



## CITY COUNCIL AGENDA REPORT

**Meeting Date:** November 17, 2022

**From:** John Swiecki, Community Development Director

**Subject:** Urgency Ordinance adopting the 2022 California Building Standards Code with local amendments and finding that this Ordinance categorically exempt from environmental review under CEQA Guidelines Section 15308, Actions by Regulatory Agencies for Protection of the Environment.

### Community Goal/Result

Safe Community - Residents and visitors will experience a sense of safety

Ecological Sustainability - Brisbane will be a leader in setting policies and practicing service delivery innovations that promote ecological sustainability

### Purpose

To adopt the most recent version of the California Building Standards Codes (Code of Regulations, Title 24 or CBC) and the International Property Maintenance Code, including amendments to the CBC and existing reach codes, e.g., fire protection, on-site energy generation, etc., with the new provisions to be in full force and effect January 1, 2023.

### Recommendation

Adopt the attached draft ordinance on an urgency basis.

### Background

Every three years a new set of construction codes is published by the State. Local adoption of these codes allows the City to enforce them under the authority of the Brisbane Municipal Code (BMC). A city may also adopt local modifications to these codes based on certain findings. Whether or not a city elects to adopt the State codes by local ordinance, the State codes automatically become effective January 1, 2023.

The last Code adoption cycle was in 2019 when the City amended Chapter 15.04 of the BMC, to adopt the 2019 Edition of the California Building Standards Code. At the same time, the City also amended other chapters within Title 15 of the BMC to adopt local “reach codes” pertaining to fire protection, on-site energy generation, building electrification, and electric vehicle (EV) charging infrastructure.

This draft ordinance was prepared collaboratively between the Planning, Building, Public Works and Fire Departments and in consultation with the City Attorney. An informational summary of the draft ordinance was provided to the Planning Commission at its last meeting and the City Council Planning Issues Subcommittee received a brief report on reach codes in October.

## Discussion

**Building Code and Property Maintenance Code Adoption:** The proposed ordinance would adopt the following construction codes by updating BMC Chapter 15.04, Adoption of Construction Codes:

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.

Additionally, in order to keep current with property maintenance provisions, it is recommended that the 2021 International Property Maintenance Code be adopted to replace the 2018 edition.

As indicated above, adoption of the above referenced codes would allow the City to enforce the said codes under the authority of the BMC.

**Brisbane Construction Code:** BMC Chapter 15.04 is one of many chapters under Title 15 that together regulate buildings and construction. A number of these chapters have not been

amended since 1978 and are obsolete, remnants of a previous iteration of the Brisbane Construction Code that have been superseded by the CBC. The draft ordinance (Section 15) would delete out-of-date BMC Chapters 15.08 – Organization and Enforcement, 15.12 – Permits and Fees, 15.16 - Inspections, and 15.20 – Certificates of Occupancy.

**Energy and Reduction of Greenhouse Gas Emissions Reach Codes:** To supplement the updated State codes noted above, it is proposed that the City maintain previously adopted local modifications, known as “reach codes”, to address local fire hazards as well as energy efficiency and greenhouse gas (GHG) emissions. It is also proposed that the City delete reach codes that are no longer necessary due to updated CBC requirements that supersede the City’s current reach codes.

The table below identifies the City’s existing reach codes related to energy and GHG reductions and summarizes staff’s proposed action.

<b>Reach Code</b>	<b>Recommended Action</b>
Onsite Energy Generation (BMC Ch 15.81)	Repeal
New Buildings Electrification (BMC Ch 15.83)	Repeal and replace with similar reach code
EV Charging Infrastructure (BMC Ch 15.84)	Retain with no modifications ( <i>minor amendment(s) to application streamlining under BMC Ch 15.86 proposed</i> )

**BMC Chapter 15.81 - On-Site Energy Generation: This reach code is superseded by the 2022 CBC and staff proposes it to be deleted (see Section 15 of the draft ordinance).**

Current City reach codes require that new residential and non-residential buildings include limited on-site solar energy generation. The 2022 CBC requires all new residential and nonresidential building to install a new solar energy and battery storage system; State code supersedes this local reach code.

**BMC Chapter 15.83 - Building Electrification: Staff recommends eliminating blanket exceptions (see Sections 1, 4, and 15 of the draft ordinance).**

The City adopted BMC Chapter 15.83 during the last cycle in 2019. It requires all newly constructed residential and nonresidential buildings to be all-electric with some exceptions. For example, residences could have combustion cooking appliances and fireplaces, and life science buildings and buildings that demonstrate non-electric building components are essential as a core component of the intended building use, such as a barbeque-themed restaurant, pizza oven were entirely exempt. New buildings would not be prohibited from the use of natural gas under the 2022 CBC, however, building electrification is still considered an appropriate prescriptive reach code. In addition to solar power generation, building electrification remains an important step in further reducing GHG emissions and the City’s current reach code still exceeds the requirements of the CBC. It is recommended t this reach code be retained to:

- Reduce the use of natural gas in buildings which improves indoor environmental quality and health and welfare;
- Reduce the use of natural gas which will reduce the natural gas infrastructure and fire risk over time; and
- Promote the health and welfare of residents, workers, and visitors to the City.

As noted above, the City's adopted reach included blanket exemptions for certain businesses and appliances. Given the importance of eliminating gas to achieve long term climate goals, staff believes the existing blanket exemptions are no longer warranted or appropriate. The amendments proposed in the draft ordinance would eliminate all current exceptions, unless 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." If an exception were granted, subject to approval from the Building Official, the applicant would still be required to pre-wire the building to be all-electric as condition of approval. This language would be consistent with more recent all-electric reach codes adopted by cities like San Mateo, Belmont, and San Carlos. At the City Council Planning Subcommittee meeting, it was mentioned that Millbrae's reach code had an absolute prohibition on gas with no feasibility exemption for any uses, including R&D. In researching this matter further, staff verified that Millbrae's proposed reach code includes a feasibility exemption similar to the other cities listed above.

The draft ordinance would repeal BMC Chapter 15.83, which amended the 2019 California Energy Code, and replace with local amendments to CALGreen (Part 11 of the CBC). If a reach code amends the Energy Code (Part 6 of the CBC), jurisdictions need to file an application to the California Energy Commission to demonstrate that any local amendments are cost effective and would save more energy than those required by the State. This is done by submitting a detailed cost effectiveness study to the State. This requirement does not extend to other parts of the CBC, meaning, amending Part 11 rather than Part 6 of the CBC would achieve the same outcome (requiring all new construction, both residential and nonresidential buildings be all-electric) while simplifying adoption of the reach code.

**BMC Chapter 15.84 - EV Charging Infrastructure: This reach code is still considered a reasonable prescriptive reach code (see Section 1 of the draft ordinance).**

The City adopted BMC Chapter 15.84 during the last cycle in 2019. It requires specific EV chargers and EV parking spaces in new development projects. Per the City's Sustainability Manager, this reach code remains stronger than the new 2022 CBC as well as the new EV reach codes proposed by the Bay Area Reach Codes Coalition. This reach code is recommended to be retained and readopted without revision.

A minor amendment to BMC Chapter 15.86, which is related to EV charger permit streamlining for existing development and discussed below under “Other Modifications”, does not change the requirements under this reach code that applies only to new development projects. It is recommended to retain this reach code to increase EV charging infrastructure to encourage electric vehicle adoption, which in turn reduces GHG emissions and improves air quality and health and welfare.

**Fire Code:** Since 2007, the City has adopted local modifications to the Fire Code that address items such as automatic fire sprinklers on certain structures, fire access turnarounds on dead end roads, removal of combustible materials from property, limitations on storage of explosives and flammable liquids, and other provisions. Local modifications to the Fire Code are again proposed in BMC Chapter 15.44 of the attached draft ordinance. In this cycle, the proposed updates suggested by North County Fire Authority are for clarification and/or reorganization and do not substantively change the previously approved modifications. Fire Code amendments are included as Section 5 of the draft ordinance.

**Express Findings Required for Local Amendments:** Section 17958 of the California Health and Safety Code provides that a local jurisdiction may make changes to the provisions within the State’s uniform codes that are published in the California Building Standards Code. Sections 17958.5 and 17958.7 of the Health and Safety Code require that for each proposed local change to those provisions in the uniform codes and published in the California Building Standards Code which regulate buildings used for human habitation, the City Council must make findings supporting its determination that each such local change is reasonably necessary because of local climatic, geological, topographical, or environmental conditions.

In the past, the City has made such findings for local modifications to the Fire Code based on Brisbane’s heavily vegetated hillsides; narrow, steep public streets and private access-ways; proximity to the San Andreas Fault; exposure to strong winds; and location immediately adjacent to protected habitat conservation areas subject to wildland fires.

While the findings for our fire reach codes have been made in past years, they must be repeated again as part of this Ordinance; the findings are in Section 1. The express findings, summarized below, have been modified to address other local modifications included within the Ordinance that make amendments to the Building Code and Green Building Standards Code of the 2022 CBC, something that has not been done previously.

1. Failure to address and significantly reduce GHG emissions could result in sea level rise, that could put at risk City homes and businesses, public facilities, and Highway 101.
2. The burning of fossil fuels used in gas appliances for the heating of buildings contributes to climate change and GHG emissions.
3. EV charging installations may help the City of Brisbane reduce its share of the GHG emissions that contribute to climate change.

4. All-electric new buildings benefit the health, safety, and welfare of Brisbane residents. Requiring all-electric construction without gas infrastructure will reduce the amount of GHG emissions produced in Brisbane.
5. The local amendments for all-electric new buildings are consistent with the goals of the Green Building Code.
6. The City is located near the San Andreas Fault and is subject to seismic activity that could potentially result in ground shaking and damage to structures, via shaking, slope failure, and liquefaction and potentially ignite fires throughout the City.
7. The City of Brisbane is located along the eastern slope of San Bruno Mountain, immediately adjacent to a protected habitat conservation area which is subject to wildland fires due to existing vegetation and a temperate climate with dry summer months. These factors create a substantial safety hazard to nearby residences and the natural environment. The City's existing development and vacant sites along eastern slope of San Bruno Mountain may be subject to slope movement resulting in potential hazards related to slope stability.
8. The City regularly experiences strong winds, with average velocities ranging from approximately 15 to 25 miles per hour and reaching high velocities of 50 miles per hour and these winds may significantly contribute to the spread of fire and increase the difficulty of fire suppression in the City or otherwise impact structures, such as patio covers.
9. The elimination of natural gas infrastructure in new buildings would reduce fire hazards in buildings near highly combustible wildland areas and the reduction of natural gas infrastructure in new buildings would reduce the hazards associated with gas leaks during seismic events.
10. Certain hillside areas of the City contain narrow, winding streets, with steep grades and congested parking and traffic, making access difficult for fire apparatus and equipment in the event of an emergency.
11. Numerous dwellings located within the upper hillsides can only be reached by means of private access ways which may not be adequately constructed or maintained for access by Fire Department vehicles.
12. Brisbane has a predominance of small lots, with many being in range of 2,500 to 5,000 square feet, and sound transmission from one lot can readily impact neighboring lots. The close proximity of the lots on steep topography could also exacerbate the impacts in the event of a structural or grading failure.
13. The City's topography, combined with its proximity to U.S. Interstate 101, which runs through its eastern edge, and its proximity to San Francisco International Airport (SFO),

located approximately 2 to 3 miles to the south, results in sound transmission from these sources throughout the City.

14. Brisbane's small residential lots on steep hillsides pose hazards of accidents associated with swimming pools due to the close proximity between the swimming pools and residences.
15. Brisbane has a large number of existing older buildings and structures, many of which were built without the benefit of building codes being in effect at the time, and the above outlined climatic, geological and topographic conditions combine to create hazardous conditions to these structures.

**Other Modifications:** The Ordinance also includes minor amendments to BMC Chapter 15.86 - Electric Vehicle Charging Station Permit Streamlining to address grammatical errors and new State legislation. The State passed AB 970 which builds upon AB 1236 passed in 2015 and amends California Government Code Section 65850.7. Effective January 1, 2023, AB 970 clarifies the timeline, or streamlining requirements, on permits for EV charging stations at existing buildings as follows:

- For projects with 1-25 stations at a single site, applications must be reviewed for completeness within 5 business days and approved/denied within 20 business days.
- For projects with 26 or more stations at a single site, applications must be reviewed for completeness within 10 business days and approved/denied within 40 business days.

The amendments within the draft ordinance are consistent with new State law, specifying the purpose and applicability of the chapter is pursuant to, "California Government Code Section 65850.7 or successor legislation." No change is proposed to the current EV charging infrastructure standards contained within BMC Chapter 15.84, which only applies to new development projects. Section 10 of the draft ordinance includes the modifications to BMC Chapter 15.86.

#### **Ordinance to be Adopted on an Urgency Basis**

The ordinance is proposed for adoption on an urgency basis because the 2022 Edition of the California Building Code becomes effective state-wide on January 1, 2023 and it is the community's interest of health and safety for the city's reach code provisions to be in full force and effect at that time. If the Ordinance were not adopted as an urgency ordinance, the local amendments made to the 2022 Edition of the California Building Code would not be in effect until mid-January 2023 due to the City Council's meeting schedule in December. A four-fifths vote of the City Council is needed to adopt the Ordinance on an urgency basis.

**CEQA Determination**

Adoption of the Ordinance is not subject environmental review under the California Environmental Quality Act (CEQA) in that it is categorically exempt under the CEQA Guidelines, Section 15308, Actions by Regulatory Agencies to Protect the Environment.

**Fiscal Impact**

None

**Measure of Success**

Application of updated standards to comply with State law and implementation of local amendments which protect public health and safety and help meet the goals of the City’s Climate Action Plan.

**Attachments**

1. Draft Urgency Ordinance adopting the 2022 California Building Standards Code with local amendments
2. “Redline” of the updates to the BMC

  
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 John Swiecki, Community Development Director

  
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 Clay Holstine, City Manager