



BRISBANE CITY COUNCIL  
ACTION MINUTES

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**SPECIAL MEETING**

**THURSDAY, DECEMBER 3, 2015**

*BRISBANE CITY HALL, 50 PARK PLACE, BRISBANE*

**7:00 P.M. (in the City Hall Large Conference Room)**

This portion of the meeting was called to order at 7:13 p.m.

**A. Council will discuss selection of Mayor and Mayor Pro-Tem which will happen at their meeting on Tuesday, December 8, 2015**

Michele Salmon expressed her opinion that CM Lentz should not be selected as the next Mayor due to his busy schedule as he was running for a seat on the San Mateo County Board of Supervisors.

Mayor O'Connell gave a brief review of the history of the selection of Mayor and Mayor Pro Tem and the reason that the Council has a pre-meeting to discuss before the actual vote takes place at the City Council Reorganization meeting.

After Councilmember discussion it was the consensus of the current Councilmembers and Councilmember elect Madison Davis that Mayor Pro Tem Lentz should be selected as the next Mayor and that CM Liu should be selected as the next Mayor Pro Tem.

**7:30 P.M. CALL TO ORDER – FLAG SALUTE (in the Community Meeting Room)**

Mayor O'Connell called the meeting to order at 7:37 p.m. and led the flag salute.

**ROLL CALL**

Councilmembers present:	Conway, Lentz, Liu, Miller, and Mayor O'Connell
Councilmembers absent:	None
Staff present:	City Manager Holstine, City Clerk Spediacci, Deputy City Attorney Stricker, Administrative Services Director Schillinger, Police Chief Macias

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

Councilmembers asked that the meeting be closed in memory of Brisbane resident Jane Kinsler and in the victims of mass shooting in San Bernardino.

With those additions, CM Conway made a motion, seconded by CM Miller, to adopt the agenda as amended.

## **ORAL COMMUNICATIONS NO. 1**

Michele Salmon expressed her disappointment in the Council action at the last meeting in approving the re-zoning of the former VWR site before getting the environmental report.

Tony Verreos read a Christmas poem.

## **OLD BUSINESS**

- A. Consider the Introduction of Ordinance 602 (1) Enacting Chapters 8.45 and 8.46 of the Brisbane Municipal Code to Prohibiting Smoking of Tobacco Products and other Products, including the use of e-cigarettes and Smoking and Vaping of Medical Marijuana, in Public Places, businesses patronized by the Public and Multi-unit residences, and to impose certain restrictions on the distribution and sale of tobacco products and e-cigarettes; and (2) Amending Chapter 8.44 of the Brisbane Municipal code to extend the city’s existing tobacco retail permit requirements to electronic cigarette retailers.**

Deputy City Attorney Stricker said that the purpose of this item was for the Council to determine whether to follow the recommendation of the Health and Safety Committee (“Committee”) to introduce an ordinance regulating smoking and vaporizing (also called “vaping”) of a wide variety of substances, imposing certain restrictions on the sale and distribution of tobacco products including e-cigarettes, and bringing the City’s existing tobacco retailer permit requirements into conformity with the County’s parallel permitting requirements by extending the City’s requirements to retailers of e-cigarettes.

She said that Council previously considered an earlier version of the ordinance and sent the proposed ordinance back to the Committee for further consideration and possible revision.

She said that, if adopted, the proposed ordinance currently before Council would impose a variety of new regulations in Brisbane. The proposed ordinance would:

1. Ban smoking of traditional tobacco products and other products in certain public places and businesses patronized by the public;
2. Ban the use of e-cigarettes and vaporizing of other substances in certain public places and businesses patronized by the public;
3. Ban smoking in common areas and individual units of multi-unit residences;
4. Ban the use of e-cigarettes and vaporizing of other substances in common areas and individual units of multi-unit residences;

5. Apply to the smoking of marijuana and does *not* contain an exemption for the smoking of medical marijuana in individual units of a multi-unit residence;
6. Apply to the vaporizing of marijuana and does *not* contain an exemption for the vaporizing of medical marijuana in individual units of a multi-unit residence;
7. Impose limited restrictions on the distribution and sale of tobacco products, including e-cigarettes; and
8. Extend the City's existing tobacco retail permit requirements to e-cigarette retailers.

She then reviewed the background of the current laws in the State, San Mateo County, Brisbane, and other jurisdictions and then discussed the additional issues raised at the last City Council meeting including designated smoking areas in multi-unit residences, the medical marijuana exemption by the County, the County's ordinance allowing businesses to apply for an exemption, and the citations to support for findings attached to the staff report.

Councilmembers asked initial questions relating to enforcement, the effective date of the County's ordinance, smoking on public sidewalks, and the unknown long-term exposure to E-cigarettes.

San Mateo County's Director of Tobacco Prevention Program Shaunda Scruggs gave a Powerpoint Presentation about the scientific evidence of exposure to tobacco smoke, explaining what E-Cigarettes are and what is currently known about their toxicity, California Youth E-Cigarette Use and Marketing, and Multi-Unit Housing and E-Cigarette Policies Statewide.

Annette Salgado said she was a high school sophomore in South San Francisco and requested that the Council prohibit smoking in multi-unit housing.

Tony Verreos thanked the Council for taking the time to consider this ordinance and said by passing this ordinance Brisbane would join twenty other cities in San Mateo County.

Rick Fiara said he was a 30-year resident and a smoker for 40 years and questioned whether the Police Department should have to go out and enforce cigarette enforcement calls.

Denise Escovese said she was also a high school student in South San Francisco also encourage the Council to adopt the proposed ordinance and indicated that vape pens are often used for marijuana and tobacco.

Marilyn Recks a volunteer for many organizations in San Mateo County and encouraged the Council to support the proposed ordinance.

Karen Cunningham advocated for a tiered approach and allowing building owners make the decision of whether their building should be smoking or non-smoking.

Michele Salmon expressed her opinion that the proposed ordinance was going too far and asked the Council to take a step back and create something that was positive and enforceable.

Dr. Sabharwal spoke about the constitutional rights of children and said it was time for the Council to make a decision.

Joel Diaz submitted studies for the record from the American Academy of Pediatrics on tobacco-smoke exposure in children who live in multi-unit housing and from the Chronic Disease Center on Secondhand Smoke. He also spoke about personal property rights.

Renee Marmion said that the subject and conversation was very interesting and educational and gave her perspective having resided in both a single family home and a multi-unit residence.

Tony Verreos responded to an earlier comment that this issue had not been given enough time or thought. He reviewed the many Council and Subcommittee meetings in which this subject had been discussed and asked that the City of Brisbane not be the last to adopt smoking regulations.

Karen Cunningham read an excerpt from an article San Mateo County Times regarding the San Mateo City Council seeking regulations to deal with the consequences of second hand smoke.

Michele Salmon asked to hear what the Police Chief had to say about the enforcement of this proposed ordinance.

Joel Diaz submitted for the record the studies that he had quoted earlier and then addressed some of the earlier comments that were made regarding one-hour separations in multi-unit residences. He asked that the Council move slowly before taking away people's rights.

Dr. Sabharwal said that it was time for the Council to take a vote on this issue and should remember to consider the constitutional rights of the child.

Mayor O'Connell asked Police Chief Macias about enforcement. Chief Macias said that they would first refer citizens to the County for education and then enforce the proposed laws only when non-compliance was an issue.

Councilmembers asked questions of City Attorney Stricker and discussed property rights, use rights, constitutional rights, where the common areas of smoking could be, the decreased signage requirements on the current version of the ordinance, and smoking on sidewalks in front of schools.

Councilmembers also raised concerns about making additional efforts to educate and seek input from homeowner associations and landlords about any proposed regulations before introducing an ordinance regulating smoking or vaporizing in multi-unit residences.

Councilmembers directed staff to amend the proposed new section 8.45.040 to prohibit smoking or vaporizing at all public transit "shelters" rather than public transit "stops" and to make a clarifying amendment to one of the findings to read "The United States Fire Administration recommends that if people smoke, they smoke outdoors".

The Council then went through the list presented earlier (numbered 1-8 above) and found there was consensus on moving forward on Items 1, 2, 7, and 8.

After discussion, they directed staff to delete the proposed new Chapter 8.46, the chapter that would have imposed restrictions on smoking and vaporizing in multi-unit residences pending further outreach and attendance at HOA meetings to give information and get input from the HOA's and landlords.

With those further changes, CM Miller made a motion, seconded by CM Conway, to introduce the Ordinance as amended. The motion carried unanimously by all present.

CM Miller then made a motion, seconded by CM Conway, stating that it is the Council's intent to implement the control of smoking in multi-unit residences within the next year, but before that happens an extensive educational outreach stating the nature and reason for the ordinance be conducted with input from all landlords and homeowner associations. The motion carried unanimously by all present.

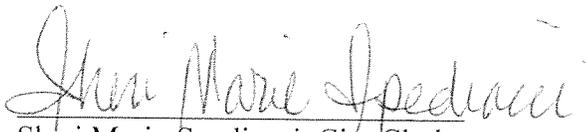
Councilmembers then directed the Health and Safety Subcommittee to meet with Ms. Scruggs and develop a communication and outreach plan to bring back to Council for approval.

Ms Scruggs said she, and contractors hired by her office, would be happy to help make a plan and then conduct the extensive outreach.

CM Miller read a letter received from County Supervisor Carol Groom offering the County's assistance in the education process.

#### **ADJOURNMENT**

The Council meeting was adjourned at 11:51 p.m. in memory of Jane Kinsler and the victims in San Bernardino mass shooting.

  
Sheri Marie Spediacci, City Clerk