CITY of BRISBANE

Planning Commission Meeting Agenda

Thursday, February 27, 2025 at 7:30 PM ● Hybrid Meeting ● Brisbane City Hall 50 Park Place, Brisbane CA

The public may observe/participate in Planning Commission meetings using remote public comment options or attending in person. Planning Commissioners shall attend in person unless remote participation is permitted by law. The Commission may take action on any item listed on the agenda.

TO ADDRESS THE COMMISSION

In Person:

Location: 50 Park Place, Brisbane, CA 94005, Community Meeting Room

Masks are no longer required but are highly recommended in accordance with California Department of Health Guidelines. To maintain public health and safety, please do not attend in person if you are experiencing symptoms associated with COVID-19 or respiratory illness.

To address the Planning Commission on any item on or not on the posted agenda, fill out a Request of Speak Form located in the Community Meeting Room Lobby and submit it to the City staff.

Remote Participation:

Members of the public may observe/participate in the meeting by logging into the Zoom webinar listed below. Planning Commission Meetings may also be viewed live and/or on-demand via the City's YouTube channel at youtube.com/brisbaneca, or on Comcast Channel 27. Archived videos may be replayed on the City's website, brisbaneca.org/meetings. Please be advised that if there are technological difficulties, the meeting will nevertheless continue.

The agenda materials may be viewed online at brisbaneca.org/meetings at least 24 hours prior to Special Meetings, and at least 72 hours prior to a Regular Meeting.

Remote Public Comments:

Meeting participants are encouraged to submit public comments in writing in advance of the meeting to jswiecki@brisbaneca.org. Remote meeting participants may address the Planning Commission via Zoom Webinar using the link or the call in number listed below. Note, the above email will not be monitored during the meeting and emails received during the meeting will not be responded to or brought to the attention of the Planning Commission during the meeting.

Zoom Webinar: (please use the latest version: zoom.us/download)
brisbaneca.org/pc-zoom
Webinar ID: 970 0458 3387

Call In Number: +1 (669) 900-9128

SPECIAL ASSISTANCE
If you need special assistance to participate in this meeting, please contact the Community Development Department at (415) 508-2120 in advance of the meeting. Notification in advance of the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting.

WRITINGS THAT ARE RECEIVED AFTER THE AGENDA HAS BEEN POSTED
All written communications are provided to the Planning Commission. Any written communication that is received after the agenda has been posted but before 4 p.m. of the day of the meeting will be available for public inspection at the front lobby in City Hall and online at brisbaneca.org/meetings. Any writings that are received after 4 p.m. of the day of the meeting will be distributed to the Planning Commission and made available for public inspection at the front lobby and on the internet the day after the meeting (brisbaneca.org/meetings).

Commissioners: Funke, Gooding, Lau, Patel, and Sayasane

CALL TO ORDER

ROLL CALL

ADOPTION OF AGENDA

CONSENT CALENDAR

Please Note: Items listed here as Consent Calendar Items are considered routine and will be acted upon collectively by one motion adopting the Planning Department's recommendation unless a member of the public, the Commission, or its staff asks to remove an item to discuss it. Prior to the motion, the Chairperson will ask if anyone wishes to remove an item from the Consent Calendar.

None

ORAL COMMUNICATIONS (Limited to a total of 15 minutes)

WRITTEN COMMUNICATIONS

NEW BUSINESS

A. PUBLIC HEARING: Zoning Text Amendment 2025-RZ-01; Citywide; Updates to density bonus and inclusionary housing ordinance to comply with current State law and implement the City's 2023-2031 Housing Element; and finding that the proposed adoption of the zoning text amendment is exempt from CEQA pursuant to CEQA Guidelines §15061(b)(3) because it involves adoption of policies and programs that would not cause a significant effect on the environment; City of Brisbane, applicant.

OLD BUSINESS

ITEMS INITIATED BY STAFF

B. Consideration of changing Commission meeting time

ITEMS INITIATED BY THE COMMISSION

SELECTION OF PLANNING COMMISSION OFFICERS

ADJOURNMENT

C. Adjournment to the regular meeting of March 13, 2025.

APPEALS PROCESS

Anyone may appeal the action of the Planning Commission to the City Council. Except where specified otherwise, appeals shall be filed with the City Clerk not later than 15 calendar days following the Planning Commission's decision. Exceptions to the 15-day filing period include the following: appeals shall be filed with the City Clerk within 6 calendar days of the Planning Commission's action for use permits and variances and 10 calendar days for tentative maps and advertising sign applications. An application form and fee are required to make a formal appeal. For additional information, please contact the City Clerk at 415-508-2110.

File Attachments for Item:

A. PUBLIC HEARING: Zoning Text Amendment 2025-RZ-01; Citywide; Updates to density bonus and inclusionary housing ordinance to comply with current State law and implement the City's 2023-2031 Housing Element; and finding that the proposed adoption of the zoning text amendment is exempt from CEQA pursuant to CEQA Guidelines §15061(b)(3) because it involves adoption of policies and programs that would not cause a significant effect on the environment; City of Brisbane, applicant.

PLANNING COMMISSION AGENDA REPORT

Meeting Date: February 27, 2025

From: Julia Ayres, Principal Planner

Subject: Zoning Text Amendment 2025-RZ-01; Updates to density bonus and inclusionary housing ordinance

REQUEST

Zoning text amendment to modify the City's density bonus and inclusionary housing ordinance (BMC Ch. 17.31) to comply with current State law, and implement related programs in the 2023-2031 Housing Element, including:

- Program 2.C.1: Amend the density bonus ordinance to:
    - Allow greater density bonus and/or incentives to housing developments that provide housing units designed and dedicated for use by large families with low- to extremely low- incomes.
    - Be consistent with Government Code Sections 65915(a) and (g).
    - Grant a proportionately lower density bonus and/or incentives for affordable housing projects that do not qualify under Government Code Section 65915 due to their small size or other limitations.
    - Grant a density bonus and/or other incentives greater than required for projects that meet or exceed the qualifications for a density bonus.
- 2.E.4: Update the Inclusionary Housing Ordinance to comply with current State law and consider in-lieu fee alternatives for for-sale developments that may provide additional affordable housing revenue to the City.
- 4.A.11: Amend inclusionary housing ordinance to extend timeframe of affordability covenants on new affordable housing development

RECOMMENDATION

Recommend City Council approval of the draft zoning text amendment to amend the City's density bonus and inclusionary housing ordinance to comply with current State law and implement the City's 2023-2031 Housing Element.

ENVIRONMENTAL DETERMINATION

The proposed adoption of the zoning text amendment to modify the City's existing density bonus and inclusionary housing ordinance (BMC Ch. 17.31) is exempt from CEQA pursuant to CEQA Guidelines §15061(b)(3) because it involves adoption of policies and programs that would not cause a significant effect on the environment.

APPLICABLE CODE SECTIONS

The City's existing density bonus and inclusionary housing ordinance is located in Chapter 17.31 of the Brisbane Municipal Code. State density bonus law is located in Government Code Sections 65915-65918. Other State regulations impacting inclusionary housing regulations are located in Government Code Section 65850. The Housing Accountability Act is located in Government Code Section 65589.5.

ANALYSIS AND FINDINGS

Background

In the fall of 2024, the Planning Commission held two workshops on the proposed updates to the density bonus and inclusionary housing ordinance. Those workshop agenda reports are attached for reference and provide detailed background on the State law context, the Planning Commission's prior study in 2018 and 2019 of the ordinance update, which are summarized below.

State Law Context

California planning and zoning law authorizes cities and counties to adopt ordinances that require residential developments to include a certain percentage of units affordable to moderate and low income households. These types of regulatory requirements are commonly referred to as "inclusionary zoning." Additionally, since the 1970's, California planning law has mandated a "density bonus" program that allows housing developers to achieve greater residential densities than would otherwise be allowed by the applicable zoning ordinance, and diverge from other zoning requirements such as height or parking, in exchange for providing affordable housing units or housing dedicated to special needs groups such as seniors and disabled persons. In adopting ordinances to implement the State density bonus program, cities can adopt regulations that go above and beyond the State provisions, but cannot adopt regulations that limit what State density bonus law allows.

City Ordinance

The City adopted an inclusionary housing and density bonus ordinance in 2009 (BMC Chapter 17.31; Attachment 6). The ordinance sets forth inclusionary requirements for rental and for-sale housing projects of six units or more. The ordinance also sets forth the City's procedures to implement the State density bonus program, which is available for projects of at least five or more units.

2019 Update to City Ordinance

Following adoption of the 2015-2022 Housing Element and new State laws impacting inclusionary zoning and density bonus regulations, in 2018 and 2019 the Planning Commission studied updates to the City ordinance. The Commission recommended Council approval of a draft ordinance ("the 2019 draft ordinance) at a public hearing in April 2019. The April 11, 2019 agenda report is included in Attachment 7; Resolution RZ-5-18 is attached in Attachment 8. The 2019 draft ordinance is also summarized in the September 26, 2024 workshop agenda report (Attachment).

2019-Present

Since April 2019, Council consideration of the ordinance was put on hold due to an evolving regulatory environment at the State level, the 2023-2031 Housing Element process, and efforts to create an Affordable Housing Strategic Plan which included an evaluation of the draft ordinance's inclusionary housing provisions. The Planning Commission hosted two workshops in the fall of 2024 to review and update the draft ordinance in the context of the new 2023-2031 Housing Element, the 2024 Affordable Housing Strategic Plan, and current State law context. The Commission considered and gave direction regarding staff's suggested revisions to the ordinance which are summarized in the Discussion below.

Discussion and Analysis

Proposed Revisions to the Draft Ordinance

The attached draft revised ordinance (Attachments 1 and 2; clean and redlined versions, respectively) applies the Commission's recommendations made at the September 26 and November 14, 2024 workshops to:

- Extend all alternatives to on-site construction of inclusionary units available to rental housing developments in the draft ordinance to for-sale developments;
- Allow for-sale developments to provide required inclusionary units as accessory dwelling units.

These revisions were discussed in detail by the Commission at the fall workshops and are not discussed further in this report. Staff does not recommend moving forward with on-site clustering of inclusionary units in separate buildings at this time, as the off-site construction alternative can encompass this design alternative.

Minor revisions to the ordinance include updates to the Definitions sections of each ordinance to comply with current State law or make elements of the ordinances more clear and internally consistent.

Substantive items the Planning Commission did not address at the previous workshops that arose from City staff review are discussed in detail below.

Density Bonus Ordinance (Proposed BMC Ch. 17.29)

- Section 17.29.030: Revisions to clarify administrative procedures for density bonus requests.

The revised draft ordinance proposes updates to this section which establishes the grounds under which an applicant may make a request for a density bonus, incentive or concession, waiver of development standard, or parking modification and the grounds under which the City can reject such a request per Government Code sections 65915(d) and 65915(e).

Revisions to this section also include deletion of two provisions that were redundant of State density bonus law related to the circumstances under which a developer may request a lesser density bonus than the project is entitled to, and the obligation of the City to approve incentives and concessions, waivers of development standards, and parking modifications are granted when there is no maximum residential density applicable to a site. (Government Code Sections 65915(f)) Eliminating provisions of the draft ordinance which restate State law will minimize changes necessary to the City's ordinance if/when State density bonus law changes.

Revisions to this section also include clarifications to the decision-making body acting on a density bonus request, as appropriate to the permit applicable to the density bonus project (e.g., Housing Development Permits pursuant to Chapter 17.45 of the BMC are reviewed by the Zoning Administrator). These revisions are required to conform to Housing Accountability Act requirements which prohibit application of discretionary review to housing development projects that meet objective standards. Under the HAA, projects that request a density bonus and/or incentives, concessions, development standard waivers or parking modifications cannot be considered to not conform to whatever development standards may be waived or modified as part of the request.

Finally, revisions to this section include addition of a policy to allow a developer of a density bonus project to request one additional incentive or concession if the density bonus project includes family-sized target units (units with three or more bedrooms) designed and dedicated for use by low- to extremely low-income households. This is pursuant to 2023-2031 Housing Element program 2.C.1.

- Section 17.29.040: New section for density bonus application processing procedures to comply with State density bonus law.

The 2019 draft ordinance did not provide clear application processing procedures for density bonus applications as required by State density bonus law (Government Code Section 65915(a)(3)). This new section provides clear application submittal requirements in compliance with State density bonus law, including the affordable housing plan submittal requirements previously located in the affordable housing plan section of the ordinance.

The affordable housing plan requirements have also been adjusted to better comply with fair housing laws pertaining to marketing plans, and to eliminate the requirement for the plan to include methods to verify tenant/homebuyer incomes and procedures for qualifying tenant/homebuyers for units. Staff is proposing that the City establish citywide income verification and qualification procedures housed within implementation guidelines, not the ordinance itself.

- Section 17.29.040 – Deleted section regarding affordable housing plans for density bonus projects.

This section has been deleted. Its components have been inserted into Section 17.29.040 (timing of affordable housing plan approval and the decision-making body, affordable housing plan submittal requirements) and Section 17.29.060 (minor modifications to affordable housing plans by the Community Development Director).

- Section 17.29.050- Affordable housing agreements for density bonus projects.

This section has been modified to extend the affordability term for rental target units from 55 years (minimum term required in State Density Bonus law) to in perpetuity. This aligns the affordability term of target units provided to qualify for a density bonus with the term for rental inclusionary units required in Chapter 17.31. Without this adjustment, a development that provides target density bonus units beyond the inclusionary ordinance's requirements could have affordable units with different affordability terms, which would make management difficult. The current ordinance applies the same affordability terms to density bonus target units and inclusionary units so this change would maintain consistency with the City's current practice.

Other minor revisions include pulling out definitions of terms and conditions under which properties may be transferred to successors in interest, which will be placed into the implementation guidelines referenced previously as certain provisions will be subject to and superseded by State density bonus law. Also eliminated are references to preferences to any households on a city-maintained waiting list for affordable housing. The city does not currently maintain such a waiting list, and there are fair housing concerns generally in using local preferences that must be carefully considered.

- Section 17.29.060- Implementation and enforcement

This section has minor amendments proposed to comply with Housing Element Program 3.A.5 regarding one-to-one replacement of units rented or sold in violation of the affordable housing agreement, and to include provisions for minor modifications to approved affordable housing plans pulled from previous Section 17.29.040 (proposed for deletion as described above). Finally, reference to preparation of implementing guidelines and the general scope of topics addressed in the guidelines is added to this section.

Inclusionary Housing Ordinance (Revised BMC Chapter 17.31)

- 17.31.030 - Inclusionary requirement

This Section has been modified to add a requirement for payment of an in-lieu fee for fractional inclusionary requirements that cannot be rounded up to the nearest whole integer. It also contains minor revisions to reference the alternatives established for all projects in the subsequent Section 17.31.040. Finally, the section has been revised to add clarifying language of what circumstances inclusionary units may be considered as target units under the density bonus ordinance.

- 17.31.040- Inclusionary housing incentives.

This Section has been revised to add back (from the 2009 the ability for for-sale developments to propose accessory dwelling units (ADUs) to meet inclusionary housing requirements, and reference that such units may be rented or sold should the City choose to amend its ADU ordinance to allow separate sale of ADUs. The Commission had indicated interest in allowing affordable ADUs to be sold and staff anticipates bringing this back as part of a comprehensive update to the ADU ordinance later this year. The incentive allowing inclusionary units to be smaller than market-rate units also has been modified to require that the overall square footage of inclusionary units be comparable to the size of market-rate units, which may yield additional affordable units. The Commission discussed this with staff and voiced interest in bringing it forward at the fall 2024 workshops.

- Section 17.31.050- Alternatives to constructing inclusionary units

This Section has been revised to extend all alternatives to for-sale developments. Additional criteria for City Council approval of certain alternatives was also provided. Individual alternatives are discussed below:

  - For-sale development in-lieu fee payment: The 2019 draft ordinance allowed rental inclusionary projects (of any size) to opt to pay an in-lieu fee rather than build units on-site. The revised ordinance extends this opt-in alternative to for-sale developments of 15 or fewer lots/units. For-sale developments of 16 or more lots/units could request City Council approval to pay an in-lieu fee. In determining the appropriate scale for-sale developments to opt to pay an in-lieu fee without discretionary approval, staff considered the inclusionary ordinances of other cities in the Peninsula, of which several require payment of in-lieu fees (no on-site construction) for for-sale projects of 10-20 units/lots.
  - Off-Site Construction: Clarifying language was added to state that clustering of inclusionary units that would require future subdivisions would be considered under this alternative.
  - Off-Site Preservation: This is a new alternative that would be subject to City Council approval and would allow conversion of existing housing units in Brisbane to deed-restricted

affordable units to meet the inclusionary housing requirement for a project, subject to certain conditions.
    - Land Dedication: This alternative was amended to add qualifying criteria and standards for land dedication.
    - Funding of Special Needs Project: This alternative was amended to clarify the timing at which the project funding would be required.

- Section 17.31.060- Affordable Housing Plan

This Section was amended similarly to the requirements for affordable housing plans for density bonus projects described above to better comply with fair housing laws pertaining to marketing plans, and to eliminate the requirement for the plan to include methods to verify tenant/homebuyer incomes and procedures for qualifying tenant/homebuyers for units. Staff is proposing that the City establish citywide income verification and qualification procedures housed within implementation guidelines. Finally, this Section was modified to eliminate redundant language regarding modified phasing of inclusionary vs. market-rate units, which is addressed in Section 17.31.090.

- Section 17.31.070- Adjustment or reduction of inclusionary housing requirement.

No changes are proposed to this section.

- Section 17.31.080- Affordable housing agreement

This Section has been amended to clarify the affordability term for rental inclusionary units, which is in perpetuity (same term as for for-sale units). Other minor revisions include removing certain terms and definitions related to successors in interest that staff proposes to include in implementation guidelines.

- Section 17.31.090 – Implementation and enforcement

This Section has been modified to reference implementing guidelines similarly to the corresponding Section in the Density Bonus ordinance detailed above.

Implementation

In considering the draft ordinance after the Planning Commission makes its recommendation, the City Council will need to take separate action to adopt an lieu-fee pursuant to §17.31.050 of the revised draft ordinance. The Council will have to make related policy decisions including setting the fee amount. Staff has attached proposed in-lieu fee amounts based on previously completed nexus and feasibility studies (2015), updated consistent with the increase in the Consumer Price Index (CPI; See Attachment 4).

As discussed at previous Commission study sessions and workshops, inclusionary housing in-lieu fees must be programmed to support affordable housing opportunities, including new construction of affordable housing, or other means to achieve the City's housing goals (e.g., down payment loans for low income households, accessory dwelling unit construction loans, etc.).

Housing Development Approvals for Density Bonus and Inclusionary Housing Projects

In 2022, the City adopted provisions for Housing Development Permits for housing developments of two or more units to comply with the Housing Accountability Act, which limits the City's discretionary power to deny permits for housing developments that comply with objective standards. Projects of five or

more units that do not require approval of a tentative map are processed via a Housing Development Permit, which is reviewed and acted on by the Zoning Administrator.

Housing Development Permit procedures are codified in BMC Chapter 17.45. The Zoning Administrator must notice property owners within 300 feet of the proposed project to inform them of the application, describe the project in detail and analyze its consistency with all objective standards in the Brisbane Municipal Code, and describe the Zoning Administrator's proposed action to approve or deny the application. If public comments objecting to staff's analysis of consistency with objective standards are received, the Zoning Administrator must hold a public meeting to review the application and consistency analysis at least 10 and up to 30 days prior notice to property owners within 300 feet of the property.

Consideration of any density bonus request, including incentives and concessions, waivers of development standards, and parking modifications would be described in the public notice distributed to adjacent property owners per the Housing Development Permit procedures. The Zoning Administrator's decision may be appealed to the Planning Commission. Please note that any project that requires a subdivision would continue to be reviewed by the Planning Commission and/or City Council depending on the subdivision type. Further, certain inclusionary housing incentives require City Council approval as outlined in the draft Ordinance, and in that case the City Council would also be the hearing body on the accompanying Housing Development Permit.

ATTACHMENTS

1. Resolution 2025-RZ-01 including the revised ordinance as Exhibit A
2. Redlined version of the draft revised ordinance
3. Preliminary Proposed In-Lieu Fee
4. September 26, 2024 Planning Commission workshop
    a. Agenda report (hyperlink)
    b. Minutes (hyperlink)
5. November 14, 2024 Planning Commission workshop
    a. Agenda report (hyperlink)
    b. Meeting video (hyperlink)
6. BMC Chapter 17.31 (hyperlink)
7. April 11, 2019 Planning Commission agenda report
8. Planning Commission Resolution RZ-5-18

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Julia Ayres
Julia Ayres, Principal Planner

John Swiecki
John Swiecki, Community Development Director

RESOLUTION NO. 2025-RZ-01

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BRISBANE RECOMMENDING THAT THE CITY COUNCIL OF THE CITY OF BRISBANE ADOPT AN ORDINANCE TO AMEND THE ZONING ORDINANCE BY ADDING NEW CHAPTER 17.29 AND AMENDING CHAPTER 17.31 OF THE BRISBANE MUNICIPAL CODE CONCERNING DENSITY BONUS AND INCLUSIONARY HOUSING REQUIREMENTS

WHEREAS, the City adopted an inclusionary housing and density bonus ordinance in 2009, such ordinance being located in Chapter 17.31 of the Brisbane Municipal Code, and that ordinance sets forth inclusionary requirements for rental and for-sale housing projects of six units or more and establishes procedures to implement the State density bonus program for projects of five or more units; and

WHEREAS, in April of 2019, the Planning Commission adopted Resolution RZ-5-18 , recommending adoption of zoning text amendments to update the Density Bonus and Inclusionary Housing Ordinance, Chapter 17.31 of the Brisbane Municipal Code, following several study sessions and workshops and pursuant to programs contained in the adopted the 2015-2022 Housing Element and to comply with updates to governing State laws; and

WHEREAS, since April 2019, Council consideration of the ordinance was put on hold due to an evolving regulatory environment at the State level, the 2023-2031 Housing Element process, and efforts to create an Affordable Housing Strategic Plan which included an evaluation of the draft 2019 ordinance's inclusionary housing provisions; and

WHEREAS, the City's adopted, certified 2023-2031 Housing Element of the General Plan contains the programs requiring additional revisions and updates to the City's density bonus and inclusionary housing ordinance, including Program 2.C.1, Program 2.E.4, Program 4.A.11, that weren't captured in the draft 2019 ordinance; and

WHEREAS, the City's Affordable Housing Strategic Plan, accepted by the City Council in November 2023, provided an evaluation of the draft inclusionary housing ordinance and made recommendations for the Planning Commission and City Council to consider in a revised draft ordinance to provide more alternatives and incentives for both rental and for-sale project developers, which analysis is contained in Appendix B to the Affordable Housing Strategic Plan; and

WHEREAS, the Planning Commission considered additional revisions and updates to the draft 2019 ordinance at workshops held on September 26, 2024 and November 14, 2024 pursuant to the 2023-2031 Housing Element, Affordable Housing Strategic Plan, and updates to State law since 2019; and

WHEREAS, the attached ordinance (Exhibit A) implements the requirements of the 2023-2031 Housing Element and the recommendations of the Affordable Housing Strategic Plan and updates to State law ; and

WHEREAS, adoption of the attached proposed zoning text amendments can be seen with certainty to have no possibility of significant effect on the environment, the activity is not subject to the California Environmental Quality Act per State CEQA Guidelines Section 15061(b)(3); and

NOW, THEREFORE, based upon the evidence presented, both written and oral, the Planning Commission of the City of Brisbane hereby RECOMMENDS that the City Council adopt the attached ordinance.

AYES:
NOES:
ABSENT:

_____

_____
Chairperson

ATTEST:

_____
John Swiecki, Community Development Director

draft
ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF BRISBANE ADDING NEW CHAPTER 17.29 AND AMENDING CHAPTER 17.31 OF THE BRISBANE MUNICIPAL CODE CONCERNING DENSITY BONUS AND INCLUSIONARY HOUSING REQUIREMENTS

The City Council of the City of Brisbane hereby ordains as follows:

SECTION 1: A new Chapter 17.29 is added to the Municipal Code to read as follows:

Chapter 17.29 – DENSITY BONUSES

Sections:

17.29.010 Purposes of chapter.
17.29.020 Definitions.
17.29.030 Administration of Density Bonuses.
17.29.040 Application for a Density Bonus.
17.29.050 Affordable housing agreements.
17.29.060 Implementation and enforcement.

17.29.010 – Purposes of chapter.

A. The City of Brisbane enacts this chapter to implement the goals, objectives, and policies of the City's general plan housing element relative to administering a density bonus program to encourage the provision of housing affordable to a variety of household income levels, seniors, and persons with disabilities.

B. This chapter is also intended to implement Sections 65915 through 65918 of the California Government Code, or successor statutes and regulations, governing density bonuses and other incentives required by such statutes or regulations.

17.29.020 - Definitions.

A. Affordable Housing Agreement. A recorded agreement between a property owner and the City to ensure that the density bonus requirements of this Chapter are satisfied.

B. Affordable Ownership Cost. The affordable ownership cost for for-sale target units shall be as specified in California Health and Safety Code Section 50052.5, as may be amended over time.

C. Affordable Rent. The affordable rent for rental target units shall be as specified in California Health and Safety Code Section 50053, as may be amended over time.

D. Approving Authority. The City decision-making body acting on an application for a housing development subject to the requirements of this Chapter, including the City Council, Planning Commission, or Community Development Director.

E. Base Density. Base density or maximum residential density shall be as defined in the State Density Bonus law.

F. Child Care Facility. Child care facility shall have the same meaning as defined in the State Density Bonus Law.

G. City. The City of Brisbane or the Brisbane Housing Authority.

H. City Council. The City Council of the City of Brisbane as established in Title 2 of this Code or the Board Members of the Brisbane Housing Authority

I. City Manager. The City Manager of the City of Brisbane as established in Title 2 of this Code, the City Manager's designee, the Executive Director of the Brisbane Housing Authority or the Executive Director's designee.

J. Community Development Director. The Director of the Community Development Department responsible for overseeing implementation of Title 17 of this Code, or the Community Development Director's designee.

K. Density Bonus. Density bonus shall be defined by State Density Bonus Law.

L. Density Bonus Project. Density bonus project shall mean any parcel map, subdivision map, housing development permit, design permit, building permit, or other city approval which results in a net increase of at least two (2) primary dwelling units and/or residential lots or combination thereof for which a density bonus, incentive or concession, waiver or reduction of development standards, and/or modification of parking standard is requested by the developer pursuant to State Density Bonus Law and this Chapter. A density bonus project may include, but is not limited to, new construction, conversion of existing dwelling units to condominium ownership, subdivision of land to create additional residential lots, conversion of an existing nonresidential building to residential use, and the addition of dwelling units to an existing multifamily dwelling. A density bonus project shall include units or lots intended for sale or for rent.

   1. For-Sale Density Bonus Project. A density bonus project that offers dwelling units or lots to the public for purchase.

   2. Rental Density Bonus Project. A density bonus project that offers dwelling units to be rented to tenants upon occupancy, whether or not a condominium or subdivision map is recorded as part of the project.

M. Development Standard. A development standard shall be as defined by the State Density Bonus Law, provided, however, the term "development standard" does not include any of the following:

   1. The permitted uses of a site;

   2. Any city fees;

   3. Affordable housing requirements;

   4. Building standards approved by the California Building Standards Commission as provided in California Health and Safety Code Section 18901 et seq.; or

   5. The requirements of Brisbane's Green Building Ordinance as set forth in Title 15, Chapter 15.80 of this Code.

N. Domestic Partner. Domestic partner means two (2) persons who have filed a declaration of domestic partnership with the California Secretary of State pursuant to Division 2.5, beginning with Section 297, of the California Family Code and such registration was in full force and effect at the time of the transfer or on the date of the transferor's death. A copy of the domestic partnership registration shall be provided to the city upon request.

O. Dwelling Unit. Dwelling unit shall have the meaning set forth in Section 17.02.235 of this Code.

1. Density Bonus Unit. Those dwelling units granted pursuant to a density bonus requested pursuant to the provisions of this Chapter and State Density Bonus Law.
2. Market-Rate Unit. Any dwelling unit within a density bonus project that is not a target unit.
3. Target Unit. Any dwelling unit affordable to moderate and low income households within a density bonus project that qualify the project for a density bonus.

P. Eligible Household. A household whose household income qualifies the household for occupancy of a target uni.

Q. Eligible Purchaser. A household whose household income qualifies the household to purchase a for-sale target unit, or a qualified non-profit housing corporation as such term is defined in Section 714.7 of the California Civil Code or successor statute.

R. First Approval. The first of the following approvals to occur with respect to a density bonus project: subdivision approval, housing development permit, building permit or any other permit or approval under the Brisbane Municipal Code.

S. Household Income. Household income shall be the gross income of the household as calculated pursuant to Title 25 California Code of Regulations, §6914, as amended, or its successor. regulation The household income categories addressed in this Chapter shall be defined as follows:

1. Lower Income Household. A household whose income does not exceed the lower income limits applicable to San Mateo County, as published annually by the State of California pursuant to California Code of Regulations, Title 25, Section 6932, as may be amended over time.
2. Moderate Income Household. A household whose income does not exceed the moderate income limits applicable to San Mateo County, as published annually by the State of California pursuant to California Code of Regulations, Title 25, Section 6932, as may be amended over time.
3. Very Low Income Household. A very low income household shall be as defined by California Health and Safety Code Section 50105, as may be amended over time.
4. Extremely Low Income Household. An extremely low income household shall be as defined by Section 50106 of the California Health and Safety Code or successor statute

T. Housing Authority. “Housing Authority” shall mean the Brisbane Housing Authority, as established by Resolution of the City Council. For the purposes of this Chapter, “Housing Authority” shall have the same meaning as “City.”

U. Incentives or Concessions. Incentives or concessions shall be as defined in the State Density Bonus Law

V. Maximum Residential Density. Maximum residential density or base density shall be as defined in State Density Bonus Law.

W. Modified Parking Standards. Modifications to the parking standards that would otherwise apply to an density bonus project under Chapter 17.34 of this Code, as described in the State Density Bonus Law.

X. Resale Restriction Agreement. A resale restriction agreement shall mean an agreement, covenant, deed of trust, or other document, approved by the City Council, which is executed by the property owner and recorded against each target unit to insure that such unit remains affordable for the applicable term.

Y. Specific Adverse Impact. A "specific adverse impact" shall have the same meaning as the meaning provided in the Government Code Section 65589.5, as may be amended from time to time, or successor provisions.

Z. State Density Bonus Law. State Density Bonus Law shall mean Sections 65915 through 65918 of the California Government Code, as may be amended from time to time, or successor statutes

AA. Waiver or Reduction of Development Standard. Waiver or Reduction of Development Standard shall be as defined in the State Density Bonus Law.

17.29.030 - Administration of Density Bonuses

A. The City shall grant density bonuses, incentives and concessions, waivers or reductions in development standards, and/or modified parking standards requested by applicants in accordance with the provisions of the State Density Bonus Law and the procedures set forth in this Chapter.

1. The City may deny a request for incentives or concessions only as provided by the State Density Bonus Law.

2. The City may deny a request for a waiver or reduction of a development standard only as provided by the State Density Bonus Law.

B. A developer of a project containing between two (2) to four (4) dwelling units or lots may request approval of a density bonus as shown in Table 17.29.030. The decision making body shall waive or reduce any development standard that may preclude development of such a project as set forth in section A of this Section 17.29.030.

Table 17.29.030

Zoning District	Lot Size	Maximum Permitted Residential Density	Percentage low income units	Percentage Density Bonus	Total Units including Density Bonus Units
R-2	4,950-7,499 sq ft	2 units	50%	30%	3 units
R-3	4,950- 5,999 sq ft	3 units	30%	15%	4 units
	6,000- 7,499 sq ft	4 units	50%	15%	5 units

C. A developer of a density bonus project that exceeds the qualifications for a density bonus per State Density Bonus Law may request that the City grant one additional incentive or concession above the maximum number prescribed by State Density Bonus Law, as applicable to the project.

D. A developer of a density bonus project may request one additional incentive or concession if the density bonus project includes family-sized target units (units with three or more bedrooms) designed and dedicated for use by low- to extremely low-income households.

E. Inclusionary units provided in compliance with Chapter 17.31 may be counted as target units for the purposes of calculating a density bonus if they meet requirements for target units established under State Density Bonus Law.

F. The decision making body for any density bonus project shall be the decision making body specified for the first approval. The City Council shall be the decision-making body for any density bonus projects that include requests of incentives or concessions or waivers of development standards that otherwise require City Council approval under other Chapters of this Municipal Code.

G. Notwithstanding that an applicant may request direct financial assistance, including that for purchasers of target units, which shall require approval of the City Council, nothing in this section 17.29.030 requires the City to provide direct financial incentives for the housing development, including but not limited to providing to the applicant publicly owned land.

H. In accordance with the State Density Bonus Law, neither the granting of a concession or incentive, waiver or reduction in development standards, nor the granting of a density bonus, shall be interpreted, in and of itself, to require a general plan amendment, zoning change, or other discretionary approval.

17.29.040 – Application for a Density Bonus.

A. Application Processing. Applications for density bonuses, incentives, concessions, waivers or reductions in development standards, and/or modifications of parking standards pursuant to the State Density Bonus Law and this Chapter shall be processed in concert with and by the same decision-making body, as any other planning entitlement applications that the density bonus project may require., except where otherwise indicated in Section 17.29.030.

B. Contents of Application. Applications shall be filed with the Community Development Director on such form as the Director shall prescribe. In addition to the submittal requirements for any other planning entitlement applications or permit approvals the project requires, the application shall include the following information and supporting materials:

1. Current title report(s) for all properties proposed for development, prepared within at least six (6) months of application submittal.
2. A letter signed by the present owner(s) stating what density bonus, incentives and concessions, waivers or modifications of development standards, and/or parking modification are being requested from the City.
3. In the case of a condominium conversion request, such information required by Chapter 17.30 of this Title.
4. A statement describing whether the density bonus project is proposed on any property that has one of the following conditions. If any of the below conditions exist on the property, the application must identify how such units will be replaced in the density bonus project. Such replacement units shall not be counted as target units when calculating the density bonus, unless the density bonus project is 100% affordable.
    a. Includes a parcel or parcels on which rental dwelling units are presently located that are subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of lower or very low income or if rental dwelling units have been vacated or demolished in the five-year period preceding the application that were at the time subject to a recorded covenant, ordinance or law that restricted rents to levels affordable to persons and families of very low or lower income;
    b. Includes a parcel or parcels on which rental dwelling units have been subject to any other form of rent or price control through a public agency's exercise of its police power;
    c. Includes a parcel or parcels on which rental dwelling units are presently occupied by low or very low income households.
5. A detailed vicinity map showing the project location and such details as the location of the nearest commercial retail, transit stop, potential employment locations, park or recreation facilities or other social or community service facilities.
6. A project data table showing the total number of dwelling units proposed on the site and off site, as applicable, including the number of target units and density bonus units, and the project's conformance to all objective development standards.
7. Site plan(s) with accurately dimensioned property lines showing existing and proposed structures and their uses, adjacent structures and their uses, setbacks, adjacent streets, easements, existing and proposed utilities, existing and proposed driveways, and internal circulation and parking.

8. Floor plans of all existing and proposed structures (with the use of each room/space labeled) and designating target units, as appropriate.
9. Roof plans.
10. Elevations of all sides of the existing and/or proposed structures, identifying colors and materials , and showing the height of structure(s) measured per the definition of building height in Chapter 17.02 of this Title and UBC type of construction. Cross-sections may also be required based upon the complexity of the design.
11. Existing and proposed parking facilities, including the dimensions of parking spaces, number and location of spaces designated as compact or handicapped spaces, and a calculation of the number of parking spaces required by this title or any other applicable regulations;
12. An affordable housing plan that contains all of the following, as applicable to the request:
    a. The number, type, tenure, household income categories, number of bedrooms and baths, approximate location, size, and design (including finishes and features) of all density bonus units;
    b. The number, type, tenure, affordability level, number of bedrooms and baths, approximate location, size, and design (including finishes and features) of all target units;
    c. Construction phasing of target units in relation to market-rate units, if applicable, and overall construction schedule. If the developer proposes to construct the target units in separate phases from the market-rate unit construction, the affordable housing plan shall specify the security to be provided to the City to ensure that the target units will be constructed, and explain how the proposed phasing would provide greater public benefit than providing the target units concurrently with the market-rate units;
    d. Preliminary marketing plan, indicating general approach to marketing target units in compliance with all fair housing laws. The final marketing plan may be deferred to prior to first building permit issuance, subject to Community Development Director approval, including the manner in which target units will be offered to the public in a nondiscriminatory and equitable manner and the method of marketing target units after initial occupancy is secured;
    e. A financing mechanism, the particulars and the amount of which shall be determined by the City at the time the affordable housing plan is approved, to cover the City's costs for the on-going administration and monitoring of the affordability provisions applicable to the target units, except where prohibited by State law.
    f. Description of any requested density bonuses, incentives, concessions, waivers or modifications of development standards, and/or modified parking standards and documentation of eligibility for the request(s), including a description of the base density without the requested density bonus, the number and location of all target units qualifying the project for a density bonus, the level of affordability of the target units, and identification of the density bonus units.
        i. For all requested incentives and concessions, reasonable documentation demonstrating eligibility for the incentive or concession or to demonstrate that the incentive or concession meets the definition set forth in the State Density Bonus Law. For requests to allow mixed-use zoning in conjunction with the density bonus project, the application shall additionally include documentation demonstrating that the proposed commercial, office, industrial, or other land uses will reduce the cost of the density bonus project development and that the commercial, office, industrial, or other land uses are compatible with the density bonus project and the existing or planned

development in the area where the proposed project will be located. The cost of reviewing any documentation submitted in support of a request for a concession or incentive, including but not limited to the cost to the City of hiring a consultant to review the documentation, shall be borne by the applicant.

ii. For all requested waivers or reductions of development standards, written evidence that (i) the development standards for which a waiver or reduction is requested will physically preclude the construction of the housing development at the densities or with the incentives or concessions permitted by this chapter; (ii) the waiver or reduction would not have a specific, adverse impact, or, if a specific, adverse impact would occur, that the impact could feasibly be mitigated or avoided; (iii) the waiver or reduction would not have an adverse impact on any real property that is listed in the California Register of Historical Resources; and (iv) the waiver or reduction would not be contrary to any state or federal law.

iii. If a density bonus, incentive or concession is requested for a land donation, the application shall show the location of the land to be dedicated and provide evidence that each of the conditions for such land donation set forth in the State Density Bonus Law will be met.

iv. If a density bonus, incentive or concession is requested for a child care facility, the application shall show the location and square footage of the child care facility and describe how all requirements of the State Density Bonus law for such density bonus, incentive or concession are met by the application.

B. Application Fee. The application shall be accompanied by the payment of a fee in such amount as established from time to time by resolution of the City Council. In addition, the applicant shall also deposit such amounts as the Community Development Director may require from time to time to cover the cost of any environmental or legal review, geotechnical and engineering reports, review of green building documentation, and such other studies that may be required by the City in connection with the processing of the application or related planning entitlements.

C. Newly Constructed Condominiums. In addition to the information listed in this section, an application for a density bonus project for newly constructed condominiums, as defined in 17.30.020.A of this title, shall also include the materials set forth in Section 17.30.040.

D. Streamlined Housing Development Projects. Density bonus projects that are streamlined housing development projects, as defined in Chapter 17.02 of this Title, shall include additional supporting documentation to demonstrate eligibility as set forth on a form prescribed by the city.

17.29.050 - Affordable housing agreements.

A. Applicability. Recordation of an affordable housing agreement shall be made a condition of the first approval for all density bonus projects to ensure implementation of all requirements of this Chapter. The affordable housing agreement shall be recorded prior to, or concurrently with, the final subdivision or parcel map, or, where the housing development does not include a map, prior to issuance of a building permit for any structure in the housing development. The affordable housing agreement shall run with the land and bind all future owners and successors in interest.

B. The affordable housing agreement shall be in a form provided by the City and shall include the following, without limitation:

1. All information provided in the affordable housing plan pursuant to Section 17.29.040 of this Chapter.

2. The household income categories of the target units, consistent with the requirements of the State Density Bonus law.

3. Continued affordability of the target units, as follows:

   a. For-Sale Target Units. The affordable housing agreement shall require that a resale restriction agreement, in a form approved by the City, be recorded against each for-sale target unit when the target unit is first transferred to an eligible purchaser. The resale restriction agreement shall provide that target units in for-sale density bonus projects shall remain affordable in perpetuity and that the affordability provisions be applicable to any subsequent transferees or successors in interest.

      The resale restriction agreement shall also provide that the for-sale target unit shall not be rented.

   b. Rental Target Units. The affordable housing agreement shall be recorded against each rental density bonus project containing rental target units to ensure that the target units remain affordable in perpetuity.

      Rental target units that are later converted to for-sale units, e.g., converted to condominiums, and then sold shall be sold as for-sale target units and the requirements of subparagraph a of paragraph 2 of subsection C of this Section shall apply.

4. The affordable housing agreement shall specify that no household shall be permitted to begin occupancy of a target unit unless the Community Development Director has approved the household's eligibility

5. Affordable housing agreements for land dedication, child care facilities, and condominium conversions shall ensure the continued compliance with all conditions included in State Density Bonus Law.

6. Affordable housing agreements for senior citizen housing developments shall provide that units in the residential development shall be occupied by senior citizens or other persons eligible to reside in such a project as established by the State Density Bonus Law.

7. The affordable housing agreement shall include provisions requiring maintenance of records to demonstrate continued compliance with this Chapter over long-term operation of the density bonus project.

8. The affordable housing agreement shall include a description of remedies for breach of the affordable housing agreement by either party. The City may identify tenants or qualified purchasers as third party beneficiaries under the agreement.

C. The affordable housing agreement shall include any other provisions determined necessary by the City Attorney to ensure implementation and compliance with the State Density Bonus Law and this Chapter.

17.29.060 - Implementation and enforcement.

A. No permit, license, subdivision map, or other approval or entitlement for a density bonus project shall be issued, including without limitation a final inspection for occupancy, until all requirements applicable to the density bonus project at such time pursuant to this Chapter have been satisfied.

   1. Except where authorized by the approved affordable housing plan pursuant to Section 17.29.040, no building permit shall be issued for any market rate unit until the permittee has obtained permits for target units sufficient to meet the requirements of Section 17.29.030 of this Chapter, and, if the project includes inclusionary housing units pursuant to Chapter 17.31 of this Code. No final inspection for occupancy for any market-rate unit shall be completed until the permittee has

constructed the target units required by Section 17.29.030 of this Chapter, unless so authorized in the approved affordable housing plan.

2. The time requirements set forth in this Section for issuance of building permits for market-rate units and for final inspections for occupancy for market-rate units may be modified to accommodate phasing schedules, model variations, or other factors in a density bonus project within the submitted affordable housing plan pursuant to Sections 17.29.030 of this Chapter, if the City determines this will provide greater public benefit and an affordable housing agreement pursuant to Section 17.29.050 of this Chapter has been approved by the decision making body for the first approval for the density bonus project.

B. Conditions to carry out the purposes of this Chapter shall be imposed on the first approval for a density bonus project.

C. The City Attorney is authorized to enforce the provisions of this Chapter and all affordable housing agreements, regulatory agreements, resale controls, deeds of trust, or similar documents placed on target units, by civil action and any other proceeding or method permitted by law.

D. The City Manager is authorized to execute any agreement and any related documents following approval such agreement by the Community Development Director and the City Attorney.

E. Failure of any official or agency to fulfill the requirements of this Chapter shall not excuse any applicant or owner from the requirements of this Chapter.

F. The remedies provided for herein shall be cumulative and not exclusive and shall not preclude the City from any other remedy or relief to which it otherwise would be entitled under law or equity.

G. Any target unit that is sold or rented in violation of the affordability requirements established in the approved affordable housing agreement or resale restriction agreement shall be replaced at a one-to-one ratio. The means of replacement shall be wholly subject to the discretion of the City Manager

H. A request for a minor modification of an approved affordable housing plan may be granted by the community development director if the modification is substantially in compliance with the original affordable housing plan and conditions of approval for the density bonus project. A minor modification is technical in nature, as opposed to substantive or material. Substantive or material changes to the affordable housing plan shall be processed in the same manner as the original plan.

I. The City shall prepare guidelines to further implement this ordinance. These guidelines shall include, but are not limited to, the following:

1. The form and contents of the affordable housing agreement and any resale restriction, including provisions for successors in interest and other ownership transfers for for-sale target units;
2. The form and contents of the final marketing plan and resident selection process;
3. Procedures for setting rents and sales prices for the target units;
4. Procedures for qualifying tenant households and prospective purchaser households of target units, including any preferences;
5. Compliance and monitoring procedures to assure that affordability restrictions are maintained;
6. Resale and subordination procedures for for-sale target units;
7. The establishment of any fees to recoup the City's costs for the ongoing administration and monitoring of the affordability provisions of the target units, except where prohibited by State law.

SECTION 2: Chapter 17.31 of the Municipal Code is amended in its entirety to read as follows:

Chapter 17.31 - INCLUSIONARY HOUSING

Sections:

17.31.010 Basis and purposes.
17.31.020 Definitions.
17.31.030 Inclusionary requirement.
17.31.040 Inclusionary housing incentives.
17.31.050 Alternatives to constructing inclusionary units.
17.31.060 Affordable housing plan for inclusionary units.
17.31.070 Adjustment or reduction of inclusionary housing requirement.
17.31.080 Affordable housing agreement
17.31.090 Implementation and enforcement.

17.31.010 - Basis and purposes.

A. Rental and owner-occupied housing in the City has become steadily more expensive. Housing costs have gone up faster than incomes for many groups in the community.

B. Many persons who work in the City, who have grown up or have family ties in the City, who already live in the City but must move due to increasing housing costs, or who wish to live in the City for other reasons, cannot afford housing in the city.

C. Federal and state government programs do not provide nearly enough affordable housing opportunities or subsidies to satisfy the housing needs of moderate, lower or very low income households.

D. Rising land prices have been a key factor in preventing development of new affordable housing. New housing construction in the City which does not include inclusionary units aggravates the existing shortage of affordable housing by absorbing the supply of available residential land. This reduces the supply of land for affordable housing and increases the price of remaining residential land. Providing the inclusionary units required by this Chapter will help to ensure that part of the City's remaining developable land is used to provide affordable housing.

E. The City wishes to retain an economically balanced community, with housing available to very low income, lower income and moderate income households. The City's general plan implements the established policy of the State of California that each community should foster an adequate supply of housing for households at all economic levels.

F. An economically balanced community is only possible if part of the new housing built in the City is affordable to households with limited incomes. Requiring builders of new housing to include some housing affordable to households at a range of incomes is fair, not only because new development without inclusionary units contributes to the shortage of affordable housing, but also because zoning and other ordinances concerning new housing in the City should be consistent with the community's goal to foster an adequate supply of housing for households at all economic levels.

G. In enacting this Chapter it is also the intent of the City of Brisbane to implement the goals, objectives, and policies of the City's general plan housing element, which encourages the provision of housing affordable to a variety of household income levels, seniors, and persons with disabilities, and identifies an inclusionary housing policy one method to encourage the development of affordable housing.

17.31.020 - Definitions.

A. Affordable Housing Agreement. A recorded agreement between a property owner and the City to ensure that the inclusionary housing requirements of this Chapter are satisfied.

B. Affordable Ownership Cost. The affordable ownership cost for for-sale target units shall be as specified in California Health and Safety Code Section 50052.5, as may be amended over time.

C. Affordable Rent. The affordable rent for rental target units shall be as specified in California Health and Safety Code Section 50053, as may be amended over time.

D. Approving Authority. The City decision-making body acting on an application for a housing development subject to the requirements of this Chapter, including the City Council, Planning Commission, or Community Development Director.

E. City. The City of Brisbane or the Brisbane Housing Authority.

F. City Council. The City Council of the City of Brisbane as established in Title 2 of this Code or the Board Members of the Brisbane Housing Authority.

G. City Manager. The City Manager of the City of Brisbane as established in Title 2 of this Code, the City Manager's designee, the Executive Director of the Brisbane Housing Authority or the Executive Director's designee.

H. Community Development Director. The Director of the Community Development Department responsible for overseeing implementation of Title 17 of this Code, or the Community Development Director's designee.

I. Domestic Partner. Domestic partner means two (2) persons who have filed a declaration of domestic partnership with the California Secretary of State pursuant to Division 2.5, beginning with Section 297, of the California Family Code and such registration was in full force and effect at the time of the transfer or on the date of the transferor's death. A copy of the domestic partnership registration shall be provided to the city upon request.

J. Dwelling Unit. Dwelling unit shall have the meaning set forth in Section 17.02.235 of this Code.

   1. Inclusionary Unit. Dwelling unit within a housing development that is required by Section 17.31.030 of this Chapter to be rented at affordable rents or sold at an affordable ownership cost to specified households. Inclusionary units may be considered target units as that term is defined in Chapter 17.29 of this Code.

   2. Market-Rate Unit. Any unit within a housing development that is not an inclusionary unit.

K. Eligible Household. A household whose household income qualifies the household for occupancy of inclusionary units provided under this Chapter.

L. Eligible Purchaser. A household whose household income qualifies the household to purchase a for-sale inclusionary unit, or a qualified non-profit housing corporation as such term is defined in Section 714.7 of the California Civil Code or successor provisions.

M. First Approval. The first of the following approvals to occur with respect to an inclusionary housing development: subdivision approval, housing development permit, building permit or any other permit or approval under the Brisbane Municipal Code.

N. Household Income. Household income shall be the gross income of the household as calculated pursuant to Title 25 California Code of Regulations, §6914, as amended, or its successor. The household income categories addressed in this Chapter shall be defined as follows:

1. Lower Income Household. A household whose income does not exceed the lower income limits applicable to San Mateo County, as published annually by the State of California pursuant to California Code of Regulations, Title 25, Section 6932, as may be amended over time.
2. Moderate Income Household. A household whose income does not exceed the moderate income limits applicable to San Mateo County, as published annually by the State of California pursuant to California Code of Regulations, Title 25, Section 6932, as may be amended over time.
3. Very Low Income Household. A very low income household shall be as defined by California Health and Safety Code Section 50105, as may be amended over time.

O. Housing Authority. "Housing Authority" shall mean the Brisbane Housing Authority, as established by Resolution of the City Council. For the purposes of this Chapter, "Housing Authority" shall have the same meaning as "City."

P. Inclusionary Housing Development. Any parcel map, subdivision map, use permit, building permit, or other City approval which results in a net increase of at least five (5) or more primary dwelling units and/or residential lots or combination thereof intended for sale or for rent. An inclusionary housing development project may include, but is not limited to, new construction, conversion of existing dwelling units to condominium ownership, creation of residential lots, conversion of an existing nonresidential building to residential use, and the addition of primary dwelling units to an existing multifamily dwelling. .

1. For-Sale Inclusionary Housing Development. An inclusionary housing development, or portion thereof, where the dwelling units or lots are offered to the public for purchase.
2. Rental Inclusionary Housing Development. An inclusionary housing development, or portion thereof, comprised of dwelling units which are intended to be rented, or are actually offered for rent, to tenants upon completion, whether or not a condominium or subdivision map is recorded as part of the housing development.

Q. Resale restriction agreement. An agreement, covenant, deed of trust, or other document, approved by the City Council, which is executed by the property owner and recorded against each inclusionary unit to insure that such unit remains affordable for the applicable term.

17.31.030 - Inclusionary requirement.

A. Applicability. The inclusionary requirements established in this section shall apply to all housing development projects with five (5) or more primary dwelling units or residential lots, except for the following:

1. Housing development projects that are developed pursuant to the terms of a development agreement, provided that such housing development projects shall comply with any affordable housing requirements included in the development agreement.
2. Housing development tentative maps or vesting tentative maps exempted by Government Code Section 66474.2 or 66498.1, provided that such maps shall comply with any predecessor ordinance in effect on the date the application for the map was deemed complete.

B. Inclusionary Requirements. Unless an alternative is elected pursuant to Section 17.31.050 of this Chapter, the following inclusionary requirements shall apply to for-sale and rental housing development projects:

1. For-sale Developments. A for-sale inclusionary housing development shall provide the following inclusionary lots or units:

a. A for-sale housing development with five (5) to ten (10) primary dwelling units or lots must provide fifteen percent (15%) of the proposed units at affordable ownership costs for moderate income households.

b. A for-sale housing development of eleven (11) or more primary dwelling units or lots must provide ten percent (10%) of the units or lots at affordable ownership costs for moderate income households and five percent (5%) of the units or lots at affordable ownership costs for lower income households.

2. Rental Developments. A rental inclusionary housing development with five (5) or more primary dwelling units must provide fifteen percent (15%) of the units at affordable rents to very low income households.

C. Calculation of Inclusionary Requirement. For purposes of calculating the number of inclusionary units required by this section, any calculations resulting in fractional units of one-half or greater shall be rounded to the next larger integer. If the calculation of the required total number of inclusionary units results in a fraction of less than one-half, the fractional amount shall be provided to the City through payment of an in-lieu fee established by the City Council. For density bonus projects per Chapter 17.29, density bonus units shall not be counted when determining the minimum inclusionary housing requirement.

D. Contemporaneous construction of five (5) or more primary dwelling units on a lot, or on contiguous lots for which there is evidence of common ownership or control, even though not covered by the same City land use approval, shall also be considered a single housing development. Construction shall be considered contemporaneous if any building permits are issued within five (5) years following the date of completion of any earlier construction.

E. If an inclusionary housing development requests a density bonus pursuant to Chapter 17.29 of this Title, inclusionary units may be considered target units for purposes of qualifying for a density bonus only if such inclusionary units meet all of the applicable requirements for target units in Chapter 17.29 of this Title and State Density Bonus Law.

17.31.040 - Inclusionary housing incentives.

The following incentives shall apply to all inclusionary housing developments that provide one or more inclusionary units in accordance with the provisions of this Chapter:

A. Single-family detached inclusionary units may be constructed on smaller lots than the market-rate units in the same housing development, but the lots may be no smaller than the minimum standard for the applicable zoning district, except as may be modified by an eligible density bonus request pursuant to Chapter 17.29 of this Title or other provisions of this Municipal Code that address reduction of minimum lot sizes.

B. The square footage of the inclusionary units should be comparable to the market-rate units in the same residential development. However, at the discretion of the Community Development Director, smaller units may be provided, as long as the total inclusionary square footage provided remains comparable, yielding additional units.

C. Inclusionary units may have different finishes and features than market-rate units, including but not limited to interior finishes, fixtures, or appliances, than market-rate units in the same residential development, as long as the finishes and features are durable and of good quality, as determined by the Community Development Director.

D. For for-sale inclusionary housing developments, accessory dwelling units may be proposed as inclusionary units. Such accessory dwelling units must comply with the requirements of Chapter 17.43 of this title. Accessory dwelling units shall be rented or sold, consistent with Chapter 17.43, at

affordable rents or affordable ownership costs per Section 17.31.030 of this Chapter, as specified in a regulatory agreement, covenant, or other document approved by the City Council pursuant to Section 17.31.060 of this chapter.

17.31.050 - Alternatives to constructing inclusionary units

A. An applicant for a rental inclusionary housing development, or an applicant for a for-sale inclusionary housing development of fifteen or fewer primary dwellings or lots may, at the sole discretion of the applicant, elect to pay an in-lieu fee as established by resolution of the City Council, for each required inclusionary unit to the Brisbane Housing Authority's Low and Moderate Income Housing Fund, instead of constructing the inclusionary units within the residential development. The in-lieu fee shall be paid prior to issuance of the building permit, unless applicable State law requires an different payment timing.

B. An applicant for a rental or for-sale housing development may request City Council approval of one or more of the following as an alternative to constructing the inclusionary units within the housing development or paying an in-lieu fee, which request shall be described within the affordable housing plan for inclusionary units prepared pursuant to Section 17.31.060 of this Chapter. City Council approval of such a request shall be based on findings that 1) the outcome for the City is superior in terms of the number and affordability of affordable units that would be created, or 2) construction of the required inclusionary units within the market-rate development would be infeasible or present unreasonable hardship in light of such factors as project size, site constraints, market competition, price and product type disparity, applicant capability, and financial subsidies available. Evidence must be submitted with the affordable housing plan required by Section 17.31.060 of this Chapter.

1. Off-Site Construction. The applicant may request to construct some or all of the inclusionary units at a location within the City outside of the housing development site. Off-site construction alternatives include alternatives where parcelization of the subject property is required to create a separate parcel. Off-site inclusionary units shall be located on sites that are compatible with adjacent land uses, appropriately zoned for the intended residential development, and are in proximity to or will provide access to employment opportunities, urban services, major roads or other public transit facilities.

2. Off-Site Preservation. The applicant may request to create inclusionary units off-site through the purchase and conversion of existing market-rate units to affordable units, either by the applicant or by a not-for-profit entity. The total square footage must, at minimum, equal the square footage that would have been expected on-site, at affordability levels that meet or exceed the on-site requirements. The off-site units must be purchased prior to the building permit for the inclusionary housing development. The off-site preservation option must be approved by the City Council, and the Community Development Director may set requirements related to the rehabilitation and condition of the property and the protection and/or temporary relocation of existing tenants.

3. Dedication of Land. The applicant may dedicate land within the City that is suitable for affordable housing development to the City or to the designee of the City.. The value of the land shall be not less than the sum of the in-lieu fee that would be due under Section 17.31.050 of this Chapter. The valuation of any land offered in-lieu shall be determined by an appraisal made by an appraiser mutually agreed upon by the City and the applicant. Costs associated with the appraisal shall be borne by the applicant. The timing of the land dedication shall be at or before the first approval of the inclusionary housing development. Factors considered by the Council may include but are not

limited to general location, access to transit, buildability, current zoning, and the number of units that could be built at the location.

4. Funding of Affordable or Special Needs Housing Project. The applicant may make a contribution to a special needs housing project or facility (shelter, transitional housing, or similar) in the City in an amount equivalent to the in-lieu fee payment due under subsection A of this Section 17.31.050. The contribution must be made prior to receipt of the building permit for the inclusionary housing development.

5. In-Lieu Fee for Certain For-Sale Developments. An applicant for a for-sale inclusionary housing development of more than fifteen primary dwelling units or lots may request Council approval to pay an in-lieu fee payment rather than construct affordable units with the project.

17.31.060 - Affordable housing plan for inclusionary units.

A. An affordable housing plan for inclusionary units shall be submitted as part of the application for first approval of any inclusionary housing development, except where payment of an in-lieu fee is elected by the applicant pursuant to Section 17.31.050.A of this Chapter. No application for a first approval may be deemed complete unless an affordable housing plan, if required, is submitted conforming to the provisions of this Chapter.

B. If the applicant has requested a density bonus pursuant to Chapter 17.29 of this Code, the affordable housing plan required under this Section shall be combined with the affordable housing plan for target units required pursuant to Section 17.29.040 of this Code.

C. The affordable housing plan for inclusionary units shall include the following information:

1. For housing developments proposing to construct the inclusionary units within the development, the affordable housing plan shall specify, at the same level of detail as the application for the housing development:

a. The number, type, tenure, household income categories, number of bedrooms and baths, approximate location, size, and design (including finishes and features) of all inclusionary units;

b. Construction phasing of inclusionary units in relation to market-rate units and overall construction schedule. If the developer proposes to construct the inclusionary units in separate phases from the market-rate unit construction, the affordable housing plan shall specify the security to be provided to the City to ensure that the inclusionary units will be constructed, and explain how the proposed phasing would provide greater public benefit than providing the inclusionary units concurrently with the market-rate units;

c. Preliminary marketing plan indicating general approach to marketing inclusionary units. The final marketing plan may be deferred to prior to first building permit issuance, subject to Community Development Director approval, including the manner in which inclusionary units will be offered to the public in a nondiscriminatory and equitable manner and the method of marketing inclusionary units after initial occupancy is secured;

d. A financing mechanism, the particulars and the amount of which shall be determined by the City at the time the affordable housing plan is approved, to cover the City's costs for the on-going administration and monitoring of the affordability provisions applicable to the inclusionary units, except where prohibited by State law.

2. If an applicant requests City Council approval of alternatives to constructing the inclusionary units within a housing development pursuant to subsection 17.31.050.B of this Chapter, the affordable housing plan shall describe the requested alternatives.

3. If the applicant requests use of different finishes and features than market-rate units as addressed in Section 17.31.040, the affordable housing plan shall describe the request.

D. The affordable housing plan for inclusionary units shall be reviewed simultaneously with any other permit applications associated with the first approval for the inclusionary housing development.

17.31.070 – Adjustment or reduction of inclusionary housing requirement.

A. An applicant may request City Council approval of an adjustment or reduction of the inclusionary housing requirements of this Chapter if an applicant demonstrates that the requested adjustment or reduction would better implement the goals, objectives, and policies of the City's general plan housing element, which encourages the provision of housing affordable to a variety of household income levels, seniors, and persons with disabilities. The City Council, in its sole discretion, will determine whether to approve the applicant's request based on the City's progress in meeting its housing goals, objectives, and policies at the time the request is made.

B. Any request for an adjustment or reduction under this section shall be submitted concurrently with the affordable housing plan required by Section 17.31.060 of this Chapter. The request for a reduction or adjustment shall set forth in detail the factual basis for the adjustment or reduction.

17.31.080 - Affordable housing agreement.

A. Applicability. Recordation of an affordable housing agreement shall be made a condition of the first approval for all inclusionary housing developments. The affordable housing agreement shall be recorded prior to, or concurrently with, the final or parcel map, or, where the inclusionary housing development does not require a map, prior to issuance of a building permit for any structure in the inclusionary housing development. The affordable housing agreement shall run with the land and bind all future owners and successors in interest.

B. The affordable housing agreement shall be in a form provided by the City and shall include the following, without limitation:

1. All information provided in the affordable housing plan pursuant to Sections 17.31.060 of this Chapter.

2. The household income categories of the inclusionary units, consistent with the requirements of Section 17.31.030 of this Chapter or any alternative requirements pursuant to Section 17.31.050 of this Chapter.

3. Continued affordability of the inclusionary units, as follows:

a. For-Sale Inclusionary Units. The affordable housing agreement shall require that a resale restriction agreement, in a form approved by the City, be recorded against each for-sale inclusionary unit when the unit is first transferred to an eligible purchaser. The resale restriction agreement shall provide that inclusionary units in for-sale housing developments shall remain affordable in perpetuity and that the affordability provisions be applicable to any subsequent transferees or successors in interest.

The resale restriction agreement shall also provide that the for-sale inclusionary unit shall not be rented.

b. Rental Inclusionary Units. The affordable housing agreement shall be recorded against each inclusionary housing development containing rental units to ensure that the inclusionary units remain affordable in perpetuity.

Rental inclusionary units that are later converted to for-sale units, e.g., converted to condominiums, and then sold shall be sold as for-sale inclusionary units and the requirements of subparagraph a of paragraph 3 of subsection B of this Section shall apply.

4. The affordable housing agreement shall specify that no household shall be permitted to begin occupancy of an inclusionary unit unless the City or the City's designee has approved the household's eligibility.

5. Affordable housing agreements for inclusionary housing developments intended to be occupied by households with one or more members who are sixty-two (62) years of age or older shall provide that dwelling units in the residential development shall be occupied by persons eligible to reside in such a project.

6. The affordable housing agreement shall include provisions requiring maintenance of records to demonstrate compliance with this Chapter.

7. The affordable housing agreement shall include a description of remedies for breach of the agreement by either party. The City may identify tenant households or qualified purchaser households as third party beneficiaries under the agreement.

D. The affordable housing agreement shall include any other provisions determined necessary by the City Attorney to ensure implementation and compliance with this Chapter.

17.31.090 - Implementation and enforcement.

A. The City shall prepare guidelines to further implement this ordinance. These guidelines shall include, but are not limited to, the following:

1. The form and contents of the affordable housing agreement and any resale restriction, including provisions for successors in interest and other ownership transfers;

2. The form and contents of the final marketing plan and resident selection process;

3. Procedures for setting rents and sales prices for the inclusionary units;

4. Procedures for qualifying tenant households and prospective purchaser households of inclusionary units, including any preferences;

5. Compliance and monitoring procedures to assure that affordability restrictions are maintained;

6. Resale and subordination procedures for inclusionary for-sale units;

7. The establishment of any fees to recoup the City's costs for the ongoing administration and monitoring of the affordability provisions of the inclusionary units, except where prohibited by State law.

B. No permit, license, subdivision map, or other approval or entitlement for an inclusionary housing development shall be issued, including without limitation a final inspection for occupancy, until all requirements applicable to the inclusionary housing development at such time pursuant to this Chapter have been satisfied.

1. No building permit shall be issued for any market-rate unit until the permittee has obtained permits for inclusionary units sufficient to meet the requirements of Section 17.31.030 of this Chapter, and, if a density bonus has been requested pursuant to Chapter 17.29, Section 17.29.030 of this Code. No final inspection for occupancy for any market-rate unit shall be completed until or simultaneously with construction of the inclusionary units required by Section 17.31.030 of this Chapter.

2. The time requirements set forth in this Section for issuance of building permits for market-rate units and for final inspections for occupancy for market-rate units may be modified to accommodate phasing schedules, model variations, or other factors in an inclusionary housing development within the submitted affordable housing plan pursuant to Sections 17.31.060 of this Chapter, if the City determines this will provide greater public benefit and an affordable housing agreement pursuant to Section 17.31.080 of this Chapter has been accepted by the community development director.

C. Conditions to carry out the purposes of this Chapter shall be imposed on the first approval for an inclusionary housing development and any subsequent approvals.

D. The City Attorney is authorized to enforce the provisions of this Chapter and all affordable housing agreements, regulatory agreements, resale controls, deeds of trust, or similar documents placed on inclusionary units, by civil action and any other proceeding or method permitted by law.

E. The City Manager is authorized to execute the resale restriction agreement and any related documents following approval by the Community Development Director and the City Attorney.

F. Failure of any official or agency to fulfill the requirements of this Chapter shall not excuse any applicant or owner from the requirements of this Chapter.

G. The remedies provided for herein shall be cumulative and not exclusive and shall not preclude the City from any other remedy or relief to which it otherwise would be entitled under law or equity.

SECTION 3: Where a use permit, design permit or variance approval has been issued through final action by the City prior to the effective date of this Ordinance, or where such planning permit approval is not required and a complete building permit application has been submitted prior to the effective date of this Ordinance, the holder of such use permit, design permit or variance approval or complete building permit application may proceed to construct the improvements or establish the use authorized by such permit or approval and the same shall be exempted from any conflicting regulations that may be contained in this Ordinance.

SECTION 4: If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of Brisbane hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that one or more sections, subsections, sentences, clauses or phrases may be held invalid or unconstitutional.

SECTION 5: This Ordinance shall be in full force and effect thirty days after its passage and adoption.

* * *

The above and foregoing Ordinance was regularly introduced and after the waiting time required by law, was thereafter passed and adopted at a regular meeting of the City Council of the City of Brisbane held on the _____ day of _____, 2025, by the following vote:

AYES:

NOES:
ABSENT:
ABSTAIN:

_____
MAYOR

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney

draft
ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF BRISBANE ADDING NEW CHAPTER 17.29 AND AMENDING CHAPTER 17.31 OF THE BRISBANE MUNICIPAL CODE CONCERNING DENSITY BONUS AND INCLUSIONARY HOUSING REQUIREMENTS

The City Council of the City of Brisbane hereby ordains as follows:

SECTION 1: A new Chapter 17.29 is added to the Municipal Code to read as follows:

Chapter 17.29 – DENSITY BONUSES

Sections:

17.29.010 Purposes of chapter.
17.29.020 Definitions.
17.29.030 Administration of D~~d~~ensity ~~b~~Bonuses.
17.29.040 Application for a Density Bonus.
~~Affordable housing plan for density bonus projects.~~
17.29.050 Affordable housing agreements.
17.29.060 Implementation and enforcement.

17.29.010 – Purposes of chapter.

A. The City of Brisbane enacts this chapter to implement the goals, objectives, and policies of the City's general plan housing element relative to administering a density bonus program to encourage the provision of housing affordable to a variety of household income levels, seniors, and persons with disabilities.

B. This chapter is also intended to implement Sections 65915~~, 65915.5, and 65917~~ through 65918 of the California Government Code, or successor statutes and regulations, governing density bonuses and other incentives required by such statutes or regulations~~therein for the production of housing for very low income, lower income, moderate income, and senior households~~.

17.29.020 - Definitions.

A. Affordable Housing Agreement. A recorded agreement between a property owner and the City to ensure that the density bonus requirements of this Chapter are satisfied.

B. Affordable Ownership Cost. The affordable ownership cost for for-sale target units shall be as specified in California Health and Safety Code Section 50052.5, as may be amended over time.

C. Affordable Rent. The affordable rent for rental target units shall be as specified in California Health and Safety Code Section 50053, as may be amended over time.

D. Approving Authority. The City decision-making body acting on an application for a housing development subject to the requirements of this Chapter, including the City Council, Planning Commission, or Community Development Director.

~~D.~~E. Base Density. Base density or maximum residential density shall be as defined in the State Density Bonus law.

F. Child Care Facility. Child care facility shall have the same meaning as defined in the ~~Government Code Section 65915(h)(4), as may be amended over time~~State Density Bonus Law.
~~E.~~

~~F.~~G. City. The City of Brisbane or the Brisbane Housing Authority.

~~G.~~H. City Council. The City Council of the City of Brisbane as established in Title 2 of this Code or the Board Members of the Brisbane Housing Authority

~~H.~~I. City Manager. The City Manager of the City of Brisbane as established in Title 2 of this Code, the City Manager's designee, the Executive Director of the Brisbane Housing Authority or the Executive Director's designee.

~~I. Common Interest Development. As defined in California Civil Code Section 4100, as may be amended over time.~~

J. Community Development Director. The Director of the Community Development Department responsible for overseeing implementation of Title 17 of this Code, or the Community Development Director's designee.

K. Density Bonus. Density bonus~~.~~ shall be defined by State Density Bonus Law ~~A density increase over the otherwise allowable maximum residential density, as defined in this Section 17.29.020, pursuant to Government Code Section 65915(f) and 65915.5, as may be amended over time~~.

L. Density Bonus Project. Density bonus project shall mean any parcel map, subdivision map, housing development permit, design permit, building permit, or other city approval which results in a net increase of at least two (2) primary dwelling units and/or residential lots or combination thereof -for which a density bonus, incentive or concession, waiver or reduction of development standards, and/or modification of parking standard is requested by the developer pursuant to State Density Bonus Law and this Chapter. A density bonus project may include, but is not limited to, new construction, conversion of existing dwelling units to condominium ownership, subdivision of land to create additional residential lots, conversion of an existing nonresidential building to residential use, and the addition of dwelling units to an existing multifamily dwelling. A density bonus project shall include units or lots intended for sale or for rent.

1. For-Sale Density Bonus Project. A density bonus project that offers dwelling units or lots to the public for purchase.

~~1.~~ Rental Density Bonus Project. A density bonus project that offers dwelling units to be rented to tenants upon occupancy, whether or not a condominium or subdivision map is recorded as part of the project.

2.

M~~L~~. Development Standard. A development standard shall be as defined by the ~~Government Code Section 65915(o)(1)~~State Density Bonus Law~~, as may be amended over time~~, provided, however, ~~. As used in this Chapter,~~ the term "development standard" does not include any of the following:

1. The permitted uses of a site;

2. Any city fees;

3. Affordable housing requirements;

4~~3~~. Building standards approved by the California Building Standards Commission as provided in California Health and Safety Code Section 18901 et seq.; or

5~~4~~. The requirements of Brisbane's Green Building Ordinance as set forth in Title 15, Chapter 15.80 of this Code.

~~M~~N. Domestic Partner. Domestic partner means two (2) persons who have filed a declaration of domestic partnership with the California Secretary of State pursuant to Division 2.5, beginning with Section 297, of the California Family Code and such registration was in full force and effect at the time of the transfer or on the date of the transferor's death. A copy of the domestic partnership registration shall be provided to the city upon request.

O~~N~~. Dwelling Unit. Dwelling unit shall have the meaning set forth in Section 17.02.235 of this Code.

1. Density Bonus Unit. Those dwelling units granted pursuant to a density bonus requested pursuant to the provisions of this Chapter ~~which exceed the otherwise allowable maximum residential density for the development site~~ and State Density Bonus Law.

2. Market-Rate Unit. Any dwelling unit within a ~~housing development~~density bonus project that is not a target unit.

3. Target Unit~~s~~. Any ~~D~~dwelling unit~~s~~ affordable to moderate and~~,~~ low~~, or very low~~ income households within a ~~housing development~~density bonus project that qualify the project for a density bonus.

P~~O~~. Eligible Household. A household whose household income qualifies the household for occupancy of a ~~density bonus~~target unit~~s provided under this Chapter~~.

~~P~~Q. Eligible Purchaser. A household whose household income qualifies the household to purchase a for-sale ~~inclusionary~~target unit, or a qualified non-profit housing corporation as such term is defined in Section 714.7 of the California Civil Code or successor statute~~provisions~~.

R~~Q~~P. First Approval. The first of the following approvals to occur with respect to a ~~housing developme~~ density bonus project~~nt~~: subdivision approval, housing development permit, building permit or any other permit or approval under the ~~Zoning Ordinance~~Brisbane Municipal Code.

~~Q~~SR. Household Income. Household income shall be the gross income of the household as calculated pursuant to Title 25 California Code of Regulations, §6914, as amended, or its successor. regulation The household income categories addressed in this Chapter shall be defined as follows:

~~1. Area Median Income. Area median income for San Mateo County as published by the State of California pursuant to California Code of Regulations, Title 25, Section 6932, as may be amended over time.~~

~~2.~~1. Lower Income Household. A household whose income does not exceed the lower income limits applicable to San Mateo County, as published annually by the State of California pursuant to California Code of Regulations, Title 25, Section 6932, as may be amended over time.

~~3.~~2. Moderate Income Household. A household whose income does not exceed the moderate income limits applicable to San Mateo County, as published annually by the State of California pursuant to California Code of Regulations, Title 25, Section 6932, as may be amended over time.

3. Very Low Income Household. A very low income household shall be as defined by California Health and Safety Code Section 50105, as may be amended over time.

4. Extremely Low Income Household. An extremely low income household shall be as defined by Section 50106 of the California Health and Safety Code or successor statute~~regulations.~~

R~~S~~T. Housing Authority. "Housing Authority" shall mean the Brisbane Housing Authority, as established by Resolution of the City Council. For the purposes of this Chapter, "Housing Authority" shall have the same meaning as "City."

~~S. Housing Development. Any parcel map, subdivision map, use permit, building permit, or other city approval which results in a net increase of at least five (5) or more dwelling units and/or residential lots or combination thereof. A housing development may include, but is not limited to, new construction, conversion of existing dwelling units to condominium ownership, creation of residential lots,~~

~~conversion of an existing nonresidential building to residential use, and the addition of dwelling units to an existing multifamily dwelling. A housing development shall include units or lots intended for sale or for rent.~~

~~1. For-Sale Housing Development. A housing development, or portion thereof, where the dwelling units or lots are offered to the public for purchase.~~

~~2. Rental Housing Development. A housing development, or portion thereof, comprised of dwelling units which are intended to be rented, or are actually offered for rent, to tenants upon completion, whether or not a condominium or subdivision map is recorded as part of the housing development.~~

~~3. Senior Citizen Housing Development. A senior citizen housing development shall be as defined per Government Code Section 65915(b)(1)(C), as may be amended over time.~~

~~T~~U. Incentives or Concessions. Incentives or concessions shall be as defined in the ~~the Government Code Section 65915(k) and 65915.5~~State Density Bonus Law~~, as identified by a financial pro forma submitted by the applicant per 17.31.120 of this Code.~~

V~~U~~. Maximum Residential Density. ~~The maximum number of dwelling units permitted by the City's zoning ordinance on the date the application is deemed complete~~Maximum residential density or base density shall be as defined in State Density Bonus Law.

~~V~~

VU.W. Modified Parking Standards. Modifications to the parking standards that would otherwise apply to an density bonus project~~ housing development~~ under Chapter 17.34 of this Code, as described in ~~Government Code Section 65915(p~~the)State Density Bonus Law~~, as may be amended from time to time~~.

WV~~W~~X. Resale Restriction Agreement. A resale restriction agreement shall mean ~~A~~an agreement, covenant, deed of trust, or other document, approved by the City Council, which is executed by the property owner and recorded against each target unit to insure that such unit remains affordable for the applicable term.

X~~W~~X~~Y~~. Specific Adverse Impact. A "specific adverse impact" shall have the same meaning as the meaning provided in the Government Code Section 65589.5, as may be amended from time to time, or successor provisions.

X~~Y~~Z. State Density Bonus Law. State Density Bonus Law shall mean Sections 65915 through 65918 of the California Government Code, as may be amended from time to time, or successor statutes~~regulations.~~

Y~~Z~~AA. Waiver or Reduction of Development Standard. Waiver or Reduction of Development Standard shall be as defined in the State Density Bonus Law.

17.29.030 - ~~Density bonuses.~~ Administration of Density Bonuses

A. The City shall grant ~~a~~ density bonuses, incentives and concessions, waivers or reductions in development standards, and/or modified parking standards requested by applicants ~~for approval of a housing development project of at least five units, to the extent required pursuant to Sections~~in accordance with the provisions of~~f~~ the ~~65915 and 65915.5~~State Density Bonus Law ~~of the Government Code, as may be amended over time~~ and the procedures set forth in this Chapter.

1. The City may deny a request for~~-~~ incentives or concessions only as provided by the State Density Bonus Law~~the the .~~

2. The City may deny a request for a waiver or reduction of a development standard only as provided by the State Density Bonus Law.

B. ~~1.~~ A developer of a ~~housing development~~ project containing between two (2) ~~and~~to four (4) dwelling units or lots may request ~~City Council~~ approval of a density bonus as shown in Table 17.29.030. The ~~City~~ decision making body shall waive or reduce any development standard that may preclude development of such a project as set forth in ~~per~~ ~~sub~~section ~~B~~A of this Section 17.29.030.

Table 17.29.030

Zoning District	Lot Size	Maximum Permitted Residential Density	Percentage low income units	Percentage Density Bonus	Total Units including Density Bonus Units
R-2	4,950-7,499 sq ft	2 units	50%	30%	3 units
R-3	4,950- 5,999 sq ft	3 units	30%	15%	4 units
	6,000- 7,499 sq ft	4 units	50%	15%	5 units

C. ~~2.~~A developer of a ~~housing development~~density bonus project that exceeds the qualifications for a density bonus per ~~Government Code Section 65915~~State Density Bonus Law may request that the City grant one additional incentive or concession above the maximum number prescribed by ~~Government Code Section 65915(d)(2)~~State Density Bonus Law, as applicable to the project.

~~3. A developer may request a lesser density bonus than the project is entitled to, but no reduction will be permitted in the number of required target units pursuant to subsection A of this Section 17.29.030.~~

~~4. Where a site has no maximum residential density, no density bonus need be granted. However, the City shall grant incentives or concessions and waivers or reductions in development standards requested by applicants pursuant to Government Code Sections 65915(d) and 65915(e).~~

~~5.~~ D. A developer of a density bonus project may request one additional incentive or concession if the density bonus project includes family-sized target units (units with three or more bedrooms) designed and dedicated for use by low- to extremely low-income households.

E. Inclusionary units provided in compliance with~~required pursuant to~~ Chapter 17.31 ~~will~~ may be counted as target units for the purposes of calculating a density bonus if they meet requirements for target units established under State Density Bonus Law ~~and Chapter 17.31~~.

~~B~~F. The decision making body for any density bonus project shall be the decision making body specified for the first approval. The City Council shall be the decision-making body for any density bonus projects that include requests of incentives or concessions or waivers of development standards that otherwise require City Council approval under other Chapters of this Municipal Code. ~~The following concessions and incentives shall require approval by the City Council, even though the housing development may otherwise only require approval by the Planning Commission:~~

~~1. Deferring collection of development impact fees on market-rate units until issuance of certificate of occupancy;~~

~~2. Any direct financial assistance, including that for purchasers of target units;~~

~~3. Any regulatory incentives or concessions not related to the zoning ordinance's development standards or parking requirements, such as incentives involving infrastructure standards or mixed-use zoning.~~

~~C~~G. Notwithstanding that an applicant may request direct financial assistance, including that for purchasers of target units, which shall require approval of the City Council,~~N~~ nothing in this section

17.29.030 requires the City to provide direct financial incentives for the housing development, including but not limited to providing to the applicant ~~to the provision of~~ publicly owned land.

~~D~~H. In accordance with the ~~state law~~State Density Bonus Law, neither the granting of a concession or incentive, waiver or reduction in development standards, nor the granting of a density bonus, shall be interpreted, in and of itself, to require a general plan amendment, zoning change, or other discretionary approval.

17.29.040 – Application for a Density Bonus.

A. Application Processing. Applications for density bonuses, incentives, concessions, waivers or reductions in development standards, and/or modifications of parking standards pursuant to the State Density Bonus Law and this Chapter shall be processed in concert with and by the same decision-making body~~, except where otherwise indicated in Section 17.29.030~~, as any other planning entitlement applications that the density bonus project may require., except where otherwise indicated in Section 17.29.030.

B. Contents of Application. Applications shall be filed with the Community Development Director on such form as the Director shall prescribe. In addition to the submittal requirements for any other planning entitlement applications or permit approvals the project requires, the application shall include the following information and supporting materials:

1. Current title report(s) for all properties proposed for development, prepared within at least six (6) months of application submittal.

2. A letter signed by the present owner(s) stating what density bonus, incentives and concessions, waivers or modifications of development standards, and/or parking modification are being requested from the City.

~~3. In the case of a request for any incentives or concessions, a description of how the requested incentives or concessions will result in identifiable and actual cost reductions to provide for affordable housing costs or rents for the target dwelling units.~~

~~4. In the case of a request for waivers or reductions of development standards, a description of how the existing development standards would have the effect of physically precluding the construction of the development at the requested densities or the requested concessions or incentives.~~

~~5~~3. In the case of a condominium conversion request, such information required by Chapter 17.30 of this Title.

~~6~~. A statement describing whether the density bonus project is proposed on any property that has one of the following conditions. If any of the below conditions exist on the property, the application must identify how such units will be replaced in the density bonus project. Such replacement units shall not be counted as target units when calculating the density bonus, unless the density bonus project is 100% affordable.

a. Includes a parcel or parcels on which rental dwelling units are presently ~~,~~located that are subject to a recorded covenant, ordinance, or law that restricts rents to levels~~l~~ affordable to persons and families of lower or very low income or if rental dwelling units have been vacated or demolished in the five-year period preceding the application that were at the time ~~,~~ subject to a recorded covenant, ordinance or law that restricted rents to levels affordable to persons and families of very low or lower income;

b. Includes a parcel or parcels on which rental dwelling units have~~Has~~ been subject to any other form of rent or price control through a public agency's exercise of its police power;

c. Includes a parcel or parcels on which rental dwelling units are ~~Is~~ presently occupied by low or very low income households.

5. A detailed vicinity map showing the project location and such details as the location of the nearest commercial retail, transit stop, potential employment locations, park or recreation facilities or other social or community service facilities.

~~8~~6. A project data table showing the total number of dwelling units proposed on the site and off site, as applicable, including the number of target units and density bonus units, and the project's conformance to all objective development standards.

~~7~~9. Site plan(s) with accurately dimensioned property lines showing existing and proposed structures and their uses, adjacent structures and their uses, setbacks, adjacent streets, easements, existing and proposed utilities, existing and proposed driveways, and internal circulation and parking.

~~10~~8. Floor plans of all existing and proposed structures (with the use of each room/space labeled) and designating target units, as appropriate.

~~11~~9. Roof plans.

~~12~~10. Elevations of all sides of the existing and/or proposed structures, identifying colors and materials ~~as appropriate~~, and showing the height of structure(s) measured per the definition of building height in Chapter 17.02 of this Title and UBC type of construction. Cross-sections may also be required based upon the complexity of the design.

~~13~~11. Existing and proposed parking facilities, including the dimensions of parking spaces, number and location of spaces designated as compact or handicapped spaces, and a calculation of the number of parking spaces required by this title or any other applicable regulations;

~~14~~12.

~~17.~~ An affordable housing plan that contains all of the following, as applicable to the request:

a. The number, type, tenure, household income categories, number of bedrooms and baths, approximate location, size, and design (including finishes and features) of all density bonus units;

b. The number, type, tenure, affordability level, number of bedrooms and baths, approximate location, size, and design (including finishes and features) of all target units;

c. Construction phasing of target units in relation to market-rate units, if applicable, and overall construction schedule. If the developer proposes to construct the target units in separate phases from the market-rate unit construction, the affordable housing plan shall specify the security to be provided to the City to ensure that the target units will be constructed, and explain how the proposed phasing would provide greater public benefit than providing the target units concurrently with the market-rate units;

d. Preliminary ~~M~~marketing plan, indicating general approach to marketing target units in compliance with all fair housing laws. The final marketing plan may be deferred to prior to first building permit issuance, subject to Community Development Director approval, including the manner in which target units will be offered to the public in a nondiscriminatory and equitable manner and the method of marketing target units after initial occupancy is secured~~, and accompanied by an anti-displacement policy applicable to the target units~~;

~~e. Methods to be used to verify incomes of target unit tenant households or purchaser households;~~

~~f. Procedures for qualifying target unit tenant households and prospective purchaser households, including any preferences.~~

~~e~~g. A financing mechanism, the particulars and the amount of which shall be determined by the City at the time the affordable housing plan is approved, to cover the City's costs for the on-going administration and monitoring of the affordability provisions applicable to the target units, except where prohibited by State law.

~~h~~f. Description of any requested density bonuses, incentives, concessions, waivers or modifications of development standards, and/or modified parking standards and documentation of eligibility for the request(s), including a description of the base density without the requested density bonus, the number and location of all target units qualifying the project for a density bonus, the level of affordability of the target units, and identification of the density bonus units.

i. For all requested incentives and concessions, reasonable documentation demonstrating eligibility for the incentive or concession or to demonstrate that the incentive or concession meets the definition set forth in the State Density Bonus Law. For requests to allow mixed-use zoning in conjunction with the density bonus project, the application shall additionally include documentation demonstrating that the proposed commercial, office, industrial, or other land uses will reduce the cost of the density bonus project development and that the commercial, office, industrial, or other land uses are compatible with the density bonus project and the existing or planned development in the area where the proposed project will be located. The cost of reviewing any documentation submitted in support of a request for a concession or incentive, including but not limited to the cost to the City of hiring a consultant to review the documentation, shall be borne by the applicant.

ii. For all requested waivers or reductions of development standards, written evidence that (i) the development standards for which a waiver or reduction is requested will physically preclude the construction of the housing development at the densities or with the incentives or concessions permitted by this chapter; (ii) the waiver or reduction would not have a specific, adverse impact, or, if a specific, adverse impact would occur, that the impact could feasibly be mitigated or avoided; (iii) the waiver or reduction would not have an adverse impact on any real property that is listed in the California Register of Historical Resources; and (iv) the waiver or reduction would not be contrary to any state or federal law.

iii. If a density bonus, incentive or concession is requested for a land donation, the application shall show the location of the land to be dedicated and provide evidence that each of the conditions for such land donation set forth in the State Density Bonus Law will be met.

iv. If a density bonus, incentive or concession is requested for a child care facility, the application shall show the location and square footage of the child care facility and describe how all requirements of the State Density Bonus law for such density bonus, incentive or concession are met by the application.

B. Application Fee. The application shall be accompanied by the payment of a fee in such amount as established from time to time by resolution of the City Council. In addition, the applicant shall also deposit such amounts as the Community Development Director may require from time to time to cover the cost of any environmental or legal review, geotechnical and engineering reports, review

of green building documentation, and such other studies that may be required by the City in connection with the processing of the application or related planning entitlements.

C. Newly Constructed Condominiums. In addition to the information listed in this section, an application for a density bonus project for newly constructed condominiums, as defined in 17.30.020.A of this title, shall also include the materials set forth~~stipulated~~ in Section ~~17.30.040~~17.30.040.

D. Streamlined Housing Development Projects. Density bonus projects that are streamlined housing development projects, as defined in Chapter 17.02 of this Title, shall include additional supporting documentation to demonstrate eligibility as set forth on a form prescribed by the city.

~~**17.29.040 - Affordable housing plans for density bonus projects.**~~

~~A.An affordable housing plan shall be submitted as part of the application for first approval of any housing development for which a density bonus, incentives or concessions, or waivers or reductions of development standards are requested. No application for a first approval shall be deemed complete unless an affordable housing plan is submitted conforming to the provisions of this section.~~

~~B. The affordable housing plan shall include the following information:~~

~~1. All information required for affordable housing plans for inclusionary units pursuant to Section 17.31.060.C of Chapter 17.31, as applicable to the project.~~

~~2. Description of the base project without the requested density bonus, the number and location of all target units qualifying the project for a density bonus, the level of affordability of the target units, and identification of the density bonus units.~~

~~3. Description of any requested density bonuses, incentives, concessions, waivers or modifications of development standards, and/or modified parking standards.~~

~~i. For all requested incentives and concessions, a pro forma demonstrating the requested incentives and concessions result in identifiable and actual cost reductions to provide for affordable ownership cost or rent, as appropriate to the project. The cost of reviewing any required pro forma data submitted in support of a request for a concession or incentive, including but not limited to the cost to the City of hiring a consultant to review the pro forma, shall be borne by the applicant.~~

~~ii. For all requested waivers or reductions of development standards, written evidence that (i) the development standards for which a waiver or reduction is requested will physically preclude the construction of the housing development at the densities or with the incentives or concessions permitted by this chapter; (ii) the waiver or reduction would not have a specific, adverse impact, or, if a specific, adverse impact would occur, that the impact could feasibly be mitigated or avoided; (iii) the waiver or reduction would not have an adverse impact on any real property that is listed in the California Register of Historical Resources; and (iv) the waiver or reduction would not be contrary to any state or federal law.~~

~~iii. If a density bonus or concession is requested for a land donation, the application shall show the location of the land to be dedicated and provide evidence that each of the findings in Government Code Section 65915(g) can be made.~~

~~iv. If a density bonus or concession is requested for a child care facility, the application shall show the location and square footage of the child care facility and provide evidence that the findings in Government Code Section 65915(i) can be made.~~

~~v. If a density bonus or concession is requested for a mixed use development, as defined in Chapter 17.02 of this Code, the application shall provide evidence that the required findings in Government Code Section 65915(k)(2) can be made.~~

~~9. The applicant may request a modification of the requirement set forth in Section 17.29.060 of this Chapter that the target units be constructed concurrently with the market-rate units. In that case, the affordable housing plan shall describe the proposed phasing at the same level of detail as required in the application for the housing development, specify the security to be provided to the City to ensure that the affordable units will be constructed, and explain how the proposed phasing would provide greater public benefit than providing the target units concurrently with the market-rate units.~~

~~CB. An~~The affordable housing plan for density bonus projects shall be reviewed by the Planning Commission or City Council, as appropriate to the application, in conjunction simultaneously with any other permit applications associated with the first approval for the housing development. The City Council shall be the approving authority for the affordable housing plan where incentives or concessions pursuant to Section 17.29.030 of this Code are requested, even though the approving authority for the housing development density bonus project might otherwise be the Planning Commission.

~~D. A request for a minor modification of an approved affordable housing plan may be granted by the community development director if the modification is substantially in compliance with the original affordable housing plan and conditions of approval. A minor modification is technical in nature, as opposed to substantive or material. Substantive or material changes to the affordable housing plan shall be processed in the same manner as the original plan.~~

17.29.050 - Affordable housing agreement<u>s</u>.

A. Applicability. Recordation of an affordable housing agreement shall be made a condition of the first approval for all ~~housing developments subject to the requirements of this chapter~~<u>density bonus projects</u> to ensure implementation of all requirements of this Chapter. The affordable housing agreement shall be recorded prior to, or concurrently with, the final <u>subdivision</u> or parcel map, or, where the housing development does not include a map, prior to issuance of a building permit for any structure in the housing development. The affordable housing agreement shall run with the land and bind all future owners and successors in interest.

~~B. Definitions. The following definitions shall be applicable to such terms as used in this section:~~

~~1. "Successor in interest"" means any person or persons, other than a transferee defined in subparagraph b of paragraph 2 of this subsection B, vested in legal title to the target unit by reason of the death of the owner of a target unit. For the purposes of this section, the household income of a successor in interest will be calculated consistent with the calculation of household income as defined in Section 17.29.020.Q of this Chapter.~~

~~2. "Transfer" means any sale, conveyance, assignment, or other change of ownership, whether voluntary or involuntary, of any legal or equitable interest in a target unit. Where the target unit is owned by a corporation, limited liability company, general or limited partnership, or other form of business entity, a transfer of the unit shall be deemed to have occurred upon transfer of fifty percent (50%) or more of the ownership interest in such entity. Notwithstanding the foregoing, the following transfers shall be exempt from the requirement that the transferee qualify as an eligible household:~~

~~a. Any transfer to a spouse or domestic partner of the transferor, where the spouse or domestic partner becomes a co-owner of the target unit with the transferor;~~

~~b. Any transfer by devise or inheritance to a spouse or domestic partner of the transferor upon the transferor's death, where the spouse or domestic partner continues to occupy the unit as his or her principal place of residence;~~

~~c. Any transfer between spouses as part of a marriage dissolution proceeding;~~

~~d. Any transfer to an inter vivos revocable trust in which the transferor is the beneficiary;~~

~~e. The granting of a~~the lien or other security interest in the unit as security for a loan and such loan ~~complies with any applicable requirements of the resale restriction agreement.~~the ~~set forth the~~

~~The exemptions listed above shall apply only during the period in which the target unit is owned by the exempted person and shall not apply to any subsequent transfer by that person, which shall be subject to all of the terms and provisions of the resale restriction agreement.~~

~~C~~B. The affordable housing agreement shall be in a form provided by the City and shall include the following, without limitation:

1. All information provided in the affordable housing plan pursuant to Section 17.29.040 of this Chapter.

2. The household income categories of the target units, consistent with the requirements of the State Density Bonus law.

3~~2~~. Continued affordability of the target units, as follows:

a. For-Sale Target Units. The affordable housing agreement shall require that a resale restriction agreement, in a form approved by the City, be recorded against each for-sale target unit when the target unit is first transferred to an eligible purchaser. The resale restriction agreement shall provide that target units in for-sale ~~housing developments~~density bonus projects shall remain affordable in perpetuity and that the affordability provisions be applicable to any subsequent transferees or successors in interest.

The resale restriction agreement shall also provide that the for-sale target unit shall not be rented ~~and that a successor in interest shall not be exempt from meeting the household income eligibility requirements as are transferees under paragraph 2 of subsection B of this section; provided, however, a successor interest may reside in the unit, subject to the obligations of the resale restriction agreement, if a successor in interest's household income qualifies the successor in interest as provided in Section 17.29.020 Q of this Chapter. If the household income of the successor in interest does not qualify, the successor in interest must sell the unit as set forth in the resale restriction agreement, following a grace period not to exceed one year~~.

b. Rental Target Units. The affordable housing agreement shall be recorded against each ~~housing development~~rental density bonus project containing rental target units to ensure that the target units remain affordable ~~for a minimum term as specified in Government Code Section 65915(c)(1)the ; provided, however, if the target units in the housing development are also inclusionary housing units as defined in Chapter 17.31, the target units shall remain affordable~~ in perpetuity ~~as required by Chapter 17.31~~.

~~For those target units in a housing development that are not inclusionary housing units as defined in Chapter 17.31, a longer period of time than as specified in Government Code section 65915(c)(1)~~the ~~may be required by any construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program.~~

Rental target units that are later converted to for-sale units, e.g., converted to condominiums, and then sold shall be sold as for-sale target units and the requirements of subparagraph a of paragraph 2 of subsection C~~B~~ of this Section shall apply.

~~3~~4. The affordable housing agreement shall specify that no household shall be permitted to begin occupancy of a target unit unless the Community Development Director has approved the household's eligibility~~, unless the household has been exempted under paragraph 2 of subsection B of this Section 17.29.050. If the City maintains a list of, or otherwise identifies, eligible households, initial and subsequent occupants of target units shall be selected first from the list of identified households, to the maximum extent possible, in accordance with guidelines approved by the City Council and all applicable State laws~~.

~~4~~5. Affordable housing agreements for land dedication, child care facilities, and condominium conversions shall ensure the continue~~the~~d compliance with all conditions included in ~~Government Code Sections 65915 and 65915.5~~State Density Bonus Law.

~~5~~6. Affordable housing agreements for senior citizen housing developments shall provide that units in the residential development shall be occupied by senior citizens or other persons eligible to reside in such a project as established by the State Density Bonus Law.

~~6~~7. The affordable housing agreement shall include provisions requiring maintenance of records to demonstrate continued compliance with this Chapter over long-term operation of the density bonus project.

~~7~~8. The affordable housing agreement shall include a description of remedies for breach of the affordable housing agreement by either party. The City may identify tenants or qualified purchasers as third party beneficiaries under the agreement.

C~~D~~. The affordable housing agreement shall include any other provisions determined necessary by the City Attorney to ensure implementation and compliance with the State Density Bonus La~~q~~w and this Chapter.

17.29.060 - Implementation and enforcement.

A. No permit, license, subdivision map, or other approval or entitlement for a ~~housing development~~density bonus project shall be issued, including without limitation a final inspection for occupancy, until all requirements applicable to the ~~housing development~~density bonus project at such time pursuant to this Chapter have been satisfied.

1. Except where authorized by the approved affordable housing plan pursuant to Section 17.29.040, ~~N~~no building permit shall be issued for any market rate unit until the permittee has obtained permits for target units sufficient to meet the requirements of Section 17.29.030 of this Chapter, and, if the project includes inclusionary housing units pursuant to Chapter 17.31 of this Code ~~and~~~~Chapter, Section 17.31.030 of this Code~~. No final inspection for occupancy for any market-rate unit shall be completed until the permittee has constructed the target units required by Section 17.29.030 of this Chapter, unless so authorized in the approved affordable housing plan.

2. The time requirements set forth in this Section for issuance of building permits for market-rate units and for final inspections for occupancy for market-rate units may be modified to accommodate phasing schedules, model variations, or other factors in a ~~housing development~~density bonus project within the submitted affordable housing plan pursuant to Sections 17.29.0~~4~~30 of this Chapter, if the City determines this will provide greater public benefit and an affordable housing agreement pursuant to Section 17.29.050 of this Chapter has been ~~accepted by the community development director~~approved by the decision making body for the first approval for the density bonus project.

B. Conditions to carry out the purposes of this Chapter shall be imposed on the first approval for a ~~housing development~~density bonus project.

C. The City Attorney is authorized to enforce the provisions of this Chapter and all affordable housing agreements, regulatory agreements, resale controls, deeds of trust, or similar documents placed on target units, by civil action and any other proceeding or method permitted by law.

D. The City Manager is authorized to execute ~~the~~ any ~~resale restriction~~ agreement and any related documents following approval such ~~of the resale restriction~~ agreement by the Community Development Director and the City Attorney.

E. Failure of any official or agency to fulfill the requirements of this Chapter shall not excuse any applicant or owner from the requirements of this Chapter.

F. The remedies provided for herein shall be cumulative and not exclusive and shall not preclude the City from any other remedy or relief to which it otherwise would be entitled under law or equity.

G. Any target unit that is sold or rented in violation of the affordability requirements established in the approved affordable housing agreement or resale restriction agreement shall be replaced at a one-to-one ratio. The means of replacement shall be wholly subject to the discretion of the City Manager ~~or their designee.~~

H. A request for a minor modification of an approved affordable housing plan may be granted by the community development director if the modification is substantially in compliance with the original affordable housing plan and conditions of approval for the density bonus project. A minor modification is technical in nature, as opposed to substantive or material. Substantive or material changes to the affordable housing plan shall be processed in the same manner as the original plan.

I. The City shall prepare guidelines to further implement this ordinance. These guidelines shall include, but are not limited to, the following:

1. The form and contents of the affordable housing agreement and any resale restriction, including provisions for successors in interest and other ownership transfers for for-sale target units;

2. The form and contents of the final marketing plan and resident selection process;

3. Procedures for setting rents and sales prices for the target units;

Procedures for qualifying tenant households and prospective purchaser households of target units, including any preferences;

4.

5. Compliance and monitoring procedures to assure that affordability restrictions are maintained;

6. Resale and subordination procedures for for-sale target units;

~~I.~~7. The establishment of any fees to recoup the City's costs for the ongoing administration and monitoring of the affordability provisions of the target units, except where prohibited by State law.

SECTION 2: Chapter 17.31 of the Municipal Code is amended in its entirety to read as follows:

Chapter 17.31 - INCLUSIONARY HOUSING

Sections:

17.31.010 Basis and purposes.
17.31.020 Definitions.
17.31.030 Inclusionary requirement.
17.31.040 Inclusionary housing incentives.
17.31.050 Alternatives to constructing inclusionary units ~~for rental housing developments~~.
17.31.060 Affordable housing plan for inclusionary units.
17.31.070 Adjustment or reduction of inclusionary housing requirement.
17.31.080 Affordable housing agreement
17.31.090 Implementation and enforcement.

17.31.010 - Basis and purposes.

A. Rental and owner-occupied housing in the City has become steadily more expensive. Housing costs have gone up faster than incomes for many groups in the community.

B. Many persons who work in the City, who have grown up or have family ties in the City, who already live in the City but must move due to increasing housing costs, or who wish to live in the City for other reasons, cannot afford housing in the city.

C. Federal and state government programs do not provide nearly enough affordable housing opportunities or subsidies to satisfy the housing needs of moderate, lower or very low income households.

D. Rising land prices have been a key factor in preventing development of new affordable housing. New housing construction in the City which does not include inclusionary units aggravates the existing shortage of affordable housing by absorbing the supply of available residential land. This reduces the supply of land for affordable housing and increases the price of remaining residential land. Providing the inclusionary units required by this Chapter will help to ensure that part of the City's remaining developable land is used to provide affordable housing.

E. The City wishes to retain an economically balanced community, with housing available to very low income, lower income and moderate income households. The City's general plan implements the established policy of the State of California that each community should foster an adequate supply of housing for households at all economic levels.

F. An economically balanced community is only possible if part of the new housing built in the City is affordable to households with limited incomes. Requiring builders of new housing to include some housing affordable to households at a range of incomes is fair, not only because new development without inclusionary units contributes to the shortage of affordable housing, but also because zoning and other ordinances concerning new housing in the City should be consistent with the community's goal to foster an adequate supply of housing for households at all economic levels.

G. In enacting this Chapter it is also the intent of the City of Brisbane to implement the goals, objectives, and policies of the City's general plan housing element, which encourages the provision of housing affordable to a variety of household income levels, seniors, and persons with disabilities, and identifies an inclusionary housing policy ~~as~~ one method~~s~~ to encourage the development of affordable housing.

17.31.020 - Definitions.

A. Affordable Housing Agreement. A recorded agreement between a property owner and the City to ensure that the inclusionary housing requirements of this Chapter are satisfied.

B. Affordable Ownership Cost. The affordable ownership cost for for-sale target units shall be as specified in California Health and Safety Code Section 50052.5, as may be amended over time.

C. Affordable Rent. The affordable rent for rental target units shall be as specified in California Health and Safety Code Section 50053, as may be amended over time.

D. Approving Authority. The City decision-making body acting on an application for a housing development subject to the requirements of this Chapter, including the City Council, Planning Commission, or Community Development Director.

E. City. The City of Brisbane or the Brisbane Housing Authority.

F. City Council. The City Council of the City of Brisbane as established in Title 2 of this Code or the Board Members of the Brisbane Housing Authority.

G. City Manager. The City Manager of the City of Brisbane as established in Title 2 of this Code, the City Manager's designee, the Executive Director of the Brisbane Housing Authority or the Executive Director's designee.

H. Community Development Director. The Director of the Community Development Department responsible for overseeing implementation of Title 17 of this Code, or the Community Development Director's designee.

I. Domestic Partner. Domestic partner means two (2) persons who have filed a declaration of domestic partnership with the California Secretary of State pursuant to Division 2.5, beginning with Section 297, of the California Family Code and such registration was in full force and effect at the time of the transfer or on the date of the transferor's death. A copy of the domestic partnership registration shall be provided to the city upon request.

J. Dwelling Unit. Dwelling unit shall have the meaning set forth in Section 17.02.235 of this Code.

1. Inclusionary Unit. Dwelling unit within a housing development that is required by Section 17.31.030 of this Chapter to be rented at affordable rents or sold at an affordable ownership cost to specified households. Inclusionary units ~~are~~ may be considered target units as that term is defined in Chapter 17.29 of this Code.

2. Market-Rate Unit. Any unit within a housing development that is not an inclusionary unit.

K. Eligible Household. A household whose household income qualifies the household for occupancy of inclusionary units provided under this Chapter.

~~K.~~L. Eligible Purchaser. A household whose household income qualifies the household to purchase a for-sale inclusionary unit, or a qualified non-profit housing corporation as such term is defined in Section 714.7 of the California Civil Code or successor provisions.

~~L.~~M. First Approval. The first of the following approvals to occur with respect to an inclusionary housing development: subdivision approval, housing development permit, building permit or any other permit or approval under the ~~Zoning Ordinance~~Brisbane Municipal Code.

~~M.~~N. Household Income. Household income shall be the gross income of the household as calculated pursuant to Title 25 California Code of Regulations, §6914, as amended, or its successor. The household income categories addressed in this Chapter shall be defined as follows:

~~1. Area Median Income. Area median income for San Mateo County as published by the State of California pursuant to California Code of Regulations, Title 25, Section 6932, as may be amended over time.~~

~~2.~~1. Lower Income Household. A household whose income does not exceed the lower income limits applicable to San Mateo County, as published annually by the State of California pursuant to California Code of Regulations, Title 25, Section 6932, as may be amended over time.

~~3.~~2. Moderate Income Household. A household whose income does not exceed the moderate income limits applicable to San Mateo County, as published annually by the State of California pursuant to California Code of Regulations, Title 25, Section 6932, as may be amended over time.

~~4.~~3. Very Low Income Household. A very low income household shall be as defined by California Health and Safety Code Section 50105, as may be amended over time.

~~N.~~O. Housing Authority. "Housing Authority" shall mean the Brisbane Housing Authority, as established by Resolution of the City Council. For the purposes of this Chapter, "Housing Authority" shall have the same meaning as "City."

~~O.~~P. Inclusionary Housing Development~~Housing Development~~. Any parcel map, subdivision map, use permit, building permit, or other City approval which results in a net increase of at least five (5) or more primary dwelling units and/or residential lots or combination thereof intended for sale or for rent. An inclusionary housing development~~residential~~ project may include, but is not limited to, new construction, conversion of existing dwelling units to condominium ownership, creation of residential lots, conversion of an existing nonresidential building to residential use, and the addition of primary dwelling units to an existing multifamily dwelling. ~~A housing development shall include units or lots intended for sale or for rent~~.

1. For-Sale Inclusionary Housing Development. An inclusionary housing development, or portion thereof, where the dwelling units or lots are offered to the public for purchase.

2. Rental Inclusionary Housing Development. An inclusionary housing development, or portion thereof, comprised of dwelling units which are intended to be rented, or are actually offered for rent, to tenants upon completion, whether or not a condominium or subdivision map is recorded as part of the housing development.

~~P. Maximum Residential Density. The maximum number of residential units permitted by the City's zoning ordinance on the date the application is deemed complete.~~

Q. Resale restriction agreement. An agreement, covenant, deed of trust, or other document, approved by the City Council, which is executed by the property owner and recorded against each inclusionary unit to insure that such unit remains affordable for the applicable term.

17.31.030 - Inclusionary requirement.

A. Applicability. The inclusionary requirements established in this section shall apply to all housing development projects with five (5) or more primary dwelling units or residential lots, except for the following:

1. Housing development projects that are developed pursuant to the terms of a development agreement ~~executed prior to the effective date of this Chapter~~, provided that such housing development projects shall comply with any affordable housing requirements included in the development agreement.

2. Housing development tentative maps or vesting tentative maps exempted by Government Code Section 66474.2 or 66498.1, provided that such maps shall comply with any predecessor ordinance in effect on the date the application for the map was deemed complete.

B. Inclusionary Requirements. Unless an alternative is elected pursuant to Section 17.31.050 of this Chapter, the following inclusionary requirements shall apply to for-sale and rental housing development projects:

1. For-sale ~~Housing~~ Developments. A for-sale inclusionary housing development ~~subject to the inclusionary requirements of this Chapter~~ shall provide the following inclusionary lots or units~~, unless an alternative is approved pursuant to Section 17.31.050 of this Chapter~~:

a. A for-sale housing development with five (5) to ten (10) primary dwelling units or lots must provide fifteen percent (15%) of the proposed units at affordable ownership costs for moderate income households.

b. A for-sale housing development of eleven (11) or more primary dwelling units or lots must provide ten percent (10%) of the units or lots at affordable ownership costs for moderate income households and five percent (5%) of the units or lots at affordable ownership costs for lower income households.

2. Rental ~~Housing~~ Developments. A rental inclusionary housing development with five (5) or more primary dwelling units must provide fifteen percent (15%) of the units at affordable rents to very low income households~~, unless an alternative is elected pursuant to Section 17.31.050 of this Chapter~~.

C. Calculation of Inclusionary Requirement. For purposes of calculating the number of inclusionary units required by this section, any calculations resulting in fractional units of one-half or greater shall be rounded to the next larger integer. If the calculation of the required total number of inclusionary units results in a fraction of less than one-half, the fractional amount shall be provided to the City through payment of an in-lieu fee established by the City Council. For density bonus projects per Chapter 17.29, density bonus units shall not be counted when determining the minimum inclusionary housing requirement.

~~Additionally, any density bonus units authorized pursuant to Chapter 17.29 of this Code shall not be counted as part of the housing development.~~

D. Contemporaneous construction of five (5) or more primary dwelling units on a lot, or on contiguous lots for which there is evidence of common ownership or control, even though not covered by the same City land use approval, shall also be considered a single housing development. Construction shall be considered contemporaneous if any building permits are issued within five (5) years following the date of completion of any earlier construction.

E. If an inclusionary housing development ~~project~~ requests a density bonus pursuant to Chapter 17.29 of this Title, ~~only~~ inclusionary units may be considered target units ~~that meet all of the applicable requirements for target units in Chapter 17.29 of this Title shall be considered target units~~ for purposes of qualifying for a density bonus only if such inclusionary units meet all of the applicable requirements for target units in Chapter 17.29 of this Title and State Density Bonus Law.

17.31.040 - Inclusionary housing incentives.

~~A.~~ The following incentives shall apply to all inclusionary housing developments that provide one or more inclusionary units in accordance with the provisions of this Chapter:

~~1~~A. Single-family detached inclusionary units ~~need not~~may be constructed on smaller lots ~~the same size as~~than the market-rate units in the same ~~residential~~ housing development, but the lots may be no smaller

than the minimum standard for the applicable zoning district, except as ~~provided~~ may be modified by ~~Section 17.31.060(B)(1) of this~~an eligible density bonus request pursuant to Chapter 17.29 of this Title or other provisions of this Municipal Code that address reduction of minimum lot sizes.

~~2~~B. The square footage of the inclusionary units should be comparable to the market-rate units in the same residential development. However, at the discretion of the Community Development Director, smaller units may be provided, as long as the total inclusionary square footage provided remains comparable, yielding additional units.~~Inclusionary units may be smaller in size than market-rate units in the same residential development.~~.

~~3~~C. Inclusionary units may have different finishes and features than market-rate units, including but not limited to ~~-~~interior finishes, fixtures, or appliances, ~~and features,~~ than market-rate units in the same residential development, as long as the finishes and features are durable and of good quality, as determined by the Community Development Director.

D. For for-sale inclusionary housing ~~projects~~developments, accessory dwelling units may be proposed as inclusionary units. Such accessory dwelling units must comply with the requirements of Chapter 17.43 of this title. Accessory dwelling units shall be rented or sold, consistent with Chapter 17.43, at affordable rents or affordable ownership costs per Section 17.31.030 of this C~~c~~hapter, as specified in a regulatory agreement, covenant, or other document approved by the City Council pursuant to Section 17.31.060 of this chapter.

17.31.050 - Alternatives to constructing inclusionary units ~~for rental housing developments.~~

A. An applicant for a ~~-~~rental inclusionary housing development, or an applicant for a for-sale inclusionary housing development of fifteen or fewer primary dwellings or lots ~~subject to the inclusionary requirements of this Chapter~~ may, at the sole discretion of the applicant, elect to pay an in-lieu fee as established by resolution of the City Council, for each required inclusionary unit to the Brisbane Housing Authority's Low and Moderate Income Housing Fund, instead of constructing the inclusionary units within the residential development~~, pursuant to Government Code Section 65850(g)~~. The ~~timing of the~~ in-lieu fee ~~payment~~ shall be paid prior to issuance of the building permit, unless applicable State law requires an different payment timing ~~as determined by the Planning Commission or City Council at the time of approval of the affordable housing plan pursuant to Section 17.31.060 of this Chapter~~.

B. An applicant for a rental or for-sale housing development ~~subject to the inclusionary requirements of this Chapter~~ may request City Council approval of one or more of the following ~~alternatives~~ as an alternative to constructing the inclusionary units within the housing development or paying an in-lieu fee, which request shall be~~as~~ described within the affordable housing plan for inclusionary units prepared pursuant to ~~subs~~Section 17.31.060 ~~.B.3~~ of this Chapter. City Council approval of such a request shall be based on findings that 1) the outcome for the City is superior in terms of the number and affordability of affordable units that would be created, or 2) construction of the required inclusionary units within the market-rate development would be infeasible or present unreasonable hardship in light of such factors as project size, site constraints, market competition, price and product type disparity, applicant capability, and financial subsidies available. Evidence must be submitted with the affordable housing plan required by Section 17.31.060 of this Chapter.~~:~~

1. Off-Site Construction. The applicant may request to construct some or all of the inclusionary units at a location within the City outside of the ~~residential development~~housing development site. Off-site construction alternatives include alternatives where parcelization of the subject property is required to create a separate parcel. Off-site inclusionary units shall be located on sites that are compatible with adjacent land uses, appropriately zoned for the intended residential development,

and are in proximity to or will provide access to employment opportunities, urban services, major roads or other public transit facilities.

2. Off-Site Preservation. The applicant may request to create inclusionary units off-site through the purchase and conversion of existing market-rate~~r~~ units to affordable units, either by the applicant or by a not-for-profit entity. The total square footage must, at minimum, equal the square footage that would have been expected on-site, at affordability levels that meet or exceed the on-site requirements. The off-site units must be purchased prior to the building permit for the inclusionary housing development. The off-site preservation option must be approved by the City Council, and the Community Development Director may set requirements related to the rehabilitation and condition of the property and the protection and/or temporary relocation of existing tenants.

3~~2~~. Dedication of Land. The applicant may dedicate land within the City that is suitable for affordable housing development to the City or ~~another public entity that provides affordable housing~~to the designee of the City ~~that is suitable for affordable housing development. The land shall meet all of the requirements of Government Code Section 65915(g) or successor provisions~~. The value of the land shall be not less than the sum of the in-lieu fee that would be due under ~~subsection A.1 of this~~ Section 17.31.050 of this Chapter. The valuation of any land offered in-lieu shall be determined by an appraisal made by an appraiser mutually agreed upon by the City and the applicant. Costs associated with the appraisal shall be borne by the applicant. The timing of the land dedication shall be ~~[fill in the blank…]~~at or before the first approval of the inclusionary housing development. Factors considered by the Council may include but are not limited to general location, access to transit, buildability, current zoning, and the number of units that could be built at the location.~~g…others?~~

4~~3~~. Funding of Affordable or Special Needs Housing Project. The applicant may make a contribution to a special needs housing project or facility (shelter, transitional housing, or similar) ~~or program or other affordable housing project~~ in the City in an amount equivalent to the in-lieu fee payment due under subsection A.~~1~~ of this Section 17.31.050. The contribution must be made prior to receipt of the building permit for the inclusionary housing development.

5~~4~~. ~~Other Alternatives. The City Council may approve other alternatives to the construction of new inclusionary units. Alternatives may include, but are not limited to, acquisition and rehabilitation of inclusionary units, conversion of existing market rate units to inclusionary~~ affordable units, ~~or construction of special needs housing projects or programs (shelters, transitional housing, etc.).~~

5. In-Lieu Fee for Certain For-Sale Developments. An applicant for a for-sale inclusionary housing development of more than ~~15~~fifteen primary dwelling units or lots may request Council approval to pay an in-lieu fee payment rather than construct affordable units with the project.

17.31.060 - Affordable housing plan for inclusionary units.

A. An affordable housing plan for inclusionary units shall be submitted as part of the application for first approval of any inclusionary housing development ~~for which inclusionary units are required by this Chapter~~, except where payment of an in-lieu fee is elected by the applicant ~~for a rental housing development~~ pursuant to Section 17.31.050 ~~(A)~~ of this Chapter. No application for a first approval may be deemed complete unless an affordable housing plan, if required, is submitted conforming to the provisions of this Chapter.

B. If the applicant has requested a density bonus pursuant to Chapter 17.29 of this Code, the affordable housing plan required under this Section shall be combined with the affordable housing plan for target units required pursuant to Section 17.29.040 of this Code.

C. The affordable housing plan for inclusionary units shall include the following information:

1. For housing developments proposing to construct the inclusionary units within the development, the affordable housing plan shall specify, at the same level of detail as the application for the housing development:

a. The number, type, tenure, household income categories, number of bedrooms and baths, approximate location, size, and design (including finishes and features) of all inclusionary units;

b. Construction phasing of inclusionary units in relation to market-rate units and overall construction schedule. If the developer ~~intends~~ proposes to construct the inclusionary units in separate phases from the market-rate unit construction, the affordable housing plan shall specify the security to be provided to the City to ensure that the inclusionary units will be constructed, and explain how the proposed phasing would provide greater public benefit than providing the inclusionary units concurrently with the market-rate units;

c. Preliminary ~~M~~marketing plan indicating general approach to marketing inclusionary units. The f~~F~~inal marketing plan may be deferred to prior to first building permit issuance, subject to Community Development Director approval, including the manner in which inclusionary units will be offered to the public in a nondiscriminatory and equitable manner and the method of marketing inclusionary units after initial occupancy is secured;

~~d. Methods to be used to verify incomes of tenant households or purchaser households;~~

~~e. Procedures for qualifying tenant households and prospective purchaser households of inclusionary units, including any preferences.~~

~~f.~~ d. A financing mechanism, the particulars and the amount of which shall be determined by the City at the time the affordable housing plan is approved, to cover the City's costs for the on-going administration and monitoring of the affordability provisions applicable to the inclusionary units, except where prohibited by State law.

2. If an applicant requests City Council approval of alternatives to constructing the inclusionary units within a ~~rental~~ housing development pursuant to subsection 17.31.050.B of this Chapter, the affordable housing plan shall describe the requested alternatives.

~~3. The affordable housing plan shall state the affordable rent or ownership costs of the inclusionary units, as calculated by the Community Development Director.~~

3. If the applicant requests use of different finishes and features than market-rate units as addressed in Section 17.31.040, the affordable housing plan shall describe the request.

~~4. If the applicant wishes to request a modification of the requirements set forth in Section 17.31.090 of this Chapter that the inclusionary units be constructed concurrently with the market-rate units, the affordable housing plan shall describe the proposed phasing at the same level of detail as required in the application for the housing development. Additionally, the plan shall specify the security to be provided to the City to ensure that the inclusionary units will be constructed, and explain how the proposed phasing would provide greater public benefit than providing the inclusionary units concurrently with the market-rate units.~~

~~C~~D. The affordable housing plan for inclusionary units shall be reviewed ~~by the Planning Commission or City Council, as appropriate to the application,~~ simultaneously with any other permit applications associated with the first approval for the ~~housing~~ inclusionary housing development.

17.31.070 – Adjustment or reduction of inclusionary housing requirement.

A. An applicant may request City Council approval of an adjustment or reduction of the inclusionary housing requirements of this Chapter if an applicant demonstrates that the requested adjustment or reduction would better implement the goals, objectives, and policies of the City's general plan housing element, which encourages the provision of housing affordable to a variety of household income levels, seniors, and persons with disabilities. The City Council, in its sole discretion, will determine whether to approve the applicant's request based on the City's progress in meeting its housing goals, objectives, and policies at the time the request is made.

B. Any request for an adjustment or reduction under this section shall be submitted concurrently with the affordable housing plan required by Section 17.31.060 of this Chapter. The request for a reduction or adjustment shall set forth in detail the factual basis for the adjustment or reduction.

17.31.080 - Affordable housing agreement.

A. Applicability. Recordation of an affordable housing agreement shall be made a condition of the first approval for all inclusionary housing developments ~~subject to the requirements of this Chapter to ensure implementation of all requirements of this Chapter~~. The affordable housing agreement shall be recorded prior to, or concurrently with, the final or parcel map, or, where the inclusionary housing development does not require a map, prior to issuance of a building permit for any structure in the inclusionary housing development. The affordable housing agreement shall run with the land and bind all future owners and successors in interest.

~~B. Definitions. The following definitions shall be applicable to such terms as used in this section:~~

~~1. "Successor in interest"" means any person or persons, other than a transferee defined in subparagraph b of paragraph 2 of this subsection B, vested in legal title to the target unit by reason of the death of the owner of a target unit. For the purposes of this section, the household income of a successor in interest will be calculated consistent with the calculation of household income as defined in Section 17.29.020.Q of this Chapter.~~

~~2. "Transfer" means any sale, conveyance, assignment, or other change of ownership, whether voluntary or involuntary, of any legal or equitable interest in an inclusionary unit. Where the inclusionary unit is owned by a corporation, limited liability company, general or limited partnership, or other form of business entity, a transfer of the inclusionary unit shall be deemed to have occurred upon transfer of fifty percent (50%) or more of the ownership interest in such entity. Notwithstanding the foregoing, the following transfers shall be exempt from the requirement that the transferee qualify as an eligible household:~~

~~a. Any transfer to a spouse or domestic partner of the transferor, where the spouse or domestic partner becomes a co-owner of the inclusionary unit with the transferor;~~

~~b. Any transfer by devise or inheritance to a spouse or domestic partner of the transferor upon the transferor's death, where the spouse or domestic partner continues to occupy the inclusionary unit as his or her principal place of residence;~~

~~c. Any transfer between spouses as part of a marriage dissolution proceeding;~~

~~d. Any transfer to an inter vivos revocable trust in which the transferor is the beneficiary;~~

~~e. The granting of the lien or other security interest in the unit as security for a loan and such loan complies with any applicable requirements of the resale restriction agreement.~~

~~The exemptions listed above shall apply only during the period in which the inclusionary unit is owned by the exempted person and shall not apply to any subsequent transfer by that person, which shall be subject to all of the terms and provisions of the resale restriction agreement.~~

~~C~~B. The affordable housing agreement shall be in a form provided by the City and shall include the following, without limitation:

1. All information provided in the affordable housing plan pursuant to Sections 17.31.060 of this Chapter.

2. The household income categories of the inclusionary units, consistent with the requirements of Section 17.31.030 of this Chapter or any alternative requirements pursuant to Section 17.31.050 of this Chapter.

~~2~~3. Continued affordability of the inclusionary units, as follows:

~~e.~~a. For-Sale ~~Target~~ Inclusionary Units. The affordable housing agreement shall require that a resale restriction agreement, in a form approved by the City, be recorded against each for-sale ~~target~~ inclusionary unit when the ~~target~~ unit is first transferred to an eligible purchaser. The resale restriction agreement shall provide that ~~target~~ inclusionary units in for-sale housing developments shall remain affordable in perpetuity and that the affordability provisions be applicable to any subsequent transferees or successors in interest.

The resale restriction agreement shall also provide that the for-sale ~~target~~ inclusionary unit shall not be rented. ~~and that a successor in interest shall not be exempt from meeting the household income eligibility requirements as are transferees under paragraph 2 of subsection B of this section; provided, however, a successor interest may reside in the unit, subject to the obligations of the resale restriction agreement, if a successor in interest's household income qualifies the successor in interest as provided in Section 17.29.020 Q of this Chapter. If the household income of the successor in interest does not qualify, the successor in interest must sell the unit as set forth in the resale restriction agreement, following a grace period not to exceed one year.~~

~~d.~~b. Rental Inclusionary ~~u~~Units. The affordable housing agreement shall be recorded against each inclusionary housing development containing rental ~~target~~ units to ensure that the ~~target~~ inclusionary units remain affordable ~~for a minimum term as specified in Government Code Section 65915(c)(1); provided, however, if the target units in the housing development are also inclusionary housing units as defined in Chapter 17.31, the target units shall remain affordable~~ in perpetuity ~~as required by Chapter 17.31~~.

~~For those target units in a housing development that are not inclusionary housing units as defined in Chapter 17.31, a longer period of time than as specified in Government Code section 65915(c)(1) may be required by any construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program.~~

Rental ~~target~~ inclusionary units that are later converted to for-sale units, e.g., converted to condominiums, and then sold shall be sold as for-sale ~~target~~ inclusionary units and the requirements of subparagraph a of paragraph ~~3~~2 of subsection B of this Section shall apply.

~~3~~4. The affordable housing agreement shall specify that no household shall be permitted to begin occupancy of an inclusionary unit unless the ~~Community Development Director~~City or the City's designee has approved the household's eligibility~~, unless the household has been exempted under subsection B of this Section 17.31.080. If the City maintains a list of, or otherwise identifies, eligible households, initial and subsequent occupants of inclusionary units~~

~~shall be selected first from the list of identified households, to the maximum extent possible, in accordance with guidelines approved by the City Council~~.

~~4~~5. Affordable housing agreements for inclusionary housing developments intended to be occupied by households with one or more members who are sixty-two (62) years of age or older shall provide that dwelling units in the residential development shall be occupied by persons eligible to reside in such a project.

~~5~~6. The affordable housing agreement shall include provisions requiring maintenance of records to demonstrate compliance with this Chapter.

~~6~~7. The affordable housing agreement shall include a description of remedies for breach of the agreement by either party. The City may identify tenant households or qualified purchaser households as third party beneficiaries under the agreement.

D. The affordable housing agreement shall include any other provisions determined necessary by the City Attorney to ensure implementation and compliance with this Chapter.

17.31.090 - Implementation and enforcement.

A. The City shall prepare guidelines to further implement this ordinance. These guidelines shall include, but are not limited to, the following:

1. The form and contents of the affordable housing agreement and any resale restriction, including provisions for successors in interest and other ownership transfers;

2. The form and contents of the final marketing plan and resident selection process;

3. Procedures for setting rents and sales prices for the inclusionary units;

4. Procedures for qualifying tenant households and prospective purchaser households of inclusionary units, including any preferences;

5. Compliance and monitoring procedures to assure that affordability restrictions are maintained;

6. Resale and subordination procedures for inclusionary for-sale units;

7. The establishment of any fees to recoup the City's costs for the ongoing administration and monitoring of the affordability provisions of the inclusionary units, except where prohibited by State law.

B. No permit, license, subdivision map, or other approval or entitlement for an inclusionary housing development shall be issued, including without limitation a final inspection for occupancy, until all requirements applicable to the inclusionary housing development at such time pursuant to this Chapter have been satisfied.

1. No building permit shall be issued for any market-rate unit until the permittee has obtained permits for inclusionary units sufficient to meet the requirements of Section 17.31.030 of this Chapter, and, if a density bonus has been requested pursuant to Chapter 17.29, Section 17.29.030 of this Code. No final inspection for occupancy for any market-rate unit shall be completed until or simultaneously with ~~the permittee has constructed~~construction of the inclusionary units required by Section 17.31.030 of this Chapter.

2. The time requirements set forth in this Section for issuance of building permits for market-rate units and for final inspections for occupancy for market-rate units may be modified to

accommodate phasing schedules, model variations, or other factors in an inclusionary housing development within the submitted affordable housing plan pursuant to Sections 17.31.060 of this Chapter, if the City determines this will provide greater public benefit and an affordable housing agreement pursuant to Section 17.31.080 of this Chapter has been accepted by the community development director.

~~B~~C. Conditions to carry out the purposes of this Chapter shall be imposed on the first approval for an inclusionary housing development and any subsequent approvals.

~~C~~D. The City Attorney is authorized to enforce the provisions of this Chapter and all affordable housing agreements, regulatory agreements, resale controls, deeds of trust, or similar documents placed on inclusionary units, by civil action and any other proceeding or method permitted by law.

~~D~~E. The City Manager is authorized to execute the resale restriction agreement and any related documents following approval by the Community Development Director and the City Attorney.

~~E~~F. Failure of any official or agency to fulfill the requirements of this Chapter shall not excuse any applicant or owner from the requirements of this Chapter.

~~F~~G. The remedies provided for herein shall be cumulative and not exclusive and shall not preclude the City from any other remedy or relief to which it otherwise would be entitled under law or equity.

SECTION 3: Where a use permit, design permit or variance approval has been issued through final action by the City prior to the effective date of this Ordinance, or where such planning permit approval is not required and a complete building permit application has been submitted prior to the effective date of this Ordinance, the holder of such use permit, design permit or variance approval or complete building permit application may proceed to construct the improvements or establish the use authorized by such permit or approval and the same shall be exempted from any conflicting regulations that may be contained in this Ordinance.

SECTION 4: If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of Brisbane hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that one or more sections, subsections, sentences, clauses or phrases may be held invalid or unconstitutional.

SECTION 5: This Ordinance shall be in full force and effect thirty days after its passage and adoption.

Preliminary Proposed In-Lieu Fees

Requirement, per unit	$/Unit Preliminary Proposed In-Lieu Fee
For Sale, 5-10 units	$ 236,558
For Sale, 11 + units	$ 265,717
Rental	$ 378,346

Comparable Policies

City	Rental	Owner	Both	Revised
South San Francsicso			$424,840.11	1/1/2025
East Palo Alto	$ 291,200	$ 273,400		6/1/2024
San Mateo (city)	$ 334,517	$ 307,005		6/1/2024

Average Affordability Gap (2015 Nexus Study)

	2015	2024 (CPI inflated)
50% of AMI	$ 280,783	$ 378,346
70%-80% of AMI	$ 240,477	$ 324,035
90%-110% of AMI	$ 175,558	$ 236,558

CPI-U, San Francisco-Oakland-Hayward CA

	CPI-U
2015	258.572
2024	348.417
Inflation Factor	1.347466083

Attachment 4

September 26, 2024 Planning Commission Workshop

a. Agenda Report

b. Minutes

Attachment 5

November 14, 2024 Planning Commission Workshop

a. Agenda Report

b. Meeting video

Attachment 6

BMC Ch. 17.31, Density Bonus and Inclusionary Housing Ordinance

City of Brisbane
Planning Commission Agenda Report

TO: Planning Commission For the Meeting of 4/11/2019

FROM: Julia Ayres, Associate Planner, via John Swiecki, Community Development Director

SUBJECT: **Zoning Text Amendment RZ-5-18;** Zoning Text Amendments to update the City's density bonus and inclusionary housing regulations contained in Chapter 17.31 of the Brisbane Municipal Code, pursuant to Programs H.B.4.b and H.B.5.a of the 2015-2022 Housing Element and State Assembly Bill AB 1505; Citywide; City of Brisbane, applicant.

REQUEST: Zoning text amendments to update the density bonus and inclusionary housing regulations in the Brisbane Municipal Code.

RECOMMENDATION: Adoption of Resolution RZ-5-18, recommending approval of the zoning text amendments to the City Council.

ENVIRONMENTAL DETERMINATION: The City Council adopted a Negative Declaration—State Clearinghouse No. 2015012053- for the 2015-2022 Housing Element via adoption of Resolution 2015-08. The proposed zoning text amendments would modify existing regulatory processes in the Municipal Code related to the cost or rent of new residential projects which would be subject to project-specific CEQA analysis at the time they are submitted to the City for review. State CEQA Guidelines Section 15061(b)(3) states the general rule that where it can be seen with certainty that there is no possibility that minor zoning amendments may have a significant effect on the environment, the activity is not subject to the California Environmental Quality Act.

APPLICABLE REGULATIONS: Procedures for zoning amendments are provided in BMC Chapter 17.50. The City's zoning regulations regarding density bonuses and inclusionary housing are located in BMC Chapter 17.31. State regulations governing the density bonuses and inclusionary housing are located in Government Code Sections 65915 – 65918 and Section 65850, respectively.

BACKGROUND

The current 2015-2022 Housing Element of the General Plan and recently adopted State law AB 1505 (2017) require updates to the City's Inclusionary Housing and Density Bonus Ordinance (BMC Chapter 17.31, adopted in 2009). The applicable Housing Element excerpts and excerpt from AB 1505 are attached. The Planning Commission has reviewed the City's current ordinance, state law provisions, regulations in neighboring jurisdictions, and other pertinent

information over the course of five workshops and study sessions from July 2018 to March 2019. The resulting draft amendments to the density bonus and inclusionary housing regulations are attached in draft Resolution RZ-5-18 (Attachment 1) and discussed in detail below.

DISCUSSION:

The attached draft ordinance proposes the following revisions to the current density bonus and inclusionary housing regulations.

1) Organization of Ordinance

The current ordinance includes both density bonus and inclusionary housing regulations within a single chapter (Chapter 17.31). While this allows for some efficiencies - specifically in the affordable housing plan section, which has overlapping requirements for both types of projects – staff recommends separating the two sets of regulations due to differences in their application and administration. For example, while all projects over five units/lots in size (per the recommended ordinance; see item 2 below) would be subject to inclusionary requirements, the project may not necessarily invoke the density bonus regulations. The draft ordinance extracts the density bonus regulations from Chapter 17.31 and inserts them into a new Chapter 17.29, retaining the revised inclusionary housing regulations in Chapter 17.31. Each chapter contains cross-references to the other where appropriate.

Consistent with this approach to separate the regulations into separate chapters, the draft ordinance contains updates to the definitions sections of both chapters to eliminate extraneous terms, consolidate definitions where appropriate, and update pertinent cross-references between chapters. Organizational modifications are also proposed to aid in the chapters' readability.

2) Revises inclusionary housing regulations (Chapter 17.31) as follows:

a) Reduces the minimum unit threshold for projects subject to inclusionary housing requirements from six units to five units.

The draft ordinance proposes reducing the inclusionary requirements threshold from six to five units to make the threshold for density bonus and inclusionary housing projects uniform. Under the current ordinance, a five-unit project providing one affordable housing unit would be eligible for density bonus and concessions or incentives, while a five-unit project not exercising the density bonus could be approved without yielding any affordable units. The proposed 15% inclusionary requirement applied to a five unit project would be one unit, per the rounding provisions contained in the ordinance.

b) Utilizes a percentage-based inclusionary requirement instead of the current sliding scale.

The draft ordinance would replace the current sliding scale for inclusionary requirements with a flat percentage of 15% both for rental projects (in compliance with AB 1505) and for-sale projects (see §17.31.030 of the draft ordinance). Additionally, §17.31.030.B.2 would require the inclusionary units for rental projects to be targeted to very low income

households, whereas the current ordinance targets low and moderate income households. As discussed in the January 24, 2019 staff memorandum to the Commission, the City currently has not issued or approved any very low units in the current Regional Housing Needs Allocation (RHNA), which identifies the need for 114 dwelling units affordable to very low income households. Additionally, the Low Income Housing Tax Credit (LIHTC) program requires eligible projects to provide housing affordable to households making no more than 50-60 percent of the area's median income, which falls within the very low income household category for San Mateo County.

The draft ordinance breaks down affordability requirements between low and moderate income households for **for-sale** residential projects based on the project size (§17.31.030.B.1), as follows:

- Five- Ten Units/Lots: *15% affordable to moderate income households*

  It is recommended that smaller for-sale residential projects contain affordability requirements targeted at moderate income households, recognizing the challenges smaller projects face in regards to financing as well as managing the administration, advertisements, and sales of the income-restricted units.

- Eleven or More Units/Lots: *10% affordable to moderate income households, 5% affordable to low income households*

  Serving a broader range of income levels could be less fiscally and administratively challenging for larger for-sale residential projects.

c) Provides one by-right alternative to constructing rental inclusionary units and additional discretionary alternatives.

The current ordinance does not allow any alternatives to constructing inclusionary units within the project. Consistent with the requirements of AB 1505, §17.31.050.A of the draft ordinance as proposed allows a developer to pay an in-lieu fee, (as adopted separately by the City Council) instead of providing affordable units within the project. The fee is paid to the City and restricted for purposes of developing affordable housing. While state law mandates that the City provide one alternative to on-site construction of inclusionary units, §17.31.050.B of the draft ordinance also establishes several discretionary alternatives - requiring City Council approval - that a developer could request depending on the particular project, project site, or other circumstance that would otherwise preclude the project from strict compliance with the ordinance or otherwise achieve the City's housing goals.

d) Establishes options for other adjustments of inclusionary housing requirement.

The draft ordinance would allow an applicant to request City Council approval of an adjustment or reduction of the inclusionary housing requirements if they can demonstrate that the adjustment would better implement the goals, objectives, and policies of the Housing Element (e.g., a project providing special needs housing). The City Council would have sole discretion in approving the applicant's request based on the City's

progress in meeting its housing goals, objectives, and policies at the time the request is made.

3) Revises the density bonus regulations (Chapter 17.29) as follows:

a) Eliminates density bonus tables and replaces with references to applicable State law.

The current ordinance contains excerpts from State density bonus law outlining the types of density bonuses, the number of affordable units projects must provide, and the maximum bonus available. The draft ordinance eliminates these excerpts and replaces them with references to the applicable State statues. This ensures that the City's ordinance remains in compliance with State density bonus law as it may be amended over time.

b) Creates a density bonus incentive for small projects and projects that exceed the density bonus qualifications (pursuant to Housing Element Program H.B.5.a).

In order to implement this Housing Element program, §17.29.030.A.1 of the draft ordinance establishes a density bonus for small projects (two to four units) in the R-2 and R-3 Residential Districts. Additionally, §17.29.030.A.2 of the draft ordinance would allow a developer of a housing development that exceeds the qualifications for a density bonus to request one additional incentive or concession above the maximum number prescribed by the Government Code.

Implementation

In considering the draft ordinance after the Planning Commission makes its recommendation, the City Council will need to take separate action in regard to adopting an lieu-fee pursuant to §17.31.050.A of the draft ordinance. The Council will have to make related policy decisions including setting the fee amount, and determining if they want to impose a broader nexus or linkage fee on smaller residential and/or nonresidential development, as discussed at the Commission's March 14, 2019 workshop. The Commission may wish to offer advisory comments to the City Council on the fee issue.

As discussed at previous Commission study sessions and workshops, inclusionary housing in-lieu fees must be programmed to support affordable housing opportunities, including new construction of affordable housing, or other means to achieve the City's housing goals (e.g., down payment loans for low income households, accessory dwelling unit construction loans, etc.) The City Council would need to consider the City's overall affordable housing policies and strategies in conjunction with imposing affordable housing fees.

ATTACHMENTS:

A. ~~Draft Resolution RZ-5-18, including the draft ordinance~~
B. ~~Brisbane Municipal Code Chapter 17.31 (current ordinance)~~
C. Relevant 2015-2022 Housing Element excerpts
D. AB 1505 excerpts

Not included

Attachment 7

Resolution RZ-5-18:
Relevant Housing Element Programs

Program H.B.4.b Update the inclusionary housing ordinance so as to comply with California Civil Code Sections 1954.51-535.

Time Frame: December 31, 2016
Responsibility: Community Development Department
Funding Source: City funds

Program H.B.5.a Amend the Affordable Housing Ordinance (BMC Chapter 17.31) to permit the City to grant a proportionately lower density bonus and/or incentives for affordable housing projects that do not qualify under Government Code Section 65915 due to their small size or other limitations, as well as to grant a density bonus and/or other incentives greater than required for projects that meet or exceed the qualifications for a density bonus (as provided by AB 2280), such as those that include units for extremely-low-income families and larger households. Once the amendment is adopted, develop an outreach program to ensure its successful implementation.

Time Frame: December 31, 2016
Responsibility: Community Development Department, Planning Commission, City Council
Funding Source: City funds

AB-1505 Land use: zoning regulations. (2017-2018)

SHARE THIS:

Date Published: 09/29/2017 09:00 PM

Assembly Bill No. 1505

CHAPTER 376

An act to amend Section 65850 of, and to add Section 65850.01 to, the Government Code, relating to land use.

[Approved by Governor September 29, 2017. Filed with Secretary of State September 29, 2017.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1505, Bloom. Land use: zoning regulations.

The Planning and Zoning Law authorizes the legislative body of any county or city to adopt ordinances regulating zoning within its jurisdiction, as specified.

This bill would additionally authorize the legislative body of any county or city to adopt ordinances to require, as a condition of development of residential rental units, that the development include a certain percentage of residential rental units affordable to, and occupied by, moderate-income, lower income, very low income, or extremely low income households or by persons and families of low or moderate income, as specified, and would declare the intent of the Legislature in adding this provision.

This bill would also authorize the Department of Housing and Community Development, within 10 years of the adoption or amendment of an ordinance by a county or city after September 15, 2017, that requires as a condition of the development of residential rental units that more than 15% of the total number of units rented in the development be affordable to, and occupied by, households at 80% or less of the area median income, to review that ordinance if the county or city meets specified conditions. The bill would authorize the department to request, and require that the county or city provide, evidence that the ordinance does not unduly constrain the production of housing by submitting an economic feasibility study that meets specified standards. If the department finds that economic feasibility study does not meet these standards, or if the county or city fails to submit the study within 180 days, the bill would require the county or city to limit any requirement to provide rental units in a development affordable to households at 80% or less of the area median income to no more than 15% of the total number of units in the development. The bill would require the department to report any findings made pursuant to these provisions to the Legislature. The bill would also declare that these provisions regarding department review of certain land use ordinances address a matter of statewide concern.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 65850 of the Government Code is amended to read:

Attachment 7

Item A.

65850. The legislative body of any county or city may, pursuant to this chapter, adopt ordinances that do any of the following:

(a) Regulate the use of buildings, structures, and land as between industry, business, residences, open space, including agriculture, recreation, enjoyment of scenic beauty, use of natural resources, and other purposes.

(b) Regulate signs and billboards.

(c) Regulate all of the following:

(1) The location, height, bulk, number of stories, and size of buildings and structures.

(2) The size and use of lots, yards, courts, and other open spaces.

(3) The percentage of a lot which may be occupied by a building or structure.

(4) The intensity of land use.

(d) Establish requirements for offstreet parking and loading.

(e) Establish and maintain building setback lines.

(f) Create civic districts around civic centers, public parks, public buildings, or public grounds, and establish regulations for those civic districts.

(g) Require, as a condition of the development of residential rental units, that the development include a certain percentage of residential rental units affordable to, and occupied by, households with incomes that do not exceed the limits for moderate-income, lower income, very low income, or extremely low income households specified in Sections 50079.5, 50093, 50105, and 50106 of the Health and Safety Code. The ordinance shall provide alternative means of compliance that may include, but are not limited to, in-lieu fees, land dedication, off-site construction, or acquisition and rehabilitation of existing units.

SEC. 2. Section 65850.01 is added to the Government Code, to read:

65850.01. (a) The Department of Housing and Community Development, hereafter referred to as "the department" in this section, shall have the authority to review an ordinance adopted or amended by a county or city after September 15, 2017, that requires as a condition of the development of residential rental units that more than 15 percent of the total number of units rented in a development be affordable to, and occupied by, households at 80 percent or less of the area median income if either of the following apply:

(1) The county or city has failed to meet at least 75 percent of its share of the regional housing need allocated pursuant to Sections 65584.04, 65584.05, and 65584.06, as applicable for the above-moderate income category specified in Section 50093 of the Health and Safety Code, prorated based on the length of time within the planning period pursuant to paragraph (1) of subdivision (f) of Section 65588, over at least a five-year period. This determination shall be made based on the annual housing element report submitted to the department pursuant to paragraph (2) of subdivision (a) of Section 65400.

(2) The department finds that the jurisdiction has not submitted the annual housing element report as required by paragraph (2) of subdivision (a) of Section 65400 for at least two consecutive years.

(b) Based on a finding pursuant to subdivision (a), the department may request, and the county or city shall provide, evidence that the ordinance does not unduly constrain the production of housing by submitting an economic feasibility study. The county or city shall submit the study within 180 days from receipt of the department's request. The department's review of the feasibility study shall be limited to determining whether or not the study meets the following standards:

(1) A qualified entity with demonstrated expertise preparing economic feasibility studies prepared the study.

(2) If the economic feasibility study is prepared after September 15, 2017, the county or city has made the economic feasibility study available for at least 30 days on its Internet Web site. After 30 days, the county or city shall include consideration of the economic feasibility study on the agenda for a regularly scheduled meeting of the legislative body of the county or city prior to consideration and approval. This paragraph applies when an economic feasibility study is completed at the request of the department or prepared in connection with the ordinance.

Attachment 7

Item A.

(3) The study methodology followed best professional practices and was sufficiently rigorous to allow an assessment of whether the rental inclusionary requirement, in combination with other factors that influence feasibility, is economically feasible.

(c) If the economic feasibility study requested pursuant to subdivision (b) has not been submitted to the department within 180 days, the jurisdiction shall limit any requirement to provide rental units in a development affordable to households at 80 percent of the area median income to no more than 15 percent of the total number of units in a development until an economic feasibility study has been submitted to the department and the department makes a finding that the study meets the standards specified in paragraphs (1), (3), and, if applicable, (2), of subdivision (b).

(d) (1) Within 90 days of submission, the department shall make a finding as to whether or not the economic feasibility study meets the standards specified in paragraphs (1), (3), and, if applicable, (2), of subdivision (b).

(2) If the department finds that the jurisdiction's economic feasibility study does not meet the standards in paragraphs (1), (3), and, if applicable, (2), of subdivision (b), the jurisdiction shall have the right to appeal the decision to the Director of Housing and Community Development or his or her designee. The director or his or her designee shall issue a final decision within 90 days of the department's receipt of the appeal unless extended by mutual agreement of the jurisdiction and the department.

(3) If in its final decision the department finds that jurisdiction's economic feasibility study does not meet the standards in paragraphs (1), (3), and, if applicable, (2), of subdivision (b), the jurisdiction shall limit any requirement to provide rental units in a development affordable to households at 80 percent of the area median income to no more than 15 percent of the total number of units in a development until such time as the jurisdiction submits an economic feasibility study that supports the ordinance under review and the department issues a finding that the study meets the standards in paragraphs (1), (3), and, if applicable, (2), of subdivision (b).

(e) The department shall not request to review an economic feasibility study for an ordinance more than 10 years from the date of adoption or amendment of the ordinance, whichever is later.

(f) The department shall annually report any findings made pursuant to this section to the Legislature. The report required by this subdivision shall be submitted in compliance with Section 9795.

(g) The Legislature finds and declares that ensuring access to affordable housing is a matter of statewide concern and not a municipal affair, as that term is used in Section 5 of Article XI of the California Constitution. Therefore, this section shall apply to an ordinance proposed or adopted by any city, including a charter city.

SEC. 3. The Legislature finds and declares all of the following:

(a) Inclusionary housing ordinances have provided quality affordable housing to over 80,000 Californians, including the production of an estimated 30,000 units of affordable housing in the last decade alone.

(b) Since the 1970s, over 170 jurisdictions have enacted inclusionary housing ordinances to meet their affordable housing needs.

(c) While many of these local programs have been in place for decades, a 2009 appellate court decision has created uncertainty and confusion for local governments regarding the use of this tool to ensure the inclusion of affordable rental units in residential developments.

(d) It is the intent of the Legislature to reaffirm the authority of local jurisdictions to include within these inclusionary housing ordinances requirements related to the provision of rental units.

(e) The Legislature declares its intent in adding subdivision (g) to Section 65850 of the Government Code, pursuant to Section 1 of this act, to supersede the holding and dicta in the court decision of Palmer/Sixth Street Properties, L.P. v. City of Los Angeles (2009) 175 Cal.App.4th 1396 to the extent that the decision conflicts with a local jurisdiction's authority to impose inclusionary housing ordinances pursuant to subdivision (g) of Section 65850 of the Government Code, as added pursuant to Section 1 of this act.

(f) In no case is it the intent of the Legislature in adding subdivision (g) to Section 65850 of the Government Code, pursuant to Section 1 of this act, to enlarge, diminish, or modify in any way the existing authority of local jurisdictions to establish, as a condition of development, inclusionary housing requirements, beyond reaffirming their applicability to rental units.

RESOLUTION NO. RZ-5-18

RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BRISBANE RECOMMENDING APPROVAL OF ZONING TEXT AMENDMENT RZ-5-18 ADDING NEW CHAPTER 17.29 AND AMENDING CHAPTER 17.31 OF THE BRISBANE MUNICIPAL CODE CONCERNING DENSITY BONUS AND INCLUSIONARY HOUSING REQUIREMENTS TO THE CITY COUNCIL

WHEREAS, in April of 2015, the City Council adopted the 2015-2022 Housing Element via General Plan Amendment GPA-1-14, and certified a Negative Declaration for the Housing Element; and

WHEREAS, Housing Element Program H.B.5.a directs the City to amend the Affordable Housing Ordinance (BMC Chapter 17.31) to permit the City to grant a proportionately lower density bonus and/or incentives for affordable housing projects that do not qualify under Government Code Section 65915 due to their small size or other limitations, as well as to grant a density bonus and/or other incentives greater than required for projects that meet or exceed the qualifications for a density bonus; and

WHEREAS, Housing Element Program H.B.4.b obligates the City to update its BMC Chapter 17.31 to comply with current State inclusionary housing and density bonus law; and

WHEREAS, Assembly Bill (AB) 1505, signed into law in September 2017, requires cities with inclusionary housing ordinances imposing an inclusionary requirement of more than 15 percent to rental housing developments to provide an economic feasibility study demonstrating that that the ordinance does not unduly constrain the production of housing by to the State Housing and Community Development Department, and requires inclusionary housing ordinances to allow at least one by-right alternative to developers to constructing inclusionary housing units within a rental housing development; and

WHEREAS, the draft ordinance implements the requirements of Housing Element programs H.B.4.b and H.B.5.a related to the City's implementation of State density bonus law, and the requirements of Housing Element Program H.B.4.b and AB 1505 related to the City's inclusionary housing regulations, including adoption of a 15 percent inclusionary requirement for rental and for-sale housing developments of five or more residential units or lots; and

WHEREAS, because the project implements Housing Element programs of the 2015-2022 Housing Element, for which a negative declaration was adopted (SCH#2015012053), and the proposed zoning text amendments can be seen with certainty to have no possibility of significant effect on the environment, the activity is not subject to the California Environmental Quality Act per State CEQA Guidelines Section 15061(b)(3); and

NOW, THEREFORE, based upon the evidence presented, both written and oral, the Planning Commission of the City of Brisbane hereby RECOMMENDS that the City Council adopt the attached ordinance.

AYES: Gomez, Gooding, Mackin, Sayasane.
NOES: None.
ABSENT: Patel.

PAMALA SAYASANE
Chairperson

ATTEST:

JOHN SWIECKI, Community Development Director

draft
ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF BRISBANE ADDING NEW CHAPTER 17.29 AND AMENDING CHAPTER 17.31 OF THE BRISBANE MUNICIPAL CODE CONCERNING DENSITY BONUS AND INCLUSIONARY HOUSING REQUIREMENTS

The City Council of the City of Brisbane hereby ordains as follows:

SECTION 1: A new Chapter 17.29 is added to the Municipal Code to read as follows:

Chapter 17.29 – DENSITY BONUSES

Sections:

17.29.010 Purposes of chapter.
17.29.020 Definitions.
17.29.030 Density bonuses.
17.29.040 Affordable housing plan for density bonus projects.
17.29.050 Affordable housing agreement.
17.29.060 Implementation and enforcement.

17.29.010 – Purposes of chapter.

A. The City of Brisbane enacts this chapter to implement the goals, objectives, and policies of the City's general plan housing element relative to administering a density bonus program to encourage the provision of housing affordable to a variety of household income levels, seniors, and persons with disabilities.

B. This chapter is also intended to implement Sections 65915, 65915.5, and 65917 of the California Government Code, or successor regulations, governing density bonuses and other incentives required therein for the production of housing for very low income, lower income, moderate income, and senior households.

17.29.020 - Definitions.

A. Affordable Housing Agreement. A recorded agreement between a property owner and the City to ensure that the density bonus requirements of this Chapter are satisfied.

B. Affordable Ownership Cost. The affordable ownership cost for for-sale target units shall be as specified in California Health and Safety Code Section 50052.5, as may be amended over time.

C. Affordable Rent. The affordable rent for rental target units shall be as specified in California Health and Safety Code Section 50053, as may be amended over time.

D. Approving Authority. The City decision-making body acting on an application for a housing development subject to the requirements of this Chapter, including the City Council, Planning Commission, or Community Development Director.

E. Child Care Facility. Child care facility shall have the same meaning as defined in Government Code Section 65915(h)(4), as may be amended over time.

F. City. The City of Brisbane or the Brisbane Housing Authority.

G. City Council. The City Council of the City of Brisbane as established in Title 2 of this Code or the Board Members of the Brisbane Housing Authority

H. City Manager. The City Manager of the City of Brisbane as established in Title 2 of this Code, the City Manager's designee, the Executive Director of the Brisbane Housing Authority or the Executive Director's designee.

I. Common Interest Development. As defined in California Civil Code Section 4100, as may be amended over time.

J. Community Development Director. The Director of the Community Development Department responsible for overseeing implementation of Title 17 of this Code, or the Community Development Director's designee.

K. Density Bonus. A density increase over the otherwise allowable maximum residential density, as defined in this Section 17.29.020, pursuant to Government Code Section 65915(f) and 65915.5, as may be amended over time.

L. Development Standard. A development standard shall be as defined by Government Code Section 65915(o)(1), as may be amended over time. As used in this Chapter, the term "development standard" does not include any of the following:

1. The permitted uses of a site;
2. Affordable housing requirements;
3. Building standards approved by the California Building Standards Commission as provided in California Health and Safety Code Section 18901 et seq.; or
4. The requirements of Brisbane's Green Building Ordinance as set forth in Title 15, Chapter 15.80 of this Code.

M. Domestic Partner. Domestic partner means two (2) persons who have filed a declaration of domestic partnership with the California Secretary of State pursuant to Division 2.5, beginning with Section 297, of the California Family Code and such registration was in full force and effect at the time of the transfer or on the date of the transferor's death. A copy of the domestic partnership registration shall be provided to the city upon request.

N. Dwelling Unit. Dwelling unit shall have the meaning set forth in Section 17.02.235 of this Code.

1. Density Bonus Unit. Those dwelling units granted pursuant to the provisions of this Chapter which exceed the otherwise allowable maximum residential density for the development site.
2. Market-Rate Unit. Any dwelling unit within a housing development that is not a target unit.
3. Target Units. Dwelling units affordable to moderate, low, or very low income households within a housing development that qualify the project for a density bonus.

O. Eligible Household. A household whose household income qualifies the household for occupancy of density bonus units provided under this Chapter.

P. First Approval. The first of the following approvals to occur with respect to a housing development: subdivision approval, building permit or any permit or approval under the Zoning Ordinance.

Q. Household Income. Household income shall be the gross income of the household as calculated pursuant to Title 25 California Code of Regulations, §6914, as amended, or its successor. The household income categories addressed in this Chapter shall be defined as follows:

1. Area Median Income. Area median income for San Mateo County as published by the State of California pursuant to California Code of Regulations, Title 25, Section 6932, as may be amended over time.
2. Lower Income Household. A household whose income does not exceed the lower income limits applicable to San Mateo County, as published annually by the State of California pursuant to California Code of Regulations, Title 25, Section 6932, as may be amended over time.
3. Moderate Income Household. A household whose income does not exceed the moderate income limits applicable to San Mateo County, as published annually by the State of California pursuant to California Code of Regulations, Title 25, Section 6932, as may be amended over time.
4. Very Low Income Household. A very low income household shall be as defined by California Health and Safety Code Section 50105, as may be amended over time.

R. Housing Authority. "Housing Authority" shall mean the Brisbane Housing Authority, as established by Resolution of the City Council. For the purposes of this Chapter, "Housing Authority" shall have the same meaning as "City."

S. Housing Development. Any parcel map, subdivision map, use permit, building permit, or other city approval which results in a net increase of at least five (5) or more dwelling units and/or residential lots or combination thereof. A housing development may include, but is not limited to, new construction, conversion of existing dwelling units to condominium ownership, creation of residential lots, conversion of an existing nonresidential building to residential use, and the addition of dwelling units to an existing multifamily dwelling. A housing development shall include units or lots intended for sale or for rent.

1. For-Sale Housing Development. A housing development, or portion thereof, where the dwelling units or lots are offered to the public for purchase.
2. Rental Housing Development. A housing development, or portion thereof, comprised of dwelling units which are intended to be rented, or are actually offered for rent, to tenants upon completion, whether or not a condominium or subdivision map is recorded as part of the housing development.
3. Senior Citizen Housing Development. A senior citizen housing development shall be as defined per Government Code Section 65915(b)(1)(C), as may be amended over time.

T. Incentives or Concessions. Incentives or concessions shall be as defined in the Government Code Section 65915(k) and 65915.5, as identified by a financial pro forma submitted by the applicant per 17.31.120 of this Code.

U. Maximum Residential Density. The maximum number of dwelling units permitted by the City's zoning ordinance on the date the application is deemed complete.

V. Modified Parking Standards. Modifications to the parking standards that would otherwise apply to a housing development under Chapter 17.34 of this Code, as described in Government Code Section 65915(p), as may be amended from time to time.

W. Resale Restriction Agreement. An agreement, covenant, deed of trust, or other document, approved by the City Council, which is executed by the property owner and recorded against each target unit to insure that such unit remains affordable for the applicable term.

X. Specific Adverse Impact. A "specific adverse impact" shall have the same meaning as the meaning provided in the Government Code Section 65589.5, as may be amended from time to time.

17.29.030 - Density bonuses.

A. The City shall grant a density bonus, incentives and concessions, waivers or reductions in development standards, and/or modified parking standards requested by applicants for approval of a housing development project of at least five units, to the extent required pursuant to Sections 65915 and 65915.5 of the Government Code, as may be amended over time.

1. A developer of a housing development containing between two (2) and four (4) dwelling units or lots may request City Council approval of a density bonus as shown in Table 17.29.030. The City shall waive or reduce any development standard that may preclude development of such a project subsection B of this Section 17.29.030.

Table 17.29.030

Zoning District	Lot Size	Maximum Permitted Residential Density	Percentage low income units	Percentage Density Bonus	Total Units including Density Bonus Units
R-2	4,950-7,499 sq ft	2 units	50%	30%	3 units
R-3	4,950- 5,999 sq ft	3 units	30%	15%	4 units
	6,000- 7,499 sq ft	4 units	50%	15%	5 units

2. A developer of a housing development that exceeds the qualifications for a density bonus per Government Code Section 65915 may request that the City grant one additional incentive or concession above the maximum number prescribed by Government Code Section 65915(d)(2), as applicable to the project.

3. A developer may request a lesser density bonus than the project is entitled to, but no reduction will be permitted in the number of required target units pursuant to subsection A of this Section 17.29.030.

4. Where a site has no maximum residential density, no density bonus need be granted. However, the City shall grant incentives or concessions and waivers or reductions in development standards requested by applicants pursuant to Government Code Sections 65915(d) and 65915(e).

5. Inclusionary units required pursuant to Chapter 17.31 will be counted as target units for the purposes of calculating a density bonus.

B. The following concessions and incentives shall require approval by the City Council, even though the housing development may otherwise only require approval by the Planning Commission:

1. Deferring collection of development impact fees on market-rate units until issuance of certificate of occupancy;

2. Any direct financial assistance, including that for purchasers of target units;

3. Any regulatory incentives or concessions not related to the zoning ordinance's development standards or parking requirements, such as incentives involving infrastructure standards or mixed-use zoning.

C. Nothing in this section requires the City to provide direct financial incentives for the housing development, including but not limited to the provision of publicly owned land.

D. In accordance with state law, neither the granting of a concession or incentive, nor the granting of a density bonus, shall be interpreted, in and of itself, to require a general plan amendment, zoning change, or other discretionary approval.

17.29.040 - Affordable housing plan for density bonus projects.

A. An affordable housing plan shall be submitted as part of the application for first approval of any housing development for which a density bonus, incentives or concessions, or waivers or reductions of development standards are requested. No application for a first approval shall be deemed complete unless an affordable housing plan is submitted conforming to the provisions of this section.

B. The affordable housing plan shall include the following information:

1. All information required for affordable housing plans for inclusionary units pursuant to Section 17.31.060.C of Chapter 17.31, as applicable to the project.

2. Description of the base project without the requested density bonus, the number and location of all target units qualifying the project for a density bonus, the level of affordability of the target units, and identification of the density bonus units.

3. Description of any requested density bonuses, incentives, concessions, waivers or modifications of development standards, and/or modified parking standards.

   a. For all requested incentives and concessions, a pro forma demonstrating the requested incentives and concessions result in identifiable and actual cost reductions to provide for affordable ownership cost or rent, as appropriate to the project. The cost of reviewing any required pro forma data submitted in support of a request for a concession or incentive, including but not limited to the cost to the City of hiring a consultant to review the pro forma, shall be borne by the applicant.

   b. For all requested waivers or reductions of development standards, written evidence that (i) the development standards for which a waiver or reduction is requested will physically preclude the construction of the housing development at the densities or with the incentives or concessions permitted by this chapter; (ii) the waiver or reduction would not have a specific, adverse impact, or, if a specific, adverse impact would occur, that the impact could feasibly be mitigated or avoided; (iii) the waiver or reduction would not have an adverse impact on any real property that is listed in the California Register of Historical Resources; and (iv) the waiver or reduction would not be contrary to any state or federal law.

   c. If a density bonus or concession is requested for a land donation, the application shall show the location of the land to be dedicated and provide evidence that each of the findings in Government Code Section 65915(g) can be made.

   d. If a density bonus or concession is requested for a child care facility, the application shall show the location and square footage of the child care facility and provide evidence that the findings in Government Code Section 65915(i) can be made.

   e. If a density bonus or concession is requested for a mixed use development, as defined in Chapter 17.02 of this Code, the application shall provide evidence that the required findings in Government Code Section 65915(k)(2) can be made.

9. The applicant may request a modification of the requirement set forth in Section 17.29.060 of this Chapter that the target units be constructed concurrently with the market-rate units. In that case, the affordable housing plan shall describe the proposed phasing at the same level of detail as required in the application for the housing development, specify the security to be provided to the City to ensure that the affordable units will be constructed, and explain how the proposed phasing would provide greater public benefit than providing the target units concurrently with the market-rate units.

C. The affordable housing plan for density bonus projects shall be reviewed by the Planning Commission or City Council, as appropriate to the application, simultaneously with any other permit applications associated with the first approval for the housing development. The City Council shall be the approving authority for the affordable housing plan where incentives or concessions pursuant to Section 17.29.030 of this Code are requested, even though the approving authority for the housing development might otherwise be the Planning Commission.

D. A request for a minor modification of an approved affordable housing plan may be granted by the community development director if the modification is substantially in compliance with the original affordable housing plan and conditions of approval. A minor modification is technical in nature, as opposed to substantive or material. Substantive or material changes to the affordable housing plan shall be processed in the same manner as the original plan.

17.29.050 - Affordable housing agreement.

A. Applicability. Recordation of an affordable housing agreement shall be made a condition of the first approval for all housing developments subject to the requirements of this chapter to ensure implementation of all requirements of this Chapter. The affordable housing agreement shall be recorded prior to, or concurrently with, the final or parcel map, or, where the housing development does not include a map, prior to issuance of a building permit for any structure in the housing development. The affordable housing agreement shall run with the land and bind all future owners and successors in interest.

B. Definitions. The following definitions shall be applicable to such terms as used in this section:

1. “Successor in interest”” means any person or persons, other than a transferee defined in subparagraph b of paragraph 2 of this subsection B, vested in legal title to the target unit by reason of the death of the owner of a target unit. For the purposes of this section, the household income of a successor in interest will be calculated consistent with the calculation of household income as defined in Section 17.29.020.Q of this Chapter.

2. "Transfer" means any sale, conveyance, assignment, or other change of ownership, whether voluntary or involuntary, of any legal or equitable interest in a target unit. Where the target unit is owned by a corporation, limited liability company, general or limited partnership, or other form of business entity, a transfer of the unit shall be deemed to have occurred upon transfer of fifty percent (50%) or more of the ownership interest in such entity. Notwithstanding the foregoing, the following transfers shall be exempt from the requirement that the transferee qualify as an eligible household:

   a. Any transfer to a spouse or domestic partner of the transferor, where the spouse or domestic partner becomes a co-owner of the target unit with the transferor;

   b. Any transfer by devise or inheritance to a spouse or domestic partner of the transferor upon the transferor's death, where the spouse or domestic partner continues to occupy the unit as his or her principal place of residence;

   c. Any transfer between spouses as part of a marriage dissolution proceeding;

   d. Any transfer to an inter vivos revocable trust in which the transferor is the beneficiary;

   e. The granting of the lien or other security interest in the unit as security for a loan and such loan complies with any applicable requirements of the resale restriction agreement.

   The exemptions listed above shall apply only during the period in which the target unit is owned by the exempted person and shall not apply to any subsequent transfer by that person, which shall be subject to all of the terms and provisions of the resale restriction agreement.

C. The affordable housing agreement shall be in a form provided by the City and shall include the following, without limitation:

1. All information provided in the affordable housing plan pursuant to Section 17.29.040 of this Chapter.

2. Continued affordability of the target units, as follows:

a. For-Sale Target Units. The affordable housing agreement shall require that a resale restriction agreement, in a form approved by the City, be recorded against each for-sale target unit when the target unit is first transferred to an eligible purchaser. The resale restriction agreement shall provide that target units in for-sale housing developments shall remain affordable in perpetuity and that the affordability provisions be applicable to any subsequent transferees or successors in interest

The resale restriction agreement shall also provide that the for-sale target unit shall not be rented and that a successor in interest shall not be exempt from meeting the household income eligibility requirements as are transferees under paragraph 2 of subsection B of this section; provided, however, a successor interest may reside in the unit, subject to the obligations of the resale restriction agreement, if a successor in interest's household income qualifies the successor in interest as provided in Section 17.29.020 Q of this Chapter. If the household income of the successor in interest does not qualify, the successor in interest must sell the unit as set forth in the resale restriction agreement, following a grace period not to exceed one year.

b. Rental Target Units. The affordable housing agreement shall be recorded against each housing development containing rental target units to ensure that the target units remain affordable for a minimum term as specified in Government Code Section 65915(c)(1); provided, however, if the target units in the housing development are also inclusionary housing units as defined in Chapter 17.31, the target units shall remain affordable in perpetuity as required by Chapter 17.31

For those target units in a housing development that are not inclusionary housing units as defined in Chapter 17.31, a longer period of time than as specified in Government Code section 65915(c)(1) may be required by any construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program.

Rental target units that are later converted to for-sale units, e.g., converted to condominiums, and then sold shall be sold as for-sale target units and the requirements of subparagraph a of paragraph 2 of subsection B of this Section shall apply.

3. The affordable housing agreement shall specify that no household shall be permitted to begin occupancy of a target unit unless the Community Development Director has approved the household's eligibility, unless the household has been exempted under paragraph 2 of subsection B of this Section 17.29.050. If the City maintains a list of, or otherwise identifies, eligible households, initial and subsequent occupants of target units shall be selected first from the list of identified households, to the maximum extent possible, in accordance with guidelines approved by the City Council.

4. Affordable housing agreements for land dedication, child care facilities, and condominium conversions shall ensure continued compliance with all conditions included in Government Code Sections 65915 and 65915.5.

5. Affordable housing agreements for senior citizen housing developments shall provide that units in the residential development shall be occupied by senior citizens or other persons eligible to reside in such a project.

6. The affordable housing agreement shall include provisions requiring maintenance of records to demonstrate compliance with this Chapter.

7. The affordable housing agreement shall include a description of remedies for breach of the affordable housing agreement by either party. The City may identify tenants or qualified purchasers as third party beneficiaries under the agreement.

D. The affordable housing agreement shall include any other provisions determined necessary by the City Attorney to ensure implementation and compliance with this Chapter.

17.29.060 - Implementation and enforcement.

A. No permit, license, subdivision map, or other approval or entitlement for a housing development shall be issued, including without limitation a final inspection for occupancy, until all requirements applicable to the housing development at such time pursuant to this Chapter have been satisfied.

1. No building permit shall be issued for any market rate unit until the permittee has obtained permits for target units sufficient to meet the requirements of Section 17.29.030 of this Chapter, and, if the project includes inclusionary housing units pursuant to Chapter 17.31 of this Chapter, Section 17.31.030 of this Code. No final inspection for occupancy for any market-rate unit shall be completed until the permittee has constructed the target units required by Section 17.29.030 of this Chapter.

2. The time requirements set forth in this Section for issuance of building permits for market-rate units and for final inspections for occupancy for market-rate units may be modified to accommodate phasing schedules, model variations, or other factors in a housing development within the submitted affordable housing plan pursuant to Sections 17.29.040 of this Chapter, if the City determines this will provide greater public benefit and an affordable housing agreement pursuant to Section 17.29.050 of this Chapter has been accepted by the community development director.

B. Conditions to carry out the purposes of this Chapter shall be imposed on the first approval for a housing development.

C. The City Attorney is authorized to enforce the provisions of this Chapter and all affordable housing agreements, regulatory agreements, resale controls, deeds of trust, or similar documents placed on target units, by civil action and any other proceeding or method permitted by law.

D. The City Manager is authorized to execute the resale restriction agreement and any related documents following approval of the resale restriction agreement by the Community Development Director and the City Attorney.

E. Failure of any official or agency to fulfill the requirements of this Chapter shall not excuse any applicant or owner from the requirements of this Chapter.

F. The remedies provided for herein shall be cumulative and not exclusive and shall not preclude the City from any other remedy or relief to which it otherwise would be entitled under law or equity.

SECTION 2: Chapter 17.31 of the Municipal Code is amended in its entirety to read as follows:

Chapter 17.31 - INCLUSIONARY HOUSING

Sections:

17.31.010 Basis and purposes.
17.31.020 Definitions.
17.31.030 Inclusionary requirement.
17.31.040 Inclusionary housing incentives.
17.31.050 Alternatives to constructing inclusionary units for rental housing developments.
17.31.060 Affordable housing plan for inclusionary units.
17.31.070 Adjustment or reduction of inclusionary housing requirement.
17.31.080 Affordable housing agreement
17.31.090 Implementation and enforcement.

17.31.010 - Basis and purposes.

A. Rental and owner-occupied housing in the City has become steadily more expensive. Housing costs have gone up faster than incomes for many groups in the community.

B. Many persons who work in the City, who have grown up or have family ties in the City, who already live in the City but must move due to increasing housing costs, or who wish to live in the City for other reasons, cannot afford housing in the city.

C. Federal and state government programs do not provide nearly enough affordable housing opportunities or subsidies to satisfy the housing needs of moderate, lower or very low income households.

D. Rising land prices have been a key factor in preventing development of new affordable housing. New housing construction in the City which does not include inclusionary units aggravates the existing shortage of affordable housing by absorbing the supply of available residential land. This reduces the supply of land for affordable housing and increases the price of remaining residential land. Providing the inclusionary units required by this Chapter will help to ensure that part of the City's remaining developable land is used to provide affordable housing.

E. The City wishes to retain an economically balanced community, with housing available to very low income, lower income and moderate income households. The City's general plan implements the established policy of the State of California that each community should foster an adequate supply of housing for households at all economic levels.

F. An economically balanced community is only possible if part of the new housing built in the City is affordable to households with limited incomes. Requiring builders of new housing to include some housing affordable to households at a range of incomes is fair, not only because new development without inclusionary units contributes to the shortage of affordable housing, but also because zoning and other ordinances concerning new housing in the City should be consistent with the community's goal to foster an adequate supply of housing for households at all economic levels.

G. In enacting this Chapter it is also the intent of the City of Brisbane to implement the goals, objectives, and policies of the City's general plan housing element, which encourages the provision of housing affordable to a variety of household income levels, seniors, and persons with disabilities, and identifies an inclusionary housing policy as methods to encourage the development of affordable housing.

17.31.020 - Definitions.

A. Affordable Housing Agreement. A recorded agreement between a property owner and the City to ensure that the inclusionary housing requirements of this Chapter are satisfied.

B. Affordable Ownership Cost. The affordable ownership cost for for-sale target units shall be as specified in California Health and Safety Code Section 50052.5, as may be amended over time.

C. Affordable Rent. The affordable rent for rental target units shall be as specified in California Health and Safety Code Section 50053, as may be amended over time.

D. Approving Authority. The City decision-making body acting on an application for a housing development subject to the requirements of this Chapter, including the City Council, Planning Commission, or Community Development Director.

E. City. The City of Brisbane or the Brisbane Housing Authority.

F. City Council. The City Council of the City of Brisbane as established in Title 2 of this Code or the Board Members of the Brisbane Housing Authority.

G. City Manager. The City Manager of the City of Brisbane as established in Title 2 of this Code, the City Manager's designee, the Executive Director of the Brisbane Housing Authority or the Executive Director's designee.

H. Community Development Director. The Director of the Community Development Department responsible for overseeing implementation of Title 17 of this Code, or the Community Development Director's designee.

I. Domestic Partner. Domestic partner means two (2) persons who have filed a declaration of domestic partnership with the California Secretary of State pursuant to Division 2.5, beginning with Section 297, of the California Family Code and such registration was in full force and effect at the time of the transfer or on the date of the transferor's death. A copy of the domestic partnership registration shall be provided to the city upon request.

J. Dwelling Unit. Dwelling unit shall have the meaning set forth in Section 17.02.235 of this Code.

   1. Inclusionary Unit. Dwelling unit within a housing development that is required by Section 17.31.030 of this Chapter to be rented at affordable rents or sold at an affordable ownership cost to specified households. Inclusionary units are considered target units as that term is defined in Chapter 17.29 of this Code.

   2. Market-Rate Unit. Any unit within a housing development that is not an inclusionary unit.

K. Eligible Household. A household whose household income qualifies the household for occupancy of inclusionary units provided under this Chapter.

L. First Approval. The first of the following approvals to occur with respect to a housing development: subdivision approval, building permit or any permit or approval under the Zoning Ordinance.

M. Household Income. Household income shall be the gross income of the household as calculated pursuant to Title 25 California Code of Regulations, §6914, as amended, or its successor. The household income categories addressed in this Chapter shall be defined as follows:

   1. Area Median Income. Area median income for San Mateo County as published by the State of California pursuant to California Code of Regulations, Title 25, Section 6932, as may be amended over time.

2. Lower Income Household. A household whose income does not exceed the lower income limits applicable to San Mateo County, as published annually by the State of California pursuant to California Code of Regulations, Title 25, Section 6932, as may be amended over time.
3. Moderate Income Household. A household whose income does not exceed the moderate income limits applicable to San Mateo County, as published annually by the State of California pursuant to California Code of Regulations, Title 25, Section 6932, as may be amended over time.
4. Very Low Income Household. A very low income household shall be as defined by California Health and Safety Code Section 50105, as may be amended over time.

N. Housing Authority. "Housing Authority" shall mean the Brisbane Housing Authority, as established by Resolution of the City Council. For the purposes of this Chapter, "Housing Authority" shall have the same meaning as "City."

O. Housing Development. Any parcel map, subdivision map, use permit, building permit, or other City approval which results in a net increase of at least five (5) or more dwelling units and/or residential lots or combination thereof. A housing development may include, but is not limited to, new construction, conversion of existing dwelling units to condominium ownership, creation of residential lots, conversion of an existing nonresidential building to residential use, and the addition of dwelling units to an existing multifamily dwelling. A housing development shall include units or lots intended for sale or for rent.

1. For-Sale Housing Development. A housing development, or portion thereof, where the dwelling units or lots are offered to the public for purchase.
2. Rental Housing Development. A housing development, or portion thereof, comprised of dwelling units which are intended to be rented, or are actually offered for rent, to tenants upon completion, whether or not a condominium or subdivision map is recorded as part of the housing development.

P. Maximum Residential Density. The maximum number of residential units permitted by the City's zoning ordinance on the date the application is deemed complete.

Q. Resale restriction agreement. An agreement, covenant, deed of trust, or other document, approved by the City Council, which is executed by the property owner and recorded against each inclusionary unit to insure that such unit remains affordable for the applicable term.

17.31.030 - Inclusionary requirement.

A. Applicability. The inclusionary requirements established in this section shall apply to all housing developments with five (5) or more dwelling units, except for the following:

1. Housing developments that are developed pursuant to the terms of a development agreement executed prior to the effective date of this Chapter, provided that such housing developments shall comply with any affordable housing requirements included in the development agreement.
2. Housing development tentative maps or vesting tentative maps exempted by Government Code Section 66474.2 or 66498.1, provided that such maps shall comply with any predecessor ordinance in effect on the date the application for the map was deemed complete.

B. Inclusionary Requirements.

1. For-sale Housing Developments. A for-sale housing development subject to the inclusionary requirements of this Chapter shall provide the following inclusionary lots or units, unless an alternative is approved pursuant to Section 17.31.050 of this Chapter:

a. A for-sale housing development with five (5) to ten (10) dwelling units or lots must provide fifteen percent (15%) of the units at affordable ownership costs for moderate income households.

b. A for-sale housing development of eleven (11) or more dwelling units or lots must provide ten percent (10%) of the units at affordable ownership costs for moderate income households and five percent (5%) of the units or lots at affordable ownership costs for lower income households.

2. Rental Housing Developments. A rental housing development with five (5) or more dwelling units must provide fifteen percent (15%) of the units at affordable rents to very low income households, unless an alternative is elected pursuant to Section 17.31.050 of this Chapter.

C. For purposes of calculating the number of inclusionary units required by this section, any calculations resulting in fractional units shall be rounded to the next larger integer. Additionally, any density bonus units authorized pursuant to Chapter 17.29 of this Code shall not be counted as part of the housing development.

D. Contemporaneous construction of five (5) or more dwelling units on a lot, or on contiguous lots for which there is evidence of common ownership or control, even though not covered by the same City land use approval, shall also be considered a single housing development. Construction shall be considered contemporaneous if any building permits are issued within five (5) years following the date of completion of any earlier construction.

17.31.040 - Inclusionary housing incentives.

A. The following incentives shall apply to all housing developments that provide one or more inclusionary units in accordance with the provisions of this Chapter:

1. Single-family detached inclusionary units need not be constructed on lots the same size as the market-rate units in the same residential development, but the lots may be no smaller than the minimum standard for the applicable zoning district, except as provided by Section 17.31.060(B)(1) of this Chapter.

2. Inclusionary units may be smaller in size than market-rate units in the same residential development.

3. Inclusionary units may have different interior finishes and features than market-rate units in the same residential development, as long as the finishes and features are durable and of good quality, as determined by the Community Development Director.

17.31.050 - Alternatives to constructing inclusionary units for rental housing developments.

A. An applicant for a rental housing development subject to the inclusionary requirements of this Chapter may, at the sole discretion of the applicant, elect to pay an in-lieu fee as established by resolution of the City Council, for each required inclusionary unit to the Brisbane Housing Authority's Low and Moderate Income Housing Fund, instead of constructing the inclusionary units within the residential development, pursuant to Government Code Section 65850(g). The timing of the in-lieu fee payment shall be as determined by the Planning Commission or City Council at the time of approval of the affordable housing plan pursuant to Section 17.31.060 of this Chapter.

B. An applicant for a rental housing development subject to the inclusionary requirements of this Chapter may request City Council approval of one or more of the following alternatives as an alternative to constructing the inclusionary units within the housing development, as described within the affordable housing plan for inclusionary units prepared pursuant to subsection 17.31.060.B.3 of this Chapter:

1. Off-Site Construction. The applicant may request to construct some or all of the inclusionary units at a location within the City outside of the residential development. Off-site inclusionary units shall be located on sites that are compatible with adjacent land uses, appropriately zoned for the intended residential development, and are in proximity to or will provide access to employment opportunities, urban services, major roads or other public transit facilities.

2. Dedication of Land. The applicant may dedicate land within the City to the City or another public entity that provides affordable housing that is suitable for affordable housing development. The land shall meet all of the requirements of Government Code Section 65915(g). The value of the land shall be not less than the sum of the in-lieu fee that would be due under subsection A.1 of this Section 17.31.050. The valuation of any land offered in-lieu shall be determined by an appraisal made by an appraiser mutually agreed upon by the City and the applicant. Costs associated with the appraisal shall be borne by the applicant.

3. Funding of Affordable or Special Needs Housing Project. The applicant may make a contribution to a special needs housing project or program or other affordable housing project in the City in an amount equivalent to the in-lieu fee payment due under subsection A.1 of this Section 17.31.050.

4. Other Alternatives. The City Council may approve other alternatives to the construction of new inclusionary units. Alternatives may include, but are not limited to, acquisition and rehabilitation of inclusionary units, conversion of existing market-rate units to inclusionary units, or construction of special needs housing projects or programs (shelters, transitional housing, etc.).

17.31.060 - Affordable housing plan for inclusionary units.

A. An affordable housing plan for inclusionary units shall be submitted as part of the application for first approval of any housing development for which inclusionary units are required by this Chapter, except where payment of an in-lieu fee is elected by the applicant for a rental housing development pursuant to Section 17.31.050 of this Chapter. No application for a first approval may be deemed complete unless an affordable housing plan, if required, is submitted conforming to the provisions of this Chapter.

B. If the applicant has requested a density bonus pursuant to Chapter 17.29 of this Code, the affordable housing plan required under this Section shall be combined with the affordable housing plan for target units required pursuant to Section 17.29.040 of this Code.

C. The affordable housing plan for inclusionary units shall include the following information:

1. For housing developments proposing to construct the inclusionary units within the development, the affordable housing plan shall specify, at the same level of detail as the application for the housing development:

a. The number, type, tenure, number of bedrooms and baths, approximate location, size, and design of all inclusionary units;

b. Construction phasing of inclusionary units in relation to market-rate units and overall construction schedule. If the developer intends to construct the inclusionary units in separate phases from the market-rate unit construction, the affordable housing plan shall

specify the security to be provided to the City to ensure that the inclusionary units will be constructed, and explain how the proposed phasing would provide greater public benefit than providing the inclusionary units concurrently with the market-rate units;

c. Marketing plan;

d. Methods to be used to verify incomes of tenant households or purchaser households;

e. Procedures for qualifying tenant households and prospective purchaser households of inclusionary units, including any preferences.

f. A financing mechanism, the particulars and the amount of which shall be determined by the City at the time the affordable housing plan is approved, to cover the City's costs for the on-going administration and monitoring of the affordability provisions applicable to the inclusionary units.

2. If an applicant requests City Council approval of alternatives to constructing the inclusionary units within a rental housing development pursuant to subsection 17.31.050.B of this Chapter, the affordable housing plan shall describe the requested alternatives.

3. The affordable housing plan shall state the affordable rent or ownership costs of the inclusionary units, as calculated by the Community Development Director.

4. If the applicant wishes to request a modification of the requirements set forth in Section 17.31.090 of this Chapter that the inclusionary units be constructed concurrently with the market-rate units, the affordable housing plan shall describe the proposed phasing at the same level of detail as required in the application for the housing development. Additionally, the plan shall specify the security to be provided to the City to ensure that the inclusionary units will be constructed, and explain how the proposed phasing would provide greater public benefit than providing the inclusionary units concurrently with the market-rate units.

C. The affordable housing plan for inclusionary units shall be reviewed by the Planning Commission or City Council, as appropriate to the application, simultaneously with any other permit applications associated with the first approval for the housing development.

17.31.070 – Adjustment or reduction of inclusionary housing requirement.

A. An applicant may request City Council approval of an adjustment or reduction of the inclusionary housing requirements of this Chapter if an applicant demonstrates that the requested adjustment or reduction would better implement the goals, objectives, and policies of the City's general plan housing element, which encourages the provision of housing affordable to a variety of household income levels, seniors, and persons with disabilities. The City Council, in its sole discretion, will determine whether to approve the applicant's request based on the City's progress in meeting its housing goals, objectives, and policies at the time the request is made.

B. Any request for an adjustment or reduction under this section shall be submitted concurrently with the affordable housing plan required by Section 17.31.060 of this Chapter. The request for a reduction or adjustment shall set forth in detail the factual basis for the adjustment or reduction.

17.31.080 - Affordable housing agreement.

A. Applicability. Recordation of an affordable housing agreement shall be made a condition of the first approval for all housing developments subject to the requirements of this Chapter to ensure implementation of all requirements of this Chapter. The affordable housing agreement shall be recorded prior to, or concurrently with, the final or parcel map, or, where the housing development does not require a map, prior to issuance of a building permit for any structure in the housing

development. The affordable housing agreement shall run with the land and bind all future owners and successors in interest.

B. Definitions. The following definitions shall be applicable to such terms as used in this section:

1. “Successor in interest”” means any person or persons, other than a transferee defined in subparagraph b of paragraph 2 of this subsection B, vested in legal title to the target unit by reason of the death of the owner of a target unit. For the purposes of this section, the household income of a successor in interest will be calculated consistent with the calculation of household income as defined in Section 17.29.020.Q of this Chapter.

2. "Transfer" means any sale, conveyance, assignment, or other change of ownership, whether voluntary or involuntary, of any legal or equitable interest in an inclusionary unit. Where the inclusionary unit is owned by a corporation, limited liability company, general or limited partnership, or other form of business entity, a transfer of the inclusionary unit shall be deemed to have occurred upon transfer of fifty percent (50%) or more of the ownership interest in such entity. Notwithstanding the foregoing, the following transfers shall be exempt from the requirement that the transferee qualify as an eligible household:

a. Any transfer to a spouse or domestic partner of the transferor, where the spouse or domestic partner becomes a co-owner of the inclusionary unit with the transferor;

b. Any transfer by devise or inheritance to a spouse or domestic partner of the transferor upon the transferor's death, where the spouse or domestic partner continues to occupy the inclusionary unit as his or her principal place of residence;

c. Any transfer between spouses as part of a marriage dissolution proceeding;

d. Any transfer to an inter vivos revocable trust in which the transferor is the beneficiary;

e. The granting of the lien or other security interest in the unit as security for a loan and such loan complies with any applicable requirements of the resale restriction agreement.

The exemptions listed above shall apply only during the period in which the inclusionary unit is owned by the exempted person and shall not apply to any subsequent transfer by that person, which shall be subject to all of the terms and provisions of the resale restriction agreement.

C. The affordable housing agreement shall be in a form provided by the City and shall include the following, without limitation:

1. All information provided in the affordable housing plan pursuant to Sections 17.31.060 of this Chapter.

2. Continued affordability of the inclusionary units, as follows:

c. For-Sale Target Units. The affordable housing agreement shall require that a resale restriction agreement, in a form approved by the City, be recorded against each for-sale target unit when the target unit is first transferred to an eligible purchaser. The resale restriction agreement shall provide that target units in for-sale housing developments shall remain affordable in perpetuity and that the affordability provisions be applicable to any subsequent transferees or successors in interest

The resale restriction agreement shall also provide that the for-sale target unit shall not be rented and that a successor in interest shall not be exempt from meeting the household income eligibility requirements as are transferees under paragraph 2 of subsection B of this section; provided, however, a successor interest may reside in the unit, subject to the obligations of the resale restriction agreement, if a successor in interest’s household income qualifies the successor in interest as provided in Section 17.29.020 Q of this

Chapter. If the household income of the successor in interest does not qualify, the successor in interest must sell the unit as set forth in the resale restriction agreement, following a grace period not to exceed one year.

d. Rental Inclusionary units. The affordable housing agreement shall be recorded against each housing development containing rental target units to ensure that the target units remain affordable for a minimum term as specified in Government Code Section 65915(c)(1); provided, however, if the target units in the housing development are also inclusionary housing units as defined in Chapter 17.31, the target units shall remain affordable in perpetuity as required by Chapter 17.31

For those target units in a housing development that are not inclusionary housing units as defined in Chapter 17.31, a longer period of time than as specified in Government Code section 65915(c)(1) may be required by any construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program.

Rental target units that are later converted to for-sale units, e.g., converted to condominiums, and then sold shall be sold as for-sale target units and the requirements of subparagraph a of paragraph 2 of subsection B of this Section shall apply.

3. The affordable housing agreement shall specify that no household shall be permitted to begin occupancy of an inclusionary unit unless the Community Development Director has approved the household's eligibility, unless the household has been exempted under subsection B of this Section 17.31.080. If the City maintains a list of, or otherwise identifies, eligible households, initial and subsequent occupants of inclusionary units shall be selected first from the list of identified households, to the maximum extent possible, in accordance with guidelines approved by the City Council.

4. Affordable housing agreements for housing developments intended to be occupied by households with one or more members who are sixty-two (62) years of age or older shall provide that dwelling units in the residential development shall be occupied by persons eligible to reside in such a project.

5. The affordable housing agreement shall include provisions requiring maintenance of records to demonstrate compliance with this Chapter.

6. The affordable housing agreement shall include a description of remedies for breach of the agreement by either party. The City may identify tenant households or qualified purchaser households as third party beneficiaries under the agreement.

D. The affordable housing agreement shall include any other provisions determined necessary by the City Attorney to ensure implementation and compliance with this Chapter.

17.31.090 - Implementation and enforcement.

A. No permit, license, subdivision map, or other approval or entitlement for a housing development shall be issued, including without limitation a final inspection for occupancy, until all requirements applicable to the housing development at such time pursuant to this Chapter have been satisfied.

1. No building permit shall be issued for any market-rate unit until the permittee has obtained permits for inclusionary units sufficient to meet the requirements of Section 17.31.030 of this Chapter, and, if a density bonus has been requested pursuant to Chapter 17.29, Section 17.29.030 of this Code. No final inspection for occupancy for any market-rate unit shall be

completed until the permittee has constructed the inclusionary units required by Section 17.31.030 of this Chapter.

2. The time requirements set forth in this Section for issuance of building permits for market-rate units and for final inspections for occupancy for market-rate units may be modified to accommodate phasing schedules, model variations, or other factors in a housing development within the submitted affordable housing plan pursuant to Sections 17.31.060 of this Chapter, if the City determines this will provide greater public benefit and an affordable housing agreement pursuant to Section 17.31.080 of this Chapter has been accepted by the community development director.

B. Conditions to carry out the purposes of this Chapter shall be imposed on the first approval for a housing development.

C. The City Attorney is authorized to enforce the provisions of this Chapter and all affordable housing agreements, regulatory agreements, resale controls, deeds of trust, or similar documents placed on inclusionary units, by civil action and any other proceeding or method permitted by law.

D. The City Manager is authorized to execute the resale restriction agreement and any related documents following approval by the Community Development Director and the City Attorney.

E. Failure of any official or agency to fulfill the requirements of this Chapter shall not excuse any applicant or owner from the requirements of this Chapter.

F. The remedies provided for herein shall be cumulative and not exclusive and shall not preclude the City from any other remedy or relief to which it otherwise would be entitled under law or equity.

SECTION 3: Where a use permit, design permit or variance approval has been issued through final action by the City prior to the effective date of this Ordinance, or where such planning permit approval is not required and a complete building permit application has been submitted prior to the effective date of this Ordinance, the holder of such use permit, design permit or variance approval or complete building permit application may proceed to construct the improvements or establish the use authorized by such permit or approval and the same shall be exempted from any conflicting regulations that may be contained in this Ordinance.

SECTION 4: If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of Brisbane hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that one or more sections, subsections, sentences, clauses or phrases may be held invalid or unconstitutional.

SECTION 5: This Ordinance shall be in full force and effect thirty days after its passage and adoption.

* * *

The above and foregoing Ordinance was regularly introduced and after the waiting time required by law, was thereafter passed and adopted at a regular meeting of the City Council of the City of Brisbane held on the _____ day of _____, 2019, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

_____
Mayor Madison Davis

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney