



CITY of BRISBANE

City Council Meeting Agenda

Thursday, May 15, 2025 at 6:30 PM • Hybrid Meeting 50 Park Place, Brisbane, CA

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

TO ADDRESS THE COUNCIL

IN PERSON

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

Masking is not required but according to the California Department of Public Health guidelines, people at higher risk for severe illness should consider masking. To help maintain public health and safety, we respectfully request that people not attend in-person if they are experiencing symptoms associated with COVID-19 or are otherwise ill and likely contagious (e.g., respiratory illnesses).

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

REMOTE PARTICIPATION

Members of the public may participate in the City Council meeting by logging into the Zoom Webinar listed below. City Council meetings may also be viewed live and/or on-demand via the City's YouTube Channel, youtube.com/brisbaneca, or on Comcast Ch. 27. Archived videos may be replayed on the City's website, brisbaneca.org/meetings. Please be advised that if there are technological difficulties, the meeting will nevertheless continue if remote participation is available.

The agenda materials may be viewed online at brisbaneca.org at least 72 hours prior to a Regular Meeting, and at least 24 hours prior to a Special Meeting.

Remote Public Comments:

Remote meeting participants may address the City Council via Zoom Webinar. Aside from commenting personally while in the Zoom Webinar, you can also use the call in number. The public comments received will be noted for the record during Oral Communications 1 and 2 or during an agenda item. We encourage you to email comments on or not on agenda items in advance of the meeting to ipadilla@brisbaneca.org. That email address, however, will not be monitored during the meeting and emails received during the meeting will not be responded to or brought to the attention of the City Council during the meeting.

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

Webinar ID: 991 9362 8666

Call In Number: 1 (669) 900-9128

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

SPECIAL ASSISTANCE

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

WRITINGS THAT ARE RECEIVED AFTER THE AGENDA HAS BEEN POSTED

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

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

ROLL CALL

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

ADOPTION OF AGENDA

AWARDS AND PRESENTATIONS

- B. Proclaiming May 18–24, 2025 as Public Works Week
- C. Life Saving Award Commendations

ORAL COMMUNICATIONS NO. 1

CONSENT CALENDAR

- D. Approve Minutes of City Council Meeting of May 1, 2025
- E. Approve Minutes of Closed Session City Council Meeting of May 1, 2025
- F. Approve Co-sponsorship of Friends of the Brisbane Library City-Wide Yard Sale
- G. Approve Co-sponsorship of Bright Minds Africa Swim-a-Thon Event
- H. Adopt an Ordinance, Waiving Second Reading, Designating the Fire Hazard Severity Zone in the City
- I. Introduce an Ordinance Amending the Municipal Code Concerning Notices of Violations

(There is no fiscal impact in introducing, and then adopting, this Ordinance. Council has adopted a fee schedule that provides a fee for processing and administering these types of appeals.)

- J. Adopt a Resolution Approving One Project, the Overlay of Klamath Street between Visitacion Avenue and San Bruno Avenue, as Intended Use of the Fiscal Year 2025-26 Road Maintenance and Rehabilitation Account Funding

(For the fiscal impact of this item, the engineer's estimate is \$215,000. The City will receive an estimated \$127,270 to partially fund the cost of this work. The remaining expenses for the project will be funded using Measure A Sales Tax and State Gas Tax revenues. This work is categorically exempt from provisions of CEQA.)

- K. Receive Open Space and Ecology Committee 2025 Workplan

(The purpose of this item is to review this year's goals for the Open Space and Ecology Committee (OSEC), a Council-appointed citizen advisory committee.)

- L. Brisbane Lagoon Watershed Sea Level Rise Adaptation Plan

(It is being recommended to authorize the City Manager to sign an Agreement for Professional Services with Schaff & Wheeler to study the impact of sea level rise on the Lagoon and the adjoining roads of Sierra Point Parkway and U.S. 101 for the amount of \$293,340 which is primarily funded by a California Adaptation Grant.)

- M. Zoning Text Amendment 2025-RZ-01-- Adopt an Ordinance, Waiving Second Reading, to Update the City's Density Bonus and Inclusionary Housing Ordinance

(Staff is recommending to adopt an ordinance to amend the zoning ordinance's inclusionary housing and density bonus regulations, currently located in BMC Ch. 17.31, to comply with current State law and implement the Housing Element. This item is exempt from CEQA pursuant to CEQA Guidelines §15061(b)(3) because it involves adoption of policies and programs that would not cause a significant effect on the environment.)

- N. Adopt a Resolution Establishing the 2025 Business License Tax for Liquid Storage Facilities as to Kinder Morgan/SFPP

PUBLIC HEARING

- O. Receive Information on Compliance with Assembly Bill 2561/Government Code Section 3502.3 Regarding Vacancies, Recruitment and Retention Efforts
- P. Consider Adoption of Resolution Amending the Master Fee Schedule per Section 3.32.040 of the BMC to Adopt New Inclusionary In-Lieu Fees and Other Administrative Fees to Implement the Ordinance

NEW BUSINESS

- Q. Receive an Update from the Economic Development Department- “Economic Vitality”
- R. City Attorney Recruitment Discussion

STAFF REPORTS

- S. City Manager’s Report- City Updates and Upcoming Activities

MAYOR/COUNCIL MATTERS

- T. Mayor Lentz’s Request to Have the Mayor, Mayor Pro Tem and Staff Meet SF Mayor Lurie to Establish a Relationship with the Mayor’s Office to Support Common Goals Such as Sea Level Rise Resilience, Efficient Public Transportation, and Bringing Beneficial Amenities to the Region
- U. Countywide Assignments and Subcommittee Reports
 - i. Report Out on Subcommittee Meetings
 - ii. Upcoming Subcommittee Meetings
- V. Written Communications

ORAL COMMUNICATIONS NO. 2

ADJOURNMENT

File Attachments for Item:

D. Approve Minutes of City Council Meeting of May 1, 2025



BRISBANE CITY COUNCIL**ACTION MINUTES**

**CITY COUNCIL MEETING AGENDA
THURSDAY, MAY 1, 2025**

HYBRID MEETING, 50 PARK PLACE, BRISBANE, CA 94005

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

Mayor Lentz called the meeting to order at 6:31 P.M. and led the Pledge of Allegiance.

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

No Councilmembers made a request under Roll Call Item A.

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

Councilmembers absent: None

Staff Present: City Manager Dennis, City Clerk Padilla, City Attorney McMorrow, Assistant City Manager Fernandez, Finance Director Yuen, Parks and Recreation Director Leek, Parks and Recreation Supervisor Houghton, Parks and Recreation Supervisor Nahass Lopez, Deputy Fire Chief Amable, Inspector Preston, and Administrative Management Analyst Ibarra

ADOPTION OF AGENDA

Councilmember O’Connell made a motion, seconded by Councilmember Kern, to adopt the agenda as it stands. The motion was carried unanimously by all present.

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

Noes: None

Absent: None

Abstain: None

AWARDS AND PRESENTATIONS

B. May is Mental Health Month Proclamation

Mayor Lentz recognized May 2025 as Mental Health Month in the City of Brisbane to enhance public awareness of mental health to help end the stigma and direct members of the community to resources and support for mental health and substance use conditions.

Walter Ng, Community Engagement Supervisor of StarVista Crisis Center and co-chair of the May Mental Health Month Planning Committee, accepted the proclamation and thanked the City Council for their support.

City Manager shared that aside of events, City Hall and the Gazebo will also be lit up in lime green colors to commemorate Mental Health Month in the City of Brisbane.

C. Wildfire Preparedness Month

Mayor Lentz proclaimed May 2025 as Wildfire Preparedness Month and encourage all Brisbane residents to increase their knowledge and awareness of proper safety measures to protect themselves from the devastating effects of wildfires.

Inspector Preston from North County Fire accepted the proclamation and thanked the Councilmembers for spreading awareness about Wildfire Preparedness. Inspector Preston also invited the public to the Wildfire Awareness Event at City Hall on May 13, 2025 at 5pm.

D. Youth Advisory Committee Presentation

Members of the Youth Advisory Committee presented the activities, events, and initiatives they have worked on as well as upcoming programs they are coordinating for the youth in the City of Brisbane. Councilmembers thanked them for their service and leadership.

ORAL COMMUNICATIONS NO. 1

No members of the public wished to speak at this time.

CONSENT CALENDAR

- E. Approve Minutes of City Council Meeting of April 3, 2025**
- F. Approve Minutes of City Council Meeting of April 17, 2025**
- G. Approve Minutes of City Council Special Meeting of April 17, 2025**
- H. Approve Investment Report as of March 2025**
- I. Introduce an Ordinance Designating the Fire Hazard Severity Zone in the City**
- J. Adopt an Ordinance Concerning Dollar Thresholds Under the California Uniform Public Construction Cost Accounting Act and the City's Federal Procurement Policy**

(There is no fiscal impact from adopting this Ordinance. Adoption of the Ordinance will allow the City to use less staff time to obtain products and equipment under a certain dollar threshold and bring the City's procurement policies when federal funds are used in line with federal guidelines.)

Councilmember Mackin made a motion, seconded by Councilmember O'Connell, to approve Consent Calendar Items E-J. The motion was carried unanimously by all present.

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

Noes: None

Absent: None

Abstain: None

NEW BUSINESS

K. Receive Update from Silverspot Cooperative Nursery School and Discuss Lease

City Manager Dennis reported that staff recommends that the City Council receive an update from Silverspot Cooperative Nursery School (Silverspot) and discuss a new lease between the City and Silverspot. Silverspot Cooperative Nursery School is a Non-profit 501(c)(3) organization established in 2002. Silverspot Cooperative Nursery School is a parent-run, non-profit co-operative nursery school, working to create a community of encouragement and learning for families. The City has leased property at 4 Solano Street to Silverspot since 2003:

The board members of Silverspot, and Silverspot Director Diana Ji provided an overview of Silverspot to the councilmembers. They presented on the changes the school employed to meet the needs of the school, the school's revenue and expenses, and their fundraising efforts.

After council questions with staff, Silverspot Director Ji, Silverspot boardmembers and former Silverspot Director Tom Wheeler, the following members of the public showed their support for Silverspot and their school's lease renewal: Melissa Rivas, Julianna Johnson and Jessica Aloft.

Council discussed agreeing to the following amendments to the lease:

- renew the lease to two years (Article 2)
- establishing the monthly base rent to \$1,000 and is waived if Silverspot designates an equivalent amount towards community benefit, e.g., offering tuition assistance to families in need (Article 3).
- change the minimum age served and lower from 2 years 6 months to 2 years and a reduction to 15 children given the ebbs and flows of enrollment in recent years (Article 4)
- tighten the maintenance language in sections 8.01 and 8.02 and add section 8.03--Landlord shall perform maintenance of the landscape in the playground area and in the front yard of the Property at least twice per month (Article 8)
- enforce water payment if possible, if not strike it out of the new lease

Mayor Lentz also wanted more clarity from Silverspot on how they would reimagine the Tot Lot playground.

Staff was directed to return to the council with the amended lease renewal at a future City Council Meeting for Council review.

STAFF REPORTS

L. City Manager's Report- City Updates and Upcoming Activities

City Manager Dennis welcomed the new staff Christina Fernandez, Assistant to the City Manager. City Manager Dennis also provided an update on upcoming activities.

MAYOR/COUNCIL MATTERS

M. Consider Letter of Support for Regional Transportation Funding Bill

City Manager Dennis reported that staff recommend the Council discuss whether they would like to issue their own support letter for Senate Bill 63 a regional transportation funding bill. After Council questions and discussion, staff was directed to bring back this item to a City Council Meeting when there is more information about the bill and regarding Senator Arreguin's request for \$2 billion in the state budget to support transit.

N. Countywide Assignments and Subcommittee Reports

- i. Report Out on Subcommittee Meetings
- ii. Upcoming Subcommittee Meetings

Councilmembers reported on their countywide assignments and subcommittee reports.

O. Written Communications

The following written correspondences were received by Councilmembers:

Mairena (04-27-2025) Quarry
Anonymous (04-27-2025) Bank of America Building
Brown-Stevens (04-30-2025) Hidden Heroes of Greenbelt Awards
Straw (04-29-202) Ridge
Madrinan (04-29-2025) Silverspot
Mizicko-Jackson (05-01-2025) Silverspot
Vivas (05-01-2025) Silverspot
Aloft (04-30-2025) Silverspot

ORAL COMMUNICATIONS NO. 2

No members of the public wished to speak at this time.

ADJOURNMENT

The meeting was adjourned by Mayor Lentz at 8:51 P.M. and will be immediately followed by a Special Meeting in the Large Conference Room.

Ingrid Padilla
City Clerk

File Attachments for Item:

E. Approve Minutes of Closed Session City Council Meeting of May 1, 2025



BRISBANE CITY COUNCIL

ACTION MINUTES

CITY COUNCIL CLOSED SESSION MEETING AGENDA THURSDAY, MAY 1, 2025

*HYBRID MEETING, 50 PARK PLACE LARGE CONFERENCE ROOM,
BRISBANE, CA 94005*

1. 8:00 P.M. CLOSED SESSION (To Be Held in the Large Conference Room Immediately following the Adjournment of the Brisbane City Council Meeting at 6:30 P.M.)

A. Approval of the Closed Session Agenda

B. Public Comment. Members of the public may address the Councilmembers on any item on the closed session agenda

C. Adjournment into Closed Session

D. Conference With Real Property Negotiator Under Government Code Section 54956.8

Unrecorded Lot #	Assessor's Parcel No.	Owner
Lot 96	007-502-090	Jagdish Dayal

NEGOTIATOR: City Manager Jeremy Dennis

UNDER NEGOTIATION: Price and other terms and conditions of sale

E. CONFERENCE WITH LEGAL COUNSEL—ANTICIPATED LITIGATION

Government Code, Section 54956.9 (d). Number of Cases: One

Mayor Lentz called the meeting to order at 8:58 P.M.

Councilmember O'Connell made a motion, seconded by Councilmember Kern to approve the Closed Session Meeting agenda as it stands. The motion passed unanimously by all present.

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

Noes: None

Absent: None

Abstain: None

REPORT OUT OF CLOSED SESSION

City Attorney McMorrow reported that Councilmembers did not take any action and provided directions to staff on the Real Property Negotiation Item D and Anticipated Litigation Item E.

ADJOURNMENT

The meeting was adjourned at 9:58 P.M.

Ingrid Padilla, City Clerk

File Attachments for Item:

F. Approve Co-sponsorship of Friends of the Brisbane Library City-Wide Yard Sale



CITY COUNCIL AGENDA REPORT

Meeting Date: 5/15/2025

From: Jeff Franco, Recreation Coordinator
Noreen Leek, Parks & Recreation Director

Subject: Approve the Friends of the Brisbane Library City-Wide Yard Sale for Event cosponsorship

Community Goal/Result

Community Building

Purpose

Promote cultural and social events that encourage community engagement and provide assistance to local non-profit organizations.

Recommendation

Approve the Friends of the Brisbane Library's (FOBL) City-Wide Yard Sale as a cosponsored event.

Background

The City-Wide Yard Sale is open to the public and includes flea market style shopping opportunities at both the Brisbane Community Park and participating resident homes throughout Brisbane. A map of all the garage/yard sales locations will be distributed to the public. Hosted by the Friends of the Brisbane Library, this annual yard sale is the Friends' biggest fundraiser. Brisbane community members register to sell on the day of the event, and their registration fees support FOBL efforts. This event brings community members together in a unique format to repurpose household supplies/clothing and promote sustainability. It also supports Council's goal of providing assistance to non-profits.

Discussion

This year's event is being proposed for July 12, 2025, at the Community Park and along San Francisco Avenue. Event set up would begin around 7:00am and clean up would be completed by 6:00pm.

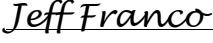
Fiscal Impact

FOBL is requesting support from the City in the way of promotion and community announcements. They have also requested closure of a portion of San Francisco Avenue for the purpose of the event. Therefore, some staff time from the Public Works team will be necessary to place public notifications onsite prior and to conduct the closure itself on the day of the event. A permit for doing so will be routed by staff in accordance with the City's policies for traffic encroachment permits.

FINANCIAL IMPACT SUMMARY BASED ON APPLICATION		
Public Works staff for street closure	Approximately 2 hours on OT @ \$52.50/hour = \$105	Requesting to be waived
Promotional and Marketing Support	Waived	

Attachments

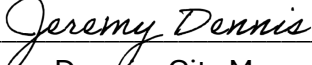
1. Cosponsorship Application



Jeff Franco, Recreation Coordinator



Noreen Leek, Parks & Recreation Director



Jeremy Dennis, City Manager



City of Brisbane

CO-SPONSORSHIP APPLICATION

This application must be submitted to the Parks & Recreation Department at least (90) working days prior to the requested event.

PHONE: 415-508-2140 | EMAIL: BRISBANEREC@BRISBANECA.ORG | OFFICE: 50 Park Place, Brisbane, CA 94005

APPLICANT INFORMATION

Name of Contact Person: DAWN DAVID Contact Person's Phone: 415.823.3552

Contact Person's Email: dawn.david25@gmail.com

Name of Organization: F.O.B.L. (FRIENDS OF THE BRISBANE LIBRARY) Organization's Website: www.FOBL.info

Organization's Address or P.O. Box: 163 VISITATION AVE. BRISBANE CA. 94005

Circle ONE of the following items below that best describes your organization.

- ☒ a. Brisbane Non-Profit Organization
- ☐ b. Non-resident, Non-Profit Organization (Outside of Brisbane)
- ☐ c. School District, School, or School Affiliated Group (ex. PTO)
- ☐ d. Private Group, Club, or Organization

What year did your organization begin serving the Brisbane community? 1999

How has your organization contributed to the Brisbane community in the past 2 years?

FOBL FINANCIALLY SUPPORTS PROGRAMMING AT THE BRISBANE LIBRARY FOR COMMUNITY ENRICHMENT. WE HOST THE CITY-WIDE YARD SALE, WHICH ENABLES OUR COMMUNITY TO DECLUTTER HOUSES, ENCOURAGES RE-USE OF OTHERWISE LANDFILL-DESTINED HOUSEHOLD ITEMS & ENCOURAGES PEOPLE TO WALK AROUND OUR TOWN & SUPPORT BUSINESS & EACH OTHER.

What is your organization's mission and/or purpose?

WE ARE A NONPROFIT ORGANIZATION THAT PROVIDES ASSISTANCE TO THE BRISBANE LIBRARY. WE ORGANIZE, DEVELOP & PROVIDE EVENTS & RESOURCES TO SUSTAIN OUR SMALL BUT TREASURED LIBRARY.

EVENT DETAILS

Name of Event: FOBL'S CITY-WIDE YARD SALE Event Set-up Start Time: 8:00 AM

Event Date (mm/dd/yy): JULY 12, 2025

Event Start Time: 9:00 AM

Event Day of Week: SATURDAY

Event Close Time: 3:00 PM

Event Location: SAN FRANCISCO AVE. FROM OLD COUNTY RD TO MANIPUA STREET

Reservation Permit Number (if applicable): _____

Describe what can be expected from this event? (ex. Performance, shopping, activities, etc.)

SHOPPING VIA COMMUNITY-MEMBER BOOTHS

Will there be any fundraising at this event? NO If yes, what will the funds raised be used for? N/A

Are there any admission fees for this event? NO If yes, please list them here: N/A

If this event is NOT open to the general public, what are the restrictions for who may attend? (ex. Age, membership, residency, etc.)

N/A

F. INDOOR FACILITY ACCESS REQUEST

City Staff must be present to accommodate the use of any of our indoor facilities. The following schedule will be used to ensure someone will be available when you need access. (If you are not requesting indoor facility use, you may skip to the next section)

Date of Facility Access (mm/dd/yy): N/A Opening Time: N/A Closing Time: N/A
Date of Facility Access (mm/dd/yy): _____ Opening Time: _____ Closing Time: _____
Date of Facility Access (mm/dd/yy): _____ Opening Time: _____ Closing Time: _____

EQUIPMENT USE REQUEST

<Insert Equipment Use Liability Notice>

Indicate the equipment you wish to borrow for this event.

Bluetooth Speaker? _____ with Microphone? _____

Projector & Screen? (Mission Blue Only) _____

Other: _____

Quantity:

Item:

6ft Long Rectangle Tables

5ft Diameter Round Tables

Chairs

10ft x 10ft Canopy/Pop-up Tent

Weighted Sandbags

PERMITS

Food & Beverage Permits

Will any food or non-alcoholic beverages be sold at your event? NO If yes, this permit is required smchealth.org/food-program

Will alcoholic beverages be served or sold at your event? NO If yes, you must attach a copy of an [Alcoholic Beverage Permit](#)

*Full Liquor Liability: If beer or wine is available for consumption and money is transacted in any form (i.e. for donation, for a ticket, for a meal, for entry to the event, for the beverage) then full liquor liability premiums are necessary.

Traffic Permits

Will this event require any street or parking closures? YES If yes, you must obtain a [Brisbane Encroachment Permit](#)

Amplified Sound Permits

Do you wish to use amplified sound at this event? NO If yes, you must submit an [Brisbane Amplified Sound Permit Application](#)

ADDITIONAL SUPPORT

Do you need any promotional support for this event?

Signboards? YES Social Media? YES

Digital Graphics / Flyers? YES Programs? _____

Other: N/A

USE AGREEMENT & LIABILITY RELEASE

To the fullest extent allowed by law, I agree to indemnify and defend the City of Brisbane, its directors, officers, agents, employees and volunteers and hold them harmless from and against any and all loss, liability, expense, claims, costs, suits, and damages, including attorneys' fees, arising out of the use or occupancy described in this application. I agree to waive all rights of subrogation against the City, its elected or appointed officers, officials, agents and employees for losses paid under the terms of any policy which arise from the use or occupancy described in this application.

Applicant Signature

David David

Date

4/22/25

File Attachments for Item:

G. Approve Co-sponsorship of Bright Minds Africa Swim-a-Thon Event



CITY COUNCIL AGENDA REPORT

Meeting Date: 5/15/2025

From: Jeff Franco, Recreation Coordinator
Noreen Leek, Parks & Recreation Director

Subject: Approve the Bright Minds Africa Swim-a-Thon for Event cosponsorship

Community Goal/Result

Community Building

Purpose

Promote cultural and social events that encourage community engagement and provide assistance to local non-profit organizations.

Recommendation

Approve the Bright Minds Africa Swim-a-Thon as a co-sponsored event.

Background

Bright Minds Africa is a non-profit organization that provides a school partnership program at Lipman Middle School. One of their founders, Gina Dettmer, is a Brisbane resident. The mission of Bright Minds Africa is to empower girls and remove the obstacles that prevent them from accessing education, including family dynamics, community needs, and social issues like early marriage. Bright Minds Africa achieves this through various programs, including:

- Education: Identifying out-of-school children and working with their families to enroll them, providing scholarships, and supporting local schools with teacher training and infrastructure.
- Literacy: Developing libraries in schools and communities to combat functional illiteracy and offer literacy programming.
- Healthcare: Addressing malnutrition, HIV transmission, and maternal health issues through various interventions.
- Other Initiatives: Providing clean water projects, microloans, and mentorship.

Currently, Lipman students engage in a pen pal exchange program with students in Nigeria and fundraise for communities throughout West Africa. Through Bright Minds Africa, Brisbane residents have the opportunity to sponsor students in Nigeria and partake in an annual donor dinner.

Discussion

Bright Minds Africa's inaugural Swim-a-Thon event is being proposed for Saturday, June 7, 2025, from 3:30-7:00pm at the Brisbane Community Pool. The event set up would begin at 2:30pm and clean up would be completed by 7:15pm. Lifeguards would be onsite throughout the duration of the event. The

event would consist of community members registering in advance and swimming laps to raise funds to donate towards construction of a High School for girls in Nigeria.

Fiscal Impact

Bright Minds Africa is requesting support from the city as summarized in the table below. They have requested use of the Brisbane Community Pool for the aforementioned event.

FINANCIAL IMPACT SUMMARY BASED ON APPLICATION

Hourly Rental of the Community Pool	Approximately 5 hours @ \$175/hour = \$875 <i>(including set up/clean up)</i>	Requesting to be waived
Promotional and Marketing Support	Waived	

Attachments

1. Cosponsorship Application

Jeff Franco

Jeff Franco, Recreation Coordinator

Noreen Leek

Noreen Leek, Parks & Recreation Director

Jeremy Dennis

Jeremy Dennis, City Manager



City of Brisbane

CO-SPONSORSHIP APPLICATION

This application must be submitted to the Parks & Recreation Department at least (90) working days prior to the requested event.

PHONE: 415-508-2140 | EMAIL: BRISBANEREC@BRISBANECA.ORG | OFFICE: 50 Park Place, Brisbane, CA 94005

APPLICANT INFORMATION

Name of Contact Person: Gina Dettmer Contact Person's Phone: 415-420-7291
 Contact Person's Email: gmdettmer@gmail.com
 Name of Organization: Bright Minds Africa Organization's Website: www.brightmindsafrica.org
 Organization's Address or P.O. Box: 77 Plumas St. Brisbane, CA 94005

Circle ONE of the following items below that best describes your organization.

- ☒ a. Brisbane Non-Profit Organization
- ☐ b. Non-resident, Non-Profit Organization (Outside of Brisbane)
- ☐ c. School District, School, or School Affiliated Group (ex. PTO)
- ☐ d. Private Group, Club, or Organization

What year did your organization begin serving the Brisbane community? 2021

How has your organization contributed to the Brisbane community in the past 2 years?

We provide a School Partnership Program at Lipman, where students engage in a pen pal exchange with Nigerian students and fundraise for a project for school and communities in Nigeria. Brisbane residents have the opportunity to sponsor

What is your organization's mission and/or purpose?

students in Nigeria and we provide an annual donor dinner. To empower and educate girls in West Africa, and to provide cross-cultural exchange for students and community members in the Bay Area.

EVENT DETAILS

Name of Event: Swim-a-thon Event Set-up Start Time: 2:30 pm
 Event Date (mm/dd/yy): Saturday in May or June Event Start Time: 3:30 pm
 Event Day of Week: Saturday Event Close Time: 7:15 pm
 Event Location: Brisbane Pool
 Reservation Permit Number (if applicable): N/A

Describe what can be expected from this event? (ex. Performance, shopping, activities, etc.)

Community members swim laps to raise funds for a project in Nigeria.

Will there be any fundraising at this event? Yes If yes, what will the funds raised be used for? Build a high school for girls

Are there any admission fees for this event? No If yes, please list them here: _____

If this event is NOT open to the general public, what are the restrictions for who may attend? (ex. Age, membership, residency, etc.)

Open to the general public but must register ahead of time.

G. INDOOR FACILITY ACCESS REQUEST

City Staff must be present to accommodate the use of any of our indoor facilities. The following schedule will be used to ensure someone will be available when you need access. (If you are not requesting indoor facility use, you may skip to the next section)

Date of Facility Access (mm/dd/yy): _____ Opening Time: _____ Closing Time: _____
 Date of Facility Access (mm/dd/yy): _____ Opening Time: _____ Closing Time: _____
 Date of Facility Access (mm/dd/yy): _____ Opening Time: _____ Closing Time: _____

EQUIPMENT USE REQUEST

<Insert Equipment Use Liability Notice>

Indicate the equipment you wish to borrow for this event.

Bluetooth Speaker? Yes with Microphone? Yes

Projector & Screen? (Mission Blue Only) _____

Theater Risers? (Mission Blue Only) _____

Theatrical Lighting? (Mission Blue Only) _____ Lighting Technician? _____

Other: _____

Quantity:

Item:

3 6ft Long Rectangle Tables

20 5ft Diameter Round Tables

1 Chairs

4 10ft x 10ft Canopy/Pop-up Tent

Weighted Sandbags *if it fits on pool deck*

PERMITS

Food & Beverage Permits

Will any food or non-alcoholic beverages be sold at your event? No If yes, this permit is required smchealth.org/food-program

Will alcoholic beverages be served or sold at your event? No If yes, you must attach a copy of an Alcoholic Beverage Permit

*Full Liquor Liability: If beer or wine is available for consumption and money is transacted in any form (i.e. for donation, for a ticket, for a meal, for entry to the event, for the beverage) then full liquor liability premiums are necessary.

Traffic Permits

Will this event require any street or parking closures? No If yes, you must obtain a Brisbane Encroachment Permit

Amplified Sound Permits

Do you wish to use amplified sound at this event? Yes If yes, you must submit an Brisbane Amplified Sound Permit Application

But same as used by the pool?

ADDITIONAL SUPPORT

Do you need any promotional support for this event?

Signboards? Yes please! Social Media? _____

Digital Graphics / Flyers? _____ Programs? _____

Other: _____

USE AGREEMENT & LIABILITY RELEASE

To the fullest extent allowed by law, I agree to indemnify and defend the City of Brisbane, its directors, officers, agents, employees and volunteers and hold them harmless from and against any and all loss, liability, expense, claims, costs, suits, and damages, including attorneys' fees, arising out of the use or occupancy described in this application. I agree to waive all rights of subrogation against the City, its elected or appointed officers, officials, agents and employees for losses paid under the terms of any policy which arise from the use or occupancy described in this application.

Applicant Signature Ragnia Deth

Date 3/31/25

File Attachments for Item:

H. Adopt an Ordinance, Waiving Second Reading, Designating the Fire Hazard Severity Zone in the City

**CITY COUNCIL MEMO****Meeting Date: May 15, 2025****From: Ingrid Padilla, City Clerk****Subject: An Ordinance Establishing the 2025 Local Responsibility Area Fire Hazard Severity Zone Map for the City of Brisbane and designating all areas within the City of Brisbane as Moderate**

The Ordinance listed above was introduced at the City Council Meeting of May 1, 2025. It is on this agenda for consideration of adoption.

Attachment:

1. Staff Report from the City Council Meeting of May 1, 2025

**CITY COUNCIL AGENDA REPORT****Meeting Date: Thursday, May 1, 2025****From: Fire Marshal Battalion Chief Craig Wittner****Subject: Fire Hazard Severity Zone Map****Community Goal/Result**

Safe Community – Enhance safety within the community of residents, businesses, and visitors.

Purpose

To comply with California Government Code 51179.

Recommendation

Staff recommend the City Council introduce an ordinance establishing the 2025 Local Responsibility Area Fire Hazard Severity Zone Map for the City of Brisbane and designating all areas within the City of Brisbane as Moderate.

Background

On February 24, 2025, CAL FIRE released the 2025 Local Responsibility Area (LRA) Fire Hazard Severity Maps. State law requires CAL FIRE, in coordination with the Office of the State Fire Marshal to identify areas in the state as moderate, high, and very high fire hazard severity zones, utilizing a consistent statewide model based on the severity of fire hazard that is expected to prevail in those areas. Fire Hazard Severity Zone maps evaluate “hazard,” not “risk” and are based on the physical conditions that create a likelihood and expected fire behavior over a 30 to 50-year period. The State Department of Forestry and Fire Protection has designated all areas within the City of Brisbane as Moderate and the map attached to the Ordinance reflects that designation.

The North County Fire Authority has made this information, including the map, available to the public for review and comment. The Authority has received no comments on the map.

Notwithstanding that properties in Brisbane will be designated as moderate, insurance companies use their own sophisticated risk models to make decisions about what premiums are to be imposed for fire insurance purposes..

Fiscal Impact

None

Environmental Review

No further environmental review is required under the California Environmental Quality Act (CEQA) to introduce and adopt this Ordinance because the Ordinance is not a project under CEQA Guidelines, Section 15378, and there is no significant environmental effect related to its adoption (CEQA Guidelines, Section 15061 (b)(3)).

Attachments

1. Ordinance
2. Local Responsibility Area (LRA) Moderate Fire Hazard Severity Zone Map

Craig Wittner

Craig Wittner, Fire Marshal

Jeremy Dennis

Jeremy Dennis, City Manager

CITY OF BRISBANE ORDINANCE NO. _____**AN UNCODIFIED ORDINANCE OF THE CITY OF BRISBANE DESIGNATING THE FIRE HAZARD SEVERITY ZONE FOR THE CITY OF BRISBANE AS MODERATE AND ADOPTING A MAP ENTITLED “CITY OF BRISBANE FIRE HAZARD SEVERITY ZONE”**

WHEREAS, the State Fire Marshal has identified areas in the State as moderate, high, or very high fire hazard severity zones based on consistent statewide criteria based on the severity of the fire hazard that is expected to prevail in those areas; and

WHEREAS, the California Department of Forestry and Fire Protection has recommended that all areas within the City of Brisbane be designated as a moderate fire hazard severity zone; and

WHEREAS, the City is to adopt by ordinance a map designating the areas within its jurisdiction as moderate, high, or very high fire hazard severity zones; and

WHEREAS, information concerning this matter and the proposed map has been available to the public for review and comment; and

WHEREAS, this Ordinance is exempt from review under the California Environmental Quality Act (“CEQA”) under CEQA Guidelines Sections 15378 (not a project) and 15061(b)(3) (no significant environmental impact).

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BRISBANE does ordain as follows:

Section 1. The City Council hereby designates the Fire Hazard Severity Zone for the City of Brisbane as Moderate and adopts the attached map entitled “City of Brisbane Fire Hazard Severity Zone”.

Section 2. The official map referenced in Section 1 of this Ordinance is also located electronically on the following website: www.northcountyfire.gov.

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

The above Ordinance was regularly introduced and after waiting the time required by law was thereafter passed and adopted at a regular meeting of the City Council of the City of Brisbane on May 15, 2025, by the following vote:

AYES:
NOES;
ABSENT;
ABSTAIN:

Mayor of the City of Brisbane

Attest:

Ingrid Padilla, City Clerk

Approved as to form:

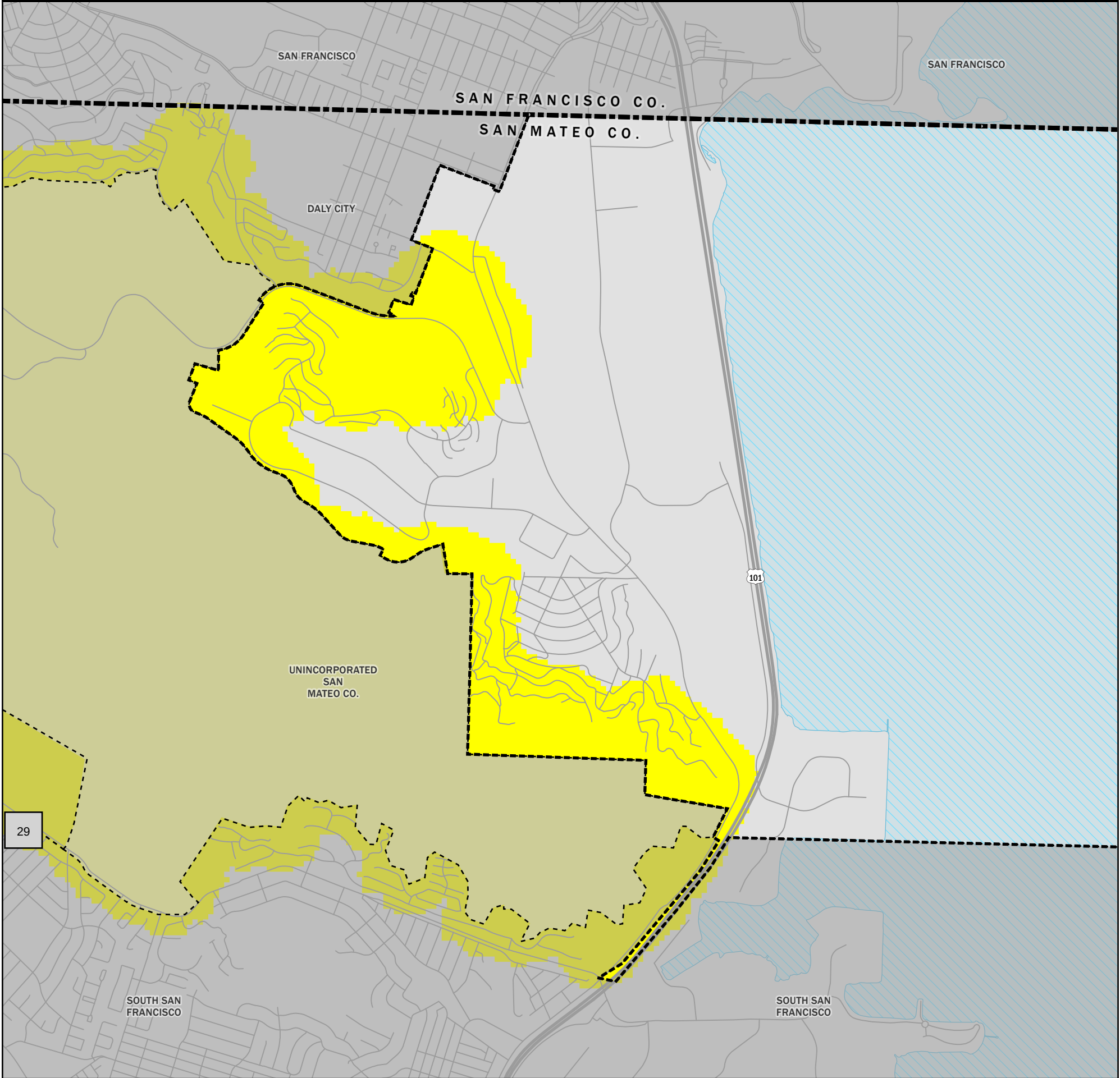
A handwritten signature in blue ink, appearing to read 'T. R. McMorrow', with a long horizontal flourish extending to the right.

Thomas R. McMorrow, City Attorney



Local Responsibility Area Fire Hazard Severity Zones

As Identified by the
State Fire Marshal
February 24, 2025



Fire Hazard Severity Zones (FHSZ) in Local Responsibility Area (LRA), as Identified by the State Fire Marshal

Moderate

Fire Hazard Severity Zones in State Responsibility Area (SRA), Effective April 1, 2024

Moderate

Mi 0 0.5 1
Km 0 0.5 1 1.5

Projection: NAD 83 California Teale Albers
Scale: 1:24,000 at 11" x 17"

Incorporated City Waterbody
Unzoned LRA

Government Code section 51178 requires the State Fire Marshal to identify areas in the state as moderate, high, and very high fire hazard severity zones based on consistent

statewide criteria and based on the severity of fire hazard that is expected to prevail in those areas. Moderate, high, and very high fire hazard severity zones shall be based on fuel loading, slope, fire weather,

and other relevant factors including areas where winds have been identified by the Office of the State Fire Marshal as a major cause of wildfire spread.

The State of California and the Department of Forestry and Fire Protection make no representations or warranties regarding the accuracy of data or maps. Neither the State nor the Department shall be liable under any circumstances for any direct, special, incidental, or consequential damages with respect to any claim by any user or third party on account of, or arising from, the use of data or maps.

Gavin Newsom, Governor, State of California
Wade Crowfoot, Secretary for Natural Resources, CA Natural Resources Agency
Joe Tyler, Director/Fire Chief, CA Department of Forestry and Fire Protection
Daniel Berlant, State Fire Marshal, CA Department of Forestry and Fire Protection

Data Sources:
CAL FIRE Fire Hazard Severity Zones (FHSZSRA23_3, FHSZLRA_25_1)
CAL FIRE State Responsibility Areas (SRA25_1)
City and County boundaries as of 10/22/24 (CA Board of Equalization)

File Attachments for Item:

I. Introduce an Ordinance Amending the Municipal Code Concerning Notices of Violations

(There is no fiscal impact in introducing, and then adopting, this Ordinance. Council has adopted a fee schedule that provides a fee for processing and administering these types of appeals.)



CITY COUNCIL AGENDA REPORT

Meeting Date: May 15, 2025

From: Michael Roush, Legal Counsel & Jeremy Dennis, City Manager

Subject: Ordinance Concerning Notices of Violations for Violations of the Brisbane Municipal Code

Community Goal/Result

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

Recommendation

Introduce the attached Ordinance amending the Municipal Code concerning Notices of Violations for violations of the Brisbane Municipal Code and then, subsequently, adopt the Ordinance.

Adoption of this Ordinance is not subject to further environmental review since it is not a project under the California Environmental Quality Act. Section 15378 (b)(5), CEQA Guidelines.

Background

When the City becomes aware of potential violations of the Municipal Code, typically by complaints from residents, the City's Code Enforcement Officer will investigate. If it appears that there is a violation, the Code Enforcement Officer will contact the property owner and/or responsible party and advise that the violation must be abated or corrected. If those informal methods to resolve the matter are not successful, the Municipal Code provides a number of remedies that the City may pursue in order to gain compliance. These include an infraction or misdemeanor citation (depending on the nature of the violation) which imposes a fine on the violator, an administrative citation which likewise imposes a fine on the violator, or a Notice of Violation ("NOV") which does not impose a fine on the violator but does order the violator to correct or abate the violation within a specified period of time and advises that the failure to correct or abate may subject to further enforcement actions. NOV's also provide that the person who received the NOV may appeal, i.e., the person cited contends that there is no violation of the Code.

Currently, for most NOV's, the Municipal Code does not expressly provide for an appeal hearing except in the limited situations where the NOV provides that the Code Enforcement Officer may record a Notice of Violation against the property if the violation is not corrected or abated. Typically, however, most NOV's do not include that language but only that the violation must be corrected within a specific period time. Therefore, for most NOV's there are no express procedures in the Municipal Code about the appeals process when the NOV does not say that

the Code Enforcement Officer may record the NOV against the property. This came into focus recently when an NOV for a zoning ordinance violation was issued, it did not say an NOV may be recorded, and the person who received the NOV filed an appeal. That particular appeal became moot when the NOV was withdrawn but appeals procedures for these types of NOVs should be placed into the Municipal Code for future enforcement actions.

The City has adopted by reference a number of what are called “Construction Codes”, for example, the California Building, Residential, Electrical, Plumbing, Energy and Green Building Standards, and Property Maintenance Codes. Section 15.04.040, Brisbane Municipal Code. Generally, these Codes are based on International or Uniform Codes and the intent of these Codes is to provide uniform standards throughout the State. NOVs under these Codes provide their own appeals procedures.

Typically, these Codes call for a “Board of Appeals” to hear appeals, with Board members to be persons with experience in the particular subject matter of the particular Code, for example, the Board members under the Building Code are to have experience and training in building construction. Board members are appointed by the “chief appointing authority” (presumably the City Manager) or by the governing body, e.g., the City Council; Board members may not be employees of the agency that issued the NOV. To say that most cities have such appointed such Boards would be an overstatement and indeed Brisbane has never established or appointed such a Board. Perhaps oddly, the Codes typically provide, however, that if a Board has not been appointed, the governing body is to hear appeals of NOVs, notwithstanding that most members of a governing body would lack experience and training in these areas. Moreover, unlike appeals of NOVs for violations under other Chapters of the Municipal Code, recent case law holds that appeals of NOVs under the construction codes must be heard by a Board of Appeals, not by a single hearing officer.

A city may, however, amend most construction codes under certain limited conditions, i.e., because of local climatic, geological, topographical or environmental conditions. Moreover, such amendments must be approved by the California Building Standards Commission. See Section 15.04.043, BMC, concerning amendments to certain construction codes. Accordingly, there would not be the required grounds to amend most construction codes to revise the appeals procedure, for example to have a single hearing officer hear appeals and, even if the City were to so amend those codes, it seems unlikely the California Building Standards Commission would approve.

One construction code, however, the International Property Maintenance Code, may be amended for reasons not tied to climactic, geological, topographical, or environmental circumstances. That Code is often the subject of Brisbane issued NOVs.

Discussion

Staff recommends that Section 1.14.140 of the Municipal Code be amended such that if an NOV is issued, it may, but need not, provide that an NOV may be recorded against the property if the underlying violation is not corrected or abated. Otherwise, the NOV will provide that the violation must be corrected or abated within a specific period of time. Whether the NOV has the recording language or not, the person who receives the NOV may appeal.

Staff also recommends that the International Property Maintenance Code be amended by deleting the current appeals procedures that contemplates a Board of Appeals and replacing it with the appeals procedure set forth in Chapter 1.14 (Code Enforcement). Such amendment does not need to be approved by the California Buildings Standards Commission. More importantly, the amendment would permit a single hearing officer to hear and decide appeals of NOV's for violations of the Property Maintenance Code. In the absence of a Board of Appeals being appointed, appeals of NOV's for violations of other construction codes will need to be heard by the City Council. Fortunately, such appeals are rare and indeed, staff is not aware of any such appeals in the last 15 years.

If this Ordinance is adopted, for the overwhelming majority of NOV's, if there is an appeal, the City Manager may designate a hearing officer to hear and decide the merits of the appeal. The hearing officer may be a City Department head whose department does not have direct regulatory authority over that portion of the Municipal Code giving rise to the violation. For example, if the Code Enforcement Officer issued an NOV for a zoning ordinance violation and the NOV was appealed, the City Manager could assign the Public Works Director to hear the appeal since that Director has no direct regulatory authority over zoning matters. Whether a City Department Head or otherwise, the hearing officer's decision is final, subject only to judicial review.

In instances where an NOV has been recorded after a hearing officer has upheld the underlying violation or where the person fails to appeal, and the violation is subsequently corrected, the City will prepare a termination/cancellation of the NOV and provide it to the property owner so that the owner may have it recorded and remove the cloud on title.

The issuance of an NOV, recorded or not, is in addition to any other remedies the City may have, such as criminal or administrative citations, or a civil action, to compel compliance.

Fiscal Impact

There is no fiscal impact in introducing, and then adopting, this Ordinance. Council has adopted a fee schedule that provides a fee (currently \$454) for processing and administering these types of appeals.

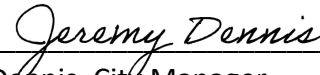
Environmental Review

No further environmental review under the California Environmental Quality Act is required for introduction/adoption of this Ordinance because it is an organizational or administrative activity of the City that will not result in direct or indirect physical changes in the environment and hence it is not a project under CEQA. CEQA Guidelines, Section 15378(b)(5).

Attachment:

1. Ordinance amending Sections 1.14.140 and 15.04.043 of the Brisbane Municipal Code concerning notices of violations



Michael Roush, Legal Counsel

Jeremy Dennis, City Manager

ORDINANCE NO. ____

AN ORDINANCE OF THE CITY OF BRISBANE TO AMEND SECTIONS 1.14.140 AND 15.04.043 OF THE BRISBANE MUNICIPAL CODE CONCERNING NOTICES OF CODE VIOLATIONS

THE CITY COUNCIL OF THE CITY OF BRISBANE HEREBY ORDAINS AS FOLLOWS:

SECTION 1. Section 1.14.140 of the Brisbane Municipal Code is amended to read as follows:

“1.14.140 Notices of code violations.

(Subsection A, no change).

B. Whenever an enforcement officer has knowledge of a violation of any provision of this code, or any other ordinance of the city, or any rule, regulation, or order promulgated or issued pursuant to this code, or the provisions of any code adopted by reference by this code, or any condition or any approval, permit, or license granted pursuant to this code, and such violation is located upon any real property in the city, the enforcement officer may:

1. Issue to the owner of such property a notice of violation informing the owner of the location of the violation, the description of the violation, the code section violated, the corrective or abatement action required, the date by which the violation must be corrected or abated, that if the violation is not corrected or abated within the time frame set forth that the owner will be subject to further code enforcement actions, and the owner's appeal rights; and/or
2. Issue to the owner of such property of the enforcement officer's intent to record a notice of violation in the office of the county recorder. The notice of intent shall describe the nature of the violation and inform the owner that a notice of violation will be recorded unless the owner requests a hearing within 20 days from the date of the notice.

C. Any notice of violation or notice of intent to record a notice of violation shall be mailed to the owner at the address shown on the latest available assessment roll, or as otherwise known to the enforcement officer, and a copy posted to the property.

D. If the owner exercises appeal rights timely under paragraph 1 of Subsection B, or if the owner timely requests a hearing under paragraph 2 of subsection B, the City Manager, unless the code requires otherwise, shall appoint a hearing officer, who may be a City Department Head or Deputy Department Head whose Department does not have direct regulatory authority over the property in question. The hearing officer may affirm, modify, or reverse the decision of the enforcement officer that there is a violation of the code to be corrected or abated. The decision of the hearing officer shall be final subject only to judicial review as provided by law.

E. If the owner does not exercise timely appeal rights under paragraph 1 of subsection B and the violation remains uncorrected or unabated or, if owner has exercised timely appeal rights and the hearing officer, following the hearing and consideration of the relevant evidence, determines that a

violation as cited in the notice of violation exists, the enforcement officer may take further enforcement actions.

F. If the owner does not timely request a hearing under paragraph 2 of subsection B and the violation remains uncorrected or unabated or, if the owner has timely requested a hearing and hearing officer, following the hearing and consideration of the relevant evidence, determines that violation as cited in the notice of intent to record exists, the enforcement officer may record a notice of code violation in the office of the county recorder.

G. If a notice of code violation has been recorded, at the request of the affected property owner or other interested person and upon the enforcement officer's determination that the violation has been corrected or abated, the enforcement officer shall furnish to the owner or other interested party a termination/cancellation of the recorded notice of code violation.

H. The enforcement officer's issuing to the owner a notice of violation or a notice of intent to record a notice of violation pursuant to this section shall be in addition to any other rights, remedies, or actions available to the city by reason of the same violation as described in the notice."

Section 2: Section 15.04.043 of the Brisbane Municipal Code is amended to read:

"Section 15.04.043 Amendments to the California Building Standards Codes

The 2022 California Building Code (CBC), California Residential Code (CRC), California Green Building Standards Code (CALGreen), and the 2021 International Property Maintenance Code (IPMC) are hereby amended as follows:

(Subsections A through I, no change).

J. Section 107 of the IPMC is deleted and replaced with the following:

Appeals of administrative citations, notices of violation, or compliance orders of the code official issued under this code shall be conducted in accordance with Chapter 1.14 (Code Enforcement).'

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

The above Ordinance was regularly introduced and after waiting the time required by law was thereafter passed and adopted at a regular meeting of the City Council of the City of Brisbane held on _____, 2025, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN

Mayor of the City of Brisbane

I.

ATTEST:

Ingrid Padilla, City Clerk

Approved as to form:

Thomas R. McMorrow, City Attorney

File Attachments for Item:

J. Adopt a Resolution Approving One Project, the Overlay of Klamath Street between Visitacion Avenue and San Bruno Avenue, as Intended Use of the Fiscal Year 2025-26 Road Maintenance and Rehabilitation Account Funding

(For the fiscal impact of this item, the engineer's estimate is \$215,000. The City will receive an estimated \$127,270 to partially fund the cost of this work. The remaining expenses for the project will be funded using Measure A Sales Tax and State Gas Tax revenues. This work is categorically exempt from provisions of CEQA.)



CITY COUNCIL AGENDA REPORT

Meeting Date: May 15, 2025

From: Karen Kinser, Deputy Director of Public Works

Subject: Adoption of Project as Intended Use of FY 2025-26 RMRA Funding

Community Goal/Result

(1) Safe Community

Purpose

To satisfy the Fiscal Year Road Maintenance and Rehabilitation Account eligibility, accountability, and transparency requirements established by SB 1 (2017, Beall); this action is consistent with the community's value of being fiscally conservative.

Recommendation

Approve Resolution No. 2025-xx adopting one (1) project, the overlay of Klamath Street between Visitacion Avenue and San Bruno Avenue, for fiscal year 2025-2026 funded by Senate Bill 1 (SB 1): the Road Repair and Accountability Act of 2017.

Background

SB 1 (Beall) was filed with the Secretary of State on April 28, 2017. This bill established a Road Maintenance and Rehabilitation Account (RMRA) in the State Transportation Fund that is intended to address deferred maintenance on the state highway system and the local street and road systems. The bill also requires the California Transportation Commission (CTC) to adopt criteria to ensure efficient use of these funds.

The reason for recommending approval of the attached resolution is to satisfy the eligibility requirements of SB 1 while providing transparency to the community of the City's intended use of the SB 1 funds and holding itself accountable for the efficient investment of public funds to maintain public streets and roads with the annual expenditure reporting requirements. The City will report to the Commission by December 1 of each year on its use of RMRA funds received and/or spent each FY and account for all projects proposed in that FY.

Fiscal Impact

The project recommended for this year is to utilize 2025-26 RMRA funds to complete a mill-and-overlay of Klamath Street between Visitacion Avenue and San Bruno Avenue, as identified in the City's pavement management system. The engineers estimate is \$215,000. The City will receive an estimated \$127,270 to partially fund the cost of this work. The remaining expenses for the project will be funded using Measure A Sales Tax and State Gas Tax revenues.

Environmental Review

This work is categorically exempt from provisions of CEQA in that the proposal is replacement or reconstruction of existing uses on the same site as the existing facilities with no change in purpose or expansion of capacity (California Code of Regulations, Title 14, Division 6, Chapter 3, Article 19, §15302 “Class 2 – Replacement or Reconstruction”).

Measure of Success

Compliance with the SB 1 Local Streets and Roads RMRA eligibility requirements by the CTC’s submittal due dates, allowing the City to receive its FY 2025-26 RMRA apportionment. Should the City fail to meet the eligibility requirements within the submittal period enforced by the CTC, the City will forfeit its RMRA apportionment, which will then be disbursed to other eligible Cities that fiscal year.

Attachments

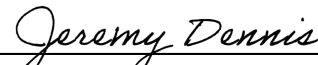
1. Resolution No. 2025-xx



Karen Kinser, Deputy Director of Public Works



Randy Breault, Director of Public Works/City Engineer



Jeremy Dennis, City Manager

RESOLUTION NO. 2025-xx

RESOLUTION ADOPTING ONE (1) PROJECT, THE OVERLAY OF KLAMATH STREET BETWEEN VISITACION AVENUE AND SAN BRUNO AVENUE, FOR FISCAL YEAR 2025-2026 FUNDED BY SENATE BILL 1 (SB 1): THE ROAD REPAIR AND ACCOUNTABILITY ACT OF 2017

WHEREAS, Senate Bill 1 (SB 1), the Road Repair and Accountability Act of 2017 (Chapter 5, Statutes of 2017) was passed by the Legislature and Signed into law by the Governor in April 2017 to address the significant multi-modal transportation funding shortfalls statewide; and

WHEREAS, SB 1 includes accountability and transparency provisions that will ensure the residents of Brisbane are aware of the projects proposed for funding in our community and which projects have been completed each fiscal year; and

WHEREAS, the City must adopt by resolution a list of projects proposed to receive fiscal year funding from the Road Maintenance and Rehabilitation Account (RMRA), created by SB 1, which must include a description and the location of each proposed project, a proposed schedule for the project's completion, and the estimated useful life of the improvement; and

WHEREAS, the City will receive an estimated \$127,270 in RMRA funding in Fiscal Year 2025-26 from SB 1; and

WHEREAS, this is the ninth year in which the City is receiving SB 1 funding and will enable the City to continue essential road maintenance and rehabilitation projects, safety improvements, repairing and replacing aging bridges, and increasing access and mobility options for the traveling public that would not have otherwise been possible without SB 1; and

WHEREAS, the City has undergone a robust public process to ensure public input into our community's transportation priorities/the project list; and

WHEREAS, the City used a Pavement Management System to develop the SB 1 project list to ensure revenues are being used on the most high-priority and cost-effective projects that also meet the communities priorities for transportation investment; and

WHEREAS, the funding from SB 1 will help the City maintain and rehabilitate streets throughout the City this year and into the future; and

WHEREAS, the 2024 California Statewide Local Streets and Roads Needs Assessment found that the City's streets and roads are in "Good to Excellent" condition and this revenue will help us maintain or increase the overall quality of our road system; and

WHEREAS, the SB 1 project list and overall investment in our local streets and roads infrastructure with a focus on basic maintenance and safety, investing in complete streets infrastructure, and using cutting-edge technology, materials and practices, will have significant positive co-benefits statewide.

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

1. The foregoing recitals are true and correct.
2. The Overlay of Klamath Street between Visitacion Avenue and San Bruno Avenue will be funded with Fiscal Year 2025-26 Road Maintenance and Rehabilitation Account revenues:
 - a. Anticipated Funding Sources: 2025-2026 RMRA funds (\$127,270), Measure A Sales Tax and State Gas Tax revenues (\$87,730)
 - b. Project Description: Mill-and-overlay of asphalt concrete surfacing.
 - c. Project Location: Klamath Street between Visitacion Avenue and San Bruno Avenue
 - d. Proposed Schedule: Release notice inviting bids to contractors spring 2026 and complete construction by summer 2026.
 - e. Estimated Useful Life: The city's Pavement Management System calculates a new useful life of 20 years for this repaired roadway.
3. The Overlay of Klamath Street between Visitacion Avenue and San Bruno Avenue is adopted into the City's FY 2025-2026 Capital Improvement program.

Cliff Lentz, Mayor City of
Brisbane

* * * *

I, the undersigned, hereby certify that the foregoing Resolution No. 2025-xx was adopted at a regular meeting of the City Council of the City of Brisbane on the 15th day of May, 2025 by the following vote:

AYES:

NOES:

ABSENT:

Ingrid Padilla, City Clerk
City of Brisbane

File Attachments for Item:

K. Receive Open Space and Ecology Committee 2025 Workplan

(The purpose of this item is to review this year's goals for the Open Space and Ecology Committee (OSEC), a Council-appointed citizen advisory committee.)



CITY COUNCIL AGENDA REPORT

Meeting Date: May 15, 2025

From: Karen Kinser, Deputy Director of Public Works

Subject: OSEC 2025 Work Plan

Community Goal/Result

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

Purpose

To review this year's goals for the Open Space and Ecology Committee (OSEC), a Council-appointed citizen advisory committee.

Recommendation

Receive OSEC's 2025 Work Plan.

Background

With new members joining OSEC this year, development of a proposed workplan by the committee was somewhat delayed. On April 9, 2025, Council liaisons to OSEC, Council Members Coleen Mackin and Terry O'Connell, met with the OSEC Chair and Vice Chair to discuss the Work Plan.

Discussion

Council liaisons shared their support of OSEC and staff for their work to date. Council liaisons provided direction on the attached Work Plan.

Fiscal Impact

No fiscal impact.

Measure of Success

OSEC has a blueprint for their endeavors for the remainder of 2025.

Attachments

1. 2025 Work Plan

Karen Kinser, Deputy Director of Public Works

Randy Breault, Public Works Director

Jeremy Dennis, City Manager

2025 OSEC Work Plan

The Open Space and Ecology Committee provides policy and programmatic recommendations on environmental issues.

Priority projects:

- Provide input on Quarry and Baylands Developments
- Consider strategies to reduce emissions from existing buildings and transportation
- Support the health and growth of the urban tree canopy utilizing the recent Tree Inventory, via education and outreach, grants and potential other means. Consider setting a canopy coverage goal.

Routine/ongoing efforts:

- Review and approve annual vegetation management plan for Brisbane Acres
- Review Open Space Plan and its implementation and update as necessary
- Review and recommend plans to meet Climate Emergency Declaration goals
- Provide input on three to four habitat restoration days per year
- Improve/maintain Crocker Trail frog habitat
- Education and Outreach
 - Day in the Park community festival
 - Bike to Work Day
 - Lipman Science Fair
 - Library display
 - Publications through City e-blast, Star, website, social media sites and MCTV
 - Outreach to targeted areas, e.g. on trash

Long-term policy issues (to be addressed if/when they arise):

- Coordinate Climate Action Plan update with Baylands Specific Plan
- Provide input on design of Baylands open space upon Council approval of land use
- General Plan - Review of future proposed updates to Open Space Element

File Attachments for Item:

L. Brisbane Lagoon Watershed Sea Level Rise Adaptation Plan

(It is being recommended to authorize the City Manager to sign an Agreement for Professional Services with Schaff & Wheeler to study the impact of sea level rise on the Lagoon and the adjoining roads of Sierra Point Parkway and U.S. 101 for the amount of \$293,340 which is primarily funded by a California Adaptation Grant.)



CITY COUNCIL AGENDA REPORT

Meeting Date: May 15, 2025
From: Director of Public Works/City Engineer
Subject: Brisbane Lagoon Watershed Sea Level Rise Adaptation Plan

Purpose

To authorize the selected consultant to perform the subject study that is funded by a California adaptation grant.

Recommendation

Authorize the City Manager to sign the attached Agreement for Professional Services with Schaff & Wheeler, and to issue Task Order 25-001 in the amount of \$293,340.

Background

The City applied for a Climate Adaptation Planning Grant to study the impact of sea level rise on the Lagoon and the adjoining roads of Sierra Point Parkway and U.S. 101. A conditional award letter was received in July 2024, and Caltrans issued the notice to Proceed on February 21, 2025.

A Request for Proposals to complete this study was issued March 8, 2025, and two proposals were received on the due date of April 8, 2025. Staff reviewed both proposals and determined that Schaff & Wheeler was the most qualified consultant to perform this work.

Discussion

The full scope of the work to be completed by Schaaf & Wheeler is attached as Exhibit A to the Agreement.

Approval of this action is consistent with City Council's Resolution No. 2024-24, passed unanimously September 5, 2024.

Fiscal Impact

This project is funded by:

State Highway Account – Climate Adaptation Planning Grant	\$259,920
Local Match	<u>\$34,000</u>
TOTAL	\$293,920

Environmental Review

Prior to the Final Plan's submittal to City Council for approval, an Initial Study shall be conducted per California Code of Regulations Title 14, Division 6, Chapter 3, Article 5 §15063 to determine if the project may have a significant impact on the environment.

Attachments

1. Agreement for Professional Services with Schaff & Wheeler
2. Resolution No. 2024-24

R.L. Breault

Randy Breault, Public Works Director*Jeremy Dennis*

Jeremy Dennis, City Manager

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT, dated _____, is made by and between THE CITY OF BRISBANE, a municipal corporation ("City"), and Schaaf & Wheeler a C corporation ("Consultant").

RECITALS

A. City desires to retain Consultant for the performance of certain professional engineering and design services.

B. Consultant represents that Consultant is specially trained, experienced, and qualified to provide such professional services and is willing to do so pursuant to the terms and conditions of this Agreement.

AGREEMENT

1. **Scope of Services.** Subject to the direction and approval of City through its staff that City may provide from time to time, Consultant shall perform the services described in written Task Orders. All services shall be performed to the reasonable satisfaction of the City department head in charge of the project. All plans, specifications, estimates, and engineering data furnished by Consultant to City shall be signed by the responsible engineer, with registration number indicated where appropriate.

2. **Time of Performance.** The services of Consultant shall commence upon the issuance by City of a Task Order and shall be satisfactorily completed in a reasonable timeframe mutually agreed to by City and Consultant.

3. **Responsible Personnel.** The personnel acting on behalf of Consultant primarily responsible for performance of the services hereunder shall be Daniel Schaaf, PE.

4. **Compensation.** As compensation for all services to be performed by Consultant under this Agreement, Consultant shall be paid the amounts set forth in Exhibit A attached hereto and incorporated herein by reference. The hourly rates set forth in Exhibit A include salary, fringe benefits, overhead, profit, and other expenses to be incurred by Consultant. In no event shall Consultant's total compensation exceed the sum agreed upon in the Task Order without additional written authorization from City. Payment by City under this Agreement shall not be deemed a waiver of defects, even if such defects were known to City at the time of payment.

5. **Method of Payment.** Consultant shall submit billings to City describing in detail the work performed for which payment is requested, the date the services were performed, the number of hours spent and by whom, and a description of any reimbursable Expenditures. Billings shall be submitted at such time as agreed upon between City and Consultant. City shall pay Consultant no later than 30 days after approval of the invoice

by City staff. If City objects to all or any portion of the billing, City shall notify Consultant of the nature of such objection and the amount in dispute. City shall pay when due the portion of the billing, if any, that is not in dispute. The parties will make a good faith effort to settle the disputed billing through good faith negotiations.

6. **Maintenance and Inspection of Records.** Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, time cards, and other records or documents relating to charges for services or expenditures charged to City, for a minimum of three (3) years from the date of final payment to Consultant under this Agreement and 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. Consultant shall also make such records and documents available for inspection and audit upon request by any representatives of the State or Federal government. The right of inspection shall include the right to make extracts and copies.

7. **Assignment and Subcontracts.** Consultant acknowledges that Consultant's special skill and expertise is a material consideration for City entering into this Agreement. Consultant shall not assign, subcontract or delegate to any other party the performance of any services to be rendered by Consultant under this Agreement without the prior written approval of City. If City consents to any subcontracting of work, Consultant shall be fully responsible to City for all acts or omissions of the subcontractor. Each subcontractor must agree in writing to comply with all of the applicable terms and conditions of this Agreement.

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

9. **Ownership of Documents.** Except for Consultants pre-existing intellectual property, including but not limited to, data, materials, concepts and standard details, all final plans, studies, documents and other writings prepared by and for Consultant in the course of performing its services under this Agreement, except working notes and internal documents, shall become the property of City upon payment to Consultant for such work, and City shall have the sole right to use such materials in its discretion without further compensation to Consultant or to any other party. Consultant shall, at Consultant's expense, provide such reports, plans, studies, documents and other writings to City upon 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 its subcontractors harmless against any claims of liability arising from such reuse by City.

10. **Independent Contractor.** Consultant is, and at all times shall remain, an independent contractor, and not an agent, officer or employee of City. As an independent contractor, neither Consultant nor any of its 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.

11. **Licenses.** Consultant represents and warrants to City that it 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 current and in full force and effect at all times during the term of this Agreement. Consultant shall maintain a current City of Brisbane business license.

12. **Compliance with Standards of Care and Laws.** Consultant shall adhere to the standard of care in its profession and shall use due professional care to comply with all applicable federal, state and local laws, codes, ordinances and regulations in connection with the performance of its services under this Agreement. Standard of Care shall be defined as skill and care ordinarily used by members of the subject profession practicing under similar circumstances at the same time and locality. Without limiting the generality of the foregoing, Consultant shall comply with the Federal Acquisition Regulations as set forth in CFR Title 48, Part 31 and CFR Title 49, Part 18, to the extent the same are applicable to the performance of Consultant's services under this Agreement.

13. **Errors and Omissions.** (Not Used)

14. **Indemnity.** To the extent allowed by law, Consultant shall indemnify, defend, and hold City, its officers, officials, agents, employees and volunteers, harmless from and against any and all claims, demands, causes of action, losses, damages, injuries, expenses and liabilities, including reasonable attorney's fees, to the extent caused by the negligent performance by Consultant or any of its subcontractors, agents or employees, of any services under this Agreement or the failure by Consultant or any of its subcontractors, agents or employees to comply with any of their obligations contained in this Agreement, and City shall not be liable for any acts or omissions of Consultant or any of its subcontractors, agents or employees.

15. **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, providing coverage at least as broad as Insurance Services Office Commercial General Liability form CG 0001 (Ed. 11/88). If the form of insurance with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit.

(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, providing coverage at least as broad as Insurance Services Office form CA 0001 (Ed. 12/90) Code 1 (any auto).

- (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. In the alternative, Consultant may rely on a self-insurance program to provide this coverage so long as the program of self-insurance complies fully with the provisions of the California Labor Code. The insurer, if insurance is provided, or Consultant, if a program of self-insurance is provided, shall waive all rights of subrogation against City for loss arising from work performed by Consultant for City.
 - (4) *Professional Liability Coverage.* Consultant shall maintain professional errors and omissions liability insurance in an amount not less than \$1,000,000 per claim and \$2,000,000 annual aggregate, covering negligent acts, errors or omissions which may be committed by Consultant in the performance of its services under this Agreement.
- (b) Endorsements: Each general liability and automobile liability insurance policy shall contain, or be endorsed to contain, the following provisions:
- (1) The City, its officers, officials, employees, and volunteers are to be covered as additional insureds as respects: liability arising out of activities performed by or on behalf of Consultant; products and completed operations of Consultant; premises owned, occupied or used by Consultant; or automobiles owned, leased, hired or borrowed by Consultant. The coverage shall contain no special limitations on the scope of protection afforded to City, its officers, officials, employees, or volunteers.
 - (2) For any claims related to the Project, Consultant's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by City, its officers, officials, employees, or volunteers shall be excess of Consultant's insurance and shall not contribute with it.
 - (3) Any failure of consultant to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to City, its officers, officials, employees, or volunteers.
 - (4) Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

- (5) Consultant's insurance coverage shall not be canceled except after thirty (30) days' prior written notice has been given to City by the carrier, except for cancellation for non-payment of premium whereby a 10-day notice shall apply. Consultant shall immediately give written notice to City of any suspension or reduction in coverage or limits.
- (c) Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions exceeding \$50,000 must be declared to and approved by City. At City's option, Consultant shall demonstrate financial capability for payment of such deductibles or self-insured retentions.
- (d) Acceptability of Insurers. Insurance is to be placed with insurers having a current AM. Best rating of no less than A:VII, unless otherwise approved by City in writing.
- (e) Verification of coverage. Consultant shall provide certificates of insurance with original endorsements to City 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, including endorsements effecting the coverage required by this Agreement.

16. **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 Attn: Director of Public Works/City Engineer 50 Park Lane Brisbane, CA 94005
To Consultant	Schaaf & Wheeler Consulting Civil Engineers, Inc. 4699 Old Ironside Drive, Suite 350 Santa Clara, CA 95054

17. **Resolution of Disputes; Litigation Expenses and Attorneys' Fees.** In the event of any dispute between the parties pertaining to this Agreement, the parties shall endeavor in good faith to resolve such dispute through mediation before the commencement of legal action by one party against the other. In the event of any litigation, including administrative proceedings relating to this Agreement, including but not limited to any action or suit by any party, assignee, or beneficiary, to enforce, interpret, or seek relief from any provision or obligation arising out of this Agreement, the parties and litigants shall bear their own attorney's fees and costs. No party or litigant shall be entitled to recover any attorney's fees or costs from any other party or litigant, regardless of which party or litigant might prevail or be deemed a prevailing party.

18. **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 also be terminated by either party, for any reason, upon fifteen (15) day's prior written

notice to the other party. In the event this Agreement is terminated by City through no fault of Consultant, Consultant shall be compensated for all services performed to the date of termination.

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

20. **Miscellaneous Provisions.**

- (a) Severability. Should any portion of this Agreement be declared void or unenforceable in a final decision by a court of competent jurisdiction, such decision shall not affect the validity of the remainder of this Agreement, which shall continue in full force and effect, provided that the remainder of this Agreement can be reasonably interpreted to implement the intention of the parties.
- (b) Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes and cancels all prior agreements or understandings, whether written or verbal.
- (c) Amendments. This Agreement may be modified or amended only by a written document duly executed by both City and Consultant.
- (d) Waiver. The waiver of any breach or default under this Agreement shall not constitute a continuing waiver of a subsequent breach of the same provision or any other provision of this Agreement.
- (e) Execution. Each party warrants that the individuals signing this Agreement on its behalf have the legal power and authority to do so and to bind the party to this Agreement.
- (f) Successors and Assigns. Subject to the restriction against assignment and subcontracting, this Agreement shall be inure to the benefit of and shall be binding upon the heirs, personal representatives, successors and assigns of the parties hereto.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

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THE CITY OF BRISBANE

Jeremy Dennis, City Manager

APPROVED AS TO FORM:



Michael Roush, Legal Counsel

CONSULTANT:

Signed by:

B08CCBC2485E484...

Daniel Schaaf, PE
RCE #57617

EXHIBIT A

For Task Order 25-001, attach April 8, 2025 "Proposal for Brisbane Lagoon Watershed Sea Level Rise Adaptation Plan" & Fee Proposal here.

40th — 1985–2025
Anniversary
Schaaf & Wheeler
CONSULTING CIVIL ENGINEERS

PROPOSAL FOR

City of Brisbane

Brisbane Lagoon Watershed Sea Level Rise Adaptation Plan

Schaaf & Wheeler

CONSULTING CIVIL ENGINEERS

870 Market Street, Suite 1278

San Francisco, CA 94102

(408) 246-4848

April 8, 2025

Public Works Director/City Engineer
ATTN: Proposal for Brisbane Lagoon SLR Plan
50 Park Place
Brisbane, CA 94005

Subject: Proposal for Brisbane Lagoon Watershed Sea Level Rise Adaptation Plan

To Whom It May Concern:

Schaaf & Wheeler is pleased to submit the enclosed proposal to provide a Brisbane Lagoon Watershed Sea Level Rise Adaptation Plan to the City of Brisbane. Our team is positioned to analyze the most recent data for sea level rise and precipitation changes to identify up to three alternative concepts to mitigate impacts in the future. We are supported by Civic Edge for community engagement and CMG for nature-based solutions.

CMG and Schaaf & Wheeler bring a strong, proven partnership grounded in successful collaboration on complex, multi-benefit resilience projects. Together, we have worked on OAAC Adapt, a multi-jurisdictional sea level rise planning effort in Oakland and Alameda; the Menlo Park SAFER Bay Project, a 3.7-mile flood protection and habitat restoration project; and more recently the OneShoreline Lower Colma Creek Planning and Design project, which integrates flood risk reduction and ecological enhancements between San Mateo Avenue and Utah Avenue. Our complementary expertise in landscape architecture and engineering enables us to deliver integrated, implementable solutions that align infrastructure performance with community and environmental goals.

Our firm has provided engineering services related to sea level rise and precipitation changes throughout the Bay Area for decades, most recently completing the Foster City Levee Improvements Project, which was fully constructed in 2024. This project provides 100-yr protection today with resilience to 3-ft of sea level rise in the future. We are also working on similar multi-disciplinary projects for the City of Menlo Park and OneShoreline. We are familiar with low-lying areas along the Bay and the challenges with freeway crossings and the operations of tide gates.

In many low-lying areas, pump stations are ultimately required once the low tides make it prohibitive to drain the lagoon by gravity. Schaaf & Wheeler has designed hundreds of pump stations along the low-lying areas of the Bay. In addition, Schaaf & Wheeler recently modeled the City storm drain system on Valley Drive for the LOMR. We understand that this project has a finite grant funded budget and have simplified the analyses, which we believe will still answer the necessary questions of future resilience to both precipitation and sea level changes without over analyzing the system.

Robin J. Lee, PE, CFM will be the project manager. Robin has 20 years of experience providing civil engineering services for water resources projects throughout California. She manages our nearby office in Novato. I will be the principal-in-charge. I am a vice president and an owner of Schaaf & Wheeler with more than 25 years of experience working on infrastructure to combat sea level rise as well as floodplain mapping. I manage our local San Francisco office.

Schaaf & Wheeler had reviewed the City's RGA and acknowledges that all work specified in the RGA will be completed according to the terms of that agreement. The enclosed proposal outlines our team experience and recommended approach to the Scope of Work. We welcome the opportunity to meet with the City to discuss our proposal further. If you need additional information or have any questions, please contact Robin at (415) 271-3117 or rlee@swwsv.com.

Sincerely,
Schaaf & Wheeler



Daniel J. Schaaf, PE
Vice President

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Fee Proposal (included separately)

Appendix: Resumes

Firm Experience and Related Work

About Schaaf & Wheeler

Firm Name:	Schaaf & Wheeler
Type of Organization:	Corporation – Incorporated in California since 1985, in business 40 years
Primary Contact:	Robin J. Lee, PE, CFM (415) 271-3117; rlee@swwsv.com
Offices:	HQ: 4699 Old Ironsides Drive, Ste. 350, Santa Clara, CA 95054 870 Market Street, Ste. 1278, San Francisco, CA 94102 2200 Range Avenue, Ste. 201, Santa Rosa, CA 95403 3 Quail Run Circle, Ste. 101, Salinas, CA 93907 10232 Donner Pass Road, Ste. 4, Truckee, CA 96161 250 Bel Marin Keys Boulevard, Bldg. A, Ste. 205, Novato, CA 94949
Professional Registrations and Affiliations:	Certified State of California Small Business Enterprise Certification No. 40527

Schaaf & Wheeler is a civil engineering firm focused in water resources. With 40 years of commitment to solving flood control, stormwater, wastewater, potable water, and recycled water problems, Schaaf & Wheeler is recognized by public and private sector clients for its value-added engineering. We are certified as a small business enterprise by the State of California and operate from six locations: Santa Clara, San Francisco, Santa Rosa, Salinas, Novato, and Truckee. While work will primarily be performed from our Novato and San Francisco offices, we are able to draw resources from all six offices as needed. Schaaf & Wheeler's specialties within the water resources discipline include:

- Hydrology and hydraulics analyses, including site evaluations and modeling;
- Flood control analyses, including floodplain studies and channel design, filing of letters of map revision, and FEMA coordination;
- Watershed assessments, erosion and sediment control, and bioengineered channel stabilization;
- Water quality, including design or review of best management practices (BMPs) for stormwater treatment and hydromodification flow control facilities;
- Stormwater management and drainage services, including master planning, engineering, and design of urban storm drain systems and pump stations;
- Wastewater system master planning, engineering, and design of conveyance systems, including lift stations;
- Potable water system master planning, modeling, engineering; and design of supply, storage, collection and distribution systems, including tanks and booster stations;
- Recycled water systems planning, engineering, and design, including reclamation feasibility studies and customer retrofits;
- Construction management, construction site observation, construction inspection services, value engineering, construction cost analysis, and constructability reviews; and
- Project management, including management of subconsultants, containment of schedule and cost, and communication with clients and stakeholders.

Project Examples

Schaaf & Wheeler has completed numerous projects similar in size and scope to the City's proposed project. Details of those projects are outlined below, including reference information.



Client and Contact:

Hannah Lee, PE
Marin County Flood Control &
Water Conservation District
3501 Civic Center Drive, Rm 304
San Rafael, CA 94903
(415) 473-6528
HLee@marincounty.org

Contract Value: \$784,638

Construction Cost: N/A

Project Duration: Jan 2023 –
Present

Team Members:

PM: Robin J. Lee, PE
Staff: Daniel J. Schaaf, PE;
Justin Maynard, PE; Sandra
Carroll, EIT

Subcontractors:

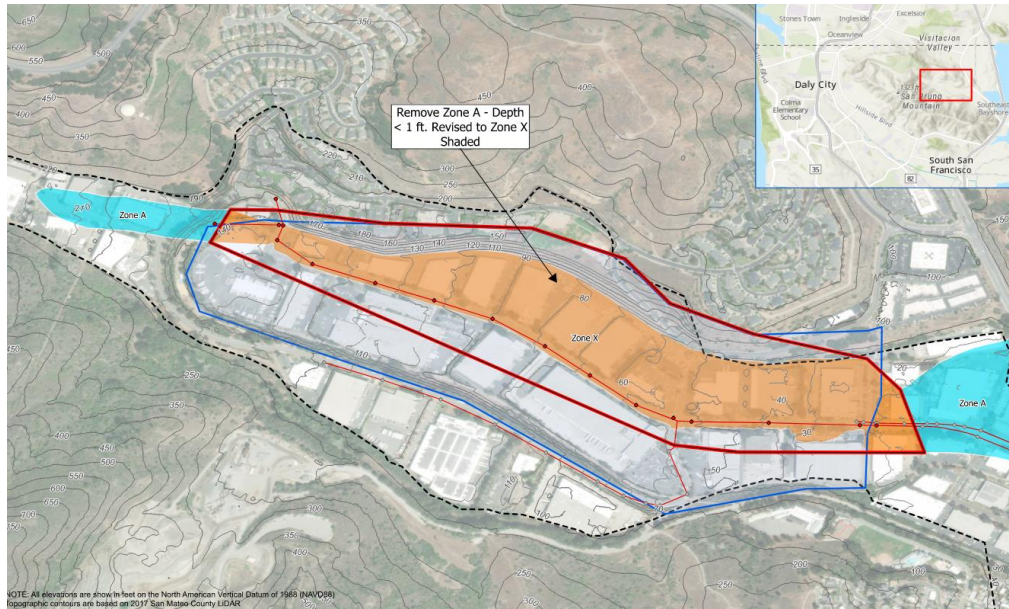
WRA
Miller Pacific
Circlepoint

Marin City Comprehensive Stormwater Plan

The Marin County Flood Control & Water Conservations District contracted Schaaf & Wheeler to complete the Marin City Stormwater Plan, which focuses on the drainage issues in the upper watershed and the flooding issues in the lower watershed related to high tides and climate change impacts.

Community outreach and engagement is a critical element of this project. Schaaf & Wheeler led five task force meetings and three community meetings to ensure that the project gathered community input and feedback. The final community meeting was an open house style walk through of the executive summary, which is meant to be a stand-alone document that the public can easily read and digest with numerous graphics. The plan recommends three large capital improvement projects in the lower watershed that should prevent flooding in the community in a 10-year storm event with climate change to mid-century for tides and precipitation.

This project is in progress, and the master planning efforts are projected for completion in June 2025.

**Client and Contact:**

Sam Yowakim
 Ware Malcolm
 4683 Chabot Drive, Suite 300
 Pleasanton, CA 94588
 (925) 480-6085
 syowakim@waremalcomb.com

Project Owner:

CSHV Crocker LLC

Contract Value: \$18,740

Construction Cost: N/A

Project Duration: Sep 2022 – present

Team Members:

PM: Robin J. Lee, PE
 Staff: Justin R. Maynard, PE

435 Valley Drive Zone A Study and LOMR

A portion of the 435 Valley Drive site, including the existing structure, is mapped in an area designated as a Zone A Special Flood Hazard Area (SFHA) by FEMA. Zones A SFHAs are subject to inundation by a 1% annual chance of flooding but do not have an assigned base flood elevation (BFE) since FEMA has not studied the area in detail.

Our services included determination of the drainage areas affecting the site, hydraulic analysis of surface flows within the effective flood zone, and estimation of the capacity of the pipe system in the street using the City's SWMM model and developing a more up to date model. Our analysis determined that flows within Valley Drive are contained in the roadway channel, and runoff from the street does not get diverted to the site.

Based on these findings, Schaaf & Wheeler completed the required application documents and obtained community acknowledgement from the City of Brisbane to have the parcel moved from Zone A to a Zone X per our hydraulic analysis. This project is in its final stages with FEMA and should revise the maps this year.

**Client and Contact:**

Summer Bundy, San Mateo
County Flood and Sea Level Rise
Resiliency District
(650) 294-0752
sbundy@oneshoreline.org

Contract Value: \$10,142,182

Construction Cost: TBD

Project Duration: April 2022 –
March 2026

Team Members:

PM: Charles D. Anderson, PE
Staff: Robin J. Lee, PE; Sandra
E. Carroll, EIT

Subconsultants:

Civic Edge

Millbrae and Burlingame Shoreline Area Protection and Enhancement Project

The San Mateo County Flood and Sea Level Rise Resiliency District (OneShoreline) contracted Schaaf & Wheeler to complete the Millbrae and Burlingame Shoreline Area Protection and Enhancement Project.

Our efforts include comprehensive programming, design, construction document preparation, environmental documentation, and permitting to provide flood protection and sea level rise resilience for Millbrae's and Burlingame's San Francisco Bayfront between San Francisco International Airport San Mateo. The team is developing alternatives to achieve sea level rise resilience for a defined coastal protection area.

Our firm leads a multi-disciplinary team for this ongoing project, which recently completed a feasibility study and published a project description and Notice of Preparation for CEQA.

**Reference:**

Laura Galli, PE
 Foster City
 610 Foster City Blvd.
 Foster City, CA 94404
 (650) 867-2280
 lgalli@fostercity.org

Contract Value: \$6,211,930

Construction Cost: \$65 million

Project Duration: 2014 – 2023

Team Members:

Charles D. Anderson, PE
 Caitlin J. Tharp, PE
 Daniel J. Schaaf, PE
 Robin J. Lee, PE
 Sarah Weinberg, EIT

Foster City Levee Protection Planning and Improvements Project

Schaaf & Wheeler has led a multi-disciplinary team that provided Foster City with the contract documents and regulatory approvals needed to build levee improvements allowing the City to regain FEMA accreditation and provide resilience against sea level rise impacts that are likely by the end of the century.

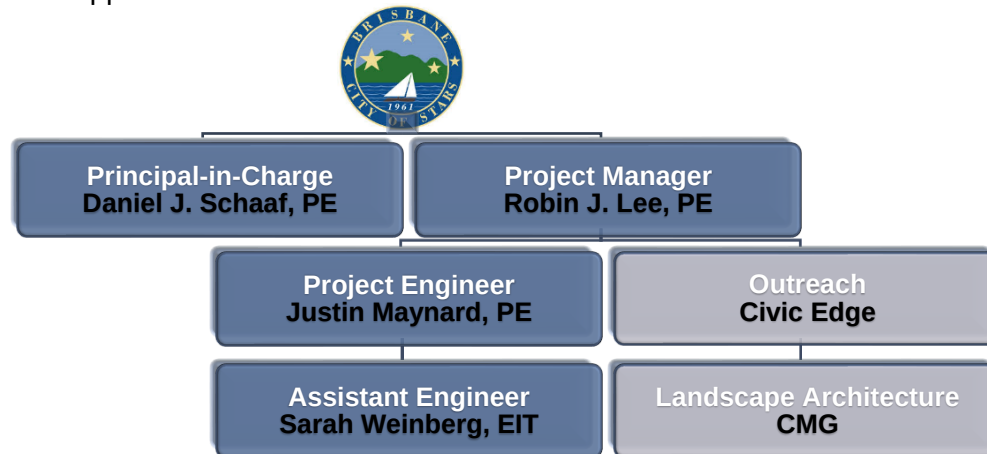
After analyzing coastal hazards based on the FEMA CCAMP study and calculating wave runup values to reflect future sea level rise, several flood protection alternatives were analyzed, and a project description was established for environmental analysis through CEQA.

A \$90 million bond measure to completely self-fund the improvements passed with more than 80 percent approval. All regulatory permits were in place by the end of 2020, including unanimous approval by all BCDC Commissioners. After a third-party constructability review, contract documents were ready for bid when a global pandemic hit.

Undeterred, the City advertised for bids through a virtual process and pre-qualified eight contractors. On June 30, 2020, the City opened six bids ranging from \$60 million to \$69 million. Construction began in earnest in October 2020. Due to contract acceleration, the project was completed in fall 2023.

Proposed Team Members

Schaaf & Wheeler has assembled a dedicated team of in-house engineers and subconsultants to complete this project, as outlined in our organization chart. A summary of key personnel qualifications and experience is included below, with education and licensing included in resumes in the Appendix.



Schaaf & Wheeler Team

Robin Lee, PE, CFM: Project Manager

Robin is a senior project manager at Schaaf & Wheeler with 20 years of experience in stormwater management, flood control, hydrology, and water quality. She has worked on numerous successful storm drainage and flood control projects throughout the Bay Area, including SDMPs for the Cities of Mill Valley and Corte Madera as well as for the Town of Ross. Robin is currently wrapping up the final report for the Marin City Stormwater Plan that has included a significant community outreach program including five task force meetings and three community meetings. Robin worked closely with the community to gather input for the plan and the ranking of the recommendations. Robin also recently completed a LOMR application to revise a Zone A within the City of Brisbane. She has also worked closely with the City of South San Francisco, providing on-call services for almost a decade. *As project manager, she will be responsible for delegating project tasks to the team while maintaining the schedule and budget. She will meet regularly with the City as needed for project updates and to resolve any issues that arise during development.*

Daniel J. Schaaf, PE: Principal-in-Charge

Dan is a vice president and an owner of Schaaf & Wheeler. He has 25 years of experience in storm drain master planning, flood control, hydrology and hydraulics, and numerical modeling. Dan recently led the Schaaf & Wheeler team that produced channel repair designs for numerous sites in Livermore. He is currently project manager for Santa Cruz County's Zone 5 Drainage Master Plan. Dan has performed hundreds of FEMA mapping studies throughout California. *Dan will provide technical supervision and overall project oversight. He will be responsible for contract negotiation and overall technical management for the duration of the project. He will work with Robin to maintain the project schedule and budget.*

Justin Maynard, PE: Project Engineer

Justin is a senior engineer at Schaaf & Wheeler with 10 years of experience conducting storm drainage system modeling, wave and wave runup analyses, cost estimating, and design of capital improvements. He has conducted hydrologic and open-channel hydraulic modeling and analysis with HEC-RAS and HMS. Justin has completed topographic surveying, restoration monitoring, and field investigations for stream, floodplain, and habitat restoration projects. He has also worked on climate change stochastic modeling. He has completed wave transect analyses along the Bayfront in Millbrae, Burlingame, San Mateo, Foster City, and Redwood City. *He will support Robin with day-to-day engineering.*

Sarah Weinberg, EIT: Assistant Engineer

Sarah is an assistant engineer at Schaaf & Wheeler with three years of experience providing engineering services. She has completed several no-rise hydraulic analyses with HEC-RAS and corresponding FEMA permits for public agency projects for the cities of Napa, Morgan Hill, and Rocklin. Sarah regularly uses HEC-RAS, Civil 3D, and ArcGIS together to create hydraulic analyses in HEC-RAS and show results either in ArcGIS or Civil 3D. She is also skilled in using HEC-HMS for hydrologic analyses to be incorporated into hydraulic modeling. *She will support Robin with day-to-day engineering.*

About Our Subconsultants**Outreach**

Founded in 2003, Civic Edge (CEC) is a WBE/SBE/LBE/DBE-certified firm providing innovative strategic communications, authentic outreach and community engagement, and responsive public relations CEC has led engagement and strategic communications for major resilience and transportation planning projects in San Francisco and throughout the Bay Area for over 20 years for clients including the Port of San Francisco, San Francisco Metropolitan Transportation Agency, San Francisco County Transportation Authority, San Mateo County Flood and Sea Level Rise Resiliency District (OneShoreline), Caltrain, and many others. Civic Edge and Schaaf & Wheeler currently work together on the OneShoreline Millbrae and Burlingame Shoreline Resilience Project.

**Landscape Architecture**

CMG Landscape Architecture is a design studio that integrates landscape architecture, urban design, and planning to increase social and ecological wellbeing. Their practice is focused on the health and vibrancy of the Bay Area. Sustainability through climate change mitigation, urban resiliency and ecology, strategies for sea level rise, drought-tolerant landscapes, habitat creation, and carbon sequestration initiatives shape their approach. Each project is distinct and designed to include, support, and sustain a specific place and community. CMG and Schaaf & Wheeler bring a strong, proven partnership grounded in successful collaboration on complex, multi-benefit resilience projects, including most recently the OneShoreline Lower Colma Creek Planning and Design project, which integrates flood risk reduction and ecological enhancements between San Mateo Avenue and Utah Avenue.

Recommended Approach

In order to conduct all of the outreach and attend the community meetings within the grant budget, Schaaf & Wheeler's recommends simplifying the analysis using a hydrologic model that balances the volume of the lagoon with the runoff draining into the lagoon and the tidal boundary conditions. Schaaf & Wheeler will develop the engineering solutions to shoreline protection and management of the City's lagoon. These typical "grey" solutions will then be adapted by CMG with nature-based strategies that improve resilience to flood risk while optimizing co-benefits such as improved public access, recreational opportunities, and enhanced ecological function.

Civic Edge will work closely with the City's community outreach team to engage stakeholder input to ensure they are implementable and responsive to community needs. Grounding decisions in inclusive engagement helps ensure that the final plan reflects shared priorities, is equitable and financially feasible, and gains long-term public support.

Task 1: Existing Conditions

Schaaf & Wheeler will review existing drainage system information in the area proximate to the Brisbane Lagoon that could potentially be impacted by sea level rise. Record drawings of Caltrans drainage facilities that connect to Brisbane Lagoon will be requested from Caltrans.

The drainage area to the lagoon, Caltrans facilities, and low-lying areas draining to the lagoon will be summarized in a map that will be used at the kickoff meeting to discuss project goals. It should be noted that the area to the east of Highway 101 is not included in this study since it does not drain into the Brisbane Lagoon.



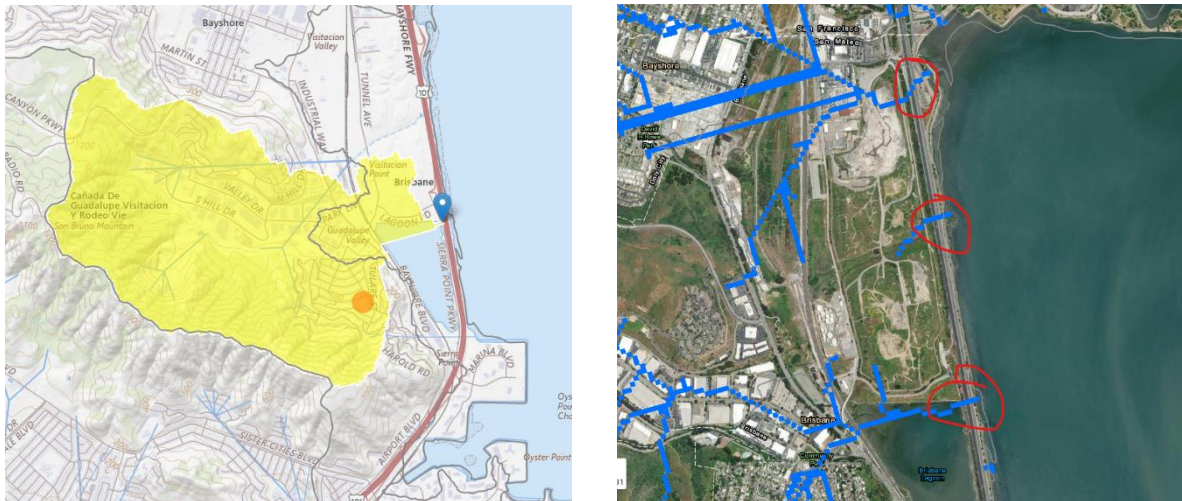
San Francisco Waterfront Resilience Program / USACE Flood Study

Task Deliverables

- Map of existing drainage facilities, Caltrans, and low-lying areas
- Summary of existing conditions

Task 2: Analysis

While the RFP states modeling will use the City's XPSWMM model, Schaaf & Wheeler recommends that this project use a simple hydrologic model such as HEC-HMS since the watershed to the Brisbane Lagoon is a water balance between the runoff draining into the lagoon, the culvert under the freeway draining the lagoon to the Bay, and the tide cycle. There is no need to model all the upstream pipes that will attenuate the flow. Using HEC-HMS will be conservative since the assumption is that the runoff from the drainage area to the lagoon will all make it to the lagoon. It should be noted that the Baylands proposed development does not drain into the lagoon (see figure below). However, there are a total of three culverts under highway 101 (one of which drains the lagoon) that will need to be looked at as shoreline protection strategies are recommended to make sure that the interior drainage system is designed to account for shoreline protection. This process reduces the overall modeling effort that allows for all the public outreach and meetings requested in the RFP.



Approximate Brisbane Lagoon Watershed (left) Culverts Under 101 (right)

Schaaf & Wheeler will use the readily available data from Cal-Adapt to recommend the expected changes in extreme precipitation events. The 10-year and 100-year events will be evaluated for both the Representative Concentration Pathway (RCP) 4.5 and RCP 8.5 scenarios for the year 2100. Two analysis rainfall distributions will be developed for each recurrence interval in order to provide a basis for short-term and long-term planning.

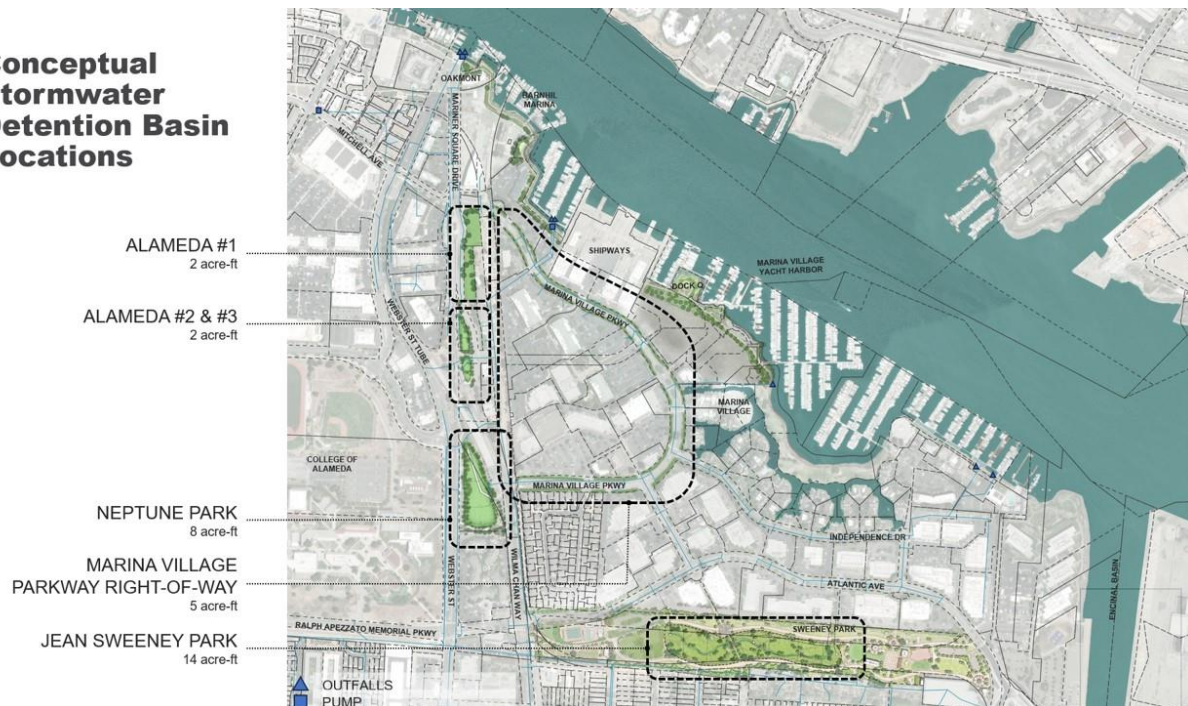
Ultimately, Schaaf & Wheeler will identify and recommend four evaluation tide scenarios for flood modeling using Cal-Adapt data. The scenarios will be developed to consider short-term and long-term planning for medium and maximum flood scenarios.

Schaaf & Wheeler will apply the four climate scenarios to the HEC-HMS model for the existing and future developed watersheds. Locations susceptible to sea level rise impacts will be identified by comparing the water surface elevation in the lagoon to low-lying areas.

Schaaf & Wheeler will use the 100-year RCP 8.5 precipitation scenario and the long-term medium and maximum flood scenarios to develop and evaluate up to three alternatives for adaptation to the potential impacts of sea level rise. One alternative that is expected to be studied will involve gate systems on the San Francisco Bay side of US 101 culverts that connect to Brisbane Lagoon to enhance the ability to manage the lagoon water surface elevations. Pumps determined to be necessary will be included in the alternatives analysis in order to meet sea level rise adaptation objectives.

CMG will identify and illustrate nature-based strategies at the conceptual level for each of the three engineering alternatives developed by Schaaf & Wheeler. CMG will focus on integrating ecological and landscape-based measures that enhance shoreline resilience while supporting the surrounding natural systems. Potential strategies may include salt marsh restoration, oyster reefs, horizontal living levees, eelgrass beds, and upland vegetation to improve ecological function and habitat continuity. CMG will prepare conceptual graphics to clearly communicate each alternative's approach and the role of nature-based features. These graphics will be used to support the public outreach process in later tasks, helping to make technical adaptation strategies more accessible and understandable to the broader community.

Conceptual Stormwater Detention Basin Locations



OAAC Adapt Conceptual Stormwater Detention Basin Locations

CMG and Schaaf & Wheeler will work together to develop probable costs for each of the three alternatives.

Task Deliverables

- Model scenarios to evaluate potential impacts of sea level rise
- Model scenarios to evaluate adaptation alternatives
- Study of potential nature-based solutions
- Alternative layouts and concept-level opinions of probable cost

Task 3: Public Outreach

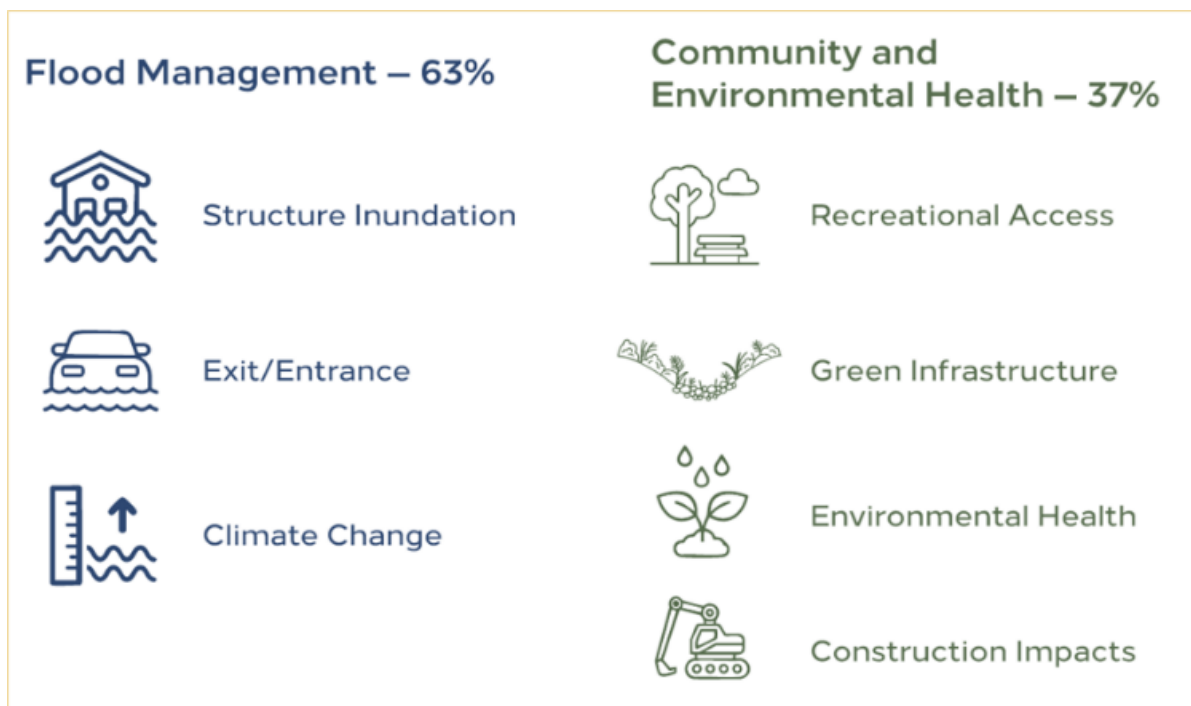
Subconsultant Civic Edge will lead the public outreach with graphic support from CMG. Civic Edge will work directly with the City's Communication Department to facilitate community and stakeholder involvement throughout the planning process.

Upon receipt of the grant award, Civic Edge will work with the City's Communication Department to draft an approved central messaging document and recommendations for design. This task assumes build out of webpage will be executed by the City with no more than quarterly updates. Civic Edge will draft Eventbrite pages for promotion of events.

Civic Edge recommends using existing community organization meetings as a platform for presenting project. Though the following meetings are included within the scope, upon award of the project, our team would like to discuss the number of meetings as well as the types of meetings with the City:

1. One Town Hall meeting (completion of analysis) **(in-person)**
2. Participate in up to 10 virtual meetings (preview draft plan) **(virtual)**
3. One in-person meeting (review draft plan) **(in-person)**
4. One in-person meeting (present final plan) **(in-person)**

Civic Edge and the City's Communication Department will incorporate opportunities for virtual meetings to solicit feedback from community members, in addition to the three in-person meetings. Engagement meetings will be held at times that are optimally convenient for members of the public to attend or by joining existing meetings that are for already established community groups. The image below shows the weighting factors from the Marin City community used to prioritize their flood mitigation concepts.



Marin City Stormwater Plan Community Weighting

Civic Edge and City's Communication Department will hold public meetings to present findings upon completion of the analysis, after publication of the draft plan, and after the adoption of the final plan, with options to participate virtually and to watch the meetings and provide input asynchronously. Upon request, the City will provide translation services for the same languages as provided for San Mateo County elections: Tagalog, Chinese, and Spanish.

The goal of this task is for Schaaf & Wheeler and CMG to convey the messages and plan information to the City so that they can continue the presentations and dissemination of information on to the community.

Task Deliverables

- Issuance of a press release promoting the grant award via social media to inform stakeholders of the upcoming planning process
- Development of a project-specific web page content to inform the community of events
- Provision of quarterly social media updates on the planning process and project-specific meetings
- Public meeting announcements, materials, contact lists, and summary of comments, as applicable

Task 4: Advisory Committee Meetings

To facilitate successful engagement with community members and stakeholders, the City will form a Project Advisory Committee (PAC) which will include representatives from project stakeholders. The PAC will review comments received from the public. The PAC will provide feedback on the planning process and guide implementation of the proposed activities. Public agencies that will be invited to participate include Caltrans, OneShoreline, Coltrain, the High Speed Rail Authority, San Mateo County Department of Emergency Management, BCDC, and the Sierra Point Owners Association. Other agencies/private entities owning parcels adjacent to the bay, as well as the local Ohlone Native American tribe, will also be invited to participate.

It is recommended to hold meetings at milestones rather than monthly and to host meetings virtually due to budget constraints. It is assumed that the City will take the lead on organizing the meetings and Schaaf & Wheeler and CMG will prepare the agendas and meeting notes.



Yerba Buena Island Habitat Management Plan

Task Deliverables

- Agendas, meeting notes, list of attendees, list of action items from virtual PAC meetings

Task 5: Draft and Final Plan

Schaaf & Wheeler and CMG will prepare a draft report that documents the work performed in Tasks 2, 3, and 4. Feedback received during Tasks 3 and 4 will be strongly weighed, and the PAC will be engaged in conversations with the Schaaf & Wheeler team regarding the selection of a preferred alternative that best meets the public's expressed desires while addressing the underlying hydrological challenges associated with climate change. The draft report will be provided for public feedback. Once the public comment period on the draft report closes, the the Schaaf & Wheeler team will address one set on consolidated comments on the draft plan and prepare a final report.

Task Deliverables

- Draft Brisbane Lagoon Watershed Sea Level Rise Adaptation Plan
- Responses to comments
- Final Brisbane Lagoon Watershed Sea Level Rise Adaptation Plan

Task 6: Board Review/ Approval

The Brisbane City Council will consider the Brisbane Lagoon Watershed Sea Level Rise Adaptation Plan for adoption once the final plan has been developed. The final plan will be in an accessible format and will acknowledge the funding from this Caltrans grant within the plan. This acknowledgement may come in the form of an acknowledgement page within the plan.

Task Deliverables

- Agenda item and meeting notes from public presentation and discussion at Council meeting
- Final plan submitted to Caltrans

Appendix: Resumes

Robin J. Lee, PE Senior Project Manager



Robin J. Lee, PE, CFM has 20 years of experience in water resource engineering from planning all the way through detailed design. Robin has worked on single-event modeling related to flooding issues to holistic design event modeling related to master planning. Robin's experience includes modeling and design of storm water and sewer systems, drainage systems, hydrology and hydraulics, water quality, and FEMA applications. Robin serves as the project manager for the Foster City on-call, where Schaaf & Wheeler assists the City with plan checks for wet utility design and hydrology studies.

Robin has been assisting both private and public clients navigate FEMA maps, applications, and modeling efforts to better understand flood threats. Robin has prepared LOMR applications and peer-reviewed applications for cities and counties.

Robin is well-versed in stormwater regulations, from NPDES to local regulations. She has worked primarily on stormwater treatment, trash capture, and green infrastructure requirements by writing feasibility studies and designing trash capture systems. Robin also provides Third Party Reviews for Stormwater Management Plans for development projects throughout the Bay Area to assist City staff to ensure that the development meets the requirements of the San Francisco Bay Municipal Regional Permit.

Selected Project Experience

Hydrology and Hydraulics

Comprehensive Stormwater Plan

Marin City

Storm Drain Master Plan
Town of Corte Madera

Storm Drain Master Plan
Town of Ross

Zone 5 Storm Drain Master Plan and Financial Study
Santa Cruz County

Citywide Flood Control and Stormdrainage Master Plan
City of Mill Valley

Santa Clara Storm Drain Master Plan
City of Santa Clara

Hydrologic & Hydraulic Model for Zone 7 Watershed
Zone 7 Water Agency

Moraga Storm Drain Master Plan
Town of Moraga

Storm Drain Maintenance and Rehabilitation Plan
City of Ukiah

Great Oaks iStar Development HMP and LID Sizing
Ruth and Going, Inc

Communications Hill Development Detention and Stormwater Treatment Analyses

Education

MS, Civil and Environmental Engineering, UC Berkeley

BS, Civil and Environmental Engineering, UC Los Angeles

Licenses

Registered Civil Engineer
California C70040

Washington C43587

CFM, US-23-12881

Affiliations

American Society of Civil Engineers (ASCE)

World Water Corps
Volunteer, Bolivia

Software

HEC-HMS, EPANET, HEC-RAS, SWMM, InfoSWMM, GIS, ArcPro, HY-8, BAHM

HMH Engineers

Development Review and Management

Third Party C3 SWMP Reviews and Inspections
Various Clients

On-call Development Review and Construction Review
Foster City

Foster City Water, Sewer, and Storm Drain Standard Detail Updates
City of Foster City

Floodplain Management/Sea Level Rise

Zone D Flood Memos
Various School Districts

Zone A Flood Studies and
FEMA Applications
Various Clients

Singleton Road Bridge
Impact Analysis
Valley Water

Site Development, Flood
Plain Study, and FEMA
Applications
Various Clients

West Little Llagas Creek
LOMR
Morgan Hill

South Flea Market Floodplain
Analysis and LOMR
City of San Jose

Summerhill Homes Adrian
Court Flood Analysis and
FEMA Applications
Burlingame

Foster City Levee
Improvements
City of Foster City

SFO Shoreline Protection
Study
Moffet & Nichol

San Bruno/Colma Creek
Resiliency Study
Coastal Conservancy and
SFO

Foster City Lagoon Re-
Evaluation of Base Flood
Elevation
City of Foster City

San Mateo Creek Capacity
Evaluation
City of San Mateo

Water Quality/Environmental

Physical Stream Channel
Assessment
County of Puyallup

Mount Vernon NPDES Phase
II Stormwater Program
Development and
Implementation

City of Mount Vernon

Lake Whatcom Tributary
Monitoring
Whatcom County

Greater Los Angeles County
Integrated Regional Water
Management Plan
Los Angeles County

Wastewater Systems

Five-Year Capital
Improvement Plan
City of Mill Valley

CCTV and Design Services
for Sewer Improvements
City of Mill Valley

Trash Capture

Caltrans Large-Scale Trash
Capture Feasibility
City of Sunnyvale

Large Full Trash Capture
Device Feasibility Project
Marin County Flood Control
and Water Conservation
District

Large-Scale Trash Capture
Feasibility for Caltrans
Funding
County of San Mateo

Trash Capture Feasibility
Study and Design
Mendocino County

100% Trash Capture Plan
City of San Bruno

100% Trash Capture Plan
City of South San Francisco

NPDES Trash Capture
Feasibility Study
City of San Bruno

NPDES Trash Capture
Feasibility Study
City of South San Francisco

Small Trash Capture Device
Installation, Design, and
Management
City of South San Francisco

Small Trash Capture Device
Installation, Design, and
Management

City of San Bruno

Green Infrastructure

Hillcrest Park Regional Green
Infrastructure and Trash
Capture
City of Concord

Green Infrastructure Plan
City of South San Francisco

Green Infrastructure Plan
City of San Bruno

Low-Impact Development
Design and Drainage Report
for Sebastapol Multi-Lot
Development
Atlas Civil Design

Daniel J. Schaaf, PE Vice President



Daniel J. Schaaf, PE has over 25 years of project experience encompassing the areas of flood control and drainage, surface water hydrology, and physical and numerical modeling. Dan has managed several large hydrology/hydraulics, flood control, and drainage projects.

He is skilled in open-channel hydraulics, coastal and estuary processes, 1D and 2D modeling, urban hydrology, floodplain mapping, and storm drain master planning. He is currently working on implementing modeling projects that integrate pipe and surface flows using sophisticated 2D modeling software. He has performed several FEMA Flood Insurance Studies and Letters of Map Revisions for clients throughout California, Utah, and Arizona.

Selected Project Experience

Planning and Design

Storm Drain Master Plan
Update
City of San Mateo

Storm Drain Master Plan
City of San Leandro

Storm Drain Master Plan
Marin City

Storm Drain Master Plan
Santa Cruz County Zone 5

Storm Drain Master Plan
City of Seaside

Storm Drain Master Plan
City of Livermore

Storm Drain Master Plan
City of Carmel

Storm Drain Master Plan
City of Larkspur

Storm Drain Master Plan
City of Cupertino

Citywide Flood Control and
Storm Drainage Master Plan
City of Mill Valley

Los Gatos Drainage Study

City of San Rafael

Hermosa Beach Storm Drain
Master Plan
City of Hermosa Beach

Marin City Drainage Gaging
Marin County Flood Control
and Water Conservation
District

O'Connor Pump Station
Improvement Feasibility
Study
City of East Palo Alto

Stormwater Master Plan
City of Mountain View

Alameda Point Storm Drain
Review
Alameda Point Partners, LLC

Half Moon Bay Stormwater
Master Plan & Kehoe Ditch
Hydraulic Analysis
City of Half Moon Bay

Cove Stormwater Pump
Station Evaluation
County of Marin

Stormwater Master Plan

Education

BSCE, San Jose State
University

MSCE (Water Resource
Engineering), San Jose
State University

Licenses

Registered Civil Engineer,
California C57617, Arizona
82401, Utah 14191892-2202

Affiliations

American Society of Civil
Engineers

Floodplain Management
Association

Software

GeoHEC-HMS, GeoHEC-
RAS, Flo-2D, MIKE+, MIKE
11, MIKE 21, MIKE-URBAN,
EPA SWMM, InfoSWMM,
XP-SWMM, InfoWorks ICM,
QUAL2E, RMA-2, RMA-10,
EPA-Net, ArcPro, Spatial
Analyst, 3D Analyst,
AutoCAD, BAHM

City of Palo Alto

Storm Drain Master Plan
City of Orinda

Storm Drain Master Plan
Town of Moraga

Storm Water Conveyance
Program
Town of Woodside

Storm Drain Master Plan
City of Palo Alto

Industrial Road
Neighborhood Drainage
Study
City of San Carlos

Stormwater Facility
Prioritized Repair /
Replacement Program
Town of Woodside

Storm Drain Master Plan
City of East Palo Alto

North Bayshore Storm Drain
Master Plan
City of Mountain View

North San Jose Drainage
Master Plan
City of San Jose

Stormwater Master Plan
City of Los Altos

Stormwater Master Plan
County of Santa Cruz

El Charro Specific Plan
Channel Design
City of Livermore

Northside Pump Station
Design
City of Alameda, Public
Works Department

Storm Drain Master Plan and
Sea Level Rise Study
City of Alameda

Storm Drain Master Plan
City of Paso Robles

Program Management for
Storm Drain CIP
City of Belmont Public Works

Hydrology and Hydraulics
Diridon Station Flood Design
Peninsula Joint Powers
Board

Napa County Bridge
Replacement Scour Analyses
County of Napa

BART to Silicon Valley II
500-year Design
Valley Transportation
Authority

King City Golf Course
January 2023 Flood
Mitigation
City of King City

January 2024 Storm Damage
Repairs
City of Livermore

East Fork San Luis Obispo
Creek Hydrology and
Hydraulics Study
County of San Luis Obispo

Bear Gulch Reservoir PMF
Study
California Water Service
Company

Dam Failure Studies
Alameda County Water
District

Laurel Dam Failure
Inundation Study
City of San Mateo

City of Fremont Old Canyon
Road Bridge Scour Analyses
City of Fremont

Saratoga Creek Bike Path
Hydraulics
Mark Thomas & Associates

Old Carmel River Dam
Removal LOMR
Granite Construction

Woodside Water Tank
Failure Analysis
California Water Service
Company

Cove Pump Station Hydraulic
Study (Tiburon)
Marin County Public Works

Alameda Sea Level Rise
Study
City of Alameda

San Francisco Airport Sea
Level Rise Study
Moffatt & Nichol

Hydrologic & Hydraulic Model
for Zone 7 Watershed
Zone 7 Water Agency

Floodplain Management

El Charro LOMR
City of Livermore

Colma Creek LOMR
City of South San Francisco

Monterey County Flood
Insurance Study Peer Review
City of Gonzales and City of
Soledad

Laguna Water Treatment
Interior Flood Study
City of Santa Rosa

Laguna Water Treatment
Flood Protection Study
City of Santa Rosa

2017 Storm Damage Repairs
Project
City of Livermore

Napa River LOMR (Oakville)
Napa County Public Works

Emergency Flood Control
Strategy
City of Livermore

Livermore Airport Flood
Protection Planning
City of Livermore

Dam Break Analyses and
Inundation Mapping for Little
Grass Valley, Sly Creek, and
Lost Creek Dams
South Feather Water Agency

Bear Gulch Station 46 Tank
Failure Inundation Study
California Water Resource
Company

Silicon Valley BART
Extension Floodplain Study
Valley Transit Authority

San Tomas Aquino Flood
Study
Santa Clara Valley Water
District

Flood Analysis and Bayfront
Levee Wave Analysis
City of San Mateo

Arroyo Las Positas and
Arroyo Mocho CLOMR
City of Livermore

Justin Maynard, PE Senior Engineer



Justin Maynard, PE has more than 10 years of experience in flood protection, storm drain modeling, HEC-HMS and HEC-RAS model development, FEMA letter of map change analysis, and pump station design.

Selected Project Experience

Stormwater Systems and Analysis

Zone 5 Storm Drain Master Plan Update
Santa Cruz County, CA

Ravenswood Business Development Stormwater Improvement Analysis
East Palo Alto, CA

Communication Hill Phase 3-4 Stormwater Pond Redesign
San Jose, CA

Burlingame Lagoon Drainage Area Modeling and Capital Improvements
City of Burlingame

Villa Grande Stormwater System Modeling and Planning
Sonoma County

Cemex Eliot Plant Drainage Modeling & Design
City of Pleasanton

VA Southern Oregon Rehabilitation Center and Clinics MS4 Master Plan/Wetpond Design
VA, White City, OR

SR 432/SR 411 Intersection Improvements Stormwater Design
City of Longview

SR 502/SR 503 Intersection Improvements Stormwater Design
City of Battleground

Lexington Elementary School Storm System and Pump Station Design
Kelso School District

Multnomah County Vance Property Stormwater Master Planning
Gresham, OR

Storm Drain Master Plan
City of Cupertino

Matadero Creek Pump Station and Storm Drain Improvements and Trash Capture Design
City of Palo Alto

Mountain View Trash Boom Feasibility Study/Design
City of Mountain View

Livermore Trash Capture Feasibility Study and Capital Improvement Plan
City of Livermore

San Mateo Residential Flood Modeling
City of San Mateo

Coyote Point/Poplar Ave Pump Station Capacity Analysis and Floodplain Modeling
City of San Mateo

Education

BS, Civil and Environmental Engineering, UCLA
MS, Environmental Fluid Mechanics and Hydrology, Stanford University

Licenses

Registered PE (Civil)
California #85653
Washington #56080
Oregon #93798

Affiliations

ASCE

City of Soledad Storm Drain Master Plan
City of Soledad

City of South San Francisco Forensic Flooding Analysis
City of South San Francisco

City of Santa Clara Storm Drain Master Plan
City of Santa Clara

Various NPDES C.3 Reviews

Base Flood Elevation Delineation, Foster City
Central Lagoon
City of Foster City

Hydrology and Hydraulics

Santa Ana River Floodplain Development Modeling
Corona, CA

San Felipe Lake-Soap Lake Area 2D Floodplain Analysis
San Benito County, CA

Cowan Pump Station, Mills Creek, and El Portal Creek System 1-D/2D Stormwater Model
Burlingame, CA

OneShoreline Shoreline Protection Project
City of Millbrae and Burlingame

Slinkard Creek Fish Passage Barrier
Mono County, CA

Gaviota Creek Restoration Calibrated Hydrology, 2D Modeling, and Bank Stability Analysis
CalTrans, Gaviota, CA

Arroyo Seco Fish Passage, Screening, and Diversion Model
Monterey County, CA

Big & Little Creek Calibrated Hydrology and 2D Hydraulic Modeling
USFS – Knappa, OR

Halo Ranch Mitigation Bank Tidal Restoration Modeling & Design
RES, Petaluma, CA

Romero Canyon Water Diversion Modeling & Design
Montecito, CA

Bean Hollow Reservoir System Continuous Hydrology Modeling and Water Supply Analysis
San Mateo County, CA

Arroyo Grande 2D Floodplain Modeling
San Luis Obispo County, CA

Burlingame Creek Survey and Hydraulic Modeling
Gresham, OR

Coweeman River 2D Floodplain and Restoration Design Modeling
Cowlitz County, WA

Walla Walla High School New Pedestrian Bridge Scour Analysis

Walla Walla, WA

Asbury Creek Crossing Replacement
ODOT, Arch Cape, OR

Lexington Elementary School Downstream Analysis of McCorkle Creek, Dam, and Pump Station
Kelso School District

South Umpqua River No-Rise Analysis For Kerr Construction Project
Roseburg, OR

Baker Creek Hydrology Analysis
Friends of Baker Creek, McMinnville, OR

Finnegan Creek Bridge Hydrology and Scour Analysis
Oregon Transportation Professionals, Sherman County, OR

West 10th Street Fish Passage Crossing Analysis and Design
Private Client

Downstream HEC-RAS 2D Analysis and Pump Station Design for a new Vet Clinic in St Helens, OR
Private Client

Deer Island/Novato Creek 2D Tidal/Flood Modeling
Marin County

Anderson Dam Interim Stochastic Reliability Analysis
Santa Clara Valley Water District

Dublin Crossing Flood Study and CLOMR
Ruggeri-Jensen-Azar/City of Dublin

Moffett Gateway Development Flood Study
City of Mountain View

Christopher Ranch Flood Study
Gilroy, CA

Enterprise Storm Basin Letter of Map Revision
Gilroy, CA

Foster City Levee Deficiency and Wave Runup Analyses
City of Foster City

Coyote Point Levee Overtopping Analysis and 2D Floodplain Mapping
City of San Mateo

Anderson Dam Seismic Retrofit Dewatering Plan
Santa Clara Valley Water District

Dam Failure Inundation Studies, Butte/Plumas County
South Feather Water and Power Company

Upper Llagas Creek Flood Protection Project
RMC Water & Environment/Santa Clara Valley Water District

Hydrologic Model Development
Zone 7 Water Agency

Stream Restoration/ Stabilization

Johnson Creek Restoration Concepts (Hogan to Regner)
Gresham, OR

Romero Canyon Bridge Replacement & Stream Restoration
Montecito, CA

Nechacokee Creek Stream Stabilization & Sanitary Sewer Repair
Gresham, OR

Sahara Mobile Village/Stevens Creek Bank Stabilization Modeling
Mountain View, CA

Marin County Nicasio Creek Bank Stabilization Survey, Modeling, & Design
Marin County, CA

Sarah Weinberg, EIT Assistant Engineer



Sarah Weinberg has three years of experience providing engineering services. She has completed several no-rise hydraulic analyses with HEC-RAS and corresponding FEMA permits for public agency projects for the cities of Napa, Morgan Hill, and Rocklin.

Sarah regularly uses HEC-RAS, Civil 3D, and ArcGIS together to create hydraulic analyses in HEC-RAS and show results either in ArcGIS or Civil 3D. She is also skilled in using HEC-HMS for hydrologic analyses to be incorporated into hydraulic modeling.

Sarah has completed several trash capture projects, including for the cities of South San Francisco, Ukiah, and Gilroy.

Education

BSCE, Civil Engineering,
Cornell University, Ithaca,
NY

Licenses

Engineer in Training

Software

AutoCAD, AutoCAD Civil 3D,
AutoTurn, , HEC-RAS, HEC-
HMS, ArcGIS, MATLAB

Selected Project Experience

Royal Oaks Village: No-Rise
Hydraulic Analysis and
LOMR
City of Morgan Hill

West Oaks Bridge: No-Rise
Hydraulic Analysis and
CLOMR
City of Rocklin

Alta Winery: No-Rise
Hydraulic Analysis
City of Napa

BART Extension Hydraulic
Analysis for Diridon Station
City of San Jose

Cottonwood Creek Repairs:
Hydraulic Analysis and Plan
Sets
City of Livermore

Anderson Dam: Dam Risk
Analysis with Matlab
City of Morgan Hill

Trash Capture Analysis
City of San Francisco

Trash Capture Analysis
City of Ukiah

Trash Capture Analysis
City of Gilroy

Creek Restoration and Bridge
Design Support
Google, Inc.

Half Moon Bay: Storm Drain
Master Plan Updates
City of Half Moon Bay

Fontanesi Expansion:
Hydrologic Analysis of Onsite
Drainage
City of Henderson

Violetta Muselli (she/her)

Senior Director

Violetta is a confident communicator and strategist with over 15 years of experience. At Civic Edge she merges her communications and engagement know-how with her passion for climate change resilience and equitable urban planning by leading engagement and outreach efforts for multi-year resilience planning efforts around the Bay Area. Her diverse experience includes managing and growing a thriving hospitality business in San Francisco, coordinating cross-functional projects at Lyft, and implementing communications and engagement strategy for a social-impact nonprofit and for international clients while living abroad. She is skilled at creating structure from ambiguity, distilling information for target audiences, and building consensus. Violetta also brings extensive event production experience and a deep understanding of San Francisco's small business community. She is driven by a desire to solve problems and keep her project teams organized to deliver results for her clients and the communities they serve. A native San Franciscan, Violetta spends her free time swimming in the chilly SF Bay, urban hiking, and cooking.



Project Experience

OneShoreline, Millbrae and Burlingame Shoreline Resilience Project, San Mateo County, CA (Community Engagement Lead), 2024-Current

Leads engagement and outreach strategy and coordinates the implementation of community meetings and other engagement tactics including walking tours and intercept surveys for multi-year resilience planning project to protect against sea level rise along the Millbrae and Burlingame shoreline.

Caltrain, Caltrain Climate Change Vulnerability Study (Community Engagement Lead), 2024-Current

Leads equity-based engagement and outreach strategy including coordination with community based organization leadership for climate vulnerability study to understand current and future impacts of climate change to Caltrain riders and infrastructure.

Bay Area Clean Water Agencies, Ongoing Strategic Communications (Communications Lead) 2023-Current

Provides ongoing strategic communications support and implements earned media strategy including managing press relationships for the joint power's authority representing the Bay Area's wastewater treatment providers. Led redesign of www.baywise.org focused on pollution prevention.

San Francisco Department of Emergency Management, Communications and Website Redesign, SF, CA (Content Manager), 2023-Current

Leads content creation and editing for department's emergency preparedness program rebrand to ReadySF.gov including core messaging and website redesign.

San Francisco International Airport, Marketing and Communications (Media Planning Lead) 2023-Current

Leads coordination of planning and implementation for media strategy including SEM, radio, display/programmatic, paid social, and OTT/CTV for multiple airport business units.

Port of San Francisco, Waterfront Resilience Program (Project Manager for Community Engagement), 2020-2024

Led collaboration between the community engagement, technical, and agency teams during development of the San Francisco Waterfront Flood Study – Draft Plan, including conceptualizing and implementing multi-lingual strategies for public outreach and feedback and developing engagement materials. The Draft Plan reflects more than six years of community engagement and public input and aims to defend San Francisco's shoreline from Aquatic Park to Heron's Head Park against rising sea levels.

Santa Clara Valley Open Space Authority, Coyote Valley Conservation Areas Master Plan (Project Manager for Community Engagement), 2022-2024

Led development and implementation of a robust, equity-centered community engagement plan to incorporate public feedback into the multi-year master planning effort to connect 1.13 million acres of core habitat in the Santa Clara County mountain ranges and safeguard the region's biodiversity. Devised engagement and outreach strategy, implemented equity-centered engagement including in-language workshops in Spanish and Vietnamese and outreach to youth and older adults through community based organization partnerships and facilitated reporting to guide decision making.

Years of Experience | 15+

Years with firm | 4

Education | BA Environmental Studies, Minor Writing for Business Communication, University of California, Santa Barbara

Amber Shipley (she/her)

Managing Partner

After nearly a decade of work on Capitol Hill and with nonprofit organizations across the country, Amber Shipley moved to San Francisco to live the west coast dream. She brings a keen understanding of how to advance her clients' public policy and communications goals and excels at designing and implementing strategic initiatives across a diverse array of issue areas. Amber is a big-picture thinker with a wicked attention to detail and passion for providing the best possible service to our civic sector clients. She has a unique ability to take the messiest situations and make people and projects shine. In addition to her love for politics, Amber is an avid gardener and loves brewing (and drinking!) beer.



Project Experience

San Francisco Department of Public Health Living Proof SF Campaign, Project Lead January - December 2024

In 2024, Amber served as the consultant lead for Civic Edge's work with the San Francisco Department of Public Health on their Living Proof SF campaign to increase public awareness about treatments for opioid use disorder. Amber's work included overseeing the campaign's creative development, working collaboratively with the client on campaign dissemination strategy, and ensuring all aspects of the campaign's implementation met key performance indicators and overarching goals.

Port of San Francisco Waterfront Resilience Program, Community Engagement Lead September 2017 - April 2024

From 2017 through 2024, Amber served as the consultant team's community engagement lead for the Port of San Francisco Waterfront Resilience Program. As the lead, Amber was responsible for overseeing a team of dozens of consultants to develop the communications strategy for the project, oversee the development of print and digital

communications, develop an outreach strategy and coordinate all aspects of the project to be in-language and culturally competent for all San Francisco residents.

Association of Bay Area Governments Housing Methodology Committee, Facilitation Lead

August 2019 - September 2020

Starting in 2019, Amber provided strategic and logistical support to help more than 40 elected officials and key constituents selected to serve on the Housing Methodology Committee (HMC) determine an equitable means of distributing the state's Regional Housing Needs Assessment (RHNA) throughout the nine-county Bay Area. Amber led the Civic Edge team in creating a framework for the HMC to build consensus and make decisions about this difficult topic, developing agendas to move them through very challenging, technical topics, and taking detailed notes that were made public within a week of each meeting. Amber also facilitated each of the twelve meetings, helping HMC members dive into resources and hash out differences, before coming together in a final vote of approval in their final meeting. It's worth noting that while the meetings began in person, the onset of Covid meant that more than half of the meetings were conducted via Zoom.

Years of Experience | 20+

Years with firm | 11

Education | BA Politics, Whitman College

MA Women's and Gender Studies, Rutgers, The State University of New Jersey

MA Public Policy, University of Minnesota

Partner

Chris has 30 years of experience and is a founding partner of CMG Landscape Architecture, a leading designer, and a passionate advocate for urban public spaces and access to nature. He is known for his intersectional approach to design through the lens of social and ecological vitality. Chris works with cities, community advocates, and landowners to co-create, design, and keep places that are inviting and enduring.

His work spans a spectrum from open space planning, to parks, civic spaces, public engagement, and resilient landscapes. Chris's leadership of complex, creative, and collaborative projects is exemplified by his work on the public realm and park system for Treasure Island in San Francisco, CA, and Estuary Commons, a community vision for resilience developed through a co-creative process. He led the creation of an innovative urban ecology that combines outdoor social and workspaces within an immersive landscape at the Meta Headquarters.

As an advocate, committed to inclusive and equitable parks and public spaces, Chris has served on the Board of Directors of the San Francisco Parks Alliance, a leading park non-profit that champions, transforms, and activates parks and public spaces throughout San Francisco. Chris holds a Bachelor of Landscape Architecture from Virginia Tech University of College of Architecture and Urban Planning.

Resilience

Estuary Commons Design Challenge, *San Leandro Bay, East Oakland, CA*
 OAAC ADAPT, *Alameda, CA*
 Pacific Commons, *Fremont, CA*
 Treasure Island Parks + Open Space, *San Francisco, CA*
 Waller Creek, *Austin, TX*

Engagement

Estuary Commons Co-Creation, *San Leandro Bay, East Oakland, CA*
 Realize Flood Park, *San Mateo, CA*

Park/Public Space

855 Brannan, *San Francisco, CA*
 California Forever, *Solano County, CA*
 Concord Naval Weapons Station, *Concord, CA*
 Daggett Park, *San Francisco, CA*
 East Cut Sports + Dog Park, *San Francisco, CA*
 Mint Plaza, *San Francisco, CA*
 Moffett Park Specific Plan, *Sunnyvale, CA*
 Noe Valley Town Square, *San Francisco, CA*
 Park Habitat, *San Jose, CA*
 Treasure Island Parks + Open Space, *San Francisco, CA*



Years of Experience
 30

Education

Bachelor of Landscape Architecture, Honors College of Architecture and Urban Studies, *Virginia Tech University*
 Riva San Vitale European Travel Studies, *Virginia Tech University*

Registration

Licensed Landscape Architect, *California, No. 5993*

Awards + Fellowships

2011-2021, Parks Alliance Board of Directors, Board Member
 2019, SPUR Bay Area Regional Strategy, Advisory Board Member
 2004-2010, Neighborhood Parks Council Board of Directors, Board Member/Treasurer

Teaching Experience

2019 MLA Studio, *University of California Berkeley*, Co-Teacher
 2018 Resilient by Design Studio, *University of California Berkeley*, Co-Teacher
 2017 Resilient by Design Studio, *California College of Arts*, Co-Teacher

Lectures + Exhibitions

2019 Climate Action Summit, Climate Positive Design Panel Leader
 2016 Collaborating for Ecology: An Open Discussion, ASLA Annual Meeting & Expo, Speaker

Publications

2019 Resilient By Design: Bay Area Challenge, 'Estuary Commons All Bay Collective', Contributing Author



Patricia Fonseca Flores

Principal

Patricia Fonseca Flores is a Principal at CMG Landscape Architecture. She believes in designing and planning with nature and brings 19+ years of experience in landscape architecture, master planning, resilience planning and open space development management.

With the understanding that each site has its own environmental, cultural, and historical context, she specializes in creating unique projects and places in the San Francisco Bay Area and Latin America. Patricia's work includes signature waterfront open spaces in San Francisco, including Crane Cove Park, Treasure Island and Ocean Beach.

Patricia is currently serving on the Design Review Board of the San Francisco Bay Conservation and Development Commission (BCDC), advising, and providing guidance on public access, views and open space on projects seeking approval within the BCDC's 100-foot shoreline jurisdiction. Patricia's educational background in Architecture from the University of Costa Rica and her Masters in Landscape Architecture from University of California Berkeley, along with her upbringing in Costa Rica, have shaped her into an adaptive, multifaceted and nature-based design leader.

Resilience

Bolinas Lagoon North End Restoration Project, *Marin County, CA**
 Santa Catarina Sustainable Mobility Corridor Master Plan, *Monterrey, Mexico**
 Islais Creek Southeast Mobility Adaptation Strategy, *San Francisco, CA**
 Mangrove Discovery Eco-Park & Education Center, *Panama City, Panama**
 Mission Bay Rain Garden, *San Francisco, CA**
 Ocean Beach Master Plan, *San Francisco, CA**
 Olympia Sea Level Rise Response Plan, *Olympia, WA**
 San Francisco Draft Waterfront Adaptation Strategies, *San Francisco, CA*
 San Rafael Sea Level Rise Adaptation Plan, *San Rafael, CA*

Park/Public Space

California Forever, *Solano County, CA*
 Crane Cove Park, *San Francisco, CA**
 Concord Naval Weapons Station, *Concord, CA*
 East Downtown Visalia Parks and Infrastructure Master Plan, *Visalia, CA**
 Google Downtown West Mixed-Use Plan, *San Jose, CA**
 Harvey West Park Design and Program Assessment, *Santa Cruz, CA*
 Kathryn Albertson Park, *Boise, ID**
 North Bayshore & Moffett Park, *Mountain View + Sunnyvale, CA**
 Treasure Island Waterfront Plaza, *San Francisco, CA**
 Treasure Island Clipper Cove Promenade, *San Francisco, CA**
 Visitacion Valley Redevelopment Open Space + Streetscape Masterplan, *San Francisco, CA**

**Prior work experience*



Years of Experience

19

Languages

Spanish, English, French, +
Japanese

Education

Master of Landscape
Architecture, *University of
California, Berkeley, 2006*
 Professional Degree in
Architecture, *University of Costa
Rica, 2004*

Licenses

Colegio Federado de Ingenieros
y Arquitectos de Costa Rica
#0110230064

Awards + Fellowships

Merit Award for General Design,
American Society of Landscape
Architects (ASLA) Northern
California Chapter, *Crane Cove
Park*
 Excellence on the Waterfront Top
Honor Award, The Waterfront
Center, *Ocean Beach Master
Plan*
 Planning Integration Award,
National Association of
Environmental Professionals
(NAEP), *Ocean Beach Master
Plan*
 Merit Award Outstanding
Planning Document, Association
of Environmental Professionals
(AEP), *Ocean Beach Master Plan*

Lectures + Exhibitions

University of California, College
of Environmental Design
 California College For The Arts,
Architecture Program
 Academy Of Art University,
School Of Landscape
Architecture
 University Of Costa Rica, School
Of Architecture
 University Veritas, School Of
Architecture

cmg

SAMPLE COST PROPOSAL 1

COST-PLUS-FIXED FEE OR LUMP SUM OR FIRM FIXED PRICE CONTRACTS

(DESIGN, ENGINEERING AND ENVIRONMENTAL STUDIES)

Note: Mark-ups are Not Allowed

☒ Prime Consultant ☐ Subconsultant ☐ 2nd Tier Subconsultant

Consultant Schaaf & Wheeler

Project No. 925C

Contract No. _____

Date 4/8/25

DIRECT LABOR

Classification/Title	Name	Hours	Actual Hourly Rate	Total
Vice Principal	Dan Schaaf	24.00	\$ 135.00	\$ 3,240.00
Senior PM	Robin J. Lee	184.00	\$ 116.00	\$ 21,344.00
Senior Engineer	Justin Maynard	88.00	\$ 80.00	\$ 7,040.00
Assistant Engineer	Sarah Weinberg	250.00	\$ 49.00	\$ 12,250.00

LABOR COSTS

a) Subtotal Direct Labor Costs

\$ 43,874.00

b) Anticipated Salary Increases (see page 2 for calculation)

\$ 0.00

c) **TOTAL DIRECT LABOR COSTS [(a) + (b)]** \$ 43,874.00

INDIRECT COSTS

d) Fringe Benefits (Rate: 49.30%)

e) Total Fringe Benefits [(c) x (d)] \$ 21,629.88

f) Overhead (Rate: 32.99%)

g) Overhead [(c) x (f)] \$ 14,474.03

h) General and Administrative (Rate: 87.28%)

i) Gen & Admin [(c) x (h)] \$ 38,293.23

j) **TOTAL INDIRECT COSTS [(e) + (g) + (i)]** \$ 74,397.14

FIXED FEE

k) **TOTAL FIXED FEE [(c) + (j)] x fixed fee 10.00%** \$ 11,827.11

l) CONSULTANT'S OTHER DIRECT COSTS (ODC) – ITEMIZE (Add additional pages if necessary)

Description of Item	Quantity	Unit	Unit Cost	Total
Mileage Costs				\$ 0.00
Equipment Rental and Supplies				\$ 0.00
Permit Fees				\$ 0.00
Plan Sheets				\$ 0.00
Test				\$ 0.00

l) **TOTAL OTHER DIRECT COSTS** _____

m) SUBCONSULTANTS' COSTS (Add additional pages if necessary)

Subconsultant 1: CMG

\$ 107,246.66

Subconsultant 2: Civic Edge

\$ 55,995.50

Subconsultant 3: _____

Subconsultant 4: _____

m) **TOTAL SUBCONSULTANTS' COSTS** \$ 163,242.16

n) **TOTAL OTHER DIRECT COSTS INCLUDING SUBCONSULTANTS [(l)+(m)]** \$ 163,242.16

TOTAL COST [(c) + (j) + (k) + (n)] \$ 293,340.41

NOTES:

- Key personnel **must** be marked with an asterisk (*) and employees that are subject to prevailing wage requirements must be marked with two asterisks (**). All costs must comply with the Federal cost principles. Subconsultants will provide their own cost proposals.
- The cost proposal format shall not be amended. Indirect cost rates shall be updated on an annual basis in accordance with the consultant's annual accounting period and established by a cognizant agency or accepted by Caltrans.
- Anticipated salary increases calculation (page 2) must accompany.

SAMPLE COST PROPOSAL 1

COST-PLUS-FIXED FEE OR LUMP SUM OR FIRM FIXED PRICE CONTRACTS

(CALCULATIONS FOR ANTICIPATED SALARY INCREASES)

1. Calculate Average Hourly Rate for 1st year of the contract (Direct Labor Subtotal divided by total hours)

Direct Labor Subtotal per Cost Proposal	Total Hours per Cost Proposal		Avg Hourly Rate	5 Year Contract Duration
\$250,000.00	500	=	\$50.00	Year 1 Avg Hourly Rate

2. Calculate hourly rate for all years (Increase the Average Hourly Rate for a year by proposed escalation %)

	Avg Hourly Rate		Proposed Escalation			
Year 1	\$50.00	+	2%	=	\$51.00	Year 2 Avg Hourly Rate
Year 2	\$51.00	+	2%	=	\$52.02	Year 3 Avg Hourly Rate
Year 3	\$52.02	+	2%	=	\$53.06	Year 4 Avg Hourly Rate
Year 4	\$53.06	+	2%	=	\$54.12	Year 5 Avg Hourly Rate

3. Calculate estimated hours per year (Multiply estimate % each year by total hours)

	Estimated % Completed Each Year	Total Hours per Cost Proposal		Total Hours per Year	
Year 1	20.0%	5000	=	1000	Estimated Hours Year 1
Year 2	40.0%	5000	=	2000	Estimated Hours Year 2
Year 3	15.0%	5000	=	750	Estimated Hours Year 3
Year 4	15.0%	5000	=	750	Estimated Hours Year 4
Year 5	100%	5000	=	500	Estimated Hours Year 5
Total	100%	Total	=	5000	

4. Calculate Total Costs including Escalation (Multiply Average Hourly Rate by the number of hours)

	Avg Hourly Rate (calculated above)	Estimated hours (calculated above)		Cost per Year	
Year 1	\$50.00	1000	=	\$50,000.00	Estimated Hours Year 1
Year 2	\$51.00	2000	=	\$102,000.00	Estimated Hours Year 2
Year 3	\$52.02	750	=	\$39,015.00	Estimated Hours Year 3
Year 4	\$53.06	750	=	\$39,795.30	Estimated Hours Year 4
Year 5	\$54.12	500	=	\$27,060.80	Estimated Hours Year 5
Total Direct Labor Cost with Escalation			=	\$257,871.10	
Direct Labor Subtotal before Escalation			=	\$250,000.00	
Estimated total of Direct Labor Salary Increase			=	\$7,871.10	Transfer to Page 1

NOTES:

- This is not the only way to estimate salary increases. Other methods will be accepted if they clearly indicate the % increase, the # of years of the contract, and a breakdown of the labor to be performed each year
- An estimation that is based on direct labor multiplied by salary increase % multiplied by the # of years is not acceptable.
(i.e. \$250,000 x 2% x 5 yrs = \$25,000 is not an acceptable methodology)
- This assumes that one year will be worked at the rate on the cost proposal before salary increases are granted.
- Calculations for anticipated salary escalation must be provided.

SAMPLE COST PROPOSAL 1

Certification of Direct Costs:

I, the undersigned, certify to the best of my knowledge and belief that all direct costs identified on the cost proposal(s) in this contract are actual, reasonable, allowable, and allocable to the contract in accordance with the contract terms and the following requirements:

1. Generally Accepted Accounting Principles (GAAP)
2. Terms and conditions of the contract
3. [Title 23 United States Code Section 112](#) - Letting of Contracts
4. [48 Code of Federal Regulations Part 31](#) - Contract Cost Principles and Procedures
5. [23 Code of Federal Regulations Part 172](#) - Procurement, Management, and Administration of Engineering and Design Related Service
6. [48 Code of Federal Regulations Part 9904 - Cost Accounting Standards Board](#) (when applicable)

All costs must be applied consistently and fairly to all contracts. All documentation of compliance must be retained in the project files and be in compliance with applicable federal and state requirements. Costs that are noncompliant with the federal and state requirements are not eligible for reimbursement. Local governments are responsible for applying only cognizant agency approved or Caltrans accepted Indirect Cost Rate(s).

Prime Consultant or Subconsultant Certifying:

Name: Daniel J. Schaaf, PE Title *: Vice President

Signature:  Date of Certification (mm/dd/yyyy): 04/8/25

Email: dschaaf@swwsv.com Phone Number: 415.297.4118

Address: 870 Market Street, Suite 1278, San Francisco, CA 94102

*An individual executive or financial officer of the consultant's or subconsultant's organization at a level no lower than a Vice President or a Chief Financial Officer, or equivalent, who has authority to represent the financial information utilized to establish the cost proposal for the contract.

List services the consultant is providing under the proposed contract:

see attached breakdown by task

Schaaf & Wheeler
Fee Proposal
Project No. 925C

	Hourly Rates		Principal Project Manager: Daniel J. Schaaf, PE	Senior Project Manager: Robin J. Lee, PE	Senior Engineer: Justin Maynard, PE	Assistant Engineer: Sarah Weinberg, EIT	Schaaf & Wheeler Total	Civic Edge	CMG	10% Markup	Total
	Actual	Hourly Rate									
Task 1 Existing Conditions											
1.1 Map of Existing Drainage Facilities			\$400	\$344	\$237	\$145					
1.2 Summary of Existing Conditions/Kickoff			\$135	\$116	\$80	\$49					
	2		2	8	0	24	\$7,040	\$0	\$2,124	\$212	\$9,376
						16	\$4,501		\$295	\$30	\$4,826
				4		8	\$2,538		\$1,828	\$183	\$4,550
Task 2 Analysis											
2.1 Update SWMM Model with Existing Conditions			16	22	56	118	\$44,402	\$0	\$51,295	\$2,565	\$100,826
2.2 Update SWMM Model with Proposed Baylands				4	16	40	\$10,983			\$0	\$10,983
2.3 Model Scenarios to Evaluate Potential Impacts of SLR (4 scenarios)				2	4	8	\$2,799			\$0	\$2,799
2.4 Model Scenarios to Evaluate Adaptation Alternatives (3 alternatives)				4	16	30	\$10,331			\$0	\$10,331
2.5 Study of Potential Nature-Based Solutions				4	16	24	\$10,260			\$0	\$10,260
2.6 Alternative Layouts and Concept-Level Opinions of Probable Cost				4	4	8	\$4,288		\$26,787	\$2,679	\$33,754
Task 3 Public Outreach											
3.1 Press Release Promoting Grant Award			8	4		8	\$5,741		\$24,507	\$2,451	\$32,699
3.2 Development of a Project-Specific Web Page for Events			0	52	0	0	\$17,887	\$50,905	\$26,720	\$7,763	\$103,274
3.3 Provision of Consistent Social Media Updates				4			\$1,376	\$11,075		\$1,108	\$13,558
3.4 Public Meeting Announcements, Materials, Contact Lists, and Comment Summary				4			\$1,376	\$5,080		\$508	\$6,964
Task 4 Advisory Committee Meetings											
4.1 Agendas, Meetings Notes, Lists of Attendees, Action Items				40			\$13,759	\$29,850	\$26,720	\$5,657	\$75,986
4.2 Attend 6 Virtual PAC Meetings			0	18	0	20	\$9,097	\$0	\$5,609	\$561	\$15,267
Task 5 Draft and Final Plan											
5.1 Draft Brisbane Lagoon Watershed Sea Level Rise Adaptation Plan				6		20	\$4,970		\$2,066	\$207	\$7,243
5.2 Responses to Comments				12			\$4,128		\$3,542	\$354	\$8,024
5.3 Final Brisbane Lagoon Watershed Sea Level Rise Adaptation Plan			6	24	32	68	\$28,129	\$0	\$9,978	\$998	\$39,105
Task 6 Board Review/Approval											
6.1 Presentation of Final Plan Agendized for City Council Meeting			2	12	16	40	\$14,536		\$5,731	\$573	\$20,840
6.2 Agenda Item and Meeting Notes from Public Presentation and Discussion at Council Meeting			2	8	8	8	\$6,613		\$3,097	\$310	\$10,019
6.3 Final Plan Submitted to Caltrans			2	4	8	20	\$6,980		\$1,150	\$115	\$8,246
Task 7 Project Coordination and Meetings											
7.1 Monthly Invoices			0	12	0	20	\$7,034	\$0	\$1,771	\$177	\$8,982
7.2 Monthly Team Meetings			8	8		16	\$5,077		\$1,771	\$177	\$7,025
			0	48	0	0	\$16,511	\$0	\$0	\$0	\$16,511
				24			\$8,255				\$8,255
				24			\$8,255				\$8,255
Total			24	184	88	250	\$130,098	\$50,905	\$97,497	\$12,275	\$293,340

RESOLUTION NO. 2024-24

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRISBANE AUTHORIZING THE DIRECTOR OF PUBLIC WORKS/CITY ENGINEER TO EXECUTE AGREEMENTS WITH THE CALIFORNIA DEPARTMENT OF TRANSPORTATION FOR THE BRISBANE LAGOON AND U.S. HIGHWAY 101 ADAPTATION PLANNING STUDY

WHEREAS, the City of Brisbane is eligible to receive Federal and/or State funding for certain transportation planning related plans through the California Department of Transportation; and

WHEREAS, a Restricted Grant Agreement is needed to be executed with the California Department of Transportation before such funds can be reimbursed through the Transportation Planning Grant Program; and

WHEREAS, the City of Brisbane wishes to delegate authorization to execute these agreements and any amendments thereto; and

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

The Director of Public Works/City Engineer is authorized to execute all Restricted Grant Agreements and any amendments thereto with the California Department of Transportation.



Terry O'Connell, Mayor

* * * *

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Brisbane held on the fifth day of September, 2024, by the following vote:

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

NOES: None

ABSENT: None

ABSTAIN: None

ATTEST:



Ingrid Padilla, City Clerk

RESOLUTION NO. 2024-24

File Attachments for Item:

M. Zoning Text Amendment 2025-RZ-01-- Adopt an Ordinance, Waiving Second Reading, to Update the City's Density Bonus and Inclusionary Housing Ordinance

(Staff is recommending to adopt an ordinance to amend the zoning ordinance's inclusionary housing and density bonus regulations, currently located in BMC Ch. 17.31, to comply with current State law and implement the Housing Element. This item is exempt from CEQA pursuant to CEQA Guidelines §15061(b)(3) because it involves adoption of policies and programs that would not cause a significant effect on the environment.)

**CITY COUNCIL MEMO****Meeting Date: May 15, 2025****From: Ingrid Padilla, City Clerk****Subject: An Ordinance of the City of Brisbane****Adding New Chapter 17.29 and Amending Chapter 17.31 of the
Brisbane Municipal Code Concerning Density Bonus and
Inclusionary Housing Requirements**

The Ordinance listed above was introduced at the City Council Meeting of April 17, 2025. It is on this agenda for consideration of adoption with the revised Ordinance.

Attachments:

1. Revised Ordinance
2. Red lined Ordinance
3. Staff Report from the City Council Meeting of April 17, 2025

DRAFT ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY OF BRISBANE
 ADDING NEW CHAPTER 17.29 AND AMENDING CHAPTER 17.31 OF
 THE BRISBANE MUNICIPAL CODE
 CONCERNING DENSITY BONUS AND
 INCLUSIONARY HOUSING REQUIREMENTS**

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

SECTION 1: A new Chapter 17.29 is added to the Municipal Code to read as follows:

Chapter 17.29 – DENSITY BONUSES

Sections:

- | | |
|-----------|------------------------------------|
| 17.29.010 | Purposes of chapter. |
| 17.29.020 | Definitions. |
| 17.29.030 | Administration of Density Bonuses. |
| 17.29.040 | Application for a Density Bonus. |
| 17.29.050 | Affordable housing agreements. |
| 17.29.060 | Implementation and enforcement. |

17.29.010 – Purposes of chapter.

- A. The City of Brisbane enacts this chapter to implement the goals, objectives, and policies of the City's general plan housing element relative to administering a density bonus program to encourage the provision of housing affordable to a variety of household income levels, seniors, and persons with disabilities.
- B. This chapter is also intended to implement Sections 65915 through 65918 of the California Government Code, or successor statutes and regulations, governing density bonuses and other incentives required by such statutes or regulations.

17.29.020 - Definitions.

- A. Affordable Housing Agreement. A recorded agreement between a property owner and the City to ensure that the density bonus requirements of this Chapter are satisfied.
- B. Affordable Ownership Cost. The affordable ownership cost for for-sale target units shall be as specified in California Health and Safety Code Section 50052.5, as may be amended over time.
- C. Affordable Rent. The affordable rent for rental target units shall be as specified in California Health and Safety Code Section 50053, as may be amended over time.
- D. Approving Authority. The City decision-making body acting on an application for a housing development subject to the requirements of this Chapter, including the City Council, Planning Commission, or Community Development Director.
- E. Base Density. Base density or maximum residential density shall be as defined in the State Density Bonus law.
- F. Child Care Facility. Child care facility shall have the same meaning as defined in the State Density Bonus Law.
- G. City. The City of Brisbane or the Brisbane Housing Authority.

- H. City Council. The City Council of the City of Brisbane as established in Title 2 of this Code or the Board Members of the Brisbane Housing Authority
- I. City Manager. The City Manager of the City of Brisbane as established in Title 2 of this Code, the City Manager's designee, the Executive Director of the Brisbane Housing Authority or the Executive Director's designee.
- J. Community Development Director. The Director of the Community Development Department responsible for overseeing implementation of Title 17 of this Code, or the Community Development Director's designee.
- K. Density Bonus. Density bonus shall be defined by State Density Bonus Law.
- L. Density Bonus Project. Density bonus project shall mean any parcel map, subdivision map, housing development permit, design permit, building permit, or other city approval which results in a net increase of at least two (2) primary dwelling units and/or residential lots or combination thereof for which a density bonus, incentive or concession, waiver or reduction of development standards, and/or modification of parking standard is requested by the developer pursuant to State Density Bonus Law and this Chapter. A density bonus project may include, but is not limited to, new construction, conversion of existing dwelling units to condominium ownership, subdivision of land to create additional residential lots, conversion of an existing nonresidential building to residential use, and the addition of dwelling units to an existing multifamily dwelling. A density bonus project shall include units or lots intended for sale or for rent.
 - 1. For-Sale Density Bonus Project. A density bonus project that offers dwelling units or lots to the public for purchase.
 - 2. Rental Density Bonus Project. A density bonus project that offers dwelling units to be rented to tenants upon occupancy, whether or not a condominium or subdivision map is recorded as part of the project.
- M. Development Standard. A development standard shall be as defined by the State Density Bonus Law, provided, however, the term "development standard" does not include any of the following:
 - 1. The permitted uses of a site;
 - 2. Any city fees;
 - 3. Affordable housing requirements;
 - 4. Building standards approved by the California Building Standards Commission as provided in California Health and Safety Code Section 18901 et seq.; or
 - 5. The requirements of Brisbane's Green Building Ordinance as set forth in Title 15, Chapter 15.80 of this Code.
- N. Domestic Partner. Domestic partner means two (2) persons who have filed a declaration of domestic partnership with the California Secretary of State pursuant to Division 2.5, beginning with Section 297, of the California Family Code and such registration was in full force and effect at the time of the transfer or on the date of the transferor's death. A copy of the domestic partnership registration shall be provided to the city upon request.
- O. Dwelling Unit. Dwelling unit shall have the meaning set forth in Section 17.02.235 of this Code.
 - 1. Density Bonus Unit. Those dwelling units granted pursuant to a density bonus requested pursuant to the provisions of this Chapter and State Density Bonus Law.
 - 2. Market-Rate Unit. Any dwelling unit within a density bonus project that is not a target unit.

3. Target Unit. Any dwelling unit affordable to moderate and low income households within a density bonus project that qualify the project for a density bonus.
- P. Eligible Household. A household whose household income qualifies the household for occupancy of a target unit.
- Q. Eligible Purchaser. A household whose household income qualifies the household to purchase a for-sale target unit, or a qualified non-profit housing corporation as such term is defined in Section 714.7 of the California Civil Code or successor statute.
- R. First Approval. The first of the following approvals to occur with respect to a density bonus project: subdivision approval, housing development permit, building permit or any other permit or approval under the Brisbane Municipal Code.
- S. Household Income. Household income shall be the gross income of the household as calculated pursuant to Title 25 California Code of Regulations, §6914, as amended, or its successor. regulation The household income categories addressed in this Chapter shall be defined as follows:
1. Lower Income Household. A household whose income does not exceed the lower income limits applicable to San Mateo County, as published annually by the State of California pursuant to California Code of Regulations, Title 25, Section 6932, as may be amended over time.
 2. Moderate Income Household. A household whose income does not exceed the moderate income limits applicable to San Mateo County, as published annually by the State of California pursuant to California Code of Regulations, Title 25, Section 6932, as may be amended over time.
 3. Very Low Income Household. A very low income household shall be as defined by California Health and Safety Code Section 50105, as may be amended over time.
 4. Extremely Low Income Household. An extremely low income household shall be as defined by Section 50106 of the California Health and Safety Code or successor statute
- T. Housing Authority. "Housing Authority" shall mean the Brisbane Housing Authority, as established by Resolution of the City Council. For the purposes of this Chapter, "Housing Authority" shall have the same meaning as "City."
- U. Incentives or Concessions. Incentives or concessions shall be as defined in the State Density Bonus Law
- V. Maximum Residential Density. Maximum residential density or base density shall be as defined in State Density Bonus Law.
- W. Modified Parking Standards. Modifications to the parking standards that would otherwise apply to an density bonus project under Chapter 17.34 of this Code, as described in the State Density Bonus Law.
- X. Resale Restriction Agreement. A resale restriction agreement shall mean an agreement, covenant, deed of trust, or other document, approved by the City Council, which is executed by the property owner and recorded against each target unit to insure that such unit remains affordable for the applicable term.
- Y. Specific Adverse Impact. A "specific adverse impact" shall have the same meaning as the meaning provided in the Government Code Section 65589.5, as may be amended from time to time, or successor provisions.
- Z. State Density Bonus Law. State Density Bonus Law shall mean Sections 65915 through 65918 of the California Government Code, as may be amended from time to time, or successor statutes
- AA. Waiver or Reduction of Development Standard. Waiver or Reduction of Development Standard shall be as defined in the State Density Bonus Law.

17.29.030 - Administration of Density Bonuses

- A. The City shall grant density bonuses, incentives and concessions, waivers or reductions in development standards, and/or modified parking standards requested by applicants in accordance with the provisions of the State Density Bonus Law and the procedures set forth in this Chapter.
1. The City may deny a request for incentives or concessions only as provided by the State Density Bonus Law.
 2. The City may deny a request for a waiver or reduction of a development standard only as provided by the State Density Bonus Law.
- B. A developer of a project containing between two (2) to four (4) dwelling units or lots may request approval of a density bonus as shown in Table 17.29.030. The decision making body shall waive or reduce any development standard that may preclude development of such a project as set forth in section A of this Section 17.29.030.

Table 17.29.030

Zoning District	Lot Size	Maximum Permitted Residential Density	Percentage low income units	Percentage Density Bonus	Total Units including Density Bonus Units
R-2	4,950-7,499 sq ft	2 units	50%	30%	3 units
R-3	4,950- 5,999 sq ft	3 units	30%	15%	4 units
R-3	6,000- 7,499 sq ft	4 units	50%	15%	5 units

- C. A developer of a density bonus project that exceeds the qualifications for a density bonus per State Density Bonus Law may request that the City grant one additional incentive or concession above the maximum number prescribed by State Density Bonus Law, as applicable to the project.
- D. A developer of a density bonus project may request City Council approval of one additional incentive or concession if the density bonus project includes family-sized target units (units with three or more bedrooms) designed and dedicated for use by low- to extremely low-income households.
- E. Inclusionary units provided in compliance with Chapter 17.31 may be counted as target units for the purposes of calculating a density bonus if they meet requirements for target units established under State Density Bonus Law.
- F. The decision making body for any density bonus project shall be the decision making body specified for the first approval. The City Council shall be the decision-making body for any density bonus projects that include requests of incentives or concessions or waivers of development standards that otherwise require City Council approval under this Chapter or other Chapters of this Municipal Code.
- G. Notwithstanding that an applicant may request direct financial assistance, including that for purchasers of target units, which shall require approval of the City Council, nothing in this section 17.29.030 requires the City to provide direct financial incentives for the housing development, including but not limited to providing to the applicant publicly owned land.
- H. In accordance with the State Density Bonus Law, neither the granting of a concession or incentive, waiver or reduction in development standards, nor the granting of a density bonus, shall be interpreted, in and of itself, to require a general plan amendment, zoning change, or other discretionary approval.

17.29.040 – Application for a Density Bonus.

- A. Application Processing. Applications for density bonuses, incentives, concessions, waivers or reductions in development standards, and/or modifications of parking standards pursuant to the State Density Bonus Law and this Chapter shall be processed in concert with and by the same decision-making body, as any other planning entitlement applications that the density bonus project may require., except where otherwise indicated in Section 17.29.030.
- B. Contents of Application. Applications shall be filed with the Community Development Director on such form as the Director shall prescribe. In addition to the submittal requirements for any other planning entitlement applications or permit approvals the project requires, the application shall include the following information and supporting materials:
 - 1. Current title report(s) for all properties proposed for development, prepared within at least six (6) months of application submittal.
 - 2. A letter signed by the present owner(s) stating what density bonus, incentives and concessions, waivers or modifications of development standards, and/or parking modification are being requested from the City.
 - 3. In the case of a condominium conversion request, such information required by Chapter 17.30 of this Title.
 - 4. A statement describing whether the density bonus project is proposed on any property that has one of the following conditions. If any of the below conditions exist on the property, the application must identify how such units will be replaced in the density bonus project. Such replacement units shall not be counted as target units when calculating the density bonus, unless the density bonus project is 100% affordable.
 - a. Includes a parcel or parcels on which rental dwelling units are presently located that are subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of lower or very low income or if rental dwelling units have been vacated or demolished in the five-year period preceding the application that were at the time subject to a recorded covenant, ordinance or law that restricted rents to levels affordable to persons and families of very low or lower income;
 - b. Includes a parcel or parcels on which rental dwelling units have been subject to any other form of rent or price control through a public agency's exercise of its police power;
 - c. Includes a parcel or parcels on which rental dwelling units are presently occupied by low or very low income households.
 - 5. A detailed vicinity map showing the project location and such details as the location of the nearest commercial retail, transit stop, potential employment locations, park or recreation facilities or other social or community service facilities.
 - 6. A project data table showing the total number of dwelling units proposed on the site and off site, as applicable, including the number of target units and density bonus units, and the project's conformance to all objective development standards.
 - 7. Site plan(s) with accurately dimensioned property lines showing existing and proposed structures and their uses, adjacent structures and their uses, setbacks, adjacent streets, easements, existing and proposed utilities, existing and proposed driveways, and internal circulation and parking.
 - 8. Floor plans of all existing and proposed structures (with the use of each room/space labeled) and designating target units, as appropriate.
 - 9. Roof plans.

10. Elevations of all sides of the existing and/or proposed structures, identifying colors and materials, and showing the height of structure(s) measured per the definition of building height in Chapter 17.02 of this Title and UBC type of construction. Cross-sections may also be required based upon the complexity of the design.
11. Existing and proposed parking facilities, including the dimensions of parking spaces, number and location of spaces designated as compact or handicapped spaces, and a calculation of the number of parking spaces required by this title or any other applicable regulations;
12. An affordable housing plan that contains all of the following, as applicable to the request:
 - a. The number, type, tenure, household income categories, number of bedrooms and baths, approximate location, size, and design (including finishes and features) of all density bonus units;
 - b. The number, type, tenure, affordability level, number of bedrooms and baths, approximate location, size, and design (including finishes and features) of all target units;
 - c. Construction phasing of target units in relation to market-rate units, if applicable, and overall construction schedule. If the developer proposes to construct the target units in separate phases from the market-rate unit construction, the affordable housing plan shall specify the security to be provided to the City to ensure that the target units will be constructed, and explain how the proposed phasing would provide greater public benefit than providing the target units concurrently with the market-rate units;
 - d. Preliminary marketing plan, indicating general approach to marketing target units in compliance with all fair housing laws. The final marketing plan may be deferred to prior to first building permit issuance, subject to Community Development Director approval, including the manner in which target units will be offered to the public in a nondiscriminatory and equitable manner and the method of marketing target units after initial occupancy is secured;
 - e. A financing mechanism, the particulars and the amount of which shall be determined by the City at the time the affordable housing plan is approved, to cover the City's costs for the on-going administration and monitoring of the affordability provisions applicable to the target units, except where prohibited by State law.
13. Description of any requested density bonuses, incentives, concessions, waivers or modifications of development standards, and/or modified parking standards and documentation of eligibility for the request(s), including a description of the base density without the requested density bonus, the number and location of all target units qualifying the project for a density bonus, the level of affordability of the target units, and identification of the density bonus units.
 - a. For all requested incentives and concessions, reasonable documentation demonstrating eligibility for the incentive or concession or to demonstrate that the incentive or concession meets the definition set forth in the State Density Bonus Law. For requests to allow mixed-use zoning in conjunction with the density bonus project, the application shall additionally include documentation demonstrating that the proposed commercial, office, industrial, or other land uses will reduce the cost of the density bonus project development and that the commercial, office, industrial, or other land uses are compatible with the density bonus project and the existing or planned development in the area where the proposed project will be located. The cost of reviewing any documentation submitted in support of a request for a concession or incentive, including but not limited to the cost to the City of hiring a consultant to review the documentation, shall be borne by the applicant.

- b. For all requested waivers or reductions of development standards, written evidence that (i) the development standards for which a waiver or reduction is requested will physically preclude the construction of the housing development at the densities or with the incentives or concessions permitted by this chapter; (ii) the waiver or reduction would not have a specific, adverse impact, or, if a specific, adverse impact would occur, that the impact could feasibly be mitigated or avoided; (iii) the waiver or reduction would not have an adverse impact on any real property that is listed in the California Register of Historical Resources; and (iv) the waiver or reduction would not be contrary to any state or federal law.
 - c. If a density bonus, incentive or concession is requested for a land donation, the application shall show the location of the land to be dedicated and provide evidence that each of the conditions for such land donation set forth in the State Density Bonus Law will be met.
 - d. If a density bonus, incentive or concession is requested for a child care facility, the application shall show the location and square footage of the child care facility and describe how all requirements of the State Density Bonus law for such density bonus, incentive or concession are met by the application.
- B. **Application Fee.** The application shall be accompanied by the payment of a fee in such amount as established from time to time by resolution of the City Council. In addition, the applicant shall also deposit such amounts as the Community Development Director may require from time to time to cover the cost of any environmental or legal review, geotechnical and engineering reports, review of green building documentation, and such other studies that may be required by the City in connection with the processing of the application or related planning entitlements.
- C. **Newly Constructed Condominiums.** In addition to the information listed in this section, an application for a density bonus project for newly constructed condominiums, as defined in 17.30.020.A of this title, shall also include the materials set forth in Section 17.30.040.
- D. **Streamlined Housing Development Projects.** Density bonus projects that are streamlined housing development projects, as defined in Chapter 17.02 of this Title, shall include additional supporting documentation to demonstrate eligibility as set forth on a form prescribed by the city.

17.29.050 - Affordable housing agreements.

- A. **Applicability.** Recordation of an affordable housing agreement shall be made a condition of the first approval for all density bonus projects to ensure implementation of all requirements of this Chapter. The affordable housing agreement shall be recorded prior to, or concurrently with, the final subdivision or parcel map, or, where the housing development does not include a map, prior to issuance of a building permit for any structure in the housing development. The affordable housing agreement shall run with the land and bind all future owners and successors in interest.
- B. The affordable housing agreement shall be in a form provided by the City and shall include the following, without limitation:
 - 1. All information provided in the affordable housing plan pursuant to Section 17.29.040 of this Chapter.
 - 2. The household income categories of the target units, consistent with the requirements of the State Density Bonus law.
 - 3. Continued affordability of the target units, as follows:
 - a. **For-Sale Target Units.** The affordable housing agreement shall require that a resale restriction agreement, in a form approved by the City, be recorded against each for-sale target unit when the target unit is first transferred to an eligible purchaser. The resale

restriction agreement shall provide that target units in for-sale density bonus projects shall remain affordable in perpetuity and that the affordability provisions be applicable to any subsequent transferees or successors in interest.

The resale restriction agreement shall also provide that the for-sale target unit shall not be rented.

- b. Rental Target Units. The affordable housing agreement shall be recorded against each rental density bonus project containing rental target units to ensure that the target units remain affordable in perpetuity.

Rental target units that are later converted to for-sale units, e.g., converted to condominiums, and then sold shall be sold as for-sale target units and the requirements of subparagraph a of paragraph 2 of subsection C of this Section shall apply.

- 4. The affordable housing agreement shall specify that no household shall be permitted to begin occupancy of a target unit unless the Community Development Director has approved the household's eligibility
 - 5. Affordable housing agreements for land dedication, child care facilities, and condominium conversions shall ensure the continued compliance with all conditions included in State Density Bonus Law.
 - 6. Affordable housing agreements for senior citizen housing developments shall provide that units in the residential development shall be occupied by senior citizens or other persons eligible to reside in such a project as established by the State Density Bonus Law.
 - 7. The affordable housing agreement shall include provisions requiring maintenance of records to demonstrate continued compliance with this Chapter over long-term operation of the density bonus project.
 - 8. The affordable housing agreement shall include a description of remedies for breach of the affordable housing agreement by either party. The City may identify tenants or qualified purchasers as third party beneficiaries under the agreement.
- C. The affordable housing agreement shall include any other provisions determined necessary by the City Attorney to ensure implementation and compliance with the State Density Bonus Law and this Chapter.

17.29.060 - Implementation and enforcement.

- A. No permit, license, subdivision map, or other approval or entitlement for a density bonus project shall be issued, including without limitation a final inspection for occupancy, until all requirements applicable to the density bonus project at such time pursuant to this Chapter have been satisfied.
 - 1. Except where authorized by the approved affordable housing plan pursuant to Section 17.29.040, no building permit shall be issued for any market rate unit until the permittee has obtained permits for target units sufficient to meet the requirements of Section 17.29.030 of this Chapter, and, if the project includes inclusionary housing units pursuant to Chapter 17.31 of this Code. No final inspection for occupancy for any market-rate unit shall be completed until the permittee has constructed the target units required by Section 17.29.030 of this Chapter, unless so authorized in the approved affordable housing plan.
 - 2. The time requirements set forth in this Section for issuance of building permits for market-rate units and for final inspections for occupancy for market-rate units may be modified to accommodate phasing schedules, model variations, or other factors in a density bonus project within the submitted affordable housing plan pursuant to Sections 17.29.030 of this Chapter, if the City determines this will provide greater public benefit and an affordable housing agreement pursuant

to Section 17.29.050 of this Chapter has been approved by the decision making body for the first approval for the density bonus project.

- B. Conditions to carry out the purposes of this Chapter shall be imposed on the first approval for a density bonus project.
- C. The City Attorney is authorized to enforce the provisions of this Chapter and all affordable housing agreements, regulatory agreements, resale controls, deeds of trust, or similar documents placed on target units, by civil action and any other proceeding or method permitted by law.
- D. The City Manager is authorized to execute any agreement and any related documents following approval such agreement by the Community Development Director and the City Attorney.
- E. Failure of any official or agency to fulfill the requirements of this Chapter shall not excuse any applicant or owner from the requirements of this Chapter.
- F. The remedies provided for herein shall be cumulative and not exclusive and shall not preclude the City from any other remedy or relief to which it otherwise would be entitled under law or equity.
- G. Any target unit that is sold or rented in violation of the affordability requirements established in the approved affordable housing agreement or resale restriction agreement shall be replaced at a one-to-one ratio. The means of replacement shall be wholly subject to the discretion of the City Manager
- H. A request for a minor modification of an approved affordable housing plan may be granted by the community development director if the modification is substantially in compliance with the original affordable housing plan and conditions of approval for the density bonus project. A minor modification is technical in nature, as opposed to substantive or material. Substantive or material changes to the affordable housing plan shall be processed in the same manner as the original plan.
- I. The City shall prepare guidelines to further implement this ordinance. These guidelines shall include, but are not limited to, the following:
 - 1. The form and contents of the affordable housing agreement and any resale restriction, including provisions for successors in interest and other ownership transfers for for-sale target units;
 - 2. The form and contents of the final marketing plan and resident selection process;
 - 3. Procedures for setting rents and sales prices for the target units;
 - 4. Procedures for qualifying tenant households and prospective purchaser households of target units, including but not limited to household income verification and any preferences;
 - 5. Compliance and monitoring procedures to assure that affordability restrictions are maintained;
 - 6. Resale and subordination procedures for for-sale target units;
 - 7. The establishment of any fees to recoup the City's costs for the ongoing administration and monitoring of the affordability provisions of the target units, except where prohibited by State law.

SECTION 2: Chapter 17.31 of the Municipal Code is amended in its entirety to read as follows:

Chapter 17.31 - INCLUSIONARY HOUSING

Sections:

17.31.010	Basis and purposes.
17.31.020	Definitions.
17.31.030	Inclusionary requirement.
17.31.040	Inclusionary housing incentives.
17.31.050	Alternatives to constructing inclusionary units.
17.31.060	Affordable housing plan for inclusionary units.
17.31.070	Adjustment or reduction of inclusionary housing requirement.
17.31.080	Affordable housing agreement
17.31.090	Implementation and enforcement.

17.31.010 - Basis and purposes.

- A. Rental and owner-occupied housing in the City has become steadily more expensive. Housing costs have gone up faster than incomes for many groups in the community.
- B. Many persons who work in the City, who have grown up or have family ties in the City, who already live in the City but must move due to increasing housing costs, or who wish to live in the City for other reasons, cannot afford housing in the city.
- C. Federal and state government programs do not provide nearly enough affordable housing opportunities or subsidies to satisfy the housing needs of moderate, lower or very low income households.
- D. Rising land prices have been a key factor in preventing development of new affordable housing. New housing construction in the City which does not include inclusionary units aggravates the existing shortage of affordable housing by absorbing the supply of available residential land. This reduces the supply of land for affordable housing and increases the price of remaining residential land. Providing the inclusionary units required by this Chapter will help to ensure that part of the City's remaining developable land is used to provide affordable housing.
- E. The City wishes to retain an economically balanced community, with housing available to very low income, lower income and moderate income households. The City's general plan implements the established policy of the State of California that each community should foster an adequate supply of housing for households at all economic levels.
- F. An economically balanced community is only possible if part of the new housing built in the City is affordable to households with limited incomes. Requiring builders of new housing to include some housing affordable to households at a range of incomes is fair, not only because new development without inclusionary units contributes to the shortage of affordable housing, but also because zoning and other ordinances concerning new housing in the City should be consistent with the community's goal to foster an adequate supply of housing for households at all economic levels.
- G. In enacting this Chapter it is also the intent of the City of Brisbane to implement the goals, objectives, and policies of the City's general plan housing element, which encourages the provision of housing affordable to a variety of household income levels, seniors, and persons with disabilities, and identifies an inclusionary housing policy one method to encourage the development of affordable housing.

17.31.020 - Definitions.

- A. Affordable Housing Agreement. A recorded agreement between a property owner and the City to ensure that the inclusionary housing requirements of this Chapter are satisfied.
- B. Affordable Ownership Cost. The affordable ownership cost for for-sale target units shall be as specified in California Health and Safety Code Section 50052.5, as may be amended over time.
- C. Affordable Rent. The affordable rent for rental target units shall be as specified in California Health and Safety Code Section 50053, as may be amended over time.
- D. Approving Authority. The City decision-making body acting on an application for a housing development subject to the requirements of this Chapter, including the City Council, Planning Commission, or Community Development Director.
- E. City. The City of Brisbane or the Brisbane Housing Authority.
- F. City Council. The City Council of the City of Brisbane as established in Title 2 of this Code or the Board Members of the Brisbane Housing Authority.
- G. City Manager. The City Manager of the City of Brisbane as established in Title 2 of this Code, the City Manager's designee, the Executive Director of the Brisbane Housing Authority or the Executive Director's designee.
- H. Community Development Director. The Director of the Community Development Department responsible for overseeing implementation of Title 17 of this Code, or the Community Development Director's designee.
- I. Domestic Partner. Domestic partner means two (2) persons who have filed a declaration of domestic partnership with the California Secretary of State pursuant to Division 2.5, beginning with Section 297, of the California Family Code and such registration was in full force and effect at the time of the transfer or on the date of the transferor's death. A copy of the domestic partnership registration shall be provided to the city upon request.
- J. Dwelling Unit. Dwelling unit shall have the meaning set forth in Section 17.02.235 of this Code.
 - 1. Inclusionary Unit. Dwelling unit within a housing development that is required by Section 17.31.030 of this Chapter to be rented at affordable rents or sold at an affordable ownership cost to specified households. Inclusionary units may be considered target units as that term is defined in Chapter 17.29 of this Code.
 - 2. Market-Rate Unit. Any unit within a housing development that is not an inclusionary unit.
- K. Eligible Household. A household whose household income qualifies the household for occupancy of inclusionary units provided under this Chapter.
- L. Eligible Purchaser. A household whose household income qualifies the household to purchase a for-sale inclusionary unit, or a qualified non-profit housing corporation as such term is defined in Section 714.7 of the California Civil Code or successor provisions.
- M. First Approval. The first of the following approvals to occur with respect to an inclusionary housing development: subdivision approval, housing development permit, building permit or any other permit or approval under the Brisbane Municipal Code.
- N. Household Income. Household income shall be the gross income of the household as calculated pursuant to Title 25 California Code of Regulations, §6914, as amended, or its successor. The household income categories addressed in this Chapter shall be defined as follows:

1. Lower Income Household. A household whose income does not exceed the lower income limits applicable to San Mateo County, as published annually by the State of California pursuant to California Code of Regulations, Title 25, Section 6932, as may be amended over time.
 2. Moderate Income Household. A household whose income does not exceed the moderate income limits applicable to San Mateo County, as published annually by the State of California pursuant to California Code of Regulations, Title 25, Section 6932, as may be amended over time.
 3. Very Low Income Household. A very low income household shall be as defined by California Health and Safety Code Section 50105, as may be amended over time.
- O. Housing Authority. "Housing Authority" shall mean the Brisbane Housing Authority, as established by Resolution of the City Council. For the purposes of this Chapter, "Housing Authority" shall have the same meaning as "City."
- P. Inclusionary Housing Development. Any parcel map, subdivision map, use permit, building permit, or other City approval which results in a net increase of at least five (5) or more primary dwelling units and/or residential lots or combination thereof intended for sale or for rent. An inclusionary housing development project may include, but is not limited to, new construction, conversion of existing dwelling units to condominium ownership, creation of residential lots, conversion of an existing nonresidential building to residential use, and the addition of primary dwelling units to an existing multifamily dwelling. .
1. For-Sale Inclusionary Housing Development. An inclusionary housing development, or portion thereof, where the dwelling units or lots are offered to the public for purchase.
 2. Rental Inclusionary Housing Development. An inclusionary housing development, or portion thereof, comprised of dwelling units which are intended to be rented, or are actually offered for rent, to tenants upon completion, whether or not a condominium or subdivision map is recorded as part of the housing development.
- Q. Resale restriction agreement. An agreement, covenant, deed of trust, or other document, approved by the City Council, which is executed by the property owner and recorded against each inclusionary unit to insure that such unit remains affordable for the applicable term.

17.31.030 - Inclusionary requirement.

- A. Applicability. The inclusionary requirements established in this section shall apply to all inclusionary housing development projects with five (5) or more primary dwelling units or residential lots, except for the following:
1. Housing development projects that are developed pursuant to the terms of a development agreement, provided that such housing development projects shall comply with any affordable housing requirements included in the development agreement.
 2. Housing development tentative maps or vesting tentative maps exempted by Government Code Section 66474.2 or 66498.1, provided that such maps shall comply with any predecessor ordinance in effect on the date the application for the map was deemed complete.
- B. Inclusionary Requirements. Unless an alternative is elected pursuant to Section 17.31.050 of this Chapter, the following inclusionary requirements shall apply to for-sale and rental housing development projects:
1. For-sale Developments. A for-sale inclusionary housing development shall provide the following inclusionary lots or units:

- a. A for-sale housing development with five (5) to ten (10) primary dwelling units or lots must provide fifteen percent (15%) of the proposed units at affordable ownership costs for moderate income households.
 - b. A for-sale housing development of eleven (11) or more primary dwelling units or lots must provide ten percent (10%) of the units or lots at affordable ownership costs for moderate income households and five percent (5%) of the units or lots at affordable ownership costs for lower income households.
- 2. Rental Developments. A rental inclusionary housing development with five (5) or more primary dwelling units must provide fifteen percent (15%) of the units at affordable rents to very low income households.
- C. Calculation of Inclusionary Requirement. For purposes of calculating the number of inclusionary units required by this section, any calculations resulting in fractional units of one-half or greater shall be rounded to the next larger integer. If the calculation of the required total number of inclusionary units results in a fraction of less than one-half, the fractional amount shall be provided to the City through payment of an in-lieu fee established by the City Council. For density bonus projects per Chapter 17.29, density bonus units shall not be counted when determining the minimum inclusionary housing requirement.
- D. Contemporaneous construction of five (5) or more primary dwelling units on a lot, or on contiguous lots for which there is evidence of common ownership or control, even though not covered by the same City land use approval, shall also be considered a single housing development. Construction shall be considered contemporaneous if any building permits are issued within five (5) years following the date of completion of any earlier construction.
- E. If an inclusionary housing development requests a density bonus pursuant to Chapter 17.29 of this Title, inclusionary units may be considered target units for purposes of qualifying for a density bonus only if such inclusionary units meet all of the applicable requirements for target units in Chapter 17.29 of this Title and State Density Bonus Law.

17.31.040 - Inclusionary housing incentives.

The following incentives shall apply to all inclusionary housing developments that provide one or more inclusionary units in accordance with the provisions of this Chapter:

- A. Single-family detached inclusionary units may be constructed on smaller lots than the market-rate units in the same housing development, but the lots may be no smaller than the minimum standard for the applicable zoning district, except as may be modified by an eligible density bonus request pursuant to Chapter 17.29 of this Title or other provisions of this Municipal Code that address reduction of minimum lot sizes.
- B. The square footage of the inclusionary units should be comparable to the market-rate units in the same residential development. However, at the discretion of the Community Development Director, smaller units may be provided, as long as the total inclusionary square footage provided remains comparable, yielding additional units.
- C. Inclusionary units may have different finishes and features than market-rate units, including but not limited to interior finishes, fixtures, or appliances, than market-rate units in the same residential development, as long as the finishes and features are durable and of good quality, as determined by the Community Development Director.

17.31.050 - Alternatives to constructing inclusionary units

- A. An applicant for a rental inclusionary housing development, or an applicant for a for-sale inclusionary housing development of fifteen or fewer primary dwellings or lots may, at the sole discretion of the applicant, elect to pay an in-lieu fee as established by resolution of the City Council, for each required inclusionary unit to the Brisbane Housing Authority's Low and Moderate Income Housing Fund, instead of constructing the inclusionary units within the residential development. The in-lieu fee shall be paid prior to issuance of the building permit, unless applicable State law requires an different payment timing.
- B. An applicant for a rental or for-sale housing development may request City Council approval of one or more of the following as an alternative to constructing the inclusionary units within the housing development or paying an in-lieu fee, which request shall be described within the affordable housing plan for inclusionary units prepared pursuant to Section 17.31.060 of this Chapter. City Council approval of such a request shall be based on findings that 1) the outcome for the City is superior in terms of the number and affordability of affordable units that would be created, or 2) construction of the required inclusionary units within the market-rate development would be infeasible or present unreasonable hardship in light of such factors as project size, site constraints, market competition, price and product type disparity, applicant capability, and financial subsidies available. Evidence must be submitted with the affordable housing plan required by Section 17.31.060 of this Chapter.
 - 1. Off-Site Construction. The applicant may request to construct some or all of the inclusionary units at a location within the City outside of the housing development site. Off-site construction alternatives include alternatives where parcelization of the subject property is required to create a separate parcel. Off-site inclusionary units shall be located on sites that are compatible with adjacent land uses, appropriately zoned for the intended residential development, and are in proximity to or will provide access to employment opportunities, urban services, major roads or other public transit facilities.
 - 2. Off-Site Preservation. The applicant may request to create inclusionary units off-site through the purchase and conversion of existing market-rate units to affordable units, either by the applicant or by a not-for-profit entity. The total square footage must, at minimum, equal the square footage that would have been expected on-site, at affordability levels that meet or exceed the on-site requirements. The off-site units must be purchased prior to the building permit for the inclusionary housing development. The off-site preservation option must be approved by the City Council, and the Community Development Director may set requirements related to the rehabilitation and condition of the property and the protection and/or temporary relocation of existing tenants.
 - 3. Dedication of Land. The applicant may dedicate land within the City that is suitable for affordable housing development to the City or to the designee of the City.. The value of the land shall be not less than the sum of the in-lieu fee that would be due under Section 17.31.050 of this Chapter. The valuation of any land offered in-lieu shall be determined by an appraisal made by an appraiser mutually agreed upon by the City and the applicant. Costs associated with the appraisal shall be borne by the applicant. The timing of the land dedication shall be at or before the first approval of the inclusionary housing development. Factors considered by the Council may include but are not limited to general location, access to transit, buildability, current zoning, and the number of units that could be built at the location.
 - 4. Funding of Affordable or Special Needs Housing Project. The applicant may make a contribution to a special needs housing project or facility (shelter, transitional housing, or similar) in the City in an amount equivalent to the in-lieu fee payment due under subsection A of this Section 17.31.050. The contribution must be made prior to receipt of the building permit for the inclusionary housing development.

5. In-Lieu Fee for Certain For-Sale Developments. An applicant for a for-sale inclusionary housing development of more than fifteen primary dwelling units or lots may request Council approval to pay an in-lieu fee payment rather than construct affordable units with the project.

17.31.060 - Affordable housing plan for inclusionary units.

- A. An affordable housing plan for inclusionary units shall be submitted as part of the application for first approval of any inclusionary housing development, except where payment of an in-lieu fee is elected by the applicant pursuant to Section 17.31.050.A of this Chapter. No application for a first approval may be deemed complete unless an affordable housing plan, if required, is submitted conforming to the provisions of this Chapter.
- B. If the applicant has requested a density bonus pursuant to Chapter 17.29 of this Code, the affordable housing plan required under this Section shall be combined with the affordable housing plan for target units required pursuant to Section 17.29.040 of this Code.
- C. The affordable housing plan for inclusionary units shall include the following information:
 1. For housing developments proposing to construct the inclusionary units within the development, the affordable housing plan shall specify, at the same level of detail as the application for the housing development:
 - a. The number, type, tenure, household income categories, number of bedrooms and baths, approximate location, size, and design (including finishes and features) of all inclusionary units;
 - b. Construction phasing of inclusionary units in relation to market-rate units and overall construction schedule. If the developer proposes to construct the inclusionary units in separate phases from the market-rate unit construction, the affordable housing plan shall specify the security to be provided to the City to ensure that the inclusionary units will be constructed, and explain how the proposed phasing would provide greater public benefit than providing the inclusionary units concurrently with the market-rate units;
 - c. Preliminary marketing plan indicating general approach to marketing inclusionary units. The final marketing plan may be deferred to prior to first building permit issuance, subject to Community Development Director approval, including the manner in which inclusionary units will be offered to the public in a nondiscriminatory and equitable manner and the method of marketing inclusionary units after initial occupancy is secured;
 - d. A financing mechanism, the particulars and the amount of which shall be determined by the City at the time the affordable housing plan is approved, to cover the City's costs for the on-going administration and monitoring of the affordability provisions applicable to the inclusionary units, except where prohibited by State law.
 2. If an applicant requests City Council approval of alternatives to constructing the inclusionary units within a housing development pursuant to subsection 17.31.050.B of this Chapter, the affordable housing plan shall describe the requested alternatives.
 3. If the applicant requests use of different finishes and features than market-rate units as addressed in Section 17.31.040, the affordable housing plan shall describe the request.
- D. The affordable housing plan for inclusionary units shall be reviewed simultaneously with any other permit applications associated with the first approval for the inclusionary housing development.

17.31.070 – Adjustment or reduction of inclusionary housing requirement.

- A. An applicant may request City Council approval of an adjustment or reduction of the inclusionary housing requirements of this Chapter if an applicant demonstrates that the requested adjustment or reduction would better implement the goals, objectives, and policies of the City's general plan housing element, which encourages the provision of housing affordable to a variety of household income levels, seniors, and persons with disabilities. The City Council, in its sole discretion, will determine whether to approve the applicant's request based on the City's progress in meeting its housing goals, objectives, and policies at the time the request is made.
- B. Any request for an adjustment or reduction under this section shall be submitted concurrently with the affordable housing plan required by Section 17.31.060 of this Chapter. The request for a reduction or adjustment shall set forth in detail the factual basis for the adjustment or reduction.

17.31.080 - Affordable housing agreement.

- A. Applicability. Recordation of an affordable housing agreement shall be made a condition of the first approval for all inclusionary housing developments. The affordable housing agreement shall be recorded prior to, or concurrently with, the final or parcel map, or, where the inclusionary housing development does not require a map, prior to issuance of a building permit for any structure in the inclusionary housing development. The affordable housing agreement shall run with the land and bind all future owners and successors in interest.
- B. The affordable housing agreement shall be in a form provided by the City and shall include the following, without limitation:
 - 1. All information provided in the affordable housing plan pursuant to Sections 17.31.060 of this Chapter.
 - 2. The household income categories of the inclusionary units, consistent with the requirements of Section 17.31.030 of this Chapter or any alternative requirements pursuant to Section 17.31.050 of this Chapter.
 - 3. Continued affordability of the inclusionary units, as follows:
 - a. For-Sale Inclusionary Units. The affordable housing agreement shall require that a resale restriction agreement, in a form approved by the City, be recorded against each for-sale inclusionary unit when the unit is first transferred to an eligible purchaser. The resale restriction agreement shall provide that inclusionary units in for-sale housing developments shall remain affordable in perpetuity and that the affordability provisions be applicable to any subsequent transferees or successors in interest.

The resale restriction agreement shall also provide that the for-sale inclusionary unit shall not be rented.
 - b. Rental Inclusionary Units. The affordable housing agreement shall be recorded against each inclusionary housing development containing rental units to ensure that the inclusionary units remain affordable in perpetuity.

Rental inclusionary units that are later converted to for-sale units, e.g., converted to condominiums, and then sold shall be sold as for-sale inclusionary units and the requirements of subparagraph a of paragraph 3 of subsection B of this Section shall apply.
 - 4. The affordable housing agreement shall specify that no household shall be permitted to begin occupancy of an inclusionary unit unless the City or the City's designee has approved the household's eligibility.
 - 5. Affordable housing agreements for inclusionary housing developments intended to be occupied by households with one or more members who are sixty-two (62) years of age or older shall

provide that dwelling units in the residential development shall be occupied by persons eligible to reside in such a project.

6. The affordable housing agreement shall include provisions requiring maintenance of records to demonstrate compliance with this Chapter.
 7. The affordable housing agreement shall include a description of remedies for breach of the agreement by either party. The City may identify tenant households or qualified purchaser households as third party beneficiaries under the agreement.
- D. The affordable housing agreement shall include any other provisions determined necessary by the City Attorney to ensure implementation and compliance with this Chapter.

17.31.090 - Implementation and enforcement.

- A. The City shall prepare guidelines to further implement this ordinance. These guidelines shall include, but are not limited to, the following:
1. The form and contents of the affordable housing agreement and any resale restriction, including provisions for successors in interest and other ownership transfers;
 2. The form and contents of the final marketing plan and resident selection process;
 3. Procedures for setting rents and sales prices for the inclusionary units;
 4. Procedures for qualifying tenant households and prospective purchaser households of inclusionary units, including but not limited to household income verification and any preferences;
 5. Compliance and monitoring procedures to assure that affordability restrictions are maintained;
 6. Resale and subordination procedures for inclusionary for-sale units;
 7. The establishment of any fees to recoup the City's costs for the ongoing administration and monitoring of the affordability provisions of the inclusionary units, except where prohibited by State law.
- B. No permit, license, subdivision map, or other approval or entitlement for an inclusionary housing development shall be issued, including without limitation a final inspection for occupancy, until all requirements applicable to the inclusionary housing development at such time pursuant to this Chapter have been satisfied.
1. No building permit shall be issued for any market-rate unit until the permittee has obtained permits for inclusionary units sufficient to meet the requirements of Section 17.31.030 of this Chapter, and, if a density bonus has been requested pursuant to Chapter 17.29, Section 17.29.030 of this Code. No final inspection for occupancy for any market-rate unit shall be completed until or simultaneously with construction of the inclusionary units required by Section 17.31.030 of this Chapter.
 2. The time requirements set forth in this Section for issuance of building permits for market-rate units and for final inspections for occupancy for market-rate units may be modified to accommodate phasing schedules, model variations, or other factors in an inclusionary housing development within the submitted affordable housing plan pursuant to Sections 17.31.060 of this Chapter, if the City determines this will provide greater public benefit and an affordable housing agreement pursuant to Section 17.31.080 of this Chapter has been accepted by the community development director.
- C. Conditions to carry out the purposes of this Chapter shall be imposed on the first approval for an inclusionary housing development and any subsequent approvals.

- D. The City Attorney is authorized to enforce the provisions of this Chapter and all affordable housing agreements, regulatory agreements, resale controls, deeds of trust, or similar documents placed on inclusionary units, by civil action and any other proceeding or method permitted by law.
- E. The City Manager is authorized to execute the resale restriction agreement and any related documents following approval by the Community Development Director and the City Attorney.
- F. Failure of any official or agency to fulfill the requirements of this Chapter shall not excuse any applicant or owner from the requirements of this Chapter.
- G. The remedies provided for herein shall be cumulative and not exclusive and shall not preclude the City from any other remedy or relief to which it otherwise would be entitled under law or equity.

SECTION 3: Where a use permit, design permit or variance approval has been issued through final action by the City prior to the effective date of this Ordinance, or where such planning permit approval is not required and a complete building permit application has been submitted prior to the effective date of this Ordinance, the holder of such use permit, design permit or variance approval or complete building permit application may proceed to construct the improvements or establish the use authorized by such permit or approval and the same shall be exempted from any conflicting regulations that may be contained in this Ordinance.

SECTION 4: If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of Brisbane hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that one or more sections, subsections, sentences, clauses or phrases may be held invalid or unconstitutional.

SECTION 5: This Ordinance shall be in full force and effect thirty days after its passage and adoption.

* * *

The above and foregoing Ordinance was regularly introduced and after the waiting time required by law, was thereafter passed and adopted at a regular meeting of the City Council of the City of Brisbane held on the _____ day of _____, 2025, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

MAYOR

ATTEST:

City Clerk

APPROVED AS TO FORM:

A handwritten signature in blue ink, appearing to read 'T. McMorrow', is positioned above a horizontal line.

Thomas McMorrow, City Attorney

DRAFT ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY OF BRISBANE
 ADDING NEW CHAPTER 17.29 AND AMENDING CHAPTER 17.31 OF
 THE BRISBANE MUNICIPAL CODE
 CONCERNING DENSITY BONUS AND
 INCLUSIONARY HOUSING REQUIREMENTS**

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

SECTION 1: A new Chapter 17.29 is added to the Municipal Code to read as follows:

Chapter 17.29 – DENSITY BONUSES

Sections:

- | | |
|-----------|------------------------------------|
| 17.29.010 | Purposes of chapter. |
| 17.29.020 | Definitions. |
| 17.29.030 | Administration of Density Bonuses. |
| 17.29.040 | Application for a Density Bonus. |
| 17.29.050 | Affordable housing agreements. |
| 17.29.060 | Implementation and enforcement. |

17.29.010 – Purposes of chapter.

- A. The City of Brisbane enacts this chapter to implement the goals, objectives, and policies of the City's general plan housing element relative to administering a density bonus program to encourage the provision of housing affordable to a variety of household income levels, seniors, and persons with disabilities.
- B. This chapter is also intended to implement Sections 65915 through 65918 of the California Government Code, or successor statutes and regulations, governing density bonuses and other incentives required by such statutes or regulations.

17.29.020 - Definitions.

- A. Affordable Housing Agreement. A recorded agreement between a property owner and the City to ensure that the density bonus requirements of this Chapter are satisfied.
- B. Affordable Ownership Cost. The affordable ownership cost for for-sale target units shall be as specified in California Health and Safety Code Section 50052.5, as may be amended over time.
- C. Affordable Rent. The affordable rent for rental target units shall be as specified in California Health and Safety Code Section 50053, as may be amended over time.
- D. Approving Authority. The City decision-making body acting on an application for a housing development subject to the requirements of this Chapter, including the City Council, Planning Commission, or Community Development Director.
- E. Base Density. Base density or maximum residential density shall be as defined in the State Density Bonus law.
- F. Child Care Facility. Child care facility shall have the same meaning as defined in the State Density Bonus Law.
- G. City. The City of Brisbane or the Brisbane Housing Authority.

- H. City Council. The City Council of the City of Brisbane as established in Title 2 of this Code or the Board Members of the Brisbane Housing Authority
- I. City Manager. The City Manager of the City of Brisbane as established in Title 2 of this Code, the City Manager's designee, the Executive Director of the Brisbane Housing Authority or the Executive Director's designee.
- J. Community Development Director. The Director of the Community Development Department responsible for overseeing implementation of Title 17 of this Code, or the Community Development Director's designee.
- K. Density Bonus. Density bonus shall be defined by State Density Bonus Law.
- L. Density Bonus Project. Density bonus project shall mean any parcel map, subdivision map, housing development permit, design permit, building permit, or other city approval which results in a net increase of at least two (2) primary dwelling units and/or residential lots or combination thereof for which a density bonus, incentive or concession, waiver or reduction of development standards, and/or modification of parking standard is requested by the developer pursuant to State Density Bonus Law and this Chapter. A density bonus project may include, but is not limited to, new construction, conversion of existing dwelling units to condominium ownership, subdivision of land to create additional residential lots, conversion of an existing nonresidential building to residential use, and the addition of dwelling units to an existing multifamily dwelling. A density bonus project shall include units or lots intended for sale or for rent.
 - 1. For-Sale Density Bonus Project. A density bonus project that offers dwelling units or lots to the public for purchase.
 - 2. Rental Density Bonus Project. A density bonus project that offers dwelling units to be rented to tenants upon occupancy, whether or not a condominium or subdivision map is recorded as part of the project.
- M. Development Standard. A development standard shall be as defined by the State Density Bonus Law, provided, however, the term "development standard" does not include any of the following:
 - 1. The permitted uses of a site;
 - 2. Any city fees;
 - 3. Affordable housing requirements;
 - 4. Building standards approved by the California Building Standards Commission as provided in California Health and Safety Code Section 18901 et seq.; or
 - 5. The requirements of Brisbane's Green Building Ordinance as set forth in Title 15, Chapter 15.80 of this Code.
- N. Domestic Partner. Domestic partner means two (2) persons who have filed a declaration of domestic partnership with the California Secretary of State pursuant to Division 2.5, beginning with Section 297, of the California Family Code and such registration was in full force and effect at the time of the transfer or on the date of the transferor's death. A copy of the domestic partnership registration shall be provided to the city upon request.
- O. Dwelling Unit. Dwelling unit shall have the meaning set forth in Section 17.02.235 of this Code.
 - 1. Density Bonus Unit. Those dwelling units granted pursuant to a density bonus requested pursuant to the provisions of this Chapter and State Density Bonus Law.
 - 2. Market-Rate Unit. Any dwelling unit within a density bonus project that is not a target unit.

3. Target Unit. Any dwelling unit affordable to moderate and low income households within a density bonus project that qualify the project for a density bonus.
- P. Eligible Household. A household whose household income qualifies the household for occupancy of a target unit.
- Q. Eligible Purchaser. A household whose household income qualifies the household to purchase a for-sale target unit, or a qualified non-profit housing corporation as such term is defined in Section 714.7 of the California Civil Code or successor statute.
- R. First Approval. The first of the following approvals to occur with respect to a density bonus project: subdivision approval, housing development permit, building permit or any other permit or approval under the Brisbane Municipal Code.
- S. Household Income. Household income shall be the gross income of the household as calculated pursuant to Title 25 California Code of Regulations, §6914, as amended, or its successor. regulation The household income categories addressed in this Chapter shall be defined as follows:
1. Lower Income Household. A household whose income does not exceed the lower income limits applicable to San Mateo County, as published annually by the State of California pursuant to California Code of Regulations, Title 25, Section 6932, as may be amended over time.
 2. Moderate Income Household. A household whose income does not exceed the moderate income limits applicable to San Mateo County, as published annually by the State of California pursuant to California Code of Regulations, Title 25, Section 6932, as may be amended over time.
 3. Very Low Income Household. A very low income household shall be as defined by California Health and Safety Code Section 50105, as may be amended over time.
 4. Extremely Low Income Household. An extremely low income household shall be as defined by Section 50106 of the California Health and Safety Code or successor statute
- T. Housing Authority. "Housing Authority" shall mean the Brisbane Housing Authority, as established by Resolution of the City Council. For the purposes of this Chapter, "Housing Authority" shall have the same meaning as "City."
- U. Incentives or Concessions. Incentives or concessions shall be as defined in the State Density Bonus Law
- V. Maximum Residential Density. Maximum residential density or base density shall be as defined in State Density Bonus Law.
- W. Modified Parking Standards. Modifications to the parking standards that would otherwise apply to an density bonus project under Chapter 17.34 of this Code, as described in the State Density Bonus Law.
- X. Resale Restriction Agreement. A resale restriction agreement shall mean an agreement, covenant, deed of trust, or other document, approved by the City Council, which is executed by the property owner and recorded against each target unit to insure that such unit remains affordable for the applicable term.
- Y. Specific Adverse Impact. A "specific adverse impact" shall have the same meaning as the meaning provided in the Government Code Section 65589.5, as may be amended from time to time, or successor provisions.
- Z. State Density Bonus Law. State Density Bonus Law shall mean Sections 65915 through 65918 of the California Government Code, as may be amended from time to time, or successor statutes
- AA. Waiver or Reduction of Development Standard. Waiver or Reduction of Development Standard shall be as defined in the State Density Bonus Law.

17.29.030 - Administration of Density Bonuses

- A. The City shall grant density bonuses, incentives and concessions, waivers or reductions in development standards, and/or modified parking standards requested by applicants in accordance with the provisions of the State Density Bonus Law and the procedures set forth in this Chapter.
1. The City may deny a request for incentives or concessions only as provided by the State Density Bonus Law.
 2. The City may deny a request for a waiver or reduction of a development standard only as provided by the State Density Bonus Law.
- B. A developer of a project containing between two (2) to four (4) dwelling units or lots may request approval of a density bonus as shown in Table 17.29.030. The decision making body shall waive or reduce any development standard that may preclude development of such a project as set forth in section A of this Section 17.29.030.

Table 17.29.030

Zoning District	Lot Size	Maximum Permitted Residential Density	Percentage low income units	Percentage Density Bonus	Total Units including Density Bonus Units
R-2	4,950-7,499 sq ft	2 units	50%	30%	3 units
R-3	4,950- 5,999 sq ft	3 units	30%	15%	4 units
R-3	6,000- 7,499 sq ft	4 units	50%	15%	5 units

- C. A developer of a density bonus project that exceeds the qualifications for a density bonus per State Density Bonus Law may request that the City grant one additional incentive or concession above the maximum number prescribed by State Density Bonus Law, as applicable to the project.
- D. A developer of a density bonus project may request City Council approval of one additional incentive or concession if the density bonus project includes family-sized target units (units with three or more bedrooms) designed and dedicated for use by low- to extremely low-income households.
- E. Inclusionary units provided in compliance with Chapter 17.31 may be counted as target units for the purposes of calculating a density bonus if they meet requirements for target units established under State Density Bonus Law.
- F. The decision making body for any density bonus project shall be the decision making body specified for the first approval. The City Council shall be the decision-making body for any density bonus projects that include requests of incentives or concessions or waivers of development standards that otherwise require City Council approval under this Chapter or other Chapters of this Municipal Code.
- G. Notwithstanding that an applicant may request direct financial assistance, including that for purchasers of target units, which shall require approval of the City Council, nothing in this section 17.29.030 requires the City to provide direct financial incentives for the housing development, including but not limited to providing to the applicant publicly owned land.
- H. In accordance with the State Density Bonus Law, neither the granting of a concession or incentive, waiver or reduction in development standards, nor the granting of a density bonus, shall be interpreted, in and of itself, to require a general plan amendment, zoning change, or other discretionary approval.

17.29.040 – Application for a Density Bonus.

- A. Application Processing. Applications for density bonuses, incentives, concessions, waivers or reductions in development standards, and/or modifications of parking standards pursuant to the State Density Bonus Law and this Chapter shall be processed in concert with and by the same decision-making body, as any other planning entitlement applications that the density bonus project may require., except where otherwise indicated in Section 17.29.030.
- B. Contents of Application. Applications shall be filed with the Community Development Director on such form as the Director shall prescribe. In addition to the submittal requirements for any other planning entitlement applications or permit approvals the project requires, the application shall include the following information and supporting materials:
 - 1. Current title report(s) for all properties proposed for development, prepared within at least six (6) months of application submittal.
 - 2. A letter signed by the present owner(s) stating what density bonus, incentives and concessions, waivers or modifications of development standards, and/or parking modification are being requested from the City.
 - 3. In the case of a condominium conversion request, such information required by Chapter 17.30 of this Title.
 - 4. A statement describing whether the density bonus project is proposed on any property that has one of the following conditions. If any of the below conditions exist on the property, the application must identify how such units will be replaced in the density bonus project. Such replacement units shall not be counted as target units when calculating the density bonus, unless the density bonus project is 100% affordable.
 - a. Includes a parcel or parcels on which rental dwelling units are presently located that are subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of lower or very low income or if rental dwelling units have been vacated or demolished in the five-year period preceding the application that were at the time subject to a recorded covenant, ordinance or law that restricted rents to levels affordable to persons and families of very low or lower income;
 - b. Includes a parcel or parcels on which rental dwelling units have been subject to any other form of rent or price control through a public agency's exercise of its police power;
 - c. Includes a parcel or parcels on which rental dwelling units are presently occupied by low or very low income households.
 - 5. A detailed vicinity map showing the project location and such details as the location of the nearest commercial retail, transit stop, potential employment locations, park or recreation facilities or other social or community service facilities.
 - 6. A project data table showing the total number of dwelling units proposed on the site and off site, as applicable, including the number of target units and density bonus units, and the project's conformance to all objective development standards.
 - 7. Site plan(s) with accurately dimensioned property lines showing existing and proposed structures and their uses, adjacent structures and their uses, setbacks, adjacent streets, easements, existing and proposed utilities, existing and proposed driveways, and internal circulation and parking.
 - 8. Floor plans of all existing and proposed structures (with the use of each room/space labeled) and designating target units, as appropriate.
 - 9. Roof plans.

10. Elevations of all sides of the existing and/or proposed structures, identifying colors and materials, and showing the height of structure(s) measured per the definition of building height in Chapter 17.02 of this Title and UBC type of construction. Cross-sections may also be required based upon the complexity of the design.
11. Existing and proposed parking facilities, including the dimensions of parking spaces, number and location of spaces designated as compact or handicapped spaces, and a calculation of the number of parking spaces required by this title or any other applicable regulations;
12. An affordable housing plan that contains all of the following, as applicable to the request:
 - a. The number, type, tenure, household income categories, number of bedrooms and baths, approximate location, size, and design (including finishes and features) of all density bonus units;
 - b. The number, type, tenure, affordability level, number of bedrooms and baths, approximate location, size, and design (including finishes and features) of all target units;
 - c. Construction phasing of target units in relation to market-rate units, if applicable, and overall construction schedule. If the developer proposes to construct the target units in separate phases from the market-rate unit construction, the affordable housing plan shall specify the security to be provided to the City to ensure that the target units will be constructed, and explain how the proposed phasing would provide greater public benefit than providing the target units concurrently with the market-rate units;
 - d. Preliminary marketing plan, indicating general approach to marketing target units in compliance with all fair housing laws. The final marketing plan may be deferred to prior to first building permit issuance, subject to Community Development Director approval, including the manner in which target units will be offered to the public in a nondiscriminatory and equitable manner and the method of marketing target units after initial occupancy is secured;
 - e. A financing mechanism, the particulars and the amount of which shall be determined by the City at the time the affordable housing plan is approved, to cover the City's costs for the on-going administration and monitoring of the affordability provisions applicable to the target units, except where prohibited by State law.
13. Description of any requested density bonuses, incentives, concessions, waivers or modifications of development standards, and/or modified parking standards and documentation of eligibility for the request(s), including a description of the base density without the requested density bonus, the number and location of all target units qualifying the project for a density bonus, the level of affordability of the target units, and identification of the density bonus units.
 - a. For all requested incentives and concessions, reasonable documentation demonstrating eligibility for the incentive or concession or to demonstrate that the incentive or concession meets the definition set forth in the State Density Bonus Law. For requests to allow mixed-use zoning in conjunction with the density bonus project, the application shall additionally include documentation demonstrating that the proposed commercial, office, industrial, or other land uses will reduce the cost of the density bonus project development and that the commercial, office, industrial, or other land uses are compatible with the density bonus project and the existing or planned development in the area where the proposed project will be located. The cost of reviewing any documentation submitted in support of a request for a concession or incentive, including but not limited to the cost to the City of hiring a consultant to review the documentation, shall be borne by the applicant.

- b. For all requested waivers or reductions of development standards, written evidence that (i) the development standards for which a waiver or reduction is requested will physically preclude the construction of the housing development at the densities or with the incentives or concessions permitted by this chapter; (ii) the waiver or reduction would not have a specific, adverse impact, or, if a specific, adverse impact would occur, that the impact could feasibly be mitigated or avoided; (iii) the waiver or reduction would not have an adverse impact on any real property that is listed in the California Register of Historical Resources; and (iv) the waiver or reduction would not be contrary to any state or federal law.
 - c. If a density bonus, incentive or concession is requested for a land donation, the application shall show the location of the land to be dedicated and provide evidence that each of the conditions for such land donation set forth in the State Density Bonus Law will be met.
 - d. If a density bonus, incentive or concession is requested for a child care facility, the application shall show the location and square footage of the child care facility and describe how all requirements of the State Density Bonus law for such density bonus, incentive or concession are met by the application.
- B. **Application Fee.** The application shall be accompanied by the payment of a fee in such amount as established from time to time by resolution of the City Council. In addition, the applicant shall also deposit such amounts as the Community Development Director may require from time to time to cover the cost of any environmental or legal review, geotechnical and engineering reports, review of green building documentation, and such other studies that may be required by the City in connection with the processing of the application or related planning entitlements.
- C. **Newly Constructed Condominiums.** In addition to the information listed in this section, an application for a density bonus project for newly constructed condominiums, as defined in 17.30.020.A of this title, shall also include the materials set forth in Section 17.30.040.
- D. **Streamlined Housing Development Projects.** Density bonus projects that are streamlined housing development projects, as defined in Chapter 17.02 of this Title, shall include additional supporting documentation to demonstrate eligibility as set forth on a form prescribed by the city.

17.29.050 - Affordable housing agreements.

- A. **Applicability.** Recordation of an affordable housing agreement shall be made a condition of the first approval for all density bonus projects to ensure implementation of all requirements of this Chapter. The affordable housing agreement shall be recorded prior to, or concurrently with, the final subdivision or parcel map, or, where the housing development does not include a map, prior to issuance of a building permit for any structure in the housing development. The affordable housing agreement shall run with the land and bind all future owners and successors in interest.
- B. The affordable housing agreement shall be in a form provided by the City and shall include the following, without limitation:
 - 1. All information provided in the affordable housing plan pursuant to Section 17.29.040 of this Chapter.
 - 2. The household income categories of the target units, consistent with the requirements of the State Density Bonus law.
 - 3. Continued affordability of the target units, as follows:
 - a. **For-Sale Target Units.** The affordable housing agreement shall require that a resale restriction agreement, in a form approved by the City, be recorded against each for-sale target unit when the target unit is first transferred to an eligible purchaser. The resale

restriction agreement shall provide that target units in for-sale density bonus projects shall remain affordable in perpetuity and that the affordability provisions be applicable to any subsequent transferees or successors in interest.

The resale restriction agreement shall also provide that the for-sale target unit shall not be rented.

- b. Rental Target Units. The affordable housing agreement shall be recorded against each rental density bonus project containing rental target units to ensure that the target units remain affordable in perpetuity.

Rental target units that are later converted to for-sale units, e.g., converted to condominiums, and then sold shall be sold as for-sale target units and the requirements of subparagraph a of paragraph 2 of subsection C of this Section shall apply.

4. The affordable housing agreement shall specify that no household shall be permitted to begin occupancy of a target unit unless the Community Development Director has approved the household's eligibility
 5. Affordable housing agreements for land dedication, child care facilities, and condominium conversions shall ensure the continued compliance with all conditions included in State Density Bonus Law.
 6. Affordable housing agreements for senior citizen housing developments shall provide that units in the residential development shall be occupied by senior citizens or other persons eligible to reside in such a project as established by the State Density Bonus Law.
 7. The affordable housing agreement shall include provisions requiring maintenance of records to demonstrate continued compliance with this Chapter over long-term operation of the density bonus project.
 8. The affordable housing agreement shall include a description of remedies for breach of the affordable housing agreement by either party. The City may identify tenants or qualified purchasers as third party beneficiaries under the agreement.
- C. The affordable housing agreement shall include any other provisions determined necessary by the City Attorney to ensure implementation and compliance with the State Density Bonus Law and this Chapter.

17.29.060 - Implementation and enforcement.

- A. No permit, license, subdivision map, or other approval or entitlement for a density bonus project shall be issued, including without limitation a final inspection for occupancy, until all requirements applicable to the density bonus project at such time pursuant to this Chapter have been satisfied.
 1. Except where authorized by the approved affordable housing plan pursuant to Section 17.29.040, no building permit shall be issued for any market rate unit until the permittee has obtained permits for target units sufficient to meet the requirements of Section 17.29.030 of this Chapter, and, if the project includes inclusionary housing units pursuant to Chapter 17.31 of this Code. No final inspection for occupancy for any market-rate unit shall be completed until the permittee has constructed the target units required by Section 17.29.030 of this Chapter, unless so authorized in the approved affordable housing plan.
 2. The time requirements set forth in this Section for issuance of building permits for market-rate units and for final inspections for occupancy for market-rate units may be modified to accommodate phasing schedules, model variations, or other factors in a density bonus project within the submitted affordable housing plan pursuant to Sections 17.29.030 of this Chapter, if the City determines this will provide greater public benefit and an affordable housing agreement pursuant

to Section 17.29.050 of this Chapter has been approved by the decision making body for the first approval for the density bonus project.

- B. Conditions to carry out the purposes of this Chapter shall be imposed on the first approval for a density bonus project.
- C. The City Attorney is authorized to enforce the provisions of this Chapter and all affordable housing agreements, regulatory agreements, resale controls, deeds of trust, or similar documents placed on target units, by civil action and any other proceeding or method permitted by law.
- D. The City Manager is authorized to execute any agreement and any related documents following approval such agreement by the Community Development Director and the City Attorney.
- E. Failure of any official or agency to fulfill the requirements of this Chapter shall not excuse any applicant or owner from the requirements of this Chapter.
- F. The remedies provided for herein shall be cumulative and not exclusive and shall not preclude the City from any other remedy or relief to which it otherwise would be entitled under law or equity.
- G. Any target unit that is sold or rented in violation of the affordability requirements established in the approved affordable housing agreement or resale restriction agreement shall be replaced at a one-to-one ratio. The means of replacement shall be wholly subject to the discretion of the City Manager
- H. A request for a minor modification of an approved affordable housing plan may be granted by the community development director if the modification is substantially in compliance with the original affordable housing plan and conditions of approval for the density bonus project. A minor modification is technical in nature, as opposed to substantive or material. Substantive or material changes to the affordable housing plan shall be processed in the same manner as the original plan.
- I. The City shall prepare guidelines to further implement this ordinance. These guidelines shall include, but are not limited to, the following:
 - 1. The form and contents of the affordable housing agreement and any resale restriction, including provisions for successors in interest and other ownership transfers for for-sale target units;
 - 2. The form and contents of the final marketing plan and resident selection process;
 - 3. Procedures for setting rents and sales prices for the target units;
 - 4. Procedures for qualifying tenant households and prospective purchaser households of target units, including but not limited to household income verification and any preferences;
 - 5. Compliance and monitoring procedures to assure that affordability restrictions are maintained;
 - 6. Resale and subordination procedures for for-sale target units;
 - 7. The establishment of any fees to recoup the City's costs for the ongoing administration and monitoring of the affordability provisions of the target units, except where prohibited by State law.

SECTION 2: Chapter 17.31 of the Municipal Code is amended in its entirety to read as follows:

Chapter 17.31 - INCLUSIONARY HOUSING

Sections:

17.31.010	Basis and purposes.
17.31.020	Definitions.
17.31.030	Inclusionary requirement.
17.31.040	Inclusionary housing incentives.
17.31.050	Alternatives to constructing inclusionary units.
17.31.060	Affordable housing plan for inclusionary units.
17.31.070	Adjustment or reduction of inclusionary housing requirement.
17.31.080	Affordable housing agreement
17.31.090	Implementation and enforcement.

17.31.010 - Basis and purposes.

- A. Rental and owner-occupied housing in the City has become steadily more expensive. Housing costs have gone up faster than incomes for many groups in the community.
- B. Many persons who work in the City, who have grown up or have family ties in the City, who already live in the City but must move due to increasing housing costs, or who wish to live in the City for other reasons, cannot afford housing in the city.
- C. Federal and state government programs do not provide nearly enough affordable housing opportunities or subsidies to satisfy the housing needs of moderate, lower or very low income households.
- D. Rising land prices have been a key factor in preventing development of new affordable housing. New housing construction in the City which does not include inclusionary units aggravates the existing shortage of affordable housing by absorbing the supply of available residential land. This reduces the supply of land for affordable housing and increases the price of remaining residential land. Providing the inclusionary units required by this Chapter will help to ensure that part of the City's remaining developable land is used to provide affordable housing.
- E. The City wishes to retain an economically balanced community, with housing available to very low income, lower income and moderate income households. The City's general plan implements the established policy of the State of California that each community should foster an adequate supply of housing for households at all economic levels.
- F. An economically balanced community is only possible if part of the new housing built in the City is affordable to households with limited incomes. Requiring builders of new housing to include some housing affordable to households at a range of incomes is fair, not only because new development without inclusionary units contributes to the shortage of affordable housing, but also because zoning and other ordinances concerning new housing in the City should be consistent with the community's goal to foster an adequate supply of housing for households at all economic levels.
- G. In enacting this Chapter it is also the intent of the City of Brisbane to implement the goals, objectives, and policies of the City's general plan housing element, which encourages the provision of housing affordable to a variety of household income levels, seniors, and persons with disabilities, and identifies an inclusionary housing policy one method to encourage the development of affordable housing.

17.31.020 - Definitions.

- A. Affordable Housing Agreement. A recorded agreement between a property owner and the City to ensure that the inclusionary housing requirements of this Chapter are satisfied.
- B. Affordable Ownership Cost. The affordable ownership cost for for-sale target units shall be as specified in California Health and Safety Code Section 50052.5, as may be amended over time.
- C. Affordable Rent. The affordable rent for rental target units shall be as specified in California Health and Safety Code Section 50053, as may be amended over time.
- D. Approving Authority. The City decision-making body acting on an application for a housing development subject to the requirements of this Chapter, including the City Council, Planning Commission, or Community Development Director.
- E. City. The City of Brisbane or the Brisbane Housing Authority.
- F. City Council. The City Council of the City of Brisbane as established in Title 2 of this Code or the Board Members of the Brisbane Housing Authority.
- G. City Manager. The City Manager of the City of Brisbane as established in Title 2 of this Code, the City Manager's designee, the Executive Director of the Brisbane Housing Authority or the Executive Director's designee.
- H. Community Development Director. The Director of the Community Development Department responsible for overseeing implementation of Title 17 of this Code, or the Community Development Director's designee.
- I. Domestic Partner. Domestic partner means two (2) persons who have filed a declaration of domestic partnership with the California Secretary of State pursuant to Division 2.5, beginning with Section 297, of the California Family Code and such registration was in full force and effect at the time of the transfer or on the date of the transferor's death. A copy of the domestic partnership registration shall be provided to the city upon request.
- J. Dwelling Unit. Dwelling unit shall have the meaning set forth in Section 17.02.235 of this Code.
 - 1. Inclusionary Unit. Dwelling unit within a housing development that is required by Section 17.31.030 of this Chapter to be rented at affordable rents or sold at an affordable ownership cost to specified households. Inclusionary units may be considered target units as that term is defined in Chapter 17.29 of this Code.
 - 2. Market-Rate Unit. Any unit within a housing development that is not an inclusionary unit.
- K. Eligible Household. A household whose household income qualifies the household for occupancy of inclusionary units provided under this Chapter.
- L. Eligible Purchaser. A household whose household income qualifies the household to purchase a for-sale inclusionary unit, or a qualified non-profit housing corporation as such term is defined in Section 714.7 of the California Civil Code or successor provisions.
- M. First Approval. The first of the following approvals to occur with respect to an inclusionary housing development: subdivision approval, housing development permit, building permit or any other permit or approval under the Brisbane Municipal Code.
- N. Household Income. Household income shall be the gross income of the household as calculated pursuant to Title 25 California Code of Regulations, §6914, as amended, or its successor. The household income categories addressed in this Chapter shall be defined as follows:

1. Lower Income Household. A household whose income does not exceed the lower income limits applicable to San Mateo County, as published annually by the State of California pursuant to California Code of Regulations, Title 25, Section 6932, as may be amended over time.
 2. Moderate Income Household. A household whose income does not exceed the moderate income limits applicable to San Mateo County, as published annually by the State of California pursuant to California Code of Regulations, Title 25, Section 6932, as may be amended over time.
 3. Very Low Income Household. A very low income household shall be as defined by California Health and Safety Code Section 50105, as may be amended over time.
- O. Housing Authority. "Housing Authority" shall mean the Brisbane Housing Authority, as established by Resolution of the City Council. For the purposes of this Chapter, "Housing Authority" shall have the same meaning as "City."
- P. Inclusionary Housing Development. Any parcel map, subdivision map, use permit, building permit, or other City approval which results in a net increase of at least five (5) or more primary dwelling units and/or residential lots or combination thereof intended for sale or for rent. An inclusionary housing development project may include, but is not limited to, new construction, conversion of existing dwelling units to condominium ownership, creation of residential lots, conversion of an existing nonresidential building to residential use, and the addition of primary dwelling units to an existing multifamily dwelling. .
1. For-Sale Inclusionary Housing Development. An inclusionary housing development, or portion thereof, where the dwelling units or lots are offered to the public for purchase.
 2. Rental Inclusionary Housing Development. An inclusionary housing development, or portion thereof, comprised of dwelling units which are intended to be rented, or are actually offered for rent, to tenants upon completion, whether or not a condominium or subdivision map is recorded as part of the housing development.
- Q. Resale restriction agreement. An agreement, covenant, deed of trust, or other document, approved by the City Council, which is executed by the property owner and recorded against each inclusionary unit to insure that such unit remains affordable for the applicable term.

17.31.030 - Inclusionary requirement.

- A. Applicability. The inclusionary requirements established in this section shall apply to all inclusionary housing development projects with five (5) or more primary dwelling units or residential lots, except for the following:
1. Housing development projects that are developed pursuant to the terms of a development agreement, provided that such housing development projects shall comply with any affordable housing requirements included in the development agreement.
 2. Housing development tentative maps or vesting tentative maps exempted by Government Code Section 66474.2 or 66498.1, provided that such maps shall comply with any predecessor ordinance in effect on the date the application for the map was deemed complete.
- B. Inclusionary Requirements. Unless an alternative is elected pursuant to Section 17.31.050 of this Chapter, the following inclusionary requirements shall apply to for-sale and rental housing development projects:
1. For-sale Developments. A for-sale inclusionary housing development shall provide the following inclusionary lots or units:

- a. A for-sale housing development with five (5) to ten (10) primary dwelling units or lots must provide fifteen percent (15%) of the proposed units at affordable ownership costs for moderate income households.
 - b. A for-sale housing development of eleven (11) or more primary dwelling units or lots must provide ten percent (10%) of the units or lots at affordable ownership costs for moderate income households and five percent (5%) of the units or lots at affordable ownership costs for lower income households.
- 2. Rental Developments. A rental inclusionary housing development with five (5) or more primary dwelling units must provide fifteen percent (15%) of the units at affordable rents to very low income households.
- C. Calculation of Inclusionary Requirement. For purposes of calculating the number of inclusionary units required by this section, any calculations resulting in fractional units of one-half or greater shall be rounded to the next larger integer. If the calculation of the required total number of inclusionary units results in a fraction of less than one-half, the fractional amount shall be provided to the City through payment of an in-lieu fee established by the City Council. For density bonus projects per Chapter 17.29, density bonus units shall not be counted when determining the minimum inclusionary housing requirement.
- D. Contemporaneous construction of five (5) or more primary dwelling units on a lot, or on contiguous lots for which there is evidence of common ownership or control, even though not covered by the same City land use approval, shall also be considered a single housing development. Construction shall be considered contemporaneous if any building permits are issued within five (5) years following the date of completion of any earlier construction.
- E. If an inclusionary housing development requests a density bonus pursuant to Chapter 17.29 of this Title, inclusionary units may be considered target units for purposes of qualifying for a density bonus only if such inclusionary units meet all of the applicable requirements for target units in Chapter 17.29 of this Title and State Density Bonus Law.

17.31.040 - Inclusionary housing incentives.

The following incentives shall apply to all inclusionary housing developments that provide one or more inclusionary units in accordance with the provisions of this Chapter:

- A. Single-family detached inclusionary units may be constructed on smaller lots than the market-rate units in the same housing development, but the lots may be no smaller than the minimum standard for the applicable zoning district, except as may be modified by an eligible density bonus request pursuant to Chapter 17.29 of this Title or other provisions of this Municipal Code that address reduction of minimum lot sizes.
- B. The square footage of the inclusionary units should be comparable to the market-rate units in the same residential development. However, at the discretion of the Community Development Director, smaller units may be provided, as long as the total inclusionary square footage provided remains comparable, yielding additional units.
- C. Inclusionary units may have different finishes and features than market-rate units, including but not limited to interior finishes, fixtures, or appliances, than market-rate units in the same residential development, as long as the finishes and features are durable and of good quality, as determined by the Community Development Director.

17.31.050 - Alternatives to constructing inclusionary units

- A. An applicant for a rental inclusionary housing development, or an applicant for a for-sale inclusionary housing development of fifteen or fewer primary dwellings or lots may, at the sole discretion of the applicant, elect to pay an in-lieu fee as established by resolution of the City Council, for each required inclusionary unit to the Brisbane Housing Authority's Low and Moderate Income Housing Fund, instead of constructing the inclusionary units within the residential development. The in-lieu fee shall be paid prior to issuance of the building permit, unless applicable State law requires an different payment timing.
- B. An applicant for a rental or for-sale housing development may request City Council approval of one or more of the following as an alternative to constructing the inclusionary units within the housing development or paying an in-lieu fee, which request shall be described within the affordable housing plan for inclusionary units prepared pursuant to Section 17.31.060 of this Chapter. City Council approval of such a request shall be based on findings that 1) the outcome for the City is superior in terms of the number and affordability of affordable units that would be created, or 2) construction of the required inclusionary units within the market-rate development would be infeasible or present unreasonable hardship in light of such factors as project size, site constraints, market competition, price and product type disparity, applicant capability, and financial subsidies available. Evidence must be submitted with the affordable housing plan required by Section 17.31.060 of this Chapter.
 1. Off-Site Construction. The applicant may request to construct some or all of the inclusionary units at a location within the City outside of the housing development site. Off-site construction alternatives include alternatives where parcelization of the subject property is required to create a separate parcel. Off-site inclusionary units shall be located on sites that are compatible with adjacent land uses, appropriately zoned for the intended residential development, and are in proximity to or will provide access to employment opportunities, urban services, major roads or other public transit facilities.
 2. Off-Site Preservation. The applicant may request to create inclusionary units off-site through the purchase and conversion of existing market-rate units to affordable units, either by the applicant or by a not-for-profit entity. The total square footage must, at minimum, equal the square footage that would have been expected on-site, at affordability levels that meet or exceed the on-site requirements. The off-site units must be purchased prior to the building permit for the inclusionary housing development. The off-site preservation option must be approved by the City Council, and the Community Development Director may set requirements related to the rehabilitation and condition of the property and the protection and/or temporary relocation of existing tenants.
 3. Dedication of Land. The applicant may dedicate land within the City that is suitable for affordable housing development to the City or to the designee of the City.. The value of the land shall be not less than the sum of the in-lieu fee that would be due under Section 17.31.050 of this Chapter. The valuation of any land offered in-lieu shall be determined by an appraisal made by an appraiser mutually agreed upon by the City and the applicant. Costs associated with the appraisal shall be borne by the applicant. The timing of the land dedication shall be at or before the first approval of the inclusionary housing development. Factors considered by the Council may include but are not limited to general location, access to transit, buildability, current zoning, and the number of units that could be built at the location.
 4. Funding of Affordable or Special Needs Housing Project. The applicant may make a contribution to a special needs housing project or facility (shelter, transitional housing, or similar) in the City in an amount equivalent to the in-lieu fee payment due under subsection A of this Section 17.31.050. The contribution must be made prior to receipt of the building permit for the inclusionary housing development.

5. In-Lieu Fee for Certain For-Sale Developments. An applicant for a for-sale inclusionary housing development of more than fifteen primary dwelling units or lots may request Council approval to pay an in-lieu fee payment rather than construct affordable units with the project.

17.31.060 - Affordable housing plan for inclusionary units.

- A. An affordable housing plan for inclusionary units shall be submitted as part of the application for first approval of any inclusionary housing development, except where payment of an in-lieu fee is elected by the applicant pursuant to Section 17.31.050.A of this Chapter. No application for a first approval may be deemed complete unless an affordable housing plan, if required, is submitted conforming to the provisions of this Chapter.
- B. If the applicant has requested a density bonus pursuant to Chapter 17.29 of this Code, the affordable housing plan required under this Section shall be combined with the affordable housing plan for target units required pursuant to Section 17.29.040 of this Code.
- C. The affordable housing plan for inclusionary units shall include the following information:
 1. For housing developments proposing to construct the inclusionary units within the development, the affordable housing plan shall specify, at the same level of detail as the application for the housing development:
 - a. The number, type, tenure, household income categories, number of bedrooms and baths, approximate location, size, and design (including finishes and features) of all inclusionary units;
 - b. Construction phasing of inclusionary units in relation to market-rate units and overall construction schedule. If the developer proposes to construct the inclusionary units in separate phases from the market-rate unit construction, the affordable housing plan shall specify the security to be provided to the City to ensure that the inclusionary units will be constructed, and explain how the proposed phasing would provide greater public benefit than providing the inclusionary units concurrently with the market-rate units;
 - c. Preliminary marketing plan indicating general approach to marketing inclusionary units. The final marketing plan may be deferred to prior to first building permit issuance, subject to Community Development Director approval, including the manner in which inclusionary units will be offered to the public in a nondiscriminatory and equitable manner and the method of marketing inclusionary units after initial occupancy is secured;
 - d. A financing mechanism, the particulars and the amount of which shall be determined by the City at the time the affordable housing plan is approved, to cover the City's costs for the on-going administration and monitoring of the affordability provisions applicable to the inclusionary units, except where prohibited by State law.
 2. If an applicant requests City Council approval of alternatives to constructing the inclusionary units within a housing development pursuant to subsection 17.31.050.B of this Chapter, the affordable housing plan shall describe the requested alternatives.
 3. If the applicant requests use of different finishes and features than market-rate units as addressed in Section 17.31.040, the affordable housing plan shall describe the request.
- D. The affordable housing plan for inclusionary units shall be reviewed simultaneously with any other permit applications associated with the first approval for the inclusionary housing development.

17.31.070 – Adjustment or reduction of inclusionary housing requirement.

- A. An applicant may request City Council approval of an adjustment or reduction of the inclusionary housing requirements of this Chapter if an applicant demonstrates that the requested adjustment or reduction would better implement the goals, objectives, and policies of the City's general plan housing element, which encourages the provision of housing affordable to a variety of household income levels, seniors, and persons with disabilities. The City Council, in its sole discretion, will determine whether to approve the applicant's request based on the City's progress in meeting its housing goals, objectives, and policies at the time the request is made.
- B. Any request for an adjustment or reduction under this section shall be submitted concurrently with the affordable housing plan required by Section 17.31.060 of this Chapter. The request for a reduction or adjustment shall set forth in detail the factual basis for the adjustment or reduction.

17.31.080 - Affordable housing agreement.

- A. Applicability. Recordation of an affordable housing agreement shall be made a condition of the first approval for all inclusionary housing developments. The affordable housing agreement shall be recorded prior to, or concurrently with, the final or parcel map, or, where the inclusionary housing development does not require a map, prior to issuance of a building permit for any structure in the inclusionary housing development. The affordable housing agreement shall run with the land and bind all future owners and successors in interest.
- B. The affordable housing agreement shall be in a form provided by the City and shall include the following, without limitation:
 - 1. All information provided in the affordable housing plan pursuant to Sections 17.31.060 of this Chapter.
 - 2. The household income categories of the inclusionary units, consistent with the requirements of Section 17.31.030 of this Chapter or any alternative requirements pursuant to Section 17.31.050 of this Chapter.
 - 3. Continued affordability of the inclusionary units, as follows:
 - a. For-Sale Inclusionary Units. The affordable housing agreement shall require that a resale restriction agreement, in a form approved by the City, be recorded against each for-sale inclusionary unit when the unit is first transferred to an eligible purchaser. The resale restriction agreement shall provide that inclusionary units in for-sale housing developments shall remain affordable in perpetuity and that the affordability provisions be applicable to any subsequent transferees or successors in interest.

The resale restriction agreement shall also provide that the for-sale inclusionary unit shall not be rented.
 - b. Rental Inclusionary Units. The affordable housing agreement shall be recorded against each inclusionary housing development containing rental units to ensure that the inclusionary units remain affordable in perpetuity.

Rental inclusionary units that are later converted to for-sale units, e.g., converted to condominiums, and then sold shall be sold as for-sale inclusionary units and the requirements of subparagraph a of paragraph 3 of subsection B of this Section shall apply.
 - 4. The affordable housing agreement shall specify that no household shall be permitted to begin occupancy of an inclusionary unit unless the City or the City's designee has approved the household's eligibility.
 - 5. Affordable housing agreements for inclusionary housing developments intended to be occupied by households with one or more members who are sixty-two (62) years of age or older shall

provide that dwelling units in the residential development shall be occupied by persons eligible to reside in such a project.

6. The affordable housing agreement shall include provisions requiring maintenance of records to demonstrate compliance with this Chapter.
 7. The affordable housing agreement shall include a description of remedies for breach of the agreement by either party. The City may identify tenant households or qualified purchaser households as third party beneficiaries under the agreement.
- D. The affordable housing agreement shall include any other provisions determined necessary by the City Attorney to ensure implementation and compliance with this Chapter.

17.31.090 - Implementation and enforcement.

- A. The City shall prepare guidelines to further implement this ordinance. These guidelines shall include, but are not limited to, the following:
1. The form and contents of the affordable housing agreement and any resale restriction, including provisions for successors in interest and other ownership transfers;
 2. The form and contents of the final marketing plan and resident selection process;
 3. Procedures for setting rents and sales prices for the inclusionary units;
 4. Procedures for qualifying tenant households and prospective purchaser households of inclusionary units, including but not limited to household income verification and any preferences;
 5. Compliance and monitoring procedures to assure that affordability restrictions are maintained;
 6. Resale and subordination procedures for inclusionary for-sale units;
 7. The establishment of any fees to recoup the City's costs for the ongoing administration and monitoring of the affordability provisions of the inclusionary units, except where prohibited by State law.
- B. No permit, license, subdivision map, or other approval or entitlement for an inclusionary housing development shall be issued, including without limitation a final inspection for occupancy, until all requirements applicable to the inclusionary housing development at such time pursuant to this Chapter have been satisfied.
1. No building permit shall be issued for any market-rate unit until the permittee has obtained permits for inclusionary units sufficient to meet the requirements of Section 17.31.030 of this Chapter, and, if a density bonus has been requested pursuant to Chapter 17.29, Section 17.29.030 of this Code. No final inspection for occupancy for any market-rate unit shall be completed until or simultaneously with construction of the inclusionary units required by Section 17.31.030 of this Chapter.
 2. The time requirements set forth in this Section for issuance of building permits for market-rate units and for final inspections for occupancy for market-rate units may be modified to accommodate phasing schedules, model variations, or other factors in an inclusionary housing development within the submitted affordable housing plan pursuant to Sections 17.31.060 of this Chapter, if the City determines this will provide greater public benefit and an affordable housing agreement pursuant to Section 17.31.080 of this Chapter has been accepted by the community development director.
- C. Conditions to carry out the purposes of this Chapter shall be imposed on the first approval for an inclusionary housing development and any subsequent approvals.

- D. The City Attorney is authorized to enforce the provisions of this Chapter and all affordable housing agreements, regulatory agreements, resale controls, deeds of trust, or similar documents placed on inclusionary units, by civil action and any other proceeding or method permitted by law.
- E. The City Manager is authorized to execute the resale restriction agreement and any related documents following approval by the Community Development Director and the City Attorney.
- F. Failure of any official or agency to fulfill the requirements of this Chapter shall not excuse any applicant or owner from the requirements of this Chapter.
- G. The remedies provided for herein shall be cumulative and not exclusive and shall not preclude the City from any other remedy or relief to which it otherwise would be entitled under law or equity.

SECTION 3: Where a use permit, design permit or variance approval has been issued through final action by the City prior to the effective date of this Ordinance, or where such planning permit approval is not required and a complete building permit application has been submitted prior to the effective date of this Ordinance, the holder of such use permit, design permit or variance approval or complete building permit application may proceed to construct the improvements or establish the use authorized by such permit or approval and the same shall be exempted from any conflicting regulations that may be contained in this Ordinance.

SECTION 4: If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of Brisbane hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that one or more sections, subsections, sentences, clauses or phrases may be held invalid or unconstitutional.

SECTION 5: This Ordinance shall be in full force and effect thirty days after its passage and adoption.

* * *

The above and foregoing Ordinance was regularly introduced and after the waiting time required by law, was thereafter passed and adopted at a regular meeting of the City Council of the City of Brisbane held on the _____ day of _____, 2025, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

MAYOR

ATTEST:

City Clerk

APPROVED AS TO FORM:

M.

Density Bonus/Inclusionary Housing Ord.

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

Thomas McMorrow, City Attorney



CITY COUNCIL AGENDA REPORT

Meeting Date: April 17, 2025

From: John Swiecki, Community Development Director

Subject: Zoning Text Amendment 2025-RZ-01; Introduction and First Reading of Draft Ordinance to Update the City's Density Bonus and Inclusionary Housing Ordinance

Adoption of the draft ordinance is exempt from CEQA pursuant to CEQA Guidelines §15061(b)(3) because it involves adoption of policies and programs that would not cause a significant effect on the environment.

Community Goal/Result

Community Building; Fiscally Prudent

Purpose

To amend the zoning ordinance's inclusionary housing and density bonus regulations to comply with current State law and implement the Housing Element.

Recommendation

Introduce the ordinance amending the zoning text to update the inclusionary housing and density bonus regulations currently located in BMC Ch. 17.31, as provided in Attachment 1.

Background

2009 Ordinance

The City Council adopted an inclusionary housing and density bonus ordinance in 2009 (BMC Chapter 17.31; Attachment 4). The inclusionary provisions require rental and for-sale housing developments of six or more units or lots to provide a certain number of housing units that are affordable to and occupied by low income and/or moderate-income households. The ordinance also contains the City's procedures to implement the State density bonus program, which is available for housing projects of at least five units.

2019 Draft Ordinance

In 2018, the Planning Commission studied updates to the 2009 ordinance to implement programs in the 2015 Housing Element and bring the ordinance into compliance with State laws impacting the ordinance. In April 2019 the Commission recommended Council approval of a draft ordinance ("the 2019 draft ordinance") addressing State law requirements in effect at the time and the 2015 Housing Element policies.

City Council consideration of the 2019 draft ordinance was delayed due to an evolving regulatory environment at the State level, the 2023-2031 Housing Element process, and efforts to create an Affordable Housing Strategic Plan which included an evaluation of the draft 2019 ordinance's inclusionary housing provisions.

2025 Draft Ordinance

In 2024, staff revisited the draft ordinance to address programs in the new 2023-2031 Housing Element, strategies in the 2024 Affordable Housing Strategic Plan, and current State law. Recommended revisions to the 2019 ordinance were reviewed at Planning Commission workshops in the fall of 2024.

Following those workshops, on February 27, 2025, the Commission considered a revised draft ordinance at a public hearing and voted unanimously to recommend City Council approval of the ordinance. This revised draft ordinance (“2025 draft ordinance”) is included as Attachment 1, and the February 27, 2025 Planning Commission agenda report is attached as Attachment 5. Staff has not provided a redlined version of the 2009 ordinance showing changes proposed by the 2025 draft ordinance because of the significant structural changes proposed. Tables summarizing substantive revisions proposed to the 2009 ordinance are provided in the Discussion section below.

Housing Subcommittee Review

The City Council housing subcommittee met to review the draft 2025 ordinance on March 13, 2025. The subcommittee’s recommendations are summarized in the Discussion section below.

Discussion

The 2025 draft ordinance (Attachment 1) extracts the density bonus regulations into a standalone chapter (new chapter 17.29). Inclusionary housing regulations remain in Chapter 17.31. Beyond this structural change, the 2025 draft ordinance proposes the following substantive revisions to the density bonus and inclusionary housing ordinance:

Density Bonus Provisions

Updated Provision	State Law or Policy Requirement
Eliminate State density bonus tables from implementing ordinance and replace with reference to State law	Government Code Sections 65915-65918
Create a density bonus for small projects under 5 units	2015 Housing Element Program H.B.5.a
Grant additional concessions or incentives than required by State law for projects that exceed the density bonus qualifications	2023 Housing Element Program 2.C.1
Extend rental target unit affordability term from 55 years to in perpetuity	No State Law or other Policy; Planning Commission recommendation
Require one-to-one replacement of lost units	2023 Housing Element Program 3.A.5
Allow one additional incentive or concession if the density bonus project includes family-sized target units (units with three or more bedrooms) affordable to low- to extremely low-income households	2023 Housing Element Program 2.C.1
Affordability in perpetuity for both rental and for-sale	2023 Housing Element Program 4.A.11
Direct staff to prepare implementation guidelines that address topics including income verification and household qualification procedures, procedures for	No State Law or other Policy; Planning Commission recommendation

successors in interest, and other implementation provisions, and extracting such provisions from the ordinance	
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Inclusionary Housing Ordinance (BMC Ch. 17.31)

Updated Provision	State Law or Policy Requirement
Reduce project size threshold from 6 or more units/lots to 5 or more units/lots	No State Law or other Policy; Planning Commission recommendation
15% inclusionary requirement instead of the current sliding scale	Rental: Government Code Section 65850.01 For-sale: No State Law or other Policy; Planning Commission recommendation
Affordable rental units must be affordable to very low income households (rather than a mix of low and very low income households)	No State Law or other Policy; Planning Commission recommendation
Provide alternatives to on-site construction of affordable units, including:	
Any rental project can choose to pay an in-lieu fee	Government Code Section 65850
Any for-sale project of 15 or fewer units/lots can choose to pay an in-lieu fee	2023 Housing Element Program 2.E.4, Affordable Housing Strategic Plan Strategy A-5
City Council may approve other alternatives for for-sale or rental projects, including off-site construction, land donation, conversion of market-rate units, funding affordable or special needs housing project, or in-lieu fee for for-sale projects of more than 15 units/lots	2023 Housing Element Program 2.E.4, Affordable Housing Strategic Plan Strategy A-5
Affordability in perpetuity for both rental and for-sale	2023 Housing Element Program 4.A.11
Require an in-lieu fee for fractional inclusionary requirements that cannot be rounded up to the nearest whole integer	No State Law or other Policy; Planning Commission recommendation
Modify incentives to:	
Continue to allow affordable units to be smaller than market-rate units, but require comparable total square footage	No State Law or other Policy; Planning Commission recommendation
Acknowledge that ADUs provided by for-sale developments may be able to be sold IF the City amends its ADU regulations to allow ADUs to be sold. (Separate ordinance would be required, not proposed in this ordinance.)	No State Law or other Policy; Planning Commission recommendation
Direct staff to prepare implementation guidelines that address topics including income verification and household qualification procedures, procedures for successors in interest, and other implementation	No State Law or other Policy; Planning Commission recommendation

provisions, and extracting such provisions from the ordinance	
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Draft Implementation Guidelines

HEART of San Mateo County provides housing policy consulting services to the City. HEART staff is preparing an implementing guidelines document containing detailed procedures for administering the density bonus and inclusionary housing ordinances, as referenced in the draft ordinance. This document would be maintained and updated by City staff.

Housing Subcommittee Recommendations

The Housing Subcommittee (Mayor Lentz, Councilmember Davis) met on March 13, 2025 to review the draft ordinance. The subcommittee made the following recommendation for the full Council's consideration:

- Eliminate incentive for for-sale inclusionary housing developments to meet inclusionary requirements by providing affordable accessory dwelling units (Section 17.31.040.D of the draft ordinance). The subcommittee considered this option problematic in terms of on-going management, monitoring, and tracking. If this incentive would be eliminated, for-sale developments would need to construct affordable units as for-sale single-family dwellings, unless they opted to pay an in-lieu fee (projects of 15 or fewer units) or requested Council approval of another alternative means of compliance.

The draft ordinance in Attachment 1 has been modified to eliminate this incentive, shown in tracked changes on page 13 of the ordinance, for the Council's consideration.

Inclusionary In-Lieu Fee: Setting the Fee Amounts

Implementation of the draft ordinance would require the City to adopt in-lieu fees for inclusionary housing, as well as new fees for administration of the ordinance's requirements. In-lieu fees would be maintained in the City's low and moderate income housing fund to fund a variety of the City's programs related to preserving existing affordable housing stock, creating new affordable housing, or assisting low-income households. Staff has provided recommended in-lieu fees in Attachment 3. Should the Council move to introduce the draft ordinance, a Resolution will be prepared amending the Master Fee Schedule to adopt the proposed fees at the next City Council meeting.

Adopting an in-lieu fee for rental inclusionary housing developments is proposed to meet the State-required opt-in alternative for rental projects in the inclusionary policy. While not required by State law, an in-lieu fee is also proposed for opt-in payment by small for-sale projects (15 or fewer units/lots), or for discretionary approval by the City Council for larger for-sale projects, which is consistent with the City's Housing Element policy to provide more alternatives for compliance with the inclusionary housing ordinance.

In-lieu fees are not development impact or mitigation fees and are therefore not subject to the Mitigation Fee Act. The proposed in-lieu fees shown in Attachment 3 are based on the “affordability gap” between market-rate housing prices and the maximum affordable purchase price for low and moderate-income households. The affordability gap is a helpful tool for targeting appropriate in-lieu fees because it represents the cost the developer incurs for providing the unit. The proposed in-lieu fees are similar to those of neighboring jurisdictions, shown in the benchmarking analysis provided in Attachment 6. As this fee is set independently from the cost of an individual development, for some developers, paying the fee will be preferable to providing the unit on-site. For some developments, the opposite may be the case. The City Council may also adjust these fees to incentivize a particular outcome. For example, if the City Council wished to incentivize building units on-site, the City Council could consider increasing the in-lieu fees.

Local Preferences

“Local preferences” are requirements that affordable units provided to comply with City regulations or 100% affordable housing developments have “preferences” to serve or market the affordable housing units to certain target populations. For example, a requirement that current or former Brisbane residents be given priority in leasing or selling affordable units would be considered a local preference. Local preferences are not established in the draft ordinance. Should the Council wish to consider local preferences, staff can prepare some background information on the legal requirements for studying and establishing such preferences in compliance with State and Federal fair housing laws.

Fiscal Impact

None at this time. Adoption of an inclusionary in-lieu fee will generate affordable housing revenues, but it is difficult to forecast potential revenue as it depends on project size and type, and whether in-lieu fee payments are proposed at all by a project developer as opposed to on-site construction or other compliance alternatives.

Environmental Review

Adoption of the draft ordinance is exempt from CEQA pursuant to CEQA Guidelines §15061(b)(3) because it involves adoption of policies and programs that would not cause a significant effect on the environment.

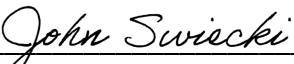
Measure of Success

Inclusionary housing and density bonus regulations that comply with State law and implement the City’s Housing Element policies to encourage and facilitate development of affordable housing in Brisbane.

Attachments

1. Draft Ordinance

2. Resolution 2025-RZ-01
3. Proposed In-Lieu Fees and other Administrative Fees
4. [BMC Chapter 17.31, Inclusionary Housing And Density Bonuses](#) (hyperlink)
5. February 27, 2025 Planning Commission agenda report and attachments
6. San Mateo County benchmarking analysis of inclusionary housing regulations



John Swiecki, Community Development Director



Jeremy Dennis, City Manager

DRAFT ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY OF BRISBANE
 ADDING NEW CHAPTER 17.29 AND AMENDING CHAPTER 17.31 OF
 THE BRISBANE MUNICIPAL CODE
 CONCERNING DENSITY BONUS AND
 INCLUSIONARY HOUSING REQUIREMENTS**

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

SECTION 1: A new Chapter 17.29 is added to the Municipal Code to read as follows:

Chapter 17.29 – DENSITY BONUSES

Sections:

17.29.010	Purposes of chapter.
17.29.020	Definitions.
17.29.030	Administration of Density Bonuses.
17.29.040	Application for a Density Bonus.
17.29.050	Affordable housing agreements.
17.29.060	Implementation and enforcement.

17.29.010 – Purposes of chapter.

- A. The City of Brisbane enacts this chapter to implement the goals, objectives, and policies of the City's general plan housing element relative to administering a density bonus program to encourage the provision of housing affordable to a variety of household income levels, seniors, and persons with disabilities.
- B. This chapter is also intended to implement Sections 65915 through 65918 of the California Government Code, or successor statutes and regulations, governing density bonuses and other incentives required by such statutes or regulations.

17.29.020 - Definitions.

- A. Affordable Housing Agreement. A recorded agreement between a property owner and the City to ensure that the density bonus requirements of this Chapter are satisfied.
- B. Affordable Ownership Cost. The affordable ownership cost for for-sale target units shall be as specified in California Health and Safety Code Section 50052.5, as may be amended over time.
- C. Affordable Rent. The affordable rent for rental target units shall be as specified in California Health and Safety Code Section 50053, as may be amended over time.
- D. Approving Authority. The City decision-making body acting on an application for a housing development subject to the requirements of this Chapter, including the City Council, Planning Commission, or Community Development Director.
- E. Base Density. Base density or maximum residential density shall be as defined in the State Density Bonus law.
- F. Child Care Facility. Child care facility shall have the same meaning as defined in the State Density Bonus Law.

- G. City. The City of Brisbane or the Brisbane Housing Authority.
- H. City Council. The City Council of the City of Brisbane as established in Title 2 of this Code or the Board Members of the Brisbane Housing Authority
- I. City Manager. The City Manager of the City of Brisbane as established in Title 2 of this Code, the City Manager's designee, the Executive Director of the Brisbane Housing Authority or the Executive Director's designee.
- J. Community Development Director. The Director of the Community Development Department responsible for overseeing implementation of Title 17 of this Code, or the Community Development Director's designee.
- K. Density Bonus. Density bonus shall be defined by State Density Bonus Law.
- L. Density Bonus Project. Density bonus project shall mean any parcel map, subdivision map, housing development permit, design permit, building permit, or other city approval which results in a net increase of at least two (2) primary dwelling units and/or residential lots or combination thereof for which a density bonus, incentive or concession, waiver or reduction of development standards, and/or modification of parking standard is requested by the developer pursuant to State Density Bonus Law and this Chapter. A density bonus project may include, but is not limited to, new construction, conversion of existing dwelling units to condominium ownership, subdivision of land to create additional residential lots, conversion of an existing nonresidential building to residential use, and the addition of dwelling units to an existing multifamily dwelling. A density bonus project shall include units or lots intended for sale or for rent.
 - 1. For-Sale Density Bonus Project. A density bonus project that offers dwelling units or lots to the public for purchase.
 - 2. Rental Density Bonus Project. A density bonus project that offers dwelling units to be rented to tenants upon occupancy, whether or not a condominium or subdivision map is recorded as part of the project.
- M. Development Standard. A development standard shall be as defined by the State Density Bonus Law, provided, however, the term "development standard" does not include any of the following:
 - 1. The permitted uses of a site;
 - 2. Any city fees;
 - 3. Affordable housing requirements;
 - 4. Building standards approved by the California Building Standards Commission as provided in California Health and Safety Code Section 18901 et seq.; or
 - 5. The requirements of Brisbane's Green Building Ordinance as set forth in Title 15, Chapter 15.80 of this Code.
- N. Domestic Partner. Domestic partner means two (2) persons who have filed a declaration of domestic partnership with the California Secretary of State pursuant to Division 2.5, beginning with Section 297, of the California Family Code and such registration was in full force and effect at the time of the transfer or on the date of the transferor's death. A copy of the domestic partnership registration shall be provided to the city upon request.
- O. Dwelling Unit. Dwelling unit shall have the meaning set forth in Section 17.02.235 of this Code.
 - 1. Density Bonus Unit. Those dwelling units granted pursuant to a density bonus requested pursuant to the provisions of this Chapter and State Density Bonus Law.

2. Market-Rate Unit. Any dwelling unit within a density bonus project that is not a target unit.
 3. Target Unit. Any dwelling unit affordable to moderate and low income households within a density bonus project that qualify the project for a density bonus.
- P. Eligible Household. A household whose household income qualifies the household for occupancy of a target unit.
- Q. Eligible Purchaser. A household whose household income qualifies the household to purchase a for-sale target unit, or a qualified non-profit housing corporation as such term is defined in Section 714.7 of the California Civil Code or successor statute.
- R. First Approval. The first of the following approvals to occur with respect to a density bonus project: subdivision approval, housing development permit, building permit or any other permit or approval under the Brisbane Municipal Code.
- S. Household Income. Household income shall be the gross income of the household as calculated pursuant to Title 25 California Code of Regulations, §6914, as amended, or its successor. regulation The household income categories addressed in this Chapter shall be defined as follows:
1. Lower Income Household. A household whose income does not exceed the lower income limits applicable to San Mateo County, as published annually by the State of California pursuant to California Code of Regulations, Title 25, Section 6932, as may be amended over time.
 2. Moderate Income Household. A household whose income does not exceed the moderate income limits applicable to San Mateo County, as published annually by the State of California pursuant to California Code of Regulations, Title 25, Section 6932, as may be amended over time.
 3. Very Low Income Household. A very low income household shall be as defined by California Health and Safety Code Section 50105, as may be amended over time.
 4. Extremely Low Income Household. An extremely low income household shall be as defined by Section 50106 of the California Health and Safety Code or successor statute
- T. Housing Authority. "Housing Authority" shall mean the Brisbane Housing Authority, as established by Resolution of the City Council. For the purposes of this Chapter, "Housing Authority" shall have the same meaning as "City."
- U. Incentives or Concessions. Incentives or concessions shall be as defined in the State Density Bonus Law
- V. Maximum Residential Density. Maximum residential density or base density shall be as defined in State Density Bonus Law.
- W. Modified Parking Standards. Modifications to the parking standards that would otherwise apply to an density bonus project under Chapter 17.34 of this Code, as described in the State Density Bonus Law.
- X. Resale Restriction Agreement. A resale restriction agreement shall mean an agreement, covenant, deed of trust, or other document, approved by the City Council, which is executed by the property owner and recorded against each target unit to insure that such unit remains affordable for the applicable term.
- Y. Specific Adverse Impact. A "specific adverse impact" shall have the same meaning as the meaning provided in the Government Code Section 65589.5, as may be amended from time to time, or successor provisions.
- Z. State Density Bonus Law. State Density Bonus Law shall mean Sections 65915 through 65918 of the California Government Code, as may be amended from time to time, or successor statutes
- AA. Waiver or Reduction of Development Standard. Waiver or Reduction of Development Standard shall be as defined in the State Density Bonus Law.

17.29.030 - Administration of Density Bonuses

- A. The City shall grant density bonuses, incentives and concessions, waivers or reductions in development standards, and/or modified parking standards requested by applicants in accordance with the provisions of the State Density Bonus Law and the procedures set forth in this Chapter.
1. The City may deny a request for incentives or concessions only as provided by the State Density Bonus Law.
 2. The City may deny a request for a waiver or reduction of a development standard only as provided by the State Density Bonus Law.
- B. A developer of a project containing between two (2) to four (4) dwelling units or lots may request approval of a density bonus as shown in Table 17.29.030. The decision making body shall waive or reduce any development standard that may preclude development of such a project as set forth in section A of this Section 17.29.030.

Table 17.29.030

Zoning District	Lot Size	Maximum Permitted Residential Density	Percentage low income units	Percentage Density Bonus	Total Units including Density Bonus Units
R-2	4,950-7,499 sq ft	2 units	50%	30%	3 units
R-3	4,950- 5,999 sq ft	3 units	30%	15%	4 units
R-3	6,000- 7,499 sq ft	4 units	50%	15%	5 units

- C. A developer of a density bonus project that exceeds the qualifications for a density bonus per State Density Bonus Law may request that the City grant one additional incentive or concession above the maximum number prescribed by State Density Bonus Law, as applicable to the project.
- D. A developer of a density bonus project may request one additional incentive or concession if the density bonus project includes family-sized target units (units with three or more bedrooms) designed and dedicated for use by low- to extremely low-income households.
- E. Inclusionary units provided in compliance with Chapter 17.31 may be counted as target units for the purposes of calculating a density bonus if they meet requirements for target units established under State Density Bonus Law.
- F. The decision making body for any density bonus project shall be the decision making body specified for the first approval. The City Council shall be the decision-making body for any density bonus projects that include requests of incentives or concessions or waivers of development standards that otherwise require City Council approval under other Chapters of this Municipal Code.
- G. Notwithstanding that an applicant may request direct financial assistance, including that for purchasers of target units, which shall require approval of the City Council, nothing in this section 17.29.030 requires the City to provide direct financial incentives for the housing development, including but not limited to providing to the applicant publicly owned land.
- H. In accordance with the State Density Bonus Law, neither the granting of a concession or incentive, waiver or reduction in development standards, nor the granting of a density bonus, shall be interpreted, in and of itself, to require a general plan amendment, zoning change, or other discretionary approval.

17.29.040 – Application for a Density Bonus.

- A. Application Processing. Applications for density bonuses, incentives, concessions, waivers or reductions in development standards, and/or modifications of parking standards pursuant to the State Density Bonus Law and this Chapter shall be processed in concert with and by the same decision-making body, as any other planning entitlement applications that the density bonus project may require., except where otherwise indicated in Section 17.29.030.
- B. Contents of Application. Applications shall be filed with the Community Development Director on such form as the Director shall prescribe. In addition to the submittal requirements for any other planning entitlement applications or permit approvals the project requires, the application shall include the following information and supporting materials:
 - 1. Current title report(s) for all properties proposed for development, prepared within at least six (6) months of application submittal.
 - 2. A letter signed by the present owner(s) stating what density bonus, incentives and concessions, waivers or modifications of development standards, and/or parking modification are being requested from the City.
 - 3. In the case of a condominium conversion request, such information required by Chapter 17.30 of this Title.
 - 4. A statement describing whether the density bonus project is proposed on any property that has one of the following conditions. If any of the below conditions exist on the property, the application must identify how such units will be replaced in the density bonus project. Such replacement units shall not be counted as target units when calculating the density bonus, unless the density bonus project is 100% affordable.
 - a. Includes a parcel or parcels on which rental dwelling units are presently located that are subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of lower or very low income or if rental dwelling units have been vacated or demolished in the five-year period preceding the application that were at the time subject to a recorded covenant, ordinance or law that restricted rents to levels affordable to persons and families of very low or lower income;
 - b. Includes a parcel or parcels on which rental dwelling units have been subject to any other form of rent or price control through a public agency's exercise of its police power;
 - c. Includes a parcel or parcels on which rental dwelling units are presently occupied by low or very low income households.
 - 5. A detailed vicinity map showing the project location and such details as the location of the nearest commercial retail, transit stop, potential employment locations, park or recreation facilities or other social or community service facilities.
 - 6. A project data table showing the total number of dwelling units proposed on the site and off site, as applicable, including the number of target units and density bonus units, and the project's conformance to all objective development standards.
 - 7. Site plan(s) with accurately dimensioned property lines showing existing and proposed structures and their uses, adjacent structures and their uses, setbacks, adjacent streets, easements, existing and proposed utilities, existing and proposed driveways, and internal circulation and parking.
 - 8. Floor plans of all existing and proposed structures (with the use of each room/space labeled) and designating target units, as appropriate.
 - 9. Roof plans.

10. Elevations of all sides of the existing and/or proposed structures, identifying colors and materials, and showing the height of structure(s) measured per the definition of building height in Chapter 17.02 of this Title and UBC type of construction. Cross-sections may also be required based upon the complexity of the design.
11. Existing and proposed parking facilities, including the dimensions of parking spaces, number and location of spaces designated as compact or handicapped spaces, and a calculation of the number of parking spaces required by this title or any other applicable regulations;
12. An affordable housing plan that contains all of the following, as applicable to the request:
 - a. The number, type, tenure, household income categories, number of bedrooms and baths, approximate location, size, and design (including finishes and features) of all density bonus units;
 - b. The number, type, tenure, affordability level, number of bedrooms and baths, approximate location, size, and design (including finishes and features) of all target units;
 - c. Construction phasing of target units in relation to market-rate units, if applicable, and overall construction schedule. If the developer proposes to construct the target units in separate phases from the market-rate unit construction, the affordable housing plan shall specify the security to be provided to the City to ensure that the target units will be constructed, and explain how the proposed phasing would provide greater public benefit than providing the target units concurrently with the market-rate units;
 - d. Preliminary marketing plan, indicating general approach to marketing target units in compliance with all fair housing laws. The final marketing plan may be deferred to prior to first building permit issuance, subject to Community Development Director approval, including the manner in which target units will be offered to the public in a nondiscriminatory and equitable manner and the method of marketing target units after initial occupancy is secured;
 - e. A financing mechanism, the particulars and the amount of which shall be determined by the City at the time the affordable housing plan is approved, to cover the City's costs for the on-going administration and monitoring of the affordability provisions applicable to the target units, except where prohibited by State law.
13. Description of any requested density bonuses, incentives, concessions, waivers or modifications of development standards, and/or modified parking standards and documentation of eligibility for the request(s), including a description of the base density without the requested density bonus, the number and location of all target units qualifying the project for a density bonus, the level of affordability of the target units, and identification of the density bonus units.
 - a. For all requested incentives and concessions, reasonable documentation demonstrating eligibility for the incentive or concession or to demonstrate that the incentive or concession meets the definition set forth in the State Density Bonus Law. For requests to allow mixed-use zoning in conjunction with the density bonus project, the application shall additionally include documentation demonstrating that the proposed commercial, office, industrial, or other land uses will reduce the cost of the density bonus project development and that the commercial, office, industrial, or other land uses are compatible with the density bonus project and the existing or planned development in the area where the proposed project will be located. The cost of reviewing any documentation submitted in support of a request for a concession or incentive, including but not limited to the cost to the City of hiring a consultant to review the documentation, shall be borne by the applicant.

- b. For all requested waivers or reductions of development standards, written evidence that (i) the development standards for which a waiver or reduction is requested will physically preclude the construction of the housing development at the densities or with the incentives or concessions permitted by this chapter; (ii) the waiver or reduction would not have a specific, adverse impact, or, if a specific, adverse impact would occur, that the impact could feasibly be mitigated or avoided; (iii) the waiver or reduction would not have an adverse impact on any real property that is listed in the California Register of Historical Resources; and (iv) the waiver or reduction would not be contrary to any state or federal law.
 - c. If a density bonus, incentive or concession is requested for a land donation, the application shall show the location of the land to be dedicated and provide evidence that each of the conditions for such land donation set forth in the State Density Bonus Law will be met.
 - d. If a density bonus, incentive or concession is requested for a child care facility, the application shall show the location and square footage of the child care facility and describe how all requirements of the State Density Bonus law for such density bonus, incentive or concession are met by the application.
- B. **Application Fee.** The application shall be accompanied by the payment of a fee in such amount as established from time to time by resolution of the City Council. In addition, the applicant shall also deposit such amounts as the Community Development Director may require from time to time to cover the cost of any environmental or legal review, geotechnical and engineering reports, review of green building documentation, and such other studies that may be required by the City in connection with the processing of the application or related planning entitlements.
- C. **Newly Constructed Condominiums.** In addition to the information listed in this section, an application for a density bonus project for newly constructed condominiums, as defined in 17.30.020.A of this title, shall also include the materials set forth in Section 17.30.040.
- D. **Streamlined Housing Development Projects.** Density bonus projects that are streamlined housing development projects, as defined in Chapter 17.02 of this Title, shall include additional supporting documentation to demonstrate eligibility as set forth on a form prescribed by the city.

17.29.050 - Affordable housing agreements.

- A. **Applicability.** Recordation of an affordable housing agreement shall be made a condition of the first approval for all density bonus projects to ensure implementation of all requirements of this Chapter. The affordable housing agreement shall be recorded prior to, or concurrently with, the final subdivision or parcel map, or, where the housing development does not include a map, prior to issuance of a building permit for any structure in the housing development. The affordable housing agreement shall run with the land and bind all future owners and successors in interest.
- B. The affordable housing agreement shall be in a form provided by the City and shall include the following, without limitation:
 - 1. All information provided in the affordable housing plan pursuant to Section 17.29.040 of this Chapter.
 - 2. The household income categories of the target units, consistent with the requirements of the State Density Bonus law.
 - 3. Continued affordability of the target units, as follows:
 - a. **For-Sale Target Units.** The affordable housing agreement shall require that a resale restriction agreement, in a form approved by the City, be recorded against each for-sale target unit when the target unit is first transferred to an eligible purchaser. The resale

restriction agreement shall provide that target units in for-sale density bonus projects shall remain affordable in perpetuity and that the affordability provisions be applicable to any subsequent transferees or successors in interest.

The resale restriction agreement shall also provide that the for-sale target unit shall not be rented.

- b. Rental Target Units. The affordable housing agreement shall be recorded against each rental density bonus project containing rental target units to ensure that the target units remain affordable in perpetuity.

Rental target units that are later converted to for-sale units, e.g., converted to condominiums, and then sold shall be sold as for-sale target units and the requirements of subparagraph a of paragraph 2 of subsection C of this Section shall apply.

- 4. The affordable housing agreement shall specify that no household shall be permitted to begin occupancy of a target unit unless the Community Development Director has approved the household's eligibility
 - 5. Affordable housing agreements for land dedication, child care facilities, and condominium conversions shall ensure the continued compliance with all conditions included in State Density Bonus Law.
 - 6. Affordable housing agreements for senior citizen housing developments shall provide that units in the residential development shall be occupied by senior citizens or other persons eligible to reside in such a project as established by the State Density Bonus Law.
 - 7. The affordable housing agreement shall include provisions requiring maintenance of records to demonstrate continued compliance with this Chapter over long-term operation of the density bonus project.
 - 8. The affordable housing agreement shall include a description of remedies for breach of the affordable housing agreement by either party. The City may identify tenants or qualified purchasers as third party beneficiaries under the agreement.
- C. The affordable housing agreement shall include any other provisions determined necessary by the City Attorney to ensure implementation and compliance with the State Density Bonus Law and this Chapter.

17.29.060 - Implementation and enforcement.

- A. No permit, license, subdivision map, or other approval or entitlement for a density bonus project shall be issued, including without limitation a final inspection for occupancy, until all requirements applicable to the density bonus project at such time pursuant to this Chapter have been satisfied.
 - 1. Except where authorized by the approved affordable housing plan pursuant to Section 17.29.040, no building permit shall be issued for any market rate unit until the permittee has obtained permits for target units sufficient to meet the requirements of Section 17.29.030 of this Chapter, and, if the project includes inclusionary housing units pursuant to Chapter 17.31 of this Code. No final inspection for occupancy for any market-rate unit shall be completed until the permittee has constructed the target units required by Section 17.29.030 of this Chapter, unless so authorized in the approved affordable housing plan.
 - 2. The time requirements set forth in this Section for issuance of building permits for market-rate units and for final inspections for occupancy for market-rate units may be modified to accommodate phasing schedules, model variations, or other factors in a density bonus project within the submitted affordable housing plan pursuant to Sections 17.29.030 of this Chapter, if the City determines this will provide greater public benefit and an affordable housing agreement pursuant

to Section 17.29.050 of this Chapter has been approved by the decision making body for the first approval for the density bonus project.

- B. Conditions to carry out the purposes of this Chapter shall be imposed on the first approval for a density bonus project.
- C. The City Attorney is authorized to enforce the provisions of this Chapter and all affordable housing agreements, regulatory agreements, resale controls, deeds of trust, or similar documents placed on target units, by civil action and any other proceeding or method permitted by law.
- D. The City Manager is authorized to execute any agreement and any related documents following approval such agreement by the Community Development Director and the City Attorney.
- E. Failure of any official or agency to fulfill the requirements of this Chapter shall not excuse any applicant or owner from the requirements of this Chapter.
- F. The remedies provided for herein shall be cumulative and not exclusive and shall not preclude the City from any other remedy or relief to which it otherwise would be entitled under law or equity.
- G. Any target unit that is sold or rented in violation of the affordability requirements established in the approved affordable housing agreement or resale restriction agreement shall be replaced at a one-to-one ratio. The means of replacement shall be wholly subject to the discretion of the City Manager
- H. A request for a minor modification of an approved affordable housing plan may be granted by the community development director if the modification is substantially in compliance with the original affordable housing plan and conditions of approval for the density bonus project. A minor modification is technical in nature, as opposed to substantive or material. Substantive or material changes to the affordable housing plan shall be processed in the same manner as the original plan.
- I. The City shall prepare guidelines to further implement this ordinance. These guidelines shall include, but are not limited to, the following:
 - 1. The form and contents of the affordable housing agreement and any resale restriction, including provisions for successors in interest and other ownership transfers for for-sale target units;
 - 2. The form and contents of the final marketing plan and resident selection process;
 - 3. Procedures for setting rents and sales prices for the target units;
 - 4. Procedures for qualifying tenant households and prospective purchaser households of target units, including any preferences;
 - 5. Compliance and monitoring procedures to assure that affordability restrictions are maintained;
 - 6. Resale and subordination procedures for for-sale target units;
 - 7. The establishment of any fees to recoup the City's costs for the ongoing administration and monitoring of the affordability provisions of the target units, except where prohibited by State law.

SECTION 2: Chapter 17.31 of the Municipal Code is amended in its entirety to read as follows:

Chapter 17.31 - INCLUSIONARY HOUSING

Sections:

17.31.010	Basis and purposes.
17.31.020	Definitions.
17.31.030	Inclusionary requirement.
17.31.040	Inclusionary housing incentives.
17.31.050	Alternatives to constructing inclusionary units.
17.31.060	Affordable housing plan for inclusionary units.
17.31.070	Adjustment or reduction of inclusionary housing requirement.
17.31.080	Affordable housing agreement
17.31.090	Implementation and enforcement.

17.31.010 - Basis and purposes.

- A. Rental and owner-occupied housing in the City has become steadily more expensive. Housing costs have gone up faster than incomes for many groups in the community.
- B. Many persons who work in the City, who have grown up or have family ties in the City, who already live in the City but must move due to increasing housing costs, or who wish to live in the City for other reasons, cannot afford housing in the city.
- C. Federal and state government programs do not provide nearly enough affordable housing opportunities or subsidies to satisfy the housing needs of moderate, lower or very low income households.
- D. Rising land prices have been a key factor in preventing development of new affordable housing. New housing construction in the City which does not include inclusionary units aggravates the existing shortage of affordable housing by absorbing the supply of available residential land. This reduces the supply of land for affordable housing and increases the price of remaining residential land. Providing the inclusionary units required by this Chapter will help to ensure that part of the City's remaining developable land is used to provide affordable housing.
- E. The City wishes to retain an economically balanced community, with housing available to very low income, lower income and moderate income households. The City's general plan implements the established policy of the State of California that each community should foster an adequate supply of housing for households at all economic levels.
- F. An economically balanced community is only possible if part of the new housing built in the City is affordable to households with limited incomes. Requiring builders of new housing to include some housing affordable to households at a range of incomes is fair, not only because new development without inclusionary units contributes to the shortage of affordable housing, but also because zoning and other ordinances concerning new housing in the City should be consistent with the community's goal to foster an adequate supply of housing for households at all economic levels.
- G. In enacting this Chapter it is also the intent of the City of Brisbane to implement the goals, objectives, and policies of the City's general plan housing element, which encourages the provision of housing affordable to a variety of household income levels, seniors, and persons with disabilities, and identifies an inclusionary housing policy one method to encourage the development of affordable housing.

17.31.020 - Definitions.

- A. Affordable Housing Agreement. A recorded agreement between a property owner and the City to ensure that the inclusionary housing requirements of this Chapter are satisfied.
- B. Affordable Ownership Cost. The affordable ownership cost for for-sale target units shall be as specified in California Health and Safety Code Section 50052.5, as may be amended over time.
- C. Affordable Rent. The affordable rent for rental target units shall be as specified in California Health and Safety Code Section 50053, as may be amended over time.
- D. Approving Authority. The City decision-making body acting on an application for a housing development subject to the requirements of this Chapter, including the City Council, Planning Commission, or Community Development Director.
- E. City. The City of Brisbane or the Brisbane Housing Authority.
- F. City Council. The City Council of the City of Brisbane as established in Title 2 of this Code or the Board Members of the Brisbane Housing Authority.
- G. City Manager. The City Manager of the City of Brisbane as established in Title 2 of this Code, the City Manager's designee, the Executive Director of the Brisbane Housing Authority or the Executive Director's designee.
- H. Community Development Director. The Director of the Community Development Department responsible for overseeing implementation of Title 17 of this Code, or the Community Development Director's designee.
- I. Domestic Partner. Domestic partner means two (2) persons who have filed a declaration of domestic partnership with the California Secretary of State pursuant to Division 2.5, beginning with Section 297, of the California Family Code and such registration was in full force and effect at the time of the transfer or on the date of the transferor's death. A copy of the domestic partnership registration shall be provided to the city upon request.
- J. Dwelling Unit. Dwelling unit shall have the meaning set forth in Section 17.02.235 of this Code.
 - 1. Inclusionary Unit. Dwelling unit within a housing development that is required by Section 17.31.030 of this Chapter to be rented at affordable rents or sold at an affordable ownership cost to specified households. Inclusionary units may be considered target units as that term is defined in Chapter 17.29 of this Code.
 - 2. Market-Rate Unit. Any unit within a housing development that is not an inclusionary unit.
- K. Eligible Household. A household whose household income qualifies the household for occupancy of inclusionary units provided under this Chapter.
- L. Eligible Purchaser. A household whose household income qualifies the household to purchase a for-sale inclusionary unit, or a qualified non-profit housing corporation as such term is defined in Section 714.7 of the California Civil Code or successor provisions.
- M. First Approval. The first of the following approvals to occur with respect to an inclusionary housing development: subdivision approval, housing development permit, building permit or any other permit or approval under the Brisbane Municipal Code.
- N. Household Income. Household income shall be the gross income of the household as calculated pursuant to Title 25 California Code of Regulations, §6914, as amended, or its successor. The household income categories addressed in this Chapter shall be defined as follows:

1. Lower Income Household. A household whose income does not exceed the lower income limits applicable to San Mateo County, as published annually by the State of California pursuant to California Code of Regulations, Title 25, Section 6932, as may be amended over time.
 2. Moderate Income Household. A household whose income does not exceed the moderate income limits applicable to San Mateo County, as published annually by the State of California pursuant to California Code of Regulations, Title 25, Section 6932, as may be amended over time.
 3. Very Low Income Household. A very low income household shall be as defined by California Health and Safety Code Section 50105, as may be amended over time.
- O. Housing Authority. "Housing Authority" shall mean the Brisbane Housing Authority, as established by Resolution of the City Council. For the purposes of this Chapter, "Housing Authority" shall have the same meaning as "City."
- P. Inclusionary Housing Development. Any parcel map, subdivision map, use permit, building permit, or other City approval which results in a net increase of at least five (5) or more primary dwelling units and/or residential lots or combination thereof intended for sale or for rent. An inclusionary housing development project may include, but is not limited to, new construction, conversion of existing dwelling units to condominium ownership, creation of residential lots, conversion of an existing nonresidential building to residential use, and the addition of primary dwelling units to an existing multifamily dwelling. .
1. For-Sale Inclusionary Housing Development. An inclusionary housing development, or portion thereof, where the dwelling units or lots are offered to the public for purchase.
 2. Rental Inclusionary Housing Development. An inclusionary housing development, or portion thereof, comprised of dwelling units which are intended to be rented, or are actually offered for rent, to tenants upon completion, whether or not a condominium or subdivision map is recorded as part of the housing development.
- Q. Resale restriction agreement. An agreement, covenant, deed of trust, or other document, approved by the City Council, which is executed by the property owner and recorded against each inclusionary unit to insure that such unit remains affordable for the applicable term.

17.31.030 - Inclusionary requirement.

- A. Applicability. The inclusionary requirements established in this section shall apply to all inclusionary housing development projects with five (5) or more primary dwelling units or residential lots, except for the following:
1. Housing development projects that are developed pursuant to the terms of a development agreement, provided that such housing development projects shall comply with any affordable housing requirements included in the development agreement.
 2. Housing development tentative maps or vesting tentative maps exempted by Government Code Section 66474.2 or 66498.1, provided that such maps shall comply with any predecessor ordinance in effect on the date the application for the map was deemed complete.
- B. Inclusionary Requirements. Unless an alternative is elected pursuant to Section 17.31.050 of this Chapter, the following inclusionary requirements shall apply to for-sale and rental housing development projects:
1. For-sale Developments. A for-sale inclusionary housing development shall provide the following inclusionary lots or units:

- a. A for-sale housing development with five (5) to ten (10) primary dwelling units or lots must provide fifteen percent (15%) of the proposed units at affordable ownership costs for moderate income households.
 - b. A for-sale housing development of eleven (11) or more primary dwelling units or lots must provide ten percent (10%) of the units or lots at affordable ownership costs for moderate income households and five percent (5%) of the units or lots at affordable ownership costs for lower income households.
- 2. Rental Developments. A rental inclusionary housing development with five (5) or more primary dwelling units must provide fifteen percent (15%) of the units at affordable rents to very low income households.
- C. Calculation of Inclusionary Requirement. For purposes of calculating the number of inclusionary units required by this section, any calculations resulting in fractional units of one-half or greater shall be rounded to the next larger integer. If the calculation of the required total number of inclusionary units results in a fraction of less than one-half, the fractional amount shall be provided to the City through payment of an in-lieu fee established by the City Council. For density bonus projects per Chapter 17.29, density bonus units shall not be counted when determining the minimum inclusionary housing requirement.
- D. Contemporaneous construction of five (5) or more primary dwelling units on a lot, or on contiguous lots for which there is evidence of common ownership or control, even though not covered by the same City land use approval, shall also be considered a single housing development. Construction shall be considered contemporaneous if any building permits are issued within five (5) years following the date of completion of any earlier construction.
- E. If an inclusionary housing development requests a density bonus pursuant to Chapter 17.29 of this Title, inclusionary units may be considered target units for purposes of qualifying for a density bonus only if such inclusionary units meet all of the applicable requirements for target units in Chapter 17.29 of this Title and State Density Bonus Law.

17.31.040 - Inclusionary housing incentives.

The following incentives shall apply to all inclusionary housing developments that provide one or more inclusionary units in accordance with the provisions of this Chapter:

- A. Single-family detached inclusionary units may be constructed on smaller lots than the market-rate units in the same housing development, but the lots may be no smaller than the minimum standard for the applicable zoning district, except as may be modified by an eligible density bonus request pursuant to Chapter 17.29 of this Title or other provisions of this Municipal Code that address reduction of minimum lot sizes.
- B. The square footage of the inclusionary units should be comparable to the market-rate units in the same residential development. However, at the discretion of the Community Development Director, smaller units may be provided, as long as the total inclusionary square footage provided remains comparable, yielding additional units.
- C. Inclusionary units may have different finishes and features than market-rate units, including but not limited to interior finishes, fixtures, or appliances, than market-rate units in the same residential development, as long as the finishes and features are durable and of good quality, as determined by the Community Development Director.
- ~~D. For for sale inclusionary housing developments, accessory dwelling units may be proposed as inclusionary units. Such accessory dwelling units must comply with the requirements of Chapter 17.43 of this title. Accessory dwelling units shall be rented or sold, consistent with Chapter 17.43, at~~

~~affordable rents or affordable ownership costs per Section 17.31.030 of this Chapter, as specified in a regulatory agreement, covenant, or other document approved by the City Council pursuant to Section 17.31.060 of this chapter.~~

17.31.050 - Alternatives to constructing inclusionary units

- A. An applicant for a rental inclusionary housing development, or an applicant for a for-sale inclusionary housing development of fifteen or fewer primary dwellings or lots may, at the sole discretion of the applicant, elect to pay an in-lieu fee as established by resolution of the City Council, for each required inclusionary unit to the Brisbane Housing Authority's Low and Moderate Income Housing Fund, instead of constructing the inclusionary units within the residential development. The in-lieu fee shall be paid prior to issuance of the building permit, unless applicable State law requires an different payment timing.
- B. An applicant for a rental or for-sale housing development may request City Council approval of one or more of the following as an alternative to constructing the inclusionary units within the housing development or paying an in-lieu fee, which request shall be described within the affordable housing plan for inclusionary units prepared pursuant to Section 17.31.060 of this Chapter. City Council approval of such a request shall be based on findings that 1) the outcome for the City is superior in terms of the number and affordability of affordable units that would be created, or 2) construction of the required inclusionary units within the market-rate development would be infeasible or present unreasonable hardship in light of such factors as project size, site constraints, market competition, price and product type disparity, applicant capability, and financial subsidies available. Evidence must be submitted with the affordable housing plan required by Section 17.31.060 of this Chapter.
 1. Off-Site Construction. The applicant may request to construct some or all of the inclusionary units at a location within the City outside of the housing development site. Off-site construction alternatives include alternatives where parcelization of the subject property is required to create a separate parcel. Off-site inclusionary units shall be located on sites that are compatible with adjacent land uses, appropriately zoned for the intended residential development, and are in proximity to or will provide access to employment opportunities, urban services, major roads or other public transit facilities.
 2. Off-Site Preservation. The applicant may request to create inclusionary units off-site through the purchase and conversion of existing market-rate units to affordable units, either by the applicant or by a not-for-profit entity. The total square footage must, at minimum, equal the square footage that would have been expected on-site, at affordability levels that meet or exceed the on-site requirements. The off-site units must be purchased prior to the building permit for the inclusionary housing development. The off-site preservation option must be approved by the City Council, and the Community Development Director may set requirements related to the rehabilitation and condition of the property and the protection and/or temporary relocation of existing tenants.
 3. Dedication of Land. The applicant may dedicate land within the City that is suitable for affordable housing development to the City or to the designee of the City.. The value of the land shall be not less than the sum of the in-lieu fee that would be due under Section 17.31.050 of this Chapter. The valuation of any land offered in-lieu shall be determined by an appraisal made by an appraiser mutually agreed upon by the City and the applicant. Costs associated with the appraisal shall be borne by the applicant. The timing of the land dedication shall be at or before the first approval of the inclusionary housing development. Factors considered by the Council may include but are not

limited to general location, access to transit, buildability, current zoning, and the number of units that could be built at the location.

4. Funding of Affordable or Special Needs Housing Project. The applicant may make a contribution to a special needs housing project or facility (shelter, transitional housing, or similar) in the City in an amount equivalent to the in-lieu fee payment due under subsection A of this Section 17.31.050. The contribution must be made prior to receipt of the building permit for the inclusionary housing development.
5. In-Lieu Fee for Certain For-Sale Developments. An applicant for a for-sale inclusionary housing development of more than fifteen primary dwelling units or lots may request Council approval to pay an in-lieu fee payment rather than construct affordable units with the project.

17.31.060 - Affordable housing plan for inclusionary units.

- A. An affordable housing plan for inclusionary units shall be submitted as part of the application for first approval of any inclusionary housing development, except where payment of an in-lieu fee is elected by the applicant pursuant to Section 17.31.050.A of this Chapter. No application for a first approval may be deemed complete unless an affordable housing plan, if required, is submitted conforming to the provisions of this Chapter.
- B. If the applicant has requested a density bonus pursuant to Chapter 17.29 of this Code, the affordable housing plan required under this Section shall be combined with the affordable housing plan for target units required pursuant to Section 17.29.040 of this Code.
- C. The affordable housing plan for inclusionary units shall include the following information:
 1. For housing developments proposing to construct the inclusionary units within the development, the affordable housing plan shall specify, at the same level of detail as the application for the housing development:
 - a. The number, type, tenure, household income categories, number of bedrooms and baths, approximate location, size, and design (including finishes and features) of all inclusionary units;
 - b. Construction phasing of inclusionary units in relation to market-rate units and overall construction schedule. If the developer proposes to construct the inclusionary units in separate phases from the market-rate unit construction, the affordable housing plan shall specify the security to be provided to the City to ensure that the inclusionary units will be constructed, and explain how the proposed phasing would provide greater public benefit than providing the inclusionary units concurrently with the market-rate units;
 - c. Preliminary marketing plan indicating general approach to marketing inclusionary units. The final marketing plan may be deferred to prior to first building permit issuance, subject to Community Development Director approval, including the manner in which inclusionary units will be offered to the public in a nondiscriminatory and equitable manner and the method of marketing inclusionary units after initial occupancy is secured;
 - d. A financing mechanism, the particulars and the amount of which shall be determined by the City at the time the affordable housing plan is approved, to cover the City's costs for the on-going administration and monitoring of the affordability provisions applicable to the inclusionary units, except where prohibited by State law.
 2. If an applicant requests City Council approval of alternatives to constructing the inclusionary units within a housing development pursuant to subsection 17.31.050.B of this Chapter, the affordable housing plan shall describe the requested alternatives.

3. If the applicant requests use of different finishes and features than market-rate units as addressed in Section 17.31.040, the affordable housing plan shall describe the request.
- D. The affordable housing plan for inclusionary units shall be reviewed simultaneously with any other permit applications associated with the first approval for the inclusionary housing development.

17.31.070 – Adjustment or reduction of inclusionary housing requirement.

- A. An applicant may request City Council approval of an adjustment or reduction of the inclusionary housing requirements of this Chapter if an applicant demonstrates that the requested adjustment or reduction would better implement the goals, objectives, and policies of the City's general plan housing element, which encourages the provision of housing affordable to a variety of household income levels, seniors, and persons with disabilities. The City Council, in its sole discretion, will determine whether to approve the applicant's request based on the City's progress in meeting its housing goals, objectives, and policies at the time the request is made.
- B. Any request for an adjustment or reduction under this section shall be submitted concurrently with the affordable housing plan required by Section 17.31.060 of this Chapter. The request for a reduction or adjustment shall set forth in detail the factual basis for the adjustment or reduction.

17.31.080 - Affordable housing agreement.

- A. Applicability. Recordation of an affordable housing agreement shall be made a condition of the first approval for all inclusionary housing developments. The affordable housing agreement shall be recorded prior to, or concurrently with, the final or parcel map, or, where the inclusionary housing development does not require a map, prior to issuance of a building permit for any structure in the inclusionary housing development. The affordable housing agreement shall run with the land and bind all future owners and successors in interest.
- B. The affordable housing agreement shall be in a form provided by the City and shall include the following, without limitation:
 1. All information provided in the affordable housing plan pursuant to Sections 17.31.060 of this Chapter.
 2. The household income categories of the inclusionary units, consistent with the requirements of Section 17.31.030 of this Chapter or any alternative requirements pursuant to Section 17.31.050 of this Chapter.
 3. Continued affordability of the inclusionary units, as follows:
 - a. For-Sale Inclusionary Units. The affordable housing agreement shall require that a resale restriction agreement, in a form approved by the City, be recorded against each for-sale inclusionary unit when the unit is first transferred to an eligible purchaser. The resale restriction agreement shall provide that inclusionary units in for-sale housing developments shall remain affordable in perpetuity and that the affordability provisions be applicable to any subsequent transferees or successors in interest.

The resale restriction agreement shall also provide that the for-sale inclusionary unit shall not be rented.
 - b. Rental Inclusionary Units. The affordable housing agreement shall be recorded against each inclusionary housing development containing rental units to ensure that the inclusionary units remain affordable in perpetuity.

Rental inclusionary units that are later converted to for-sale units, e.g., converted to condominiums, and then sold shall be sold as for-sale inclusionary units and the requirements of subparagraph a of paragraph 3 of subsection B of this Section shall apply.

4. The affordable housing agreement shall specify that no household shall be permitted to begin occupancy of an inclusionary unit unless the City or the City's designee has approved the household's eligibility.
 5. Affordable housing agreements for inclusionary housing developments intended to be occupied by households with one or more members who are sixty-two (62) years of age or older shall provide that dwelling units in the residential development shall be occupied by persons eligible to reside in such a project.
 6. The affordable housing agreement shall include provisions requiring maintenance of records to demonstrate compliance with this Chapter.
 7. The affordable housing agreement shall include a description of remedies for breach of the agreement by either party. The City may identify tenant households or qualified purchaser households as third party beneficiaries under the agreement.
- D. The affordable housing agreement shall include any other provisions determined necessary by the City Attorney to ensure implementation and compliance with this Chapter.

17.31.090 - Implementation and enforcement.

- A. The City shall prepare guidelines to further implement this ordinance. These guidelines shall include, but are not limited to, the following:
 1. The form and contents of the affordable housing agreement and any resale restriction, including provisions for successors in interest and other ownership transfers;
 2. The form and contents of the final marketing plan and resident selection process;
 3. Procedures for setting rents and sales prices for the inclusionary units;
 4. Procedures for qualifying tenant households and prospective purchaser households of inclusionary units, including any preferences;
 5. Compliance and monitoring procedures to assure that affordability restrictions are maintained;
 6. Resale and subordination procedures for inclusionary for-sale units;
 7. The establishment of any fees to recoup the City's costs for the ongoing administration and monitoring of the affordability provisions of the inclusionary units, except where prohibited by State law.
- B. No permit, license, subdivision map, or other approval or entitlement for an inclusionary housing development shall be issued, including without limitation a final inspection for occupancy, until all requirements applicable to the inclusionary housing development at such time pursuant to this Chapter have been satisfied.
 1. No building permit shall be issued for any market-rate unit until the permittee has obtained permits for inclusionary units sufficient to meet the requirements of Section 17.31.030 of this Chapter, and, if a density bonus has been requested pursuant to Chapter 17.29, Section 17.29.030 of this Code. No final inspection for occupancy for any market-rate unit shall be completed until or simultaneously with construction of the inclusionary units required by Section 17.31.030 of this Chapter.

2. The time requirements set forth in this Section for issuance of building permits for market-rate units and for final inspections for occupancy for market-rate units may be modified to accommodate phasing schedules, model variations, or other factors in an inclusionary housing development within the submitted affordable housing plan pursuant to Sections 17.31.060 of this Chapter, if the City determines this will provide greater public benefit and an affordable housing agreement pursuant to Section 17.31.080 of this Chapter has been accepted by the community development director.
- C. Conditions to carry out the purposes of this Chapter shall be imposed on the first approval for an inclusionary housing development and any subsequent approvals.
- D. The City Attorney is authorized to enforce the provisions of this Chapter and all affordable housing agreements, regulatory agreements, resale controls, deeds of trust, or similar documents placed on inclusionary units, by civil action and any other proceeding or method permitted by law.
- E. The City Manager is authorized to execute the resale restriction agreement and any related documents following approval by the Community Development Director and the City Attorney.
- F. Failure of any official or agency to fulfill the requirements of this Chapter shall not excuse any applicant or owner from the requirements of this Chapter.
- G. The remedies provided for herein shall be cumulative and not exclusive and shall not preclude the City from any other remedy or relief to which it otherwise would be entitled under law or equity.

SECTION 3: Where a use permit, design permit or variance approval has been issued through final action by the City prior to the effective date of this Ordinance, or where such planning permit approval is not required and a complete building permit application has been submitted prior to the effective date of this Ordinance, the holder of such use permit, design permit or variance approval or complete building permit application may proceed to construct the improvements or establish the use authorized by such permit or approval and the same shall be exempted from any conflicting regulations that may be contained in this Ordinance.

SECTION 4: If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of Brisbane hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that one or more sections, subsections, sentences, clauses or phrases may be held invalid or unconstitutional.

SECTION 5: This Ordinance shall be in full force and effect thirty days after its passage and adoption.

* * *

The above and foregoing Ordinance was regularly introduced and after the waiting time required by law, was thereafter passed and adopted at a regular meeting of the City Council of the City of Brisbane held on the _____ day of _____, 2025, by the following vote:

AYES:

NOES:
ABSENT:
ABSTAIN:

MAYOR

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

RESOLUTION NO. 2025-RZ-01

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BRISBANE
RECOMMENDING THAT THE CITY COUNCIL OF THE CITY OF BRISBANE ADOPT
AN ORDINANCE TO AMEND THE ZONING ORDINANCE BY ADDING
NEW CHAPTER 17.29 AND AMENDING CHAPTER 17.31 OF
THE BRISBANE MUNICIPAL CODE
CONCERNING DENSITY BONUS AND
INCLUSIONARY HOUSING REQUIREMENTS

WHEREAS, the City adopted an inclusionary housing and density bonus ordinance in 2009, such ordinance being located in Chapter 17.31 of the Brisbane Municipal Code, and that ordinance sets forth inclusionary requirements for rental and for-sale housing projects of six units or more and establishes procedures to implement the State density bonus program for projects of five or more units; and

WHEREAS, in April of 2019, the Planning Commission adopted Resolution RZ-5-18, recommending adoption of zoning text amendments to update the Density Bonus and Inclusionary Housing Ordinance, Chapter 17.31 of the Brisbane Municipal Code, following several study sessions and workshops and pursuant to programs contained in the adopted the 2015-2022 Housing Element and to comply with updates to governing State laws; and

WHEREAS, since April 2019, Council consideration of the ordinance was put on hold due to an evolving regulatory environment at the State level, the 2023-2031 Housing Element process, and efforts to create an Affordable Housing Strategic Plan which included an evaluation of the draft 2019 ordinance's inclusionary housing provisions; and

WHEREAS, the City's adopted, certified 2023-2031 Housing Element of the General Plan contains the programs requiring additional revisions and updates to the City's density bonus and inclusionary housing ordinance, including Program 2.C.1, Program 2.E.4, Program 4.A.11, that weren't captured in the draft 2019 ordinance; and

WHEREAS, the City's Affordable Housing Strategic Plan, accepted by the City Council in November 2023, provided an evaluation of the draft inclusionary housing ordinance and made recommendations for the Planning Commission and City Council to consider in a revised draft ordinance to provide more alternatives and incentives for both rental and for-sale project developers, which analysis is contained in Appendix B to the Affordable Housing Strategic Plan; and

WHEREAS, the Planning Commission considered additional revisions and updates to the draft 2019 ordinance at workshops held on September 26, 2024 and November 14, 2024 pursuant to the 2023-2031 Housing Element, Affordable Housing Strategic Plan, and updates to State law since 2019; and

WHEREAS, on February 27, 2025, the Planning Commission held a public hearing on the attached ordinance (Exhibit A), publicly noticed in compliance with Brisbane Municipal

Reso. 2025-RZ-1
Density Bonus/Inclusionary Housing Ord.

Code Chapters 1.12 and 17.54, at which time any person interested in the matter was given an opportunity to be heard; and

WHEREAS, the attached ordinance (Exhibit A) implements the requirements of the 2023-2031 Housing Element and the recommendations of the Affordable Housing Strategic Plan and updates to State law ; and

WHEREAS, adoption of the attached proposed zoning text amendments can be seen with certainty to have no possibility of significant effect on the environment, the activity is not subject to the California Environmental Quality Act per State CEQA Guidelines Section 15061(b)(3); and

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

AYES: Funke, Gooding, Lau, Patel, Sayasane

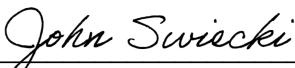
NOES: None

ABSENT: None



Alex Lau
Chairperson

ATTEST:



John Swiecki, Community Development Director

Proposed Fees: Inclusionary Housing and Density Bonus Ordinance Update

Fee	Land Use Type	Amount
In-Lieu Fee	Rental 5+ units	\$378,346 per unit or fraction thereof*
	For Sale, 5-10 units	\$236,558 per unit/lot or fraction thereof*
	For Sale, 11 + units	\$265,717 per unit/lot or fraction thereof*
Administrative Fees		
Review of Eligibility for BMR Unit applicant (Developer)	Rental	\$125 per application
Annual monitoring fee (Developer/Property Management)	Rental	\$150 per unit
Fine for failure to provide documentation for homeowner monitoring (Homeowner)	For-Sale; any size	\$1000 (after 90 days) \$1000 additional for every 30 days
BMR Homeowner Subordination Request (Homeowner)	For-Sale; any size	\$125 per request

* For projects for which application of the inclusionary requirement results in a fractional unit less than 0.5, an in-lieu fee shall be assessed as an equivalent fraction of the fee charged for a whole unit.

ATTACHMENT 4
(Hyperlink)

BMC Chapter 17.31



PLANNING COMMISSION AGENDA REPORT

Meeting Date: February 27, 2025

From: Julia Ayres, Principal Planner

Subject: Zoning Text Amendment 2025-RZ-01; Updates to density bonus and inclusionary housing ordinance

REQUEST

Zoning text amendment to modify the City's density bonus and inclusionary housing ordinance (BMC Ch. 17.31) to comply with current State law, and implement related programs in the 2023-2031 Housing Element, including:

- Program 2.C.1: Amend the density bonus ordinance to:
 - o Allow greater density bonus and/or incentives to housing developments that provide housing units designed and dedicated for use by large families with low- to extremely low- incomes.
 - o Be consistent with Government Code Sections 65915(a) and (g).
 - o Grant a proportionately lower density bonus and/or incentives for affordable housing projects that do not qualify under Government Code Section 65915 due to their small size or other limitations.
 - o Grant a density bonus and/or other incentives greater than required for projects that meet or exceed the qualifications for a density bonus.
- 2.E.4: Update the Inclusionary Housing Ordinance to comply with current State law and consider in-lieu fee alternatives for for-sale developments that may provide additional affordable housing revenue to the City.
- 4.A.11: Amend inclusionary housing ordinance to extend timeframe of affordability covenants on new affordable housing development

RECOMMENDATION

Recommend City Council approval of the draft zoning text amendment to amend the City's density bonus and inclusionary housing ordinance to comply with current State law and implement the City's 2023-2031 Housing Element.

ENVIRONMENTAL DETERMINATION

The proposed adoption of the zoning text amendment to modify the City's existing density bonus and inclusionary housing ordinance (BMC Ch. 17.31) is exempt from CEQA pursuant to CEQA Guidelines §15061(b)(3) because it involves adoption of policies and programs that would not cause a significant effect on the environment.

APPLICABLE CODE SECTIONS

The City's existing density bonus and inclusionary housing ordinance is located in Chapter 17.31 of the Brisbane Municipal Code. State density bonus law is located in Government Code Sections 65915-65918. Other State regulations impacting inclusionary housing regulations are located in Government Code Section 65850. The Housing Accountability Act is located in Government Code Section 65589.5.

ANALYSIS AND FINDINGS

Background

In the fall of 2024, the Planning Commission held two workshops on the proposed updates to the density bonus and inclusionary housing ordinance. Those workshop agenda reports are attached for reference and provide detailed background on the State law context, the Planning Commission's prior study in 2018 and 2019 of the ordinance update, which are summarized below.

State Law Context

California planning and zoning law authorizes cities and counties to adopt ordinances that require residential developments to include a certain percentage of units affordable to moderate and low income households. These types of regulatory requirements are commonly referred to as "inclusionary zoning." Additionally, since the 1970's, California planning law has mandated a "density bonus" program that allows housing developers to achieve greater residential densities than would otherwise be allowed by the applicable zoning ordinance, and diverge from other zoning requirements such as height or parking, in exchange for providing affordable housing units or housing dedicated to special needs groups such as seniors and disabled persons. In adopting ordinances to implement the State density bonus program, cities can adopt regulations that go above and beyond the State provisions, but cannot adopt regulations that limit what State density bonus law allows.

City Ordinance

The City adopted an inclusionary housing and density bonus ordinance in 2009 (BMC Chapter 17.31; Attachment 6). The ordinance sets forth inclusionary requirements for rental and for-sale housing projects of six units or more. The ordinance also sets forth the City's procedures to implement the State density bonus program, which is available for projects of at least five or more units.

2019 Update to City Ordinance

Following adoption of the 2015-2022 Housing Element and new State laws impacting inclusionary zoning and density bonus regulations, in 2018 and 2019 the Planning Commission studied updates to the City ordinance. The Commission recommended Council approval of a draft ordinance ("the 2019 draft ordinance") at a public hearing in April 2019. The April 11, 2019 agenda report is included in Attachment 7; Resolution RZ-5-18 is attached in Attachment 8. The 2019 draft ordinance is also summarized in the September 26, 2024 workshop agenda report (Attachment).

2019-Present

Since April 2019, Council consideration of the ordinance was put on hold due to an evolving regulatory environment at the State level, the 2023-2031 Housing Element process, and efforts to create an Affordable Housing Strategic Plan which included an evaluation of the draft ordinance's inclusionary housing provisions. The Planning Commission hosted two workshops in the fall of 2024 to review and update the draft ordinance in the context of the new 2023-2031 Housing Element, the 2024 Affordable Housing Strategic Plan, and current State law context. The Commission considered and gave direction regarding staff's suggested revisions to the ordinance which are summarized in the Discussion below.

Discussion and Analysis

Proposed Revisions to the Draft Ordinance

The attached draft revised ordinance (Attachments 1 and 2; clean and redlined versions, respectively) applies the Commission's recommendations made at the September 26 and November 14, 2024 workshops to:

- Extend all alternatives to on-site construction of inclusionary units available to rental housing developments in the draft ordinance to for-sale developments;
- Allow for-sale developments to provide required inclusionary units as accessory dwelling units.

These revisions were discussed in detail by the Commission at the fall workshops and are not discussed further in this report. Staff does not recommend moving forward with on-site clustering of inclusionary units in separate buildings at this time, as the off-site construction alternative can encompass this design alternative.

Minor revisions to the ordinance include updates to the Definitions sections of each ordinance to comply with current State law or make elements of the ordinances more clear and internally consistent.

Substantive items the Planning Commission did not address at the previous workshops that arose from City staff review are discussed in detail below.

Density Bonus Ordinance (Proposed BMC Ch. 17.29)

- Section 17.29.030: Revisions to clarify administrative procedures for density bonus requests.

The revised draft ordinance proposes updates to this section which establishes the grounds under which an applicant may make a request for a density bonus, incentive or concession, waiver of development standard, or parking modification and the grounds under which the City can reject such a request per Government Code sections 65915(d) and 65915(e).

Revisions to this section also include deletion of two provisions that were redundant of State density bonus law related to the circumstances under which a developer may request a lesser density bonus than the project is entitled to, and the obligation of the City to approve incentives and concessions, waivers of development standards, and parking modifications are granted when there is no maximum residential density applicable to a site. (Government Code Sections 65915(f)) Eliminating provisions of the draft ordinance which restate State law will minimize changes necessary to the City's ordinance if/when State density bonus law changes.

Revisions to this section also include clarifications to the decision-making body acting on a density bonus request, as appropriate to the permit applicable to the density bonus project (e.g., Housing Development Permits pursuant to Chapter 17.45 of the BMC are reviewed by the Zoning Administrator). These revisions are required to conform to Housing Accountability Act requirements which prohibit application of discretionary review to housing development projects that meet objective standards. Under the HAA, projects that request a density bonus and/or incentives, concessions, development standard waivers or parking modifications cannot be considered to not conform to whatever development standards may be waived or modified as part of the request.

Finally, revisions to this section include addition of a policy to allow a developer of a density bonus project to request one additional incentive or concession if the density bonus project includes family-sized target units (units with three or more bedrooms) designed and dedicated for use by low- to extremely low-income households. This is pursuant to 2023-2031 Housing Element program 2.C.1.

- Section 17.29.040: New section for density bonus application processing procedures to comply with State density bonus law.

The 2019 draft ordinance did not provide clear application processing procedures for density bonus applications as required by State density bonus law (Government Code Section 65915(a)(3)). This new section provides clear application submittal requirements in compliance with State density bonus law, including the affordable housing plan submittal requirements previously located in the affordable housing plan section of the ordinance.

The affordable housing plan requirements have also been adjusted to better comply with fair housing laws pertaining to marketing plans, and to eliminate the requirement for the plan to include methods to verify tenant/homebuyer incomes and procedures for qualifying tenant/homebuyers for units. Staff is proposing that the City establish citywide income verification and qualification procedures housed within implementation guidelines, not the ordinance itself.

- Section 17.29.040 – Deleted section regarding affordable housing plans for density bonus projects.

This section has been deleted. Its components have been inserted into Section 17.29.040 (timing of affordable housing plan approval and the decision-making body, affordable housing plan submittal requirements) and Section 17.29.060 (minor modifications to affordable housing plans by the Community Development Director).

- Section 17.29.050- Affordable housing agreements for density bonus projects.

This section has been modified to extend the affordability term for rental target units from 55 years (minimum term required in State Density Bonus law) to in perpetuity. This aligns the affordability term of target units provided to qualify for a density bonus with the term for rental inclusionary units required in Chapter 17.31. Without this adjustment, a development that provides target density bonus units beyond the inclusionary ordinance's requirements could have affordable units with different affordability terms, which would make management difficult. The current ordinance applies the same affordability terms to density bonus target units and inclusionary units so this change would maintain consistency with the City's current practice.

Other minor revisions include pulling out definitions of terms and conditions under which properties may be transferred to successors in interest, which will be placed into the implementation guidelines referenced previously as certain provisions will be subject to and superseded by State density bonus law. Also eliminated are references to preferences to any households on a city-maintained waiting list for affordable housing. The city does not currently maintain such a waiting list, and there are fair housing concerns generally in using local preferences that must be carefully considered.

- Section 17.29.060- Implementation and enforcement

This section has minor amendments proposed to comply with Housing Element Program 3.A.5 regarding one-to-one replacement of units rented or sold in violation of the affordable housing agreement, and to include provisions for minor modifications to approved affordable housing plans pulled from previous Section 17.29.040 (proposed for deletion as described above). Finally, reference to preparation of implementing guidelines and the general scope of topics addressed in the guidelines is added to this section.

Inclusionary Housing Ordinance (Revised BMC Chapter 17.31)

- 17.31.030 - Inclusionary requirement

This Section has been modified to add a requirement for payment of an in-lieu fee for fractional inclusionary requirements that cannot be rounded up to the nearest whole integer. It also contains minor revisions to reference the alternatives established for all projects in the subsequent Section 17.31.040. Finally, the section has been revised to add clarifying language of what circumstances inclusionary units may be considered as target units under the density bonus ordinance.

- 17.31.040- Inclusionary housing incentives.

This Section has been revised to add back (from the 2009 the ability for for-sale developments to propose accessory dwelling units (ADUs) to meet inclusionary housing requirements, and reference that such units may be rented or sold should the City choose to amend its ADU ordinance to allow separate sale of ADUs. The Commission had indicated interest in allowing affordable ADUs to be sold and staff anticipates bringing this back as part of a comprehensive update to the ADU ordinance later this year. The incentive allowing inclusionary units to be smaller than market-rate units also has been modified to require that the overall square footage of inclusionary units be comparable to the size of market-rate units, which may yield additional affordable units. The Commission discussed this with staff and voiced interest in bringing it forward at the fall 2024 workshops.

- Section 17.31.050- Alternatives to constructing inclusionary units

This Section has been revised to extend all alternatives to for-sale developments. Additional criteria for City Council approval of certain alternatives was also provided. Individual alternatives are discussed below:

- For-sale development in-lieu fee payment: The 2019 draft ordinance allowed rental inclusionary projects (of any size) to opt to pay an in-lieu fee rather than build units on-site. The revised ordinance extends this opt-in alternative to for-sale developments of 15 or fewer lots/units. For-sale developments of 16 or more lots/units could request City Council approval to pay an in-lieu fee. In determining the appropriate scale for-sale developments to opt to pay an in-lieu fee without discretionary approval, staff considered the inclusionary ordinances of other cities in the Peninsula, of which several require payment of in-lieu fees (no on-site construction) for for-sale projects of 10-20 units/lots.
- Off-Site Construction: Clarifying language was added to state that clustering of inclusionary units that would require future subdivisions would be considered under this alternative.
- Off-Site Preservation: This is a new alternative that would be subject to City Council approval and would allow conversion of existing housing units in Brisbane to deed-restricted

affordable units to meet the inclusionary housing requirement for a project, subject to certain conditions.

- Land Dedication: This alternative was amended to add qualifying criteria and standards for land dedication.
- Funding of Special Needs Project: This alternative was amended to clarify the timing at which the project funding would be required.

- Section 17.31.060- Affordable Housing Plan

This Section was amended similarly to the requirements for affordable housing plans for density bonus projects described above to better comply with fair housing laws pertaining to marketing plans, and to eliminate the requirement for the plan to include methods to verify tenant/homebuyer incomes and procedures for qualifying tenant/homebuyers for units. Staff is proposing that the City establish citywide income verification and qualification procedures housed within implementation guidelines. Finally, this Section was modified to eliminate redundant language regarding modified phasing of inclusionary vs. market-rate units, which is addressed in Section 17.31.090.

- Section 17.31.070- Adjustment or reduction of inclusionary housing requirement.

No changes are proposed to this section.

- Section 17.31.080- Affordable housing agreement

This Section has been amended to clarify the affordability term for rental inclusionary units, which is in perpetuity (same term as for for-sale units). Other minor revisions include removing certain terms and definitions related to successors in interest that staff proposes to include in implementation guidelines.

- Section 17.31.090 – Implementation and enforcement

This Section has been modified to reference implementing guidelines similarly to the corresponding Section in the Density Bonus ordinance detailed above.

Implementation

In considering the draft ordinance after the Planning Commission makes its recommendation, the City Council will need to take separate action to adopt an lieu-fee pursuant to §17.31.050 of the revised draft ordinance. The Council will have to make related policy decisions including setting the fee amount. Staff has attached proposed in-lieu fee amounts based on previously completed nexus and feasibility studies (2015), updated consistent with the increase in the Consumer Price Index (CPI; See Attachment 4).

As discussed at previous Commission study sessions and workshops, inclusionary housing in-lieu fees must be programmed to support affordable housing opportunities, including new construction of affordable housing, or other means to achieve the City's housing goals (e.g., down payment loans for low income households, accessory dwelling unit construction loans, etc.).

Housing Development Approvals for Density Bonus and Inclusionary Housing Projects

In 2022, the City adopted provisions for Housing Development Permits for housing developments of two or more units to comply with the Housing Accountability Act, which limits the City's discretionary power to deny permits for housing developments that comply with objective standards. Projects of five or

more units that do not require approval of a tentative map are processed via a Housing Development Permit, which is reviewed and acted on by the Zoning Administrator.

Housing Development Permit procedures are codified in BMC Chapter 17.45. The Zoning Administrator must notice property owners within 300 feet of the proposed project to inform them of the application, describe the project in detail and analyze its consistency with all objective standards in the Brisbane Municipal Code, and describe the Zoning Administrator's proposed action to approve or deny the application. If public comments objecting to staff's analysis of consistency with objective standards are received, the Zoning Administrator must hold a public meeting to review the application and consistency analysis at least 10 and up to 30 days prior notice to property owners within 300 feet of the property.

Consideration of any density bonus request, including incentives and concessions, waivers of development standards, and parking modifications would be described in the public notice distributed to adjacent property owners per the Housing Development Permit procedures. The Zoning Administrator's decision may be appealed to the Planning Commission. Please note that any project that requires a subdivision would continue to be reviewed by the Planning Commission and/or City Council depending on the subdivision type. Further, certain inclusionary housing incentives require City Council approval as outlined in the draft Ordinance, and in that case the City Council would also be the hearing body on the accompanying Housing Development Permit.

ATTACHMENTS

1. Resolution 2025-RZ-01 including the revised ordinance as Exhibit A
2. Redlined version of the draft revised ordinance
3. Preliminary Proposed In-Lieu Fee
4. September 26, 2024 Planning Commission workshop
 - a. [Agenda report](#) (hyperlink)
 - b. [Minutes](#) (hyperlink)
5. November 14, 2024 Planning Commission workshop
 - a. [Agenda report](#) (hyperlink)
 - b. [Meeting video](#) (hyperlink)
6. [BMC Chapter 17.31](#) (hyperlink)
7. April 11, 2019 Planning Commission agenda report
8. Planning Commission Resolution RZ-5-18

Julia Ayres

Julia Ayres, Principal Planner

John Swiecki

John Swiecki, Community Development Director

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RESOLUTION NO. 2025-RZ-01

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BRISBANE
RECOMMENDING THAT THE CITY COUNCIL OF THE CITY OF BRISBANE ADOPT
AN ORDINANCE TO AMEND THE ZONING ORDINANCE BY ADDING
NEW CHAPTER 17.29 AND AMENDING CHAPTER 17.31 OF
THE BRISBANE MUNICIPAL CODE
CONCERNING DENSITY BONUS AND
INCLUSIONARY HOUSING REQUIREMENTS

WHEREAS, the City adopted an inclusionary housing and density bonus ordinance in 2009, such ordinance being located in Chapter 17.31 of the Brisbane Municipal Code, and that ordinance sets forth inclusionary requirements for rental and for-sale housing projects of six units or more and establishes procedures to implement the State density bonus program for projects of five or more units; and

WHEREAS, in April of 2019, the Planning Commission adopted Resolution RZ-5-18, recommending adoption of zoning text amendments to update the Density Bonus and Inclusionary Housing Ordinance, Chapter 17.31 of the Brisbane Municipal Code, following several study sessions and workshops and pursuant to programs contained in the adopted the 2015-2022 Housing Element and to comply with updates to governing State laws; and

WHEREAS, since April 2019, Council consideration of the ordinance was put on hold due to an evolving regulatory environment at the State level, the 2023-2031 Housing Element process, and efforts to create an Affordable Housing Strategic Plan which included an evaluation of the draft 2019 ordinance's inclusionary housing provisions; and

WHEREAS, the City's adopted, certified 2023-2031 Housing Element of the General Plan contains the programs requiring additional revisions and updates to the City's density bonus and inclusionary housing ordinance, including Program 2.C.1, Program 2.E.4, Program 4.A.11, that weren't captured in the draft 2019 ordinance; and

WHEREAS, the City's Affordable Housing Strategic Plan, accepted by the City Council in November 2023, provided an evaluation of the draft inclusionary housing ordinance and made recommendations for the Planning Commission and City Council to consider in a revised draft ordinance to provide more alternatives and incentives for both rental and for-sale project developers, which analysis is contained in Appendix B to the Affordable Housing Strategic Plan; and

WHEREAS, the Planning Commission considered additional revisions and updates to the draft 2019 ordinance at workshops held on September 26, 2024 and November 14, 2024 pursuant to the 2023-2031 Housing Element, Affordable Housing Strategic Plan, and updates to State law since 2019; and

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WHEREAS, the attached ordinance (Exhibit A) implements the requirements of the 2023-2031 Housing Element and the recommendations of the Affordable Housing Strategic Plan and updates to State law ; and

WHEREAS, adoption of the attached proposed zoning text amendments can be seen with certainty to have no possibility of significant effect on the environment, the activity is not subject to the California Environmental Quality Act per State CEQA Guidelines Section 15061(b)(3); and

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

AYES:

NOES:

ABSENT:

Chairperson

ATTEST:

John Swiecki, Community Development Director

draft
ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY OF BRISBANE
ADDING NEW CHAPTER 17.29 AND AMENDING CHAPTER 17.31 OF
THE BRISBANE MUNICIPAL CODE
CONCERNING DENSITY BONUS AND
INCLUSIONARY HOUSING REQUIREMENTS**

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

SECTION 1: A new Chapter 17.29 is added to the Municipal Code to read as follows:

Chapter 17.29 – DENSITY BONUSES

Sections:

17.29.010	Purposes of chapter.
17.29.020	Definitions.
17.29.030	Administration of Density Bonuses.
17.29.040	Application for a Density Bonus.
17.29.050	Affordable housing agreements.
17.29.060	Implementation and enforcement.

17.29.010 – Purposes of chapter.

- A. The City of Brisbane enacts this chapter to implement the goals, objectives, and policies of the City's general plan housing element relative to administering a density bonus program to encourage the provision of housing affordable to a variety of household income levels, seniors, and persons with disabilities.
- B. This chapter is also intended to implement Sections 65915 through 65918 of the California Government Code, or successor statutes and regulations, governing density bonuses and other incentives required by such statutes or regulations.

17.29.020 - Definitions.

- A. Affordable Housing Agreement. A recorded agreement between a property owner and the City to ensure that the density bonus requirements of this Chapter are satisfied.
- B. Affordable Ownership Cost. The affordable ownership cost for for-sale target units shall be as specified in California Health and Safety Code Section 50052.5, as may be amended over time.
- C. Affordable Rent. The affordable rent for rental target units shall be as specified in California Health and Safety Code Section 50053, as may be amended over time.
- D. Approving Authority. The City decision-making body acting on an application for a housing development subject to the requirements of this Chapter, including the City Council, Planning Commission, or Community Development Director.
- E. Base Density. Base density or maximum residential density shall be as defined in the State Density Bonus law.
- F. Child Care Facility. Child care facility shall have the same meaning as defined in the State Density Bonus Law.

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- G. City. The City of Brisbane or the Brisbane Housing Authority.
- H. City Council. The City Council of the City of Brisbane as established in Title 2 of this Code or the Board Members of the Brisbane Housing Authority
- I. City Manager. The City Manager of the City of Brisbane as established in Title 2 of this Code, the City Manager's designee, the Executive Director of the Brisbane Housing Authority or the Executive Director's designee.
- J. Community Development Director. The Director of the Community Development Department responsible for overseeing implementation of Title 17 of this Code, or the Community Development Director's designee.
- K. Density Bonus. Density bonus shall be defined by State Density Bonus Law.
- L. Density Bonus Project. Density bonus project shall mean any parcel map, subdivision map, housing development permit, design permit, building permit, or other city approval which results in a net increase of at least two (2) primary dwelling units and/or residential lots or combination thereof for which a density bonus, incentive or concession, waiver or reduction of development standards, and/or modification of parking standard is requested by the developer pursuant to State Density Bonus Law and this Chapter. A density bonus project may include, but is not limited to, new construction, conversion of existing dwelling units to condominium ownership, subdivision of land to create additional residential lots, conversion of an existing nonresidential building to residential use, and the addition of dwelling units to an existing multifamily dwelling. A density bonus project shall include units or lots intended for sale or for rent.
 - 1. For-Sale Density Bonus Project. A density bonus project that offers dwelling units or lots to the public for purchase.
 - 2. Rental Density Bonus Project. A density bonus project that offers dwelling units to be rented to tenants upon occupancy, whether or not a condominium or subdivision map is recorded as part of the project.
- M. Development Standard. A development standard shall be as defined by the State Density Bonus Law, provided, however, the term "development standard" does not include any of the following:
 - 1. The permitted uses of a site;
 - 2. Any city fees;
 - 3. Affordable housing requirements;
 - 4. Building standards approved by the California Building Standards Commission as provided in California Health and Safety Code Section 18901 et seq.; or
 - 5. The requirements of Brisbane's Green Building Ordinance as set forth in Title 15, Chapter 15.80 of this Code.
- N. Domestic Partner. Domestic partner means two (2) persons who have filed a declaration of domestic partnership with the California Secretary of State pursuant to Division 2.5, beginning with Section 297, of the California Family Code and such registration was in full force and effect at the time of the transfer or on the date of the transferor's death. A copy of the domestic partnership registration shall be provided to the city upon request.
- O. Dwelling Unit. Dwelling unit shall have the meaning set forth in Section 17.02.235 of this Code.

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1. Density Bonus Unit. Those dwelling units granted pursuant to a density bonus requested pursuant to the provisions of this Chapter and State Density Bonus Law.
 2. Market-Rate Unit. Any dwelling unit within a density bonus project that is not a target unit.
 3. Target Unit. Any dwelling unit affordable to moderate and low income households within a density bonus project that qualify the project for a density bonus.
- P. Eligible Household. A household whose household income qualifies the household for occupancy of a target unit.
- Q. Eligible Purchaser. A household whose household income qualifies the household to purchase a for-sale target unit, or a qualified non-profit housing corporation as such term is defined in Section 714.7 of the California Civil Code or successor statute.
- R. First Approval. The first of the following approvals to occur with respect to a density bonus project: subdivision approval, housing development permit, building permit or any other permit or approval under the Brisbane Municipal Code.
- S. Household Income. Household income shall be the gross income of the household as calculated pursuant to Title 25 California Code of Regulations, §6914, as amended, or its successor. regulation. The household income categories addressed in this Chapter shall be defined as follows:
1. Lower Income Household. A household whose income does not exceed the lower income limits applicable to San Mateo County, as published annually by the State of California pursuant to California Code of Regulations, Title 25, Section 6932, as may be amended over time.
 2. Moderate Income Household. A household whose income does not exceed the moderate income limits applicable to San Mateo County, as published annually by the State of California pursuant to California Code of Regulations, Title 25, Section 6932, as may be amended over time.
 3. Very Low Income Household. A very low income household shall be as defined by California Health and Safety Code Section 50105, as may be amended over time.
 4. Extremely Low Income Household. An extremely low income household shall be as defined by Section 50106 of the California Health and Safety Code or successor statute
- T. Housing Authority. "Housing Authority" shall mean the Brisbane Housing Authority, as established by Resolution of the City Council. For the purposes of this Chapter, "Housing Authority" shall have the same meaning as "City."
- U. Incentives or Concessions. Incentives or concessions shall be as defined in the State Density Bonus Law
- V. Maximum Residential Density. Maximum residential density or base density shall be as defined in State Density Bonus Law.
- W. Modified Parking Standards. Modifications to the parking standards that would otherwise apply to a density bonus project under Chapter 17.34 of this Code, as described in the State Density Bonus Law.
- X. Resale Restriction Agreement. A resale restriction agreement shall mean an agreement, covenant, deed of trust, or other document, approved by the City Council, which is executed by the property owner and recorded against each target unit to insure that such unit remains affordable for the applicable term.
- Y. Specific Adverse Impact. A "specific adverse impact" shall have the same meaning as the meaning provided in the Government Code Section 65589.5, as may be amended from time to time, or successor provisions.
- Z. State Density Bonus Law. State Density Bonus Law shall mean Sections 65915 through 65918 of the California Government Code, as may be amended from time to time, or successor statutes

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AA. Waiver or Reduction of Development Standard. Waiver or Reduction of Development Standard shall be as defined in the State Density Bonus Law.

17.29.030 - Administration of Density Bonuses

- A. The City shall grant density bonuses, incentives and concessions, waivers or reductions in development standards, and/or modified parking standards requested by applicants in accordance with the provisions of the State Density Bonus Law and the procedures set forth in this Chapter.
1. The City may deny a request for incentives or concessions only as provided by the State Density Bonus Law.
 2. The City may deny a request for a waiver or reduction of a development standard only as provided by the State Density Bonus Law.
- B. A developer of a project containing between two (2) to four (4) dwelling units or lots may request approval of a density bonus as shown in Table 17.29.030. The decision making body shall waive or reduce any development standard that may preclude development of such a project as set forth in section A of this Section 17.29.030.

Table 17.29.030

Zoning District	Lot Size	Maximum Permitted Residential Density	Percentage low income units	Percentage Density Bonus	Total Units including Density Bonus Units
R-2	4,950-7,499 sq ft	2 units	50%	30%	3 units
R-3	4,950- 5,999 sq ft	3 units	30%	15%	4 units
	6,000- 7,499 sq ft	4 units	50%	15%	5 units

- C. A developer of a density bonus project that exceeds the qualifications for a density bonus per State Density Bonus Law may request that the City grant one additional incentive or concession above the maximum number prescribed by State Density Bonus Law, as applicable to the project.
- D. A developer of a density bonus project may request one additional incentive or concession if the density bonus project includes family-sized target units (units with three or more bedrooms) designed and dedicated for use by low- to extremely low-income households.
- E. Inclusionary units provided in compliance with Chapter 17.31 may be counted as target units for the purposes of calculating a density bonus if they meet requirements for target units established under State Density Bonus Law.
- F. The decision making body for any density bonus project shall be the decision making body specified for the first approval. The City Council shall be the decision-making body for any density bonus projects that include requests of incentives or concessions or waivers of development standards that otherwise require City Council approval under other Chapters of this Municipal Code.
- G. Notwithstanding that an applicant may request direct financial assistance, including that for purchasers of target units, which shall require approval of the City Council, nothing in this section 17.29.030 requires the City to provide direct financial incentives for the housing development, including but not limited to providing to the applicant publicly owned land.
- H. In accordance with the State Density Bonus Law, neither the granting of a concession or incentive, waiver or reduction in development standards, nor the granting of a density bonus, shall be interpreted, in and of itself, to require a general plan amendment, zoning change, or other discretionary approval.

17.29.040 – Application for a Density Bonus.

- A. Application Processing. Applications for density bonuses, incentives, concessions, waivers or reductions in development standards, and/or modifications of parking standards pursuant to the State Density Bonus Law and this Chapter shall be processed in concert with and by the same decision-making body, as any other planning entitlement applications that the density bonus project may require., except where otherwise indicated in Section 17.29.030.
- B. Contents of Application. Applications shall be filed with the Community Development Director on such form as the Director shall prescribe. In addition to the submittal requirements for any other planning entitlement applications or permit approvals the project requires, the application shall include the following information and supporting materials:
 - 1. Current title report(s) for all properties proposed for development, prepared within at least six (6) months of application submittal.
 - 2. A letter signed by the present owner(s) stating what density bonus, incentives and concessions, waivers or modifications of development standards, and/or parking modification are being requested from the City.
 - 3. In the case of a condominium conversion request, such information required by Chapter 17.30 of this Title.
 - 4. A statement describing whether the density bonus project is proposed on any property that has one of the following conditions. If any of the below conditions exist on the property, the application must identify how such units will be replaced in the density bonus project. Such replacement units shall not be counted as target units when calculating the density bonus, unless the density bonus project is 100% affordable.
 - a. Includes a parcel or parcels on which rental dwelling units are presently located that are subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of lower or very low income or if rental dwelling units have been vacated or demolished in the five-year period preceding the application that were at the time subject to a recorded covenant, ordinance or law that restricted rents to levels affordable to persons and families of very low or lower income;
 - b. Includes a parcel or parcels on which rental dwelling units have been subject to any other form of rent or price control through a public agency's exercise of its police power;
 - c. Includes a parcel or parcels on which rental dwelling units are presently occupied by low or very low income households.
 - 5. A detailed vicinity map showing the project location and such details as the location of the nearest commercial retail, transit stop, potential employment locations, park or recreation facilities or other social or community service facilities.
 - 6. A project data table showing the total number of dwelling units proposed on the site and off site, as applicable, including the number of target units and density bonus units, and the project's conformance to all objective development standards.
 - 7. Site plan(s) with accurately dimensioned property lines showing existing and proposed structures and their uses, adjacent structures and their uses, setbacks, adjacent streets, easements, existing and proposed utilities, existing and proposed driveways, and internal circulation and parking.

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8. Floor plans of all existing and proposed structures (with the use of each room/space labeled) and designating target units, as appropriate.
9. Roof plans.
10. Elevations of all sides of the existing and/or proposed structures, identifying colors and materials, and showing the height of structure(s) measured per the definition of building height in Chapter 17.02 of this Title and UBC type of construction. Cross-sections may also be required based upon the complexity of the design.
11. Existing and proposed parking facilities, including the dimensions of parking spaces, number and location of spaces designated as compact or handicapped spaces, and a calculation of the number of parking spaces required by this title or any other applicable regulations;
12. An affordable housing plan that contains all of the following, as applicable to the request:
 - a. The number, type, tenure, household income categories, number of bedrooms and baths, approximate location, size, and design (including finishes and features) of all density bonus units;
 - b. The number, type, tenure, affordability level, number of bedrooms and baths, approximate location, size, and design (including finishes and features) of all target units;
 - c. Construction phasing of target units in relation to market-rate units, if applicable, and overall construction schedule. If the developer proposes to construct the target units in separate phases from the market-rate unit construction, the affordable housing plan shall specify the security to be provided to the City to ensure that the target units will be constructed, and explain how the proposed phasing would provide greater public benefit than providing the target units concurrently with the market-rate units;
 - d. Preliminary marketing plan, indicating general approach to marketing target units in compliance with all fair housing laws. The final marketing plan may be deferred to prior to first building permit issuance, subject to Community Development Director approval, including the manner in which target units will be offered to the public in a nondiscriminatory and equitable manner and the method of marketing target units after initial occupancy is secured;
 - e. A financing mechanism, the particulars and the amount of which shall be determined by the City at the time the affordable housing plan is approved, to cover the City's costs for the on-going administration and monitoring of the affordability provisions applicable to the target units, except where prohibited by State law.
 - f. Description of any requested density bonuses, incentives, concessions, waivers or modifications of development standards, and/or modified parking standards and documentation of eligibility for the request(s), including a description of the base density without the requested density bonus, the number and location of all target units qualifying the project for a density bonus, the level of affordability of the target units, and identification of the density bonus units.
 - i. For all requested incentives and concessions, reasonable documentation demonstrating eligibility for the incentive or concession or to demonstrate that the incentive or concession meets the definition set forth in the State Density Bonus Law. For requests to allow mixed-use zoning in conjunction with the density bonus project, the application shall additionally include documentation demonstrating that the proposed commercial, office, industrial, or other land uses will reduce the cost of the density bonus project development and that the commercial, office, industrial, or other land uses are compatible with the density bonus project and the existing or planned

development in the area where the proposed project will be located. The cost of reviewing any documentation submitted in support of a request for a concession or incentive, including but not limited to the cost to the City of hiring a consultant to review the documentation, shall be borne by the applicant.

- ii. For all requested waivers or reductions of development standards, written evidence that (i) the development standards for which a waiver or reduction is requested will physically preclude the construction of the housing development at the densities or with the incentives or concessions permitted by this chapter; (ii) the waiver or reduction would not have a specific, adverse impact, or, if a specific, adverse impact would occur, that the impact could feasibly be mitigated or avoided; (iii) the waiver or reduction would not have an adverse impact on any real property that is listed in the California Register of Historical Resources; and (iv) the waiver or reduction would not be contrary to any state or federal law.
 - iii. If a density bonus, incentive or concession is requested for a land donation, the application shall show the location of the land to be dedicated and provide evidence that each of the conditions for such land donation set forth in the State Density Bonus Law will be met.
 - iv. If a density bonus, incentive or concession is requested for a child care facility, the application shall show the location and square footage of the child care facility and describe how all requirements of the State Density Bonus law for such density bonus, incentive or concession are met by the application.
- B. **Application Fee.** The application shall be accompanied by the payment of a fee in such amount as established from time to time by resolution of the City Council. In addition, the applicant shall also deposit such amounts as the Community Development Director may require from time to time to cover the cost of any environmental or legal review, geotechnical and engineering reports, review of green building documentation, and such other studies that may be required by the City in connection with the processing of the application or related planning entitlements.
- C. **Newly Constructed Condominiums.** In addition to the information listed in this section, an application for a density bonus project for newly constructed condominiums, as defined in 17.30.020.A of this title, shall also include the materials set forth in Section 17.30.040.
- D. **Streamlined Housing Development Projects.** Density bonus projects that are streamlined housing development projects, as defined in Chapter 17.02 of this Title, shall include additional supporting documentation to demonstrate eligibility as set forth on a form prescribed by the city.

17.29.050 - Affordable housing agreements.

- A. **Applicability.** Recordation of an affordable housing agreement shall be made a condition of the first approval for all density bonus projects to ensure implementation of all requirements of this Chapter. The affordable housing agreement shall be recorded prior to, or concurrently with, the final subdivision or parcel map, or, where the housing development does not include a map, prior to issuance of a building permit for any structure in the housing development. The affordable housing agreement shall run with the land and bind all future owners and successors in interest.
- B. The affordable housing agreement shall be in a form provided by the City and shall include the following, without limitation:
 - 1. All information provided in the affordable housing plan pursuant to Section 17.29.040 of this Chapter.

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2. The household income categories of the target units, consistent with the requirements of the State Density Bonus law.
3. Continued affordability of the target units, as follows:
 - a. For-Sale Target Units. The affordable housing agreement shall require that a resale restriction agreement, in a form approved by the City, be recorded against each for-sale target unit when the target unit is first transferred to an eligible purchaser. The resale restriction agreement shall provide that target units in for-sale density bonus projects shall remain affordable in perpetuity and that the affordability provisions be applicable to any subsequent transferees or successors in interest.

The resale restriction agreement shall also provide that the for-sale target unit shall not be rented.
 - b. Rental Target Units. The affordable housing agreement shall be recorded against each rental density bonus project containing rental target units to ensure that the target units remain affordable in perpetuity.

Rental target units that are later converted to for-sale units, e.g., converted to condominiums, and then sold shall be sold as for-sale target units and the requirements of subparagraph a of paragraph 2 of subsection C of this Section shall apply.
4. The affordable housing agreement shall specify that no household shall be permitted to begin occupancy of a target unit unless the Community Development Director has approved the household's eligibility
5. Affordable housing agreements for land dedication, child care facilities, and condominium conversions shall ensure the continued compliance with all conditions included in State Density Bonus Law.
6. Affordable housing agreements for senior citizen housing developments shall provide that units in the residential development shall be occupied by senior citizens or other persons eligible to reside in such a project as established by the State Density Bonus Law.
7. The affordable housing agreement shall include provisions requiring maintenance of records to demonstrate continued compliance with this Chapter over long-term operation of the density bonus project.
8. The affordable housing agreement shall include a description of remedies for breach of the affordable housing agreement by either party. The City may identify tenants or qualified purchasers as third party beneficiaries under the agreement.
- C. The affordable housing agreement shall include any other provisions determined necessary by the City Attorney to ensure implementation and compliance with the State Density Bonus Law and this Chapter.

17.29.060 - Implementation and enforcement.

- A. No permit, license, subdivision map, or other approval or entitlement for a density bonus project shall be issued, including without limitation a final inspection for occupancy, until all requirements applicable to the density bonus project at such time pursuant to this Chapter have been satisfied.
 1. Except where authorized by the approved affordable housing plan pursuant to Section 17.29.040, no building permit shall be issued for any market rate unit until the permittee has obtained permits for target units sufficient to meet the requirements of Section 17.29.030 of this Chapter, and, if the project includes inclusionary housing units pursuant to Chapter 17.31 of this Code. No final inspection for occupancy for any market-rate unit shall be completed until the permittee has

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constructed the target units required by Section 17.29.030 of this Chapter, unless so authorized in the approved affordable housing plan.

2. The time requirements set forth in this Section for issuance of building permits for market-rate units and for final inspections for occupancy for market-rate units may be modified to accommodate phasing schedules, model variations, or other factors in a density bonus project within the submitted affordable housing plan pursuant to Sections 17.29.030 of this Chapter, if the City determines this will provide greater public benefit and an affordable housing agreement pursuant to Section 17.29.050 of this Chapter has been approved by the decision making body for the first approval for the density bonus project.
- B. Conditions to carry out the purposes of this Chapter shall be imposed on the first approval for a density bonus project.
 - C. The City Attorney is authorized to enforce the provisions of this Chapter and all affordable housing agreements, regulatory agreements, resale controls, deeds of trust, or similar documents placed on target units, by civil action and any other proceeding or method permitted by law.
 - D. The City Manager is authorized to execute any agreement and any related documents following approval such agreement by the Community Development Director and the City Attorney.
 - E. Failure of any official or agency to fulfill the requirements of this Chapter shall not excuse any applicant or owner from the requirements of this Chapter.
 - F. The remedies provided for herein shall be cumulative and not exclusive and shall not preclude the City from any other remedy or relief to which it otherwise would be entitled under law or equity.
 - G. Any target unit that is sold or rented in violation of the affordability requirements established in the approved affordable housing agreement or resale restriction agreement shall be replaced at a one-to-one ratio. The means of replacement shall be wholly subject to the discretion of the City Manager
 - H. A request for a minor modification of an approved affordable housing plan may be granted by the community development director if the modification is substantially in compliance with the original affordable housing plan and conditions of approval for the density bonus project. A minor modification is technical in nature, as opposed to substantive or material. Substantive or material changes to the affordable housing plan shall be processed in the same manner as the original plan.
 - I. The City shall prepare guidelines to further implement this ordinance. These guidelines shall include, but are not limited to, the following:
 1. The form and contents of the affordable housing agreement and any resale restriction, including provisions for successors in interest and other ownership transfers for for-sale target units;
 2. The form and contents of the final marketing plan and resident selection process;
 3. Procedures for setting rents and sales prices for the target units;
 4. Procedures for qualifying tenant households and prospective purchaser households of target units, including any preferences;
 5. Compliance and monitoring procedures to assure that affordability restrictions are maintained;
 6. Resale and subordination procedures for for-sale target units;
 7. The establishment of any fees to recoup the City's costs for the ongoing administration and monitoring of the affordability provisions of the target units, except where prohibited by State law.

SECTION 2: Chapter 17.31 of the Municipal Code is amended in its entirety to read as follows:

Chapter 17.31 - INCLUSIONARY HOUSING

Sections:

17.31.010	Basis and purposes.
17.31.020	Definitions.
17.31.030	Inclusionary requirement.
17.31.040	Inclusionary housing incentives.
17.31.050	Alternatives to constructing inclusionary units.
17.31.060	Affordable housing plan for inclusionary units.
17.31.070	Adjustment or reduction of inclusionary housing requirement.
17.31.080	Affordable housing agreement
17.31.090	Implementation and enforcement.

17.31.010 - Basis and purposes.

- A. Rental and owner-occupied housing in the City has become steadily more expensive. Housing costs have gone up faster than incomes for many groups in the community.
- B. Many persons who work in the City, who have grown up or have family ties in the City, who already live in the City but must move due to increasing housing costs, or who wish to live in the City for other reasons, cannot afford housing in the city.
- C. Federal and state government programs do not provide nearly enough affordable housing opportunities or subsidies to satisfy the housing needs of moderate, lower or very low income households.
- D. Rising land prices have been a key factor in preventing development of new affordable housing. New housing construction in the City which does not include inclusionary units aggravates the existing shortage of affordable housing by absorbing the supply of available residential land. This reduces the supply of land for affordable housing and increases the price of remaining residential land. Providing the inclusionary units required by this Chapter will help to ensure that part of the City's remaining developable land is used to provide affordable housing.
- E. The City wishes to retain an economically balanced community, with housing available to very low income, lower income and moderate income households. The City's general plan implements the established policy of the State of California that each community should foster an adequate supply of housing for households at all economic levels.
- F. An economically balanced community is only possible if part of the new housing built in the City is affordable to households with limited incomes. Requiring builders of new housing to include some housing affordable to households at a range of incomes is fair, not only because new development without inclusionary units contributes to the shortage of affordable housing, but also because zoning and other ordinances concerning new housing in the City should be consistent with the community's goal to foster an adequate supply of housing for households at all economic levels.
- G. In enacting this Chapter it is also the intent of the City of Brisbane to implement the goals, objectives, and policies of the City's general plan housing element, which encourages the provision of housing affordable to a variety of household income levels, seniors, and persons with disabilities, and identifies an inclusionary housing policy one method to encourage the development of affordable housing.

17.31.020 - Definitions.

- A. **Affordable Housing Agreement.** A recorded agreement between a property owner and the City to ensure that the inclusionary housing requirements of this Chapter are satisfied.
- B. **Affordable Ownership Cost.** The affordable ownership cost for for-sale target units shall be as specified in California Health and Safety Code Section 50052.5, as may be amended over time.
- C. **Affordable Rent.** The affordable rent for rental target units shall be as specified in California Health and Safety Code Section 50053, as may be amended over time.
- D. **Approving Authority.** The City decision-making body acting on an application for a housing development subject to the requirements of this Chapter, including the City Council, Planning Commission, or Community Development Director.
- E. **City.** The City of Brisbane or the Brisbane Housing Authority.
- F. **City Council.** The City Council of the City of Brisbane as established in Title 2 of this Code or the Board Members of the Brisbane Housing Authority.
- G. **City Manager.** The City Manager of the City of Brisbane as established in Title 2 of this Code, the City Manager's designee, the Executive Director of the Brisbane Housing Authority or the Executive Director's designee.
- H. **Community Development Director.** The Director of the Community Development Department responsible for overseeing implementation of Title 17 of this Code, or the Community Development Director's designee.
- I. **Domestic Partner.** Domestic partner means two (2) persons who have filed a declaration of domestic partnership with the California Secretary of State pursuant to Division 2.5, beginning with Section 297, of the California Family Code and such registration was in full force and effect at the time of the transfer or on the date of the transferor's death. A copy of the domestic partnership registration shall be provided to the city upon request.
- J. **Dwelling Unit.** Dwelling unit shall have the meaning set forth in Section 17.02.235 of this Code.
 - 1. **Inclusionary Unit.** Dwelling unit within a housing development that is required by Section 17.31.030 of this Chapter to be rented at affordable rents or sold at an affordable ownership cost to specified households. Inclusionary units may be considered target units as that term is defined in Chapter 17.29 of this Code.
 - 2. **Market-Rate Unit.** Any unit within a housing development that is not an inclusionary unit.
- K. **Eligible Household.** A household whose household income qualifies the household for occupancy of inclusionary units provided under this Chapter.
- L. **Eligible Purchaser.** A household whose household income qualifies the household to purchase a for-sale inclusionary unit, or a qualified non-profit housing corporation as such term is defined in Section 714.7 of the California Civil Code or successor provisions.
- M. **First Approval.** The first of the following approvals to occur with respect to an inclusionary housing development: subdivision approval, housing development permit, building permit or any other permit or approval under the Brisbane Municipal Code.
- N. **Household Income.** Household income shall be the gross income of the household as calculated pursuant to Title 25 California Code of Regulations, §6914, as amended, or its successor. The household income categories addressed in this Chapter shall be defined as follows:

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1. Lower Income Household. A household whose income does not exceed the lower income limits applicable to San Mateo County, as published annually by the State of California pursuant to California Code of Regulations, Title 25, Section 6932, as may be amended over time.
 2. Moderate Income Household. A household whose income does not exceed the moderate income limits applicable to San Mateo County, as published annually by the State of California pursuant to California Code of Regulations, Title 25, Section 6932, as may be amended over time.
 3. Very Low Income Household. A very low income household shall be as defined by California Health and Safety Code Section 50105, as may be amended over time.
- O. Housing Authority. "Housing Authority" shall mean the Brisbane Housing Authority, as established by Resolution of the City Council. For the purposes of this Chapter, "Housing Authority" shall have the same meaning as "City."
- P. Inclusionary Housing Development. Any parcel map, subdivision map, use permit, building permit, or other City approval which results in a net increase of at least five (5) or more primary dwelling units and/or residential lots or combination thereof intended for sale or for rent. An inclusionary housing development project may include, but is not limited to, new construction, conversion of existing dwelling units to condominium ownership, creation of residential lots, conversion of an existing nonresidential building to residential use, and the addition of primary dwelling units to an existing multifamily dwelling. .
1. For-Sale Inclusionary Housing Development. An inclusionary housing development, or portion thereof, where the dwelling units or lots are offered to the public for purchase.
 2. Rental Inclusionary Housing Development. An inclusionary housing development, or portion thereof, comprised of dwelling units which are intended to be rented, or are actually offered for rent, to tenants upon completion, whether or not a condominium or subdivision map is recorded as part of the housing development.
- Q. Resale restriction agreement. An agreement, covenant, deed of trust, or other document, approved by the City Council, which is executed by the property owner and recorded against each inclusionary unit to insure that such unit remains affordable for the applicable term.

17.31.030 - Inclusionary requirement.

- A. Applicability. The inclusionary requirements established in this section shall apply to all housing development projects with five (5) or more primary dwelling units or residential lots, except for the following:
1. Housing development projects that are developed pursuant to the terms of a development agreement, provided that such housing development projects shall comply with any affordable housing requirements included in the development agreement.
 2. Housing development tentative maps or vesting tentative maps exempted by Government Code Section 66474.2 or 66498.1, provided that such maps shall comply with any predecessor ordinance in effect on the date the application for the map was deemed complete.
- B. Inclusionary Requirements. Unless an alternative is elected pursuant to Section 17.31.050 of this Chapter, the following inclusionary requirements shall apply to for-sale and rental housing development projects:
1. For-sale Developments. A for-sale inclusionary housing development shall provide the following inclusionary lots or units:

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- a. A for-sale housing development with five (5) to ten (10) primary dwelling units or lots must provide fifteen percent (15%) of the proposed units at affordable ownership costs for moderate income households.
 - b. A for-sale housing development of eleven (11) or more primary dwelling units or lots must provide ten percent (10%) of the units or lots at affordable ownership costs for moderate income households and five percent (5%) of the units or lots at affordable ownership costs for lower income households.
- 2. Rental Developments. A rental inclusionary housing development with five (5) or more primary dwelling units must provide fifteen percent (15%) of the units at affordable rents to very low income households.
- C. Calculation of Inclusionary Requirement. For purposes of calculating the number of inclusionary units required by this section, any calculations resulting in fractional units of one-half or greater shall be rounded to the next larger integer. If the calculation of the required total number of inclusionary units results in a fraction of less than one-half, the fractional amount shall be provided to the City through payment of an in-lieu fee established by the City Council. For density bonus projects per Chapter 17.29, density bonus units shall not be counted when determining the minimum inclusionary housing requirement.
- D. Contemporaneous construction of five (5) or more primary dwelling units on a lot, or on contiguous lots for which there is evidence of common ownership or control, even though not covered by the same City land use approval, shall also be considered a single housing development. Construction shall be considered contemporaneous if any building permits are issued within five (5) years following the date of completion of any earlier construction.
- E. If an inclusionary housing development requests a density bonus pursuant to Chapter 17.29 of this Title, inclusionary units may be considered target units for purposes of qualifying for a density bonus only if such inclusionary units meet all of the applicable requirements for target units in Chapter 17.29 of this Title and State Density Bonus Law.

17.31.040 - Inclusionary housing incentives.

The following incentives shall apply to all inclusionary housing developments that provide one or more inclusionary units in accordance with the provisions of this Chapter:

- A. Single-family detached inclusionary units may be constructed on smaller lots than the market-rate units in the same housing development, but the lots may be no smaller than the minimum standard for the applicable zoning district, except as may be modified by an eligible density bonus request pursuant to Chapter 17.29 of this Title or other provisions of this Municipal Code that address reduction of minimum lot sizes.
- B. The square footage of the inclusionary units should be comparable to the market-rate units in the same residential development. However, at the discretion of the Community Development Director, smaller units may be provided, as long as the total inclusionary square footage provided remains comparable, yielding additional units.
- C. Inclusionary units may have different finishes and features than market-rate units, including but not limited to interior finishes, fixtures, or appliances, than market-rate units in the same residential development, as long as the finishes and features are durable and of good quality, as determined by the Community Development Director.
- D. For for-sale inclusionary housing developments, accessory dwelling units may be proposed as inclusionary units. Such accessory dwelling units must comply with the requirements of Chapter 17.43 of this title. Accessory dwelling units shall be rented or sold, consistent with Chapter 17.43, at

affordable rents or affordable ownership costs per Section 17.31.030 of this Chapter, as specified in a regulatory agreement, covenant, or other document approved by the City Council pursuant to Section 17.31.060 of this chapter.

17.31.050 - Alternatives to constructing inclusionary units

- A. An applicant for a rental inclusionary housing development, or an applicant for a for-sale inclusionary housing development of fifteen or fewer primary dwellings or lots may, at the sole discretion of the applicant, elect to pay an in-lieu fee as established by resolution of the City Council, for each required inclusionary unit to the Brisbane Housing Authority's Low and Moderate Income Housing Fund, instead of constructing the inclusionary units within the residential development. The in-lieu fee shall be paid prior to issuance of the building permit, unless applicable State law requires an different payment timing.
- B. An applicant for a rental or for-sale housing development may request City Council approval of one or more of the following as an alternative to constructing the inclusionary units within the housing development or paying an in-lieu fee, which request shall be described within the affordable housing plan for inclusionary units prepared pursuant to Section 17.31.060 of this Chapter. City Council approval of such a request shall be based on findings that 1) the outcome for the City is superior in terms of the number and affordability of affordable units that would be created, or 2) construction of the required inclusionary units within the market-rate development would be infeasible or present unreasonable hardship in light of such factors as project size, site constraints, market competition, price and product type disparity, applicant capability, and financial subsidies available. Evidence must be submitted with the affordable housing plan required by Section 17.31.060 of this Chapter.
 1. Off-Site Construction. The applicant may request to construct some or all of the inclusionary units at a location within the City outside of the housing development site. Off-site construction alternatives include alternatives where parcelization of the subject property is required to create a separate parcel. Off-site inclusionary units shall be located on sites that are compatible with adjacent land uses, appropriately zoned for the intended residential development, and are in proximity to or will provide access to employment opportunities, urban services, major roads or other public transit facilities.
 2. Off-Site Preservation. The applicant may request to create inclusionary units off-site through the purchase and conversion of existing market-rate units to affordable units, either by the applicant or by a not-for-profit entity. The total square footage must, at minimum, equal the square footage that would have been expected on-site, at affordability levels that meet or exceed the on-site requirements. The off-site units must be purchased prior to the building permit for the inclusionary housing development. The off-site preservation option must be approved by the City Council, and the Community Development Director may set requirements related to the rehabilitation and condition of the property and the protection and/or temporary relocation of existing tenants.
 3. Dedication of Land. The applicant may dedicate land within the City that is suitable for affordable housing development to the City or to the designee of the City.. The value of the land shall be not less than the sum of the in-lieu fee that would be due under Section 17.31.050 of this Chapter. The valuation of any land offered in-lieu shall be determined by an appraisal made by an appraiser mutually agreed upon by the City and the applicant. Costs associated with the appraisal shall be borne by the applicant. The timing of the land dedication shall be at or before the first approval of the inclusionary housing development. Factors considered by the Council may include but are not

limited to general location, access to transit, buildability, current zoning, and the number of units that could be built at the location.

4. **Funding of Affordable or Special Needs Housing Project.** The applicant may make a contribution to a special needs housing project or facility (shelter, transitional housing, or similar) in the City in an amount equivalent to the in-lieu fee payment due under subsection A of this Section 17.31.050. The contribution must be made prior to receipt of the building permit for the inclusionary housing development.
5. **In-Lieu Fee for Certain For-Sale Developments.** An applicant for a for-sale inclusionary housing development of more than fifteen primary dwelling units or lots may request Council approval to pay an in-lieu fee payment rather than construct affordable units with the project.

17.31.060 - Affordable housing plan for inclusionary units.

- A. An affordable housing plan for inclusionary units shall be submitted as part of the application for first approval of any inclusionary housing development, except where payment of an in-lieu fee is elected by the applicant pursuant to Section 17.31.050.A of this Chapter. No application for a first approval may be deemed complete unless an affordable housing plan, if required, is submitted conforming to the provisions of this Chapter.
- B. If the applicant has requested a density bonus pursuant to Chapter 17.29 of this Code, the affordable housing plan required under this Section shall be combined with the affordable housing plan for target units required pursuant to Section 17.29.040 of this Code.
- C. The affordable housing plan for inclusionary units shall include the following information:
 1. For housing developments proposing to construct the inclusionary units within the development, the affordable housing plan shall specify, at the same level of detail as the application for the housing development:
 - a. The number, type, tenure, household income categories, number of bedrooms and baths, approximate location, size, and design (including finishes and features) of all inclusionary units;
 - b. Construction phasing of inclusionary units in relation to market-rate units and overall construction schedule. If the developer proposes to construct the inclusionary units in separate phases from the market-rate unit construction, the affordable housing plan shall specify the security to be provided to the City to ensure that the inclusionary units will be constructed, and explain how the proposed phasing would provide greater public benefit than providing the inclusionary units concurrently with the market-rate units;
 - c. Preliminary marketing plan indicating general approach to marketing inclusionary units. The final marketing plan may be deferred to prior to first building permit issuance, subject to Community Development Director approval, including the manner in which inclusionary units will be offered to the public in a nondiscriminatory and equitable manner and the method of marketing inclusionary units after initial occupancy is secured;
 - d. A financing mechanism, the particulars and the amount of which shall be determined by the City at the time the affordable housing plan is approved, to cover the City's costs for the on-going administration and monitoring of the affordability provisions applicable to the inclusionary units, except where prohibited by State law.
 2. If an applicant requests City Council approval of alternatives to constructing the inclusionary units within a housing development pursuant to subsection 17.31.050.B of this Chapter, the affordable housing plan shall describe the requested alternatives.

3. If the applicant requests use of different finishes and features than market-rate units as addressed in Section 17.31.040, the affordable housing plan shall describe the request.
- D. The affordable housing plan for inclusionary units shall be reviewed simultaneously with any other permit applications associated with the first approval for the inclusionary housing development.

17.31.070 – Adjustment or reduction of inclusionary housing requirement.

- A. An applicant may request City Council approval of an adjustment or reduction of the inclusionary housing requirements of this Chapter if an applicant demonstrates that the requested adjustment or reduction would better implement the goals, objectives, and policies of the City's general plan housing element, which encourages the provision of housing affordable to a variety of household income levels, seniors, and persons with disabilities. The City Council, in its sole discretion, will determine whether to approve the applicant's request based on the City's progress in meeting its housing goals, objectives, and policies at the time the request is made.
- B. Any request for an adjustment or reduction under this section shall be submitted concurrently with the affordable housing plan required by Section 17.31.060 of this Chapter. The request for a reduction or adjustment shall set forth in detail the factual basis for the adjustment or reduction.

17.31.080 - Affordable housing agreement.

- A. Applicability. Recordation of an affordable housing agreement shall be made a condition of the first approval for all inclusionary housing developments. The affordable housing agreement shall be recorded prior to, or concurrently with, the final or parcel map, or, where the inclusionary housing development does not require a map, prior to issuance of a building permit for any structure in the inclusionary housing development. The affordable housing agreement shall run with the land and bind all future owners and successors in interest.
- B. The affordable housing agreement shall be in a form provided by the City and shall include the following, without limitation:
 1. All information provided in the affordable housing plan pursuant to Sections 17.31.060 of this Chapter.
 2. The household income categories of the inclusionary units, consistent with the requirements of Section 17.31.030 of this Chapter or any alternative requirements pursuant to Section 17.31.050 of this Chapter.
 3. Continued affordability of the inclusionary units, as follows:
 - a. For-Sale Inclusionary Units. The affordable housing agreement shall require that a resale restriction agreement, in a form approved by the City, be recorded against each for-sale inclusionary unit when the unit is first transferred to an eligible purchaser. The resale restriction agreement shall provide that inclusionary units in for-sale housing developments shall remain affordable in perpetuity and that the affordability provisions be applicable to any subsequent transferees or successors in interest.

The resale restriction agreement shall also provide that the for-sale inclusionary unit shall not be rented.
 - b. Rental Inclusionary Units. The affordable housing agreement shall be recorded against each inclusionary housing development containing rental units to ensure that the inclusionary units remain affordable in perpetuity.

Rental inclusionary units that are later converted to for-sale units, e.g., converted to condominiums, and then sold shall be sold as for-sale inclusionary units and the requirements of subparagraph a of paragraph 3 of subsection B of this Section shall apply.

4. The affordable housing agreement shall specify that no household shall be permitted to begin occupancy of an inclusionary unit unless the City or the City's designee has approved the household's eligibility.
 5. Affordable housing agreements for inclusionary housing developments intended to be occupied by households with one or more members who are sixty-two (62) years of age or older shall provide that dwelling units in the residential development shall be occupied by persons eligible to reside in such a project.
 6. The affordable housing agreement shall include provisions requiring maintenance of records to demonstrate compliance with this Chapter.
 7. The affordable housing agreement shall include a description of remedies for breach of the agreement by either party. The City may identify tenant households or qualified purchaser households as third party beneficiaries under the agreement.
- D. The affordable housing agreement shall include any other provisions determined necessary by the City Attorney to ensure implementation and compliance with this Chapter.

17.31.090 - Implementation and enforcement.

- A. The City shall prepare guidelines to further implement this ordinance. These guidelines shall include, but are not limited to, the following:
1. The form and contents of the affordable housing agreement and any resale restriction, including provisions for successors in interest and other ownership transfers;
 2. The form and contents of the final marketing plan and resident selection process;
 3. Procedures for setting rents and sales prices for the inclusionary units;
 4. Procedures for qualifying tenant households and prospective purchaser households of inclusionary units, including any preferences;
 5. Compliance and monitoring procedures to assure that affordability restrictions are maintained;
 6. Resale and subordination procedures for inclusionary for-sale units;
 7. The establishment of any fees to recoup the City's costs for the ongoing administration and monitoring of the affordability provisions of the inclusionary units, except where prohibited by State law.
- B. No permit, license, subdivision map, or other approval or entitlement for an inclusionary housing development shall be issued, including without limitation a final inspection for occupancy, until all requirements applicable to the inclusionary housing development at such time pursuant to this Chapter have been satisfied.
1. No building permit shall be issued for any market-rate unit until the permittee has obtained permits for inclusionary units sufficient to meet the requirements of Section 17.31.030 of this Chapter, and, if a density bonus has been requested pursuant to Chapter 17.29, Section 17.29.030 of this Code. No final inspection for occupancy for any market-rate unit shall be completed until or simultaneously with construction of the inclusionary units required by Section 17.31.030 of this Chapter.

2. The time requirements set forth in this Section for issuance of building permits for market-rate units and for final inspections for occupancy for market-rate units may be modified to accommodate phasing schedules, model variations, or other factors in an inclusionary housing development within the submitted affordable housing plan pursuant to Sections 17.31.060 of this Chapter, if the City determines this will provide greater public benefit and an affordable housing agreement pursuant to Section 17.31.080 of this Chapter has been accepted by the community development director.
- C. Conditions to carry out the purposes of this Chapter shall be imposed on the first approval for an inclusionary housing development and any subsequent approvals.
- D. The City Attorney is authorized to enforce the provisions of this Chapter and all affordable housing agreements, regulatory agreements, resale controls, deeds of trust, or similar documents placed on inclusionary units, by civil action and any other proceeding or method permitted by law.
- E. The City Manager is authorized to execute the resale restriction agreement and any related documents following approval by the Community Development Director and the City Attorney.
- F. Failure of any official or agency to fulfill the requirements of this Chapter shall not excuse any applicant or owner from the requirements of this Chapter.
- G. The remedies provided for herein shall be cumulative and not exclusive and shall not preclude the City from any other remedy or relief to which it otherwise would be entitled under law or equity.

SECTION 3: Where a use permit, design permit or variance approval has been issued through final action by the City prior to the effective date of this Ordinance, or where such planning permit approval is not required and a complete building permit application has been submitted prior to the effective date of this Ordinance, the holder of such use permit, design permit or variance approval or complete building permit application may proceed to construct the improvements or establish the use authorized by such permit or approval and the same shall be exempted from any conflicting regulations that may be contained in this Ordinance.

SECTION 4: If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of Brisbane hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that one or more sections, subsections, sentences, clauses or phrases may be held invalid or unconstitutional.

SECTION 5: This Ordinance shall be in full force and effect thirty days after its passage and adoption.

* * *

The above and foregoing Ordinance was regularly introduced and after the waiting time required by law, was thereafter passed and adopted at a regular meeting of the City Council of the City of Brisbane held on the _____ day of _____, 2025, by the following vote:

AYES:

Draft Density Bonus/Inclusionary Housing Ord.

NOES:
ABSENT:
ABSTAIN:

MAYOR

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

draft
ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY OF BRISBANE
ADDING NEW CHAPTER 17.29 AND AMENDING CHAPTER 17.31 OF
THE BRISBANE MUNICIPAL CODE
CONCERNING DENSITY BONUS AND
INCLUSIONARY HOUSING REQUIREMENTS**

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

SECTION 1: A new Chapter 17.29 is added to the Municipal Code to read as follows:

Chapter 17.29 – DENSITY BONUSES

Sections:

- 17.29.010 Purposes of chapter.
- 17.29.020 Definitions.
- 17.29.030 ~~Administration of Density Bonuses.~~
- 17.29.040 Application for a Density Bonus.
- ~~Affordable housing plan for density bonus projects.~~
- 17.29.050 Affordable housing agreements.
- 17.29.060 Implementation and enforcement.

17.29.010 – Purposes of chapter.

- A. The City of Brisbane enacts this chapter to implement the goals, objectives, and policies of the City's general plan housing element relative to administering a density bonus program to encourage the provision of housing affordable to a variety of household income levels, seniors, and persons with disabilities.
- B. This chapter is also intended to implement Sections 65915, ~~65915.5, and 65917~~ through 65918 of the California Government Code, or successor statutes and regulations, governing density bonuses and other incentives required by such statutes or regulations ~~therein for the production of housing for very low income, lower income, moderate income, and senior households.~~

17.29.020 - Definitions.

- A. Affordable Housing Agreement. A recorded agreement between a property owner and the City to ensure that the density bonus requirements of this Chapter are satisfied.
- B. Affordable Ownership Cost. The affordable ownership cost for for-sale target units shall be as specified in California Health and Safety Code Section 50052.5, as may be amended over time.
- C. Affordable Rent. The affordable rent for rental target units shall be as specified in California Health and Safety Code Section 50053, as may be amended over time.
- D. Approving Authority. The City decision-making body acting on an application for a housing development subject to the requirements of this Chapter, including the City Council, Planning Commission, or Community Development Director.
- ~~D.~~E. Base Density. Base density or maximum residential density shall be as defined in the State Density Bonus law.

~~F.~~ Child Care Facility. Child care facility shall have the same meaning as defined in the Government Code Section 65915(h)(4), as may be amended over time State Density Bonus Law.

~~E.~~

~~F.G.~~ City. The City of Brisbane or the Brisbane Housing Authority.

~~G.H.~~ City Council. The City Council of the City of Brisbane as established in Title 2 of this Code or the Board Members of the Brisbane Housing Authority

~~H.I.~~ City Manager. The City Manager of the City of Brisbane as established in Title 2 of this Code, the City Manager's designee, the Executive Director of the Brisbane Housing Authority or the Executive Director's designee.

~~I.~~ ~~Common Interest Development. As defined in California Civil Code Section 4100, as may be amended over time.~~

J. Community Development Director. The Director of the Community Development Department responsible for overseeing implementation of Title 17 of this Code, or the Community Development Director's designee.

~~K.~~ Density Bonus. ~~Density bonus~~ shall be defined by State Density Bonus Law ~~A density increase over the otherwise allowable maximum residential density, as defined in this Section 17.29.020, pursuant to Government Code Section 65915(f) and 65915.5, as may be amended over time.~~

L. Density Bonus Project. Density bonus project shall mean any parcel map, subdivision map, housing development permit, design permit, building permit, or other city approval which results in a net increase of at least two (2) primary dwelling units and/or residential lots or combination thereof -for which a density bonus, incentive or concession, waiver or reduction of development standards, and/or modification of parking standard is requested by the developer pursuant to State Density Bonus Law and this Chapter. A density bonus project may include, but is not limited to, new construction, conversion of existing dwelling units to condominium ownership, subdivision of land to create additional residential lots, conversion of an existing nonresidential building to residential use, and the addition of dwelling units to an existing multifamily dwelling. A density bonus project shall include units or lots intended for sale or for rent.

1. For-Sale Density Bonus Project. A density bonus project that offers dwelling units or lots to the public for purchase.

4. Rental Density Bonus Project. A density bonus project that offers dwelling units to be rented to tenants upon occupancy, whether or not a condominium or subdivision map is recorded as part of the project.

2.

~~M.L.~~ Development Standard. A development standard shall be as defined by the Government Code Section 65915(o)(1) State Density Bonus Law, as may be amended over time, provided, however, .As used in this Chapter, the term "development standard" does not include any of the following:

1. The permitted uses of a site;

2. Any city fees;

3. Affordable housing requirements;

43. Building standards approved by the California Building Standards Commission as provided in California Health and Safety Code Section 18901 et seq.; or

54. The requirements of Brisbane's Green Building Ordinance as set forth in Title 15, Chapter 15.80 of this Code.

~~MN.~~ Domestic Partner. Domestic partner means two (2) persons who have filed a declaration of domestic partnership with the California Secretary of State pursuant to Division 2.5, beginning with Section 297, of the California Family Code and such registration was in full force and effect at the time of the transfer or on the date of the transferor's death. A copy of the domestic partnership registration shall be provided to the city upon request.

ON. Dwelling Unit. Dwelling unit shall have the meaning set forth in Section 17.02.235 of this Code.

1. Density Bonus Unit. Those dwelling units granted pursuant to a density bonus requested pursuant to the provisions of this Chapter ~~which exceed the otherwise allowable maximum residential density for the development site and State Density Bonus Law.~~
2. Market-Rate Unit. Any dwelling unit within a housing development density bonus project that is not a target unit.
3. Target Units. ~~Any Dwelling units~~ affordable to moderate and, low, ~~or very low~~ income households within a housing development density bonus project that qualify the project for a density bonus.

PO. Eligible Household. A household whose household income qualifies the household for occupancy of a density bonus target units provided under this Chapter.

PQ. Eligible Purchaser. A household whose household income qualifies the household to purchase a for-sale inclusionary target unit, or a qualified non-profit housing corporation as such term is defined in Section 714.7 of the California Civil Code or successor statute provisions.

RQP. First Approval. The first of the following approvals to occur with respect to a housing development density bonus project ~~is~~: subdivision approval, housing development permit, building permit or any other permit or approval under the Zoning Ordinance ~~Brisbane Municipal Code~~.

QSR. Household Income. Household income shall be the gross income of the household as calculated pursuant to Title 25 California Code of Regulations, §6914, as amended, or its successor. regulation The household income categories addressed in this Chapter shall be defined as follows:

- ~~1. Area Median Income. Area median income for San Mateo County as published by the State of California pursuant to California Code of Regulations, Title 25, Section 6932, as may be amended over time.~~
- ~~2.1.~~ Lower Income Household. A household whose income does not exceed the lower income limits applicable to San Mateo County, as published annually by the State of California pursuant to California Code of Regulations, Title 25, Section 6932, as may be amended over time.
- ~~3.2.~~ Moderate Income Household. A household whose income does not exceed the moderate income limits applicable to San Mateo County, as published annually by the State of California pursuant to California Code of Regulations, Title 25, Section 6932, as may be amended over time.
3. Very Low Income Household. A very low income household shall be as defined by California Health and Safety Code Section 50105, as may be amended over time.
4. Extremely Low Income Household. An extremely low income household shall be as defined by Section 50106 of the California Health and Safety Code or successor statute regulations.

RST. Housing Authority. "Housing Authority" shall mean the Brisbane Housing Authority, as established by Resolution of the City Council. For the purposes of this Chapter, "Housing Authority" shall have the same meaning as "City."

~~S.~~ ~~Housing Development. Any parcel map, subdivision map, use permit, building permit, or other city approval which results in a net increase of at least five (5) or more dwelling units and/or residential lots or combination thereof. A housing development may include, but is not limited to, new construction, conversion of existing dwelling units to condominium ownership, creation of residential lots,~~

~~conversion of an existing nonresidential building to residential use, and the addition of dwelling units to an existing multifamily dwelling. A housing development shall include units or lots intended for sale or for rent.~~

- ~~1. For Sale Housing Development. A housing development, or portion thereof, where the dwelling units or lots are offered to the public for purchase.~~
- ~~2. Rental Housing Development. A housing development, or portion thereof, comprised of dwelling units which are intended to be rented, or are actually offered for rent, to tenants upon completion, whether or not a condominium or subdivision map is recorded as part of the housing development.~~
- ~~3. Senior Citizen Housing Development. A senior citizen housing development shall be as defined per Government Code Section 65915(b)(1)(C), as may be amended over time.~~

~~TU. Incentives or Concessions. Incentives or concessions shall be as defined in the the Government Code Section 65915(k) and 65915.5 State Density Bonus Law, as identified by a financial pro forma submitted by the applicant per 17.31.120 of this Code.~~

~~VU. Maximum Residential Density. The maximum number of dwelling units permitted by the City's zoning ordinance on the date the application is deemed complete~~Maximum residential density or base density shall be as defined in State Density Bonus Law.

~~V~~

~~VU.W. Modified Parking Standards. Modifications to the parking standards that would otherwise apply to an density bonus project housing development under Chapter 17.34 of this Code, as described in Government Code Section 65915(pthe)State Density Bonus Law, as may be amended from time to time.~~

~~WVWX. Resale Restriction Agreement. A resale restriction agreement shall mean A~~an agreement, covenant, deed of trust, or other document, approved by the City Council, which is executed by the property owner and recorded against each target unit to insure that such unit remains affordable for the applicable term.

~~XWXY. Specific Adverse Impact. A "specific adverse impact" shall have the same meaning as the meaning provided in the Government Code Section 65589.5, as may be amended from time to time, or successor provisions.~~

~~XYZ. State Density Bonus Law. State Density Bonus Law shall mean Sections 65915 through 65918 of the California Government Code, as may be amended from time to time, or successor statutes~~regulations.

~~YZAA. Waiver or Reduction of Development Standard. Waiver or Reduction of Development Standard shall be as defined in the State Density Bonus Law.~~

17.29.030 - ~~Density bonuses.~~ Administration of Density Bonuses

A. The City shall grant ~~a~~density bonuses, incentives and concessions, waivers or reductions in development standards, and/or modified parking standards requested by applicants ~~for approval of a housing development project of at least five units, to the extent required pursuant to Sections in accordance with the provisions off the~~ 65915 and 65915.5 State Density Bonus Law of the Government Code, as may be amended over time and the procedures set forth in this Chapter.

- ~~1. The City may deny a request for incentives or concessions only as provided by the State Density Bonus Law~~the the.

2. The City may deny a request for a waiver or reduction of a development standard only as provided by the State Density Bonus Law.

- B. 1. — A developer of a ~~housing development project~~ containing between two (2) ~~and to~~ four (4) dwelling units or lots may request ~~City Council~~ approval of a density bonus as shown in Table 17.29.030. The ~~City decision making body~~ shall waive or reduce any development standard that may preclude development of such a project ~~as set forth in per subsection BA~~ of this Section 17.29.030.

Table 17.29.030

Zoning District	Lot Size	Maximum Permitted Residential Density	Percentage low income units	Percentage Density Bonus	Total Units including Density Bonus Units
R-2	4,950-7,499 sq ft	2 units	50%	30%	3 units
R-3	4,950- 5,999 sq ft	3 units	30%	15%	4 units
	6,000- 7,499 sq ft	4 units	50%	15%	5 units

- C. 2. A developer of a ~~housing development density bonus project~~ that exceeds the qualifications for a density bonus per ~~Government Code Section 65915~~ State Density Bonus Law may request that the City grant one additional incentive or concession above the maximum number prescribed by ~~Government Code Section 65915(d)(2)~~ State Density Bonus Law, as applicable to the project.
3. — ~~A developer may request a lesser density bonus than the project is entitled to, but no reduction will be permitted in the number of required target units pursuant to subsection A of this Section 17.29.030.~~
4. — ~~Where a site has no maximum residential density, no density bonus need be granted. However, the City shall grant incentives or concessions and waivers or reductions in development standards requested by applicants pursuant to Government Code Sections 65915(d) and 65915(e).~~
5. — D. A developer of a density bonus project may request one additional incentive or concession if the density bonus project includes family-sized target units (units with three or more bedrooms) designed and dedicated for use by low- to extremely low-income households.
- E. Inclusionary units provided in compliance with required pursuant to Chapter 17.31 ~~will may~~ be counted as target units for the purposes of calculating a density bonus if they meet requirements for target units established under State Density Bonus Law and Chapter 17.31.
- BF. The decision making body for any density bonus project shall be the decision making body specified for the first approval. The City Council shall be the decision-making body for any density bonus projects that include requests of incentives or concessions or waivers of development standards that otherwise require City Council approval under other Chapters of this Municipal Code. The following concessions and incentives shall require approval by the City Council, even though the housing development may otherwise only require approval by the Planning Commission:
1. — ~~Deferring collection of development impact fees on market rate units until issuance of certificate of occupancy;~~
 2. — ~~Any direct financial assistance, including that for purchasers of target units;~~
 3. — ~~Any regulatory incentives or concessions not related to the zoning ordinance's development standards or parking requirements, such as incentives involving infrastructure standards or mixed-use zoning.~~
- CG. Notwithstanding that an applicant may request direct financial assistance, including that for purchasers of target units, which shall require approval of the City Council, nothing in this section

17.29.030 requires the City to provide direct financial incentives for the housing development, including but not limited to providing to the applicant to the provision of publicly owned land.

~~DH.~~ In accordance with the state law State Density Bonus Law, neither the granting of a concession or incentive, waiver or reduction in development standards, nor the granting of a density bonus, shall be interpreted, in and of itself, to require a general plan amendment, zoning change, or other discretionary approval.

17.29.040 – Application for a Density Bonus.

- A. Application Processing. Applications for density bonuses, incentives, concessions, waivers or reductions in development standards, and/or modifications of parking standards pursuant to the State Density Bonus Law and this Chapter shall be processed in concert with and by the same decision-making body, except where otherwise indicated in Section 17.29.030, as any other planning entitlement applications that the density bonus project may require., except where otherwise indicated in Section 17.29.030.
- B. Contents of Application. Applications shall be filed with the Community Development Director on such form as the Director shall prescribe. In addition to the submittal requirements for any other planning entitlement applications or permit approvals the project requires, the application shall include the following information and supporting materials:
1. Current title report(s) for all properties proposed for development, prepared within at least six (6) months of application submittal.
 2. A letter signed by the present owner(s) stating what density bonus, incentives and concessions, waivers or modifications of development standards, and/or parking modification are being requested from the City.
 3. In the case of a request for any incentives or concessions, a description of how the requested incentives or concessions will result in identifiable and actual cost reductions to provide for affordable housing costs or rents for the target dwelling units.
 4. In the case of a request for waivers or reductions of development standards, a description of how the existing development standards would have the effect of physically precluding the construction of the development at the requested densities or the requested concessions or incentives.
 53. In the case of a condominium conversion request, such information required by Chapter 17.30 of this Title.
 46. A statement describing whether the density bonus project is proposed on any property that has one of the following conditions. If any of the below conditions exist on the property, the application must identify how such units will be replaced in the density bonus project. Such replacement units shall not be counted as target units when calculating the density bonus, unless the density bonus project is 100% affordable.
 - a. Includes a parcel or parcels on which rental dwelling units are presently located that are subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of lower or very low income or if rental dwelling units have been vacated or demolished in the five-year period preceding the application that were at the time, subject to a recorded covenant, ordinance or law that restricted rents to levels affordable to persons and families of very low or lower income;
 - b. Includes a parcel or parcels on which rental dwelling units have been subject to any other form of rent or price control through a public agency's exercise of its police power;

- c. Includes a parcel or parcels on which rental dwelling units are ~~Is presently occupied by~~ low or very low income households.
5. A detailed vicinity map showing the project location and such details as the location of the nearest commercial retail, transit stop, potential employment locations, park or recreation facilities or other social or community service facilities.
86. A project data table showing the total number of dwelling units proposed on the site and off site, as applicable, including the number of target units and density bonus units, and the project's conformance to all objective development standards.
79. Site plan(s) with accurately dimensioned property lines showing existing and proposed structures and their uses, adjacent structures and their uses, setbacks, adjacent streets, easements, existing and proposed utilities, existing and proposed driveways, and internal circulation and parking.
108. Floor plans of all existing and proposed structures (with the use of each room/space labeled) and designating target units, as appropriate.
119. Roof plans.
1210. Elevations of all sides of the existing and/or proposed structures, identifying colors and materials ~~as appropriate~~, and showing the height of structure(s) measured per the definition of building height in Chapter 17.02 of this Title and UBC type of construction. Cross-sections may also be required based upon the complexity of the design.
1311. Existing and proposed parking facilities, including the dimensions of parking spaces, number and location of spaces designated as compact or handicapped spaces, and a calculation of the number of parking spaces required by this title or any other applicable regulations;
1412.
17. An affordable housing plan that contains all of the following, as applicable to the request:
- The number, type, tenure, household income categories, number of bedrooms and baths, approximate location, size, and design (including finishes and features) of all density bonus units;
 - The number, type, tenure, affordability level, number of bedrooms and baths, approximate location, size, and design (including finishes and features) of all target units;
 - Construction phasing of target units in relation to market-rate units, if applicable, and overall construction schedule. If the developer proposes to construct the target units in separate phases from the market-rate unit construction, the affordable housing plan shall specify the security to be provided to the City to ensure that the target units will be constructed, and explain how the proposed phasing would provide greater public benefit than providing the target units concurrently with the market-rate units;
 - Preliminary ~~M~~marketing plan, indicating general approach to marketing target units in compliance with all fair housing laws. The final marketing plan may be deferred to prior to first building permit issuance, subject to Community Development Director approval, including the manner in which target units will be offered to the public in a nondiscriminatory and equitable manner and the method of marketing target units after initial occupancy is secured, ~~and accompanied by an anti-displacement policy applicable to the target units=;~~
 - Methods to be used to verify incomes of target unit tenant households or purchaser households;

f. Procedures for qualifying target unit tenant households and prospective purchaser households, including any preferences.

eg. A financing mechanism, the particulars and the amount of which shall be determined by the City at the time the affordable housing plan is approved, to cover the City's costs for the on-going administration and monitoring of the affordability provisions applicable to the target units, except where prohibited by State law.

hf. Description of any requested density bonuses, incentives, concessions, waivers or modifications of development standards, and/or modified parking standards and documentation of eligibility for the request(s), including a description of the base density without the requested density bonus, the number and location of all target units qualifying the project for a density bonus, the level of affordability of the target units, and identification of the density bonus units.

i. For all requested incentives and concessions, reasonable documentation demonstrating eligibility for the incentive or concession or to demonstrate that the incentive or concession meets the definition set forth in the State Density Bonus Law. For requests to allow mixed-use zoning in conjunction with the density bonus project, the application shall additionally include documentation demonstrating that the proposed commercial, office, industrial, or other land uses will reduce the cost of the density bonus project development and that the commercial, office, industrial, or other land uses are compatible with the density bonus project and the existing or planned development in the area where the proposed project will be located. The cost of reviewing any documentation submitted in support of a request for a concession or incentive, including but not limited to the cost to the City of hiring a consultant to review the documentation, shall be borne by the applicant.

ii. For all requested waivers or reductions of development standards, written evidence that (i) the development standards for which a waiver or reduction is requested will physically preclude the construction of the housing development at the densities or with the incentives or concessions permitted by this chapter; (ii) the waiver or reduction would not have a specific, adverse impact, or, if a specific, adverse impact would occur, that the impact could feasibly be mitigated or avoided; (iii) the waiver or reduction would not have an adverse impact on any real property that is listed in the California Register of Historical Resources; and (iv) the waiver or reduction would not be contrary to any state or federal law.

iii. If a density bonus, incentive or concession is requested for a land donation, the application shall show the location of the land to be dedicated and provide evidence that each of the conditions for such land donation set forth in the State Density Bonus Law will be met.

iv. If a density bonus, incentive or concession is requested for a child care facility, the application shall show the location and square footage of the child care facility and describe how all requirements of the State Density Bonus law for such density bonus, incentive or concession are met by the application.

B. Application Fee. The application shall be accompanied by the payment of a fee in such amount as established from time to time by resolution of the City Council. In addition, the applicant shall also deposit such amounts as the Community Development Director may require from time to time to cover the cost of any environmental or legal review, geotechnical and engineering reports, review

of green building documentation, and such other studies that may be required by the City in connection with the processing of the application or related planning entitlements.

- C. Newly Constructed Condominiums. In addition to the information listed in this section, an application for a density bonus project for newly constructed condominiums, as defined in 17.30.020.A of this title, shall also include the materials set forth stipulated in Section 17.30.040.
- D. Streamlined Housing Development Projects. Density bonus projects that are streamlined housing development projects, as defined in Chapter 17.02 of this Title, shall include additional supporting documentation to demonstrate eligibility as set forth on a form prescribed by the city.

17.29.040—Affordable housing plans for density bonus projects.

- ~~A. An affordable housing plan shall be submitted as part of the application for first approval of any housing development for which a density bonus, incentives or concessions, or waivers or reductions of development standards are requested. No application for a first approval shall be deemed complete unless an affordable housing plan is submitted conforming to the provisions of this section.~~
- ~~B. The affordable housing plan shall include the following information:~~
- ~~1. All information required for affordable housing plans for inclusionary units pursuant to Section 17.31.060.C of Chapter 17.31, as applicable to the project.~~
 - ~~2. Description of the base project without the requested density bonus, the number and location of all target units qualifying the project for a density bonus, the level of affordability of the target units, and identification of the density bonus units.~~
 - ~~3. Description of any requested density bonuses, incentives, concessions, waivers or modifications of development standards, and/or modified parking standards.~~
 - ~~i. For all requested incentives and concessions, a pro forma demonstrating the requested incentives and concessions result in identifiable and actual cost reductions to provide for affordable ownership cost or rent, as appropriate to the project. The cost of reviewing any required pro forma data submitted in support of a request for a concession or incentive, including but not limited to the cost to the City of hiring a consultant to review the pro forma, shall be borne by the applicant.~~
 - ~~ii. For all requested waivers or reductions of development standards, written evidence that (i) the development standards for which a waiver or reduction is requested will physically preclude the construction of the housing development at the densities or with the incentives or concessions permitted by this chapter; (ii) the waiver or reduction would not have a specific, adverse impact, or, if a specific, adverse impact would occur, that the impact could feasibly be mitigated or avoided; (iii) the waiver or reduction would not have an adverse impact on any real property that is listed in the California Register of Historical Resources; and (iv) the waiver or reduction would not be contrary to any state or federal law.~~
 - ~~iii. If a density bonus or concession is requested for a land donation, the application shall show the location of the land to be dedicated and provide evidence that each of the findings in Government Code Section 65915(g) can be made.~~
 - ~~iv. If a density bonus or concession is requested for a child care facility, the application shall show the location and square footage of the child care facility and provide evidence that the findings in Government Code Section 65915(i) can be made.~~

~~v. If a density bonus or concession is requested for a mixed-use development, as defined in Chapter 17.02 of this Code, the application shall provide evidence that the required findings in Government Code Section 65915(k)(2) can be made.~~

~~9. The applicant may request a modification of the requirement set forth in Section 17.29.060 of this Chapter that the target units be constructed concurrently with the market-rate units. In that case, the affordable housing plan shall describe the proposed phasing at the same level of detail as required in the application for the housing development, specify the security to be provided to the City to ensure that the affordable units will be constructed, and explain how the proposed phasing would provide greater public benefit than providing the target units concurrently with the market-rate units.~~

~~CB. An affordable housing plan for density bonus projects shall be reviewed by the Planning Commission or City Council, as appropriate to the application, in conjunction simultaneously with any other permit applications associated with the first approval for the housing development. The City Council shall be the approving authority for the affordable housing plan where incentives or concessions pursuant to Section 17.29.030 of this Code are requested, even though the approving authority for the housing development density bonus project might otherwise be the Planning Commission.~~

~~D. A request for a minor modification of an approved affordable housing plan may be granted by the community development director if the modification is substantially in compliance with the original affordable housing plan and conditions of approval. A minor modification is technical in nature, as opposed to substantive or material. Substantive or material changes to the affordable housing plan shall be processed in the same manner as the original plan.~~

17.29.050 - Affordable housing agreements.

A. Applicability. Recordation of an affordable housing agreement shall be made a condition of the first approval for all ~~housing developments subject to the requirements of this chapter~~density bonus projects to ensure implementation of all requirements of this Chapter. The affordable housing agreement shall be recorded prior to, or concurrently with, the final subdivision or parcel map, or, where the housing development does not include a map, prior to issuance of a building permit for any structure in the housing development. The affordable housing agreement shall run with the land and bind all future owners and successors in interest.

~~B. Definitions. The following definitions shall be applicable to such terms as used in this section:~~

~~1. "Successor in interest" means any person or persons, other than a transferee defined in subparagraph b of paragraph 2 of this subsection B, vested in legal title to the target unit by reason of the death of the owner of a target unit. For the purposes of this section, the household income of a successor in interest will be calculated consistent with the calculation of household income as defined in Section 17.29.020.Q of this Chapter.~~

~~2. "Transfer" means any sale, conveyance, assignment, or other change of ownership, whether voluntary or involuntary, of any legal or equitable interest in a target unit. Where the target unit is owned by a corporation, limited liability company, general or limited partnership, or other form of business entity, a transfer of the unit shall be deemed to have occurred upon transfer of fifty percent (50%) or more of the ownership interest in such entity. Notwithstanding the foregoing, the following transfers shall be exempt from the requirement that the transferee qualify as an eligible household:~~

~~a. Any transfer to a spouse or domestic partner of the transferor, where the spouse or domestic partner becomes a co-owner of the target unit with the transferor;~~

- ~~b. Any transfer by devise or inheritance to a spouse or domestic partner of the transferor upon the transferor's death, where the spouse or domestic partner continues to occupy the unit as his or her principal place of residence;~~
- ~~c. Any transfer between spouses as part of a marriage dissolution proceeding;~~
- ~~d. Any transfer to an inter vivos revocable trust in which the transferor is the beneficiary;~~
- ~~e. The granting of a lien or other security interest in the unit as security for a loan and such loan complies with any applicable requirements of the resale restriction agreement.~~ the set forth the

~~The exemptions listed above shall apply only during the period in which the target unit is owned by the exempted person and shall not apply to any subsequent transfer by that person, which shall be subject to all of the terms and provisions of the resale restriction agreement.~~

~~CB.~~ The affordable housing agreement shall be in a form provided by the City and shall include the following, without limitation:

1. All information provided in the affordable housing plan pursuant to Section 17.29.040 of this Chapter.
2. The household income categories of the target units, consistent with the requirements of the State Density Bonus law.
32. Continued affordability of the target units, as follows:

- a. For-Sale Target Units. The affordable housing agreement shall require that a resale restriction agreement, in a form approved by the City, be recorded against each for-sale target unit when the target unit is first transferred to an eligible purchaser. The resale restriction agreement shall provide that target units in for-sale ~~housing developments~~ density bonus projects shall remain affordable in perpetuity and that the affordability provisions be applicable to any subsequent transferees or successors in interest.

~~The resale restriction agreement shall also provide that the for-sale target unit shall not be rented and that a successor in interest shall not be exempt from meeting the household income eligibility requirements as are transferees under paragraph 2 of subsection B of this section; provided, however, a successor interest may reside in the unit, subject to the obligations of the resale restriction agreement, if a successor in interest's household income qualifies the successor in interest as provided in Section 17.29.020 Q of this Chapter. If the household income of the successor in interest does not qualify, the successor in interest must sell the unit as set forth in the resale restriction agreement, following a grace period not to exceed one year.~~

- b. Rental Target Units. The affordable housing agreement shall be recorded against each ~~housing development~~ rental density bonus project containing rental target units to ensure that the target units remain affordable ~~for a minimum term as specified in Government Code Section 65915(c)(1) the~~ ; provided, however, if the target units in the housing development are also inclusionary housing units as defined in Chapter 17.31, the target units shall remain affordable in perpetuity ~~as required by Chapter 17.31.~~

~~For those target units in a housing development that are not inclusionary housing units as defined in Chapter 17.31, a longer period of time than as specified in Government Code section 65915(c)(1) the may be required by any construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program.~~

Rental target units that are later converted to for-sale units, e.g., converted to condominiums, and then sold shall be sold as for-sale target units and the requirements of subparagraph a of paragraph 2 of subsection ~~CB~~ of this Section shall apply.

34. The affordable housing agreement shall specify that no household shall be permitted to begin occupancy of a target unit unless the Community Development Director has approved the household's eligibility, ~~unless the household has been exempted under paragraph 2 of subsection B of this Section 17.29.050. If the City maintains a list of, or otherwise identifies, eligible households, initial and subsequent occupants of target units shall be selected first from the list of identified households, to the maximum extent possible, in accordance with guidelines approved by the City Council and all applicable State laws.~~
 45. Affordable housing agreements for land dedication, child care facilities, and condominium conversions shall ensure the ~~the~~ continued compliance with all conditions included in ~~Government Code Sections 65915 and 65915.5~~ State Density Bonus Law.
 56. Affordable housing agreements for senior citizen housing developments shall provide that units in the residential development shall be occupied by senior citizens or other persons eligible to reside in such a project as established by the State Density Bonus Law.
 67. The affordable housing agreement shall include provisions requiring maintenance of records to demonstrate continued compliance with this Chapter over long-term operation of the density bonus project.
 78. The affordable housing agreement shall include a description of remedies for breach of the affordable housing agreement by either party. The City may identify tenants or qualified purchasers as third party beneficiaries under the agreement.
- ~~CD~~. The affordable housing agreement shall include any other provisions determined necessary by the City Attorney to ensure implementation and compliance with the State Density Bonus Law and this Chapter.

17.29.060 - Implementation and enforcement.

- A. No permit, license, subdivision map, or other approval or entitlement for a ~~housing development density bonus project~~ shall be issued, including without limitation a final inspection for occupancy, until all requirements applicable to the ~~housing development density bonus project~~ at such time pursuant to this Chapter have been satisfied.
 1. Except where authorized by the approved affordable housing plan pursuant to Section 17.29.040, ~~No~~ building permit shall be issued for any market rate unit until the permittee has obtained permits for target units sufficient to meet the requirements of Section 17.29.030 of this Chapter, and, if the project includes inclusionary housing units pursuant to Chapter 17.31 of this ~~Code and Chapter, Section 17.31.030 of this Code~~. No final inspection for occupancy for any market-rate unit shall be completed until the permittee has constructed the target units required by Section 17.29.030 of this Chapter, unless so authorized in the approved affordable housing plan.
 2. The time requirements set forth in this Section for issuance of building permits for market-rate units and for final inspections for occupancy for market-rate units may be modified to accommodate phasing schedules, model variations, or other factors in a ~~housing development density bonus project~~ within the submitted affordable housing plan pursuant to Sections 17.29.0430 of this Chapter, if the City determines this will provide greater public benefit and an affordable housing agreement pursuant to Section 17.29.050 of this Chapter has been ~~accepted by the community development director~~ approved by the decision making body for the first approval for the density bonus project.

- B. Conditions to carry out the purposes of this Chapter shall be imposed on the first approval for a ~~housing development density bonus project~~.
- C. The City Attorney is authorized to enforce the provisions of this Chapter and all affordable housing agreements, regulatory agreements, resale controls, deeds of trust, or similar documents placed on target units, by civil action and any other proceeding or method permitted by law.
- D. The City Manager is authorized to execute ~~the any resale restriction~~ agreement and any related documents following approval ~~such of the resale restriction~~ agreement by the Community Development Director and the City Attorney.
- E. Failure of any official or agency to fulfill the requirements of this Chapter shall not excuse any applicant or owner from the requirements of this Chapter.
- F. The remedies provided for herein shall be cumulative and not exclusive and shall not preclude the City from any other remedy or relief to which it otherwise would be entitled under law or equity.
- G. Any target unit that is sold or rented in violation of the affordability requirements established in the approved affordable housing agreement or resale restriction agreement shall be replaced at a one-to-one ratio. The means of replacement shall be wholly subject to the discretion of the City Manager or their designee.
- H. A request for a minor modification of an approved affordable housing plan may be granted by the community development director if the modification is substantially in compliance with the original affordable housing plan and conditions of approval for the density bonus project. A minor modification is technical in nature, as opposed to substantive or material. Substantive or material changes to the affordable housing plan shall be processed in the same manner as the original plan.
- I. The City shall prepare guidelines to further implement this ordinance. These guidelines shall include, but are not limited to, the following:
 - 1. The form and contents of the affordable housing agreement and any resale restriction, including provisions for successors in interest and other ownership transfers for for-sale target units;
 - 2. The form and contents of the final marketing plan and resident selection process;
 - 3. Procedures for setting rents and sales prices for the target units;
 - Procedures for qualifying tenant households and prospective purchaser households of target units, including any preferences;
 - 4.
 - 5. Compliance and monitoring procedures to assure that affordability restrictions are maintained;
 - 6. Resale and subordination procedures for for-sale target units;
 - 7. The establishment of any fees to recoup the City's costs for the ongoing administration and monitoring of the affordability provisions of the target units, except where prohibited by State law.

SECTION 2: Chapter 17.31 of the Municipal Code is amended in its entirety to read as follows:

Chapter 17.31 - INCLUSIONARY HOUSING

Sections:

17.31.010	Basis and purposes.
17.31.020	Definitions.
17.31.030	Inclusionary requirement.
17.31.040	Inclusionary housing incentives.
17.31.050	Alternatives to constructing inclusionary units for rental housing developments.
17.31.060	Affordable housing plan for inclusionary units.
17.31.070	Adjustment or reduction of inclusionary housing requirement.
17.31.080	Affordable housing agreement
17.31.090	Implementation and enforcement.

17.31.010 - Basis and purposes.

- A. Rental and owner-occupied housing in the City has become steadily more expensive. Housing costs have gone up faster than incomes for many groups in the community.
- B. Many persons who work in the City, who have grown up or have family ties in the City, who already live in the City but must move due to increasing housing costs, or who wish to live in the City for other reasons, cannot afford housing in the city.
- C. Federal and state government programs do not provide nearly enough affordable housing opportunities or subsidies to satisfy the housing needs of moderate, lower or very low income households.
- D. Rising land prices have been a key factor in preventing development of new affordable housing. New housing construction in the City which does not include inclusionary units aggravates the existing shortage of affordable housing by absorbing the supply of available residential land. This reduces the supply of land for affordable housing and increases the price of remaining residential land. Providing the inclusionary units required by this Chapter will help to ensure that part of the City's remaining developable land is used to provide affordable housing.
- E. The City wishes to retain an economically balanced community, with housing available to very low income, lower income and moderate income households. The City's general plan implements the established policy of the State of California that each community should foster an adequate supply of housing for households at all economic levels.
- F. An economically balanced community is only possible if part of the new housing built in the City is affordable to households with limited incomes. Requiring builders of new housing to include some housing affordable to households at a range of incomes is fair, not only because new development without inclusionary units contributes to the shortage of affordable housing, but also because zoning and other ordinances concerning new housing in the City should be consistent with the community's goal to foster an adequate supply of housing for households at all economic levels.
- G. In enacting this Chapter it is also the intent of the City of Brisbane to implement the goals, objectives, and policies of the City's general plan housing element, which encourages the provision of housing affordable to a variety of household income levels, seniors, and persons with disabilities, and identifies an inclusionary housing policy ~~as one~~ methods to encourage the development of affordable housing.

17.31.020 - Definitions.

- A. Affordable Housing Agreement. A recorded agreement between a property owner and the City to ensure that the inclusionary housing requirements of this Chapter are satisfied.
- B. Affordable Ownership Cost. The affordable ownership cost for for-sale target units shall be as specified in California Health and Safety Code Section 50052.5, as may be amended over time.
- C. Affordable Rent. The affordable rent for rental target units shall be as specified in California Health and Safety Code Section 50053, as may be amended over time.
- D. Approving Authority. The City decision-making body acting on an application for a housing development subject to the requirements of this Chapter, including the City Council, Planning Commission, or Community Development Director.
- E. City. The City of Brisbane or the Brisbane Housing Authority.
- F. City Council. The City Council of the City of Brisbane as established in Title 2 of this Code or the Board Members of the Brisbane Housing Authority.
- G. City Manager. The City Manager of the City of Brisbane as established in Title 2 of this Code, the City Manager's designee, the Executive Director of the Brisbane Housing Authority or the Executive Director's designee.
- H. Community Development Director. The Director of the Community Development Department responsible for overseeing implementation of Title 17 of this Code, or the Community Development Director's designee.
- I. Domestic Partner. Domestic partner means two (2) persons who have filed a declaration of domestic partnership with the California Secretary of State pursuant to Division 2.5, beginning with Section 297, of the California Family Code and such registration was in full force and effect at the time of the transfer or on the date of the transferor's death. A copy of the domestic partnership registration shall be provided to the city upon request.
- J. Dwelling Unit. Dwelling unit shall have the meaning set forth in Section 17.02.235 of this Code.
 - 1. Inclusionary Unit. Dwelling unit within a housing development that is required by Section 17.31.030 of this Chapter to be rented at affordable rents or sold at an affordable ownership cost to specified households. Inclusionary units ~~are~~ may be considered target units as that term is defined in Chapter 17.29 of this Code.
 - 2. Market-Rate Unit. Any unit within a housing development that is not an inclusionary unit.
- K. Eligible Household. A household whose household income qualifies the household for occupancy of inclusionary units provided under this Chapter.
- ~~K.L.~~ Eligible Purchaser. A household whose household income qualifies the household to purchase a for-sale inclusionary unit, or a qualified non-profit housing corporation as such term is defined in Section 714.7 of the California Civil Code or successor provisions.
- ~~L.M.~~ First Approval. The first of the following approvals to occur with respect to an inclusionary housing development: subdivision approval, housing development permit, building permit or any other permit or approval under the Zoning OrdinanceBrisbane Municipal Code.
- ~~M.N.~~ Household Income. Household income shall be the gross income of the household as calculated pursuant to Title 25 California Code of Regulations, §6914, as amended, or its successor. The household income categories addressed in this Chapter shall be defined as follows:

~~1. Area Median Income. Area median income for San Mateo County as published by the State of California pursuant to California Code of Regulations, Title 25, Section 6932, as may be amended over time.~~

~~2.1. Lower Income Household. A household whose income does not exceed the lower income limits applicable to San Mateo County, as published annually by the State of California pursuant to California Code of Regulations, Title 25, Section 6932, as may be amended over time.~~

~~3.2. Moderate Income Household. A household whose income does not exceed the moderate income limits applicable to San Mateo County, as published annually by the State of California pursuant to California Code of Regulations, Title 25, Section 6932, as may be amended over time.~~

~~4.3. Very Low Income Household. A very low income household shall be as defined by California Health and Safety Code Section 50105, as may be amended over time.~~

~~N.O. Housing Authority. "Housing Authority" shall mean the Brisbane Housing Authority, as established by Resolution of the City Council. For the purposes of this Chapter, "Housing Authority" shall have the same meaning as "City."~~

~~O.P. Inclusionary Housing Development. Any parcel map, subdivision map, use permit, building permit, or other City approval which results in a net increase of at least five (5) or more primary dwelling units and/or residential lots or combination thereof intended for sale or for rent. An inclusionary housing development residential project may include, but is not limited to, new construction, conversion of existing dwelling units to condominium ownership, creation of residential lots, conversion of an existing nonresidential building to residential use, and the addition of primary dwelling units to an existing multifamily dwelling. A housing development shall include units or lots intended for sale or for rent.~~

1. For-Sale Inclusionary Housing Development. An inclusionary housing development, or portion thereof, where the dwelling units or lots are offered to the public for purchase.

2. Rental Inclusionary Housing Development. An inclusionary housing development, or portion thereof, comprised of dwelling units which are intended to be rented, or are actually offered for rent, to tenants upon completion, whether or not a condominium or subdivision map is recorded as part of the housing development.

~~P. Maximum Residential Density. The maximum number of residential units permitted by the City's zoning ordinance on the date the application is deemed complete.~~

Q. Resale restriction agreement. An agreement, covenant, deed of trust, or other document, approved by the City Council, which is executed by the property owner and recorded against each inclusionary unit to insure that such unit remains affordable for the applicable term.

17.31.030 - Inclusionary requirement.

A. Applicability. The inclusionary requirements established in this section shall apply to all housing development projects with five (5) or more primary dwelling units or residential lots, except for the following:

1. Housing development projects that are developed pursuant to the terms of a development agreement ~~executed prior to the effective date of this Chapter~~, provided that such housing development projects shall comply with any affordable housing requirements included in the development agreement.

2. Housing development tentative maps or vesting tentative maps exempted by Government Code Section 66474.2 or 66498.1, provided that such maps shall comply with any predecessor ordinance in effect on the date the application for the map was deemed complete.
- B. Inclusionary Requirements. ~~Unless an alternative is elected pursuant to Section 17.31.050 of this Chapter, the following inclusionary requirements shall apply to for-sale and rental housing development projects:~~
1. For-sale ~~Housing~~ Developments. A for-sale inclusionary housing development ~~subject to the inclusionary requirements of this Chapter~~ shall provide the following inclusionary lots or units, ~~unless an alternative is approved pursuant to Section 17.31.050 of this Chapter:~~
 - a. A for-sale housing development with five (5) to ten (10) primary dwelling units or lots must provide fifteen percent (15%) of the proposed units at affordable ownership costs for moderate income households.
 - b. A for-sale housing development of eleven (11) or more primary dwelling units or lots must provide ten percent (10%) of the units or lots at affordable ownership costs for moderate income households and five percent (5%) of the units or lots at affordable ownership costs for lower income households.
 2. Rental ~~Housing~~ Developments. A rental inclusionary housing development with five (5) or more primary dwelling units must provide fifteen percent (15%) of the units at affordable rents to very low income households, ~~unless an alternative is elected pursuant to Section 17.31.050 of this Chapter.~~
- C. Calculation of Inclusionary Requirement. For purposes of calculating the number of inclusionary units required by this section, any calculations resulting in fractional units of one-half or greater shall be rounded to the next larger integer. If the calculation of the required total number of inclusionary units results in a fraction of less than one-half, the fractional amount shall be provided to the City through payment of an in-lieu fee established by the City Council. For density bonus projects per Chapter 17.29, density bonus units shall not be counted when determining the minimum inclusionary housing requirement.
- ~~Additionally, any density bonus units authorized pursuant to Chapter 17.29 of this Code shall not be counted as part of the housing development.~~
- D. Contemporaneous construction of five (5) or more primary dwelling units on a lot, or on contiguous lots for which there is evidence of common ownership or control, even though not covered by the same City land use approval, shall also be considered a single housing development. Construction shall be considered contemporaneous if any building permits are issued within five (5) years following the date of completion of any earlier construction.
- E. If an inclusionary housing development project requests a density bonus pursuant to Chapter 17.29 of this Title, only inclusionary units may be considered target units that meet all of the applicable requirements for target units in Chapter 17.29 of this Title shall be considered target units for purposes of qualifying for a density bonus only if such inclusionary units meet all of the applicable requirements for target units in Chapter 17.29 of this Title and State Density Bonus Law.

17.31.040 - Inclusionary housing incentives.

~~A.~~—The following incentives shall apply to all inclusionary housing developments that provide one or more inclusionary units in accordance with the provisions of this Chapter:

- ~~1.A.~~ Single-family detached inclusionary units ~~need not~~may be constructed on smaller lots ~~the same size as~~than the market-rate units in the same ~~residential housing~~ development, but the lots may be no smaller

than the minimum standard for the applicable zoning district, except as ~~provided~~ may be modified by Section 17.31.060(B)(1) of this an eligible density bonus request pursuant to Chapter 17.29 of this Title or other provisions of this Municipal Code that address reduction of minimum lot sizes.

~~2B.~~ The square footage of the inclusionary units should be comparable to the market-rate units in the same residential development. However, at the discretion of the Community Development Director, smaller units may be provided, as long as the total inclusionary square footage provided remains comparable, yielding additional units. Inclusionary units may be smaller in size than market-rate units in the same residential development.

~~3C.~~ Inclusionary units may have different finishes and features than market-rate units, including but not limited to -interior finishes, fixtures, or appliances, and features, than market-rate units in the same residential development, as long as the finishes and features are durable and of good quality, as determined by the Community Development Director.

~~D.~~ For for-sale inclusionary housing projects developments, accessory dwelling units may be proposed as inclusionary units. Such accessory dwelling units must comply with the requirements of Chapter 17.43 of this title. Accessory dwelling units shall be rented or sold, consistent with Chapter 17.43, at affordable rents or affordable ownership costs per Section 17.31.030 of this Chapter, as specified in a regulatory agreement, covenant, or other document approved by the City Council pursuant to Section 17.31.060 of this chapter.

17.31.050 - Alternatives to constructing inclusionary units ~~for rental housing developments.~~

A. An applicant for a ~~rental~~ inclusionary housing development, ~~or an applicant for a for-sale inclusionary housing development of fifteen or fewer primary dwellings or lots subject to the inclusionary requirements of this Chapter~~ may, at the sole discretion of the applicant, elect to pay an in-lieu fee as established by resolution of the City Council, for each required inclusionary unit to the Brisbane Housing Authority's Low and Moderate Income Housing Fund, instead of constructing the inclusionary units within the residential development, ~~pursuant to Government Code Section 65850(g). The timing of the in-lieu fee payment shall be paid prior to issuance of the building permit, unless applicable State law requires a different payment timing as determined by the Planning Commission or City Council at the time of approval of the affordable housing plan pursuant to Section 17.31.060 of this Chapter.~~

B. An applicant for a rental or for-sale housing development ~~subject to the inclusionary requirements of this Chapter~~ may request City Council approval of one or more of the following ~~alternatives~~ as an alternative to constructing the inclusionary units within the housing development or paying an in-lieu fee, which request shall be as described within the affordable housing plan for inclusionary units prepared pursuant to ~~sub~~Section 17.31.060 ~~B.3~~ of this Chapter. City Council approval of such a request shall be based on findings that 1) the outcome for the City is superior in terms of the number and affordability of affordable units that would be created, or 2) construction of the required inclusionary units within the market-rate development would be infeasible or present unreasonable hardship in light of such factors as project size, site constraints, market competition, price and product type disparity, applicant capability, and financial subsidies available. Evidence must be submitted with the affordable housing plan required by Section 17.31.060 of this Chapter.

1. Off-Site Construction. The applicant may request to construct some or all of the inclusionary units at a location within the City outside of the ~~residential development~~ housing development site. Off-site construction alternatives include alternatives where parcelization of the subject property is required to create a separate parcel. Off-site inclusionary units shall be located on sites that are compatible with adjacent land uses, appropriately zoned for the intended residential development,

and are in proximity to or will provide access to employment opportunities, urban services, major roads or other public transit facilities.

2. Off-Site Preservation. The applicant may request to create inclusionary units off-site through the purchase and conversion of existing market-rate units to affordable units, either by the applicant or by a not-for-profit entity. The total square footage must, at minimum, equal the square footage that would have been expected on-site, at affordability levels that meet or exceed the on-site requirements. The off-site units must be purchased prior to the building permit for the inclusionary housing development. The off-site preservation option must be approved by the City Council, and the Community Development Director may set requirements related to the rehabilitation and condition of the property and the protection and/or temporary relocation of existing tenants.
32. Dedication of Land. The applicant may dedicate land within the City that is suitable for affordable housing development to the City or ~~another public entity that provides affordable housing to the designee of the City that is suitable for affordable housing development.~~ The land shall meet all of the requirements of Government Code Section 65915(g) or successor provisions. The value of the land shall be not less than the sum of the in-lieu fee that would be due under ~~subsection A.1 of this~~ Section 17.31.050 of this Chapter. The valuation of any land offered in-lieu shall be determined by an appraisal made by an appraiser mutually agreed upon by the City and the applicant. Costs associated with the appraisal shall be borne by the applicant. The timing of the land dedication shall be [fill in the blank...] at or before the first approval of the inclusionary housing development. Factors considered by the Council may include but are not limited to general location, access to transit, buildability, current zoning, and the number of units that could be built at the location.g...others?
43. Funding of Affordable or Special Needs Housing Project. The applicant may make a contribution to a special needs housing project or facility (shelter, transitional housing, or similar) or program or other affordable housing project in the City in an amount equivalent to the in-lieu fee payment due under subsection A.1 of this Section 17.31.050. The contribution must be made prior to receipt of the building permit for the inclusionary housing development.
54. ~~Other Alternatives.~~ The City Council may approve other alternatives to the construction of new inclusionary units. Alternatives may include, but are not limited to, acquisition and rehabilitation of inclusionary units, conversion of existing market rate units to inclusionary affordable units, or construction of special needs housing projects or programs (shelters, transitional housing, etc.).
5. In-Lieu Fee for Certain For-Sale Developments. An applicant for a for-sale inclusionary housing development of more than ~~15~~ fifteen primary dwelling units or lots may request Council approval to pay an in-lieu fee payment rather than construct affordable units with the project.

17.31.060 - Affordable housing plan for inclusionary units.

- A. An affordable housing plan for inclusionary units shall be submitted as part of the application for first approval of any inclusionary housing development ~~for which inclusionary units are required by this Chapter,~~ except where payment of an in-lieu fee is elected by the applicant ~~for a rental housing development~~ pursuant to Section 17.31.050. ~~(A)~~ of this Chapter. No application for a first approval may be deemed complete unless an affordable housing plan, if required, is submitted conforming to the provisions of this Chapter.

- B. If the applicant has requested a density bonus pursuant to Chapter 17.29 of this Code, the affordable housing plan required under this Section shall be combined with the affordable housing plan for target units required pursuant to Section 17.29.040 of this Code.
- C. The affordable housing plan for inclusionary units shall include the following information:
1. For housing developments proposing to construct the inclusionary units within the development, the affordable housing plan shall specify, at the same level of detail as the application for the housing development:
 - a. The number, type, tenure, household income categories, number of bedrooms and baths, approximate location, size, and design (including finishes and features) of all inclusionary units;
 - b. Construction phasing of inclusionary units in relation to market-rate units and overall construction schedule. If the developer intends-proposes to construct the inclusionary units in separate phases from the market-rate unit construction, the affordable housing plan shall specify the security to be provided to the City to ensure that the inclusionary units will be constructed, and explain how the proposed phasing would provide greater public benefit than providing the inclusionary units concurrently with the market-rate units;
 - c. Preliminary Marketing plan indicating general approach to marketing inclusionary units. The final marketing plan may be deferred to prior to first building permit issuance, subject to Community Development Director approval, including the manner in which inclusionary units will be offered to the public in a nondiscriminatory and equitable manner and the method of marketing inclusionary units after initial occupancy is secured;
 - ~~d. Methods to be used to verify incomes of tenant households or purchaser households;~~
 - ~~e. Procedures for qualifying tenant households and prospective purchaser households of inclusionary units, including any preferences.~~
 - ~~f. d.~~ A financing mechanism, the particulars and the amount of which shall be determined by the City at the time the affordable housing plan is approved, to cover the City's costs for the on-going administration and monitoring of the affordability provisions applicable to the inclusionary units, except where prohibited by State law.
 2. If an applicant requests City Council approval of alternatives to constructing the inclusionary units within a ~~rental~~ housing development pursuant to subsection 17.31.050.B of this Chapter, the affordable housing plan shall describe the requested alternatives.
 - ~~3. The affordable housing plan shall state the affordable rent or ownership costs of the inclusionary units, as calculated by the Community Development Director.~~
 - ~~3. If the applicant requests use of different finishes and features than market-rate units as addressed in Section 17.31.040, the affordable housing plan shall describe the request.~~
 - ~~4. If the applicant wishes to request a modification of the requirements set forth in Section 17.31.090 of this Chapter that the inclusionary units be constructed concurrently with the market-rate units, the affordable housing plan shall describe the proposed phasing at the same level of detail as required in the application for the housing development. Additionally, the plan shall specify the security to be provided to the City to ensure that the inclusionary units will be constructed, and explain how the proposed phasing would provide greater public benefit than providing the inclusionary units concurrently with the market-rate units.~~
- ~~ED.~~ The affordable housing plan for inclusionary units shall be reviewed by the Planning Commission or City Council, as appropriate to the application, simultaneously with any other permit applications associated with the first approval for the housing-inclusionary housing development.

17.31.070 – Adjustment or reduction of inclusionary housing requirement.

- A. An applicant may request City Council approval of an adjustment or reduction of the inclusionary housing requirements of this Chapter if an applicant demonstrates that the requested adjustment or reduction would better implement the goals, objectives, and policies of the City's general plan housing element, which encourages the provision of housing affordable to a variety of household income levels, seniors, and persons with disabilities. The City Council, in its sole discretion, will determine whether to approve the applicant's request based on the City's progress in meeting its housing goals, objectives, and policies at the time the request is made.
- B. Any request for an adjustment or reduction under this section shall be submitted concurrently with the affordable housing plan required by Section 17.31.060 of this Chapter. The request for a reduction or adjustment shall set forth in detail the factual basis for the adjustment or reduction.

17.31.080 - Affordable housing agreement.

- A. Applicability. Recordation of an affordable housing agreement shall be made a condition of the first approval for all inclusionary housing developments ~~subject to the requirements of this Chapter to ensure implementation of all requirements of this Chapter~~. The affordable housing agreement shall be recorded prior to, or concurrently with, the final or parcel map, or, where the inclusionary housing development does not require a map, prior to issuance of a building permit for any structure in the inclusionary housing development. The affordable housing agreement shall run with the land and bind all future owners and successors in interest.

~~B. Definitions. The following definitions shall be applicable to such terms as used in this section:~~

- ~~1. "Successor in interest" means any person or persons, other than a transferee defined in subparagraph b of paragraph 2 of this subsection B, vested in legal title to the target unit by reason of the death of the owner of a target unit. For the purposes of this section, the household income of a successor in interest will be calculated consistent with the calculation of household income as defined in Section 17.29.020.Q of this Chapter.~~
- ~~2. "Transfer" means any sale, conveyance, assignment, or other change of ownership, whether voluntary or involuntary, of any legal or equitable interest in an inclusionary unit. Where the inclusionary unit is owned by a corporation, limited liability company, general or limited partnership, or other form of business entity, a transfer of the inclusionary unit shall be deemed to have occurred upon transfer of fifty percent (50%) or more of the ownership interest in such entity. Notwithstanding the foregoing, the following transfers shall be exempt from the requirement that the transferee qualify as an eligible household:~~
 - ~~a. Any transfer to a spouse or domestic partner of the transferor, where the spouse or domestic partner becomes a co-owner of the inclusionary unit with the transferor;~~
 - ~~b. Any transfer by devise or inheritance to a spouse or domestic partner of the transferor upon the transferor's death, where the spouse or domestic partner continues to occupy the inclusionary unit as his or her principal place of residence;~~
 - ~~c. Any transfer between spouses as part of a marriage dissolution proceeding;~~
 - ~~d. Any transfer to an inter vivos revocable trust in which the transferor is the beneficiary;~~
 - ~~e. The granting of the lien or other security interest in the unit as security for a loan and such loan complies with any applicable requirements of the resale restriction agreement.~~

~~The exemptions listed above shall apply only during the period in which the inclusionary unit is owned by the exempted person and shall not apply to any subsequent transfer by that person, which shall be subject to all of the terms and provisions of the resale restriction agreement.~~

~~€B.~~ The affordable housing agreement shall be in a form provided by the City and shall include the following, without limitation:

1. All information provided in the affordable housing plan pursuant to Sections 17.31.060 of this Chapter.
2. The household income categories of the inclusionary units, consistent with the requirements of Section 17.31.030 of this Chapter or any alternative requirements pursuant to Section 17.31.050 of this Chapter.
23. Continued affordability of the inclusionary units, as follows:

~~e.a.~~ For-Sale ~~Target-Inclusionary~~ Units. The affordable housing agreement shall require that a resale restriction agreement, in a form approved by the City, be recorded against each for-sale ~~target-inclusionary~~ unit when the ~~target~~ unit is first transferred to an eligible purchaser. The resale restriction agreement shall provide that ~~target-inclusionary~~ units in for-sale housing developments shall remain affordable in perpetuity and that the affordability provisions be applicable to any subsequent transferees or successors in interest.

The resale restriction agreement shall also provide that the for-sale ~~target-inclusionary~~ unit shall not be rented, ~~and that a successor in interest shall not be exempt from meeting the household income eligibility requirements as are transferees under paragraph 2 of subsection B of this section; provided, however, a successor interest may reside in the unit, subject to the obligations of the resale restriction agreement, if a successor in interest's household income qualifies the successor in interest as provided in Section 17.29.020 Q of this Chapter. If the household income of the successor in interest does not qualify, the successor in interest must sell the unit as set forth in the resale restriction agreement, following a grace period not to exceed one year.~~

~~d.b.~~ Rental Inclusionary ~~u~~Units. The affordable housing agreement shall be recorded against each inclusionary housing development containing rental ~~target~~ units to ensure that the ~~target inclusionary~~ units remain affordable ~~for a minimum term as specified in Government Code Section 65915(c)(1); provided, however, if the target units in the housing development are also inclusionary housing units as defined in Chapter 17.31, the target units shall remain affordable in perpetuity as required by Chapter 17.31.~~

~~For those target units in a housing development that are not inclusionary housing units as defined in Chapter 17.31, a longer period of time than as specified in Government Code section 65915(c)(1) may be required by any construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program.~~

Rental ~~target-inclusionary~~ units that are later converted to for-sale units, e.g., converted to condominiums, and then sold shall be sold as for-sale ~~target-inclusionary~~ units and the requirements of subparagraph a of paragraph ~~32~~ of subsection B of this Section shall apply.

34. The affordable housing agreement shall specify that no household shall be permitted to begin occupancy of an inclusionary unit unless the ~~Community Development Director~~ City or the City's designee has approved the household's eligibility, ~~unless the household has been exempted under subsection B of this Section 17.31.080. If the City maintains a list of, or otherwise identifies, eligible households, initial and subsequent occupants of inclusionary units~~

- ~~shall be selected first from the list of identified households, to the maximum extent possible, in accordance with guidelines approved by the City Council.~~
- ~~45.~~ Affordable housing agreements for inclusionary housing developments intended to be occupied by households with one or more members who are sixty-two (62) years of age or older shall provide that dwelling units in the residential development shall be occupied by persons eligible to reside in such a project.
 - ~~56.~~ The affordable housing agreement shall include provisions requiring maintenance of records to demonstrate compliance with this Chapter.
 - ~~67.~~ The affordable housing agreement shall include a description of remedies for breach of the agreement by either party. The City may identify tenant households or qualified purchaser households as third party beneficiaries under the agreement.
- D. The affordable housing agreement shall include any other provisions determined necessary by the City Attorney to ensure implementation and compliance with this Chapter.

17.31.090 - Implementation and enforcement.

- A. The City shall prepare guidelines to further implement this ordinance. These guidelines shall include, but are not limited to, the following:
- 1. The form and contents of the affordable housing agreement and any resale restriction, including provisions for successors in interest and other ownership transfers;
 - 2. The form and contents of the final marketing plan and resident selection process;
 - 3. Procedures for setting rents and sales prices for the inclusionary units;
 - 4. Procedures for qualifying tenant households and prospective purchaser households of inclusionary units, including any preferences;
 - 5. Compliance and monitoring procedures to assure that affordability restrictions are maintained;
 - 6. Resale and subordination procedures for inclusionary for-sale units;
 - 7. The establishment of any fees to recoup the City's costs for the ongoing administration and monitoring of the affordability provisions of the inclusionary units, except where prohibited by State law.
- B. No permit, license, subdivision map, or other approval or entitlement for an inclusionary housing development shall be issued, including without limitation a final inspection for occupancy, until all requirements applicable to the inclusionary housing development at such time pursuant to this Chapter have been satisfied.
- 1. No building permit shall be issued for any market-rate unit until the permittee has obtained permits for inclusionary units sufficient to meet the requirements of Section 17.31.030 of this Chapter, and, if a density bonus has been requested pursuant to Chapter 17.29, Section 17.29.030 of this Code. No final inspection for occupancy for any market-rate unit shall be completed until or simultaneously with the permittee has constructed construction of the inclusionary units required by Section 17.31.030 of this Chapter.
 - 2. The time requirements set forth in this Section for issuance of building permits for market-rate units and for final inspections for occupancy for market-rate units may be modified to

accommodate phasing schedules, model variations, or other factors in an inclusionary housing development within the submitted affordable housing plan pursuant to Sections 17.31.060 of this Chapter, if the City determines this will provide greater public benefit and an affordable housing agreement pursuant to Section 17.31.080 of this Chapter has been accepted by the community development director.

- ~~BC.~~ Conditions to carry out the purposes of this Chapter shall be imposed on the first approval for an inclusionary housing development and any subsequent approvals.
- ~~CD.~~ The City Attorney is authorized to enforce the provisions of this Chapter and all affordable housing agreements, regulatory agreements, resale controls, deeds of trust, or similar documents placed on inclusionary units, by civil action and any other proceeding or method permitted by law.
- ~~DE.~~ The City Manager is authorized to execute the resale restriction agreement and any related documents following approval by the Community Development Director and the City Attorney.
- ~~EF.~~ Failure of any official or agency to fulfill the requirements of this Chapter shall not excuse any applicant or owner from the requirements of this Chapter.
- ~~FG.~~ The remedies provided for herein shall be cumulative and not exclusive and shall not preclude the City from any other remedy or relief to which it otherwise would be entitled under law or equity.

SECTION 3: Where a use permit, design permit or variance approval has been issued through final action by the City prior to the effective date of this Ordinance, or where such planning permit approval is not required and a complete building permit application has been submitted prior to the effective date of this Ordinance, the holder of such use permit, design permit or variance approval or complete building permit application may proceed to construct the improvements or establish the use authorized by such permit or approval and the same shall be exempted from any conflicting regulations that may be contained in this Ordinance.

SECTION 4: If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of Brisbane hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that one or more sections, subsections, sentences, clauses or phrases may be held invalid or unconstitutional.

SECTION 5: This Ordinance shall be in full force and effect thirty days after its passage and adoption.

Requirement, per unit	\$/Unit Preliminary Proposed In-Lieu Fee
For Sale, 5-10 units	\$ 236,558
For Sale, 11 + units	\$ 265,717
Rental	\$ 378,346

Comparable Policies

City	Rental	Owner	Both	Revised
South San Francsicso			\$424,840.11	1/1/2025
East Palo Alto	\$ 291,200	\$ 273,400		6/1/2024
San Mateo (city)	\$ 334,517	\$ 307,005		6/1/2024

Average Affordability Gap (2015 Nexus Study)

	2015	2024 (CPI inflated)
50% of AMI	\$ 280,783	\$ 378,346
70%-80% of AMI	\$ 240,477	\$ 324,035
90%-110% of AMI	\$ 175,558	\$ 236,558

CPI-U, San Francisco-
Oakland-Hayward CA

	CPI-U
2015	258.572
2024	348.417

Inflation Factor 1.347466083

Attachment 4

September 26, 2024 Planning Commission Workshop

a. Agenda Report

b. Minutes

Attachment 5

November 14, 2024 Planning Commission Workshop

- a. Agenda Report
- b. Meeting video

Attachment 6

BMC Ch. 17.31, Density Bonus and Inclusionary Housing Ordinance

City of Brisbane

Planning Commission Agenda Report

TO: Planning Commission For the Meeting of 4/11/2019

FROM: Julia Ayres, Associate Planner, via John Swiecki, Community Development Director

SUBJECT: **Zoning Text Amendment RZ-5-18;** Zoning Text Amendments to update the City's density bonus and inclusionary housing regulations contained in Chapter 17.31 of the Brisbane Municipal Code, pursuant to Programs H.B.4.b and H.B.5.a of the 2015-2022 Housing Element and State Assembly Bill AB 1505; Citywide; City of Brisbane, applicant.

REQUEST: Zoning text amendments to update the density bonus and inclusionary housing regulations in the Brisbane Municipal Code.

RECOMMENDATION: Adoption of Resolution RZ-5-18, recommending approval of the zoning text amendments to the City Council.

ENVIRONMENTAL DETERMINATION: The City Council adopted a Negative Declaration—State Clearinghouse No. 2015012053- for the 2015-2022 Housing Element via adoption of Resolution 2015-08. The proposed zoning text amendments would modify existing regulatory processes in the Municipal Code related to the cost or rent of new residential projects which would be subject to project-specific CEQA analysis at the time they are submitted to the City for review. State CEQA Guidelines Section 15061(b)(3) states the general rule that where it can be seen with certainty that there is no possibility that minor zoning amendments may have a significant effect on the environment, the activity is not subject to the California Environmental Quality Act.

APPLICABLE REGULATIONS: Procedures for zoning amendments are provided in BMC Chapter 17.50. The City's zoning regulations regarding density bonuses and inclusionary housing are located in BMC Chapter 17.31. State regulations governing the density bonuses and inclusionary housing are located in Government Code Sections 65915 – 65918 and Section 65850, respectively.

BACKGROUND

The current 2015-2022 Housing Element of the General Plan and recently adopted State law AB 1505 (2017) require updates to the City's Inclusionary Housing and Density Bonus Ordinance (BMC Chapter 17.31, adopted in 2009). The applicable Housing Element excerpts and excerpt from AB 1505 are attached. The Planning Commission has reviewed the City's current ordinance, state law provisions, regulations in neighboring jurisdictions, and other pertinent

information over the course of five workshops and study sessions from July 2018 to March 2019. The resulting draft amendments to the density bonus and inclusionary housing regulations are attached in draft Resolution RZ-5-18 (Attachment 1) and discussed in detail below.

DISCUSSION:

The attached draft ordinance proposes the following revisions to the current density bonus and inclusionary housing regulations.

1) Organization of Ordinance

The current ordinance includes both density bonus and inclusionary housing regulations within a single chapter (Chapter 17.31). While this allows for some efficiencies - specifically in the affordable housing plan section, which has overlapping requirements for both types of projects – staff recommends separating the two sets of regulations due to differences in their application and administration. For example, while all projects over five units/lots in size (per the recommended ordinance; see item 2 below) would be subject to inclusionary requirements, the project may not necessarily invoke the density bonus regulations. The draft ordinance extracts the density bonus regulations from Chapter 17.31 and inserts them into a new Chapter 17.29, retaining the revised inclusionary housing regulations in Chapter 17.31. Each chapter contains cross-references to the other where appropriate.

Consistent with this approach to separate the regulations into separate chapters, the draft ordinance contains updates to the definitions sections of both chapters to eliminate extraneous terms, consolidate definitions where appropriate, and update pertinent cross-references between chapters. Organizational modifications are also proposed to aid in the chapters' readability.

2) Revises inclusionary housing regulations (Chapter 17.31) as follows:

- a) Reduces the minimum unit threshold for projects subject to inclusionary housing requirements from six units to five units.

The draft ordinance proposes reducing the inclusionary requirements threshold from six to five units to make the threshold for density bonus and inclusionary housing projects uniform. Under the current ordinance, a five-unit project providing one affordable housing unit would be eligible for density bonus and concessions or incentives, while a five-unit project not exercising the density bonus could be approved without yielding any affordable units. The proposed 15% inclusionary requirement applied to a five unit project would be one unit, per the rounding provisions contained in the ordinance.

- b) Utilizes a percentage-based inclusionary requirement instead of the current sliding scale.

The draft ordinance would replace the current sliding scale for inclusionary requirements with a flat percentage of 15% both for rental projects (in compliance with AB 1505) and for-sale projects (see §17.31.030 of the draft ordinance). Additionally, §17.31.030.B.2 would require the inclusionary units for rental projects to be targeted to very low income

households, whereas the current ordinance targets low and moderate income households. As discussed in the January 24, 2019 staff memorandum to the Commission, the City currently has not issued or approved any very low units in the current Regional Housing Needs Allocation (RHNA), which identifies the need for 114 dwelling units affordable to very low income households. Additionally, the Low Income Housing Tax Credit (LIHTC) program requires eligible projects to provide housing affordable to households making no more than 50-60 percent of the area's median income, which falls within the very low income household category for San Mateo County.

The draft ordinance breaks down affordability requirements between low and moderate income households for **for-sale** residential projects based on the project size (§17.31.030.B.1), as follows:

- Five- Ten Units/Lots: *15% affordable to moderate income households*

It is recommended that smaller for-sale residential projects contain affordability requirements targeted at moderate income households, recognizing the challenges smaller projects face in regards to financing as well as managing the administration, advertisements, and sales of the income-restricted units.

- Eleven or More Units/Lots: *10% affordable to moderate income households, 5% affordable to low income households*

Serving a broader range of income levels could be less fiscally and administratively challenging for larger for-sale residential projects.

- c) Provides one by-right alternative to constructing rental inclusionary units and additional discretionary alternatives.

The current ordinance does not allow any alternatives to constructing inclusionary units within the project. Consistent with the requirements of AB 1505, §17.31.050.A of the draft ordinance as proposed allows a developer to pay an in-lieu fee, (as adopted separately by the City Council) instead of providing affordable units within the project. The fee is paid to the City and restricted for purposes of developing affordable housing. While state law mandates that the City provide one alternative to on-site construction of inclusionary units, §17.31.050.B of the draft ordinance also establishes several discretionary alternatives - requiring City Council approval - that a developer could request depending on the particular project, project site, or other circumstance that would otherwise preclude the project from strict compliance with the ordinance or otherwise achieve the City's housing goals.

- d) Establishes options for other adjustments of inclusionary housing requirement.

The draft ordinance would allow an applicant to request City Council approval of an adjustment or reduction of the inclusionary housing requirements if they can demonstrate that the adjustment would better implement the goals, objectives, and policies of the Housing Element (e.g., a project providing special needs housing). The City Council would have sole discretion in approving the applicant's request based on the City's

progress in meeting its housing goals, objectives, and policies at the time the request is made.

3) Revises the density bonus regulations (Chapter 17.29) as follows:

- a) Eliminates density bonus tables and replaces with references to applicable State law.

The current ordinance contains excerpts from State density bonus law outlining the types of density bonuses, the number of affordable units projects must provide, and the maximum bonus available. The draft ordinance eliminates these excerpts and replaces them with references to the applicable State statutes. This ensures that the City's ordinance remains in compliance with State density bonus law as it may be amended over time.

- b) Creates a density bonus incentive for small projects and projects that exceed the density bonus qualifications (pursuant to Housing Element Program H.B.5.a).

In order to implement this Housing Element program, §17.29.030.A.1 of the draft ordinance establishes a density bonus for small projects (two to four units) in the R-2 and R-3 Residential Districts. Additionally, §17.29.030.A.2 of the draft ordinance would allow a developer of a housing development that exceeds the qualifications for a density bonus to request one additional incentive or concession above the maximum number prescribed by the Government Code.

Implementation

In considering the draft ordinance after the Planning Commission makes its recommendation, the City Council will need to take separate action in regard to adopting an lieu-fee pursuant to §17.31.050.A of the draft ordinance. The Council will have to make related policy decisions including setting the fee amount, and determining if they want to impose a broader nexus or linkage fee on smaller residential and/or nonresidential development, as discussed at the Commission's March 14, 2019 workshop. The Commission may wish to offer advisory comments to the City Council on the fee issue.

As discussed at previous Commission study sessions and workshops, inclusionary housing in-lieu fees must be programmed to support affordable housing opportunities, including new construction of affordable housing, or other means to achieve the City's housing goals (e.g., down payment loans for low income households, accessory dwelling unit construction loans, etc.) The City Council would need to consider the City's overall affordable housing policies and strategies in conjunction with imposing affordable housing fees.

ATTACHMENTS:

- ~~A. Draft Resolution RZ 5-18, including the draft ordinance~~
- ~~B. Brisbane Municipal Code Chapter 17.31 (current ordinance)~~
- C. Relevant 2015-2022 Housing Element excerpts
- D. AB 1505 excerpts

Not included

**Resolution RZ-5-18:
Relevant Housing Element Programs**

Program H.B.4.b Update the inclusionary housing ordinance so as to comply with California Civil Code Sections 1954.51-535.

Time Frame: December 31, 2016

Responsibility: Community Development Department

Funding Source: City funds

Program H.B.5.a Amend the Affordable Housing Ordinance (BMC Chapter 17.31) to permit the City to grant a proportionately lower density bonus and/or incentives for affordable housing projects that do not qualify under Government Code Section 65915 due to their small size or other limitations, as well as to grant a density bonus and/or other incentives greater than required for projects that meet or exceed the qualifications for a density bonus (as provided by AB 2280), such as those that include units for extremely-low-income families and larger households. Once the amendment is adopted, develop an outreach program to ensure its successful implementation.

Time Frame: December 31, 2016

Responsibility: Community Development Department, Planning Commission, City Council

Funding Source: City funds


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AB-1505 Land use: zoning regulations. (2017-2018)

SHARE THIS:



Date Published: 09/29/2017 09:00 PM

Assembly Bill No. 1505

CHAPTER 376

An act to amend Section 65850 of, and to add Section 65850.01 to, the Government Code, relating to land use.

[Approved by Governor September 29, 2017. Filed with Secretary of State September 29, 2017.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1505, Bloom. Land use: zoning regulations.

The Planning and Zoning Law authorizes the legislative body of any county or city to adopt ordinances regulating zoning within its jurisdiction, as specified.

This bill would additionally authorize the legislative body of any county or city to adopt ordinances to require, as a condition of development of residential rental units, that the development include a certain percentage of residential rental units affordable to, and occupied by, moderate-income, lower income, very low income, or extremely low income households or by persons and families of low or moderate income, as specified, and would declare the intent of the Legislature in adding this provision.

This bill would also authorize the Department of Housing and Community Development, within 10 years of the adoption or amendment of an ordinance by a county or city after September 15, 2017, that requires as a condition of the development of residential rental units that more than 15% of the total number of units rented in the development be affordable to, and occupied by, households at 80% or less of the area median income, to review that ordinance if the county or city meets specified conditions. The bill would authorize the department to request, and require that the county or city provide, evidence that the ordinance does not unduly constrain the production of housing by submitting an economic feasibility study that meets specified standards. If the department finds that economic feasibility study does not meet these standards, or if the county or city fails to submit the study within 180 days, the bill would require the county or city to limit any requirement to provide rental units in a development affordable to households at 80% or less of the area median income to no more than 15% of the total number of units in the development. The bill would require the department to report any findings made pursuant to these provisions to the Legislature. The bill would also declare that these provisions regarding department review of certain land use ordinances address a matter of statewide concern.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

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

SECTION 1. Section 65850 of the Government Code is amended to read:

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65850. The legislative body of any county or city may, pursuant to this chapter, adopt ordinances that do any of the following:

- (a) Regulate the use of buildings, structures, and land as between industry, business, residences, open space, including agriculture, recreation, enjoyment of scenic beauty, use of natural resources, and other purposes.
- (b) Regulate signs and billboards.
- (c) Regulate all of the following:
 - (1) The location, height, bulk, number of stories, and size of buildings and structures.
 - (2) The size and use of lots, yards, courts, and other open spaces.
 - (3) The percentage of a lot which may be occupied by a building or structure.
 - (4) The intensity of land use.
- (d) Establish requirements for offstreet parking and loading.
- (e) Establish and maintain building setback lines.
- (f) Create civic districts around civic centers, public parks, public buildings, or public grounds, and establish regulations for those civic districts.
- (g) Require, as a condition of the development of residential rental units, that the development include a certain percentage of residential rental units affordable to, and occupied by, households with incomes that do not exceed the limits for moderate-income, lower income, very low income, or extremely low income households specified in Sections 50079.5, 50093, 50105, and 50106 of the Health and Safety Code. The ordinance shall provide alternative means of compliance that may include, but are not limited to, in-lieu fees, land dedication, off-site construction, or acquisition and rehabilitation of existing units.

SEC. 2. Section 65850.01 is added to the Government Code, to read:

65850.01. (a) The Department of Housing and Community Development, hereafter referred to as "the department" in this section, shall have the authority to review an ordinance adopted or amended by a county or city after September 15, 2017, that requires as a condition of the development of residential rental units that more than 15 percent of the total number of units rented in a development be affordable to, and occupied by, households at 80 percent or less of the area median income if either of the following apply:

(1) The county or city has failed to meet at least 75 percent of its share of the regional housing need allocated pursuant to Sections 65584.04, 65584.05, and 65584.06, as applicable for the above-moderate income category specified in Section 50093 of the Health and Safety Code, prorated based on the length of time within the planning period pursuant to paragraph (1) of subdivision (f) of Section 65588, over at least a five-year period. This determination shall be made based on the annual housing element report submitted to the department pursuant to paragraph (2) of subdivision (a) of Section 65400.

(2) The department finds that the jurisdiction has not submitted the annual housing element report as required by paragraph (2) of subdivision (a) of Section 65400 for at least two consecutive years.

(b) Based on a finding pursuant to subdivision (a), the department may request, and the county or city shall provide, evidence that the ordinance does not unduly constrain the production of housing by submitting an economic feasibility study. The county or city shall submit the study within 180 days from receipt of the department's request. The department's review of the feasibility study shall be limited to determining whether or not the study meets the following standards:

(1) A qualified entity with demonstrated expertise preparing economic feasibility studies prepared the study.

(2) If the economic feasibility study is prepared after September 15, 2017, the county or city has made the economic feasibility study available for at least 30 days on its Internet Web site. After 30 days, the county or city shall include consideration of the economic feasibility study on the agenda for a regularly scheduled meeting of the legislative body of the county or city prior to consideration and approval. This paragraph applies when an economic feasibility study is completed at the request of the department or prepared in connection with the ordinance.

M.

(3) The study methodology followed best professional practices and was sufficiently rigorous to allow an assessment of whether the rental inclusionary requirement, in combination with other factors that influence feasibility, is economically feasible.

(c) If the economic feasibility study requested pursuant to subdivision (b) has not been submitted to the department within 180 days, the jurisdiction shall limit any requirement to provide rental units in a development affordable to households at 80 percent of the area median income to no more than 15 percent of the total number of units in a development until an economic feasibility study has been submitted to the department and the department makes a finding that the study meets the standards specified in paragraphs (1), (3), and, if applicable, (2), of subdivision (b).

(d) (1) Within 90 days of submission, the department shall make a finding as to whether or not the economic feasibility study meets the standards specified in paragraphs (1), (3), and, if applicable, (2), of subdivision (b).

(2) If the department finds that the jurisdiction's economic feasibility study does not meet the standards in paragraphs (1), (3), and, if applicable, (2), of subdivision (b), the jurisdiction shall have the right to appeal the decision to the Director of Housing and Community Development or his or her designee. The director or his or her designee shall issue a final decision within 90 days of the department's receipt of the appeal unless extended by mutual agreement of the jurisdiction and the department.

(3) If in its final decision the department finds that jurisdiction's economic feasibility study does not meet the standards in paragraphs (1), (3), and, if applicable, (2), of subdivision (b), the jurisdiction shall limit any requirement to provide rental units in a development affordable to households at 80 percent of the area median income to no more than 15 percent of the total number of units in a development until such time as the jurisdiction submits an economic feasibility study that supports the ordinance under review and the department issues a finding that the study meets the standards in paragraphs (1), (3), and, if applicable, (2), of subdivision (b).

(e) The department shall not request to review an economic feasibility study for an ordinance more than 10 years from the date of adoption or amendment of the ordinance, whichever is later.

(f) The department shall annually report any findings made pursuant to this section to the Legislature. The report required by this subdivision shall be submitted in compliance with Section 9795.

(g) The Legislature finds and declares that ensuring access to affordable housing is a matter of statewide concern and not a municipal affair, as that term is used in Section 5 of Article XI of the California Constitution. Therefore, this section shall apply to an ordinance proposed or adopted by any city, including a charter city.

SEC. 3. The Legislature finds and declares all of the following:

(a) Inclusionary housing ordinances have provided quality affordable housing to over 80,000 Californians, including the production of an estimated 30,000 units of affordable housing in the last decade alone.

(b) Since the 1970s, over 170 jurisdictions have enacted inclusionary housing ordinances to meet their affordable housing needs.

(c) While many of these local programs have been in place for decades, a 2009 appellate court decision has created uncertainty and confusion for local governments regarding the use of this tool to ensure the inclusion of affordable rental units in residential developments.

(d) It is the intent of the Legislature to reaffirm the authority of local jurisdictions to include within these inclusionary housing ordinances requirements related to the provision of rental units.

(e) The Legislature declares its intent in adding subdivision (g) to Section 65850 of the Government Code, pursuant to Section 1 of this act, to supersede the holding and dicta in the court decision of *Palmer/Sixth Street Properties, L.P. v. City of Los Angeles* (2009) 175 Cal.App.4th 1396 to the extent that the decision conflicts with a local jurisdiction's authority to impose inclusionary housing ordinances pursuant to subdivision (g) of Section 65850 of the Government Code, as added pursuant to Section 1 of this act.

(f) In no case is it the intent of the Legislature in adding subdivision (g) to Section 65850 of the Government Code, pursuant to Section 1 of this act, to enlarge, diminish, or modify in any way the existing authority of local jurisdictions to establish, as a condition of development, inclusionary housing requirements, beyond reaffirming their applicability to rental units.

RESOLUTION NO. RZ-5-18

RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BRISBANE
RECOMMENDING APPROVAL OF ZONING TEXT AMENDMENT RZ-5-18
ADDING NEW CHAPTER 17.29 AND AMENDING CHAPTER 17.31 OF
THE BRISBANE MUNICIPAL CODE
CONCERNING DENSITY BONUS AND
INCLUSIONARY HOUSING REQUIREMENTS
TO THE CITY COUNCIL

WHEREAS, in April of 2015, the City Council adopted the 2015-2022 Housing Element via General Plan Amendment GPA-1-14, and certified a Negative Declaration for the Housing Element; and

WHEREAS, Housing Element Program H.B.5.a directs the City to amend the Affordable Housing Ordinance (BMC Chapter 17.31) to permit the City to grant a proportionately lower density bonus and/or incentives for affordable housing projects that do not qualify under Government Code Section 65915 due to their small size or other limitations, as well as to grant a density bonus and/or other incentives greater than required for projects that meet or exceed the qualifications for a density bonus; and

WHEREAS, Housing Element Program H.B.4.b obligates the City to update its BMC Chapter 17.31 to comply with current State inclusionary housing and density bonus law; and

WHEREAS, Assembly Bill (AB) 1505, signed into law in September 2017, requires cities with inclusionary housing ordinances imposing an inclusionary requirement of more than 15 percent to rental housing developments to provide an economic feasibility study demonstrating that the ordinance does not unduly constrain the production of housing by to the State Housing and Community Development Department, and requires inclusionary housing ordinances to allow at least one by-right alternative to developers to constructing inclusionary housing units within a rental housing development; and

WHEREAS, the draft ordinance implements the requirements of Housing Element programs H.B.4.b and H.B.5.a related to the City's implementation of State density bonus law, and the requirements of Housing Element Program H.B.4.b and AB 1505 related to the City's inclusionary housing regulations, including adoption of a 15 percent inclusionary requirement for rental and for-sale housing developments of five or more residential units or lots; and

WHEREAS, because the project implements Housing Element programs of the 2015-2022 Housing Element, for which a negative declaration was adopted (SCH#2015012053), and the proposed zoning text amendments can be seen with certainty to have no possibility of significant effect on the environment, the activity is not subject to the California Environmental Quality Act per State CEQA Guidelines Section 15061(b)(3); and

Reso. RZ-5-18
Density Bonus/Inclusionary Housing Ord.

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

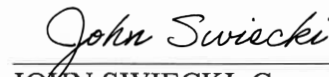
AYES: Gomez, Gooding, Mackin, Sayasane.

NOES: None.

ABSENT: Patel.


PAMALA SAYASANE
Chairperson

ATTEST:


JOHN SWIECKI, Community Development Director

draft
ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY OF BRISBANE
ADDING NEW CHAPTER 17.29 AND AMENDING CHAPTER 17.31 OF
THE BRISBANE MUNICIPAL CODE
CONCERNING DENSITY BONUS AND
INCLUSIONARY HOUSING REQUIREMENTS**

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

SECTION 1: A new Chapter 17.29 is added to the Municipal Code to read as follows:

Chapter 17.29 – DENSITY BONUSES

Sections:

17.29.010	Purposes of chapter.
17.29.020	Definitions.
17.29.030	Density bonuses.
17.29.040	Affordable housing plan for density bonus projects.
17.29.050	Affordable housing agreement.
17.29.060	Implementation and enforcement.

17.29.010 – Purposes of chapter.

- A. The City of Brisbane enacts this chapter to implement the goals, objectives, and policies of the City's general plan housing element relative to administering a density bonus program to encourage the provision of housing affordable to a variety of household income levels, seniors, and persons with disabilities.
- B. This chapter is also intended to implement Sections 65915, 65915.5, and 65917 of the California Government Code, or successor regulations, governing density bonuses and other incentives required therein for the production of housing for very low income, lower income, moderate income, and senior households.

17.29.020 - Definitions.

- A. Affordable Housing Agreement. A recorded agreement between a property owner and the City to ensure that the density bonus requirements of this Chapter are satisfied.
- B. Affordable Ownership Cost. The affordable ownership cost for for-sale target units shall be as specified in California Health and Safety Code Section 50052.5, as may be amended over time.
- C. Affordable Rent. The affordable rent for rental target units shall be as specified in California Health and Safety Code Section 50053, as may be amended over time.
- D. Approving Authority. The City decision-making body acting on an application for a housing development subject to the requirements of this Chapter, including the City Council, Planning Commission, or Community Development Director.
- E. Child Care Facility. Child care facility shall have the same meaning as defined in Government Code Section 65915(h)(4), as may be amended over time.
- F. City. The City of Brisbane or the Brisbane Housing Authority.

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- G. City Council. The City Council of the City of Brisbane as established in Title 2 of this Code or the Board Members of the Brisbane Housing Authority
- H. City Manager. The City Manager of the City of Brisbane as established in Title 2 of this Code, the City Manager's designee, the Executive Director of the Brisbane Housing Authority or the Executive Director's designee.
- I. Common Interest Development. As defined in California Civil Code Section 4100, as may be amended over time.
- J. Community Development Director. The Director of the Community Development Department responsible for overseeing implementation of Title 17 of this Code, or the Community Development Director's designee.
- K. Density Bonus. A density increase over the otherwise allowable maximum residential density, as defined in this Section 17.29.020, pursuant to Government Code Section 65915(f) and 65915.5, as may be amended over time.
- L. Development Standard. A development standard shall be as defined by Government Code Section 65915(o)(1), as may be amended over time. As used in this Chapter, the term "development standard" does not include any of the following:
 - 1. The permitted uses of a site;
 - 2. Affordable housing requirements;
 - 3. Building standards approved by the California Building Standards Commission as provided in California Health and Safety Code Section 18901 et seq.; or
 - 4. The requirements of Brisbane's Green Building Ordinance as set forth in Title 15, Chapter 15.80 of this Code.
- M. Domestic Partner. Domestic partner means two (2) persons who have filed a declaration of domestic partnership with the California Secretary of State pursuant to Division 2.5, beginning with Section 297, of the California Family Code and such registration was in full force and effect at the time of the transfer or on the date of the transferor's death. A copy of the domestic partnership registration shall be provided to the city upon request.
- N. Dwelling Unit. Dwelling unit shall have the meaning set forth in Section 17.02.235 of this Code.
 - 1. Density Bonus Unit. Those dwelling units granted pursuant to the provisions of this Chapter which exceed the otherwise allowable maximum residential density for the development site.
 - 2. Market-Rate Unit. Any dwelling unit within a housing development that is not a target unit.
 - 3. Target Units. Dwelling units affordable to moderate, low, or very low income households within a housing development that qualify the project for a density bonus.
- O. Eligible Household. A household whose household income qualifies the household for occupancy of density bonus units provided under this Chapter.
- P. First Approval. The first of the following approvals to occur with respect to a housing development: subdivision approval, building permit or any permit or approval under the Zoning Ordinance.
- Q. Household Income. Household income shall be the gross income of the household as calculated pursuant to Title 25 California Code of Regulations, §6914, as amended, or its successor. The household income categories addressed in this Chapter shall be defined as follows:

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1. **Area Median Income.** Area median income for San Mateo County as published by the State of California pursuant to California Code of Regulations, Title 25, Section 6932, as may be amended over time.
 2. **Lower Income Household.** A household whose income does not exceed the lower income limits applicable to San Mateo County, as published annually by the State of California pursuant to California Code of Regulations, Title 25, Section 6932, as may be amended over time.
 3. **Moderate Income Household.** A household whose income does not exceed the moderate income limits applicable to San Mateo County, as published annually by the State of California pursuant to California Code of Regulations, Title 25, Section 6932, as may be amended over time.
 4. **Very Low Income Household.** A very low income household shall be as defined by California Health and Safety Code Section 50105, as may be amended over time.
- R. **Housing Authority.** “Housing Authority” shall mean the Brisbane Housing Authority, as established by Resolution of the City Council. For the purposes of this Chapter, “Housing Authority” shall have the same meaning as “City.”
- S. **Housing Development.** Any parcel map, subdivision map, use permit, building permit, or other city approval which results in a net increase of at least five (5) or more dwelling units and/or residential lots or combination thereof. A housing development may include, but is not limited to, new construction, conversion of existing dwelling units to condominium ownership, creation of residential lots, conversion of an existing nonresidential building to residential use, and the addition of dwelling units to an existing multifamily dwelling. A housing development shall include units or lots intended for sale or for rent.
1. **For-Sale Housing Development.** A housing development, or portion thereof, where the dwelling units or lots are offered to the public for purchase.
 2. **Rental Housing Development.** A housing development, or portion thereof, comprised of dwelling units which are intended to be rented, or are actually offered for rent, to tenants upon completion, whether or not a condominium or subdivision map is recorded as part of the housing development.
 3. **Senior Citizen Housing Development.** A senior citizen housing development shall be as defined per Government Code Section 65915(b)(1)(C), as may be amended over time.
- T. **Incentives or Concessions.** Incentives or concessions shall be as defined in the Government Code Section 65915(k) and 65915.5, as identified by a financial pro forma submitted by the applicant per 17.31.120 of this Code.
- U. **Maximum Residential Density.** The maximum number of dwelling units permitted by the City's zoning ordinance on the date the application is deemed complete.
- V. **Modified Parking Standards.** Modifications to the parking standards that would otherwise apply to a housing development under Chapter 17.34 of this Code, as described in Government Code Section 65915(p), as may be amended from time to time.
- W. **Resale Restriction Agreement.** An agreement, covenant, deed of trust, or other document, approved by the City Council, which is executed by the property owner and recorded against each target unit to insure that such unit remains affordable for the applicable term.
- X. **Specific Adverse Impact.** A "specific adverse impact" shall have the same meaning as the meaning provided in the Government Code Section 65589.5, as may be amended from time to time.

17.29.030 - Density bonuses.

- A. The City shall grant a density bonus, incentives and concessions, waivers or reductions in development standards, and/or modified parking standards requested by applicants for approval of a housing development project of at least five units, to the extent required pursuant to Sections 65915 and 65915.5 of the Government Code, as may be amended over time.
1. A developer of a housing development containing between two (2) and four (4) dwelling units or lots may request City Council approval of a density bonus as shown in Table 17.29.030. The City shall waive or reduce any development standard that may preclude development of such a project subsection B of this Section 17.29.030.

Table 17.29.030

Zoning District	Lot Size	Maximum Permitted Residential Density	Percentage low income units	Percentage Density Bonus	Total Units including Density Bonus Units
R-2	4,950-7,499 sq ft	2 units	50%	30%	3 units
R-3	4,950- 5,999 sq ft	3 units	30%	15%	4 units
	6,000- 7,499 sq ft	4 units	50%	15%	5 units

2. A developer of a housing development that exceeds the qualifications for a density bonus per Government Code Section 65915 may request that the City grant one additional incentive or concession above the maximum number prescribed by Government Code Section 65915(d)(2), as applicable to the project.
 3. A developer may request a lesser density bonus than the project is entitled to, but no reduction will be permitted in the number of required target units pursuant to subsection A of this Section 17.29.030.
 4. Where a site has no maximum residential density, no density bonus need be granted. However, the City shall grant incentives or concessions and waivers or reductions in development standards requested by applicants pursuant to Government Code Sections 65915(d) and 65915(e).
 5. Inclusionary units required pursuant to Chapter 17.31 will be counted as target units for the purposes of calculating a density bonus.
- B. The following concessions and incentives shall require approval by the City Council, even though the housing development may otherwise only require approval by the Planning Commission:
1. Deferring collection of development impact fees on market-rate units until issuance of certificate of occupancy;
 2. Any direct financial assistance, including that for purchasers of target units;
 3. Any regulatory incentives or concessions not related to the zoning ordinance's development standards or parking requirements, such as incentives involving infrastructure standards or mixed-use zoning.
- C. Nothing in this section requires the City to provide direct financial incentives for the housing development, including but not limited to the provision of publicly owned land.
- D. In accordance with state law, neither the granting of a concession or incentive, nor the granting of a density bonus, shall be interpreted, in and of itself, to require a general plan amendment, zoning change, or other discretionary approval.

17.29.040 - Affordable housing plan for density bonus projects.

- A. An affordable housing plan shall be submitted as part of the application for first approval of any housing development for which a density bonus, incentives or concessions, or waivers or reductions of development standards are requested. No application for a first approval shall be deemed complete unless an affordable housing plan is submitted conforming to the provisions of this section.
- B. The affordable housing plan shall include the following information:
 - 1. All information required for affordable housing plans for inclusionary units pursuant to Section 17.31.060.C of Chapter 17.31, as applicable to the project.
 - 2. Description of the base project without the requested density bonus, the number and location of all target units qualifying the project for a density bonus, the level of affordability of the target units, and identification of the density bonus units.
 - 3. Description of any requested density bonuses, incentives, concessions, waivers or modifications of development standards, and/or modified parking standards.
 - a. For all requested incentives and concessions, a pro forma demonstrating the requested incentives and concessions result in identifiable and actual cost reductions to provide for affordable ownership cost or rent, as appropriate to the project. The cost of reviewing any required pro forma data submitted in support of a request for a concession or incentive, including but not limited to the cost to the City of hiring a consultant to review the pro forma, shall be borne by the applicant.
 - b. For all requested waivers or reductions of development standards, written evidence that (i) the development standards for which a waiver or reduction is requested will physically preclude the construction of the housing development at the densities or with the incentives or concessions permitted by this chapter; (ii) the waiver or reduction would not have a specific, adverse impact, or, if a specific, adverse impact would occur, that the impact could feasibly be mitigated or avoided; (iii) the waiver or reduction would not have an adverse impact on any real property that is listed in the California Register of Historical Resources; and (iv) the waiver or reduction would not be contrary to any state or federal law.
 - c. If a density bonus or concession is requested for a land donation, the application shall show the location of the land to be dedicated and provide evidence that each of the findings in Government Code Section 65915(g) can be made.
 - d. If a density bonus or concession is requested for a child care facility, the application shall show the location and square footage of the child care facility and provide evidence that the findings in Government Code Section 65915(i) can be made.
 - e. If a density bonus or concession is requested for a mixed use development, as defined in Chapter 17.02 of this Code, the application shall provide evidence that the required findings in Government Code Section 65915(k)(2) can be made.
 - 9. The applicant may request a modification of the requirement set forth in Section 17.29.060 of this Chapter that the target units be constructed concurrently with the market-rate units. In that case, the affordable housing plan shall describe the proposed phasing at the same level of detail as required in the application for the housing development, specify the security to be provided to the City to ensure that the affordable units will be constructed, and explain how the proposed phasing would provide greater public benefit than providing the target units concurrently with the market-rate units.

- C. The affordable housing plan for density bonus projects shall be reviewed by the Planning Commission or City Council, as appropriate to the application, simultaneously with any other permit applications associated with the first approval for the housing development. The City Council shall be the approving authority for the affordable housing plan where incentives or concessions pursuant to Section 17.29.030 of this Code are requested, even though the approving authority for the housing development might otherwise be the Planning Commission.
- D. A request for a minor modification of an approved affordable housing plan may be granted by the community development director if the modification is substantially in compliance with the original affordable housing plan and conditions of approval. A minor modification is technical in nature, as opposed to substantive or material. Substantive or material changes to the affordable housing plan shall be processed in the same manner as the original plan.

17.29.050 - Affordable housing agreement.

- A. Applicability. Recordation of an affordable housing agreement shall be made a condition of the first approval for all housing developments subject to the requirements of this chapter to ensure implementation of all requirements of this Chapter. The affordable housing agreement shall be recorded prior to, or concurrently with, the final or parcel map, or, where the housing development does not include a map, prior to issuance of a building permit for any structure in the housing development. The affordable housing agreement shall run with the land and bind all future owners and successors in interest.
- B. Definitions. The following definitions shall be applicable to such terms as used in this section:
 - 1. "Successor in interest" means any person or persons, other than a transferee defined in subparagraph b of paragraph 2 of this subsection B, vested in legal title to the target unit by reason of the death of the owner of a target unit. For the purposes of this section, the household income of a successor in interest will be calculated consistent with the calculation of household income as defined in Section 17.29.020.Q of this Chapter.
 - 2. "Transfer" means any sale, conveyance, assignment, or other change of ownership, whether voluntary or involuntary, of any legal or equitable interest in a target unit. Where the target unit is owned by a corporation, limited liability company, general or limited partnership, or other form of business entity, a transfer of the unit shall be deemed to have occurred upon transfer of fifty percent (50%) or more of the ownership interest in such entity. Notwithstanding the foregoing, the following transfers shall be exempt from the requirement that the transferee qualify as an eligible household:
 - a. Any transfer to a spouse or domestic partner of the transferor, where the spouse or domestic partner becomes a co-owner of the target unit with the transferor;
 - b. Any transfer by devise or inheritance to a spouse or domestic partner of the transferor upon the transferor's death, where the spouse or domestic partner continues to occupy the unit as his or her principal place of residence;
 - c. Any transfer between spouses as part of a marriage dissolution proceeding;
 - d. Any transfer to an inter vivos revocable trust in which the transferor is the beneficiary;
 - e. The granting of the lien or other security interest in the unit as security for a loan and such loan complies with any applicable requirements of the resale restriction agreement.

The exemptions listed above shall apply only during the period in which the target unit is owned by the exempted person and shall not apply to any subsequent transfer by that person, which shall be subject to all of the terms and provisions of the resale restriction agreement.

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C. The affordable housing agreement shall be in a form provided by the City and shall include the following, without limitation:

1. All information provided in the affordable housing plan pursuant to Section 17.29.040 of this Chapter.
2. Continued affordability of the target units, as follows:

- a. **For-Sale Target Units.** The affordable housing agreement shall require that a resale restriction agreement, in a form approved by the City, be recorded against each for-sale target unit when the target unit is first transferred to an eligible purchaser. The resale restriction agreement shall provide that target units in for-sale housing developments shall remain affordable in perpetuity and that the affordability provisions be applicable to any subsequent transferees or successors in interest

The resale restriction agreement shall also provide that the for-sale target unit shall not be rented and that a successor in interest shall not be exempt from meeting the household income eligibility requirements as are transferees under paragraph 2 of subsection B of this section; provided, however, a successor interest may reside in the unit, subject to the obligations of the resale restriction agreement, if a successor in interest's household income qualifies the successor in interest as provided in Section 17.29.020 Q of this Chapter. If the household income of the successor in interest does not qualify, the successor in interest must sell the unit as set forth in the resale restriction agreement, following a grace period not to exceed one year.

- b. **Rental Target Units.** The affordable housing agreement shall be recorded against each housing development containing rental target units to ensure that the target units remain affordable for a minimum term as specified in Government Code Section 65915(c)(1); provided, however, if the target units in the housing development are also inclusionary housing units as defined in Chapter 17.31, the target units shall remain affordable in perpetuity as required by Chapter 17.31

For those target units in a housing development that are not inclusionary housing units as defined in Chapter 17.31, a longer period of time than as specified in Government Code section 65915(c)(1) may be required by any construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program.

Rental target units that are later converted to for-sale units, e.g., converted to condominiums, and then sold shall be sold as for-sale target units and the requirements of subparagraph a of paragraph 2 of subsection B of this Section shall apply.

3. The affordable housing agreement shall specify that no household shall be permitted to begin occupancy of a target unit unless the Community Development Director has approved the household's eligibility, unless the household has been exempted under paragraph 2 of subsection B of this Section 17.29.050. If the City maintains a list of, or otherwise identifies, eligible households, initial and subsequent occupants of target units shall be selected first from the list of identified households, to the maximum extent possible, in accordance with guidelines approved by the City Council.
4. Affordable housing agreements for land dedication, child care facilities, and condominium conversions shall ensure continued compliance with all conditions included in Government Code Sections 65915 and 65915.5.
5. Affordable housing agreements for senior citizen housing developments shall provide that units in the residential development shall be occupied by senior citizens or other persons eligible to reside in such a project.

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6. The affordable housing agreement shall include provisions requiring maintenance of records to demonstrate compliance with this Chapter.
 7. The affordable housing agreement shall include a description of remedies for breach of the affordable housing agreement by either party. The City may identify tenants or qualified purchasers as third party beneficiaries under the agreement.
- D. The affordable housing agreement shall include any other provisions determined necessary by the City Attorney to ensure implementation and compliance with this Chapter.

17.29.060 - Implementation and enforcement.

- A. No permit, license, subdivision map, or other approval or entitlement for a housing development shall be issued, including without limitation a final inspection for occupancy, until all requirements applicable to the housing development at such time pursuant to this Chapter have been satisfied.
1. No building permit shall be issued for any market rate unit until the permittee has obtained permits for target units sufficient to meet the requirements of Section 17.29.030 of this Chapter, and, if the project includes inclusionary housing units pursuant to Chapter 17.31 of this Chapter, Section 17.31.030 of this Code. No final inspection for occupancy for any market-rate unit shall be completed until the permittee has constructed the target units required by Section 17.29.030 of this Chapter.
 2. The time requirements set forth in this Section for issuance of building permits for market-rate units and for final inspections for occupancy for market-rate units may be modified to accommodate phasing schedules, model variations, or other factors in a housing development within the submitted affordable housing plan pursuant to Sections 17.29.040 of this Chapter, if the City determines this will provide greater public benefit and an affordable housing agreement pursuant to Section 17.29.050 of this Chapter has been accepted by the community development director.
- B. Conditions to carry out the purposes of this Chapter shall be imposed on the first approval for a housing development.
- C. The City Attorney is authorized to enforce the provisions of this Chapter and all affordable housing agreements, regulatory agreements, resale controls, deeds of trust, or similar documents placed on target units, by civil action and any other proceeding or method permitted by law.
- D. The City Manager is authorized to execute the resale restriction agreement and any related documents following approval of the resale restriction agreement by the Community Development Director and the City Attorney.
- E. Failure of any official or agency to fulfill the requirements of this Chapter shall not excuse any applicant or owner from the requirements of this Chapter.
- F. The remedies provided for herein shall be cumulative and not exclusive and shall not preclude the City from any other remedy or relief to which it otherwise would be entitled under law or equity.

SECTION 2: Chapter 17.31 of the Municipal Code is amended in its entirety to read as follows:

Chapter 17.31 - INCLUSIONARY HOUSING

Sections:

17.31.010	Basis and purposes.
17.31.020	Definitions.
17.31.030	Inclusionary requirement.
17.31.040	Inclusionary housing incentives.
17.31.050	Alternatives to constructing inclusionary units for rental housing developments.
17.31.060	Affordable housing plan for inclusionary units.
17.31.070	Adjustment or reduction of inclusionary housing requirement.
17.31.080	Affordable housing agreement
17.31.090	Implementation and enforcement.

17.31.010 - Basis and purposes.

- A. Rental and owner-occupied housing in the City has become steadily more expensive. Housing costs have gone up faster than incomes for many groups in the community.
- B. Many persons who work in the City, who have grown up or have family ties in the City, who already live in the City but must move due to increasing housing costs, or who wish to live in the City for other reasons, cannot afford housing in the city.
- C. Federal and state government programs do not provide nearly enough affordable housing opportunities or subsidies to satisfy the housing needs of moderate, lower or very low income households.
- D. Rising land prices have been a key factor in preventing development of new affordable housing. New housing construction in the City which does not include inclusionary units aggravates the existing shortage of affordable housing by absorbing the supply of available residential land. This reduces the supply of land for affordable housing and increases the price of remaining residential land. Providing the inclusionary units required by this Chapter will help to ensure that part of the City's remaining developable land is used to provide affordable housing.
- E. The City wishes to retain an economically balanced community, with housing available to very low income, lower income and moderate income households. The City's general plan implements the established policy of the State of California that each community should foster an adequate supply of housing for households at all economic levels.
- F. An economically balanced community is only possible if part of the new housing built in the City is affordable to households with limited incomes. Requiring builders of new housing to include some housing affordable to households at a range of incomes is fair, not only because new development without inclusionary units contributes to the shortage of affordable housing, but also because zoning and other ordinances concerning new housing in the City should be consistent with the community's goal to foster an adequate supply of housing for households at all economic levels.
- G. In enacting this Chapter it is also the intent of the City of Brisbane to implement the goals, objectives, and policies of the City's general plan housing element, which encourages the provision of housing affordable to a variety of household income levels, seniors, and persons with disabilities, and identifies an inclusionary housing policy as methods to encourage the development of affordable housing.

17.31.020 - Definitions.

- A. Affordable Housing Agreement. A recorded agreement between a property owner and the City to ensure that the inclusionary housing requirements of this Chapter are satisfied.
- B. Affordable Ownership Cost. The affordable ownership cost for for-sale target units shall be as specified in California Health and Safety Code Section 50052.5, as may be amended over time.
- C. Affordable Rent. The affordable rent for rental target units shall be as specified in California Health and Safety Code Section 50053, as may be amended over time.
- D. Approving Authority. The City decision-making body acting on an application for a housing development subject to the requirements of this Chapter, including the City Council, Planning Commission, or Community Development Director.
- E. City. The City of Brisbane or the Brisbane Housing Authority.
- F. City Council. The City Council of the City of Brisbane as established in Title 2 of this Code or the Board Members of the Brisbane Housing Authority.
- G. City Manager. The City Manager of the City of Brisbane as established in Title 2 of this Code, the City Manager's designee, the Executive Director of the Brisbane Housing Authority or the Executive Director's designee.
- H. Community Development Director. The Director of the Community Development Department responsible for overseeing implementation of Title 17 of this Code, or the Community Development Director's designee.
- I. Domestic Partner. Domestic partner means two (2) persons who have filed a declaration of domestic partnership with the California Secretary of State pursuant to Division 2.5, beginning with Section 297, of the California Family Code and such registration was in full force and effect at the time of the transfer or on the date of the transferor's death. A copy of the domestic partnership registration shall be provided to the city upon request.
- J. Dwelling Unit. Dwelling unit shall have the meaning set forth in Section 17.02.235 of this Code.
 - 1. Inclusionary Unit. Dwelling unit within a housing development that is required by Section 17.31.030 of this Chapter to be rented at affordable rents or sold at an affordable ownership cost to specified households. Inclusionary units are considered target units as that term is defined in Chapter 17.29 of this Code.
 - 2. Market-Rate Unit. Any unit within a housing development that is not an inclusionary unit.
- K. Eligible Household. A household whose household income qualifies the household for occupancy of inclusionary units provided under this Chapter.
- L. First Approval. The first of the following approvals to occur with respect to a housing development: subdivision approval, building permit or any permit or approval under the Zoning Ordinance.
- M. Household Income. Household income shall be the gross income of the household as calculated pursuant to Title 25 California Code of Regulations, §6914, as amended, or its successor. The household income categories addressed in this Chapter shall be defined as follows:
 - 1. Area Median Income. Area median income for San Mateo County as published by the State of California pursuant to California Code of Regulations, Title 25, Section 6932, as may be amended over time.

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2. Lower Income Household. A household whose income does not exceed the lower income limits applicable to San Mateo County, as published annually by the State of California pursuant to California Code of Regulations, Title 25, Section 6932, as may be amended over time.
 3. Moderate Income Household. A household whose income does not exceed the moderate income limits applicable to San Mateo County, as published annually by the State of California pursuant to California Code of Regulations, Title 25, Section 6932, as may be amended over time.
 4. Very Low Income Household. A very low income household shall be as defined by California Health and Safety Code Section 50105, as may be amended over time.
- N. Housing Authority. "Housing Authority" shall mean the Brisbane Housing Authority, as established by Resolution of the City Council. For the purposes of this Chapter, "Housing Authority" shall have the same meaning as "City."
- O. Housing Development. Any parcel map, subdivision map, use permit, building permit, or other City approval which results in a net increase of at least five (5) or more dwelling units and/or residential lots or combination thereof. A housing development may include, but is not limited to, new construction, conversion of existing dwelling units to condominium ownership, creation of residential lots, conversion of an existing nonresidential building to residential use, and the addition of dwelling units to an existing multifamily dwelling. A housing development shall include units or lots intended for sale or for rent.
1. For-Sale Housing Development. A housing development, or portion thereof, where the dwelling units or lots are offered to the public for purchase.
 2. Rental Housing Development. A housing development, or portion thereof, comprised of dwelling units which are intended to be rented, or are actually offered for rent, to tenants upon completion, whether or not a condominium or subdivision map is recorded as part of the housing development.
- P. Maximum Residential Density. The maximum number of residential units permitted by the City's zoning ordinance on the date the application is deemed complete.
- Q. Resale restriction agreement. An agreement, covenant, deed of trust, or other document, approved by the City Council, which is executed by the property owner and recorded against each inclusionary unit to insure that such unit remains affordable for the applicable term.

17.31.030 - Inclusionary requirement.

- A. Applicability. The inclusionary requirements established in this section shall apply to all housing developments with five (5) or more dwelling units, except for the following:
1. Housing developments that are developed pursuant to the terms of a development agreement executed prior to the effective date of this Chapter, provided that such housing developments shall comply with any affordable housing requirements included in the development agreement.
 2. Housing development tentative maps or vesting tentative maps exempted by Government Code Section 66474.2 or 66498.1, provided that such maps shall comply with any predecessor ordinance in effect on the date the application for the map was deemed complete.
- B. Inclusionary Requirements.
1. For-sale Housing Developments. A for-sale housing development subject to the inclusionary requirements of this Chapter shall provide the following inclusionary lots or units, unless an alternative is approved pursuant to Section 17.31.050 of this Chapter:

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- a. A for-sale housing development with five (5) to ten (10) dwelling units or lots must provide fifteen percent (15%) of the units at affordable ownership costs for moderate income households.
 - b. A for-sale housing development of eleven (11) or more dwelling units or lots must provide ten percent (10%) of the units at affordable ownership costs for moderate income households and five percent (5%) of the units or lots at affordable ownership costs for lower income households.
- 2. Rental Housing Developments. A rental housing development with five (5) or more dwelling units must provide fifteen percent (15%) of the units at affordable rents to very low income households, unless an alternative is elected pursuant to Section 17.31.050 of this Chapter.
- C. For purposes of calculating the number of inclusionary units required by this section, any calculations resulting in fractional units shall be rounded to the next larger integer. Additionally, any density bonus units authorized pursuant to Chapter 17.29 of this Code shall not be counted as part of the housing development.
- D. Contemporaneous construction of five (5) or more dwelling units on a lot, or on contiguous lots for which there is evidence of common ownership or control, even though not covered by the same City land use approval, shall also be considered a single housing development. Construction shall be considered contemporaneous if any building permits are issued within five (5) years following the date of completion of any earlier construction.

17.31.040 - Inclusionary housing incentives.

- A. The following incentives shall apply to all housing developments that provide one or more inclusionary units in accordance with the provisions of this Chapter:
 - 1. Single-family detached inclusionary units need not be constructed on lots the same size as the market-rate units in the same residential development, but the lots may be no smaller than the minimum standard for the applicable zoning district, except as provided by Section 17.31.060(B)(1) of this Chapter.
 - 2. Inclusionary units may be smaller in size than market-rate units in the same residential development.
 - 3. Inclusionary units may have different interior finishes and features than market-rate units in the same residential development, as long as the finishes and features are durable and of good quality, as determined by the Community Development Director.

17.31.050 - Alternatives to constructing inclusionary units for rental housing developments.

- A. An applicant for a rental housing development subject to the inclusionary requirements of this Chapter may, at the sole discretion of the applicant, elect to pay an in-lieu fee as established by resolution of the City Council, for each required inclusionary unit to the Brisbane Housing Authority's Low and Moderate Income Housing Fund, instead of constructing the inclusionary units within the residential development, pursuant to Government Code Section 65850(g). The timing of the in-lieu fee payment shall be as determined by the Planning Commission or City Council at the time of approval of the affordable housing plan pursuant to Section 17.31.060 of this Chapter.

Draft Density Bonus/Inclusionary Housing Ord.

- B. An applicant for a rental housing development subject to the inclusionary requirements of this Chapter may request City Council approval of one or more of the following alternatives as an alternative to constructing the inclusionary units within the housing development, as described within the affordable housing plan for inclusionary units prepared pursuant to subsection 17.31.060.B.3 of this Chapter:
1. **Off-Site Construction.** The applicant may request to construct some or all of the inclusionary units at a location within the City outside of the residential development. Off-site inclusionary units shall be located on sites that are compatible with adjacent land uses, appropriately zoned for the intended residential development, and are in proximity to or will provide access to employment opportunities, urban services, major roads or other public transit facilities.
 2. **Dedication of Land.** The applicant may dedicate land within the City to the City or another public entity that provides affordable housing that is suitable for affordable housing development. The land shall meet all of the requirements of Government Code Section 65915(g). The value of the land shall be not less than the sum of the in-lieu fee that would be due under subsection A.1 of this Section 17.31.050. The valuation of any land offered in-lieu shall be determined by an appraisal made by an appraiser mutually agreed upon by the City and the applicant. Costs associated with the appraisal shall be borne by the applicant.
 3. **Funding of Affordable or Special Needs Housing Project.** The applicant may make a contribution to a special needs housing project or program or other affordable housing project in the City in an amount equivalent to the in-lieu fee payment due under subsection A.1 of this Section 17.31.050.
 4. **Other Alternatives.** The City Council may approve other alternatives to the construction of new inclusionary units. Alternatives may include, but are not limited to, acquisition and rehabilitation of inclusionary units, conversion of existing market-rate units to inclusionary units, or construction of special needs housing projects or programs (shelters, transitional housing, etc.).

17.31.060 - Affordable housing plan for inclusionary units.

- A. An affordable housing plan for inclusionary units shall be submitted as part of the application for first approval of any housing development for which inclusionary units are required by this Chapter, except where payment of an in-lieu fee is elected by the applicant for a rental housing development pursuant to Section 17.31.050 of this Chapter. No application for a first approval may be deemed complete unless an affordable housing plan, if required, is submitted conforming to the provisions of this Chapter.
- B. If the applicant has requested a density bonus pursuant to Chapter 17.29 of this Code, the affordable housing plan required under this Section shall be combined with the affordable housing plan for target units required pursuant to Section 17.29.040 of this Code.
- C. The affordable housing plan for inclusionary units shall include the following information:
1. For housing developments proposing to construct the inclusionary units within the development, the affordable housing plan shall specify, at the same level of detail as the application for the housing development:
 - a. The number, type, tenure, number of bedrooms and baths, approximate location, size, and design of all inclusionary units;
 - b. Construction phasing of inclusionary units in relation to market-rate units and overall construction schedule. If the developer intends to construct the inclusionary units in separate phases from the market-rate unit construction, the affordable housing plan shall

specify the security to be provided to the City to ensure that the inclusionary units will be constructed, and explain how the proposed phasing would provide greater public benefit than providing the inclusionary units concurrently with the market-rate units;

- c. Marketing plan;
 - d. Methods to be used to verify incomes of tenant households or purchaser households;
 - e. Procedures for qualifying tenant households and prospective purchaser households of inclusionary units, including any preferences.
 - f. A financing mechanism, the particulars and the amount of which shall be determined by the City at the time the affordable housing plan is approved, to cover the City's costs for the on-going administration and monitoring of the affordability provisions applicable to the inclusionary units.
- 2. If an applicant requests City Council approval of alternatives to constructing the inclusionary units within a rental housing development pursuant to subsection 17.31.050.B of this Chapter, the affordable housing plan shall describe the requested alternatives.
 - 3. The affordable housing plan shall state the affordable rent or ownership costs of the inclusionary units, as calculated by the Community Development Director.
 - 4. If the applicant wishes to request a modification of the requirements set forth in Section 17.31.090 of this Chapter that the inclusionary units be constructed concurrently with the market-rate units, the affordable housing plan shall describe the proposed phasing at the same level of detail as required in the application for the housing development. Additionally, the plan shall specify the security to be provided to the City to ensure that the inclusionary units will be constructed, and explain how the proposed phasing would provide greater public benefit than providing the inclusionary units concurrently with the market-rate units.
- C. The affordable housing plan for inclusionary units shall be reviewed by the Planning Commission or City Council, as appropriate to the application, simultaneously with any other permit applications associated with the first approval for the housing development.

17.31.070 – Adjustment or reduction of inclusionary housing requirement.

- A. An applicant may request City Council approval of an adjustment or reduction of the inclusionary housing requirements of this Chapter if an applicant demonstrates that the requested adjustment or reduction would better implement the goals, objectives, and policies of the City's general plan housing element, which encourages the provision of housing affordable to a variety of household income levels, seniors, and persons with disabilities. The City Council, in its sole discretion, will determine whether to approve the applicant's request based on the City's progress in meeting its housing goals, objectives, and policies at the time the request is made.
- B. Any request for an adjustment or reduction under this section shall be submitted concurrently with the affordable housing plan required by Section 17.31.060 of this Chapter. The request for a reduction or adjustment shall set forth in detail the factual basis for the adjustment or reduction.

17.31.080 - Affordable housing agreement.

- A. Applicability. Recordation of an affordable housing agreement shall be made a condition of the first approval for all housing developments subject to the requirements of this Chapter to ensure implementation of all requirements of this Chapter. The affordable housing agreement shall be recorded prior to, or concurrently with, the final or parcel map, or, where the housing development does not require a map, prior to issuance of a building permit for any structure in the housing

development. The affordable housing agreement shall run with the land and bind all future owners and successors in interest.

B. Definitions. The following definitions shall be applicable to such terms as used in this section:

1. "Successor in interest" means any person or persons, other than a transferee defined in subparagraph b of paragraph 2 of this subsection B, vested in legal title to the target unit by reason of the death of the owner of a target unit. For the purposes of this section, the household income of a successor in interest will be calculated consistent with the calculation of household income as defined in Section 17.29.020.Q of this Chapter.
2. "Transfer" means any sale, conveyance, assignment, or other change of ownership, whether voluntary or involuntary, of any legal or equitable interest in an inclusionary unit. Where the inclusionary unit is owned by a corporation, limited liability company, general or limited partnership, or other form of business entity, a transfer of the inclusionary unit shall be deemed to have occurred upon transfer of fifty percent (50%) or more of the ownership interest in such entity. Notwithstanding the foregoing, the following transfers shall be exempt from the requirement that the transferee qualify as an eligible household:
 - a. Any transfer to a spouse or domestic partner of the transferor, where the spouse or domestic partner becomes a co-owner of the inclusionary unit with the transferor;
 - b. Any transfer by devise or inheritance to a spouse or domestic partner of the transferor upon the transferor's death, where the spouse or domestic partner continues to occupy the inclusionary unit as his or her principal place of residence;
 - c. Any transfer between spouses as part of a marriage dissolution proceeding;
 - d. Any transfer to an inter vivos revocable trust in which the transferor is the beneficiary;
 - e. The granting of the lien or other security interest in the unit as security for a loan and such loan complies with any applicable requirements of the resale restriction agreement.

The exemptions listed above shall apply only during the period in which the inclusionary unit is owned by the exempted person and shall not apply to any subsequent transfer by that person, which shall be subject to all of the terms and provisions of the resale restriction agreement.

C. The affordable housing agreement shall be in a form provided by the City and shall include the following, without limitation:

1. All information provided in the affordable housing plan pursuant to Sections 17.31.060 of this Chapter.
2. Continued affordability of the inclusionary units, as follows:
 - c. For-Sale Target Units. The affordable housing agreement shall require that a resale restriction agreement, in a form approved by the City, be recorded against each for-sale target unit when the target unit is first transferred to an eligible purchaser. The resale restriction agreement shall provide that target units in for-sale housing developments shall remain affordable in perpetuity and that the affordability provisions be applicable to any subsequent transferees or successors in interest

The resale restriction agreement shall also provide that the for-sale target unit shall not be rented and that a successor in interest shall not be exempt from meeting the household income eligibility requirements as are transferees under paragraph 2 of subsection B of this section; provided, however, a successor interest may reside in the unit, subject to the obligations of the resale restriction agreement, if a successor in interest's household income qualifies the successor in interest as provided in Section 17.29.020 Q of this

Chapter. If the household income of the successor in interest does not qualify, the successor in interest must sell the unit as set forth in the resale restriction agreement, following a grace period not to exceed one year.

- d. Rental Inclusionary units. The affordable housing agreement shall be recorded against each housing development containing rental target units to ensure that the target units remain affordable for a minimum term as specified in Government Code Section 65915(c)(1); provided, however, if the target units in the housing development are also inclusionary housing units as defined in Chapter 17.31, the target units shall remain affordable in perpetuity as required by Chapter 17.31

For those target units in a housing development that are not inclusionary housing units as defined in Chapter 17.31, a longer period of time than as specified in Government Code section 65915(c)(1) may be required by any construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program.

Rental target units that are later converted to for-sale units, e.g., converted to condominiums, and then sold shall be sold as for-sale target units and the requirements of subparagraph a of paragraph 2 of subsection B of this Section shall apply.

3. The affordable housing agreement shall specify that no household shall be permitted to begin occupancy of an inclusionary unit unless the Community Development Director has approved the household's eligibility, unless the household has been exempted under subsection B of this Section 17.31.080. If the City maintains a list of, or otherwise identifies, eligible households, initial and subsequent occupants of inclusionary units shall be selected first from the list of identified households, to the maximum extent possible, in accordance with guidelines approved by the City Council.
 4. Affordable housing agreements for housing developments intended to be occupied by households with one or more members who are sixty-two (62) years of age or older shall provide that dwelling units in the residential development shall be occupied by persons eligible to reside in such a project.
 5. The affordable housing agreement shall include provisions requiring maintenance of records to demonstrate compliance with this Chapter.
 6. The affordable housing agreement shall include a description of remedies for breach of the agreement by either party. The City may identify tenant households or qualified purchaser households as third party beneficiaries under the agreement.
- D. The affordable housing agreement shall include any other provisions determined necessary by the City Attorney to ensure implementation and compliance with this Chapter.

17.31.090 - Implementation and enforcement.

- A. No permit, license, subdivision map, or other approval or entitlement for a housing development shall be issued, including without limitation a final inspection for occupancy, until all requirements applicable to the housing development at such time pursuant to this Chapter have been satisfied.
 1. No building permit shall be issued for any market-rate unit until the permittee has obtained permits for inclusionary units sufficient to meet the requirements of Section 17.31.030 of this Chapter, and, if a density bonus has been requested pursuant to Chapter 17.29, Section 17.29.030 of this Code. No final inspection for occupancy for any market-rate unit shall be

completed until the permittee has constructed the inclusionary units required by Section 17.31.030 of this Chapter.

2. The time requirements set forth in this Section for issuance of building permits for market-rate units and for final inspections for occupancy for market-rate units may be modified to accommodate phasing schedules, model variations, or other factors in a housing development within the submitted affordable housing plan pursuant to Sections 17.31.060 of this Chapter, if the City determines this will provide greater public benefit and an affordable housing agreement pursuant to Section 17.31.080 of this Chapter has been accepted by the community development director.
- B. Conditions to carry out the purposes of this Chapter shall be imposed on the first approval for a housing development.
 - C. The City Attorney is authorized to enforce the provisions of this Chapter and all affordable housing agreements, regulatory agreements, resale controls, deeds of trust, or similar documents placed on inclusionary units, by civil action and any other proceeding or method permitted by law.
 - D. The City Manager is authorized to execute the resale restriction agreement and any related documents following approval by the Community Development Director and the City Attorney.
 - E. Failure of any official or agency to fulfill the requirements of this Chapter shall not excuse any applicant or owner from the requirements of this Chapter.
 - F. The remedies provided for herein shall be cumulative and not exclusive and shall not preclude the City from any other remedy or relief to which it otherwise would be entitled under law or equity.

SECTION 3: Where a use permit, design permit or variance approval has been issued through final action by the City prior to the effective date of this Ordinance, or where such planning permit approval is not required and a complete building permit application has been submitted prior to the effective date of this Ordinance, the holder of such use permit, design permit or variance approval or complete building permit application may proceed to construct the improvements or establish the use authorized by such permit or approval and the same shall be exempted from any conflicting regulations that may be contained in this Ordinance.

SECTION 4: If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of Brisbane hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that one or more sections, subsections, sentences, clauses or phrases may be held invalid or unconstitutional.

SECTION 5: This Ordinance shall be in full force and effect thirty days after its passage and adoption.

* * *

The above and foregoing Ordinance was regularly introduced and after the waiting time required by law, was thereafter passed and adopted at a regular meeting of the City Council of the City of Brisbane held on the _____ day of _____, 2019, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Mayor Madison Davis

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

Jurisdiction	Project Size Threshold	Rental On-site Income Requirements	Ownership On-site Income Requirements	Alternatives	In-Lieu Fee Levels	When are in lieu fees required?	Term of Affordability	Links
Atherton	N/a	N/a	N/a	N/a	N/a	N/a	N/a	
Belmont	25 units	>25 units: Housing impact fees 25+ units: 15% @ 80% AMI	>25 units: Pay housing impact fees 25+ units: 15% @ 120% AMI	Off-site For-sale: >24 units, 15% @ 80-120% AMI For-rent: >24 units: 15% @ 50-80% AMI				
Brisbane: Proposed Draft Ordinance	5 units	15% @ 50% AMI	5-10 Units: 15% @ 120% AMI 11+ Units: 10% @ 120% AMI; 5% @ 80% AMI	In-Lieu Fee: Rental (any size); for-sale 15 or fewer lots/units Land Donation, Off-Site Construction, Conversion, Special Needs Project Funding: Rental or For-Sale with City Council approval In-Lieu Fee: For-Sale 16+ units/lots with City Council approval	For-Sale 5-10 Units: \$236,558 For-Sale 11+ Units: \$265,717 Rental: \$378,346	N/A	Perpetuity (all)	
Colma	5 units	Housing Impact Fee	20% @ 50-120% AMI	Combination Land-donation Off site	Make up the gap between the amount of development capital typically expected to be available based on the amount to be received by a Developer or owner from Affordable Sales Price or Affordable Rent and anticipated cost of constructing the Inclusionary Units			Inclusionary Housing Ordinance
Daly City	20 units for rental; 15 units for ownership	10% @ 80% AMI	20% @ 120% AMI	In-lieu fee	Alternative for rental only: \$48/s.f. ; required for rental: \$35sf; required for ownership: \$45/sf	Rental: 5-20 units, Ownership: 5-14 units	55 years	Inclusionary Housing Ordinance
East Palo Alto	5 units	5+ units: 20% of net new 5% @ 35% AMI & 10% @ 50% AMI & 5% @ 60% AMI	5+ units: 20% of net new 10% @ 80% AMI & 10% @ 120% AMI	In-lieu fee Off site Other	Rental: \$273,400 (per affordable unit) Ownership: \$259,600 (per affordable unit)		Perpetuity	Inclusionary Housing Ordinance
Foster City	5 units	10% @50% AMI 5% @ 80% AMI 5% @ 120% AMI	20% @ 120% AMI	In-lieu fee	Rental: \$75.32/sq ft ; Sale: \$48.21/sq ft There are some other disclaimers in the fee schedule	9 units and lower Fractional units		Below Market Rate Inclusionary Housing Program
Half Moon Bay	10 units	25% of all units: 6% @ 50% AMI & 7% @ 80% AMI & 7% @ 120% AMI			20% of building permit valuation for the market rate units			Inclusionary Housing Ordinance
Hillsborough	N/a	N/a	N/a	N/a	N/a	N/a	N/a	
Menlo Park	1 unit	1-20 units: 10% @ 50-120% AMI 20 or more units: 15% @ 50-120% AMI		Acquisition and rehabilitation of existing units In-lieu fees Land dedication Off-site			55 years for rental	Below Market Rate Housing Program
Millbrae	10 units	5% @ 50% AMI 10% @ 80% AMI	15% @ 120% AMI	As an alternative to the fee payment, may be able to provide an additional on-site inclusionary unit	May be allowed for fractional units less than 0.5 or residential developments four to nine units	Residential developments with 4 to 9 units	55 years rental, 45 years ownership	

Pacifica	8 units	15% of all units: (In redevelopment area) 30% @ 50% AMI 40% @ 80% AMI (Outside redevelopment area) 50% @ 80% AMI 50% @ 120% AMI	Each subsequent purchaser shall be limited to the lesser of: Original purchase price, plus the percentage increase AMI from date of original purchase, plus cost of any capital improvement expenditures greater than 1% of original purchase price, minus costs necessary to bring unit up to code; Fair market value	Combination of below In-lieu Land dedication Off-site	Reflect the estimated cost to provide the BMR unit		55 years rental; 45 years ownerships	Inclusionary Housing Ordinance
Portola Valley	Subdivision developments		15% of lots			In-lieu fees required for fractional lots, if the developer does not wish		Inclusionary Lot Requirements in Municipal Code
Redwood City	20 units	5% @ 50% AMI 10% @ 120% AMI	15% @ 80-120% AMI	In lieu Unit size (affordable units may be 20% smaller than MR units) Other		Payment for fractional units	55 years rental, 30 years ownership	Affordable Housing Programs
San Bruno	5 units	15% of units: 10% @ 50% AMI 5% @ 50% AMI	5+ units: 15% of units: 20% @ 80% AMI 10% @ 120% AMI	In lieu Off-site Convert owner units to rentals: 5% @ 50% AMI 5% @ 80% AMI 5% @ 120% AMI	In-lieu fee will provide at least an equivalent number of affordable units at the same or lower income levels as required		55 years rental, 45 years ownership	Inclusionary Housing Ordinance
San Carlos	5 units	15% of units: 10% @ 50% AMI 5% @ 80% AMI	5-7 units: 20% @ 80% AMI 7+ units: 15% @ 80% AMI	Land dedication Off-site	Difference between affordable sales price or rent and the fair market value for the unit: no event shall the in lieu fee exceed cost of mitigating the impact of market-rate units		Perpetuity; Perpetuity renewal at resale for ownership	Inclusionary Housing Ordinance
San Mateo	11 units	15% @ 80% AMI	15% @ 120% AMI		Rental: (.1-.4) units: 33,452 - \$133,807 (5-10) units: 167,259 - \$334,517 Owner: (.1-.4) units: 30,701 - \$122,802 (5-10) units: 153,503 - \$307,005	5-10 units		Inclusionary Housing Ordinance
San Francisco	10 units	15% @ 80% AMI, 5% @ 120% AMI, 5% @ middle-income	6% @ 80% AMI, 6% @ middle-income	Combination Off-site units On-site units Small sites	\$199.5/s.f. gross (per s.f. of affordable housing that would've been provided on site)			Inclusionary Affordable Housing Program
San Mateo County	5	20%; all low, very low, extremely low	20%; half may be moderate, the rest any combo of low/very low/extemely low	In-lieu, land dedication, offsite units; may substitute disabled or large family units	Based on an established portion of construction cost, for a comparable unit; differs from County impact fee		55 years	
South San Francisco	5 units	15% of units: 5% @ 50% AMI 9% @ 80% AMI	15% of units: 7.5% @ 80% AMI 7.5% @ 120% AMI	In-lieu fee	Determined by City Council		55 years for rental, 55 years for renew at resale for ownership	Inclusionary Housing Ordinance
Woodside	N/a	N/a	N/a	N/a	N/a	N/a	N/a	

File Attachments for Item:

N. Adopt a Resolution Establishing the 2025 Business License Tax for Liquid Storage Facilities as to Kinder Morgan/SFPP



CITY COUNCIL AGENDA REPORT

Meeting Date: May 15, 2025

From: Carolina Yuen, Finance Director

Subject: Resolution Establishing the 2025 Business License Tax for Liquid Storage Facilities as to Kinder Morgan/SFPP

Community Goal/Result

Fiscally Prudent
Economic Development

Purpose

To establish for calendar year 2025 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.

Recommendation

Adopt the attached resolution imposing a business license tax in the amount of \$224,494 as to Kinder Morgan/SFPP for calendar year 2025.

Background

The City receives revenues from diverse sources in order to provide the necessary high-quality services the community expects.

At the general election in November 2019, Brisbane voters approved to revise Section 5.20.011 to the Brisbane Municipal Code concerning the business license tax on liquid storage facilities. This revision provided that the tax rate will be up to 6 cents per barrel delivered over the rack in the preceding calendar year, with the exact rate to be determined annually by the City Council. That liquid storage tax formula would then be applied for subsequent years, but in no event would the tax be greater than \$400,000.

Since 2021, Kinder Morgan/SFPP has reported the following number of over-the-rack barrels and accordingly has paid the business license tax as set forth below:

2021 - \$288,586 based on 4,809,771 barrels from 2020
 2022 - \$324,327 based on 5,405,448 barrels from 2021
 2023 - \$338,159 based on 5,635,991 barrels from 2022
 2024 - \$229,198 based on 3,819,969 barrels from 2023

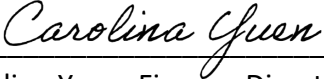
Discussion

Kinder Morgan/SFPP has provided the City with information that in 2024 there were 3,741,567 barrels “over the rack.” The ordinance provides that the tax rate may be up to 6 cents per barrel, with a business license cap of \$400,000. Adoption of the attached resolution will set the tax rate at 6 cents per barrel and impose for 2025 a business license tax for Kinder Morgan/SFPP of \$224,494. The City is exploring options to review recent activity as reported.

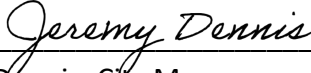
Fiscal Impact

As to Kinder Morgan/SFPP, Council’s adoption of the attached resolution will result in a business license tax of \$224,494 for calendar year 2025.

Attachment - Resolution Establishing the Business License Tax to Kinder Morgan/SFPP LLC for Calendar Year 2025.



Carolina Yuen, Finance Director



Jeremy Dennis, City Manager

RESOLUTION NO. 2025-_____**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 2025 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/SFPP 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 2025 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 2024; and

WHEREAS, Kinder Morgan/SFPP LLC provided data to the City indicating that the number of barrels “over the rack” for calendar year 2024 was 3,741,597; 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 2025, the City Council sets the business license tax rate for the Kinder Morgan/SFPP liquid storage facility in Brisbane at six cents per barrel and the annual business license tax charged to Kinder Morgan/SFPP LLC for 2025 shall be \$224,494.

2. Payment of the business license taxes for 2025 shall be due and payable in full by June 30, 2025.

Cliff Lentz, Mayor

I hereby certify that the foregoing Resolution No. 2025-_____ was duly and regularly adopted at a regular meeting of the Brisbane City Council on May 15, 2025 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

Ingrid Padilla, City Clerk

File Attachments for Item:

O. Receive Information on Compliance with Assembly Bill 2561/Government Code Section 3502.3 Regarding Vacancies, Recruitment and Retention Efforts



CITY COUNCIL AGENDA REPORT

Meeting Date: May 15, 2025

From: Abby Partin, Human Resources Director

Subject: Compliance with Assembly Bill 2561/Government Code Section 3502.3 Regarding Vacancies, Recruitment and Retention Efforts

Community Goal/Result

Safe Community, Community Building, Fiscally Prudent

Purpose

To ensure the community continues to receive excellent service by attracting and retaining exceptional employees in a financially prudent manner.

Recommendation

Staff recommends the City Council receive and file a staff report providing an update on the City of Brisbane's vacancy rate in compliance with Assembly Bill 2561.

Background

On September 22, 2024, Governor Newsom signed Assembly Bill (AB) No. 2561 into law, amending the Meyers-Milias-Brown Act (MMBA) and establishing Government Code Section 3502.3 (GC 3502.3). This new legislation imposes a formal obligation on public agencies to publicly report on the status of their vacancies. The California Legislature enacted these requirements in response to the recognition that staffing vacancies present a widespread and significant challenge across the public sector.

Under GC 3502.3, public agencies must present an annual report on the status of vacancies and recruitment and retention efforts, during a public hearing before their governing body. This presentation must occur at least once per fiscal year prior to the adoption of the final budget. Agencies are also required to disclose any changes to policies, procedures, or recruitment activities that may pose obstacles to the hiring process.

If the number of vacancies in a specific bargaining unit equals or exceeds 20% of its total authorized full-time positions, the public agency must, upon request from the recognized employee organization, include the following data in its presentation:

1. The total number of position vacancies within the bargaining unit
2. The total number of applicants for those positions
3. The average number of days to complete the hiring process from the time a position is posted
4. Opportunities for improving compensation and other working conditions

Additionally, GC 3502.3 grants recognized employee organizations the right to present their own comments or recommendations during the same public hearing, regardless of the vacancy rate,

ensuring that their perspectives are included in the agency's annual discussion on workforce challenges.

There are 10 employee groups (4 represented and 6 unrepresented) at the City consisting of 96 authorized regular full-time employees.

Table 1. Count of Authorized Regular Full-time Employees

City of Brisbane Employee Groups	Position Count
General Employees Association	32
Mid-Management/Professional Employees	17
International Association of Firefighters – Local 2400	14
Brisbane Police Officers Association	14
Confidential Employees	6
Confidential Management Group*	13

*Brisbane Fire Management, Confidential Management, Executive Management, Police Chief, Police Commander

Discussion

Vacancies

Position vacancies arise for various reasons, including the approval of newly budgeted positions, internal movements such as promotions or transfers, and employee departures due to retirement, voluntary resignation, or involuntary termination. When vacancies occur, it is a top priority for the Human Resources Department and hiring managers to fill these roles promptly. Doing so ensures continuity of services, maintains operational efficiency, reduces reliance on overtime, and minimizes disruptions to departmental functions. Timely recruitment efforts are critical to sustaining the City's workforce, meeting community needs, and upholding service standards, while also supporting internal career growth and attracting external talent.

Although AB 2561 now requires staff to present an annual update on vacancy status and recruitment and retention efforts, the City has long prioritized filling vacancies as quickly as reasonably possible. Throughout calendar year 2024, the City maintained an average vacancy rate of 2.4% across all bargaining units. This rate is calculated monthly by dividing the number of vacant positions by the total number of authorized positions.

Table 1. Vacancy Rate by Employee Groups

City of Brisbane Employee Groups	Vacancy Rate
General Employees Association	1.3%
Mid-Management/Professional Employees	0%
International Association of Firefighters – Local 2400	7.6%
Brisbane Police Officers Association	7.0%
Confidential Employees	16%
Confidential Management Group*	7.6%

*Brisbane Fire Management, Confidential Management, Executive Management, Police Chief, Police Commander

In CY 2024, there were five internal promotions, three of which resulted from newly budgeted positions. With the City Council authorizing these new roles, the City has been able to foster employee growth and professional development, which has positively contributed to overall employee retention. The two retirements during this period were planned and expected, reflecting natural turnover rather than dissatisfaction, and are therefore excluded from avoidable turnover and retention metrics. Lastly, there were two voluntary separations, which may reflect factors such as disengagement, pursuit of external opportunities, unsuccessful completion of the probationary period, or other personal reasons.

Recruitment and Retention Efforts

The Human Resources Department recognizes recruitment is about identifying, attracting, and hiring the right people, and retention is about keeping employees engaged, satisfied, and committed to the organization long-term. Both are critical for the success of the organization, especially in today's competitive job market.

When a department submits a hiring request for a regular full-time position, all employees are notified of the opening via email and are provided with a link to submit an employment application via CalOpps job board. Internal promotions, which accounted for filling over 50% of the City's vacant position in CY 2024, are a key performance indicator for the Human Resources Department.

For a recruitment to begin, the hiring department notifies Human Resources staff who then will open a job posting either internally or externally to capture other applicants to interview and establish an eligibility list. Upon selecting a candidate, a conditional offer is provided, the candidate completes necessary pre-employment procedures (e.g., background check, physical, etc.), a start date is determined, and a formal offer of employment is signed.

In CY 2024, Human Resources recruitment staff spent less than their normal work time on recruitments, which indicates minimum vacancies. There were only nine (9) recruitments for the year, whereas as in the previous year there were twenty (20) recruitments. The average amount of time to fill a regular vacant position including continuous recruitment was 83 days.

Recruitment advertising sources include social media platforms (LinkedIn, Facebook, Instagram), job boards (CalOpps, Handshake, League of California Cities), and the City's website, signboards, and internal newsletter, The Buzz.

While the City maintained an average vacancy rate of 2.4% during CY 2024, filling certain regular positions - particularly within public safety - continues to present challenges. A key contributing factor is the increased demand for qualified police officers across San Mateo County and neighboring jurisdictions, which has intensified regional competition for talent.

To address this, Human Resources and Police Administration staff are working to reduce time-to-hire and improve applicant outreach. Strategies under consideration include expanded

advertising of open positions, targeted recruitment efforts, and engagement with local police academies to attract unaffiliated graduates.

For CY 2024, the City's turnover rate was 4%, reflecting a strong ability to retain employees. To meet the changing desires of employees, the City incorporates several retention strategies. First, the City aims to prioritize both physical and mental well-being. The City offers compressed work weeks, such as 9/80 and 4/10 work schedules, and hybrid telework options to help employees balance work and personal life. Employees are encouraged to use their paid-time off to rest and recharge, reducing burnout and supporting a healthy work-life balance. Additionally, the City provides an Employee Assistance Program (EAP) to all employees and dependents, access to a wellness room at City Hall, and a few mindfulness classes.

Second, the City offers a training and development program to support career advancement as well as enhance employee engagement. The City partners with the San Mateo County Regional Training Consortium, Liebert Cassidy Witmore, and Employee Risk Management Authority to provide a variety of training to employees. Types of training provided are Introduction to Supervision, Customer Service, time management, self-care, and career development. This effort's intent is to have a higher retention rate, by enabling employees to feel more valued and aligned with their roles. Professional growth and development are also fostered through the City's robust Tuition Reimbursement Program, where employees are eligible to receive reimbursement for the cost of educational programs which are directly related to the employee's long-term professional development.

Employee engagement plays a vital role in retention, and the City fully recognizes its significance. When employees feel valued and supported, they are more likely to be motivated, enthusiastic about their work, and deeply connected to the organization. The City fosters engagement through various recognition efforts, including annual service awards, bi-monthly birthday celebrations, and the employee appreciation summer barbecue.

To further strengthen engagement and promote an inclusive, supportive workplace culture, the City has established two dedicated groups: the Innovation Team and the Equity and Inclusion Committee. Initiatives led by these groups include the Internal Brisbane Leadership Academy, the development of an AI Resources Policy, the International Potluck Lunch, and M96onthly Celebrations acknowledgments, among others.

Communication is a key driver of employee engagement, as it fosters trust, transparency, and a sense of connection between employees and the organization. To support this, the City Manager regularly shares updates with staff following City Council meetings, keeping employees informed about matters that may affect them and maintaining an open line of communication. Additionally, departments such as Human Resources and City Manager's Office have recently conducted anonymous and confidential Employee Engagement Surveys to gather insights on how best to support employees and enhance service delivery to the community.

In closing, the City has made meaningful progress in addressing vacancies and strengthening recruitment efforts, but employee retention remains a critical area of focus. By continuing to invest in employee engagement, wellness, professional development, recognition, and open communication, the City can cultivate a workplace environment where talent not only thrives but is retained for the long term.

Fiscal Impact

There is no direct fiscal impact associated with conducting the public hearing required under AB 2561/GC section 3205.3.

Measure of Success

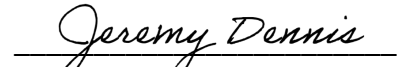
The City is able to maintain a stable and high-quality workforce.

Attachments

1. AB 2561 Bill Text



Abby Partin, Human Resources
Director



Jeremy Dennis, City Manager

O.



California

LEGISLATIVE INFORMATION

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AB-2561 Local public employees: vacant positions. (2023-2024)

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Date Published: 09/23/2024 09:00 PM

Assembly Bill No. 2561

CHAPTER 409

An act to add Section 3502.3 to the Government Code, relating to public employment.

[Approved by Governor September 22, 2024. Filed with Secretary of State September 22, 2024.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2561, McKinnor. Local public employees: vacant positions.

Existing law, the Meyers-Milias-Brown Act (act), authorizes local public employees, as defined, to form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on matters of labor relations. The act requires the governing body of a public agency to meet and confer in good faith regarding wages, hours, and other terms and conditions of employment with representatives of recognized employee organizations and to consider fully presentations that are made by the employee organization on behalf of its members before arriving at a determination of policy or course of action.

This bill would, as specified, require a public agency to present the status of vacancies and recruitment and retention efforts at a public hearing at least once per fiscal year, and would entitle the recognized employee organization to present at the hearing. If the number of job vacancies within a single bargaining unit meets or exceeds 20% of the total number of authorized full-time positions, the bill would require the public agency, upon request of the recognized employee organization, to include specified information during the public hearing. By imposing new duties on local public agencies, the bill would impose a state-mandated local program. The bill would also include related legislative findings.

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.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement shall be made pursuant to these statutory provisions for costs mandated by the state pursuant to this act, but would recognize that a local agency or school district may pursue any available remedies to seek reimbursement for these costs.

o.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:**SECTION 1.** The Legislature finds and declares as follows:

(a) Job vacancies in local government are a widespread and significant problem for the public sector affecting occupations across wage levels and educational requirements.

(b) High job vacancies impact public service delivery and the workers who are forced to handle heavier workloads, with understaffing leading to burnout and increased turnover that further exacerbate staffing challenges.

(c) There is a statewide interest in ensuring that public agency operations are appropriately staffed and that high vacancy rates do not undermine public employee labor relations.

SEC. 2. Section 3502.3 is added to the Government Code, to read:

3502.3. (a) (1) A public agency shall present the status of vacancies and recruitment and retention efforts during a public hearing before the governing board at least once per fiscal year.

(2) If the governing board will be adopting an annual or multiyear budget during the fiscal year, the presentation shall be made prior to the adoption of the final budget.

(3) During the hearing, the public agency shall identify any necessary changes to policies, procedures, and recruitment activities that may lead to obstacles in the hiring process.

(b) The recognized employee organization for a bargaining unit shall be entitled to make a presentation at the public hearing at which the public agency presents the status of vacancies and recruitment and retention efforts for positions within that bargaining unit.

(c) If the number of job vacancies within a single bargaining unit meets or exceeds 20 percent of the total number of authorized full-time positions, the public agency shall, upon request of the recognized employee organization, include all of the following information during the public hearing:

(1) The total number of job vacancies within the bargaining unit.

(2) The total number of applicants for vacant positions within the bargaining unit.

(3) The average number of days to complete the hiring process from when a position is posted.

(4) Opportunities to improve compensation and other working conditions.

(d) This section shall not prevent the governing board from holding additional public hearings about vacancies.

(e) The provisions of this section are severable. If any provision of this section or its application is held invalid, the invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

(f) For purposes of this section, "recognized employee organization" has the same meaning as defined in subdivision (a) of Section 3501.

SEC. 3. The Legislature finds and declares that Section 2 of this act, which adds Section 3502.3 to the Government Code, furthers, 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:

It is in the public interest, and it furthers the purposes of paragraph (7) of subdivision (b) of Section (3) of Article I of the California Constitution, to ensure that information concerning public agency employment is available to the public.

SEC. 4. No reimbursement shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code for costs mandated by the state pursuant to this act. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Part 7 (commencing with Section 17500) and any other law.

File Attachments for Item:

P. Consider Adoption of Resolution Amending the Master Fee Schedule per Section 3.32.040 of the BMC to Adopt New Inclusionary In-Lieu Fees and Other Administrative Fees to Implement the Ordinance



CITY COUNCIL AGENDA REPORT

Meeting Date: May 15, 2025

From: John Swiecki, Community Development Director

Subject: Adoption of Resolution Amending the Master Fee Schedule Adopted on June 6, 2024

Community Goal/Result

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

Purpose

To amend the City's Master Fee Schedule adopted on June 6, 2024 to adopt inclusionary in-lieu fees required by amendments to the City's inclusionary housing ordinance, and to adopt other administrative fees to ensure that the City's costs for implementing the updated inclusionary housing and density bonus regulations are recovered.

Recommendation

Adopt attached Resolution containing the proposed inclusionary in-lieu fees, including an annual Construction Cost Index escalator, and administrative fees.

Background

Updated Inclusionary Housing and Density Bonus Regulations

On April 17, 2025 the City Council voted 5-0 to introduce an Ordinance that would amend the City's inclusionary housing and density bonus regulations to comply with current State law and the City's Housing Element (see April 17 City Council agenda report in Attachment 2). The Ordinance is scheduled for second reading and adoption at tonight's Council meeting. Under the Ordinance, developers of housing projects of five or more units must provide 15% of the units at various affordable costs or rents as specified in the Ordinance. As an alternative to constructing the affordable units, developers of certain projects may pay an in-lieu fee for each affordable unit, rather than building the unit. To implement the Ordinance, the City must establish inclusionary in-lieu fees and administrative fees.

As described in the April 17 City Council agenda report (Attachment 2), in-lieu fees are not development impact or mitigation fees and are therefore not subject to the Mitigation Fee Act. The proposed in-lieu fees are based on the "affordability gap" between market-rate housing prices and the maximum affordable purchase price for low and moderate-income households. The affordability gap is a helpful tool for targeting appropriate in-lieu fees because it represents the cost the developer incurs for providing the unit. The proposed in-lieu fees are similar to those of neighboring jurisdictions, shown in the benchmarking analysis provided in the April 17 City Council agenda report.

Discussion

The proposed fees were presented in the April 17, 2025 Council agenda report (see Attachment 2) and are shown in Exhibit A of the attached Resolution. The inclusionary in-lieu fees are excerpted in the table below:

Fee	Land Use Type	Amount
In-Lieu Fee	Rental 5+ units	\$378,346 per unit or fraction thereof ^{1, 2}
	For Sale, 5-10 units	\$236,558 per unit/lot or fraction thereof ^{1, 2}
	For Sale, 11 + units	\$265,717 per unit/lot or fraction thereof ^{1, 2}

¹ For projects for which application of the inclusionary requirement results in a fractional unit less than 0.5, an in-lieu fee shall be assessed as an equivalent fraction of the fee charged for a whole unit.

² Subject to adjustments according to increase in the California Construction Cost Index

The attached Resolution incorporates an annual adjustment to align with increases to the California Construction Cost Index, per the Council's direction on April 17. The administrative fees would be subject to the regular increases applied uniformly from time to time to the Master Fee Schedule. The City is also participating in a multi-jurisdictional study to calibrate the in-lieu fees, the results of which are anticipated in early 2026.

As a point of information, the City is also undertaking an overall update to the Master Fee Schedule that is anticipated to be completed in mid-2025. That update would not increase the proposed inclusionary in-lieu fee amounts.

Fiscal Impact

Adoption of inclusionary in-lieu fees will generate affordable housing revenues, but potential revenue amount and timing of their receipt is unknown, depending on the rate and scale of residential projects, and the extent to which developers exercise the in-lieu fee option. The administrative fees would allow for cost recovery of city staff or consultant time to process the applications or activities for which the fees are adopted.

Environmental Review

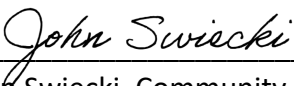
Adoption of inclusionary in-lieu fees and their inclusion, as well as administrative fees, into the Master Fee Schedule are exempt from CEQA review pursuant to CEQA Guidelines §15061(b)(3) because it involves adoption of policies and programs that would not cause a significant effect on the environment.

Measure of Success

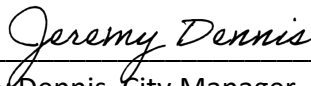
Fee adoption will allow for implementation on the City's newly adopted Inclusionary housing ordinance.

Attachments

1. Resolution to Amend the Master Fee Schedule (including amendments in Exhibit A) to adopt inclusionary in-lieu fees and administrative fees
2. April 17, 2025 City Council agenda report annotated by staff



John Swiecki, Community Development Director



Jeremy Dennis, City Manager

RESOLUTION NO. 2025-**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRISBANE
ADOPTING AMENDMENTS TO THE MASTER FEE SCHEDULE**

WHEREAS, the City Council adopted amendments to the Master Fee Schedule on June 6, 2024; and

WHEREAS, Section 3.32.030 of the Brisbane Municipal Code allows the City Council to amend the Master Fee Schedule at any time by resolution; and

WHEREAS, on May 15, 2025 the City Council adopted an ordinance to amend the City's inclusionary housing and density bonus regulations in Title 17 of the Brisbane Municipal Code, which ordinance permits an inclusionary housing in-lieu fee for residential projects as an alternative to constructing the affordable units required by the inclusionary housing regulations; and

WHEREAS, additional administrative fees are required to properly recover staff time in administering the above-referenced ordinance that are not presently captured in the Master Fee Schedule; and

WHEREAS, on May 15, 2025, the City Council conducted a public hearing to consider proposed amendments to the Master Fee Schedule, at which time any person interested in the matter was given an opportunity to be heard; and

WHEREAS, the City Council finds that:

The proposed user fees and service charges set forth on the Master Fee Schedule do not exceed the actual cost of providing the services to which they relate, as determined by the user fee study; and

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

1. The Master Fee Schedule amendments attached hereto as Exhibit A are hereby approved and adopted and will be incorporated into the Master Fee Schedule.
2. This Resolution shall become effective sixty (60) days following the date of this adoption and shall be applicable to all user fees and service charges

Reso. 2025-

described therein which are payable to the City from and after such effective date.

Cliff Lentz, Mayor

I hereby certify that the foregoing Resolution No. 2025-_____ was duly and regularly adopted at a regular meeting of the Brisbane City Council on May 15, 2025 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

Ingrid Padilla, City Clerk

Reso. 2025-

EXHIBIT A

The following fees are added to the Master Fee Schedule under “Planning Fees”:

Fee	Fee Sub-Type	Fee Amount	Basis
Inclusionary In-Lieu Fee	Rental, 5 or more units	\$378,346 per unit or fraction thereof*	Subject to adjustments according to increase in the California Construction Cost Index (CCCI)
	For Sale, 5-10 units or lots	\$236,558 per unit/lot or fraction thereof*	Subject to adjustments according to increase in the CCCI
	For Sale, 11 or more units or lots	\$265,717 per unit/lot or fraction thereof*	Subject to adjustments according to increase in the CCCI
Below Market Rate Unit Applicant Eligibility Review	Rental and for-sale	\$125 per application	Charged to the owner/developer per application
Below Market Rate Unit Monitoring Fee	Rental	\$150 per unit	Charged annually to the owner/property management company
Below Market Rate Homeowner Monitoring Noncompliance Fine	For-Sale	\$1,000 (after 90 days) \$1,000 additional every subsequent 30 days	Charged to the homeowner
Below Market Rate Homeowner Subordination Request	For-Sale	\$125 per request	Charged to the homeowner

* For projects for which application of the inclusionary requirement results in a fractional unit less than 0.5, an in-lieu fee shall be assessed as an equivalent fraction of the fee charged for a whole unit.



CITY COUNCIL AGENDA REPORT

Meeting Date: April 17, 2025

From: John Swiecki, Community Development Director

Subject: Zoning Text Amendment 2025-RZ-01; Introduction and First Reading of Draft Ordinance to Update the City's Density Bonus and Inclusionary Housing Ordinance

Adoption of the draft ordinance is exempt from CEQA pursuant to CEQA Guidelines §15061(b)(3) because it involves adoption of policies and programs that would not cause a significant effect on the environment.

Community Goal/Result

Community Building; Fiscally Prudent

Purpose

To amend the zoning ordinance's inclusionary housing and density bonus regulations to comply with current State law and implement the Housing Element.

Recommendation

Introduce the ordinance amending the zoning text to update the inclusionary housing and density bonus regulations currently located in BMC Ch. 17.31, as provided in Attachment 1.

Background

2009 Ordinance

The City Council adopted an inclusionary housing and density bonus ordinance in 2009 (BMC Chapter 17.31; Attachment 4). The inclusionary provisions require rental and for-sale housing developments of six or more units or lots to provide a certain number of housing units that are affordable to and occupied by low income and/or moderate-income households. The ordinance also contains the City's procedures to implement the State density bonus program, which is available for housing projects of at least five units.

2019 Draft Ordinance

In 2018, the Planning Commission studied updates to the 2009 ordinance to implement programs in the 2015 Housing Element and bring the ordinance into compliance with State laws impacting the ordinance. In April 2019 the Commission recommended Council approval of a draft ordinance ("the 2019 draft ordinance") addressing State law requirements in effect at the time and the 2015 Housing Element policies.

City Council consideration of the 2019 draft ordinance was delayed due to an evolving regulatory environment at the State level, the 2023-2031 Housing Element process, and efforts to create an Affordable Housing Strategic Plan which included an evaluation of the draft 2019 ordinance's inclusionary housing provisions.

2025 Draft Ordinance

In 2024, staff revisited the draft ordinance to address programs in the new 2023-2031 Housing Element, strategies in the 2024 Affordable Housing Strategic Plan, and current State law. Recommended revisions to the 2019 ordinance were reviewed at Planning Commission workshops in the fall of 2024.

Following those workshops, on February 27, 2025, the Commission considered a revised draft ordinance at a public hearing and voted unanimously to recommend City Council approval of the ordinance. This revised draft ordinance (“2025 draft ordinance”) is included as Attachment 1, and the February 27, 2025 Planning Commission agenda report is attached as Attachment 5. Staff has not provided a redlined version of the 2009 ordinance showing changes proposed by the 2025 draft ordinance because of the significant structural changes proposed. Tables summarizing substantive revisions proposed to the 2009 ordinance are provided in the Discussion section below.

Housing Subcommittee Review

The City Council housing subcommittee met to review the draft 2025 ordinance on March 13, 2025. The subcommittee’s recommendations are summarized in the Discussion section below.

Discussion

The 2025 draft ordinance (Attachment 1) extracts the density bonus regulations into a standalone chapter (new chapter 17.29). Inclusionary housing regulations remain in Chapter 17.31. Beyond this structural change, the 2025 draft ordinance proposes the following substantive revisions to the density bonus and inclusionary housing ordinance:

Density Bonus Provisions

Updated Provision	State Law or Policy Requirement
Eliminate State density bonus tables from implementing ordinance and replace with reference to State law	Government Code Sections 65915-65918
Create a density bonus for small projects under 5 units	2015 Housing Element Program H.B.5.a
Grant additional concessions or incentives than required by State law for projects that exceed the density bonus qualifications	2023 Housing Element Program 2.C.1
Extend rental target unit affordability term from 55 years to in perpetuity	No State Law or other Policy; Planning Commission recommendation
Require one-to-one replacement of lost units	2023 Housing Element Program 3.A.5
Allow one additional incentive or concession if the density bonus project includes family-sized target units (units with three or more bedrooms) affordable to low- to extremely low-income households	2023 Housing Element Program 2.C.1
Affordability in perpetuity for both rental and for-sale	2023 Housing Element Program 4.A.11
Direct staff to prepare implementation guidelines that address topics including income verification and household qualification procedures, procedures for	No State Law or other Policy; Planning Commission recommendation

successors in interest, and other implementation provisions, and extracting such provisions from the ordinance	
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Inclusionary Housing Ordinance (BMC Ch. 17.31)

Updated Provision	State Law or Policy Requirement
Reduce project size threshold from 6 or more units/lots to 5 or more units/lots	No State Law or other Policy; Planning Commission recommendation
15% inclusionary requirement instead of the current sliding scale	Rental: Government Code Section 65850.01 For-sale: No State Law or other Policy; Planning Commission recommendation
Affordable rental units must be affordable to very low income households (rather than a mix of low and very low income households)	No State Law or other Policy; Planning Commission recommendation
Provide alternatives to on-site construction of affordable units, including:	
Any rental project can choose to pay an in-lieu fee	Government Code Section 65850
Any for-sale project of 15 or fewer units/lots can choose to pay an in-lieu fee	2023 Housing Element Program 2.E.4, Affordable Housing Strategic Plan Strategy A-5
City Council may approve other alternatives for for-sale or rental projects, including off-site construction, land donation, conversion of market-rate units, funding affordable or special needs housing project, or in-lieu fee for for-sale projects of more than 15 units/lots	2023 Housing Element Program 2.E.4, Affordable Housing Strategic Plan Strategy A-5
Affordability in perpetuity for both rental and for-sale	2023 Housing Element Program 4.A.11
Require an in-lieu fee for fractional inclusionary requirements that cannot be rounded up to the nearest whole integer	No State Law or other Policy; Planning Commission recommendation
Modify incentives to:	
Continue to allow affordable units to be smaller than market-rate units, but require comparable total square footage	No State Law or other Policy; Planning Commission recommendation
Acknowledge that ADUs provided by for-sale developments may be able to be sold IF the City amends its ADU regulations to allow ADUs to be sold. (Separate ordinance would be required, not proposed in this ordinance.)	No State Law or other Policy; Planning Commission recommendation
Direct staff to prepare implementation guidelines that address topics including income verification and household qualification procedures, procedures for successors in interest, and other implementation	No State Law or other Policy; Planning Commission recommendation

provisions, and extracting such provisions from the ordinance	
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Draft Implementation Guidelines

HEART of San Mateo County provides housing policy consulting services to the City. HEART staff is preparing an implementing guidelines document containing detailed procedures for administering the density bonus and inclusionary housing ordinances, as referenced in the draft ordinance. This document would be maintained and updated by City staff.

Housing Subcommittee Recommendations

The Housing Subcommittee (Mayor Lentz, Councilmember Davis) met on March 13, 2025 to review the draft ordinance. The subcommittee made the following recommendation for the full Council's consideration:

- Eliminate incentive for for-sale inclusionary housing developments to meet inclusionary requirements by providing affordable accessory dwelling units (Section 17.31.040.D of the draft ordinance). The subcommittee considered this option problematic in terms of on-going management, monitoring, and tracking. If this incentive would be eliminated, for-sale developments would need to construct affordable units as for-sale single-family dwellings, unless they opted to pay an in-lieu fee (projects of 15 or fewer units) or requested Council approval of another alternative means of compliance.

The draft ordinance in Attachment 1 has been modified to eliminate this incentive, shown in tracked changes on page 13 of the ordinance, for the Council's consideration.

Inclusionary In-Lieu Fee: Setting the Fee Amounts

Implementation of the draft ordinance would require the City to adopt in-lieu fees for inclusionary housing, as well as new fees for administration of the ordinance's requirements. In-lieu fees would be maintained in the City's low and moderate income housing fund to fund a variety of the City's programs related to preserving existing affordable housing stock, creating new affordable housing, or assisting low-income households. Staff has provided recommended in-lieu fees in Attachment 3. Should the Council move to introduce the draft ordinance, a Resolution will be prepared amending the Master Fee Schedule to adopt the proposed fees at the next City Council meeting.

Adopting an in-lieu fee for rental inclusionary housing developments is proposed to meet the State-required opt-in alternative for rental projects in the inclusionary policy. While not required by State law, an in-lieu fee is also proposed for opt-in payment by small for-sale projects (15 or fewer units/lots), or for discretionary approval by the City Council for larger for-sale projects, which is consistent with the City's Housing Element policy to provide more alternatives for compliance with the inclusionary housing ordinance.

In-lieu fees are not development impact or mitigation fees and are therefore not subject to the Mitigation Fee Act. The proposed in-lieu fees shown in Attachment 3 are based on the “affordability gap” between market-rate housing prices and the maximum affordable purchase price for low and moderate-income households. The affordability gap is a helpful tool for targeting appropriate in-lieu fees because it represents the cost the developer incurs for providing the unit. The proposed in-lieu fees are similar to those of neighboring jurisdictions, shown in the benchmarking analysis provided in Attachment 6. As this fee is set independently from the cost of an individual development, for some developers, paying the fee will be preferable to providing the unit on-site. For some developments, the opposite may be the case. The City Council may also adjust these fees to incentivize a particular outcome. For example, if the City Council wished to incentivize building units on-site, the City Council could consider increasing the in-lieu fees.

Local Preferences

“Local preferences” are requirements that affordable units provided to comply with City regulations or 100% affordable housing developments have “preferences” to serve or market the affordable housing units to certain target populations. For example, a requirement that current or former Brisbane residents be given priority in leasing or selling affordable units would be considered a local preference. Local preferences are not established in the draft ordinance. Should the Council wish to consider local preferences, staff can prepare some background information on the legal requirements for studying and establishing such preferences in compliance with State and Federal fair housing laws.

Fiscal Impact

None at this time. Adoption of an inclusionary in-lieu fee will generate affordable housing revenues, but it is difficult to forecast potential revenue as it depends on project size and type, and whether in-lieu fee payments are proposed at all by a project developer as opposed to on-site construction or other compliance alternatives.

Environmental Review

Adoption of the draft ordinance is exempt from CEQA pursuant to CEQA Guidelines §15061(b)(3) because it involves adoption of policies and programs that would not cause a significant effect on the environment.

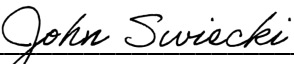
Measure of Success

Inclusionary housing and density bonus regulations that comply with State law and implement the City’s Housing Element policies to encourage and facilitate development of affordable housing in Brisbane.

Attachments

- ~~1. Draft Ordinance~~

- ~~2. Resolution 2025 RZ-01~~
3. Proposed In-Lieu Fees and other Administrative Fees
- ~~4. [BMC Chapter 17.31, Inclusionary Housing And Density Bonuses](#) (hyperlink)~~
- ~~5. February 27, 2025 Planning Commission agenda report and attachments~~
6. San Mateo County benchmarking analysis of inclusionary housing regulations



John Swiecki, Community Development Director



Jeremy Dennis, City Manager

4/17/2025 City Council Meeting

ATTACHMENT 3

Proposed Fees: Inclusionary Housing and Density Bonus Ordinance Update

Fee	Land Use Type	Amount
In-Lieu Fee	Rental 5+ units	\$378,346 per unit or fraction thereof*
	For Sale, 5-10 units	\$236,558 per unit/lot or fraction thereof*
	For Sale, 11 + units	\$265,717 per unit/lot or fraction thereof*
Administrative Fees		
Review of Eligibility for BMR Unit applicant (Developer)	Rental	\$125 per application
Annual monitoring fee (Developer/Property Management)	Rental	\$150 per unit
Fine for failure to provide documentation for homeowner monitoring (Homeowner)	For-Sale; any size	\$1000 (after 90 days) \$1000 additional for every 30 days
BMR Homeowner Subordination Request (Homeowner)	For-Sale; any size	\$125 per request

* For projects for which application of the inclusionary requirement results in a fractional unit less than 0.5, an in-lieu fee shall be assessed as an equivalent fraction of the fee charged for a whole unit.

Jurisdiction	Project Size Threshold	Rental On-site Income Requirements	Ownership On-site Income Requirements	Alternatives	In-Lieu Fee Levels	When are in lieu fees required?	Term of Affordability	Links
Atherton	N/a	N/a	N/a	N/a	N/a	N/a	N/a	
Belmont	25 units	>25 units: Housing impact fees 25+ units: 15% @ 80% AMI	>25 units: Pay housing impact fees 25+ units: 15% @ 120% AMI	Off-site For-sale: >24 units, 15% @ 80-120% AMI For-rent: >24 units: 15% @ 50-80% AMI				
Brisbane: Proposed Draft Ordinance	5 units	15% @ 50% AMI	5-10 Units: 15% @ 120% AMI 11+ Units: 10% @ 120% AMI; 5% @ 80% AMI	In-Lieu Fee: Rental (any size); for-sale 15 or fewer lots/units Land Donation, Off-Site Construction, Conversion, Special Needs Project Funding: Rental or For-Sale with City Council approval In-Lieu Fee: For-Sale 16+ units/lots with City Council approval	For-Sale 5-10 Units: \$236,558 For-Sale 11+ Units: \$265,717 Rental: \$378,346	N/A	Perpetuity (all)	
Colma	5 units	Housing Impact Fee	20% @ 50-120% AMI	Combination Land-donation Off site	Make up the gap between the amount of development capital typically expected to be available based on the amount to be received by a Developer or owner from Affordable Sales Price or Affordable Rent and anticipated cost of constructing the Inclusionary Units			Inclusionary Housing Ordinance
Daly City	20 units for rental; 15 units for ownership	10% @ 80% AMI	20% @ 120% AMI	In-lieu fee	Alternative for rental only: \$48/s.f. ; required for rental: \$35sf; required for ownership: \$45/sf	Rental: 5-20 units, Ownership: 5-14 units	55 years	Inclusionary Housing Ordinance
East Palo Alto	5 units	5+ units: 20% of net new 5% @ 35% AMI & 10% @ 50% AMI & 5% @ 60% AMI	5+ units: 20% of net new 10% @ 80% AMI & 10% @ 120% AMI	In-lieu fee Off site Other	Rental: \$273,400 (per affordable unit) Ownership: \$259,600 (per affordable unit)		Perpetuity	Inclusionary Housing Ordinance
Foster City	5 units	10% @50% AMI 5% @ 80% AMI 5% @ 120% AMI	20% @ 120% AMI	In-lieu fee	Rental: \$75.32/sq ft ; Sale: \$48.21/sq ft There are some other disclaimers in the fee schedule	9 units and lower Fractional units		Below Market Rate Inclusionary Housing Program
Half Moon Bay	10 units	25% of all units: 6% @ 50% AMI & 7% @ 80% AMI & 7% @ 120% AMI			20% of building permit valuation for the market rate units			Inclusionary Housing Ordinance
Hillsborough	N/a	N/a	N/a	N/a	N/a	N/a	N/a	
Menlo Park	1 unit	1-20 units: 10% @ 50-120% AMI 20 or more units: 15% @ 50-120% AMI		Acquisition and rehabilitation of existing units In-lieu fees Land dedication Off-site			55 years for rental	Below Market Rate Housing Program
Millbrae	10 units	5% @ 50% AMI 10% @ 80% AMI	15% @ 120% AMI	As an alternative to the fee payment, may be able to provide an additional on-site inclusionary unit	May be allowed for fractional units less than 0.5 or residential developments four to nine units	Residential developments with 4 to 9 units	55 years rental, 45 years ownership	

Pacifica	8 units	15% of all units: (In redevelopment area) 30% @ 50% AMI 40% @ 80% AMI (Outside redevelopment area) 50% @ 80% AMI 50% @ 120% AMI	Each subsequent purchaser shall be limited to the lesser of: Original purchase price, plus the percentage increase AMI from date of original purchase, plus cost of any capital improvement expenditures greater than 1% of original purchase price, minus costs necessary to bring unit up to code; Fair market value	Combination of below In-lieu Land dedication Off-site	Reflect the estimated cost to provide the BMR unit		55 years rental; 45 years ownerships	Inclusionary Housing Ordinance
Portola Valley	Subdivision developments		15% of lots			In-lieu fees required for fractional lots, if the developer does not wish		Inclusionary Lot Requirements in Municipal Code
Redwood City	20 units	5% @ 50% AMI 10% @ 120% AMI	15% @ 80-120% AMI	In lieu Unit size (affordable units may be 20% smaller than MR units) Other		Payment for fractional units	55 years rental, 30 years ownership	Affordable Housing Programs
San Bruno	5 units	15% of units: 10% @ 50% AMI 5% @ 50% AMI	5+ units: 15% of units: 20% @ 80% AMI 10% @ 120% AMI	In lieu Off-site Convert owner units to rentals: 5% @ 50% AMI 5% @ 80% AMI 5% @ 120% AMI	In-lieu fee will provide at least an equivalent number of affordable units at the same or lower income levels as required		55 years rental, 45 years ownership	Inclusionary Housing Ordinance
San Carlos	5 units	15% of units: 10% @ 50% AMI 5% @ 80% AMI	5-7 units: 20% @ 80% AMI 7+ units: 15% @ 80% AMI	Land dedication Off-site	Difference between affordable sales price or rent and the fair market value for the unit: no event shall the in lieu fee exceed cost of mitigating the impact of market-rate units		Perpetuity; Perpetuity renewal at resale for ownership	Inclusionary Housing Ordinance
San Mateo	11 units	15% @ 80% AMI	15% @ 120% AMI		Rental: (.1-.4) units: 33,452 - \$133,807 (5-10) units: 167,259 - \$334,517 Owner: (.1-.4) units: 30,701 - \$122,802 (5-10) units: 153,503 - \$307,005	5-10 units		Inclusionary Housing Ordinance
San Francisco	10 units	15% @ 80% AMI, 5% @ 120% AMI, 5% @ middle-income	6% @ 80% AMI, 6% @ middle-income	Combination Off-site units On-site units Small sites	\$199.5/s.f. gross (per s.f. of affordable housing that would've been provided on site)			Inclusionary Affordable Housing Program
San Mateo County	5	20%; all low, very low, extremely low	20%; half may be moderate, the rest any combo of low/very low/extemely low	In-lieu, land dedication, offsite units; may substitute disabled or large family units	Based on an established portion of construction cost, for a comparable unit; differs from County impact fee		55 years	
South San Francisco	5 units	15% of units: 5% @ 50% AMI 9% @ 80% AMI	15% of units: 7.5% @ 80% AMI 7.5% @ 120% AMI	In-lieu fee	Determined by City Council		55 years for rental, 55 years for renew at resale for ownership	Inclusionary Housing Ordinance
Woodside	N/a	N/a	N/a	N/a	N/a	N/a	N/a	

File Attachments for Item:

Q. Receive an Update from the Economic Development Department- “Economic Vitality”



CITY COUNCIL AGENDA REPORT

Meeting Date: May 15, 2025

From: Mitch Bull – Economic Development Director

City Manager Jeremy Dennis

Subject: Economic Development Department Update
-Economic Vitality

Recommendation:

Staff recommend that the City Council accept this report on an update regarding the Economic Development Department, as presented and forwarded by the Economic Development Subcommittee, for review and discussion.

Background:

As part of the goal setting of the City Council in 2016, Economic Development was highlighted as one of the major areas for improvement. The Economic Development Department was created in a more formal way, expanding the part-time hours that I was working (in tandem with my duties as the President/CEO Brisbane Chamber of the of Commerce). Upon my “retirement” from the Chamber in 2019, the hours were expanded to create the stand-alone department that currently exists.

Over the years, the department has been actively involved with Economic Development, real estate procurement and liquidation, and the initial point of contact for anyone who wishes to conduct business within the City of Brisbane. Staff have represented the city throughout the region and state through attendance at numerous Progress Seminars, visits to legislative days in Sacramento, and as representatives to SAMCEDA and the California Economic Development Association (CALED).

With the changing of the City Manager’s office the Economic Development department has also been more cohesively involved with other city initiatives such as emergency planning, community development planning and sustainability. While staff have had some success, such as the ATM installation at City Hall, staff are involved but ultimately failing to secure (currently) as replacement banking tenant for the former Bank of America site. Staff have also assisted the City Manager’s office in securing the lease for 25 Park Place and the sale of excess parcels on McClain St.

The Economic Development Committee met in April and recommended supporting the suggestions related below. Staff also met with Brisbane Chamber of Commerce representatives to ensure no overlap of responsibilities and duties and also discussed ways the City could partner together.

Discussion:

Economic and Business Development has long had connotations of just filling buildings with tenants or building new structures on vacant or stressed properties. When one says the word “development” the immediate response is that a “developer” is going to do something; and the connotation is usually negative.

Economic Vitality is a concept that goes beyond signing leases and filling buildings but is a collaboration between city staff, community members, and business partners to enhance the economic stability of the city and improve the quality of life. It is more of a holistic concept that encompasses the integration of economics, environmental stewardship, sustainability, planning and communication as a total package. The Economic Vitality Office (EVO) will also be involved in promoting workforce development and be an advocate for economic opportunity options available at a local, state and federal level.

The goal is a more engaged and complimentary solution that will result in economic growth, a continued strengthening of the city/business/citizen dynamic and better marketing of the city in the regional outlook for potential businesses that are looking to locate to the SF Bay Area. entrepreneurship and sustainability.

The recommendation is to approve a rebranding of the current Economic Development Department into the Economic Vitality Office (EVO). The EVO will continue to be the primary point of contact for businesses and entrepreneurs looking to do business in the city. Staff will continue to provide the necessary information and connections to city staff and resources throughout the county and state.

Major Programs and Initiatives

- Employer Interviews: staff have started to conduct employer interviews with some of our major businesses and have gained valuable feedback on city services, business needs and concerns.
 - Staff will be continuing this effort and expanding the reach.
- Continue to monitor business and industry trends
- Program recommendations, as fiscally appropriate, to enhance the environments of Visitacion Avenue, Brisbane Village, Shopping Center, Crocker Park, Sierra Point and the Brisbane Technology Park. From lighting, parking, zoning and land use the aforementioned business areas are critical to Brisbane’s economic fortunes. They may require different solutions, in order to maximize the impact on the revenue that each sector can potentially generate.
- Develop and implement a business retention / business excellence and incubator strategy to link our citizens with business that support the economy
- Recruitment of Businesses and Sectors – Light Industrial / manufacturing / outreach to brokers and developers – through interviews / business roundtables and partnership advertising with our business and development partners

- Workforce Development – Explore job creation opportunities, affordable housing, workplace amenities such as maker space, incubator space, etc.

Future Initiatives

- Revamped “Business of the Year” award programs – highlight large businesses/ small businesses / home-based businesses - develop methodology for selection. Awards can be plaques / cash grants. Announce winners in a “business celebration” held at the Doubletree Hotel with participation from the business community and general population.
- Develop small business grant program \$ TBD to encourage and help to launch start-up businesses. Possible future small grants to entrepreneurs and start-ups. (e.g. 5 grants/year at a future determined dollar amount)

Strategic Partnerships for the Economic Vitality Office

- SAMCEDA
- State of California – GOBiz
- Community Resources – Commissions and Subcommittees
- Brisbane Chamber of Commerce
- CALED (California Economic Development Association)
- Local groups such as MOB, Brisbane Makers, etc.

Measures of Success

Staff will base the success of the Economic Vitality Office (EVO) rollout (in part) on the following: Number of clicks on our webpage, Surveys that staff will conduct to gauge client and citizen recognition of the EVO office and programs, increase on business activity in leasing and interactions with our partners in real estate, site development and leasing, and other interactions with our commissions, committees, and citizen groups.

Expected Results and Measurements

- Visibility – Website Traffic results / Business Journal adv response
- Room Night uptick within Brisbane hotels
- Retention of Businesses / New Businesses
- Surveys of Business and Citizens on EVO efforts

1. How is the EVO different than the Brisbane Chamber?

The Brisbane Chamber is a 501c6 trade organization that focuses on enhancing and improving the economy of Brisbane and their member businesses and organizations. The Economic Vitality Office is a city staff department that will continue to work hand in hand with the Chamber but

will have a broader action plan and reach, as the department will focus on larger city and regional issues, trends and policy solutions. Both organizations will continue to promote the City of Brisbane, and the efforts of both organizations will continue to create an environment where the businesses, the citizens and the community thrive.

2. Does this rebranding constitute a change in the focus of what the Economic Development Department has been doing over the past 7 years?

The rebrand, while adding additional components, is a way to better explain and market the efforts and goals of the department. The goal is not just about filling spaces, but a mindful, planned response to strengthen and expand the economic vitality of the city. It will also provide a clear pathway for sharing communications and resources in areas such as marketing, communications, sustainability, emergency planning, city planning and other resources.

3. Have any materials been produced recently to support economic vitality in the City?

Yes – staff will share a video recently produced by staff intended to provide businesses with key information about why Brisbane is an ideal location to locate their activities.

Fiscal Impact:

Minimal at this time, (reprinting of business cards / website update). Future programs may involve “Businesses of the Year “awards, joint advertising campaigns with developers and media (e.g. San Francisco Business Times; Site Selector) to promote our city and highlight available business opportunities.

- | | |
|--|-------------------|
| • Small Business Grants | \$ Future TBD |
| • Advertising in trade journals / websites | \$. TBD |
| • Webpage Development | \$ TBD (in house) |
| • Business of the Year awards: Home Business, Small Business, Large Business, Restaurant/Retail Business | |

Mitch Bull

Mitch Bull
Economic Development Director

Jeremy Dennis

Jeremy Dennis
City Manager

File Attachments for Item:

R. City Attorney Recruitment Discussion



CITY COUNCIL AGENDA REPORT

Meeting Date: May 15, 2025

From: Jeremy Dennis, City Manager

Subject: City Attorney Recruitment Discussion

Recommendation

Staff recommend that the City Council:

1. Receive an update from the ad hoc City Attorney Subcommittee on its discussions regarding the use of a consultant for the recruitment or to use in-house support
2. Discuss the contents of draft recruitment materials.

Background

For the past decade, the City has been served by two City Attorneys. Michael was City Attorney until 2019 while Tom was the City's lead counsel on certain state and federal issues. Tom became City Attorney in 2019, and Michael continued as the City's lead counsel on day-to-day matters.

Early this year, both indicated their interest in stepping down as primary legal counsel to the City in favor of the City hiring a new City Attorney to assume the traditional role of a City Attorney.

The City Council created an ad hoc subcommittee to provide recommendations on recruiting a new City Attorney. That body met in March and provided initial direction to the subcommittee.

Discussion

This section provides greater detail on the subcommittee's recommendations.

1. Subcommittee Discussion/Recommendation

The Subcommittee primarily discussed whether it was advantageous to the City to utilize a third-party recruiter/consultant to recruit a new City Attorney, or whether an initial search carried out by in-house HR services would be more appropriate given budget considerations.

The Subcommittee recommends that in-house support be utilized for an initial recruitment. Should the in-house process not result in the Council's selection of a new City Attorney, the Subcommittee recommends reconsidering retaining a professional recruiter.¹

The Subcommittee also recommends that consideration be given first to firms that are regionally located that can provide their services in person, when appropriate.

The Subcommittee requested that we share materials used during the most recent recruitment of a City Attorney in 2012 with the Council. The available materials from the previous recruitment are attached (unfortunately, not all materials were available).

2. Discussion of Recruitment Material Content

Staff recommends that the City Council accept the Subcommittee's recommendations.

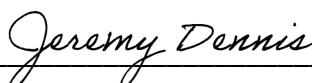
Staff recommends that the Council discuss the attributes, qualities, qualifications and other such topics so that staff can draft materials for the recruitment.

Fiscal Impact

None.

Attachments

- 1. Previous recruitment materials**
- 2. Recent sample recruitment materials from local cities**



Jeremy Dennis, City Manager

¹ The Subcommittee recognized that its approach may extend the process for selecting a new City Attorney by a couple months and asked the City's current attorneys whether such a delay would pose a problem for either of them. It does not.



October 15, 2012

Vice Mayor Ray Miller
and Council Member Sepi Richardson
City of Brisbane
50 Park Place
Brisbane, CA 94005

Dear Vice Mayor Miller and Council Member Richardson:

Thank you for your patience in receiving this overview of our discussion on October 2. As Clay may have mentioned, I broke my wrist the next day and have been struggling with some of the relatively simple tasks in life since then. Typing appears to be my greatest challenge.

I appreciated the opportunity to meet with you to discuss the recruitment of the City Attorney. Based on our conversation, the following outlines my understanding of your needs and the process involved.

The City's Needs

With the retirement of your long-tenured City Attorney, the Brisbane City Council is interested in recruiting an individual to serve as a contract City Attorney who will work on site on an as-needed basis (office hours and Council/Planning Commission meetings) as well as provide advice and counsel on a daily basis from an off-site location.

The Recruitment Process

RFP -- In order to identify interested parties/individuals from law firms or other professionals, the City of Brisbane will prepare a Request for Professional Services for City Attorney services. The Council Subcommittee will work with City staff to draft the RFP and assemble a list of potential law firms and other individuals to receive the RFP. I will assist the City in reviewing the draft RFP as well as supplement the distribution list with additional professionals in the industry. The RFP will then be sent to the distribution list with direction that all responses must be sent directly to the City. The RFP will also be posted on our firm's web site.

Gaining Familiarity with Brisbane -- I will attend a City Council meeting in order to become more familiar with the Council, organizational culture and needs, and current/future issues and challenges facing the community and organization. This familiarity will assist me in the review and screening of candidates that "fit" the organization and Council's needs.

Review of Proposals -- The Council Subcommittee will review proposal responses and determine the leading candidates/firms (no more than 12) for further consideration. I will meet with the Subcommittee to review those identified, outline any questions or concerns the Subcommittee may have, and offer any additional advice or assistance necessary.

*City of Brisbane
Page Two*

Preliminary Interviews – My firm will schedule face-to-face preliminary interviews with those individuals selected by the Subcommittee, and I will personally conduct those interviews. Candidates/firms will be reviewed for background/experience, skills, and “fit” with the City of Brisbane’s needs and organizational culture.

Recommendation of Finalists – I will meet with the Subcommittee to review the results of the preliminary interviews and provide a recommendation of the leading candidates to attend finalist interviews with the Subcommittee or Council. All candidates/firms will be notified of their status following this meeting.

Screening/Backgrounding/References – My firm will obtain release forms from finalists in order to conduct necessary background checks (civil/criminal/credit/education/motor vehicle) as well as reference checks. All results of these checks will be provided to the City for their review and confidential files.

Attendance of Finalist Interviews – My firm will contact finalists and schedule their interviews with the Subcommittee or Council. I will personally facilitate these finalist interviews and provide sample interview questions as well as evaluation and ranking sheets.

Offer of Employment – The City will negotiate the offer of employment/contract with the selected finalist/firm. All other finalists will be notified of their status by my firm.

Professional Fee & Expenses

The professional fee and out-of-pocket expenses incurred to provide the above assistance to the City is \$9,750. Additional assistance outside the scope of services detailed above would be negotiated.

Thank you once again for your interest in my services. I look forward to hearing from you at your convenience.

Sincerely,

Bobbi C. Peckham

bobbi@peckhamandmckenney.com

(866) 912-1919 toll-free; (916) 730-2014 (c)

Approved and Accepted:



Cliff Lentz, Mayor, City of Brisbane

CITY OF ATASCADERO



**Request for Proposal (RFP)
2023-01**

City Attorney Services

October 25, 2023

**City of Atascadero
6500 Palma Avenue
Atascadero, CA 93442**

Final Day to Submit Questions: November 8, 2023, 5:00 P.M.

Submission Deadline: November 15, 2023

The City Council of the City of Atascadero ("City") is seeking proposals from interested and qualified contract attorneys and legal firms to provide legal services and serve as primary attorney for the City.

OVERVIEW AND BACKGROUND

Background

The City of Atascadero is committed to promoting and providing for the safety, health, and welfare of its citizens, visitors, and business community. Founded in 1913, the City of Atascadero, California is well-known for its friendly atmosphere and hometown charm. This beautiful, 26 square mile Central Coast community has a population of 30,000 and is situated in the center of San Luis Obispo County along Highway 101, halfway between the metropolitan areas of Los Angeles and San Francisco. Atascadero has quite a bit to offer from its vibrant Downtown to Atascadero Lake Park that includes the Charles Paddock Zoo and the Faces of Freedom Veterans Memorial. Atascadero is also within a three-hour drive to Yosemite or Sequoia National Parks and only about two hours to Big Sur, Monterey or Carmel. The City is truly a great place to live, work and raise a family.

Incorporated in 1979, the City of Atascadero is a General Law City that operates under a Council-Manager form of government. The City is governed by a five-member Council, and a seven-member Planning Commission. Council Members are elected to four-year overlapping terms on an at-large basis and the Mayor is separately elected to a two year term on an at large basis. The City Council is the legislative body responsible for overall policy development and direction of the City. In addition, the City has a handful of committees, boards, and commissions that provide input and help conduct City business.

The City provides an extensive array of services including a police department, fire department a small public transit operation, recreation programs, facility rentals, planning services, building permits, housing programs, economic development, wastewater collection and treatment, maintenance of stormwater systems and public rights-of-way, parks and trail systems as well as all of the traditional internal management support functions. Atascadero delivers municipal services through seven (7) departments: Administrative Services, City Manager's Office, Community Development, Community Services & Promotions, Fire & Emergency Services, Police, and Public Works.

The City has a current annual operating and capital budget of approximately \$87 million, and a regular staff of approximately 142 full-time equivalent employees. The City belongs to a risk management pool (CJPIA: California Joint Powers Insurance Authority), which provides legal assistance with workers compensation, general liability, and property claims. Normally, the City Attorney is not expected to represent the City in matters covered by the joint risk pool.

City Objectives

The City of Atascadero wishes to continue its practice of acquiring its legal services on a contract basis. The City Attorney serves at the pleasure of the City Council as a directly appointed position. The City Attorney is an integral part of the City's management team and, aside from his/her role as legal advisor, is expected to participate in management activities and functions as directed by

the City Manager. The City Attorney is not a City employee and is not entitled to the benefits of a City employee; the position is strictly on a contractual basis. The City reserves the right to retain or employ other attorneys or special counsel as may be needed, in its sole judgement, to take charge of any litigation or legal matters to assist the City.

The City seeks a City Attorney who will provide clear, understandable, and independent legal advice. The firm/individual must be qualified to provide expertise in the area of general municipal law, including for example planning, zoning, environmental review, construction, municipal finance, the Public Records Act, Brown Act, ethics, conflict of interest laws, litigation, municipal employment law, and labor relations statutes. Through this Request for Proposals (RFP), the City intends to enter into a professional services agreement for an initial five-year agreement, with the option for renewal for additional five one-year periods unless terminated by either party.

QUALIFICATIONS

The Applicant must be a licensed and active member of the California State Bar. Qualified applicants will have a minimum of five (5) years of municipal legal experience in California as a Municipal Attorney. Further, it is required that the City Attorney have experience in the following areas:

- Designing, drafting, and updating Municipal Code sections and regulations.
- Providing support to City staff and the Council on matters including land use appeals, code enforcement, and misdemeanor violations of City code.
- Experience with and knowledge of the law governing general law cities including but not limited to, personnel law, labor/employment training and personnel investigations, workers compensation, and disability issues/ADA/FEHA, as well as administrative law including, but not limited to the Brown Act, Public Records Act, Elections Code, public bidding and procurement and contracts and other areas of municipal law.
- Experience regarding land use regulations related to public land use and planning, public utilities, and environmental law, including CEQA, general plans, housing authorities, and code enforcement actions. Knowledge of regulations pertaining to, water and sewer utilities, solid waste/recycling, hazardous materials, brownfields, and coastal issues, including urban run-off/stormwater discharge.
- Experience with and knowledge of real property proceedings, including but not limited to, condemnation/ eminent domain, unlawful detainer/eviction (commercial), development/redevelopment/compensation agreements, and real estate transactions.
- Litigation experience or experience monitoring or supervising litigation activity within a firm. Knowledge of public entity tort claims; labor and employment matters; police department legal matters, including public safety defense; matters pertaining to construction law, public works, and prevailing wage; and writ litigation and appellate procedures.
- Demonstrated ability to speak clearly, concisely, and effectively in public.
- Ability to relate easily and effectively with all members of the City Council, staff, and the public.
- Knowledge of distinct legal issues and concerns facing the City of Atascadero and the County of San Luis Obispo, including familiarity with the local court system. Local office and/or presence is preferred.

SCOPE OF WORK

The City Attorney serves at the pleasure of the City Council. The City Attorney will work directly with the City Manager and City staff in performance of his/her daily duties in the operation of City business. The City Attorney is an integral member of the City's management team. As such, the City Attorney's participation will go beyond purely legal matters and will involve City special events. The general responsibilities of the City Attorney include, but are not limited to, the following and shall be considered to be services covered by the retainer:

- Provide clear, concise, and modern legal advice and consultation as requested or required to members of the City Council, the City Manager, Committees and City staff. Contacts are typically via telephone and email, but in any case, should flow through the City Manager's Office unless otherwise directed or agreed upon. Each such request will include a response deadline, which may be the same or next day.
- Maintain office hours or availability for in-person presence at the City, during such times as mutually determined with the City Manager and/or the City Council.
- Attendance at regular and special meetings of the City Council and Planning Commission and other City bodies as necessary, unless excused by the City Manager, and advising the bodies and staff on agenda items and procedural matters.
- Provide guidance on parliamentary procedures and matters concerning requirements of such areas including the Brown Act, Public Records Act, Political Reform Act, CEQA, tort liability and risk, due process and other legal requirements imposed by statute and common law, as well as a working knowledge of municipal employment practice and public administration.
- Prepare, review, and revise documents, including, but not limited to, initiation of memoranda concerning legal issues, contracts, agreements, ordinances, resolutions, land use decisions including appeals, public improvements, deeds, easements, dedications, rights-of-way, and City Council staff reports.
- Advise and represent the City in litigation for actions and other proceedings brought against City, its elected officials, appointed officers and agents, and the keep the City Council and City Manager regularly apprised of litigation developments. Represent City in the prosecution of City ordinance violations.
- Represent the City in inter-agency projects and other legal matters.
- Review compliance with public records requests and records destruction.
- Counsel the City regarding taxes, assessments, fees, Proposition 218, and other financial advice.
- Provide legal advice and assistance to operating departments with regard to employee workers' compensation, employee disciplinary actions, and bargaining unit MOUs.
- Perform legal research and advise on issues related to land use, including interpretation of the California Environmental Quality Act ("CEQA").
- Provide legal advice and assistance to Council and Staff with regard to interaction with state agencies, including the Department of Fish and Wildlife, State Water Resources Control Board, and special districts and joint powers authorities, including Atascadero Mutual Water Company, Central Coast Community Energy, and the Integrated Waste Management Authority.
- Update the City's Municipal Code.

- Monitor pending and current state and federal legislation and court decisions, as appropriate, and provide written updates on those that have the potential to affect the City. Provide suggested action or changes in operations or procedures to assure compliance.
- Research and advise on municipal and other legal matters as requested by the City Council or the City Manager.
- Recommend specialist legal firms as needed and provide management of same.

PROPOSAL SUBMISSION REQUIREMENTS

Proposal Submittal

Proposals must be received no later than the close of City business, November 15, 2023. The delivery address follows:

City of Atascadero
Attn: Lara Christensen, Deputy City Manager
6500 Palma Avenue
Atascadero, CA 93422

Email: christensen@atascadero.org

General Instructions

Proposals should be a straightforward, concise description of the Applicant's firm, background, qualifications, capabilities to satisfy the requirements of this RFP, and proposed pricing. The proposing party is responsible for all costs incurred in preparation and submittal of a proposal.

Proposal Format

Letter of Transmittal. The proposal shall include a transmittal letter, signed by a duly authorized representative of the firm/attorney, and must include the name, address, telephone number and email address of the Respondent and those (if necessary) to whom any correspondence should be directed. Provide the legal entity name, Federal Employer Identification Number (EIN), and form of business (i.e. Corporation, LLP, etc.). The letter shall contain a statement to the effect that the proposal and fee schedule are valid and binding for 180 days.

Identification of Attorneys. The response to this RFP should include descriptions of the attorney or attorneys (partners/principals and associates) that may be assigned to work with and who would have primary responsibility for providing regular services to the City under the proposal. For each attorney, the RFP should identify the overall capabilities, qualifications, trainings, areas of expertise, and prior experience, as they relate to the desired qualifications and experience described in this RFP. Include names, resumes, publications, scholastic honors, and professional affiliations, and length of employment with the firm.

Support Staff. The RFP should include information about the types of support staff, such as other attorneys, paralegals, interns and others in the firm who would be assigned to perform work for the City and whose time would be billed for such work. The response should include information about how the firm plans to utilize support staff within the City's budget constraints.

Description of Services. The RFP should describe the services the firm proposes to provide in a way that demonstrates understanding of the needs of the City, the firm's overall experience with municipal law, any areas of specialty listed above, and any special qualifications that are believed to distinguish it from other law firms. Describe the nature of your/the law firm's practice, as well as qualifications for providing legal services as City Attorney for the City of Atascadero.

Rates and Charges. The proposed means of compensation, including hourly rates or fees to be charged for each individual named in the Statement of Qualifications, should be listed. A schedule of the rates or amounts for all fees, charges, and expenses to be billed by each attorney or staff member should also be included. An estimated range of anticipated monthly charges the City may expect to be billed is highly desirable.

Availability and Commitment to Provide Services. The RFP should include an indication of the commitment to provide the services by the attorney or attorneys with principal responsibility for providing services to the City. In this context, the words availability and commitment should be taken in their broadest meanings, incorporating time, flexibility in scheduling, office location of the attorney or attorneys, and firm or personal policies and practices with regard to returning calls and meeting deadlines. Any significant time period required before beginning services should be noted.

Knowledge of San Luis Obispo (SLO) County Governmental Issues. The RFP should describe familiarity with unique issues facing local governments in SLO County and the City in particular. Living experience in SLO County and in the City should be listed.

Actual or Perceived Conflicts.

- Please list any political contributions of money, in-kind services, or loans made to any member of the City of Atascadero Council within the last five years by the applicant law firm and all of its attorneys (including the attorney being proposed as City Attorney).
- Please list all public clients for which your firm currently provides legal services.
- Please list all public clients for which your firm has provided services over the last five years.
- Please identify any foreseeable potential conflicts of interest which would result from such representation and the manner in which you would propose to resolve such conflicts.
- For the proposed City Attorney, please specify current or known future professional commitments in order that the City may evaluate your continuing availability for providing legal services to the City.

Reasonable diligence to identify and disclose potential conflicts is expected of all firms submitting a response to this RFP. The proposal should also provide a statement or description of firm policy to address how conflicts of interest between two or more clients are avoided.

References. References from three to five comparable and representative public agency clients, which the firm is currently working with or has worked in the recent past, and the public agency's teams should be included, with contact information, including the contact's name, title, agency, phone and email address. Specify the client location, consultant firm members and participating individuals, and their roles on the team (City Attorney, Deputy City Attorney, legal staff, etc.), type of work, and other relevant information.

Additional Information. Statements submitted in response to the RFP may, but are not required to, provide additional information to assist a proper evaluation of the proposal. Any discussions relating to suggested strategies to reduce costs for outside legal services are appropriate in this section.

RFP Schedule of Events

RFP Event	Date
1 City Issues RFP	October 25, 2023
2 Deadline for Receipt of Proposal	November 15, 2023
3 Interview(s)	TBD
4 Agreement to City Council	December 12, 2023
5 Estimated Contract Start Date	January 1, 2024

The City reserves the right, in its sole discretion, to adjust the schedule, waive variances or irregularities, or reject all proposals.

Cost Proposal

The incumbent City Attorney has provided the services described in this RFP for a flat monthly amount. It is the expectation of the City Council that proposals submitted shall not exceed the current budget amount of \$240,000. In the event the budget amount would be exceeded, prior approval of the City Council would be required.

Billing proposals should consider the scope of work and hourly involvement by each staff/law firm member. Describe how you/your firm will aid the City in remaining within the adopted budget resulting from the award of this contract. Specify how long the prices quoted will be binding. Please describe how you/the firm intend(s) to charge for legal services and provide a fee schedule.

- If hourly rate billing is proposed, provide the structure of standard hourly billing rates for the designated City Attorney and any other partners, associates, paralegals, etc. assisting such person in providing services; provide the fee schedule/hourly rates in a table format.
- If a monthly retainer is proposed, how many hours per month would be included and what services would be performed as part of the retainer? Describe what occurs when the City requires fewer or more hours of service in a given month and a description of the sort of matters that would not be included in the monthly retainer.
- Please define any "extra" services, such as litigation, and describe if such services will be billed at a different hourly rate or basis.
- Are charges ever shared between clients, and if so, explain what method is used.
- Please describe any proposed blended rate and availability of any alternative billing options including any applicable government or discount rate offered to the City of Atascadero.
- Specify which items, if any, are billed separately and at what rate. Such items might include telephone and fax charges, postage, duplicating/printing, out-of-pocket expenses, and mileage/travel time.

These rates shall remain firm through any initial term of the agreement and any rate change for additional agreement terms requires approval by the City Council. Selected firm must be capable of tracking and billing (invoicing) all work hours and materials (if reimbursable) by specific

program or funding source as required by the City of Atascadero and as identified in the City's Attorney Services Agreement. The proposal of any firm not capable or willing to comply with this requirement will be considered non-responsive.

EVALUATION CRITERIA AND SELECTION PROCESS

The City Council anticipates making a selection of a firm or firms following a careful evaluation of all relevant information.

Calls to submitting firms or attorneys and their references may be made to clarify material in the submittals. Based upon this review, the best qualified firms may be invited to a personal interview. The main criteria used to evaluate the RFP will concern the experience and qualifications of the firm's attorneys who would be assigned to the City. The material submitted in the proposals, interviews with the firms, a thorough background check, and references will be determinative factors in making a selection. Ancillary information including the firm's fee structure and schedule of charges for ancillary services is important but will be given secondary weight.

SPECIAL PROVISIONS

Contract Award. The contract will be awarded for an initial period of five (5) years. The agreement will be then automatically renewed for additional five, one-year periods unless terminated by either party. However, the City Attorney shall work at the pleasure of the City Council and nothing herein shall limit their ability to terminate the contract at will with no notice or penalty.

Cost of Preparing and Submitting Statements. All costs incurred in preparing and submitting the RFP is to be borne by the submitter and not the City. In no event shall the City be liable for any cost whatsoever for the preparation or submittal of a response to this RFP.

Reservations and Options. The City Council reserves the rights and options to:

- Reject any or all of the submittals
- Waive any of the provisions of the RFP
- Issue subsequent RFPs
- Cancel the RFP process
- Waive technical error in the responses it receives
- Negotiate with any, all, or none of the respondents to this RFP in regards to costs or to further refine the scope of services to be provided.

WITHDRAWAL OF PROPOSAL

Any proposal may withdrawn at any time prior to the date and time fixed for the opening of the proposals by submitting a written request to the Atascadero City Manager. The request shall be signed by an individual authorized to bind the respondent.

PROPOSALS AND PUBLIC RECORDS

Until award of the contract, the proposals shall be held in confidence and shall not be available for public review. Upon award of a contract to the successful respondent, all proposals shall be public records. No proposal shall be returned after the date and time set for opening thereof. All proposals shall become the property of the City of Atascadero.

INQUIRIES

Questions regarding this RFP should be submitted in **writing** to:

Lara Christensen, Deputy City Manager

6500 Palma Avenue

Atascadero, CA 93422

[lchristensen@atascadero.org](mailto:christensen@atascadero.org)

Respondents are directed not to contact other City staff or City Council in conjunction with this request. All queries must be submitted in writing.

Substantive requests for information received may be responded to in writing by the City in the form of an addendum to this RFP and sent to all RFP recipients.

ADDENDA

It shall be the respondent's responsibility to check the City of Atascadero's website to obtain any addenda that may be issued for the RFP. Addenda should be acknowledged in the Transmittal Letter.

SAMPLE CONSULTANT AGREEMENT

CITY OF ATASCADERO



CONTRACT FOR

[Name of Consultant]

for

GENERAL TITLE OF SERVICES



CONSULTANT SERVICES AGREEMENT

FOR THE

CITY OF ATASCADERO

[NAME OF CONSULTANT]

THIS CONTRACT is made and entered into between City of Atascadero, a Municipal Corporation ("City") and [Name of Consultant] ("Consultant"). City and Consultant agree as follows:

1. SCOPE AND STANDARDS:

A. **CONTRACT.** Consultant shall do all work, attend all meetings, produce all reports and carry out all activities necessary to complete the services described in the SCOPE OF WORK AND STANDARDS FOR SERVICES, attached hereto and incorporated herein by this reference as Exhibit A, as requested by the City. This Contract and its exhibits shall be known as the "Contract Documents." Terms set forth in any Contract Document shall be deemed to be incorporated in all Contract Documents as if set forth in full therein.

2. EMPLOYMENT STATUS OF PERSONNEL:

A. **INDEPENDENT CONTRACTOR; EMPLOYEES OF CONSULTANT.** Consultant enters into this Contract as, and shall at all times remain as to the City, an independent contractor and not as an employee of the City. Nothing in this Contract shall be construed to be inconsistent with this relationship or status. Any persons employed by Consultant for the performance of services pursuant to this Contract shall remain employees of Consultant, shall at all times be under the direction and control of Consultant, and shall not be considered employees of City. All persons employed by Consultant to perform services pursuant to this Contract shall be entitled solely to the right and privileges afforded to Consultant employees and shall not be entitled, as a result of providing services hereunder, to any additional rights or privileges that may be afforded to City employees.



B. **INDEPENDENT INVESTIGATION.** The Consultant agrees and hereby represents it has satisfied itself by its own investigation and research regarding the conditions affecting the work to be done and labor and materials needed, and that its decision to execute this Contract is based on such independent investigation and research.

C. **COMPLIANCE WITH EMPLOYMENT LAWS.** The Consultant shall keep itself fully informed of, shall observe and comply with, and shall cause any and all persons, firms or corporations employed by it or under its control to observe and comply with, applicable federal, state, county and municipal laws, ordinances, regulations, orders and decrees which in any manner affect those engaged or employed on the work described by this Contract or the materials used or which in any way affect the conduct of the work.

D. **UNLAWFUL DISCRIMINATION PROHIBITED.** Consultant shall not engage in unlawful employment discrimination. Such unlawful employment discrimination includes, but is not limited to, employment discrimination based upon a person's race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, gender, citizenship or sexual orientation.

3. **TIME OF PERFORMANCE:**

The services of Consultant are to commence upon execution of this Contract by City, and shall be undertaken and completed in a prompt and timely manner, in accordance with the Scope of Work referenced in Exhibit A. Except as provided in Sections 6 and 19 below, this Contract shall terminate no later than [insert date], unless extended by the mutual agreement of both parties.

4. **COMPENSATION:**

A. **TERMS.** Compensation to the Consultant shall be as set forth in Exhibit B attached hereto and made a part hereof.

B. **NO PAY FOR ADDITIONAL SERVICES WITHOUT WRITING.** Consultant shall not be compensated for any services rendered in connection with its performance of this Contract, which are in addition to those set forth herein or listed in Exhibit A, unless such additional services are authorized in advance and in writing by the City Manager or the City Manager's designee (hereinafter "City Manager" shall include the City Manager's designee). Consultant shall be compensated for any additional services in the amounts and in the manner as agreed to by City and Consultant at the time City's express written authorization signed by the City Manager is given to Consultant for the performance of said services.



5. SUPERVISION, LABOR AGREEMENTS AND PERSONNEL:

A. **CONSULTANT SUPERVISES PERSONNEL.** The Consultant shall have the responsibility for supervising the services provided under this Contract, hiring of personnel, establishing standards of performance, assignment of personnel, determining and affecting discipline, determining required training, maintaining personnel files, and other matters relating to the performance of services and control of personnel. The City Manager may use any reasonable means to monitor performance and the Consultant shall comply with the City Manager's request to monitor performance.

B. **PERFORMANCE NOT SUBJECT TO EMPLOYMENT AGREEMENTS.** The City acknowledges that the Consultant may be obligated to comply with bargaining agreements and/or other agreements with employees and that the Consultant is legally obligated to comply with these Contracts. It is expressly the intent of the parties and it is agreed by the parties that the Consultant's performance shall not in any manner be subject to any bargaining agreement(s) or any other agreement(s) the Consultant may have covering and/or with its employees.

C. **APPROVAL OF STAFF MEMBERS.** Consultant shall make every reasonable effort to maintain the stability and continuity of Consultant's staff assigned to perform the services required under this Contract. Consultant shall notify City of any changes in Consultant's staff to be assigned to perform the services required under this Contract and shall obtain the approval of the City Manager of a list of all proposed staff members who are to be assigned to perform services under this Contract prior to any such performance.

6. TERMINATION:

A. **30 DAYS NOTICE.** The City, upon thirty (30) days written notice, may terminate this Contract, without cause, at any time. In the event of such termination, Consultant shall be compensated for non-disputed fees under the terms of this Contract up to the date of termination.

B. **OBLIGATIONS SURVIVE TERMINATION.** Notwithstanding any termination of this Contract, Consultant shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of this Contract by Consultant, and the City may withhold any payments due to Consultant until such time as the exact amount of damages, if any, due the City from Consultant is determined. All of the indemnification, defense and hold harmless obligations in this Contract shall survive termination.



7. CHANGES:

The City or Consultant may, from time to time, request changes in the scope of the services of Consultant to be performed hereunder. Such changes, including any increase or decrease in the amount of Consultant's compensation and/or changes in the schedule must be authorized in advance by both Parties in writing. Mutually agreed changes shall be incorporated in written amendments to this Contract. Any increase in the amount of Consultant's compensation and/or changes in Exhibit A and or Exhibit B must be authorized in advance by the City Manager.

8. PROPERTY OF CITY:

A. **MATERIALS PREPARED EXCLUSIVE PROPERTY OF CITY.** It is mutually agreed that all materials prepared by the Consultant under this Contract are upon creation and shall be at all times the exclusive property of the City, and the Consultant shall have no property right therein whatsoever. City agrees that Consultant shall bear no responsibility for any reuse of the materials prepared by the Consultant if used for purposes other than those expressly set forth in the Intended Use of Consultant's Products and Materials section of this Contract. Consultant shall not disseminate any information or reports gathered or created pursuant to this Contract without the prior written approval of City including without limitation information or reports required by government agencies to enable Consultant to perform its duties under this Contract and as may be required under the California Public Records Act excepting therefrom as may be provided by court order. Consultant will be allowed to retain copies of all deliverables.

B. **CONSULTANT TO DELIVER CITY PROPERTY.** Immediately upon termination, or upon the request by the City, the City shall be entitled to, and the Consultant shall deliver to the City, all data, drawings, specifications, reports, estimates, summaries and other such materials and property of the City as may have been prepared or accumulated to date by the Consultant in performing this Contract. Consultant will be allowed to retain copies of all deliverables to the City.

9. CONFLICTS OF INTEREST:

A. **CONSULTANT** covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of City or which would in any way hinder Consultant's performance of services under this Contract. Consultant further covenants that in the performance of this Contract, Consultant shall take reasonable care to ensure that no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express written consent of the City Manager. Consultant agrees to at all times avoid conflicts of interest or the appearance of any conflicts of interest with the interests of City in the performance of this Contract. Consultant agrees to include language similar to this Section 9(A) in all contracts with subcontractors and agents for the work contemplated herein.

10. CONFIDENTIAL INFORMATION:

City of Atascadero
 [Name of Consultant]



A. **ALL INFORMATION KEPT IN CONFIDENCE.** All materials prepared or assembled by Consultant pursuant to performance of this Contract are confidential and Consultant agrees that they shall not be made available to any individual or organization without the prior written approval of the City, except by court order.

B. **REIMBURSEMENT FOR UNAUTHORIZED RELEASE.** If Consultant or any of its officers, employees, or subcontractors does voluntarily provide information in violation of this Contract, the City has the right to reimbursement and indemnity from party releasing such information for any damages caused by the releasing party's, including the non-releasing party's attorney's fees and disbursements, including without limitation expert's fees and disbursements.

C. **COOPERATION.** City and Consultant shall promptly notify the other party should Consultant or City, its officers, employees, agents, or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Contract and the work performed thereunder or with respect to any project or property located within the City. City and Consultant each retains the right, but has no obligation, to represent the other party and/or be present at any deposition, hearing or similar proceeding. Consultant and City agree to cooperate fully with the other party and to provide the other party with the opportunity to review any response to discovery requests provided by Consultant or City. However, City and Consultant's right to review any such response does not imply or mean the right by the other party to control, direct, or rewrite said response.

11. **PROVISION OF LABOR, EQUIPMENT AND SUPPLIES:**

A. **CONSULTANT PROPERTY.** Consultant shall furnish all necessary labor, supervision, equipment, communications facilities, and supplies necessary to perform the services required by this Contract except as set forth in Exhibit _____. City acknowledges that all equipment and other tangible assets used by Consultant in providing these services are the property of Consultant and shall remain the property of Consultant upon termination of this Contract.

B. **SPECIAL SUPPLIES.** City shall be responsible for supplying any special supplies, stationary, notices, forms or similar items that it requires to be issued with a City logo. All such items shall be approved by the City Manager and shall be provided at City's sole cost and expense.



12. COMPLIANCE WITH LAW:

A. **COMPLIANCE REQUIRED.** Consultant shall keep itself informed of applicable local, state, and federal laws and regulations which may affect those employed by it or in any way affect the performance of its services pursuant to this Contract. Consultant shall observe and comply with all applicable laws, ordinances, regulations and codes of federal, state and local governments, and shall commit no trespass on any public or private property in performing any of the work authorized by this Contract. Consultant shall at all times hold a valid contractor's license if performing any function or activity for which a license is required pursuant to Chapter 9 (commencing with section 7000) of Division 3 of the California Business and Professions Code, and Consultant shall provide a copy of the license(s) upon the request of the City. The City, its officials, officers, elected officials, appointed officials and employees shall not be liable at law or in equity as a result of any failure of consultant to comply with this section.

B. **PREVAILING WAGES.** In the event it is determined that the Consultant is required to pay prevailing wages for the work performed under this Agreement, the Consultant shall pay all penalties and wages as required by applicable law.

13. SUBCONTRACTING:

None of the services covered by this Contract shall be subcontracted without the prior written consent of the City Manager. Consultant shall be as fully responsible to the City for the negligent acts and omissions of its contractors and subcontractors, and of persons either directly or indirectly employed by them, as it is for the negligent acts and omissions of persons directly employed by Consultant.

14. ASSIGNABILITY:

Consultant shall not assign or transfer any interest in this Contract whether by assignment or notation. However, claims for money due or to become due Consultant from the City under this Contract may be assigned to a financial institution, but only with prior written consent of the City Manager. Notice of any assignment or transfer whether voluntary or involuntary shall be furnished promptly to the City. The rights and benefits under this agreement are for the sole and exclusive benefit of the City and this Contract shall not be construed that any third party has an interest in the Contract.



15. LIABILITY OF CONSULTANT:

Consultant shall be responsible for performing the work under this Contract in a manner which is consistent with the generally accepted standards of Consultant's profession and shall be liable for its own negligence and the negligent acts of its employees, agents, contractors and subcontractors. The City shall have no right of control over the manner in which the work is to be done but only as to its outcome, and shall not be charged with the responsibility of preventing risk to Consultant or its employees, agents, contractors or subcontractors.

16. INDEMNIFICATION:

A. INDEMNIFICATION FOR PROFESSIONAL LIABILITY. When the law establishes a professional standard of care for Consultant's Services, to the fullest extent permitted by law, Consultant shall indemnify, protect, defend and hold harmless City and any and all of its officials, employees and agents ("Indemnified Parties") from and against any and all losses, liabilities, damages, costs and expenses, including attorneys fees and costs to the extent same are caused in whole or in part by any negligence or wrongful act, error or omission of Consultant, willful misconduct, or recklessness of its officers, agents, employees or subconsultants (or any entity or individual that Consultant shall bear the legal liability thereof) in the performance of professional services under this agreement.

B. INDEMNIFICATION FOR OTHER THAN PROFESSIONAL LIABILITY. Other than in the performance of professional services and to the full extent permitted by law, Consultant shall indemnify, defend and hold harmless City, and any and all of its employees, officials and agents from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including attorneys fees and costs, court costs, interest, defense costs, and expert witness fees), where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this Agreement by Consultant or by any individual or entity for which consultant is legally liable, including but not limited to officers, agents, employees or subconsultants of Consultant.

C. GENERAL INDEMNIFICATION PROVISIONS. Consultant agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this section for each and every subconsultant or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this agreement. In the event consultant fails to obtain such indemnity obligations from others as required here, Consultant agrees to be fully responsible according to the terms of this section. Failure of City to monitor compliance with these requirements imposes no additional obligations on City and will in no way act as a waiver of any rights hereunder. This obligation to indemnify and defend City as set forth here is binding on the successor, assigns or heirs of Consultant and shall survive the termination of this agreement or this section.



17. INSURANCE:

Consultant shall maintain prior to the beginning of and for the duration of this Agreement insurance coverage as specified in Exhibit ____ attached to and part of this agreement.

18. RECORDS:

Consultant shall maintain complete and accurate records with respect to labor costs, material expenses, parcels abated or serviced and other such information required by City that relates to the performance of services under this Contract. Consultant shall maintain adequate records of services provided in sufficient detail to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible and in a form acceptable to the City, which the City may specify and change from time to time. Consultant shall provide free access to the representatives of City or its designees, at reasonable times, to such books and records, shall give City the right to examine and audit said books and records, shall permit City to make transcripts therefrom as necessary, and shall allow inspection of all work, data, documents, proceedings, and activities related to this Contract. Such records, together with supporting documents, shall be maintained for a period of three (3) years after receipt of final payment.

19. MISCELLANEOUS PROVISIONS:

A. **ASSIGNMENT OR SUBSTITUTION.** City has an **NONDISCRIMINATION / NONPREFERENTIAL TREATMENT STATEMENT**. In performing this Contract, the parties shall not discriminate or grant preferential treatment on the basis of race, sex, color, age, religion, sexual orientation, disability, ethnicity, or national origin, and shall comply to the fullest extent allowed by law, with all applicable local, state, and federal laws relating to nondiscrimination.

B. **UNAUTHORIZED ALIENS.** Consultant hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act (8 U.S.C.A. & 1101 et seq.), as amended; and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Consultant so employ such unauthorized aliens for the performance of work and/or services covered by this contract, and should the Federal Government impose sanctions against the City for such use of unauthorized aliens, Consultant hereby agrees to, and shall, reimburse City for the cost of all such sanctions imposed, together with any and all costs, including attorneys' fees, incurred by the City in connection therewith.

C. **GOVERNING LAW.** The City and Consultant understand and agree that the laws of the State of California shall govern the rights, obligations, duties, and liabilities of the parties to this Contract and also govern the interpretation of this Contract. Any litigation concerning this Contract shall take place in the San Luis Obispo Superior Court, federal diversity jurisdiction being expressly waived.

D. City has an interest in the qualifications of and capability of the persons and entities that will fulfill the duties and obligations imposed upon Consultant by this Contract. In

City of Atascadero
[Name of Consultant]



recognition of that interest, neither any complete nor partial assignment of this Contract, may be made by Consultant nor changed, substituted for, deleted, or added to without the prior written consent of City which consent shall not be unreasonably withheld. Any attempted assignment or substitution shall be ineffective, null, and void, and constitute a material breach of this Contract entitling City to any and all remedies at law or in equity, including summary termination of this Contract. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Contract.

E. **ENTIRE CONTRACT.** This Contract constitutes the entire Contract and understanding between the parties relative to the services specified herein and there are no understandings, agreements, conditions, representations, warranties or promises, with respect to this Contract, except those contained in or referred to in this Contract and this Contract supersedes all prior understandings, agreements, courses of conduct, prior dealings among the parties and documentation of any kind without limitation.

F. **AMENDMENTS.** This Contract may be modified or amended, or any of its provisions waived, only by a subsequent written agreement executed by each of the parties. The parties agree that this requirement for written modifications cannot be waived and any attempted waiver shall be void.

G. **CONSTRUCTION AND INTERPRETATION.** Consultant and City agree and acknowledge that the provisions of this Contract have been arrived at through negotiation and that each party has had a full and fair opportunity revise the provisions of this Contract and to have such provisions reviewed by legal counsel. Therefore, any ambiguities in construing or interpreting this Contract shall not be resolved against the drafting party. The titles of the various sections are merely informational and shall not be construed as a substantive portion of this Contract.

H. **WAIVER.** The waiver at any time by any party of any of its rights with respect to a default or other matter arising in connection with this Contract shall not be deemed a waiver with respect to any subsequent default or other matter.

I. **SEVERABILITY.** The invalidity, illegality or unenforceability, of any provision of this Contract shall not render the other provisions invalid, illegal or unenforceable.

City of Atascadero
 [Name of Consultant]



J. NOTICES. All invoices, payments, notices, demands, requests, comments, or approvals that are required to be given by one party to the other under this Contract shall be in writing and shall be deemed to have been given if delivered personally or enclosed in a properly addressed envelope and deposited in a United States Post Office for delivery by registered or certified mail addressed to the parties (deemed to have been received three (3) business days after deposit in the U.S. Mail) at the following addresses:

City: City of Atascadero
 City Manager
 6500 Palma Avenue
 Atascadero, CA 93422

Consultant [NAME OF CONSULTANT]
 [CONTACT PERSON]
 [Street Address]
 [City, state and zip code]

Each party may change the address at which it gives notice by giving ten (10) days advance, written notice to the other party.

K. AUTHORITY TO EXECUTE. The person or persons executing this Contract on behalf of Consultant warrant and represent that they have the authority to execute this Contract on behalf of their agency and further warrant and represent that they have the authority to bind Consultant to the performance of its obligations hereunder.

Effective to this _____ day of _____, 2014 by the parties as follows.

Approved as to form:

[NAME OF CONSULTANT]

 Counsel for consultant

By: _____

[Name and Title]

Approved as to form:

CITY OF ATASCADERO

By: _____

Brian Pierik, City Attorney

By: _____

[Name and Title]



CERTIFICATE OF COMPLIANCE WITH LABOR CODE § 3700

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I have complied or will comply with such provisions before commencing the performance of the work of this contract. (Cal. Labor C. §§1860, 1861.)

CONSULTANT

[Insert Consultant Name and Title]

EXHIBIT A

Scope of Work

EXHIBIT B

Compensation and Method of Payment

EXHIBIT C
Insurance Requirements

Exhibit E

INSURANCE REQUIREMENTS: Consultant Services

The Consultant shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, employees, or subconsultants.

Minimum Scope of Insurance. Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).
2. Insurance Services Office form number CA 0001 (Ed. 1/87) covering Automobile Liability, code 1 (any auto).
3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.
4. Errors and Omissions Liability insurance as appropriate to the consultant's profession.

Minimum Limits of Insurance. Consultant shall maintain limits no less than:

1. General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.
3. Employer's Liability: \$1,000,000 per accident for bodily injury or disease.
4. Errors and Omissions Liability: \$1,000,000 per occurrence.

Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees and volunteers; or the Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

Other Insurance Provisions. The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. The City, its officers, officials, employees, agents and volunteers are to be covered as insureds as respects: liability arising out of activities performed by or on behalf of the Consultant; products and completed operations of the Consultant; premises owned, occupied or used by the Consultant; or automobiles owned, leased, hired or borrowed by the Consultant. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, official, employees, agents or volunteers.
2. For any claims related to this project, the 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 the City, its officers, officials, employees, agents or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.
3. The Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
4. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII.

Additional Insured

The City of Atascadero will need to be added to the policy as Additional Insured by endorsement to the General Liability, adding the City's name to the Certificate of Insurance is not sufficient and will not be accepted.

Verification of Coverage. Consultant shall furnish the City with a certificate of insurance showing maintenance of the required insurance coverage. Original endorsements effecting general liability and automobile liability coverage required by this clause must also be provided. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements are to be received and approved by the City before work commences.

R.

City of Suisun City

Request for Proposal

City Attorney Services



March 22, 2024

I. Introduction

A. Purpose

The City of Suisun City invites interested legal firms and/or individuals to submit proposals for City Attorney Services as described in the scope of work set forth in this request for proposals (RFP). The City seeks a City Attorney who will provide clear, understandable, and independent legal advice. The firm/individual must be qualified to provide expertise in the areas of general municipal law, land use, personnel and labor relations, open meeting and conflict of interest laws and other legal matters affecting a general law city as such may arise. The City Attorney will serve under the direction and supervision of the City Council and acts as their legal advisor. The City Attorney is not a City employee and is not entitled to the benefits of a City employee; the position is strictly on a contractual basis. The City Council reserves the right to retain or employ other attorneys or special counsel as may be needed, in its sole judgment, to take charge of any litigation or legal matters or to assist the City Attorney.

B. Submittal Closing, Time, and Location, Inquiries

All proposals delivered in an express courier package shall be sealed in a separate envelope within the courier package. Any proposal found ineligible or incomplete shall not be considered for selection. Proposers assume full responsibility for having their proposal deposited at the proper address and no later than the scheduled closing time. Faxed or emailed proposals or modifications will not be considered. Proposals will not be received after the closing date and time indicated below.

Proposal Labeling: REQUEST FOR PROPOSAL FOR CITY ATTORNEY SERVICES

Submittal Closing: Wednesday, May 1, 2024, 5:00pm, PST

Location: City of Suisun City
Attention: Aaron Roth, Interim City Manager
701 Civic Center BLVD
Suisun City, CA 94585

Number of Copies: Five (5) Bound copies of the proposal; one (1) unbound reproducible copy; and one (1) electronic version (usb flash drive) must be submitted.

C. Inquiries

Any prospective Proposer desiring an explanation or interpretation of the solicitation, specifications, etc., must request so in writing, no later than five (5) days before proposal due date to allow a reply to reach prospective Proposer before the proposal submission date. The written request must be submitted to the individual identified below. Inquiries regarding this solicitation shall be directed to:

City of Suisun City

Attention: Aaron Roth, Interim City Manager
701 Civic Center BLVD
Suisun City, CA 94585
Email: aroth@suisun.com

Please reference "Request for Proposals for City Attorney Services" when contacting the City regarding this solicitation. The City of Suisun City website, www.suisun.com will contain a copy of this document as well as a summary of any/all applicable addenda, if any. Any firm found to be contacting members of the City Council or other members of City staff or officials to obtain information during this RFP process may be automatically disqualified from any further consideration.

D. Background

Suisun City operates under a council-manager form of government and serves a population of 29,000 with approximately 100 full-time staff, a full time police and fire department with upwards of 50 additional various part-time and seasonal staff. We have an elected Mayor and four-member Council, as well as an elected City Clerk and City Treasurer. The City Manager and City Attorney are appointed by the Council and serve at-will.

The City Council is the legislative body responsible for overall policy development and direction of the City. The City Council has several community commissions/committees whose members are appointed by the Council, including the Planning Commission, the Recreation Parks Marina & Arts Commission, Public Safety and Emergency Management Advisory Committee, and the Measure S Sales Tax Committee to name a few.

The City Council appoints the City Manager, who serves as the executive officer and is responsible for the day-to-day operations of the City. The City Manager's executive staff includes a Finance Director, Public Works Director, Development Services Director, Police Chief, Fire Chief, and Recreation, Parks, Marina and Arts Director.

The City Council appoints the City Attorney and contracts with that individual's firm for legal services. The City of Suisun City provides a variety of municipal services including public works, parks and recreation, engineering, planning, fire, police, water, sewer, streets and storm drain maintenance as well as all of the traditional internal financial and administrative support functions. The City of Suisun City has a FY 2023/24 General Fund Operating Budget of \$25,069,193 and a total budget for all funds of \$87,453,296.

II. Terms and Conditions

A. Proposal Preparation Costs

The City is not, nor shall be deemed, liable for any costs incurred by Proposer in the preparation, submittal, or presentation of their proposals.

B. Reservation of Rights

This RFP does not commit or obligate the City of Suisun City to accept or execute an agreement for any expressed or implied service. The City reserves the right to:

- Reject any and all proposals received and to accept or reject any item(s) herein;
- Take all proposals under advisement for up to one hundred and twenty (120) days after opening;
- Waive any informality on any proposal;
- Be the sole judge of the relative merits of the material mentioned in the respective proposal received;
- Request any firm/individual submitting a proposal to clarify its proposal during the selection phase;
- Negotiate the service schedule and reasonable costs with the selected firm/individual;
- Modify or alter any requirements herein, and issue addenda or amendments to this RFP;
- Terminate this RFP process at any time.

C. Acceptance of Conditions

It is the Proposer's responsibility to examine the scope and location of the proposed work to fully acquaint themselves with the specifications and the nature of the work to be accomplished. Proposers shall have no claim against the City based upon ignorance of the nature and requirements of the services provided, misapprehension of the work environment, or misunderstanding of the specification or agreement provisions.

By submitting a proposal, each Proposer expressly agrees to and accepts the following conditions:

- Proposal and cost schedules shall be valid and binding for one hundred and twenty (120) days following the proposal due date and will become part of the Agreement that is negotiated with the City.
- The City may require whatever evidence is deemed necessary relative to the Proposer's financial stability and ability to perform these services.
- The City reserves the right to request further information from the Proposer, either in writing or orally, to establish any stated qualifications.

- The City reserves the right to solely judge the Proposer's representations, and to solely determine whether the Proposer is qualified to undertake these services pursuant to the criteria set forth herein. The Proposer, by submitting a proposal, expressly acknowledges and agrees that the judgment of the City as to whether or not the Proposer is qualified to perform these services shall be binding, final and conclusive.

D. Proposal Inclusions

The Request for Proposal documents shall be submitted in their entirety, with ALL applicable portions fully completed by the Proposer. All Proposers are encouraged to review and confirm that their proposal includes and specifically addresses all of the proposal requirements prior to submitting.

E. Withdrawal of Proposal Before Closing

Any Proposer may request the withdrawal of their submitted proposal by written request at any time prior to the scheduled closing date and time. Upon receiving written request to withdraw any proposal, the City will consider the proposal null and void, and return the proposal to the Proposer. Withdrawal of proposal will not impact Proposer's resubmittal for this or any future proposal(s).

F. Professional Licensing

The Proposer shall possess any necessary professional certification(s) and/or license(s) relative to the work to be performed required by an appropriate licensing authority of the State of California and shall provide evidence of such to the City with their proposal or prior to commencement of the work in such a form as the City shall require.

G. Insurance Requirement

The Proposer shall, at its own expense, procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Agreement by the proposer, its agent, representatives, employees, or subcontractors. Proposer shall also require all of its subcontractors assigned to provide services to procure and maintain the same insurance requirement for the duration of the Agreement. Specific insurance requirements are as follows:

- General Liability Insurance of at least \$1,000,000.00 per occurrence and \$2,000,000.00 aggregate liability.
- Automobile Liability Insurance of at least \$1,000,000.00 per accident Combined Single Limit (CSL);
- Worker's Compensation Insurance at least equal to the State of California required minimums.

- Professional Errors and Omissions Insurance of at least \$1,000,000.00 per occurrence and \$2,000,000.00 annual aggregate liability.

H. Business License

The professional provider, and any sub-consultant(s), will obtain a business license with the City of Suisun City Business License Program on or before their commencement of work.

I. Public Record

Be advised that all information contained in proposals submitted in response to this solicitation shall become a matter of public record upon contract award, and made available upon request, unless otherwise marked. The Proposer must identify, in writing, all copyrighted material, trade secrets or other proprietary information the Proposer claims are exempt from disclosure pursuant to the California Public Records Act. The Proposer who claims such an exemption must also state in the proposal that:

“The Proposer agrees to indemnify and hold harmless the City and its officers, employees and agents from any claims, liability or damages against the City and to defend any actions brought against the City for its refusal to disclose such material, trade secrets or other proprietary information to any party.”

J. Equal Opportunity

The City of Suisun City requires all Proposers to comply with equal opportunity policies.

K. Independent Contractor

The City Attorney will be an independent contractor. All persons employed by a firm in accordance with an Agreement resulting from this RFP will be employees of the firm or law practice and not of the City of Suisun City.

L. Conflict of Interest

No official, officer, or employee of the City of Suisun City or of a local public body during his/her tenure or for one year thereafter shall have any interest, direct or indirect, in this contract or the proceeds thereof. Furthermore, the parties hereto covenant and agree that to their knowledge, no board member, officer or employee of the City of Suisun City has any interest, whether contractual, non-contractual, financial or otherwise, in this transaction, or in the business of the contracting party other than the City of Suisun City, and that if any such interest comes to the knowledge of either party at any time, a full disclosure of such information will be made in writing to the other party or parties, even if such interest would not be considered a conflict of interest under Article 4 (commencing with

Section 1090) or Article 4.6 (commencing with Section 1120) of Division 4 of Title 1 of the Government Code of the State of California.

M. Appendix

The appendix shall include any suggested additions or modifications to the scope that the individual/firm believes will enhance the quality of their proposal. Individual/Firm brochures, exhibits, and any other pertinent documents may be included in the Appendix.

N. Contract

Award of a professional services contract, if any, will be to the proposer whose proposal best complies with all of the requirements of the RFP documents and which provides the best solution for the needs of the City of Suisun City.

The successful firm will be required to enter into a Legal Services Agreement with the City of Suisun City, which will include the requirements of this RFP, as well as other requirements to be determined. The City reserves the right to negotiate the price, terms, and scope of services with the proposer, prior to entering into an Agreement. The agreement will contain provisions requiring the selected law firm to indemnify the City and provide that the City Attorney and any support staff is an independent contractor(s) serving at the will of the City Council. Provisions will also be included in the contract allowing the City Council to terminate the agreement, at its sole and entire discretion, upon the provision of notice.

The term of the contract is negotiable.

III. Scope of Work

A. Understanding the Scope of Work

The City Attorney is appointed by and reports to the City Council. The City Attorney is the chief legal counsel for the City of Suisun City and, as such, is responsible for advising on all legal matters. The primary responsibilities the City will require of its City Attorney shall include, but not be limited to, the following:

- Represent and provide legal advice and consultation on a regular basis to the City Council, City Manager and City Staff as requested or required. Contacts are usually made by email or telephone and same-day response is typically expected.
- Attend City Council meetings (unless excused) and be prepared to advise the Council on matters on the agenda as well as procedural or substantive issues that arise during the meeting. Attendance at Planning Commission or other City meetings is required when requested.
- Coordinate and manage the services and costs of all outside or special legal counsel within budgetary limits as approved by the City Council.
- Recommend policies and procedures that comply with the requirements of the law.
- Keep the City Council and City Manager informed of legislation or judicial opinions that have potential impact to the City.
- Prepare, review and revise staff documents, including, but not limited to, initiation of memorandums concerning legal issues, contracts, agreements, ordinances, resolutions, land use decisions on appeal, and staff reports for the legal support of City functions and duties.
- Provide staff assistance, legal research and counseling related to the acquisition or sale of property, preparation of leases, deeds and easements, agreements, utility franchise agreements, operations governed by law, liability situations, grant guidelines, pension law, personnel, employee relations and other matters as necessary requiring legal advice.
- Interpret the City's Municipal Code.
- Provide guidance concerning the requirements of the Brown Act, Conflict of Interest (AB 1234), the Political Reform Act, the Public Records Act, due process, and other legal requirements imposed by statute and common law.
- Assist with responses to Public Records Act requests.
- Represent the City in litigation not covered by the City's self-insured riskpools.
- Provide legal advice and assistance to operating departments, assist in notice of disciplinary actions and provide advisory service to the Human Resources Officer.
- Research and interpret laws, court decisions and other legal authorities in order to prepare legal opinions and to advise the City Council and management staff on legal

matters pertaining to City operations.

- Represent the City as requested before other governmental bodies and agencies to promote the interest of the City.
- Oversee coordination with special legal counsel on all City litigation as directed by the City Council and/or City Manager.
- Maintain legal files and provide the City Clerk copies of pertinent pleadings and orders in all litigation the City Attorney is handling for the City.
- Perform other legal duties as may be required by the City Council as may be necessary to complete the performance and functions mentioned above.
- Promptly return all phone calls from the City Council and City Staff.

IV. Evaluation and Selection Process

A. Areas of Performance Effectiveness

The City of Suisun City recognizes that a successful and effective City Attorney will demonstrate specific qualities. The following areas will serve as part of the basis for evaluation of the City Attorney.

- Competent representation – doing things right (legal knowledge, research, and analysis)
- Ethical leadership – doing the right things (principle-centered)
- Adherence to legal policies and procedures (promoting the public interest)
- Professional conduct (emotional and mental fortitude)
- Inter-governmental governance (networking and coalition building)
- Customer service (City Council, City Manager, City staff, and others as appropriate)

B. Proposal Evaluation

Selection of Proposer to interview with the City will be based on the contents of their written proposal. Proposals will be rated according to the following criteria (in no particular order):

- Depth and breadth of experience and expertise in the practice of law, most specifically in those areas most often encountered in municipal government operations;
- Understanding of municipal government issues and municipal law;
- Capability to perform legal services promptly and in a manner that permits the City Council and staff to meet established deadlines and operate in an effective and efficient manner;
- Qualifications of the key staff that will be assigned to the City of Suisun City under this proposal;
- Familiarity with State of California Land Use Law;

- Communication skills;
- References of past or current municipal law clients or municipal practice;
- Proposed fee structure, including but not necessarily limited to, a monthly retainer, services included in monthly retainer, hourly rates for services not included in monthly retainer.
- Cost of providing services.
- Results of interviews with City Council.

During the evaluation process, the City reserves the right, where it may serve the City's best interest, to request additional information or clarification from proposing firms/individuals to allow corrections of errors or omissions. The City reserves the right to verify any information contained in proposals, including references, resumes, etc. The City reserves the right to investigate and research proposals, including facts and opinions that could be helpful in evaluating the capabilities of firms/individuals whether or not they were specifically included in the proposals.

C. Selection Process

The top-ranked firms/individuals may be requested to attend a meeting with the City Council to be interviewed, and the City Council will interview up to two individuals proposed as City Attorney from such firms. The interviews will allow the designated firms or individuals an opportunity to answer any questions the City Council may have regarding their proposals. Participation in the interviews will be at no cost to the City. The City Council will make the final determination of the successful firm/individual.

Please note that in an effort to maintain the integrity of the interview process all proposing firms are prohibited from contact with the City Council members outside of the formal interview process.

D. Tentative RFP Timeline

Release of RFP	Friday, March 22, 2024
Proposal Submission Deadline	Wednesday, May 1, 2024, 5pm
PST RFP Internal Reviews	Wednesday, May 15, 2024
Candidate Firm Interviews	Week of May 27, 2024
Selected Firm Contract Negotiations	June, 2024
Award of Contract	June 18, 2024

V. Requested Information

All proposals must provide specific and succinct answers to all questions and requests for information. Please answer the questions in the format and order presented. Submissions of individual resumes alone will not be considered responsive to any specific question.

A. General Proposal

1. Letter of Transmittal: Signed by an authorized representative of the firm or the individual committing to provide the legal services described above, including a brief introduction and history of the firm, number of employees, proven work history, and a statement as to qualifications.
2. Table of Contents: Include a clear identification of the material by section and page number included in the proposal.
3. Firm Qualifications: Provide professional experience and qualifications for the Proposer and/or firm and the designated individuals to provide the services specified in the Request for Proposals. Please include responses to the following specific information:
 - a. Describe your firm's background and history; include number of years in business and number of years providing legal services to public sector agencies.
 - b. Location of office(s) that would serve the City of Suisun City.
 - c. Provide the name(s) and qualifications of attorney(s) who would be assigned to represent the City of Suisun City and who will attend City Council meetings regularly, including the following for each: Responding firms may propose either one or two alternatives for proposed appointment to City Attorney.
 - i. Certificates or licenses, including the date of admission to the State Bar of California;
 - ii. Length of employment with the firm;
 - iii. Description of education including name of educational institutions, degrees conferred, and year of each degree;
 - iv. Professional background and professional associations;
 - v. Years of municipal or other local public sector experience;
 - vi. Knowledge of, and experience with California Municipal Law relating to general law cities including, but not limited to, land use and planning, environmental law (CEQA), general plans, code enforcements and other related areas of law, administrative law, labor relations/personnel law, contracts, Public Records Act and other areas of municipal law;
 - vii. Specific expertise and training;

- viii. Provide complete resumes of the persons designated by the firm to be the City Attorney or substitute City Attorney.
- d. Describe your view of the role of the City Attorney.
 - e. Describe how you would develop and maintain an effective partnership between the City Attorney, City Manager and City Council.
 - f. Describe how you will keep the City Council and the City Manager informed about the status of litigation and other legal matters on a regular basis, and what basis would that be.
 - g. Describe the response time we can expect from the City Attorney to inquiries made by the City Council and City Manager.
 - h. Describe how you will track and manage legal costs so that the City's legal costs are held to a minimum.
 - i. Describe how you will proactively advise the City Council, City Manager and staff about legal developments or issues of concern, without being asked.
 - j. Describe how as the City Attorney you would coordinate your daily work with the City Manager and City Council.
 - k. Describe how as the City Attorney you would coordinate your daily work with the City Department Heads.
 - l. Clearly describe your range of experience with project negotiation, eminent domain issues, and the drafting and implementation of agreements and contracts (i.e., lease, purchase) and litigation.
 - m. How would you evaluate whether to use an attorney within your law firm or an attorney from another law firm to handle a case, provide expert advice, or provide other needed services?
 - n. Describe the firms' practices regarding professional development training and keeping current with the laws and legal matters affecting its clients.
 - o. Identify the types of in-service training (such as ethics, commission roles and responsibilities, how to conduct performance evaluations, harassment investigations, etc.) your firm is capable of providing to municipalities.
 - p. Describe systems/mechanisms that would be established from monthly reporting of status of routine projects, requests, and litigation.
 - q. Describe the firm's philosophy in addressing complete matters within the context of balancing legal limitations with project goals and objectives.
 - r. Describe your firm's suggested process for transmittal of requests and other material to the City Attorney.
 - s. Describe the firm's experience with contract services provided by a municipality.

- t. It is anticipated that the City will contractually require monthly-itemized statements for all services and will subject these statements to audit at least annually. Describe how you would provide this reporting.
 - u. Describe how the firm proposes to obtain client satisfaction with provided services, and what tools or resources are available to ensure continued satisfaction.
 - v. If a multi-employee firm, describe the firm's philosophy with regard to personnel changes in City Attorney, whether initiated by the firm or requested by the City.
- 4. Please complete and submit the Certification of Proposal Form (Attachment A) and Business Information Form (Attachment B) with your Proposal.
- 5. References: Provide contact information for three (3) municipal, public agency and/or key clients for which legal services have been provided in the last ten (10) years (preferably performed by the attorney being proposed to represent the City of Suisun City). Please include the contact person's name, address, phone number and email address.
- 6. Clients/Potential Conflicts of Interest:
 - a. Identify any foreseeable or potential conflicts of interest with public clients you serve and the manner in which you would propose to resolve such conflicts.
 - b. For the person to be designated as City Attorney and any substitute City Attorney(s), list all public clients that person presently represents as City Attorney or general counsel, along with the meeting dates and times for each governing body.
 - c. List all private clients that could potentially pose a conflict of interest with your representation of the City of Suisun City.
 - d. Identify all situations in the last five (5) years in which you have been adverse to public entities, either in litigation or administrative matters.
 - e. Please list any political contributions of money, in-kind services, or loans made to any member of a City Council within the last three (3) years by the applicant law firm and all of its attorneys, including the attorney being proposed to represent the City of Suisun City.
- 7. Insurance: Please include a description and pertinent information regarding the general liability and malpractice insurance carried by the firm or individual, including the amount of coverage provided by such insurance.

B. Cost Proposal

While the City is open to reviewing various cost structures, it is anticipated that the City will receive cost proposals wherein “general” services are provided under a fixed monthly retainer and any additional “special” services are billed at a pre-negotiated hourly rate.

1. General Services: Please give your definition of “general” legal services. Would all general legal services be included in your monthly retainer?
2. Special Services: Please give your definition of “special” legal services. How are they differentiated from general legal services? Would any special services be included in your retainer? If so, please identify them.
3. How would your firm aid the City to remain within its adopted budget for its legal services?
4. Billing Method: Describe your firm’s preference for method of payment, payment terms, and your procedure for billing retention, hours, and expenses and other accounting requirements.
5. Reimbursable: Define the type and unit rates for reimbursement of expenses. For example, rate for mileage, reproduction of documents or word processing charges, unit costs for telephone costs, etc.
6. In-Service Training: Please provide the costs of any in-service training(s) that your firm can provide to the City.
7. Adjustments: Do you expect to have a cost-of-living adjustment incorporated into the agreement with the City? If so, please explain how you propose it be computed and implemented.
8. Would your firm be willing to operate under a maximum annual expenditure cap with the City? If so, please explain how it might be structured.
9. Monthly Retainer/Billable Hours: Please complete and submit the Cost Proposal Form (Attachment C) with your Proposal. The proposed compensation shall be in one of two (2) formats. The Proposer shall either propose an hourly rate(s) for work, including meeting attendance OR the submittal shall contain a billing system wherein regular attendance at City Council, Planning Commission, or Successor Agency meetings are billed at a fixed, per meeting fee (i.e. monthly retainer) and services beyond the scope are billed at the proposed hourly rate(s). Billing should correspond to the Scope of Work and hourly involvement by each staff member. Alternatively, the proposer may choose a blended cost structure, in which case the structure should be described in sufficient detail to be understood by staff and Council members.
10. Cost of Proposal Worksheet: Please complete and submit the Cost of Proposal Worksheet (Attachment D) with your proposal.

VI. Sample Documents

- A. **Sample Report:** Please submit a copy of a typical report your firm provides to municipalities (i.e. staff report, memorandum, legal opinion, etc.).
- B. **Sample Billing Invoice:** Please submit a copy of a typical invoice your firm provides to municipalities. Please redact any sensitive information.

Attachment A

Certification of Proposal

- The undersigned hereby submits its proposal and, by so doing, agrees to furnish services to the City in accordance with this Request for Proposal and to be bound by the terms and conditions of the RFP.
- This firm has carefully reviewed its proposal and understands and agrees that the City is not responsible for any errors or omissions on the part of the Proposer and that the Proposer is solely responsible for such errors or omissions.
- It is understood and agreed that the City reserves the right to accept or reject any or all proposals and to waive any informal or irregularity in any proposal received by the City.
- The proposal includes all components, figures and dates required by this Request for Proposal.
- This firm has carefully read and fully understands all of the items contained in this Request for Proposals. This firm agrees to all of the requirements of the RFP.
- The City is not responsible for any cost associated with preparing the Proposal.

Date: _____

Name of Firm: _____

Authorized Signature: _____

Print/Type Name: _____

Title: _____

Address: _____

Telephone: _____

Fax: _____

Email: _____

Attachment B
Business Information Form

Business Contact

Information: Name of Firm:

Address:

City/State/Zip Code:

Telephone:

Fax:

Email:

Website:

Federal Tax Number:

Number of Years in Business:

Number of Employees:

Does the firm/business maintain amounts of insurance specified by the City?

Yes

No

Are there any claims that are pending against any insurance policies?

Yes

No

If yes, describe:

Has the firm/business been in bankruptcy, reorganization, or receivership in the last five years?

Yes

No

Has the proposed designated City Attorney practiced municipal law a minimum of five (5) years?

Yes

No

Is each of the proposed attorneys accredited and in good standing with the State Bar of California?

Yes

No

Business Classification:

Corporation

Partnership

Individual

If a Corporation:

Date of Incorporation: _____

State of Incorporation: _____

President’s Name: _____

If a Partnership:

Date of Organization: _____

Name of all Partners: _____

Attachment C
Cost Proposal Form

Proposer

Name of Firm: _____

Address: _____

Name of Contact: _____

Phone Number: _____

Email Address: _____

Hourly Rates (no retainer)

Estimated average hours per month: _____ Hourly Rate: \$ _____

Total cost for services per month: \$ _____

Monthly Retainer

Estimated average hours per month: _____ Hourly Rate: \$ _____

Total cost for services included in monthly retainer: \$ _____

Add-On Hours Outside of Monthly Retainer:

List of Personnel	Hourly Rates
1. _____	\$ _____
2. _____	\$ _____
3. _____	\$ _____

Reimbursable and/or Other Costs:

Please define the types and unit rates for expenses (i.e. mileage, reproduction of documents, faxed documents, processing charges, etc.) if any:

City of Suisun City
Request for Proposals
City Attorney Services

Attachment D
Cost of Proposal Worksheet

Services		Provided by Firm (Yes/No)		Included in Retainer (Yes/No)		Title of Person Performing Service
1.	Attend regular and special Council meetings.	☐	☐	☐	☐	
2.	Attend regular Planning Commission meetings	☐	☐	☐	☐	
3.	Attend Executive Team Staff and other meetings as needed.	☐	☐	☐	☐	
4.	Office hours, at least one day per week.	☐	☐	☐	☐	
5.	Agenda review and follow-up.	☐	☐	☐	☐	
6.	Standard contract review and revision.	☐	☐	☐	☐	
7.	Standard ordinance/resolution review and revision.	☐	☐	☐	☐	
8.	Public Records Act request review and direction.	☐	☐	☐	☐	
9.	Brown Act issues.	☐	☐	☐	☐	
10.	General legal advice and counsel on matters pertaining to the City, not involving more than three (3) hours of research.	☐	☐	☐	☐	
11.	Routine personnel and labor questions, which can be responded to orally, not involving more than one (1) hour of research.	☐	☐	☐	☐	
12.	Code enforcement issues – City code interpretation.	☐	☐	☐	☐	
13.	Code enforcement issues – consultation with City staff.	☐	☐	☐	☐	
14.	Code enforcement issues – preparation and review of notices, demands and orders.	☐	☐	☐	☐	
15.	Litigation, including eminent domain.	☐	☐	☐	☐	
16.	Personnel services– review of Practices and Procedures	☐	☐	☐	☐	
17.	Personnel services – disciplinary procedure.	☐	☐	☐	☐	
18.	Personnel services – grievances.	☐	☐	☐	☐	
19.	Personnel services – arbitration.	☐	☐	☐	☐	
20.	Personnel services – FLSA, FMLA, ADA and HIPPA issues.	☐	☐	☐	☐	
Services		Provided by Firm		Included in Retainer		Title of Person Performing

City of Suisun City
Request for Proposals
City Attorney Services

		(Yes/No)		(Yes/No)		Service
21.	Personnel services – Revision of drafting at-will personnel contracts.	☐	☐	☐	☐	
22.	Transactions – options.	☐	☐	☐	☐	
23.	Transactions – leases.	☐	☐	☐	☐	
24.	Transactions – statutory development agreements.	☐	☐	☐	☐	
25.	Transactions –specialized reimbursement agreements, fee credit or reimbursement agreements.	☐	☐	☐	☐	
26.	Franchising.	☐	☐	☐	☐	
27.	Public Works – contract disputes and interpretation services.	☐	☐	☐	☐	
28.	Public Works – drafting construction and similar contracts and conditions.	☐	☐	☐	☐	
29.	Public Works – prevailing wage issues.	☐	☐	☐	☐	
30.	Public Works – right of way acquisition.	☐	☐	☐	☐	
31.	Development Services – CEQA issues and document review.	☐	☐	☐	☐	
32.	Development Services – routine Subdivision Map Act issues.	☐	☐	☐	☐	
33.	Development Services – non routine Subdivision Map Act issues.	☐	☐	☐	☐	
34.	Development Services – zoning and land use issues.	☐	☐	☐	☐	
35.	Development Services – housing issues.	☐	☐	☐	☐	
36.	Ordinance and resolutions – drafting and compilation of non-routine ordinances and resolutions; review and analysis of non-routine ordinances and resolutions drafted by City Staff or other Jurisdictions.	☐		☐	☐	
37.	Appearance before other public entities or government agencies on behalf of the City.	☐	☐	☐	☐	
38.	Proposer may list additional, pertinent services it can provide to the City of Suisun City on the lines below:	☐	☐	☐	☐	
39.	Other services not listed above as described below:					

City of Suisun City
Request for Proposals
City Attorney Services

End of Document

R.



REQUEST FOR PROPOSALS
BY THE CITY OF FARMERSVILLE
FOR CITY ATTORNEY SERVICES

Date Issued: March 15, 2024

Proposals Due: April 12, 2024

Submit To: Jennifer Gomez
City Manager
City of Farmersville
909 W. Visalia Road
Farmersville, CA 93223

City of Farmersville
Request for Proposals
For City Attorney Services

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I. Introduction

A. Purpose

The City of Farmersville invites interested legal firms and individuals to submit proposals for City Attorney Services as described in the scope of work set forth in this request for proposals (RFP). The City seeks a City Attorney who will provide clear, understandable, and independent legal advice. The firm must be qualified to provide expertise in the areas of general municipal law, land use, personnel and labor relations, open meeting and conflict of interest laws. The City Attorney serves under the direction and supervision of the City Council and acts as their legal advisor. The City Attorney is not a City employee and is not entitled to the benefits of a City employee; the position is strictly on a contractual basis. The City Council reserves the right to retain or employ other attorneys or special counsel as may be needed, in its sole judgment, to take charge of any litigation or legal matters or to assist the City Attorney.

B. Background

Farmersville is a full-service city that provides a wide-array of services to approximately 11,000 residents. The city is situated in the Central San Joaquin Valley along Highway 198, east of Visalia.

The City of Farmersville is a General Law City governed by a Council/Manager form of government. Under this form of government, the elected City Council set the policies for the operation of the Farmersville City Government. The City Council consists of five members, elected at-large. Council Members serve four-year terms. The Mayor and Mayor Pro Tem are selected by the Council for two-year terms. The Mayor is the presiding officer of the Council, and the official spokesperson and ceremonial representative of the City.

Regular meetings of the Farmersville City Council are held on the 2nd and 4th Mondays of each month, at the Council Chambers, 909 W. Visalia Road, Farmersville, California at 6:00 p.m., and additional meetings may be scheduled as needed. Meetings of the Farmersville Planning Commission are held on the 3rd Wednesday of each month at 6:00 p.m.

The City Council is responsible for passing City ordinances, resolutions, adopting an annual budget, appointing commissions and committees, and setting policy, among other things. The City Council appoints the City Manager. The City Manager appoints the heads of the various departments. The City has approximately 40 full-time employees and the operating hours of City Hall are Monday through Friday from 8:00 a.m. to 5:00 p.m.

The City provides a wide range of services including police, fire, public works, utilities, finance, human resources, and community development, as well as general administrative activities. Additional information about the City can be found on the City's website at www.cityoffarmersville-ca.gov.

C. Submittal Closing, Time, and Location

All proposals delivered in an express courier package shall be sealed in a separate envelope within the courier package. Any proposal found ineligible or incomplete shall not be considered for selection. Proposers assume full responsibility for having their proposal deposited at the proper address and no later than the scheduled closing time.

Proposals will not be received after the closing date and time indicated below:

Proposal Labeling: REQUEST FOR PROPOSAL FOR CITY OF FARMERSVILLE
ATTORNEY SERVICES

Submittal Closing: April 12, 2024, at 4:00 p.m., PST Location:

City of Farmersville
Attention: Jennifer Gomez, City Manager
909 W. Visalia Road
Farmersville, CA 93223

Number of Copies: One (1) Original and six (6) copies and one (1) unbound copy.

Early responses are acceptable; proposals will not be opened until the submittal deadline. Late proposals will not be accepted. Faxed or emailed proposals or modifications will not be accepted. Postmarks prior to the deadline are not sufficient for acceptance. The City will not be responsible for any errors or omissions in the proposals or for any delays in delivery.

D. Inquiries

Any prospective Proposer desiring an explanation or interpretation of the solicitation, specifications, etc., must request so in writing, no later than five (5) days before proposal due date to allow a reply to reach prospective Proposer before the proposal submission date. The written request must be submitted to the individual identified below (emails okay). Verbal explanations or instructions given during any phase of this solicitation will not be binding. Inquiries regarding this solicitation shall be directed to:

Jennifer Gomez
City Manager
City of Farmersville
909 W. Visalia Road, Farmersville, CA 93223
Phone: (559) 747-0458
Email: jgomez@cityoffarmersville-ca.gov

Please reference "Request for Proposals for City Attorney Services" when contacting the City regarding this solicitation. The City of Farmersville website, www.cityoffarmersville-ca.gov will contain a copy of this document as well as a summary of any/all applicable addenda, if any.

II. Terms and Conditions

A. Proposal Preparation Costs

The City is not, nor shall be deemed, liable for any costs incurred by Proposer in the preparation, submittal, or presentation of their proposals.

B. Reservation of Rights

This RFP does not commit or obligate the City of Farmersville to accept or execute an agreement for any expressed or implied service. The City reserves the right to:

- Reject any and all proposals received and to accept or reject any item(s) herein;
- Take all proposals under advisement for up to ninety (90) days after opening;
- Waive any informality on any proposal;
- Be the sole judge of the relative merits of the material mentioned in the respective proposal received;
- Request any firm submitting a proposal to clarify its proposal during the selection phase;
- Negotiate the service schedule and reasonable costs with the selected firm;
- Modify or alter any requirements herein, and issue addenda or amendments to this RFP;
- Terminate this RFP process at any time.

C. Acceptance of Conditions

It is the Proposer's responsibility to examine the scope and location of the proposed work to fully acquaint themselves with the specifications and the nature of the work to be accomplished. Proposers shall have no claim against the City based upon ignorance of the nature and requirements of the services provided, misapprehension of the work environment, or misunderstanding of the specification or agreement provisions.

By submitting a proposal, each Proposer expressly agrees to and accepts the following conditions:

- Proposal and cost schedules shall be valid and binding for ninety (90) days following the proposal due date and will become part of the Agreement that is negotiated with the City.

- The City may require whatever evidence is deemed necessary relative to the Proposer's financial stability and ability to perform these services.
- The City reserves the right to request further information from the Proposer, either in writing or orally, to establish any stated qualifications.
- The City reserves the right to solely judge the Proposer's representations, and to solely determine whether the Proposer is qualified to undertake these services pursuant to the criteria set forth herein. The Proposer, by submitting a proposal, expressly acknowledges and agrees that the judgment of the City as to whether or not the Proposer is qualified to perform these services shall be binding, final and conclusive.

D. Proposal Inclusions

The Request for Proposals documents shall be submitted in their entirety, with ALL applicable portions fully completed by the Proposer. All Proposers are encouraged to review and confirm that their proposal includes and specifically addresses all of the proposal requirements prior to submitting as outlines elsewhere in this document.

E. Withdrawal of Proposal Before Closing

Any Proposer may request the withdrawal of their submitted proposal by written request at any time prior to the scheduled closing date and time. Upon receiving written request to withdraw any proposal, the City will consider the proposal null and void, and return the proposal to the Proposer. Withdrawal of proposal will not impact Proposer's resubmittal for this or any future proposal(s).

F. Proposal Submittal

All Proposers shall complete and return one (1) original and six (6) copies of their proposal on standard sized paper and one (1) unbound copy. More than one (1) proposal from an individual, firm, partnership, or corporation under the same or different names will not be considered.

G. Contract Execution

The firm/individual shall prepare the Agreement to be executed by both parties upon final review of the City.

H. Professional Licensing

The professional services provider, and any sub-consultant(s), shall possess any necessary professional certification(s) and/or license(s) relative to the work to be performed required by an appropriate licensing authority of the State of California and shall provide evidence of such to the City with their proposal or prior to commencement of the work in such a form as the City

shall require.

I. Insurance Requirement

The Proposer shall, at its own expense, procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Agreement by the consultants, its agent, representatives, employees, or subcontractors. Proposer shall also require all of its subcontractors assigned to provide services to procure and maintain the same insurance requirement for the duration of the Agreement. Specific insurance requirements are as follows:

- General Liability Insurance of at least \$1,000,000.00 per occurrence and \$2,000,000.00 aggregate liability.
- Automobile Liability Insurance of at least \$1,000,000.00 per accident Combined Single Limit (CSL);
- Statutory Worker's Compensation Insurance, including Employer's Liability coverage of at least \$1,000,000.00;
- Professional Errors and Omissions Insurance of at least \$1,000,000.00 per occurrence and \$2,000,000.00 annual aggregate liability;
- Insurance endorsement proving City as Additional Insured.

J. Business License

The professional provider, and any sub-consultant(s), shall obtain a valid City of Farmersville Business License on or before their commencement of work.

K. Public Record

Be advised that all information contained in proposals submitted in response to this solicitation shall become a matter of public record upon contract award, and made available upon request, unless otherwise marked. The Proposer must identify, in writing, all copyrighted material, trade secrets or other proprietary information the Proposer claims are exempt from disclosure pursuant to the California Public Records Act. The Proposer who claims such an exemption must also state in the proposal that:

"The Proposer agrees to indemnify and hold harmless the City and its officers, employees and agents from any claims, liability or damages against the City and to defend any actions brought against the City for its refusal to disclose such material, trade secrets or other proprietary information to any party."

L. Equal Opportunity

The City of Farmersville requires all Proposers to comply with equal opportunity policies.

M. Independent Contractor

The City Attorney will be an independent contractor. All persons employed by a firm in accordance with an Agreement resulting from this RFP will be employees of the firm or law practice and not of the City of Farmersville.

N. Conflict of Interest

No official, officer, or employee of the City of Farmersville or of a local public body during his/her tenure or for one year thereafter shall have any interest, direct or indirect, in this contract or the proceeds thereof. Furthermore, the parties hereto covenant and agree that to their knowledge, no board member, officer or employee of the City of Farmersville has any interest, whether contractual, non-contractual, financial or otherwise, in this transaction, or in the business of the contracting party other than the City of Farmersville, and that if any such interest comes to the knowledge of either party at any time, a full disclosure of such information will be made in writing to the other party or parties, even if such interest would not be considered a conflict of interest under Article 4 (commencing with Section 1090) or Article 4.6 (commencing with Section 1120) of Division 4 of Title 1 of the Government Code of the State of California.

O. Non-Collusion Affidavit

All proposals must be accompanied by a signed and notarized Non-Collusion Affidavit per the Public Contract code Section 7106.

P. Appendix

The appendix shall include any suggested additions or modifications to the scope that the individual/firm believes will enhance the quality of their proposal. Individual/Firm brochures, exhibits, and any other pertinent documents may be included in the Appendix.

III. Scope of Work

A. Understanding the Scope of Work

The City Attorney is appointed by and reports to the City Council. The City Attorney is the chief legal counsel for the City of Farmersville and, as such, is responsible for advising on all legal matters. The primary responsibilities the City will require of its City Attorney shall include, but not be limited to, the following:

- Represent and provide legal advice and consultation, encompassing all aspects of municipal law, on a daily basis to the City Council, City Manager and City Staff as requested or required. Contacts are usually made by email or telephone and same-day response is typically expected.
- Attend and represent the City's legal interests at all City Council meetings

(including Closed Sessions and Council Study Sessions), Planning Commission and other meetings of other Commissions and Committees on an as needed basis specified by the City.

- Attend at least two regular City Council meetings per month and be prepared to advise the Council on matters on the agenda as well as procedural or substantive issues that arise during the meeting.
- Attend at least one regular Planning Commission meeting per month and be prepared to advise the Commission on matters on the agenda as well as procedural or substantive issues that arise during the meeting. Coordinate and manage the services and costs of all outside legal counsel within budgetary limits as approved by the City Council.
- Review, approve and/or prepare ordinances, resolutions, staff reports, contracts, deeds, leases, and other legal documents required by the City.
- Approve the form of all contracts made by and between the City of Farmersville and all bonds given to the City, endorsing same.
- Recommend policies and procedures that comply with the requirements of the law.
- Keep the City Council informed of legislation or judicial opinions that have potential impact to the City.
- Prepare, review and revise staff documents, including, but not limited to, initiation of memorandums concerning legal issues, contracts, agreements, ordinances, resolutions, land use decisions on appeal, and staff reports for the legal support of City functions and duties.
- Provide staff assistance, legal research and counseling related to the acquisition or sale of property, preparation of contracts, leases, deeds and easements, agreements, utility franchise agreements, fees, taxes, assessments, environmental law (CEQA), public contracts/capital projects, land use, zoning, and subdivision matters, Proposition 218, risk assessment, election law, code enforcement, operations governed by law, liability situations, grant guidelines, and other matters as necessary requiring legal advice.
- Interpret the City's Municipal Code and prosecute misdemeanor and ordinance infractions as necessary.
- Provide guidance concerning the requirements of the Brown Act, Conflict of Interest (AB 1234), the Political Reform Act, the Public Records Act, due process and other legal requirements imposed by statute and common law.
- Represent the City in litigation not covered by the City's self-insured riskpools and

otherwise cooperate, support, and collaborate with self-insured risk pool staff, and legal counsel, as appointed.

- Provide legal advice and assistance to operating departments, assist in notice of disciplinary actions and provide advisory service as needed.
- Research and interpret laws, court decisions and other legal authorities in order to prepare legal opinions and to advise the City Council and management staff on legal matters pertaining to City operations.
- Represent the City before other governmental bodies and agencies to promote the interest of the City as needed.
- Oversee coordination with special legal counsel on all City litigation as directed by the City Council and/or City Manager.
- Maintain legal files and provide the City Clerk copies of pertinent pleadings and orders in all litigation the City Attorney is handling for the City.
- Perform other legal duties as may be required by the City Council as may be necessary to complete the performance and functions mentioned above.

IV. Evaluation and Selection Process

A. Areas of Performance Effectiveness

The City of Farmersville recognizes that a successful and effective City Attorney will demonstrate specific qualities. The extent to which an incumbent's performance exhibits effectiveness in the following areas will serve as a basis for evaluation of the City Attorney. These effectiveness areas include:

- Open government, transparency, and democratic governance
- Competent representation – doing things right (legal knowledge, research, and analysis)
- Ethical leadership – doing the right things (principle-centered)
- Adherence to legal policies and procedures (promoting the public interest)
- Professional conduct (emotional and mental fortitude)
- Inter-governmental governance (networking and coalition building)
- Customer service (public, media and stakeholder relationships)

B. Proposal Evaluation

Selection of Proposer to interview with the City will be based on the contents of their written proposal. Proposal will be rated according to the following criteria (in no particular order):

- Depth and breadth of experience and expertise in the practice of law, most specifically in those areas most often encountered in municipal government operations;
- Understanding of municipal government issues and municipal law;
- Capability to perform legal services promptly and in a manner that permits the City Council and staff to meet established deadlines and operates in an effective and efficient manner;
- Qualifications of the key staff that will be assigned to the City of Farmersville under this proposal;
- Familiarity with State of California Land Use Law;
- Communication skills;
- References of past or current municipal law clients or municipal practice;
- Proposed fee structure, including but not necessarily limited to, a monthly retainer, services included in monthly retainer, hourly rates for services not included in monthly retainer.

During the evaluation process, the City reserves the right, where it may serve the City's best interest, to request additional information or clarification from proposing firms/individuals to allow corrections of errors or omissions. The City reserves the right to verify any information contained in proposals, including references, resumes, etc. The City reserves the right to investigate and research proposals, including facts and opinions that could be helpful in evaluating the capabilities of firms/individuals whether or not they were specifically included in the proposals.

C. Selection Process

The top-ranked firms/individuals may be requested to attend a meeting with the City Council to be interviewed. The interviews will allow the designated firms or individuals an opportunity to answer any questions the City Council may have regarding their proposals. Participation in the interviews will be at no cost to the City. The City Council will make the final determination of the successful firm/individual.

D. Proposal Timeline

Release of RFP - March 15, 2024

Deadline to Submit Questions -	March 29, 2024
Deadline for Proposal Submission -	April 12, 2024
Review of Proposals (Closed Session) -	April 22, 2024
Notification of Finalists -	April 23, 2024 (tentative)
Interviews with Finalists (Closed Session) -	May 13, 2024 (tentative)
Award of Contract (City Council Meeting) -	To be determined
Contract Effective Date -	To be determined

The City Council will review proposals at a Closed Session Meeting, top ranked finalists will be interviewed by the City Council during a scheduled Closed Session where proposers will have an opportunity to present their proposals and answer any questions the City Council may have. Participation in the interviews will be at no cost to the City. Please note that in an effort to maintain the integrity of the interview process, all proposers are prohibited from contact with the City Council Members outside of the formal interview process.

V. Requested Information

All proposals **must provide** specific and succinct answers to all questions and requests for information. Indirect, imprecise, or incomplete responses can serve only to the disadvantage of the Proposer. Please answer the questions in the format and order presented. Submissions of individual resumes alone will not be considered responsive to any specific question.

A. General Proposal

1. Letter of Transmittal: Signed by an authorized representative of the firm or the individual committing to provide the legal services described above, including a brief introduction and history of the firm, number of employees, proven work history, and a statement as to qualifications.
2. Table of Contents: Include a clear identification of the material by section and page number included in the proposal.
3. Firm Qualifications: Provide professional experience and overall capabilities, qualifications, training, and areas of expertise for each of the partners/principals and associates that may be assigned to work with the City, including, but not limited to:
 - Name of individual(s) with resume(s);

- Length of employment with firm;
- Specialization;
- Legal training;
- Scholastic honors and professional affiliations;
- Date of admittance to California Bar;
- Years of practice;
- Municipal or other local public sector experience;
- Knowledge of, and experience with California Municipal Law;
- Years and statement of other types of clientele represented;
- Litigation experience and track record;
- Experience with fee collections, cost recovery, and rate setting governed by Prop 26, Prop 218, AB 1600, SB 1693, and other State and Federal requirements.
- Knowledge and use of Alternative Dispute Resolution (ADR) techniques; ADR training and experience; and success record of advocacy in mediation and arbitrations;
- Knowledge and practice of law relating to land use and planning, CEQA, NEPA, general plans, real estate, environmental issues, hazardous waste and other related law;
- Experience in the area of contracts and franchises;
- Experience in the preparation and review of ordinances and resolutions;
- Experience in the area of the Public Records Act, the Brown Act, and the Elections Code;
- If the firm, or any of the attorneys employed by the firm, have ever been successfully sued for malpractice, been the subject of complaints filed with the State Bar, or had discipline imposed by the State Bar, please provide information on the nature of the incident, the dates on which the matter began and was concluded, and the results of the situation.
- Describe your view of the role of the City Attorney.

- Describe how you would structure the working relationship between the City Council, City Manager, Department Heads, and other members of staff.
- Describe how you will keep the City Council and the City Manager informed about the status of litigation and other legal matters.
- Describe the response time we can expect from the City Attorney to inquiries made by the City Council and City Manager.
- Describe how you will track and manage legal costs so that the City's legal costs are held to a minimum. Please provide an example.
- Describe how you will proactively advise the City Council, City Manager and staff about legal developments or issues of concern, without being asked.
- Describe how as the City Attorney you would coordinate your daily work with the City Manager and City Department Heads.
- Describe how as the City Attorney you would coordinate necessary administrative, statistical, and case work with legal counsel and other administrative staff at employment risk, liability, and workers compensation risk pools that the City is a member.
- Clearly describe your range of experience with project negotiation, eminent domain issues, and the drafting and implementation of agreements and contracts (i.e. lease, purchase) and litigation.
- How would you evaluate whether to use an attorney within your law firm or an attorney from another law firm to handle a case, provide expert advice, or provided other needed services?
- Describe the firms' practices regarding professional development training and keeping current with the laws and legal matters affecting its clients.
- Identify the types of in-service training (such as ethics, commission roles and responsibilities, how to conduct performance evaluations, harassment investigations, etc.) your firm is capable of providing to municipalities.
- Describe systems/mechanisms that would be established from monthly reporting of status of projects, requests, and litigation.
- Identify the types of reports your firm would provide to the City Council and City Manager.

- Describe your firm's suggested process for transmittal of requests and other material to City Attorney.
 - Describe the staffing of your office, including all permanent and temporary employees and their general duties and work schedules. Include any changes you would propose, now or in the future, should you be awarded a contract to provide legal services to the City.
4. Please complete and submit the Certification of Proposal Form (Attachment A) and Business Information Form (Attachment B) with your Proposal.
 5. References: Provide contact information for three (3) municipal, public agency and/or key clients for which municipal legal services have been provided in the last ten (10) years. Please include the contact person's name, address, phone number and email address.
 6. Clients/Potential Conflicts of Interest:
 - a. Identify any foreseeable or potential conflicts of interest and public clients you serve and the manner in which you would propose to resolve such conflicts.
 - b. For the person to be designated as City Attorney and any substitute City Attorney(s), list all public clients that person presently represents as City Attorney or general counsel, along with the meeting dates and times for each governing body.
 - c. List all private clients that could potentially pose a conflict of interest with your representation of the City of Farmersville.
 - d. Identify all situations in the last five (5) years in which you have been adverse to public entities, either in litigation or administrative matters.
 - e. Please list any political contributions of money, in-kind services, or loans made to any member of a City Council within the last three (3) years by the applicant law firm and all of its attorneys, including the attorney being proposed to represent the City of Farmersville.
 7. Insurance: Please include a description and pertinent information regarding the general liability and malpractice insurance carried by the firm or individual, including the amount of coverage provided by such insurance.

B. Cost Proposal

It is anticipated that the City will expect the selected firm to provide a system wherein "general" services are provided under a flat or fixed monthly retainer and any additional "special" services are billed at a pre-negotiated hourly rate.

1. General Services: Please give your definition of “general” legal services. Would all general legal services be included in your monthly retainer?
2. Special Services: Please give your definition of “special” legal services. How are they differentiated from general legal services? Would any special services be included in your retainer? If so, please identify them.
3. How would your firm aid the City to remain within its adopted budget for its legal services?
4. Billing Method: Describe your firm’s preference for method of payment, payment terms, and your procedure for billing retention, hours, and expenses and other accounting requirements.
5. Reimbursable: Define the type and unit rates for reimbursement of expenses. For example, rate for mileage, reproduction of documents or word processing charges, unit costs for telephone costs, etc.
6. In-Service Training: Please provide the costs of any in-service training(s) that your firm can provide to the City.
7. Adjustments: Do you expect to have a cost-of-living adjustment incorporated into the agreement with the City? If so, please explain how you propose it be computed and implemented.
8. Monthly Flat or Fixed Rate/Billable Hours: Please complete and submit the Cost Proposal Form (Attachment C) with your Proposal. The proposed compensation may be in two (2) formats. The Proposer is to propose an hourly rate(s) for work, including meeting attendance OR the submittal shall contain a billing system wherein regular attendance at City Council or Planning Commission meetings are billed at a flat or fixed rate, per meeting fee (i.e. monthly retainer) and services beyond the scope are billed at the proposed hourly rate(s). Billing should correspond to the Scope of Work and hourly involvement by each staff member.
9. Cost of Proposal Worksheet: Please complete and submit the Cost of Proposal Worksheet (Attachment D) with your proposal.

VI. Sample Documents

- A. Sample Report: Please submit a copy of a typical report your firm provides to municipalities (i.e. staff report, memorandum, legal opinion, etc.).
- B. Sample Billing Invoice: Please submit a copy of a typical invoice your firm provides to municipalities that identifies General and Special Services. Please redact any sensitive information.

Attachment A
Certification of Proposal

- The undersigned hereby submits its proposal and, by so doing, agrees to furnish services to the City in accordance with this Request for Proposal and to be bound by the terms and conditions of the RFP.
- This firm has carefully reviewed its proposal and understands and agrees that the City is not responsible for any errors or omissions on the part of the Proposer and that the Proposer is solely responsible for such errors or omissions.
- It is understood and agreed that the City reserves the right to accept or reject any or all proposals and to waive any informal or irregularity in any proposal received by the City.
- The proposal includes all components, figures and data required by this Request for Proposal.
- This firm has carefully read and fully understands all of the items contained in this Request for Proposals. This firm agrees to all of the requirements of the RFP.
- The City is not responsible for any cost associated with preparing the Proposal.

Date: _____

Name of Firm: _____

Authorized Signature: _____

Print/Type Name: _____

Title: _____

Address: _____

Telephone: _____

Fax: _____

Email: _____

Attachment B
Business Information Form

Business Contact Information:

Name of Firm: _____

Address: _____

City/State/Zip Code: _____

Telephone: _____

Fax: _____

Email: _____

Website: _____

Federal Tax Number: _____

Number of Years in Business: _____

Number of Employees: _____

Does the firm/business maintain amounts of insurance specified by the City? Yes No

Are there any claims that are pending against any insurance policies? Yes No

If yes, describe: _____

Has the firm/business been in bankruptcy, reorganization, or receivership in the last five years? Yes No

Has the proposed designated City Attorney practiced municipal law a minimum of five (5) years? Yes No

Is each of the proposed attorneys accredited and in good standing with the State Bar of California? Yes No

Business Classification: Corporation Partnership Individual

If a Corporation:

Date of Incorporation: _____

State of Incorporation: _____

President's Name: _____

If a Partnership:

Date of Organization: _____

Name of all Partners: _____

Attachment C
Cost of Proposal Form

Proposer

Name of Firm: _____

Address: _____

Name of Contact: _____

Phone Number: _____

Email Address: _____

Hourly Rates (no retainer)

Estimated average hours per month: _____ Hourly Rate: \$ _____

Total cost for services per month: \$ _____

Monthly Retainer

Estimated average hours per month: _____ Hourly Rate: \$ _____

Total cost for services included in monthly retainer: \$ _____

Add-On Hours Outside of Monthly Retainer:

List of Personnel	Hourly Rates
1. _____	\$ _____
2. _____	\$ _____
3. _____	\$ _____

Reimbursable and/or Other Costs:

Please define the types and unit rates for expenses (i.e. mileage, reproduction of documents, faxed documents, processing charges, etc.) if any:

Attachment D
Cost of Proposal Worksheet

Services		Provided by Firm (Yes/No)		Included in Retainer (Yes/No)		Title of Person Performing Service
1.	Attend regular and special Council meetings.	☐	☐	☐	☐	
2.	Attend regular Planning Commission meetings	☐	☐	☐	☐	
3.	Agenda review and follow-up.	☐	☐	☐	☐	
4.	Standard contract review and revision.	☐	☐	☐	☐	
5.	Standard ordinance/resolution review and revision.	☐	☐	☐	☐	
6.	Public Records Act request review and direction.	☐	☐	☐	☐	
7.	Brown Act issues.	☐	☐	☐	☐	
8.	General legal advice and counsel on matters pertaining to the City, not involving more than three (3) hours of research.	☐	☐	☐	☐	
9.	Code enforcement issues – city code interpretation.	☐	☐	☐	☐	
10.	Code enforcement issues – consultation with City staff.	☐	☐	☐	☐	
11.	Code enforcement issues – preparation and review of notices, demands and orders.	☐	☐	☐	☐	
12.	Litigation, including eminent domain.	☐	☐	☐	☐	
13.	Personnel services – Revision of drafting at-will personnel contracts.	☐	☐	☐	☐	
14.	Transactions – leases.	☐	☐	☐	☐	
15.	Transactions – statutory development agreements.	☐	☐	☐	☐	
16.	Transactions – specialized fee credit or reimbursement agreements.	☐	☐	☐	☐	
17.	Franchising.	☐	☐	☐	☐	
18.	Public Works – contract disputes and interpretation services.	☐	☐	☐	☐	
19.	Public Works – drafting construction and similar contracts and conditions.	☐	☐	☐	☐	
20.	Public Works – prevailing wage issues.	☐	☐	☐	☐	
21.	Public Works – right of way acquisition.	☐	☐	☐	☐	

[illegible]

R.

6

File Attachments for Item:

U. Countywide Assignments and Subcommittee Reports

i. Report Out on Subcommittee Meetings

ii. Upcoming Subcommittee Meetings



CITY of BRISBANE

Council Subcommittee Update

From April 26th, 2025 to May 9th, 2025

1. Report Out on Subcommittees/Committees

A. Public Art Advisory Committee

4/28

Davis, O'Connell

The committee thanked Park & Recreation Commissioner Greenlee for her years of service on the Public Art Advisory Committee. The committee received an update of the public art fund balance which is currently \$2.6M.

The committee reviewed the existing Public Art Ordinance and Implementation Guidelines to ensure that they are consistent with the newly adopted Public Art Master Plan.

Next Steps #1: Staff will redline for the committee for approval and then it will be brought to Council for review.

The committee then reviewed and considered the list of priorities from the Public Art Master Plan and identified short-term projects and initiatives.

Next Steps #2: After reviewing and capturing the committee's feedback, staff will bring back the priorities to the next meeting for further consideration.

Meeting Packet: <https://www.brisbaneca.org/bc-artadvisory/meeting/public-art-advisory-committee-meeting-20>

2. Upcoming Subcommittees:

Brisbane School District/City 2x2 Subcommittee 5/13 4pm Davis, Lentz

Introduction of School Board Members and consider ways to collaborate.

Public Art Advisory Committee 5/19 5:15pm Davis, O'Connell

Review Implementation Guidelines, Art Ordinance, and review Priorities. Standing Meeting.

3. Proposed Subcommittees:

Does any councilmember wish to propose any items for a subcommittee to discuss?