



BRISBANE CITY COUNCIL  
ACTION MINUTES

**DRAFT**

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**THURSDAY, November 5, 2015**

*BRISBANE CITY HALL, 50 PARK PLACE, BRISBANE*

**7:00 P.M. CLOSED SESSION**

- A. Conference with Real Property Negotiators, pursuant to Government Code Section 54956.8; Property: APN #'S: 007-271-070, 007-271-060 & 007-271-050; Agency Negotiator: Clay Holstine, City Manager; Parties: Owners of above reference parcels**

Deputy City Attorney Stricker reported that Council gave direction to the Agency Negotiator on the subject properties.

**7:30 P.M. CALL TO ORDER – FLAG SALUTE**

Mayor O'Connell called the meeting to order and led the flag salute.

**ROLL CALL**

Councilmembers present: Conway, Lentz, Liu, Miller, and Mayor O'Connell  
Councilmembers absent: None  
Staff present: City Manager Holstine, City Clerk Spediacci, Community Development Director Swiecki, Deputy City Attorney Stricker, Administrative Services Director Schillinger, Public Works Director Breault, Senior Planner Ken Johnson, Police Commander Meisner

**ADOPTION OF AGENDA (Deletions, Additions, Changes and Adoption)**

Mayor O'Connell asked that the meeting be closed in honor of John Gomez, Barbara Verneast and Nino Mozzetti. CM Conway asked to make an announcement after the adoption of the agenda and also requested New Business Item A be moved before Public Hearings. CM Conway made a motion, seconded by CM Miller, to adopt the agenda as amended. The motion carried unanimously by all present.

CM Conway made an announcement that there would be a Flag Raising Ceremony in honor of Veterans at City Hall on Thursday, November 12, 2015 at 8:15 am. He said that coffee and

donuts would be served.

## **ORAL COMMUNICATIONS NO. 1**

Michael Barnes submitted letters from his wife, Kim Follien, on the smoking ordinance and the VWR site, and he presented the Council with a check in the amount of \$1,550 from t-shirt sales from the Family Festival to be used for the skate park renovations.

Dennis Busse asked about the protocol for a citizen to request that an agenda item be discussed earlier in the evening due to senior citizens who are unable to stay up late. Mayor O'Connell stated that a phone call with a request to the City Clerk prior to the meeting would be sufficient.

## **PRESENTATION**

### **A. City Preparedness for El Niño Conditions**

Public Works Director Breault that reported staff was working diligently to prepare storm drains, clean out catch basins and trash capture devices, trim and remove trees that are at risk, prepare winter equipment, purchase sandbags to be available for residents, and prepare extreme weather response vehicles for various situations. He said that the retaining wall installation has been completed on the backside of San Bruno Ave and that one more was in progress further down that road. He also said that mutual aid agreements are in place with several cities on the Peninsula to assist each other in emergencies.

CM Conway inquired about installing heavy duty rakes onto the catch basins so residents can use it to clear the catch basin when they see it is needed.

Mayor O'Connell suggested a public announcement be made to remind residents of the Adopt a Catch Basin program.

## **CONSENT CALENDAR**

Councilmembers asked to remove Consent Calendar Item C.

### **A. Approve Monthly Investment Report as of August 31, 2015**

### **B. Adopt Ordinance No. 601, waiving second reading, Adding a New Chapter 2.02 to the Brisbane Municipal Code (City Council), Adding a New Section 2.02.010 Concerning City Council Salaries and Repealing Ordinance No. 281**

CM Conway made a motion, seconded by Lentz to adopt Consent Calendar Items A & B as proposed. The motion carried unanimously by all present.

### **C. Acceptance of Final Baylands Sustainability Framework**

CM Conway commended all those who worked on the document and acknowledged that it is a living document that will change as needed. He suggested the acronyms in the document be spelled out, suggested that the reference to urinals on page 60 be considered as “waterless urinals”, and requested the language on page 65 regarding San Bruno Mountain indicate that it is already a Planned Conservation Area.

CM Miller made a motion, seconded by Lentz, to adopt Consent Calendar Item C as amended. The motion carried unanimously by all present.

**NEW BUSINESS (Item taken out of order)**

- A. Introduce Ordinance No. 602, waiving first reading, Consider legislation that would (1) restrict or limit the use of tobacco products and/or e-cigarettes in various public places, businesses patronized by the public and in common areas and individual units of multi-unit dwellings and (2) ban the sale of tobacco products and/or e-cigarettes sales when such products are not in the manufacturer’s original packaging or are sold from vending machines or self-service displays**

Deputy City Attorney Stricker said that at the City Council meeting of October 15<sup>th</sup>, the Council considered an earlier draft of the smoking ordinance currently before the Council tonight. She said that at that meeting questions arose about the extent to which the ban on smoking and vaporizing would apply at a variety of City-owned or operated parks, trails, and other outdoor facilities, including the Marina. The Council asked that the Subcommittee consider these issues and make a recommendation to the full Council.

She also said that the Council directed staff to provide notice to homeowner associations of the proposed ban on smoking and vaporizing in multi-unit residences and directed staff to clarify that the findings set forth in the proposed ordinance represented research conducted by San Mateo County.

Ms. Stricker then outlined the proposed ordinance changes that the Subcommittee was recommending as a result of their meetings and address other outstanding issues including why the County’s ordinance excluded medical marijuana and had a provision allowing businesses to request an exemption from certain aspects of their ordinance.

Shaunda Scruggs, San Mateo County Director of Tobacco Prevention Program, then presented information related secondhand smoke, its health effects and how it travels in multi-unit residences, as well as on E-cigarettes and marketing to youth.

Olga Radom said she was a member of the San Mateo Tobacco Education Coalition and spoke in support of the ordinance.

Tania Dubrovsky also said she was a member of San Mateo Tobacco Education Coalition and spoke in favor of the ordinance.

Louise Busse expressed opposition to the non-smoking ordinance and said that any law that changes the lifestyle of so many people should be put to a vote of the whole population and not be decided by council.

Karen Cunningham suggested allowing the owners of multi-unit buildings decide if the building will be a smoking or non-smoking building. She urged the Council to consider her point prior to approving any ordinance.

Dave Gremaux spoke against the ordinance and said he felt that people should have a choice in their own homes.

Dr. Sabharwal spoke in support of the ordinance and noted that airspace is common space.

Danny Ames supported the ordinance but said that banning E-cigs in the ordinance was an overreach. He also said that he agreed with Ms. Cunningham's idea of owners declaring their buildings as smoking or non-smoking.

Dan Carter spoke in support of the ordinance but requested that the restriction of vaping medical marijuana be removed. He expressed his concern about making someone who is in a crisis situation already have to go outside to smoke.

Dr. Raymond Liu spoke in support of the ordinance and noted public comments this evening are focused on the rights of smokers and non-smokers. He stated that smokers have a choice, but noted that non-smokers do not in multi-unit buildings.

Barbara Ebel expressed concern that the ordinance could be viewed as possible discrimination against people who smoke.

Tom Heinz spoke in support of the ordinance if the medicinal cannabis portion was removed. He provided a handout to Council on the history of cannabis use for medicinal use and urged council to remove the medicinal cannabis portion from the ordinance.

Serafina Kernberger expressed her support for the ordinance and said that she and her family live in a multi-unit dwelling with a neighbor who smokes.

Nick Corman stated he was concerned with the ordinance as it related to medical marijuana and to the signage issues. He also said the most CCR's in associations cover the issues associated with multi-unit housing.

Dennis Busse spoke against the ordinance and said that the ordinance should be voted on by the people. He also inquired whether the City would escort local veterans to the Veterans Celebration at City Hall.

Tony Verreos expressed his support of the ordinance and said he felt that the real discussion should be the free right of people, especially children, who do not have a say in what they are breathing.

Joel Diaz spoke against the ordinance. He said that although he feels the innocent should be protected from the dangers of second hand smoke, he was also concerned with personal rights and urged the council to consider that issue.

Mr. Mikal spoke in support of the ordinance and said he felt that the innocent do not have a choice about second hand smoke. He also said that medical marijuana can be taken in forms other than smoking.

Karen Cunningham stated the Council was elected to make decisions on behalf of the citizens so that every issue does not have to go to a vote of the people.

Mayor O'Connell and Councilmembers acknowledged the many emails and letters received addressing the smoking ordinance issue.

Councilmembers discussed the many issues that were raised, including the private property owners' rights side, the rights for people to enjoy a smoke free environment, the need to update the City's current law, protecting children from second-hand smoke, the lack of information providing on the effect of vaping, the enforcement side of the proposed ban, smoking on unenclosed decks and balconies, and no-smoking signage in multi-unit buildings.

After Council discussion, they directed staff and the Council Subcommittee to work on gathering more information on the effects of E-cigs and vaping, to consider mirroring the county's ordinance on medical marijuana, to clarify the required no-smoking signage locations in multi-unit housing, and to think about finding a compromise of possible designated smoking areas in multi-unit housing or "grandfather" in units that currently house smokers. They acknowledged that the Council would consider the Subcommittees recommendations at a future Council meeting.

Due to the late hour, Councilmembers also agreed to forward any additional concerns with the proposed ordinance to the City Manager for his consideration during the Subcommittee meetings.

**CONTINUED PUBLIC HEARING** *(Cont'd from October 15, 2015 meeting)*

- A. Consider the adoption of Ordinance No. 599 (Zoning Text Amendment RZ-2-15) to amend Brisbane Municipal Code (BMC) Chapter 17.20 (M-1 Manufacturing District) to expand the permitted and conditionally permitted uses and make related amendments to BMC Chapter 17.02 (Definitions)**

Community Development Director Swiecki noted that this item was to consider expanding the range of permitted and conditionally permitted uses in the M-1 Manufacturing Zoning District. He said that this item was initiated in September with Council requesting more research from staff. The staff report includes maps showing the flood plain and possible impacts of sea level rise on the former VWR site, on the status of the Remedial Action Plan and information on the contamination issues, and the traffic study on the potential transportation impacts from freight forwarding.

Council discussion included the impacts of “permitted” verses “conditional” uses, determining the degree of contamination and responsibility of cleanup on the site, and on concerns about traffic-flow from the intersection of the site.

Mr. Dan Letter, Senior Vice President of Capital Deployment said that he was representing Prologis and stated that Prologis is currently working on over 100 contamination sites and has been successful in turning the properties around.

Joel Diaz spoke against the freight forwarding aspect of the issue and urged the Council to make sure the contamination on the site was cleaned up prior to any development as required in the text of the General Plan.

Dennis Busse referenced an article from Universal Paragon Corporation regarding the use of the surrounding areas for recreation and asked that movement be made in that direction.

Mayor O’Connell acknowledged receipt of letters from Kim Follien who was in support of adding freight forwarding and data centers and from Michele Salmon expressing concern about contamination on the site and the lack of investigation on that matter.

Councilmembers discussed the environmental issues at the site and the State’s responsibility for regulating clean up, the sea level rise projections and where they came from, freight forwarders and traffic impacts, and regulation regarding food processing odors.

After additional Council questions and clarification, CM Miller made a motion, seconded by CM Lentz to adopt Ordinance 599 as presented, but adding a performance measure for the food processing permit. The motion carried 4-1, Mayor O’Connell opposed due to her concern with the unknown contamination.

CM Miller made a motion, seconded by CM Conway, instructing staff to bring back a resolution of intention at the next Council meeting to work with the Planning Commission to bring the zoning areas into conformance with the General Plan. The motion carried unanimously.

## **STAFF REPORTS**

### **A. City Manager’s Report on upcoming activities**

## **MAYOR/COUNCIL MATTERS**

### **A. County-wide Assignments/Subcommittee Reports**

Due to the late hour, no reports were given.

### **B. Written Communications**

There were no written communications reported.

## **ORAL COMMUNICATIONS 2**

There were no members of the public wishing to speak.

## **ADJOURNMENT**

The Council meeting was adjourned at 1:00 a.m. in memory of John Gomez, Barbara Verneast and Nino Mozzetti.

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Sheri Marie Spediacci, City Clerk