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**MEMORANDUM**

TO: Brisbane City Council  
FROM: City Attorney  
RE: Establishment of Brisbane Housing Authority  
DATE: 1/27/2011

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As part of the Governor's proposal to abolish redevelopment agencies, unspent redevelopment housing funds would be transferred to "local housing authorities" to use for low and moderate income housing. Whether this proposal actually becomes law still remains to be seen, and even if some action is taken at the State level to abolish redevelopment agencies, exactly how that law will handle the disposition of housing funds cannot be predicted at this time. Moreover, the term "local housing authorities" has not been defined or clarified. For example, where would the funds go if a city (such as Brisbane) has not established a Housing Authority? We assume the funds would go to the San Mateo County Housing Authority. If that is the case, our objective would be to keep the funds under the control of the City by establishing a Brisbane Housing Authority to receive and administer the housing funds currently held by the Brisbane Redevelopment Agency.

It would be premature for Brisbane to establish a Housing Authority until the State actually takes some action on the Governor's proposal and it becomes clear that the Brisbane Redevelopment Agency will be abolished and the housing funds held by the Agency can be transferred to a newly formed Brisbane Housing Authority. In anticipation of such action becoming necessary in the future, the purpose of this Memo is to describe the process for establishment of a Housing Authority.

**General Information.**

Housing authorities are creatures of statute that are activated and conduct business only after the City Council has adopted a resolution declaring the need for the authority to function in the City. Health & Safety Code § 34240-34380<sup>1</sup>. The general purpose of housing authorities is to provide safe and sanitary residential dwelling accommodations for lower income residents. Housing authorities must conduct their operations in accordance

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<sup>1</sup> All section references in this Memo are to the California Health and Safety Code.

with the state law providing for their existence. A housing authority is considered a local agency, subject to the Brown Act.

### **Establishment of Housing Authority.**

Section 34242 provides that the City Council may adopt a resolution declaring the need for a housing authority if it makes either of the following findings:

- (a) That insanitary [sic] or unsafe inhabited dwelling accommodations exist in the city.
- (b) That there is a shortage of safe or sanitary dwelling accommodations in the city available to persons of low income at rentals they can afford.

The housing authority is governed by a five-member Housing Commission. At the election of the City Council, such Commission can either be a separate body of members appointed by the City Council (as in the case of the Planning Commission) or the Council members themselves may serve as the Commission (as in the case of GVMID). However, if the Authority has any tenants, they are entitled to representation (either as members of the Authority or as members of a separate commission). But this requirement would only apply if the Authority itself was the owner and operator of rental property.

If the Council has declared itself to be the commissioners of the Housing Authority but elects to establish a separate housing commission having members other than the City Council, it must do so by ordinance. §34291. This ordinance would govern the number of members, terms of office, qualification and method of appointment, removal and other organizational matters. The duties and responsibilities of the commission would also be defined by the ordinance.

### **Powers of the Housing Authority.**

The powers of the Authority related to housing include the following, as listed in Sections 34312 and 33312.3:

- (a) Prepare, carry out, acquire, lease, and operate housing projects for persons of low income;
- (b) Provide for the construction, reconstruction, improvement, alteration, or repair of housing projects;
- (c) Provide leased housing to persons of low income;
- (d) Provide financing for the acquisition, construction, rehabilitation, refinancing, or development of affordable housing;
- (e) Provide counseling, referral and advisory services to persons of low and moderate income in connection with the purchase, rental, occupancy, maintenance, or repair of housing;

- (f) Issue revenue bonds and make construction loans and mortgage loans for the purpose of financing the acquisition, construction, rehabilitation, refinancing, or development of multifamily rental housing; and
- (g) Convey surplus land to a nonprofit or private developer for development of single family homes for persons of low or moderate income.

A Housing Authority also has the power of eminent domain. §34325. It is subject to the planning, zoning, sanitary, and building laws, ordinances and regulations of the City. §34326. Annual reports of the Authority's activities must be filed with both the City Clerk and the State Department of Housing and Community Development. §34328.

#### **Future Action.**

Based upon the language in Section 34240, it can be stated that a Brisbane Housing Authority already exists and only needs to be activated by the adoption of a resolution by the City Council declaring a need for the Authority to function, as described above. There is no apparent requirement for prior notice of an intent to adopt this resolution or waiting time for the resolution to become effective. On the contrary, Section 34244 specifies as follows:

"In any proceeding involving the validity or enforcement of or relating to any contract of the authority, the authority is conclusively deemed to have been established and authorized to transact business and exercise its powers upon proof of the adoption of a resolution by the governing body declaring the need for the authority. The resolution is sufficient if it declares that there is such need for an authority and finds in substantially the terms of Section 34242 that either or both of the conditions set forth in that section exist in the county or city."

Consequently, if the Governor's proposal to abolish redevelopment agencies is adopted and it appears that housing funds currently being held by the Brisbane Redevelopment Agency will be transferred outside of the City to the County, the City Council can quickly adopt the resolution needed to activate the Brisbane Housing Authority and assert that such Authority is the proper "local housing agency" to which the funds should be transferred.