



CITY COUNCIL/REDEVELOPMENT/GVMID
SUMMARY MINUTES

DRAFT

MONDAY, JANUARY 9, 2012

BRISBANE CITY HALL, 50 PARK PLACE, BRISBANE

CALL TO ORDER – FLAG SALUTE

Mayor Lentz called the meeting to order at 7:31 p.m. and led the flag salute.

ROLL CALL

Councilmembers present: Conway, Miller, O’Connell, Richardson, and Mayor Lentz
Councilmembers absent: None
Staff present: City Manager Holstine, Administrative Services Director Schillinger, Financial Services Director Cooper, City Clerk Spediacci, Community Development Director Swiecki, Police Chief Macias, City Attorney Toppel

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

CM Miller made a motion, seconded by CM Conway, to adopt the agenda as proposed. The motion was carried unanimously by all present.

ORAL COMMUNICATIONS NO. 1

Andy Torvik, spoke about his concern and frustration regarding groundwater contamination and raw sewage due to an underground broken pipe at a neighboring home on Alvarado. He asked that the Council help him with getting this problem resolved.

Mayor Lentz responded that he has been working with staff to address the concerns that Mr. Torvik brought up.

NEW BUSINESS

- A. **Consider adoption of Resolution No. 2012-01 to express its intent to serve as the successor agency of the Redevelopment Agency of the City of Brisbane, pursuant to Health and Safety Code Section 34171 (j) and Section 34173, and to elect to retain the housing assets and functions previously performed by the Redevelopment Agency of the City of Brisbane, pursuant to Health and Safety Code Section 34176**

City Attorney Toppel outlined the information in the staff report. He said the purpose of the proposed resolution is for the City of Brisbane to act as the successor agency to the City's Redevelopment Agency with respect to redevelopment in general and the housing program. He explained that a recent California Supreme Court decision upheld the constitutionality of Assembly Bill 1X 26, the state law that abolished redevelopment agencies. The court also invalidated the law that allowed that cities such as Brisbane are no longer able to function as redevelopment agencies (RDA's). Mr. Toppel recommended passing the resolution to clarify that the City would become the successor agency. He noted that if the City did nothing, it would probably become the successor agency automatically in February, but having a resolution in place will clarify the City's intent. He added that this action will not have any financial implications and it will not expose the City's general fund to any additional liability.

City Attorney Toppel observed that the resolution will give the City local control over some programs currently operated by the Redevelopment Agency and control over the process of dissolving the Redevelopment Agency and transferring its assets. He indicated that there is still uncertainty about how AB 1X 26 will affect affordable housing programs. City Attorney Toppel advised that the City must provide the county with a list of the Redevelopment Agency's enforceable obligations, and the County will then take responsibility for collecting tax increment revenues and remitting the amounts needed to pay those debts.

CM Conway asked what would happen if the City defaulted on the Redevelopment Agency's bonds. Administrative Services Director Schillinger said a default would result in lower bond ratings for the City in the future. He noted that the Redevelopment Agency's bonds are backed up with tax increment revenues, which would flow to the City as successor agency. If the tax revenues were not used to repay bonds as intended, the City's credit status could be affected. Administrative Services Director Schillinger observed that the City retains one year's worth of bond payments in reserve, and tax increments currently are about twice the amount needed for bond repayment.

City Manager Holstine advised that decisions about how tax increment funds will be used in the future will be up to a new oversight committee rather than the City itself.

Administrative Services Director Schillinger discussed the financial implications of the elimination of the Redevelopment Agency in more detail. He displayed a spreadsheet showing the long-term debts of Brisbane's RDA and the housing fund, the amounts due each year, and their funding sources. Administrative Services Director Schillinger noted that one of the goals of AB 1X 26 is to pay off bonds as quickly as possible, and the law requires surplus cash in the housing fund to be forwarded to the County for distribution to underlying taxing entities. He pointed out that there is currently a balance of \$3,973,000 in the housing fund. He recommended paying off the outstanding 1998 tax allocation bond in full, leaving \$1,972,488 available for the County to redistribute to the underlying taxing entities, which include the City of Brisbane, Jefferson Union High School District, Brisbane Elementary School District, the free library district, Bayshore Elementary School District, the community college district, and the County. Administrative Services Director Schillinger said the allocation among the taxing entities is determined by a formula enacted as part of Proposition 13.

Administrative Services Director Schillinger proposed using annual tax increment revenues to pay the annual debt service of \$1,934,800 on the 2001 tax allocation bond, \$216,057 for the 2005 lease revenue bond, and \$250,000 in administrative expenses. He noted these total annual costs would be \$2,400,857. Deducting this from the annual tax revenue increment of \$4,155,000 would leave a

balance of \$1,754,143 each year. Administrative Services Director Schillinger said that as successor agency, the City could use this money to pay for completion of the Marina refinancing, the RDA #2 shortfall, and housing fund reimbursement.

Administrative Services Director Schillinger advised that the future oversight board required by AB IX 26 will consist of two people appointed by the County Board of Supervisors, one appointed by the mayor, one from the County Board of Education, one from the community college district, one from the largest special taxing district, which is the free library district in Brisbane's case, and one former employee of the RDA. He said the oversight committee will review and approve the way the successor agency handles its funds.

Administrative Services Director Schillinger cautioned that there is a risk that future tax increment revenues will be insufficient to cover debts, and there is also a possibility that the state could divert more funds from local governments in the future. However, there are now state laws limiting the ability of the state to take local funds and use them for any purposes other than what local governments have established. Because of these protections, Administrative Services Director Schillinger stated that he felt comfortable that Brisbane's tax increment revenues could not be redirected for other purposes, and that there were sufficient tax increment revenues to repay the RDA's obligations.

CM Conway asked how many redevelopment agencies there were in San Mateo County. Administrative Services Manager Schillinger estimated there were probably 10 or 11 cities with RDA's, and some have multiple agencies. CM Conway asked if there would be separate oversight panels for each RDA. Administrative Services Director Schillinger responded that the law provides for two people appointed by the County Board of Supervisors, but it is unclear as to whether there would be a single oversight group in each jurisdiction or one for each RDA.

City Manager Holstine recommended contacting Brisbane's representative on the Board of Supervisors to find out more about who would be appointed. He added that the oversight boards will exist for five years, after which they will be combined into one countywide board.

CM Conway asked for a percentage breakdown of the \$1,972,488 to be distributed to the underlying taxing entities. Administrative Services Director Schillinger said 18.98 percent would go to the County, 2.77 percent to the free library district, 20.78 to the City of Brisbane, .11 percent to Guadalupe Valley Municipal Improvement District, 6.33 percent to the Bayshore Elementary District, 14.70 percent to the Brisbane Elementary District, 24.46 percent to the Jefferson Union High School District, 6.78 percent to the San Mateo Community College District, 1 percent to Bayshore Sanitary District, .21 percent to Bay Area Air Quality Management, .35 percent to the County Harbor District, and 3.53 percent for the County education tax.

CM Conway asked how tax increment revenues would be allocated. Administrative Services Director Schillinger replied that the money would go to the County auditor-controller, the successor agency would provide an enforceable obligation payment schedule to the County auditor-controller, the County auditor-controller would disburse the enforceable obligation funds to the successor agency, and the remaining funds would be distributed to the underlying taxing entities.

CM Conway asked for more details about the charge for administrative expenses. Administrative Services Director Schillinger responded that the law requires 5 percent of the tax increment revenues in 2012, or a minimum of \$250,000, and that figure would go down to 3 percent in subsequent years.

CM Richardson asked what the County's administrative expenses would be. Administrative Services Director Schillinger said he believed those costs would come off the top. He added that there are still many uncertainties about how the new law will be implemented.

Lynn Hutchins, special redevelopment counsel, Goldfarb and Lipman, clarified that County will probably deduct its costs from the tax increment revenues, then pay statutory costs and enforceable obligations, and then distribute the remaining funds to the taxing entities.

CM Richardson commented that there were efforts underway to extend the AB 1X 26 deadline. Ms. Hutchins stated that there were two pending bills before the California Legislature, one dealing with housing funds and another extending the dissolution date to April 15, 2012 to allow time to clean up the language and eliminate possible conflicts.

CM Richardson observed that AB 1X 26 could eliminate some jobs and cause layoffs. Ms. Hutchins said most RDA's share employees with their cities, so those workers would be governed by their respective collective bargaining agreements. She noted that San Francisco's RDA did have some employees of its own, and there are protective provisions written into the bill to address those situations.

CM Richardson noted that the Council just received a report summarizing the results of the 2010 financial audit, and she asked if another audit would be needed after the RDA is resolved. Ms. Hutchins said the law requires the County auditor-controller to audit each RDA in the county by the end of this fiscal year.

CM O'Connell asked if Brisbane would have two oversight committees for the two RDA areas. Administrative Services Director Schillinger explained that both areas fall under one RDA, so Brisbane would have one oversight board.

CM O'Connell asked for an explanation of the "missed RDA" payment reflected in the summary. Administrative Services Director Schillinger said there were insufficient tax increment revenues in 2001 to pay obligations. With the refinance in 2001, the City refinanced RDA #1's existing debt to pay for the Marina, and additional debt was incurred over the next few years because the City was not able to meet its 20 percent housing set-aside. Administrative Services Director Schillinger added that RDA #2 faced the same problem during those years, so the City loaned money to the RDA to cover those amounts.

Ms. Hutchins stated that the law is clear that housing fund deferral payments are considered enforceable obligations that must be repaid by the successor agency. She noted the existing fund balance goes to the County auditor-controller for distribution to underlying taxing entities, while deferred set-asides for housing are treated as enforceable obligations for which the County will distribute funds to the successor agency for affordable housing uses.

Administrative Services Director Schillinger added that the City will also receive money in the future from people who sell houses that were subsidized with housing funds, and the City can reuse these funds for housing purposes.

CM O'Connell asked what will happen to existing hard assets such as land the RDA purchased for future housing projects. Administrative Services Director Schillinger replied that those assets will be transferred to the successor agency.

CM O'Connell asked if the City needed to create two successor agencies, one for housing and one for the RDA. Ms. Hutchins explained that the City will become the successor agency for the RDA, but the housing funds will simply be transferred to the City without the need to create a separate agency for that function.

CM Miller recalled that the City activated a housing authority recently. City Attorney Toppel said that after considering the uncertain state of the law, it would be best for now to have the City assume the assets of the housing program. He added that if there appears to be an advantage in the future, the Brisbane Housing Authority could assume those assets.

CM Miller expressed concern that the City was accepting a major financial obligation by becoming successor agency to the RDA. He observed that the RDA had been a separate entity with a firewall separating it from the City of Brisbane. He asked what legal assurances the City has that the RDA's huge debts will not be charged against other revenue sources. Ms. Hutchins clarified that the City was not assuming any bond obligations of the RDA; instead, the City, as successor agency, would simply be administering debt payments. She quoted language from the law defining the limitations of the successor agency's liability. She emphasized that as long as tax increment revenues are used the way they were intended, the successor agency would not be exposed to liability.

Mayor Lentz asked what would happen if a member of the public was injured on property owned by the City for housing purposes. Ms. Hutchins commented that the law is unclear on that point. City Attorney Toppel said his understanding was that claims of that type would be covered under the City's general liability insurance policy.

CM Miller pointed out that although AB 1X 27 contains language limiting the City's liability, that law could be changed. Administrative Services Director Schillinger said Proposition 1A and Proposition 22 would then come into play. He noted the purpose of the tax increment is to repay bonds, while the purpose of other tax revenues going into the general fund is to pay for general City purposes. He stated that the law is clear that the state government cannot reallocate a city's general fund revenues for other purposes.

CM Miller drew attention to the list of enforceable obligations and asked if payments to Metropolitan Life and the housing fund were included. Administrative Services Director Schillinger responded that those obligations will be included in a revised repayment schedule. CM Miller expressed concern that the oversight board could challenge the validity some of the obligations between the City and the RDA. Administrative Services Director Schillinger said that was a possibility. For that reason, he expressed support for City Manager Holstine's earlier recommendation about contacting the Board of Supervisors and suggested contacting the free library district and the other appointing authorities as well.

Referring to the proposed Resolution No. 2012-1, CM Miller asked what entity would become the successor agency if the City did not. He noted the deadline for opting out was fast approaching. Administrative Services Director Schillinger said the purpose of the January 13 opt-out deadline was to allow other entities a chance to express interest; he added that if the City takes no action, the City will

automatically become the successor agency. He noted that by accepting the role of successor agency, the City can frame the discussion and create the list of recognized and enforceable obligations to be repaid. If another entity became successor agency, it could decide not to include some of the items. Administrative Services Director Schillinger added that accepting the role of successor agency also provides the City with at least \$250,000 for administrative expenses.

City Manager Holstine stated that the City's attorneys, the League of Cities, and the California Redevelopment Association believe that nearly all the RDA's in the state will be replaced by cities as successor agencies. Administrative Services Director Schillinger added that there initially some cities that were reluctant to take on that role, and he cited Foster City as an example; however, after further consideration, it appears that they have decided to become successor agencies.

CM Richardson observed that the fifth "Whereas" paragraph of proposed resolution indicates the City can elect not to become successor agency, but the remaining provisions suggest otherwise. She questioned the need for that language. Ms. Hutchins explained that the fifth paragraph merely restates the law.

Mayor Lentz noted that the list of enforceable obligations will be posted on the City Website so the public is aware of how funds are being spent.

Mayor Lentz asked when the City would begin receiving tax increment revenues to pay the outstanding obligations. Administrative Services Director Schillinger replied that the timing was still uncertain with respect to when the oversight committee would be approving the enforceable obligations and when the County auditor-controller would begin remitting payments. Ms. Hutchins said payments for the 2011-12 fiscal year are supposed to be made on May 16 and June 1. Administrative Services Director Schillinger added that San Mateo County may be able to process payments more quickly.

CM Conway reviewed the legislative history and court decisions leading up to the dissolution of the state's RDA's, the purpose of the resolution, and its fiscal implications. He asked how the change will affect local schools. Administrative Services Director Schillinger said the implications for school districts are still uncertain. He emphasized that the purpose of AB 1X 26 is to repay debts as soon as possible, so there may be little money left for schools. He commented that it was difficult to predict what the Legislature would do in the future.

CM Miller observed that the Legislature has been looking for ways to equalize per-pupil payments to schools throughout the state for many years, and the dissolution of RDA's could make funding even more unbalanced than it has been.

Mayor Lentz asked if any Councilmembers objected to the proposed resolution.

CM Miller said he did not object to the resolution, but felt it was a very major step for the City to be taking. He clarified that he wanted to be reassured that the City would not be incurring the RDA's financial obligations, and he wanted the public to understand the reasons for the action. He added that he was satisfied with the explanations provided by staff and legal counsel.

CM Miller asked if the resolution could be rescinded in the event the State Legislature enacted other laws that affected successor agencies. City Attorney Toppel replied that the Council can normally

rescind resolutions it approved earlier. He commented that it was impossible to predict what the Legislature would do. He added that the City might have greater problems if it opted out and then later decided it wanted to become the successor agency.

CM O'Connell remarked that given the problems with some of the other redevelopment agencies in the state, she was pleased that Brisbane had managed its RDA so conscientiously and prudently. She thanked the staff and legal counsel for providing clear information to help the Council make this decision.

To address the concerns articulated by Councilmembers and to clarify the liability issue, Mayor Lentz proposed adding the following language to the resolutions: "Whereas, the liability of the successor agency is limited to the funds and assets it receives under the Dissolution Act to perform its functions, the City would not expose its general fund to liability to discharge the obligations of the former Redevelopment Agency." Councilmembers expressed support for this addition.

CM Richardson made a motion, seconded by CM Conway, to adopt the resolution with the addition that Mayor Lentz had proposed.

Mayor Lentz asked if there were any public comments, but there were no members of the public who wished to address the City Council on this matter.

The motion carried unanimously by all present.

WORKSHOP

A. Policy Direction of Sierra Point Design Guidelines

Community Development Director Swiecki noted that at the December workshop on the Sierra Point design guidelines, the City Council referred the matter to the Open Space and Ecology Committee for review of public space uses and environmental issues. He referred to the list of bullet items in the meeting packet and requested Council direction on incorporation of sustainability principles, green building requirements and standards, renewable energy generation, updated information on projected sea level rise, and to ensure that plans for open area and open space are consistent with the City's general plan. He said the staff was asked to explore implications of RDA dissolution, the regulatory authority of the design guidelines, ensure that the design guidelines reflect the wishes of the City Council and the members of the public, contact affected property owners.

CM Miller stated that the staff report reflects all the issues previously identified by the Council. He recommended that the Open Space and Ecology Committee start by reviewing the City's green building ordinance, as well as LEED standards and the Green Point rating system. He advocated mandating certain features rather than leaving them up to developers to select.

Mayor Lentz noted that Lisa Pontecorvo has been working with both the Sustainability Committee and the Open Space and Ecology Committee, and he suggested involving her in the process of updating the guidelines. He also recommended obtaining up-to-date information from the Bay Conservation and Development Commission about projected sea level rise. Mayor Lentz proposed setting a deadline for the Open Space and Ecology to make its recommendations so they can be acted on by the City Council without undue delay.

CM Miller stressed the importance of giving clear instructions to developers that reflect principles of sustainability and green building.

After some discussion, it was the consensus of the Council to direct the Open Space and Ecology Committee to review the items identified in the staff report and provide recommendations to the City Council for consideration. Community Development Director Swiecki suggested that this matter be brought back to the Council in mid-March for consideration and a public hearing in early April.

Colleen Mackin expressed her opinion that the Parks and Recreation Commission should review the guidelines as they affect public spaces and parks. CM Miller agreed, and suggested obtaining the Parks and Recreation Commission's input regarding what should be included in a park. CM O'Connell noted that the Parks and Recreation Commission should look at recreational and open space uses for the entire site, not just the park portions.

Mayor Lentz suggested holding a public workshop or charrette to look at various park options and how they would be integrated with the other features at Sierra Point.

Councilmembers agreed to solicit feedback from the Parks and Recreation Commission.

B. Housing Element Implementation Program

Community Development Director Swiecki provided an update on the status of implementation of the City's housing program. He said the City needs to rezone two sites to accommodate its regional housing quota, a 7-acre site in the Southwest Bayshore area that would accommodate up to 93 residential units, and another site at the edge of Crocker Park for a mixed-use commercial and residential development. He noted the City is unable to exercise a discretionary design review process for these sites; instead, the zoning designation itself must allow residential development.

Community Development Director Swiecki discussed the concept of form-based codes that will be used to implement the new zoning districts. He explained that conventional zoning is based on uses within a development, while form-based codes focus on defining the physical form of a given area and regulating on that basis. In this system, members of the public participate in charrettes and workshops to decide the critical elements of a given area, including its appearance, ambience, scale, and community connectivity. Once that visioning process is complete, the guiding principles are incorporated in a regulating code that dictates architectural standards that reflect the desires of the community. Community Development Director Swiecki observed that the form-based code process addresses design issues at the front end of a project instead of after a developer submits a proposal.

Community Development Director Swiecki recommended having a design charrette for the mixed-use portion of Crocker Park later in 2012. He said the staff would like to involve the San Mateo Health Department in the discussion and make use of their healthy lifestyle program in developing standards for mixed-use communities. He mentioned the possibility of working with Cal Poly to engage graduate students in the form-based code development process. Community Development Director Swiecki advised that the City will probably need to hire professional consultants to facilitate the community-based visioning process. He added that he would come back to the Council in a few months with more details about the process.

Community Development Director Swiecki advised that the staff is working on a series of code amendments to implement other programs and policies of the Housing Element.

CM Miller said a constituent asked if there had been any environmental studies related to the Housing Element and the potential safety and toxicity of the sites to be rezoned for residential use. He expressed particular concern about the Southwest Bayshore parcel across from VWR. Community Development Director Swiecki indicated that there had been some preliminary screening with respect to air quality, and more detailed environment review would be done as part of the zoning process.

CM Miller observed that the Baylands EIR will be ready for Council review at about the same time as this project, and he asked whether the form-based code development process could be deferred for a year. Community Development Director Swiecki replied that the rezoning deadlines are set by law, and the City must show a good-faith effort in implementing these programs.

CM Miller expressed concern about how the City will be able to pay for the expenses related to the community visioning process.

Mayor Lentz commented that the American Institute of Architects and the San Mateo County Health Department have some free resources that could help. He recommended focusing on Crocker Park as a whole rather than just one section. Mayor Lentz asked how much it would cost to hire a facilitator to work with the community. Community Development Director Swiecki estimated that total costs would be \$50,000 to \$75,000.

CM Conway asked what would happen if the City was unable to achieve the rezoning by the statutory deadline. City Attorney Toppel acknowledged that meeting the 2012 deadline will be challenging, but advised that the City at least needs to make a reasonable effort to comply. He noted that the community visioning process would be a good first step.

At 10:36 p.m., CM Conway made a motion to extend the meeting for another ten minutes. The motion was seconded by CM Miller and carried unanimously by all present.

CM O'Connell emphasized the importance of proceeding carefully and thoughtfully with the form-based code process so the community is not stuck with something undesirable. Community Development Director Swiecki agreed, but recommended moving forward with the planning process as proposed. He added that the City Council always has the right to amend the code.

CM O'Connell recommended reviewing and updating the form-based codes on a regular basis. She also suggested holding a design contest to encourage young architects to submit drawings that can form the basis for public review at a charrette.

CM Richardson noted that the hyperlink in the description of this agenda item was not actually linked to the Housing Element, and she asked the staff to correct this problem. She also requested a copy of the Community Development Director Swiecki's PowerPoint presentation.

John Christopher Burr questioned whether form-based codes would work well in Brisbane. He pointed out that Brisbane has unique topography, small roads and lots, and other special conditions that cannot be addressed adequately in form-based codes. Instead, he suggested conducting small meetings with local homeowners to find out what they really want.

Mayor Lentz clarified that two sites in question were both flat areas, and the form-based codes would only apply to those two sites.

Mr. Burr advocated more public outreach to neighborhood groups. He noted that the California Environmental Quality Act requires a higher level of environmental review, and the general planning guidelines promulgated by the Office of Planning and Research warn against trying to major amendments to general plans in isolation without considering other sections of the general plan.

Mr. Burr criticized the Delphi technique as a way of arriving at community consensus. He said facilitators often use this approach to get people to accept a particular point of view. He cited the community preferred alternative for the Baylands as an example of a plan that was foisted upon the community. He recommended not hiring professional facilitators who employ such phony techniques. Instead, Mr. Burr advocated letting the public vote on these issues.

In response to Mr. Burr's concern about the level of environmental review, Community Development Director Swiecki stated that a negative declaration was adopted for the Housing Element.

ADJOURNMENT

There being no further business, CM Miller made a motion, seconded by CM Conway, that the meeting be adjourned. The motion was carried unanimously by all present and the meeting was adjourned at 10:48 p.m.

Sheri Marie Spediacci, City Clerk