

City of Brisbane

Agenda Report

To: Mayor & City Council

From: City Manager

Date: City Council Meeting of December 11, 2014

Subject: Incompatibility of Office

Recommendation

Refer to City Attorney to draft an ordinance change that will make City Municipal Code compatible with State law.

Summary

An issue has arisen with the recent election to the Brisbane School Board of a council appointee to the Parks and Recreation Commission. While State Law does not create an issue of "Incompatibility of Office" a unique feature of the Brisbane Municipal Code creates a conflict.

The City Attorney has reviewed this situation and provided the following analysis to City Council and staff:

Section 2.20.020 of the Brisbane Municipal Code provides in part that members of the parks, beaches and recreation commission shall not hold any other public office. A "public office" is a governmental position, created or authorized by law, the tenure of which is continuing or permanent and in which the incumbent performs a public function and exercises some of the sovereign powers of government. Certainly, then, a person elected to a school board holds a "public office".

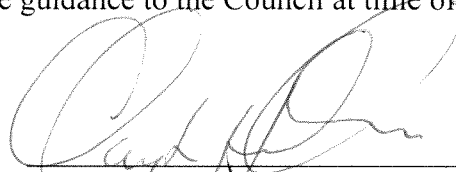
Because a person elected to a school board holds a public office, the Municipal Code bars simultaneous membership on the School Board and the Parks, Beaches and Recreation Commission.

In passing, generally members of purely advisory boards are not subject to the doctrine of incompatibility under Government Code, section 1099. The Municipal Code, for whatever reason, has gone further in terms of defining what is "incompatible".

If the Council requests the City Attorney to draft an ordinance to alleviate this conflict we can place the first reading on the December 18th agenda. A second reading would then take place at your January 15th meeting. An ordinance then goes into effect 30 days thereafter.

The affected Parks and Recreation Commissioner resigned from the Parks & Recreation Commission on December 3rd. The City Council, if it chooses, could then reappoint her to the Commission after the ordinance goes into effect. The first Council meeting after effective date of the ordinance would be February 19th.

An additional issue that the Council may wish to request is clarification from the City Attorney on what category of issues should a person holding both offices recuse themselves from. A potential issue could arise from programs the City and District collaborate on as well as any financial issue related to the operation of those programs. The City Attorney will need some time to flesh this issue out and hopefully can provide some guidance to the Council at time of the first reading.


Clay Holstine, City Manager

December 3, 2014

Dear Honorable City Council:

Having recently being elected to the office of BESD Trustee, I asked Stuart to confirm with our City Attorney that our municipal code would allow service as both a Parks and Recreation Commissioner and as a Brisbane Elementary School District board member.

To my surprise, Section 2.20.020 of the Brisbane Municipal Code states that members of the Parks, Beaches and Recreation Commission shall not hold any other public office (1964).

I respectfully request that the Council revisit and amend Section 2.20.020. If Parks and Recreation was a policy-making body, I would understand that there is indeed the potential for conflict of interest. It is of note that the Planning Commission does not have any such stipulation regarding Commissioners holding public office. And according to our City Attorney, "members of purely advisory boards are not subject to the doctrine of incompatibility under Government Code, section 1099". There is precedence of joint Parks and Recreation and School Board service in the recent instance of Dawn Cutler and presently, Tom Ledda (Daly City Parks and Recreation).

As a member of both Brisbane Parks and Recreation and BESD School Board, I would be sensitive to any potential conflicts. For example, I would step down from the P&R Teen Services subcommittee, since it works directly with school administrators to create Lipman's new after school program.

As a committed member of the Commission, I am currently serving on the subcommittees for the public arts ordinance, trails development, the Marina, Community Center renovation, Teen Services, skate park, Habitat Restoration Day. I am currently vice-chair, and I'm prepared to step into the chair position if that is the will of the Commission.

With regret I will be resigning from the Parks and Recreation Commission at tonight's meeting. It is my hope that I will be reappointed in February. I understand that changing the Municipal Code is at the discretion of the Council. I respectfully ask for this amendment, and will honor the decision that you make.

Thank you very much.

Karen Lentz

Vice Chair, Parks and Recreation Commission
Brisbane Elementary School District Trustee

Cc: Renee Marmion, Chair, Parks and Recreation Commission
Clay Holstein, City of Brisbane
Stuart Schillinger, City of Brisbane