# Title 15  BUILDINGS AND CONSTRUCTION

Chapters:

## Chapter 15.01 GRADING[[1]](#footnote-1)

Sections:

15.01.010 Title.

This chapter shall be known as the "City of Brisbane Grading Ordinance" and may be so cited.

(Ord. No. 579, § 1, 6-2-22)

15.01.020 Purpose and objectives.

A. The purpose of this chapter is to provide for grading operations; to safeguard life, limb, health, property and public welfare; and to preserve and enhance the natural environment, including, but not limited to, water quality, by regulating and controlling clearing and grading of property within the city.

B. This chapter is intended to achieve the following objectives:

(1) Grading plans shall be designed so that grading operations do not create or contribute to landslides, accelerated soil creep, settlement, subsidence, or hazards associated with strong ground motion and soil liquefaction.

(2) Grading plans shall contain reasonable provisions for the preservation of natural land and water features, vegetation, drainage, and other indigenous features of the site.

(3) Grading plans shall be designed to preserve and enhance the city's aesthetic character.

(4) Grading plans shall require compliance with all applicable laws, rules and regulations pertaining to air and water pollution, noise control, and preservation of archaeological remains.

(5) Grading operations shall be conducted so as to expose the smallest practical area of soil to erosion for the least possible time, consistent with an anticipated build-out schedule.

(Ord. No. 579, § 1, 6-2-22)

15.01.030 Scope.

A. This chapter amends the regulations pertaining to grading as set forth in the California Building Standards Code, as adopted in Chapter 15.04 of this Code. In the event of any conflict or inconsistency between the provisions of this chapter and the provisions of Chapter 15.04 or any of the codes adopted by reference therein, the provisions of this chapter shall be controlling.

B. This chapter sets forth rules and regulations to control excavation, land disturbances, land fill, soil storage, and erosion and sedimentation resulting from such activities. This chapter provides that all excavation or landfilling activities or soil storage shall be undertaken in a manner designed to minimize surface runoff, erosion, and sedimentation and to avoid or mitigate damage caused by grading activities to areas having habitat value. This chapter also establishes procedures for the issuance, administration and enforcement of grading permits.

(Ord. No. 579, § 1, 6-2-22)

15.01.040 Definitions.

When used in this chapter, the following words shall have the meanings ascribed to them in this section:

(1) "Applicant" means any person, corporation, partnership, association of any type, public agency or any other legal entity that submits an application to the city engineer for a permit pursuant to this chapter.

(2) "As-graded" means the surface conditions extant on completion of grading.

(3) "BAAQMD CEQA" Guidelines means the recommended measures detailed in Table 8-1 of the Bay Area Air Quality Management District's "California Environmental Quality Act-Air Quality Guidelines, Updated May 2011," or any amendment, revision, or reissuance thereof and any additional measures, including those recommended in Table 8-2 of the reference, as determined necessary and appropriate by the city engineer.

(4) "Bedrock" means in-place solid rock.

(5) "Bench" means a relatively level step excavated into earth material. "Bench" also includes terraces.

(6) "Best management practices (BMPs)" means a technique or series of techniques which, when used in an erosion control plan, is proven to be effective in controlling construction-related runoff, erosion and sedimentation. Approved BMPs can be found in the California Stormwater Quality Association "Construction BMP Handbook/Portal," the State of California Department of Transportation March 2003 "Construction Site Best Management Practices (BMPs) Manual," the San Mateo Countywide Water Pollution Prevention Program Construction Best Management Practices" plan sheet, Erosion and Sediment Control Handbook, by Goldman, Jackson and Bursztynsky, and any amendment, revision or reissuance thereof.

(7) "Borrow" means earth material acquired from an off-site location for use in grading on a site.

(8) "City" means the City of Brisbane.

(9) "City engineer" means the Director of Public Works/City Engineer of the City of Brisbane and his/her duly authorized designees. The city engineer may delegate any of his or her duties under this chapter to his or her authorized agents or representatives.

(10) "City street" means any public or private street in the City of Brisbane.

(11) "Civil engineer" means a professional engineer registered in the State of California to practice in the field of civil engineering.

(12) "Civil engineering" means the application of the knowledge of the forces of nature, principles of mechanics and the properties of materials to the evaluation, design and construction of civil works for the beneficial uses of humankind.

(13) "Clearing and grubbing" means the removal of trees, shrubs, bushes, windfalls and all other materials from above and below the natural ground surface. This activity removes vegetative ground cover, removes top soil, and removes/disturbs root mat. Except in those cases where specifically approved by a grading permit, "grubbing" for the removal of stumps and roots shall not exceed eighteen (18) inches below the original surface of the ground.

(14) "Community development director" means the Director of Planning of the City of Brisbane.

(15) "Compaction" means the densification of a fill by mechanical means.

(16) "Contour rounding" means the rounding of cut and fill slopes in the horizontal and/or vertical planes to blend with existing contours or to provide horizontal variation to eliminate the artificial appearance of slopes. (See Figure 1.)

(17) "Drainageway" means natural or manmade channel that collects and intermittently or continuously conveys stormwater runoff.

(18) "Dry season" means the period from April 15th to October 15th .

(19) "Earth material" means any rock, natural soil, fill or combination thereof.

(20) "Engineering geologist" means a geologist experienced and knowledgeable in engineering geology and qualified to practice engineering geology in the State of California.

(21) "Engineering geology" means the application of geologic knowledge and principles in the investigation and evaluation of naturally occurring rock and soil for use in the design of civil works.

(22) "Erosion" means the wearing away of the ground surface as a result of the movement of wind or water.

(23) "Excavation" means any act by which earth, sand, gravel, rock or any other similar material is cut into, dug, quarried, uncovered, removed, displaced, relocated, or bulldozed, including the conditions resulting therefrom.

(24) "Fill/land fill" means any act by which earth, sand, gravel, rock or any other similar material is deposited, placed, pushed, pulled or transported to a place other than the place from which it was excavated, including the conditions resulting therefrom.

(25) "Final erosion and sediment control plan (final plan)" means a set of best management practices or equivalent measures designed to control surface runoff and erosion and to retain sediment on a particular site after all other planned final structures and permanent improvements have been erected or installed.

(26) "General plan" means the general plan adopted by the City of Brisbane and all amendments thereto.

(27) "Grade" means the vertical location of the ground surface.

(a) "Existing grade" means the grade prior to grading.

(b) "Rough grade" means the stage at which the grade approximately conforms to the approved plan.

(c) "Finish grade" means the final grade of the site which conforms to the approved plan.

(28) "Grading" means any land disturbance or excavation or fill or any combination thereof and shall include the conditions resulting from any land disturbance, excavation or fill. Grading shall include trenching on public or private property including within public streets.

(29) "Grading permit" means the formal approval required by this chapter for any grading, filling, excavating, storage or disposal of soil or earth materials or any other excavation or land filling activity. Application to the city engineer and the city engineer's approval is required under the process of this chapter.

(30) "HCP" means the San Bruno Mountain Area Habitat Conservation Plan, as approved and adopted by the U.S. Fish and Wildlife Service in 1983, including subsequent amendments and updates.

(31) "Interim erosion and sediment control plan (interim plan)" means a set of best management practices or equivalent measures designed to control surface runoff and erosion and to retain sediment on a particular site during the period in which construction-related excavations, fills and soil storage occur, and before the final plan is completed.

(32) "Key" means a designed compacted fill placed in a trench excavated in earth material beneath the toe of a proposed fill slope.

(33) "Permittee" means the applicant in whose name a valid permit is duly issued pursuant to this chapter and his/her agents, employees and others acting under his/her direction.

(34) "Plan operator" is the Habitat Conservation Plan Manager, presently the San Mateo County Department of Parks, and also means any successor agency.

(35) "Revegetation" means the replanting of disturbed natural ground surfaces on properties within the HCP and on properties that the community development director has determined requires mitigation to restore habitat value.

(36) "Sediment" means earth material deposited by water or wind.

(37) "Site" means a parcel or parcels of real property owned by one or more than one person that is being or is capable of being developed as a single project, including phased construction. Site also includes any public or private property or rights-of-way on which excavation, fill or land disturbance occurs.

(38) "Slope" means an inclined ground surface the inclination of which is expressed as a ratio of horizontal distance to vertical distance.

(39) "Soil" means naturally occurring superficial deposits overlying bedrock.

(40) "Soils engineer" means a civil engineer experienced and knowledgeable in the practice of soils engineering. Soils engineer and geotechnical engineer are synonymous.

(41) "Soils engineering" means the application of the principles of soil mechanics in the investigation, evaluation and design of improvements involving the use of earth materials and the inspection and testing of the construction thereof. Soils engineering and geotechnical engineering are synonymous.

(42) "Structure" means anything built or constructed including pavement and pipelines.

(43) "Temporary erosion control" consists of, but is not limited to, constructing such facilities and taking such measures as are necessary to prevent, control, and abate water, mud and wind erosion damage to public and private property during grading operations.

(44) "Terrace" means a relatively level step constructed in the face of a graded slope surface for drainage and maintenance purposes. "Terrace" also includes benches.

(45) "Truck haul" means the movement over public streets of any excavated material.

(45) "Vertical slope rounding" means the rounding of the top and toes of cut and fill slopes.

(47) "Weeding" means the removal of noxious, dangerous, or invasive plants. This activity also includes the removal of vegetation which attains such a large growth as to become a fire menace when dry, and further includes the removal of dry grass, grass cuttings, tree trimmings, vines, stubble or other growth material which endangers the public by creating a fire hazard, including any such hazard determination made by the fire department pursuant to the city's weed abatement ordinance. Any activity that disturbs more than fifteen percent (15%) of the natural ground surface shall be classified as "clearing and grubbing."

(48) "Wet season" means the period from October 15th to April 15th .

(Ord. No. 579, § 1, 6-2-22)

15.01.050 Precautions imposed by city engineer.

A. If, at any stage of grading, the city engineer determines by inspection that conditions are such that further work as authorized by an existing grading permit is likely to endanger any property or public way, the city engineer may require, as a condition to allowing the work to be continued, that reasonable safety precautions be formulated by the permittee and submitted to the city engineer for his/her consideration and the grading permit be amended to avoid such danger. "Safety precautions" may include but shall not be limited to specifying a flatter exposed slope, construction of additional drainage facilities, berms, terracing, compaction, cribbing, or retaining walls, or planting of slopes.

B. The sole and primary responsibility for meeting the requirements of this section and of this chapter for any civil or criminal liability as a result of the performance of grading work pursuant to a grading permit shall be upon the permittee. Neither the city, the city engineer, or any employees or agents of the city shall be responsible for any liability for issuance of a grading permit or the conduct of any inspections thereunder.

(Ord. No. 579, § 1, 6-2-22)

15.01.060 Discovery of prehistoric, historic, or unique archaeological resources, or human remains.

A. In the event of the accidental discovery of prehistoric, historic, or unique archaeological resources, the permittee shall immediately cease work and follow the protocol established in the Guidelines for Implementation of the California Environmental Quality Act, as contained in California Code of Regulations, Title 14, Division 6, Chapter 3 ("CEQA Guidelines"), specifically, Section 15064.5(f) and any amendments thereto. This includes obtaining an evaluation from a qualified archaeologist to be forwarded to the community development director for review/approval, and will include a finding as to the categorization of the discovery, any recommended avoidance measures or appropriate mitigation, and a statement as to what portions of the site, if any, are cleared for resumption of work while the recommended mitigation is being performed. If the find is determined to be significant, contingency funding and a time allotment sufficient to allow for implementation of appropriate mitigation or avoidance measures shall be provided.

B. In the event of the accidental discovery or recognition of any human remains, the permittee shall immediately cease work and implement the protocol established in the CEQA Guidelines, specifically, Section 15064.5(e)(1) et. seq. and any amendment thereto.

(Ord. No. 579, § 1, 6-2-22)

15.01.070 Other laws.

Neither this chapter nor any administrative decision made under it:

A. Exempts the permittee from complying with other applicable laws or from procuring other required permits or complying with the requirements and conditions of such a permit; or

B. Limits the right of any person to maintain, at any time, any appropriate action, at law or in equity, for relief or damages against the permittee arising from the permitted activity; or

C. Exempts any person from complying with any applicable laws or allows any person to perform any grading without complying with such other applicable laws.

(Ord. No. 579, § 1, 6-2-22)

15.01.080 Severability and validity.

If any part of this chapter is found not valid, the remainder shall remain in effect.

(Ord. No. 579, § 1, 6-2-22)

15.01.090 Permit required.

Except as exempted under Section 15.01.140, it shall be unlawful for any person to clear and grub, grade, fill, excavate, store or dispose of soil and earth materials or perform any other excavation or land-filling activity without first obtaining a grading permit as set forth in this chapter. A separate grading permit shall be required for each site. With respect to subdivisions, a separate permit will be required for each phase of development. The grading permit issued for each site may also cover the utility construction associated with the site provided the required information for the utilities is included with the application. A building permit shall not be issued prior to the issuance of a grading permit, when required.

(Ord. No. 579, § 1, 6-2-22)

15.01.100 HCP permission required.

No owner of property within the boundaries of the HCP shall weed, clear and grub, grade, fill, excavate, store, or dispose of soil and earth materials or perform any other excavation or land filling activity without first obtaining permission from the plan operator. Permission for the listed activities is presently obtained through submittal of a site activity review application; no grading permit will be issued by the city for any property within the HCP until the property owner has first complied with the requirements of the plan operator.

(Ord. No. 579, § 1, 6-2-22)

15.01.110 Planning commission review of application for grading permit.

A. Where a grading permit is required by the provisions of this chapter, it shall be issued by the city engineer following the city engineer's approval of the permit application. Before the city engineer issues a grading permit, the permit application shall also be reviewed by the planning commission where:

1. More than two hundred fifty (250) cubic yards of material are to be moved or planned to be moved in any single grading or excavation operation and the parcel or parcels of land on which the grading is to be performed is located within any zoning district as defined by the city's most current zoning map; or

2. More than fifty (50) cubic yards of material are to be moved or planned to be moved in any single grading or excavation operation and the parcel or parcels of land on which the grading or excavation is to be performed is located within any of the following zoning districts as defined by the city's most current Zoning Map—Brisbane Acres, Southwest Bayshore, Central Brisbane, Northeast Ridge, and Northwest Bayshore—or the quarry; or

3. Grading is to be performed on any parcel of land within the boundaries of the HCP; provided, however, review by the planning commission shall not be required if the only grading operation to be conducted is weeding, or clearing and grubbing, where such work is performed pursuant to an HCP site activity approval issued by the plan operator.

B. Where planning commission review of an application for a grading permit is required by subsection A of this Section 15.01.110, the review shall be based upon a consideration of the following potential impacts of the proposed grading:

1. Will the proposed grading be designed to reflect or fit comfortably with the site context and natural topography?

2. Will the proposed grading be designed to ensure that retaining walls visible to the public are designed to be as visually unobtrusive as possible by means including, but not limited to:

(i) Ensuring walls are architecturally integrated with proposed or existing structures on the site;

(ii) Ensuring wall faces are decorative and treated with color, texture, architectural features, trelliswork or other means to visually break up the wall expanses;

(iii) Screening with water conserving, non-invasive landscaping that at maturity will soften and reduce the visible expanse of walls?

3. Will the proposed grading be designed to minimize removal of:

(i) Existing street trees (see Section 12.12.020);

(ii) Any California Bay Laurel, Coast live Oak or California Buckeye trees;

(iii) Three (3) or more trees of any species on the same site having a circumference of at least thirty (30) inches measured twenty-four (24) inches above grade?

4. Where removal of existing trees is necessary, will the landscape plans for the project include the planting of appropriate replacement trees?

C. Where the planning commission's review of an application for a grading permit is required by subsection A of Section 15.01.110, the planning commission may request the city engineer to have the application peer reviewed by a professional engineer, as defined in Business and Profession Code Section 6701, and, as part of that review, take into consideration any comments or concerns the planning commission has made under subsection B of this Section 15.01.110. Following that review, the city engineer may approve, conditionally approve, or deny the grading permit application.

(Ord. No. 579, § 1, 6-2-22)

15.01.120 Quarry operations.

No grading permit for an excavation shall be issued if the excavation for which a grading permit is required shall allow for the operation of a quarry, where quarrying is otherwise prohibited by the provisions of the zoning ordinance of the city.

(Ord. No. 579, § 1, 6-2-22)

15.01.130 Application to annexed territory.

Activities regulated by this chapter, whether operative or nonoperative, which are located in territory hereafter annexed to the city shall not operate from and after thirty (30) days following annexation to the city, unless, in the case of operative activities, or before recommencement of operations in the case of inoperative activities, a grading permit shall have been granted as provided herein.

(Ord. No. 579, § 1, 6-2-22)

15.01.140 Exemptions.

A grading permit shall not be required in the following instances:

A. Exploratory excavations and trenches under the direction of a soils engineer or engineering geologist, provided that these excavations and trenches comply with all of the following:

(1) All earth material removed from the trenches or excavations that is not completely removed from the project site must be stored in a manner that prevents erosion, sedimentation, off-site migration, and smothering of natural vegetative ground cover;

(2) All trenches and excavations are properly backfilled;

(3) All excavations and trenches are subject to the applicable sections of Title 8 of the State Safety Order, Division of Industrial Safety.

B. An excavation which does not exceed five (5) cubic yards on any one site and is less than two (2) feet in vertical depth and which does not create a cut slope steeper than two feet horizontal to one vertical (2:1). Such excavation, however, is not exempt from the requirements of Sections 15.01.340 and 15.01.350.

C. A fill less than one foot in depth placed on natural grade with a slope flatter than five (5) horizontal to one vertical (5:1), which does not exceed five (5) cubic yards on any one site and does not obstruct a drainageway. Such fill, however, is not exempt from the requirements of Section 15.01.340.

D. Grading in connection with dredging operations in San Francisco Bay for which approval for such grading has been granted by the city under other permits or agreements.

E. Grading in connection with the operation of salvage, garbage and disposal dumps for which approval for such grading has been granted by the city under other permits or agreements.

F. Emergencies posing an immediate danger to life or property, or substantial flood or fire hazards, or interruption of utility services to the public, in which case a permit shall be obtained as soon as possible.

G. Excavation by public utilities in connection with the placement of facilities, including repair and maintenance of local utility distribution and service utilities, if such excavation is authorized by a valid street encroachment permit.

(Ord. No. 579, § 1, 6-2-22)

15.01.150 Application for grading permit.

The application for a grading permit shall be in writing and filed with the city engineer in duplicate and must include all of the following items, unless otherwise waived by the city engineer:

A. Application form;

B. Site map and grading plan;

C. Interim erosion and sediment control plan;

D. Final erosion and sediment control plan;

E. Revegetation plan;

F. Soils engineering report;

G. Engineering geology report;

H. Work schedule and transportation routes;

I. Security;

J. Fees;

K. Confirmation of the proposed recycling or reuse of all rocks, soils, tree remains, trees and other vegetative matter resulting from the grading operations, which shall be satisfied by providing a copy of the recycling and diversion of debris permit issued by the building department pursuant to Chapter 15.75 of this Code.

L. Any other material required by the city engineer.

(Ord. No. 579, § 1, 6-2-22)

15.01.160 Application form.

The following information is required on the application form unless waived or modified by the city engineer:

A. Name, address and telephone number of the applicant;

B. Names, addresses and telephone numbers of any and all contractors, subcontractors or persons actually doing the excavating and land-filling activities and their respective tasks;

C. Name(s), address(es) and telephone number(s) of the person(s) responsible for the preparation of the site map and grading plan;

D. Names(s), address(es) and telephone number(s) of the person(s) responsible for the preparation of the interim and/or final erosion and sediment control plan, and the revegetation plan;

E. Name, address and telephone number of the soils engineer and/or the engineering geologist responsible for the preparation of the soils and engineering geology reports;

F. A vicinity map showing the location of the site in relationship to the surrounding area's watercourses, water bodies and other significant geographic features, and roads and other significant structures;

G. Date of the application;

H. Title report confirming ownership;

I. Signature(s) of the owner(s) of the site or of an authorized representative.

(Ord. No. 579, § 1, 6-2-22)

15.01.170 Site map and grading plan.

The site map and grading plan shall contain all the following information unless waived or modified by the city engineer:

A. Plan views and cross sections showing the existing and proposed topography of the site. The plan view shall show contours at an interval sufficiently detailed to define the topography over the entire site. The minimum contour interval shall be two (2) feet where ground slope is less than fifteen percent (15%) and five (5) feet where ground slope exceeds fifteen percent (15%);

B. Two (2) contour intervals off-site and extension of the on-site contours a minimum of one hundred (100) feet off-site, and sufficient to show on and off-site drainage;

C. An accurate plat plan drawn by a registered civil engineer or licensed land surveyor showing the site's exterior boundaries in true location with respect to the plan's topographic information, all easements, boundaries of the "Habitat Conservation Plan" area, special districts, and any other pertinent information;

D. Location and graphic representation of all existing and proposed natural and manmade drainage facilities;

E. Detailed plans of all surface and subsurface drainage devices, walls, cribbing, dams and other protective devices to be constructed with, or as a part of the proposed work, together with a map showing the drainage area and the estimated runoff of the area served by any drain;

F. Location and graphic representation of proposed excavation and fills, of on-site storage of soil and other earthen material, and of on-site disposal of soil and other earthen material;

G. Location of existing vegetation types and the location and type of vegetation to be left undisturbed;

H. Location of proposed final surface runoff, and of erosion and sediment control measures;

I. Quantity of soil or earthen materials in cubic yards to be excavated, filled, stored or otherwise removed from or utilized on-site;

J. Location of any buildings or structures on the property where the work is to be performed and the location of any buildings or structures on land of adjacent owners which are within fifteen (15) feet of the property or which may be affected by the proposed grading operations;

K. Location and slope of proposed streets and driveways. Driveways shall not exceed a centerline slope of twenty percent (20%) and, unless specifically approved by the city engineer, streets shall not exceed a centerline slope of fifteen percent (15%).

(Ord. No. 579, § 1, 6-2-22)

15.01.180 Interim erosion and sediment control plan (interim plan).

A. An interim plan containing all of the following information shall be provided with respect to conditions existing on the site during excavation or filling activities or soil storage and before the final plan is completed; furthermore, the plan submitted shall demonstrate compliance with the requirements of the municipal regional permit, as defined in Section 13.06.040:

(1) The location and amount of runoff discharging from the site, calculated using a method approved by the city engineer;

(2) A delineation and brief description of the measures to be undertaken to control erosion caused by surface runoff and by wind and to retain sediment on the site including, but not limited to, the design and specifications for berms and sediment detention basins, types and method of applying mulches, the design and specifications for diverters, dikes and drains, seeding methods, the type, location and extent of pre-existing and undisturbed vegetation types, and a schedule for maintenance and upkeep.

B. The location of all the measures listed by the applicant under subsection A(2) above shall be depicted on the site map and grading plan, or on a separate plan, at the discretion of the city engineer.

C. An estimate of the cost of implementing and maintaining all interim erosion and sediment control measures shall be submitted in a form acceptable to the city engineer.

D. The applicant may propose the use of any erosion and sediment control techniques in the interim plan provided such techniques are proven to be as or more effective than the equivalent best management practices contained in the manual of standards.

(Ord. No. 579, § 1, 6-2-22)

15.01.190 Final erosion and sediment control plan (final plan).

A. A final plan containing all of the following information shall be provided with respect to conditions existing on the site after final structures and improvements (except those required under this section) have been completed; furthermore, the plan submitted shall demonstrate compliance with the requirements of the municipal regional permit, as defined in Section 13.06.040:

(1) The location and amount of runoff discharging from the site, calculated using a method approved by the city engineer;

(2) A description of and specifications for sediment retention devices;

(3) A description of and specifications for surface runoff and wind erosion control devices;

(4) A description of vegetative measures;

(5) A graphic representation of the location of all items in subsections B through D above, and items A through K in 15.01.170 above.

B. An estimate of the costs of implementing all final erosion and sediment control measures must be submitted in a form acceptable to the city engineer.

C. The applicant may propose the use of any erosion and sediment control techniques in the final plan provided such techniques are proven to be as or more effective than the equivalent best management practices contained in the manual of standards.

(Ord. No. 579, § 1, 6-2-22)

15.01.200 Revegetation plan.

A revegetation plan is designed to effectively mitigate impacts to the site's habitat values by restoring or replacing native vegetation to the maximum extent practical and reasonable to achieve. Sites subject to revegetation requirements shall submit a plan to replant and maintain disturbed surfaces for review and approval by the city engineer and community development director in accordance with the following:

A. Topsoil removed from the surface shall be stored on or near the site and protected from soil loss while the work is underway. Such storage shall not cause damage to root systems of onsite trees intended to be preserved.

B. Mulching, seeding, planting of groundcover, shrubs or trees, or other suitable stabilization measures shall be used to protect exposed soil, to minimize soil loss, and to maximize slope stability. Use of drought tolerant native plant species that are fire resistant is encouraged. Use of plant species identified as invasive in the most current HCP Vegetation Management Activities Report is prohibited, whether or not the project site is within the boundaries of the HCP.

C. The city engineer may require the permittee to monitor revegetation for a period up to five (5) years, to provide reports of such monitoring to the city planning department, to allow for third-party assessment of the success of the revegetation at the applicant's expense, and to provide security to correct, complete, or remediate the approved revegetation plan. The city engineer and the community development director shall each retain discretion as to whether the approved revegetation plan has been successfully implemented.

D. Onsite mitigation is preferred. In the event that the community development director determines that adequate mitigation can not be reasonably achieved onsite, the city may approve an offsite revegetation plan to achieve the goals of restoring habitat value. Such offsite mitigation shall comply with the provisions of this chapter that govern onsite mitigation.

E. For sites located within the HCP, the city may impose restoration/revegetation requirements in addition to those required by the plan operator, so long as a reasonable rationale is provided for the additional requirements. A decision to require more stringent measures may be based upon the biological features of the site, for example, if the site is an existing or potential wildlife corridor or part of a buffer zone between developed areas and existing habitat, or if the site has particular geological features, such as potential for erosion or susceptibility to seismic hazards.

(Ord. No. 579, § 1, 6-2-22)

15.01.210 Soils engineering report (soils report).

A. A soils report, when required by the city engineer, is to be prepared by an approved soils engineer and shall be based on adequate and necessary test borings, and shall contain all the following information, in addition to the minimum applicable requirements of the latest edition of the California Building Code adopted by the city:

(1) Data regarding the nature, distribution, strength, and erodibility of existing soils;

(2) Data regarding the nature, distribution, strength and erodibility of soil to be placed on the site, if any;

(3) Conclusions and recommendations for grading procedures;

(4) Conclusions and recommended designs for soil stabilization for interim conditions and after construction is completed;

(5) Design criteria for corrective measures when necessary;

(6) Foundation and pavement design criteria when necessary;

(7) Opinions and recommendations covering suitability of the site for the proposed uses;

(8) Other recommendations, as necessary, commensurate with the project grading and development.

B. Recommendations included in the report and approved by the city engineer shall be incorporated in the grading plan.

C. Whenever a soils engineering report is required, the final submitted grading plans shall include a review letter from the soils engineer confirming that his/her recommendations have been incorporated into the plans.

(Ord. No. 579, § 1, 6-2-22)

15.01.220 Engineering geology report.

A. An engineering geology report, when required by the city engineer, is to be prepared by a qualified engineering geologist and shall be based on adequate and necessary test borings and shall contain the following information, in addition to the minimum applicable requirements of the latest edition of the California Building Code adopted by the city:

(1) An adequate description of the geology of the site, including identification of actual and potential geologic hazards;

(2) Conclusions and recommendations regarding the effect of geologic conditions on the proposed development;

(3) Recommendations for mitigation of identified hazards wherever appropriate;

(4) An opinion as to the extent that instability on adjacent properties may adversely affect the project;

(5) Opinions and recommendations covering suitability of the site for the proposed uses;

(6) Other recommendations, as necessary, commensurate with the project grading and development.

B. Recommendations included in the report and approved by the city engineer shall be incorporated in the grading plan.

C. Whenever an engineering geology report is required, the final submitted grading plans shall include a review letter from the engineering geologist confirming that his/her recommendations have been incorporated into the plans.

(Ord. No. 579, § 1, 6-2-22)

15.01.230 Work schedule and transport routes.

A. The applicant shall submit a master work schedule showing the following information:

(1) Proposed grading schedule;

(2) Proposed conditions of the site on each July 15th , August 15th , September 15th , October 1st , and October 15th during which the permit is in effect;

(3) Proposed schedule for installation of all interim erosion and sediment control measures including, but not limited to, the stage of completion of erosion and sediment control devices and vegetative measures on each of the dates set forth in subsection A(2);

(4) Schedule for construction of the proposed improvements on the site;

(5) Schedule for installation of permanent erosion and sediment control devices where required.

B. The applicant shall also submit a description of the routes of travel to be used for access to and from the site for removing excavated material and bringing in fill or other materials.

(Ord. No. 579, § 1, 6-2-22)

15.01.240 Security.

A. The applicant shall provide a performance bond or other acceptable security for the performance of the work described and delineated on the approved grading plan and the approved revegetation plan prior to the issuance of the grading permit, in an amount to be set by the city engineer but not less than one hundred percent (100%) of the approved estimated cost of performing said work. The form of security shall be one or a combination of the following to be determined and approved by the city engineer:

(1) Bond or bonds issued by one or more duly authorized corporate sureties. The form of the bond or bonds shall be subject to the approval of the city attorney;

(2) Deposit, either with the city or a responsible escrow agent or trust company at the option of the city, of money, negotiable bonds of the kind approved for securing deposits of public moneys, or an unconditional irrevocable letter of credit other instrument of credit from one or more financial institutions subject to regulation by the state or federal government wherein said financial institution pledges funds are on deposit and guaranteed for payment;

(3) Cash in U.S. currency.

B. The applicant shall provide security for the performance of the work described and delineated in the interim plan in an amount to be determined by the city engineer, but not less than one hundred percent (100%) of the approved estimated cost of performing said work. The form of the security shall be as set forth in subsection A of this section.

C. The applicant shall provide security for the performance of the work described and delineated in the final plan in an amount to be determined by the city engineer but not less than one hundred percent (100%) of the approved estimated cost of performing said work. The form of the security shall be as set forth in subsection A of this section.

D. The applicant shall provide a cash deposit in an amount established by resolution of the city council to insure the repair of damage to public property or cleaning of public streets. In the event of failure by the applicant, after written notification if time permits, to maintain public property or right-of-way in a manner satisfactory to the city engineer, the city engineer may order repairs made or cleaning performed and deduct the cost from the deposit. Any unused balance shall be returned to the applicant upon completion of the grading.

(Ord. No. 579, § 1, 6-2-22)

15.01.250 Fees.

A. Before accepting a grading permit application and plans for checking, the city engineer shall collect all applicable plan checking fees as established by resolution of the city council and as provided in this chapter.

B. Unless exempted under Section 15.01.260 of this chapter, a fee for each grading permit shall be paid to the city prior to issuance of a grading permit, in such amount as established from time to time by resolution of the city council.

C. Failure to pay fees and obtain a permit before commencing work shall be deemed a violation of this chapter, except when it can be proven to the city engineer's satisfaction that an emergency existed that made it impractical to first obtain the permit. A violation shall result in an assessment of double permit fees for work done prior to permit issuance. Payment of a double fee shall not relieve any person from complying with the requirements of this chapter nor from any other penalties prescribed herein.

D. Additional fees approved by resolution of the city council and contained in this chapter shall be paid as required.

E. If after written notification (if time allows) the city engineer performs emergency work on private property, he shall charge the property owner all direct and indirect costs which are necessary to complete the work to his satisfaction. In addition, the city engineer may charge a mobilization cost equal to ten percent (10%) of the cost for performing the work. Fees or deposits required for special purposes, e.g., cleanup, dust control, etc., collected but not expended for the purpose for which they are collected, will be refunded.

(Ord. No. 579, § 1, 6-2-22)

15.01.260 Grading permit fee exemption.

A. A fee for a grading permit shall not be required in the following instances: grading for the foundation, basement, and other features (e.g., walkways, patios, terracing) of a building or structure for which a building permit has been issued, provided that all grading, drainage, retaining wall, and ground cover work will be started and completed within a single dry season. A soils report and other information relating to such grading, and a performance bond or other acceptable security for the performance of the work, and a cash deposit to ensure the repair of damage to public property or cleaning of public streets, may be required in connection with the issuance of the grading permit. The amount and form of such security and cash deposit shall be as set forth in Section 15.01.240.

B. Notwithstanding the provisions of paragraph A above, a grading permit fee will be required where the grading to be performed, other than that solely for the building and its foundation and driveway, is such as to require grading permit approval by the planning commission under Section 15.01.110.

(Ord. No. 579, § 1, 6-2-22)

15.01.270 Action on application.

A. No grading permit shall be issued by the city engineer unless the applicant provides sufficient information for the city engineer to find that the work, as proposed by the applicant, is likely not to endanger any person, property, public resource, or public way or detrimentally affect water quality. Factors to be considered by the city engineer in making his finding shall include, but shall not be limited to, the soils engineering report, the engineering geology report, possible saturation by rains, earth movements, run-off of surface waters, and subsurface conditions such as the stratification and faulting of rock, and the nature and type of soil or rock.

B. Applications shall be reviewed by the city engineer in the order that they are received.

(Ord. No. 579, § 1, 6-2-22)

15.01.280 Permit duration.

Permits issued under this chapter shall be valid for the period during which the proposed excavation or filling activities and soil storage take place or are scheduled to take place per Section 15.01.230. Permittee shall commence permitted activities within sixty (60) days of the scheduled commencement date for grading or the permittee shall resubmit all required application forms, fees, maps, plans, schedules and security to the city engineer, except where an item to be resubmitted is waived by the city engineer.

(Ord. No. 579, § 1, 6-2-22)

15.01.290 Appeals.

Any person may appeal to the local grading permit appeals board the issuance, denial, or conditions of a grading permit, the suspension after a hearing by the city engineer, or the revocation of a grading permit, or the failure to suspend or revoke a grading permit. Any such appeal shall be in writing and shall be filed with the city engineer within fifteen (15) days after the action complained of. The appeal shall be accompanied by a fee, as set forth by the city council, and shall clearly state the reason for appeal. Members of the appeals board shall not be employees of the city and shall be professional engineers as defined in Business and Professions Code, Section 6701. Upon receipt of such an appeal, the city engineer shall bring the appeal before the local grading permit appeals board within thirty (30) days and shall notify the appellant and (if different) the applicant of the date and time of the meeting at which the appeal will be heard. No other notice need be given, except such additional notice as may be required by state or other law. The local grading permit appeals board shall proceed to hear and determine the appeal at the same meeting or at such later meeting as it shall determine, and in connection therewith may continue the same from time to time. The action of the local grading permit appeals board shall be final, subject to timely judicial review.

(Ord. No. 579, § 1, 6-2-22)

15.01.300 Revised plans.

If the city engineer finds the soil or other conditions to be different from those stated in the application for a grading permit, he or she may immediately suspend the grading permit, and permittee shall cease all work on the work site, excepting work to make the site safe, until approval is obtained from the city engineer for revised plans which conform to the existing conditions.

(Ord. No. 579, § 1, 6-2-22)

15.01.310 Cessation of operations.

If the operation of any activity regulated by this chapter is voluntarily ceased for a continuous period of more than ninety (90) days (which period is not stated in the approved work schedule per Section 15.01.230) then the grading permit shall be null and void and the operation of said activity shall not be recommenced until a new grading permit is obtained as provided herein.

(Ord. No. 579, § 1, 6-2-22)

15.01.320 Assignment of permit.

A permit issued pursuant to this chapter may be assigned, provided all of the following conditions are satisfied:

A. The permittee notifies the city engineer of the proposed assignment;

B. The proposed assignee:

(1) Submits an application form pursuant to Section 15.01.160; and

(2) Agrees in writing to all the conditions and duties imposed by the permit; and

(3) Agrees in writing to assume responsibility for all work performed prior to the assignment; and

(4) Provides security pursuant to Section 15.01.240; and

(5) Agrees to pay all applicable fees.

C. The city engineer approves the assignment. The city engineer may disapprove an assignment for cause and shall not unreasonably withhold approval.

(Ord. No. 579, § 1, 6-2-22)

15.01.330 No improvements planned.

Where an applicant does not plan to construct permanent improvements on the site, or plans to leave portions of the site graded but unimproved, applicant must meet all the requirements of this chapter.

(Ord. No. 579, § 1, 6-2-22)

15.01.340 Grading permit, paving.

No person shall construct pavement surfacing on natural or existing grade for the purpose of a private road, parking lot or travelway without a valid grading permit, unless waived by the city engineer. Resurfacing or maintenance of existing paved surfaces shall be exempt from this requirement.

(Ord. No. 579, § 1, 6-2-22)

15.01.350 Grading permit, drainageway alteration.

No person shall alter an existing watercourse, channel, or revetment by excavating, or placing fill, rock protection or structural improvements without a valid grading permit, unless waived by the city engineer, or unless the work is performed as interim protection under an emergency situation (Section 15.01.140.F).

(Ord. No. 579, § 1, 6-2-22)

15.01.360 Excavation blasting permit.

No person shall possess, store, sell, transport or use explosives and/or blasting agents in violation of any existing laws or ordinances or do any excavation by explosives or blasting without a grading permit and without a separate blasting permit issued by the city fire department.

(Ord. No. 579, § 1, 6-2-22)

15.01.370 Truck haul permit.

A truck haul permit shall be obtained from the city engineer for the movement over a city street of any excavated or fill material to or from any property in the city or to or from any property outside the city which has direct access to a city street. This requirement shall not be applicable, however, to any quarrying operations nor to any transportation of materials not exceeding fifty (50) cubic yards from any one site. Before issuing a truck haul permit for moving excavated material over a city street, the city engineer shall collect a fee as approved by resolution of the city council.

(Ord. No. 579, § 1, 6-2-22)

15.01.380 Issuance of grading permits.

The city engineer may issue a grading permit upon receipt and approval of the items listed in Section 15.01.150. Permits shall be issued subject to the following conditions:

A. The permittee shall maintain a copy of the permit and all approved plans and reports required under Sections 15.01.150 and 15.01.400.B, on the work site, and the permit, plans and reports shall be available for public inspection during all working hours;

B. The permittee shall, at all times, conduct operations in conformity with approved site map, grading plan, and other required plans and reports.

C. The permittee shall comply with other conditions imposed by the city engineer as are reasonably necessary to prevent the proposed operations from being conducted in such a manner as to constitute or create a nuisance or a hazard to life, property, or the environment. Such conditions may include, but are not limited to:

(1) The route and time of travel over public streets so as to cause the least interference with general traffic and to cause the least damage to public streets;

(2) The removal of rock, earth or other material that may be deposited on public streets by reason of said grading operations;

(3) The payment to city of the cost of repairing damage to public streets caused by trucking operations in connection with said grading operations;

(4) The installation of suitable fencing, barricades, signage, and lighting surrounding the grading operations.

D. The permittee shall implement temporary erosion control as necessary to protect public and private property, and as required in Section 15.01.180. Temporary erosion control shall be continuous throughout the work.

E. Permittee shall be knowledgeable of the conditions and/or restrictions of the grading permit as outlined in applicable sections of this chapter, and as contained on the approved site map, grading plan, and other required plans and reports.

(Ord. No. 579, § 1, 6-2-22)

15.01.390 Time and noise limitations on grading operations.

A. The time and noise limitations on all grading operations shall be those set forth for construction activities in Chapter 8.28, Noise Control, of this Code.

B. No grading work shall be performed during hours other than the normal working hours of the city public works department's inspection and maintenance personnel without approval of the city engineer and without first obtaining a special permit for such work from the city engineer. Before issuing a special permit for such work, the city engineer shall collect a fee as approved by resolution of the city council. Permitted hours of operation may be shortened by the city engineer's finding of a previously unforeseen effect on the health, safety or welfare of the surrounding community.

(Ord. No. 579, § 1, 6-2-22)

15.01.400 Implementation of permits; permittee's duties.

In addition to performing as required under Section 15.01.380:

A. The permittee shall request an inspection of the site by the city engineer at each of the stages of the grading operation listed below. The city engineer shall approve the work inspected or notify, in writing, the permittee or owner wherein it fails to comply with the approved grading plans or any other applicable requirement. Any portion of the work that does not comply with the grading plans or other applicable requirement shall be corrected. The stages of work at which inspections shall be requested are:

(1) Initial: when the permittee is ready to begin grading work;

(2) Rough grading: when all rough grading has been completed;

(3) Interim erosion control: the installation of all interim erosion control devices and the completion of planting revegetation requirements;

(4) Final: readiness of the site for final inspection, including, but not limited to, finished grading, installation of drainage devices and final erosion control measures.

B. Permittee shall submit status reports to the city engineer with revised work schedules required by Section 15.01.230, or other reports as required by city engineer, for the city engineer's approval if:

(1) There are delays in obtaining materials, machinery, services, or manpower necessary to the implementation of the grading, interim, or final plans as scheduled;

(2) There are any delays in excavation, land-disturbing, filling activities, or soil storage;

(3) The work is not being done in conformance with any approved grading plans;

(4) There are any delays in the implementation of the interim or final plans.

C. Permittee shall submit recommendations for corrective measures, if necessary and appropriate, with the reports made under subsection B of this section, unless the city engineer waives the requirement.

(Ord. No. 579, § 1, 6-2-22)

15.01.410 Implementation of permits—Requirements of city engineer.

A. The permittee shall submit all reports as may be required in this section and in Sections 15.01.380 and 15.01.400 to the City Engineer for review. The city engineer may require permittee to modify the site map and grading plan, interim or final plans, and maintenance methods and schedules. The city engineer shall notify the permittee in writing of the requirement to modify and may specify a specific period of time within which permittee must comply. All modifications are subject to the city engineer's approval.

B. The city engineer may inspect the site:

(1) Upon receipt of any report by permittee under provisions of Section 15.01.400.B;

(2) To verify completion of modifications required under subsection A of this section;

(3) During and following any rainfall;

(4) At any other time, at the city engineer's discretion.

C. Upon completion of the rough grading work and at the final completion of the work, the city engineer may require the following reports and drawings and supplements thereto:

(1) An as-graded grading plan prepared by the civil engineer who prepared the approved grading plan, including original ground surface elevations, as-graded ground surface elevations, lot drainage patterns and locations and elevations of all surface and subsurface drainage facilities. The civil engineer shall provide a statement that the work was done in general conformance with the final approved grading plan;

(2) A soil grading report prepared by the soils engineer including locations and elevations of field density tests, summaries of field and laboratory tests, and other substantiating data and comments on any changes made during grading and their effect on the recommendations made in the soil engineering investigation report. The soils engineer shall provide a statement as to compliance of the work with his/her recommendations and as to the adequacy of the site for the intended use;

(3) An engineering geology report prepared by the geologist containing a final description of the geology of the site including any new information disclosed during the grading and the effect of same on recommendations incorporated in the approved grading plan. The geologist shall provide a statement as to compliance of the work with his/her recommendations and as to the adequacy of the site for the intended use as affected by geologic factors.

D. No person shall in any way hinder or prevent the city engineer or any of his/her authorized representatives from entering and inspecting any property on which grading has been or is being done.

(Ord. No. 579, § 1, 6-2-22)

15.01.420 Grading inspection.

A. All grading operations for which a permit is required shall be subject to inspection by the city engineer. When required by the city engineer, special inspection of grading operations and special testing shall be performed according to the provisions of subsection B of this section.

B. In addition to complying with all requirements of the California Building Code, as amended by this chapter, "regular grading" and "engineered grading" applicants/permittees shall be subject to and comply with the following:

(1) Engineered and Regular Grading Designation. Grading in excess of one thousand (1,000) cubic yards and/or ten (10) feet vertical depth of cut and/or fill shall be performed according to approved grading plan prepared by a civil engineer, and shall be designated as "engineered grading." Grading involving less than one thousand (1,000) cubic yards and/or less than ten (10) feet vertical depth of cut and/or fill shall be designated "regular grading" unless the applicant/permittee, with the city engineer's approval, or the city engineer, independently, chooses to have the grading performed as "engineered grading."

(2) Engineered Grading Requirements. For engineered grading, it shall be the responsibility of the civil engineer who prepares the approved grading plan to incorporate all recommendations from the soil engineering and engineering geology reports into the grading plan. He/she shall also be responsible for the professional inspection and approval of the grading within his area of technical specialty. This responsibility shall include, but need not be limited to, inspection and approval as to the establishment of line, grade, and drainage of the development area. The civil engineer shall act as the coordinating agent if the need arises for liaison between the other professionals, the contractor and the city engineer. The civil engineer shall also be responsible for the preparation of revised plans and the submission of as-graded grading plans and compliance statements upon completion of the work.

(3) Soils Engineering and Engineering Geology Requirements. Soils engineering and engineering geology reports shall be required at the discretion of the city engineer. During grading, all necessary reports, compaction data, soils engineering and engineering geology recommendations shall be submitted to the owner, the geologist, the civil engineer, and the city engineer by the soils engineer and the engineering geologist. Areas of responsibility shall be as follows:

(a) The soils engineer's area of responsibility shall include, but need not be limited to, the professional inspection and approval concerning the preparation of ground to receive fills, testing for required compaction, stability of all finish slopes, and the design of buttress fills, where required, incorporating data supplied by the engineering geologist.

(b) The engineering geologist's area of responsibility shall include, but need not be limited to, professional inspection and approval of the adequacy of natural ground for receiving fills and the stability of cut slopes with respect to geological matters and the need for subdrains or other groundwater drainage devices. He/she shall report the findings to the owner, the soils engineer, the city engineer and the civil engineer.

(c) The city engineer shall inspect the project as required under Section 15.01.410 and at any more frequent interval necessary to determine that the professional consultants are exercising adequate control.

(4) Regular Grading Requirements. The city engineer may require the permittee to provide inspection and testing by a professional testing company acceptable to the city engineer. The testing agency's responsibility shall include, but need not be limited to, approval concerning the inspection of cleared areas and benches to receive fill, and the compaction of fills. When the city engineer has reasonable cause to believe that geologic factors may be involved, the grading operation will be required to conform to "engineered grading" requirements.

(5) Notification of Noncompliance. If, in the course of fulfilling their responsibility under this section, the civil engineer, the soils engineer, the engineering geologist, or the testing agency finds that the work is not being done in conformance with this section or the approved grading plans, the discrepancies shall be reported immediately in writing to the person in charge of the grading work and to the city engineer (see Section 15.01.400). Recommendations for corrective action measures, if necessary, shall be submitted.

(6) Transfer of Responsibility for Approval. If the civil engineer, the soils engineer, the engineering geologist, or the testing agency of record is changed during the course of the work, the work shall be stopped until the replacement has agreed to accept the responsibility within the area of their technical competence for approval upon completion of the work.

(Ord. No. 579, § 1, 6-2-22)

15.01.430 Completion of work.

A. Final Reports. Upon the completion of the rough grading work and at the final completion of the work, the city engineer may require the following reports and drawings and supplements thereto:

(1) An as-graded grading plan prepared by the civil engineer who prepared the approved grading plan, including original ground surface elevations, as-graded ground surface elevations, lot drainage patterns and locations and elevations of all surface drainage facilities. The civil engineer shall state that to the best of his/her knowledge the work was done according to the final approved grading plan;

(2) A soil grading report prepared by the soils engineer, including locations and elevations of field density tests, summaries of field and laboratory tests, and other substantiating data and comments on any changes made during grading and their effect on the recommendations made in the soils engineering investigation report. The civil engineer shall render a finding as to the adequacy of the site for the intended use as affected by geologic factors;

(3) A geologic grading report prepared by the engineering geologist, including a final description of the geology of the site and any new information disclosed during the grading and the effect of same on recommendations incorporated in the approved grading plan. The engineering geologist shall render a finding as to the adequacy of the site for the intended use as affected by geologic factors.

B. Notification of Completion. The permittee or his/her agent shall notify the city engineer when the grading operation is ready for final inspection. Final approval shall not be given until all work, including installation of drainage facilities and their protective devices and all erosion control measures have been completed according to the final approved grading plan and the required reports have been submitted.

(Ord. No. 579, § 1, 6-2-22)

15.01.440 Removal of ground cover.

A. All debris from clearing and grubbing shall be removed from the site within three (3) months from the completion of that activity.

B. During the dry season, the natural vegetative ground cover of any watershed shall not be destroyed or removed more than thirty (30) days prior to grading. During the wet season, such ground cover shall not be destroyed or removed more than five (5) days prior to such grading. The city engineer may grant an extension of time when justified by the circumstances.

(Ord. No. 579, § 1, 6-2-22)

15.01.450 Wet season grading.

A. Commencement or continuation of any grading during the wet season is prohibited unless the city engineer grants permission as provided in this section.

B. The city engineer may, at his or her discretion, grant permission to commence or continue grading during the wet season, on the basis of the information submitted by the applicant or permittee, weather forecasts, experience or any other factors which he or she may consider pertinent, so long as such grading will not cause a hazardous condition, erosion, or sedimentation to occur or continue.

C. For continuance of wet season grading activities other than installation, maintenance or repair of measures in the interim or final erosion control plan, applicant/permittee shall submit evidence to the city engineer, as often as the city engineer requires, demonstrating that erosion and sedimentation are being effectively controlled.

D. Applicant/permittee's failure to submit the required information to obtain permission for wet season grading activity shall result in suspension or revocation of the grading permit, action against the security, filing a lien on the property to recover city's costs, and/or prosecution as provided in Sections 15.01.550 through 15.01.580 of this chapter.

(Ord. No. 579, § 1, 6-2-22)

15.01.460 Cuts.

A. General. Unless otherwise recommended in the approved soil engineering and/or engineering geology report, and specifically waived by the city engineer, cuts shall conform to the provisions of this section and in accordance with Figures 1 and Figure 2 of this chapter.

B. Cut slopes. Cut slopes shall be no steeper than two to one (2:1 - two (2) horizontal to one vertical) unless otherwise justified in the soil engineering or engineering geology report. Justification shall consist of a geotechnical slope stability analysis acceptable to the city engineer, with factors of safety in proportion to the affected structures and type of loading (e.g. earthquake). The factors of safety to be analyzed shall be those determined at the discretion of the city engineer.

C. Slope adjustments. The city engineer may require that the excavation be made with cut face flatter in slope than two (2) horizontal and one vertical if he/she finds the material in which the excavation is to be made is unusually subject to erosion, or if other conditions make such flatter slope necessary for stability and safety.

D. Drainage and Terracing. Drainage and terracing shall be provided as required by Section 15.01.490.

(Ord. No. 579, § 1, 6-2-22)

15.01.470 Fills.

A. General. Unless otherwise recommended in the approved soil engineering report and/or engineering geology report, and specifically waived by the city engineer, fills shall conform to the provisions of this section and Figure 1 and Figure 2 of this chapter. In the absence of an approved soils engineering report, these provisions may be waived for minor fills not intended to support structures.

B. Fill Location. Fill slopes shall not be constructed on natural slopes steeper than two to one (2:1), or where the fill slope terminates above a planned or existing cut slope, within a horizontal distance equal to one-third (⅓) of the vertical height of the fill, unless specifically addressed in the soils engineering report or the engineering geology report and approved by the city engineer.

C. Preparation of Ground. The ground surface shall be prepared to receive fill by removing vegetation, noncomplying fill, top-soil and other unsuitable materials scarifying to provide a bond with the new fill and, where slopes are steeper than five to one (5:1), and the height is greater than five (5) feet, by benching into sound bedrock or other competent material as determined by the soils engineer. The bench under the toe of a fill on a slope steeper than five to one (5:1) shall be at least ten (10) feet wide. The area beyond the toe of fill shall be sloped for sheet overflow, or a paved drain shall be provided. Where fill is to be placed over a cut, the bench under the toe of fill shall be at least ten (10) feet wide, but the cut must be made before placing fill and shall be approved by the soils engineer and engineering geologist as suitable foundation for fill. Unsuitable soil is soil that, in the opinion of the building official or the civil engineer or the soils engineer or the geologist, is not competent to support other soil or fill, to support structures or to satisfactorily perform the other functions for which the soil is intended.

D. Fill Material. Detrimental amounts of organic material shall not be permitted in fills. Except as permitted by the city engineer, no rock or similar irreducible material with a maximum dimension greater than eight (8) inches shall be buried or placed in fills.

Exception: the city engineer may permit placement of larger rock when the soils engineer properly devises a method of placement, continuously inspects its placement, and approves the fill stability. The following conditions shall also apply:

(1) Prior to issuance of the grading permit, potential rock disposal areas shall be delineated on the grading plan.

(2) Rock sizes greater than eight (8) inches in maximum dimension shall be ten (10) feet or more below grade, measured vertically.

(3) Rocks shall be placed so as to assure filling of all voids with fines.

E. Compaction. All fills shall be compacted to a minimum of ninety percent (90%) of maximum density as determined by Appendix J of the 2010 California Building Standards Code or equivalent, as approved by the city engineer. Field density shall be determined according to Appendix J of the 2010 California Building Standards Code or equivalent, as approved by the city engineer.

In addition to the inspections of fills, the city engineer may require a statement from an approved soils engineer based on tests of the fill at selected stages. If favorable conditions exist, the city engineer may, by prior approval, waive requirements for inspection of or soils tests by an approved soils engineer. The requirements of the city engineer for the compaction of fills may include but shall not be limited to the following:

(1) Preparation of the natural ground surface by removing top soil and vegetation and by compacting the fill upon a series of terraces;

(2) Control of moisture content of the material used for the fill;

(3) Limitation of the use of various kinds of materials;

(4) Maximum thickness of the layers of the fill to be compacted;

(5) Method of compaction;

(6) Density requirements of the completed fill depending upon the location and use of the fill;

(7) Compaction tests required during the process of filling.

F. Slope. The slope of fill surfaces shall be no steeper than is safe for the intended use. Fill slopes shall be no steeper than two (2) horizontal to one vertical (2:1).

The city engineer may require that the fill be made with a slope face flatter in slope than two to one (2:1) if he or she finds the material of which the fill is to be made is unusually subject to erosion, or if other conditions make such flatter slope necessary for stability and safety.

G. Drainage and Terracing. Drainage and terracing shall be provided and the area above fill slopes and the surfaces of terraces shall be graded and paved as required by Section 15.01.490.

(Ord. No. 579, § 1, 6-2-22)

15.01.480 Setbacks.

A. General. The setbacks and other restrictions specified by this section are minimum and may be increased by the city engineer or by the recommendations of a civil engineer, soils engineer, or engineering geologist, if necessary for safety and stability or to prevent damage of adjacent properties from deposition or erosion or to provide access for slope maintenance and drainage. Retaining walls may be used to reduce the required setbacks when approved by the city engineer.

B. Setbacks from Property Lines. The tops of cuts and toes of fill slopes shall be set back from the outer boundaries of the permit area, including slope-right areas and easements, in accordance with Figure 2 of this chapter. The tops and toes of cut and fill slopes shall be set back from property lines and structures as far as necessary to provide for safety of adjacent property, safety of pedestrians and vehicular traffic, required slope rounding, adequate foundation support, required swales, berms, and drainage facilities, and applicable zoning requirements. Except for pier-type foundations or other special foundation design, setbacks shall not be less than as shown on Figure 2 of this chapter.

(Ord. No. 579, § 1, 6-2-22)

15.01.490 Drainage and terracing.

A. General. Unless otherwise indicated on the approved grading plan, drainage facilities and terracing shall conform to the provisions of this section.

B. Terrace. Terraces at least six (6) feet in width shall be established at not more than thirty (30) feet vertical intervals on all cut or fill slopes to control surface drainage and debris, except that where only one terrace is required, it shall be at mid-height. For cut or fill slopes greater than sixty (60) feet and up to one hundred twenty (120) feet in vertical height, one terrace at approximately mid-height shall be twelve (12) feet in width. Terrace width and spacing for cut and fill slopes greater than one hundred twenty (120) feet in height shall be designed by the civil engineer who prepares the approved grading plan and approved by the city engineer. Suitable access shall be provided to permit proper cleaning and maintenance. Swales and ditches shall comply with the following requirements:

(1) Swales or ditches on terraces shall have a minimum gradient along and towards the ditch of five percent (5%) unless approved by the city engineer and must be paved with reinforced concrete not less than three (3) inches in thickness or an approved equal paving. They shall have a minimum depth at the deepest point of one foot and a minimum, paved width of three (3) feet or as required by the city engineer.

(2) A single run of swale or ditch shall not exceed a length of one hundred fifty (150) feet or collect runoff from a tributary area exceeding thirteen thousand five hundred (13,500) square feet (projected) without discharging into a down drain, unless approved by the city engineer.

C. Subsurface Drainage. Cut and fill slopes shall be provided with subsurface drainage as necessary for stability.

D. Disposal. All drainage facilities shall be designed to carry waters to the nearest practicable drainage way approved by the city engineer and/or other appropriate jurisdiction as a safe place to deposit such waters. Erosion of ground in the area of discharge shall be prevented by installation of nonerosive down drains or other devices.

Building pads shall have a drainage gradient of two percent (2%) toward approved drainage facilities, unless waived by the city engineer.

Exception: the gradient from the building pad may be one percent (1%) if all the following conditions exist throughout the permit area:

(1) No proposed fills are greater than ten (10) feet in maximum depth;

(2) No proposed finish cut or fill slope faces have a vertical height in excess of ten (10) feet;

(3) No existing slope faces, which have a slope face steeper than ten (10) horizontally to one (1) vertically, have a vertical height in excess of ten (10) feet;

(4) A two percent (2%) gradient is provided for the first five (5) feet adjacent to the structure.

E. Interceptor Drains. Adequate provision shall be made to prevent any surface waters from damaging the cut face of an excavation or the sloping surface of a fill. At the discretion of the city engineer, paved interceptor drains shall be installed along the top of all cut slopes where the tributary drainage area above slopes towards the cut and has a drainage path greater than forty (40) feet measured horizontally. Interceptor drains shall be paved with a minimum of three (3) inches of concrete or gunite and reinforced. They shall have a minimum depth of twelve (12) inches and minimum paved width of thirty (30) inches measured horizontally across the drain or as required by the city engineer. The slope of drain shall be subject to the city engineer's approval.

(Ord. No. 579, § 1, 6-2-22)

15.01.500 Import and export of earth material.

On project sites where earth materials are moved on public roadways from or to the site, the following requirements shall apply:

A. Dust control shall be implemented as specified in Section 15.01.510 below. The permittee shall be responsible for maintaining public rights-of-way used for hauling purposes in a condition free of dust, earth, or debris attributable to the grading operation.

B. Loading and hauling of earth from or to the site must be accomplished within the limitations established in Section 15.01.390 of this chapter.

C. Access roads to the premises shall be only at points designated on the approved grading plan. Access roads shall include stabilized construction entrances and/or other BMPs as required by the city engineer.

D. The last fifty (50) feet of the access road, as it approaches the intersection with the public roadway, shall have a grade not to exceed three percent (3%). There shall be a clear, unobstructed sight distance of three hundred (300) feet to the intersection from both the public roadway and the access road. If the three hundred (300) feet sight distance cannot be obtained, flagmen and/or signs shall be posted.

E. A stop sign conforming to the requirements of the California Vehicle Code shall be posted at the entrance of the access road to the public roadway.

F. An advance warning sign, conforming to the requirements of the current California Manual for Uniform Traffic Control Devices, shall be posted on both sides of the access intersection. The advance warning sign shall be covered or removed when the access intersection is not in use.

(Ord. No. 579, § 1, 6-2-22)

15.01.510 Dust control.

The movement of earth materials either within, to, or from a site shall require the implementation of dust control measures in accordance with the BAAQMD CEQA Guidelines and any additional measures that the city engineer deems to be necessary and appropriate. As determined by the city engineer, a water truck shall be continuously present on-site to assure maximum control.

(Ord. No. 579, § 1, 6-2-22)

15.01.520 Protection of adjoining property.

In accordance with California Civil Code Section 832, each adjacent owner is entitled to the lateral and subjacent support that his/her land receives from the adjoining land, subject to the right of the owner of the adjoining land to make proper and usual excavations on the same for purposes of construction or improvement as provided by law.

(Ord. No. 579, § 1, 6-2-22)

15.01.530 Removal of hazards.

Whenever the city engineer determines that any existing excavation, embankment, or fill on private property has become a hazard to any person, endangers property, or adversely affects the safety, use, or stability of a public way or drainage channel, the owner of the property upon which the excavation or fill is located, or other person or agent in control of such property, upon receipt of notice from the city engineer, shall immediately repair or eliminate such excavation or embankment so as to remove the hazard and to conform with the requirements of this chapter. Notice from the city engineer to remove a hazard may be verbal if the hazard presents an immediate threat of injury or damage, and as soon as reasonably possible thereafter, the verbal notice shall be followed by a written notice from the city engineer.

(Ord. No. 579, § 1, 6-2-22)

15.01.540 Post-grading procedures.

Upon completion of final grading and permanent improvements, where such permanent improvements are planned at the time grading is performed, permittee shall notify the city engineer that the grading is completed. The city engineer shall review the grading performed, and the final reports required in Section 15.01.430, and, if found in substantial conformance to the permit conditions, the city engineer may release the unexpended and unencumbered amount of the cash deposit and initiate the release of the security bonds posted by the permittee in accordance with Section 15.01.590.

(Ord. No. 579, § 1, 6-2-22)

15.01.550 Revocation or suspension of permits.

A. The city engineer may suspend any grading permit for the violation of any condition of the permit, the violation of any provision hereof or any other applicable law or ordinance, or the existence of any condition or the doing of any act constituting or creating a nuisance, threatening water quality, or endangering life, property, or the environment. Upon written notification of suspension of a permit, the permittee shall cease all work on the work site, except work necessary to remedy the cause of the suspension.

B. Following the suspension, the permittee shall be granted a hearing by the city engineer within five (5) days of the written notice of suspension. The notice shall state, generally, the grounds of complaint and the time and place where such hearing will be held.

C. At the conclusion of said hearing, and within thirty (30) days thereafter, the city engineer shall make his/her findings and notify, in writing, the permittee of the action taken.

D. If the permittee, after written notice of suspension, fails or refuses to cease work, as required under subsection A of this section, the city engineer may revoke the permit.

E. The city engineer may reinstate a suspended permit upon the permittee's correction of the cause of the suspension.

F. The city engineer shall not reinstate a revoked permit.

(Ord. No. 579, § 1, 6-2-22)

15.01.560 Violation—Penalties.

A. The violation of any of the provisions of this chapter shall constitute a misdemeanor, punishable by the fines, penalties and enforcement provisions set forth in Chapters 1.14, 1.16 and 1.18 of this Code.

B. Where a violation of any of the provisions of this chapter is determined by the city to have been willful, reckless, or grossly negligent, then in addition to the fines, penalties and enforcement provisions referenced in paragraph A above or set forth elsewhere in this Code, the city may impose a supplemental fine not to exceed the amounts listed below for each violation:

|  |  |
| --- | --- |
| Grading Quantity | Supplemental Fine |
| 6—50 cubic yards | $1,500.00 |
| 51—-00 cubic yards | $2,500.00 |
| 101—1,000 cubic yards | $5,000.00 |
| 1,001—10,000 cubic yards | $10,000.00 |
| 10,001—100,000 cubic yards | $25,000.00 |
| 100,001—200,000 cubic yards | $50,000.00 |
| Greater than 200,000 cubic yards | $250,000.00 |

(Ord. No. 579, § 1, 6-2-22)

15.01.570 Action against the security.

The city engineer may retain and/or execute security required by Section 15.01.240 if one of the conditions listed in subsections A through D below exists. The city engineer shall use funds from the appropriate security to finance remedial work undertaken by the city or private contractor under contract to the city, and to reimburse the city for all direct costs incurred in the process of the remedial work, including, but not limited to, the following conditions:

A. The permittee ceases land-disturbing activities and/or filling and abandons the work site prior to the completion of the work shown on the site map, grading plan and revegetation plan (if applicable);

B. The permittee fails to conform to the conditions of the grading permit as approved or as modified under Section 15.01.380 and has had his/her permit revoked under Section 15.01.550;

C. The techniques utilized under the interim or final erosion control plan fail within one year of installation, or before a final erosion control plan is implemented for the site or portions of the site, whichever is later;

D. The city engineer determines that action by the city is necessary to prevent excessive erosion from occurring on the site.

(Ord. No. 579, § 1, 6-2-22)

15.01.580 Public nuisance abatement.

A. The city council finds and declares that any work site on which grading has been started and has been abandoned or is not completed according to the site plan, grading plan, and grading permit, or on which the interim or final erosion control facilities have failed, or where on-site grading and erosion control facilities either are not working properly or are inadequate or incomplete, creates a danger to public health, safety and welfare, and constitutes a public nuisance. All duties of the city manager under this chapter may be delegated to other officers, agents or employees of the city.

B. The public nuisance abatement procedures provided in this section are, at the city's option, alternative or additional to the procedures provided in Sections 15.01.570 and 15.01.530 of this chapter, or to any applicable procedures provided by this Code, including Chapters 1.14, 1.16, 1.18, 8.38, or any other city ordinance, or provided by state law.

C. The city manager is authorized to abate each and every such nuisance or cause the same to be abated in the manner provided by the provisions of this section.

D. Before abating any condition which is declared to be a public nuisance, the city manager shall post upon or in front of the property on which such nuisance exists, a notice which shall be substantially in the following form:

NOTICE TO ABATE NUISANCE OR REMOVE HAZARD

Notice is hereby given that the following activity/condition on the property located at \_\_\_\_\_\_\_\_, in the City of Brisbane, County of San Mateo, State of California, identified as Assessors Parcel Number \_\_\_\_\_\_\_\_ constitutes a violation of the City of Brisbane Grading Ordinance or a violation of a permit or approval issued pursuant to such Ordinance:

Such condition creates a danger to the public health, safety, and welfare and is a public nuisance which must be abated by immediately by taking the following corrective action:

If said nuisance is not abated or said hazard is not removed within \_\_\_\_\_\_\_ days from and after the date of posting of this notice, or if good cause is not shown to the undersigned within said time why such corrective action should not be taken, the city will abate such nuisance by removing or causing to be removed said hazard and completing or causing to be completed the corrective action described above, and in such event, the cost and expense of such removal and abatement will be specifically assessed upon or against the parcel of land from which the hazard is removed and on which the corrective action is completed, and such assessment will constitute a lien upon the property until paid.

All interested persons having any objection to the above shall present such objections to the undersigned city manager at City Hall, 50 Park Place, Brisbane, California 94005, within \_\_\_\_\_\_\_\_ days from and after the posting, herein specified, of this notice.

Posted/Mailed this \_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_,20\_\_\_

CITY MANAGER OF THE CITY OF BRISBANE

By:\_\_\_\_\_\_\_\_\_\_\_

E. Before abating any condition which is declared to be a public nuisance in this section, the city manager, in addition to posting of notice or notices as provided by subsection (D) of this section, may mail, or cause to be mailed, to the person or persons who are designated on the last equalized assessment roll of the County of San Mateo, as owner or owners of the parcel of land on which such nuisance exists, at their address or addresses as shown on the last equalized assessment roll, a written notice or notices which shall be substantially in the same form shown in subsection (D) above.

F. The owner or owners of any private parcel of land within or upon which a public nuisance, as described in this section, exists, have a duty to abate such nuisance at his, her or their own cost and expense by removing any hazard and completing any planned permitted grading within the time prescribed in the notice which is posted upon such property, or if notice is given by mail within the time prescribed in the mailed notice. If such owner or owners fail to abate such nuisance within said time, and if, in addition, they fail to show cause to the satisfaction of the city manager why said nuisance should not be abated, then in that event the city may abate said nuisance or cause same to be abated.

G. In order to abate said nuisance, the city may cause the removal of said nuisance and complete the planned permitted work, or perform such other work as may be necessary or appropriate to abate the nuisance or may cause a licensed contractor to abate the nuisance in such manner for reasonable rates not in excess of prevailing rates for similar work within the city.

H. In the event the city manager finds that any public nuisance, above described in this section, within or upon any parcel of land is so serious and presents such an immediate menace or danger to the public health, safety and welfare that such nuisance should be immediately abated without first posting or mailing notices, as above provided, and without first giving the owner or owners of said parcel further time to abate the same, then in that event the city manager may immediately abate said nuisance or cause the same to be abated in the manner provided in subsection G of this section without first posting or mailing any notices and without giving the owner or owners of the parcel further time to abate the same. However, the city manager, if he or she abates such nuisance, shall prepare and file in his or her office a written report describing the location, nature and extent of the public nuisance and setting forth the reasons why he or she had to abate it immediately, as aforesaid, and he or she shall cause a copy of said report to be mailed within ten (10) days from and after completion of such abatement, to the owner or owners of the parcel within or upon which nuisance existed, as such owner or owners are shown on the last equalized assessment roll of the County of San Mateo, at their addresses as shown on said roll.

I. The city manager shall keep a record of the cost and expense incurred by him or her in abating or causing to be abated, pursuant to this section, each public nuisance within or upon each separate parcel of land. To said costs and expenses, the city manager shall add an amount for overhead and administration and incidental expenses and shall submit them to the city council for confirmation of an itemized written report showing all costs and expenses incurred by the city in abating each public nuisance.

J. A copy of city manager's report to the city council shall be posted for at least ten (10) days prior to its submission to the city council at the usual place where city notices are posted, together with a notice of the time and place when and where it will be submitted to the city council for a hearing. The notice shall state a time and place when and where property owners may appear and object to any matter contained in the report.

K. At the time fixed for receiving and considering the report, the city council shall hear it with any objections of the property owners liable to be assessed for the abatement. It may modify the report if it is deemed necessary. If the city council finds the report to be acceptable, it shall confirm the report by resolution.

L. After confirmation of the report, a certified copy of the same shall be filed with the County of San Mateo. The description of the parcels reported shall be those used for the same parcels on the county's assessor's map books for the current year.

M. The cost of abatement within or upon each parcel of land, as confirmed, constitutes a special assessment against that parcel, and upon such confirmation it is a lien on the parcel. Laws relating to the levy, collection and enforcement of county taxes apply to such special assessment taxes. The appropriate county official shall enter each assessment on the county tax roll opposite the parcel of land. The amount of the assessment shall be collected at the time and in the manner of ordinary municipal taxes. If delinquent, the amount is subject to the same penalties and procedures of foreclosure and sale provided for ordinary municipal taxes.

N. As an alternate method, the county tax collector, in his or her discretion, may collect the assessments without reference to the general taxes by issuing separate bills and receipts for the assessments.

O. The city finance director may receive the amount due on the abatement cost and issue receipts at any time after confirmation of the report and until July 1st of the calendar year in which the report is confirmed. If the cost is paid in full, no report shall be filed with the County of San Mateo to levy a special assessment for such cost.

P. The city council may order refunded all or part of a special assessment paid pursuant to this section if it finds that all or part of the special assessment has been erroneously levied. A special assessment or part shall not be refunded unless a claim is filed on or before March 1st next following the date the tax became due and payable. The claim shall be verified by the person who paid the tax, or his or her duly authorized representative.

(Ord. No. 579, § 1, 6-2-22)

15.01.590 Release of security.

Security deposited with the city for faithful performance of the grading, revegetation (if applicable), and erosion control work, and to finance necessary remedial work shall be released according to the following schedule:

A. Securities held against the successful completion of the work shown on the site map, grading plan and the interim plan, shall be released to the permittee at the termination of the permit, or the satisfactory completion of the grading operations, provided no action against such security is filed prior to that date;

B. Securities held against the successful completion of the work shown on the final plan shall be released to the permittee either one year after termination of the permit or when the final plan is approved as completed, or when the city planning department approves a final revegetation monitoring report, whichever is later, provided no action against such security has been filed prior to that date.

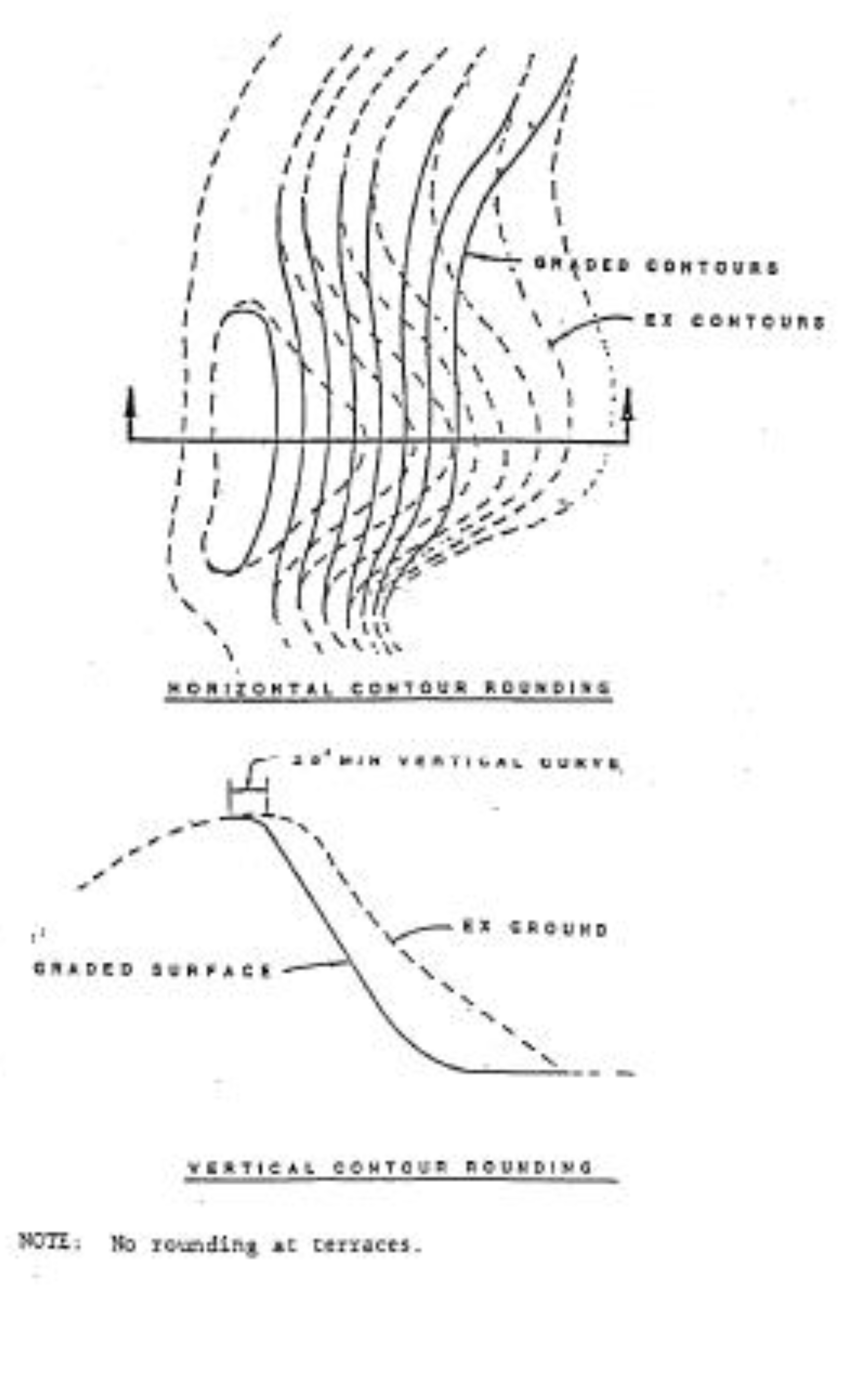
(Ord. No. 579, § 1, 6-2-22)

15.01.600 Cumulative enforcement procedures.

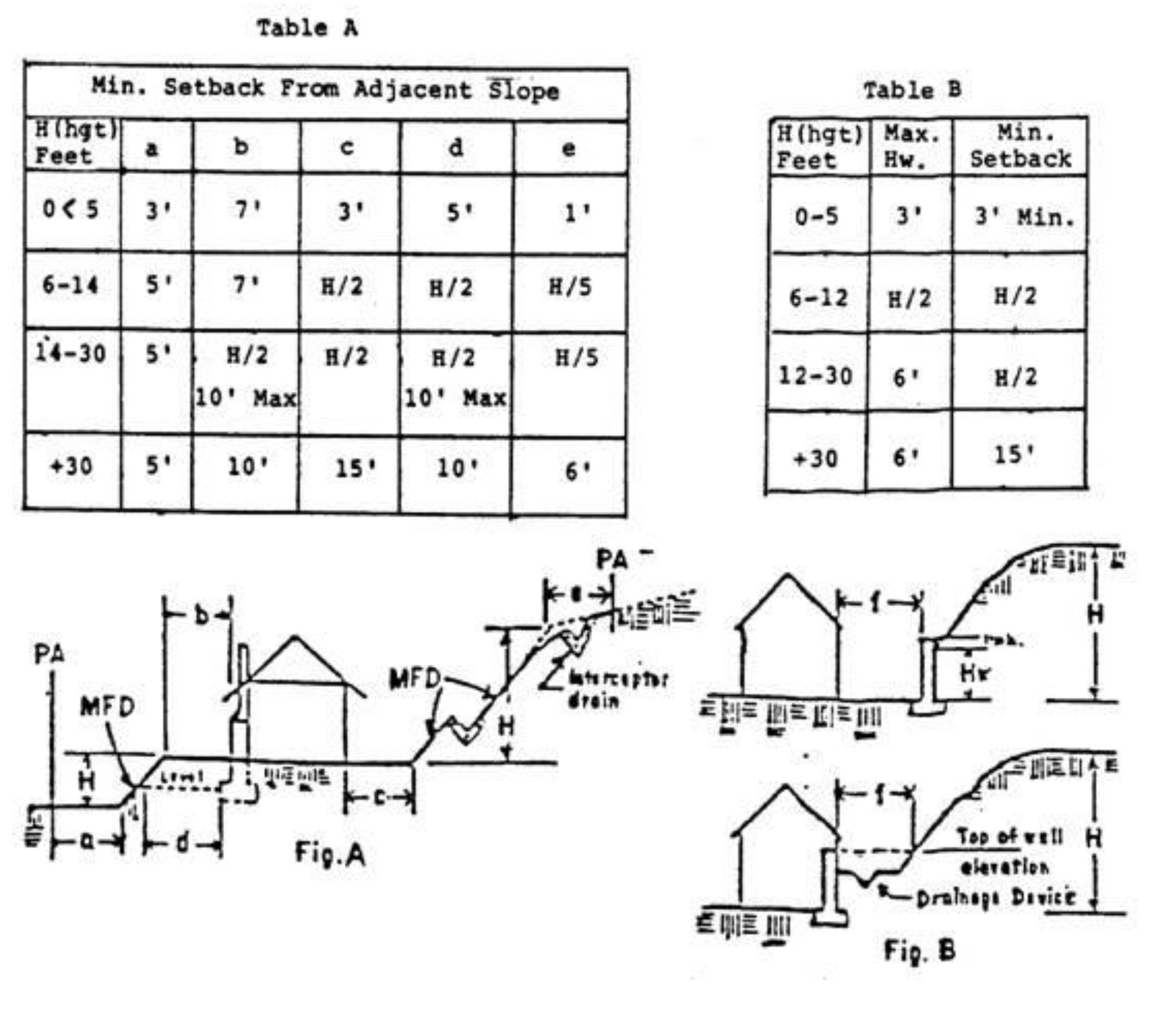
The procedures for enforcement of a permit, as set forth in this chapter, are cumulative and not exclusive.

(Ord. No. 579, § 1, 6-2-22)

**FIGURE 1**



**FIGURE 2**



NOTES:

1. PA means permit area boundary and/or property line; MFD means manufactured surface.

2. Setbacks shall also comply with applicable zoning regulations.

3. Table A applies to manufactured slopes and 2:1 or steeper natural slopes. Setbacks from natural slopes flatter than 2:1 shall meet the approval of the city engineer.

4. "b" may be reduced to 5′ minimum if an approved drainage device is used; roof gutters and downspouts may be required.

5. "b" may be reduced to less than 5′ if no drainage is carried on this side and if roof gutters are included.

6. If the slope between "a" and "b" levels is replaced by a retaining wall, "a" may be reduced to zero and "b" remains as shown in Table A. The height of the retaining wall shall be controlled by zoning regulations.

7. "b" is measured from the face of the structure to the top of the slope.

8. "d" is measured from the lower outside edge of the footing along a horizontal line to the face of the slope. Under special circumstances "d" may be reduced or recommended in the approved soil report and approved by the City Engineer.

9. The use of retaining walls to reduce setbacks (Fig. B) must be approved by the city engineer.

10. "f" may be reduced if the slope is composed of sound rock that is not likely to produce detritus and is recommended by the soil engineer or engineering geologist and approved by the city engineer.

11. "a" and "e" shall be 2′ when PA coincides with arterial or local street right-of-way and when improved sidewalk is adjacent to right-of-way.

12. "e" shall be increased as necessary for interceptor drains.

## Chapter 15.04 ADOPTION OF CONSTRUCTION CODES[[2]](#footnote-2)

Sections:

15.04.010 Purpose and authority.

The purpose of this chapter is to adopt by reference the 2022 Edition of the California Building Standards Code, Title 24 of the California Code of Regulations. This chapter is also adopted to provide minimum requirements and standards for the protection of the public safety, health, property and welfare of the City of Brisbane. This chapter is adopted under the authority of Government Code Section 38660 and Section 50022.2 and Health and Safety Code Section 18941.5.

(Ord. No. 552, § 1, 12-6-10; Ord. No. 583, § 2, 5-19-14; Ord. No. 613, § 2, 1-5-17; Ord. No. 643, § 2, 12-12-19; Ord. No. 675, § 2, 11-17-22)

15.04.020 Citation.

This chapter shall be known as the Brisbane Construction Code or Building Code of the City of Brisbane, and may be cited as such, and will be referred to herein as "this code."

(Ord. No. 552, § 1, 12-6-10; Ord. No. 675, § 3, 11-17-22)

15.04.030 Conflicts with other laws, rules or regulations.

In the event of any conflict between this code and any law, rule or regulation of the state of California, or any other ordinance, rule or regulation of the city, that requirement which establishes the higher standard of safety or environmental protection or conservation, shall govern. Failure to comply with such higher standard shall be a violation of this code.

(Ord. No. 552, § 1, 12-6-10)

15.04.040 Adoption of construction codes.

A. Title 24 of the California Code of Regulations, 2022 Edition of the California Building Standards Code, is hereby adopted by reference and incorporated in this code, including the following parts:

1. 2022 California Administrative Code, Title 24, Part 1.

2. 2022 California Building Code, Volumes 1 and 2, based on the 2021 International Building Code (ICC), Title 24, Part 2, including Appendix G Flood Resistant Construction, Appendix I Patio Covers, and Appendix J Grading.

3. 2022 California Residential Code, based on the 2021 Edition International Residential Code (ICC), Title 24, Part 2.5, including Appendix H Patio Covers, Appendix J Existing Building and Structures, Appendix K Sound Transmission, and Appendix V Swimming Pool Safety Act.

4. 2022 California Electrical Code, based on the 2020 Edition National Electric Code as published by the National Fire Protection Association (NFPA), Title 24, Part 3.

5. 2022 California Mechanical Code, based on the 2021 Uniform Mechanical Code as published by the International Association of Plumbing and Mechanical Officials (IAPMO), including all appendix chapters, Title 24, Part 4.

6. 2022 California Plumbing Code, based upon the 2021 Uniform Plumbing Code as published by the International Association of Plumbing and Mechanical Officials (IAPMO), including all appendix chapters, Title 24, Part 5.

7. 2022 California Energy Code, Title 24, Part 6.

8. 2022 California Historical Building Code, Title 24, Part 8.

9. 2022 California Fire Code, Title 24, Part 9, and modifications thereof, see Chapter 15.44 of this title.

10. 2022 California Existing Building Code based on the 2021 International Existing Building Code Edition, published by the International Code Council, together with those omissions, amendments, exceptions and additions thereto as amended in Part 10 of the California Building Standards Code, California Code of Regulations Title 24.

11. 2022 California Green Building Standards Code, Title 24, Part 11.

12. 2022 California Referenced Standards Code, Title 24, Part 12.

B. The 2021 International Property Maintenance Code is hereby adopted by reference and incorporated in this code.

(Ord. No. 552, § 1, 12-6-10; Ord. No. 583, § 3, 5-19-14; Ord. No. 613, § 3, 1-5-17; Ord. No. 643, § 3, 12-12-19; Ord. No. 651, § 2, 3-19-20; Ord. No. 675, § 3, 11-17-22)

15.04.043 Amendments to the California Building Standards Code.

The 2022 California Building Code (CBC), California Residential Code (CRC), and California Green Building Standards Code (CALGreen) are hereby amended as follows:

A. CBC Section 101.1 is amended to read as follows:

[A] 101.1 Title.

These regulations shall be known as the Building Code of the City of Brisbane, hereinafter referred to as "this code."

B. CBC Section 102.6.3 is added to read as follows:

[A] 102.6.3 Buildings or structures moved into city.

Any building or structure moved into the city, within the jurisdiction of the building official, shall meet the standards required by the construction codes for new buildings and structures.

C. CBC Section 102.7 is added to read as follows:

[A] 102.7 Additions, Alterations, and Major Rebuilds to Existing Buildings.

Additions, alterations, or repairs to any building or structure shall comply with the provisions set out in this code, except as otherwise required in Chapter 15.10 of Title 15.

D. CBC Section 103.1 is amended to read as follows:

[A] 103.1 Enforcement Agency.

The Community Development Department is the official in charge thereof and shall be known as the building official. The function of the agency shall be the implementation, administration, and enforcement of the provisions of this code.

E. Small Residential Rooftop Solar Permit Streamlining.

1. CBC Section 105.3.1.1 is added to read as follows:

105.3.1.1 Small Residential Rooftop Solar Permit Streamlining.

Any application for a building permit for small residential rooftop solar energy systems, as defined by Chapter 15.82 of this Title, is subject to the streamlined and inspection process established thereunder.

2. CRC Section R105.3.1.2 is added to read as follows:

R105.3.1.2 Small Residential Rooftop Solar Permit Streamlining.

Any application for a building permit for small residential rooftop solar energy systems, as defined by Chapter 15.82 of this Title, is subject to the streamlined and inspection process established thereunder.

F. Electric Vehicle Charging Station Permit Streamlining.

1. CBC Section 105.3.1.2 is added to read as follows:

105.3.1.2 Electric Vehicle Charging Station Permit Streamlining.

Any application for a building permit for electric vehicle charging stations, as defined by Chapter 15.86 of this Title, is subject to the streamlined process established thereunder.

2. CRC Section R105.3.1.3 is added to read as follows:

R105.3.1.3 Electric Vehicle Charging Station Permit Streamlining.

Any application for a building permit for electric vehicle charging stations, as defined by Chapter 15.86 of this Title, is subject to the streamlined process established thereunder.

G. CBC Section 109.4 is deleted in its entirety and replaced to read as follows:

[A] 109.4 Work commencing before permit issuance.

Any person who commences any work before obtaining the necessary permits shall be subject to a penalty fee established by the building official that is up to ten (10) times the amount of the required permit fee, in addition to the required permit fees.

The payment of penalty fees for commencing work without a permit shall not relieve any person from fully complying with the requirements of this code or the construction codes in the execution of the work; and the payment of such fees shall not relieve any person from any other fines or penalties that may be imposed pursuant to any other provisions of this title.

H. CBC Section 114.4 is amended to read as follows:

[A] 114.4 Violation penalties.

Any person who violates a provision of this code or fails to comply with any of the requirements thereof or who erects, constructs, alters, or repairs a building or structure in violation of the approved construction documents or directive of the building official, or of a permit or certificate issued under the provisions of this code shall constitute a misdemeanor, punishable by the fines, penalties, and enforcement provisions set forth in Chapters 1.14, 1.16 and 1.18 of Title 1. The penalties set forth herein are cumulative and shall not preclude the imposition of any other fine or penalty otherwise permitted by law, including a penalty fee for commencing work without a permit as prescribed by this code.

I. CBC Section 1505.1.2 is amended to read as follows:

1505.1.2 Roof coverings within all other areas.

The entire roof covering of every existing structure where ten percent (10%) or more of the total roof area of a wood roof or fifty percent (50%) or more of the total roof area of a non-wood roof is replaced within any one (1) year period, the entire roof covering of every new structure, and any roof covering applied in the alteration, repair or replacement of the roof of every existing structure, shall be a fire-retardant roof covering that is at least Class C.

J. CALGreen Section 202 is amended to add definitions as follows:

ALL-ELECTRIC BUILDING. A building that contains no combustion equipment or plumbing for combustion equipment serving space heating (including fireplaces), water heating (including pools and spas), cooking appliances (including barbeques), and clothes drying, within the building or building property lines, and instead uses electric heating appliances for service.

ELECTRIC HEATING APPLIANCE. A device that produces heat energy to create a warm environment by the application of electric power to resistance elements, refrigerant compressors, or dissimilar material junctions, as defined in the California Mechanical Code.

FUEL GAS. A gas that is natural, manufactured, liquefied petroleum, or a mixture of these, as defined in the California Mechanical Code.

FUEL GAS INFRASTRUCTURE. Piping, other than service pipe, in or in connection with a building, structure or within the property lines of premises, extending from the point of delivery at the gas meter, service meter assembly, outlet of the service regulator, service shutoff valve, or final pressure regulator, whichever is applicable, as defined in the California Mechanical Code.

LABORATORY. A room, building or area where the use and storage of hazardous materials are utilized for testing, analysis, instruction, research or developmental activities in medical and life sciences. The building may include a combination of scientific work areas and the supporting offices.

K. CALGreen Section 4.106 is amended to include new subsections to read as follows:

4.106.5 All-electric buildings. New construction buildings and qualifying alteration projects shall comply with Section 4.106.5.1 or 4.106.5.2 so that they do not use combustion equipment or are ready to accommodate installation of electric heating appliances.

4.106.5.1. New construction. All newly constructed buildings shall be all-electric buildings.

Exceptions:

If the applicant establishes that there is not an all-electric prescriptive compliance pathway for the building under the California Building Energy Efficiency Standards, and that the building is not able to achieve the performance compliance standard applicable to the building under the Energy Efficiency Standards using commercially available technology and an approved calculation method, then the local enforcing agency may grant a modification. The applicant shall comply with Section 4.106.5.2.

Inactive Fuel Gas Infrastructure may be extended to spaces that are anticipated to qualify for the exceptions contained in this chapter. The inactive Fuel Gas Infrastructure shall not be activated, have a meter installed, or otherwise used unless the exemptions specified in this chapter have been confirmed as part of the issuance of a building permit. If the Fuel Gas Infrastructure is no longer serving one of the exceptions contained in this chapter, it shall either be capped, otherwise terminated, or removed by the entity previously entitled to the exemption, in a manner pursuant to all applicable Codes.

The City of Brisbane shall have the authority to approve alternative materials, design and methods of construction or equipment per California Building Code Section 104.

4.106.5.2 Requirements for combustion equipment. Where combustion equipment is allowed per Exceptions under 4.106.5.1, the construction drawings shall indicate electrical infrastructure and physical space accommodating the future installation of an electrical heating appliance in the following ways, as certified by a registered design professional or licensed electrical contractor:

1. Branch circuit wiring, electrically isolated and designed to serve all electrical heating appliances in accordance with manufacturer requirements and the California Electrical Code, including the appropriate voltage, phase, minimum amperage, and an electrical receptacle or junction box within five feet of the appliance that is accessible with no obstructions. Appropriately sized conduit may be installed in lieu of conductors; and

2. Labeling of both ends of the unused conductors or conduit shall be with "For Future Electrical Appliance"; and

3. Reserved circuit breakers in the electrical panel for each branch circuit, appropriately labeled (i.e. "Reserved for Future Electric Range"), and positioned on the opposite end of the panel supply conductor connection; and

4. Connected subpanels, panelboards, switchboards, busbars, and transformers shall be sized to serve the future electrical heating appliances. The electrical capacity requirements shall be adjusted for demand factors in accordance with the California Electric Code; and

5. Physical space for future electrical heating appliances, including equipment footprint, and if needed a pathway reserved for routing of ductwork to heat pump evaporator(s), shall be depicted on the construction drawings. The footprint necessary for future electrical heating appliances may overlap with non-structural partitions and with the location of currently designed combustion equipment.

L. CALGreen Section 5.106 is amended to include new subsections to read as follows:

5.106.13 All-electric buildings. New construction buildings and qualifying alteration projects shall comply with Section 5.106.13.1 or 5.106.13.2 so that they do not use combustion equipment or are ready to accommodate installation of electric heating appliances.

5.106.13.1 New construction. All newly constructed buildings shall be all-electric buildings.

Exceptions:

Laboratory areas within Non-Residential Buildings may contain non-electric Space Conditioning Systems. To take advantage of this exception, an applicant shall provide third party verification that the All-electric space heating requirement is not cost effective and feasible.

If the applicant establishes that there is not an all-electric prescriptive compliance pathway for the building under the California Building Energy Efficiency Standards, and that the building is not able to achieve the performance compliance standard applicable to the building under the Energy Efficiency Standards using commercially available technology and an approved calculation method, then the local enforcing agency may grant a modification. The applicant shall comply with Section 5.106.13.2

Inactive Fuel Gas Infrastructure may be extended to spaces that are anticipated to qualify for the exceptions contained in this chapter. The inactive Fuel Gas Infrastructure shall not be activated, have a meter installed, or otherwise used unless the exemptions specified in this chapter have been confirmed as part of the issuance of a building permit. If the Fuel Gas Infrastructure is no longer serving one of the exceptions contained in this chapter, it shall either be capped, otherwise terminated, or removed by the entity previously entitled to the exemption, in a manner pursuant to all applicable Codes.

The City of Brisbane shall have the authority to approve alternative materials, design and methods of construction or equipment per California Building Code Section 104.

5.106.13.2 Requirements for combustion equipment. Where combustion equipment is allowed per Exceptions under 5.106.13.1, the construction drawings shall indicate electrical infrastructure and physical space accommodating the future installation of an electrical heating appliance in the following ways, as certified by a registered design professional or licensed electrical contractor:

1. Branch circuit wiring, electrically isolated and designed to serve all electrical heating appliances in accordance with manufacturer requirements and the California Electrical Code, including the appropriate voltage, phase, minimum amperage, and an electrical receptacle or junction box within five feet of the appliance that is accessible with no obstructions. Appropriately sized conduit may be installed in lieu of conductors; and

2. Labeling of both ends of the unused conductors or conduit shall be with "For Future Electrical Appliance"; and

3. Reserved circuit breakers in the electrical panel for each branch circuit, appropriately labeled (i.e. "Reserved for Future Electric Range"), and positioned on the opposite end of the panel supply conductor connection; and

4. Connected subpanels, panelboards, switchboards, busbars, and transformers shall be sized to serve the future electrical heating appliances. The electrical capacity requirements shall be adjusted for demand factors in accordance with the California Electric Code; and

5. Physical space for future electrical heating appliances, including equipment footprint, and if needed a pathway reserved for routing of ductwork to heat pump evaporator(s), shall be depicted on the construction drawings. The footprint necessary for future electrical heating appliances may overlap with non-structural partitions and with the location of currently designed combustion equipment.

(Ord. No. 675, § 4, 11-17-22)

15.04.045 Timing of the construction of off-site improvements.

Where a building permit requires that an applicant construct certain off-site improvements including, but not limited, to road widening, retaining walls and/or parking spaces, the applicant shall construct all such improvements in a schedule approved by the city engineer before beginning any on site construction unless the city engineer authorizes specific on site construction before the enumerated off-site improvements are completed.

(Ord. No. 685, § 1, 10-5-23)

15.04.047 Building permit fee.

A. A fee for each permit issued shall be paid to the building official as set forth in CBC Section 109.

B. All development projects exceeding the size and valuation thresholds set forth in Chapter 15.85 of this title shall make contributions to the Brisbane public art fund in the amounts specified thereunder.

(Ord. No. 675, § 4, 11-17-22)

15.04.050 Disclaimer of liability.

The provisions of this code shall not be construed as imposing upon the City of Brisbane any liability or responsibility for damage to persons or property resulting from defective work, nor shall the City of Brisbane or any official, employee or agent thereof, be held as assuming any such liability or responsibility by reason of the review or inspection authorized by the provisions of this code of any permits or certificates issued under this code.

(Ord. No. 552, § 1, 12-6-10)

## Chapter 15.10 ADDITIONS, ALTERATIONS, AND MAJOR REBUILDS TO EXISTING BUILDINGS

Sections:

15.10.010 Authority.

The building official or the building official's designee shall have the authority to enforce the provisions of this chapter.

(Ord. No. 653, § 5, 10-15-20)

15.10.020 Coordination with other chapters.

This chapter is intended to establish requirements which are in addition to, and not in replacement of, any other ordinance, rule, regulation, or policy of the city which may be applicable to the proposed development project, including any of the codes adopted by this Title 15 and the requirements of Section 17.01.060 of this title.

(Ord. No. 653, § 5, 10-15-20)

15.10.030 Applicability.

This chapter shall apply to additions, alterations, or major rebuilds, as defined in Section 15.10.040 of this chapter, to a lawfully constructed building completed within any five (5) year period. The date of completion shall normally be established as the date on which the city grants final inspection approval of the work.

(Ord. No. 653, § 5, 10-15-20)

15.10.040 Definitions.

For the purposes of this chapter the following definitions apply:

A. "Addition and alteration" shall mean new floor area added to an existing lawfully constructed building and/or changes to the existing floor area of a lawfully constructed building, which calculated together or apart constitute fifty (50) percent of the pre-existing floor area of the building. The conversion or recognition of non-habitable rooms to habitable space may be included in the calculation of alteration of space, at the discretion of the building official.

B. "Major rebuild" shall mean removal of seventy-five percent (75%) or more of the combined surface area of the interior walls and ceilings of the habitable rooms of a building or structure to expose support members.

C. "Floor area" shall mean the sum of the gross horizontal areas of all floors of all buildings or structures measured from the interior face of the exterior walls, but excluding each of the following:

1. Any area where the floor to ceiling height is less than six (6) feet.

2. Any detached garage or other detached accessory structure which does not constitute habitable space.

3. Any attached carport or covered deck.

4. Any attached or detached accessory dwelling unit eight hundred (800) square feet or less in gross horizontal area that, if detached, does not exceed sixteen (16) feet in height, where authorized pursuant to Chapter 17.43 of Title 17 of this code.

D. "Standards for new construction" shall mean:

1. The requirements of the California Buildings Code adopted by this Title 15; and

2. The storm water management and discharge requirements established by Chapter 13.06 of Title 13; and

3. The standard specifications and street standards adopted by Section 12.24.010 of Title 12.

E. "Hardship" means some verifiable level of difficulty or adversity, beyond the control of the applicant, by which the applicant cannot reasonably comply with the requirements of this chapter.

(Ord. No. 653, § 5, 10-15-20)

15.10.050 Compliance standards.

For applicable projects, the entire building shall be brought into conformity with the standards for new construction that the building official determines to be necessary or appropriate to eliminate existing health or safety hazards, including, but is not limited to, defects in structural integrity, defective or inadequate electrical installations, defective or inadequate fire sprinklers, sanitary sewer or storm drainage facilities, and substandard street access to the property.

(Ord. No. 653, § 5, 10-15-20)

15.10.060 Exceptions.

A. Standard Exceptions. The following standard exceptions to Section 15.10.050 shall apply:

1. The area of any additions and/or alterations not exceeding a cumulative total of four hundred (400) square feet within any five-year period.

2. The conversion of existing floor area in an existing single-family or multiple-family dwelling to an accessory dwelling unit where authorized pursuant to Chapter 17.43 of Title 17.

3. The area of any addition and/or alteration for the creation or expansion of an attached or detached accessory dwelling unit eight hundred (800) square feet or less in floor area where authorized pursuant to Chapter 17.43 of Title 17. If detached, the accessory dwelling unit may not exceed sixteen (16) feet in height.

4. Work involving exterior surfaces, such as the replacement of roofing or siding, or the addition or replacement of windows or doors, or the addition of a porch or deck.

5. Alterations, renovations or repairs which do not essentially change the uses of the rooms within the building.

B. Other Exceptions. Where the above listed exceptions do not apply, the building official shall have authority on a case-by-case basis to grant modifications of any such requirements for the standards of new construction if the building official is able to find and determine that:

1. Compliance with the requirement will cause unreasonable hardship; or

2. The modification does not reduce any requirements for fire protection or any requirements relating to structural support and integrity; or

3. The modification does not create any new or increased hazard to the health or safety of the occupants of the existing building or structure.

(Ord. No. 653, § 5, 10-15-20)

## Chapter 15.44 FIRE PREVENTION CODE[[3]](#footnote-3)

15.44.010 Adoption of fire prevention code.

The Fire Prevention Code for the City of Brisbane shall be the 2018 Edition of the International Fire Code and the 2019 Edition of the California Fire Code, including Appendices B, C, D, F, and L (collectively, hereinafter referred to as the "Fire Code"), as promulgated by the International Code Council, and the same is hereby adopted and incorporated herein by reference, subject to the modifications as contained in this Chapter 15.44. Two (2) copies of the fire code have been filed for use and examination by the public, one copy being located at Brisbane City Hall and the other copy being located at the fire administration office.

(Ord. No. 643, § 4, 12-12-19)

15.44.020 Title of chapter.

This chapter shall be known as the "fire prevention code of the city" for the administration and enforcement of the fire code.

(Ord. No. 643, § 4, 12-12-19)

15.44.030 Section 104.2 amended—Applications and permits.

Section 104.2 of the fire code is amended by adding the following paragraphs at the end of said section:

Except as otherwise determined by the Fire Marshall, plans submitted in support of an application for a building permit to construct all buildings or structures within the City of Brisbane shall be submitted to the Fire Department for review and approval to determine conformance with applicable fire and life safety requirements.

No portion of any equipment intended to be covered by earth or by enclosure within permanent portions of a building or structure shall be enclosed until inspected and approved by the Fire Marshal, or appointed

Fire Department staff. An inspection shall be requested prior to covering or enclosing of any such equipment. Such request shall be made not less than forty-eight (48) hours prior to the estimated time of the desired inspection.

(Ord. No. 643, § 4, 12-12-19)

15.44.040 Section 105.6.25 added—Permit fees.

Section 105.6.25 is added to the fire code, to read as follows:

105.6.25 Permit fees. The Fire Department shall be authorized to charge such fees and costs for services performed pursuant to the Fire Code as may be established from time to time by ordinance or resolution of the City Council.

(Ord. No. 675, § 5, 11-17-22)

Editor's note(s)—Ord. No. 675, § 5, adopted Nov. 17, 2022, repealed the former § 15.44.040 and enacted a new § 15.44.040 as set out herein. The former § 15.44.040 pertained to Section 105.7.17 added—Permit fees and derived from Ord. No. 643, § 4, adopted Dec. 12, 2019.

15.44.050 Section 503.2.5 amended—Dead ends.

Section 503.2.5 of the fire code is amended by adding the following paragraph to the end of said section:

Dead-end fire apparatus access roads in excess of one hundred fifty feet (150′) in length shall be provided with a minimum turnaround clear radius of fifty-two feet (52′), or other turnaround as approved by the Fire Marshal.

(Ord. No. 643, § 4, 12-12-19)

15.44.060 Section 503.3 amended—Marking.

Section 503.3 of the fire code is amended by adding the following paragraph to the end of said section:

Where fire lanes on private property have been designated by the Fire Marshal, curbs shall be painted red on the side or sides of the street or access route where parking is prohibited and no parking signs or other appropriate notice prohibiting obstructions, as approved by the Fire Marshal, shall be provided and maintained by the owner. No parking signs shall read as follows:

FIRE LANE   
NO PARKING OR STOPPING   
CVC SEC. 22500.1   
PARKED VEHICLES MAY BE TOWED   
AT VEHICLE OWNER'S EXPENSE

(Ord. No. 643, § 4, 12-12-19)

15.44.070 Section 507.5.7 added—Fire hydrants and water supply.

Section 507.5.7 is added to the fire code, to read as follows:

507.5.7 Hydrants. All new fire hydrants shall be UL listed, or equivalent, wet barrel type having a minimum of two 2 ½" and one 4 ½" outlets, all equipped with national standard threads (Clow 860, or approved equivalent). The minimum fire service main size permitted is six inches (6").

(Ord. No. 643, § 4, 12-12-19)

15.44.080 Section 903 amended—Automatic sprinkler systems.

Section 903 of the fire code is amended in its entirety to read as follows:

903 Automatic fire extinguishing systems.

(a) Notwithstanding any other provisions of this code or any other code or ordinance of the City of Brisbane, automatic fire sprinkler systems, approved by the fire marshal, shall be installed in the following buildings and structures that are classified as new construction:

1. For all occupancies except R-3 occupancies: Any new building or structure, regardless of size, except stand alone, uninhabitable buildings, garages and sheds having a floor area of less than four hundred (400) square feet.

2. For all R-3 occupancies: Any new single-family or duplex structure, excluding any detached accessory structure that does not constitute habitable space having a floor area of less than four hundred (400) square feet.

(b) When additions or alterations made to an existing building fall within the requirements under Brisbane Municipal Code Chapter 15.10, an automatic fire sprinkler system shall be provided for the entire building.

(c) Other Areas. An automatic fire sprinkler system shall be installed in all garbage compartments, rubbish and linen chutes, linen rooms, incinerator compartments, dumb waiter shafts, and storage rooms when located in all occupancies except Group R, Division 3. An accessible indicating shut off valve shall also be installed.

(d) Condominium Conversions. An automatic fire sprinkler system shall be installed for all condominium conversions.

(e) Where automatic fire sprinkler systems are required to be installed, the following additional requirements shall also be satisfied, as applicable:

1. A minimum of three (3) copies of plans and specifications for automatic sprinkler installations, plus water supply calculations, shall be provided to the fire department for review and approval prior to commencement of the installation work.

2. All required automatic sprinkler systems shall be approved by the fire department.

3. All acceptance tests and such periodic tests as required by the fire marshal or pursuant to NFPA Pamphlets No. 13, 13D, 13R and/or Subchapter 5, Title 19, California Code of Regulations, shall be conducted and, where applicable, witnessed by a representative of the fire department.

4. An approved exterior visual fire alarm device may be required for buildings that have numerous fire department connections (FDCs). Type and locations will be determined by the fire department. Such visual alarm devices are not to replace the exterior audible device, but to assist fire suppression personnel as to location(s) of systems which require pumping operations.

(Ord. No. 643, § 4, 12-12-19; Ord. No. 653, § 3, 10-15-20)

15.44.090 Section 5608.1 amended—Fireworks prohibited.

Section 5608.1 of the fire code is amended by adding the following paragraph to the end of the first paragraph:

The possession, storage, sale, use or discharge of fireworks including California State Fire Marshal approved "safe and sane" fireworks are prohibited within the City of Brisbane.

(Ord. No. 643, § 4, 12-12-19)

15.44.100 Section 904.2 amended—Where required.

Section 904.2 of the fire code is amended by adding the following subsection after subsection 904.2.2 Commercial hood and duct systems:

904.2.3 Floor markings. The location(s) of all cooking appliances that are protected by an approved automatic fire extinguishing system shall be permanently identified either by a wall mounted "approved" appliance floor plan or marked on the floor in a manner approved by the Fire Marshal.

(Ord. No. 643, § 4, 12-12-19)

15.44.110 Section 907.8.1 amended—Maintenance required.

Section 907.8.1 of the fire code is amended by adding the following paragraph at the end of said section:

Owners and operators of group R-1 occupancies shall provide documentation to the Fire Department, such as annual inspection forms, which confirm that all smoke detection devices and equipment within apartment units are installed and are in good operating condition.

(Ord. No. 643, § 4, 12-12-19)

15.44.120 Section 304.1.4 added—Removal of invasive species, waste materials and combustible vegetation.

Section 304.1.4 is added to the fire code, to read as follows:

304.1.4 Removal of invasive species, waste materials and combustible vegetation.

(a) For purposes of this Section 301.1.4, the following definitions apply:

"Invasive species" means any plant species that is non-native to the ecosystem under consideration and whose introduction causes, or is likely to cause, economic or environmental harm to human health.

"Person" shall mean an owner of any property within the City of Brisbane excepting the City of Brisbane, the Successor Agency of the Redevelopment Agency of the City of Brisbane and the Brisbane Housing Authority.

"Well maintained" means property that is maintained in such a way as to prevent a fire from rapidly spreading including, but not limited to, appropriately watered lawns, ground cover plants, and ornamental shrubbery and trees that are sufficiently spaced, pruned, and free of all dead or dying material.

(b) Notice to Remove. The Division of Fire Prevention is authorized to notify any person owning property within the City of Brisbane or its jurisdiction, or the agent of such person, to properly dispose of invasive species and such wastepaper, hay, grass, straw, weeds, litter, combustible or flammable waste, brush, waste petroleum products, blackberry vines and other growth or rubbish of any kind located on such person's property which is dangerous to public safety, health or welfare or is deemed a fire hazard by the Division of Fire Prevention. Such notice shall inform the person or the person's agent that should the invasive species, wastepaper, hay, grass, straw, weeds, flammable vegetation, brush, litter, combustible or flammable waste, waste petroleum products, blackberry vines and other growth or rubbish of any kind not be removed as required, then it will be removed by the City and the cost of said removal shall in accordance with this chapter be assessed as a lien on the property, to be collected with the next regular tax bill.

Such notice shall be by certified mail, addressed to the person owning the property at the person's last known address, as revealed by the tax rolls, and such additional address as may be known by the Division of Fire Prevention.

(c) Action Upon Non-compliance. Upon failure, neglect or refusal of any person owning property or the person's agent so notified to properly dispose of invasive species and such wastepaper, hay, grass, straw, weeds, litter, combustible or flammable waste, brush, waste petroleum products, blackberry vines or other growth or rubbish of any kind dangerous to the public health, safety and welfare within fifteen (15) days after receipt of written notice provided for in subsection (b) above, or within fifteen (15) days after the date of such notice in the event the same is returned to the Division of Fire Prevention because of its inability to make delivery thereof, provided the same was properly addressed to the last known address of such person or agent, as provided in subsection (b) of this section, the Division of Fire Prevention is hereby authorized to refer this non-compliance to the City Manager to have the City pay for disposing of such invasive species, wastepaper, hay, grass, straw, weeds, litter, combustible or flammable waste, brush, waste petroleum products, blackberry vines and other growth or rubbish that endangers property or is liable to be fired.

(d) Charge Included in Tax Bill. When the City has effected the removal of dangerous or hazardous conditions from property as noted in subsection (b) or has paid for its removal, the actual cost thereof, plus accrued interest at the rate of ten percent (10%) per annum from the date of the completion of the work, if not paid for by such person prior thereto, shall be charged to the person owning such property on the next regular tax bill forwarded to such person, and said charge shall be due and payable by said person at the time of payment of such bill.

(e) Property Including Buildings, Structures and Acreage Maintained.

1. Any person who owns, leases, controls, operates or maintains any building or structure in, upon, or adjoining any mountainous area or forest-covered lands, brush-covered lands or grass covered lands, or any land covered with flammable material shall maintain around and adjacent to such building or structure a fire break for a distance of not less than thirty (30) feet or to the property line, whichever shall be less.

2. Any person who owns unimproved acreage that is two acres or less shall maintain a one hundred (100) foot fire break around the perimeter of such acreage. Any person who owns unimproved acreage that is more than two acres, but less than four acres shall maintain a one hundred (100) foot clearance along each property line and a one hundred (100) foot crosscut break such that there is one hundred (100) feet of clearance around every three acres, Any person who owns unimproved acreage four acres or greater shall maintain a one hundred (100) foot clearance along each property line and a one hundred (100) foot crosscut break every three acres. Trees within the 100-foot clearance or within the crosscut break (i) that are less than six feet in height shall be removed entirely from the acreage, (ii) that are ten feet in height or greater must be limbed such that the lowest limb is not less than six (6) feet from the ground, and (iii) that are dead shall be removed completely from the acreage.

3. Within the areas described in paragraph 2 of subsection (e), dead or dying grass shall be mowed to a maximum of four inches in height, brush shall be cut to within several inches of the surface and vegetation shall be well maintained.

(f) The Fire Chief or the Fire Chief's designee has the discretion to direct the maintenance requirements of subsection (e) or to modify the requirements of subsection (e) due to terrain or environmental concerns.

(g) Notwithstanding that a person has taken action to remove the flammable materials described in subsection (b), if flammable materials re-occur on the property, such person shall remove such materials as provided in this section.

(h) Remedies Cumulative. The remedies set forth in this section are in addition to any other remedies available to the City as set forth in its ordinances and resolutions and the statutes of the State of California.

(i) Other Regulations. In addition to the remedies set forth herein, the City Council may adopt such other additional, appropriate resolutions and ordinances establishing procedures and regulations for the regulation, control and abatement of invasive species, waste materials, weeds and other matters constituting a fire and/or safety hazard. The City Manager or the City Manager's designee may promulgate regulations to implement and carry out the purposes of this Ordinance, Other regulations concerning vegetation management and fire prevention apply to properties within the San Bruno Mountain Habitat Conservation Plan Area, including the need for a person engaging in vegetation management and fire prevention to obtain a permit from the County of San Mateo before engaging in such activity."

(Ord. No. 643, § 4, 12-12-19; Ord. No. 661, § 1, 4-15-21)

Editor's note(s)—Ord. No. 661, § 1, adopted April 15, 2021 amended § 15.44.120 and in doing so changed the title of said section from "Section 304.1.4 added—Removal of waste materials and combustible vegetation" to "Section 304.1.4 added—Removal of invasive species, waste materials and combustible vegetation," as set out herein.

15.44.130 Section 710 added—Roof coverings.

Section 710 is added to the fire code, to read as follows:

710 Roof coverings. Roof coverings on all buildings shall be fire retardant non-wood materials and shall comply with the standards of the California Building Code, Class A or B, prepared or built-up roofing. Re-roofing of existing buildings which occurs within any twelve (12) month period shall comply with the foregoing requirement if the re-roofing involves fifty percent (50%) or more of the roof area in the case of a non-wood roof or ten percent (10%) or more of the roof area in the case of a wood roof.

(Ord. No. 675, § 6, 11-17-22)

Editor's note(s)—Ord. No. 675, § 6, adopted Nov. 17, 2022, repealed the former § 15.44.130 and enacted a new § 15.44.130 as set out herein. The former § 15.44.130 pertained to Section 709 added—Roof coverings and derived from Ord. No. 643, § 4, adopted Dec. 12, 2019.

15.44.140 Section 5301.1 amended—Scope.

Section 5301.1 of the fire code is amended by adding the following paragraph at the end of the first paragraph:

The storage of compressed natural gas is prohibited in all areas of the City except for the following subareas as identified in the General Plan for the City of Brisbane: Northeast Bayshore, Southeast Bayshore, Crocker Park, Beatty, and the Baylands when the storage container or tank is located at least 200 (two hundred) feet from the closest property line of a property occupied by a residence or school. Notwithstanding the foregoing, the Fire Marshal may grant a permit for storage of compressed natural gas in other areas of the City if the Fire Marshal determines, in each case, that the storage is required for the conduct of a lawful use upon the property, will not constitute a safety hazard, and will otherwise comply with all applicable provisions of this Code and all other ordinances, rules and regulations of the City. The Fire Marshal may impose such conditions and requirements upon the issuance of the permit as the Fire Marshal deems necessary or appropriate.

(Ord. No. 643, § 4, 12-12-19)

15.44.150 Section 5601.1.6 amended—General.

Section 5601.1.6 of the fire code is amended by adding the following paragraph at the end of said section:

The storage of explosives and blasting agents is prohibited in all areas of the City, except that the Fire Marshal may grant a permit to allow such storage if the Fire Marshal determines, in each case, that the storage is required for the conduct of a lawful use upon the property, will not constitute a safety hazard, and will otherwise comply with all applicable provisions of this Code and all other ordinances, rules and regulations of the City. The Fire Marshal may impose such conditions and requirements upon the issuance of the permit as the Fire Marshal deems necessary or appropriate.

(Ord. No. 675, § 7, 11-17-22)

Editor's note(s)—Ord. No. 675, § 7, adopted Nov. 17, 2022, repealed the former § 15.44.150 and enacted a new § 15.44.150 as set out herein. The former § 15.44.150 pertained to Section 5601.2 amended—General and derived from Ord. No. 643, § 4, adopted Dec. 12, 2019.

15.44.160 Section 5704.1 amended—General.

Section 5704.1 of the fire code is amended by adding the following paragraph at the end of said section:

The storage of flammable or combustible liquids in outside aboveground tanks is prohibited in all areas of the City except for the following subareas as identified in the General Plan for the City of Brisbane: Northeast Bayshore, Southeast Bayshore, Crocker Park, Beatty, and the Baylands when the storage container or tank is located at least 200 (two hundred) feet from the closest property line of a property occupied by a residence or school. Notwithstanding the foregoing, the Fire Marshal may grant a permit for such storage in other areas of the City if the Fire Marshal determines, in each case, that the storage is required for the conduct of a lawful use upon the property, will not constitute a safety hazard, and will otherwise comply with all applicable provisions of this Code and all other ordinances, rules and regulations of the City. The Fire Marshal may impose such conditions and requirements upon the issuance of the permit as the Fire Marshal deems necessary or appropriate.

(Ord. No. 643, § 4, 12-12-19)

15.44.170 Section 6104.2 amended—Maximum capacity within established limits.

Section 6104.2 of the fire code is amended by adding the following paragraph at the end of the first paragraph of said section:

The aggregate storage of liquefied petroleum gas at any one installation in excess of five hundred (500) gallons (1893 L) is prohibited in all areas of the City except for the following subareas as identified in the General Plan for the City of Brisbane: Northeast Bayshore, Southeast Bayshore, Crocker Park, Beatty, and the Baylands when the storage container or tank is located at least 200 (two hundred) feet from the closest property line of a property occupied by a residence or school. Notwithstanding the foregoing, the Fire Marshal may grant a permit for such storage in other areas of the City if the Fire Marshal determines, in each case, that the storage is required for the conduct of a lawful use upon the property, will not constitute a safety hazard, and will otherwise comply with all applicable provisions of this Code and all other ordinances, rules and regulations of the City. The Fire Marshal may impose such conditions and requirements upon the issuance of the permit as the Fire Marshal deems necessary or appropriate.

(Ord. No. 643, § 4, 12-12-19)

15.44.180 Section 914.3.9 added—Firefighter breathing air replenishment system.

Section 914 of the fire code is amended by adding the following paragraph:

Section 914.3.9 Firefighter breathing air replenishment system. All Group B and Group R occupancies, each having floors used for human occupancy located more than seventy-five feet (75') above the lowest level of fire department vehicular access, shall be equipped with an approved rescue air replenishment system as per Appendix L. Such a system shall provide an adequate pressurized fresh air supply through a permanent piping system for the replenishment of portable life sustaining air equipment carried by fire department, rescue, and other personnel in the performance of their duties. Location and specifications or access stations to, and the installation of, such air replenishment systems shall be in accordance with the requirements of the fire chief.

(Ord. No. 643, § 4, 12-12-19)

15.44.190 Section 903.2.22 added—Sprinkler protection of car stackers.

Section 903.2.22 of the fire code is added to read:

Sections 903.2.22 Purpose: To establish requirements for sprinkler protection of car stackers not specifically addressed in NFPA 13.

Section 903.2.22- Car Stackers

Parking garage areas containing car stackers shall be protected by an automatic wet-pipe sprinkler system designed to Extra Hazard Group 2. In addition, non-extended coverage standard sidewall sprinklers listed for Ordinary Hazard shall be provided under each parking level, including the bottom level if the stacker is provided with a pit. Each sidewall sprinkler shall cover an area of 80 sq. ft. or less.

The area of application may be reduced from the required 2500 sq. ft. to as low as 1500 sq. ft. if

1. 1-hour fire rated walls are provided to separate the car stacker areas from the standard parking stalls,

2. The car stacker areas are divided up into 1500 sq. ft. areas via 1-hour fire rated walls, and

3. One-hour fire rated walls are provided to separate the car stacker areas from any other areas in the garage.

One-hour fired rated walls are not required in the driveway areas. For the hydraulic calculation, flow from all sprinklers, upright or pendent sprinklers at ceiling and all sidewall sprinklers at all levels, located in the area of application shall be included in the calculation.

(Ord. No. 675, § 8, 11-17-22)

Editor's note(s)—Ord. No. 675, § 8, adopted Nov. 17, 2022, repealed the former § 15.44.190 and enacted a new § 15.44.190 as set out herein. The former § 15.44.190 pertained to Section 903.2.21 added—Sprinkler protection of car stackers and derived from Ord. No. 643, § 4, adopted Dec. 12, 2019.

15.44.193 Amendment to Appendix D of Section D101—Definition—Fire apparatus access road.

Appendix D of the Fire Code is amended by adding Section D101.2 to read as follows:

D101.2—Definition Fire Apparatus Access Road. A road that provides fire apparatus access from a fire station to at facility, building or portion thereof. This is a general term inclusive of all other terms such as, but not limited to, fire lane, public street, private street, parking lot lane, access roadway and driveway.

(Ord. No. 675, § 9, 11-17-22)

15.44.197 Amendment to Appendix D of Section D102—Access road exceptions.

An Exception is added to Appendix D of Section D102 of the fire code to read as follows:

Exception: When a fire department access road cannot be installed due to location on the property, topography, waterways, nonnegotiable grades, or other similar conditions the authority having jurisdiction shall be authorized to require fire protection features in addition to those already required.

(Ord. No. 675, § 9, 11-17-22)

15.44.200 Section D102.2 added—Access to exterior door.

Section D102.2 of the fire code is added to read as follows:

Section D102.2 Fire department access shall extend to within 50 feet (15 m) of at least one exterior door that can be opened from the outside and that provides access to the interior of the building.

(Ord. No. 643, § 4, 12-12-19)

15.44.210 Section D102.3 added—Large building access.

Section amendment Appendix D Section D102.

Section D102.3 of the fire code is added to read as follows:

Large Buildings—Fire department access roads shall be provided such that any portion of the facility or any portion of an exterior wall of the first story of the building is located not more than 150 ft. (46 m) from fire department access roads as measured by an approved route around the exterior of the building or facility.

(Ord. No. 643, § 4, 12-12-19)

15.44.220 Section D102.4 added—Access road clearance.

Section 4-3.124—Amendment Appendix D Section D102.

Section D102.4 is added to read as follows:

Fire department access roads shall have an unobstructed vertical clearance of not less than 13 ft. 6 in. (4.1 m.).

(Ord. No. 643, § 4, 12-12-19)

15.44.230 Reserved.

Editor's note(s)—Ord. No. 675, § 14, Nov. 17, 2022, repealed § 15.44.230, which pertained to amendment to Appendix D of Section D102—Access road exceptions and derived from Ord. No. 643, § 4, adopted Dec. 12, 2019.

15.44.240 Reserved.

Editor's note(s)—Ord. No. 675, § 14, Nov. 17, 2022, repealed § 15.44.240, which pertained to amendment to amendment to Appendix D of Section D101—Definition—Fire apparatus access road and derived from Ord. No. 643, § 4, adopted Dec. 12, 2019.

15.44.250 Amendment of Appendix D, Section D103.7 added—Marking.

Appendix D of the fire code is amended by adding Section D103.7 to read:

D103.7—Marking. Where fire lanes on private property have been designated by the Fire Marshal, curbs shall be painted red on the side or sides of the street or access route where parking is prohibited and no parking signs or other appropriate notice prohibiting obstructions, as approved by the Fire Marshal, shall be provided and maintained by the owner.

(Ord. No. 643, § 4, 12-12-19)

15.44.260 Violations of fire code—Penalties.

The violation of any of the provisions of the fire code adopted by this chapter, or any permit issued thereunder, shall constitute a misdemeanor, punishable by the fines, penalties and enforcement provisions set forth in Chapters 1.14, 1.16 and 1.18 of this code.

(Ord. No. 643, § 4, 12-12-19)

## Chapter 15.45 STORAGE OF HAZARDOUS MATERIALS IN UNDERGROUND TANKS

Sections:

15.45.010 Purpose.

The purpose of this chapter is the protection of health, life, resources and property through prevention and control of unauthorized discharges of hazardous materials in underground storage tanks.

(Ord. 297 § 1(part), 1983).

15.45.020 General obligation—Safety and care.

A. No person, firm or corporation shall cause, suffer, or permit the storage of hazardous materials:

1. In a manner which violates a provision of this chapter or any other local, federal, or state statute, code, rule, or regulation relating to hazardous materials; or

2. In a manner which causes an unauthorized discharge of hazardous materials or poses a significant risk of such unauthorized discharge.

B. The health officer shall have discretion to exempt an applicant from any specific requirement of this chapter, other than the requirement for secondary containment in underground storage facilities, except as provided in Section 15.45.090, or to require applicant to meet additional or modified requirements, where such action would be appropriate and consistent with achieving the general obligation of this chapter for protecting public health, safety and welfare.

(Ord. 297 § 1(part), 1983).

15.45.030 Specific obligation.

A. Any person, firm or corporation which stores any material regulated by Section 15.45.050 which is not excluded by other sections of this chapter shall obtain and keep current a hazardous materials storage permit.

B. All such hazardous materials shall be contained in conformity with Sections 15.45.060 through 15.45.080.

(Ord. 297 § 1(part), 1983).

15.45.040 Definitions.

Unless otherwise expressly stated, whenever used in this chapter, the following terms shall have the meanings set forth below:

A. "Abandoned," when referring to a storage facility, means out of service and not safeguarded in compliance with this chapter.

B. "Facility" means any one, or combination of, underground storage tanks used by a single business entity at a single location or site.

C. "Hazardous material or substance" means any material which is subject to regulation pursuant to Section 15.45.050. A mixture shall be deemed to be a hazardous material or substance if it is a waste and contains any material regulated pursuant to Section 15.45.050.

D. "Officer" means the county health officer or any designee of such employee or any other official or contract agency of the city designated by the city council to perform the duties of such office.

E. "Permit quantity limit" means the maximum amount of hazardous material that can be stored in a storage facility. Separate permit quantity limits will be set for each storage facility for which a permit is obtained in accordance with the requirements of this chapter.

F. "Owner" means the owner of an underground storage tank or facility.

G. "Operator" means the operator of an underground storage tank or facility.

H. "Person" means an individual, trust, firm, joint stock company, corporation, including a government corporation, partnership, and association. "Person" also includes any city, county, district, the state, or any department or agency thereof.

I. "Pipe" means any pipeline or system of pipelines which is used in connection with the storage of hazardous substances and which are not intended to transport hazardous substances in interstate or intrastate commerce or to transfer hazardous materials in bulk to or from a marine vessel.

J. "Primary containment" means the first level of containment, i.e., the inside portion of that container which comes into immediate contact on its inner surface with the hazardous material being contained.

K. "Product-tight" means impervious to the substance which is contained, or is to be contained, so as to prevent the seepage of the substance from the primary containment. To be product-tight, the tank shall not be subject to physical or chemical deterioration by the substance which it contains, over the useful life of the tank.

L. "Secondary containment" means the level of containment external to and separate from the primary containment.

M. "Single-walled" means construction with walls made of but one thickness of material. Laminated, coated, or clad materials shall be considered as single-walled.

N. "Special inspectors" means a professional engineer registered pursuant to Business and Professional Code, who is qualified to attest, at a minimum, to structural soundness, seismic safety, the compatibility of construction materials with contents, cathodic protection, and the mechanical compatibility of the structural elements.

O. "Storage" or "store" means the containment, handling or treatment of hazardous substances, either on a temporary basis or for a period of years. "Storage" or "store" does not mean the storage of hazardous wastes in an underground storage tank if the person operating the tank has been issued a hazardous waste facilities permit.

P. "Unauthorized release" means any release or emission of any hazardous substance which does not conform to the provisions of this chapter, unless this release is authorized by the State Water Resources Control Board pursuant to Division 7 (commencing with Section 13000) of the Water Code.

Q. "Underground storage facility" means any one or combination of tanks, including pipes connected thereto, which is used for the storage of hazardous substances and which is substantially or totally beneath the surface of the ground.

(Ord. 297 § 1(part), 1983).

15.45.050 Materials regulated.

"Hazardous materials" means all of the following liquid and solid substances, unless the State Department of Health Services, in consultation with the State Water Resources Control Board, determines the substance could not adversely affect the quality of the waters of the state:

1. Substances on the list prepared by the Director of the Department of Industrial Relations pursuant to Section 6382 of the Labor Code.

2. Hazardous substances, as defined in Section 25316 of the Health and Safety Code.

3. Any material which is classified by the National Fire Protection Association (NFPA) as a flammable liquid, a class II combustible liquid, or a class III-A combustible liquid.

4. The comprehensive master list of hazardous materials compiled by the State Department of Health Services pursuant to Health and Safety Code Section 25281.

5. Any material which has been determined to be hazardous based on any appraisal or assessment by or on behalf of the party storing the material in compliance with the requirements of the EPA or the California Department of Health Services, or which should have been, but was not, determined to be hazardous due to the deliberate failure of the party storing the material to comply with the requirements of the EPA and/or the Department of Health Services.

6. Any material which has been determined by the party storing it, through testing or other objective means, to be likely to create a significant potential or actual hazard to public health, safety or welfare. This subsection shall not establish a requirement to test for the purposes of this chapter.

(Ord. 297 § 1(part), 1983).

15.45.060 Containment of hazardous materials.

A. No person, firm or corporation shall store any hazardous materials in underground storage tanks regulated by this chapter until a permit or approval has been issued pursuant to this chapter. No permit or approval shall be granted pursuant to this chapter unless permit applicant demonstrates to the satisfaction of city by the submission of appropriate plans and other information, that the design and construction of the storage facility will result in a suitable manner of storage for the hazardous material or materials to be contained therein.

B. All installation, construction, repair or modification, closure, and removal shall be to the satisfaction of city. The city shall have the discretion to impose reasonable additional or different requirements in order to better secure the purpose and general obligation of this chapter for protection of public health, safety, and welfare.

(Ord. 297 § 1(part), 1983).

15.45.070 New underground storage facilities.

Every underground storage tank installed after January 1, 1984, shall meet the following requirements:

A. Be designed and constructed to provide primary and secondary levels of containment of the hazardous substances stored in them in accordance with the following performance standards:

1. Primary containment shall be product-tight.

2. Secondary containment shall be constructed to prevent structural weakening as a result of contact with any released hazardous substances, and also shall be capable of storing, for the maximum anticipated period of time necessary for the recovery of any released hazardous substance.

3. In the case of an installation with one primary container, the secondary containment shall be large enough to contain at least one hundred percent (100%) of the volume of the primary tank.

4. In the case of multiple primary tanks, the secondary container shall be large enough to contain one hundred fifty percent (150%) of the volume of the largest primary tank placed in it, or ten percent (10%) of the aggregate internal volume of all primary tanks, whichever is greater.

5. If the facility is open to rainfall, then the secondary containment must be able to additionally accommodate the volume of a twenty-four (24)-hour rainfall as determined by a one hundred (100)-year storm history.

6. Single-walled containers do not fulfill the requirements of an underground storage tank providing for both a primary and a secondary containment.

7. The design and construction of underground storage tanks for motor vehicle fuels storage need not meet the requirements of subdivisions A(1-6) of this section, if the primary containment construction is of glass fibre reinforced plastic, cathodically protected steel, or steel clad with glass fibre reinforced plastic, and if such alternative primary containment is installed in conjunction with a system that will intercept and direct a leak from any part of the tank to a monitoring well to detect any release of motor vehicle fuels stored in the tank and which is designed to provide early leak detection, response, and to protect groundwater from releases, and if the monitoring is in accordance with the alternative method identified in Section 15.45.080. Pressurized piping systems connected to underground storage tanks used for the storage of motor vehicle fuels and monitored in accordance with subdivision A(3) of Section 15.45.080 shall also be deemed to meet the requirements of this subdivision.

B. Be designed and constructed with a monitoring system capable of detecting the entry of the hazardous material stored in the primary containment into the secondary containment. If water could intrude into the secondary containment, a means of monitoring for water intrusion and for safely removing the water shall also be provided.

C. When required by the health officer, a means of over-fill protection for any primary tank, including an overfill prevention device or an attention-getting higher level alarm, or both. Primary tank filling operations of underground storage tanks containing motor vehicle fuels which are visually monitored and controlled by a facility operator satisfy the requirements of this subsection.

D. Different substances that in combination may cause a fire or explosion, or the production of flammable, toxic, or poisonous gas, or the deterioration of a primary or secondary container, shall be separated in both the primary and secondary containment so as to avoid potential intermixing.

E. If water could enter into the secondary containment by precipitation or infiltration, the facility shall contain a means of removing the water by the owner or operator. This removal system shall also provide for a means of analyzing the removed water for hazardous substance contamination and a means of disposing of the water, if so contaminated, at an authorized disposal facility.

(Ord. 297 § 1(part), 1983).

15.45.080 Other underground storage facilities.

For every underground storage tank installed on or before January 1, 1984, and used for the storage of hazardous substances the following actions shall be taken:

A. On or before January 1, 1985, the owner shall outfit the facility with a monitoring system capable of detecting unauthorized releases of any hazardous substances stored in the facility, and thereafter, the operator shall monitor each facility, based on materials stored and the type of monitoring installed.

B. Provide a means for visual inspection of the tank, wherever practical, for the purpose of the monitoring required by subsection A of this section. Alternative methods of monitoring the tank on a monthly, or more frequent basis, may be required by the health officer. The alternative monitoring methods include, but are not limited to, the following methods:

1. Pressure testing, vacuum testing or hydrostatic testing of the piping systems or underground storage tanks;

2. A groundwater monitoring well or wells which are down gradient and adjacent to the underground storage tank, vapor analysis within a well where appropriate, and analysis of soil borings at the time of initial installation of the well. The health officer shall approve the location and number of wells, the depth of wells and the sampling frequency, pursuant to these regulations;

3. For monitoring tanks containing motor vehicle fuels, daily gauging and inventory reconciliation by the operator, if inventory record are kept on file for one year and are reviewed quarterly, the tank is tested for tightness hydrostatically or, when appropriate with pressure between three (3) and five (5) pounds, inclusive, per square inch at specified time intervals and whenever any pressurized system has a leak detection device to monitor for leaks in the piping. The tank shall also be tested for tightness hydrostatically or where appropriate, with pressure between three (3) and five (5) pounds, inclusive, per square inch whenever there is a shortage greater than the amount which the State Water Resources Control Board shall specify by regulation.

(Ord. 297 § 1(part), 1983).

15.45.090 Variance.

A. A variance from the requirement for secondary containment for an underground storage facility may be granted upon a written finding by the health officer issuing the permit that based on the special circumstances:

1. The requirement of secondary containment creates an unusual and particular hardship; and

2. An equivalent degree of protection is provided by the proposed alternative; and

3. The proposed alternative has been appropriately certified by a "special inspector."

B. The decision of the health officer on a request for a variance from the requirement for secondary containment for an underground storage facility may be appealed to the city council.

(Ord. 297 § 1(part), 1983).

15.45.100 Abandoned underground storage tanks.

A. No person shall abandon an underground storage tank or close or temporarily cease operating an underground storage tank, except as provided in this section.

B. An underground storage tank which is temporarily taken out of service, but which the operator intends to return to use, shall continue to be subject to all the permit, inspection, and monitoring requirements of this chapter, unless the operator complies with the provisions of subsection C of this section for the period of time the underground tank is not in use.

C. No person shall close an underground storage tank unless the person undertakes all of the following actions:

1. Demonstrates to the health officer that all residual amounts of the hazardous substance or hazardous substances which were stored in the tank prior to its closure have been removed, properly disposed of, and neutralized;

2. Adequately seals the tank to minimize any threat to the public safety and the possibility of water intrusion into, or runoff from, the tank;

3. Provides for, and carries out, the maintenance of the tank as the health officer determines is necessary, for the period of time the health officer requires;

4. Demonstrates to the health officer that there has been no significant soil contamination resulting from a discharge in the area surrounding the underground storage tank or facility.

(Ord. 297 § 1(part), 1983).

15.45.110 Unauthorized releases—Reporting.

A. Any unauthorized release from the primary containment which the operator is able to clean up within eight (8) hours, and which does not escape from the secondary containment, does not increase the hazard of fire or explosion and does not cause any deterioration of the secondary containment of the underground storage tank shall be reported by the operator to the health officer within twenty-four (24) hours of detection, and shall be recorded on the operator's monitoring reports.

B. Any unauthorized release which escapes from the secondary containment, increases the hazard of fire or explosion, or causes any deterioration of the secondary containment of the underground tank shall be reported to the health officer by the operator within twenty-four (24) hours after the release has been detected or should have been detected. A full written report shall be transmitted to the health officer by the owner or operator of the underground storage tanks within five (5) working days of the occurrence of the release.

C. Whenever a material balance or other inventory record, employed as a monitoring technique indicates a loss of hazardous material, and no unauthorized discharge has been confirmed by other means, permittee shall have five (5) working days to determine whether or not there has been an unauthorized discharge. If before the end of such period, it is determined that there has been no unauthorized discharge, an entry explaining the occurrence shall be made in permittee's monitoring records. Where permittee has not been able, within such period, to determine that there has been unauthorized discharge, an unauthorized discharge is deemed confirmed and permittee shall proceed in accordance with this section.

D. Whenever any test results suggest a possible unauthorized discharge, and no unauthorized discharge has been confirmed by other means, the permittee shall have five (5) working days to retest. If second test results obtained within that period establish that there has been no unauthorized discharge, the results of both tests shall be recorded in permittee's monitoring records. If it has not been established within such period that there has been no unauthorized discharge, an unauthorized discharge is deemed confirmed and permittee shall proceed in accordance with 4973.5(A).

E. Any person in charge of a storage facility or responsible for emergency response for a storage facility, who has knowledge of any unauthorized discharge of a hazardous material which is a gas at Standard Temperature and Pressure (STP), must immediately report such discharge to the city if such discharge presents a threat of imminent danger to public health and safety.

F. The health officer shall review the permit whenever there has been an unauthorized release or when the health officer determines that the underground storage tank is unsafe. In determining whether to modify or terminate the permit, the health officer shall consider the age of the tank, the methods of containment, the methods of monitoring, the feasibility of any required repairs, the concentration of the hazardous substances stored in the tank, the severity of potential unauthorized releases, and the suitability of any other long-term preventive measures which would meet the requirements of this chapter.

(Ord. 297 § 1(part), 1983).

15.45.120 Unauthorized releases—Repairs.

If there has been any unauthorized release, as defined in Section 15.45.110A and B, from an underground storage tank containing motor vehicle fuel not under pressure, the permit holder may repair the tank once by an interior-coating process if the tank meets all of the following requirements:

A. An ultrasonic test, or comparable test, has been conducted to determine the thickness of the storage tank. If the result of the test indicates that a serious corrosion problem exists with regard to the tank, as determined by the person conducting the test, the health officer may require additional corrosion protection for the tank or may deny the authorization to repair.

B. A hydrostatic test is an alternative to the ultra-sonic test in subsection A of this section. If the result of the test indicates that a serious problem exists with regard to the integrity of the tank, as determined by the person conducting the test or the health officer, the health officer may require additional protection for the tank or may deny authorization for the repair.

C. A vacuum test has been conducted with a result indexed at not more than five and three-tenths inches (5.3″) of mercury. This requirement shall not be applicable if technology is not available for testing the tank on site using accepted engineering practices.

D. Following the repair, the standard installation testing for requirements for underground storage tanks specified in Section 2-7.3 of the Flammable and Combustible Liquids Code, adopted by the National Fire Protection Association on November 20, 1981 (NFPA 30-1981), and published in the 1982 edition of the National Fire Code shall be followed.

E. The material used to repair the tank by an interior-coating process is compatible with the motor vehicle fuel that is stored, as approved by the State Water Resources Control Board by regulation.

F. The material used to repair the tank by an interior-coating process is applied in accordance with nationally recognized engineering practices such as the American Petroleum Institute's recommended practice No. 1631 for the interior lining of existing underground storage tanks.

G. Any regulations developed by the State Water Resources Control Board, in consultation with the State Fire Marshal, for the repair of underground storage tanks, and the standards in this section shall remain in effect until the adoption of these regulations.

(Ord. 297 § 1(part), 1983).

15.45.130 Unauthorized releases—Cleanup responsibility.

Any person, firm or corporation responsible for storing the hazardous material shall institute and complete all actions necessary to remedy the effects of any unauthorized discharge, whether sudden or gradual. The health officer shall undertake actions to remedy the effects of such unauthorized discharge itself, only if he determines that it is reasonably necessary under the circumstances for the county to do so. The responsible party shall be liable to reimburse the county for all costs incurred by the county in remedying the effects of such unauthorized discharge, including the costs of fighting fires to the extent allowed by law. This responsibility is not conditioned upon evidence of wilfulness or negligence of the party storing the hazardous material(s) in causing or allowing such discharge. Any responsible party who undertakes action to remedy the effects of unauthorized discharge(s) shall not be barred by this chapter from seeking to recover appropriate costs and expenditures from other responsible parties unless otherwise excluded by this chapter or state law.

(Ord. 297 § 1(part), 1983).

15.45.140 Unauthorized releases—Indemnification.

As a condition of the issuance of a permit under this chapter, the health officer may require the permittee to agree in writing to indemnify, hold harmless and defend the city against any claim, cause of action, disability, loss, liability, damage, cost or expense, howsoever arising, which occurs by reason of an unauthorized discharge in connection with permittee's operations under this permit, except as arises from city's sole wilful act or sole active negligence.

(Ord. 297 § 1(part), 1983).

15.45.150 Handling, emergency procedures and access.

A. Dispensing and mixing of hazardous materials must not be done in such a manner as to substantially increase the risk of an unauthorized discharge. When hazardous materials are moved into or out of a storage facility, they shall remain in the travel path only for the time reasonably necessary to transport the hazardous materials and such movement shall be in a manner which will not result in an unauthorized discharge.

B. Access to the storage facilities shall be secured by means of fences and/or locks. The access to the storage facilities shall be kept securely locked when unattended.

C. Emergency equipment shall be provided which is reasonable and appropriate for potential emergencies presented by the stored hazardous materials. Such equipment shall be regularly tested and adequately maintained by the permittee.

D. Simplified emergency procedures shall be posted conspicuously in locations where hazardous materials are stored.

(Ord. 297 § 1(part), 1983).

15.45.160 Inspections and records—Authority.

In order to carry out the purposes of this chapter, the health officer has the authority specified in Health and Safety Code Section 25183 with respect to any place where underground storage tanks are located, and in Health and Safety Code Section 25185 with respect to real property which is within two thousand (2,000) feet of any place where underground storage tanks are located.

(Ord. 297 § 1(part), 1983).

15.45.170 Inspections.

A. The health officer shall inspect every underground storage tank within its jurisdiction at least once every three years. The purpose of the inspection is to determine whether the tank complies with design and construction standards, whether the operator has monitored and tested the tank as required by the permit, and whether the tank is in a safe operating condition. After an inspection, the health officer shall prepare a compliance report detailing the inspection and shall send a copy of this report to the permit holder.

B. In addition to, or instead of, the inspections specified in subsection A of this section, the health officer may require the permit holder to employ, periodically, special inspectors to conduct an audit or assessment of the permit holder's facility to determine whether the facility complies with the factors specified in 4974.1(A) and to prepare a special inspection report with recommendations concerning the safe storage of hazardous materials at the facility. The report shall contain recommendations consistent with the provisions of this chapter, where appropriate. A copy of the report shall be filed with the health officer at the same time the inspector submits the report to the permit holder. Within thirty (30) days after receiving this report the permit holder shall file with the health officer, a plan to implement all recommendations contained in the report or shall demonstrate to the satisfaction of the health officer why these recommendations should not be implemented.

C. The permittee shall pay for each inspection a fee as established by resolution of the city council.

(Ord. 297 § 1(part), 1983).

15.45.180 Maintenance of records.

A. The operator of the underground storage facility shall monitor the facility using the method specified on the permit for the facility. Records shall be kept in sufficient detail to enable the health officer to determine the operator has undertaken all monitoring activities required by the permit to operate.

B. If the operator is not the owner, the owner shall provide a copy of the permit to the operator, enter into a written contract with the operator which requires the operator to monitor the tank as set forth in the permit, and provide the operator with a summary of this section in an approved form. The owner shall notify the health officer of any change of operator.

(Ord. 297 § 1(part), 1983).

15.45.190 Requirement for permit.

A. Except as provided in Section 15.45.200, no person shall own or operate an underground storage tank unless a permit for its operation has been issued by the health officer to the owner, which permit shall specify the method to be used to monitor the facility. The health officer shall prepare a form which provides for the acceptance of the obligations of a transferred permit by any person who is to assume ownership of an underground storage tank from the previous owner and is to be transferred the permit to operate the tank. That person shall complete the form accepting the obligations of the permit and submit the completed form to the health officer thirty (30) days after the ownership of the underground storage tank is transferred. The health officer may review and modify, or terminate, the transfer of the permit to operate the underground storage tank, pursuant to the criteria specified in state or city law upon receiving the completed form.

B. Any person assuming ownership of an underground storage tank used for the storage of hazardous substances for which a valid operating permit has been issued shall have thirty (30) days after the date of assumption of ownership to apply for an operating permit or, if accepting a transferred permit, shall submit to the health officer the completed form accepting the obligations of the transferred permit, as specified in subsection A of this section. During the period from the date of application until the permit is issued or refused, the person shall not be held to be in violation of this section.

C. When, in its judgment, it is appropriate to do so, the health officer may issue a single permit to a person for a facility. Additional approvals shall be obtained for any storage facility thereafter connected, installed, constructed, repaired as required, substantially modified, replaced, closed or removed, or for any change or addition in hazardous materials stored, not in accordance with the prior approval.

(Ord. 297 § 1(part), 1983).

15.45.200 Required information for permit application.

A. An application for a permit to operate an underground storage tank, or for renewal of the permit, shall be made, by the owner, on a standardized form prepared by the city and provided by the health officer and shall be accompanied by the appropriate fee.

B. The health officer shall store this information for the purpose of managing and appropriately cross-referencing and indexing this data. The application form shall include, but not be limited to, requests for the following information:

1. A description of the construction of the underground storage tank or tanks;

2. A list of all the hazardous substances which are or will be stored in the underground storage tank or tanks, specifying the hazardous substances for each underground storage tank;

3. A description of the monitoring program for the underground storage tank or tanks;

4. The name and address of the person, firm, or corporation which owns the underground storage tank or tanks and, if different, the name and address of the person who operates the underground storage tank or tanks;

5. The address of the facility at which the underground storage tank or tanks are located;

6. The name of the person making the application;

7. The name and twenty-four (24)-hour phone number of the contact person in the event of an emergency involving the facility;

8. If the owner or operator of the underground storage tank is a public agency, the application shall include the name of the supervisor of the division, section or office which operates the tank.

C. As a condition of any permit to operate an underground storage tank, the permittee shall complete an annual report form, prepared by the health officer which will detail any changes in the usage of any underground storage tanks, including the storage of new hazardous substances, changes in monitoring procedure and unauthorized release occurrences.

D. If a permittee stores in an underground storage tank or tanks a hazardous substance which is not listed in the application, as required by subdivision B(2) of this section, the permittee shall apply for a new or amended permit within thirty (30) days after commencing the storage of that hazardous substance.

(Ord. 297 § 1(part), 1983).

15.45.210 Approval of permit.

A permit shall not be approved until the health officer is satisfied that the storage approved adequately conforms to the provisions of this chapter.

(Ord. 297 § 1(part), 1983).

15.45.220 Fees for permit.

A. A fee shall be paid to the city by each person who submits an application for a permit to operate an underground storage tank or to renew or amend a permit. The city council shall adopt a fee schedule at a level sufficient to pay the necessary and reasonable costs incurred in administering this chapter, including, but not limited to, permitting and inspection responsibilities.

B. This fee shall include a surcharge, the amount of which shall be determined by the Legislature annually to cover the costs of the State Water Control Board in carrying out its responsibilities under this chapter.

(Ord. 297 § 1(part), 1983).

15.45.230 Civil penalties.

A. Any operator of an underground storage tank shall be liable for a civil penalty of not more than five hundred dollars ($500.00) per day for any of the following:

1. Operation of an underground storage tank which has not been issued a permit;

2. Failure to monitor the underground storage tank, as required by the permit;

3. Failure to maintain required records;

4. Failure to report an unauthorized release;

5. Failure to properly close an underground storage tank;

6. Failure to remedy the effects of any unauthorized release whether sudden or gradual.

B. Any owner of an underground storage tank shall be liable for a civil penalty of not more than five hundred dollars ($500.00) per day for any of the following:

1. Failure to obtain a permit as specified by this chapter;

2. Failure to repair an underground tank in accordance with the provisions of this chapter;

3. Abandonment or improper closure of any underground tank subject to the provisions of this chapter;

4. Knowingly failing to take reasonable and necessary steps as to assure compliance with this chapter by the operator of an underground tank.

C. In determining both the civil and criminal penalties imposed pursuant to this section, the court shall consider all relevant circumstances, including, but not limited to, the extent of harm or potential harm caused by the violation, the nature of the violation and the period of time over which it occurred, the frequency of past violations, and the corrective action, if any, taken by the person who holds the permit.

(Ord. 297 § 1(part), 1983).

15.45.240 Civil action for retaliation.

A civil action may be instituted against any employer by any employee who has been discharged, demoted, suspended, or in any other manner discriminated against in terms of conditions of employment, or threatened with any such retaliation, because such employee has in good faith, made any oral or written report or complaint related to the enforcement of this chapter to any company official, public official or union official, or has testified in any proceeding in any way related thereto. In addition to any actual damages which may be awarded, damages shall include costs and attorney's fees. The court may award punitive damages in a proper case.

(Ord. 297 § 1(part), 1983).

15.45.250 Violation—Penalties.

The violation of any of the provisions of this chapter shall constitute a misdemeanor, punishable by the fines, penalties and enforcement provisions set forth in Chapters 1.14, 1.16 and 1.18 of this code. Such fines, penalties and enforcement provisions are cumulative and shall be in addition to the civil penalties and remedies specified in this chapter.

(Ord. 297 § 1(part), 1983).

(Ord. No. 554, § 53, 1-18-11)

15.45.260 Disclaimer of liability.

A. The degree of protection required by this chapter is considered reasonable for regulatory purposes. The standards set forth herein are minimal standards and this chapter does not imply that compliance will ensure that there will be no unauthorized discharge of hazardous material. This chapter shall not create liability on the part of the city, any officer or employee thereof for any damages that result from reliance on this chapter or any administrative decision lawfully made thereunder. All persons holding, storing, using, processing, and disposing of hazardous materials within the city should be and are advised to determine to their own satisfaction the level of protection in addition to that required by this chapter necessary or desirable to ensure that there is no unauthorized discharge of hazardous materials.

(Ord. 297 § 1(part), 1983).

15.45.270 Regulations.

The health officer shall develop procedures implementing this chapter. These regulations shall be promulgated by the health officer by January 1, 1985, or upon final adoption of regulations by the State Water Resources Control Board implementing state standards.

(Ord. 297 § 1(part), 1983).

15.45.280 Conflict with other laws.

Notwithstanding any provision of this chapter:

A. Whenever any provisions of this chapter conflict with any state or federal regulations of storage facilities, the stricter provisions will prevail.

B. Whenever any provision of this chapter conflicts with the Fire Code as adopted by the city, the stricter provision shall prevail.

(Ord. 297 § 1(part), 1983).

## Chapter 15.48 MOVING OF BUILDINGS OR STRUCTURES

Sections:

15.48.010 Definitions.

For the purpose of this chapter, certain terms, phrases and words shall be construed as follows:

A. "Building" is any structure built for the support, shelter, or enclosure of persons, animals, chattels, or property of any kind.

B. "Building inspector" is the building inspector of the county or his regularly authorized deputy, or any person performing the duties of the building inspector of the city.

C. "Person" is a natural person, his heirs, executors, administrators, or assigns, and also includes a firm, partnership, or corporation, its or their successors or assigns, or the agent of any of the aforesaid.

D. "Structure" is that which is built or constructed, an edifice, or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner.

(Ord. 66 § 1, 1964).

15.48.020 Applicability to apartment houses and dwellings.

Notwithstanding any other provisions of this chapter to the contrary, the provisions of this chapter governing the moving of apartment houses and dwellings after July 1, 1978, shall permit the retention of existing materials and methods of construction so long as the apartment house or dwelling complies with the provisions published in the State Building Standards Code and the other rules and regulations of the State Commission of Housing and Community Development or alternative local standards adopted pursuant to Section 17920.7 of the California Health and Safety Code, complies with the building standards for foundation applicable to new construction, and does not become or continue to be a substandard building.

(Ord. 261 § 35, 1980: Ord. 66 § 7.5, 1964).

15.48.030 Permit—Required.

No person, firm or corporation shall move any building or structure into or within the city or shall remove any building or structure from the city without first obtaining a permit from the building inspector for each such building or structure to be moved or removed.

(Ord. 66 § 2, 1964).

15.48.040 Permit—Application—Contents.

To obtain a permit to move or remove a building or structure, the applicant shall first file an application therefor in writing on a form furnished for that purpose by the building inspector. Every such application shall contain the following information:

A. The location and legal description of the land on which the building or structure to be moved or removed at the time of the application is situated;

B. The location and legal description of the land to which the building or structure is to be moved;

C. The alterations or additions, if any, to be made to the building structure to be moved or removed;

D. The name and address of the person who will install the foundations and to any other necessary work that may be required at the new site, if the building or structure is to be moved or removed to land within the city;

E. The name and address of the person who will move the building or structure to be moved or removed;

F. The use made of the building or structure to be moved or removed at the time of the application for a permit to move or remove the same;

G. The use to be made of the building or structure if it is to be moved or removed to land within the city;

H. Any such other information as may reasonably be required by the building inspector.

(Ord. 66 § 3, 1964).

15.48.050 Permit—Application—Filing fee.

Prior to or at the time of filing any application for a permit to move or remove a building or structure a fee of ten dollars ($10.00) shall be paid to the building inspector by the applicant to defray the reasonable cost of investigations and other services required of the building inspector pursuant to this chapter. The filing fee provided in this section shall be in addition to other permit fees which are required to erect, construct, enlarge, alter, repair, improve and convert any structural, electrical, plumbing, and heating work required for any building, or to demolish any building or structure pursuant to other applicable laws or ordinances.

(Ord. 66 § 4, 1964).

15.48.060 Permit—Application—Investigation and report.

The building inspector upon receipt of application for a permit to move or remove a building or structure pursuant to this chapter shall make all necessary inspections to determine whether such building or structure may be moved safely without demolishing or destroying the same and shall determine whether or not the proposed location of any building or structure sought to be moved or removed to a location within the city meets the requirements of the city building code and any other laws or ordinances appertaining thereto. The application may also be examined and reviewed by other departments of the city to check compliance with the laws and ordinances. Upon the making of his inspections and the completion of his investigation of the application for a permit to move or remove any building or structure, the building inspector shall make and file a written report of his findings and recommendations with every such application for a permit to move or remove a building or structure.

(Ord. 66 § 5, 1964).

15.48.070 Permit—Conditions of issuance.

If the written report of the building inspector shows that the building or structure specified in the application may be moved safely without demolishing or destroying the same, and if the report shows that where the building or structure is to be moved or removed to land within the city, the building or structure when so moved or removed will conform with the requirements of any laws and ordinances applicable thereto, the building inspector shall issue the permit to move or remove the building or structure upon fulfillment of the conditions set forth in Sections 15.48.080 and 15.48.090 by the applicant.

(Ord. 66 § 6(part), 1964).

15.48.080 Permit—Liability insurance required.

The person named in the application as the person who will move the building or structure to be moved or removed shall furnish evidence of public liability insurance covering injuries to persons and property by reason of the proposed moving or removing of the building in a reasonable amount to be approved by the building inspector.

(Ord. 66 § 6(a), 1964).

15.48.090 Permit—Bond required.

No permit for the moving of any building or structure shall be granted by the building inspector until the applicant shall have filed a bond in favor of the city in the sum of not less than one thousand dollars ($1,000.00) nor more than one hundred thousand dollars ($100,000.00), in such amount however as the building inspector may determine, in the form of cash or surety bond acceptable to the city attorney, which bond shall be conditioned that the applicant will strictly comply with all conditions of this chapter and any other applicable laws and ordinances, and that the applicant will pay any and all damages which may result by reason of the moving of the building or structure to any fence, hedge, tree, pavement, street, sidewalk, curb, sewer, gas pipe, water pipe, electric wire or pole supporting the same or to any public or private property, and conditioned further that such person will save, indemnify and keep harmless the city against all liabilities, judgments, costs or any expenses which may in any way accrue against the city in consequence of the granting of the permit or of the moving of the building or structure. In the event that the building or structure is to be moved or removed to a location within the limits of the city, the bond shall further be conditioned that the applicant shall, within ninety (90) days of the issuance of the permit, complete the work necessary to make the building or structure comply with all applicable laws and ordinances, including but not limited to the various health, building and zoning regulations of the city.

(Ord. 66 § 6(b), 1964).

15.48.100 Permit—Denial.

A. If the written report of the building inspector shows that the moving or removing of the building or structure specified in the application may not be done safely without demolishing or destroying the same, he shall deny the application for a permit to move or remove the building or structure. If the written report of the building inspector shows that where the building or structure specified in the application is to be moved or removed into the incorporated territory of the city, that the building or structure may not be made to conform with the requirements of any laws and ordinances applicable thereto, the building inspector shall deny the application for a permit to move or remove the building or structure unless the applicant can and does select another location within the incorporated territory to which the building or structure may be moved or removed in conformance with any laws and ordinances applicable thereto, or unless the applicant selects another location not subject to the jurisdiction of the city.

B. No permit shall be issued for the moving of a building or structure from a location outside of the limits of the city to a location within the limits of the city, unless the application is accompanied by the written consent to such moving of a majority in number of the residents of properties facing the street or public place upon which the building or structure shall face within three hundred (300) lineal feet of the exterior boundaries of the parcel of land upon which the building or structure is to be located.

(Ord. 66 § 7, 1964).

15.48.110 Permit—Appeal of denial.

A. Any applicant for a permit provided for in this chapter may appeal in writing to the city council within five (5) days after the rejection of any application or refusal to issue a permit. The city manager-clerk shall forthwith set the matter for hearing and cause notice of the time and place thereof to be given to the applicant in writing either by delivery to him personally, or by transmission of such notice by United States mail not less than five (5) days prior to the date set for such hearing. Transmission of such notice by United States mail addressed to the applicant at the address given in the application shall be deemed to be delivered on the date of mailing thereof.

B. At the time and place set for the hearing, the applicant shall appear and offer evidence in support of the application. After such hearing, the council shall forthwith cause the applicant to be given written notice of its decision.

(Ord. 66 § 8, 1964).

15.48.120 Compliance with requirements outside jurisdiction of city.

No permit issued pursuant to this chapter shall relieve the applicant therefor from compliance with any requirements of laws or ordinances of other jurisdictions where the location of the building or structure to be moved or removed is not within the territory of the city.

(Ord. 66 § 9, 1964).

15.48.130 Violation—Penalties.

The violation of any of the provisions of this chapter shall constitute a misdemeanor, punishable by the fines, penalties and enforcement provisions set forth in Chapters 1.14, 1.16 and 1.18 of this code.

(Ord. 66 § 10, 1964).

(Ord. No. 554, § 54 1-18-11)

## Chapter 15.52 WELL CONSTRUCTION

Sections:

15.52.010 Definitions.

For the purposes of this chapter, the following words shall have the meanings ascribed to them as follows:

A. "Annular space" means the space between two (2) objects, one of which is surrounded by the other, including the space between an excavation and the wall of a pit or the curbing of a well, or between two (2) casings.

B. "Approved check valve" means a check valve that seats readily and completely. It must be carefully machined to have free moving parts and assured watertightness. The face of the closure element and valve seat must be bronze, composition, or other noncorrodible material which will seat tightly under all prevailing conditions of field use. Pins and bushings shall be of bronze or other noncorrodible, nonsticking material, machined for easy dependable operation. The closure element (e.g., clapper) shall be internally weighted or otherwise internally equipped to promote rapid and positive closure.

C. "Health officer" means the director of the county department of public health and welfare, or his authorized representative, or such other person or persons as the city council may hereafter by resolution appoint to fulfill the duties now being performed by the director.

D. "Property line" means the surveyed line separating one piece of property from another or separating public rights-of-way from private properties.

E. "Sewer" means a pipe carrying waste matter from any structure or being a part of any community sewerage system.

F. "Sewage disposal system" means a system of septic tank drainage field and possibly a seepage pit, handling the waste from any structure not served by a community sewerage system.

G. "Water superintendent" means the designated official in charge of a water distribution system serving water to two (2) or more families.

(Ord. 27 § 2, 1962).

15.52.020 Permit required.

It is unlawful for any person, firm or corporation, whether as principal, servant, agent or employee, to dig, drill, bore or drive a well whether the water from the well is to be used for domestic purposes or irrigation purposes, without first having obtained a permit to do so from the city department of public health and welfare.

(Ord. 27 § 1, 1962).

15.52.030 Inspections.

A. Upon application for permit to dig, drill, bore or drive a well, an inspection within a reasonable time shall be made of the proposed location by a representative of the county department of public health and welfare.

B. Further inspections may be made during process of well construction.

C. After well construction has been completed a final inspection shall be made to determine that the well is properly protected and that proper approved double check valves have been installed in the water line between the house or structure and the meter box or distribution system of the community water system.

(Ord. 27 § 6, 1962).

15.52.040 Permit and inspection fee.

Section 3348 of County Ordinance No. 2324 establishing a fifty dollar ($50.00) well permit inspection fee, three (3) copies of which are filed with the city clerk, is adopted by reference as the applicable well permit and inspection fee for the city.

(Ord. 244 § 4, 1978).

15.52.050 Location restrictions.

In any area subject to flooding, or runoff from higher ground, or in any area where the method of sewage disposal is by the septic tank and seepage method, the following construction standards must be provided:

A. The annular space between two (2) casings or between the drilled hole and a casing is to be filled with cement having a minimum thickness of two (2) inches. Example: Annular space between an eight (8) inch casing and a twelve (12) inch casing or a twelve (12) inch drill hole and an eight (8) inch casing.

B. The cement shall extend to a sufficient depth to penetrate an impervious stratum below the first pervious or possible water bearing stratum, and in no event less than ten (10) feet.

C. The cement shall be introduced into the hole by pouring through a pipe, using either gravity or grout pump, and commencing at the bottom of the hole and working up to the top.

D. These standards may be required any time or place when in the opinion of the health officer, the protection of the underground water against pollution or contamination, or the protection of the public health may demand.

E. No well shall be located any closer than the following distances, unless circumstances are such that in the opinion of the health officer no danger to public health or safety will develop if the above standards are adhered to:

1. From a septic tank, fifty (50) feet;

2. From a drainage field, seventy-five (75) feet;

3. From a seepage pit, one hundred (100) feet;

4. From a cesspool, one hundred (100) feet;

5. From a sewer line, fifty (50) feet;

6. From a property line (sewered area), five (5) feet;

7. From a property line (unsewered area), forty (40) feet;

8. From a stream or creek bank, ten (10) feet.

(Ord. 27 § 3, 1962).

15.52.060 Protection of community system.

There shall be installed, between the house or structure being served water and the meter box or distribution system, a double check valve arrangement approved jointly by the health officer and water superintendent.

(Ord. 27 § 4, 1962).

15.52.070 Construction standards.

A. All wells must be properly protected at the surface with an impervious slab extending at least twenty-four (24) inches to all sides of the well opening.

B. In areas where dug wells are the main source of available water, it will be necessary to have an impervious lining extending down at least ten (10) feet below the surface of the ground.

C. Gravel packed wells shall be so constructed that surface contamination will not gain access to the well.

D. Upon completion of a well, the drilling contractor shall be responsible for the placing of a secure well-cap or plug, such cap or plug being one which would ordinarily make the introduction of surface contamination remote.

(Ord. 27 § 5, 1962).

15.52.080 Abandonment of wells.

A. When a well is abandoned, it shall be properly capped or plugged, if abandonment is of a temporary nature, and shall be completely sealed by filling with a mixture of one (1) part cement to four (4) parts sand, or with neat cement if abandoned permanently.

B. Upon determination that a well is polluted or contaminated and reasonable efforts to clear the pollution or contamination have been unsuccessful, the county health officer shall have the authority to enforce the permanent abandonment as directed in subsection A of this section.

(Ord. 27 § 8, 1962).

15.52.090 Preparation and issuance of regulation.

The health officer may prepare and issue written regulations deemed necessary to obtain compliance with this chapter and to clarify its relation with the laws of the state.

(Ord. 27 § 7, 1962).

15.52.100 Violation—Declared nuisance—Abatement.

Any installation made in violation of the terms of this chapter and standards established as provided for in this chapter is determined to constitute a public nuisance and its maintenance and operation may be abated in a civil action instituted by the district attorney of the county.

(Ord. 27 § 11, 1962).

15.52.110 Violation—Penalties.

The violation of any of the provisions of this chapter shall constitute a misdemeanor, punishable by the fines, penalties and enforcement provisions set forth in Chapters 1.14, 1.16 and 1.18 of this code.

(Ord. 27 § 10, 1962).

(Ord. No. 554, § 55, 1-18-11)

## Chapter 15.56 FLOODPLAIN MANAGEMENT

Sections:

15.56.010 Statutory authorization.

The Legislature of the state of California has in Government Code Sections 65302, 65560 and 65800 conferred upon local government units authority to adopt regulations designed to promote the public health, safety and general welfare of its citizenry.

(Ord. 340 § 2(part), 1988).

(Ord. No. 592, § 1, 2-23-15)

15.56.020 Findings of fact.

A. Certain areas of the city are subject to periodic inundation which could result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare.

B. Flood losses may be caused by the cumulative effect of obstructions in areas of special flood hazards which increase flood heights and velocities. Uses that are inadequately floodproofed, elevated or otherwise protected from flood damage also may contribute to flood loss.

(Ord. 340 § 2(part), 1988).

(Ord. No. 592, § 1, 2-23-15)

15.56.030 Statement of purpose.

It is the purpose of this chapter to promote the public health, safety and general welfare, and to minimize public and private losses due to flood conditions in specific areas by provisions designed:

A. To protect human life and health;

B. To minimize expenditure of public money for costly flood control projects;

C. To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;

D. To minimize damage to the public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in areas of special flood hazard;

E. To insure that potential buyers are notified that property is in an area of special flood hazard; and

F. To insure that those who occupy the areas of special flood hazard assume responsibility for their actions.

(Ord. 340 § 2(part), 1988).

(Ord. No. 592, § 1, 2-23-15)

15.56.040 Methods of reducing flood loss.

In order to accomplish its purposes, this chapter includes methods and provisions for:

A. Restricting or prohibiting uses which are dangerous to health, safety and property due to water or erosion hazards, or which result in damaging increases in erosion or flood heights or velocities;

B. Requiring that uses vulnerable to floods, including facilities which serve such uses, be protected from flood damage at the time of initial construction;

C. Controlling the alteration of natural floodplains, stream channels and natural protective barriers, which help accommodate or channel floodwaters;

D. Controlling filling, grading, dredging, and other development which may increase flood damage; and

E. Preventing or regulating the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards in other areas.

(Ord. 340 § 2 (part), 1988).

(Ord. No. 592, § 1, 2-23-15)

15.56.050 Definitions.

Unless otherwise defined below, words or phrases used in this chapter shall be interpreted so as to give them the meaning they have in common usage and to give this chapter its most reasonable application:

A. "Accessory structure" means a structure that is either:

1. Solely for the parking of no more than two (2) cars; or

2. A small, low cost shed for limited storage, less than one hundred fifty (150) square feet and one thousand five hundred dollars ($1,500.00) in value.

B. "Accessory use" means a use which is incidental and subordinate to the principal use of the parcel of land on which it is located.

C. "Appeal" means a request for a review of the floodplain administrator's interpretation of any provision of this chapter.

D. "Area of shallow flooding" means a designated AO or AH zone on the flood insurance rate map (FIRM). The base flood depths range from one to three feet; a clearly defined channel does not exist; the path of flooding is unpredictable and indeterminate; and velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

E. "Area of special flood hazard." See "special flood hazard area."

F. "Base flood" means the flood having a one percent chance of being equaled or exceeded in any given year. Also called the "one hundred (100)-year flood."

G. "Base flood elevation" (BFE) means the elevation shown on the flood insurance rate map for zones AE, AH, A1-30, VE and V1-V30 that indicates the water surface elevation resulting from a flood that has a one-percent or greater chance of being equaled or exceeded in any given year.

H. "Basement" means any area of the building having its floor subgrade (below ground level) on all sides.

I. "Breakaway walls" are any type of walls, whether solid or lattice, and whether constructed of concrete, masonry, wood, metal, plastic or any other suitable building material which is not part of the structural support of the building and which is designed to break away under abnormally high tides or wave action without causing any damage to the structural integrity of the building on which they are used for any buildings to which they might be carried by floodwaters. A breakaway wall shall have a safe design loading resistance of not less than ten (10) and no more than twenty (20) pounds per square foot. Use of breakaway walls must be certified by a registered engineer or architect and shall meet the following conditions:

1. Breakaway wall collapse shall result from a water load less than would occur during the base flood; and

2. The elevated portion of the building shall not incur any structural damage due to the effects of wind and water loads acting simultaneously in the event of the base flood.

J. "Coastal high hazard area" means an area of special flood hazard extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources. It is an area subject to high velocity waters, including coastal and tidal inundation or tsunamis. The area is designated on a flood insurance rate map (FIRM) as zone V1-V30, VE, or V.

K. "Development" means any manmade change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations.

L. "Encroachment" means the advance or infringement of uses, plant growth, fill, excavation, buildings, permanent structures or development into a floodplain which may impede or alter the flow capacity of a floodplain.

M. "Existing manufactured home park or subdivision" means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before August 22, 1988.

N. "Expansion to an existing manufactured home park or subdivision" means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

O. "Flood" or "flooding" means a general and temporary condition of partial or complete inundation of normally dry land areas from: (1) the overflow of floodwaters; (2) the unusual and rapid accumulation or runoff of surface waters from any source; and/or (3) the collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as a flash flood or abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in this definition.

P. "Flood boundary and floodway map" (FBFM) means the official map on which the Federal Emergency Management Agency or Federal Insurance Administration has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

Q. "Flood hazard boundary map" (FHBM) means the official map of a community issued by the Federal Emergency Management Agency, where the boundaries of the flood, mudflow and related erosion areas having special hazards have been designated.

R. "Flood insurance rate map" (FIRM) means the official map on which the Federal Emergency Management Agency or Federal Insurance Administration has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

S. "Flood insurance study" (FIS) means the official report provided by the Federal Insurance Administration that includes flood profiles, the FIRM, the flood boundary and floodway map, and the water surface elevation of the base flood.

T. "Floodplain" or "flood-prone area" means any land area susceptible to being inundated by water from any source. (See definition of "flooding.")

U. "Floodplain administrator" is the community official designated by title to administer and enforce the floodplain management regulations.

V. "Floodplain management" means the operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works and floodplain management regulations.

W. "Floodplain management regulations" means the zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances such as floodplain ordinances, grading ordinances and erosion control ordinances, and other applications of police power. The term describes such state and local regulations in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.

X. "Floodproofing" means any combination of structural and nonstructural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

Y. "Floodway" means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot. Also referred to as "regulatory floodway."

Z. "Floodway fringe" is that area of the floodplain on either side of the "regulatory floodway" where encroachment may be permitted.

AA. "Fraud and victimization" as related to Section 15.56.090 of this chapter, means that the variance granted must not cause fraud on or victimization of the public. In examining this requirement, the city council will consider the fact that every newly constructed building adds to government responsibilities and remains a part of the community for fifty (50) to one hundred (100) years. Buildings that are permitted to be constructed below the base flood elevation are subject during all those years to increased risk of damage from floods, while future owners of the property and the community as a whole are subject to all the costs, inconvenience, danger, and suffering that those increased flood damages bring. In addition, future owners may purchase the property, unaware that it is subject to potential flood damage, and can be insured only at very high flood insurance rates.

BB. "Functionally dependent use" means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and shipbuilding and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

CC. "Hardship" as related to Section 15.56.090 of this chapter means the exceptional hardship that would result from a failure to grant the requested variance. The {community governing body} requires that the variance be exceptional, unusual, and peculiar to the property involved. Mere economic or financial hardship alone is not exceptional. Inconvenience, aesthetic considerations, physical handicaps, personal preferences, or the disapproval of one's neighbors likewise cannot, as a rule, qualify as an exceptional hardship. All of these problems can be resolved through other means without granting a variance, even if the alternative is more expensive, or requires the property owner to build elsewhere or put the parcel to a different use than originally intended.

DD. "Highest adjacent grade" means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

EE. "Historic structure" means any structure that is:

1. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;

2. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;

3. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of Interior; or

4. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either by an approved state program as determined by the Secretary of the Interior or directly by the Secretary of the Interior in states without approved programs.

FF. "Lowest floor" means the lowest floor of the lowest enclosed area, including basement.

1. An unfinished or flood resistant enclosure below the lowest floor that is usable solely for parking of vehicles, building access or storage in an area other than a basement area, is not considered a building's lowest floor provided it conforms to applicable non-elevation design requirements, including, but not limited to:

a. The flood openings standard in Section 15.56.081(C)(3);

b. The anchoring standards in Section 15.56.081(A);

c. The construction materials and methods standards in Section 15.56.081(B); and

d. The standards for utilities in Section 15.56.081(D).

2. For residential structures, all subgrade enclosed areas are prohibited as they are considered to be basements (see "basement" definition). This prohibition includes below-grade garages and storage areas.

GG. "Manufactured home" means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes the term "manufactured home" also includes park trailers, travel trailers and other similar vehicles placed on a site for greater than one hundred eighty (180) consecutive days.

HH. "Manufactured home park or subdivision" means a parcel or contiguous parcels of land divided into two or more manufactured home lots for sale or rent.

II. "Mean sea level" means, for purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929 or other datum, to which base flood elevations shown on a community's flood insurance rate map are referenced.

JJ. "New construction" means, for floodplain management purposes, structures for which the "start of construction" commenced on or after the effective date of a floodplain management regulation adopted by this community.

KK. "New manufactured home park or subdivision" means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after August 22, 1988.

LL. "Obstruction" includes, but is not limited to, any dam, wall, wharf, embankment, levee, dike, pile, abutment, protection, excavation, channelization, bridge, conduit, culvert, building, wire, fence, rock, gravel, refuse, fill, structure, vegetation or other material in, along, across or projecting into any watercourse which may alter, impede, retard or change the direction and/or velocity of the flow of water, or due to its location, its propensity to snare or collect debris carried by the flow of water, or its likelihood of being carried downstream.

MM. "One hundred (100)-year flood" or "100-year flood" means a flood which has a one percent annual probability of being equaled or exceeded. It is identical to the "base flood," which will be the term used throughout the chapter.

NN. "Person" means an individual or his agent, firm, partnership, association, or this state or its agencies or political subdivisions.

OO. "Primary frontal dune" means a continuous or nearly continuous mound or ridge of sand with relatively steep seaward and landward slopes immediately landward and adjacent to the beach and subject to erosion and overtopping from high tides and waves during major coastal storms. The inland limit of the primary frontal dune occurs at the point where there is a distinct change from a relatively mild slope.

PP. "Program deficiency" means a defect in a community's floodplain management regulations or administrative procedures that impairs effective implementation of those floodplain management regulations.

QQ. "Public safety and nuisance" means that the granting of a variance must not result in anything which is injurious to safety or health of an entire community or neighborhood, or any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin.

RR. "Recreational vehicle" means a vehicle which is:

1. Built on a single chassis;

2. Four hundred (400) square feet or less when measured at the largest horizontal projection;

3. Designed to be self-propelled or permanently towable by a light-duty truck; and

4. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

SS. "Regulatory floodway" means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

TT. "Riverine" means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

UU. "Sand dunes" mean naturally occurring accumulations of sand in ridges or mounds landward of the beach.

VV. "Special flood hazard area (SFHA)" means an area in the floodplain subject to a one percent or greater chance of flooding in any given year. It is shown on an FHBM or FIRM as zone A, AO, A1-A30, AE, A99, AH, V1-V30, VE or V.

WW. "Substantial damage" means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed fifty percent (50%) of the market value of the structure before the damage occurred.

XX. "Remedy a violation" means to bring the structure or other development into compliance with state or local floodplain management regulations, or, if this is not possible, to reduce the impacts of its noncompliance. Ways that impacts may be reduced include protecting the structure or other affected development from flood damages, implementing the enforcement provisions of the ordinance or otherwise deterring future similar violations, or reducing federal financing exposure with regard to the structure or other development.

YY. "Special flood hazard area (SFHA)" means an area having special flood or flood-related erosion hazards, and shown on an FHBM or FIRM as zone A, A1-30, AE, A99.

ZZ. "Start of construction" includes substantial improvement, and means the date the building permit was issued; provided, the actual start of construction, repair, reconstruction, placement, or other improvement was within one hundred eighty (180) days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the state of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the excavation for a basement, footings, piers or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure.

AAA. "Structure" means a walled and roofed building, including a gas or liquid storage tank that is principally aboveground as well as a manufactured home.

BBB. 1. "Substantial improvement" means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds fifty percent (50%) of the market value of the structure either:

a. Before improvement or repair is started; or

b. If the structure has been damaged, and is being restored, before the damage occurred.

2. For the purpose of this definition substantial improvement is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building, commences, whether or not that alteration affects the external dimensions of the structure. The term does not, however, include either:

a. Any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions; or

b. Any alteration of a structure listed on the National Register of Historic Places or a state inventory of historic places.

CCC. "V zone." See "Coastal high hazard area."

DDD. "Variance" means a grant of relief from the requirements of this chapter which permits construction in a manner that would otherwise be prohibited by this chapter.

EEE. "Violation" means the failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in this chapter is presumed to be in violation until such time as that documentation is provided.

FFF. "Water surface elevation" means the height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929, North American Vertical Datum (NAVD) of 1988, or other datum, of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

GGG. "Watercourse" means a lake, river, creek, stream, wash, arroyo, channel or other topographic feature on or over which waters flow at least periodically. Watercourse includes specifically designated areas in which substantial flood damage may occur.

(Ord. 340 § 2(part), 1988).

(Ord. No. 592, § 1, 2-23-15; Ord. No. 631, § 1, 2-21-19)

15.56.060 General provisions.

The following Sections 15.56.061 through 15.56.067 set out general provisions for floodplain management.

(Ord. 340 § 2(part), 1988).

(Ord. No. 592, § 1, 2-23-15)

15.56.061 Lands to which this chapter applies.

This chapter shall apply to all areas of special flood hazard within the jurisdiction of the city.

(Ord. 340 § 2(part), 1988).

(Ord. No. 592, § 1, 2-23-15)

15.56.062 Basis for establishing the areas of special flood hazard.

The areas of special flood hazard are those areas so identified by the Federal Emergency Management Agency (FEMA) in the "Flood Insurance Study (FIS) for San Mateo County (Unincorporated Areas)" dated August 5, 1986, with accompanying Flood Boundary and Floodway Maps (FBFM's) and Flood Insurance Rate Maps (FIRM's) for city of Brisbane, effective date March 29, 1983 and San Mateo County (unincorporated areas), effective date July 5, 1984, and all subsequent amendments and/or revisions, are hereby adopted by reference and declared to be a part of this chapter. The FIS and attendant mapping is the minimum area of applicability of this chapter and may be supplemented by studies for other areas which allow implementation of this chapter and which are recommended to the city council by the floodplain administrator. The study, FIRM's and FBFM's are on file in the city of Brisbane public works department at 50 Park Place, Brisbane, California.

(Ord. 523 § 1, 2007: Ord. 340 § 2(part), 1988).

(Ord. No. 592, § 1, 2-23-15)

15.56.063 Compliance.

No structure or land shall hereafter be constructed, located, extended, covered, or altered without full compliance with the terms of this chapter and other applicable regulations. Violations of the provisions of this chapter by failure to comply with any of its requirements, including violations of conditions and safeguards established in connection with conditions, shall constitute a misdemeanor. Nothing herein shall prevent the city council from taking such lawful action as is necessary to prevent or remedy any violation.

(Ord. 340 § 2(part), 1988).

(Ord. No. 592, § 1, 2-23-15)

15.56.064 Abrogation and greater restrictions.

This chapter is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this chapter and another ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restriction shall prevail.

(Ord. 340 § 2(part), 1988).

(Ord. No. 592, § 1, 2-23-15)

15.56.065 Interpretation.

In the interpretation and application of this chapter, all provisions shall be:

A. Considered as minimum requirement;

B. Liberally construed in favor of the governing body; and

C. Deemed neither to limit nor repeal any other powers granted under state statutes.

(Ord. 340 § 2(part), 1988).

(Ord. No. 592, § 1, 2-23-15)

15.56.066 Warning and disclaimer of liability.

The degree of flood protection required by this chapter is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by manmade or natural causes. This chapter does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damage. This chapter shall not create liability on the part of the city of Brisbane, any officer or employee thereof, or the Federal Insurance Administration, for any flood damages that result from reliance on this chapter or any administrative decision lawfully made thereunder.

(Ord. 340 § 2(part), 1988).

(Ord. No. 592, § 1, 2-23-15)

15.56.067 Severability.

This chapter and the various parts thereof are declared to be severable. Should any section of this chapter be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the chapter as a whole, or any portion thereof other than the section so declared to be unconstitutional or invalid.

(Ord. 340 § 2(part), 1988).

(Ord. No. 592, § 1, 2-23-15)

15.56.070 Administration.

The following Sections 15.56.071 through 15.56.073 set out administrative procedures for floodplain management.

(Ord. 340 § 2(part), 1988).

(Ord. No. 592, § 1, 2-23-15)

15.56.071 Establishment of development permit.

A development permit shall be obtained before construction or development begins within any area of special flood hazards established in Section 15.56.062. Application for a development permit shall be made on forms furnished by the floodplain administrator and may include, but not be limited to: Plans in duplicate drawn to scale showing the nature, location, dimensions, and elevation of the area in question; existing or proposed structures, fill, storage of materials, drainage facilities; and the location of the foregoing. Specifically, the following information is required:

A. Plans in duplicate, drawn to scale, showing:

1. Location, dimensions, and elevation of the area in question, existing or proposed structures, storage of materials and equipment and their location;

2. Proposed locations of water supply, sanitary sewer, and other utilities;

3. Grading information showing existing and proposed contours, any proposed fill, and drainage facilities;

4. Location of the regulatory floodway when applicable;

5. Base flood elevation information as specified in Section 15.56.062 or Section 15.56.073(C);

6. Proposed elevation in relation to mean sea level, of the lowest floor (including basement) of all structures; and

7. Proposed elevation in relation to mean sea level to which any nonresidential structure will be floodproofed, as required in Section 15.56.081(C)(2) of this chapter and detailed in FEMA Technical Bulletin TB 3-93.

B. Certification from a registered civil engineer or architect that the nonresidential floodproofed building meets the floodproofing criteria in Section 15.56.081(C)(2).

C. For a crawl-space foundation, location and total net area of foundation openings as required in Section 15.56.081(C)(3) of this chapter and detailed in FEMA Technical Bulletins 1-93 and 7-93.

D. All appropriate certifications listed in Section 15.56.073(D) of this chapter.

E. Description of the extent to which any watercourse will be altered or relocated as a result of proposed development.

(Ord. 340 § 2(part), 1988).

(Ord. No. 592, § 1, 2-23-15; Ord. No. 631, § 1, 2-21-19)

15.56.072 Designation of the floodplain administrator.

The building official, as defined in this code, is appointed to administer and implement this chapter by granting or denying development permits in accordance with its provisions.

The director of public works/city engineer shall assist the floodplain administrator by performing the following functions:

A. Maintain the city's floodplain management files, including the flood insurance rate map (FIRM).

B. Review and approve/deny updates and revisions to the FIRM.

C. Function as the city representative for floodplain management studies, plans, mapping activities, projects and flood mitigation projects.

D. Assist and cooperate with the Federal Emergency Management Agency during community assistance visits and during regular review of this chapter to ensure the city meets the minimum requirements of the National Flood Insurance Program.

(Ord. 340 § 2(part), 1988).

(Ord. No. 631, § 1, 2-21-19)

15.56.073 Duties and responsibilities of the floodplain administrator.

The duties and responsibilities of the floodplain administrator shall include, but not be limited to:

A. Permit Review. Review all development permits to determine that:

1. The permit requirements of this chapter have been satisfied;

2. All other required state and federal permits have been obtained;

3. The site is reasonably safe from flooding; and

4. The proposed development does not adversely affect the carrying capacity of areas where base flood elevations have been determined but a floodway has not been designated. For purposes of this chapter, "adversely affects" means that the cumulative effect of the proposed development when combined with all other existing and anticipated development will not increase the water surface elevation of the base flood more than one foot at any point.

5. All letters of map revision (LOMR's) for flood control projects are approved prior to the issuance of building permits. Building permits must not be issued based on conditional letters of map revision (CLOMR's). Approved CLOMR's allow construction of the proposed flood control project and land preparation as specified in the "start of construction" definition.

B. Development of Substantial Improvement and Substantial Damage Procedures.

1. Using FEMA publication FEMA 213, "Answers to Questions About Substantially Damaged Buildings," develop detailed procedures for identifying and administering requirements for substantial improvement and substantial damage, to include defining "market value."

2. Assure procedures are coordinated with other departments/divisions and implemented by community staff.

C. Use of Other Flood Data. When base flood elevation data has not been provided in accordance with Section 15.56.062, the floodplain administrator shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from a federal, state or other source, in order to administer Section 15.56.080. Any such information shall be submitted to the city for adoption.

  NOTE: A base flood elevation may be obtained using one of two methods from the FEMA publication, FEMA 265, "Managing Floodplain Development in Approximate zone A Areas - A Guide for Obtaining and Developing Base (100-year) Flood Elevations" dated July 1995.

D. Whenever a watercourse is to be altered or relocated it is the responsibility of the floodplain administrator to:

1. Notify adjacent communities and the California Department of Water Resources prior to such alteration or relocation of watercourse, and submit evidence of such notification to the Federal Insurance Administration;

2. Submit evidence of such notification to the Federal Emergency Management Agency; and

3. Require that the flood-carrying capacity of the altered or relocated portion of said watercourse is maintained.

E. Base Flood Elevation Changes Due to Physical Alterations.

1. Within six (6) months of information becoming available or project completion, whichever comes first, the floodplain administrator shall submit or assure that the permit applicant submits technical or scientific data to FEMA for a letter of map revision (LOMR).

2. All LOMR's for flood control projects are approved prior to the issuance of building permits. Building permits must not be issued based on conditional letters of map revision (CLOMR's). Approved CLOMR's allow construction of the proposed flood control project and land preparation as specified in the "start of construction" definition.

  Such submissions are necessary so that upon confirmation of those physical changes affecting flooding conditions, risk premium rates and floodplain management requirements are based on current data.

F. Changes in Corporate Boundaries. The floodplain administrator shall notify FEMA in writing whenever the corporate boundaries have been modified by annexation or other means and include a copy of a map of the community clearly delineating the new corporate limits.

G. It is the responsibility of the floodplain administrator to obtain and maintain for public inspection and make available as needed:

1. The certification required in Section 15.56.081(C)(1), floor elevations;

2. The certification required in Section 15.56.081(C)(2)(c), elevation or floodproofing of nonresidential structures;

3. The certification required in Section 15.56.081(C)(3)(a) or 15.56.081(C)(3)(b), wet floodproofing standard;

4. The certified elevation required in Section 15.56.081(E)(2), subdivision standards;

5. The certification required in Section 15.56.081(H)(2) floodway encroachment.

6. Information required by Section 15.56.081(I) (coastal construction standards);

H. It is the responsibility of the floodplain administrator to make interpretations where needed, as to the exact location of the boundaries of the areas of special flood hazards; for example, where there appears to be a conflict between a mapped boundary and actual field conditions. The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in Section 15.56.090.

I. It is the responsibility of the floodplain administrator to take action to remedy violations of this chapter as specified in Section 15.56.063 herein.

(Ord. 340 § 2(part), 1988).

(Ord. No. 592, § 1, 2-23-15; Ord. No. 631, § 1, 2-21-19)

15.56.080 Provisions for flood hazard reduction.

The following Section 15.56.081 sets out provisions for flood hazard reduction.

(Ord. 340 § 2(part), 1988).

(Ord. No. 592, § 1, 2-23-15)

15.56.081 Standards for construction.

In all areas of special flood hazards, the following standards are required:

A. Anchoring.

1. All new construction and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.

2. All manufactured homes shall meet the anchoring standards of subsection F of this section.

B. Construction Materials and Methods.

1. All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.

2. All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.

3. All new construction and substantial improvements shall be constructed with electrical, heating, ventilation, plumbing and air conditioning equipment and other facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

4. Within zones AH or AO, so that there are adequate drainage paths around structures on slopes to guide flood waters around and away from proposed structures.

C. Elevation and Floodproofing.

1. Residential Construction. All new construction or substantial improvements of residential structures shall have the lowest floor, including basement:

a. In AE, AH, A1-30 zones, elevated to or above the base flood elevation.

b. In an AO zone, elevated above the highest adjacent grade to a height equal to or exceeding the depth number specified in feet on the FIRM, or elevated at least two (2) feet above the highest adjacent grade if no depth number is specified.

c. In an A zone, without BFE's specified on the FIRM [unnumbered A zone], elevated to or above the base flood elevation; as determined under Section 15.56.073(C).

  Upon the completion of the structure, the elevation of the lowest floor, including basement, shall be certified by a registered civil engineer or licensed land surveyor, and verified by the community building inspector to be properly elevated. Such certification and verification shall be provided to the floodplain administrator.

2. Nonresidential Construction. All new construction or substantial improvements of nonresidential structures shall either be elevated to conform with subsection (C)(1) or:

a. Be floodproofed, together with attendant utility and sanitary facilities, below the elevation recommended under subsection (C)(1), so that the structure is watertight with walls substantially impermeable to the passage of water;

b. Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and

c. Be certified by a registered civil engineer or architect that the standards of subsections a and b immediately above are satisfied. Such certification shall be provided to the floodplain administrator.

3. Flood Openings. All new construction and substantial improvements of structures with fully enclosed areas below the lowest floor (excluding basements) that are usable solely for parking of vehicles, building access or storage, and which are subject to flooding, shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwater. Designs for meeting this requirement must meet the following minimum criteria:

a. For non-engineered openings:

i. Have a minimum of two (2) openings on different sides having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding;

ii. The bottom of all openings shall be no higher than one foot above grade;

iii. Openings may be equipped with screens, louvers, valves or other coverings or devices provided that they permit the automatic entry and exit of floodwater; and

iv. Buildings with more than one enclosed area must have openings on exterior walls for each area to allow flood water to directly enter; or

b. Be certified by a registered civil engineer or architect.

4. Garages and low cost accessory structures.

a. Attached garages.

i. A garage attached to a residential structure, constructed with the garage floor slab below the BFE, must be designed to allow for the automatic entry of flood waters per subsection (C)(3) "Flood Openings." Areas of the garage below the BFE must be constructed with flood resistant materials per subsection B "construction materials and methods."

ii. A garage attached to a nonresidential structure must meet the above requirements or be dry floodproofed. For guidance on below grade parking areas, see FEMA Technical Bulletin TB-6.

b. Detached Garages and Accessory Structures.

i. "Accessory structures" used solely for parking (two (2) car detached garages or smaller) or limited storage (small, low-cost sheds), as defined in subsection (C)(2) "nonresidential construction", may be constructed such that its floor is below the base flood elevation (BFE), provided the structure is designed and constructed in accordance with the following requirements:

(A) Use of the accessory structure must be limited to parking or limited storage;

(B) The portions of the accessory structure located below the BFE must be built using flood-resistant materials;

(C) The accessory structure must be adequately anchored to prevent flotation, collapse and lateral movement;

(D) Any mechanical and utility equipment in the accessory structure must be elevated or floodproofed to or above the BFE;

(E) The accessory structure must comply with floodplain encroachment provisions in subsection H "floodways"; and

(F) The accessory structure must be designed to allow for the automatic entry of flood waters in accordance with subsection (C)(3) "flood openings."

ii. Detached garages and accessory structures not meeting the above standards must be constructed in accordance with all applicable standards in Section 15.56.081.

D. Standards for Utilities. All new and replacement water supply and sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the system and discharge from systems into floodwaters. On-site waste disposal systems shall be located to avoid impairment to them, or contamination from them during flooding.

E. Standards for Subdivisions.

1. All preliminary subdivision proposals shall identify the flood hazard area and the elevation of the base flood.

2. If the site is filled above the base flood elevation, the following as-built information for each structure shall be certified by a registered civil engineer or licensed land surveyor and provided as part of an application for a letter of map revision based on fill (LOMR-F) to the floodplain administrator:

a. Lowest floor elevation.

b. Pad elevation.

c. Lowest adjacent grade.

  All final subdivision plans will provide the elevation of the proposed structure(s) and pads. If the site is filled above the base flood, the final pad elevation shall be certified by a registered professional engineer or surveyor and provided to the floodplain administrator.

3. All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage.

4. All subdivisions shall provide adequate drainage to reduce exposure to flood hazards.

F. Standards for Manufactured Homes.

1. All manufactured homes that are placed or substantially improved, on sites located: (1) outside of a manufactured home park or subdivision; (2) in a new manufactured home park or subdivision; (3) in an expansion to an existing manufactured home park or subdivision; or (4) in an existing manufactured home park or subdivision upon which a manufactured home has incurred "substantial damage" as the result of a flood, shall:

a. Within zones A1-30, AH, and AE on the community's flood insurance rate map, be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated to or above the base flood elevation and be securely fastened to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.

b. Within zones V1-30, V, and VE on the community's flood insurance rate map, meet the requirements of Section 15.56.081(I).

2. All manufactured homes to be placed or substantially improved on sites in an existing manufactured home park or subdivision within zones A1-30, AH, AE, V1-30, V, and VE on the community's flood insurance rate map that are not subject to the provisions of subsection 1 above will be securely fastened to an adequately anchored foundation system to resist flotation, collapse, and lateral movement, and be elevated so that either the:

a. Lowest floor of the manufactured home is at or above the base flood elevation; or

b. Manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than thirty-six (36) inches in height above grade.

  Upon the completion of the structure, the elevation of the lowest floor including basement shall be certified by a registered civil engineer or licensed land surveyor, and verified by the community building inspector to be properly elevated. Such certification and verification shall be provided to the floodplain administrator.

G. Standards for Recreational Vehicles.

1. All recreational vehicles placed in zones A1-30, AH, AE, V1-30 and VE will either:

a. Be on the site for fewer than one hundred eighty (180) consecutive days; or

b. Be fully licensed and ready for highway use. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions; or

c. Meet the permit requirements of Section 15.56.071 of this chapter and the elevation and anchoring requirements for manufactured homes in Section 15.56.081(F).

2. Recreational vehicles placed on sites within zones V1-30, V, and VE on the community's flood insurance rate map will meet the requirements of subsection 1 above and Section 15.56.081(I).

H. Floodways. Located within areas of special flood hazard established in Section 15.56.062 are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of floodwaters which carry debris, potential projectiles and erosion potential, the following provisions apply:

1. Until a regulatory floodway is adopted, no new construction, substantial development, or other development (including fill) shall be permitted within zones A1-30 and AE, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other development, will not increase the water surface elevation of the base flood more than one foot at any point within the City of Brisbane.

2. Encroachments in floodways are prohibited, including fill, new construction, substantial improvements, and other development, unless certification by registered professional engineer or architect is provided demonstrating that encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.

3. If subsection (G)(1) of this section is satisfied, all new construction and substantial improvements shall comply with all other applicable flood hazard reduction provisions of Sections 15.56.080 and 15.56.081.

I. Coastal High Hazard Areas. Within coastal high hazard areas, zones V, V1-30, and VE, as established under Section 15.56.062, the following standards shall apply:

1. All new residential and non-residential construction, including substantial improvement/damage, shall be elevated on adequately anchored pilings or columns and securely anchored to such pilings or columns so that the bottom of the lowest horizontal structural member of the lowest floor (excluding the pilings or columns) is elevated to or above the base flood level. The pile or column foundation and structure attached thereto is anchored to resist flotation, collapse, and lateral movement due to the effects of wind and water loads acting simultaneously on all building components. Water loading values used shall be those associated with the base flood. Wind loading values used shall be those required by applicable state or local building standards.

2. All new construction and other development shall be located on the landward side of the reach of mean high tide.

3. All new construction and substantial improvement shall have the space below the lowest floor free of obstructions or constructed with breakaway walls as defined in Section 15.56.050 of this chapter. Such enclosed space shall not be used for human habitation and will be usable solely for parking of vehicles, building access or storage.

4. Fill shall not be used for structural support of buildings.

5. Man-made alteration of sand dunes which would increase potential flood damage is prohibited.

6. The floodplain administrator shall obtain and maintain the following records:

a. Certification by a registered engineer or architect that a proposed structure complies with subsection 1 above; and

b. The elevation (in relation to mean sea level) of the bottom of the lowest horizontal structural member of the lowest floor (excluding pilings or columns) of all new and substantially improved structures, and whether such structures contain a basement.

(Ord. 340 § 2(part), 1988).

(Ord. No. 592, § 1, 2-23-15; Ord. No. 631, § 1, 2-21-19)

15.56.090 Variance procedure.

A. Appeal Board.

1. The planning commission shall hear and decide appeals and requests for variances from the requirements of this chapter.

2. The planning commission shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the floodplain administrator in the enforcement or administration of this chapter.

3. In passing upon such applications, the planning commission shall consider all technical evaluations, all relevant factors, standards specified in other sections of this chapter, and:

a. The danger that materials may be swept onto other lands to the injury of others;

b. The danger to life and property due to flooding or erosion damage;

c. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;

d. The importance of the services provided by the proposed facility to the community;

e. The necessity to the facility of a waterfront location, where applicable;

f. The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;

g. The compatibility of the proposed use with existing and anticipated development;

h. The relationship of the proposed use to the comprehensive plan and the floodplain management program for that area;

i. The safety of access to the property in time of flood for ordinary and emergency vehicles;

j. The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters expected at the site; and

k. The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, water systems, and streets and bridges.

B. Upon consideration of the factors of subsection (A)(3) of this section and the purposes of this chapter, the planning commission may attach such conditions to the granting of variances as it deems necessary to further the purposes of this chapter.

C. The floodplain administrator shall maintain the records of all appeal actions and report any variances to the Federal Insurance Administration upon request.

(Ord. 340 § 2(part), 1988).

(Ord. No. 592, § 1, 2-23-15)

15.56.091 Conditions for variances.

A. Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed in the National Register of Historic Places or the state inventory of historic places, without regard to the procedures set forth in the remainder of this section.

B. Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.

C. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

D. Variances shall only be issued upon:

1. A showing of good and sufficient cause;

2. A determination that failure to grant the variance will not result in increased floor heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

E. Variances may be issued for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use provided the provisions of subsections A through D of this section are satisfied and that the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.

F. Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor elevation below the regulatory flood elevation and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest flood elevation. A copy of the notice shall be recorded by the floodplain board in the office of the county recorder and shall be recorded in a manner so that it appears in the chain of title of the affected parcel of land.

(Ord. 340 § 2(part), 1988).

(Ord. No. 592, § 1, 2-23-15)

## Chapter 15.60 SEISMIC HAZARD IDENTIFICATION PROGRAM FOR UNREINFORCED MASONRY BUILDINGS

Sections:

15.60.010 Purpose.

It is generally acknowledged that the city of Brisbane is located in a geographic area of high seismic risk, due to its proximity to both the San Andreas and Hayward faults, and may reasonably be expected to experience moderate to severe ground shaking in the event of a significant local earthquake. Such ground shaking could result in serious injury or loss of life due to damage or collapse of buildings. Historically, unreinforced masonry buildings have been shown to be especially vulnerable. The purpose of this chapter is to promote public safety by identifying those buildings in the city which exhibit structural deficiencies in their capacities for earthquake resistance, and by determining the severity and extent of those deficiencies in relation to their potential for causing injury or loss of life.

(Ord. 354 § 1(part), 1990).

15.60.020 Definitions.

For purposes of this chapter the following definitions apply:

A. "Civil engineer or structural engineer" means a licensed civil or structural engineer registered by the state of California pursuant to the rules and regulations of Title 16, Chapter 5 of the California Administrative Code.

B. "Uniform Building Code (UBC)" is as published by the International Conference of Building Officials, Whittier, California, as adopted by the city of Brisbane.

C. "Unreinforced masonry (URM) building" means any building containing walls and/or columns constructed wholly or partially of masonry without at least fifty (50) percent of the reinforcement required by the 1985 edition of the UBC, and includes:

1. Unreinforced brick masonry;

2. Unreinforced concrete masonry;

3. Hollow clay tile;

4. Adobe or unburned clay masonry;

5. Stone masonry.

D. "Risk categories" are defined as follows:

1. "Essential building": any building housing a hospital or other medical facility having surgery or emergency treatment areas; fire or police stations; municipal government disaster operation and communication centers.

2. "High risk building": any building not classified as an essential building, having an occupant load of one hundred (100) persons or more.

3. "Medium risk building": any building not classified as an essential building, having an occupant load of between twenty (20) and ninety-nine (99) persons.

4. "Low risk building": any building not classified as an essential building, having an occupant load of less than twenty (20) persons.

E. Other terms are as defined in the 1985 edition of the UBC.

(Ord. 354 § 1(part), 1990).

15.60.030 Scope of program.

Owners of all URM buildings in the city, except as exempted below, shall be required to have an engineering report submitted to the city's department of planning and building, to determine the existence, nature, extent and severity of structural deficiencies in their buildings' capacities for earthquake resistance which could result in damage or collapse with possible injury or loss of life.

(a) Exempted Buildings. The following buildings are exempted from complying with this chapter:

1. Residential buildings with five (5) or fewer dwelling units.

2. Buildings which have already been structurally upgraded in substantial accordance with either the 1973, or later, edition of the UBC or the City of Los Angeles Division 88 Standard for URM Buildings.

(Ord. 354 § 1(part), 1990).

15.60.040 Building owner notification.

Owners of buildings included in the scope of this program shall be notified within three (3) months of the enactment of the ordinance codified in this chapter by the department of planning and building of the city that each such building has been included in the city's list of potentially hazardous URM buildings, and is required to have an engineering report submitted to the city.

(Ord. 354 § 1(part), 1990).

15.60.050 Recording.

At the time of building owner notification, the planning director shall file with the office of the county recorder, a certificate stating that the subject building falls within the scope of this chapter, has been included in the city's list of potentially hazardous URM buildings, and is required to comply with the provisions contained herein. At such later time as each such identified building has either been determined as excludable from the city's list by further investigation, or has undergone mitigation of its hazards to the satisfaction of the planning director, the planning director shall then file with the office of the county recorder a certificate stating that the building has been removed from the potentially hazardous classification.

(Ord. 354 § 1(part), 1990).

15.60.060 Engineering reports.

Owners of identified buildings shall submit engineering reports to the department of planning and building of the city as follows:

A. Timeframe. Engineering reports shall be submitted within twelve (12) months of building owner notification.

B. Authorized Preparers. Engineering reports shall be prepared by civil or structural engineers, as previously defined herein, who are familiar with seismic analysis and design.

C. Purpose. The purpose of each such engineering report shall be to investigate, in a thorough and unambiguous fashion, a building's structural systems that resist earthquake forces, and to evaluate their adequacy to resist the seismic design forces as specified herein.

D. Engineering Standards. The engineering standards to be used in preparation of engineering reports shall be the 1985 edition of the UBC and the City of Los Angeles Division 88 Standard for URM Buildings, as modified by Appendix A of the ordinance codified in this chapter, on file in the office of the city clerk.

E. Format. The format for engineering reports shall be as outlined in Appendix B of said ordinance, or other equivalent format approved in writing by the planning director.

(Ord. 354 § 1(part), 1990).

15.60.070 Letters of intent.

A letter of intent shall be submitted within ninety (90) days of submittal of each engineering report, and shall describe in general fashion how the building owner intends to approach hazard reduction of his or her building. Options available to the building owner for approaching hazard reduction include, but are not limited to, the following:

A. Structural rehabilitation of the building to meet or exceed the seismic provisions of the engineering standards referenced herein;

B. Change in use of the building to a residential occupancy exempted from compliance with this chapter, as previously described herein, as may be allowed by other city ordinances;

C. Sale of the building to a new owner, who shall then bear the responsibility of hazard reduction;

D. Vacating the building pending further investigation of possible alternatives;

E. Demolition of the building, or portions thereof, to eliminate the potentially hazardous conditions;

F. If the owner proposes to retrofit a building which qualifies as "historical property" as determined by an appropriate governmental agency under Section 37602 of the Health and Safety Code, the building shall be retrofitted in accordance with the State Historical Building Code.

(Ord. 354 § 1(part), 1990).

15.60.080 City's review of engineering reports and letters of intent.

The department of planning and building shall review the documents submitted for each identified building for conformance to this chapter. The department of planning and building may, at its option, engage the services of consulting civil or structural engineers to assist in evaluation of documents submitted. Costs of each such review shall be recovered by fees assessed upon the building owner at the time of submittal of documents, based upon the time required for review of such documents. This fee amount shall be deducted from the plan check fee subsequently collected for any structural rehabilitation plans subsequently submitted for building permit purposes for work directly related to compliance with this chapter. Copies of engineering reports submitted shall be available to the public for review at the department of planning and building upon request.

(Ord. 354 § 1(part), 1990).

15.60.090 Building tenant notification.

Owners of each identified building shall provide each of their tenants with written notification that a seismic investigation of their building has taken place, and that the engineering report documenting the investigation is available for review at the department of planning and building. Such notification shall occur within thirty (30) days of submittal of each engineering report. Each building owner shall also submit to the department of planning and building written confirmation of tenant notifications in the form of a signed affidavit or other equivalent means approved by the department of planning and building.

(Ord. 354 § 1(part), 1990).

15.60.100 Violation—Penalties.

The violation of any of the provisions of this chapter shall constitute a misdemeanor, punishable by the fines, penalties and enforcement provisions set forth in Chapters 1.14, 1.16 and 1.18 of this code.

(Ord. 354 § 1(part), 1990).

(Ord. No. 554, § 56, 1-18-11)

15.60.110 Progress reports to city council.

The department of planning and building shall prepare annual progress reports to the city council on the implementation of this chapter.

(Ord. 354 § 1(part), 1990).

15.60.120 Interpretations.

The interpretation of the planning director shall prevail on matters relating to the implementation of this chapter.

(Ord. 354 § 1(part), 1990).

## Chapter 15.70 WATER CONSERVATION IN LANDSCAPING[[4]](#footnote-4)

15.70.010 Title.

This chapter shall be known as the City of Brisbane Water Conservation in Landscaping Ordinance.

(Ord. No. 607, § 2, 4-7-16)

15.70.015 Coordination with State Green Building Standards Code.

This code does not replace the most recent edition of the California Green Building Standards Code (CALGreen) adopted by the city, including the appendices printed therein and any supplements subsequently issued thereto. To the extent the provisions of this chapter conflict with any current or subsequently adopted provisions in CALGreen, then the most stringent provisions shall supersede and control with regard to the outdoor water use.

(Ord. No. 607, § 2, 4-7-16)

15.70.020 Applicability.

A. The provisions of this chapter shall apply to all of the following landscape projects:

1. New construction projects with an aggregate landscape area equal to or greater than five hundred (500) square feet requiring a building or landscape permit, plan check or design review;

2. Rehabilitated landscape projects with an aggregate landscape area equal to or greater than one thousand (1,000) square feet requiring a building or landscape permit, plan check, or design review;

3. Existing landscapes over one acre in size and installed before the enactment of this chapter, shall only be subject to the provisions for existing landscapes provided for in Section 15.70.180.

B. For projects using treated or untreated graywater or rainwater captured on site, any lot or parcel within the project that has less than two thousand five hundred (2,500) square feet of landscape area and meets the lot or parcel's landscape water requirement (estimated total water use) entirely with treated or untreated graywater or through stored rainwater captured on site is subject only to the requirements for irrigation systems detailed in the prescriptive compliance option section of the city's water conservation in landscaping technical guidance document (technical guidance document).

C. This provisions of this chapter shall not apply to any of the following:

1. New construction with irrigated landscape areas less than five hundred (500) square feet, rehabilitated landscapes with irrigated landscape areas less than one thousand (1,000) square feet, or landscapes that do not require a building or landscape permit, plan check or design review, or new or expanded water service;

2. Landscapes, or portions of landscapes, that are only irrigated for an establishment period;

3. Registered local, state or federal historical sites where landscaping establishes a historical landscape style, as determined by a public board or commission responsible for architectural review or historic preservation;

4. Ecological restoration or mined-land reclamation projects that do not require a permanent irrigation system; or

5. Community gardens or plant collections, as part of botanical gardens and arboretums open to the public, agricultural uses, commercial nurseries and sod farms.

(Ord. No. 607, § 2, 4-7-16)

15.70.030 Definitions.

A. As used in this chapter and the technical guidance document certain words and phrases shall be defined as follows:

1. "Applied water" means the portion of water supplied by the irrigation system to the landscape.

2. "Automatic irrigation controller" means a timing device used to remotely control valves that operate an irrigation system. Automatic irrigation controllers are able to self-adjust and schedule irrigation events using either evapotranspiration (weather-based) or soil moisture data.

3. "Backflow prevention device" means a safety device used to prevent pollution or contamination of the water supply due to the reverse flow of water from the irrigation system.

4. "Certificate of completion" means the document required under Section 15.70.110, certificate of completion.

5. "Certified irrigation designer" means a person certified to design irrigation systems by an accredited academic institution, a professional trade organization or other program such as the US Environmental Protection Agency's WaterSense irrigation designer certification program and the Irrigation Association's Certified Irrigation Designer Program.

6. "Certified landscape irrigation auditor" means a person certified to perform landscape irrigation audits by an accredited academic institution, a professional trade organization or other program such as the US Environmental Protection Agency's WaterSense irrigation auditor certification program and Irrigation Association's Certified Landscape Irrigation Auditor Program.

7. "Check valve" or "anti-drain valve" means a valve located under a sprinkler head, or other location in the irrigation system, to hold water in the system to prevent drainage from sprinkler heads when the sprinkler is off.

8. "Common interest developments" means community apartment projects, condominium projects, planned developments, and stock cooperatives per Civil Code Section 1351.

9. "Compost" means the safe and stable product of controlled biologic decomposition of organic materials that is beneficial to plant growth.

10. "Conversion factor (0.62)" means the number that converts acre-inches per acre per year to gallons per square foot per year.

11. "Distribution uniformity" means the measure of the uniformity of irrigation water over a defined area.

12. "Drip irrigation" means any non-spray low volume irrigation system utilizing emission devices with a flow rate measured in gallons per hour. Low volume irrigation systems are specifically designed to apply small volumes of water slowly at or near the root zone of plants.

13. "Ecological restoration project" means a project where the site is intentionally altered to establish a defined, indigenous, historic ecosystem or restoration of habitat for endangered species following a disturbance of the area.

14. "Effective precipitation" or "usable rainfall" (Eppt) means the portion of total precipitation which becomes available for plant growth.

15. "Emitter" means a drip irrigation emission device that delivers water slowly from the system to the soil.

16. "Established landscape" means the point at which plants in the landscape have developed significant root growth into the soil. Typically, most plants are established after one or two (2) years of growth.

17. "Establishment period of the plants" in reference to termination of irrigation after establishment, generally means the first two (2) years after installing the plant in the landscape. Typically, most plants are established after one or two (2) years of growth. Native habitat mitigation areas and trees may need three (3) to five (5) years for establishment.

18. "Estimated total water use" (ETWU) means the total water used for the landscape.

19. "ET adjustment factor" (ETAF) means a factor of 0.55 for residential areas and 0.45 for non-residential areas, that, when applied to reference evapotranspiration, adjusts for plant factors and irrigation efficiency, two (2) major influences upon the amount of water that needs to be applied to the landscape. The ETAF for new and existing (non-rehabilitated) Special Landscape Areas shall not exceed 1.0. The ETAF for existing non-rehabilitated landscapes is 0.8.

20. "Evapotranspiration rate" means the quantity of water evaporated from adjacent soil and other surfaces and transpired by plants during a specified time.

21. "Expanded water service" means the installation of a larger meter or addition of a new meter.

22. "Flow rate" means the rate at which water flows through pipes, valves and emission devices, measured in gallons per minute, gallons per hour, or cubic feet per second.

23. "Flow sensor" means an inline device installed at the supply point of the irrigation system that produces a repeatable signal proportional to flow rate. Flow sensors must be connected to an automatic irrigation controller, or flow monitor capable of receiving flow signals and operating master valves. This combination flow sensor/controller may also function as a landscape water meter or submeter.

24. "Friable" means a soil condition that is easily crumbled or loosely compacted down to a minimum depth per planting material requirements, whereby the root structure of newly planted material will be allowed to spread unimpeded.

25. "Fuel modification plan guideline" means guidelines from a local fire authority to assist residents and businesses that are developing land or building structures in a fire hazard severity zone.

26. "Graywater" means untreated wastewater that has not been contaminated by any toilet discharge, has not been affected by infectious, contaminated, or unhealthy bodily wastes, and does not present a threat from contamination by unhealthful processing, manufacturing, or operating wastes. "Graywater" includes, but is not limited to, wastewater from bathtubs, showers, bathroom washbasins, clothes washing machines, and laundry tubs, but does not include wastewater from kitchen sinks or dishwashers. Health and Safety Code Section 17922.12.

27. "Hardscapes" means any durable material (pervious and non-pervious).

28. "Hydrozone" means a portion of the landscaped area having plants with similar water needs and rooting depth. A hydrozone may be irrigated or non-irrigated.

29. "Infiltration rate" means the rate of water entry into the soil expressed as a depth of water per unit of time (e.g., inches per hour).

30. "Invasive plant species" means species of plants not historically found in California that spread outside cultivated areas and can damage environmental or economic resources. Invasive species may be regulated by county agricultural or parks agencies as noxious species. Lists of invasive plants are maintained at the California Invasive Plant Inventory and USDA invasive and noxious weeds database.

31. "Irrigation audit" means an in-depth evaluation of the performance of an irrigation system conducted by a certified landscape irrigation auditor. An irrigation audit includes, but is not limited to: inspection, system tune-up, system test with distribution uniformity or emission uniformity, reporting overspray or runoff that causes overland flow, and preparation of an irrigation schedule. The audit must be conducted in a manner consistent with the irrigation association's landscape irrigation auditor certification program or other U.S. Environmental Protection Agency "Watersense" labeled auditing program.

32. "Irrigation efficiency" (IE) means the measurement of the amount of water beneficially used divided by the amount of water applied. Irrigation efficiency is derived from measurements and estimates of irrigation system characteristics and management practices. The irrigation efficiency for purposes of this chapter are 0.75 for overhead spray devices and 0.81 for drip systems.

33. "Irrigation survey" means an evaluation of an irrigation system that is less detailed than an irrigation audit. An irrigation survey includes, but is not limited to: Inspection, system test, and written recommendations to improve performance of the irrigation system.

34. "Irrigation water use analysis" means an analysis of water use data based on meter readings and billing data.

35. "Landscape architect" means a person who holds a license to practice landscape architecture by the State of California Business and Professions Code, Section 5615.

36. "Landscape area" means all the irrigated planting areas, turf areas, and water features in a landscape design plan. The landscape area does not include footprints of buildings or structures, sidewalks, driveways, parking lots, decks, patios, gravel or stone walks, other pervious or non-pervious hardscapes, and other non-irrigated areas.

37. "Landscape contractor" means a person licensed by the state of California to construct, maintain, repair, install, or subcontract the development of landscape systems.

38. "Landscape project" means the total area comprising the landscape area, as defined in this chapter.

39. "Landscape water meter" means an inline device installed at the irrigation supply point that measures the flow of water into the irrigation system and is connected to a totalizer to record water use.

40. "Lateral line" means the water delivery pipeline that supplies water to the emitters or sprinklers from the valve.

41. "Local agency" means the City of Brisbane. The local agency is also responsible for the enforcement of this chapter, including but not limited to, approval of a permit and plan check or design review of a project.

42. "Local water purveyor" means any entity other than the city of Brisbane, including a public agency, city, county, district or private water company that provides retail water service.

43. "Low volume irrigation" means the application of irrigation water at low pressure through a system of tubing or lateral lines and low-volume emitters such as drip, drip lines, and bubblers. Low volume irrigation systems are specifically designed to apply small volumes of water slowly at or near the root zone of plants.

44. "Main line" means the pressurized pipeline that delivers water from the water source to the valve or outlet.

45. "Master shut-off valve" is an automatic valve installed at the irrigation supply point which controls water flow into the irrigation system. When this valve is closed water will not be supplied to the irrigation system. A master valve will greatly reduce any water loss due to a leaky station valve.

46. "Maximum applied water allowance" (MAWA) means the upper limit of annual applied water for the established landscaped area. It is based upon the area's reference evapotranspiration, the ET adjustment factor, and the size of the landscape area. The estimated total water use shall not exceed the maximum applied water allowance. Special landscape areas, including recreation areas, areas permanently and solely dedicated to edible plants such as orchards and vegetable gardens, and areas irrigated with recycled water are subject to the MAWA with an ETAF not to exceed 1.0. MAWA = (ETo) (0.62) [(ETAF x LA) + ((1-ETAF) x SLA)].

47. "Median" is an area between opposing lanes of traffic that may be unplanted or planted with trees, shrubs, perennials, and ornamental grasses.

48. "Microclimate" means the climate of a small, specific area that may contrast with the climate of the overall landscape area due to factors such as wind, sun exposure, plant density, or proximity to reflective surfaces.

49. "Mined-land reclamation projects" means any surface mining operation with a reclamation plan approved in accordance with the Surface Mining and Reclamation Act of 1975.

50. "Mulch" means any organic material such as leaves, bark, straw, compost, or inorganic mineral materials such as rocks, gravel, or decomposed granite left loose and applied to the soil surface for the beneficial purposes of reducing evaporation, suppressing weeds, moderating soil temperature, and preventing soil erosion.

51. "New construction" means the construction of a new building or structure with a landscape or other new land improvement, such as a park, playground, or greenbelt without an associated building.

52. "Non-residential landscape" means landscapes in commercial, institutional, industrial and public settings that may have areas designated for recreation or public assembly. It also includes portions of common areas of common interest developments with designated recreational areas.

53. "Operating pressure" means the pressure at which the parts of an irrigation system are designed by the manufacturer to operate.

54. "Overhead sprinkler irrigation systems" or "overhead spray irrigation systems" means systems that deliver water through the air (e.g., spray heads and rotors).

55. "Overspray" means the irrigation water which is delivered beyond the target area.

56. "Parkway" means the area between a sidewalk and the curb or traffic lane. It may be planted or unplanted, and with or without pedestrian egress.

57. "Permit" means an authorizing document issued by local agencies for new construction or rehabilitated landscapes.

58. "Pervious" means any surface or material that allows the passage of water through the material and into the underlying soil.

59. "Plant factor" or "plant water use factor" is a factor, when multiplied by ETo, estimates the amount of water needed by plants. For purposes of this chapter, the plant factor range for very low water use plants is 0 to 0.1, the plant factor range for low water use plants is 0.1 to 0.3, the plant factor range for moderate water use plants is 0.4 to 0.6, and the plant factor range for high water use plants is 0.7 to 1.0. Plant factors cited in this chapter are derived from the publication "Water Use Classification of Landscape Species". Plant factors may also be obtained from horticultural researchers from academic institutions or professional associations as approved by the California Department of Water Resources (DWR).

60. "Project applicant" means the individual or entity submitting a landscape documentation package required under Section 15.70.050, to request a permit, plan check, or design review from the city or requesting new or expanded water service. A project applicant may be the property owner or his or her designee.

61. "Rain sensor" or "rain sensing shutoff device" means a component which automatically suspends an irrigation event when it rains.

62. "Record drawing" or "as-builts" means a set of reproducible drawings which show significant changes in the work made during construction and which are usually based on drawings marked up in the field and other data furnished by the contractor.

63. "Recreational area" means areas, excluding private single-family residential areas, designated for active play, recreation or public assembly in parks, sports fields, picnic grounds, amphitheaters or golf course tees, fairways, roughs, surrounds and greens.

64. "Recycled water," "reclaimed water," or "treated sewage effluent water" means treated or recycled waste water of a quality suitable for nonpotable uses such as landscape irrigation and water features. This water is not intended for human consumption.

65. "Reference evapotranspiration" or "ETo" means a standard measurement of environmental parameters which affect the water use of plants. ETo is expressed in inches per day, month, or year as represented in technical guidance document and is an estimate of the evapotranspiration of a large field of four (4) to seven (7) inch tall, cool-season grass that is well watered. Reference evapotranspiration is used as the basis of determining the maximum applied water allowances so that regional differences in climate can be accommodated.

66. "Rehabilitated landscape" means any re-landscaping project that requires a permit, plan check, design review, or requires a new or expanded water service application.

67. "Residential landscape" means landscapes surrounding single or multifamily homes.

68. "Run off" means water which is not absorbed by the soil or landscape to which it is applied and flows from the landscape area.

69. "Soil moisture sensing device" or "soil moisture sensor" means a device that measures the amount of water in the soil. The device may also suspend or initiate an irrigation event.

70. "Soil texture" means the classification of soil based on its percentage of sand, silt, and clay.

71. "Special landscape area" (SLA) means an area of the landscape dedicated solely to edible plants, recreational areas, areas irrigated with recycled water, or water features using recycled water.

72. "Sprinkler head" or "spray head" means a device which delivers water through a nozzle.

73. "Static water pressure" means the pipeline or municipal water supply pressure when water is not flowing.

74. "Station" means an area served by one valve or by a set of valves that operate simultaneously.

75. "Swimming pool" means any structure intended for swimming, recreational bathing or wading that contains water over twenty-four (24) inches deep. This includes in-ground, above ground, and on-ground pools; hot tubs; spa and fixed in place wading pools.

76. "Swing joint" means an irrigation component that provides a flexible, leak-free connection between the emission device and lateral pipeline to allow movement in any direction and to prevent equipment damage.

77. "Submeter" means a metering device to measure water applied to the landscape that is installed after the primary utility water meter.

78. "Turf" means a ground cover surface of mowed grass. Annual bluegrass, Kentucky bluegrass, Perennial ryegrass, Red fescue, and Tall fescue are cool-season grasses. Bermuda grass, Kikuyu grass, Seashore Paspalum, St. Augustine grass, Zoysia grass, and Buffalo grass are warm-season grasses.

79. "Valve" means a device used to control the flow of water in the irrigation system.

80. "Water conserving plant species" means a plant species identified as having a very low or low plant factor.

81. "Water feature" means a design element where open water performs an aesthetic or recreational function. Water features include ponds, lakes, waterfalls, fountains, artificial streams, spas, and swimming pools (where water is artificially supplied). The surface area of water features is included in the high water use hydrozone of the landscape area. Constructed wetlands used for on-site wastewater treatment or stormwater best management practices that are not irrigated and used solely for water treatment or stormwater retention are not water features and, therefore, are not subject to the water budget calculation.

82. "Watering window" means the time of day irrigation is allowed.

83. "WUCOLS" means the Water Use Classification of Landscape Species published by the University of California Cooperative Extension and the Department of Water Resources, 2014 or most recent update.

(Ord. No. 607, § 2, 4-7-16)

15.70.040 Compliance with chapter.

A. All owners of new construction and rehabilitated landscapes of applicable sizes shall provide the landscape application and documentation package, as detailed in Section 15.70.050.

B. All owners of existing landscapes over one acre in size, even if installed before enactment of this chapter, shall: (1) comply with city programs that may be instituted relating to irrigation audits, surveys and water use analysis, and (2) maintain landscape irrigation facilities to prevent water waste and runoff.

C. The project applicant shall:

1. Prior to construction, submit all portions of the landscape project application to the city;

2. Upon approval of the landscape project application by the city:

a. Receive a permit or approval of the plan check or design review and record the date of the permit in the certificate of completion;

b. Submit a copy of the approved landscape documentation package along with the record drawings, and any other information to the property owner or his/her designee; and

3. After construction, submit the landscape audit report and certificate of completion to the city.

D. As the approving authority the city will:

1. Provide the project applicant with a copy of this chapter, the technical guidance document and application requirements and the procedures for obtaining applicable permits, plan checks, design reviews, or new or expanded water service;

2. Review the landscape project application submitted by the project applicant;

3. Approve or deny the project applicant's landscape project application submittal;

4. Issue or approve a permit, plan check or design review that complies with the approved landscape project application or approve a new or expanded water service application that complies with the approved landscape project application; provided that all other requirements applicable to the issuance or approval of such permit, plan check, or design review or approval of new or expanded water service have been satisfied;

5. Approve or deny the landscape audit report and certificate of completion. If denied the city will provide the project applicant with a list of items necessary to complete the project.

(Ord. No. 607, § 2, 4-7-16)

15.70.050 Landscape project application and documentation package.

A. The elements of a new or rehabilitated landscape must be designed to achieve water efficiency and will comply with the criteria described in this chapter. In completing the landscape project application, project applicants may choose one of two (2) options to demonstrate that the landscape meets the chapter's water efficiency goals, consistent with the State's Model Water Conservation in Landscaping Ordinance. The options include:

1. Prescriptive Compliance Option. The requirements of the prescriptive compliance option are detailed in the technical guidance document. The prescriptive compliance option includes specific landscape area limitations for moderate to high water use plants along with other site preparation compliance measures.

2. Water Budget Calculation Option The project applicant may elect to complete a water budget calculation for the landscape project using the water efficient landscape worksheet in technical guidance document, instead of the prescriptive compliance option. Water budget calculations, if prepared, shall adhere to the requirements provided in the technical guidance document, which includes water budget parameters that are consistent with the State's Model Water Conservation in Landscaping Ordinance.

B. The landscape project application shall include the following elements:

1. Prescriptive compliance option:

a. Landscape project application; including general project information;

b. Landscape design plan;

c. Grading design plan;

d. Certificate of completion;

e. Landscape audit report;

f. Certificate of completion;

g. Irrigation scheduling;

h. Landscape and irrigation maintenance schedule; and

i. Where applicable, information on recycled water and graywater systems.

2. Water budget calculation option:

a. Landscape project application, including general project information;

b. Landscape design plan;

c. Water budget calculations;

d. soil management report;

e. Irrigation design plan;

f. Grading design plan;

g. Certificate of completion;

h. Landscape audit report;

i. Certificate of completion;

j. Irrigation scheduling;

k. Landscape and irrigation maintenance schedule; and

l. Where applicable, information on recycled water and graywater systems.

C. Submittal. The landscape project application shall be submitted to the City for review and approval prior to installation of the landscape and shall provide information identifying and describing the project, as detailed in the technical guidance document.

(Ord. No. 607, § 2, 4-7-16)

15.70.060 Water budget calculations.

A. As indicated in Section 15.70.050, the project applicant may elect to either complete a water budget calculation for the landscape project using the water efficient landscape worksheet in technical guidance document, or the applicant may elect the planting restrictions option. Water budget calculations, if prepared, shall adhere to the requirements provided in the technical guidance document, which includes water budget parameters that are consistent with the State's Model Water Conservation in Landscaping Ordinance.

B. Landscapes under the prescriptive compliance option are exempt from the requirement to submit water budget calculations.

(Ord. No. 607, § 2, 4-7-16)

15.70.070 Landscape design plan.

For the efficient use of water, a landscape shall be carefully designed and planned for the intended function of the project and as appropriate to its context. A landscape design plan meeting the criteria detailed in the technical guidance document shall be submitted as part of the landscape documentation package, which includes landscaping design parameters that are consistent with the State's Model Water Conservation in Landscaping Ordinance.

(Ord. No. 607, § 2, 4-7-16)

15.70.080 Soil management report.

A. As indicated in Section 15.70.050, the project applicant may elect the water budget calculation option for compliance, if that option is selected, in order to reduce runoff and encourage healthy plant growth, a soil management report shall be completed by the project applicant, or his/her designee, or the applicant shall complete a soil management survey. The requirements of the soil management report and the soil management survey are as detailed in the technical guidance document.

B. Landscapes under the prescriptive compliance option are exempt from the requirement to submit a soil management report, but shall comply with the soil preparation requirements detailed for the prescriptive compliance option in the technical guidance document.

(Ord. No. 607, § 2, 4-7-16)

15.70.090 Irrigation design plan.

A. This section applies to landscaped areas requiring permanent irrigation that are using the water budget calculation option, not areas that require temporary irrigation solely for the plant establishment period. For the efficient use of water, an irrigation system design plan shall be required and meet all the requirements listed in the technical guidance document and the manufacturers' recommendations.

1. The irrigation system and its related components shall be planned and designed to allow for proper installation, management, and maintenance.

2. An irrigation design plan meeting the design criteria outlined in technical guidance document shall be submitted as part of the landscape documentation package, which includes irrigation system design parameters that are consistent with the State's Model Water Conservation in Landscaping Ordinance.

B. Landscapes under the prescriptive compliance option are exempt from the requirement to submit a detailed irrigation design plan, but shall comply with the irrigation design requirements detailed for the prescriptive compliance option in the technical guidance document.

(Ord. No. 607, § 2, 4-7-16)

15.70.100 Grading design plan.

For the efficient use of water, grading of a project site shall be designed to minimize soil erosion, runoff, and water waste. A grading plan or completed grading design survey (see the technical guidance document) shall be submitted as part of the landscape documentation package. A comprehensive grading plan prepared by a civil engineer for other city permits satisfies this requirement. The city may waive this requirement, if site grade conditions are not being significantly altered.

(Ord. No. 607, § 2, 4-7-16)

15.70.110 Certificate of completion.

A. The certificate of completion (see technical guidance document for a sample certificate) shall include the elements detailed in the technical guidance document.

B. The project applicant shall:

1. Submit the signed certificate of completion to the local agency for review;

2. Ensure that copies of the approved certificate of completion are submitted to the city and property owner or his or her designee.

C. The local agency will, after receipt of the signed certificate of completion from the project applicant, approve or deny the certificate of completion. If the certificate of completion is denied, the local agency will provide information to the project applicant regarding reapplication, appeal, or other assistance.

(Ord. No. 607, § 2, 4-7-16)

15.70.120 Landscape audit report.

A. The landscape audit report shall follow inspection by the installer to confirm that the landscaping and irrigation system were installed as specified in the landscape and irrigation design plan and it shall document that an irrigation system test and tune up was performed for distribution uniformity and to prevent overspray or run off that would cause overland flow, and it shall include an irrigation schedule.

B. The landscape audit report shall include the following statement: "The landscape and irrigation system has been installed as specified in the landscape and irrigation design Plan and complies with the criteria of this chapter and the permit."

C. Local agency will administer on-going programs that may include, but not be limited to, post-installation landscape inspection, irrigation water use analysis, irrigation audits, irrigation surveys and verification of applicant supplied water budget calculations to evaluate compliance with the MAWA.

(Ord. No. 607, § 2, 4-7-16)

15.70.130 Irrigation scheduling.

A. For the efficient use of water, all irrigation schedules shall be developed, managed, and evaluated to utilize the minimum amount of water required to maintain plant health. Irrigation schedules shall meet the following criteria and as further detailed in the technical guidance document:

1. Irrigation scheduling shall be regulated by automatic irrigation controllers.

2. Irrigation scheduling restrictions are to be confirmed with the city prior to initiating irrigation, except that operation of the irrigation system outside the normal watering window is allowed for auditing and system maintenance.

3. Irrigation schedules shall be regulated by automatic irrigation controllers using current reference evapotranspiration data or soil moisture sensor data.

4. Parameters used to set the automatic controller shall be developed and submitted for each of the following:

a. The plant establishment period;

b. The established landscape; and

c. Temporarily irrigated areas.

5. Each irrigation schedule shall consider for each station location and plant specific needs.

(Ord. No. 607, § 2, 4-7-16)

15.70.140 Landscape and irrigation maintenance schedule.

Landscapes shall be maintained to ensure water use efficiency. A regular maintenance schedule shall be submitted with the certificate of completion in accordance with the technical guidance document.

(Ord. No. 607, § 2, 4-7-16)

15.70.150 Stormwater management and rainwater retention.

Stormwater management practices should generally minimize runoff and increase infiltration which recharges groundwater, except where site specific conditions such as steep slopes may contraindicate. Project applicants shall refer to the city or regional water quality control board for information on any applicable stormwater technical requirements and to the technical guidance document for guidance.

(Ord. No. 607, § 2, 4-7-16)

15.70.160 Recycled water.

A. Where used as part of a landscape design, the installation of recycled water irrigation systems shall allow for the current and future use of recycled water.

B. All recycled water irrigation systems shall be designed and operated in accordance with all applicable local and state laws.

C. Landscapes using recycled water are considered special landscape areas. The ET adjustment factor for new and existing (non-rehabilitated) special landscape areas shall not exceed 1.0.

(Ord. No. 607, § 2, 4-7-16)

15.70.170 Graywater systems.

Graywater systems promote the efficient use of water and are encouraged to assist in on-site landscape irrigation. All graywater systems shall conform to the California Plumbing Code and any applicable local ordinance standards. Refer to Section 15.70.020 for the applicability of this chapter to landscape areas less than two thousand five hundred (2,500) square feet with the estimated total water use met entirely by graywater.

(Ord. No. 607, § 2, 4-7-16)

15.70.180 Provisions for existing landscapes over one acre in size.

A. This section shall apply to all existing landscapes that were installed before the effective date of this chapter and are over one acre in size.

1. Irrigation Audit, Irrigation Survey, and Irrigation Water Use Analysis.

a. For landscapes that have a water meter, the city is the administrator for programs that may include, but not limited to, irrigation water use analyses, irrigation surveys, and irrigation audits to evaluate water use and provide recommendations as necessary to reduce landscape water use to a level that does not exceed the MAWA for existing landscapes. The MAWA for existing landscapes shall be calculated as:

MAWA = (0.8) (ETo)(LA)(0.62).

b. For landscapes that do not have a meter, the city is the administrator for programs that may include, but not limited to, irrigation surveys and irrigation audits to evaluate water use and provide recommendations as necessary in order to prevent water waste.

c. All landscape irrigation audits for existing landscapes that are greater than one acre in size shall be conducted by a certified landscape irrigation auditor.

B. Water Waste Prevention.

1. The city prohibits water waste resulting from inefficient landscape irrigation by prohibiting runoff from leaving the target landscape due to low head drainage, overspray, or other similar conditions where water flows onto adjacent property, non-irrigated areas, walks, roadways, parking lots, or structures.

2. Restrictions regarding overspray and runoff may be modified if:

a. The landscape area is adjacent to permeable surfacing and no runoff occurs; or

b. The adjacent non-permeable surfaces are designed and constructed to drain entirely to landscaping.

(Ord. No. 607, § 2, 4-7-16)

15.70.190 Penalties.

A. The violation of any of the provisions of this chapter shall constitute an infraction and a public nuisance, punishable by the fines, penalties and enforcement provisions set forth in Chapters 1.14, 1.16 and 1.18 of this code.

B. In addition to any other criminal or civil enforcement proceedings, every violation of this chapter, or any permit or approval granted pursuant to this chapter, determined to be a public nuisance may be abated by the city in accordance with the provisions of Chapter 8.36 of the Brisbane Municipal Code.

C. This chapter may be enforced by the city manager and his authorized representatives (the "enforcement official"). The director of community development, the director of public works/city engineer, and the city building inspector are hereby designated as authorized representatives of the city manager, with full power to enforce the provisions of this chapter.

D. The enforcement official has the authority to conduct such inquiries, audits, inspections, or surveys to ensure compliance with the requirements of this chapter. Whenever the enforcement official determines that a violation of this chapter has occurred, the enforcement official may serve an administrative citation pursuant to Chapter 1.16 of this code, or an administrative compliance order pursuant to Chapter 1.18 of this code, or both.

(Ord. No. 607, § 2, 4-7-16)

15.70.200 Public education.

A. Publications. Education is a critical component to promote the efficient use of water in landscapes. The use of appropriate principles of design, installation, management and maintenance that save water is encouraged in the community.

1. The city will provide information to all applicants regarding the design, installation, management, and maintenance of water-efficient landscapes and irrigation systems.

B. All model homes that are landscaped shall use signs and written information to demonstrate the principles of water-efficient landscapes that are described in this chapter.

1. Signs shall be used to identify the model as an example of a water efficient landscape featuring elements such as hydrozones, irrigation equipment, and others that contribute to the overall water efficient theme. Signage shall include information about the site water use as designed per the local ordinance; specify who designed and installed the water efficient landscape; and demonstrate low water use approaches to landscaping such as using native plants, graywater systems, and rainwater catchment systems.

2. Information shall be provided about designing, installing, managing, and maintaining water efficient landscapes.

(Ord. No. 607, § 2, 4-7-16)

15.70.220 Severability.

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

(Ord. No. 607, § 2, 4-7-16)

## Chapter 15.75 RECYCLING AND DIVERSION OF DEBRIS FROM CONSTRUCTION AND DEMOLITION[[5]](#footnote-5)

15.75.010 Authority.

The building official or his/her designee shall have the authority to enforce the provisions of this chapter.

(Ord. No. 613, § 19, 1-5-17)

15.75.020 Purpose.

The purpose of this chapter is to provide for diversion of demolition and construction materials from landfills to reuse and recycle those materials for conservation and the efficient use of resources.

(Ord. No. 613, § 19, 1-5-17)

15.75.030 Applicability.

This chapter applies to construction and demolition projects that meet the definition of a covered project in Section 15.75.050. The provisions of this chapter are in addition to those prescribed in CalGreen Sections 4.408 and 5.408.

(Ord. No. 613, § 19, 1-5-17)

15.75.040 Conflicts with other laws, rules or regulations.

In the event of any conflict between this chapter and any law, rule or regulation of the State of California, or any other ordinance, rule or regulation of the City, that requirement which establishes the higher standard of conservation shall govern. Failure to comply with such higher standard shall be a violation of this code.

(Ord. No. 613, § 19, 1-5-17)

15.75.050 Definitions.

For purposes of this chapter, the following words and phrases shall be defined as set forth in this section:

"Applicant" means any person (whether as contractor, subcontractor, owner, occupant, or otherwise) who performs any construction, demolition, remodeling, renovation, land clearing, or landscaping work for a covered project.

"Building official" means the city manager or his or her authorized representative.

"Construction and demolition debris" means and includes:

1. Demolition debris are previously used materials from the destruction or renovation of a structure or landscaping that meet the definition of inert solids or inert waste. These may include but are not limited to steel, copper, aluminum, glass, brick, concrete, asphalt material, non-leaded pipe, gypsum, wallboard, lumber, rocks, soils, tree remains, trees, and other vegetative matter; and

2. Construction debris are remnants of new materials from any construction and/or landscape project that meet the definition of inert solids or inert waste. These may include but are not limited to: cardboard, paper, plastic, carpet, sheetrock, wood, rock, concrete, metal scraps, and empty containers.

"Covered project" means and includes any project which consists of one or more of the following:

1. Demolition work only, involving an area greater than two hundred (200) square feet, as determined by the building official;

2. The renovation, remodel or addition to an existing structure where the addition is one thousand (1,000) square feet or more and/or the cost of the work exceeds seventy-five thousand dollars ($75,000.00), as determined by the building official;

3. Re-roofing of an existing structure involving an area in excess of five hundred (500) square feet.

"Hazardous waste" is a waste defined as a "hazardous waste" in accordance with Section 25117 of the Health and Safety Code, or a combination of wastes, which because of its quantity, concentration or physical, chemical or infectious characteristics may do either of the following:

Cause or significantly contribute to, an increase in the mortality or an increase in serious irreversible, or incapacitating reversible, illness.

Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported or disposed of, or otherwise managed.

Unless expressly provided otherwise in the Health and Safety Code, "hazardous waste" includes extremely hazardous waste and acutely hazardous waste.

"Inert solids" or "inert waste" is a non-liquid solid waste including, but not limited to, soil and concrete, that does not contain hazardous waste or soluble pollutants at concentrations in excess of water-quality objectives established by the regional water board pursuant to Division 7 (commencing with Section 13000) of the California Water Code and does not contain significant quantities of decomposable solid waste.

"Recycle" or "recycling" is the process of collecting, sorting, cleansing, treating and reconstituting materials that would otherwise become solid waste, and returning them to the economic mainstream in the form of raw material for new, reused or reconstituted products which meet the quality standards necessary to be used in the marketplace. Recycling does not include transformation, as defined in Public Resources Code Section 40201.

"Recyclable and reusable materials" means but is not limited to any of the following:

1. Inert solids;

2. Wood materials, including any and all lumber, fencing or construction wood that is not chemically treated, creosoted, pressure treated, contaminated or painted;

3. Vegetative materials, including trees, tree parts, shrubs, stumps, logs, brush or any other type of plants that are cleared from a site for construction or other use;

4. Metals, including all metal scrap such as, but not limited to, pipes, siding, window frames, door frames and fences;

5. Roofing materials including wood shingles and shakes as well as asphalt, stone, concrete, tile and slate based roofing material;

6. Salvageable materials including, but not limited to, wallboard, doors, windows, fixtures, hardwood flooring, sinks, carpet, carpet padding, bathtubs and appliances;

7. Any other materials that the building official determines can be diverted to a recycling or reuse facility reasonably accessible from the city.

"Re-use" is the use, in the same form as it was produced, of a material which might otherwise be discarded.

"Salvage" means the controlled removal of materials from a covered project, for the purpose of reuse or storage for later reuse.

"Structure" means anything that is built or constructed and requires a location on the ground, including a building or edifice of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner.

Universal Waste. The wastes listed below are subject to regulation pursuant to Chapter 23 of Title 22, California Code of Regulations, and are known as "universal wastes," along with any other wastes which may later be added to the list of universal wastes in the California Code of Regulations:

1. Batteries;

2. Electronic devices;

3. Mercury containing equipment;

4. Lamps;

5. Cathode ray tubes;

6. Aerosol cans.

(Ord. No. 613, § 19, 1-5-17)

15.75.060 Waste management.

For both residential and non-residential covered projects, recycle and/or salvage for re-use shall include a minimum of sixty-five percent (65%) of the nonhazardous construction and/or demolition waste and one hundred percent (100%) of inert solid material associated with excavations and land clearing operations, including trees, stumps and rocks, in accordance with either a waste management plan or by an approved waste management company, as outlined below:

A. Waste Management Plan. Submit a waste management plan in conformance with items 1 through 5. The construction waste management plan shall be updated as necessary and shall be available during construction for examination by the city.

1. Identify the construction and demolition waste materials to be diverted from disposal by efficient usage, recycling, reuse on the project or salvage for future use or sale. Priority is to be given to salvage over recycling in the plan.

2. Specify if construction and demolition waste materials will be sorted on-site (source-separated) or bulk mixed (single stream).

3. Identify diversion facilities where construction and demolition waste materials collected will be taken.

4. Identify construction methods employed to reduce the amount of construction and demolition waste generated.

5. Specify the amount of construction and demolition waste materials diverted shall be calculated by weight or volume, but not by both.

B. Waste Management Company. Utilize a waste management company, approved by the city, which can provide verifiable documentation that the percentage of construction and demolition waste material diverted from the landfill complies with the minimum recycling and/or salvage for re-use percentages listed above in this section.

(Ord. No. 613, § 19, 1-5-17)

15.75.070 Universal wastes for non-residential additions and alterations.

For nonresidential additions and alterations to a building or tenant space that meet the scoping provisions in Section 301.3 of the California Building Code, verification shall be required that the universal waste items such as fluorescent lamps and ballast and mercury containing thermostats as well as other California prohibited universal waste materials are disposed of properly and diverted from landfills. A list of prohibited universal waste materials shall be included in the construction documents.

(Ord. No. 613, § 19, 1-5-17)

15.75.080 Exceptions.

All of the following exceptions are subject to building official approval, following documentation by the applicant:

In the event that the required percentage of materials cannot be salvaged, a written explanation must be provided identifying the reasons why salvage and recovery cannot take place, whether in whole or in part.

Alternative waste reduction methods, if diversion or recycle facilities are not capable of accepting the materials and where salvage for re-use is not reasonable or feasible.

For phased projects, excavated materials may be temporarily stockpiled on site.

Reuse of vegetation or soil contaminated by disease or pest infestation.

(Ord. No. 613, § 19, 1-5-17)

15.75.090 Cash deposit required.

A. As a condition precedent to the issuance of any building or demolition permit for a covered project, the applicant shall post a cash deposit in an amount equal to two and one-half cents ($0.025) for each estimated pound of construction and demolition debris to be generated by the project, up to a maximum deposit of fifty thousand dollars ($50,000.00). The deposit shall be returned, without interest, in total or in proportion, upon proof to the satisfaction of the building official, that no less than the required percentages of construction and demolition debris have been diverted from landfills and have been recycled or reused. If a lesser percentage than required is diverted, a proportionate share of the deposit will be returned. The deposit shall be forfeited entirely or to the extent that there has been a failure to comply with the requirements of this chapter.

B. If an applicant has previously forfeited a deposit for failure to comply with the requirements of this chapter, the amount of the deposit will be increased by one and one-half cents ($0.015) per pound, up to a maximum deposit of seventy-five thousand dollars ($75,000.00) for each subsequent project.

(Ord. No. 613, § 19, 1-5-17)

15.75.100 Administrative fee.

As a condition precedent to the issuance of any building or demolition permit for a covered project, the applicant shall pay to the city an administrative fee, in such amount as established from time to time by resolution of the city council, to compensate the city for all expenses incurred in administering this chapter.

(Ord. No. 613, § 19, 1-5-17)

15.75.110 On-site practices.

During the performance of the covered project, the applicant shall recycle or divert the required percentages of construction and demolition debris and keep records thereof in tonnage or in other measurements approved by the building official that can be converted to tonnage. The building official will evaluate and monitor each covered project to gauge the percentage of construction and demolition debris which is being recycled, salvaged and disposed of from the project. Where both demolition and construction work will be performed, the required percentages of diversion shall be measured and reported separately for the demolition and construction phases of the project. To the maximum extent feasible, on-site separation of scrap wood and clean green waste in a designated debris box or boxes shall be arranged.

(Ord. No. 613, § 19, 1-5-17)

15.75.120 Reporting.

A. No later than sixty (60) days following completion of a covered project, the applicant shall, as a condition of final approval and for issuance of any certificate of occupancy, submit documentation to the building official that demonstrates compliance with the requirements of this chapter.

B. The documentation shall consist of photocopies of receipts and weight tags or other records of measurement or equivalent documentation from recycling companies, deconstruction contractors, and landfill and disposal companies. The applicant's approved recycling and waste reduction plan shall be completed by recording and confirming the type of debris diverted and the facilities to which it was taken. The applicant shall sign the completed recycling and waste reduction plan form to certify its accuracy as part of the documentation of compliance.

C. Progress reports during construction may be required for projects that take more than six (6) months to complete or have a valuation of more than one million dollars ($1,000,000.00).

D. All documentation submitted pursuant to this section is subject to verification by the building official.

E. It is unlawful for any person to submit documentation to the city under this section which that person knows to contain any false statements, including but not limited to false statements regarding tonnage of materials recycled or diverted, or to submit any false or fraudulent receipt or weight tag or other record of measurement.

(Ord. No. 613, § 19, 1-5-17)

15.75.130 Violations, penalties and enforcement.

A. Each violation of the provisions of this chapter shall constitute a public nuisance and be subject to abatement as such in the manner provided by law.

B. The violation of any of the provisions of this chapter shall constitute a misdemeanor, punishable by the fines, penalties and enforcement provisions set forth in Chapters 1.14, 1.16 and 1.18 of the Brisbane Municipal Code. Where the violation is the failure to achieve the diversion requirement applicable to the covered project and the construction and demolition debris from the covered project have already been delivered to the landfill, the violation shall be deemed to have ceased after a period of ten (10) days.

C. The building official shall have the authority to enforce this chapter, including but not limited to the authority to order that work be stopped where any work is being done contrary to the provisions of this chapter.

D. No certificate of occupancy or final inspection approval shall be issued for any covered project unless the building official has determined that the provisions of this chapter have been complied with.

(Ord. No. 613, § 19, 1-5-17)

## Chapter 15.77 BUILDING EFFICIENCY PROGRAM

Sections:

15.77.010 Authority.

The department of public works through the director or the director's designee shall have the authority to enforce this chapter.

(Ord. No. 644, § 1, 12-12-19)

15.77.020 Purpose.

This chapter implements the goals of the city's climate action plan and related California legislation by lowering the environmental impact of existing buildings through reductions in greenhouse gas (GHG) emissions, energy, and water consumption. Owners and/or tenants of identified public and private properties will initially be required to complete annual building energy and water benchmarking. Subsequently, these owners/tenants will be required to demonstrate compliance with contemporary best energy and water performance standards by following either a performance pathway that allows the submittal of documentation confirming the building is already highly efficient, or a prescriptive pathway that requires an energy audit and retro-commissioning or retrofit of base building systems.

It is the intent of this chapter that the provisions align with California Assembly Bill 802 (2015), codified in California Public Resources Code Section 25402.10 and California Code of Regulations Title 20, Division 2, Chapter 4, Article 9 (State Regulations).

(Ord. No. 644, § 1, 12-12-19)

15.77.030 Applicability.

A. This chapter shall apply to all property, including existing buildings on such property, that is:

1. City owned property and the building has a gross floor area of two thousand (2,000) square feet or more, provided, however, any city owned property that has a building with a gross floor area less than ten thousand (10,000) square feet is not subject to the requirements of Sections 15.77.060, 15.77.070, or 15.77.080 of this chapter; or

2. Privately owned property and the building has a gross floor area of ten thousand (10,000) square feet or more; or

3. Property owned by any other governmental agency that is required to comply with the city's building codes under California Government Code Section 53090, et seq., or successor legislation, and the building has a gross floor area of ten thousand (10,000) square feet or more.

B. The reporting requirements of this chapter (Sections 15.77.050, 15.77.060, 15.77.070, or 15.77.080) are not required for buildings with a gross floor area of less than ten thousand (10,000) square feet, except when a meter serves multiple buildings, all owned by the same property owner, and the buildings in total have a gross floor area of ten thousand (10,000) square feet or more.

C. This chapter shall not apply to one- and two-family dwellings and related accessory structures; multifamily properties with four (4) or fewer dwellings; condominium projects as defined in California Civil Code §§ 4125 and 6542; broadcast antennas; utility pumping stations; and other buildings not meeting the purpose of this chapter, as determined by the department.

(Ord. No. 644, § 1, 12-12-19)

15.77.040 Definitions.

The following words and phrases, whenever used in this chapter, shall be construed as defined in this section unless the context indicates otherwise. Words and phrases not defined here shall be construed as defined in BMC Chapters 15.08, 15.70, 15.80, 15.81, and 15.82.

A. "Base building systems" means the systems and subsystems of a building that use or distribute energy and/or water and/or impact the energy and/or water consumption, including the building envelope; the heating, ventilating and air-conditioning (HVAC) systems; air conveying systems; electrical and lighting systems; domestic hot water systems; water distribution systems; plumbing fixtures and other water-using equipment; landscape irrigation systems and water features; energy generation and storage equipment; and electric vehicle charging infrastructure. Base building systems shall not include:

1. Systems or subsystems owned by a tenant or for which a tenant bears full maintenance responsibility, that are within the tenant's leased space and exclusively serve such leased space, and for which the tenant pays all the energy and water bills according to usage and demand as measured by a meter or sub-meter.

2. Systems or subsystems owned by a residential unit owner that exclusively serve the residential unit of that owner.

B. "Baseline year" means the calendar year that a building shall use as its past energy and water usage year when comparing to its "reporting year" usage. For the beyond benchmarking cycle 1, the baseline year is the first year of in-compliance benchmarking, which is the calendar year data of 2020 reported in 2021 unless reporting was not completed that year or had unresolved data quality issues. In subsequent beyond benchmarking cycles, the baseline year resets to the calendar year evaluated in the previous beyond benchmarking cycle. The following table reflects the data and baseline years for a typical commercial property during the first three (3) beyond benchmarking cycles:

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
|  | Baseline | Calendar Evaluation Year Data to be compared against Baseline | Year 1 - (Reporting Year) - Performance Verification Report or Audit due | Year 3 - Check-in | Year 5 - RCx Report, Improvement Report, or Green Lease Attestation due |
| Cycle 1 | 2020 | 2022 | 2023 | 2025 | 2027 |
| Cycle 2 | 2022 | 2028 | 2029 | 2031 | 2033 |
| Cycle 3 | 2028 | 2034 | 2035 | 2037 | 2039 |

C. "Benchmarking report" means a report, generated by ENERGY STAR® Portfolio Manager, summarizing the annual energy and water performance of a building.

D. "Commercial property" means a property that is defined by ENERGY STAR® Portfolio Manager with the exception of the property types listed on Portfolio Manager as multifamily or manufacturing/industrial plants. Commercial property includes warehouses and distribution centers.

E. "Covered building" means the current definition of "covered building" as set forth in state regulations.

F. "Decarbonized building" means any building that is highly energy-efficient and produces onsite or procures carbon-free renewable energy in an amount sufficient to offset the annual carbon emissions associated with operations.

G. "Demand flexibility" means the capability provided by building controls or distributed energy resources to reduce, shed, shift, modulate or generate electricity. Energy flexibility and load flexibility are often used interchangeably with demand flexibility.

H. "Department" means the City of Brisbane's Department of Public Works.

I. "Disclosable buildings" means the most current definition of "disclosable buildings" as set forth in state regulations that have ten thousand (10,000) square feet or more of gross floor area.

J. "Distributed Energy Resources (DER)" means distribution-connected distributed generation resources, energy efficiency, energy storage, electric vehicles, and demand response technologies, that are supported by a wide-ranging suite of California Public Utilities Commission policies.

K. "Energy" means electricity, natural gas, steam, heating oil, or other products sold by a utility to a customer of a building, or renewable on-site electricity generation, for purposes of providing heat, cooling, lighting, water heating, or for powering or fueling other end-uses in the building and related facilities.

L. "Energy audit" means a systematic evaluation to identify potential modifications and improvements to a building's equipment and systems which utilize energy in order to optimize a building's overall energy performance.

M. "ENERGY STAR® Portfolio Manager" means the United States Environmental Protection Agency's online tool for measuring, tracking, and managing a building's energy, water, and greenhouse gas emission data, and benchmarking the performance of the building.

N. "ENERGY STAR® Certified" means a building which has earned an ENERGY STAR® Score of seventy-five (75) or higher, indicating that it performs better than at least seventy-five percent (75%) of similar buildings nationwide and the data has been verified by a professional engineer or registered architect.

O. "ENERGY STAR® Score" means a number ranging from one to one hundred (100) assigned by the U.S. EPA's Energy Star Portfolio Manager as a measurement of a building's energy efficiency, normalized for a building's characteristics, operations, and weather, according to methods established by the U.S. EPA's ENERGY STAR® Portfolio Manager.

P. "Energy Use Intensity" (EUI) as defined by the U.S. EPA means all energy consumption divided by the gross floor area. A normalized EUI is adjusted for property characteristics, site energy factors and source energy factors as determined by the U.S. EPA's ENERGY STAR® Portfolio Manager.

Q. "Grid-Interactive Efficient Building (GEB)" means an energy efficient building with smart technologies characterized by the active use of distributed energy resources to optimize energy use for grid services, occupant needs and preferences, and cost reductions in a continuous and integrated way.

R. "Gross floor area" means the total building square footage, as measured between the exterior walls of the building(s). Open-air stairwells, breezeways, and other similar areas that are not fully enclosed should not be included in the gross floor area. Gross floor area for a commercial property shall include all finished areas inside the building(s) including supporting areas, lobbies, tenant areas, common areas, meeting rooms, break rooms, atriums (count the base level only), restrooms, elevator shafts, stairwells, mechanical equipment areas, basements, storage rooms. Gross floor area for an industrial property shall include all space within the building(s) at the plant, including production areas, offices, conference rooms, employee break rooms, storage areas, mechanical rooms, stairways, and elevator shafts. Gross floor area for a multifamily property shall include all buildings that are part of a multifamily community or property, including any management offices or other buildings that may not contain living units, all fully-enclosed space within the exterior walls of the building(s), including living space in each unit (including occupied and unoccupied units), interior common areas (e.g. lobbies, offices, community rooms, common kitchens, fitness rooms, indoor pools), hallways, stairwells, elevator shafts, connecting corridors between buildings, storage areas, and mechanical space such as a boiler room.

S. "Industrial property" means a property that is defined by ENERGY STAR® Portfolio Manager as a manufacturing/industrial building used for producing, manufacturing, or assembling goods and includes, but is not limited to, a main production area that has high-ceilings and contains heavy equipment used for assembly line production.

T. "Multifamily property" means any multifamily building that contains two (2) or more residential living units. This includes high-rise buildings (ten (10) or more stories), mid-rise buildings (five (5) to nine (9) stories), or low-rise buildings (one to four (4) stories).

U. "Qualified auditor" means an individual whose job duties do not regularly occur at the property, who possesses such qualifications as determined by the department to perform or directly supervise individuals performing audits and to certify audit reports required by this chapter. A qualified auditor may be a contractor hired by the reporting entity, or an employee of a utility, so long as such person has two (2) or more years of auditing experience and possesses one or more of the following certifications:

1. Accredited certification that has been designated a "Better Buildings Recognized Program" by the U.S. Department of Energy ("DOE") meeting the criteria set forth in the Better Buildings Workforce Guidelines (BBWG) for Building Energy Auditors or Energy Managers;

2. Certified Energy Auditor (CEA) or Certified Energy Manager (CEM), issued by the Association of Energy Engineers (AEE);

3. Certified Facilities Manager (CFM), issued by the International Facility Management Association (IFMA);

4. High Performance Building Design Professional (HBDP) or Building Energy Assessment Professional (BEAP), issued by the American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE);

5. For audits of multifamily residential buildings only, a Multifamily Building Analyst (MFBA), issued by the Building Performance Institute (BPI);

6. Professional Engineer (PE) registered in the State of California;

7. System Maintenance Administrator (SMA) or System Maintenance Technician (SMT), issued by Building Owners and Managers Institute (BOMI) International; or

8. Additional qualified certifications as the Director of the Department deems appropriate.

V. "Qualified retro-commissioning professional" means an individual whose job duties do not regularly occur at the property, who possesses such qualifications as determined by the department to perform or directly supervise individuals performing the retuning work (i.e. adjusting system control parameters) required by this chapter. A qualified retro-commissioning professional may be a contractor hired by the reporting entity or an employee of a utility so long as such person has two (2) or more years of commissioning or retuning experience and possesses one or more of the following certifications:

1. Accredited Commissioning Process Authority Professional (ACPAP) approved by the University of Wisconsin;

2. Accredited certification that has been designated a "Better Buildings Recognized Program" by the Department of Energy meeting the criteria set forth in the Better Buildings Workforce Guidelines (BBWG) for Building Commissioning Professionals;

3. Certified Building Commissioning Professional (CBCP) or Existing Building Commissioning Professional (EBCP), issued by the Association of Energy Engineers (AEE);

4. Certified Commissioning Professional (CCP), issued by the Building Commissioning Association (BCA);

5. Certified Commissioning Authority (CxA) or Certified Commissioning Technician (CxT), issued by the AABC Commissioning Group (ACG);

6. Certified professional certified by the National Environmental Balancing Bureau (NEBB);

7. Commissioning Process Management Professional (CPMP), issued by American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE);

8. Professional Engineer (PE) registered in the State of California; or

9. Additional qualified certifications as the Director of the Department deems appropriate.

W. "Reporting year" means the year in which a benchmarking or other report is submitted, based on the prior calendar year's data. For instance, for reporting year 2023, a building owner will submit energy and water data for calendar year 2022 (January 1—December 31) with a deadline of May 15, 2023.

X. "Retro-commissioning" means a systematic process for optimizing existing systems relating to building performance through the identification and correction of deficiencies in such systems.

Y. "Retro-commissioning measures" means work relating to retro-commissioning such as repairs, maintenance, adjustments, changes to controls or related software, or operational improvements that optimize a building's energy and/or water performance.

Z. "Retrofit measures" means upgrades or alterations of building systems involving the installation of energy and/or water efficiency and DER technologies that reduce energy and/or water consumption and improve the efficiency of such systems.

AA. "Solar thermal system" means the process of utilizing energy from the sun through the use of collectors to produce heat for a variety of applications including, but not limited to, heating water, providing process heating, space heating, absorption cooling and any combination of such applications.

BB. "Solar photovoltaic" means a technology that uses a semiconductor to convert sunlight directly into electricity.

CC. "Stationary Battery Electric Storage System (BESS)" means a rechargeable energy storage system consisting of electrochemical storage batteries, battery chargers, controls, and associated electrical equipment designed to provide electrical power to a building, designed for service in a permanent location.

DD. "U.S. EPA Water Score" means a number ranging from one to one hundred (100) assigned by the U.S. EPA's ENERGY STAR® Portfolio Manager, and available to existing multifamily properties with twenty (20) or more units, as a measurement of a whole building's water use, normalized for that building's characteristics, operations, and weather, according to the methods established by the U.S. EPA's ENERGY STAR® Portfolio Manager.

EE. "Water audit" means a systematic evaluation to identify potential modifications and improvements to a building's equipment and systems which utilize water in order to optimize a building's overall water performance.

FF. "Water Use Intensity" (WUI) as defined by the U.S. EPA means all water consumption divided by the gross floor area (not including parking or irrigated area) and is not adjusted for any of the building use details (number of workers, weekly hours, etc.).

(Ord. No. 644, § 1, 12-12-19; Ord. No. 679, § 1, 4-20-23)

15.77.050 Annual energy and water benchmarking, and self-reporting.

A. Annual Energy and Water Benchmarking and Self-Reporting. For every building subject to this chapter, the property owner shall annually submit to the department an energy and water benchmarking report according to the schedule set forth in Section 15.77.100.

B. Owner and Tenant Responsibilities. For every building subject to this Section 15.77.050 that has non-residential tenants, the property owner shall request from its non-residential tenants and the utility companies that serve the building the information necessary related to paragraphs 1 and 2 of subsection C of this Section 15.77.050 to satisfy the requirements of this section. Utility companies shall provide aggregated whole building data for buildings with three (3) or more non-residential tenant accounts and shall provide the aggregated tenant-authorized information for buildings with less than three (3) non-residential tenants.

1. The property owner of a building with one or two (2) non-residential tenants in which the tenant(s) holds the utility account shall by February 1 of each calendar year, beginning in 2021, request the tenant(s) to authorize the utility companies that serve the tenant's space to provide to the property owner the energy and water use data for the tenant space. Within thirty (30) days of the tenant's receipt of such request, the tenant shall authorize the utility companies to release the energy use data for the tenant space to the property owner. After the tenant provides to the property owner an authorization form and the property owner provides such form to a utility company, the utility company shall provide to the property owner energy and water use data for tenant space including any area that the tenant subleases.

2. A tenant's failure to provide the authorization to the utility companies subjects the tenant to the penalty provisions of this chapter.

3. A tenant's failure to provide the authorization to the utility companies does not relieve the property owner's benchmarking obligations under this chapter but such obligation may be satisfied by a partial building benchmarking report as approved by the director.

4. If by reason of a lease or otherwise, a single tenant has assumed complete management and control of a building, the property owner and the tenant may agree in writing and inform the director that the tenant will assume full responsibility for the obligations of the property owner under this chapter.

5. Nothing in this chapter shall be construed to permit a property owner to use tenant utility usage data for purposes other than compliance with the benchmarking report requirements. Nor shall the reporting requirements of this chapter be construed to excuse property owners from compliance with federal or state laws governing direct access to tenant utility data from the responsible utility.

C. Energy and Water Benchmarking Report. The energy and water benchmarking report shall be based on an assessment in the ENERGY STAR® Portfolio Manager of the total energy and water consumed by the whole building for the entire calendar year being reported. The energy and water benchmarking report shall, at a minimum, include the following:

1. Descriptive Information. Basic descriptive information to track and report a building's compliance with this chapter, including, but not limited to:

a. Property address;

b. Gross floor area;

c. Property type;

d. Year built;

e. Number of stories;

f. Weekly operating hours;

g. Number of workers on main shift;

h. Number of computers;

i. Space use types and corresponding gross floor areas;

j. Covered parking garage information (if applicable);

k. Information about buildings that share a meter with the building subject to this chapter;

l. Any other reasonable information about energy consuming assets connected to the meter that affect the energy use intensity of the building;

m. Any other information required for an ENERGY STAR® score as defined by the EPA;

n. The ENERGY STAR® Portfolio Manager contact information fields for the individual or entity responsible for the benchmarking report (either the service provider, owner, tenant, or building data administrator);

o. Custom field for an electricity energy provider;

p. If the property owner is seeking an exemption, the property notes field in ENERGY STAR® Portfolio Manager shall include a brief description of the reason for seeking an exemption; and

q. Information on any non-residential tenants, including the tenant's name, contact information, and gross floor area leased, and whether each tenant provided needed data as required by Section 15.77.050.B.1.

2. Energy and Water Benchmarking Information. Information necessary to benchmark energy and water usage, including, at a minimum, the following data:

a. The ENERGY STAR® score for the building, where available;

b. The weather-normalized site and source EUI in kBtu per square foot per year for the building;

c. The site and source EUI in kBtu per square foot per year for the building;

d. The annual carbon dioxide equivalent emissions due to energy use for the building as estimated by ENERGY STAR® Portfolio Manager;

e. Indoor water use, indoor water use intensity, outdoor water use (monthly when available), and total water use;

f. Number of years the building has been ENERGY STAR® certified and the last approval date, if applicable;

g. Monthly grid purchased electricity, natural gas, and other fuel and water consumption (monthly when available) and dollar amounts (when available);

h. Monthly electricity use—Generated from onsite renewable systems and used onsite (kWh)—mandatory if applicable and seeking a performance pathway for compliance;

i. Annual maximum demand (kW) if available; and

j. Annual maximum demand date if available.

D. Quality Check of Benchmarking Report Submission.

The property owner or the owner's authorized representative shall run all automated data quality checker functions available within ENERGY STAR® Portfolio Manager, and shall correct all missing or incorrect information as identified by ENERGY STAR® Portfolio Manager prior to submitting the benchmarking report to the department.

E. Exemptions From Benchmarking Report Submission.

1. For each reporting cycle, a property owner may request an exemption from submitting a benchmarking report and the department shall determine whether an exemption under this subsection applies to a building. A property owner may appeal a determination that a building is not exempt as set forth in Section 15.77.125.

2. All disclosable properties must submit at a minimum the descriptive information in all subparagraphs set forth in paragraph 1 of subsection C of this section, even if energy and water consumption are not disclosed.

3. A property owner shall not be required to file a full benchmarking report with energy data for a reporting year if any of the following conditions apply:

a. If a certificate of occupancy or temporary certificate of occupancy for the building was not issued for more than half of the calendar year required to be benchmarked, all data set forth in paragraph 1 of subsection C of this Section 15.77.050 are required to be reported; energy and water data set forth in paragraph 2 of subsection C of this Section 15.77.050 are not required to be reported.

b. If the building were vacant for more than half of the calendar year required to be benchmarked, all data set forth in paragraph 1 of subsection C of this Section 15.77.050 are required to be reported; energy and water data set forth in paragraph 2 of subsection C of this Section 15.77.050 are not required to be reported.

c. If the building did not receive energy or water services for more than half of the calendar year required to be benchmarked, all data set forth in paragraph 1 of subsection C of this Section 15.77.050 are required to be reported; energy and water data set forth in paragraph 2 of subsection C of this Section 15.77.050 are not required to be reported.

d. If a demolition permit for the entire building has been issued, or a schedule for demolition can be reasonably documented to the satisfaction of the Department, the building is exempt from benchmarking reporting and this Section 15.77.050.

F. Publication of Limited Summary Data.

The department shall make the following information, as reported by property owners, available to the public on the city's website, and update the information at least annually; provided, however, for properties with one or two (2) non-residential tenants, such tenant(s) may elect to not have the information made available to the public:

1. Summary statistics on overall compliance with this chapter;

2. Summary statistics on overall energy and water consumption of buildings subject to this chapter derived from the aggregation of annual benchmarking reports; and

3. For each building subject to this chapter:

a. Property address, year built, gross floor area, and property use type;

b. Monthly and/or annual summary statistics for the whole building derived from the submitted benchmarking report, including all information required under subsection C of this Section 15.77.050; and

c. The status of compliance with the requirements of this chapter.

(Ord. No. 644, § 1, 12-12-19)

15.77.060 Beyond benchmarking: Pathways for demonstrating and increasing energy and water performance.

A. Compliance with beyond benchmarking requirements shall be demonstrated in one of two (2) methods: a performance path or a prescriptive path. Criteria for the performance path are described in Section 15.77.070 and apply to disclosable properties of any size. Criteria for the prescriptive path are described in 15.77.080 and are specific to a building's gross floor area.

B. Exemption from Beyond Benchmarking Requirements. For each reporting cycle, a building may request an exemption to comply with this Section 15.77.060 and the department shall determine whether an exemption under this section applies. A property owner may appeal the department's determination that a building is not exempt under this section following the procedures set forth in Section 15.77.125. Any property owner requesting an exemption under this section shall, by April 1 in the year for which the exemption is being requested, submit to the department any documentation reasonably necessary to substantiate the request or otherwise assist the department in the exemption determination. Any exemption granted does not extend to past or future submittals. A property owner shall not be required to file an energy and water audit report for a reporting year if the building was exempt from the benchmarking requirements in Section 15.77.050 E and any of the following conditions apply:

1. A demolition permit for the entire building has been issued, or a schedule for demolition can be reasonably documented to the satisfaction of the department.

2. If the building is intended for sale within the scheduled compliance deadline and the property owner has conducted a real estate appraisal within one calendar year of the reporting deadline, only a copy of the appraisal summary report is required.

3. If the building was recently constructed and received a certificate of occupancy within the last five (5) years of the scheduled compliance deadline, the property owner shall report in the following compliance cycle.

4. If a certificate of occupancy or temporary certificate of occupancy for the building had not been issued for more than half of the calendar year required to be audited, the property owner shall report in the following compliance cycle.

5. If fifty percent (50%) or more of the gross floor area of the building was not occupied for more than half of the calendar year required to be benchmarked, only an asset score full as set forth in subsection B of Section 15.77.080 is required, and retro-commissioning and water audits, or installing measures, shall not be required for the current reporting period.

6. If the building did not receive energy or water services for the more than half of the calendar year required to be audited, only an asset score full is required, and retro-commissioning and water audits, or installing measures, shall not be required for the current reporting period.

(Ord. No. 644, § 1, 12-12-19)

15.77.070 Beyond benchmarking performance path.

A. Owners of properties that are highly efficient, have demonstrated increased efficiency, or have adopted distributed energy resources may establish satisfactory energy and water efficiency by providing the documentation described below to the department in such a form as required by the department that demonstrates the following:

1. The building is new and has been occupied for less than five (5) years from its first compliance due date, based on its temporary certificate of occupancy or certificate of occupancy; or has achieved one or more of the energy standards and one or more of the water standards as set forth below for at least three (3) of the five (5) calendar years preceding the building's compliance due date.

2. Energy standards: The building has the latest version of the Leadership in Energy and Environmental Design (LEED™) existing buildings operations and maintenance certification; or qualified auditor or retro-commissioning professional certified at least at least one of the following:

a. The building has received an ENERGY STAR® score of eighty (80) or greater from the U.S. EPA; or

b. The building has improved its ENERGY STAR® score by twenty (20) points or more relative to its performance during the baseline year; or

c. The building has a weather normalized site energy use intensity as calculated by the benchmarking tool that is twenty-five percent (25%) below the calculated median for that property type; or

d. The building has reduced its weather normalized site energy use intensity by at least twenty percent (20%) relative to its performance during the baseline year.

3. If a building has installed one or more of the following distributed energy resources (DERs):

a. Solar Photovoltaic. An onsite solar photovoltaic system has been installed in accordance with the California Building Standards Code (California Code of Regulations, Title 24) in effect at the time of installation and currently operational. The greater of the two (2) following options satisfy the solar photovoltaic measure:

i. A minimum amount of solar photovoltaic capacity of five (5) kilowatts per Brisbane Municipal Code Section 15.82.050; or

ii. Sufficient capacity must be installed to offset equal to or greater than twenty percent (20%) of their annual electricity consumption, as calculated by ENERGY STAR® Portfolio Manager, or otherwise determined by the city department.

b. Stationary Electric Storage. An onsite stationary battery electric storage system (BESS) has been installed in accordance with the California Building Standards Code (California Code of Regulations, Title 24) in effect at the time of installation and currently operational.

c. Grid-interactive Efficient Building (GEB). The building currently has the ability to interact with the distribution system operator's grid to optimize its energy consumption and/or dispatch. GEBs are energy efficient buildings with smart technologies characterized by the active use of distributed energy resources to optimize energy use for grid services, occupant needs and preferences, and cost reductions in a continuous and integrated way.

d. Decarbonized Building. The building is highly energy-efficient and produces onsite or procures carbon-free renewable energy in an amount sufficient to offset the annual carbon emissions associated with operations. Through a combination of the above strategies, demonstrate through EPA Portfolio Manager that the building is decarbonized in the current reporting year.

4. Water standards: A qualified auditor or qualified retro-commissioning professional has certified at least one of the following:

a. The building has received a U.S. EPA water score of eighty (80);

b. The building has improved its U.S. EPA water score by twenty (20) points or more relative to its performance during the baseline year;

c. The building has reduced its water use intensity by at least twenty percent (20%) relative to its performance during the baseline year.

d. The building has a water use intensity that is twenty-five percent (25%) below the calculated median for that property type as determined by the Department.

B. If a building has achieved both energy and water standards, the property owner is only required to submit an ENERGY STAR® performance verification report for that reporting year. If the building only meets one of the standards, the property owner shall submit a performance verification report for the satisfactory standard and shall comply with this section by completing one of two (2) prescriptive pathway options for the unmet standard as set forth in subsection G of Section 15.77.080.

C. After the establishment of a DOE-recognized standard for a water auditor, the director may adopt the qualifications of the DOE-recognized standard with modifications as the director deems to be appropriate.

(Ord. No. 644, § 1, 12-12-19; Ord. No. 679, § 2, 4-20-23)

15.77.080 Beyond benchmarking prescriptive path.

A. If a building does not meet performance standards set forth in 15.77.070, a property owner shall meet the requirements of this chapter through one of two (2) alternative means:

1. For properties between ten thousand (10,000) and thirty-nine thousand nine hundred ninety-nine (39,999) square feet:

a. Conducting an asset score full report described in Section 15.77.080 B; and either

b. Performing retro-commissioning described in Section 15.77.080 D; or

c. Adopting improvement measures described in subsection F of Section 15.77.080; or

d. Adopting a green lease as described in subsection H of Section 15.77.080.

2. For properties forty thousand (40,000) square feet and more:

a. Conducting a minimum of an ASHRAE audit Level II audit described in Section 15.77.080 B (Level III audits are also acceptable); and either

b. Performing retro-commissioning described in Section 15.77.080 D; or

c. Adopting efficiency and/or DER Improvement Measures described in subsection F of Section 15.77.080; or

d. Adopting a green lease as described in subsection H of Section 15.77.080.

B. Energy and Water Audit Standards. Energy and water auditing standards shall comply with both of the following:

1. Energy Auditing. Energy audits required by this chapter shall meet or exceed either the Department of Energy (DOE) asset score standards, American Society of Heating Refrigerating and Air-Conditioning Engineers (ASHRAE) Level II audit standards in conformance with the ASHRAE Standard 211-2018 (or latest version) "Standard for Commercial Building Energy Audits" and shall be performed under the direct supervision of a qualified auditor or qualified retro-commissioning professional. The DOE audit template shall be used to transmit data to the city for compliance with energy auditing and retro-commissioning. The city will publish an audit template on the building energy asset score website with standardized data collection fields to capture information about base energy systems and recommended retrofit opportunities. Section 15.77.080 A describes the applicability of each of the following audit standards based on gross floor area:

a. Asset Score Full.

i. Collect building data: Use the data collection form "full" input mode version to gather information about the building's physical characteristics.

ii. Review the data collection priority map to help focus on the most important building data given the building's use type and climate zone.

iii. Enter the data on the audit template supplied on the DOE asset score website for the Brisbane Building Efficiency Program.

b. ASHRAE Level II Audit.

i. Energy audits required by this chapter shall meet or exceed Level II audit standards in conformance with the American Society of Heating Refrigerating and Air-Conditioning Engineers (ASHRAE) Standard 211-2018 "Standard for Commercial Building Energy Audits" and shall be performed under the direct supervision of a qualified auditor.

2. Water Auditing. Water audits shall be performed in accordance with industry standard practices, including the latest version of the DOE Water Audit Guidance for Commercial Buildings or ASHRAE Guideline 0.2 Commissioning Process for Existing Systems and Assemblies, unless the department directs the use of the latest version of ASHRAE Standard 230 the existing building commissioning process (EBCx process), and under the direct supervision of a qualified auditor or qualified retro-commissioning professional. The water audit of the base building systems shall include, at a minimum, the following:

a. Potable water distribution systems;

b. Landscape irrigation systems;

c. Water reuse systems; and

d. Water features.

C. Energy and Water Audit Report. A report of the energy and water audit, completed and signed by a qualified auditor, shall be maintained by the property owner as required in Section 15.77.090. The report shall meet the requirements of subsection 15.77.080 B and shall include, at a minimum, the following:

1. The date(s) that the audit and retro-commissioning were performed;

2. Identifying information on the auditor and retro-commissioning provider;

3. Information on the base building systems and equipment;

4. A list of all retrofit measures that can reduce energy use and/or cost of operating the building, costs of each measure, and an estimate of the energy savings associated with each measure;

5. A list of all retrofit measures that can reduce water use and/or cost of operating the building; costs of each measure; and an estimate of the water savings associated with each measure;

6. Functional performance testing reports;

7. Operational training conducted;

8. Inventory of existing, planned, or desired electric vehicle (EV) charging stations on the property;

9. Inventory of existing, planned, or desired solar photovoltaic, solar water heating, other energy generation equipment;

10. Inventory of existing, planned, or desired stationary battery electric storage system or other energy storage equipment;

11. Inventory of existing, planned or desired building energy end-use electrification retrofits including electrical panel upgrades;

12. Inventory of existing, planned or desired water systems and equipment; and

13. Acknowledgment that an asset score full, or ASHRAE Level II audit was conducted.

D. Energy and Water Retro-Commissioning Standards.

1. Energy retro-commissioning shall be performed in accordance with industry standard practices, including the latest version of ASHRAE Guideline 0.2 Commissioning Process for Existing Systems and Assemblies. The department may consider updating the ASHRAE Guideline 0.2 with ASHRAE Standard 230 the existing building commissioning process (EBCx process) once the standard has been voted and approved by ASHRAE. These activities shall be conducted under the direct supervision of a qualified retro-commissioning professional. The retro-commissioning of base building systems shall include, at a minimum, the following:

a. Heating, ventilation, air conditioning (HVAC) systems and controls;

b. Indoor lighting systems and controls;

c. Exterior lighting systems and controls;

d. Water heating systems;

e. Renewable energy systems;

f. Stationary electric battery storage systems;

g. Electric vehicle charging equipment; and

h. Demand flexibility systems.

2. Water retro-commissioning shall be performed in accordance with industry standard practices, including the latest version of ASHRAE Guideline 0.2 Commissioning Process for Existing Systems and Assemblies, unless the department directs the use of the latest version of ASHRAE Standard 230 the existing building commissioning process (EBCx process), and under the direct supervision of a qualified retro-commissioning professional. The water retro-commissioning of the base building systems shall include, at a minimum, the following:

a. Potable water distribution systems;

b. Landscape irrigation systems;

c. Water reuse systems; and

d. Water features.

E. Energy and Water Retro-Commissioning Report. A report of the energy and water retro-commissioning, completed and signed by a qualified retro-commissioning professional, shall be maintained by the property owner as required in Section 15.77.090. The report shall meet the requirements of Subsection 15.77.080 D and shall include, at a minimum, the following:

1. The date(s) that the retro-commissioning was performed;

2. Identifying information on the retro-commissioning provider;

3. Information on the base building systems and equipment;

4. All the retro-commissioning process activities undertaken and retro-commissioning measures completed;

5. Functional performance testing reports; and

6. Operational training conducted.

F. Improvement Measures. A property owner may comply with the requirements of this chapter for any unmet standard by demonstrating two (2) of the following corresponding efficiency improvement measures—one energy-related measure and one water-related measure listed below—were completed and by submitting an improvement measures report within the time set forth in Section 15.77.100.

1. Energy-related Improvement Measures.

a. Energy efficiency improvement measures will be provided by the department six (6) months before the compliance deadline on the city website and will continually be updated thereafter. The list of measures will include opportunities that prioritize energy efficiency in base building systems, decarbonized buildings, and building electrification. An owner may submit a request to the department to add measures not contained in the published list that are identified by a qualified auditor or retro-commissioning professional. Examples of energy systems include, but are not limited to:

i. Space heating and cooling.

ii. Ventilation.

iii. Building envelope measures such as insulation, air sealing and window upgrades.

iv. Water heating.

v. Lighting.

vi. Cooking.

vii. Refrigeration.

viii. Office equipment and computing.

ix. Other loads.

b. Distributed energy resource improvement measures will be provided by the department six (6) months before the compliance deadline on the city website and will continually be updated thereafter. The list of measures will include opportunities that prioritize decarbonized buildings and building electrification. Examples of energy systems include, but are not limited to:

i. Solar Photovoltaic. An onsite solar photovoltaic system has been installed in accordance with the California Building Standards Code (California Code of Regulations, Title 24) in effect at the time of installation and currently operational.

ii. Stationary Electric Storage. An onsite stationary battery electric storage system (BESS) has been installed in accordance with the California Building Standards Code (California Code of Regulations, Title 24) in effect at the time of installation and currently operational.

iii. Grid-interactive Efficient Building (GEB). GEBs are energy efficient buildings with smart technologies characterized by the active use of distributed energy resources to optimize energy use for grid services, occupant needs and preferences, and cost reductions in a continuous and integrated way that is currently operational.

iv. Electric Vehicle (EV) charging infrastructure. Electric vehicle charging infrastructure has been installed on the building site.

v. Decarbonized Building. A building that is highly energy-efficient and produces onsite or procures carbon-free renewable energy in an amount sufficient to offset the annual carbon emissions associated with operations. Through a combination of the above strategies, demonstrate through EPA Portfolio Manager that the building is decarbonized.

2. Water-related Improvement Measures.

a. Water efficiency improvement measures will be provided by the department six (6) months before the compliance deadline on the city website and will continually be updated thereafter. The list of measures will include opportunities that prioritize water efficiency. Examples of energy systems include, but are not limited to:

i. Installation of plumbing such that all systems in the building are in compliance with the California Building Standards Code (California Code of Regulations, Title 24) in effect at the time of installation and currently operational;

ii. Installation of outdoor landscaping and irrigation such that all systems on the property are in compliance with Brisbane Municipal Code Chapter 15.70, Water Conservation in Landscaping in effect at the time of the compliance cycle;

iii. Installation of a greywater system in accordance with California Code of Regulations, Title 24, Sections 1502.6, 1502.10.3, or as amended and in effect at the time of installation and currently operational;

iv. Installation of insulation on all hot water pipes in accessible building locations; or

v. Participation in approved water utility retrofit program (e.g. taken advantage of rebate or incentive programs for upgrades).

G. Improvement Measures Report. A report of the improvement measures implemented shall be submitted to the department and maintained by the property owner as required in Section 15.77.090. The report shall be submitted with sufficient supporting data including receipts or other proof of compliance and shall include, at a minimum, the following:

1. Descriptions of the measures including the date(s) that the improvement measures were implemented;

2. Identifying information on the person implementing the improvement measures;

3. Information on the base building systems and equipment; and

4. A list of all improvement measures that can reduce energy or water use and the cost of operating the building, and the costs of each measure.

H. Green Lease Attestation. A property owner may submit a letter of attestation that its lease or other rental agreement for the building contains sustainability or environmental provisions specifically related to energy and water as part of the agreement (a "green lease"). At a minimum, the owner shall provide reasonable evidence that the agreement includes provisions for:

1. Energy and water cost pass through requirements that do not exceed the actual reduction in building operating costs for the tenant;

2. Operational clauses that support overall energy and water reductions on the property; and

3. Reporting clauses that allow the owner and tenant to share data necessary to comply with this chapter.

I. Required Submittal to the Department.

1. For each building subject to this chapter, the property owner shall submit to the department an energy and water audit and report as described in Section 15.77.080 D, or proof of meeting one of the exemptions, in accordance with the schedule set forth in Section 15.77.100.

2. For each building subject to this chapter, the property owner shall submit to the department, in accordance with the schedule set forth in Section 15.77.100, one of the following:

a. An energy and water retro-commissioning report as described in Section 15.77.080 E;

b. An improvement measures report as described in Section 15.77.080 G; or

c. A green lease attestation as described in Section 15.77.080 H.

(Ord. No. 644, § 1, 12-12-19; Ord. No. 679, § 3, 4-20-23)

15.77.090 Record maintenance.

The property owner shall maintain records related to benchmarking, audits and retro-commissioning, including, but not limited to, the energy and water bills and reports or forms received from tenants and/or utilities. Such records shall be preserved for a period of six (6) years. When the building is sold, the records shall be given to the new property owner.

(Ord. No. 644, § 1, 12-12-19)

15.77.100 Schedule for compliance.

A. Schedule for Benchmarking Report Compliance. A property owner shall submit to the department an annual benchmarking report in compliance with Section 15.77.050 according to the following schedule:

1. For properties owned by the city with a gross floor area of two thousand (2,000) square feet or more, the city must complete and submit the initial benchmarking report annually on or before May 15, beginning in 2020.

2. For all other properties subject to this chapter, the property owner must complete and submit the initial benchmarking report annually on or before May 15, beginning in 2021.

B. Schedule for Beyond Benchmarking Compliance for Performance and Prescriptive Paths. A property owner must comply with Section 15.77.060 once every six (6) years, based on the building type (commercial, industrial or multi-family) which will be published on the city website for each building subject to this chapter under Section 15.77.060.

1. For commercial—Submit performance verification report or evidence of contract with qualified profession to complete energy and water audit for prescriptive path by May 15, 2023, or Year 1 of the cycle. The completed audit must by submitted by July 15 of the same year.

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
|  | Baseline | Calendar Evaluation Year Data to be compared against Baseline | Year 1 - (Reporting Year) - Performance Verification Report or Audit due | Year 3 - Check-in | Year 5 - RCx Report, Improvement Report, or Green Lease Attestation due |
| Cycle 1 | 2020 | 2022 | 2023 | 2025 | 2027 |
| Cycle 2 | 2022 | 2028 | 2029 | 2031 | 2033 |
| Cycle 3 | 2028 | 2034 | 2035 | 2037 | 2039 |

2. For industrial and multifamily—Submit performance report or evidence of contract with qualified profession to complete energy and water audit for prescriptive path by May 15, 2024 or Year 1 of the cycle. The completed audit must by submitted by July 15 of the same year.

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
|  | Baseline | Calendar Evaluation Year Data to be compared against Baseline | Year 1 - (Reporting Year) - Performance Verification Report or Audit due | Year 3 - Check-in | Year 5 - RCx Report, Improvement Report, or Green Lease Attestation due |
| Cycle 1 | 2020 | 2023 | 2024 | 2026 | 2028 |
| Cycle 2 | 2023 | 2029 | 2030 | 2032 | 2034 |
| Cycle 3 | 2029 | 2035 | 2036 | 2038 | 2040 |

3. For any newly constructed buildings receiving a certificate of occupancy less than five (5) years before the start (Year 0) of the cycle, the property owner shall comply with Sections 15.77.060, 15.77.070 and/or 15.77.080 at the time of the next cycle corresponding to the property type.

C. Timing of Audit and Retro-Commissioning. Except as otherwise provided in subsection 15.77.060 B, a property owner shall complete the audits and retro-commissioning within five (5) years of a building's compliance due date.

D. Early Compliance Pilots. The city may launch a voluntary early compliance pilot program to test the reporting infrastructure and refine the reporting requirements. The pilot program may begin prior to the reporting deadline in this Section 15.77.100.

E. Time Extensions. A property owner may be granted up to three (3) extensions of sixty (60) days each to file any submittal required by this chapter provided satisfactory proof is made to the department that one of the following conditions applies:

1. The property is under financial or legal distress, as verified by recent financial statements, legal filings and other relevant documents showing one or more of the following:

a. The property is under the control of a court-appointed receiver as a result of financial distress;

b. The property is owned by a financial institution as a result of borrower default;

c. The property has been acquired by a financial institution via deed in lieu of foreclosure;

d. The property is encumbered by a senior mortgage subject to a notice of default;

e. The property is an asset subject to probate proceedings;

f. The property is subject to a State of California Board of Equalization (BOE) Welfare Property Tax Exemption and the cost of complying with the reporting requirements will exceed or significantly deplete existing cash flow. The property owner must provide proof of a BOE-issued organizational clearance certificate and, where the property owner is a limited partnership, provide a supplemental clearance certificate.

2. The property owner, or tenant if applicable, is unable to timely comply due to substantial hardship. Substantial hardship shall mean circumstances by some verifiable level of adversity or difficulty from which the department determines a property owner, or tenant if applicable, would not be able reasonably to satisfy the obligations of this chapter.

3. Fifty percent (50%) or more of the gross floor area occupied by tenant(s) in the building has a lease ending within one year of the compliance deadline and the lease is not being renewed.

F. Notification. The department shall notify the property owner at least forty-five (45) days prior to the due dates specified in subsections A and B of this Section 15.77.100.

(Ord. No. 644, § 1, 12-12-19; Ord. No. 679, § 4, 4-20-23)

15.77.110 Penalties for violation.

The violation of any provisions of this chapter shall constitute an infraction and the city shall enforce this chapter as set forth in Chapters 1.14, 1.16 and 1.18 of this code. Such enforcement actions are cumulative and shall be in addition to any other enforcement remedies specified under the code or under other law.

(Ord. No. 644, § 1, 12-12-19)

15.77.115 Declaration of public nuisance.

Any building operating contrary to the provisions of this chapter and any use of property or of a building operated or maintained contrary to the provisions of this chapter are declared to be public nuisances. The city attorney may undertake the necessary proceedings to abate and/or enjoin the operation or use of any such property or building. The remedies provided by this section shall be in addition to any other remedy or remedies or penalties provided in this chapter, this code or any other law.

(Ord. No. 644, § 1, 12-12-19)

15.77.120 Fees.

By council resolution, the city may impose fees to cover the cost of the department's review of submittals required by this chapter and any other costs to administer this chapter. Such fees may include, but not be limited to, an annual benchmarking disclosure compliance fee and an audit and retro-commissioning fee.

(Ord. No. 644, § 1, 12-12-19)

15.77.125. Appeals.

A. As to any matter arising under this chapter, any person may appeal to the director any decision, determination, order, requirement or other action of the department in which the director has not been directly involved "the department decision"). Any such appeal shall be in writing and filed with the city clerk within fifteen (15) days after the action giving rise to the appeal. The director shall decide the appeal within thirty (30) days.

B. Any person dissatisfied with the director's decision concerning the department decision may appeal to the city manager by filing such appeal with the city clerk within ten (10) days after the director's decision concerning the department's decision.

C. The city manager shall consider the appeal within thirty (30) days and may affirm, reverse or modify the director's decision concerning the department decision. The decision of the city manager shall be final.

(Ord. No. 644, § 1, 12-12-19)

15.77.130. Disclosure of data provided to the city.

Data provided to the city under this chapter are public records as defined in the California Public Records Act.

(Ord. No. 644, § 1, 12-12-19)

## Chapter 15.80 GREEN BUILDING REQUIREMENTS

Sections:

15.80.010 Purpose.

The purpose of this chapter is to enhance the public welfare and assure that further commercial, residential and civic development is consistent with the city's desire to create a more sustainable community by incorporating green building measures into the design, construction and maintenance of buildings. The green building practices referenced in this chapter are designed to achieve the following goals:

A. To conserve natural resources;

B. To reduce the waste generated by construction projects;

C. To increase energy efficiency;

D. To promote the health and productivity of residents, workers, and visitors to the city; and

E. To implement the green building policy and programs set forth in the conservation element of the city's general plan.

(Ord. 524 § 1(part), 2007).

15.80.020 Findings.

The city of Brisbane finds that:

A. Green building practices recognize the relationship between natural and built environments. Green building design, siting, construction, and operation can have a significant positive effect on energy and resource efficiency, reduction of waste and pollution generation, and the health and productivity of a building's occupants over the life of the building. This is a critical component of sustainable development that meets the needs of the present without compromising the ability of future generations to meet their own needs.

B. Green building benefits are spread throughout the systems and features of the building. Green buildings may use recycled content building materials, consume less energy and water, have better indoor air quality, and use less wood fiber than conventional buildings. Construction waste is often recycled and remanufactured into other building products, resulting in reduced landfill impacts.

C. Design, siting, and construction decisions made by the city in the construction and remodeling of city buildings can result in significant energy cost savings to the city over the life of the buildings.

D. Green building design, siting, construction, and operational techniques have become increasingly widespread in commercial and residential building construction. National and regional systems have been established to serve as guides and objective standards for green building practices. At the national level, the U.S. Green Building Council has established the Leadership in Energy and Environmental Design (LEED) Green Building Rating System for new construction and major renovation of commercial projects. At the regional level, Build It Green, a nonprofit organization headquartered in the Bay Area, has developed New Home Construction Green Building Guidelines and a Green Points Rating System for single-family residences. Build It Green has also developed a Multi-family Green Point Checklist, based upon the Multi-family Green Building Guidelines established by the Alameda County Waste Management Authority.

E. The conservation element of the city's general plan requires certain commercial, residential, and city-sponsored projects to comply with green building standards and encourages voluntary implementation of green building measures for all other projects. The provisions of this chapter are intended to achieve the goals of green building design, construction and operation as prescribed by the city's general plan.

(Ord. 524 § 1(part), 2007).

15.80.030 Definitions.

As used in this chapter, certain words and terms shall be defined as follows:

"ACWMA" means the Alameda County Waste Management Authority.

"Applicant" means any individual, partnership, association, limited liability company, public or private corporation, political subdivision, or any other entity that applies to the city for the applicable permits or approvals to undertake any covered project within the city.

"Build It Green" means the nonprofit organization that publishes the New Home Construction Green Building Guidelines, the New Home Green Points Checklist, and the Multifamily GreenPoint Checklist, and any successor nonprofit entity that assumes responsibility for the programs and operations of Build It Green.

"Building" means any structure used or intended for support or shelter of any use or occupancy, as defined in the California Building Code.

"City" means the city of Brisbane and includes the Brisbane Redevelopment Agency.

"City-sponsored project" means any new construction of a building for which substantial funding is provided by the city, as determined by the city council, or is located on land owned or intended to be acquired by the city.

"Commercial core and shell project" means a commercial project constructed with energy using building systems (such as mechanical, electrical and plumbing systems), but without interior finish work.

"Commercial interior project" means new construction within the interior of a commercial structure for which the core and shell of the structure has been completed, including interior walls and partitions, drop ceilings, electrical and plumbing connections and fixtures and HVAC systems (commonly referred to as tenant improvements). A commercial interior project also includes the construction of mechanical, electrical, plumbing, or other energy using building systems (other than any fire or life safety systems required by the city or the fire department) within a commercial shell project.

"Commercial project" means any new construction of a retail, office, industrial, warehouse, or service building, or portion of a building, which is not a residential project or a city-sponsored project.

"Commercial shell project," also known as a commercial cold and dark project, means a commercial project having no energy using building systems, including no mechanical, electrical or plumbing systems (other than any fire or life safety systems required by the city or the fire department), and no interior build-outs or finishes.

"Conditioned space" means any area within a building that is heated or cooled by any equipment.

"Covered project" means any of the following, subject to Section 15.80.100:

1. City-Sponsored Projects. A city-sponsored nonresidential project having a gross floor area of five thousand (5,000) square feet or more of conditioned space.

2. Commercial Projects.

a. A commercial project having a gross floor area of ten thousand (10,000) square feet or more of conditioned space.

b. A commercial core and shell project or a commercial shell project involving a structure having a gross floor area of ten thousand (10,000) square feet or more of unfinished space.

c. A commercial interior project involving a gross floor area of ten thousand (10,000) square feet or more of interior space; provided, however, where the commercial interior project involves only a portion of a covered core and shell project or a covered shell project, such portion shall be a covered commercial interior project even though the interior space of that portion is less than ten thousand (10,000) square feet.

d. Any addition or modification to an existing commercial project that increases the gross floor area by ten thousand (10,000) square feet or more of conditioned space. Except as otherwise provided in subsection (2)(e) of this definition, the requirements of this chapter shall be applied only to the additional floor area of conditioned space being added to the existing commercial project.

e. Any addition or modification to an existing commercial project that increases the gross floor area of conditioned space by fifty percent (50%) or more and, when added to the gross floor area of the existing conditioned space, will result in ten thousand (10,000) square feet or more of conditioned space in the entire project. The requirements of this chapter shall be applied to both the existing floor area and the additional floor area of conditioned space.

3. Residential Projects.

a. A residential project having twenty (20) or more dwelling units constructed pursuant to the same development permit or approval, whether composed of single family or multi-family or any combination thereof.

b. Any addition or modification to an existing residential project that adds twenty (20) or more dwelling units to the existing project, or any addition or modification to an existing residential project that adds a number of dwelling units which, when combined with the number of existing dwelling units, will total twenty (20) or more dwelling units in the entire project. The requirements of this chapter shall be applied only to the additional dwelling units in the residential project.

4. Mixed Use Projects. A mixed use project where the commercial portion of the development includes a gross floor area of ten thousand (10,000) square feet or more of conditioned space, or the residential portion of the development includes twenty (20) or more dwelling units. If only the commercial portion or the residential portion of a development qualifies as a covered project, as defined herein, the requirements of this chapter shall be applied only to that qualified portion.

"Credits" means points assigned under the applicable rating system using the appropriate checklist for a covered project.

"Dwelling unit" means a room or group of rooms including living, sleeping, eating, cooking and sanitation facilities, constituting a separate and independent housekeeping unit, designed, occupied, or intended for occupancy by one family on a permanent basis.

"Green building" means a whole system approach to the design, siting, construction, and operation of buildings that helps mitigate the environmental impacts of buildings by seeking to minimize the use of energy, water, and other natural resources and by providing a healthy, productive indoor environment. The term applies to those measures, techniques, materials and technologies that implement the green building approach, as well as to development projects that properly utilize them.

"Green building accredited professional" means an individual who satisfies either of the following requirements, as may be applicable:

1. Where the covered project involves application of any LEED rating system, the individual must be a LEED Accredited Professional (LEED AP) who has taken and passed an exam administered by the U.S. Green Building Council to recognize the knowledge and skills necessary to support integrated design and streamline the LEED application and certification process.

2. Where the covered project involves application of any GreenPoint Rating System, the individual must be a Certified GreenPoint Rater who has completed the training and been certified as such by Build It Green.

"Green building compliance official" means the city's director of community development or his or her authorized representative.

"Green Building Project Checklist" means a checklist or scorecard developed for the purpose of calculating a score on the LEED Commercial Green Building Rating System, the LEED Commercial Core and Shell Rating System, the LEED Commercial Interior Rating System, the Build It Green New Home Green Points Checklist, or the Build It Green Multifamily GreenPoint Checklist. Covered projects shall utilize the green building project checklist that corresponds with the green building rating system approved for use.

"Green Building Worksheet" means a form provided by the city to be used by applicants to explain how their project qualifies for credits listed on the submitted green building project checklist.

"Gross floor area" means the sum of the gross horizontal areas of all floors of a building measured from the interior face of the exterior walls or columns.

"LEED" means Leadership in Energy and Environmental Design.

"LEED Commercial Core and Shell Rating System" means the most recent version of the LEED core and shell rating system approved by the U.S. Green Building Council.

"LEED Commercial Interior Rating System" means the most recent version of the LEED commercial interior rating system approved by the U.S. Green Building Council.

"LEED New Commercial Construction Rating System" means the most recent version of the LEED New Commercial Construction Rating System, also referred to as "LEED-NC (New Construction)," approved by the U.S. Green Building Council. As new rating systems are developed by the U.S. Green Building Council, the green building compliance official shall have the authority to specify the applicable LEED commercial green building rating system for a covered project.

"Mixed use project" means one or more buildings that combine the uses of a commercial project and a residential project.

"Multifamily GreenPoint Checklist" means the most recent version of the checklist developed by Build It Green for use in determining rating points under the Multi-family Green Building Guidelines.

"Multi-family Green Building Guidelines" means the most recent version of ACWMA's green building rating system for multi-family residential projects that provides detailed information, resources, and standards for the multi-family green building rating system, including information regarding the documentation required for certification. As new rating systems are developed by ACWMA, the green building compliance official shall have the authority to specify the applicable multi-family green building rating system for a covered project.

"New Home Construction Green Building Guidelines" means the most recent version of the single-family green building guidelines published by Build It Green that provides detailed information, resources, and standards for the single-family green building rating system, including information regarding the documentation required for certification. As new rating systems are developed by Build It Green, the green building compliance official shall have the authority to specify the applicable single-family green building rating system for a covered project.

"New Home Green Points Checklist" means the most recent version of the checklist developed by Build It Green for use in determining rating points under the New Home Construction Green Building Guidelines.

"Residential project" means a residential development containing twenty (20) or more dwelling units constructed pursuant to the same development approval or permit, including single-family residences, apartments, condominiums and townhouses. Facilities wherein rooms or suites are rented for transient occupancy, such as hotels, motels or similar accommodations, shall be considered commercial projects.

(Ord. 524 § 1(part), 2007).

15.80.040 Standards for compliance.

A. Covered Projects. Except as otherwise provided in this chapter, all covered projects shall comply with the following requirements:

1. All covered commercial projects, commercial core and shell projects, and commercial interior projects shall meet a minimum LEED "silver" rating on the Green Building Project Checklist. All covered commercial shell projects, when reviewed in conjunction with the commercial interior project to be built within the commercial shell project, shall comply with the "silver" rating on the Green Building Project Checklist for LEED new commercial construction projects as of the time plans are submitted for installation of interior mechanical, electrical, plumbing, or other energy using building systems within the commercial shell project or any portion thereof.

2. All covered city-sponsored projects that are neither residential projects nor mixed use projects shall achieve a minimum LEED "silver" rating on the Green Building Project Checklist, unless the city council determines that special circumstances or constraints justify a modification of this requirement, in which case an alternative standard shall be set by the council as close to the LEED "silver" rating as the council determines is reasonable under the circumstances.

3. All covered residential projects consisting of single-family dwelling units, including any such city-sponsored project, shall achieve a "green home" rating on the New Home Green Points Checklist by earning the minimum number of total points allocated between categories in accordance with the most recent version of such checklist. As of the date of initial adoption of the ordinance codified in this chapter, the single-family "green home" rating requires at least fifty (50) points, of which a minimum of eleven (11) points shall be in the category of Energy; a minimum of five (5) points shall be in the category of Indoor Air Quality-Health; a minimum of six (6) points shall be in the category of Resources; a minimum of three (3) points in the category of Water; and additional points can be earned from any category to achieve a total of fifty (50).

(4) All covered residential projects consisting of multi-family buildings, including any such city-sponsored project, shall achieve a "green home" rating on the Multifamily GreenPoint Checklist by earning the minimum number of total points allocated between categories in accordance with the most recent version of such checklist, unless the green building compliance official determines that the single-family New Home Green Points Checklist is more appropriate for the building. As of the date of initial adoption of the ordinance codified in this chapter, a green home rating on the Multifamily GreenPoint Checklist is achieved by earning at least fifty (50) total points, of which a minimum of six (6) points shall be in the category of Community; a minimum of eleven (11) points shall be in the category of Energy; a minimum of five (5) points shall be in the category of Indoor Air Quality/Health; a minimum of six (6) points shall be in the category of Resources; a minimum of three (3) points shall be in the category of Water; and additional points can be earned from any category to achieve a total of fifty (50). The project shall also comply with the requirements of A.3.a (fifty percent (50%) construction waste diversion), A.10.a (no shingle roofing), and N.1 (incorporate GreenPoint Checklist in blueprints), as set forth in the Multifamily Green Building Guidelines.

B. Additional Standards. In the event new guidelines or standards are adopted by the U.S. Green Building Council, or the Alameda County Waste Management Authority, or Build It Green, pertaining to types of projects that are not specifically described or defined in this chapter, the green building compliance official shall have authority to apply such guidelines or standards to the type of project to which they relate, as long as the same do not conflict with any of the provisions of this chapter.

C. Covered Project Determination. The green building compliance official shall make the determination as to: (1) whether a project qualifies as a covered project; (2) the classification of a covered project; and (3) whether a covered project has achieved the minimum rating required by this chapter. Any decision or determination by the green building compliance official may be appealed to the planning commission pursuant to Section 15.80.090 of this chapter.

(Ord. 524 § 1(part), 2007).

15.80.050 Voluntary actions.

A. LEED Certification. Applicants are encouraged to register covered commercial projects with the U.S. Green Building Council, but LEED certification by the U.S. Green Building Council is not required under this chapter.

B. Post Occupancy Implementation. Applicants are encouraged to take such actions as may be necessary to insure that green building measures which have been incorporated into the structure are operating as intended. Such actions include proper calibration and monitoring of building systems, regular maintenance and repair of equipment as needed, appropriate training of personnel responsible for operation of the building systems, and education of employees, tenants, and other regular occupants of the structure on practices that can be followed to promote energy conservation and other green building objectives.

C. Non-Covered Projects. Developers of non-covered projects are encouraged to incorporate green building measures, but are not required to submit any documentation pursuant to this chapter, nor is there any required verification of compliance. However, any developer of a non-covered project may voluntarily submit documentation showing compliance with the applicable green building guideline and request the green building compliance official to make a determination as to whether the project qualifies as a green building development under the applicable green building project checklist.

(Ord. 524 § 1(part), 2007).

15.80.060 Submittal and review of green building documentation.

A. Submittal of Documents. In conjunction with any application for approval of a planned development permit, use permit, design review approval, building permit, or other land development entitlement for a covered commercial, residential or mixed use project, the applicant shall submit to the green building compliance official documentation indicating the measures that will be taken to achieve the applicable green building rating required by this chapter ("green building documentation"). The green building documentation shall be prepared by a green building accredited professional or other qualified person approved by the green building compliance official. The green building documentation shall include:

1. The applicable Green Building Project Checklist;

2. The applicable Green Building Worksheet with an analysis of each credit claimed; and

3. For a covered commercial shell project, the applicant shall submit documentation showing the extent to which the shell project will qualify for points under the applicable Green Building Project Checklist, along with a preliminary description of the additional measures that will be incorporated into the commercial interior project to achieve the required "silver" rating for the entire commercial project. The plans submitted for the commercial interior project may modify the items listed in the preliminary description for the commercial shell project as long as such modified plans show compliance with the required "silver" rating for the entire commercial project.

4. Any other documentation that may be necessary to show compliance with this chapter, as submitted by the applicant or requested by the green building compliance official.

The application for approval of the covered project shall not be deemed complete until all green building documentation required by this subsection has been submitted to the green building compliance official and has been found by the green building compliance official to be complete in accordance with subsection B of this section.

B. Review of Green Building Documentation. For the green building documentation submittal to be complete, the green building compliance official must determine that the documentation is sufficient to support a finding that the covered project can achieve the applicable green building rating, as set forth in Section 15.80.040(A) of this chapter. The applicant, the planning and building sections of the community development department, and the public works department shall be notified of the green building compliance official's determination. The green building compliance official may retain the services of a consultant having expertise in green building techniques to review and evaluate the material and provide recommendations as to methods for compliance with the requirements of this chapter. The cost of such consultant shall be paid by the applicant.

C. Approval of Green Building Documentation. The green building compliance official shall only approve the green building documentation if such documentation indicates that the covered project can achieve the applicable green building rating, as set forth in Section 15.80.040(A) of this chapter. If the green building compliance official determines that these conditions have been met, the green building documentation shall be marked "approved," and returned to the applicant. The green building compliance official shall provide a copy of the approved green building documentation at the hearing on the development application and shall notify the city's department of public works and building department that the green building documentation has been approved.

D. Non-Approval of Green Building Documentation. If the green building compliance official determines that the green building documentation is incomplete or fails to indicate that the covered project will meet the required green building rating for the covered project as set forth in Section 15.80.040(A) of this chapter, the green building compliance official shall either:

1. Return the green building documentation to the applicant marked "denied," including a statement of reasons; or

2. Return the green building documentation to the applicant marked "further explanation required," and detail the additional information needed.

E. Resubmission of Green Building Documentation. If the green building documentation is returned to the applicant, the applicant may resubmit the green building documentation with such additional information as may be required or may apply for an exemption under Section 15.80.070 of this chapter.

F. Compliance as a Condition of Approval.

1. Compliance with the green building compliance official's determinations regarding the provisions of this chapter shall be listed as a condition of approval on any planned development permit, use permit, design review approval, building permit, or other land development entitlement granted by the city for a covered commercial, residential, or mixed use project. No building permit shall be issued for a covered project until the green building documentation has been approved under this section or an exemption has been granted under Section 15.80.070 of this chapter.

2. Any approval of a covered commercial shell project shall include a condition that no building permit shall be issued for installation of interior mechanical, electrical, plumbing, or other energy using building systems within that project until green building documentation has been submitted by the applicant and approved by the green building compliance official showing that the interior improvements, when reviewed in conjunction with the commercial shell project, will achieve the LEED "silver" rating on the Green Building Project Checklist for LEED new commercial construction projects.

(Ord. 524 § 1(part), 2007).

15.80.070 Hardship or infeasibility exemption.

A. Exemption. If an applicant for a covered project believes that circumstances exist that make it a hardship or infeasible to meet the requirements of this chapter, the applicant may apply for an exemption as set forth below. In applying for an exemption, the burden is on the applicant to show hardship or infeasibility.

1. "Hardship," as used in this section, means some verifiable level of difficulty or adversity, beyond the control of the applicant, by which the applicant cannot reasonably comply with the requirements of this chapter, as determined by green building compliance official.

2. "Infeasible," as used in this section, means the existence of verifiable obstacles, beyond the control of the applicant, which render the applicant incapable of complying with the requirements of this chapter, as determined by green building compliance official.

B. Application for Exemption. If an applicant for a covered project believes that justifiable grounds exist for granting an exemption, the applicant may apply for such exemption at the time the green building documentation is submitted in accordance with Section 15.80.060(A) of this chapter, or upon the non-approval of the submitted green building documentation by the green building compliance official under Section 15.80.060(D) of this chapter. The applicant shall indicate in the green building documentation the maximum number of credits the applicant believes is practical or feasible for the covered project and the circumstances that applicant believes make it a hardship or infeasible to comply fully with this chapter. Such circumstances may include, but are not limited to, availability of markets for materials to be recycled, availability of green building materials and technologies, and incompatibility of green building requirements with existing building standards.

C. Review by Green Building Compliance Official. The green building compliance official shall review the application for exemption and may request additional information from the applicant and meet with the applicant and the applicant's green building consultant to discuss the request. The green building compliance official may also retain the services of a consultant having expertise in green building techniques to review and evaluate the application for exemption. The cost of such consultant shall be paid by the applicant.

D. Granting or Denial of Exemption. If the green building compliance official determines that it would be a hardship or infeasible for the applicant to fully comply with the requirements of this chapter, the green building compliance official shall determine the maximum feasible number of credits reasonably achievable for the covered project and whether the documentation provided indicates that this number will be met. The applicant, the planning and building sections of the community development department, and the public works department shall be notified of the green building compliance official's determination. The determination may be appealed in accordance with Section 15.80.090 of this chapter. If the exemption is denied, and unless the denial of an exemption has been reversed on appeal, the green building documentation shall be deemed incomplete. If an exemption is granted, the applicant shall be required to comply with this chapter in all respects and shall be required to achieve the number of credits determined by the green building compliance official or by the planning commission or city council on appeal.

(Ord. 524 § 1(part), 2007).

15.80.080 Compliance review.

A. Building Permit Documentation. As part of the application for a building permit for any covered project, the applicant shall furnish a completed Green Building Project Checklist. All construction plans and specifications shall indicate in the general notes or individual detail drawings the green building measures to be used to attain the applicable green building rating. Notwithstanding any other provision of this code, no building permit shall be issued for any covered project until the green building compliance official has approved the green building documentation for the covered project, in accordance with Section 15.80.060 of this chapter, and the building department has determined that the plans and specifications submitted for the building permit are consistent with the approved green building documentation.

B. Compliance Review. The city shall verify that the green building measures and provisions indicated in the green building documentation are being implemented at foundation, framing, electrical, plumbing, mechanical, and any other required inspections, and prior to issuance of a final certificate of occupancy. Additional inspections may be conducted as needed to ensure compliance with this chapter. During the course of construction and following completion of the project, the city may require the applicant to provide information and documents showing use of products, equipment, and materials specified in the green building documentation. The compliance inspections may be conducted by the green building compliance official, the city's building department staff, or a consultant retained by the city at the expense of the applicant. If, as a result of any such inspection, the city determines that the project is not being constructed in accordance with the green building documentation, a stop work order may be issued. At the discretion of the green building compliance official, the stop work order may apply to the portion of the project impacted by noncompliance or to the entire project. The stop work order shall remain in effect until the green building compliance official determines that the project will be brought into compliance with the green building documentation and this chapter.

C. Substitution of Credits. During compliance review for covered projects, flexibility may be exercised by the green building compliance official to substitute the approved credits with other credits in the approved, applicable green building rating system. Substitution shall occur only at the request of the applicant and when it is determined that the originally approved credits are no longer feasible, or that the substitute credit will achieve a more favorable result, and provided the project still attains the green building rating required by this chapter.

D. Final Determination of Compliance. Prior to final building approval or issuance of a final certificate of occupancy, the green building compliance official shall review the information submitted by the applicant and determine whether the applicant has constructed the project in accordance with the green building documentation approved by the city. If the green building compliance official determines that the applicant has failed to construct the project in accordance with the approved green building documentation, then the final building approval and final certificate of occupancy may be withheld.

(Ord. 524 § 1(part), 2007).

15.80.090 Appeal.

A. Any decision or determination by the green building compliance official under this chapter, including any decisions pursuant to Section 15.80.060 relating to the approval or denial of the green building documentation, may be appealed by the applicant or any interested person to the planning commission. Notice of such appeal must be filed with the secretary of the planning commission not more than ten (10) days after the date on which the final decision or determination by the green building compliance official is rendered. The notice shall identify the decision or determination that is the subject of the appeal and shall state the alleged error or reason for the appeal. The planning commission may uphold, reverse or modify the decision or determination which is the subject of the appeal, and may refer the matter back to the green building compliance official for such further action as may be directed by the commission.

B. The decision by the planning commission may be further appealed by the applicant or any interested person to the city council by filing a notice of appeal within ten (10) days after the date on which the final decision is rendered by the planning commission. The matters raised on an appeal to the city council shall be limited to those issues and grounds that were the subject of the appeal to the planning commission. Any two members of the city council may also initiate an appeal from the decision of the planning commission in accordance with the same procedure as set forth in Section 15.52.020(B) of this title. The city council may uphold, reverse or modify the decision of the planning commission and may refer the matter back to the planning commission or to the green building compliance official for such further action as may be directed by the city council.

(Ord. 524 § 1(part), 2007).

15.80.100 Application of chapter.

The provisions of this chapter shall not be applied to any project that would otherwise be defined as a covered project under Section 15.80.030, where the application for approval or modification of such project was filed with the city and accepted as complete prior to January 16, 2008 (the effective date of the ordinance codified in this chapter), nor shall the provisions of this chapter apply to any extension of a permit or approval where the permit or approval was granted by the city prior to the effective date of the ordinance codified in this chapter. Notwithstanding the foregoing, this chapter shall be applicable to any project where compliance is required under the terms of a development agreement between the city and the owner or developer of the land, regardless of date on which the application for development approval was deemed to be complete.

(Ord. 524 § 1(part), 2007).

## Chapter 15.82 SMALL RESIDENTIAL ROOFTOP SOLAR ENERGY SYSTEMS

15.82.010 Authority.

The building official or his/her designee shall have the authority to enforce the provisions of this chapter.

(Ord. No. 596, § 1, 7-16-15)

15.82.020 Purpose.

The purpose of this chapter is to provide a streamlined permitting and inspection process for small residential rooftop solar energy systems in compliance with state law. The provisions of this chapter allow the city of Brisbane to encourage the use of solar systems by removing unreasonable barriers, minimizing costs to property owners and the city, and to expand the ability of property owners to install solar energy systems while simultaneously protecting the public health and safety.

(Ord. No. 596, § 1, 7-16-15)

15.82.030 Application.

A. This chapter applies to the permitting of all small residential rooftop solar energy systems in the city of Brisbane, as those terms are defined in this chapter.

B. Small residential rooftop solar energy systems legally established or permitted prior to the effective date of this chapter are not subject to the requirements of this chapter unless physical modifications or alterations are undertaken that materially change the size, type, or components of a small rooftop energy system in such a way as to require new permitting. Routine operation and maintenance shall not require a permit.

(Ord. No. 596, § 1, 7-16-15)

15.82.040 Definitions.

For the purposes of this chapter, the following definitions shall apply:

A. "Solar energy system" means either of the following:

1. Any solar collector or other solar energy device whose primary purpose is to provide for the collection, storage, and distribution of solar energy for space heating, space cooling, electric generation, or water heating.

2. Any structural design feature of a building, whose primary purpose is to provide for the collection, storage, and distribution of solar energy for electricity generation, space heating or cooling, or for water heating.

B. A "small residential rooftop solar energy system" means all of the following:

1. A solar energy system that is no larger than ten (10) kilowatts alternating current nameplate rating or thirty (30) kilowatts thermal.

2. A solar energy system that conforms to all applicable state fire, structural, electrical, and other building codes and all health and safety standards as adopted or amended by the city.

3. A solar energy system that is installed on a single or duplex family dwelling.

4. A solar panel or module array that does not exceed the maximum legal building height of the applicable zoning district, as defined in Title 17, Zoning.

C. An "association" means a nonprofit corporation or unincorporated association created for the purpose of managing a common interest development.

D. A "common interest development" means any of the following:

1. A community apartment project.

2. A condominium project.

3. A planned development.

4. A stock cooperative.

E. "Specific, adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified, and written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.

F. "Reasonable restrictions" on a solar energy system are those restrictions that do not significantly increase the cost of the system or significantly decrease its efficiency or specified performance, or that allow for an alternative system of comparable cost, efficiency, and energy conservation benefits.

G. "Restrictions that do not significantly increase the cost of the system or decrease its efficiency or specified performance" means:

1. For Water Heater Systems or Solar Swimming Pool Heating Systems. An amount exceeding ten (10) percent of the cost of the system, but in no case more than one thousand dollars ($1,000.00), or decreasing the efficiency of the solar energy system by an amount exceeding ten (10) percent, as originally specified and proposed.

2. For Photovoltaic Systems. An amount not to exceed one thousand dollars ($1,000.00) over the system cost as originally specified and proposed, or a decrease in system efficiency of an amount exceeding ten (10) percent as originally specified and proposed.

(Ord. No. 596, § 1, 7-16-15)

15.82.050 Solar energy system requirements.

A. All solar energy systems shall meet applicable health and safety standards and requirements adopted by the city.

B. Solar energy systems for heating water in single-family residences and for heating water in commercial or swimming pool applications shall be certified by an accredited listing agency as defined by the California Plumbing and Mechanical Code.

C. Solar energy systems for producing electricity shall meet all applicable safety and performance standards established by the California Electrical Code, the Institute of Electrical and Electronics Engineers, and accredited testing laboratories such as Underwriters Laboratories and, where applicable, rules of the Public Utilities Commission regarding safety and reliability.

(Ord. No. 596, § 1, 7-16-15)

15.82.060 Permit review and inspection requirements.

A. Approval of Permit.

1. The building official shall issue a building permit upon receipt of an application that meets the requirements established by Section 15.82.080 of this title. The building official's review shall be limited to whether the application meets city, state, and federal health and safety requirements in accordance with the solar permit streamlining policy on file with the community development department.

2. If an application is deemed incomplete, a written correction notice detailing all deficiencies in the application and any additional information or documentation required to be eligible for expedited permit issuance shall be sent to the applicant for resubmission.

3. Any condition imposed on an application shall be designed to mitigate the specific, adverse impact upon health and safety at the lowest possible cost. To the extent feasible, the condition or mitigation will not significantly increase the cost of the system or decrease its efficiency or specified performance.

4. Approval of an application shall not be subject to the approval of an association.

B. Inspection Required.

1. Only one inspection shall be required and performed by the city. A separate fire inspection may be performed by the North County Fire Authority, as determined necessary by the building official.

2. If a small residential rooftop solar energy system fails inspection, a subsequent inspection is authorized but need not conform to the requirements of this chapter. Subsequent inspections shall conform to the procedures established in Chapter 15.16 of this title.

3. Inspections of small residential rooftop solar energy systems shall be made in conformance with the solar streamlining policy on file with the community development department.

(Ord. No. 596, § 1, 7-16-15)

15.82.070 Discretionary permit required.

A. The building official may require an applicant to apply for a use permit under Title 17 of the municipal code if the official finds, based on substantial evidence, that the small residential rooftop solar energy system would have a specific, adverse impact upon public health or safety and there is no feasible method to satisfactorily mitigate or avoid the adverse impact.

B. The decision of the building official may be appealed by the applicant to the planning commission in accordance with the procedures set forth in Title 17, except that the appeal shall be filed within seven (7) calendar days after the date on which the decision is rendered.

(Ord. No. 596, § 1, 7-16-15)

15.82.080 Plans and other data.

Plans or specifications for the installation of small residential rooftop solar energy systems shall conform to the requirements of the solar permit streamlining policy on file with the community development department.

(Ord. No. 596, § 1, 7-16-15)

## Chapter 15.84 ELECTRIC VEHICLE INFRASTRUCTURE

15.84.010 Title.

This chapter shall be known as the City of Brisbane Electric Vehicle Infrastructure Ordinance.

(Ord. No. 643, § 7, 12-12-19)

15.84.020 Authority.

The building official or the building official's designee shall have the authority to enforce the provisions of this chapter.

(Ord. No. 643, § 7, 12-12-19)

15.84.030 Purpose.

The purpose of this chapter is to provide for electric vehicle charging infrastructure as part of new development projects.

(Ord. No. 643, § 7, 12-12-19)

15.84.040 Application.

This chapter applies to the permitting of all new residential and new non-residential development projects.

(Ord. No. 643, § 7, 12-12-19)

15.84.050 Coordination with state codes.

This chapter does not replace the most recent edition of the California Building Code, Title 24, as adopted by the city in Chapter 15.04 of this code. This Chapter 15.84 amends the state code, to place additional requirements on new residential and non-residential development projects. To the extent the provisions of this chapter conflict with any current or subsequently adopted state code provisions, then the most energy conserving provisions shall supersede and control.

(Ord. No. 643, § 7, 12-12-19)

15.84.060 Definitions.

For the purposes of this chapter, the following definitions shall apply:

A. EV Capable Parking Space: "EV Capable Parking Space" means a parking space linked to a listed electrical panel with sufficient capacity to provide at least one hundred ten/one hundred twenty (110/120) volts and twenty (20) amperes to the parking space. The following shall be addressed in designating an EV Capable Parking Space:

1. Where, following construction, a parking space would not otherwise be readily linked (or accessible) to the electrical panel, raceways linking the electrical panel and the parking space shall be required in order to be considered EV capable. Determination of linked or accessibility shall be at the discretion of the building official.

2. Inaccessibility (not considered EV Capable) generally includes such cases as, where underground trenching would be required or where penetrations to walls, floors, or other partitions would be required for future installation of branch circuits.

3. The panel circuit directory shall identify the overcurrent protective device space(s) reserved for EV charging as "EV CAPABLE."

4. Raceways shall be at least one inch in diameter and may be sized for multiple circuits as allowed by the California Electrical Code. Construction documents shall indicate future completion of raceway from the panel to the parking space, via the installed inaccessible raceways.

B. Level 1 EV Ready Circuit Parking Space: "Level 1 EV Ready Circuit Parking Space" means a parking space served by a complete electric circuit with a minimum of one hundred ten/one hundred twenty (110/120) volt, twenty-ampere capacity including electrical panel capacity, overprotection device. The following shall be addressed in designating a Level 1 EV Ready Circuit Parking Space:

1. Raceways shall be a minimum one inch diameter and may be sized for multiple circuits as allowed by the California Electrical Code.

2. Wiring shall be included and either.

a. A receptacle labelled "Electric Vehicle Outlet" with at least a one-half-inch font adjacent to the parking space, or

b. Electric vehicle supply equipment (EVSE).

C. Level 2 EV Ready Circuit Parking Space: "Level 2 EV Ready Circuit Parking Space" means a parking space served by a complete electric circuit with two hundred eight/two hundred forty (208/240) volt, forty-ampere capacity including electrical panel capacity, overprotection device. The following shall be addressed in designating a Level 2 EV Ready Circuit Parking Space:

1. It is to be a minimum one-inch diameter raceway that may include multiple circuits as allowed by the California Electrical Code.

2. Wiring shall be included and either:

a. A receptacle labelled "Electric Vehicle Outlet" with at least a one-half-inch font adjacent to the parking space, or

b. Electric vehicle supply equipment (EVSE) with a minimum output of thirty (30) amperes.

D. Electric Vehicle Charging Station (EVCS): "Electric Vehicle Charging Station (EVCS)" means a parking space that includes installation of electric vehicle supply equipment (EVSE) with a minimum output of thirty (30) amperes connected to a Level 2 EV Ready Circuit. EVCS installation may be used to satisfy a Level 2 EV Ready Circuit requirement.

E. New Development or New Construction: "New development or new construction" means construction or reconstruction of a principal structure on a site, to which the parking standards provided in Chapter 17.34 would be applied. Based on the building official's determination, it may include buildings that have been substantially demolished and reconstructed consistent with Chapter 17.38—Nonconforming Uses and Structures.

F. Parking Space: "Parking Space" means an area designed and marked for parking an automobile and recognized by the building official towards meeting the minimum parking standards for a site as set forth in Chapter 17.34.

(Ord. No. 643, § 7, 12-12-19)

15.84.070 Residential requirements.

A. New single-family residences, duplexes and townhouses.

1. Electric Vehicle (EV) Standards:

a. For each dwelling unit, where two (2) or more parking spaces are required, at least one Level 2 EV Ready Circuit and one Level 1 EV Ready Circuit is to be installed.

b. Where only one parking space is required per dwelling unit as provided in Chapter 17.34, only one Level 2 EV Ready Circuit shall be required to be installed.

2. Exceptions: The following exceptions apply, subject to building official approval:

a. A reduction in the EV standards may be allowed, if requested in writing by the applicant based on demonstration that the provisions of this section would render the development project infeasible due to associated utility costs. Documentation is to take into account short term and long term cost analysis to the satisfaction of the building official.

B. New multifamily dwellings. The following shall apply to multifamily developments whether parking spaces are assigned or unassigned to individual units:

1. EV Standards:

a. A minimum of one Level 2 EV Ready Circuit Parking Space per unit shall be provided; and

b. A minimum of five percent (5%) of the required parking spaces for all dwelling units shall be equipped with Level 2 EVSE; and

c. A minimum of fifty percent (50%) of required guest parking spaces shall be EVCS parking spaces.

2. Rounding. Calculations for the required minimum number of spaces equipped with Level 2 EVSE and EVCS parking spaces shall all be rounded up to the nearest whole number.

3. Exceptions: The following exceptions apply, subject to building official approval:

a. Where less than one parking space per unit is required as provided in Chapter 17.34, the Level 2 EV Ready Circuit parking space requirements shall apply only to the parking required as provided in Chapter 17.34. This subparagraph does not alter the required minimum number of parking spaces as provided in Chapter 17.34.

b. When more than twenty (20) multifamily dwelling units are constructed, load balancing systems may be installed. In such cases, the panel capacity must average a minimum of sixteen (16) amperes per EV space. Load balancing systems may be installed to increase the number of EV chargers or the amperage or voltage beyond the minimum required.

c. A reduction in the EV standards may be allowed, if requested in writing by the applicant based on demonstration that the provisions of subsection B would render the development project infeasible due to associated utility costs. However, the maximum feasible amount of EV infrastructure shall be provided. Documentation is to take into account short term and long term cost analysis to the satisfaction of the building official.

(Ord. No. 643, § 7, 12-12-19; Ord. No. 682, § 1, 6-15-23)

15.84.080 Non-residential requirements.

New non-residential construction shall comply with the following provisions:

A. Building Uses with Lower Parking Turnover Rates: For buildings designed for primarily low parking turnover uses, such as administrative office, R&D, industrial, hotels and school uses, the following provisions apply to construction of new buildings, as determined by the building official. These building uses typically have longer average parking durations as compared to those included in Section 17.84.080.B.

1. EV Standards:

a. A total of fifty percent (50%) of the parking spaces required per Chapter 17.34 shall be EV, as follows:

i. When ten (10) or more parking spaces are required to be constructed, fifteen percent (15%) of the required parking spaces on site shall be equipped with Level 2 EVCS;

ii. An additional ten percent (10%) shall be provided with at least Level 2 EV Ready Circuits; and

iii. An additional twenty-five percent (25%) shall be at least Level 1 EV Capable.

b. Rounding: Calculations for the required minimum number of spaces equipped with Level 2 EVCS, Level 1 EV Ready spaces and EV Capable spaces shall all be rounded up to the nearest whole number.

2. Exceptions: The following exceptions apply, subject to building official approval:

a. A reduction in the EV standards may be allowed, if requested in writing by the applicant based on demonstration that the provisions of this section would render the development project infeasible due to associated utility costs. However, the maximum feasible amount of EV infrastructure shall be provided. Documentation is to take into account short term and long term cost analysis to the satisfaction of the building official.

b. The building official may apply EV space standards provided in Section 15.84.080.B to uses listed in this section where the applicant has adequately demonstrated that the specific use applied for fits with the higher parking turnover rates.

B. Building Uses with Higher Parking Turnover Rates: The following provisions apply to construction of new buildings designed for the primary uses of restaurant, retail, meeting halls, gyms, commercial recreation, professional office and similar, as determined by the Building Official. These building uses typically have shorter average parking durations as compared to those included in Section 17.84.080.A.

1. EV Standards:

a. A total of twenty-five percent (25%) of the parking spaces required per Chapter 17.34 shall be EV, as follows:

i. When ten (10) or more parking spaces are required to be constructed, fifteen percent (15%) of the required parking spaces on site shall be equipped with Level 2 EVCS;

ii. An additional ten percent (10%) shall be at least Level 1 EV Ready.

b. Rounding: Calculations for the required minimum number of spaces equipped with Level 2 EVCS and Level 1 EV Ready spaces shall be rounded up to the nearest whole number.

2. Exceptions: The following exceptions apply, subject to building official approval:

a. A reduction in the EV standards may be allowed, if requested in writing by the applicant based on demonstration that the provisions of this section would render the development project infeasible due to associated utility costs. However, the maximum feasible amount of EV infrastructure shall be provided. Documentation is to take into account short term and long term cost analysis to the satisfaction of the building official.

b. Installation of each direct current fast charger with the capacity to provide at least eighty (80) kW output may substitute for six (6) Level 2 EVCS and five (5) EV Ready spaces after a minimum of six (6) Level 2 EVCS and five (5) Level 1 EV Ready spaces are installed.

(Ord. No. 643, § 7, 12-12-19)

## Chapter 15.85 ART IN PUBLIC PLACES PROGRAM

15.85.010 Title.

This chapter shall be known as the city's "art in public places program" and may be so cited.

(Ord. No. 588, § 1, 10-2-14)

15.85.020 Purpose.

The purpose of the city's art in public places program is to promote the visual arts by requiring the inclusion of a public artwork component in certain new public and private development projects in Brisbane. The city council recognizes that public art has the power to energize our public spaces, arouse our thinking, and transform the places where we live, work, and play into more welcoming and beautiful environments that invite interaction. By its presence alone, public art can heighten our awareness, question our assumptions, transform a landscape, or express community values, and for these reasons it can have the power, over time, to transform a city's image. Public art helps define a community's identity and reveal the unique character of a specific neighborhood.

(Ord. No. 588, § 1, 10-2-14)

15.85.030 Definitions.

For purposes of this chapter, the following definitions shall apply:

A. "Brisbane public art fund" means the fund described in Section 15.85.040.

B. "Building development costs" means construction costs, including grading and landscaping costs, for new private developments that do not include costs for hazardous materials abatement, land use planning consultants, feasibility studies, environmental review, land acquisition, legal fees, architecture/engineering, construction management, geotechnical surveys, historical surveys, and demolition. For public developments, "building development costs" means public construction costs that do not include costs for park and landscape renovation projects; pipelines, power transmission lines and towers, switchyards and substations, dwellings in watershed areas; mechanical, plumbing and electrical system upgrades; seismic or structural upgrades; modifications for disabled access, unless occurring in conjunction with a new building construction. "Building development costs" for public developments shall include costs for bridges and overpasses, but shall not include costs for other transportation improvement projects.

C. "Implementation guidelines" means the guidelines for implementation of this chapter to be developed by the public art subcommittee.

D. "In-lieu contribution" means a cash contribution equivalent to the percentage of building development costs required herein.

E. "Public art subcommittee" means a broadly representative subcommittee appointed by the parks and recreation commission.

(Ord. No. 588, § 1, 10-2-14)

15.85.040 Brisbane public art fund.

A. The city manager shall establish a Brisbane public art fund to receive in-lieu contributions, donations, and other funds contributed in support of the art in public places program. Unspent monies in the Brisbane public art fund shall be carried over to the next fiscal year, unless prohibited by the source of the funds, or applicable laws or regulations.

B. The Brisbane public art fund may be used to acquire, place, and maintain public art on public or private property throughout the city, as described in the implementation guidelines.

(Ord. No. 588, § 1, 10-2-14)

15.85.050 Contribution requirements.

A. Private Developments.

1. Commercial Projects.

a. Private nonresidential and non-live-work building developments with building development costs from one million dollars ($1,000,000.00) through five million dollars ($5,000,000.00) shall contribute in an amount equal to at least one percent of their building development costs into the Brisbane public art fund as an in-lieu contribution. This section shall apply to both new projects and building alterations/additions.

b. Private nonresidential and non-live-work building developments with building development costs above five million dollars ($5,000,000.00) shall contribute in an amount equal to at least one percent of their building development costs into the Brisbane public art fund as an in-lieu contribution. Alternatively, at the discretion of the owner or developer, such projects may devote in an amount equal to at least one percent of their building development costs for the acquisition and installation of publicly accessible art on the development site, subject to the provisions of Section 15.85.060. This section shall apply to both new projects and building alterations/additions.

2. Residential Projects.

a. Single and multiple family residential and live-work developments with ten (10) through twenty (20) units shall contribute in an amount equal to at least one-half percent of their building development costs into the Brisbane public art fund as an in-lieu contribution.

b. Single and multiple family residential and live-work developments with more than twenty (20) units shall contribute in an amount equal to at least one percent of their building development costs into the Brisbane public art fund as an in-lieu contribution.

c. Single and multiple family residential and live-work developments with building development costs above ten million dollars ($10,000,000.00), regardless of the number of units, shall contribute in an amount equal to at least one percent of their building development costs into the Brisbane public art fund as an in-lieu contribution. Alternatively, at the discretion of the owner or developer, such projects may devote in an amount equal to at least one percent of their building development costs for the acquisition and installation of publicly accessible art on the development site, subject to the provisions of Section 15.85.060.

d. Private residential and live-work building developments designated as low or moderate income housing shall be exempt from the requirements of this chapter.

3. Compliance with the provisions of Section 15.85.050(A) shall be demonstrated by the owner or developer prior to the issuance of a building permit as follows: (a) payment of the full amount of the in-lieu contribution; or (b) written proof to the building department of a contractual agreement to commission or purchase and to install the requested artwork on the development site. The owner or developer shall provide the city with proof of installation of the requested artwork on the development site before issuance of the certificate of occupancy, unless the city has approved some other method of assuring compliance with the provisions of this chapter.

4. An in-lieu contribution shall not necessarily change the characterization of the project as a private development.

B. Public Developments. Building developments by the city with building development costs above five hundred thousand dollars ($500,000.00) shall devote in an amount equal to at least one-half percent of their building development costs for the acquisition and installation of publicly accessible art on the development site or for contribution into the Brisbane public art fund as an in-lieu contribution.

(Ord. No. 588, § 1, 10-2-14)

15.85.060 Implementation guidelines.

The public art subcommittee shall create implementation guidelines for the art in public places program, which shall be approved by the city council. These implementation guidelines shall include, among other things, provisions regarding:

A. The selection and location of public art pieces;

B. Contributions into, expenditures from, and maintenance of the Brisbane public art fund;

C. The conditions for removing, re-siting, or replacing public art;

D. The installation of project-specific publicly accessible art in lieu of contribution to the Brisbane public art fund;

E. The process and specifications for waiving the provisions in this chapter; and

F. Requirements for demonstrating compliance with provisions of this chapter.

(Ord. No. 588, § 1, 10-2-14)

15.85.070 Violations of chapter.

In addition to other fines or penalties provided by state or municipal law, the city may revoke or suspend any discretionary permit granted to any owner or developer who violates the provisions of this chapter.

(Ord. No. 588, § 1, 10-2-14)

## Chapter 15.86 ELECTRIC VEHICLE CHARGING STATION PERMIT STREAMLINING

15.86.010 Title.

This chapter shall be known as the City of Brisbane Electric Vehicle Charging Station Permit Streamlining Ordinance.

(Ord. No. 659, § 3, 4-15-21)

15.86.020 Purpose of chapter.

This chapter is adopted for the following purposes:

A. To comply with California Government Code Section 65850.7 or successor legislation.

B. To provide an expedited, streamlined permitting process for electric vehicle charging stations.

C. To continue to address life-safety issues for electric vehicle charging stations through the building permit process.

D. To further the purposes of Chapter 15.84 of this Code (Electric Vehicle Infrastructure) concerning the requirements for electrical vehicle charging infrastructure as part of new development projects.

(Ord. No. 659, § 3, 4-15-21; Ord. No. 675, § 10, 11-17-22)

15.86.030 Applicability.

A. This chapter shall apply to any level of an electric vehicle supply equipment station that is designed and built to deliver electricity from a source outside an electric vehicle to a plug-in electric vehicle as defined in Section 15.86.040.B.

B. This chapter shall not apply to electric vehicle charging stations that were legally established prior to the effective date of the ordinance from which this chapter is derived, unless physical modifications or alterations are undertaken that materially change the size, type, or components of an electric vehicle charging station such that a building permit would be required. Routine operation and maintenance or like-kind replacements with no structural alterations shall not require a permit.

(Ord. No. 659, § 3, 4-15-21)

15.86.040 Definitions.

For the purposes of this chapter, the following words and phrases shall have the meanings:

A. "Building official" is the community development director and the duties specified herein may be assigned to the director's designee.

B. "Electronic submittal" means using the city's online portal or the internet.

C. "Electric vehicle charging station" or "charging station" means any level of an electric vehicle supply equipment station that is designed and built in compliance with Article 625 of the California Electric Code, as it reads on January 1, 2019 or subsequently adopted amendments, and delivers electricity from a source outside an electric vehicle into a plug-in electric vehicle.

D. "Specific adverse impact" means a significant, quantifiable, direct, or unavoidable impact, based on objective, identified, and written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.

E. "Unusual circumstances" means the city's resources have been limited due to such things as response to a declaration of local emergency, natural disaster, pandemic or similar unforeseen events.

(Ord. No. 659, § 3, 4-15-21; Ord. No. 675, § 11, 11-17-22)

15.86.050 Application requirements and procedures.

An electric vehicle charging station shall require a building permit subject to the requirements and procedures set forth in Sections 15.86.050.A—D. These sections apply to the permitting of all electric vehicle charging stations in the city.

A. Requirements (as set forth in Government Code, Section 65850.7 or successor legislation).

1. Electric vehicle charging stations shall meet all applicable health and safety requirements imposed by the state and the city.

2. Electric vehicle charging stations shall meet all applicable safety and performance standards established by the California Electric Code, the Society of Automotive Engineers, the National Electrical Manufacturers Association, and the accredited testing laboratories such as Underwriters Laboratories and, where applicable, rules of the Public Utilities Commission regarding safety and reliability.

B. Application Streamlining.

1. The city's permitting procedures shall comply with Government Code Section 65850.7 or successor legislation. The city shall:

a. Provide an administratively adopted building permit checklist of requirements and application form that will available through the city's website.

b. Accept an applicant's electronic signature on all forms, applications, and other documents.

c. Administratively approve building permit applications that comply with all requirements.

d. Limit its review and requirements to those standards and regulations necessary to ensure there is no specific adverse impact on public health or safety by the proposed installation.

e. Complete its review of each building permit application and, except in the event of unusual circumstances, provide the applicant with written notice of the status of the application within the applicable time period prescribed in Section 65850.7 or successor legislation. This shall include one or more of the following: notice of an incomplete application with deficiencies indicated, notice of approval based on the finding provided in section 15.86.050.C.1, or notice of denial based on the finding provided in section 15.86.050.C.2.

2. Application Requirements.

a. As required by the building official, the applicant shall complete and submit the charging station building permit checklist, application form, plans and supplemental documentation and shall submit payment of adopted application fees to the city.

b. Through the application for a building permit, the applicant shall provide documentation demonstrating that the installation of an electric vehicle charging station will not have a specific adverse impact to public health and safety or any building occupants, such verification shall include but not be limited to: electrical system capacity and loads; electrical system wiring, bonding and overcurrent protection; building infrastructure affected by charging station equipment and associated conduits; areas of charging station equipment and vehicle parking.

c. Anchorage of either floor-mounted or wall-mounted electric vehicle charging stations shall meet the requirements of the California Building or Residential Code as applicable per occupancy, and the manufacturer's installation instructions. Mounting of charging stations shall not adversely affect building elements.

C. Findings.

1. Approval. The building official shall approve a complete permit application that meets the required standards and approved checklist demonstrating that the electric vehicle charging station will not have a specific adverse impact on public health or safety.

2. Denial. The building official shall not approve a complete permit application where it is found that the proposed electric vehicle charging station would have a specific adverse impact upon the public health or safety and there is no known condition of approval that may be applied to mitigate the specific adverse impact given the circumstances of the application. The building official shall provide to the applicant in writing such finding when made.

D. Conditions of Approval.

1. If necessary to meet the finding provided in Section 15.86.050.C.1, the building official may impose condition(s) of approval, but such condition(s) shall be limited to those designed to mitigate the specific adverse impact upon the public health and safety at the lowest feasible cost.

2. The city shall not condition its approval on the approval of an association as that term is defined on Section 4080 of the State Civil Code.

(Ord. No. 659, § 3, 4-15-21; Ord. No. 675, § 12, 11-17-22)

15.86.060 Appeals.

A. An applicant may appeal the decision of the building official to the planning commission in accordance with the procedures set forth in Title 17, except that the appeal must be filed within seven (7) calendar days of the date on which the decision was rendered.

B. The city manager shall consider the appeal within thirty (30) days and may affirm, reverse or modify the director's decision concerning the department decision. The decision of the city manager shall be final.

(Ord. No. 659, § 3, 4-15-21; Ord. No. 675, § 13, 11-17-22)

## Chapter 15.88 DARK SKY ORDINANCE

15.88.010 Title.

This chapter shall be known as the "Brisbane Dark Sky Ordinance."

(Ord. No. 687, § 1, 1-18-24)

15.88.020 Purpose.

The purpose of this chapter is to establish regulations and a process to review outdoor lighting in order to accomplish the following:

A. Minimize direct glare and prevent excessive lighting, thereby minimizing light pollution caused by inappropriate or misaligned light fixtures, and promoting common courtesy among neighbors;

B. Reclaim views of the night sky and thereby help preserve Brisbane's rural quality of life and the scenic value of this desirable visual resource;

C. Promote wildlife habitation and migration by minimizing light pollution;

D. Provide sufficient lighting where it is needed to promote safety and security on public and private property;

E. Allow flexibility in the style of outdoor lighting;

F. Provide standards for efficient and moderate use of lighting which balance energy use and economic impact;

G. Provide lighting standards that may evolve according to advancements in technology; and

H. Promote lighting practices and systems which conserve energy, decrease dependence on fossil fuels and limit greenhouse gas emissions consistent with the California Global Warming Solutions Act and other applicable state and federal law.

(Ord. No. 687, § 1, 1-18-24)

15.88.030 Definitions.

Notwithstanding the definitions in Chapter 17.02 of this Code, for purposes of this chapter only, the following words and phrases are defined as follows:

A. "Brisbane stars" mean outdoor star-shaped lighted structures customary to Brisbane.

B. "Correlated color temperature" or color temperature is a specification of the color appearance of the light emitted by a light source, measured in Kelvin (K). Warmer color temperatures are a lower number, and cooler color temperatures are a higher number.

C. "Curfew" means the time of day when lighting restrictions, based on zoning district, are in effect.

D. "Developed lot area" means the portion of a lot that is covered or occupied by structures and includes any finished surface, such as a slab or deck, which is covered by a roof or other solid covering with at least seven (7) feet of clearance, other than an eave or overhang, and includes also cantilevered bays and other enclosed architectural projections which contain floor or seating area.

E. "Directional lighting" means methods of directing light downward, rather than upward or outward, with the intention of directing light where it is needed.

F. "Dynamic lighting" means lighting that changes intensity or color rapidly during use.

G. "Fully shielded" means a light fixture constructed and installed in such a manner that all light emitted, either directly from the lamp or a diffusing element, or indirectly by reflection or refraction from any part of the fixture, is projected below the horizontal plane (from the bottom of the lamp).

H. "Glare" means light entering the eye directly from a light fixture or indirectly from reflective surfaces that causes visual discomfort or reduced visibility to a reasonable person.

I. "Hardscaping" means permanent hardscape improvements on a site, including, but not limited to, parking lots, decks and patios, docks and piers, drives, entrances, curbs, ramps, stairs, steps, medians, walkways, and non-vegetated landscaping that is ten (10) feet or less in width. Materials may include, but are not limited to, concrete, asphalt, stone, gravel, or wood timbers. Hardscaping does not include the footprint of buildings.

J. "Internally illuminated signage" means any signage that is illuminated by an interior light source, which is primarily designed to illuminate only the sign.

K. "Lamp" means, in generic terms, a source of optical radiation (i.e., "light"), often called a "bulb" or "tube." Examples include incandescent, fluorescent, high-intensity discharge (HID) lamps, and low-pressure sodium (LPS) lamps, as well as light-emitting diode (LED) modules and arrays.

L. "Light pollution" means the material adverse effect of artificial light, including, but not limited to, glare, light trespass, sky glow, energy waste, compromised safety and security, and impacts on the nocturnal environment, including light sources that are left on when they no longer serve a useful function.

M. "Light trespass" means a condition in which artificial light emitted from a luminaire on one property, not inclusive of light incidentally scattered or reflected from adjacent surfaces, is directed in such a manner that the light source is visible from any other property.

N. "Lumen" means the common unit of measure used to quantify the amount of visible light produced by a lamp or emitted from a light fixture (as distinct from "Watt," a measure of power consumption).

O. "Luminaires" means outdoor light fixtures as defined in this section.

P. "Outdoor light fixtures" means outdoor illuminating devices, lamps and similar devices, including solar powered lights, and all parts used to distribute the light and/or protect the lamp, permanently installed or portable; synonymous with "luminaires."

Q. "Outdoor recreational facility" means outdoor athletic and sports areas, such as ball fields, courts, swimming pools, skate parks and similar, but does not mean or include trails or playgrounds.

R. "Seasonal lighting" means lighting installed and operated in connection with holidays or traditions; Brisbane stars are considered separately for the purposes of this chapter.

S. "Security lighting" means lighting intended to detect intrusions or other criminal activity occurring on a property or site.

T. "Skyglow" means the brightening of the nighttime sky that results from scattering and reflection of artificial light by air molecules, moisture, and dust particles in the atmosphere, caused by light directed or reflected upwards or sideways and reduces one's ability to view the night sky.

U. "String lights" means light sources connected by free-strung wires or inside of tubing resulting in several or many points of light.

(Ord. No. 687, § 1, 1-18-24)

15.88.040 Applicability.

A. All existing outdoor light fixtures installed prior to the effective date of the ordinance from which this chapter is derived shall conform to the provisions of this chapter according to the compliance schedule set forth in Section 15.88.100.

B. All outdoor light fixtures installed or replaced after the effective date of the ordinance from which this chapter is derived shall comply with this chapter.

C. For any property subject to this chapter and also regulated by permit conditions pertaining to outdoor lighting, the more restrictive provisions in terms of minimizing light pollution shall apply.

D. Nothing in this chapter shall prohibit a declaration of covenants, conditions, and restrictions for private enforcement from further restricting lighting so long as it meets the minimum standards detailed in this chapter.

E. The following lighting and activities are not regulated by this chapter:

1. Indoor lighting.

2. Construction or emergency lighting provided such lighting is temporary, necessary, and is discontinued immediately upon completion of the construction work or termination of the emergency; provided, however, construction or emergency lighting shall be deployed to comply with the ordinance to the greatest practical extent.

3. Building or premises address identification lighting that complies with the minimum applicable building or health and safety requirements, as determined by the building official; provided however, such lighting shall be deployed to comply with this chapter to the greatest practical extent, with the exception of curfew requirements.

4. Low-intensity landscape lighting which is directed downward and no greater than three hundred (300) lumens per fixture; or low-intensity landscape lighting which is dynamic lighting and no more than one hundred (100) lumens per fixture.

5. Any form of lighting whose use preempts this chapter is exempt from this chapter.

6. Short-term lighting associated with activities that are otherwise exempt from discretionary or ministerial permitting by the city; provided, however, such lighting shall be deployed to comply with this chapter to the greatest extent practical.

7. Brisbane School District athletic fields and parking lot lights.

8. Combustible fuel lighting (i.e., fire pits, lanterns, or torches) when used temporarily in occupied areas.

9. Fire alarm notification appliances.

F. Brisbane stars are subject only to the curfew requirements of [Section] 15.88.050.

G. Internally illuminated signage is subject only to the curfew and total illumination maximums established by Section 15.88.050 of this chapter.

H. Streetlights only as covered under [Section] 15.88.070.

I. Recreational and athletic fields only as covered under [Section] 15.88.080.

J. Lighting at building entrances is subject to all requirements of this chapter except for the curfew requirements in subsection 15.88.060 E of this chapter.

(Ord. No. 687, § 1, 1-18-24)

15.88.050 Lighting levels by zoning district.

Table 15.88.050

|  |  |  |  |
| --- | --- | --- | --- |
| Zoning District | Maximum lumens per SF of hardscape | | Maximum lumens per SF of developed lot area |
| O-S | 0.35 | |  |
| MLB, R-BA | 0.875 | |  |
| NCRO-2, PAOZ-1, PAOZ-2, PD (residential uses only), R-1, R-2, R-3, R-MHP |  | | 1.75 |
| NCRO-1, SCRO-1, SP-CRO, HC, M-1, TC-1, TC-2, C/PU | 3.5 | |  |
| All other zoning districts and uses not named | | Determined at time of application or closest applicable district as determined by the Community Development Director | |

(Ord. No. 687, § 1, 1-18-24)

15.88.060 Citywide requirements.

A. Shielding.

1. Except as provided in paragraph 2 of this subsection A of this section, all outdoor light fixtures shall be fully shielded.

2. Exceptions to the full shielding requirement include:

a. String lights that are no more than three hundred (300) lumens per fixture (string), or no more than one hundred (100) lumens per fixture for dynamic lighting that changes intensity or color rapidly during use, when used in occupied residential and commercial decks or patios.

b. Seasonal lighting during the period specified in Section 15.88.060 F.

c. Lighting that illuminates a United States or California flag and the flagpole to which the flag is affixed, provided these luminaires shall be shielded as necessary so that the light source is not visible from the property line.

B. Light trespass is prohibited, except for fixtures exempted from this chapter or from shielding requirements in subsection 15.88.060 A of this section.

C. Location of Outdoor Lighting. Except as required for security lighting purposes as determined by the building official, the following limitations are imposed on the location of outdoor lighting:

1. Lighting around the perimeter of a site is prohibited, except where it is controlled by motion sensor which extinguishes the light no later than ten (10) minutes after activation.

2. For residential sites, outdoor lighting shall only be used within fifty (50) feet of residentially habitable buildings or swimming pools, driveways and walkways.

D. Lighting Color (Color Temperature). The correlated color temperature of all outdoor lighting shall be three thousand (3,000) Kelvin or less except for seasonal lighting.

E. Curfew.

1. Residential Uses: All lighting subject to this chapter shall be extinguished no later than 10:00 p.m., except lighting at building entrances, parking areas and driveways, and lighting activated by motion sensor which extinguishes ten (10) minutes after activation.

2. Commercial Uses:

a. All lighting, including all illuminated advertising signage, shall be extinguished no later than 10:00 p.m. or close of business, whichever is later, except lighting at the building entrances and driveway egress points, and lighting activated by motion sensor which extinguishes ten (10) minutes after activation.

b. Automated control systems, such as motion sensors and timers, shall be used to meet the curfew requirements for commercial uses. Photocells or photocontrols shall be used to extinguish all outdoor lighting automatically when sufficient daylight is available. Automated controls shall be fully programmable and supported by battery or similar backup.

F. Seasonal lighting shall be allowed from September 15 to January 31 only, subject to curfew requirements established in Section 15.88.050.

G. All outdoor lighting shall comply with applicable regulations in the California Building Standards Code, as may be amended from time to time.

(Ord. No. 687, § 1, 1-18-24)

15.88.070 Streetlights.

A. Publicly-owned acorn-style decorative lights, such as those on Visitacion Avenue and in the Ridge neighborhood, are not subject to the shielding requirements of subsection A of Section 15.88.050 until such time as an approved program for replacement of said lights is in place. Once that program is in place, replacement lights shall be fully shielded.

B. The lumen output of each streetlight shall be the lowest reasonable lumen output to meet safety standards but in no case greater than ten thousand (10,000) lumens.

C. Lamps in all streetlights shall be replaced upon burnout with lamps which meet the color temperature and lumen requirements of this chapter.

(Ord. No. 687, § 1, 1-18-24)

15.88.080 Recreational and athletic field facilities.

For outdoor recreational and/or athletic field facilities, the following standards shall apply:

A. Illuminating Engineering Society (IES) lighting guidelines according to the appropriate class of play or activity;

B. Field lighting provided exclusively for illumination of the surface of play and viewing stands, and not for any other applications;

C. Illuminance levels must be adjustable based on the task (e.g., active play vs. field maintenance);

D. Off-site impacts of the lighting will be limited to the greatest practical extent possible;

E. Lights must be extinguished by 8:00 p.m. except when the facilities are being used for active play and the lights are equipped with a timer;

F. Timers that automatically extinguish lights must be installed to prevent lights being left on accidentally overnight.

(Ord. No. 687, § 1, 1-18-24)

15.88.090 Deviation permit procedures.

A. Deviations from the lighting standards provided in this chapter may be approved for private properties if approved by the community development director. Deviations from the lighting standards provided in this chapter for public properties may be approved by the director of public works.

B. Applications to deviate from the lighting standards shall include the following information:

1. A site plan depicting the location of proposed lighting on the site;

2. A lighting inventory that provides, at minimum:

a. The brightness (in lumens) and correlated color temperature (in Kelvin) of each luminaire;

b. The height of each fixture;

c. The directional angle of each fixture;

d. The character of shielding for each luminaire, if any;

e. Identification of luminaires that diverge from the standards of this chapter and are subject to the deviation request;

f. Detailed description of the circumstances which necessitate the deviation;

3. Such other data and information as may be required by the community development director or the public works director.

C. The deviation may be granted if the following findings are made:

1. There are unique circumstances affecting the subject property or unique design and land use characteristics that make it infeasible or impractical to comply with strict application of the lighting standards detailed in this chapter.

2. The proposed deviation will achieve the intent of this chapter to the maximum extent feasible.

D. Notice of the community development or public works director's decision to approve or deny the requested deviation shall be mailed to owners of property within a three hundred-foot radius of the subject property and posted in compliance with Chapter 1.12 of this Municipal Code. The notice shall describe the requested deviations, the community development director's action to approve or deny the request, and right to appeal the decision to the city manager pursuant to subsection E of Section 15.88.090.

E. Appeal Procedures.

1. An appeal of the community development director's decision shall be in writing and filed with the city clerk within fifteen (15) days after the date of the notice described in subsection D of Section 15.88.090. The appeal shall be accompanied by a fee, as set by the city council, and shall clearly state the reason for appeal.

2. Upon receipt of such appeal, the city clerk shall notify the community development director and the applicant and shall set a time for an administrative appeal hearing with the city manager as soon as practical but within thirty (30) days after the receipt of such appeal.

3. Notice of the appeal hearing shall be mailed to the applicant, property owner, appellant, and owners of property within three hundred (300) feet of the subject property.

4. The city manager shall conduct a de novo hearing of the application. At the close of the hearing, the city manager may affirm, reverse or modify the decision of the director, or refer the matter to the director for such further consideration as may be directed by the city manager. The city manager's decision following the appeal hearing will be final.

(Ord. No. 687, § 1, 1-18-24)

15.88.100 Conflicts with other laws.

In the event the provisions in this chapter conflict with federal or state law such that this chapter may be preempted, this chapter shall be applied in a manner intended to carry out all provisions of law to the maximum extent feasible. When there is an irreconcilable conflict between the provisions of this chapter and the requirements of federal or state law such that the provisions of this chapter are preempted, the provisions of federal or state law shall prevail over the provisions contained in this chapter but only to the extent necessary to avoid preemption.

(Ord. No. 687, § 1, 1-18-24)

15.88.110 Application of chapter to existing nonconforming lighting.

A. Effective Date. The effective date of this chapter shall be March 1, 2024.

B. The following requirements shall apply to existing outdoor light fixtures, except streetlights covered in Section 15.88.070, within one year of the effective date of the ordinance from which this chapter is derived:

1. Existing outdoor light fixtures with the ability to be redirected shall be directed downward to minimize sky glow, glare and in a manner to minimize light trespass onto adjacent properties.

2. Outdoor light fixtures that have adjustable dimmers shall be dimmed to comply with Section 15.88.060 to minimize glare and light trespass onto adjacent properties.

3. Outdoor light fixtures that are motion sensor equipped shall be programmed to extinguish not more than ten (10) minutes after activation.

4. Outdoor light fixtures with removeable lamps shall utilize bulbs meeting this chapter's color and lumen thresholds.

C. Compliance Period. Notwithstanding the provisions in section B of this section and Chapter 17.38 (Nonconforming Structures and Uses), a property owner shall comply with the remaining requirements of this chapter by the following compliance deadlines. Any nonconforming lighting still in place after the compliance deadline shall remain extinguished at all times.

1. Existing outdoor lighting in non-residential zoning districts shall comply by March 1, 2029 [five (5) years from the effective date].

2. Existing outdoor lighting in residential zoning districts shall comply by March 1, 2034 [ten (10) years from the effective date].

3. Existing streetlights and other lighting at city facilities shall comply by March 1, 2039 [fifteen (15) years from the effective date].

D. Extension. A private property owner may apply for an extension of these compliance deadlines by submitting a request to the community development director ninety (90) days before the compliance deadline detailing why an extension is needed. With the exception of lighting provided for security purposes, any noncompliant lighting shall remain extinguished while the request is pending. Upon demonstration of good cause for providing a property owner additional time to comply with the requirements of this section, the community development director may extend the property owner's time to comply and/or may require a plan for compliance that requires partial compliance in advance of full compliance. For purposes of this section, the term "good cause" shall mean a significant financial or other hardship which warrants an extension or conditional extension of the time limit for compliance established herein. In no instance shall the community development director issue an extension of the compliance period in excess of one year's time. The community development director's decision shall be appealable pursuant to the provisions of Chapter 17.52 of this Code.

(Ord. No. 687, § 1, 1-18-24)

15.88.120 Enforcement and penalties.

Any violation of the provisions of this chapter shall be subject to the provisions of Title 1Chapters 1.14, 1.16, and 1.18 of this Code.

(Ord. No. 687, § 1, 1-18-24)

1. Editor's note(s)—Ord. No. 579, § 1, adopted June 2, 2022, repealed the former Ch. 15.01, §§ 15.01.010—15.01.410, and enacted a new Ch. 15.01 as set out herein. The former Ch. 15.01 pertained to similar subject matter and derived from Ord. 346 § 2(part), adopted in 1989; Ord. 385 § 1, adopted in 1993; Ord. 475 §§ 1—3, adopted in 2002; Ord. No. 554, § 50, adopted Jan. 18, 2011; and Ord. No. 556, § 1, adopted Feb. 22, 2011. [↑](#footnote-ref-1)
2. Editor's note(s)—Ord. No. 552, § 1, adopted December 6, 2010, repealed the former Chapter 15.04, §§ 15.04.010—15.04.090, and enacted a new Chapter 15.04 as set out herein. The former Chapter pertained to adoption of uniform codes and derived from Ord. No. 526, 2007 and Ord. No. 527, 2008. [↑](#footnote-ref-2)
3. Editor's note(s)—Ord. No. 643, § 4, adopted Dec. 12, 2019, amended Ch. 15.44 in its entirety to read as herein set out. Former Ch. 15.44, §§ 15.44.010—15.44.225, pertained to the same subject matter, and derived from Ord. No. 525, § 2 (part), adopted 2007; Ord. No. 551, §§ 2—6, adopted Dec. 6, 2010; Ord. No. 583, §§ 14—25, adopted May 19, 2014; and Ord. No. 613, §§ 6—17, adopted Jan. 5, 2017. [↑](#footnote-ref-3)
4. Editor's note(s)—Ord. No. 607, § 2, adopted April 7, 2016, amended Chapter 15.70 in its entirety to read as herein set out. Former Chapter 15.70, §§ 15.70.010—15.70.150, pertained to similar material, and derived from Ord. No. 382, 1992; Ord. No. 544, adopted June 7, 2010; Ord. No. 554, adopted January 18, 2011 and Ord. No. 556, adopted February 22, 2011. [↑](#footnote-ref-4)
5. Editor's note(s)—Ord. No. 613, § 19, adopted January 5, 2017, repealed the former Chapter 15.75, §§ 15.75.010—15.75.090, and enacted a new Chapter 15.75 as set out herein. The former Chapter 15.75 pertained to similar subject matter and derived from Ord. No. 493, 2004; Ord. No. 494, 2004; Ord. No. 554, adopted January 18, 2011 and Ord. No. 556, adopted February 22, 2011. [↑](#footnote-ref-5)