



CITY *of* BRISBANE

City Council Special Meeting Agenda

Monday, September 22, 2025 at 6:00 PM • Hybrid Meeting, 50 Park Place, Brisbane, CA 94005

The public may observe/participate in City Council meetings using remote public comment options or attending in person. The City Council may take action on any item listed in the agenda.
likely

TO ADDRESS THE COUNCIL

IN PERSON

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

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.

6:00 P.M. SPECIAL MEETING

- A. Approval of the Special Meeting Agenda
- B. Discuss Draft Code of Conduct/Best Practices

ADJOURNMENT



CITY COUNCIL AGENDA REPORT

Meeting Date: September 22, 2025
From: Jeremy Dennis, City Manager
Tom McMorrow, City Attorney
Subject: Best Practices/Code of Conduct Discussion

Recommendation

Staff recommends that the City Council provide direction to staff regarding the development of a “best practices/code of conduct” for the City Council.

Background/Discussion

Attached to this cover memo are previous staff reports/minutes to meetings that have taken place over the last 15 months regarding these topics.

Below is a summary of the dates and topics as discussed:

- January 4, 2024 – discussion of protocol for development and/or zoning applications
- June 20, 2024 staff report/minutes regarding best practices and mayoral rotation; subcommittee directed to continue work
- July 18, 2024 staff report/minutes regarding mayoral rotation; the mayoral rotation proposal defeated on a 2-3 vote
- October 3, 2024 workshop staff report regarding best practices – at this meeting, staff was directed to draft best practices/code of conduct language for review by the Council
- May 15, 2025 document provided by Councilmember O’Connell primarily regarding best practices, with a brief item on the mayoral rotation

The best practices item is agendized based on Councilmember O’Connell’s submittal and the Mayor’s request to provide the Council an opportunity to discuss it.

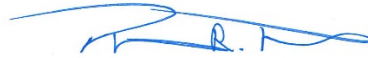
Attachments

1. May 15, 2025 submittal from Councilmember O’Connell (pg. 5)
2. Mayor Lentz submittal (pg. 8)

3. Councilmember Kern submittal (pg. 11)
4. October 3, 2024 Special Meeting staff report and minutes (pg. 13)
5. July 18, 2024 staff report and minutes (pg. 30)
6. June 20, 2024 staff report and minutes (pg. 42)
7. 2020 City Council Handbook (pg. 50)



Jeremy Dennis, City Manager



Tom McMorrow, City Attorney

Resolution

The role, responsibilities, and authority of the members of the City Council in the City of Brisbane.

City Council

Councilmembers shall be accountable to the Citizens of Brisbane.

Five individuals are elected to serve on the Council and make decisions.

All members of the Council have equal authority and equal votes.

The City Council is effective when:

acting responsibly and accountable to each other

demonstrate honesty and integrity in actions and statements

maintain clear lines of communication

put aside personal gain or agendas to work in concert with the entire body

ensure multiple points of view are explored and given consideration

foster collaboration and dialogue to achieve consensus

act in unison when making decisions in the best interest for Brisbane

Any Councilmember may suggest an item to be considered for a future Council meeting.

A submission endorsed by two or more Councilmembers will automatically be placed on a future agenda.

Mayor

Annually a Mayor is designated by and serves at the pleasure of the Council.

The duties of the Mayor are the following:

Chairs Council Meetings

Signs documents on behalf of the City

Appears on behalf on the City at Ceremonial functions

Issues Proclamations

Serves as delegate of the City at official or Governmental Events and Conferences

5 Works with the City Manager to determine agendas for Council

Meetings

Mayor Pro Tem

Annually a Mayor Pro Tem is designated by and serves at the pleasure of the Council.

The designation of "Pro Tem" does not imply this Councilmember will be selected to serve as Mayor the following year.

The duties of the Mayor Pro Tem are the following:

Perform the duties of the Mayor if the Mayor is absent or disabled

Represent the City at Ceremonial functions if the Mayor is unable to attend

Designated Authority

From time to time the Council may decide to designate the Mayor or a specific Councilmember with temporary special authority.

The Council will meet with the designee to discuss their expectations and convey guidelines.

Examples of situations where a designee might be employed:

To act as a spokesperson for the City on matters that the Council has taken an official position.

To act as a representative for the City in negotiations, conveying the official position of the Council, not in a decision-making capacity, but to engage in dialogue and bring information back to the full Council for discussion, direction, and possibly a vote.

At all times, the designee must choose words and statements carefully to reflect the official position of the Council and not personal opinions or viewpoints.

Councilmember Non-Designated Authority

Any Councilmember has the legal right meet with an individual or other entity.

The Councilmember must not imply that they represent the official position of the City unless formally designated with that authority by the City Council.

Titles such as "Mayor" or "Mayor Pro-Tem" can often be
6 interpreted as carrying the authority

of the City and/or the full Council. For that reason, the Mayor, or Mayor Pro-Tem must always exercise additional caution about giving the impression they have more authority than that of any Brisbane Councilmember.

Every Councilmember should exercise caution in meetings, and be very clear about whether comments represent the official City position or a personal viewpoint.

Councilmembers are cautioned to avoid speculating about how they might vote on a matter that has yet to come before the Council for a vote.

Comments taken out of context or indicating bias can have unfortunate, serious, and legal consequences.

Councilmembers should be especially careful in dealing with the media.

Offenses

Councilmember misconduct should be reported to the Mayor who should ask the City Manager and City Attorney to investigate the allegation. If the Mayor is the individual whose actions are being challenged, then the matter should be referred to the Mayor Pro Tem.

Offenses may be privately conveyed to the offending Councilmember, or brought up to the full council. Offenders may be reprimanded or formally censured by the Council including consideration in a public meeting. Sanction options may include losing committee assignments or censure.

Respect for one another, respect for different opinions, respect for the democratic process, and respect for our community serve as our guiding principles.

Attachment 2:

Council Member Lentz's Response to the Resolution:

I believe having guidelines that help the Council to interact with one another in a respectful and professional manner while addressing the issues that face Brisbane are important to establish, if they do not restrict individual Council Members from expressing their views and actively engaging the public.

Creating Codes of Conduct or Best Practice documents for Council Members to abide by need to be objective, so that it is clear what the intent is, rather than being subjected to personal interpretations. Since this is a document that is not only for this Council, but potentially for future Councils, the guidelines need to be clear and universal, so that everyone understands the objectives of what we are trying to achieve.

So, what are the objectives? I believe they should be goals and aspirations that help the Council to work in a more cohesive manner, where differences of opinion are embraced, honesty, fairness, integrity and respect are exhibited on the dais and in the community. We were all elected by the public, and thus it is essential that we trust the public with the voting decisions they made to put us in office.

There are many items raised in the Resolution that I agree with, while there are others that I have questions about. Some statements are obvious, while others are up to interpretation. Some positions seek to inspire, while others promote caution. Some areas respect individual expression, while other sections seem to place that in doubt. Whatever we decide to put forth, every item should be agreed to by every member of the Council. The intent of this document is to lay out how we should conduct our business as public servants, and how we would want to be treated by one another.

There are several positions raised in the Resolution that I would need greater clarity on. There are others that I don't agree with, but I am open to having meaningful conversation.

I agree that Council Members are accountable to the public, but to one another, I'm not sure about that. We should treat each other with respect and professionalism, but we're elected by the public to advocate for them.

Stating someone has a personal gain or agenda can be subjective. Council Members should not be restricted on advocating for items they feel will make Brisbane better. FPPC rules are very clear about what is and isn't a personal gain under State law, so any mention of this should be grounded in those standards to ensure fairness and objectivity.

Achieving consensus happens often when we make decisions but not achieving it doesn't mean we're not effective. We're effective when we're transparent, provide meaningful

information to the public, and have respectful engagement amongst ourselves. Spirited debate, deliberation and respectful disagreement are all part of a healthy democracy.

Acting in unison when making the best decisions for Brisbane is subjective. What might be in the “best interest” of Brisbane for one Council Member, may not be that way for another, or for that matter, the majority of the public.

What I think makes an effective Council is when we come to meetings prepared, we engage in active listening, we encourage the public to participate, we treat each other professionally, and we utilize the knowledge of our staff employees. I believe individual Council Members grow in their positions when they are accessible to the public and seek information and best practices from outside of Brisbane. We should encourage Council Members to express their opinions, whether it’s a concern or something they feel will benefit the community.

Stating that the Mayor serves at the pleasure of the Council politicizes the position because it indicates that Council Members need to “act” or “be” a certain way in order to receive favor for being appointed to the position. We all serve at the pleasure of the public. The Council appointment for Mayor should be objective, with proper guidelines that allow all Council Members to serve in that role. Our current protocol for appointing the Mayor is problematic because a Council majority can deny any Council Member from serving in the position for whatever reason. This erodes the public’s confidence in us to be fair and inclusive. Perhaps we should reevaluate the Firm Rotation for Mayor that was presented last year.

I appreciate the words of caution for how we represent ourselves when dealing with matters such as development, spending, and services. Council Members should always be clear that they are speaking on behalf of themselves, rather than the full Council, unless specifically given direction to do so. It is important that under quasi-judicial matters that Council Members do not show bias, so as not to be interpreted as being unfair towards an applicant or project before the City.

However, most items before the Council are legislative in manner, and thus give each Council Member room to advocate for positions shared by the public, seek alternatives they feel could be positive for Brisbane, or express concerns that could negatively impact the City. Individual council members have both the right and the responsibility to engage with constituents, other officials, and stakeholders to listen, share ideas, and explore a wide range of perspectives. Engaging in such dialogue does not imply speaking on behalf of the entire council, though Council Members should be clear that they are acting in an individual capacity.

Open, ongoing dialogue enriches the decision-making process, ensuring that Council actions reflect a broad and inclusive understanding of community needs, not just the results of internal deliberations. Robust public engagement and transparency are core values of democracy that are essential to fostering trust and informed participation in local government. Council Members should not be discouraged from expressing their views publicly or advocating for the policies they believe best serve the public, even if others on the Council disagree.

This approach reinforces the principle that elected officials serve as the voice of the people. Moreover, when a Council Member takes a public stance on legislative matters, it signals responsiveness and leadership. It empowers the public by clarifying where their representatives stand and encourages civic engagement, ultimately strengthening the democratic process and fostering a more proactive and representative government.

Resolutions that provide guidelines for Council conduct should never restrict Council Members from being themselves. When we take the oath of office, we do so in service of the public. Even with our differences and perspectives, we need to put trust in ourselves and the process. It is not up to us to create the rules that others must follow, but rather live by and endorse the terms of engagement that enable us to be better public servants.

The Role of City Council Members in Brisbane

A five-person City Council is elected to make decisions for the City of Brisbane. All council members have equal authority and an equal vote. They are accountable to the citizens of Brisbane. The council is most effective when members:

- Act responsibly and are accountable to each other.
- Demonstrate honesty and integrity.
- Maintain clear lines of communication.
- Put aside personal agendas to work together as a group.
- Ensure multiple points of view are considered.
- Foster collaboration and dialogue to reach a consensus.
- Act in unison when making decisions that are in the best interest of Brisbane.
- Are compliant with all applicable federal, state, and local laws in the performance of their duties.
- Demonstrate respectful behavior toward other councilmembers, city staff, and the public. This includes refraining from personal attacks, slanderous remarks, and abusive conduct.
- Are prepared for meetings by reviewing agenda items and relevant documents in advance.

Any council member can suggest an item for a future council meeting. If two or more council members endorse a submission, it will automatically be added to a future agenda.

This resolution is intended to be a "living document" that will be reviewed and updated periodically to ensure it remains relevant and effective.

Mayor and Mayor Pro Tem

Each year, the City Council designates a Mayor and a Mayor Pro Tem from among its members. The Mayor's duties include:

- Chairing council meetings.
- Signing documents on behalf of the city.
- Representing the city at ceremonial functions and official events.
- Issuing proclamations.
- Working with the City Manager to determine meeting agendas.

The Mayor Pro Tem performs the Mayor's duties if the Mayor is absent or unable to attend. The designation of "Pro Tem" does not mean they will be selected as Mayor the following year.

Authority and Representation

Designated Authority

The City Council may, at times, grant temporary special authority to the Mayor or a specific council member. In such cases, the council meets with the designee to discuss expectations and guidelines. This authority might be granted to allow the designee to act as a spokesperson for an official city position or as a representative in negotiations. When acting in this capacity, the designee must be careful to reflect the official position of the council, not their personal opinions.

Non-Designated Authority

Any council member has the legal right to meet with individuals or other entities. However, they should not imply that they represent the official position of the city unless they have been formally designated with that authority. Council members should always be clear about whether their comments reflect the official city position or a personal viewpoint. The titles "Mayor" or "Mayor Pro Tem" can be interpreted as carrying more authority, so those individuals must be extra cautious not to give that impression. Council members should also avoid speculating on how they might vote on a matter that has not yet come before the council, as comments taken out of context could have serious legal consequences.

Handling Misconduct

Allegations of council member misconduct should be reported to the Mayor, who should ask the City Manager and City Attorney to investigate. If the Mayor is the subject of the complaint, the matter should be referred to the Mayor Pro Tem.

Offenses may be addressed privately with the offending council member or brought before the full council. The council can reprimand or formally censure offenders, which may include losing committee assignments. The guiding principles for the council are respect for one another, for different opinions, for the democratic process, and for the community.



CITY *of* BRISBANE

City Council Special Meeting Agenda

Thursday, October 3, 2024 at 6:00 PM • Hybrid Meeting, 50 Park Place, Brisbane, CA 94005

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

Members of the public may by attending the meeting in person at 50 Park Place, Brisbane, CA 94005, Large Conference Room.

Councilmember Davis will join via Teleconference at 251 Mendocino St. Brisbane, California.

Councilmember Cunningham will join via Teleconference at 1826 Birdie Lane, Henderson, Nevada.

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).

REMOTE PARTICIPATION

Members of the public may participate by logging into the Zoom Meeting listed below.

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Join Zoom Meeting: zoom.us (please use the latest version: zoom.us/download)

<https://us06web.zoom.us/j/85031706803?pwd=Nlc0NVdaREF5Y3hiN2o0bEhNNkNmQT09>

Meeting ID: 850 3170 6803

Call In Number: 1 (669) 900 9128

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

SPECIAL ASSISTANCE

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1. 6:00 P.M. WORKSHOP

A. Approval of the Special Meeting Agenda

B. Discuss Draft Code of Conduct

2. ADJOURNMENT



CITY COUNCIL AGENDA REPORT

Meeting Date: October 3, 2024

From: Jeremy Dennis, City Manager

Subject: Best Practices/Code of Conduct Workshop

Recommendation

Discuss the Draft Code of Conduct – NOTE THERE IS NO ACTION ON THIS ITEM

Background

Over the course of this calendar year, the Best Practice Subcommittee has met to draft a document that provides guidance to the City Council on a variety of issues related to conduct.

The Subcommittee met in August, after Council discussions at meetings on June 20 and July 18, 2024. The Subcommittee focused on a high-level “code of conduct” document (Attachment 1), based on the Town of Colma’s existing product.

Discussion

The Council directed staff to provide an opportunity to discuss the Subcommittee’s work in a workshop format. To that end, there is no action item associated with this report; the Council may wish to direct staff or the Subcommittee to finalize product based on your discussions at the workshop.

Attachments

1. Draft Code of Conduct
2. June 20, 2024 Best Practices Update memo

A handwritten signature in black ink that reads "Jeremy Dennis". The signature is written in a cursive style and is positioned above a horizontal line.

Jeremy Dennis, City Manager

ATTACHMENT 1



VALUE-BASED CODE OF CONDUCT

Preamble

The proper operation of democratic government requires that decision-makers be independent, impartial and accountable to the people they serve. The purpose of this Code of Values is to promote and maintain the highest standards of personal and professional conduct in the City's government. Because we seek public confidence in the City's services and public trust of its decision-makers, the City Council and Leadership Team adopts and pledges to follow this Value-Based Code of Conduct:

Fairness

As representatives of the City of Brisbane, we are fair and impartial.

In practice:

- We support the public's right to know and promote meaningful public involvement.
- We treat all persons, claims and transactions in a fair and equitable manner.
- We make decisions based on the merits of the issue.

Honesty and Integrity

As representatives of the City of Brisbane, we act with honesty and integrity.

In practice:

- We are prepared to make unpopular decisions when our sense of the public's best interest requires it.
- We take responsibility for our actions, even when it is uncomfortable to do so.
- We are open, honest and transparent in our communication.

Responsibility

As representatives of the City of Brisbane, we act in a responsible manner.

In practice:

- We do not use public resources, such as agency staff time, equipment, supplies or facilities, for private gain or personal purposes.
- We develop strong relationships with our community, and encourage collaboration with our residents, businesses, and Council colleagues and staff.
- We make decisions after prudent consideration of the financial impact, considering the long-term financial needs of the agency, especially its financial stability.
- We come to meetings prepared and ready to contribute thoughtfully.

Vision

As representatives of the City of Brisbane, we look to the future when making decisions.

In practice:

- We promote intelligent and thoughtful innovation in order to forward the City's policies and services.
- We are flexible with future needs and are adaptable when faced with unforeseen circumstances.
- We endeavor to anticipate the broader regional and statewide implications of the agency's decisions and issues.

Respect

As representatives of the City of Brisbane, we respect one another and the public.

In practice:

- We treat one another and the public with patience, courtesy and civility, even when we disagree.
- We focus on the merits in discussions of issues, not personalities, character or motivations.
- We share our ideas freely, are open-minded and value others' ideas and opinions, and listen to suggestions before making a decision.
- We work to build trust with one another and the community to foster an inclusive, supportive and open environment.

Member's Pledge

We affirm that we have read and understand this Code of Values, and pledge to uphold these values.

City Council

Mayor _____

Mayor Pro Tem _____

Council Member _____

Council Member _____

Council Member _____

Leadership Team

City Manager Jeremy Dennis _____

Chief of Police Lisa Macias _____

Finance Director Carolina Yuen _____

City Clerk Ingrid Padilla _____

Parks & Recreation Director Noreen Leek _____

Police Commander Mario Garcia _____

City Attorney Thomas McMorrow _____

City Engineer Randy Breault _____

Community Development Director John Swiecki _____

North County Fire Chief Ron Myers _____

Human Resources Director Abby Partin _____

Dated _____

EXHIBIT A



VALUE-BASED CODE OF CONDUCT

Preamble

The proper operation of democratic government requires that decision-makers be independent, impartial and accountable to the people they serve. The purpose of this Code of Values is to promote and maintain the highest standards of personal and professional conduct in the ~~Town's City's~~ government. Because we seek public confidence in the ~~Town's City's~~ services and public trust of its decision-makers, the City Council and **Leadership Team** adopts and pledges to follow this **Value-Based** Code of Conduct:

Fairness

As representatives of the ~~Town of Colma~~City of Brisbane, we are fair and impartial.

In practice:

- We support the public's right to know and promote meaningful public involvement.
- ~~We support each other in health, wellness, work-life balance, and foster mindfulness by treating each other with care and compassion.~~
- We treat all persons, claims and transactions in a fair and equitable manner.
- We make decisions based on the merits of the issue.

Honesty and Integrity

As representatives of the ~~Town of Colma~~City of Brisbane, we act with honesty and integrity.

In practice:

- We are prepared to make unpopular decisions when our sense of the public's best interest requires it.
- We take responsibility for our actions, even when it is uncomfortable to do so.
- We are open, honest and transparent in our communication.

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- ~~▪ We acknowledge, recognize, give credit and trust each other for our contributions to moving the community's interests forward.~~

Responsibility

As representatives of the ~~Town of Colma~~City of Brisbane, we act in a responsible manner.

In practice:

- We do not use public resources, such as agency staff time, equipment, supplies or facilities, for private gain or personal purposes.
- We develop strong relationships with our community, and encourage collaboration with our residents, businesses, and ~~peer-Town representatives-Council colleagues~~ and staff.
- We make decisions after prudent consideration of the financial impact, considering the long-term financial needs of the agency, especially its financial stability.
- We come to meetings prepared and ready to contribute thoughtfully.

Vision

As representatives of the ~~Town of Colma~~City of Brisbane, we look to the future when making decisions.

In practice:

- We promote intelligent and thoughtful innovation in order to forward the ~~Town's~~City's policies and services.
- We are flexible with future needs and are adaptable when faced with unforeseen circumstances.
- We endeavor to anticipate the broader regional and statewide implications of the agency's decisions and issues.

- ~~▪ We understand change can be a stressful but a necessary part of the innovative process.~~

Respect

As representatives of the ~~Town of Colma~~City of Brisbane, we respect one another and the public.

In practice:

- We treat one another and the public with patience, courtesy and civility, even when we disagree.
- We focus on the merits in discussions of issues, not personalities, character or motivations.

- We share our ideas freely, are open-minded and value others' ideas and opinions, and listen to suggestions before making a decision.
- We work to build trust with one another and the community to foster an inclusive, supportive and open environment.

Member's Pledge

We affirm that we have read and understand this Code of Values, and pledge to uphold these values.

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City Council

Mayor ~~Joanne F. del Rosario~~ _____

Vice Mayor ~~Pro Tem John Irish Goodwin~~ _____

Council Member ~~Ken Gonzalez~~ _____

Council Member ~~Carrie Slaughter~~ _____

Council Member ~~Helen Fisicaro~~ _____

Leadership Team

City Manager ~~Brian Dossey~~ Jeremy Dennis _____

Chief of Police ~~John Munsey~~ Lisa Macias _____

~~Administrative Services Director, Pak Lin~~ Finance Director Carolina Yuen _____

City Clerk ~~Caitlin Corley~~ Ingrid Padilla _____

~~Parks & Recreation Director Noreen Leek~~ Recreation Manager Angelika Abellana _____

Police Commander ~~Sherwin Lum~~ Mario Garcia _____

City Attorney ~~Chris Diaz~~ Thomas McMorrow _____

City Engineer ~~Cyrus Kianpour~~ Randy Breault _____

~~Public Works Director Brad Donohue~~ _____

~~Community Development Director John Swieck~~ ity Planner Farhad Mortazavi _____

North County Fire Chief Ron Myers

Human Resources Director Abby Partin

Dated _____



CITY COUNCIL AGENDA REPORT

Meeting Date: June 20, 2024

From: Interim City Manager Holstine

Subject: Best Practices Update

Background

Earlier this year the City Council met in a workshop to discuss protocols and best practices for interaction with applicants that come before the City Council. The Council appointed a subcommittee to work with staff (Davis, Lentz). Over the past several months the subcommittee has met on three occasions.

The following guidelines are submitted to the City Council for consideration for adoption:

- Once a land use and/or zoning application has been submitted, Councilmembers will not meet independently or have communication regarding the details of their proposed project with an applicant and/or agent once an application has been received.
 - Council members will notify the City Manager and may request either their attendance or another staff person assigned by the City Manager to attend. The City Manager will inform the rest of the Council of the request.
- Prior to an application a council member may wish to meet with or accept an invitation to meet with a business or individual who wishes to seek a permit that may ultimately come before the Council as a Whole.
- Once an application has been submitted to the city, the Council may wish to use its subcommittee process, which is subject to the Brown Act, to meet and discuss aspects of a project or proposal.
- All negotiations with applicants and/or agents are to be done through the City Manager who will use various staff, consultants and/or legal resources to represent the City's interest. The City Council will provide overall direction and ultimately review and approve discretionary permits and contractual agreements such as Development Agreements.

The subcommittee suggests that a resolution be drafted to memorialize this protocol and that each council member be requested to sign the resolution. As new Councilmembers are brought in they will sign a document acknowledging and agreeing to these rules.

Attachments:

1. 06/20/24 Best Practices Ad Hoc Meeting Staff Report
2. 01/04/24 City Council Meeting Staff Report City Council Protocol for Development and/or Zoning Applications

A handwritten signature in blue ink, appearing to read "Clay Holstine", is positioned above a horizontal line.

Clay Holstine, Interim City Manager



CITY COUNCIL BEST PRACTICES AD HOC AGENDA REPORT

Meeting Date: June 6th, 2024

From: Clay Holstine, Interim City Manager

Subject: Best Practices

Background

The City Council met earlier this year to address protocols and best practices for dealing with applications that come before the City Council. To assist in drafting recommendations the Council appointed two of its members to an ad-hoc committee to work with staff and bring a recommendation back to the Council as a whole.

The goal is to provide transparency in Council decision making and maximize communications among council members.

The following protocols are provided as a starting point for discussion:

- Once a land use and/or zoning application has been submitted, Councilmembers will not meet or have communication regarding the details of their proposed project with an applicant and/or agent once an application is applied for. **Council members will notify the City Manager and request either their attendance or another staff person assigned by the City Manager to attend. The City Manager will inform the rest of the council of an upcoming meeting.**
~~Land use and/or zoning applications. Councilmembers will not meet individually with an applicant once an application is applied for.~~
- Prior to an application a council member may wish to meet with or accept an invitation to meet with a business or individual who wishes to seek a permit that may ultimately come before the Council as a **whole**. ~~Council members will notify the City Manager and request either their attendance or another staff person assigned by the City Manager to attend. The City Manager will inform the rest of the council of an upcoming meeting.~~
- Once an application has been submitted to the city, the Council may wish to use its subcommittee process, which is subject to the Brown Act to meet and discuss aspects of a project or proposal.
- All negotiations with applicants **and/or agent** are to be done through the City Manager who will use various staff, consultant, and legal resources to represent the Cities interest. The City Council will provide overall direction and ultimately review and approve discretionary permits and contractual agreements such as Development Agreements.

The subcommittee may wish to add or change the above but is recommended that the protocols be few in number so that they are easily understood and remembered.



CITY COUNCIL SPECIAL MEETING AGENDA REPORT

Meeting Date: January 4, 2024

From: Interim City Manager Clay Holstine

Subject: City Council Protocol for Development and/or Zoning Applications

Background

This year will be a busy year for the City, and particularly the Community Development Department, as staff continues its review of the pending applications to develop the Baylands site and the former quarry property. The respective environmental impact statements for each will be issued by the City in the coming months, and the applicants for each are already expressing interest in beginning to negotiate development agreements assuming their project's EIR is approved.

Purpose and Context

As we move into perhaps the busiest phases of the reviews of each project, I have been asked to share any insights with the City Council about practices followed by prior Councils to help make the process as efficient as possible for all involved. Below I outline practices of this nature that this Council may itself want to consider and follow.

Before I do so, however, I want to underscore that the City Council is the ultimate arbiter of what, if any, informal practices it wishes to adopt to help it ensure that each project is reviewed efficiently and fairly. City staff will support the Council's decisions in this regard, including ensuring that the Council's decisions, and any practices it may follow to get to the decisions, are consistent with the Council's and City's legal responsibilities.

Past Practices

I have reviewed the practices that different City Councils developed and adhered to in the past when reviewing complex development projects. Four informal practices have emerged that may be of interest to this Council for possible adherence or avoidance.

1. Negotiations Are Directed by the Full City Council and Conducted by the City Manager

Prior Councils have uniformly followed a process where they exclusively provide final direction to the City Manager about what they believe must be addressed in discussions with an applicant or in a development agreement. In each instance, the City Manager was vested with exclusive authority to negotiate with the applicant but within the parameters established by the full Council. This approach has been popular because it ensures each Council Member has an equal voice in the process while preventing any third party from being able to sow confusion and even mistrust between Council Members.

2. Meetings

The most common practice followed by prior City Councils was to ensure that if a Council member was to take part in a meeting with an applicant, its consultants and/or counsel, that a member(s) of City staff should also attend. Prior Council's believed this approach helped ensure that both the applicant and City would have the most knowledgeable people in meetings based on the topic and/or agenda for each meeting. There was also a view that this would also help surface any misunderstandings or misconceptions between the applicant and the City as early as possible in the City's formal review process.

One thing Councils have not done in the past is provide a regular public update on meetings with the applicants. If the Council desires, an agenda item under Mayor & Council Matters could address meetings, development application status, etc. This would have the value of adding another layer of transparency to the process.

Adopting this approach would not prevent Council Members from working on a development agreement for the project if a subcommittee process is established (discussed below), it would simply ensure that appropriate City staff is also joining the meeting. Similarly, it would not prevent a subcommittee of the Council from meeting with an applicant because City staff would already be present for such a meeting.

3. The Subcommittee Process

This and other Councils have used a subcommittee process successfully in understanding and responding to major issues. The Council may choose to do that here. If so, the most common example is that a Council subcommittee reviews the projects and identifies issues for discussion with the full Council. On one occasion in the past, a subcommittee of the Council and of the Planning Commission met jointly to review issues presented by a proposed development and jointly made recommendations to the full Council. Alternatively, the Council can continue to sit as a "committee of the whole" when reviewing the projects with staff and outside experts so that direction to the City Manager comes from the full body. While the subcommittee process has worked well on many issues, given that we are at the point in the process where applications have been submitted and environmental review is nearly complete (for the purposes of draft environmental impact reports) the subcommittee process may not be how the City Council wishes to proceed.

4. The Timing of Meetings

Over time various individual Council Members have declined to accept or convene meetings directly with an applicant once their land use development application or application for zoning amendment is on file. As you would imagine there are those who praise this approach as

ensuring that the Council is only involved in the final decision-making and therefore avoids any appearance of conflicts of interest, etc. And, there are others who criticize it for too broadly removing the people's elected representatives from the process.

The one observation I can offer is that if the Council or individual Council Members were to abide by the proposed process under Item 2 above, any such concerns would be moot.

5. Planning Commission

Prior Councils have directed members of the Planning Commission and other City committees and commissions not meet or confer, directly or indirectly, with an applicant or any representative of a project for which an application is pending unless it is doing so via a Commission subcommittee. This approach has helped ensure that negotiations between the City and the applicant are directed by the Council alone.

Other Considerations for Knowledge/Awareness

1. It is to be expected and entirely appropriate that Council Members may be engaged by their constituents about development issues in the City. You are their representatives, and they have every right to ask you to listen to their concerns and to give them due consideration. Similarly, you have every right to decline to attend such meetings. If you do hold any such meetings, the most important caution is to be mindful of and ensure your actions are compliant with the Brown Act and related responsibilities.

2. Each of you is elected individually and it is entirely appropriate that one or more of you may decide individually to accept meetings with the applicant, the proponents and opponents of their project, third party advocacy groups, etc., notwithstanding the benefits of the proposed practices discussed above because you have made a genuinely good faith determination that taking these types of meetings are in the City's best interests and so long as you comport yourself in such meetings in full compliance with your legal responsibilities.

3. There are common concerns with meetings taken outside of Council-agreed practices that each of you should be mindful of whether you are meeting with a constituent or an advocacy group.

- Your good faith judgement as to whom to meet and about what with respect to the projects is subject to scrutiny by enforcement bodies like the FPPC and the Attorney General's

Office, so consider seeking advice from the City Attorney as to factors you should be considering in making such a judgement.

- Experience confirms that it is individual meetings or even rumors of individual meetings that are often the basis for the damaging misconceptions of the independence of past Councils' decisions (e.g., the Council's subcommittee process has rarely led to misunderstandings).
- One potential way to address this is for Council Members to share meetings they may have under the Mayor & Council Members section of the agenda. That also allows for more transparency. The Council could exclude conversations and meetings with non-affiliated constituents but include constituents representing or potentially representing an interest group.



BRISBANE CITY COUNCIL

ACTION MINUTES

**CITY COUNCIL SPECIAL MEETING AGENDA
THURSDAY, OCTOBER 3, 2024**

HYBRID MEETING, 50 PARK PLACE, BRISBANE, CA 94005

6:00 P.M. WORKSHOP

Mayor O'Connell called the meeting to order at 6:06 p.m. Councilmember Davis joined via Teleconference at 251 Mendocino St. Brisbane, California. Councilmember Cunningham joined via Teleconference at 1826 Birdie Lane, Henderson, Nevada.

A. Approval of the Special Meeting Agenda

Councilmembers Mackin made a motion, seconded by Councilmember Lentz to approve the special meeting agenda as it stands. The motion passed unanimously by all present.

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

Noes: None

Absent: None

Abstain: None

B. Discuss Draft Code of Conduct

City Manager Dennis reported that the Best Practices Ad Hoc Subcommittee focused on a high-level "code of conduct" document based on the Town of Colma's document. It is being recommended for Council to direct staff or the Subcommittee to finalize a Code of Conduct based on Council's discussions at the workshop. Councilmembers Davis and Lentz, as the Best Practices Ad Hoc Subcommittee members, provided a recap on why the Town of Colma's Code of Conduct was a good foundation on how councilmembers and staff should treat each other personally and professionally.

After Council questions, no public comment and Council discussion, Councilmembers directed staff to draft a document that will compile the proposals from the Best Practices Subcommittee, Councilmembers' additional input, and the California Fair Political Practices Commission (FPPC) mandates. The Council agreed to discuss this matter again at a future City Council Special Meeting in a workshop format.

ADJOURNMENT

The meeting was adjourned by Mayor O'Connell at 7:30 p.m.

Ingrid Padilla
City Clerk



CITY COUNCIL AGENDA REPORT

Meeting Date: July 18, 2024

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

Subject: Election Issues: ii. Discussion Whether to Adopt a Resolution to Place on the November 5, 2024 Ballot an Ordinance to Establish Procedures by which City Council will Appoint the Mayor and Mayor Pro Tempore

Recommendation:

Discuss whether to adopt a Resolution to place on the November 5, 2024 ballot an ordinance by which City Council will appoint the Mayor and the Mayor Pro Tempore.

Background:

The mayor and mayor pro tempore ("pro-temp") in a general law city, such as Brisbane, are selected by a vote of the members of the city council. The Brisbane City Council has adopted a resolution (Resolution 2016-06, attached) setting guidelines for the selection of mayor and mayor pro temp. The resolution provides that serving as mayor and mayor pro temp is a privilege and not a right and states that "Whenever possible, each Council member shall have the opportunity to serve as mayor during that council member's first term of office" and "Whenever possible, the City Council shall select the then current mayor pro tempore as the next mayor." Accordingly, not every Council member is guaranteed that he or she will have the opportunity to serve as mayor.

City Council requested staff to place an item on the agenda to discuss whether an ordinance should be submitted to the voters at the November 2024 election that would replace the above guidelines with clear direction as to how the mayor and mayor pro temp are to be selected. In general terms, the ordinance would set up a rotation by which council members will be appointed as mayor and mayor pro temp, thereby guaranteeing that a council member will have the opportunity to serve as mayor. A proposed Ordinance is attached.

Note that the proposed Ordinance has a subsection D that references procedures by which a Council Member may be "removed" as Mayor and other Council Members may be moved "down" on the Mayoral rotational list. This document is a product of discussions by the ad hoc Code of Conduct Subcommittee (Council Members Lentz and Madison) concerning the grounds, timing and consequences concerning removing the Mayor (as Mayor) or moving a Council member "down" on the mayoral rotational list. The current version of this document is attached; the provisions of the document would not be included in the ordinance in order that City Council would have the discretion to change its terms from time to time.

If the Council decides that it wants to place this item on the November 2024 ballot, Council would need to adopt a resolution prior to August 9, 2024 in order that the County Registrar of Voters would have the item timely. This could occur at the Council's August 1 regular meeting (currently cancelled) or at a Special Meeting between July 18 and August 9.

Discussion

The ordinance would distinguish between situations where all council members have been on the Council in the previous term (even if such council members have been re-elected) and where there are newly elected council members, i.e., persons who did not serve in the previous term of office.

Assuming all council members have been on the Council in the previous term, Council would appoint as mayor the council member with the greatest length of time since that council member served as mayor. Council would appoint as mayor pro temp the council member with the second longest length of time since that member served as mayor.

Below are descriptions of how the rotation would be implemented in a mix of different scenarios:

1. Assume Council member A last served as Mayor in 2020, Council member B last served as Mayor in 2021, Council member C last served as mayor in 2022, Council member D last served as mayor in 2023 and Council member E has been mayor during 2024. Following the election in 2024 (and assuming all current council members are re-elected), if the voters approved an ordinance as described above, Council must appoint Council member A as mayor and must appoint Council member B as mayor pro temp. On the rotational list, Council member C would be in third position, Council member D would be in fourth position, and Council member E, who had just served as Mayor, would be in fifth or last position. The following year, Council would appoint Council member B as mayor, Council member C as mayor pro temp and Council member A would move to the fifth or last position.
2. If there are one or more newly elected council members, the procedure changes somewhat. If there is only one newly elected Council member, and the person who just served as mayor was re-elected or was not up for re-election, the newly elected Council member would be placed fourth in the rotation and the procedures for appointing the mayor and mayor pro temp would be the same as described above. If there are two newly elected council members, the newly elected member with the higher number of votes would be placed in the rotation in the third position and the other newly elected council member would be in fourth position. If there are three newly elected council members, the council member with the highest number of votes would be placed in the rotation in the second position, and hence would be appointed as mayor pro temp, with the other two newly elected members being in third and fourth positions.

The only caveat to this procedure would be if the person who had just served as mayor either not being re-elected or choosing not to run. In that case, and depending on the number of newly elected council members, a newly elected council member could be in the fifth, fourth or third position in the rotation.

3. Finally, if a council member who would otherwise be in line to be selected as mayor chooses not to be appointed, the appointment would be deferred for a year, and that person will remain as mayor pro temp. Council would then appoint as mayor the council member who was in third position. The following year, Council would select as mayor the council member who deferred. As to the council member who deferred, when that member's mayoral term is over, that council member, rather than moving into the fifth or last position, would be placed in the fourth position, so as not to lose the person's overall position in the rotation.

If the Council were to direct this item be placed on the November 2024 ballot, the ballot question would ask "Shall an ordinance establishing procedures for appointing the Mayor and Mayor Pro-Tempore be adopted? Yes/No"

In addition, if the Council were to direct that this item be placed on the November 2024 ballot, the resolution would authorize the City Council to submit arguments and rebuttals for or against the Ordinance. The resolution would also provide the City Clerk to transmit a copy of the ordinance to the City Attorney to prepare an impartial analysis of the effects of the ordinance on existing law and operation of the ordinance.

If the ordinance received a majority vote of those voting on it, the ordinance would be in effect and could only be changed by a future vote of the electorate. The Ordinance would apply to the procedure concerning the appointment of Mayor for 2025 and thereafter.

Alternative to Placing the Item on the Ballot

Unlike establishing City Council term limits which may only be adopted by the voters, City Council could, of course, choose to implement this procedure by the Council's adopting an ordinance or a resolution, rather than taking the item to the voters. Procedures adopted by the Council, however, could then be changed by a vote of a future Council.

Fiscal Impact

There will be an additional cost to the City to place this matter on the ballot. Election costs are difficult to estimate depending on the number of registered voters, the number of Brisbane items on the ballot, and ballot measures from other jurisdictions. Staff estimates the cost to place one or two ballot measures on the ballot in the range of \$19,000 to \$27,000. There are funds in the City Clerk's budget for this purpose.

Environmental Review

If a resolution placing the ordinance on the ballot were adopted, it would not be subject to environmental review because it concerns organizational or administrative activities of the City that in and of itself will not result in direct or indirect physical changes to the environment and, hence, it is not a project under the California Environmental Quality Act. Section 15378 (b) (5), CEQA Guidelines.

Attachments:

1. Resolution 2016-06
2. Proposed Ordinance
3. Draft Procedures for Removing a Mayor and Moving Council Members on the Mayoral Rotational List

Jeremy Dennis

Jeremy Dennis, City Manager

Ingrid Padilla

Ingrid Padilla, City Clerk

Michael H. Roush

Michael Roush, Legal Counsel

RESOLUTION NO. 2016-06

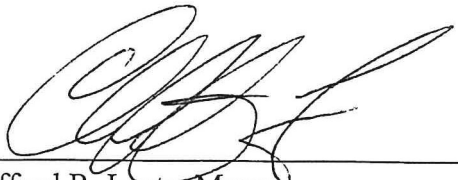
**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRISBANE SETTING
GUIDELINES FOR THE SELECTION OF MAYOR AND MAYOR PRO TEMPORE**

WHEREAS, the City Council wishes to set guidelines for the selection of Mayor and Mayor Pro Tempore so that potential conflicts concerning who is selected as Mayor and Mayor Pro Tempore may be avoided; and

WHEREAS, serving as Mayor and Mayor Pro Tempore for the City is a privilege and not a right.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Brisbane that the following Guidelines are adopted for the selection of Mayor and Mayor Pro Tempore:

1. The City Council will meet the week prior to the Council's Reorganization Meeting (typically held in December of each year) to discuss the selection of the next Mayor and Mayor Pro Tempore.
2. Whenever possible, each Council member shall have the opportunity to serve as Mayor during that Council member's first term of office.
3. Whenever possible, the City Council shall select the then current Mayor Pro Tempore as the next Mayor.
4. These Guidelines supersede any other adopted Council policy or guidelines concerning the same issue.



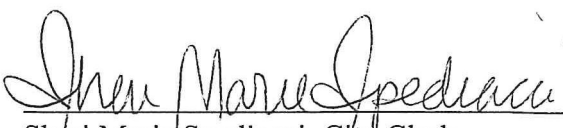
Clifford R. Lentz, Mayor

I hereby certify that the foregoing Resolution No. 2016-06 was duly and regularly adopted at the meeting of the Brisbane City Council on February 18, 2016 by the following vote:

AYES: Councilmember Conway, Davis, Liu, O'Connell, and Mayor Lentz

NOES: None

ABSENT: None



Sheri Marie Spediacci, City Clerk

Exhibit A

CITY OF BRISBANE APPOINTMENT OF MAYOR AND MAYOR PRO TEMPORE MEASURE

ORDINANCE NO. ____

AN ORDINANCE OF THE CITY OF BRISBANE ADDING CHAPTER 2.40 (APPOINTMENT OF MAYOR AND MAYOR PRO TEMPORE) TO THE BRISBANE MUNICIPAL CODE

WHEREAS, State law provides that the Mayor and Mayor Pro Tempore of a general law city, such as Brisbane, are appointed by the City Council;

WHEREAS, the City Council by resolution has established procedures by which the City Council will appoint the Mayor and Mayor Pro Tempore but these procedures are only guidelines; and

WHEREAS, City Council would like to establish procedures by which the Mayor and Mayor Pro Tempore are appointed that are more than guidelines; and

WHEREAS, State law allows a City Council to submit to the voters a measure to establish procedures by which City Council will appoint the City's Mayor and Mayor Pro Tempore.

NOW, THEREFORE, BE IT ORDAINED BY THE PEOPLE OF THE CITY OF BRISBANE AND THE CITY COUNCIL OF THE CITY OF BRISBANE THAT:

Section 1. Ordinance.

The Brisbane Municipal Code is hereby amended by adding a new Chapter, Chapter 2.40, Appointment of Mayor and Mayor Pro Tempore, to read as follows:

"Section 2.40.010. Definitions

- A. Current Council Member. A current Council Member is a Council Member who served in the City Council's most recent term of office, even if, at the time City Council appoints the Mayor and Mayor Pro Tempore, the person had been reelected to the City Council.
- B. Newly Elected Council Member. A newly elected Council Member is a person who at the most recent election was elected but did not serve in the immediate term of office before the election

Section 2.40.020 Appointment of Mayor and Mayor Pro Tempore on Rotational Basis

Annually and in December, City Council shall meet and appoint from its members on a rotational basis a Mayor and Mayor pro-temp as provided in this Ordinance. The Mayor and Mayor pro-temp shall serve until the City Council selects their successors.

Section 2.40.030 Appointment Procedures.

- A. As to a current Council member, the length of time that has elapsed since the Council Member served as Mayor shall be determined. City Council shall appoint as Mayor the current Council Member with the greatest length of time since that Council Member served as Mayor. City Council shall appoint as Mayor Pro Tempore the current Council Member with second longest length of time since that Council Member served as Mayor. The current Council Member with the third longest length of time since the Council member served as Mayor shall be in third position as to the rotation. The current Council Member with fourth longest length of time since the Council member served as Mayor shall be in fourth position as to the rotation. The current Council Member who just served as Mayor shall be in the last or fifth position.
- B. A newly elected Council Member shall be placed in fourth position in the rotation, immediately ahead of the current Council Member who served as Mayor in the previous term of office. If there are two newly elected Council Members, the Council Member with the higher number of votes shall be placed in third position in the rotation and the other Council Member shall be placed in the fourth position in the rotation. If there are three newly elected Council Members, the Council Member with the highest number of votes shall be appointed as Mayor Pro Tempore the Council Member with the second highest number of votes shall be placed in third position in the rotation, and the other Council Member shall be placed in fourth position in the rotation. If the Council Member who served as Mayor in the previous term of office was not re-elected or chose not to run, the newly elected Council Members shall be placed in the third, fourth, and fifth position in the rotation, depending on the number of newly elected Council Members and the number of votes each Council Member received.
- C. If a Council Member who would otherwise be in line to be appointed Mayor chooses not to be appointed, that person's appointment shall be deferred for one year, and the Council Member will remain Mayor Pro Tempore. City Council shall then appoint as Mayor the Council Member who was in third position in the rotation. The following year, City Council shall appoint as Mayor the Council Member who deferred. As to the Council member who deferred the Mayoral appointment for one year, when that Council Member's Mayoral term of office is over, that Council Member, rather than moving into fifth or last position, will be placed in fourth position in the rotation. If a Council Member chooses to defer the Mayoral appointment two years in row, the Council Member will be placed in third position in the rotation.

- D. Nothing in this Section 2.40.030 precludes or prevents the City Council from removing a Current Council Member as Mayor, or moving a Council Member's position on the Mayoral rotational list, if the City Council has adopted such procedures for so doing including, but not limited to, the grounds, timing and consequences."

Section 2. Environmental Clearance

This Ordinance is not a project for purposes of the California Environmental Quality Act (CEQA). Continuing administrative activities such as general policy and procedure making except as they are applied to specific instances that have a direct or indirect effect on the environment are not projects. CEQA Guidelines, Section 15378 (b) (2). This Ordinance will have no direct or indirect effect on the environment.

Section 3. Severability

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

Section 4. Effective Date.

This Ordinance shall take effect only if adopted by the electorate at an election to be held on November 5, 2024.

Mayor of the City of Brisbane

Attest:

Ingrid Padilla, City Clerk

APPROVED by the following vote of the People of the City of Brisbane on November 5, 2024:

YESES

NOES

ADOPTED by Declaration of the vote at the November 5, 2024 election by the City Council of the City of Brisbane on December ____, 2024.

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

**Draft Procedures for Removing a Mayor & Moving Council Members on the Mayoral
Rotational List**

- A. Grounds for Removing a Council Member as Mayor or Changing a Council Member's Position on the Mayoral Rotational List
1. If a sitting Council Member, or any other Council Member, is alleged to have behaved in a manner inconsistent with their office, within 30 days of the alleged behavior having come to the City's attention, the disinterested Members of the City Council shall hear the allegation and determine by majority vote whether the allegation warrants further review.
 2. If the City Council determines that an allegation warrants further review, the City Attorney shall be solely responsible for conducting the review, directly or indirectly, and reporting back to the City Council on the results of the review within 90 days.
 3. In carrying out its Section 2 review, the City Attorney shall, at minimum, determine whether one or more of the following have occurred.
 - a. The Council Member has pled guilty, pled no contest to, or has been convicted of a felony.
 - b. The Council Member is found by the Fair Political Practices Commission to have violated the state Political Reform Act, or the Council Member has conceded to an allegation that they violated the Act.
 - c. An outside law enforcement agency finds or has found that a Council Member has engaged in a physical altercation with another Council Member or City staff, and that the Council Member instigated or escalated the altercation.
 - d. An outside investigator, retained by the City Attorney, finds or has found that a Council Member disclosed confidential information, whether provided in closed session or otherwise, for the purpose of influencing the outcome of a decision.
 - e. An outside investigator, retained by the City Attorney, finds or has found that a Council Member violated the City's Sexual Harassment Policy.
 - f. An outside investigator, retained by the City Attorney, finds that the Council Member was under the influence of alcohol or drugs during a City Council meeting.

B. Timing

The City Council must initiate the process to remove a Council Member as Mayor, or to move a Council Member's position on the mayoral rotation list, within one year from a finding reported by the City Attorney under Section 3.

C. Consequences

If the City Attorney reports a finding against a Council Member under Section A3, the four (4) disinterested Council Members shall determine the consequence of the finding:

1. If the Council Member is serving as Mayor when a finding under Section A3 is reported to the City Council, the four (4) disinterested Council Members shall determine by [majority/unanimous] vote whether the Council Member shall be removed as Mayor and placed in the fifth position on the mayoral rotation list. Such removal will occur even if the event that caused the removal occurred while the Council Member was not serving as Mayor.
2. If a Council Member is not serving as Mayor when a finding under Section A3 is reported to the City Council, the four (4) disinterested Council Members shall determine by [majority/unanimous] vote whether the Council Member shall be held back one year on the mayoral rotation list.



BRISBANE CITY COUNCIL

ACTION MINUTES

**CITY COUNCIL MEETING AGENDA
THURSDAY, JULY 18, 2024**

HYBRID MEETING, 50 PARK PLACE, BRISBANE, CA 94005

OLD BUSINESS

Q. Election Issues

- ii. **Discuss whether to place on the November 5, 2024 Ballot an ordinance by which City Council will appoint the Mayor and the Mayor Pro Tempore**

Legal Counsel Roush reported that it is before the Council to discuss whether to place on the November 5, 2024 Ballot an ordinance by which City Council will appoint the Mayor and Mayor Pro Tem but no resolution was provided.

After no council questions, Dana Dillworth, Tom Heinz, Chris Florkowski, and Michele Salmon commented on their position on the Mayor and Mayor Pro Tem appointment and rotation.

After Council discussion, staff was directed to provide a City Council Workshop in October regarding best practices and code of conduct.

Council took a brief break.

Attachment 6



CITY COUNCIL AGENDA REPORT

Meeting Date: June 20, 2024

From: Interim City Manager Holstine

Subject: Elections Issues Update

Background

The Charter City and Election Issues Subcommittee met on June 6th. The subcommittee has been tasked with three assignments. The purpose of this item for the June 20th meeting is to update the City Council and receive direction as appropriate.

Directly Elected Mayor

The subcommittee has reviewed this approach. Both Belmont and San Bruno have directly elected Mayors. The subcommittee has discussed the pros and cons. As an alternative to a directly elected Mayor the subcommittee drafted language regarding Mayoral rotation. The language is in Attachment 1A. The Council may adopt this language by resolution and/or refer it to the voters for ratification. The former could be amended by the City Council at any time through a revised resolution. The latter would require voter approval to change.

**Proposed Language for Mayoral Rotation to be Placed on the Ballot
(Notes from the June 6, 2024 Election Issues Subcommittee Meeting)**

The current Council Member with the longest term from last serving as Mayor shall be sworn in as Mayor. The current Council Member with the second longest term from last serving as Mayor shall be sworn in as the Mayor Pro Tem. The current Council Member with the third longest term from last serving as Mayor will move into the third position in the rotation. The current Council Member with the fourth longest term from last serving as Mayor will move into the fourth position in the rotation. The outgoing Mayor will go to the end of the rotation.

Newly at-large elected Council Members will be placed at the end of the current Council rotation, but will be ahead of the outgoing Mayor. If there is more than one newly elected at-large Council Member in a given election, the newly elected Council Member with the most votes in their election shall be placed at the end of the current Council rotation. The newly elected at-large Council Member with the least amount of votes shall be placed at the end of the rotation, but ahead of the outgoing Mayor.

Newly by-district elected Council Members will be placed at the end of the current Council rotation, but will be ahead of the outgoing Mayor. If there is more than one newly elected by-district Council Member in a given election, the newly elected Council Members will be chosen randomly to be placed at the end of the current Council rotation, but ahead of the outgoing Mayor.

In the event the Mayor Pro Tem chooses not to serve as Mayor, they can defer for a year and the next council member in line can take their place. They will remain the Mayor Pro Tem and become Mayor the following year. Their decision to defer a year does not alter the lineup and the person after them does not change places permanently, the adjustment in the rotation is temporary.



CITY *of* BRISBANE

Charter City & Election Issues Subcommittee Agenda

Thursday, June 6th, 2024 at 2:45PM • Hybrid Meeting
Brisbane City Hall, Large Conference Room, 50 Park Place, Brisbane, CA

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

JOIN IN PERSON

Location: 50 Park Place, Brisbane, CA 94005 - [Large Conference Room](#)

Masks are no longer required but are highly recommended in accordance with California Department of Health Guidelines. To maintain public health and safety, please do not attend in person if you are experiencing symptoms associated with COVID-19 or respiratory illness.

JOIN VIRTUALLY

Join Zoom Webinar (please use the latest version: [zoom.us/download](https://us06web.zoom.us/j/85618257430)):

Join Zoom: <https://us06web.zoom.us/j/85618257430>

Meeting ID: 856 1825 7430

Call In Number: 1 (669) 900-9128

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

The agenda materials may be viewed online at www.brisbaneca.org at least 72 hours prior to a Meeting. Please be advised that if there are technological difficulties, the meeting will nevertheless continue.

TO ADDRESS THE SUBCOMMITTEE

IN PERSON PARTICIPATION

To address the Subcommittee on any item on or not on the posted agenda, please wait until Public Comments are being accepted.

REMOTE PARTICIPATION

Members of the public may observe/participate in the Committee meeting by logging into the Zoom Webinar. Aside from commenting while in the Zoom meeting, the following email line will be monitored during the meeting, and public comments received will be noted for the record during Public Comment or during the Item.

Email: Albarra@brisbaneca.org

SPECIAL ASSISTANCE

If you need special assistance to participate in this meeting, please contact Angel Ibarra at (415) 508-2109 or

Aibarra@brisbaneca.org. Notification in advance of the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting.

SUBCOMMITTEE MEMBERS:

Councilmember Davis, Councilmember Lentz

ROLL CALL

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

PRESENTATIONS AND DISCUSSION ITEMS

- B. Discussion Mayoral Rotation

PUBLIC COMMENT

ADJOURNMENT

File Attachments for Item:

B. Discussion Mayoral Rotation



CITY COUNCIL SUBCOMMITTEE AGENDA REPORT

To: Council Subcommittee regarding Election Issues
Meeting Date: June 6th, 2024
From: Interim City Manager
Subject: Mayoral Rotation

Background

At the Council meeting on May 16th, the Elections Subcommittee liaisons reviewed and gave their recommendations to the City Council regarding City districting, term limits and mayoral rotation matters that was discussed at their subcommittee meeting on May 13th.

Discussion

The council had a robust discussion and evaluated information provided and brainstormed alternatives. The topic of mayoral rotation was referred back to the subcommittee to review and what their recommendation would be to the council – whether to pursue this as a ballot initiative or not. If they would like it to go to the voters, then the subcommittee should work on the language for the resolution.

The following is a summary:

- Directly Elected Mayor -
 - The Subcommittee recommended that the term of a Mayor be 2 years and restricted to two terms.
 - As an alternative the Council could draft a strict rotation policy and refer that to the voters.
 - Under either scenario the Subcommittee is recommending that the role of the Mayor remain unchanged.

Attachment: Resolution 2016-06

RESOLUTION NO. 2016-06

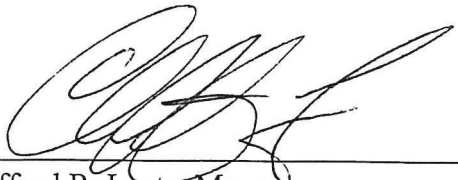
A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRISBANE SETTING GUIDELINES FOR THE SELECTION OF MAYOR AND MAYOR PRO TEMPORE

WHEREAS, the City Council wishes to set guidelines for the selection of Mayor and Mayor Pro Tempore so that potential conflicts concerning who is selected as Mayor and Mayor Pro Tempore may be avoided; and

WHEREAS, serving as Mayor and Mayor Pro Tempore for the City is a privilege and not a right.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Brisbane that the following Guidelines are adopted for the selection of Mayor and Mayor Pro Tempore:

1. The City Council will meet the week prior to the Council's Reorganization Meeting (typically held in December of each year) to discuss the selection of the next Mayor and Mayor Pro Tempore.
2. Whenever possible, each Council member shall have the opportunity to serve as Mayor during that Council member's first term of office.
3. Whenever possible, the City Council shall select the then current Mayor Pro Tempore as the next Mayor.
4. These Guidelines supersede any other adopted Council policy or guidelines concerning the same issue.



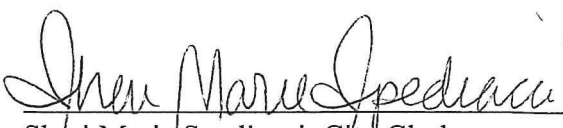
 Clifford R. Lentz, Mayor

I hereby certify that the foregoing Resolution No. 2016-06 was duly and regularly adopted at the meeting of the Brisbane City Council on February 18, 2016 by the following vote:

AYES: Councilmember Conway, Davis, Liu, O'Connell, and Mayor Lentz

NOES: None

ABSENT: None



 Sheri Marie Spediacci, City Clerk



BRISBANE CITY COUNCIL

ACTION MINUTES

CITY COUNCIL MEETING AGENDA THURSDAY, JUNE 20, 2024

HYBRID MEETING, 50 PARK PLACE, BRISBANE, CA 94005

NEW BUSINESS

H. Best Practices Ad Hoc Subcommittee Update

Interim City Manager Holstine reported that the Council appointed a subcommittee to work to draft a Best Practices Guideline. The subcommittee suggests that a resolution be drafted to memorialize a protocol regarding Councilmember best practices in interacting with land use and/or zoning applicants and that each council member be requested to sign the resolution to acknowledge and agree to these guidelines.

After Council questions, Michele Salmon made a comment on the need to have a true code of conduct between councilmembers and citizens and future developers.

During Council discussion, staff was directed to hold a future City Council workshop for best practices, research examples of Codes of Conduct for City Councilmembers from cities in San Mateo County and the Institute of Local Government and incorporate the Ethics Training as the foundation of Brisbane's Code of Conduct for City Councilmembers.

CITY COUNCIL HANDBOOK AND PRIMER ON LEGAL ISSUES 2020



FORWARD

This *City Council Handbook and Primer on Legal Issues* is provided to assist City Council members in the City of Brisbane as you carry out your public responsibilities.

This Handbook provides a reference for some of the laws, policies and procedures that are likely to come up during your tenure and with which we recommend any elected official should acquaint themselves. It is not intended to be dispositive on any issue or of any question, however. You are encouraged to ask the City Attorney any specific questions you may have or for clarification when needed.

The City Attorney will make every effort to assist City Council members in their role as city officials. In the event this Office is unable to provide assistance because the nature of an inquiry or concern is private in nature or creates a conflict of interest, the elected official will be referred to the appropriate agency or to private counsel.

Thomas McMorrow
Manatt Phelps & Phillips, LLP
Interim City Attorney

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LEGAL FRAMEWORK

The City of Brisbane is a municipal corporation, created for public purposes. Brisbane was incorporated as a general law city on November 27, 1961. As a municipality, the City is not a political subdivision of the state, unlike a county, which normally performs powers and functions which administer state policy.

CONCURRENT ROLES

Members of the City Council wear several "hats" since they serve as members of other entities operating on behalf of the City.

Successor Agency of the Redevelopment Agency and Oversight Board

The Redevelopment Agency of the City of Brisbane was established in 1957. The ability to use "property tax increment" allowed the Agency to improve blighted areas in the City and to develop the Brisbane Marina. However, in 2011 and 2012 the State Legislature enacted ABx1 26 which abolished redevelopment in California and dissolved all local redevelopment agencies, including Brisbane's. State law established Oversight Boards to supervise redevelopment dissolution, and provided for the Successor Agencies to redevelopment agencies to handle matters related to the dissolution of the redevelopment agency.

Pursuant to the California Community Redevelopment Law (Health and Safety Code Section 33000, et seq.), the members of the City Council serve as the members of the Board of Directors of the Successor Agency to the Redevelopment Agency and they served as the Oversight Board until 2018. (After 2018, there is no longer a local Oversight Board; the County serves as the Oversight Board for all Successor Agencies in the County). The law defined redevelopment as the "planning, development, replanning, redesign, clearance, reconstruction, or rehabilitation" of properties "as may be appropriate or necessary in the interest of the general welfare." The Successor Agency acts, and the Oversight Board acted, independently of the City Council.

The primary role of the Successor Agency and Oversight Board since the dissolution of the Redevelopment Agencies has been to develop a Recognized Obligations Payment Schedule for continuing obligations of the former redevelopment agency that can be paid from property taxes, and the development of a Long Range Property Management Plan that transfers properties used for governmental use to the City or proposes a plan for selling the properties that are not for a public use and distributing the proceeds to other County taxing agencies. The Long Range Property Management Plan has been adopted.

With the wind-down of the City's redevelopment agency, it is not expected that there will be much additional activity by the Successor Agency.

Brisbane Housing Authority

The Brisbane Housing Authority received the assets of the former Redevelopment Agency's Low/Moderate Income Fund in 2012. The purpose of the Housing Authority is to assist in the provision of low/moderate income housing in the City of Brisbane.

Brisbane Public Financing Authority

The Brisbane Public Financing Authority was formed in 1991. The Authority was created for the purpose of providing financing of public capital improvements for the City and, at the time, the Redevelopment Agency. The Authority has the power to issue bonds to pay the cost of any public capital improvement.

Guadalupe Valley Municipal Improvement District

The purpose of the District is to provide capital and infrastructure improvements, including improvements for water, sewer, streets, and storm drains, to residents and businesses within the District. The District is co-terminus with the boundaries of the City.

COUNCIL ACTIONS

Ordinances

Legislative acts of the City Council are known as ordinances. Ordinances may be general or special, depending upon their effect. Those which relate to the health, safety, and welfare of the community and are intended for long-term application throughout the City are known as general ordinances. Special ordinances are those with limited application, such as a franchise. General ordinances are codified in the Brisbane Municipal Code.

When is an ordinance necessary?

1. An ordinance must always be used to amend or repeal provisions of the Municipal Code or any uncodified ordinances.
2. An ordinance must always be used to adopt regulations of persons or property and which impose a penalty by fine, imprisonment or forfeiture for a violation of such regulation.
3. An ordinance must be used to take a particular action when the state law expressly requires that type of action to be taken by ordinance.

Ordinances are prepared by the City Attorney. Ordinances are prepared for presentation to the City Council as a part of a legislative calendar item, when requested by Council, or when prepared on the City Attorney's own initiative.

Standard Ordinances

Standard ordinances are subject to a two-step process: introduction and adoption .

At the time of the introduction of an ordinance, which is when the staff report is presented and most discussion occurs, it is customary to comply with the required "reading" of the ordinance by having the Clerk or Mayor read the Ordinance title. By law, all ordinances must be read either at the time of introduction or at the time of passage.

Corrections of typographical or clerical errors, including format changes, may be made after an ordinance is introduced. Any substantive changes to an ordinance to be introduced, or substantive changes made after introduction, necessitate the reintroduction of the ordinance.

By law, the adoption of a standard ordinance must not occur until at least five days after the introduction. Typically, an ordinance is introduced at one regular meeting and is adopted at the following regular meeting. Ordinance adoption is handled in a fairly routine manner, unless there is significant controversy on a subject.

All ordinances require a recorded majority vote of the total membership of the City Council for the adoption of any ordinance. Ordinances generally take effect thirty days after their final passage, except the following which take effect immediately upon adoption:

1. An ordinance relating to an election.
2. An urgency ordinance (see discussion below).
3. An ordinance relating to street improvement proceedings.
4. An ordinance relating to taxes for the usual and current expenses of the City.
5. An ordinance covered by particular provisions of law prescribing the manner of its passage and adoption.

Urgency Ordinances

An urgency ordinance is one that is necessary for the immediate preservation of the public peace, health or safety and contains a declaration of the facts which constitute the urgency. Urgency ordinances may be adopted immediately upon introduction at either a regular or special meeting. A four-fifth affirmative vote of the Council is required to adopt an urgency ordinance. Except for urgency ordinances, including interim land use ordinances (see discussion below), ordinances that take effect immediately on adoption still require a five-day period between introduction and passage.

Interim Ordinances

Special ordinances known as interim ordinances, related to zoning issues, may be adopted by the Council for a limited period of time. Interim ordinances, which frequently are used to impose moratoriums, may either go through an introduction and adoption process or be handled as urgency ordinances. In either situation, an interim ordinance requires a four-fifths vote for adoption and is effective immediately.

Time of Adoption

An ordinance adopted after midnight but during a meeting which commenced that same evening is deemed to have been adopted upon the earlier of the two calendar days. Adoption of an ordinance at an adjourned regular meeting is deemed to be adopted upon the calendar date at which the adoption actually occurred. In computing time, for example the 30 days between adoption of an ordinance and its effective date, the date of adoption is not counted.

Resolutions

Resolutions are formal Council actions which become effective upon adoption, unless otherwise stated. They are typically used to handle routine business and administrative matters requiring some type of formal memorialization. Resolutions are used for various reasons, such as when specifically required by law, when needed as a separate evidentiary document to be transmitted to another agency, or where the frequency of future reference to its contents warrants a separate document to facilitate reference and research.

By law, the City Attorney is responsible for the preparation of all resolutions.

Every effort is made to prepare resolutions in advance so that they may be reviewed by Council. When the resolution has been previously prepared it may be adopted, with or without modification, by way of a simple motion, second, discussion and vote.

If a resolution has not previously been prepared, the Council may instruct the City Attorney to prepare a resolution for later presentation or adoption, or may indicate the general nature of the contents of the resolution, vote its adoption, and direct the City Attorney to prepare it for inclusion in the City records. Generally, when Council indicates at a meeting that it wishes to adopt a resolution not previously prepared, a title is suggested and a motion made to adopt a resolution "by title only."

Resolution titles, unlike ordinance titles, serve descriptive purposes only and are not binding. Resolutions are not required to be read in full.

Resolutions and orders for the payment of money, like ordinances, require the affirmative votes of a majority of the total membership of the City Council.

Motions

The least formal of Council actions, motions typically are used for procedural matters (such as to continue items) or for administrative matters (such as to accept reports). An adopted motion is as legally effective and binding as an adopted resolution but generally is recorded simply as an item entry in the Minutes. Motions also require the affirmative vote of a majority of the total membership of the City Council.

Minute Orders

A minute order is a brief notice documenting an action taken by the Council. It is distributed subsequent to the meeting at which the action is taken. It is used only occasionally, generally when the Council wishes to provide notice other than in the Minutes that it adopted a particular motion.

THE BROWN ACT "OPEN MEETING LAW"

Overview

The “Brown Act” (Government Code Section 54950, et seq.), authored by Assemblyman Ralph D. Brown in 1953, focuses on keeping the public business in the public's eye and governs many of the processes which must be followed with regard to notices, agendas, and the conduct of meetings. It attempts to strike a balance between public access to the activities of a public body and the need for candor, debate and information gathering.

Meetings

With few exceptions, the law provides that all deliberative processes be open and available for public scrutiny. "Meeting" is defined in Government Code Section 54952.2 as

"any congregation of a majority of the members of a legislative body at the same time and location, including teleconference location as permitted by Section 54953, to hear, discuss, deliberate, or take action on any item that is within the subject matter jurisdiction of the legislative body."

Any use of direct communication, personal intermediaries, or technological devices that is employed by a majority of the members to develop a collective concurrence as to action to be taken on an item is considered a meeting under the Brown Act. Serial meetings are prohibited. A Council member's e-mail, text or other communication to two or more other Council members may be considered a serial meeting and is to be avoided.

The law requires that members of the public be provided with the right to address the City Council, including criticism of the "policies, procedures, programs, or services of the agency, or of the acts or omissions of the legislative body."

During the COVID-19 pandemic and the declaration of an emergency on a State wide and local level, meetings have been conducted “virtually”. The City Clerk instructs the City Council, staff and members of the public how to participate in Council meetings.

Agenda/Notice

As part of the notice requirements, the Brown Act requires the posting of an agenda at least 72 hours prior to a regular meeting, containing a brief general description of each item of business. (The Brisbane Municipal Code specifies three locations – City Hall, the Brisbane Community Center/Library, and the Mission Blue Center Tennis Courts – as the official places for the posting of all notices and other documents required by law to be posted.) Special meetings (see below), however, only require 24 hours’ notice as to posting of an agenda. Subject to limited exceptions,

only items appearing on the posted agenda may be acted upon. It is permissible for an item not on the agenda to be discussed, for example, an item brought up by a member of the public under “Oral Communications”, so long as there is no discussion (other than a brief comment or referral to staff) and no decision as to how the matter should be resolved is taken. Similarly, brief discussions of procedural or preliminary matters which are not substantive (e.g., instruction to staff to report back, scheduling of meetings and items) are not prohibited.

There are several exceptions to the agenda requirement:

1. Emergency matters.
2. There is a need to take immediate action and that need for action came to the attention of the local agency after the agenda was posted (requires two-thirds vote).
3. Items previously posted in connection with a meeting which occurred not more than five (5) days prior.

Types of Meetings

The Brown Act specifies how meetings are called and noticed. It addresses several types of meetings: regular meetings, special meetings and emergency meetings, as well as closed sessions.

Regular meetings are those conducted regularly on the same day of a week beginning at fixed periods of time. In Brisbane, Municipal Code Chapter 2.44 requires regular meetings to be held on the first and third Thursdays of each month unless such day is a holiday, in which case the meeting may be held on a different day of the same week unless another business day is designated by the Council or the meeting is cancelled.

A special meeting may be called at any time by the presiding officer, or by a majority of the members of Council, by delivering personally or by mail written notice 24 hours in advance to each member of the Council and to each local newspaper of general circulation, radio and television station requesting notice in writing and posting a notice on the City’s web site. Written notice may be dispensed with for any member who at or prior to the time the meeting commences files a written waiver of notice or for any member who is actually present at the time the meeting convenes. Notice of the meeting must be posted at least 24 hours prior to the special meeting in a location freely accessible to members of the public. (As noted above, the Brisbane Municipal Code specifies three locations where such notices are required to be posted.) The notice is required even if the meeting will be a closed session, and must state the time, place and business to be transacted. No other business may be considered at a special meeting.

Emergency meetings may be held if there is a work stoppage or other activity which severely impairs public health, safety or both, or if there is a crippling disaster. The 24-hour notice and posting are not required in such situations. Emergency meetings may not be held in closed session. Local newspapers of general circulation and radio or television stations that have requested notice of special meetings must be notified of emergency meetings at least one (1) hour prior to the emergency meeting or, in the case of a crippling disaster, at or near the time the presiding officer notifies members of the legislative body.

Study sessions, sometimes referred to as workshops, are open to the public and are meetings for the purposes of the Brown Act, but are not intended to constitute regular Council or Commission meetings. At such sessions, no motions are offered and no formal action is taken. The sole purpose of study sessions is to provide background information to members of the Council or Commission.

Closed sessions are permitted in a limited number of instances, subject to specific rules and regulations. Closed session meetings must be noticed on a posted agenda.

Permissible closed sessions under the Brown Act include:

- Labor Negotiations
- Pending Litigation
- Real Estate Negotiation
- Public Security
- Personnel Matters
- Certain Licensing Matters

A public report, either oral or written, must be made of most actions taken in closed session, and the vote or abstention of every member present disclosed.

Adjourned meetings

The City Council may adjourn any meeting to a later time, date and place. Less than a quorum may adjourn. A copy of the order or notice of adjournment must be conspicuously posted on or near the door of the place where the meeting was held within 24 hours after the time of the adjournment. When an order of adjournment of any meeting fails to state the hour at which the adjourned meeting is to be held, it is held at the usual hour specified for regular meetings. No adjournment may be for a longer period than the next regularly scheduled meeting.

Action Taken

"Action taken" is defined in Government Code Section 54952.6 as follows:

‘Action taken’ means a collective decision made by a majority of the members of a legislative body, a collective commitment or promise by a majority of the members of a legislative body to make a positive or negative decision, or an actual vote by a majority of the members of a legislative body when sitting as a body or entity, upon a motion, proposal, resolution, order or ordinance.

This definition is very broad and includes matters taken up at meetings and away from meetings. In other words, a collective decision by a majority of a legislative body taken informally would still amount to “action taken” if it fits under the above definition. Certain contacts among individual Council members may function as a "meeting" for the purposes of the Brown Act. If, for example, a Councilmember makes separate telephone calls to other members of the Council to discuss and seek a majority consensus on a particular issue, this would be considered a "seriatim meeting." Seriatim meetings are a violation of the Brown Act.

A topic that commonly arises under the Brown Act deals with direction to staff. Council members routinely refer matters to staff for review or comment at a later meeting. This is an acceptable practice as long as the Council as a whole does not vote (or reach consensus without a vote) on any particular matter. Also, this practice does not cause a problem as long as the direction to staff does not change City policy or amount to a legislative act of the City Council. This procedure can be used to allow Council members to get information from staff or to direct staff to meet with people for a further report back to the Council. This format cannot be used to bind the legislative body in any way, shape or form.

When Council members decide to call a special meeting, the majority of the Council will often have to discuss what is going on the agenda. As long as those discussions do not amount to a decision on how to act, the agenda may be formed without violating the Brown Act.

Advisory committees are specifically subject to the Brown Act. Advisory committees composed solely of less than a quorum of the legislative body are not subject to the Brown Act unless they are standing committees with a continuing subject matter jurisdiction, or a fixed meeting schedule, or were created by formal action. Advisory committees and standing committees are not required to have regular meetings. Members of the legislative body may attend an open and noticed meeting of a standing committee so long as they attend only as observers. Committees formed on an ad hoc basis for a short period of time are not required to comply with the Brown Act.

Violations

Violation of the provisions of the Brown Act can result in criminal penalties, the imposition of civil remedies, and the award of attorney's fees.

Every member of a legislative body who attends a meeting where action is taken in violation of the Brown Act, with the intent "to deprive the public of information to which the member knows or has reason to know the public is entitled" is guilty of a misdemeanor. (Government Code § 54959) Misdemeanor violations can be punished by up to one year in jail and/or fines. The filing of a complaint is up to the district attorney.

The available civil remedies for violations of the Brown Act are injunction, mandamus or declaratory relief. These remedies are designed to prevent further or future violations. Before a lawsuit can be initiated, however, (1) the complainant must make a written demand to the City Council to correct or cure the violation, and (2) the Council must fail to do so. If the item is brought back and ratified by the Council, no action can be brought. At times matters may be brought back for ratification for safety's sake to prevent lawsuits or the appearance of a Brown Act violation.

Actions taken in violation of certain provisions may be invalidated: basic open meeting provisions (Government Code § 54953), notice and agenda requirements (Government Code §§ 54954.2 and 54954.5), and special meetings (Government Code § 54956). Any person may seek to invalidate an action that violates one of these Brown Act provisions. An action taken by the Council during a time of alleged Brown Act violations is not automatically null and void. If the actions were in "substantial compliance" with the law, or if they related to the sale of bonds, the issuance of contracts or the collection of a tax, those actions would still be valid.

If a violation is found and attorney's fees are awarded, the award is against the City and not against the individuals who violated the law. If someone brings an action against the City and the City prevails or the action is determined to be frivolous and without merit, the City may be awarded its attorney's fees.

If a violation of closed session provisions is determined to have occurred, the court may order the legislative body to tape record its closed sessions and securely preserve the tape recordings for a period of time.

CLOSED SESSION PROVISIONS

The Brown Act limits when the City Council may meet in closed session.

Labor Negotiations

The City Council may meet in closed session with the City Manager and/or any other designated representatives prior to and during consultations and discussions with representatives of employee organizations regarding the salaries, benefits and other terms of employment of employees in order to review its position and instruct the City Manager and any other designated representatives. Approval of an agreement concluding labor negotiations must be in open session after the agreement is final and has been accepted or ratified by the other party.

Pending Litigation

The City Council, based on advice of the City Attorney, may meet in closed session to confer with or receive advice from the City Attorney and/or any other associated legal counsel regarding pending litigation when discussion in open session concerning those matters would prejudice the position of the City in the litigation.

Litigation is considered pending when any of the following circumstances exist:

1. The City is a party in a formally initiated adjudicatory proceeding before a court, administrative body exercising its adjudicatory authority, hearing officer, or arbitrator.
2. A point has been reached where there is significant exposure to litigation against the City, or where based on existing facts and circumstances the City Council is meeting only to decide whether a closed session is so authorized.
3. Based on existing facts and circumstances, the City Council has decided to initiate or is deciding whether to initiate litigation.

Prior to holding a closed session regarding pending litigation, the agenda must include a notation or the presiding officer must state publicly which circumstance applies. If litigation has been initiated the title of the litigation must be stated or it must otherwise be specifically identified unless to do so would jeopardize the City's ability to effectuate service of process upon one or more unserved parties, or would jeopardize the City's ability to conclude existing settlement negotiations to its advantage, and a statement to that effect is made publicly.

Approval given in a closed session to initiate or defend litigation must be reported out. Approval to settle a matter must be reported out, but not until after it is final.

Real Property Transactions

The City Council may hold a closed session with the City Manager and/or any other designated negotiator prior to the purchase, sale, exchange or lease of real property by or for the City, to give instructions to its negotiator regarding the price and terms of payment for the purchase, sale, exchange or lease. However, prior to the closed session, the Council must in open and public session identify the real property which the negotiations concern. Approval of a transaction must be reported once it is final.

The City Council may also meet in closed session for discussions regarding eminent domain proceedings pursuant to the litigation exemption.

Threat to Public Security

The City Council may meet in closed sessions with the City Manager, City Attorney, District Attorney, Sheriff or Chief of Public Safety, or their respective deputies, on matters posing a threat to the security of public buildings or a threat to the public's right to access to public services or public facilities.

Personnel Matters

As to those employees that the City Council appoints (currently the City Manager and the City Attorney), the City Council may meet in closed session to consider the appointment, employment, evaluation of performance, discipline, or dismissal of a public employee or to hear complaints or charges against employees, but not against any elected official. It must report in a public meeting any action taken arising out of any closed session to appoint or employ a public employee. A closed session may not be held on complaints or to consider disciplinary action or dismissal unless the employee is given at least 24 hours advance written notice of the right to a public hearing.

Licensing Matter

When the City Council determines that it is necessary to discuss and determine whether an applicant for a license or license renewal, who has a criminal record, is sufficiently rehabilitated to obtain the license, a closed session may be held with the applicant and the applicant's attorney, if any, for the purpose of making the determination.

Case law makes clear that the privilege of meeting in closed session is a privilege held by the City Council as a body, not by an individual Councilmember. The privilege may only be waived (i.e., confidential information disclosed) by majority vote of the City Council.

PUBLIC HEARINGS

All items on the Council's agenda are items on which members of the public may be heard. Even on closed session items, members of the public may comment on the item before the Council adjourns to closed session. The Council therefore may "hear" any item on its agenda, whether or not the matter has had formal notice as a "public hearing". Certain matters, however, are formally noticed in advance as public hearings, pursuant to various provisions of state law. Unless otherwise specifically required by federal, state or local law, all public hearing dates and times are set administratively.

Noticed public hearings tend to be of two types: legislative or quasi-judicial. Legislative hearings generally result in the adoption of policy or regulations, such as a zoning ordinance. Quasi-judicial hearings are those in which the Council interprets and applies regulations, such as whether or not a permit should be issued.

Formally noticed public hearings generally are conducted in the following format:

- Staff report
- Questions of staff by Council
- Comments from public
- Questions by Council
- Discussion by Council
- Action by Council

The presiding officer conducts the hearing in such a manner as to provide for freedom of speech and expression of opinion, subject to the limits of courtesy and respect of others. Comments and questions from the public are limited to the subject under consideration. Depending upon the extent of the agenda and the number of persons desiring to speak on an issue, the presiding officer may limit a speaker's time. Any person speaking may be questioned by members of the City Council.

In those instances where there is a specific applicant for a matter which is the subject of a public hearing, the applicant is entitled to make a presentation at the commencement of the public hearing, and also is entitled to make any concluding remarks just prior to closure of the public hearing.

Council members should not discuss the merits of an issue until the public hearing has been closed. Once a hearing is closed, it is inappropriate for the public to speak except to answer an inquiry of a Councilmember, as addressed through the Chair.

When the Council conducts a quasi-judicial hearing, particularly when it is hearing an appeal of a decision by a board or commission, due process considerations impose certain procedural requirements. Among the requirements for due process are adequate notice and an opportunity to be

heard. Most important to due process is the obligation of the Council to decide quasi-judicial matters based upon the evidence presented through the application and hearing process, and not on information which is unavailable to the public as a whole nor on preconceived notions which cannot be substantiated by the evidence.

All persons interested in the matter which is the subject of a hearing are entitled to submit written or other evidence relevant to the issue for consideration by the Council, in addition to or in lieu of any oral evidence. The Council determines relevancy. If the Council decides that material submitted during the public hearing is relevant, but due to its quantity or complexity there is insufficient time to fully review it, the hearing may be recessed or continued. All evidence considered by the Council in reaching its decision must be retained by the City as part of the record, as a supplement to, but not as a part of, the minutes.

Advocates of a matter before the City Council who furnish documentation on the night of the Council meeting are expected to furnish sufficient copies for the City Council, City Clerk, City Manager, and members of the public. Failure to do so may cause the Council to reject consideration of such information, or cause the item to be continued.

If a Councilmember has met with a proponent or opponent of a matter which is the subject of a quasi-judicial hearing, that meeting should be acknowledged on the record after the item is read.

Administration of Oaths

The Council may require any person addressing the Council to be sworn as a witness and to testify under oath, although this rarely occurs. The Mayor may administer oaths. Appeals and revocation hearings are the most likely instances when testimony is taken under oath. (Government Code § 40603)

Subpoenas

The Council has the power and authority to compel the attendance of witnesses, to examine them under oath and to compel the production of evidence. Again, this also rarely occurs. Subpoenas attested by the City Clerk may be issued in the name of the City. Disobedience of a subpoena or the refusal to testify on other than constitutional grounds may be deemed contempt. (Government Code §§ 37104 and 37105.)

Absences

An absence from all regular City Council meetings without permission for 60 days consecutively from the last regular meeting attended results in a vacation of office. (Government Code § 36513(a).)

PARLIAMENTARY PROCEDURE

Many procedural rules are governed by state law, City ordinance or City resolution. Procedural matters not otherwise covered by a specific provision are handled in accord with parliamentary procedures often referred to as *Robert's Rules of Order*. Many cities have adopted a much more user friendly set of procedures known as "Rosenberg's Rules of Procedures". City Council may want to consider adopting these Rules. No parliamentary provision, however, is to be construed to supersede any procedure adopted by the City Council or required by state law.

It is recognized that parliamentary procedure applies to deliberative assemblies, but that the City Council also functions as a quasi-judicial body. Due process considerations impose certain procedural requirements on quasi-judicial entities. These requirements are sometimes different than the provisions of Parliamentary procedure. For example, a City Council cannot reconsider or rescind a quasi-judicial decision after the decision is final, in the absence of statutory authority to the contrary. In addition, the Government Code sometimes imposes different rules, such as providing that the Chair does participate in debate. (§ 36803)

Rules of procedure are adopted to expedite the conduct of business in an orderly fashion. The failure to observe a procedural rule does not affect the jurisdiction of the Council or invalidate any action taken at a meeting that is otherwise held in conformance with the law.

Basic Procedures – Main Motions

In conjunction with the agenda for a Council meeting, business is brought before the Council by the motion of a member. A motion may be used to bring a subject to the Council's attention or it may follow the presentation of a report or other communication. A motion is a formal proposal that the Council take a certain action.

The proposed action may be of a substantive nature, or it may consist in expressing a certain view, or directing a specific investigation and report back, or the like.

The basic form of motion, the form which brings business forward, is known as a "main motion." The main motion sets a pattern from which all other motions are derived.

The steps by which a motion is normally processed are (1) a member makes (or moves or offers) a motion, (2) another member seconds the motion and (3) the Chair states the motion. After a main motion is made and before the question is stated by the Chair, any member can informally suggest one or more modifications in the motion, which the moving member can accept or reject. Once stated, the motion is pending and open for discussion/debate. The Chair then puts the matter to a vote and

announces the result. If the Council decides to do what a motion proposes, it adopts the motion; if the decision is against what the motion proposes, the motion is rejected.

In situations where there appears to be no opposition or the matter involves routine business, the general consent or unanimous consent procedure can be used either to adopt a motion without the steps of stating the question and putting the motion to a vote, or to take action without even the formality of a motion. To obtain general or unanimous consent, the Chair states "If there is no objection to . . ." such and such an action will be taken.

A Short Course of Motions

1. Processing of Motions

After a main motion is made and seconded, it must be stated by the presiding officer before it can be debated. Until the presiding officer states the motion, the maker has the right to modify or withdraw it. Once stated, a main motion may not be withdrawn by the mover without the consent of the person seconding it.

2. Precedence of Motions

Once the main motion is properly placed on the floor, several related motions may be employed in addressing the main motion, and if properly made and seconded, must be disposed of before the main motion can be acted upon.

- a. Fix the time to which to adjourn
- b. Adjourn
- c. Recess
- d. Raise a question of privilege
- e. Call for the orders of the day (raise a point of order)
- f. Lay on the table
- g. Previous question (close debate)
- h. Limit or extend limits of debate
- i. Postpone to a certain time (postpone definitely)
- j. Refer or commit
- k. Amend
- l. Postpone indefinitely
- m. Motion to reconsider

These motions have precedence in the order indicated above, except that a motion to reconsider has precedence over all motions.

Types of Motions/Purpose

1. Fix the time to which to adjourn. A motion to fix the time to which to adjourn requires a second, is amendable and is debatable only as to the time to which the meeting is adjourned. The purpose is to set a time for continuation of the meeting.

2. Motion to adjourn. A motion to adjourn requires a second and is not debatable except to set the time to which the meeting is adjourned. A motion to adjourn shall be in order at any time, except as follows:

- When repeated without intervening business or discussion;
- When made as an interruption of a member while speaking;
- When the previous question has been ordered;
- While a vote is being taken.

3. Motion to recess. A motion to recess requires a second, is amendable, but is not debatable. The purpose is to interrupt the meeting and it is usually done by Mayor's declaration.

4. Motion to raise a question of personal privilege. Any Councilmember at any time during the meeting may make a request of the Chair to accommodate needs such as reducing noise, adjusting the heating or cooling system, etc. In situations in which a Councilmember's integrity, character or motives are questioned, or where the welfare of the Council is concerned, the maker of the motion may interrupt another speaker if the presiding officer recognizes the "privilege." The motion does not require a second, is not amendable, and is not debatable.

5. Motion to call for the orders of the day. A motion to call for the orders of the day does not require a second, is not amendable, and is not debatable. The purpose is to require adherence to the agenda. By a two-thirds vote, the orders of the day may be set aside. Changes are frequently handled by consensus.

6. Motion to lay on the table. The purpose is to interrupt current business for more urgent business. A motion to lay on the table requires a second, is not amendable, and is not debatable. It temporarily suspends any further discussion of the pending motion without setting a time certain to resume debate. If the motion prevails, and the subject is tabled, a member must move that the matter be "taken from the table" at the same meeting or at the next regular meeting of the Council. Otherwise, the motion that was tabled dies, although any Councilmember may request the subject be placed on an agenda for a later City Council meeting.

7. Motion to move the previous question. The purpose of this motion is to close debate and a two-thirds vote is required for passage. A motion to move the previous question must be made

and seconded without interrupting one who already has the floor. It is not debatable and is not amendable. It applies to all previous motions on the subject unless otherwise specified by the maker of the motion. If the motion to move the previous question fails, debate is reopened; if it passes, then a vote is taken on the pending motion.

8. Motion to limit or extend debate. A motion to limit or extend debate requires a second, is amendable and is not debatable. The motion requires a two-thirds vote. Its purpose is to limit or extend debate.

9. Motion to postpone to a certain time. A motion to postpone to a certain time requires a second, is amendable, and is debatable as to propriety of postponement and time set. Its purpose is to postpone the pending question to a specified time.

10. Motion to refer or commit. A motion to refer requires a second, is amendable, and is debatable only as to the propriety of referring. The substance of the subject being referred shall not be discussed at the time the motion to refer is made. The purpose of the motion is to send the subject to another City department, board, commission, committee or officer for further study and report back to Council, at which time subject is fully debatable. The motion may or may not contain directions or a return date.

11. Motion to amend. A motion to amend requires a second, is amendable, and is debatable only when the motion to which it applies is debatable. A motion to amend an amendment is in order, but one to amend an amendment to an amendment is not. An amendment modifying a motion is in order, but an amendment substituting a new motion or raising an independent question is not in order. Amendments take precedence over the main motion and the motion to postpone indefinitely. Amendments to amendments are voted first, then the amendment, then the main motion as amended.

12. Motion to postpone indefinitely. A motion to postpone indefinitely requires a second, is not amendable, and is debatable. If the motion is adopted, the principal question shall be declared lost. The purpose of the motion to postpone indefinitely is to avoid a direct vote on the main motion. Its correct use is when the intent is not to vote on the matter at all. It should not be confused with the motion to lay on the table, which is a means of temporarily bypassing a subject.

13. Motion to reconsider. As a general rule, a motion to reconsider an action taken by the Council may be made during the meeting at which the action was taken, or at an adjourned meeting of the Council. There are two exceptions: quasi-judicial matters (such as conditional use permits or special development permits), and matters which by law require a public hearing. A motion to reconsider requires a second, is debatable, and is not amendable. The motion must be made by one on the prevailing side, but may be seconded by any Councilmember. If the motion to reconsider is

successful, the matter to be reconsidered takes no special precedence over other pending matters. The purpose is to bring back the matter for review. If a motion to reconsider fails, it may not itself be reconsidered. Reconsideration may not be moved more than once on the same motion.

Other Common Parliamentary Inquiries

1. Division of question. If the motion contains two or more propositions, each of which is capable of standing on its own if the others are removed, the presiding officer may, and upon request of a member shall (unless appealed), divide the motion.

2. Rescind, Repeal or Annul. The Council may rescind, repeal or annul any prior action taken with reference to any legislative or administrative matter so long as the action to rescind, repeal or annul complies with all of the rules applicable to the initial adoption and no rights have intervened to create an estoppel, unless otherwise specified by law.

3. Suspend the Rules. Any Councilmember may move to suspend the rules if necessary to accomplish a matter that would otherwise violate the rules. A second and a two-thirds vote is necessary.

4. Appeals of Rulings of the Chair. The presiding officer has the authority and duty to make necessary rulings on questions of parliamentary procedure. Any two members have the right to appeal from the Chair's decision on such a question. By one member making an appeal, and another seconding it, the question is taken from the Chair and given to the Council as a whole for decision. An appeal is applicable only to a ruling by the Chair. No appeal can be made from the Chair's response to a parliamentary inquiry or other query, since such a reply is an opinion and not a ruling.

An appeal takes precedence over any question pending at the time the Chair makes a ruling from which the appeal is made. An appeal must be made at the time of the ruling; if any debate or business has intervened it is too late to appeal. Such a motion is not amendable. A majority must vote to change the decision; otherwise the Chair's decision stands.

Parliamentarian

The City Attorney serves as parliamentarian during City Council meetings. The role of the parliamentarian is advisory and consultative; the Chair has the power to rule on questions of order.

Voting

1. Responsibility to Vote. It is the responsibility of every Councilmember to vote unless disqualified. Abstention, other than when legally required, may be viewed as an abdication of one's decision-making role.
2. Vote Change. A Councilmember may change a vote or withdraw an abstention and vote only if a timely request to do so is made immediately following the announcement of the vote and before the next item in the order of business is taken up.
3. Disqualification. A Councilmember disqualified because of any financial interest or other interest proscribed by law may not participate in the discussion or the vote. In such instances, the disqualification should be noted on the record at the outset of the item and the Councilmember should leave the dais.
4. Tie Votes. If there is a tie vote on a motion, the motion is defeated. Tie votes may be reconsidered on motion by any member of the Council voting during the original vote. Before a motion is made on the next item on the agenda, any member of the Council may make a motion to continue the matter to another date. Such a continuance suspends the running of any time in which action of the City Council is required by law. Any Councilmember may place on an agenda for a subsequent meeting a matter which resulted in a tie vote. When less than all Council members are present and a matter under discussion remains unresolved as the result of a tie vote, the matter is automatically continued to the next Council meeting. If a tie vote results because a Council member is disqualified from participating in the decision due to a financial or other disqualifying conflict of interest, the motion is defeated.

CONFLICT OF INTEREST LAWS

Common Law Doctrine

The California Supreme Court enunciated the common law doctrine against conflict of interest in 1928:

A public officer is impliedly bound to exercise the powers conferred upon him with disinterested skill, zeal, and diligence and primarily for the benefit of the public.

Several different statutes deal with the subject of conflicts of interest and ensuring you comply with each of them takes personal diligence. If you are unsure whether you have a conflict, it is always best to check before taking an action that may violate any of the conflicts of interest laws and regulations. The City Attorney can help you in working through any potential conflicts.

Political Reform Act

Background

The Political Reform Act was adopted by a vote of the people in a statewide initiative in 1974 and is embodied in Government Code Sections 81000-91014. The overall purpose of the Act is to make sure that the public's business is conducted in a lawful and unbiased manner. To accomplish this goal, several levels of regulation have been established.

Regulations

The Fair Political Practices Commission (FPPC) adopts regulations interpreting the Political Reform Act. The regulations cover public officials of many types, including officers, employees and certain types of consultants to local government.

One significant area of regulation is disclosure of economic interests. All incoming and outgoing Council members must disclose certain types of financial interests. Form 700 must be submitted within 30 days of assuming or leaving office. Also, on an annual basis, Council members must update their forms to reflect changes in the previous calendar year. All of these forms are public records, available for public review. A second area of regulation deals with the disqualification of public officials from participating in decisions. The purpose of these regulations is to determine when a public official has a financial interest which should either be disclosed to the public and/or require that the elected official be disqualified from participating in the decision-making process.

The Political Reform Act also has campaign regulations. These regulations are not discussed in this handbook because the Office of the City Attorney does not represent Council members in their

roles as candidates. Regulations also regulate lobbyists at the statewide level and mass mailings done at public expense.

Administration/Advice

The administration of the Political Reform Act is handled by the FPPC, an independent statewide body that is made up of members appointed by the Governor and the Legislature. The FPPC has a full-time staff which provides assistance to local elected officials. Informal FPPC assistance is available by phone to any person with a conflict of interest question. This is a valuable tool that can be used by all elected officials to spot conflict issues prior to a matter coming before them. The advice line is available Monday through Thursday, from 9 to 11:30 a.m., at 1-866-275-3772. The FPPC website is www.fppc.ca.gov.

In addition to informal assistance, the FPPC also offers formal assistance through written responses. If you seek formal advice, the FPPC staff will respond in writing within 30 days of your written request. The FPPC issues "I" (informal) advice letters and "A" (formal) advice letters. If you rely upon formal letter advice (an "A" letter) received from the FPPC, you will not be subject to prosecution for any actions taken, within the scope of the facts in the advice letter, by the FPPC. However, actions could still be brought by the District Attorney. To the knowledge of the City Attorney, no public official has been prosecuted for following a formal opinion letter from the FPPC. Therefore, the reliance on the written formal advice letter is a good method of making sure that what participation you will engage in on a questionable conflict issue will be the proper course of conduct. (Note: informal advice letters do not confer immunity.)

The Political Reform Act does not delegate to city attorneys the role of advising elected or appointed officials; however, the City Attorney is available to discuss FPPC conflict of interest issues. The best practice is to pose the question well in advance of any participation on the particular matter that might present a conflict situation. Questions raised on the day of a hearing will usually result in advice that is conservative because no time is given to research the matter. In short time frame situations, the advice usually is that it is safer to declare the conflict unless all facts can be thoroughly researched ahead of time. In matters involving potential conflicts, advance preparation is the key to participating in votes in a proper manner. A public official is not immunized from an FPPC enforcement action or prosecution by relying on guidance provided by the City Attorney.

The City Attorney serves as the advisor to all Council members and staff. If the City Attorney has advised a particular Council member about a conflicts issue, the City Attorney must respond to questions by other Council members about the same conflict. The City Attorney will disclose to other Council members that they will be participating in a matter in which a conflict may or may not exist. The City Attorney's Office cannot keep confidential any particular financial issue that was discussed

with an individual Council member if that Council member is to vote on a particular issue. For that reason, it is often best in sensitive situations to go directly to the FPPC.

Analysis

In the event of a conflict of interest, the individual Council member in question has the duty to disqualify himself or herself. This duty cannot be delegated to staff members or the attorney. The duty rests with the officer in question because only that individual knows the extent of his or her own personal financial dealings. A questionnaire is included to assist in determining if there is a conflict of interest. The four basic questions are: (1) whether you are participating in a governmental decision, (2) whether the governmental decision will foreseeably affect your or your immediate family members economic interests, (3) whether it is reasonably foreseeable that the economic effect of the governmental decision on you or your family is material, and (4) whether the effect of the governmental decision on your economic interests is distinguishable from the effect on the public in general.

Ownership of or Interest in Real Property Conflict Issues

One of the main areas in which conflicts occur deals with the ownership of real property. There are several steps that need to be taken to determine whether or not real property ownership or interest subjects an individual to disqualification.

The first step that must be taken is to determine whether you own an interest in real property to which the decision might relate. In order to determine this, the elected official must first determine whether his or her interest in real property includes "any real property" in which the official "has a direct or indirect interest worth two thousand dollars (\$2,000) or more." If the person owns such an interest, the analysis must continue.

The next step is to determine whether it is reasonably foreseeable that the decision will have a material financial effect on your property. There are a host of factors to consider in determining this issue but the overarching issue is whether the decision would cause a reasonably prudent person, using due care and consideration under the circumstances, to believe the governmental decision was of such a nature that its reasonably foreseeable effect would influence the market value of the official's property. As a general principle if the decision affects the value of any real property located within 500 feet of the official's property, the effect is deemed material. (There are exceptions, for example, if the real property is commercial property and contains a business entity in which case different materiality standards apply.)

But even if the decision affects real property more than 500 feet from the official's property, there are other factors to consider in determining if it is reasonably foreseeable that the decision will have a

material financial effect on the official's property. These include, but are not limited to, whether the decision will change the character of the official's property by substantially altering traffic levels or patterns, altering views, affect privacy, create noise levels, impact air quality, such as odors, or any other factors that would affect the market value of the official's real property.

And, to make this issue even a bit more complicated, different factors apply when an official has a leasehold interest in real property. Under those circumstances, a governmental decision is presumed to have a material financial effect if the decision (a) changes the termination date of the lease, (b) increases or decreases the potential rental value of the property, (c) increases or decreases the rental value of the property and the official has the right to sublease it, (d) changes the official's actual and legally allowable use of the real property or (e) impact the official's use and enjoyment of the real property.

The next step in the process is to determine whether the effect of the governmental decision is indistinguishable from its effect on the public generally (the "public generally" exception). The general rule for the exception to apply is whether the public official can demonstrate (a) the decision affects a significant segment of the public in the official's jurisdiction, and (b) decision's effect on the official's financial interest is not unique compared to the effect on the significant segment. The significant segment is generally 25% of the relevant population. A good example of this would be a water rate increase. Since a significant segment of the public (all water rate users) would be affected, a Councilmember may vote on a water rate increase even though his or her water rate will go up or down depending on the vote.

Business Entity Conflict Issues

Another area of potential disqualification deals with business entity interests. It is a conflict of interest for any public official to make, participate in making or to use his or her official position to influence a governmental decision which the public official knows or has reason to know to have a material financial effect on any business entity in which the public official:

1. has a direct or indirect investment worth \$2,000 or more; or
2. is a director, officer, partner, trustee, employee, or holds any position of management.

The business entity rules also deal with direct and indirect effects. A business entity is "directly affected" by a governmental decision before a public official or a public official's agency if the business entity or an employee or agent of the business entity initiates proceedings before the public official or the public official's agency by filing an application, petition, claim or similar request. If the entity is named as a party to or a subject of proceedings before the public official or the public official's agency, the entity is "directly affected."

A business entity is "indirectly affected" by a governmental decision where it is reasonably foreseeable that the financial effect on the business entity, such as the gross revenues, expenses, assets or liabilities of the business entity, will be materially affected by the decision, even though the business entity has not initiated the proceeding which results in the decision and/or is not a subject of the proceeding which results in the decision. A decision will have material financial effect if a prudent person with sufficient information would find it reasonably foreseeable that the decision's financial effect would contribute to a change in the value of the business entity. Examples of decisions that may be applicable include those that increase or decrease the amount of competition in a field in which the business entity is engaged and/or that increase or decrease the need for the services the business entity supplies. To determine whether the financial effect of the decision is reasonably foreseeable, in general the decision is reasonably foreseeable if the financial effect of the decision can be recognized as a realistic possibility and more than hypothetical or theoretical.

Gifts, Honoraria, Travel Expenses

Another area of concern deals with gifts, honoraria and travel expenses. The Political Reform Act provides that it is a conflict of interest for a public official, at any level of state or local government, to make, participate in making, or in any way attempt to use his or her official position to influence a governmental decision which he knows or has reason to believe will have a material financial effect on any:

1. source of income, other than gifts, aggregating five hundred dollars (\$500)* or more in value received or promised within 12 months prior to the time when the decision is made; and
2. any donor of, or intermediary or agent for a donor of, a gift or gifts aggregating two hundred and fifty dollars (\$250)* or more in value provided to, received by, or promised to the public official within 12 months prior to the time when the decision is made. (* inflation adjusted -- currently \$460; adjusted in odd-numbered years)

Gifts have reporting requirements and disqualification consequences for local elected office holders. Gifts of fifty dollars (\$50) or more per year must be disclosed along with specific information about the name and address of the donor, amount of the gift, date of gift, and business of the donor. Gifts which are promptly returned to the donor, donated to a government agency or donated to a charity, without a claimed tax deduction, are not reportable.

An honorarium is a payment received in consideration for a speech given, attendance at an event, participation on a panel or seminar, or similar activity. Local elected office holders are prohibited from receiving total honoraria in excess of one thousand dollars (\$1,000) in any year from a single source. Honoraria exceeding fifty dollars (\$50) in the reporting year are required to be reported in the

same manner as gifts are reported on the annual disclosure form. Nominal benefits, such as free food or beverages and admission to the event in which the local elected office holder speaks or participates, and reimbursement or advances of actual intrastate travel and necessary accommodations in connection with the event, are not payment and need not be reported.

Another category deals with travel expenses. These include payments by someone other than the official's own agency for travel and necessary accommodations to make a speech or sit on a panel for an event in California. These are neither gifts nor income, and thus are neither reportable nor create a disqualifying conflict of interest. Payments for travel for an event outside of California are gifts or income to the extent the payments cover the costs of travel and accommodations unnecessary to the official's delivery of the speech or participation on the panel. These payments are reportable and can create disqualifying conflicts of interest. Even if the payments for travel and accommodations are to be considered gifts, the \$1,000 limit applicable to local elected office holders does not apply to these types of payments.

A final category concerns loans. Local public officials may not receive any personal loan aggregating more than \$250 from an officer, employee, member, or consultant of, or from anyone who contracts with, their governmental agencies. In addition, elected officials may not receive any personal loan aggregating more than \$500 from a single lender unless certain terms of the loan are specified in writing. Under certain circumstances, a personal loan that is not being repaid or is being repaid below certain amounts may become a gift.

The above-mentioned topics require much more detail than is specified in this summary. The purpose of this summary is to highlight for the elected official the types of problems that may be faced. When these situations arise, it is critical to deal with them as soon as possible to determine whether actual conflicts exist and whether such financial interests must be disclosed.

Effect of Determining a Conflict

Once it is determined that a conflict exists, the public official is disqualified from all participation in the decision. This includes voting, participating in any manner or using his or her official position to influence the decision. This would include contacts with staff regarding the staff recommendation, speaking from the floor and any other attempt to influence votes or staff input on the matter. Indeed, where there is a financial conflict of interest, not only must the public official leave the dais but also the official must leave the Council chambers itself.

The only exception where the official may address the Council notwithstanding the financial conflict of interest is where the decision affects the official's own real property interest. For example, if the Council were considering a zoning change that affected the official's residence,

the official, although disqualified from participating in the decision, may nevertheless come to the podium and address the Council on the merits of the proposal.

Establishing a Quorum

Occasionally, a situation may arise where several persons on the City Council are disqualified from participating in a matter. If enough Council members are disqualified so that a quorum is not present, Council members with conflicts of interest may be required to vote even though they have financial conflicts. In such a situation, a random method is used to select which Council members will be brought back to vote on the matter. Only the number necessary to achieve a quorum may be reseated and permitted to vote in this situation.

Enforcement

If a conflict of interest exists, there are several agencies or persons who may bring an action to enforce the Political Reform Act: the District Attorney or the Fair Political Practices Commission. The District Attorney may bring criminal actions; the FPPC files only civil actions. In addition, any person residing within the jurisdiction may obtain authorization to bring a civil action to enjoin violations or compel compliance with the Act. Finally, a local agency may discipline persons who violate certain provisions of the Act. A violation of campaign regulations carries the criminal penalties of imprisonment or jail for a period not exceeding one year.

A violation of other provisions of the Act is a misdemeanor. A violator may be fined the greater of \$10,000 or three times the amount a person fails to report properly or unlawfully contributes, expends, gives, or receives. Finally, a violator is barred from being a candidate for any elective office or acting as a lobbyist for four (4) years following the conviction.

CA Government Code § 1090

Whenever a city officer or an employee will be participating in a governmental decision relating to the making of a contract, Government Code Sections 1090, et seq., must be considered. Section 1090 provides:

[C]ity officers or employees shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members. Nor shall . . . city officers or employees be purchasers at any sale or vendors at any purchase made by them in their official capacity. . . .

The objective of Section 1090 is to remove the possibility of any personal influence, whether directly or indirectly, coming to bear on an official decision regarding the making of a contract.

The fact that the contract is fair and untainted by fraud is irrelevant in determining whether there is an "interest" that will give rise to a Section 1090 prohibition.

The scope of the Section 1090 prohibition depends upon the type of "interest" possessed by the city official.

If the city official is "financially interested" as defined by Section 1090, then the Section 1090 prohibition disqualifies the city official. Also, if the city official is on a council, board, commission or committee, then that body is also disqualified even without the participation of the city official. Neither may make or participate in the making of the proposed contract.

If the city official is "remotely interested" as defined by Section 1090, then the Section 1090 prohibition arises to disqualify the city official but the official's body is not disqualified.

If the city official's interest is so minimal that there is "no interest" as defined by Section 1090, then no Section 1090 prohibition arises.

A violation renders the contract void (see Section 1092) and exposes the financially interested city official to criminal liability of a fine, imprisonment and disqualification from ever holding a public office within California (Section 1097).

Other Conflict of Interest Laws

Apart from the Political Reform Act and Government Code Section 1090, other conflict of interest laws require disqualification from decision-making and sometimes forfeiture of office.

Bias in Quasi-Judicial Decisions

Whenever a city official is going to make a quasi-judicial decision, such as an application for a conditional use permit or a subdivision, the common law prohibition against biased decision-making must be considered. The official is disqualified if the official is biased in favor of or against a party involved in a quasi-judicial proceeding. Mere familiarity with the facts does not necessarily constitute bias. The city official must be prepared to apply the law to the particular fact situation presented during the hearing, regardless of what pre-hearing opinions the official may hold.

No Free Rides

A person who holds a public office may not accept a free pass or discount from a transportation company. If this prohibition is violated, the person forfeits the office. (California Constitution, Art. XII, § 7.)

Incompatibility of Offices

Whenever a person holding a public office intends to simultaneously hold a second public office, the common law doctrine of incompatible public offices should be considered. If the duties of the two offices present a potential for a significant clash, the person can fill the second public office. However, in so doing, the person is disqualified from continuing to hold the first public office.

Incompatibility of Outside Activity

Whenever a person holding a position as a local agency official or employee intends to engage in any other employment, activity or enterprise for compensation, the provisions of Government Code Section 1126 should be considered. This section imposes a duty on every local agency official and employee not to engage in any outside activity for compensation that is inconsistent, incompatible, in conflict with, or inimical to his/her:

1. Duties as a local agency officer or employee; or
2. The duties, functions or responsibilities of his/her appointing power or the agency by which he/she is employed.

To Participate or Not to Participate?

Given the breadth and depth of California law on conflicts of interest it is understandable that an officeholder may not know whether they can participate in a discussion and vote. Below we set forth four questions a public official can and should always ask themselves to help determine whether they have or may have a conflict of interest under the Political Reform Act:

1. Are you making, participating in, or using your "official position" to influence a governmental decision?
2. Is it reasonably foreseeable that the decision will affect your economic interest (is it likely that the decision will cause you to earn or lose money)?
3. Will the effect of the decision on your economic interest be "material" to you?
4. Will the effect of the decision on your economic interest be different than the effect on the public in general?

If the answer to all four questions is "yes", then you are deemed to have a conflict of interest and must disqualify yourself (i.e., recuse) from participating in or making the decision.

If you are not sure whether the answer to one or more questions is "yes," the City Attorney is available to help you answer the questions and make the correct determination.

REQUESTS FOR PUBLIC RECORDS AND PUBLIC INFORMATION

One of the basic issues that cities deal with is how they keep their records. These records, for the most part, are open and available to the public under the California Public Records Act, California Government Code Sections 6250-6276.48.

The Act concerns public accessibility to records maintained by various state and local agencies, including the City. The term "public records" is defined in subdivision (e) of Section 6252 to include "any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics."

The general policy of the Public Records Act, like the federal Freedom of Information Act upon which it is modeled (5 U.S.C. § 552, et seq.), favors disclosure of public records. Indeed, in enacting it, the Legislature found and declared that "access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state." (Section 6250.) But, as the court in Black Panther Party v. Kehoe (1974) 42 Cal.App.3d 645, 655, noted:

If citizenship in a functioning democracy requires general access to government files, limited but genuine interests also demand restricted areas of nonaccess. Decisional law on the subject accepts the assumption that a statute calling for general disclosure may validly define reasonably restricted areas of nondisclosure, provided that the latter are justified by genuine public policy concerns.

The Act thus strikes a balance between "the public's right to know" and the need to maintain areas of nondisclosure for certain types of government records. The Act basically provides that, except as otherwise provided, public records are to be open to inspection at all times during the office hours of public agencies, and that any person may receive a copy of any identifiable public record upon request and payment of a prescribed fee.

The general right of public inspection is followed in Section 6254 with numerous categories of disclosure-exempt material which permits an agency not to disclose particular records otherwise falling within the Act's definition. Examples of exemptions are: personnel files, employment tests, real estate appraisals prior to property acquisition, and library circulation records. Confidential attorney-client memoranda need not be disclosed. In addition, a "residual category" of confidential records is described in Section 6255 which permits an agency to withhold a record from disclosure under the Act where "on the facts of [a] particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record."

As is apparent, the obligation of the City under the Public Records Act is to produce existing documents (within the meaning of the Act). The Public Records Act does not require the City to conduct special research or to create new documents simply because the requester desires information which cannot be readily obtained from existing documents. In other words, where there are no documents that respond to a request, the City's only legal obligation is to advise the requesting party of this fact. The City is only required to take one of the following actions in response to a Public Records Act request:

1. Make available all documents for inspection or copying that are responsive to the request and not exempt to disclosure.
2. Copy and make available all responsive documents upon payment of a fee.
3. If the person making the request is agreeable, provide a summary of the information contained in existing documents when these documents are voluminous or in a form that is not easily reproducible.
4. If the request is denied, the City must justify withholding any record by demonstrating, 1) the record in question is exempt under express provisions of the Act, and 2) the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record.

Recent changes in the law deal with records in electronic format. If the identifiable public record that is not exempt from disclosure is in an electronic format, the information must be made available in any electronic format in which the City holds the information.

The cost of duplication is limited to the direct cost of producing the copy of the record in electronic format. However, the requester must bear the cost of producing a copy of the record, including the cost to construct the record and the costs of programming and computer services necessary to produce the record if, 1) the request is for an electronic record that is produced only at otherwise regularly scheduled intervals, or 2) the request would require data compilation, extraction, or programming to produce the record.

The City is not required to reconstruct a record in an electronic format if the City no longer has the record in electronic format. The City is not required to release an electronic record in electronic form if its release would jeopardize or compromise the security or integrity of the original record or of any proprietary software in which it is maintained.

If the City refuses to supply records it believes need not be disclosed, the requesting person may bring an action in Superior Court to compel disclosure. The court will often review the records in

chambers prior to making a decision. If the records must be turned over, the City is required to pay the attorney's fees and court costs of the plaintiff. If the City prevails, it is only entitled to attorney's fees if the court finds that the request was "clearly frivolous." Usually, the refusal to disclose is based upon the privacy rights of an employee or applicant. In a very recent case, a news reporter sought the disclosure of telephone bills from phones used by Council members. The City provided copies of the bills, but obscured the specific numbers called. The reporter demanded to know the specific numbers. When the City refused, the reporter sued. The court held the telephone numbers did not have to be disclosed because they might indicate the deliberative processes of the Council members.

Electronic Mail

Although transmitted electronically, e-mail and text messages are *written* and therefore potentially public records which must be treated the same way as any other public record.

Three types of e-mail messages typically are considered as official city records:

1. E-mail created or received in connection with official city business, subject to the exception for preliminary drafts and the like.
2. E-mail that documents the formulation and implementation of policies and decisions.
3. Messages that initiate, authorize or complete a transaction of official public business.

Council members are discouraged from using personal e-mail addresses for communication with the public on matters of city business, as it becomes difficult for staff to obtain and retain such messages if necessary.

LABOR RELATIONS ISSUES

Labor relations between City employees and the City Council are governed by the Meyers-Milias-Brown Act (MMBA) which is found in Government Code Section 3500, et seq.

The purpose of the MMBA is to grant employees the right to form, join and participate in the activities of the employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations. The Act also gives employees the right to refuse to join or participate in employee organizations. The MMBA permits agencies to set up local rules governing employment relations.

The MMBA allows a local agency to grant exclusive recognition to an employee organization, which results in that organization being the sole representative of a specific group of employees contained in a bargaining group. The City of Brisbane has nine bargaining groups, several of which have only one member.

Formation/Alteration of Employee Bargaining Groups

All employees may be represented by a bargaining group. The first step in this process is to request recognition by the potential employee organization. If such a request is accepted under the terms set out in the Meyers-Milias-Brown Act and the local code and an affirmative vote is taken by the proposed membership, the employee organization becomes the recognized bargaining group for those particular employees.

Another aspect of representation deals with unit determinations. A bargaining unit is often determined by the types of employees who logically fit within that group. Occasionally, employees will ask the Municipal Employee Relations Officer (City Manager) to be assigned to a different bargaining unit for purposes of negotiations in labor representation. The MERO has some discretion in determining the shape of those bargaining groups.

The MMBA entitles law enforcement officers to be in a bargaining unit made up solely of peace officers.

Duties in Employee Relations

When dealing with employee organizations, the City has a requirement to "meet and confer" with recognized bargaining groups. This meet and confer requirement mandates that the City sit down and discuss in good faith issues regarding wages, hours and other terms and conditions of employment with representatives of recognized employee organizations. Prior to arriving at a determination of policy or a course of action, the City must fully consider such presentations as are made by the employee organization on behalf of its members.

In order to meet and confer in good faith with employee organizations, the City Council must designate its representative to meet with those representatives of recognized employee organizations. Both sides have the obligation to meet and confer promptly upon request of the other party and continue for a reasonable period of time in order to exchange freely information, opinions and proposals. Each party must attempt to reach agreement on matters within the scope of representation (wages, hours and other terms and conditions of employment). The process must include adequate time for resolution of impasses where specific procedures for such resolution are contained in local rules or by mutual consent of the parties. If either side refuses to bargain in good faith, the other side may seek judicial action to enforce the good faith bargaining requirement.

During negotiations, one common bad faith negotiating technique is to attempt to circumvent the process. A union representative contacts Council members directly and attempts to negotiate around the bargaining team chosen by the Council. Another example of bad faith negotiating would be when one side enters into negotiations with no intention of listening to the other side prior to making a decision. Often, this is manifested by "take it or leave it" proposals early in the process. The key to labor negotiations is to keep an open mind throughout the process and follow those guidelines that are laid down by the Council when it establishes the negotiating parameters.

Impasse Procedures

The meet and confer process may not always produce an agreement. One method of impasse resolution is called "fact finding." In a fact finding procedure, an outside person selected by mutual agreement of the parties is often brought in to conduct an impartial investigation and determination as to facts. A report is prepared and delivered by the fact finder to the parties in impasse.

Another impasse procedure is mediation. Mediation is the voluntary process in which an outsider is brought in from the State Conciliation Service who shuttles between the parties and attempts to get the parties to reach settlement. Mediation procedures are nonbinding and at times used when the parties have trouble finding a middle ground in an area in which they feel a settlement could be reached.

A final type of impasse procedure is binding arbitration. In this case, the parties agree to some sort of arbitration procedure. Cases are submitted by both sides and the arbitrator reaches a decision. That decision then becomes the solution to the problem that has been facing the parties and must be implemented. This is a procedure that is rarely used in cities because of its obvious problems in taking authority away from the City Council.

After impasse procedures are completed, a City Council may take a final step without agreement called unilateral action. Unilateral action allows the Council to implement its "last, best and final

offer." Unilateral action is a step that is rarely taken lightly and only results after a long negotiating process followed by failure of impasse procedures to allow agreement to be reached.

Memoranda of Understanding

Once agreement is reached by the negotiators, the agreement is put into writing in a document called a Memorandum of Understanding (MOU). The MOU is the basic contract between the employee organization and the City. Its term is subject to negotiation but usually lasts one, two or three years.

Once the agreement is reached between the negotiating teams, the MOU is then submitted to the respective bodies for approval. The employee organization usually holds a vote of its membership on the agreement. In addition, the City Council will be asked to approve the final document. Until the City Council approves the final document, it will not be effective.

During the term of the agreement, the City and employee organization must follow the provisions in the MOU. Often, the MOU will spell out procedures to deal with layoffs or other policies that may need to be implemented during the term of the agreement. To the extent that such procedures are specified in the MOU, the parties are bound by those procedures. Negotiations during the term of an MOU cannot be reopened without following the procedures set out in the MOU.

PERB Jurisdiction

The Public Employment Relations Board (PERB) is a quasi-judicial administrative agency charged with administering collective bargaining statutes. It is composed of five members, and is headquartered in Sacramento, with a regional office in Oakland. Legislation effective July 1, 2001 brought activities under the Meyers-Milius-Brown Act under the jurisdiction of the Public Employment Relations Board, except for peace officers and management employees.

LOCAL GOVERNMENT LIABILITY UNDER 42 U.S.C. SECTION 1983

Virtually every sphere of municipal operations can be the backdrop for a decision or action raising issues of potential civil rights liability. Essentially, a civil rights violation may arise when a municipality, its officials or employees, deprive a person of any constitutional right or federally protected right. A person need not specifically intend to deprive another of a federal or constitutional right to be liable -he or she need only have intended to do the improper act.

State and federal law allow the filing of liability claims against cities and other public agencies for alleged wrongdoing by their officers or employees acting within the scope of their employment. Injuries or property damage resulting from the careless action or inaction of public officers, employees or agents involve claims of negligence and are brought under state law in state court. Claims resulting from land use regulation, emergency powers of law enforcement officers, or limitations placed on citizens or businesses may involve federal statutory or constitutional rights, and are often brought in federal court.

The provision of the federal civil rights statutes that many believe poses one of the greatest financial risks to local government is Section 1983 of Title 42 of the United States Code. Section 1983 is an enforcement provision that provides a means for individual citizens to file a claim in federal or state court against government officials who infringe upon federal constitutional and statutory rights.

Every person, who under color of any statute, ordinance, regulation, custom or usage, of any state or territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity or other proper proceeding for redress.

Local governments are considered "persons" under the Act and thus may be held liable when their official policies, statements, ordinances, regulations or decisions violate federal rights. Local governments are subject to liability for deprivations of federal rights suffered at the hands of officials or employees when the injury results from the implementation of a public policy or custom. Numerous suits have been filed against local governments under Section 1983 by prisoners, arrestees, property owners, and businesses. Many of the claims are based on alleged violations of the First, Fourth, Eighth and Fourteenth Amendments.

The First Amendment protects individual freedom of speech, association, and religion from governmental interference. The Fourth Amendment guarantees the right of individuals to be free from unreasonable searches and seizures. The Eighth Amendment prohibits the infliction of cruel

and unusual punishments. The Fourteenth Amendment deals with equal protection and due process. Equal protection claims have been brought to remedy unequal treatment due to gender or race. Due process clause actions may allege either procedural or substantive deprivations. Liability may be imposed for depriving an individual of a liberty or property right without an adequate hearing. Substantive due process violations may result from a variety of situations where a public official's actions are deemed unreasonable. The most frequent type of Section 1983 decision involves claims of Fourteenth Amendment due process violations. First Amendment violations are the second most frequent claim.

In addition to constitutional protection, Section 1983 can be used for filing a claim based on a violation of a right secured by a federal statute.

Ordinarily, Council members acting within their traditional legislative capacity (adoption of ordinances, budgets, broad policies) are absolutely immune from liability for damages under Section 1983. Government officials performing discretionary functions (approval of a development project, for example) generally have a qualified immunity for civil damages to the extent their conduct did not violate clearly established statutory or constitutional rights. Qualified immunity is available to officials for ministerial acts, but not to the entity if a custom, policy or usage is challenged. Council members do not have immunity against civil suits when acting in an administrative or executive capacity.

An individual may be awarded monetary damages in a Section 1983 action. In addition to monetary relief, the plaintiff may also request injunctive relief, a court order prohibiting the government from carrying out a policy or program, or a declaratory order making a statute, ordinance, regulation, policy or procedure unconstitutional. If successful with any of these forms of relief, the litigant also may be awarded attorney's fees.

If a Councilmember, through official action, deprives an individual of constitutional or federal statutory rights, the Councilmember may be personally liable for damages for the violation of civil rights. Generally, there will not be personal liability if a Councilmember acted in good faith and without intent to injure anyone. The good faith defense is not available to the City as an entity. Punitive damages may be awarded against an individual Councilmember but not against the City.

ACTIONS AGAINST THE CITY

On any given day the City and/or City Council may be sued. In recent years the types of litigation filed against the City have taken many different forms. The range has included restraining orders and injunctions (seeking to stop the City from taking a course of action), writs of mandate (seeking to compel the City to do something), petitions to compel arbitration, and suits seeking monetary damages under either contract or tort theories.

By far, the most litigation against the City arises from tort claims. Torts are injuries to people or damages to property that arise from non-criminal activity. With a few exceptions, most people must first file a claim with the City in accord with the Government Claims Act before they can file a suit against the City. The Government Claims Act provides the City with a process to attempt to resolve claims without litigation.

In Brisbane, the Office of the City Attorney does not typically handle tort claims or tort litigation. Tort litigation is handled by outside counsel specializing in public entity tort defense.

Brisbane is a member of the Bay Cities Joint Powers Insurance Authority. The following is a discussion of ways to minimize tort liability exposure:

Quite often, council members, public officials and public employees make unsolicited statements, regarding incidents, which have a prejudicial impact against their agency. One JPA in California became the victim of such a statement when a judge gave more weight to the statement than to all other testimony that was provided. As a result, a rather substantial judgment was entered against that defendant.

This type of occurrence is not uncommon. It happens when elected officials make statements in public meetings to appease constituents and also when public officials and employees make them in order to pacify members of the public.

Although probably well intentioned, the impact of such statements can be quite the opposite. They can have a direct, adverse effect upon on-going litigation and that can lead to disastrous results, especially from a financial standpoint.

Some examples of these types of statements are:

- It seems like this playground equipment has something wrong with it.
- I don't know why the city doesn't do something about this problem.
- This has been a problem for as long as I can remember.

- This traffic light never seems to work properly.
- We sure seem to write a lot of accident reports for this intersection.
- That street has been a problem for years.
- That equipment has been a disaster waiting to happen.
- We should have done something about this years ago.
- That area is an accident waiting to happen.
- That street is a death trap.
- How many people have to die before we correct this problem?

Although such statements are probably intended to show the public how much the speaker cares about the problem, the actual result can be quite the opposite. Presenting such statements in court can result in adverse verdicts which have severe financial consequences for the agency. Obviously, this results in less funding for public improvements because larger amounts of money are needed to pay for judgments or settlements.

THE ROLE AND RESPONSIBILITY OF THE CITY ATTORNEY

In a nutshell, the duties of the City Attorney are: to render to the City and its officers the necessary and proper legal services so that the activities of the City are conducted in accordance with both the substantive and procedural requirements of law, to represent the City, its officers and employees in civil litigation involving the City, and to prosecute violations of the law under specified circumstances.

Every action of the City must be justified by the City's legal powers. The City Attorney is the municipal officer responsible for deciding whether or not an action is within the City's legal powers.

The City Attorney is a team member, but independent from the rest of the team. The City Attorney must be neutral and objective, and work for the Council as a whole. The City Attorney's role is to provide honest, objective and forthright answers to questions by the Council and staff, regardless of whether or not the answers will be popular.

In order to render an informed opinion on important legal questions, at times the City Attorney must analyze several sets of statutes and numerous reported cases. The sheer volume of law affecting cities has increased dramatically in the last 25 years. Further complicating the City Attorney's job is the fact that the law is not always clear in a given area. When the law is unclear, the City Attorney provides his or her best judgment on the probable and possible legal consequences of a proposed course of action; however, the City Attorney cannot make the law clear when the law is not clear.

The question of whether a city attorney serves a corporate "city" client, individual "public official" clients or both has been debated vigorously over the years. The City Attorney's client is the City itself. The "city as client" is not an abstraction. The City is embodied in various public officials and legislative and quasi legislative bodies.

Rule 3-600 of the Rules of Professional Conduct of the State Bar of California defines the attorney's role and responsibilities in representing either public or private organizations. This section provides as follows:

In representing an organization, a member shall conform his or her representation to the concept that the client is the organization itself, acting through its highest authorized officer, employee, body, or constituent overseeing the particular engagement.

The Office of the City Attorney, in accordance with the State Bar Rules of Professional Conduct, represents as its client the City of Brisbane. The City acts through the City Council; hence, direction is taken from a majority of the Council, rather than any individual Councilmember. No

individual Councilmember, nor any other officer or employee of the City, is a client of the Office of the City Attorney. As a result, no duty to represent such individuals exists.

Similarly, there is no privilege of confidentiality based on an individual attorney-client relationship separate from one's role as an officer or employee of the City.

It appears that many involved with the City do not realize there is a distinction between the attorney's statutory and ethical obligations with respect to the "client" and the City's focus on the "customer." The City Council is the one group which represents both "client" and "customer." As a result of statutory and ethical requirements, not all of the individuals who see themselves as the City Attorney's "customers" are considered to be "clients." For example, a staff member who submits a contract for review is a "customer" but in reviewing the documents the attorney must keep in mind the best interests of the City; if substantial revisions are required and processing takes some time, the "customer" may become upset but the attorney is doing his or her job for the "client."

Another good example of divergence between "customer" and "client" arises in code enforcement. If a staff member refers a matter for prosecution, the staff member is the "customer" and to the extent the attorney and staff member discuss the strengths and weaknesses of the case there is protection under the attorney-client privilege; however, if the attorney in the exercise of prosecutorial discretion determines that it would not be in the best interests of the City to prosecute the matter, the staff member may not be a satisfied "customer" even though the attorney is acting in the best interests of the "client" City.

The City Attorney will always assist with legal matters concerning the City; on individual matters, the advice of private counsel must be sought. As discussed more fully under the conflicts of interest section, the opinion of the City Attorney does not confer immunity from prosecution by the Fair Political Practices Commission if the FPPC disagrees with the advice rendered by the City Attorney.