



## CITY COUNCIL AGENDA REPORT

**Meeting Date:** July 18, 2024

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

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

### **Recommendation:**

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

### **Background:**

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

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

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

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

## **Discussion**

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

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

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

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

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

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

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

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

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

### **Alternative to Placing the Item on the Ballot**

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

### **Fiscal Impact**

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

### **Environmental Review**

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

**Attachments:**

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

*Jeremy Dennis*

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Jeremy Dennis, City Manager

*Ingrid Padilla*

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Ingrid Padilla, City Clerk

*Michael H. Roush*

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Michael Roush, Legal Counsel

**RESOLUTION NO. 2016-06**

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

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

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

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

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



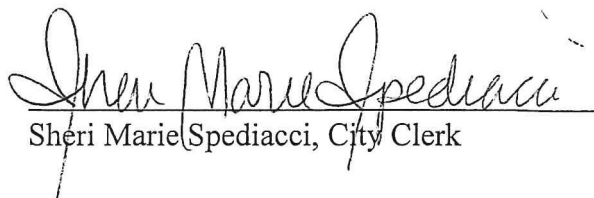
Clifford R. Lentz, Mayor

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

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

NOES: None

ABSENT: None



Sheri Marie Spediacci, City Clerk

Exhibit A

CITY OF BRISBANE APPOINTMENT OF MAYOR AND MAYOR PRO TEMPORE MEASURE

**ORDINANCE NO. \_\_\_\_**

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

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

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

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

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

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

**Section 1. Ordinance.**

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

**Section 2.40.010. Definitions**

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

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

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

Section 2.40.030 Appointment Procedures.

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

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

## Section 2. Environmental Clearance

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

## Section 3. Severability

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

## Section 4. Effective Date.

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

Mayor of the City of Brisbane

Attest:

Ingrid Padilla, City Clerk

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

YESES

NOES

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

Ingrid Padilla, City Clerk



Approved as to form:

A handwritten signature in blue ink, appearing to read 'T. R. McMorrow', with a long horizontal flourish extending to the right.

Thomas R. McMorrow, City Attorney

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

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

## B. Timing

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

## C. Consequences

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

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