CITY of BRISBANE

City Council Meeting Agenda

Thursday, April 17, 2025 at 6:30 PM ● Hybrid Meeting 50 Park Place, Brisbane, CA

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

TO ADDRESS THE COUNCIL

IN PERSON

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

Masking is not required but according to the California Department of Public Health guidelines, people at higher risk for severe illness should consider masking. To help maintain public health and safety, we respectively request that people not attend in-person if they are experiencing symptoms associated with COVID-19 or are otherwise ill and likely contagious (e.g., respiratory illnesses).

To address the City Council on any item – whether on the posted agenda or not – please fill out a Request to Speak Form located in the Community Meeting Room Lobby and submit it to the City Clerk. Speakers are not required to submit their name or address.

REMOTE PARTICIPATION

Members of the public may participate in the City Council meeting by logging into the Zoom Webinar listed below. City Council meetings may also be viewed live and/or on-demand via the City's YouTube Channel, youtube.com/brisbaneca, or on Comcast Ch. 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 if remote participation is available.

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

Remote Public Comments:

Remote meeting participants may address the City Council via Zoom Webinar. Aside from commenting personally while in the Zoom Webinar, you can also use the call in number. The public comments received will be noted for the record during Oral Communications 1 and 2 or during an agenda item. We encourage you to email comments on or not on agenda items in advance of the meeting to ipadilla@brisbaneca.org. That email address, however, 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 City Council during the meeting.

Join Zoom Webinar: zoom.us (please use the latest version: zoom.us/download)

brisbaneca.org/cc-zoom

Webinar ID: 991 9362 8666

Call In Number: 1 (669) 900-9128

Note: Callers dial *9 to "raise hand" and dial *6 to mute/unmute.

SPECIAL ASSISTANCE

If you need special assistance to participate in this meeting, please contact the City Clerk at (415) 508-2113. 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

Any writings that are received after the agenda has been posted but before 4pm of the day of the meeting will be available for public inspection at the front lobby in City Hall and on the internet (brisbaneca.org/meetings). Any writings that are received after 4pm of the day of the meeting will be distributed to the Council and made available for public inspection at the front lobby and on the internet the day after the meeting (brisbaneca.org/meetings).

6:30 P.M. CALL TO ORDER – PLEDGE OF ALLEGIANCE

ROLL CALL

A. Consider any request of a City Councilmember to attend the meeting remotely under the "Emergency Circumstances" of AB 2449

ADOPTION OF AGENDA

AWARDS AND PRESENTATIONS

B. May is Asian American Pacific Islander Heritage Month Proclamation

ORAL COMMUNICATIONS NO. 1

CONSENT CALENDAR

C. Approve Minutes of City Council Meeting of April 3, 2025

D. Approve Minutes of City Council Closed Session Meeting of April 3, 2025

E. Approve Brisbane Village Helping Hands' Spring Social Cosponsorship

F. Approve Lyrical Opposition's Festival and Fundraiser Cosponsorship

G. Receive Solid Waste Collection Adjustment-Scavenger

(Receive Scavenger's Brisbane 2025 rate increase of 2.17% effective July 1, 2025)

H. Receive Solid Waste Collection Adjustment-Recology

(Receive Recology's Brisbane 2025 rate increase of 2.37% effective July 1, 2025)

I. Introduce an Ordinance Concerning Dollar Thresholds Under the California Uniform Public Construction Cost Accounting Act and the City's Federal Procurement Policy

(There is no fiscal impact from introducing/adopting this Ordinance. If adopted, the Ordinance will allow the City to use less staff time to obtain products and equipment under a certain dollar threshold and bring the City's procurement policies when federal funds are used in line with federal guidelines.)

J. Adopt an Ordinance, Waiving Second Reading, Approving a Zoning Text Amendment 2024-RZ-2, City-wide

(It is being recommended to adopt an Ordinance amending regulations within Title 17 of the Brisbane Municipal Code including the development standards for multifamily and mixed-use zoning districts and the exceptions to the lot size standards, consistent with California Senate Bill SB 478 (2021) and the 2023-2031 Housing Element; and to amend the reasonable accommodations exceptions consistent with the Housing Element; and finding that this amendment is exempt from environmental review under CEQA Guidelines Sections 15061(b)(3) and Section 15183; City of Brisbane, applicant.)

PUBLIC HEARING

K. Zoning Text Amendment 2025-RZ-01-- Consider Introduction of Ordinance to Update the City's Density Bonus and Inclusionary Housing Ordinance

(Staff is recommending to introduce an ordinance to amend the zoning ordinance's inclusionary housing and density bonus regulations, currently located in BMC Ch. 17.31, to comply with current State law and implement the Housing Element. This item 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.)

NEW BUSINESS

L. Approve 2025 Council Priorities

(Staff is recommending to approve the 2025 Council Priorities. There is no fiscal impact associated with adopting FY 2025-26 priorities; the FY 2025-26 Budget will reflect any projects associated with the three priorities.)

STAFF REPORTS

M. City Manager's Report- City Updates and Upcoming Activities

MAYOR/COUNCIL MATTERS

N. Countywide Assignments and Subcommittee Reports
    i. Report Out on Subcommittee Meetings
    ii. Upcoming Subcommittee Meetings

O. Written Communications

ORAL COMMUNICATIONS NO. 2

ADJOURNMENT

File Attachments for Item:

C. Approve Minutes of City Council Meeting of April 3, 2025

C.

BRISBANE CITY COUNCIL

ACTION MINUTES

CITY COUNCIL MEETING AGENDA
THURSDAY, APRIL 3, 2025

HYBRID MEETING, 50 PARK PLACE, BRISBANE, CA 94005

6:30 P.M. CALL TO ORDER – PLEDGE OF ALLEGIANCE

Mayor Lentz called the meeting to order at 6:31 P.M. and led the Pledge of Allegiance.

ROLL CALL

A. Consider any request of a City Councilmember to attend the meeting remotely under the "Emergency Circumstances" of AB 2449

No Councilmembers made a request under Roll Call Item A.

Councilmembers present: Councilmembers Davis, Kern, Mackin, O'Connell and Mayor Lentz
Councilmembers absent: None

Staff Present: City Manager Dennis, City Clerk Padilla, City Attorney McMorrow, Finance Director Yuen Community Development Director Swiecki, Senior Planner Johnson, City Engineer Breault, and Administrative Management Analyst Ibarra

ADOPTION OF AGENDA

Councilmember O'Connell made a motion, seconded by Councilmember Kern, to adopt the agenda as it stands. The motion was carried unanimously by all present.

Ayes: Councilmembers Davis, Kern, Mackin, O'Connell and Mayor Lentz
Noes: None
Absent: None
Abstain: None

AWARDS AND PRESENTATIONS

B. San Mateo County Mosquito and Vector Control District Update

Brisbane Representative Michael Goldman and Operations Director Casey Stevenson presented on the latest news from the San Mateo County Mosquito and Vector Control District. The presenters also invited members of the public to their Open House event scheduled for June 21, 2025.

ORAL COMMUNICATIONS NO. 1

No member of the public wished to speak.

CONSENT CALENDAR

C. Approve Minutes of City Council Meeting of March 20, 2025

D. Approve Minutes of City Council Special Meeting of March 22, 2025

E. Approve Investment Report as of February 2025

F. Approve Construction Contract for "Pedestrian Walkway – Alvarado Street to San Benito Road" to Michael Glynn Construction Services, Inc. in the Amount of $376,535.00, and Authorize the Mayor to Sign the Agreement for the City

G. Approve Complete Streets Safety Committee Workplan for 2025

H. Approve Crocker Trail CEQA Study Award of Contract to RRM Design Group

(It is being recommended to award a contract in the amount of $175,800 to RRM Design Group to provide preliminary design and environmental compliance services for the improvement of the Crocker Trail.)

Councilmember Davis made a motion, seconded by Councilmember Kern, to approve Consent Calendar Items C-G. The motion was carried unanimously by all present.

Ayes: Councilmembers Davis, Kern, Mackin, O'Connell and Mayor Lentz
Noes: None
Absent: None
Abstain: None

After Council questions with staff, Councilmember O'Connell made a motion, seconded by Councilmember Davis, to approve Consent Calendar Items H. The motion was carried unanimously by all present.

Ayes: Councilmembers Davis, Kern, Mackin, O'Connell and Mayor Lentz
Noes: None
Absent: None
Abstain: None

PUBLIC HEARING

I. Consider Introducing an Ordinance Approving a Zoning Text Amendment 2024-RZ-2, City-wide

(It is being recommended to introduce an Ordinance amending regulations within Title 17 of the Brisbane Municipal Code including the development standards for multifamily and mixed-use zoning districts and the

exceptions to the lot size standards, consistent with California Senate Bill SB 478 (2021) and the 2023-2031 Housing Element; and to amend the reasonable accommodations exceptions consistent with the Housing Element; and finding that this amendment is exempt from environmental review under CEQA Guidelines Sections 15061(b)(3) and Section 15183; City of Brisbane, applicant.)

Senior Planner Johnson reported that this item was continued from the City Council meeting of October 17, 2024. At that meeting, Council raised concerns about the broad proposed ordinance scope and content, especially those provisions related to permitting procedural changes, and continued the item. He added that the current proposed ordinance has been greatly reduced in scope from the October 2024 version. The proposed amendment is limited to those revisions required to comply with the City's Housing Element and bring the City's ordinance into compliance with CA Senate Bill SB 478 (2021), "Housing Opportunity Act" as described in the proposed ordinance. All other proposed revisions from the October 2024 draft ordinance not driven by state law or housing element compliance have been removed from the proposed ordinance.

After Council questions, Mayor Lentz opened the public hearing. No member of the public wished to speak. Councilmember O'Connell made a motion, seconded by Councilmember Davis, to close the public hearing. The motion was carried unanimously by all present.

Ayes: Councilmembers Davis, Kern, Mackin, O'Connell and Mayor Lentz
Noes: None
Absent: None
Abstain: None

During Council discussion, staff was directed to amend the draft Ordinance accordingly:

- Adjusting floor area ratio for multi-family projects between 3 and 7 units to 1.0, and for projects between 8 and 10 units to 1.25. This means that units can be a little larger in relation to the square footage of the property. This is a requirement of State Senate Bill 478
- Adjusted height limits to 36 feet in the zoning districts that allow multi-family housing, such as, areas at and around Visitacion Avenue
- Made adjustments to the zoning code to exempt a limited amount of parking from counting against maximum FAR

After Council discussion with staff, Councilmember O'Connell made a motion, seconded by Councilmember Davis, to introduce an Ordinance Approving a Zoning Text Amendment 2024-RZ-2, City-wide as amended. The motion was carried unanimously by all present.

Ayes: Councilmembers Davis, Kern, Mackin, O'Connell and Mayor Lentz
Noes: None
Absent: None
Abstain: None

STAFF REPORTS

J. City Manager's Report- City Updates and Upcoming Activities

City Manager Dennis reported on the latest City News and upcoming activities.

MAYOR/COUNCIL MATTERS

K. City Council Meeting Schedule

i. Proposed Special Meeting on June 26, 2025

Councilmembers directed staff to schedule a special meeting on June 26, 2025.

L. Countywide Assignments and Subcommittee Reports

i. Report Out on Subcommittee Meetings

ii. Upcoming Subcommittee Meetings

Councilmembers reported out on their county assignments and subcommittee meetings. City Manager Dennis reported out on future subcommittee meetings.

M. Written Communications

Clerk Padilla acknowledged that the following correspondences were received by Councilmembers:

- Kim (03-23-2025) Quarry
- Manning (03-23-2025) Oppose AB306
- Lacsamana (03-25-2025) Big Rigs on Street

ORAL COMMUNICATIONS NO. 2

No members of the public wished to speak.

ADJOURNMENT

The meeting was adjourned at 7:55 P.M.

____

Ingrid Padilla
City Clerk

File Attachments for Item:

D. Approve Minutes of City Council Closed Session Meeting of April 3, 2025

BRISBANE CITY COUNCIL

ACTION MINUTES

CITY COUNCIL CLOSED SESSION MEETING AGENDA
THURSDAY, APRIL 3, 2025

HYBRID MEETING, 50 PARK PLACE LARGE CONFERENCE ROOM,
BRISBANE, CA 94005

7:30 P.M. CLOSED SESSION (To Be Held in the Large Conference Room Immediately following the Adjournment of the Brisbane City Council Meeting at 6:30 P.M.)

A. Approval of the Closed Session Agenda

B. Public Comment. Members of the public may address the Councilmembers on any item on the closed session agenda

C. Adjournment into Closed Session

D. Conference With Real Property Negotiator Under Government Code Section 54956.8

Unrecorded Lot #	Assessor's Parcel No.	Owner
Lot 58	007-530-040	Benito Ouano
Lot 59	007-530-050	Benito Ouano
Lot 19	007-560-160	Deanne Cheung
Lot 20	007-560-170	Deanne Cheung
Lot 96	007-502-090	Jagdish Dayal

NEGOTIATOR: City Manager Jeremy Dennis

UNDER NEGOTIATION: Price and other terms and conditions of sale

E. CONFERENCE WITH LEGAL COUNSEL—ANTICIPATED LITIGATION
Government Code, Section 54956.9 (d). Number of Cases: One

Mayor Lentz called the meeting to order at 8:09 P.M.

Councilmember O'Connell made a motion, seconded by Councilmember Kern to approve the Closed Session Meeting agenda as it stands. The motion passed unanimously by all present.
Ayes: Councilmembers Davis, Kern, Mackin, O'Connell and Mayor Lentz
Noes: None
Absent: None
Abstain: None

There was no public comment. Mayor Lentz adjourned the meeting into Closed Session.

REPORT OUT OF CLOSED SESSION

City Attorney McMorrow reported that Councilmembers did not take any action and provided directions to staff on the Real Property Negotiation Item D and Anticipated Litigation Item E.

ADJOURNMENT

The meeting was adjourned at 8:58 P.M.

____
Ingrid Padilla, City Clerk

File Attachments for Item:

E. Approve Brisbane Village Helping Hands’ Spring Social Cosponsorship

CITY COUNCIL AGENDA REPORT

Meeting Date: 4/17/2025

From: Jeff Franco, Recreation Coordinator

Noreen Leek, Parks & Recreation Director

Subject: Approve the Brisbane Village Helping Hands Spring Social Gathering for Event Cosponsorship

Community Goal/Result
Community Building & Fundraising

Purpose
Promote cultural and social events that encourage community engagement and provide assistance to local non-profit organizations.

Recommendation
Approve Brisbane Village Helping Hands Spring Social gathering as a cosponsored event.

Background
Brisbane Village Helping Hands (BVHH) is a Non-profit 501(c)(3) organization established in 2016. Their mission is to be a resource to help residents stay in their homes as they age in place in Brisbane and to help them maintain a connection to the broader community. BVHH provides volunteer services to their members, who are all Brisbane residents, including transportation, companionship visits, minor home repairs, and help with technology.

Discussion
Brisbane Village Helping Hands Spring Social gathering event will be held at the Sunrise Room on Sunday, May 4, 2025, from 12:00-3:00pm. Any funds raised at the event will benefit their nonprofit work. The event will include lunch and a brief musical performance. Admission is free to the general public. Meeting the Group II requirements with the event open to the general public qualifies them for free use of the facility and waives the deposit requirement.

Fiscal Impact
Brisbane Village Helping Hands is requesting support from the City as summarized in the table below. They have requested use of the Sunrise Room for the aforementioned event. Although use of the facility and the deposit are waived as part of their Group II designation, they are also asking the City to waive costs associated with event insurance.

FINANCIAL IMPACT SUMMARY BASED ON APPLICATION		
Hourly Rate of Building Attendant for Sunrise Room	Approximately 4 hours @ $50/hour = $200 *(including set up/clean up)*	Waived per City policy for Non-profit use
Facility Rental Deposit	$200 *(Typically refundable absent damages)*	Waived per City policy for Non-profit use
Indoor Event Insurance	Approximately $100-$250/event. (*Renters are typically required to procure insurance on their own and provide a copy to the city.)*	Requesting requirement be waived
Promotional and Marketing Support	Waived	

Attachments

1. Cosponsorship application

Jeff Franco

Jeff Franco, Recreation Coordinator

Noreen Leek

Noreen Leek, Parks & Recreation Director

Jeremy Dennis

Jeremy Dennis, City Manager

E.

City of Brisbane
CO-SPONSORSHIP APPLICATION

This application must be submitted to the Parks & Recreation Department at least **(90) working days** prior to the requested event.

PHONE: 415-508-2140 | EMAIL: BRISBANEREC@BRISBANECA.ORG | OFFICE: 50 Park Place, Brisbane, CA 94005

APPLICANT INFORMATION

Name of Contact Person: Nancy Colman **Contact Person's Phone:** 415 672-2911

Contact Person's Email: ncolman@msn.com

Name of Organization: Brisbane Village Helping Hands **Organization's Website:** brisbanevillage.org

Organization's Address or P.O. Box: P.O. Box 734, Brisbane, CA 94005

Circle ONE of the following items below that best describes your organization.

- a. **Brisbane Non-Profit Organization**
- b. **Non-resident, Non-Profit Organization (Outside of Brisbane)**
- c. **School District, School, or School Affiliated Group (ex. PTO)**
- d. **Private Group, Club, or Organization**

What year did your organization begin serving the Brisbane community? 2016

How has your organization contributed to the Brisbane community in the past 2 years?

Providing volunteer services to our members, who are all Brisbane Seniors, including transportation, friendly visits, minor home repair and maintenance, help with tech

What is your organization's mission and/or purpose?

The mission of Brisbane Village Helping Hands is to be a resource to help residents stay in their homes as they "age in place" in Brisbane and to help them maintain a connection to the broader community.

EVENT DETAILS

Name of Event: Spring Social gathering **Event Set-up Start Time:** ~~11:00 pm~~ 11 AM

Event Date (mm/dd/yy): 05/04/25 **Event Start Time:** 12:00 pm

Event Day of Week: ~~Saturday~~ Sunday **Event Close Time:** 3:00 pm

Event Location: Sunrise Room

Reservation Permit Number (if applicable):

Describe what can be expected from this event? (ex. Performance, shopping, activities, etc.)

Lunch, a brief musical performance

Will there be any fundraising at this event? no **If yes, what will the funds raised be used for?**

Are there any admission fees for this event? no **If yes, please list them here:**

If this event is NOT open to the general public, what are the restrictions for who may attend? (ex. Age, membership, residency, etc.)

it is open to the public

INDOOR FACILITY ACCESS REQUEST

City Staff must be present to accommodate the use of any of our indoor facilities. The following schedule will be used to ensure someone will be available when you need access. (If you are not requesting indoor facility use, you may skip to the next section)

Date of Facility Access (mm/dd/yy): 05/04/25 **Opening Time:** 11:00 pm **Closing Time:** 3:00 pm

Date of Facility Access (mm/dd/yy): ____________ **Opening Time:** ________ **Closing Time:** ________

Date of Facility Access (mm/dd/yy): ____________ **Opening Time:** ________ **Closing Time:** ________

EQUIPMENT USE REQUEST

<Insert Equipment Use Liability Notice>

Indicate the equipment you wish to borrow for this event.

Bluetooth Speaker? ______ **with Microphone?** ______

Projector & Screen? *(Mission Blue Only)* ______

Theater Risers? *(Mission Blue Only)* ______

Theatrical Lighting? *(Mission Blue Only)* ______ **Lighting Technician?** ______

Other: ____________________

Quantity:	Item:
2	6ft Long Rectangle Tables
	5ft Diameter Round Tables
	Chairs
	10ft x 10ft Canopy/Pop-up Tent
	Weighted Sandbags

PERMITS

Food & Beverage Permits

Will any food or non-alcoholic beverages be sold at your event? NO **If yes, this permit is required** smchealth.org/food-program

Will alcoholic beverages be served or sold at your event? ? **If yes, you must attach a copy of an** Alcoholic Beverage Permit

***Full Liquor Liability: If beer or wine is available for consumption and money is transacted in any form (i.e. for donation, for a ticket, for a meal, for entry to the event, for the beverage) then full liquor liability premiums are necessary.**

In the past we have served wine, but never needed a permit. We did not and will not sell anything.

Traffic Permits

Will this event require any street or parking closures? NO **If yes, you must obtain a** Brisbane Encroachment Permit

Amplified Sound Permits

Do you wish to use amplified sound at this event? NO **If yes, you must submit an** Brisbane Amplified Sound Permit Application

ADDITIONAL SUPPORT

Do you need any promotional support for this event?

Signboards? **Social Media?**

Digital Graphics / Flyers? **Programs?**

Other: Help with printing flyers, possibly.

USE AGREEMENT & LIABILITY RELEASE

To the fullest extent allowed by law, I agree to indemnify and defend the City of Brisbane, its directors, officers, agents, employees and volunteers and hold them harmless from and against any and all loss, liability, expense, claims, costs, suits, and damages, including attorneys' fees, arising out of the use or occupancy described in this application. I agree to waive all rights of subrogation against the City, its elected or appointed officers, officials, agents and employees for losses paid under the terms of any policy which arise from the use or occupancy described in this application.

Applicant Signature ____________________ **Date** 3/24/25

File Attachments for Item:

F. Approve Lyrical Opposition’s Festival and Fundraiser Cosponsorship

F.

CITY COUNCIL AGENDA REPORT

Meeting Date: 4/17/2025

From: Jeff Franco, Recreation Coordinator

Noreen Leek, Parks & Recreation Director

Subject: Approve the Lyrical Opposition Festival and Fundraiser Application for Event Cosponsorship

Community Goal/Result

Community Building & Fundraising

Purpose

Promote cultural and social events that encourage community engagement and provide assistance to local non-profit organizations.

Recommendation

Approve Lyrical Opposition's Festival and Fundraiser as a cosponsored event.

Background

Lyrical Opposition a is Non-profit 501(c)(3) organization established in 2020. Their mission is to foster lyrical arts that advance social justice and systemic change efforts by cultivating messages of hope that inspire and empower. They have provided multiple admission-free art events throughout Brisbane, bringing patronage to local establishments. They also host an admission-free festival and fundraiser highlighting local artists, filmmakers, and vendors.

Discussion

Lyrical Opposition's annual Festival and Fundraiser event will be held at the Mission Blue Center on Saturday, June 28, 2025, from 5:00-9:00pm. Any funds raised at the event will benefit their nonprofit work. The event will include films, music, and food vendors. Admission is free to the general public. Meeting the Group II requirements with the event open to the general public qualifies them for free use of the facility and waives the deposit requirement.

Fiscal Impact

Lyrical Opposition is requesting support from the City as summarized in the table below. They have requested use of the Mission Blue Center for the aforementioned event. Although use of the facility and the deposit are waived as part of their Group II designation, they are also asking the City to waive costs associated with event insurance.

FINANCIAL IMPACT SUMMARY BASED ON APPLICATION		
Hourly Rental of Mission Blue Center	Approximately 6 hours @ $371/hour = $2,226 *(including set up/clean up)*	Waived per City policy for Non-profit use
Mission Blue Rental Deposit	$500 *(Typically refundable absent damages)*	Waived per City policy for Non-profit use
Indoor Event Insurance	Approximately $100-$250/event. (*Renters are typically required to procure insurance on their own and provide a copy to the city.)*	Requesting requirement be waived
Promotional and Marketing Support	Waived	

Attachments

1. Cosponsorship application

Jeff Franco
Jeff Franco, Recreation Coordinator

Noreen Leek
Noreen Leek, Parks & Recreation Director

Jeremy Dennis
Jeremy Dennis, City Manager

F.

City of Brisbane
CO-SPONSORSHIP APPLICATION

This application must be submitted to the Parks & Recreation Department at least **(90) working days** prior to the requested event.

PHONE: 415-508-2140 | EMAIL: BRISBANEREC@BRISBANECA.ORG | OFFICE: 50 Park Place, Brisbane, CA 94005

APPLICANT INFORMATION

Name of Contact Person: Christian Allan Bustos **Contact Person's Phone:** 415-359-5540

Contact Person's Email: christian@lyricalopposition.org

Name of Organization: Lyrical Opposition **Organization's Website:** https://www.lyricalopposition.org

Organization's Address or P.O. Box: 132 Visitacion Ave, Brisbane, CA 94005

Circle ONE of the following items below that best describes your organization.

- **a. Brisbane Non-Profit Organization**
- **b. Non-resident, Non-Profit Organization (Outside of Brisbane)**
- **c. School District, School, or School Affiliated Group (ex. PTO)**
- **d. Private Group, Club, or Organization**

What year did your organization begin serving the Brisbane community? 2020

How has your organization contributed to the Brisbane community in the past 2 years?

Hosted multiple co-sponsored arts and culture events with the City of Brisbane and the Chamber of Commerce.

Opened a record store last year with very affordable prices of $5 or less for all records for Brisbane residents.

Two members attend and serve on the board of the Friends of the Library.
In addition to serving on the IDEA commitee the last 2 years.

What is your organization's mission and/or purpose?

Lyrical Opposition's purpose is to cultivate lyrical artists and activists to oppose systemic oppression through creative expression, education, and communal joy.

EVENT DETAILS

Name of Event: Lyrical Festival and Fundraiser 2025 **Event Set-up Start Time:** 3pm

Event Date (mm/dd/yy): 06/28/2025 **Event Start Time:** 5pm

Event Day of Week: Saturday **Event Close Time:** 9pm

Event Location: Mission Blue Center

Reservation Permit Number (if applicable): ______

Describe what can be expected from this event? (ex. Performance, shopping, activities, etc.)

Film, Music, Food Vendors

Will there be any fundraising at this event? Yes **If yes, what will the funds raised be used for?** Produce admission-free events

Are there any admission fees for this event? No **If yes, please list them here:** ______

If this event is NOT open to the general public, what are the restrictions for who may attend? (ex. Age, membership, residency, etc.)

Yes, open to public.

F.

INDOOR FACILITY ACCESS REQUEST

City Staff must be present to accommodate the use of any of our indoor facilities. The following schedule will be used to ensure someone will be available when you need access. (If you are not requesting indoor facility use, you may skip to the next section)

Date of Facility Access (mm/dd/yy): 06/28/2025 **Opening Time:** 3pm **Closing Time:** 10pm

Date of Facility Access (mm/dd/yy):________ **Opening Time:** ________ **Closing Time:** ________

Date of Facility Access (mm/dd/yy):________ **Opening Time:** ________ **Closing Time:** ________

EQUIPMENT USE REQUEST

<Insert Equipment Use Liability Notice>
Indicate the equipment you wish to borrow for this event.

Bluetooth Speaker? ______ **with Microphone?** ______

Projector & Screen? *(Mission Blue Only)* Yes

Theater Risers? *(Mission Blue Only)* ______

Theatrical Lighting? *(Mission Blue Only)* ______ **Lighting Technician?** ______

Other: ________________

Quantity:	Item:
______	6ft Long Rectangle Tables
______	5ft Diameter Round Tables
______	Chairs
______	10ft x 10ft Canopy/Pop-up Tent
______	Weighted Sandbags

PERMITS

Food & Beverage Permits

Will any food or non-alcoholic beverages be sold at your event? Yes **If yes, this permit is required** smchealth.org/food-program

Will alcoholic beverages be served or sold at your event? _____ **If yes, you must attach a copy of an** Alcoholic Beverage Permit
***Full Liquor Liability: If beer or wine is available for consumption and money is transacted in any form (i.e. for donation, for a ticket, for a meal, for entry to the event, for the beverage) then full liquor liability premiums are necessary.**

Traffic Permits

Will this event require any street or parking closures? No **If yes, you must obtain a** Brisbane Encroachment Permit

Amplified Sound Permits

Do you wish to use amplified sound at this event? No. Standard sound setup indoors at Mission Blue Center. **If yes, you must submit an** Brisbane Amplified Sound Permit Application

ADDITIONAL SUPPORT

Do you need any promotional support for this event?

Signboards? Yes **Social Media?** Yes

Digital Graphics / Flyers? **Programs?**

Other: ________________

USE AGREEMENT & LIABILITY RELEASE

To the fullest extent allowed by law, I agree to indemnify and defend the City of Brisbane, its directors, officers, agents, employees and volunteers and hold them harmless from and against any and all loss, liability, expense, claims, costs, suits, and damages, including attorneys' fees, arising out of the use or occupancy described in this application. I agree to waive all rights of subrogation against the City, its elected or appointed officers, officials, agents and employees for losses paid under the terms of any policy which arise from the use or occupancy described in this application.

Applicant Signature [signature] **Date** 3/10/2025

File Attachments for Item:

G. Receive Solid Waste Collection Adjustment-Scavenger

(Receive Scavenger's Brisbane 2025 rate increase of 2.17% effective July 1, 2025)

G.

CITY COUNCIL AGENDA REPORT

Meeting Date: April 17, 2025

From: Director of Public Works/City Engineer

Subject: Solid Waste Collection Rate Adjustment-Scavenger

The recommended action is exempt from CEQA because it is not a project (CCR Title 14 §15378 (b) (4)).

Purpose To review rate adjustments submitted by one of the city's solid waste franchisees.

Recommendation Receive South San Francisco Scavenger's 2025 rate increases.

Background

The city has two Franchise Agreements dated November 20, 2014 for the provision of waste collection services; one with South San Francisco Scavenger Company (Scavenger) in Solid Waste Collection Zones 1(A&B) and 2, and one with Recology Brisbane in Solid Waste Collection Zone 3. Both agreements have language specifying under what conditions a rate increase may occur.

Discussion

Scavenger did submit a request for rate increase; their proposed rates were reviewed by staff and found to be in accordance with their franchise agreement. Pursuant to each agreement, ". . . not later than June 30th of the year of the Notice of Intention, the City Council shall act upon the new maximum rates as appropriate, with any new maximum rates to become effective on July 1st of the same year."

The calculated rate increase for this year is 2.17%.

With the company completing their calculations per the agreement, there is no discretionary action for the Council to take.

Fiscal Impact The effective date of the new rates is July 1, 2025.

Environmental Review

Adoption of this ordinance does not require further environmental review under the California Environmental Quality Act because it is a governmental fiscal activity which does not involve any commitment to any specific project which may result in a potentially sign physical impact on the environment and hence it is not a "project". CEQA Guidelines, Section 15378 (b) (4).

Attachments

1. Scavenger's letter of 3/29/25 and redacted rate adjustment language
2. Solid Waste Collection Zone Maps

R.L. Breault
Randy Breault, Public Works Director

Jeremy Dennis
Jeremy Dennis, City Manager

G.

SOUTH SAN FRANCISCO
SCAVENGER
COMPANY, INC.

March 29, 2025

Director Randy Breault, P.E.
Public Works-Marina Services-Emergency Services
City of Brisbane
50 Park Lane
Brisbane, CA 94005

Dear Director Breault,

In accordance with the terms of Section 6.2 of the Franchise Agreement, please accept this letter as the required Notice of Intent to adjust the current rates in Brisbane.

We are applying for a rate adjustment equal to 80% of the change in the Consumer Price Index for Urban Wage Earners and Clerical Workers, as described in section 6.2. The calculation for this year yields an increase of 2.17%.

Copies of the calculation, the relevant CPI data, and a proposed rate schedule, are attached for your consideration. The new rates will take effect July 1, 2025, if approved.

Thank you for your consideration of this matter. If you have any questions, please contact me at (650) 589-4020 at your earliest convenience. We are, of course, available to meet with you to discuss any concerns or issues, at your convenience.

Sincerely,

Paul Formosa, CFO
South San Francisco Scavenger Co., Inc.

500 East Jamie Court • South San Francisco, CA 94080
V: 650.589.4020 • F: 650.589.7385 • e: info@ssfscavenger.com • web: www.ssfscavenger.com

G.

South San Francisco Scavenger Co.

City of Brisbane

Rate Computation
March 31, 2025

CPI Index February 2024	341.595
CPI Index February 2025	350.836
Numerical change	9.241
Percentage change	2.71%
80% of change	2.17%

Index Used - Consumer Price Index
Urban Wage Earners and Clerical Workers
San Francisco-Oakland-Hayward, CA
All Items
1982-84 = 100
New Series ID - CWURS49BSAO
Previous Series ID - CWURA422SAO
(replaced as of January 2018)

G.

U.S. BUREAU OF LABOR STATISTICS

Databases, Tables & Calculators by Subject

Special Notices 4/25/2024

Change Output Options: From: 2015 To: 2025 GO

include graphs include annual averages

More Formatting Options

Data extracted on: March 18, 2025 (4:57:58 PM)

Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W)

Series Id: CWURS49BSA0,CWUSS49BSA0
Not Seasonally Adjusted
Series Title: All items in San Francisco-Oakland-Hayward, CA, urban wage earners and clerical workers, not seasonally adjusted
Area: San Francisco-Oakland-Hayward, CA
Item: All items
Base Period: 1982-84=100

Download: .xlsx

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Annual	HALF1	HALF2
2015		249.809		252.875		254.736		256.060		256.107		255.492	253.910	252.041	255.780
2016		257.141		259.386		261.017		262.326		264.026		263.222	260.830	258.715	262.946
2017		265.569		268.896		269.508		269.827		271.272		271.342	268.990	267.426	270.555
2018		275.699		278.039		280.219		281.536		283.183		283.278	279.572	277.035	282.110
2019		284.758		288.266		288.581		288.514		291.707		289.456	288.192	286.615	289.770
2020		292.010		290.304		292.420		293.062		294.442		295.687	292.601	291.297	293.906
2021		297.170		302.294		304.971		307.423		309.656		312.019	304.602	300.275	308.928
2022		316.463		322.021		328.137		325.932		329.331		326.465	323.900	320.408	327.391
2023		331.875		333.478		335.725		336.663		337.698		335.597	334.662	332.718	336.605
2024		341.595		346.671		345.789		344.633		345.472		342.582	343.886	343.520	344.253
2025		350.836													

U.S. BUREAU OF LABOR STATISTICS Office of Publications and Special Studies Suitland Federal Center Floor 7 4600 Silver Hill Road Washington, DC 20212-0002

Telephone:1-202-691-5200 Telecommunications Relay Service:7-1-1 www.bls.gov Contact Us

G.

SOUTH SAN FRANCISCO SCAVENGER, INC.
RATES AND CHARGES EFFECTIVE JULY 1, 2025
CITY OF BRISBANE, CALIFORNIA

		Current Rates	*Proposed change*	**Proposed Maximum Rates**
1. RESIDENTIAL PROPERTY SERVICE -				
Single family, and up to four units. As per section 2.13				
Rate is per month, one pickup per week				
Includes 64 gallon weekly curbside recycling toter service				
Includes weekly mixed organic materials / yardwaste toter service				
20	Gallon Trash Toter	28.58	2.17%	29.20
32	Gallon Trash Toter	45.72	2.17%	46.71
64	Gallon Trash Toter	91.44	2.17%	93.42
2. COMMERCIAL AND MULTIPLE UNIT RESIDENTIAL PROPERTY CAN SERVICE-				
Multiple Unit Residential Property, 5 or more units, as per section 2.14				
Rate is per month, one pickup per week, for Solid Waste and / or Source Separated Organic Materials				
Includes Source Separated Recyclable Materials				
0 - 30	Gallons	39.54	2.17%	40.40
31 - 32	Gallons	42.22	2.17%	43.14
33 - 40	Gallons	52.69	2.17%	53.83
41 - 45	Gallons	59.38	2.17%	60.67
46 - 50	Gallons	72.48	2.17%	74.05
51 - 64	Gallons	84.36	2.17%	86.19
3. COMPACTED YARDAGE				
Residential, Multi Unit Residential, Commercial, Industrial Customers				
Per Cubic Yard, per pickup		85.48	2.17%	87.33
4. DEBRIS BOXES				
Temporary / One Time Use				
Residential, Multi Unit Residential, Commercial, Industrial Customers				
Rate is for each pickup				
5 yard	Container, 1 ton limit	354.48	2.17%	362.17
7 yard	Container, Dirt - Rock - Concre	773.94	2.17%	790.73
14 yard	Container, 3 ton limit	773.94	2.17%	790.73
20 yard	Container, 5 ton Limit	1,053.54	2.17%	1,076.40
30 yard	Container, 6 ton limit	1,519.62	2.17%	1,552.60
Rental Charge (per day, over 3 days for 5 yard and over 7 days for others)		34.91	2.17%	35.67

G.

SOUTH SAN FRANCISCO SCAVENGER, INC.
RATES AND CHARGES EFFECTIVE JULY 1, 2025
CITY OF BRISBANE, CALIFORNIA

		Current Rates	*Proposed change*	**Proposed Maximum Rates**
4. DEBRIS BOXES (coninued)				
Permanent Commercial and Industrial use				
7 yard	Container, Dirt - Rock - Concre	652.50	2.17%	666.66
14 yard	Container, 3 ton limit	652.50	2.17%	666.66
20 yard	Container, 5 ton Limit	932.21	2.17%	952.44
30 yard	Container, 6 ton limit	1,398.34	2.17%	1,428.68
Overweight Charge				
Per ton over limit		201.85	2.17%	206.23

5. CONTAINER SERVICE

Residential, Multi Unit Residential, Commercial, Industrial Customers
Rate is per month, one pickup per week, for Solid Waste
and / or Source Separated Organic Materials
Includes Source Separated Recyclable Materials

A) Regular Pickup (Rate per month, one pickup per week)

		Current Rates	Proposed change	Proposed Maximum Rates
1/2 - yard (96 gal)	Container	167.29	2.17%	170.92
1 - yard	Container	334.56	2.17%	341.82
2 - yard	Container	412.59	2.17%	421.54
3 - yard	Container	618.85	2.17%	632.28
4 - yard	Container	825.01	2.17%	842.91
5 - yard	Container	1,031.29	2.17%	1,053.67
6 - yard	Container	1,237.55	2.17%	1,264.40

B) On Call Pick-up Per yard

		Current Rates	Proposed change	Proposed Maximum Rates
Per pick-up, per yard		47.66	2.17%	48.69
Plus Container Rental per Month				
Rental charges (per month)				
1 - yard	Container	74.45	2.17%	76.07
2 - yard	Container	80.51	2.17%	82.26
3 - yard	Container	86.55	2.17%	88.43
4 - yard	Container	93.00	2.17%	95.02
5 - yard	Container	105.29	2.17%	107.57
6 - yard	Container	111.75	2.17%	114.17

G.

SOUTH SAN FRANCISCO SCAVENGER, INC.
RATES AND CHARGES EFFECTIVE JULY 1, 2025
CITY OF BRISBANE, CALIFORNIA

6. In the case of any additional service not described in the Agreement, Scavenger Company shall charge such amount as is agreed to by the customer.

7. Trash Container Management Policy Fees

Maximum fees allowed pursuant to approved Policy, as per Section 5.1.

Maximum fee consists of Admin Fee plus Extra Trip Fee for containers 1 yard and up.

Residential, Multi Unit Residential, Commercial, Industrial Customers

		Current Rates	*Proposed change*	**Proposed Maximum Rates**	
Container Size		Admin fee			Admin Fee
30	gallon	30.00	-	$	30.00
32	gallon	30.00	-	$	30.00
40	gallon	30.00	-	$	30.00
45	gallon	30.00	-	$	30.00
55	gallon	30.00	-	$	30.00
64	gallon	30.00	-	$	30.00
96	gallon	30.00	-	$	30.00
1	yard	30.00	-	$	30.00
1.5	yard	30.00	-	$	30.00
2	yard	30.00	-	$	30.00
3	yard	30.00	-	$	30.00
4	yard	30.00	-	$	30.00
5	yard	30.00	-	$	30.00
6	yard	30.00	-	$	30.00
Container Size		Extra Trip Fee		Extra Trip Fee	
1	yard	77.21	2.17%	$	78.88
1.5	yard	115.82	2.17%	$	118.32
2	yard	95.21	2.17%	$	97.28
3	yard	142.81	2.17%	$	145.91
4	yard	190.39	2.17%	$	194.52
5	yard	237.99	2.17%	$	243.15
6	yard	285.59	2.17%	$	291.78

Extra Trip Fee calculated as approved monthly 5.A) Container Service rates (one pickup per week) times 12 months per year divided by 52 weeks per year.

SOUTH SAN FRANCISCO SCAVENGER, INC.
RATES AND CHARGES EFFECTIVE JULY 1, 2025
CITY OF BRISBANE, CALIFORNIA

8. Container Monitoring Program - Compliance Fees associated with SB 1383 requirements.

A. When service of any container is delayed due to contamination and then corrected, no extra charge if collected on next regular service day.

B. When service of any container is delayed due to contamination, and then corrected, and return trip is requested prior to next pickup day, the following fee applies:

Return Trip Fee	$30.00

C. When container is contaminated, and customer requests to empty the contents as is, the following fees will apply:

Container Size	Extra Pickup Fee	Contamination Fee	Total Charge
20 or 32 gallon	$ 11.00	$ 30.00	$ 41.00
64 gallon	22.00	30.00	52.00
96 gallon	33.00	30.00	63.00
1 yard	78.88	30.00	108.88
2 yard	97.28	60.00	157.28
3 yard	145.91	90.00	235.91
4 yard	194.52	120.00	314.52
5 yard	243.15	150.00	393.15
6 yard	291.78	180.00	471.78

South San Francisco Scavenger Company Rates and Adjustments Thereto

6.1 Establishment of Rates. The maximum service rates specified in Exhibit B to this Agreement have been agreed upon by City and Scavenger Company and shall take effect on the effective date of the franchise as set forth in Section 3 above. Such maximum service rates shall be subject to review and revision as set fo11h in Section 4.1 above, Sections 6.2. 6.3 and 6.4 below and other relevant provisions of this Agreement. Scavenger Company shall not charge any amount in excess of the approved rates for services required by or permitted under this Agreement.

6.2 Modification Based on Consumer Price Index. The maximum rates specified under this Agreement shall be adjusted July 1st every year (beginning in 2016, but excluding the year 2015 and every third year thereafter) by an amount equal to eighty percent (80%) of the percentage change, if any, in the Consumer Price Index for Urban Wage Earners and Clerical Workers, as published and maintained by the United States Bureau of Labor Statistics for the San Francisco-Oakland Metropolitan Area (1982-84= 1 00), for the prior year. using the Index most recently published before March 31st of such year and before the prior March 31st. For example. if the Index should decrease by two percent (2%) as of March 3 I, 2016 as compared with March 31, 2015, each of the maximum rates set forth on Exhibit B, as previously adjusted. would be decreased as of July I.2016 by one and six-tenths percent (1.6%) [negative .02 multiplied by .8]. Likewise, if the Index should increase by three percent (3%) as of March 31, 2019 as compared with March 31, 2018, each of the maximum rates set forth on Exhibit B, as previously adjusted, would be increased as of July 1, 2019 by two and four-tenths percent (2.4%) [.03 multiplied by .8]. The procedure for rate adjustments under this Section 6.2 shall be as follows.

(a) Not later than March 31st of each year that is subject to a rate adjustment under this Section 6.2, Scavenger Company shall file with City a written Notice of Intention to increase each of the then current rates effective as of July 1st of the same year in accordance with the above-specified formula, if Scavenger Company believes such an increase to be called for, or City shall provide to Scavenger Company a written Notice of Intention to decrease each of the then current rates effective as of July 1st of the same year in accordance with the above-specified formula, if City believes such a decrease to be called for.

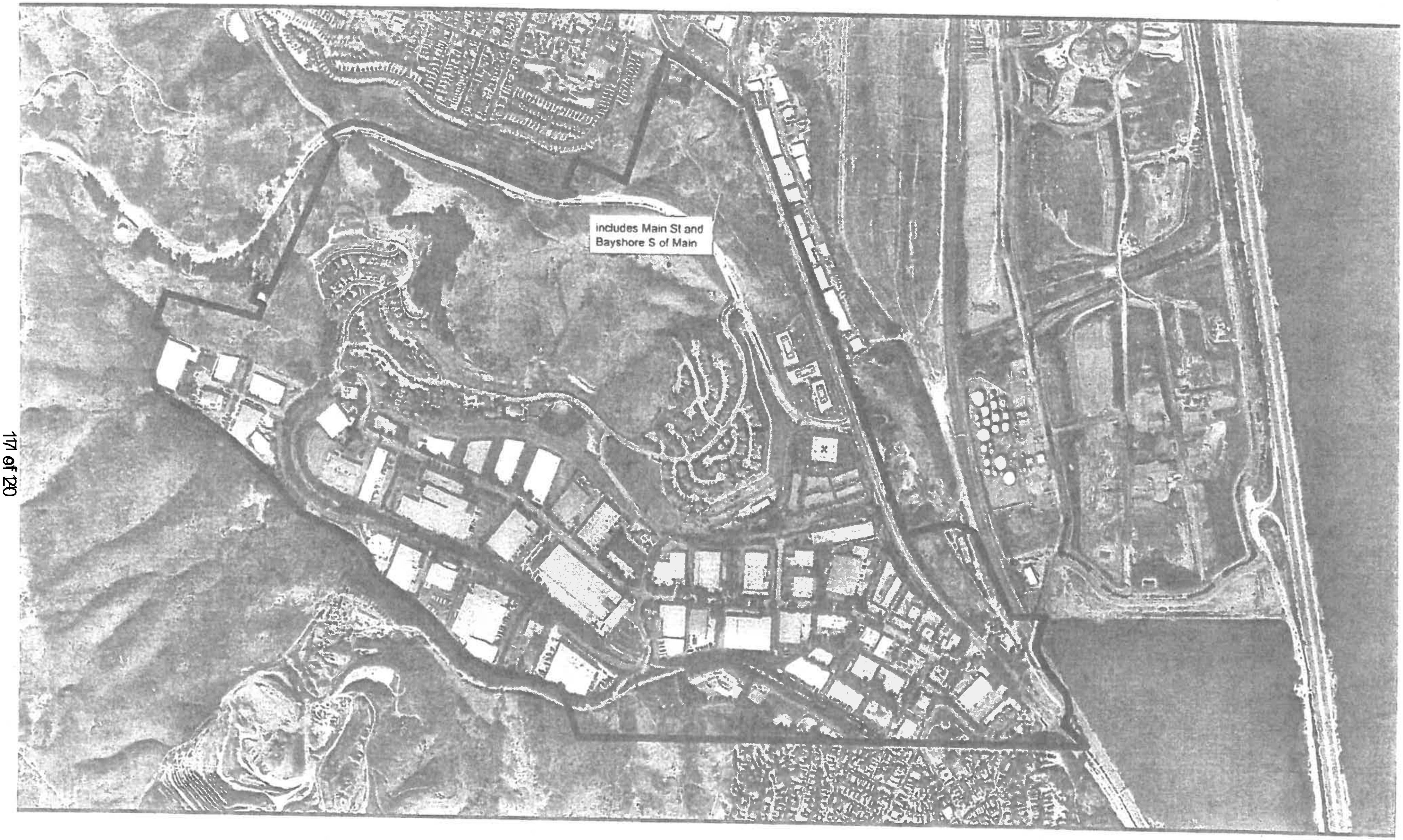
(b) Within thirty (30) days of the filing of the Notice of Intention, the City Manager shall review the Notice of Intention with Scavenger Company, and either confirm that the proposed rates are within the limit of Section 6.2(a) above or establish by mutual agreement with Scavenger Company any necessary changes to the proposed maximum rates to make such confirmation.

(c) The City Manager shall immediately inform the City Council in writing of the new maximum rates determined in accordance with this Section 6.2 and, not later than June 30th of the year of the Notice of Intention, the City Council shall act upon the new maximum rates as appropriate, with any new maximum rates to become effective on July 1st of the same year.

6.4 Modification Based on Neighboring Cities' Rates. Irrespective of any adjustments to maximum rates pursuant to Sections 6.2 and/or 6.3 above, every maximum service rate applicable under this Agreement shall be adjusted effective as of July 1 in each of the years 2015 and every third year thereafter (i) in the case of each of the service categories set forth in Exhibit C attached to this Agreement, so as to equal eighty-eight percent (88%) plus the percentage of the Franchise Fee times the average of the most current rates for such service category charged in the jurisdictions set forth in Exhibit D, and (ii) in the case of every other service category not set forth on Exhibit C, so as to equal an amount reasonably arrived at by extrapolating from the new rates determined in accordance with Section 6.4(i) above. The most current rate charged in each jurisdiction listed in Exhibit D for a service category listed in Exhibit C shall mean the rate that applies as of the date Scavenger Company files the Notice of Intention described in Section 6.4(a) below, and shall be based on the actual published rate for a period including such date. The average of the most current rates for a particular service category listed on Exhibit C shall be determined by adding all the most current rates for such service category, and dividing by the number of jurisdictions set forth in Exhibit D. The procedure for rate adjustments under this Section 6.4 shall be as follows.

(a) Not later than March 31st of each year that is subject to a rate adjustment under this Section 6.4, Scavenger Company shall file with City a written Notice of Intention to adjust, effective as of July 1st of the same year, each of the then current maximum service rates in accordance with Section 6.4 above.

An example of such calculation for an Exhibit C service category and for a related service category not listed in Exhibit C is as follows: if the total of the most current rates in the applicable jurisdictions, which number thirty-two (32), for weekly 2-yard commercial front end loader service per month as of March 31, 2018 were $4,800, Scavenger Company's Notice of Intention for July 1, 2018 would specify $150.00 [$4,800 divided by 32 multiplied by .88 plus the percentage of the Franchise Fee] as the new maximum rate for such service category, and could specify $300.00 for weekly 4-yard commercial front end loader service per month.



Feet
0 375 750 1,500

City of Brisbane
Solid Waste Collection Zone
1 - A

City of Brisbane
Solid Waste Collection Zone
1 - B

0 375 750 1,500 Feet

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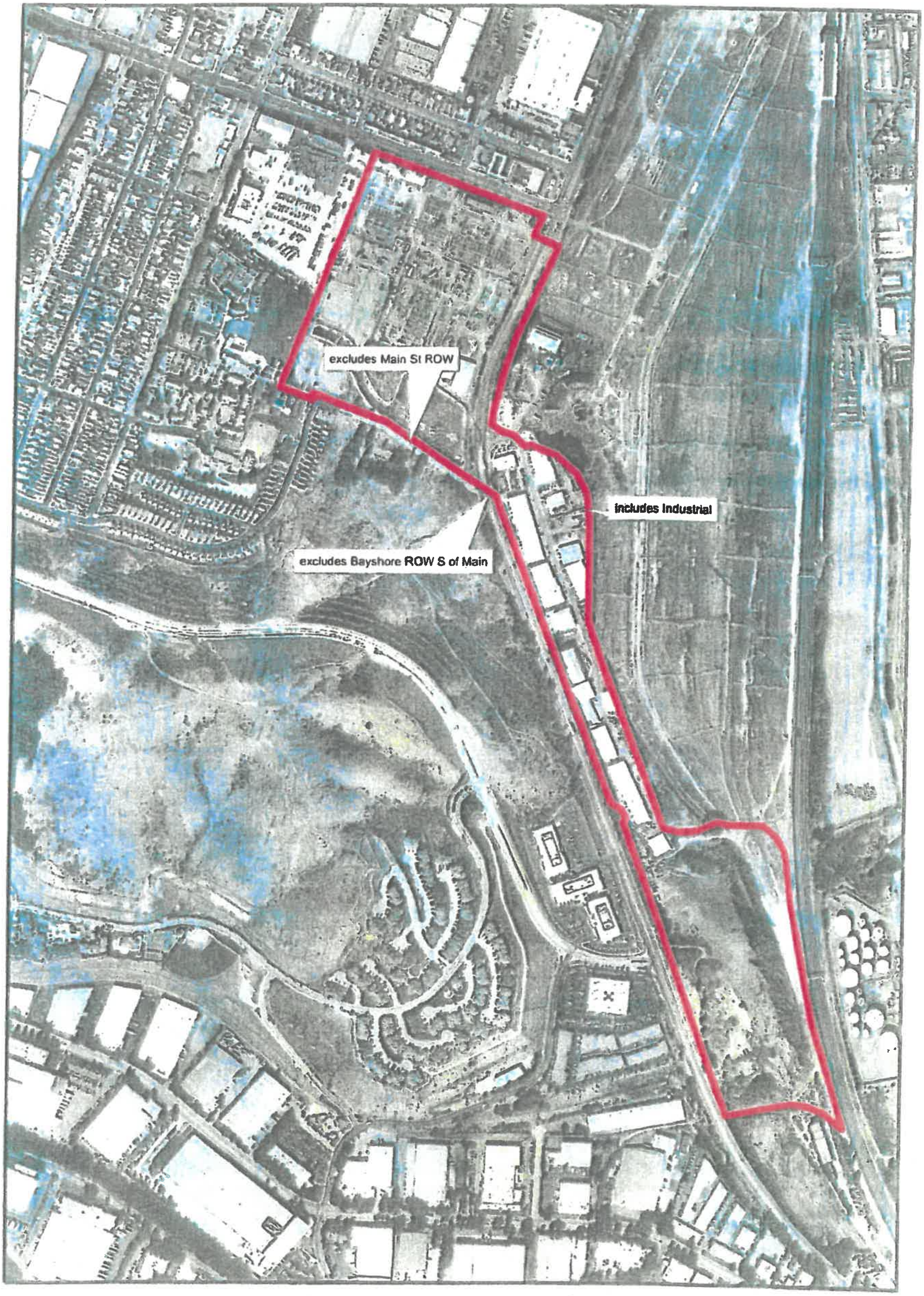

Feet
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City of Brisbane Solid Waste Collection Zone 2

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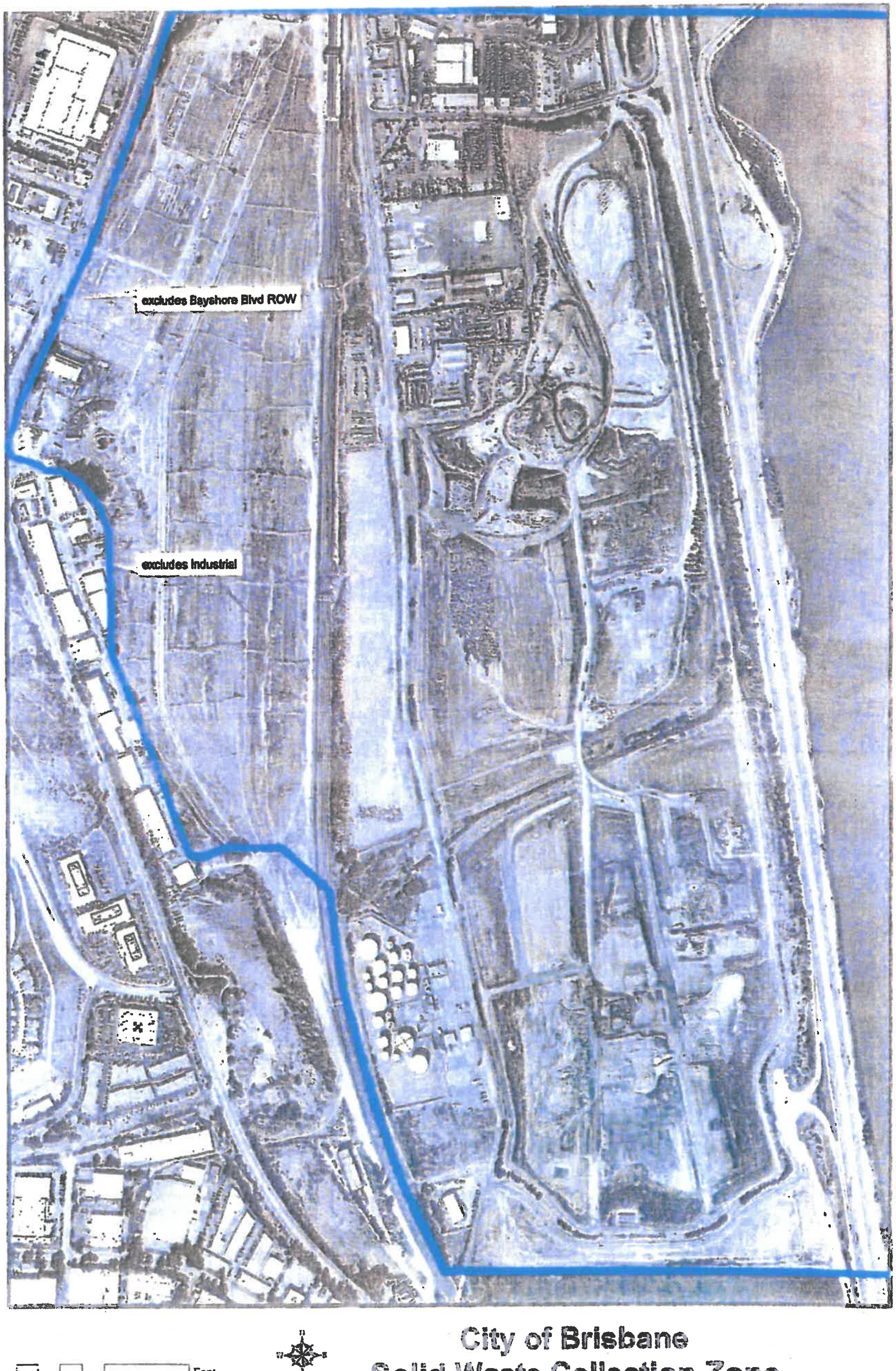


City of Brisbane
Solid Waste Collection Zone
3

File Attachments for Item:

H. Receive Solid Waste Collection Adjustment-Recology

(Receive Recology's Brisbane 2025 rate increase of 2.37% effective July 1, 2025)

CITY COUNCIL AGENDA REPORT

Meeting Date: April 17, 2025

From: Director of Public Works/City Engineer

Subject: Solid Waste Collection Rate Adjustment-Recology

The recommended action is exempt from CEQA because it is not a project (CCR Title 14 §15378 (b) (4)).

Purpose: To review rate adjustments submitted by one of the city's solid waste franchisees.

Recommendation: Receive Recology Brisbane's 2025 rate increases.

Background

The city has two Franchise Agreements dated November 20, 2014 for the provision of waste collection services, one with South San Francisco Scavenger Company in Solid Waste Collection Zones 1(A&B) and 2, and one with Recology Brisbane in Solid Waste Collection Zone 3. Both agreements have language specifying under what conditions a rate increase may occur.

Discussion

Recology Brisbane did submit a request for rate increase; their proposed rates were reviewed by staff and found to be in accordance with their franchise agreement. Pursuant to each agreement, ". . . not later than June 30th of the year of the Notice of Intention, the City Council shall act upon the new maximum rates as appropriate, with any new maximum rates to become effective on July 1st of the same year."

The rate increase for this year is 2.37%.

With the company completing their calculation per the agreement, there is no discretionary action for the Council to take.

Fiscal Impact

The effective date of the new rates is July 1, 2025.

Environmental Review

Adoption of this ordinance does not require further environmental review under the California Environmental Quality Act because it is a governmental fiscal activity which does not involve any commitment to any specific project which may result in a potentially sign physical impact on the environment and hence it is not a "project". CEQA Guidelines, Section 15378 (b) (4).

Attachments

1. Recology Brisbane's letter of 3/17/25 and redacted rate adjustment language
2. Solid Waste Collection Zone Maps

R.L. Breault

Randy Breault, Public Works Director

Jeremy Dennis

Jeremy Dennis, City Manager

March 17, 2025

BY EMAIL

Jeremy Dennis
City Manager
City of Brisbane
50 Park Lane
Brisbane, CA 94005

RE: Notice of Intention to Increase Rates & Related Matters

Dear Mr. Dennis:

The purpose of this letter is to notify the City of Brisbane of Recology's intention to increase rates effective July 1, 2025 pursuant to the refuse rate index methodology set forth in the Franchise Agreement between the City and Recology.

RRI Rate Adjustment

Section 6.2 of the Franchise Agreement provides that maximum rates shall be adjusted each July 1 using a refuse rate index consisting of the weighted average of certain index items as specified below. The annual percentage change in each index item and the calculation of the RRI Adjustment Percentage are also set forth below. Accordingly, maximum rates shall be increased by 2.37% effective July 1, 2025 under Section 6.2.

Cost Category	Weighting	Source/Index	Annual % Change in Source/Index	Weighted % Change
Fixed Labor	0.60	As per CBAs	3.50%	2.10%
Variable/Processing Costs	0.25	CPI(U)	2.38%	0.60%
CNG Fuel	0.05	Fuel Index	-6.54%	-0.33%
			RRI Adjustment Percentage:	2.37%

Franchise Fee Payment

Under Section 4.1 of the Franchise Agreement Recology must make an annual franchise fee payment to the City on or before April 30 of each year. The franchise fee is 14% of Recology's gross revenues during the proceeding calendar year from the collection and disposal of solid waste within Zone 3. For Calendar Year 2024, these revenues amounted to $137,087.96. The franchise fee is therefore $19,192.31. We will remit payment before April 30.

Diversion Rate

Section 8.4 of the Franchise Agreement requires Recology to provide the City with an annual written report setting forth Recology's best estimate of the diversion rate for its Zone 3 customers.

We estimate based on volume and type of service, that the diversion rate for our Zone 3 customers was approximately 35% for the Calendar Year 2024.

Thank you for your consideration. We would be happy to meet with City staff to discuss these matters at your earliest convenience.

Sincerely,

Anthony Crescenti
General Manager
Recology Sunset Scavenger
(415) 330-2911

cc: Randy Breault, Public Works Director, City Engineer
Rich Lanser, Recology SF Region Controller

RATE BOOK

PROPOSED COMMERCIAL RATES EFF 7/1/25

Commercial rates include the following components:

- Volumetric charges shown are for trash service.
- Recycling services are charged at 25% of the volumetric rate for trash. *
- Composting services are charged at 75% of the volumetric rate for trash. *
- There are separate charges for premium services, such as key, distance and elevation.

* Except for roll-off compactors, which are charged at 25% (recycling) or 75% (composting) of the calculated rate.

H.

1. Commercial Key Charges

		Current Rates	Proposed increased %	Proposed Maximum Rates
	1 Per Week =	$ 20.19	2.37%	$ 20.67
These rates apply to Carts located outside.	2 Per Week =	$ 35.56	2.37%	$ 36.40
Carts located inside:	3 Per Week =	$ 50.58	2.37%	$ 51.78
- Less than 100 feet from the curb will be charged 10% more.	4 Per Week =	$ 65.07	2.37%	$ 66.61
- More than 100 feet from the curb will be charged 25% more.	5 Per Week =	$ 79.62	2.37%	$ 81.51
Carts located 4 feet or more above or below ground level	6 Per Week =	$ 101.46	2.37%	$ 103.86
will be charged 25% more.	7 Per Week =	$ 124.94	2.37%	$ 127.90
Rates listed below are for carts up to 45 pounds.	Saturday =	$ 21.85	2.37%	$ 22.37
Any weight exceeding 45 pounds will be charged an additional $0.1143 per pound.	Sunday =	$ 23.48	2.37%	$ 24.04

2.Proposed Commercial Rates

Rate is per month, one pick up per week.

FOR ADDITIONAL CANS: MULTIPLY TIMES PER WEEK BY THE NUMBER OF CARTS.

For recycling carts, charge is 25% of the charge shown below
For composting carts, charge is 75% of the charge shown below

		Current Rates	Proposed increased %	Proposed Maximum Rates
32 Gallon Carts	1 Per Week =	$ 73.94	2.37%	$ 75.69
	Saturday =	$ 85.29	2.37%	$ 87.31
	Sunday =	$ 96.73	2.37%	$ 99.02
64 Gallon Carts	1 Per Week =	$ 151.48	2.37%	$ 155.07
	Saturday =	$ 167.08	2.37%	$ 171.04
	Sunday =	$ 197.00	2.37%	$ 201.67
96 Gallon Carts	1 Per Week =	$ 202.20	2.37%	$ 206.99
	Saturday =	$ 222.41	2.37%	$ 227.68
	Sunday =	$ 262.70	2.37%	$ 268.93

SUNSET SCAVENGER, INC
RATES AND CHARGES EFFECTIVE JULY 1, 2025
CITY OF BRISBANE, CALIFORNIA

3. Extra Pick-ups

			Current Rates	Proposed increased %	Proposed Maximum Rates
64 Gallon Carts	Regular		$ 47.22	2.37%	$ 48.34
	Saturday	=	$ 63.74	2.37%	$ 65.25
	Sunday	=	$ 85.03	2.37%	$ 87.05
96 Gallon Carts	Regular		$ 63.04	2.37%	$ 64.53
	Saturday	=	$ 85.12	2.37%	$ 87.14
	Sunday	=	$ 113.45	2.37%	$ 116.14

4.Container Rates

Rate is per month, one pick up per week.

FOR ADDITIONAL CANS: MULTIPLY TIMES PER WEEK BY THE NUMBER OF CARTS.
For recycling carts, charge is 25% of the charge shown below
For composting carts, charge is 75% of the charge shown below

		Current Rates	Proposed increased %	Proposed Maximum Rates
1 YD	1 Per Week =	$ 444.19	2.37%	$ 454.72
	Saturday =	$ 599.68	2.37%	$ 613.89
	Sunday =	$ 798.99	2.37%	$ 817.93
1.5 YDS	1 Per Week =	$ 683.20	2.37%	$ 699.39
	Saturday =	$ 922.27	2.37%	$ 944.13
	Sunday =	$ 1,229.87	2.37%	$ 1,259.02
2 YDS	1 Per Week =	$ 790.89	2.37%	$ 809.63
	Saturday =	$ 1,068.02	2.37%	$ 1,093.33
	Sunday =	$ 1,423.42	2.37%	$ 1,457.16
2.5 YDS	1 Per Week =	$ 989.11	2.37%	$ 1,012.55
	Saturday =	$ 1,331.81	2.37%	$ 1,363.37
	Sunday =	$ 1,780.60	2.37%	$ 1,822.80

SUNSET SCAVENGER, INC
RATES AND CHARGES EFFECTIVE JULY 1, 2025
CITY OF BRISBANE, CALIFORNIA

		Current Rates	Proposed increased %	Proposed Maximum Rates
3 YDS	1 Per Week =	$ 1,103.14	2.37%	$ 1,129.28
	Saturday =	$ 1,488.54	2.37%	$ 1,523.82
	Sunday =	$ 1,985.14	2.37%	$ 2,032.19
4 YDS	1 Per Week =	$ 1,379.08	2.37%	$ 1,411.76
	Saturday =	$ 1,861.84	2.37%	$ 1,905.97
	Sunday =	$ 2,482.23	2.37%	$ 2,541.06
6 YDS	1 Per Week =	$ 1,958.59	2.37%	$ 2,005.01
	Saturday =	$ 2,379.66	2.37%	$ 2,436.06
	Sunday =	$ 3,524.92	2.37%	$ 3,608.46
7 YDS	1 Per Week =	$ 2,284.61	2.37%	$ 2,338.76
	Saturday =	$ 3,084.79	2.37%	$ 3,157.90
	Sunday =	$ 3,602.64	2.37%	$ 3,688.02

5. Extra Pick-ups for Containers

		Current Rates	Proposed increased %	Proposed Maximum Rates
(per Yard)	Regular	$ 112.83	2.37%	$ 115.50
	Saturday =	$ 152.36	2.37%	$ 155.97
	Sunday =	$ 203.00	2.37%	$ 207.81

6. Front Load Compactor Rates

Rate is per month, one pick up per week.

FOR ADDITIONAL CANS: MULTIPLY TIMES
PER WEEK BY THE NUMBER OF CARTS.
For recycling carts, charge is 25% of the charge shown below
For composting carts, charge is 75% of the charge shown below

		Current Rates	Proposed increased %	Proposed Maximum Rates
0.5 YD	1 Per Week =	$ 314.33	2.37%	$ 321.78
	Saturday =	$ 345.57	2.37%	$ 353.76
	Sunday =	$ 380.34	2.37%	$ 389.35

H.

SUNSET SCAVENGER, INC
RATES AND CHARGES EFFECTIVE JULY 1, 2025
CITY OF BRISBANE, CALIFORNIA

		Current Rates	Proposed increased %	Proposed Maximum Rates
.75 YD	1 Per Week =	$ 471.50	2.37%	$ 482.67
	Saturday =	$ 518.36	2.37%	$ 530.65
	Sunday =	$ 570.50	2.37%	$ 584.02
1 YD	1 Per Week =	$ 628.65	2.37%	$ 643.55
	Saturday =	$ 691.13	2.37%	$ 707.51
	Sunday =	$ 760.67	2.37%	$ 778.70
1.5 YDS	1 Per Week =	$ 942.98	2.37%	$ 965.33
	Saturday =	$ 1,036.70	2.37%	$ 1,061.27
	Sunday =	$ 1,141.02	2.37%	$ 1,168.06
2 YDS	1 Per Week =	$ 1,257.31	2.37%	$ 1,287.11
	Saturday =	$ 1,382.28	2.37%	$ 1,415.04
	Sunday =	$ 1,521.34	2.37%	$ 1,557.40
2.5 YDS	1 Per Week =	$ 1,571.63	2.37%	$ 1,608.88
	Saturday =	$ 1,727.83	2.37%	$ 1,768.78
	Sunday =	$ 1,901.68	2.37%	$ 1,946.75
3 YDS	1 Per Week =	$ 1,885.97	2.37%	$ 1,930.67
	Saturday =	$ 2,073.40	2.37%	$ 2,122.54
	Sunday =	$ 2,282.01	2.37%	$ 2,336.09
4 YDS	1 Per Week =	$ 2,514.63	2.37%	$ 2,574.23
	Saturday =	$ 2,764.53	2.37%	$ 2,830.05
	Sunday =	$ 3,042.68	2.37%	$ 3,114.79
4.5 YDS	1 Per Week =	$ 2,828.94	2.37%	$ 2,895.99
	Saturday =	$ 3,110.11	2.37%	$ 3,183.82
	Sunday =	$ 3,423.03	2.37%	$ 3,504.16
5 YDS	1 Per Week =	$ 3,143.28	2.37%	$ 3,217.78
	Saturday =	$ 3,455.68	2.37%	$ 3,537.58
	Sunday =	$ 3,803.36	2.37%	$ 3,893.50

SUNSET SCAVENGER, INC
RATES AND CHARGES EFFECTIVE JULY 1, 2025
CITY OF BRISBANE, CALIFORNIA

		Current Rates	Proposed increased %	Proposed Maximum Rates
6 YDS	1 Per Week =	$ 3,771.93	2.37%	$ 3,861.32
	Saturday =	$ 4,146.81	2.37%	$ 4,245.09
	Sunday =	$ 4,564.02	2.37%	$ 4,672.19

7. Extra Pick-ups for Front load Compactor

(per Yard)	Compacted	$ 145.18	2.37%	$ 148.62
	Saturday =	$ 159.62	2.37%	$ 163.40
	Sunday =	$ 175.67	2.37%	$ 179.83

ROLL-OFF COMPACTOR RATES
Transportation Charge
$735.99 per pull

Disposal Charge
$239.72 per ton

Container Rotation Charge
$412.34 per pull

Rate Calculation Formula:
Transportation Chg. + Disposal Chg. + 10% + Rotation Chg.* = Per Pull Compactor Rate
* If applicable

7. Debris Box Rates

6 & 9yd dirt/concrete boxes must be clean fill only-no bricks, wood, metal or trash.
NO serpentine rock, metal, organic debris, or trash. Such loads must
be dumped as general debris.
Rate is per month, one pick up per week.

SUNSET SCAVENGER, INC
RATES AND CHARGES EFFECTIVE JULY 1, 2025
CITY OF BRISBANE, CALIFORNIA

		Current Rates	Proposed increased %	Proposed Maximum Rates
6 YDS	Monday-Friday	861.03	2.37%	$ 881.44
	Saturday	989.32	2.37%	$ 1,012.77
	Max. Weight	Clean fill only		Clean fill only
9 YDS	Monday-Friday	918.21	2.37%	$ 939.97
	Saturday	1055.79	2.37%	$ 1,080.81
	Max. Weight	Clean fill only		Clean fill only
15 YDS	Monday-Friday	861.03	2.37%	$ 881.44
	Saturday	989.32	2.37%	$ 1,012.77
	Max. Weight	4,000 lbs.		4,000 lbs.
20 YDS	Monday-Friday	981.61	2.37%	$ 1,004.87
	Saturday	1128.45	2.37%	$ 1,155.19
	Max. Weight	6,000 lbs.		6,000 lbs.
30 YDS	Monday-Friday	1208.84	2.37%	$ 1,237.49
	Saturday	1389.69	2.37%	$ 1,422.63
	Max. Weight	7,000 lbs.		7,000 lbs.
40 YDS	Monday-Friday	1329.41	2.37%	$ 1,360.92
	Saturday	1530.37	2.37%	$ 1,566.64
	Max. Weight	8,000 lbs.		8,000 lbs.
14yd covered	Monday-Friday	925.94	2.37%	$ 947.88
	Saturday	1066.62	2.37%	$ 1,091.90
	Max. Weight	4,000 lbs.		4,000 lbs.
20yd covered	Monday-Friday	1063.53	2.37%	$ 1,088.74
	Saturday	1221.22	2.37%	$ 1,250.16
	Max. Weight	6,000 lbs.		6,000 lbs.

Recology Rate Modification

6.2 Modification Based on Refuse Rate Index.

(a) The maximum rates specified under this Agreement shall be adjusted July 1st every year (beginning in 2016) by a percentage amount equal to the RRI Adjustment Percentage, which shall be calculated as follows:

Step 1: For each Source/Index listed in Table 1 below, calculate the annual percentage change in the Source/Index over the most recent 12-month period for which data are available at the time Recology submits the Notice of Intention described in Section 6.2(c) below.

Step 2: For each Cost Category listed in Table 1 below, multiply the Weighting for such Cost Category set forth in Table 1 below by the percentage change in the Source/Index for such Cost Category calculated in Step 1 above.

Step 3: Add the percentages calculated in Step 2 above. The result is the RRI Adjustment Percentage.

For example, if the annual percentage change is 3.0% for CPI(U), 9.0% for the Fuel Index, and 4.0% under the CBAs, then the RRI Adjustment Percentage equals 3.60% (= (.60 x 4.0%) + (.25 x 3.0%) + (.05 x 9.0%)).

Table 1. Refuse Rate Index

Cost Category	Weighting	Source/Index
Fixed Labor	0.60	As per CBAs
Variable/Processing Costs	0.25	CPI(U)
Biodiesel Fuel	0.05	Fuel Index
Total:	0.90	

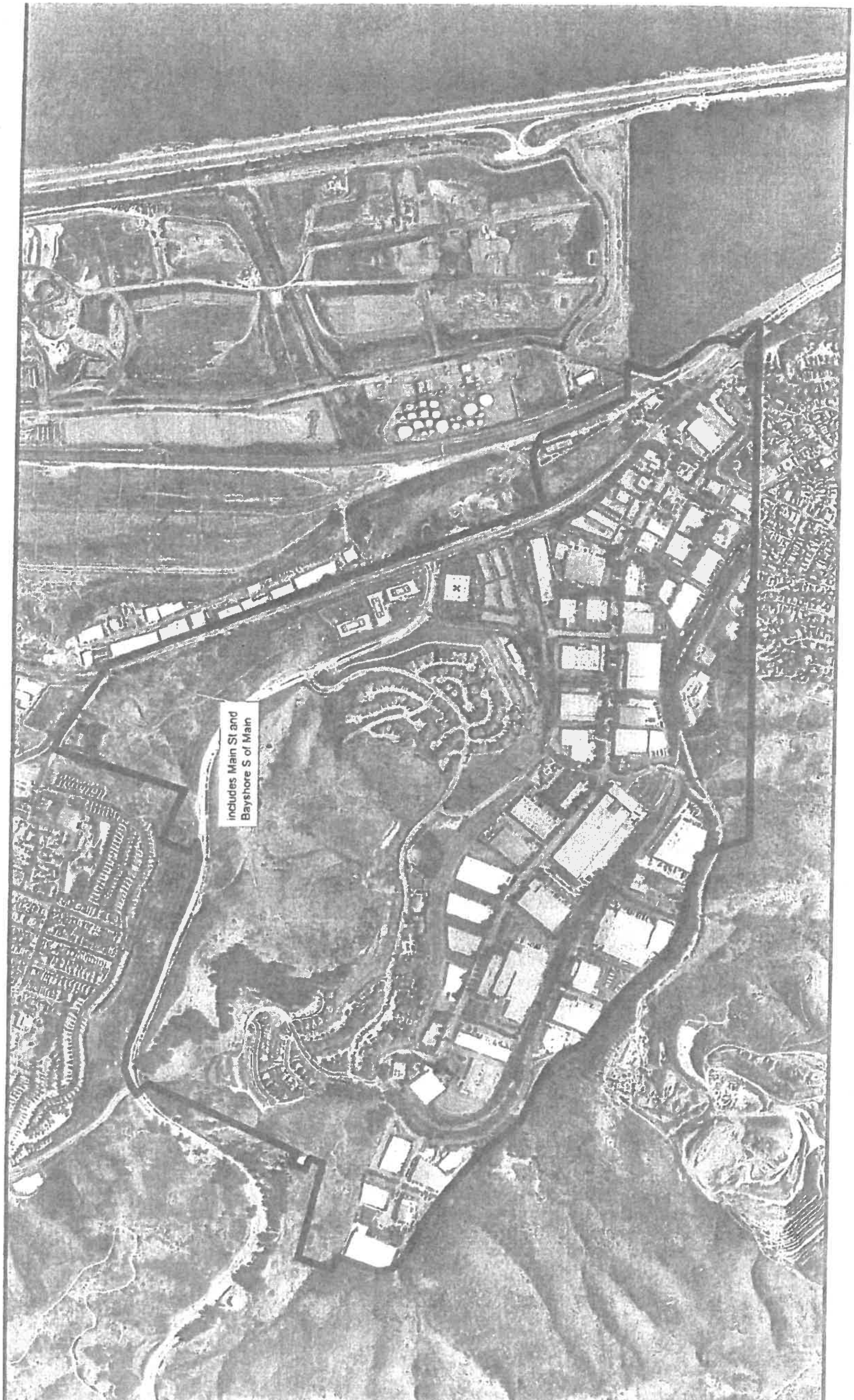
(b) For purposes of this Section 6.2:

(i) "CBAs" means the collective bargaining agreement(s) in effect from time to time applicable to the employees performing collection services under this Agreement. In connection with any adjustment under this Section 6.2, the annual percentage change calculations shall be based on the changes in wage rates required by the CBAs, and Recology shall make available to the City Manager the portions of the CBAs necessary to confirm such changes.

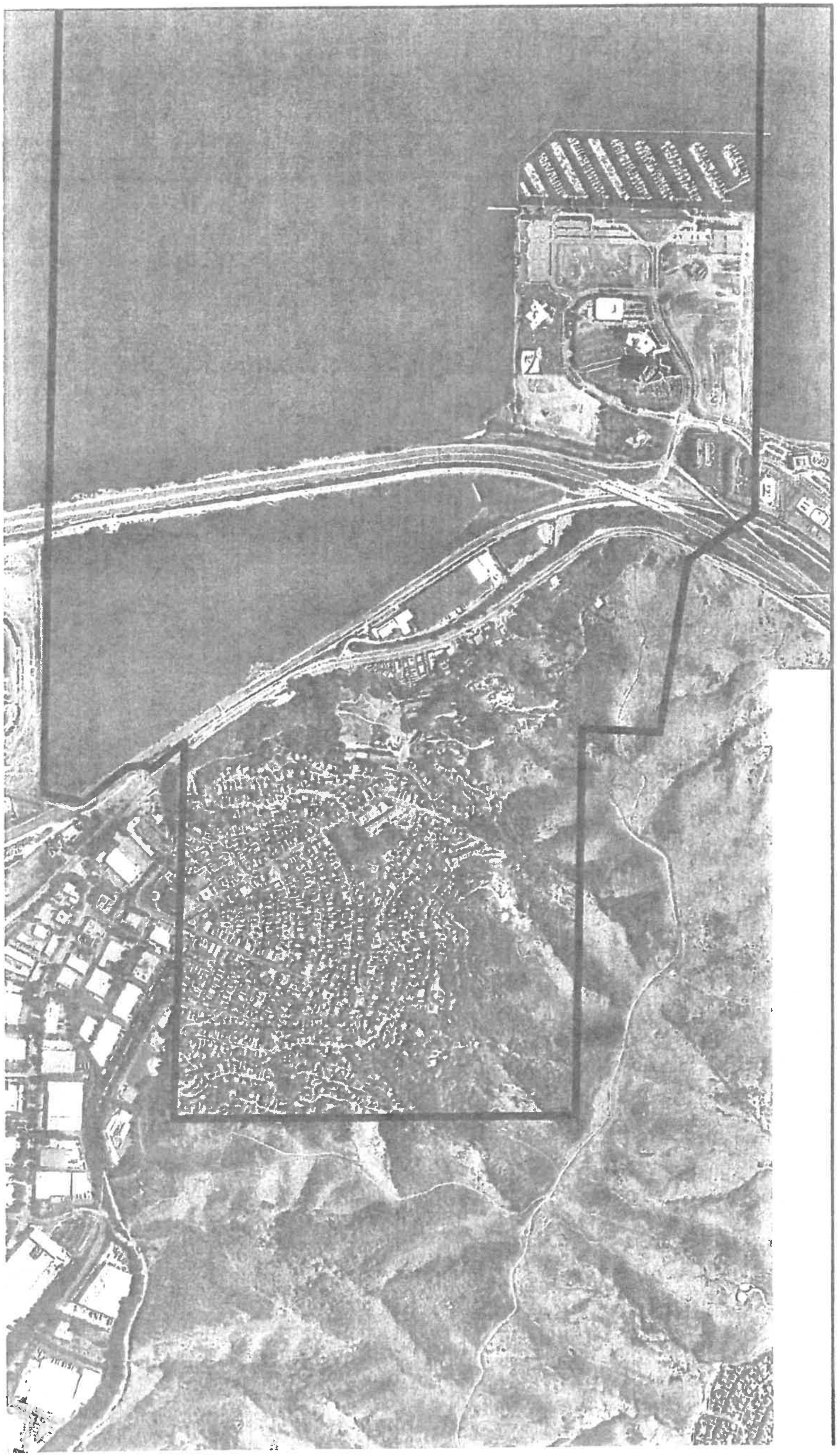
(ii) "CPI(U)" means the Consumer Price Index, All Urban Consumers, San Francisco-Oakland-San Jose, Not Seasonally Adjusted, Series ID:

CUURA422SA0, published by the U.S. Department of Labor, Bureau of Labor Statistics.

(iii) "Fuel Index" means the Total G-NGV1 Charge set forth in Schedule G-NGV1, Natural Gas Service for Compression on Customers' Premises, published by Pacific Gas & Electric Company.



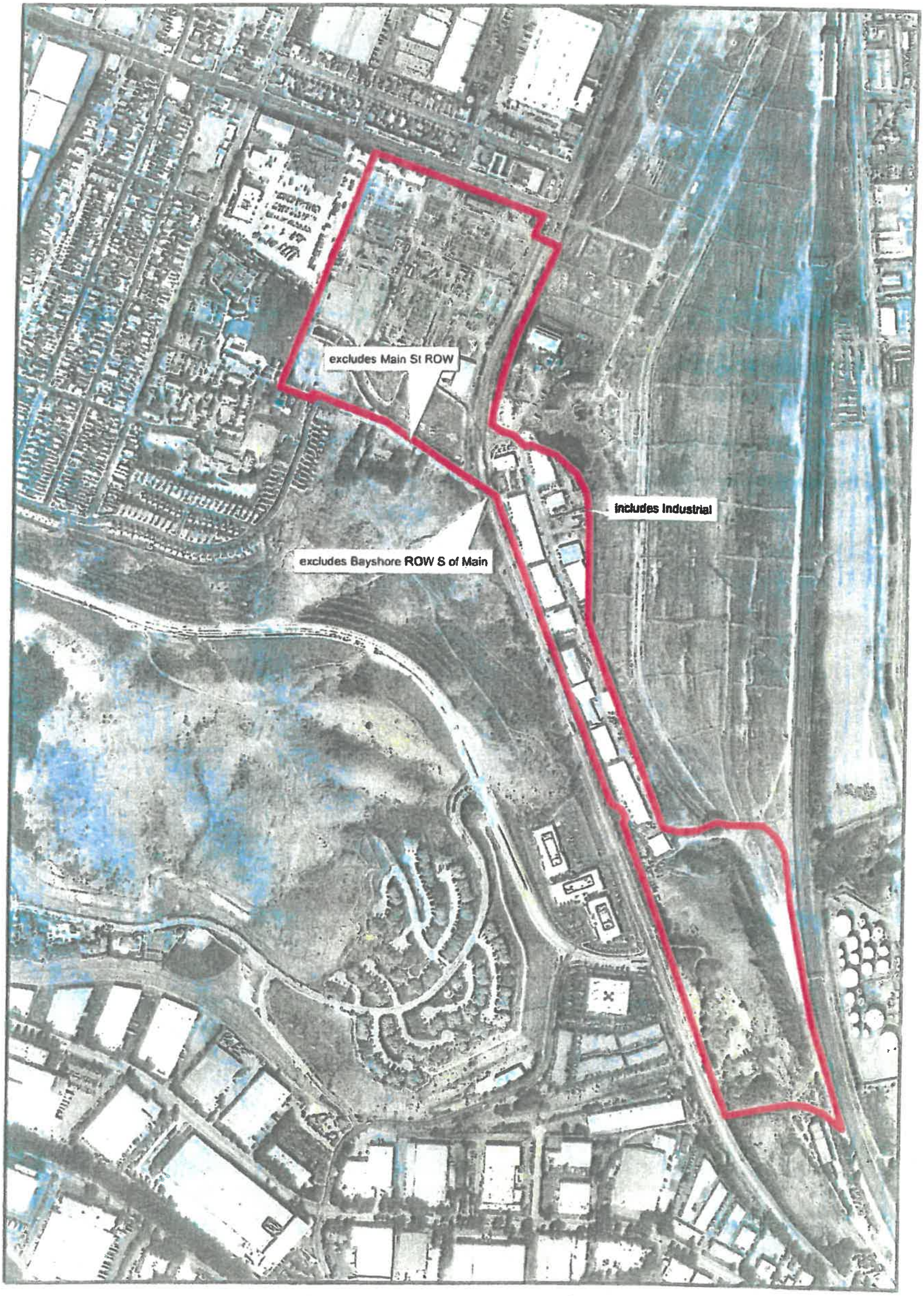
City of Brisbane
Solid Waste Collection Zone
1 - A



City of Brisbane
Solid Waste Collection Zone
1 - B

0 375 750 1,500 Feet

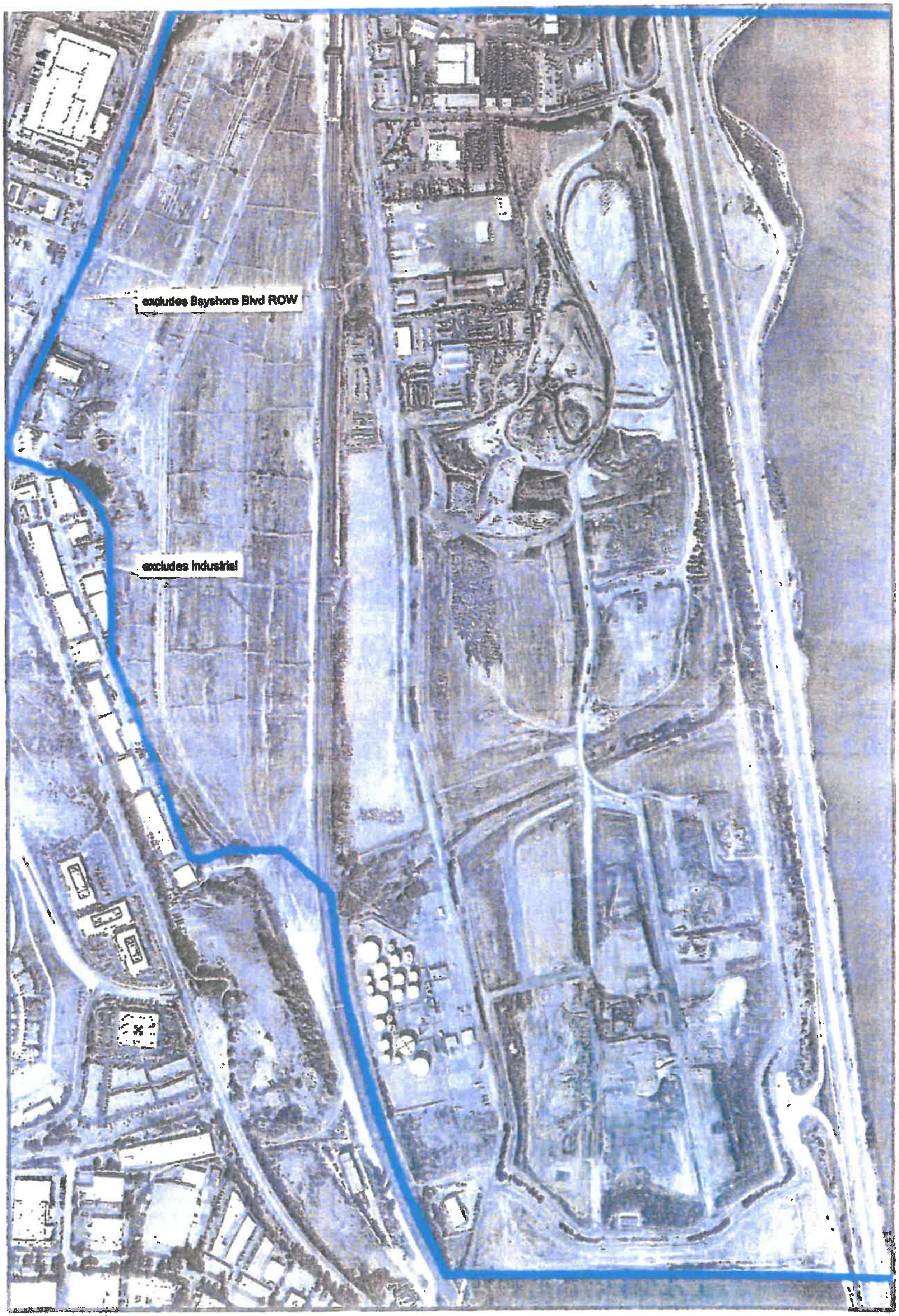
H.



Feet
0 250 500 1,000

City of Brisbane
Solid Waste Collection Zone
2

H.



City of Brisbane
Solid Waste Collection Zone
3

File Attachments for Item:

I. Introduce an Ordinance Concerning Dollar Thresholds Under the California Uniform Public Construction Cost Accounting Act and the City’s Federal Procurement Policy

(There is no fiscal impact from introducing/adopting this Ordinance. If adopted, the Ordinance will allow the City to use less staff time to obtain products and equipment under a certain dollar threshold and bring the City’s procurement policies when federal funds are used in line with federal guidelines.)

CITY COUNCIL AGENDA REPORT

Meeting Date: April 17, 2025

From: Directors of Finance and Public Works

Subject: Amendment to Municipal Code Sections 3.12.090 and 3.12.130

This Ordinance is exempt from CEQA because it is not a project (CCR Title 14 §15378 (b) (4)).

Recommendation

Introduce the attached Ordinance Concerning Dollar Thresholds Under the California Uniform Public Construction Cost Accounting Act and the City's Federal Procurement Policy.

Purpose

The proposed Ordinance (a) revises higher bidding thresholds for those public works projects that may use the California Uniform Public Construction Cost Accounting Act and (b) revises the City's Federal Procurement Polices to reflect revisions to the federal Uniform Guidelines concerning procurements using federal funds.

If the ordinance is introduced as recommended, it will be brought back to a later regularly scheduled council meeting for final adoption.

Background

The California Uniform Public Construction Cost Accounting Act (CUPCCAA) allows a city to lift the relatively low bidding threshold for public works projects. Under the general rules, public works projects (broadly defined) valued at over $5,000 must be competitively bid. These thresholds may be onerous as public bidding requires substantial staff time to administer. The CUPCCAA allows higher bidding thresholds. To use the CUPCCAA procedures a city must confirm that it has opted into the CUPCCAA by adopting an ordinance and providing a copy of the ordinance to the State Controller. The City has opted into the CUPCCAA by adopting an ordinance, codified in Section 3.12.090 of the Municipal Code.

Effective January 1, 2025, the thresholds were increased. In order that the city continue to have the flexibility to use the CUPCCAA provisions where appropriate, staff recommends the ordinance be amended to reflect these higher thresholds.

<u>Federal Procurement Policy</u>

From time to time, the City receives federal funding through awards or grants. Where federal funding is involved, the City must follow federal procurement policies. The City has adopted such policies not only in the Municipal Code (codified in Section 3.12.130) but also in its Procurement Policy. In October 2024, the federal Office of Management and Budget announced a number of changes to the Uniform Procurement Guidelines which provide the framework for the City's Federal Procurement Policy. In order that the City federal procurement policies reflect these changes, staff recommends the ordinance concerning these policies also be revised. If the ordinance is adopted, the Procurement Policy will also be revised consistently with the ordinance.

Discussion

California Uniform Public Construction Cost Accounting Act

Current Threshold	January 1, 2025 Threshold to be changed by Proposed Ordinance	Project Requirements
$5,001 - $60,000	$5,001 - $75,000	Can be performed by city employees, or contracted by force account, negotiated contract or purchase order
$60,000 - $200,000	$75,001 - $220,000	Contracted by specified informal procedures
$201,000 and higher	$221,000 and higher	Contracted per Public Contract Code formal bidding

These threshold amounts may be revised by statute from time to time. The attached ordinance provides for automatic adjustments of the bidding thresholds as the statute changes without having to amend the ordinance further. Rather, those thresholds will be reflected in the Procurement Policy.

Federal Procurement Policy

Although it may appear that the revisions to the Federal Procurement Policy are significant, they are not. Most of the changes in the attached ordinance simply reflect changes in the way that the existing policies are reflected in the Code of Federal Regulations (C.F.R.). There are, however, some changes to the procurement methods.

Currently, the city must use one of four procurement methods when purchasing supplies or equipment with federal funds: "Micro-purchases" (i.e, less than $3,000); small purchase procedures (less than $150,000); sealed bids/competitive proposals (greater than $150,000); and noncompetitive proposals, (e.g., sole source or emergency situations).

The revised federal regulations, now reflected in the attached ordinance, provide that the city must use one of three procurement methods when purchasing supplies or equipment with federal funds: Informal procurement methods for small purchases (micro-purchases now increased up to $50,000 and "simplified acquisitions" up to $250,000); formal procurement methods (essentially the same as the sealed bids/competitive proposals in the current ordinance but for amounts in excess of $250,000); and noncompetitive procurement, the same as in the existing ordinance.

Subsection E of Section 3.12.120 is also being amended to provide the city must inform its employees in writing about whistleblower rights and protections (which the City already does) and that the city has internal controls, including cybersecurity, to safeguard its information. Again, the City has these controls in place.

Other changes to the federal guidelines, such as capitalization thresholds that are not included in the ordinance, will be included in the City's Procurement Policy.

Fiscal Impact

There is no fiscal impact from adopting this Ordinance. Adoption of the Ordinance will allow the City to use less staff time to obtain products and equipment under a certain dollar threshold and bring the City's procurement policies when federal funds are used in line with federal guidelines.

Environmental Review

Adoption of this ordinance does not require further environmental review under the California Environmental Quality Act because it is a governmental fiscal activity which does not involve any commitment to any specific project which may result in a potentially sign physical impact on the environment and hence it is not a "project". CEQA Guidelines, Section 15378 (b) (4).

Attachments

1. Proposed Ordinance

Carolina Yuen
____

Carolina Yuen, Finance Director

R.L. Breault
____

Randy Breault, Public Works Director

Jeremy Dennis
____

Jeremy Dennis, City Manager

ORDINANCE NO. ___

AN ORDINANCE OF THE CITY OF BRISBANE
TO AMEND SECTIONS 3.12.090 AND 3.12.130 OF THE BRISBANE MUNICPAL CODE
CONCERNING DOLLAR THRESHOLDS UNDER THE CALIFORNIA UNIFORM PUBLIC
CONSTRUCTION COST ACCOUNTING ACT AND THE CITY'S FEDERAL PROCUREMENT POLICY

THE CITY COUNCIL OF THE CITY OF BRISBANE HEREBY ORDAINS AS FOLLOWS:

SECTION 1. Section 3.12.090 of the Brisbane Municipal Code is amended to read as follows:

"3.12.090 California Uniform Public Construction Cost Accounting Act

The California Uniform Public Construction Cost Accounting Act (CUPCCAA) [Public Contract Code, Section 22000 et seq.] provides cost accounting standards and an alternative method for the bidding of public works projects by public entities. By adoption of this section of the chapter, the city has elected to become subject to the CUPCCAA procedures.

(Subsections A and B, no change.)

C. Contracting Procedures Based on Dollar Amounts

1. CUPCCAA projects that do not exceed five thousand dollars ($5,000) are not subject to competitive bidding requirements.

2. CUPCCAA projects of seventy five thousand dollars ($75,000) or less may be performed by the employees of the city, by force account, by negotiated contract, or by purchase order.

3. CUPCCAA projects more than seventy five thousand dollars ($75,000) up to two hundred twenty thousand dollars ($220,000) may be let by informal procedures as set forth in subsection E of this section and in Sections 22020 through 22045 of the Public Contract C ode.

4. CUPCCAA projects of more than two hundred twenty thousand dollars ($220,000) shall, except as otherwise provided in Section 22034 of the Public Contract Code, be let by a formal bidding procedure.

(Subsections D and E, no change.)

F. The bidding thresholds set forth in subsection C shall be automatically adjusted as those amounts are changed by statute. Such adjusted amounts shall be in the City's Purchasing Policy."

Section 2. Section 3.12.130 of the Brisbane Municipal is amended to read as follows:

"<u>Section 3.12.030 Federal Procurement Policy</u>

(Subsections A and B, no change.)

C. General Standards. The following additional standards are required when the city procures supplies or equipment with federal funds in the form of a grant or award.

(Paragraphs 1 through 4, no change).

5. Time and Materials contracts.

a. The city may use time a time and materials type contract only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time and materials type contract means a contract whose cost to the city is the sum of (i) the actual cost of materials and (ii) direct labor hours charged at a fixed hourly rates that reflect wages, general and administrative expenses, and profit.

b. Because this formula generates an open ended contract price, a time and materials type contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, each contract must contain a ceiling price that the contractor exceeds at its own risk. Further, the city must assert a high degree of oversight to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

(2 C.F. R. Section 200.318 (j) (1) and (2))

(Paragraph 6, no change.)

7. Whistleblower rights and protections. Under the law, legal protections are provided to "whistleblowers". The city will inform its employees in writing about these whistleblower rights and protections.

8. Internal controls. The city shall adopt internal controls, including cybersecurity and other measures, to safeguard information.

D. Procurement Methods. The city must use one of three procurement methods identified below when purchasing supplies or equipment with federal funds.

1. Informal procurement methods for small purchases. These procurement methods expedite the completion of transactions, minimize administrative burdens, and reduce costs. Informal procurement methods may be used when the value of the procurement transaction under the Federal award does not exceed the simplified acquisition threshold as defined in 2 C.F.R. Section 200.1. Informal procurement methods include micro-purchases and simplified acquisitions.

a. Micro-purchases. Procurement by micro-purchase is acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold defined in 2 C.F.R. 200.1. To the extent practicable, the city must distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the city determines the price quote is reasonable based on research, experience, purchase history, or other information and maintains documents to support its conclusions. The city is responsible for determining and documenting an appropriate micro-purchase threshold based on internal controls, an evaluation of risk, and its documented procurement procedures and the city is self certifying its micro-purchasing threshold as $50,000 in compliance with 2 C.F.R. Section 200.320 (a)(1)(iv).

(2. C.F. R. 200.320 (a)(1)

b. Simplified acquisition. Procurement by simplified acquisition is acquisition of supplies or services, the aggregate dollar amount is higher than the micro-purchase threshold ($50,000) but does not exceed the simplified acquisition threshold ($250,000). If simplified acquisition procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources. (2 C.F.R. 200.320 (a)(2)).

2. <u>Formal procurement methods.</u> Formal procurement methods are required when the value of the procurement under a Federal award exceeds the simplified acquisition threshold $250,000). Formal procurement methods are competitive and require public notice. The following formal methods of procurement are sealed bids and proposals.

a. Sealed bids are publicly solicited bids through an invitation and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid conforms with all the material terms and conditions of the invitation and is the lowest in price. This method is preferred for procuring construction contracts.

(i) For sealed bids to be feasible, the following conditions should be present: (A) a complete, adequate, and realistic specification or purchase description in available, (B) two or more responsible bidders have been identified as willing and able to compete effectively for the business, and (C) the procurement lends itself to the firm fixed price contract and the selection of the successful bidder may be made principally on price.

(ii) If sealed bids are used, the following requirements apply: (A) bids must be solicited from an adequate number of bidders, as such is determined by the city, with sufficient response time prior to the date set for opening the bids; (B) bids must be publicly advertised; (C) the invitation for bids must define the items or services with specific information, including any required specifications, for the bidder to properly respond; (D) all bids will be publicly opened at the time and place prescribed in the invitation for bids; (E) A firm fixed price contract is awarded in writing to the lowest responsive bid and responsible bidder; and (F) the city must document and provide a justification for all bid rejects.

(2 C.F.R. 200.320 (a))

b. Proposals is a procurement method used when conditions are not appropriate for using sealed bids and such method may result in either a fixed price or cost reimbursement contract. Proposals are awarded in accordance with the following requirements.

(i) Requests for proposals require public notice and all evaluation factors and their relative importance must be identified. Proposals must be solicited from multiple qualified persons or entities. To the maximum extent practicable, any proposal submitted in response must be considered.

(ii) The city must have written procedures for conducting technical evaluations and making selections.

(iii) Contracts must be awarded to the responsible offeror whose proposal is most advantageous to the city considering price and other factors; and

(iv) The city may use competitive proposal procedures for qualification based procurements of architect/engineering professional services whereby the offeror's qualifications are evaluated, and the most qualified offeror is selected, subject to negotiation of fair and reasonable compensation. The method where the price is not used as a selection method may only be used to procure architectural/engineering professional services and not for other services provided by such firms that are a potential source to perform the proposed effort.

(2 C.F.R. 200.320 (b))

3. <u>Noncompetition procurement.</u> The noncompetition method may only be used if one of the following circumstances applies:

a. The aggregate amount of the procurement transaction does not exceed the micro-purchase threshold ($50,000);

b. The procurement transaction may only be fulfilled by a single source;

c. The public exigency or emergency for the requirement does not permit a delay resulting from providing public notice of a competitive solicitation; or

d. d. The city has in writing requested to use a noncompetition method and the Federal agency provides a written approval.

(2 C.F.R 200.320 (c))

E. Additional Requirements to Sealed Bids and Competitive Proposals

1. All procurement transactions under the Federal award must be conducted in a manner that provides full and open competition and is consistent with standards of 2 C.F.R. Section 200.319 and 2 C.F.R. Section 200.320. (2 C.F.R. Section 200.319 (a)).

2. To ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements

of work, or invitations for bids must be excluded from competing on those procurements. (2 C.F.R. Section 200.319 (b))

3. Examples of situations that may restrict competition include but are not limited to:

   a. Placing unreasonable requirements on firms for them to qualify to do business;

   b. Requiring unnecessary experience and excessive bonding;

   c. Noncompetitive pricing practices between firms or between affiliated companies;

   d. Noncompetitive contracts to consultants that are on retainer contracts;

   e. Organizational conflicts of interest;

   f. Specifying a "brand name" product instead of allowing "an equal" product to be offered and describing the performance or other relevant requirements of the procurement; and

   g. Any arbitrary action in the procurement process.

(2 C.F.R. Section 200.319 (c))

4. The city must have written procedures for procurement transactions. These procedures must ensure that all solicitations:

   a. Are made in accordance with 2 C.F.R. Section 200.319 (b).

   b. Incorporate a clear and accurate description of the technical requirements for the property, equipment, or service being procured. The description may include a statement of the qualitative nature of the property, equipment, or service to be procured. When necessary, the description must provide minimum associated characteristics and standards to which the property, equipment, or service must conform. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to clearly and accurately describe the technical requirements, a "brand name" or equivalent description of features may be used to provide procurement requirements. The specific features of the named brand must be clearly stated; and

   c. Identify any additional requirements which the offerors must fulfill and all other factors that will be used in evaluating bids or proposals.

   (2 C.F. R. Section 200.319 (d))

5. The city must ensure that all prequalified lists of persons, firms, or products used in procurement transactions are current and include enough qualified sources to ensure maximum open competition. When establishing or amending prequalified lists, the city must consider objective factors that evaluate price and cost to maximize competition.

The city must not preclude potential bidders from qualifying during the solicitation period. (2 C.F. R. Section 319.200 (e))

6. To the extent consistent with established and legal requirements applicable to the city, subsection E of this Section does not prohibit the city from developing procedures for procurement transactions that incorporate a scoring mechanism that rewards bidders that commit to specific numbers or types of U.S. jobs, minimum compensation benefits, on the job training for employees making work products or providing services on a contract, and other worker protections. This subsection E also does not prohibit the city from making inquiries of bidders about these subjects and assessing the responses. Any scoring mechanism must be consistent with the U.S. Constitution, applicable Federal statutes and regulations, and the terms and conditions of the Federal award. (2 C.F.R. 200.319 (f))

7. Noncompetitive procurements may only be awarded in accordance with 2 C.F.R. 200.320 (b). (2 C.F.R. 200.319 (g)).”

SECTION 3: This Ordinance shall be in full force and effect 30 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:

____
Cliff Lentz, Mayor

ATTEST:

____
Ingrid Padilla, City Clerk

APPROVED AS TO FORM:

____
Thomas R. McMorrow, City Attorney

File Attachments for Item:

J. Adopt an Ordinance, Waiving Second Reading, Approving a Zoning Text Amendment 2024-RZ-2, City-wide

(It is being recommended to adopt an Ordinance amending regulations within Title 17 of the Brisbane Municipal Code including the development standards for multifamily and mixed-use zoning districts and the exceptions to the lot size standards, consistent with California Senate Bill SB 478 (2021) and the 2023-2031 Housing Element; and to amend the reasonable accommodations exceptions consistent with the Housing Element; and finding that this amendment is exempt from environmental review under CEQA Guidelines Sections 15061(b)(3) and Section 15183; City of Brisbane, applicant.)

CITY COUNCIL MEMO

Meeting Date: April 17, 2025

From: Ingrid Padilla, City Clerk

Subject: Adopt an Ordinance, Waiving Second Reading, Approving a Zoning Text Amendment 2024-RZ-2, City-wide

It is being recommended to adopt an Ordinance amending regulations within Title 17 of the Brisbane Municipal Code including the development standards for multifamily and mixed-use zoning districts and the exceptions to the lot size standards, consistent with California Senate Bill SB 478 (2021) and the 2023-2031 Housing Element; and to amend the reasonable accommodations exceptions consistent with the Housing Element; and finding that this amendment is exempt from environmental review under CEQA Guidelines Sections 15061(b)(3) and Section 15183; City of Brisbane, applicant.

The Ordinance listed above was introduced at the City Council Meeting of April 3, 2025. It is on this agenda for consideration of adoption with the revised ordinance for the 2024-RZ-2 zoning amendment.

Attachment:

1. Revised Ordinance
2. Revised Redlined Ordinance
3. Staff Report from the City Council Meeting of October 17, 2024

Attachment 1

DRAFT ORDINANCE NO.___
AN ORDINANCE OF THE CITY OF BRISBANE
AMENDING BRISBANE MUNICIPAL CODE TITLE 17 – TO AMEND THE DEVELOPMENT STANDARDS FOR MULTIFAMILY AND MIXED USE ZONING DISTRICTS AND TO AMEND THE EXCEPTIONS TO LOT STANDARDS, CONSISTENT WITH CALIFORNIA SENATE BILL SB 478 ("HOUSING OPPORTUNITY ACT"), AND THE 2023-2031 HOUSING ELEMENT; AND TO AMEND THE REASONABLE ACCOMMODATION EXCEPTIONS CONSISTENT WITH THE HOUSING ELEMENT.

SECTION 1: Section 17.08.040. - Development Regulations, of Chapter 17.08 - R-2 Residential District, is amended to read as follows:

17.08.040 - Development regulations.

The following development regulations shall apply to any lot in the R-2 district:

A. Lot Area.

1. The minimum area of any lot shall be five thousand (5,000) square feet, except as otherwise provided in subsection B. of this Section 17.08.040.

2. A single-family dwelling may be constructed on a lot of record with an area of less than five thousand (5,000) square feet, subject to the provisions of this chapter and the limitations set forth in Section 17.32.100.

3. Notwithstanding the minimum lot area in paragraph 1 of this subsection A, pursuant to State law, a housing development project of three (3) units, proposed on an existing legal lot of record, shall not be denied solely on the basis that the lot area of that lot does not meet the minimum lot area in paragraph 1.

B. Density of Development. The minimum lot area for each dwelling unit on the site shall be two thousand five hundred (2,500) square feet; provided, however, a lot having an area of four thousand nine hundred fifty (4,950) square feet or greater shall be considered conforming for a development density of two (2) units, and further provided that pursuant to State law, a housing development project of three (3) units proposed on an existing legal lot of record shall not be denied solely on the basis that the lot area of that lot does not meet the minimum lot area for each dwelling unit.

C. Lot Dimensions. The minimum dimensions for any new lot shall be as follows:

Width	Depth
50 feet	100 feet

D. Setbacks. The minimum required setbacks for any lot, except as provided in Section 17.32.070, shall be as follows:

1. Front setback: Fifteen (15) feet, with the following exceptions:

a. Where the lot has a slope of fifteen percent (15%) or greater, the minimum front setback may be reduced to ten (10) feet.

b. Where fifty percent (50%) or more of the lots of record in a block have been improved with single-family dwellings, the minimum front setback may be the average distance of the front outside wall of the single-family structures from the front lot line, if less than fifteen (15) feet. Notwithstanding the foregoing, the minimum front setback for garages or carports shall be ten (10) feet, except where a lesser distance is determined by the city engineer to be safe in terms of pedestrian and vehicular traffic.

2. Side setback: Five (5) feet, with the exception that a lot having a width of less than fifty (50) feet may have a side setback reduced to ten percent (10%) of the lot width, but in no event less than three (3) feet or the minimum setback required by the Uniform Building Code, whichever is greater. Notwithstanding the foregoing, the minimum side setback for garages, or carports accessed from a street or alley along that side of the lot shall be ten (10) feet, except where a lesser distance is determined by the city engineer to be safe in terms of pedestrian and vehicular traffic.

3. Rear setback: Ten (10) feet.

E. Lot Coverage. The maximum coverage by all structures on any lot shall be fifty percent (50%); except that, pursuant to State law, the maximum lot coverage shall not preclude a housing development project of at least three (3) units but not more than ten (10) units, if exceeding the maximum coverage is required to allow for development up to the floor area ratio maximum, as that ratio is determined by the building official; in such instance, no variance shall be required in order for the lot to exceed the maximum coverage.

F. Floor Area Ratio. The maximum floor area ratio for all buildings on a lot shall be as follows:

1. Single family dwellings, duplexes and two-unit dwelling groups shall have a maximum floor area ratio of 0.72, with the following exceptions:

   a. In the case of single-family dwellings, where the size of the lot is three thousand seven hundred (3,700) square feet or less, one covered parking space designed to accommodate a full-size automobile shall be excluded from the calculation of floor area ratio; provided, however, such exclusion shall not exceed a total area of two hundred (200) square feet.

   b. In the case of duplexes and two-unit dwelling groups, the area of all covered parking spaces required to be provided for the site shall be excluded from the calculation of floor area ratio; provided, however, such exclusion shall not exceed a total area of four hundred (400) square feet per unit.

2. Multiple-family development shall have the following maximum floor area ratios:

a. Developments of three (3) to seven (7) units shall have a maximum floor area ratio of 1.0.

b. Developments of eight (8) to ten (10) units shall have a maximum floor area ratio of 1.25.

c. Developments of eleven (11) units or more shall have a maximum floor area ratio of 0.72; except that the area of all covered parking spaces required to be provided for the site shall be excluded from the calculation of floor area ratio; provided, however, such exclusion shall not exceed a total area of four hundred (400) square feet per unit.

G. Height of Structures.

1. Except as otherwise provided in paragraph 2 of this subsection G. and in Section 17.32.060, the maximum height of any structure shall be thirty-six (36) feet.

2. For a distance of fifteen (15) feet from the front lot line, the height of any structure shall not exceed twenty (20) feet as measured from finish grade; provided, however, garages and carports may be constructed to a height of fifteen (15) feet above the elevation of the center of the adjacent street when permitted by Section 17.32.070 of this title. On a downslope lot, a garage or carport in compliance with this subsection may exceed a height of thirty-six (36) feet, and the height of any permitted living area underneath the garage or carport shall not exceed thirty-six (36) feet from finish grade.

H. Articulation Requirements. Unless exempted, outside walls that are greater in size than twenty (20) feet in width and twenty (20) feet in height shall have a cumulative area of articulation as follows:

1. Front outside wall: Thirty percent (30%) articulation.

2. Side outside walls:

a. Interior side outside wall: No articulation requirement.

b. Exterior side outside wall: Where the structure is located on a lot having an average width of forty (40) feet or greater, the articulation requirement for the exterior side outside wall shall be twenty percent (20%). No articulation shall be required for the exterior side outside wall of structures located on lots having an average width of less than forty (40) feet.

3. Rear outside wall: Thirty percent (30%) articulation.

4. Exemptions: Single story two (2) car garages and accessory structures not exceeding a floor area of one hundred twenty (120) square feet shall be exempted from all articulation requirements.

I. Landscaping Requirements.

1. Front Setback. A minimum of fifteen percent (15%) of the front setback area shall be landscaped where the lot has a front lot line of thirty (30) feet or greater.

2. Downslope Lots. The rear of any newly constructed main structure on a downslope lot shall be screened with trees and shrubs in accordance with a landscape plan approved by the planning director.

3. Irrigated Landscapes. New and rehabilitated, irrigated landscapes are subject to the provisions of the water conservation in landscaping ordinance (refer to Chapter 15.70) or the latest state provisions, whichever is more effective in conserving water.

J. Nonconforming Residential Structures and Uses. Nonconforming residential structures and nonconforming residential uses, as defined in Section 17.02.560, may be repaired, restored, reconstructed, enlarged or expanded in accordance with the provisions of Chapters 17.38 and 17.34 of this title.

K. Recycling Area Requirements:

1. Adequate, accessible and convenient areas for depositing, collecting and loading recyclable materials in receptacles shall be provided. The area shall be located and fully enclosed so as to adequately protect neighboring uses from adverse impacts such as noise, odor, vectors, wind-blown litter or glare. The area shall be designed to prevent storm water run-on to the area and runoff from the area, and roofs shall be designed to drain away from neighboring properties. A sign clearly identifying all recycling and solid waste collection and loading areas and the materials accepted therein shall be posted adjacent to all points of direct access to the area.

2. This requirement shall apply to all new residential buildings having five (5) or more living units, institutional buildings and city facilities (including buildings, structures, and outdoor recreation areas owned by the city) where solid waste is collected and loaded. This requirement shall also apply to such existing developments for which building permit applications are submitted within a twelve-month period collectively adding thirty percent (30%) or more to the existing floor area of the development project.

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SECTION 2: Section 17.10.040 - Development Regulations, of Chapter 17.10 - R-3 Residential District, is amended to read as follows:

The following development regulations shall apply to any lot in the R-3 district:

A. Lot Area.

1. The minimum area of any lot shall be five thousand (5,000) square feet, except as otherwise provided in subsection B of this section.

2. A single-family dwelling may be constructed on a lot of record with an area of less than five thousand (5,000) square feet, subject to the provisions of this chapter and the limitations set forth in Section 17.32.100.

3. Notwithstanding the minimum lot area in paragraph 1 of this subsection A, pursuant to State law, a housing development project of three (3) units, proposed on an existing legal lot of record, shall not be denied solely on the basis that the lot area of that lot does not meet the minimum lot area in paragraph 1.

B. Density of Development. The minimum lot area for each dwelling unit on the site shall be one thousand five hundred (1,500) square feet; provided, however, a lot having an area of four thousand nine hundred fifty (4,950) square feet or greater shall be considered conforming for a development density of three (3) units, and further provided that pursuant to State law, a housing development project of three (3) units proposed on an existing legal lot of record shall not be denied solely on the basis that the lot area of that existing lot does not meet the minimum lot area for each dwelling unit.

C. Lot Dimensions. The minimum dimensions for any new lot shall be as follows:

Width	Depth
50 feet	100 feet

D. Setbacks. The minimum required setbacks for any lot, except as provided in Section 17.32.070, shall be as follows:

1. Front setback: Fifteen (15) feet, with the following exceptions:

   a. Where the lot has a slope of fifteen percent (15%) or greater, the minimum front setback may be reduced to ten (10) feet.

   b. Where fifty percent (50%) or more of the lots of record in a block have been improved with single-family dwellings, the minimum front setback may be the average distance of the front outside wall of the single-family structures from the front lot line, if less than fifteen (15) feet. Notwithstanding the foregoing, the minimum front setback for garages or carports shall be ten (10) feet, except where a lesser distance is determined by the city engineer to be safe in terms of pedestrian and vehicular traffic.

2. Side setback: Five (5) feet, with the exception that a lot having a width of less than fifty (50) feet may have a side setback reduced to ten percent (10%) of the lot width, but in no event less than three (3) feet or the minimum setback required by the Uniform Building Code, whichever is greater. Notwithstanding the foregoing, the minimum side setback for garages, or carports accessed from a street or alley along that side of the lot shall be ten (10) feet, except where a lesser distance is determined by the city engineer to be safe in terms of pedestrian and vehicular traffic.

3. Rear setback: Ten (10) feet.

4. Garage setback: Eighteen (18) feet, with the following exceptions:

   a. If paragraph 1.a or 1.b of this subsection D applies, then the garage shall be setback three (3) feet behind the front wall of the main structure.

   b. If the garage setback exemptions set forth in Section 17.32.070.A.3.a of this Title apply, the regulations of that section shall prevail.

E. Lot Coverage. The maximum coverage by all structures on any lot shall be sixty percent (60%); except that, pursuant to State law, the maximum lot coverage shall not preclude a housing development project of at least three (3) units but not more than ten (10) units, if exceeding the maximum coverage is required to allow for development up to the maximum floor area ratio, as that ratio is determined by the building official; in such instance, no variance shall be required.

F. Floor Area Ratio. The maximum floor area ratio for all buildings on a lot shall be as follows:

1. Single family dwellings, duplexes and two-unit dwelling groups shall have a maximum floor area ratio of 0.72, with the following exceptions:

a. In the case of single-family dwellings, where the size of the lot is three thousand seven hundred (3,700) square feet or less, one covered parking space designed to accommodate a full-size automobile shall be excluded from the calculation of floor area ratio; provided, however, such exclusion shall not exceed a total area of two hundred (200) square feet.

b. In the case of duplexes and two-unit dwelling groups, the area of all covered parking spaces required to be provided for the site shall be excluded from the calculation of floor area ratio; provided, however, such exclusion shall not exceed a total area of four hundred (400) square feet per unit.

2. Multiple-family development shall have the maximum floor area ratios:

a. Developments of three (3) to seven (7) units shall have a maximum floor area ratio of 1.0.

b. Developments of eight (8) to ten (10) units shall have a maximum floor area ratio of 1.25.

c. Developments of eleven (11) units or more shall have a maximum floor area ratio of 0.72; except that the area of all covered parking spaces required to be provided for the site shall be excluded from the calculation of floor area ratio; provided, however, such exclusion shall not exceed a total area of four hundred (400) square feet per unit.

G. Height of Structures.

1. Except as otherwise provided in paragraph 2 of this subsection G and in Section 17.32.060, the maximum height of any structure shall be thirty-six (36) feet.

2. For a distance of fifteen (15) feet from the front lot line, the height of any structure shall not exceed twenty (20) feet as measured from finish grade; provided, however, garages and carports may be constructed to a height of fifteen (15) feet above the elevation of the center of the adjacent street when permitted by Section 17.32.070 of this title. On a downslope lot, a garage or carport in compliance with this subsection may exceed a height of thirty-six (36) feet, but the height of any permitted living area underneath the garage or carport shall not exceed thirty-six (36) feet from finish grade.

H. Articulation Requirements. Unless exempted, outside walls that are greater in size than twenty (20) feet in width and twenty (20) feet in height shall have a cumulative area of articulation as follows:

1. Front outside wall: Thirty percent (30%) articulation.

2. Side outside walls:

a. Interior side outside wall: No articulation requirement.

b. Exterior side outside wall: Where the structure is located on a lot having an average width of forty (40) feet or greater, the articulation requirement for the exterior side outside wall shall be twenty percent (20%). No articulation shall be required for the exterior side outside wall of structures located on lots having an average width of less than forty (40) feet.

3. Rear outside wall: Thirty percent (30%) articulation.

4. Exemptions: Single story two (2) car garages and accessory structures not exceeding a floor area of one hundred twenty (120) square feet shall be exempted from all articulation requirements.

I. Landscaping Requirements.

1. Front Setback. A minimum of fifteen percent (15%) of the front setback area shall be landscaped where the lot has a front lot line of thirty (30) feet or greater.

2. Downslope Lots. The rear of any newly constructed main structure on a downslope lot shall be screened with trees and shrubs in accordance with a landscape plan approved by the planning director.

3. Sites with Three (3) or More Units. Not less than ten percent (10%) of the lot area shall be improved with landscaping where three (3) or more dwelling units are located on the same site.

4. Irrigated Landscapes. New and rehabilitated, irrigated landscapes are subject to the provisions of the water conservation in landscaping ordinance (refer to Chapter 15.70) or the latest state provisions, whichever is more effective in conserving water.

J. Nonconforming Residential Structures and Uses. Nonconforming residential structures and nonconforming residential uses, as defined in Section 17.02.560, may be repaired, restored, reconstructed, enlarged or expanded in accordance with the provisions of Chapters 17.38 and 17.34 of this title.

K. Refuse and Recycling Area Requirements.

1. So as to adequately protect neighboring uses from adverse impacts such as noise, odor, vectors, wind-blown litter or glare, areas for depositing, collecting and loading refuse and recyclable materials shall be provided and fully enclosed within an enclosure a minimum of six (6) feet tall. All receptacles for collection and recycling shall be completely screened from view at street level. All enclosures and gates shall be designed to withstand heavy use. Wheel stops or curbs shall be provided to prevent dumpsters from banging into walls of enclosure. The area shall be designed to prevent storm water run-on to the area and runoff from the area, and roofs shall be designed to drain away from neighboring properties. Lighting shall be provided at all enclosures for nighttime security and use. Lights shall be full cutoff luminaires, as certified by the manufacturer, with the light source directed downward and away from adjacent residences. A sign clearly identifying all recycling and solid waste collection and loading areas and the materials accepted therein shall be posted adjacent to all points of direct access to the area.

2. This requirement shall apply to all new residential buildings having five (5) or more living units, institutional buildings and city facilities (including buildings, structures, and outdoor recreation areas owned by the city) where solid waste is collected and loaded. This requirement shall also apply to such existing developments for which building permit applications are submitted within a twelve-month period collectively adding thirty percent (30%) or more to the existing floor area of the development project.

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SECTION 3: Section 17.14.060 - Development Regulations for the NCRO-2 District, of Chapter 17.14 - NCRO Neighborhood Commercial District NCRO-1 Brisbane Village NCRO-2 Downtown Brisbane, is amended to read as follows:

Development regulations for the NCRO-2 district are as follows:

A. Lot Area. The minimum area of any lot in the NCRO-2 district shall be two thousand five hundred (2,500) square feet; provided however, pursuant to State law, a housing development project of three (3) units, proposed on an existing legal lot of record, shall not be denied solely on the basis that the lot area of that lot does not meet the minimum lot area.

B. Lot Dimensions. The minimum dimensions of any newly established lot in the NCRO-2 district shall be as follows:

Width	Depth
25 feet	No requirement

C. Density of Residential Use. Dwelling unit density in a mixed use shall be established by the use permit.

D. Setbacks. The minimum required setbacks for any lot in the NCRO-2 district, except as provided in Section 17.32.070, shall be as follows:

1. Front setback: No requirement (0).

2. Side Setback: No requirement (0), except a ten (10) foot setback shall be required on the side setback where abutting any residential district.

3. Rear Setback: Ten (10) feet.

E. Lot Coverage. The maximum coverage by all structures on any lot in the NCRO-2 district shall be ninety percent (90%) except that, pursuant to State law, the maximum lot coverage maximum shall not preclude a housing development project of at least three (3) units but not more than ten (10) units that otherwise meets the requirements of this Chapter and Government Code Section 65913.11, as such requirements are determined by the building official; in such instance, no variance shall be required.

F. Height of Structures. The maximum height of any structure, except as provided in Section 17.32.060, shall be thirty-six (36) feet.

G. Fencing Requirements. If the site is next to a residential district, a wood fence of not less than eight (8) feet in height that adequately screens the site from the adjacent residential property shall be installed along the property line abutting the residential district. The planning director may approve deviations from the material and height requirements set forth in the preceding sentence, based upon a finding that the modified fence is more appropriate for the site and the adjacent residential property.

H. Storefronts. All uses at street level facing Visitacion and/or San Bruno Avenues shall be storefronts, as defined in Section 17.02.746 of this title, except for entrances to uses above or behind the storefronts. Such uses shall comply with the following additional requirements:

1. The minimum floor area for a storefront use is six hundred (600) square feet. The approving authority may approve a lesser floor area if the approving authority finds that such lesser area is as large as possible for the intended storefront use, given the size, configuration, and physical constraints of the structure and the site.

2. No off-street parking shall be located on any portion of the site between the curb line and the storefront.

3. New construction shall incorporate the necessary vents and chases into the building design so as to allow future changes in occupancy of the storefront area.

4. Single-family dwellings in which mixed uses are conducted shall have a storefront character as viewed from the street.

I. Passive Open Space. Usable passive open space shall be provided for residential uses of at least sixty (60) square feet per unit. Such passive open space may be provided as individual patios or decks, or as common patio or garden area, or any combination thereof. Notwithstanding that an attached or detached accessory dwelling unit greater than eight hundred (800) square feet is added to an existing residential use, there shall be no reduction in the amount of required usable passive open space for the other residential use. If an existing residential use has passive open space that does not conform to the sixty (60) square feet per unit requirement, the addition of an attached or detached accessory dwelling unit greater than eight hundred (800) square feet to that use shall not further reduce the amount of passive open space. The addition of an attached or detached accessory dwelling unit that is eight hundred (800) feet or less may result in a loss of the required usable passive open space for the other residential uses, including the loss of non-forming passive open space.

J. Recycling Area Requirements.

1. Adequate, accessible and convenient areas for depositing, collecting and loading recyclable materials in receptacles shall be provided. The area shall be located and fully enclosed so as to adequately protect neighboring uses from adverse impacts such as noise, odor, vectors, wind-blown litter or glare. The area shall be designed to prevent storm water run-on to the area and runoff from the area, and roofs shall be designed to drain away from neighboring properties. A

sign clearly identifying all recycling and solid waste collection and loading areas and the materials accepted therein shall be posted adjacent to all points of direct access to the area.

2. This requirement shall apply to all new commercial or institutional buildings, residential buildings having five (5) or more living units, and city facilities (including buildings, structures, and outdoor recreation areas owned by the city) where solid waste is collected and loaded. This requirement shall also apply to any existing development for which building permit applications are submitted within a twelve-month period collectively adding thirty percent (30%) or more to the existing floor area of the development project. For existing developments occupied by multiple tenants, this requirement shall apply to building permit applications submitted by any tenant within a twelve-month period collectively adding thirty percent (30%) or more to the existing floor area of that portion of the development which said tenant leases. Such recycling areas shall, at a minimum, be sufficient in capacity, number, and distribution to serve that portion of the development project which said tenant leases.

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SECTION 4: Section 17.16.040 - Development Regulations, of Chapter 17.16 - SCRO-1 Southwest Bayshore Commercial District, is amended to read as follows:

Development regulations in the Southwest Bayshore district are as follows:

A. Lot Area.

The minimum area of any lot shall be seven thousand five hundred (7,500) feet; provided however, pursuant to State law, a housing development project of three (3) units, proposed on an existing legal lot of record, shall not be denied solely on the basis that the lot area of that lot does not meet the minimum lot area.

B. Density of Development. The minimum lot area for each dwelling unit on a site shall be as follows:

1. Single-family dwellings: Seven thousand five hundred (7,500) square feet;

2. Duplex dwellings: Three thousand seven hundred fifty (3,750) square feet;

3. Multiple-family dwellings and dwelling groups: One thousand five hundred (1,500) square feet;

4. Mixed use or live/work development: Dwelling unit density shall be determined by the use permit.

5. Notwithstanding the minimum lot areas per dwelling unit in paragraphs 3 and 4 of this subsection B, pursuant to State law, a housing development project of three units on an existing legal lot of record shall not be denied solely on the basis that the lot area of that existing lot does not meet the minimum lot area per dwelling unit in paragraphs 3 and 4.

C. Lot Dimensions. The minimum dimensions of any lot shall be as follows:

Width	Depth
50 feet	No requirement

D. Setbacks. The minimum required setbacks for any lot, except as provided in Section 17.32.070, shall be as follows:

1. Front setback:

   a. Residential/Mixed Use: Ten (10) feet;

   b. Commercial Uses: Twenty-five (25) feet for commercial uses;

   c. Exception: The setbacks may be reduced to zero (0) where development includes dedication to public right-of-way for a frontage access road and sidewalk, to the satisfaction of the city engineer and fire department.

2. Side setback:

   a. Residential/Mixed Use: Five (5) feet;

   b. Commercial Uses: Fifteen (15) feet;

   c. Exception: The planning commission may approve exceptions to the side setback regulations for commercial uses through the granting of a use permit.

3. Rear setback: Ten (10) feet.

E. Lot Coverage. The maximum coverage by all structures on any lot shall be seventy percent (70%); provided, however, pursuant to State law, the maximum lot coverage shall not preclude a housing development project of at least three (3) units but not more than ten (10) units that otherwise meets the requirements of this Chapter and Government Code Section 65913.11, as such requirements are determined by the building official; in such instance, no variance shall be required.

F. Height of Structures. The maximum height of any structure, except as provided in Section 17.32.060, shall be thirty-six (36) feet.

G. Fencing Requirements. If the site is next to a residential district, a wood fence of not less than eight (8) feet in height that adequately screens the site from the adjacent residential district shall be installed along the property line abutting the residential district. The planning director may approve deviations from the material and height requirements set forth in the preceding sentence, based upon a finding that the modified fence is more appropriate for the site and the adjacent residential district.

H. Open Space. Usable open space shall be provided for residential uses of at least sixty (60) square feet per unit. Such open space shall not be less than five (5) feet in any dimension and may be provided as individual patios or decks, or as common patio or garden area, or any combination thereof.

Notwithstanding that an attached or detached accessory dwelling unit greater than eight hundred (800) square feet is added to an existing residential use, there shall be no reduction in the amount of required usable open space for the other residential use. If an existing residential use has open space that does not conform to the sixty (60) square feet per unit requirement, the addition of an attached or detached accessory dwelling unit greater than eight hundred (800) square feet to that use shall not further reduce the amount of open space. The addition of an attached or detached accessory dwelling unit that is eight hundred (800) feet or less may result in a loss of the required usable open space for the other residential uses, including the loss of non-conforming open space.

I. Landscaping Requirements.

1. Not less than ten percent (10%) of the lot area shall be improved with landscaping. The addition of an attached or detached accessory dwelling unit greater than eight hundred (800) square feet shall not result in a loss of the required landscape area. The addition of an attached or detached accessory dwelling unit that is eight hundred (800) square feet or less may result in a loss of the required landscape area.

2. Plant materials shall be drought resistant and non-invasive as required by the planning director.

3. Landscaping required under this section, including replacement landscaping, shall be installed according to detailed plans approved by the planning director. The landscape plans shall be consistent with the following objectives:

a. Use of plants that are not invasive;

b. Use of water conserving plants; and

c. Use of plants and other landscape features that are appropriate to the context.

4. Irrigated Landscapes. New and rehabilitated, irrigated landscapes are subject to the water conservation in landscaping ordinance (refer to Chapter 15.70) or the latest state provisions, whichever is more effective in conserving water.

J. Screening Requirements.

1. Outside storage of pallets or containers used for transportation and delivery of items related to the uses conducted on the site shall not be located in any required setback from a street and shall be screened from off-site view to the extent it is reasonable to do so.

2. The off-site visibility of exterior equipment such as heating and ventilation units, above-ground storage tanks, compactors and compressors, shall be mitigated through such measures as may be reasonable under the circumstances, including, but not limited to, the installation of screening, fencing, painting, or landscaping, or any combination of the foregoing.

3. The screening requirements set forth in subsections H.1. and H.2. of this section are not intended to be exclusive and the approving authority may require, as a condition of the use permit, such other and additional screening measures as it deems necessary or appropriate to mitigate any potential adverse visual and audible impacts created by the intended use.

K. Refuse and Recycling Area Requirements.

1. So as to adequately protect neighboring uses from adverse impacts such as noise, odor, vectors, wind-blown litter or glare, areas for depositing, collecting and loading refuse and recyclable materials shall be provided and fully enclosed within an enclosure a minimum of six (6) feet tall. All receptacles for collection and recycling shall be completely screened from view at street level. All enclosures and gates should be detailed to withstand heavy use. Wheel stops or curbs shall be provided to prevent dumpsters from banging into walls of enclosure. The area shall be designed to prevent storm water run-on to the area and runoff from the area, and roofs shall be designed to drain away from neighboring properties. Lighting shall be provided at enclosures for nighttime security and use. Lights shall be full cutoff luminaires, as certified by the manufacturer, with the light source directed downward and away from adjacent residences. A sign clearly identifying all recycling and solid waste collection and loading areas and the materials accepted therein shall be posted adjacent to all points of direct access to the area.

2. This requirement shall apply to all new commercial or institutional buildings, residential buildings having five (5) or more living units, and city facilities (including buildings, structures, and outdoor recreation areas owned by the city) where solid waste is collected and loaded. This requirement shall also apply to any existing development for which building permit applications are submitted within a twelve-month period collectively adding thirty percent (30%) or more to the existing floor area of the development project. For existing developments occupied by multiple tenants, this requirement shall apply to building permit applications submitted by any tenant within a twelve-month period collectively adding thirty percent (30%) or more to the existing floor area of that portion of the development which said tenant leases. Such recycling areas shall, at a minimum, be sufficient in capacity, number, and distribution to serve that portion of the development project which said tenant leases.

L. Emergency Shelters. Development standards for emergency shelters shall be the same as for residential development in the district, except density of development regulations, and emergency shelters that meet the following requirements are exempt from the requirement of a design permit and use permit:

1. No emergency shelter shall be allowed to be located within three hundred (300) feet of another emergency shelter.

2. The required setbacks for new development shall be:

a. Front setback: Ten (10) feet; except that the front setback may be reduced to zero (0) where development includes dedication to public right-of-way for a frontage access road and sidewalk, to the satisfaction of the city engineer and fire department.

b. Side setback: Five (5) feet; except that the planning commission may approve exceptions to the side setback regulations through the granting of a use permit.

c. Rear setback: Ten (10) feet.

3. A maximum of twelve (12) persons (twelve (12) beds) to be served nightly.

4. Each resident shall be provided personal living space.

5. Bathrooms and bathing facilities shall be provided, adequate for the number of residents.

6. Laundry facilities or services shall be provided on site, adequate for the number of residents.

7. The length of stay for individual clients shall not exceed six (6) months, or as allowed by state law.

8. Staff and services shall be provided to assist residents to obtain permanent shelter and income.

9. For security, the facility shall provide outdoor lighting of common areas, entries, parking areas, pathways, in compliance with Section 17.16.050.E.

10. For security, the shelter shall be adequately staffed twenty-four (24) hours a day, seven (7) days a week.

11. Parking shall be as specified in Chapter 17.34.

12. Outdoor activities, such as recreation, eating, and staging for drop-off, intake, and pick-up, may be conducted at the facility, between the hours of five (5:00) a.m. and ten (10:00) p.m. A night operations use permit is required for outdoor activities between the hours of ten (10:00) p.m. and five (5:00) a.m., as provided for in Section 17.16.070.

13. The facility may provide the following:

a. Kitchen facilities;

b. Dining area;

c. Recreation room;

d. Training and counseling support services;

e. Child care facilities;

f. Other facilities or services that are accessory to an emergency shelter.

14. Prior to commencing operation, the emergency shelter provider must have a written management plan, which shall be provided to the planning director. The management plan must include provisions for staff training, resident identification process, neighborhood outreach, policies regarding pets, the timing and placement of outdoor activities, provisions for residents' meals (including special dietary needs), medical care, mental health care, dental care, temporary storage of residents' personal belongings, safety and security, provisions in case of area-wide emergencies, screening of residents to ensure compatibility with services provided at the facility, plans to help secure other provisions for those who may not be part of the shelter's target population, computer access for residents, and training, counseling and social service programs for residents, as applicable.

M. Mobile Home Parks.

1. Mobile home parks in the SCRO-1 district shall be subject to the development and parking standards established in Chapter 17.11 of this title.

2. Conversion, closure, or cessation of a mobile home park in the SCRO-1 district shall be subject to the procedures established in Section 17.11.090 of this title.

*****

SECTION 5: Section 17.27.050 - Development Regulations for the POAZ-2 District, of Chapter 17.27 - POAZ Parkside Overlay District, is amended to read as follows:

Development regulations for the PAOZ-2 district are as follows:

A. Lot Area. There is no minimum lot area.

B. Density of Development. The minimum development density for any site shall be twenty-four (24) dwelling units per acre and the maximum development density shall be twenty-eight (28) dwelling units per acre.

C. Lot Dimensions. There are no minimum lot dimensions.

D. Setbacks. The minimum required setbacks for any building shall be as follows:

1. Front: Five (5) feet minimum, twenty (20) feet maximum.

Any architectural projection (including lobbies, porches, stoops, canopies, and other entry-related architectural features) may extend up to two (2) feet into the required front setback area.

2. Side: Five (5) feet minimum.

Upper floor second and third-story balconies may extend up to two (2) feet into the required side setback area.

3. Street Side: Ten (10) feet minimum and maximum.

4. Rear: Fifteen (15) feet minimum.

E. Lot Coverage. The maximum coverage by all structures on any lot shall be sixty percent (60%); provided, however, pursuant to State law, the maximum lot coverage shall not preclude a housing development project of at least three (3) units but not more than ten (10) units that otherwise meets the requirements of this Chapter and Government Code Section 65913.11, as such requirements are determined by the building official; in such instance, no variance shall be required.

F. Floor Area Ratio. There is no maximum floor area ratio.

G. Height.

1. Buildings and Architectural Features. The maximum building height shall be forty (40) feet and three (3) stories. Architectural features, including chimneys, elevators, towers, turrets, eaves, skylights or roof windows, utilities, utility penthouses, and solar panels, are allowed to project up to a maximum of ten (10) feet above the maximum building height.

2. Fences and Walls. Fences and walls in front yards shall be no more than three (3) feet in height from the adjacent sidewalk. Fences and walls in side yards shall not exceed six (6) feet in height. Deviations from the fence and wall heights shall require approval by the planning commission as set forth in Section 17.32.050.B.5. of this title.

H. Landscaping Requirements. Not less than twenty percent (20%) of the lot area shall be landscaped. New and rehabilitated, irrigated landscapes are subject to the provisions of the water conservation in landscaping ordinance (refer to Chapter 15.70) or the latest state provisions, whichever is more effective in conserving water. Landscaping shall conform to the development standards established in Section 3.5 of the Parkside Precise Plan. The addition of an attached or detached accessory dwelling unit greater than eight hundred (800) square feet shall not result in a loss of the required landscaping area. The addition of an attached or detached accessory dwelling unit that is eight hundred (800) square feet or less may result in a loss of the required landscape area.

I. Open Area Requirements. At least one hundred (100) square feet of open area per dwelling unit shall be provided. The open area may be met through a combination of common or private open areas provided on-site. Open areas shall be usable and shall support residents' passive and/or active use. The computation of open areas may include amenities and structures designed to enhance usability, such as swimming pools, rooftop gardens or decks, fountains, planters, benches, and usable landscaping. The addition of an attached or detached accessory dwelling unit greater than eight hundred (800) square feet shall not result in a loss of the required open areas. The addition of an attached or detached accessory dwelling unit that is eight hundred (800) square feet or less may result in a loss of the required open area.

J. Building Design. All buildings shall substantially comply with the building design standards established in Section 3.3 of the Parkside Precise Plan. Projects that do not comply with those building design standards shall be subject to design review as set forth in Section 17.27.060B., in addition to any other discretionary review required by the specific deviations.

K. Site Design. All projects shall substantially comply with the site design standards established in Section 3.4 of the Parkside Precise Plan. Projects that do not comply with those site design standards shall be subject to design review as set forth in Section 17.27.060.B., in addition to any other discretionary review required by the specific deviations.

L. Parking. Required on-site parking and additional guest parking shall be as established in Section 17.34.020 of this title for multiple-family developments and accessory dwelling units.

1. Design Requirements. Off-street parking facilities shall comply with the design standards as set forth in Table 1, which appears immediately following this section.

2. Short-term and long-term parking for bicycles in the PAOZ-2 district shall be provided as follows: Long-Term: 1/10 units; Short-Term: 1/20 units. Bicycle parking design shall conform to the standards established in Section 3.4 of the Parkside Precise Plan.

M. Recycling Area Requirements.

1. Adequate, accessible and convenient areas for depositing, collecting and loading recyclable materials in receptacles shall be provided. The area shall be located and fully enclosed so as to adequately protect neighboring uses from adverse impacts such as noise, odor, vectors, wind-blown litter or glare. The area shall be designed to prevent storm water run-on to the area and runoff from the area, and roofs shall be designed to drain away from neighboring properties. A sign clearly identifying all recycling and solid waste collection and loading areas and the materials accepted therein shall be posted adjacent to all points of direct access to the area.

2. These requirements shall apply to all new residential buildings having five (5) or more living units, institutional buildings and city facilities (including buildings, structures, and outdoor recreation areas owned by the city) where solid waste is collected and loaded. These requirements shall also apply to existing development project for which building permit applications are submitted within a twelve-month period that collectively add thirty percent (30%) or more to the existing floor area of the development project.

*****

SECTION 6: Section 17.32.055 - Exceptions—Lot area, lot dimensions and lot lines, of Chapter 17.32 - General Use Regulations, is amended to read as follows:

A. Limitations on Substandard Lots.

1. R-1, R-2 and R-3 Districts:

   a. A substandard lot of record, less than five thousand (5,000) square feet in area, shall be considered conforming for a single-family dwelling, if the lot was not owned in common with contiguous property in the same district on October 27, 1969.

   b. A property in the R-1 Residential District consisting of four (4) contiguous lots of record totaling at least nine thousand six hundred fifty (9,650) square feet that were owned in common on October 27, 1969, may be developed as two (2) sites, each consisting of one pair of contiguous lots.

   c. Contiguous substandard lots owned in common may be subject to merger in compliance with this section and Chapter 16.12.

2. Districts where multifamily or mixed-use development is permitted: A legal lot of record that does not meet the District minimum lot size may be developed as a housing development project as provided in the applicable District regulations and Government Code Section 65913.11.

3. All Districts:

   a. In any District, a substandard lot may be developed under the exceptions provided in the applicable District regulations.

b. Any substandard lot created through a parcel map, resubdivision or lot line adjustment approved by the city after October 27, 1969, shall be recognized as a standard lot.

B. Urban Lot Split. A lot may be created and developed in the R-1 and R-BA districts that does not conform to the District lot area and dimension requirements, subject to the requirements of the Two-unit Development Residential Overlay District, as set forth in Chapter 17.05.

C. Modification in Conjunction with Application for Tentative Map. The planning commission may approve an application for a modification to the lot dimension regulations set forth in Title 17, Zoning, for real property located in any subdivision proposed in compliance with Title 16, Subdivisions, subject to the following findings:

1. The property is of such size or shape, or is subject to such title limitations of record, or is affected by such topographical location or conditions, or is to be devoted to such use that it is impossible, impractical or undesirable in a particular case for the subdivider to fully conform to the regulations;

2. Each lot or parcel subject to the modification will be capable of being developed in accordance with the other applicable provisions of the zoning ordinance; and

3. The modification conforms with the spirit and purpose of this title.

C. Lot Line Adjustment. In compliance with the procedures set forth in Chapter 16.32 of Title 16, Subdivisions, the planning director may approve a lot line adjustment that will not increase the degree of noncompliance or otherwise increase the discrepancy between existing conditions and the requirements of the Zoning Ordinance, even though the resulting parcels may not fully comply with the development regulations of the applicable zoning district.

D. Elimination of Interior Lot Lines. A property owner may eliminate an interior lot line between record lots in common ownership through recordation of a declaration of merger signed by the property owner and acknowledged by the community development director.

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SECTION 7: Section 17.32.060 - Exceptions – Height Limit, of Chapter 17.32 - General Use Regulations, is amended to read as follows:

(Subsections A, B and C, no change.)

D. Exceptions to the height limit to accommodate accessibility improvements (such as elevators) may be permitted pursuant to Section 17.32.080 of this Chapter.

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SECTION 8: Section 17.32.070 - Exceptions – Setback requirements, of Chapter 17.32 - General Use Regulations, is amended to read as follows:

(Subsections A.1.a, A.1.b, A.1.c, A.1.d and A.1.e, no change.)

A.1.f. Accessibility Improvements (such as ramps). Exceptions to the setbacks to accommodate accessibility Improvements may be permitted pursuant to Section 17.32.080 of this Chapter.

(Subsections A.2, A.3 and A.4, no change.)

(Subsections B and C, no change.)

*****

SECTION 9: Section 17.32.080 - Requests for reasonable accommodations, of Chapter 17.32 - General Use Regulations, is amended to read as follows:

A. Existing Development: Modifications or exceptions to the regulations set forth in Title 17 that are not otherwise addressed may be granted as reasonable accommodations for residential and non-residential improvements to existing development, when designed for, intended for occupancy by, or with supportive services for, persons with disabilities. Such requests shall be granted by the planning director through a building permit, if the building permit application demonstrated that:

   1. The exception is necessary for current or future accessibility to the property or building by persons with disabilities and such accessibility cannot be addressed within either the applicable zoning district height limits or setbacks, or through other exceptions provided in this Title.

   2. The accessibility improvement(s) will be constructed in compliance with all applicable provisions of the state and local building and fire codes concerning accessibility for persons with disabilities.

   3. The development was completed, including a final inspection, three or more years prior to the application for reasonable accommodation. Otherwise, the application for reasonable accommodation shall be considered as being for new development.

B. New Development: Modifications or exceptions to the regulations set forth in Title 17 that are not otherwise addressed may be granted as reasonable accommodations for residential and non-residential development, when designed for, intended for occupancy by, or with supportive services for, persons with disabilities. Such requests may be granted by the zoning administrator through application for an accessibility improvement permit, following the conduct of a hearing with ten (10) days' notice thereof being given to property owners and occupants on both sides of, to the rear of and directly across the street from the site. The zoning administrator may issue the accessibility improvement permit if he or she finds and determines that:

1. The exception is necessary for current or future accessibility to the property or building by persons with disabilities and such accessibility cannot be addressed within either the applicable zoning district height limits or setbacks, or through other exceptions provided in this Title.

2. The accessibility improvement(s) will be constructed in compliance with all applicable provisions of the state and local building and fire codes concerning accessibility for persons with disabilities.

*****

SECTION 10: 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 11: This Ordinance shall be in full force and effect thirty days after its passage and adoption.

____
Cliff Lentz, Mayor

* * *

The above and foregoing Ordinance was adopted at a regular meeting of the City Council of the City of Brisbane held on the _________ day of ________________, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

____

Mayor

ATTEST:

____
City Clerk

APPROVED AS TO FORM:

____
City Attorney

Attachment 2

Redlined Draft Ordinance
as compared to that provided to City Council on 4/3/24
(Zoning Text Amendment 2024-RZ-2)

DRAFT ORDINANCE NO.___
AN ORDINANCE OF THE CITY OF BRISBANE
AMENDING BRISBANE MUNICIPAL CODE TITLE 17 – TO AMEND THE DEVELOPMENT STANDARDS FOR MULTIFAMILY AND MIXED USE ZONING DISTRICTS AND TO AMEND THE EXCEPTIONS TO LOT STANDARDS, CONSISTENT WITH CALIFORNIA SENATE BILL SB 478 ("HOUSING OPPORTUNITY ACT"), AND THE 2023-2031 HOUSING ELEMENT; AND TO AMEND THE REASONABLE ACCOMMODATION EXCEPTIONS CONSISTENT WITH THE HOUSING ELEMENT.

SECTION 1: Section 17.08.040. - Development Regulations, of Chapter 17.08 - R-2 Residential District, is amended to read as follows:

17.08.040 - Development regulations.

The following development regulations shall apply to any lot in the R-2 district:

A. Lot Area.

1. The minimum area of any lot shall be five thousand (5,000) square feet, except as otherwise provided in subsection B. of this Section 17.08.040.

2. A single-family dwelling may be constructed on a lot of record with an area of less than five thousand (5,000) square feet, subject to the provisions of this chapter and the limitations set forth in Section 17.32.100.

3. Notwithstanding the minimum lot area in paragraph 1 of this subsection A, pursuant to State law, a housing development project of three (3) units, proposed on an existing legal lot of record, shall not be denied solely on the basis that the lot area of that lot does not meet the minimum lot area in paragraph 1.

B. Density of Development. The minimum lot area for each dwelling unit on the site shall be two thousand five hundred (2,500) square feet; provided, however, a lot having an area of four thousand nine hundred fifty (4,950) square feet or greater shall be considered conforming for a development density of two (2) units, and further provided that pursuant to State law, a housing development project of three (3) units proposed on an existing legal lot of record shall not be denied solely on the basis that the lot area of that lot does not meet the minimum lot area for each dwelling unit.

C. Lot Dimensions. The minimum dimensions for any new lot shall be as follows:

Width	Depth
50 feet	100 feet

D. Setbacks. The minimum required setbacks for any lot, except as provided in Section 17.32.070, shall be as follows:

1. Front setback: Fifteen (15) feet, with the following exceptions:

a. Where the lot has a slope of fifteen percent (15%) or greater, the minimum front setback may be reduced to ten (10) feet.

b. Where fifty percent (50%) or more of the lots of record in a block have been improved with single-family dwellings, the minimum front setback may be the average distance of the front outside wall of the single-family structures from the front lot line, if less than fifteen (15) feet. Notwithstanding the foregoing, the minimum front setback for garages or carports shall be ten (10) feet, except where a lesser distance is determined by the city engineer to be safe in terms of pedestrian and vehicular traffic.

2. Side setback: Five (5) feet, with the exception that a lot having a width of less than fifty (50) feet may have a side setback reduced to ten percent (10%) of the lot width, but in no event less than three (3) feet or the minimum setback required by the Uniform Building Code, whichever is greater. Notwithstanding the foregoing, the minimum side setback for garages, or carports accessed from a street or alley along that side of the lot shall be ten (10) feet, except where a lesser distance is determined by the city engineer to be safe in terms of pedestrian and vehicular traffic.

3. Rear setback: Ten (10) feet.

E. Lot Coverage. The maximum coverage by all structures on any lot shall be fifty percent (50%); except that, pursuant to State law, the maximum lot coverage shall not preclude a housing development project of at least three (3) units but not more than ten (10) units, if exceeding the maximum coverage is required to allow for development up to the floor area ratio maximum, as that ratio is determined by the building official; in such instance, no variance shall be required in order for the lot to exceed the maximum coverage.

F. Floor Area Ratio. The maximum floor area ratio for all buildings on a lot shall be as follows:

1. Single family dwellings, duplexes and two-unit dwelling groups shall have a maximum floor area ratio of 0.72, with the following exceptions:

a. In the case of single-family dwellings, where the size of the lot is three thousand seven hundred (3,700) square feet or less, one covered parking space designed to accommodate a full-size automobile shall be excluded from the calculation of floor area ratio; provided, however, such exclusion shall not exceed a total area of two hundred (200) square feet.

b. In the case of duplexes and two-unit dwelling groups, the area of all covered parking spaces required to be provided for the site shall be excluded from the calculation of floor area ratio; provided, however, such exclusion shall not exceed a total area of four hundred (400) square feet per unit.

2. Multiple-family development shall have the following maximum floor area ratios:

a. Developments of three (3) ~~or more~~to seven (7) units shall have a maximum floor area ratio of 1.0. ~~1.25.~~

b. Developments of eight (8) to ten (10) units shall have a maximum floor area ratio of 1.25.

c. Developments of eleven (11) units or more shall have a maximum floor area ratio of 0.72; except that the area of all covered parking spaces required to be provided for the site shall be excluded from the calculation of floor area ratio; provided, however, such exclusion shall not exceed a total area of four hundred (400) square feet per unit.

Commented [JK1]: For 3 to 7 and 8 to 10, these FARs represent the minimum for compliance with SB 478. No FAR exceptions for garage space is included.

Commented [JK2]: For 11 units or more, there is no change from the current BMC.

G. Height of Structures.

1. Except as otherwise provided in paragraph 2 of this subsection G. and in Section 17.32.060, the maximum height of any structure shall be thirty-six (36) feet.

2. For a distance of fifteen (15) feet from the front lot line, the height of any structure shall not exceed twenty (20) feet as measured from finish grade; provided, however, garages and carports may be constructed to a height of fifteen (15) feet above the elevation of the center of the adjacent street when permitted by Section 17.32.070 of this title. On a downslope lot, a garage or carport in compliance with this subsection may exceed a height of thirty-six (36) feet, and the height of any permitted living area underneath the garage or carport shall not exceed thirty-six (36) feet from finish grade.

H. Articulation Requirements. Unless exempted, outside walls that are greater in size than twenty (20) feet in width and twenty (20) feet in height shall have a cumulative area of articulation as follows:

1. Front outside wall: Thirty percent (30%) articulation.

2. Side outside walls:

a. Interior side outside wall: No articulation requirement.

b. Exterior side outside wall: Where the structure is located on a lot having an average width of forty (40) feet or greater, the articulation requirement for the exterior side outside wall shall be twenty percent (20%). No articulation shall be required for the exterior side outside wall of structures located on lots having an average width of less than forty (40) feet.

3. Rear outside wall: Thirty percent (30%) articulation.

4. Exemptions: Single story two (2) car garages and accessory structures not exceeding a floor area of one hundred twenty (120) square feet shall be exempted from all articulation requirements.

I. Landscaping Requirements.

1. Front Setback. A minimum of fifteen percent (15%) of the front setback area shall be landscaped where the lot has a front lot line of thirty (30) feet or greater.

2. Downslope Lots. The rear of any newly constructed main structure on a downslope lot shall be screened with trees and shrubs in accordance with a landscape plan approved by the planning director.

3. Irrigated Landscapes. New and rehabilitated, irrigated landscapes are subject to the provisions of the water conservation in landscaping ordinance (refer to Chapter 15.70) or the latest state provisions, whichever is more effective in conserving water.

J. Nonconforming Residential Structures and Uses. Nonconforming residential structures and nonconforming residential uses, as defined in Section 17.02.560, may be repaired, restored, reconstructed, enlarged or expanded in accordance with the provisions of Chapters 17.38 and 17.34 of this title.

K. Recycling Area Requirements:

1. Adequate, accessible and convenient areas for depositing, collecting and loading recyclable materials in receptacles shall be provided. The area shall be located and fully enclosed so as to adequately protect neighboring uses from adverse impacts such as noise, odor, vectors, wind-blown litter or glare. The area shall be designed to prevent storm water run-on to the area and runoff from the area, and roofs shall be designed to drain away from neighboring properties. A sign clearly identifying all recycling and solid waste collection and loading areas and the materials accepted therein shall be posted adjacent to all points of direct access to the area.

2. This requirement shall apply to all new residential buildings having five (5) or more living units, institutional buildings and city facilities (including buildings, structures, and outdoor recreation areas owned by the city) where solid waste is collected and loaded. This requirement shall also apply to such existing developments for which building permit applications are submitted within a twelve-month period collectively adding thirty percent (30%) or more to the existing floor area of the development project.

*****

SECTION 2: Section 17.10.040 - Development Regulations, of Chapter 17.10 - R-3 Residential District, is amended to read as follows:

The following development regulations shall apply to any lot in the R-3 district:

A. Lot Area.

1. The minimum area of any lot shall be five thousand (5,000) square feet, except as otherwise provided in subsection B of this section.

2. A single-family dwelling may be constructed on a lot of record with an area of less than five thousand (5,000) square feet, subject to the provisions of this chapter and the limitations set forth in Section 17.32.100.

3. Notwithstanding the minimum lot area in paragraph 1 of this subsection A, pursuant to State law, a housing development project of three (3) units, proposed on an existing legal lot of

record, shall not be denied solely on the basis that the lot area of that lot does not meet the minimum lot area in paragraph 1.

B. Density of Development. The minimum lot area for each dwelling unit on the site shall be one thousand five hundred (1,500) square feet; provided, however, a lot having an area of four thousand nine hundred fifty (4,950) square feet or greater shall be considered conforming for a development density of three (3) units, and further provided that pursuant to State law, a housing development project of three (3) units proposed on an existing legal lot of record shall not be denied solely on the basis that the lot area of that existing lot does not meet the minimum lot area for each dwelling unit.

C. Lot Dimensions. The minimum dimensions for any new lot shall be as follows:

Width	Depth
50 feet	100 feet

D. Setbacks. The minimum required setbacks for any lot, except as provided in Section 17.32.070, shall be as follows:

1. Front setback: Fifteen (15) feet, with the following exceptions:

a. Where the lot has a slope of fifteen percent (15%) or greater, the minimum front setback may be reduced to ten (10) feet.

b. Where fifty percent (50%) or more of the lots of record in a block have been improved with single-family dwellings, the minimum front setback may be the average distance of the front outside wall of the single-family structures from the front lot line, if less than fifteen (15) feet. Notwithstanding the foregoing, the minimum front setback for garages or carports shall be ten (10) feet, except where a lesser distance is determined by the city engineer to be safe in terms of pedestrian and vehicular traffic.

2. Side setback: Five (5) feet, with the exception that a lot having a width of less than fifty (50) feet may have a side setback reduced to ten percent (10%) of the lot width, but in no event less than three (3) feet or the minimum setback required by the Uniform Building Code, whichever is greater. Notwithstanding the foregoing, the minimum side setback for garages, or carports accessed from a street or alley along that side of the lot shall be ten (10) feet, except where a lesser distance is determined by the city engineer to be safe in terms of pedestrian and vehicular traffic.

3. Rear setback: Ten (10) feet.

4. Garage setback: Eighteen (18) feet, with the following exceptions:

a. If paragraph 1.a or 1.b of this subsection D applies, then the garage shall be setback three (3) feet behind the front wall of the main structure.

b. If the garage setback exemptions set forth in Section 17.32.070.A.3.a of this Title apply, the regulations of that section shall prevail.

E. Lot Coverage. The maximum coverage by all structures on any lot shall be sixty percent (60%); except that, pursuant to State law, the maximum lot coverage shall not preclude a housing development project of at least three (3) units but not more than ten (10) units, if exceeding the maximum coverage is required to allow for development up to the maximum floor area ratio, as that ratio is determined by the building official; in such instance, no variance shall be required.

F. Floor Area Ratio. The maximum floor area ratio for all buildings on a lot shall be as follows:

1. Single family dwellings, duplexes and two-unit dwelling groups shall have a maximum floor area ratio of 0.72, with the following exceptions:

a. In the case of single-family dwellings, where the size of the lot is three thousand seven hundred (3,700) square feet or less, one covered parking space designed to accommodate a full-size automobile shall be excluded from the calculation of floor area ratio; provided, however, such exclusion shall not exceed a total area of two hundred (200) square feet.

b. In the case of duplexes and two-unit dwelling groups, the area of all covered parking spaces required to be provided for the site shall be excluded from the calculation of floor area ratio; provided, however, such exclusion shall not exceed a total area of four hundred (400) square feet per unit.

2. Multiple-family development shall have the maximum floor area ratios:

a. Developments of three (3) ~~or more~~to seven (7) units shall have a maximum floor area ratio of 1.0.~~1.25.~~

b. - Developments of eight (8) to ten (10) units shall have a maximum floor area ratio of 1.25.

~~a.~~c. Developments of eleven (11) units or more shall have a maximum floor area ratio of 0.72; except that the area of all covered parking spaces required to be provided for the site shall be excluded from the calculation of floor area ratio; provided, however, such exclusion shall not exceed a total area of four hundred (400) square feet per unit.

G. Height of Structures.

1. Except as otherwise provided in paragraph 2 of this subsection G and in Section 17.32.060, the maximum height of any structure shall be thirty-six (36) feet.

2. For a distance of fifteen (15) feet from the front lot line, the height of any structure shall not exceed twenty (20) feet as measured from finish grade; provided, however, garages and carports may be constructed to a height of fifteen (15) feet above the elevation of the center of the adjacent street when permitted by Section 17.32.070 of this title. On a downslope lot, a garage or carport in compliance with this subsection may exceed a height of thirty-six (36) feet, but the height of any permitted living area underneath the garage or carport shall not exceed thirty-six (36) feet from finish grade.

H. Articulation Requirements. Unless exempted, outside walls that are greater in size than twenty (20) feet in width and twenty (20) feet in height shall have a cumulative area of articulation as follows:

1. Front outside wall: Thirty percent (30%) articulation.

2. Side outside walls:

a. Interior side outside wall: No articulation requirement.

b. Exterior side outside wall: Where the structure is located on a lot having an average width of forty (40) feet or greater, the articulation requirement for the exterior side outside wall shall be twenty percent (20%). No articulation shall be required for the exterior side outside wall of structures located on lots having an average width of less than forty (40) feet.

3. Rear outside wall: Thirty percent (30%) articulation.

4. Exemptions: Single story two (2) car garages and accessory structures not exceeding a floor area of one hundred twenty (120) square feet shall be exempted from all articulation requirements.

I. Landscaping Requirements.

1. Front Setback. A minimum of fifteen percent (15%) of the front setback area shall be landscaped where the lot has a front lot line of thirty (30) feet or greater.

2. Downslope Lots. The rear of any newly constructed main structure on a downslope lot shall be screened with trees and shrubs in accordance with a landscape plan approved by the planning director.

3. Sites with Three (3) or More Units. Not less than ten percent (10%) of the lot area shall be improved with landscaping where three (3) or more dwelling units are located on the same site.

4. Irrigated Landscapes. New and rehabilitated, irrigated landscapes are subject to the provisions of the water conservation in landscaping ordinance (refer to Chapter 15.70) or the latest state provisions, whichever is more effective in conserving water.

J. Nonconforming Residential Structures and Uses. Nonconforming residential structures and nonconforming residential uses, as defined in Section 17.02.560, may be repaired, restored, reconstructed, enlarged or expanded in accordance with the provisions of Chapters 17.38 and 17.34 of this title.

K. Refuse and Recycling Area Requirements.

1. So as to adequately protect neighboring uses from adverse impacts such as noise, odor, vectors, wind-blown litter or glare, areas for depositing, collecting and loading refuse and recyclable materials shall be provided and fully enclosed within an enclosure a minimum of six (6) feet tall. All receptacles for collection and recycling shall be completely screened from view at street level. All enclosures and gates shall be designed to withstand heavy use. Wheel stops or curbs shall be provided to prevent dumpsters from banging into walls of enclosure. The area shall be designed to prevent storm water run-on to the area and runoff from the area, and roofs shall be designed to drain away from neighboring properties. Lighting shall be provided at all

enclosures for nighttime security and use. Lights shall be full cutoff luminaires, as certified by the manufacturer, with the light source directed downward and away from adjacent residences. A sign clearly identifying all recycling and solid waste collection and loading areas and the materials accepted therein shall be posted adjacent to all points of direct access to the area.

2. This requirement shall apply to all new residential buildings having five (5) or more living units, institutional buildings and city facilities (including buildings, structures, and outdoor recreation areas owned by the city) where solid waste is collected and loaded. This requirement shall also apply to such existing developments for which building permit applications are submitted within a twelve-month period collectively adding thirty percent (30%) or more to the existing floor area of the development project.

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SECTION 3: Section 17.14.060 - Development Regulations for the NCRO-2 District, of Chapter 17.14 - NCRO Neighborhood Commercial District NCRO-1 Brisbane Village NCRO-2 Downtown Brisbane, is amended to read as follows:

Development regulations for the NCRO-2 district are as follows:

A. Lot Area. The minimum area of any lot in the NCRO-2 district shall be two thousand five hundred (2,500) square feet; provided however, pursuant to State law, a housing development project of three (3) units, proposed on an existing legal lot of record, shall not be denied solely on the basis that the lot area of that lot does not meet the minimum lot area.

B. Lot Dimensions. The minimum dimensions of any newly established lot in the NCRO-2 district shall be as follows:

Width	Depth
25 feet	No requirement

C. Density of Residential Use. Dwelling unit density in a mixed use shall be established by the use permit.

D. Setbacks. The minimum required setbacks for any lot in the NCRO-2 district, except as provided in Section 17.32.070, shall be as follows:

1. Front setback: No requirement (0).

2. Side Setback: No requirement (0), except a ten (10) foot setback shall be required on the side setback where abutting any residential district.

3. Rear Setback: Ten (10) feet.

E. Lot Coverage. The maximum coverage by all structures on any lot in the NCRO-2 district shall be ninety percent (90%) except that, pursuant to State law, the maximum lot coverage maximum shall not preclude a housing development project of at least three (3) units but not more than ten (10) units that otherwise meets the requirements of this Chapter and Government Code Section 65913.11, as such requirements are determined by the building official; in such instance, no variance shall be required.

F. Height of Structures. The maximum height of any structure, except as provided in Section 17.32.060, shall be thirty-six (36) feet.

G. Fencing Requirements. If the site is next to a residential district, a wood fence of not less than eight (8) feet in height that adequately screens the site from the adjacent residential property shall be installed along the property line abutting the residential district. The planning director may approve deviations from the material and height requirements set forth in the preceding sentence, based upon a finding that the modified fence is more appropriate for the site and the adjacent residential property.

H. Storefronts. All uses at street level facing Visitacion and/or San Bruno Avenues shall be storefronts, as defined in Section 17.02.746 of this title, except for entrances to uses above or behind the storefronts. Such uses shall comply with the following additional requirements:

1. The minimum floor area for a storefront use is six hundred (600) square feet. The approving authority may approve a lesser floor area if the approving authority finds that such lesser area is as large as possible for the intended storefront use, given the size, configuration, and physical constraints of the structure and the site.

2. No off-street parking shall be located on any portion of the site between the curb line and the storefront.

3. New construction shall incorporate the necessary vents and chases into the building design so as to allow future changes in occupancy of the storefront area.

4. Single-family dwellings in which mixed uses are conducted shall have a storefront character as viewed from the street.

I. Passive Open Space. Usable passive open space shall be provided for residential uses of at least sixty (60) square feet per unit. Such passive open space may be provided as individual patios or decks, or as common patio or garden area, or any combination thereof. Notwithstanding that an attached or detached accessory dwelling unit greater than eight hundred (800) square feet is added to an existing residential use, there shall be no reduction in the amount of required usable passive open space for the other residential use. If an existing residential use has passive open space that does not conform to the sixty (60) square feet per unit requirement, the addition of an attached or detached accessory dwelling unit greater than eight hundred (800) square feet to that use shall not further reduce the amount of passive open space. The addition of an attached or detached accessory dwelling unit that is eight hundred (800) feet or less may result in a loss of the required usable passive open space for the other residential uses, including the loss of non-forming passive open space.

J. Recycling Area Requirements.

1. Adequate, accessible and convenient areas for depositing, collecting and loading recyclable materials in receptacles shall be provided. The area shall be located and fully enclosed so as to adequately protect neighboring uses from adverse impacts such as noise, odor, vectors, wind-blown litter or glare. The area shall be designed to prevent storm water run-on to the area and runoff from the area, and roofs shall be designed to drain away from neighboring properties. A sign clearly identifying all recycling and solid waste collection and loading areas and the materials accepted therein shall be posted adjacent to all points of direct access to the area.

2. This requirement shall apply to all new commercial or institutional buildings, residential buildings having five (5) or more living units, and city facilities (including buildings, structures, and outdoor recreation areas owned by the city) where solid waste is collected and loaded. This requirement shall also apply to any existing development for which building permit applications are submitted within a twelve-month period collectively adding thirty percent (30%) or more to the existing floor area of the development project. For existing developments occupied by multiple tenants, this requirement shall apply to building permit applications submitted by any tenant within a twelve-month period collectively adding thirty percent (30%) or more to the existing floor area of that portion of the development which said tenant leases. Such recycling areas shall, at a minimum, be sufficient in capacity, number, and distribution to serve that portion of the development project which said tenant leases.

*****

SECTION 4: Section 17.16.040 - Development Regulations, of Chapter 17.16 - SCRO-1 Southwest Bayshore Commercial District, is amended to read as follows:

Development regulations in the Southwest Bayshore district are as follows:

A. Lot Area.

The minimum area of any lot shall be seven thousand five hundred (7,500) feet; provided however, pursuant to State law, a housing development project of three (3) units, proposed on an existing legal lot of record, shall not be denied solely on the basis that the lot area of that lot does not meet the minimum lot area.

B. Density of Development. The minimum lot area for each dwelling unit on a site shall be as follows:

1. Single-family dwellings: Seven thousand five hundred (7,500) square feet;

2. Duplex dwellings: Three thousand seven hundred fifty (3,750) square feet;

3. Multiple-family dwellings and dwelling groups: One thousand five hundred (1,500) square feet;

4. Mixed use or live/work development: Dwelling unit density shall be determined by the use permit.

5. Notwithstanding the minimum lot areas per dwelling unit in paragraphs 3 and 4 of this subsection B, pursuant to State law, a housing development project of three units on an existing

legal lot of record shall not be denied solely on the basis that the lot area of that existing lot does not meet the minimum lot area per dwelling unit in paragraphs 3 and 4.

C. Lot Dimensions. The minimum dimensions of any lot shall be as follows:

Width	Depth
50 feet	No requirement

D. Setbacks. The minimum required setbacks for any lot, except as provided in Section 17.32.070, shall be as follows:

1. Front setback:

   a. Residential/Mixed Use: Ten (10) feet;

   b. Commercial Uses: Twenty-five (25) feet for commercial uses;

   c. Exception: The setbacks may be reduced to zero (0) where development includes dedication to public right-of-way for a frontage access road and sidewalk, to the satisfaction of the city engineer and fire department.

2. Side setback:

   a. Residential/Mixed Use: Five (5) feet;

   b. Commercial Uses: Fifteen (15) feet;

   c. Exception: The planning commission may approve exceptions to the side setback regulations for commercial uses through the granting of a use permit.

3. Rear setback: Ten (10) feet.

E. Lot Coverage. The maximum coverage by all structures on any lot shall be seventy percent (70%); provided, however, pursuant to State law, the maximum lot coverage shall not preclude a housing development project of at least three (3) units but not more than ten (10) units that otherwise meets the requirements of this Chapter and Government Code Section 65913.11, as such requirements are determined by the building official; in such instance, no variance shall be required.

F. Height of Structures. The maximum height of any structure, except as provided in Section 17.32.060, shall be thirty-six (36) feet.

G. Fencing Requirements. If the site is next to a residential district, a wood fence of not less than eight (8) feet in height that adequately screens the site from the adjacent residential district shall be installed along the property line abutting the residential district. The planning director may approve deviations from the material and height requirements set forth in the preceding sentence, based upon a finding that the modified fence is more appropriate for the site and the adjacent residential district.

H. Open Space. Usable open space shall be provided for residential uses of at least sixty (60) square feet per unit. Such open space shall not be less than five (5) feet in any dimension and may be provided as individual patios or decks, or as common patio or garden area, or any combination thereof.

Notwithstanding that an attached or detached accessory dwelling unit greater than eight hundred (800) square feet is added to an existing residential use, there shall be no reduction in the amount of required usable open space for the other residential use. If an existing residential use has open space that does not conform to the sixty (60) square feet per unit requirement, the addition of an attached or detached accessory dwelling unit greater than eight hundred (800) square feet to that use shall not further reduce the amount of open space. The addition of an attached or detached accessory dwelling unit that is eight hundred (800) feet or less may result in a loss of the required usable open space for the other residential uses, including the loss of non-conforming open space.

I. Landscaping Requirements.

1. Not less than ten percent (10%) of the lot area shall be improved with landscaping. The addition of an attached or detached accessory dwelling unit greater than eight hundred (800) square feet shall not result in a loss of the required landscape area. The addition of an attached or detached accessory dwelling unit that is eight hundred (800) square feet or less may result in a loss of the required landscape area.

2. Plant materials shall be drought resistant and non-invasive as required by the planning director.

3. Landscaping required under this section, including replacement landscaping, shall be installed according to detailed plans approved by the planning director. The landscape plans shall be consistent with the following objectives:

a. Use of plants that are not invasive;

b. Use of water conserving plants; and

c. Use of plants and other landscape features that are appropriate to the context.

4. Irrigated Landscapes. New and rehabilitated, irrigated landscapes are subject to the water conservation in landscaping ordinance (refer to Chapter 15.70) or the latest state provisions, whichever is more effective in conserving water.

J. Screening Requirements.

1. Outside storage of pallets or containers used for transportation and delivery of items related to the uses conducted on the site shall not be located in any required setback from a street and shall be screened from off-site view to the extent it is reasonable to do so.

2. The off-site visibility of exterior equipment such as heating and ventilation units, above-ground storage tanks, compactors and compressors, shall be mitigated through such measures as may be reasonable under the circumstances, including, but not limited to, the installation of screening, fencing, painting, or landscaping, or any combination of the foregoing.

3. The screening requirements set forth in subsections H.1. and H.2. of this section are not intended to be exclusive and the approving authority may require, as a condition of the use permit, such other and additional screening measures as it deems necessary or appropriate to mitigate any potential adverse visual and audible impacts created by the intended use.

K. Refuse and Recycling Area Requirements.

1. So as to adequately protect neighboring uses from adverse impacts such as noise, odor, vectors, wind-blown litter or glare, areas for depositing, collecting and loading refuse and recyclable materials shall be provided and fully enclosed within an enclosure a minimum of six (6) feet tall. All receptacles for collection and recycling shall be completely screened from view at street level. All enclosures and gates should be detailed to withstand heavy use. Wheel stops or curbs shall be provided to prevent dumpsters from banging into walls of enclosure. The area shall be designed to prevent storm water run-on to the area and runoff from the area, and roofs shall be designed to drain away from neighboring properties. Lighting shall be provided at enclosures for nighttime security and use. Lights shall be full cutoff luminaires, as certified by the manufacturer, with the light source directed downward and away from adjacent residences. A sign clearly identifying all recycling and solid waste collection and loading areas and the materials accepted therein shall be posted adjacent to all points of direct access to the area.

2. This requirement shall apply to all new commercial or institutional buildings, residential buildings having five (5) or more living units, and city facilities (including buildings, structures, and outdoor recreation areas owned by the city) where solid waste is collected and loaded. This requirement shall also apply to any existing development for which building permit applications are submitted within a twelve-month period collectively adding thirty percent (30%) or more to the existing floor area of the development project. For existing developments occupied by multiple tenants, this requirement shall apply to building permit applications submitted by any tenant within a twelve-month period collectively adding thirty percent (30%) or more to the existing floor area of that portion of the development which said tenant leases. Such recycling areas shall, at a minimum, be sufficient in capacity, number, and distribution to serve that portion of the development project which said tenant leases.

L. Emergency Shelters. Development standards for emergency shelters shall be the same as for residential development in the district, except density of development regulations, and emergency shelters that meet the following requirements are exempt from the requirement of a design permit and use permit:

1. No emergency shelter shall be allowed to be located within three hundred (300) feet of another emergency shelter.

2. The required setbacks for new development shall be:

a. Front setback: Ten (10) feet; except that the front setback may be reduced to zero (0) where development includes dedication to public right-of-way for a frontage access road and sidewalk, to the satisfaction of the city engineer and fire department.

b. Side setback: Five (5) feet; except that the planning commission may approve exceptions to the side setback regulations through the granting of a use permit.

c. Rear setback: Ten (10) feet.

3. A maximum of twelve (12) persons (twelve (12) beds) to be served nightly.

4. Each resident shall be provided personal living space.

5. Bathrooms and bathing facilities shall be provided, adequate for the number of residents.

6. Laundry facilities or services shall be provided on site, adequate for the number of residents.

7. The length of stay for individual clients shall not exceed six (6) months, or as allowed by state law.

8. Staff and services shall be provided to assist residents to obtain permanent shelter and income.

9. For security, the facility shall provide outdoor lighting of common areas, entries, parking areas, pathways, in compliance with Section 17.16.050.E.

10. For security, the shelter shall be adequately staffed twenty-four (24) hours a day, seven (7) days a week.

11. Parking shall be as specified in Chapter 17.34.

12. Outdoor activities, such as recreation, eating, and staging for drop-off, intake, and pick-up, may be conducted at the facility, between the hours of five (5:00) a.m. and ten (10:00) p.m. A night operations use permit is required for outdoor activities between the hours of ten (10:00) p.m. and five (5:00) a.m., as provided for in Section 17.16.070.

13. The facility may provide the following:

a. Kitchen facilities;

b. Dining area;

c. Recreation room;

d. Training and counseling support services;

e. Child care facilities;

f. Other facilities or services that are accessory to an emergency shelter.

14. Prior to commencing operation, the emergency shelter provider must have a written management plan, which shall be provided to the planning director. The management plan must include provisions for staff training, resident identification process, neighborhood outreach, policies regarding pets, the timing and placement of outdoor activities, provisions for residents' meals (including special dietary needs), medical care, mental health care, dental care, temporary storage of residents' personal belongings, safety and security, provisions in case of area-wide emergencies, screening of residents to ensure compatibility with services provided at the facility, plans to help secure other provisions for those who may not be part of the shelter's

target population, computer access for residents, and training, counseling and social service programs for residents, as applicable.

M. Mobile Home Parks.

1. Mobile home parks in the SCRO-1 district shall be subject to the development and parking standards established in Chapter 17.11 of this title.

2. Conversion, closure, or cessation of a mobile home park in the SCRO-1 district shall be subject to the procedures established in Section 17.11.090 of this title.

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SECTION 5: Section 17.27.050 - Development Regulations for the POAZ-2 District, of Chapter 17.27 - POAZ Parkside Overlay District, is amended to read as follows:

Development regulations for the PAOZ-2 district are as follows:

A. Lot Area. There is no minimum lot area.

B. Density of Development. The minimum development density for any site shall be twenty-four (24) dwelling units per acre and the maximum development density shall be twenty-eight (28) dwelling units per acre.

C. Lot Dimensions. There are no minimum lot dimensions.

D. Setbacks. The minimum required setbacks for any building shall be as follows:

1. Front: Five (5) feet minimum, twenty (20) feet maximum.

Any architectural projection (including lobbies, porches, stoops, canopies, and other entry-related architectural features) may extend up to two (2) feet into the required front setback area.

2. Side: Five (5) feet minimum.

Upper floor second and third-story balconies may extend up to two (2) feet into the required side setback area.

3. Street Side: Ten (10) feet minimum and maximum.

4. Rear: Fifteen (15) feet minimum.

E. Lot Coverage. The maximum coverage by all structures on any lot shall be sixty percent (60%); provided, however, pursuant to State law, the maximum lot coverage shall not preclude a housing development project of at least three (3) units but not more than ten (10) units that otherwise meets the requirements of this Chapter and Government Code Section 65913.11, as such requirements are determined by the building official; in such instance, no variance shall be required.

F. Floor Area Ratio. There is no maximum floor area ratio.

G. Height.

1. Buildings and Architectural Features. The maximum building height shall be forty (40) feet and three (3) stories. Architectural features, including chimneys, elevators, towers, turrets, eaves, skylights or roof windows, utilities, utility penthouses, and solar panels, are allowed to project up to a maximum of ten (10) feet above the maximum building height.

2. Fences and Walls. Fences and walls in front yards shall be no more than three (3) feet in height from the adjacent sidewalk. Fences and walls in side yards shall not exceed six (6) feet in height. Deviations from the fence and wall heights shall require approval by the planning commission as set forth in Section 17.32.050.B.5. of this title.

H. Landscaping Requirements. Not less than twenty percent (20%) of the lot area shall be landscaped. New and rehabilitated, irrigated landscapes are subject to the provisions of the water conservation in landscaping ordinance (refer to Chapter 15.70) or the latest state provisions, whichever is more effective in conserving water. Landscaping shall conform to the development standards established in Section 3.5 of the Parkside Precise Plan. The addition of an attached or detached accessory dwelling unit greater than eight hundred (800) square feet shall not result in a loss of the required landscaping area. The addition of an attached or detached accessory dwelling unit that is eight hundred (800) square feet or less may result in a loss of the required landscape area.

I. Open Area Requirements. At least one hundred (100) square feet of open area per dwelling unit shall be provided. The open area may be met through a combination of common or private open areas provided on-site. Open areas shall be usable and shall support residents' passive and/or active use. The computation of open areas may include amenities and structures designed to enhance usability, such as swimming pools, rooftop gardens or decks, fountains, planters, benches, and usable landscaping. The addition of an attached or detached accessory dwelling unit greater than eight hundred (800) square feet shall not result in a loss of the required open areas. The addition of an attached or detached accessory dwelling unit that is eight hundred (800) square feet or less may result in a loss of the required open area.

J. Building Design. All buildings shall substantially comply with the building design standards established in Section 3.3 of the Parkside Precise Plan. Projects that do not comply with those building design standards shall be subject to design review as set forth in Section 17.27.060B., in addition to any other discretionary review required by the specific deviations.

K. Site Design. All projects shall substantially comply with the site design standards established in Section 3.4 of the Parkside Precise Plan. Projects that do not comply with those site design standards shall be subject to design review as set forth in Section 17.27.060.B., in addition to any other discretionary review required by the specific deviations.

L. Parking. Required on-site parking and additional guest parking shall be as established in Section 17.34.020 of this title for multiple-family developments and accessory dwelling units.

1. Design Requirements. Off-street parking facilities shall comply with the design standards as set forth in Table 1, which appears immediately following this section.

2. Short-term and long-term parking for bicycles in the PAOZ-2 district shall be provided as follows: Long-Term: 1/10 units; Short-Term: 1/20 units. Bicycle parking design shall conform to the standards established in Section 3.4 of the Parkside Precise Plan.

M. Recycling Area Requirements.

1. Adequate, accessible and convenient areas for depositing, collecting and loading recyclable materials in receptacles shall be provided. The area shall be located and fully enclosed so as to adequately protect neighboring uses from adverse impacts such as noise, odor, vectors, wind-blown litter or glare. The area shall be designed to prevent storm water run-on to the area and runoff from the area, and roofs shall be designed to drain away from neighboring properties. A sign clearly identifying all recycling and solid waste collection and loading areas and the materials accepted therein shall be posted adjacent to all points of direct access to the area.

2. These requirements shall apply to all new residential buildings having five (5) or more living units, institutional buildings and city facilities (including buildings, structures, and outdoor recreation areas owned by the city) where solid waste is collected and loaded. These requirements shall also apply to existing development project for which building permit applications are submitted within a twelve-month period that collectively add thirty percent (30%) or more to the existing floor area of the development project.

*****

SECTION 6: Section 17.32.055 - Exceptions—Lot area, lot dimensions and lot lines, of Chapter 17.32 - General Use Regulations, is amended to read as follows:

A. Limitations on Substandard Lots.

1. R-1, R-2 and R-3 Districts:

a. A substandard lot of record, less than five thousand (5,000) square feet in area, shall be considered conforming for a single-family dwelling, if the lot was not owned in common with contiguous property in the same district on October 27, 1969.

b. A property in the R-1 Residential District consisting of four (4) contiguous lots of record totaling at least nine thousand six hundred fifty (9,650) square feet that were owned in common on October 27, 1969, may be developed as two (2) sites, each consisting of one pair of contiguous lots.

c. Contiguous substandard lots owned in common may be subject to merger in compliance with this section and Chapter 16.12.

2. Districts where multifamily or mixed-use development is permitted: A legal lot of record that does not meet the District minimum lot size may be developed as a housing development project as provided in the applicable District regulations and Government Code Section 65913.11.

3. All Districts:
   a. In any District, a substandard lot may be developed under the exceptions provided in the applicable District regulations.

   b. Any substandard lot created through a parcel map, resubdivision or lot line adjustment approved by the city after October 27, 1969, shall be recognized as a standard lot.

B. Urban Lot Split. A lot may be created and developed in the R-1 and R-BA districts that does not conform to the District lot area and dimension requirements, subject to the requirements of the Two-unit Development Residential Overlay District, as set forth in Chapter 17.05.

C. Modification in Conjunction with Application for Tentative Map. The planning commission may approve an application for a modification to the lot dimension regulations set forth in Title 17, Zoning, for real property located in any subdivision proposed in compliance with Title 16, Subdivisions, subject to the following findings:

1. The property is of such size or shape, or is subject to such title limitations of record, or is affected by such topographical location or conditions, or is to be devoted to such use that it is impossible, impractical or undesirable in a particular case for the subdivider to fully conform to the regulations;

2. Each lot or parcel subject to the modification will be capable of being developed in accordance with the other applicable provisions of the zoning ordinance; and

3. The modification conforms with the spirit and purpose of this title.

C. Lot Line Adjustment. In compliance with the procedures set forth in Chapter 16.32 of Title 16, Subdivisions, the planning director may approve a lot line adjustment that will not increase the degree of noncompliance or otherwise increase the discrepancy between existing conditions and the requirements of the Zoning Ordinance, even though the resulting parcels may not fully comply with the development regulations of the applicable zoning district.

D. Elimination of Interior Lot Lines. A property owner may eliminate an interior lot line between record lots in common ownership through recordation of a declaration of merger signed by the property owner and acknowledged by the community development director.

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SECTION 7: Section 17.32.060 - Exceptions – Height Limit, of Chapter 17.32 - General Use Regulations, is amended to read as follows:

(Subsections A, B and C, no change.)

D. Exceptions to the height limit to accommodate accessibility improvements (such as elevators) may be permitted pursuant to Section 17.32.080 of this Chapter.

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SECTION 8: Section 17.32.070 - Exceptions – Setback requirements, of Chapter 17.32 - General Use Regulations, is amended to read as follows:

(Subsections A.1.a, A.1.b, A.1.c, A.1.d and A.1.e, no change.)

A.1.f. Accessibility Improvements (such as ramps). Exceptions to the setbacks to accommodate accessibility Improvements may be permitted pursuant to Section 17.32.080 of this Chapter.

(Subsections A.2, A.3 and A.4, no change.)

(Subsections B and C, no change.)

*****

SECTION 9: Section 17.32.080 - Requests for reasonable accommodations, of Chapter 17.32 - General Use Regulations, is amended to read as follows:

A. Existing Development: Modifications or exceptions to the regulations set forth in Title 17 that are not otherwise addressed may be granted as reasonable accommodations for residential and non-residential improvements to existing development~~, or for new development~~, when designed for, intended for occupancy by, or with supportive services for, persons with disabilities. Such requests shall be granted by the planning director through a building permit, if the building permit application demonstrated that:

~~A.~~ 1. The exception is necessary for current or future accessibility to the property or building by persons with disabilities and such accessibility cannot be addressed within either the applicable zoning district height limits or setbacks, or through other exceptions provided in this Title.

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2. The accessibility improvement(s) will be constructed in compliance with all applicable provisions of the state and local building and fire codes concerning accessibility for persons with disabilities.

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3. The development was completed, including a final inspection, three or more years prior to the application for reasonable accommodation. Otherwise, the application for reasonable accommodation shall be considered as being for new development.

B. New Development: Modifications or exceptions to the regulations set forth in Title 17 that are not otherwise addressed may be granted as reasonable accommodations for residential and non-residential development, when designed for, intended for occupancy by, or with supportive services for, persons with disabilities. Such requests may be granted by the zoning administrator through application for an accessibility improvement permit, following the conduct of a hearing with ten (10) days' notice thereof being given to property owners and occupants on both sides of, to the rear of and directly across the street from the site. The zoning administrator may issue the accessibility improvement permit if he or she finds and determines that:

1. The exception is necessary for current or future accessibility to the property or building by persons with disabilities and such accessibility cannot be addressed within either the applicable zoning district height limits or setbacks, or through other exceptions provided in this Title.

~~1.~~2. The accessibility improvement(s) will be constructed in compliance with all applicable provisions of the state and local building and fire codes concerning accessibility for persons with disabilities.

Commented [JK3]: For new developments this is the same procedure as currently provided in BMC Section 17.32.080.

*****

SECTION 10: 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 11: This Ordinance shall be in full force and effect thirty days after its passage and adoption.

____

Cliff Lentz, Mayor

* * *

J.

The above and foregoing Ordinance was adopted at a regular meeting of the City Council of the City of Brisbane held on the _________ day of ________________, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

____
Mayor

ATTEST:

____
City Clerk

APPROVED AS TO FORM:

____
City Attorney

CITY COUNCIL AGENDA REPORT

Meeting Date: April 3, 2025

From: John Swiecki, Community Development Director

Subject: Zoning Text Amendment Application 2024-RZ-2 – zoning text amendment 2024-RZ-2 amending regulations within Title 17 of the Brisbane Municipal Code including the development standards for multifamily and mixed-use zoning districts and the exceptions to the lot size standards, consistent with California Senate Bill SB 478 (2021) and the 2023-2031 Housing Element; and to amend the reasonable accommodations exceptions consistent with the Housing Element; and finding that this amendment is exempt from environmental review under CEQA Guidelines Sections 15061(b)(3) and Section 15183; City of Brisbane, applicant.

SUPPLEMENTAL REPORT

BACKGROUND

This matter was continued from the City Council meeting of October 17, 2024. At that meeting, Council raised concerns about the broad proposed ordinance scope and content, especially those provisions related to permitting procedural changes, and continued the item. The ordinance now under consideration has been greatly reduced in scope from the October 2024 version. Specifically, the proposed amendment is limited to those revisions required to comply with the City's Housing Element and bring the City's ordinance into compliance with CA Senate Bill SB 478 (2021), "Housing Opportunity Act", as described further below and in Attachment A. All other proposed revisions from the October 2024 draft ordinance not driven by state law or housing element compliance have been removed from the proposed ordinance.

RECOMMENDATION

Introduce the ordinance amending the zoning text to modify the development provisions within the multifamily districts to comply with SB 478 and Housing Element Program 2.A.12 and the permitting provisions for reasonable accommodation for people with disabilities, as provided in Attachment A.

DISCUSSION

As indicated above, this item was continued from City's Council's October 17, 2024 meeting. The October 2024 draft ordinance was intended to address numerous issues falling into 3 basic categories, as follows:

a. Bringing the City's zoning ordinance into compliance with SB 478, codified as Government Code Section 65913.11, which requires cities to allow minimum floor area ratios (FARs) for housing development projects in the range of 3 to 10 units. This would be accomplished by amending the development standards in the zoning districts that permit multifamily residential uses, including mixed use.

b. Implementing two provisions of the City's adopted Housing Element. The first is raising the building height maximums to 36 feet to more readily allow for 3 story buildings in the districts that permit multifamily development (Program 2.A.12). The affected districts are the R-2 and R-3 Residential Districts and the SCRO-1 and NCRO-2 mixed use districts. The PAOZ-1 and PAOZ-2 residential overlay districts are not affected since the height maximums already exceed 36 ft. The second Housing Element-related amendment addresses reasonable accommodations for those with disabilities in the height and setback exceptions to the district regulations, consistent with certain Housing Element goals, and a policy and program, as further described at the end of this report.

c. Incorporating procedural and organizational revisions to BMC Title 17 for consistency, efficiency and clarity. These included organizational updates, amendments to the procedures for setback and height exceptions, along with some specific updates to the exceptions, zoning administrator procedures and appeals.

As noted previously, the updated ordinance focuses on housing Element and state law compliance, and does not include items discussed above in section c. The draft ordinance is provided (Attachment A) and a redlined version, as compared to the current Brisbane Municipal Code (BMC), is also provided (Attachment B). The October 2024 ordinance and City Council report are also attached for reference (Attachment C), which includes those items discussed above in section c.

SB 478 Compliance: State Senate Bill SB 478 was adopted in 2021 and became effective statewide on January 1, 2022. Its focus is to provide greater opportunities for development of small apartment buildings in the range of 3 to 10 housing units in districts already zoned for multi-family development, by establishing minimum building floor area to lot size ratios, known as floor area ratios (FARs).

SB 478 is codified as Government Code Section 65913.11 and requires an FAR of 1.0 for projects between 3 and 7 units and an FAR of 1.25 for projects between 8 and 10 units. It also includes provisions that prohibits cities from imposing lot coverage limits that would prevent the multifamily development from achieving those FARs. State law further precludes denial of a development on a legal lot of record solely on the basis that the lot does not comply with the district's current lot size minimum.

The R-2 and R-3 residential zoning districts accommodate multifamily developments. Both districts have an FAR of 0.72 and therefore need to be amended to comply with state-mandated FARs Other districts that are zoned for multifamily residential or mixed use development (NCRO-2, SCRO-1, PAOZ-1 and PAOZ-2) do not have FAR limits and so the FARs do not need to be amended, although cross references to state law have been added where necessary to ensure that lot coverage standards do not have the unintended consequence of restricting FAR to less than what is allowed by state law. Note that the provisions of SB 478 do not apply to the R-1 and R-BA Residential districts, since these are single family districts, nor do they apply to the Northeast Ridge as a PD planned development district.

In general, FAR as a development standard influences total permitted building area on a lot which has implications on overall bulk and mass. Theoretically a larger FAR will allow more building area on a given lot. For example, here are generalized development scenarios for a 10,000 square foot lot under various FARs:

FAR	0.50	1.0	1.5
Building Area	5,000 sq ft	10,000 sq ft	15,000 sq ft

FAR by itself does not control building size, or bulk and mass. Setbacks, height limits, lot coverage limits, and parking all influence a development's bulk and mass.

SB 478 regulates FAR based on the number of units within a project, which is a substantial departure from the City's approach, which applies development standards uniformly within a given zoning district, irrespective of the size of the project.

More specifically to the R-2 and R-3 zoning districts, staff has provided tables below showing theoretical buildout examples comparing:

1) Current zoning (noncompliant with SB 478)
2) SB 478 provisions
3) SB 478 compliance ordinance as recommended by the Planning Commission.

Note that these theoretical examples are worst-case and do not reflect the other development standards that may impact total building size.

There are 2 main differences between SB 478 and the Planning Commission recommended version of the draft ordinance. While the current R-2 and R-3 FAR is 0.72, the existing ordinance also includes a covered parking exemption for required parking up to 400 square feet per unit. For one- and two-bedroom units, as used in the examples, the covered parking requirement is 1 space per unit (200 square feet). This exemption effectively increases the FAR maximum to a range of 0.88 to 0.96 for the two districts for the current BMC examples. The Planning Commission recommended ordinance eliminates the covered parking exemption which offsets to some extent the implications of increasing FAR as required.

The Planning Commission also recommended a uniform FAR of 1.25 within the R-2 and R-3 zones for all multifamily developments of 3 or more units. This would be consistent with the City's regulatory approach as discussed above, which applies development standards uniformly within a given zoning district, not based on project size.

R-2 Residential District

Examples of Buildout Potential,
Number of Units and Total Floor Areas

Lot Size (sq ft)	Current BMC (FAR of 0.72, including covered parking exceptions)**		SB 478 Compliant (FAR of 1.0 for 3 to 7 units & 1.25 for 8 to 10 units; no change to existing parking exceptions)**		SB 478 Compliant - PC Recommended (FAR of 1.25 for 3 units or more; eliminating multifamily parking exceptions)***	
	Units	Floor Area (sq ft)	Units	Floor Area (sq ft)	Units	Floor Area (sq ft)
2,500	1	2,000	3*	3,100	3*	3,125
5,000	2	4,000	3*	5,600	3*	6,250
7,500	3	6,000	3	8,100	3	9,375
10,000	4	8,000	4	10,800	4	12,500
20,000	8	16,000	8	26,600	8	25,000

Notes:
*The R-2 Residential district density standard of 1 housing unit per 2,500 sq ft of land area, except that for SB 478 compliant examples any lot size on an established legal lot the City shall allow at least 3 units.
**For the purposes of calculation of the required parking area, 1 to 2 bedrooms are assumed (1 covered space per unit).
***SB 478 compliant examples do not include an exception for garage space, as is included in the Current BMC for residential development.

R-3 Residential District

Examples of Buildout Potential,
Number of Units and Total Floor Areas

Lot Size (sq ft)	Current BMC (FAR of 0.72, plus covered parking exceptions)**		SB 478 Compliant (FAR of 1.0 for 3 to 7 units & 1.25 for 8 to 10 units; no change to existing parking exceptions)**		SB 478 Compliant - PC Recommended (FAR of 1.25 for 3 units or more; eliminating multifamily parking exceptions)***	
	Units	Floor Area (sq ft)	Units	Floor Area (sq ft)	Units	Floor Area (sq ft)
2,500	1	2,000	3*	3,100	3*	3,125
5,000	3	4,200	3	5,600	3	6,250
7,500	5	6,400	5	8,500	5	9,375
10,000	6	8,400	6	11,200	6	12,500
12,000	8	10,240	8	16,600	8	15,000

Notes:
*The R-3 Residential district density standard is 1 housing unit per 1,500 sq ft of land area, except that for SB 478 compliant examples any lot size on an established legal lot the City shall allow at least 3 units.
**For the purposes of calculation of the required parking area, 1 to 2 bedrooms are assumed (1 covered space per unit).
***SB 478 compliant PC recommended examples do not include an exception for garage space, as is included in the Current BMC for residential development.

As indicated above, SB 478 also includes a provision which prohibits a city from denying a housing development project of at least 3 units on a legally established lot that does not meet the City's current standards for lot area. The current standard for lot area in both the R-2 and R-3 districts is 5,000 sq ft (50 ft by 100 feet); however, through the City's original 1906 subdivision map there were many lots that were established as small as 2,500 sq ft and are recognized as legal lots. While the City has recognized these existing smaller lots as conforming for a single-family dwelling, by state law they must now be permitted to be developed with at least 3 units. In effect, while the density of development does not change on larger lots, by state law it does change for small lots that would not normally meet the size minimum for 3 units.

Housing Element Programs: The amendment to the permitted height to 36 feet in the R-2, R-3, NCRO-2 and SCRO-1 would specifically address Program 2.A.12. The PAOZ-1 and PAOZ-2 limits already exceed 36 feet and so those height limits would not be amended. The Planning Commission originally recommended the 36-foot height limit be extended to the R-BA and R-1 zones as well, for consistency and equity reasons. However, this is not required for Housing Element compliance and the height amendment to the R-BA and R-1 has been deleted from the ordinance now proposed for consideration.

Also, the Planning Commission's recommendation for amendment to the reasonable accommodation provisions is aimed at accommodating people with existing disabilities and allowing for aging in place, consistent with the following Housing Element goals, policy and program.

- Goal 4: Protect residents from displacement.
- Goal 7: Avoid unreasonable government constraints to the provision of housing.
    - Policy 7.A: Improve the development review and approval process.
        - Program 7.A.3: Continue to allow ministerial approval by the Community Development Director, subject to a minimal fee, of exceptions to the Zoning Ordinance for reasonable accommodation for housing for persons with disabilities per Government Code Section 65583(c)(3).

The program indicates that the City will continue to allow ministerial approval of reasonable accommodation applications. However, Brisbane's process requires a Zoning Administrator public hearing, as a discretionary act. Also, the Government Code section cited in the program specifically calls for removing governmental constraints to the provision of housing for those with disabilities.

The amendment would allow for ministerial approval of reasonable accommodation features, via building permit, where reasonable accommodation could not otherwise be met through the development regulations or other exceptions. These may include, but is not limited to, such things as a wheelchair ramp in the setback or an elevator over the district's height limit. Also, these features may be permitted and then installed prospectively, before the accessibility feature is needed for a specific person, with the aim of allowing for people to age in place or for easing the burden and process for those who may already have an accessibility need. Currently, reasonable accommodation permits are specific to a particular person's existing need and subject to zoning administrator approval following a public hearing.

Lot Size Exceptions: Finally, Brisbane Municipal Code Section 17.32.055 contains exceptions to lot size requirements. The section is proposed to be updated for consistency with SB 478 provisions regarding lot sizes contained in Government Code Section 65913.11. Also, at the City Council's meeting in October, questions were raised about the meaning of existing provisions regarding lots of less than 5,000 sq ft, which pertains to the R-1, R-2 and R-3 Residential districts, and that has been edited for clarity. A cross reference to urban lot split provisions in the recently adopted BMC Chapter 17.05 has also been added.

John Swiecki
John Swiecki, Community Development Director

Jeremy Dennis
Jeremy Dennis, City Manager

Attachments:

A. Draft Ordinance 2024-RZ-2
B. Redlined Draft Ordinance 2024-RZ-2
C. October 17, 2024 agenda report (weblink): MEET-Packet-0f01a523d0d74ef893c17a083daadd3e.pdf and
D. October 17, 2024 minutes (weblink): 43171

ATTACHMENT A
Draft Ordinance
(Zoning Text Amendment 2024-RZ-2)

DRAFT ORDINANCE NO.___
AN ORDINANCE OF THE CITY OF BRISBANE
AMENDING BRISBANE MUNICIPAL CODE TITLE 17 – TO AMEND THE DEVELOPMENT STANDARDS FOR MULTIFAMILY AND MIXED USE ZONING DISTRICTS AND TO AMEND THE EXCEPTIONS TO LOT STANDARDS, CONSISTENT WITH CALIFORNIA SENATE BILL SB 478 ("HOUSING OPPORTUNITY ACT"), AND THE 2023-2031 HOUSING ELEMENT; AND TO AMEND THE REASONABLE ACCOMMODATION EXCEPTIONS CONSISTENT WITH THE HOUSING ELEMENT.

SECTION 1: Section 17.08.040. - Development Regulations, of Chapter 17.08 - R-2 Residential District, is amended to read as follows:

17.08.040 - Development regulations.

The following development regulations shall apply to any lot in the R-2 district:

A. Lot Area.

1. The minimum area of any lot shall be five thousand (5,000) square feet, except as otherwise provided in subsection B. of this Section 17.08.040.

2. A single-family dwelling may be constructed on a lot of record with an area of less than five thousand (5,000) square feet, subject to the provisions of this chapter and the limitations set forth in Section 17.32.100.

3. Notwithstanding the minimum lot area in paragraph 1 of this subsection A, pursuant to State law, a housing development project of three (3) units, proposed on an existing legal lot of record, shall not be denied solely on the basis that the lot area of that lot does not meet the minimum lot area in paragraph 1.

B. Density of Development. The minimum lot area for each dwelling unit on the site shall be two thousand five hundred (2,500) square feet; provided, however, a lot having an area of four thousand nine hundred fifty (4,950) square feet or greater shall be considered conforming for a development density of two (2) units, and further provided that pursuant to State law, a housing development project of three (3) units proposed on an existing legal lot of record shall not be denied solely on the basis that the lot area of that lot does not meet the minimum lot area for each dwelling unit.

C. Lot Dimensions. The minimum dimensions for any new lot shall be as follows:

Width	Depth
50 feet	100 feet

D. Setbacks. The minimum required setbacks for any lot, except as provided in Section 17.32.070, shall be as follows:

1. Front setback: Fifteen (15) feet, with the following exceptions:

    a. Where the lot has a slope of fifteen percent (15%) or greater, the minimum front setback may be reduced to ten (10) feet.

    b. Where fifty percent (50%) or more of the lots of record in a block have been improved with single-family dwellings, the minimum front setback may be the average distance of the front outside wall of the single-family structures from the front lot line, if less than fifteen (15) feet. Notwithstanding the foregoing, the minimum front setback for garages or carports shall be ten (10) feet, except where a lesser distance is determined by the city engineer to be safe in terms of pedestrian and vehicular traffic.

2. Side setback: Five (5) feet, with the exception that a lot having a width of less than fifty (50) feet may have a side setback reduced to ten percent (10%) of the lot width, but in no event less than three (3) feet or the minimum setback required by the Uniform Building Code, whichever is greater. Notwithstanding the foregoing, the minimum side setback for garages, or carports accessed from a street or alley along that side of the lot shall be ten (10) feet, except where a lesser distance is determined by the city engineer to be safe in terms of pedestrian and vehicular traffic.

3. Rear setback: Ten (10) feet.

E. Lot Coverage. The maximum coverage by all structures on any lot shall be fifty percent (50%); except that, pursuant to State law, the maximum lot coverage shall not preclude a housing development project of at least three (3) units but not more than ten (10) units, if exceeding the maximum coverage is required to allow for development up to the floor area ratio maximum, as that ratio is determined by the building official; in such instance, no variance shall be required in order for the lot to exceed the maximum coverage.

F. Floor Area Ratio. The maximum floor area ratio for all buildings on a lot shall be as follows:

1. Single family dwellings, duplexes and two-unit dwelling groups shall have a maximum floor area ratio of 0.72, with the following exceptions:

    a. In the case of single-family dwellings, where the size of the lot is three thousand seven hundred (3,700) square feet or less, one covered parking space designed to accommodate a full-size automobile shall be excluded from the calculation of floor area ratio; provided, however, such exclusion shall not exceed a total area of two hundred (200) square feet.

    b. In the case of duplexes and two-unit dwelling groups, the area of all covered parking spaces required to be provided for the site shall be excluded from the calculation of floor area ratio; provided, however, such exclusion shall not exceed a total area of four hundred (400) square feet per unit.

2. Multiple-family development of three (3) or more units shall have a maximum floor area ratio of 1.25.

G. Height of Structures.

1. Except as otherwise provided in paragraph 2 of this subsection G. and in Section 17.32.060, the maximum height of any structure shall be thirty-six (36) feet.

2. For a distance of fifteen (15) feet from the front lot line, the height of any structure shall not exceed twenty (20) feet as measured from finish grade; provided, however, garages and carports may be constructed to a height of fifteen (15) feet above the elevation of the center of the adjacent street when permitted by Section 17.32.070 of this title. On a downslope lot, a garage or carport in compliance with this subsection may exceed a height of thirty-six (36) feet, and the height of any permitted living area underneath the garage or carport shall not exceed thirty-six (36) feet from finish grade.

H. Articulation Requirements. Unless exempted, outside walls that are greater in size than twenty (20) feet in width and twenty (20) feet in height shall have a cumulative area of articulation as follows:

1. Front outside wall: Thirty percent (30%) articulation.

2. Side outside walls:

a. Interior side outside wall: No articulation requirement.

b. Exterior side outside wall: Where the structure is located on a lot having an average width of forty (40) feet or greater, the articulation requirement for the exterior side outside wall shall be twenty percent (20%). No articulation shall be required for the exterior side outside wall of structures located on lots having an average width of less than forty (40) feet.

3. Rear outside wall: Thirty percent (30%) articulation.

4. Exemptions: Single story two (2) car garages and accessory structures not exceeding a floor area of one hundred twenty (120) square feet shall be exempted from all articulation requirements.

I. Landscaping Requirements.

1. Front Setback. A minimum of fifteen percent (15%) of the front setback area shall be landscaped where the lot has a front lot line of thirty (30) feet or greater.

2. Downslope Lots. The rear of any newly constructed main structure on a downslope lot shall be screened with trees and shrubs in accordance with a landscape plan approved by the planning director.

3. Irrigated Landscapes. New and rehabilitated, irrigated landscapes are subject to the provisions of the water conservation in landscaping ordinance (refer to Chapter 15.70) or the latest state provisions, whichever is more effective in conserving water.

J. Nonconforming Residential Structures and Uses. Nonconforming residential structures and nonconforming residential uses, as defined in Section 17.02.560, may be repaired, restored, reconstructed, enlarged or expanded in accordance with the provisions of Chapters 17.38 and 17.34 of this title.

K. Recycling Area Requirements:

1. Adequate, accessible and convenient areas for depositing, collecting and loading recyclable materials in receptacles shall be provided. The area shall be located and fully enclosed so as to adequately protect neighboring uses from adverse impacts such as noise, odor, vectors, wind-blown litter or glare. The area shall be designed to prevent storm water run-on to the area and runoff from the area, and roofs shall be designed to drain away from neighboring properties. A sign clearly identifying all recycling and solid waste collection and loading areas and the materials accepted therein shall be posted adjacent to all points of direct access to the area.

2. This requirement shall apply to all new residential buildings having five (5) or more living units, institutional buildings and city facilities (including buildings, structures, and outdoor recreation areas owned by the city) where solid waste is collected and loaded. This requirement shall also apply to such existing developments for which building permit applications are submitted within a twelve-month period collectively adding thirty percent (30%) or more to the existing floor area of the development project.

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SECTION 2: Section 17.10.040 - Development Regulations, of Chapter 17.10 - R-3 Residential District, is amended to read as follows:

The following development regulations shall apply to any lot in the R-3 district:

A. Lot Area.

1. The minimum area of any lot shall be five thousand (5,000) square feet, except as otherwise provided in subsection B of this section.

2. A single-family dwelling may be constructed on a lot of record with an area of less than five thousand (5,000) square feet, subject to the provisions of this chapter and the limitations set forth in Section 17.32.100.

3. Notwithstanding the minimum lot area in paragraph 1 of this subsection A, pursuant to State law, a housing development project of three (3) units, proposed on an existing legal lot of record, shall not be denied solely on the basis that the lot area of that lot does not meet the minimum lot area in paragraph 1.

B. Density of Development. The minimum lot area for each dwelling unit on the site shall be one thousand five hundred (1,500) square feet; provided, however, a lot having an area of four thousand nine hundred fifty (4,950) square feet or greater shall be considered conforming for a development density of three (3) units, and further provided that pursuant to State law, a housing development project of three (3) units proposed on an existing legal lot of record shall not be denied solely on the basis that the lot area of that existing lot does not meet the minimum lot area for each dwelling unit.

C. Lot Dimensions. The minimum dimensions for any new lot shall be as follows:

Width	Depth
50 feet	100 feet

D. Setbacks. The minimum required setbacks for any lot, except as provided in Section 17.32.070, shall be as follows:

1. Front setback: Fifteen (15) feet, with the following exceptions:

a. Where the lot has a slope of fifteen percent (15%) or greater, the minimum front setback may be reduced to ten (10) feet.

b. Where fifty percent (50%) or more of the lots of record in a block have been improved with single-family dwellings, the minimum front setback may be the average distance of the front outside wall of the single-family structures from the front lot line, if less than fifteen (15) feet. Notwithstanding the foregoing, the minimum front setback for garages or carports shall be ten (10) feet, except where a lesser distance is determined by the city engineer to be safe in terms of pedestrian and vehicular traffic.

2. Side setback: Five (5) feet, with the exception that a lot having a width of less than fifty (50) feet may have a side setback reduced to ten percent (10%) of the lot width, but in no event less than three (3) feet or the minimum setback required by the Uniform Building Code, whichever is greater. Notwithstanding the foregoing, the minimum side setback for garages, or carports accessed from a street or alley along that side of the lot shall be ten (10) feet, except where a lesser distance is determined by the city engineer to be safe in terms of pedestrian and vehicular traffic.

3. Rear setback: Ten (10) feet.

4. Garage setback: Eighteen (18) feet, with the following exceptions:

a. If paragraph 1.a or 1.b of this subsection D applies, then the garage shall be setback three (3) feet behind the front wall of the main structure.

b. If the garage setback exemptions set forth in Section 17.32.070.A.3.a of this Title apply, the regulations of that section shall prevail.

E. Lot Coverage. The maximum coverage by all structures on any lot shall be sixty percent (60%); except that, pursuant to State law, the maximum lot coverage shall not preclude a housing development project of at least three (3) units but not more than ten (10) units, if exceeding the maximum coverage is required to allow for development up to the maximum floor area ratio, as that ratio is determined by the building official; in such instance, no variance shall be required.

F. Floor Area Ratio. The maximum floor area ratio for all buildings on a lot shall be as follows:

1. Single family dwellings, duplexes and two-unit dwelling groups shall have a maximum floor area ratio of 0.72, with the following exceptions:

a. In the case of single-family dwellings, where the size of the lot is three thousand seven hundred (3,700) square feet or less, one covered parking space designed to accommodate a full-size automobile shall be excluded from the calculation of floor area ratio; provided, however, such exclusion shall not exceed a total area of two hundred (200) square feet.

b. In the case of duplexes and two-unit dwelling groups, the area of all covered parking spaces required to be provided for the site shall be excluded from the calculation of floor area ratio; provided, however, such exclusion shall not exceed a total area of four hundred (400) square feet per unit.

2. Multiple-family development of three (3) or more units shall have a maximum floor area ratio of 1.25.

G. Height of Structures.

1. Except as otherwise provided in paragraph 2 of this subsection G and in Section 17.32.060, the maximum height of any structure shall be thirty-six (36) feet.

2. For a distance of fifteen (15) feet from the front lot line, the height of any structure shall not exceed twenty (20) feet as measured from finish grade; provided, however, garages and carports may be constructed to a height of fifteen (15) feet above the elevation of the center of the adjacent street when permitted by Section 17.32.070 of this title. On a downslope lot, a garage or carport in compliance with this subsection may exceed a height of thirty-six (36) feet, but the height of any permitted living area underneath the garage or carport shall not exceed thirty-six (36) feet from finish grade.

H. Articulation Requirements. Unless exempted, outside walls that are greater in size than twenty (20) feet in width and twenty (20) feet in height shall have a cumulative area of articulation as follows:

1. Front outside wall: Thirty percent (30%) articulation.

2. Side outside walls:

a. Interior side outside wall: No articulation requirement.

b. Exterior side outside wall: Where the structure is located on a lot having an average width of forty (40) feet or greater, the articulation requirement for the exterior side outside wall shall be twenty percent (20%). No articulation shall be required for the exterior side outside wall of structures located on lots having an average width of less than forty (40) feet.

3. Rear outside wall: Thirty percent (30%) articulation.

4. Exemptions: Single story two (2) car garages and accessory structures not exceeding a floor area of one hundred twenty (120) square feet shall be exempted from all articulation requirements.

I. Landscaping Requirements.

1. Front Setback. A minimum of fifteen percent (15%) of the front setback area shall be landscaped where the lot has a front lot line of thirty (30) feet or greater.

2. Downslope Lots. The rear of any newly constructed main structure on a downslope lot shall be screened with trees and shrubs in accordance with a landscape plan approved by the planning director.

3. Sites with Three (3) or More Units. Not less than ten percent (10%) of the lot area shall be improved with landscaping where three (3) or more dwelling units are located on the same site.

4. Irrigated Landscapes. New and rehabilitated, irrigated landscapes are subject to the provisions of the water conservation in landscaping ordinance (refer to Chapter 15.70) or the latest state provisions, whichever is more effective in conserving water.

J. Nonconforming Residential Structures and Uses. Nonconforming residential structures and nonconforming residential uses, as defined in Section 17.02.560, may be repaired, restored, reconstructed, enlarged or expanded in accordance with the provisions of Chapters 17.38 and 17.34 of this title.

K. Refuse and Recycling Area Requirements.

1. So as to adequately protect neighboring uses from adverse impacts such as noise, odor, vectors, wind-blown litter or glare, areas for depositing, collecting and loading refuse and recyclable materials shall be provided and fully enclosed within an enclosure a minimum of six (6) feet tall. All receptacles for collection and recycling shall be completely screened from view at street level. All enclosures and gates shall be designed to withstand heavy use. Wheel stops or curbs shall be provided to prevent dumpsters from banging into walls of enclosure. The area shall be designed to prevent storm water run-on to the area and runoff from the area, and roofs shall be designed to drain away from neighboring properties. Lighting shall be provided at all enclosures for nighttime security and use. Lights shall be full cutoff luminaires, as certified by the manufacturer, with the light source directed downward and away from adjacent residences. A sign clearly identifying all recycling and solid waste collection and loading areas and the materials accepted therein shall be posted adjacent to all points of direct access to the area.

2. This requirement shall apply to all new residential buildings having five (5) or more living units, institutional buildings and city facilities (including buildings, structures, and outdoor recreation areas owned by the city) where solid waste is collected and loaded. This requirement shall also apply to such existing developments for which building permit applications are submitted within a twelve-month period collectively adding thirty percent (30%) or more to the existing floor area of the development project.

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SECTION 3: Section 17.14.060 - Development Regulations for the NCRO-2 District, of Chapter 17.14 - NCRO Neighborhood Commercial District NCRO-1 Brisbane Village NCRO-2 Downtown Brisbane, is amended to read as follows:

Development regulations for the NCRO-2 district are as follows:

A. Lot Area. The minimum area of any lot in the NCRO-2 district shall be two thousand five hundred (2,500) square feet; provided however, pursuant to State law, a housing development project of three (3) units, proposed on an existing legal lot of record, shall not be denied solely on the basis that the lot area of that lot does not meet the minimum lot area.

B. Lot Dimensions. The minimum dimensions of any newly established lot in the NCRO-2 district shall be as follows:

Width	Depth
25 feet	No requirement

C. Density of Residential Use. Dwelling unit density in a mixed use shall be established by the use permit.

D. Setbacks. The minimum required setbacks for any lot in the NCRO-2 district, except as provided in Section 17.32.070, shall be as follows:

1. Front setback: No requirement (0).
2. Side Setback: No requirement (0), except a ten (10) foot setback shall be required on the side setback where abutting any residential district.
3. Rear Setback: Ten (10) feet.

E. Lot Coverage. The maximum coverage by all structures on any lot in the NCRO-2 district shall be ninety percent (90%) except that, pursuant to State law, the maximum lot coverage maximum shall not preclude a housing development project of at least three (3) units but not more than ten (10) units that otherwise meets the requirements of this Chapter and Government Code Section 65913.11, as such requirements are determined by the building official; in such instance, no variance shall be required.

F. Height of Structures. The maximum height of any structure, except as provided in Section 17.32.060, shall be thirty-six (36) feet.

G. Fencing Requirements. If the site is next to a residential district, a wood fence of not less than eight (8) feet in height that adequately screens the site from the adjacent residential property shall be installed along the property line abutting the residential district. The planning director may approve deviations from the material and height requirements set forth in the preceding sentence, based upon a finding that the modified fence is more appropriate for the site and the adjacent residential property.

H. Storefronts. All uses at street level facing Visitacion and/or San Bruno Avenues shall be storefronts, as defined in Section 17.02.746 of this title, except for entrances to uses above or behind the storefronts. Such uses shall comply with the following additional requirements:

1. The minimum floor area for a storefront use is six hundred (600) square feet. The approving authority may approve a lesser floor area if the approving authority finds that such lesser area is as large as possible for the intended storefront use, given the size, configuration, and physical constraints of the structure and the site.

2. No off-street parking shall be located on any portion of the site between the curb line and the storefront.

3. New construction shall incorporate the necessary vents and chases into the building design so as to allow future changes in occupancy of the storefront area.

4. Single-family dwellings in which mixed uses are conducted shall have a storefront character as viewed from the street.

I. Passive Open Space. Usable passive open space shall be provided for residential uses of at least sixty (60) square feet per unit. Such passive open space may be provided as individual patios or decks, or as common patio or garden area, or any combination thereof. Notwithstanding that an attached or detached accessory dwelling unit greater than eight hundred (800) square feet is added to an existing residential use, there shall be no reduction in the amount of required usable passive open space for the other residential use. If an existing residential use has passive open space that does not conform to the sixty (60) square feet per unit requirement, the addition of an attached or detached accessory dwelling unit greater than eight hundred (800) square feet to that use shall not further reduce the amount of passive open space. The addition of an attached or detached accessory dwelling unit that is eight hundred (800) feet or less may result in a loss of the required usable passive open space for the other residential uses, including the loss of non-forming passive open space.

J. Recycling Area Requirements.

1. Adequate, accessible and convenient areas for depositing, collecting and loading recyclable materials in receptacles shall be provided. The area shall be located and fully enclosed so as to adequately protect neighboring uses from adverse impacts such as noise, odor, vectors, wind-blown litter or glare. The area shall be designed to prevent storm water run-on to the area and runoff from the area, and roofs shall be designed to drain away from neighboring properties. A sign clearly identifying all recycling and solid waste collection and loading areas and the materials accepted therein shall be posted adjacent to all points of direct access to the area.

2. This requirement shall apply to all new commercial or institutional buildings, residential buildings having five (5) or more living units, and city facilities (including buildings, structures, and outdoor recreation areas owned by the city) where solid waste is collected and loaded. This requirement shall also apply to any existing development for which building permit applications are submitted within a twelve-month period collectively adding thirty percent (30%) or more to the existing floor area of the development project. For existing developments occupied by multiple tenants, this requirement shall apply to building permit applications submitted by any tenant within a twelve-month period collectively adding thirty percent (30%) or more to the existing floor area of that portion of the development which said tenant leases. Such recycling areas shall, at a minimum, be sufficient in capacity, number, and distribution to serve that portion of the development project which said tenant leases.

*****

SECTION 4: Section 17.16.040 - Development Regulations, of Chapter 17.16 - SCRO-1 Southwest Bayshore Commercial District, is amended to read as follows:

Development regulations in the Southwest Bayshore district are as follows:

A. Lot Area.

The minimum area of any lot shall be seven thousand five hundred (7,500) feet; provided however, pursuant to State law, a housing development project of three (3) units, proposed on an existing legal lot of record, shall not be denied solely on the basis that the lot area of that lot does not meet the minimum lot area.

B. Density of Development. The minimum lot area for each dwelling unit on a site shall be as follows:

1. Single-family dwellings: Seven thousand five hundred (7,500) square feet;
2. Duplex dwellings: Three thousand seven hundred fifty (3,750) square feet;
3. Multiple-family dwellings and dwelling groups: One thousand five hundred (1,500) square feet;
4. Mixed use or live/work development: Dwelling unit density shall be determined by the use permit.
5. Notwithstanding the minimum lot areas per dwelling unit in paragraphs 3 and 4 of this subsection B, pursuant to State law, a housing development project of three units on an existing legal lot of record shall not be denied solely on the basis that the lot area of that existing lot does not meet the minimum lot area per dwelling unit in paragraphs 3 and 4.

C. Lot Dimensions. The minimum dimensions of any lot shall be as follows:

Width	Depth
50 feet	No requirement

D. Setbacks. The minimum required setbacks for any lot, except as provided in Section 17.32.070, shall be as follows:

1. Front setback:
    a. Residential/Mixed Use: Ten (10) feet;
    b. Commercial Uses: Twenty-five (25) feet for commercial uses;

c. Exception: The setbacks may be reduced to zero (0) where development includes dedication to public right-of-way for a frontage access road and sidewalk, to the satisfaction of the city engineer and fire department.

2. Side setback:

a. Residential/Mixed Use: Five (5) feet;

b. Commercial Uses: Fifteen (15) feet;

c. Exception: The planning commission may approve exceptions to the side setback regulations for commercial uses through the granting of a use permit.

3. Rear setback: Ten (10) feet.

E. Lot Coverage. The maximum coverage by all structures on any lot shall be seventy percent (70%); provided, however, pursuant to State law, the maximum lot coverage shall not preclude a housing development project of at least three (3) units but not more than ten (10) units that otherwise meets the requirements of this Chapter and Government Code Section 65913.11, as such requirements are determined by the building official; in such instance, no variance shall be required.

F. Height of Structures. The maximum height of any structure, except as provided in Section 17.32.060, shall be thirty-six (36) feet.

G. Fencing Requirements. If the site is next to a residential district, a wood fence of not less than eight (8) feet in height that adequately screens the site from the adjacent residential district shall be installed along the property line abutting the residential district. The planning director may approve deviations from the material and height requirements set forth in the preceding sentence, based upon a finding that the modified fence is more appropriate for the site and the adjacent residential district.

H. Open Space. Usable open space shall be provided for residential uses of at least sixty (60) square feet per unit. Such open space shall not be less than five (5) feet in any dimension and may be provided as individual patios or decks, or as common patio or garden area, or any combination thereof.

Notwithstanding that an attached or detached accessory dwelling unit greater than eight hundred (800) square feet is added to an existing residential use, there shall be no reduction in the amount of required usable open space for the other residential use. If an existing residential use has open space that does not conform to the sixty (60) square feet per unit requirement, the addition of an attached or detached accessory dwelling unit greater than eight hundred (800) square feet to that use shall not further reduce the amount of open space. The addition of an attached or detached accessory dwelling unit that is eight hundred (800) feet or less may result in a loss of the required usable open space for the other residential uses, including the loss of non-conforming open space.

I. Landscaping Requirements.

1. Not less than ten percent (10%) of the lot area shall be improved with landscaping. The addition of an attached or detached accessory dwelling unit greater than eight hundred (800) square feet shall not result in a loss of the required landscape area. The addition of an attached

or detached accessory dwelling unit that is eight hundred (800) square feet or less may result in a loss of the required landscape area.

2. Plant materials shall be drought resistant and non-invasive as required by the planning director.

3. Landscaping required under this section, including replacement landscaping, shall be installed according to detailed plans approved by the planning director. The landscape plans shall be consistent with the following objectives:

a. Use of plants that are not invasive;

b. Use of water conserving plants; and

c. Use of plants and other landscape features that are appropriate to the context.

4. Irrigated Landscapes. New and rehabilitated, irrigated landscapes are subject to the water conservation in landscaping ordinance (refer to Chapter 15.70) or the latest state provisions, whichever is more effective in conserving water.

J. Screening Requirements.

1. Outside storage of pallets or containers used for transportation and delivery of items related to the uses conducted on the site shall not be located in any required setback from a street and shall be screened from off-site view to the extent it is reasonable to do so.

2. The off-site visibility of exterior equipment such as heating and ventilation units, above-ground storage tanks, compactors and compressors, shall be mitigated through such measures as may be reasonable under the circumstances, including, but not limited to, the installation of screening, fencing, painting, or landscaping, or any combination of the foregoing.

3. The screening requirements set forth in subsections H.1. and H.2. of this section are not intended to be exclusive and the approving authority may require, as a condition of the use permit, such other and additional screening measures as it deems necessary or appropriate to mitigate any potential adverse visual and audible impacts created by the intended use.

K. Refuse and Recycling Area Requirements.

1. So as to adequately protect neighboring uses from adverse impacts such as noise, odor, vectors, wind-blown litter or glare, areas for depositing, collecting and loading refuse and recyclable materials shall be provided and fully enclosed within an enclosure a minimum of six (6) feet tall. All receptacles for collection and recycling shall be completely screened from view at street level. All enclosures and gates should be detailed to withstand heavy use. Wheel stops or curbs shall be provided to prevent dumpsters from banging into walls of enclosure. The area shall be designed to prevent storm water run-on to the area and runoff from the area, and roofs shall be designed to drain away from neighboring properties. Lighting shall be provided at enclosures for nighttime security and use. Lights shall be full cutoff luminaires, as certified by the manufacturer, with the light source directed downward and away from adjacent residences. A sign clearly identifying all recycling and solid waste collection and loading areas and the materials accepted therein shall be posted adjacent to all points of direct access to the area.

2. This requirement shall apply to all new commercial or institutional buildings, residential buildings having five (5) or more living units, and city facilities (including buildings, structures, and outdoor recreation areas owned by the city) where solid waste is collected and loaded. This requirement shall also apply to any existing development for which building permit applications are submitted within a twelve-month period collectively adding thirty percent (30%) or more to the existing floor area of the development project. For existing developments occupied by multiple tenants, this requirement shall apply to building permit applications submitted by any tenant within a twelve-month period collectively adding thirty percent (30%) or more to the existing floor area of that portion of the development which said tenant leases. Such recycling areas shall, at a minimum, be sufficient in capacity, number, and distribution to serve that portion of the development project which said tenant leases.

L. Emergency Shelters. Development standards for emergency shelters shall be the same as for residential development in the district, except density of development regulations, and emergency shelters that meet the following requirements are exempt from the requirement of a design permit and use permit:

1. No emergency shelter shall be allowed to be located within three hundred (300) feet of another emergency shelter.

2. The required setbacks for new development shall be:

   a. Front setback: Ten (10) feet; except that the front setback may be reduced to zero (0) where development includes dedication to public right-of-way for a frontage access road and sidewalk, to the satisfaction of the city engineer and fire department.

   b. Side setback: Five (5) feet; except that the planning commission may approve exceptions to the side setback regulations through the granting of a use permit.

   c. Rear setback: Ten (10) feet.

3. A maximum of twelve (12) persons (twelve (12) beds) to be served nightly.

4. Each resident shall be provided personal living space.

5. Bathrooms and bathing facilities shall be provided, adequate for the number of residents.

6. Laundry facilities or services shall be provided on site, adequate for the number of residents.

7. The length of stay for individual clients shall not exceed six (6) months, or as allowed by state law.

8. Staff and services shall be provided to assist residents to obtain permanent shelter and income.

9. For security, the facility shall provide outdoor lighting of common areas, entries, parking areas, pathways, in compliance with Section 17.16.050.E.

10. For security, the shelter shall be adequately staffed twenty-four (24) hours a day, seven (7) days a week.

11. Parking shall be as specified in Chapter 17.34.

12. Outdoor activities, such as recreation, eating, and staging for drop-off, intake, and pick-up, may be conducted at the facility, between the hours of five (5:00) a.m. and ten (10:00) p.m. A night operations use permit is required for outdoor activities between the hours of ten (10:00) p.m. and five (5:00) a.m., as provided for in Section 17.16.070.

13. The facility may provide the following:

a. Kitchen facilities;

b. Dining area;

c. Recreation room;

d. Training and counseling support services;

e. Child care facilities;

f. Other facilities or services that are accessory to an emergency shelter.

14. Prior to commencing operation, the emergency shelter provider must have a written management plan, which shall be provided to the planning director. The management plan must include provisions for staff training, resident identification process, neighborhood outreach, policies regarding pets, the timing and placement of outdoor activities, provisions for residents' meals (including special dietary needs), medical care, mental health care, dental care, temporary storage of residents' personal belongings, safety and security, provisions in case of area-wide emergencies, screening of residents to ensure compatibility with services provided at the facility, plans to help secure other provisions for those who may not be part of the shelter's target population, computer access for residents, and training, counseling and social service programs for residents, as applicable.

M. Mobile Home Parks.

1. Mobile home parks in the SCRO-1 district shall be subject to the development and parking standards established in Chapter 17.11 of this title.

2. Conversion, closure, or cessation of a mobile home park in the SCRO-1 district shall be subject to the procedures established in Section 17.11.090 of this title.

*****

SECTION 5: Section 17.27.050 - Development Regulations for the POAZ-2 District, of Chapter 17.27 - POAZ Parkside Overlay District, is amended to read as follows:

Development regulations for the PAOZ-2 district are as follows:

A. Lot Area. There is no minimum lot area.

B. Density of Development. The minimum development density for any site shall be twenty-four (24) dwelling units per acre and the maximum development density shall be twenty-eight (28) dwelling units per acre.

C. Lot Dimensions. There are no minimum lot dimensions.

D. Setbacks. The minimum required setbacks for any building shall be as follows:

1. Front: Five (5) feet minimum, twenty (20) feet maximum.

Any architectural projection (including lobbies, porches, stoops, canopies, and other entry-related architectural features) may extend up to two (2) feet into the required front setback area.

2. Side: Five (5) feet minimum.

Upper floor second and third-story balconies may extend up to two (2) feet into the required side setback area.

3. Street Side: Ten (10) feet minimum and maximum.

4. Rear: Fifteen (15) feet minimum.

E. Lot Coverage. The maximum coverage by all structures on any lot shall be sixty percent (60%); provided, however, pursuant to State law, the maximum lot coverage shall not preclude a housing development project of at least three (3) units but not more than ten (10) units that otherwise meets the requirements of this Chapter and Government Code Section 65913.11, as such requirements are determined by the building official; in such instance, no variance shall be required.

F. Floor Area Ratio. There is no maximum floor area ratio.

G. Height.

1. Buildings and Architectural Features. The maximum building height shall be forty (40) feet and three (3) stories. Architectural features, including chimneys, elevators, towers, turrets, eaves, skylights or roof windows, utilities, utility penthouses, and solar panels, are allowed to project up to a maximum of ten (10) feet above the maximum building height.

2. Fences and Walls. Fences and walls in front yards shall be no more than three (3) feet in height from the adjacent sidewalk. Fences and walls in side yards shall not exceed six (6) feet in height. Deviations from the fence and wall heights shall require approval by the planning commission as set forth in Section 17.32.050.B.5. of this title.

H. Landscaping Requirements. Not less than twenty percent (20%) of the lot area shall be landscaped. New and rehabilitated, irrigated landscapes are subject to the provisions of the water conservation in landscaping ordinance (refer to Chapter 15.70) or the latest state provisions, whichever is more effective in conserving water. Landscaping shall conform to the development standards established in Section 3.5

of the Parkside Precise Plan. The addition of an attached or detached accessory dwelling unit greater than eight hundred (800) square feet shall not result in a loss of the required landscaping area. The addition of an attached or detached accessory dwelling unit that is eight hundred (800) square feet or less may result in a loss of the required landscape area.

I. Open Area Requirements. At least one hundred (100) square feet of open area per dwelling unit shall be provided. The open area may be met through a combination of common or private open areas provided on-site. Open areas shall be usable and shall support residents' passive and/or active use. The computation of open areas may include amenities and structures designed to enhance usability, such as swimming pools, rooftop gardens or decks, fountains, planters, benches, and usable landscaping. The addition of an attached or detached accessory dwelling unit greater than eight hundred (800) square feet shall not result in a loss of the required open areas. The addition of an attached or detached accessory dwelling unit that is eight hundred (800) square feet or less may result in a loss of the required open area.

J. Building Design. All buildings shall substantially comply with the building design standards established in Section 3.3 of the Parkside Precise Plan. Projects that do not comply with those building design standards shall be subject to design review as set forth in Section 17.27.060B., in addition to any other discretionary review required by the specific deviations.

K. Site Design. All projects shall substantially comply with the site design standards established in Section 3.4 of the Parkside Precise Plan. Projects that do not comply with those site design standards shall be subject to design review as set forth in Section 17.27.060.B., in addition to any other discretionary review required by the specific deviations.

L. Parking. Required on-site parking and additional guest parking shall be as established in Section 17.34.020 of this title for multiple-family developments and accessory dwelling units.

1. Design Requirements. Off-street parking facilities shall comply with the design standards as set forth in Table 1, which appears immediately following this section.

2. Short-term and long-term parking for bicycles in the PAOZ-2 district shall be provided as follows: Long-Term: 1/10 units; Short-Term: 1/20 units. Bicycle parking design shall conform to the standards established in Section 3.4 of the Parkside Precise Plan.

M. Recycling Area Requirements.

1. Adequate, accessible and convenient areas for depositing, collecting and loading recyclable materials in receptacles shall be provided. The area shall be located and fully enclosed so as to adequately protect neighboring uses from adverse impacts such as noise, odor, vectors, wind-blown litter or glare. The area shall be designed to prevent storm water run-on to the area and runoff from the area, and roofs shall be designed to drain away from neighboring properties. A sign clearly identifying all recycling and solid waste collection and loading areas and the materials accepted therein shall be posted adjacent to all points of direct access to the area.

2. These requirements shall apply to all new residential buildings having five (5) or more living units, institutional buildings and city facilities (including buildings, structures, and outdoor recreation areas owned by the city) where solid waste is collected and loaded. These

requirements shall also apply to existing development project for which building permit applications are submitted within a twelve-month period that collectively add thirty percent (30%) or more to the existing floor area of the development project.

*****

SECTION 6: Section 17.32.055 - Exceptions—Lot area, lot dimensions and lot lines, of Chapter 17.32 - General Use Regulations, is amended to read as follows:

A. Limitations on Substandard Lots.

1. R-1, R-2 and R-3 Districts:

    a. A substandard lot of record, less than five thousand (5,000) square feet in area, shall be considered conforming for a single-family dwelling, if the lot was not owned in common with contiguous property in the same district on October 27, 1969.

    b. A property in the R-1 Residential District consisting of four (4) contiguous lots of record totaling at least nine thousand six hundred fifty (9,650) square feet that were owned in common on October 27, 1969, may be developed as two (2) sites, each consisting of one pair of contiguous lots.

    c. Contiguous substandard lots owned in common may be subject to merger in compliance with this section and Chapter 16.12.

2. Districts where multifamily or mixed-use development is permitted: A legal lot of record that does not meet the District minimum lot size may be developed as a housing development project as provided in the applicable District regulations and Government Code Section 65913.11.

3. All Districts:

    a. In any District, a substandard lot may be developed under the exceptions provided in the applicable District regulations.

    b. Any substandard lot created through a parcel map, resubdivision or lot line adjustment approved by the city after October 27, 1969, shall be recognized as a standard lot.

B. Urban Lot Split. A lot may be created and developed in the R-1 and R-BA districts that does not conform to the District lot area and dimension requirements, subject to the requirements of the Two-unit Development Residential Overlay District, as set forth in Chapter 17.05.

C. Modification in Conjunction with Application for Tentative Map. The planning commission may approve an application for a modification to the lot dimension regulations set forth in Title 17, Zoning, for real property located in any subdivision proposed in compliance with Title 16, Subdivisions, subject to the following findings:

1. The property is of such size or shape, or is subject to such title limitations of record, or is affected by such topographical location or conditions, or is to be devoted to such use that it is impossible, impractical or undesirable in a particular case for the subdivider to fully conform to the regulations;

2. Each lot or parcel subject to the modification will be capable of being developed in accordance with the other applicable provisions of the zoning ordinance; and

3. The modification conforms with the spirit and purpose of this title.

C. Lot Line Adjustment. In compliance with the procedures set forth in Chapter 16.32 of Title 16, Subdivisions, the planning director may approve a lot line adjustment that will not increase the degree of noncompliance or otherwise increase the discrepancy between existing conditions and the requirements of the Zoning Ordinance, even though the resulting parcels may not fully comply with the development regulations of the applicable zoning district.

D. Elimination of Interior Lot Lines. A property owner may eliminate an interior lot line between record lots in common ownership through recordation of a declaration of merger signed by the property owner and acknowledged by the community development director.

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SECTION 7: Section 17.32.060 - Exceptions – Height Limit, of Chapter 17.32 - General Use Regulations, is amended to read as follows:

(Subsections A, B and C, no change.)

D. Exceptions to the height limit to accommodate accessibility improvements (such as elevators) may be permitted pursuant to Section 17.32.080 of this Chapter.

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SECTION 8: Section 17.32.070 - Exceptions – Setback requirements, of Chapter 17.32 - General Use Regulations, is amended to read as follows:

(Subsections A.1.a, A.1.b, A.1.c, A.1.d and A.1.e, no change.)

A.1.f. Accessibility Improvements (such as ramps). Exceptions to the setbacks to accommodate accessibility Improvements may be permitted pursuant to Section 17.32.080 of this Chapter.

(Subsections A.2, A.3 and A.4, no change.)

(Subsections B and C, no change.)

*****

SECTION 9: Section 17.32.080 - Requests for reasonable accommodations, of Chapter 17.32 - General Use Regulations, is amended to read as follows:

Modifications or exceptions to the regulations set forth in Title 17 that are not otherwise addressed may be granted as reasonable accommodations for residential and non-residential improvements, or for new development, when designed for, intended for occupancy by, or with supportive services for, persons with disabilities. Such requests shall be granted by the planning director through a building permit, if the building permit application demonstrated that:

A. The exception is necessary for current or future accessibility to the property or building by persons with disabilities and such accessibility cannot be addressed within either the applicable zoning district height limits or setbacks, or through other exceptions provided in this Title.

B. The accessibility improvement(s) will be constructed in compliance with all applicable provisions of the state and local building and fire codes concerning accessibility for persons with disabilities.

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SECTION 10: 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 11: This Ordinance shall be in full force and effect thirty days after its passage and adoption.

____

Cliff Lentz, Mayor

* * *

The above and foregoing Ordinance was adopted at a regular meeting of the City Council of the City of Brisbane held on the _________ day of ________________, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

____
Mayor

ATTEST:

____
City Clerk

APPROVED AS TO FORM:

____
City Attorney

ATTACHMENT B
Redlined Draft Ordinance
(Zoning Text Amendment 2024-RZ-2)

SECTION 1: Section 17.08.040. - Development Regulations, of Chapter 17.08 - R-2 Residential District, is amended to read as follows:

17.08.040 - Development regulations.

The following development regulations shall apply to any lot in the R-2 district:

A. Lot Area.

1. The minimum area of any lot shall be five thousand (5,000) square feet, except as otherwise provided in subsection B. of this Section 17.08.040.

2. A single-family dwelling may be constructed on a lot of record with an area of less than five thousand (5,000) square feet, subject to the provisions of this chapter and the limitations set forth in Section 17.32.100.

3. Notwithstanding the minimum lot area in paragraph 1 of this subsection A, pursuant to State law, a housing development project of three (3) units, proposed on an existing legal lot of record, shall not be denied solely on the basis that the lot area of that lot does not meet the minimum lot area in paragraph 1.

B. Density of Development. The minimum lot area for each dwelling unit on the site shall be two thousand five hundred (2,500) square feet; provided, however, a lot having an area of four thousand nine hundred fifty (4,950) square feet or greater shall be considered conforming for a development density of two (2) units, and further provided that pursuant to State law, a housing development project of three units proposed on an existing legal lot of record shall not be denied solely on the basis that the lot area of that lot does not meet the minimum lot area for each dwelling unit.

C. Lot Dimensions. The minimum dimensions ~~of~~ for any new lot shall be as follows:

Width	Depth
50 feet	100 feet

D. Setbacks. The minimum required setbacks for any lot, except as provided in Section 17.32.070, shall be as follows:

1. Front setback: Fifteen (15) feet, with the following exceptions:

a. Where the lot has a slope of fifteen percent (15%) or greater, the minimum front setback may be reduced to ten (10) feet.

b. Where fifty percent (50%) or more of the lots of record in a block have been improved with single-family dwellings, the minimum front setback may be the average distance of the front outside wall of the single-family structures from the front lot line, if less than fifteen (15) feet. Notwithstanding the foregoing, the minimum front setback for garages or carports shall be ten (10) feet, except where a lesser distance is determined by the city engineer to be safe in terms of pedestrian and vehicular traffic.

2. Side setback: Five (5) feet, with the exception that a lot having a width of less than fifty (50) feet may have a side setback reduced to ten percent (10%) of the lot width, but in no event less than three (3) feet or the minimum setback required by the Uniform Building Code, whichever is greater. Notwithstanding the foregoing, the minimum side setback for garages, or carports accessed from a street or alley along that side of the lot shall be ten (10) feet, except where a lesser distance is determined by the city engineer to be safe in terms of pedestrian and vehicular traffic.

3. Rear setback: Ten (10) feet.

E. Lot Coverage. The maximum coverage by all structures on any lot shall be fifty percent (50%); except that, pursuant to State law, the maximum lot coverage shall not preclude a housing development project of at least three (3) units but not more than ten (10) units, if exceeding the maximum coverage is required to allow for development up to the floor area ratio maximum, as that ratio is determined by the building official; in such instance, no variance shall be required in order for the lot to exceed the maximum coverage.

F. Floor Area Ratio. The maximum floor area ratio for all buildings on a lot shall be ~~0.72, subject to the following exclusions~~ as follows:

1. Single family dwellings, duplexes and two-unit dwelling groups shall have a maximum floor area ratio of 0.72, with the following exceptions:

   a. In the case of single-family dwellings, where the size of the lot is three thousand seven hundred (3,700) square feet or less, one covered parking space designed to accommodate a full-size automobile shall be excluded from the calculation of floor area ratio; provided, however, such exclusion shall not exceed a total area of two hundred (200) square feet.

   b. In the case of duplexes and two-unit dwelling groups ~~and multiple-family dwellings~~, the area of all covered parking spaces required to be provided for the site shall be excluded from the calculation of floor area ratio; provided, however, such exclusion shall not exceed a total area of four hundred (400) square feet per unit.

2. Multiple-family development of three (3) or more units shall have a maximum floor area ratio of 1.25.

G. Height of Structures.

1. Except as otherwise provided in paragraph 2 of this subsection G. and in Section 17.32.060, the maximum height of any structure shall be ~~as follows:~~ thirty-six (36) feet.

~~a. Twenty-eight (28) feet, for lots having a slope of less than twenty percent (20%); or~~

~~b. Thirty (30) feet, for lots having a slope of twenty percent (20%) or more.~~

2. For a distance of fifteen (15) feet from the front lot line, the height of any structure shall not exceed twenty (20) feet as measured from finish grade; provided, however, garages and carports may be constructed to a height of fifteen (15) feet above the elevation of the center of the adjacent street when permitted by Section 17.32.070 of this title. On a downslope lot, a ~~A~~ garage or carport in compliance with this subsection may exceed a height of thirty-six (~~30~~ 36) feet, ~~but~~ and the height of any permitted living area underneath the garage or carport shall not exceed thirty-six (~~30~~ 36) feet from finish grade.

H. Articulation Requirements. Unless exempted, outside walls that are greater in size than twenty (20) feet in width and twenty (20) feet in height shall have a cumulative area of articulation as follows:

1. Front outside wall: Thirty percent (30%) articulation.

2. Side outside walls:

a. Interior side outside wall: No articulation requirement.

b. Exterior side outside wall: Where the structure is located on a lot having an average width of forty (40) feet or greater, the articulation requirement for the exterior side outside wall shall be twenty percent (20%). No articulation shall be required for the exterior side outside wall of structures located on lots having an average width of less than forty (40) feet.

3. Rear outside wall: Thirty percent (30%) articulation.

4. Exemptions: Single story two (2) car garages and accessory structures not exceeding a floor area of one hundred twenty (120) square feet shall be exempted from all articulation requirements.

I. Landscaping Requirements.

1. Front Setback. A minimum of fifteen percent (15%) of the front setback area shall be landscaped where the lot has a front lot line of thirty (30) feet or greater.

2. Downslope Lots. The rear of any newly constructed main structure on a downslope lot shall be screened with trees and shrubs in accordance with a landscape plan approved by the planning director.

3. Irrigated Landscapes. New and rehabilitated, irrigated landscapes are subject to the provisions of the water conservation in landscaping ordinance (refer to Chapter 15.70) or the latest state provisions, whichever is more effective in conserving water.

J. Nonconforming Residential Structures and Uses. Nonconforming residential structures and nonconforming residential uses, as defined in Section 17.02.560, may be repaired, restored, reconstructed, enlarged or expanded in accordance with the provisions of Chapters 17.38 and 17.34 of this title.

K. Recycling Area Requirements:

1. Adequate, accessible and convenient areas for depositing, collecting and loading recyclable materials in receptacles shall be provided. The area shall be located and fully enclosed so as to adequately protect neighboring uses from adverse impacts such as noise, odor, vectors, wind-blown litter or glare. The area shall be designed to prevent storm water run-on to the area and runoff from the area, and roofs shall be designed to drain away from neighboring properties. A sign clearly identifying all recycling and solid waste collection and loading areas and the materials accepted therein shall be posted adjacent to all points of direct access to the area.

2. This requirement shall apply to all new residential buildings having five (5) or more living units, institutional buildings and city facilities (including buildings, structures, and outdoor recreation areas owned by the city) where solid waste is collected and loaded. This requirement shall also apply to such existing developments for which building permit applications are submitted within a twelve-month period collectively adding thirty percent (30%) or more to the existing floor area of the development project.

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SECTION 2: Section 17.10.040 - Development Regulations, of Chapter 17.10 - R-3 Residential District, is amended to read as follows:

The following development regulations shall apply to any lot in the R-3 district:

A. Lot Area.

1. The minimum area of any lot shall be five thousand (5,000) square feet, except as otherwise provided in subsection B of this section.

2. A single-family dwelling may be constructed on a lot of record with an area of less than five thousand (5,000) square feet, subject to the provisions of this chapter and the limitations set forth in Section 17.32.100.

3. Notwithstanding the minimum lot area in paragraph 1 of this subsection A, pursuant to State law, a housing development project of three (3) units, proposed on an existing legal lot of record, shall not be denied solely on the basis that the lot area of that lot does not meet the minimum lot area in paragraph 1.

B. Density of Development. The minimum lot area for each dwelling unit on the site shall be one thousand five hundred (1,500) square feet; provided, however, a lot having an area of four thousand nine hundred fifty (4,950) square feet or greater shall be considered conforming for a development density of three (3) units, and further provided that pursuant to State law a housing development project of three (3) units proposed on an existing legal lot of record shall not be denied solely on the basis that the lot area of that existing lot does not meet the minimum lot area for each dwelling unit.

C. Lot Dimensions. The minimum dimensions ~~of~~ for any new lot shall be as follows:

Width	Depth
50 feet	100 feet

D. Setbacks. The minimum required setbacks for any lot, except as provided in Section 17.32.070, shall be as follows:

1. Front setback: Fifteen (15) feet, with the following exceptions:

a. Where the lot has a slope of fifteen percent (15%) or greater, the minimum front setback may be reduced to ten (10) feet.

b. Where fifty percent (50%) or more of the lots of record in a block have been improved with single-family dwellings, the minimum front setback may be the average distance of the front outside wall of the single-family structures from the front lot line, if less than fifteen (15) feet. Notwithstanding the foregoing, the minimum front setback for garages or carports shall be ten (10) feet, except where a lesser distance is determined by the city engineer to be safe in terms of pedestrian and vehicular traffic.

2. Side setback: Five (5) feet, with the exception that a lot having a width of less than fifty (50) feet may have a side setback reduced to ten percent (10%) of the lot width, but in no event less than three (3) feet or the minimum setback required by the Uniform Building Code, whichever is greater. Notwithstanding the foregoing, the minimum side setback for garages, or carports accessed from a street or alley along that side of the lot shall be ten (10) feet, except where a lesser distance is determined by the city engineer to be safe in terms of pedestrian and vehicular traffic.

3. Rear setback: Ten (10) feet.

4. Garage setback: Eighteen (18) feet, with the following exceptions:

a. If paragraph 1.a or 1.b of this subsection D applies, then the garage shall be setback three (3) feet behind the front wall of the main structure.

b. If the garage setback exemptions set forth in Section 17.32.070.A.3.a of this Title apply, the regulations of that section shall prevail.

E. Lot Coverage. The maximum coverage by all structures on any lot shall be sixty percent (60%); except that, pursuant to State law, the maximum lot coverage shall not preclude a housing development project of at least three (3) units but not more than ten (10) units, if exceeding the maximum coverage is required to allow for development up to the maximum floor area ratio , as that ratio is determined by the building official; in such instance, no variance shall be required.

F. Floor Area Ratio. The maximum floor area ratio for all buildings on a lot shall be ~~0.72, subject to the following exclusions~~ as follows:

1. Single family dwellings, duplexes and two-unit dwelling groups shall have a maximum floor area ratio of 0.72, with the following exceptions:

a. In the case of single-family dwellings, where the size of the lot is three thousand seven hundred (3,700) square feet or less, one covered parking space designed to accommodate a full-size automobile shall be excluded from the calculation of floor area ratio; provided, however, such exclusion shall not exceed a total area of two hundred (200) square feet.

b. In the case of duplexes and two-unit dwelling groups ~~and multiple-family dwellings~~, the area of all covered parking spaces required to be provided for the site shall be excluded from the calculation of floor area ratio; provided, however, such exclusion shall not exceed a total area of four hundred (400) square feet per unit.

2. Multiple-family development of three (3) or more units shall have a maximum floor area ratio of 1.25.

G. Height of Structures.

1. Except as otherwise provided in paragraph 2 of this subsection G and in Section 17.32.060, the maximum height of any structure shall be ~~as follows:~~ thirty-six (36) feet.

~~a. Twenty-eight (28) feet, for lots having a slope of less than twenty percent (20%); or~~

~~b. Thirty (30) feet, for lots having a slope of twenty percent (20%) or more.~~

2. For a distance of fifteen (15) feet from the front lot line, the height of any structure shall not exceed twenty (20) feet as measured from finish grade; provided, however, garages and carports may be constructed to a height of fifteen (15) feet above the elevation of the center of the adjacent street when permitted by Section 17.32.070 of this title. On a downslope lot, a garage or carport in compliance with this subsection may exceed a height of thirty-six (~~30~~ 36) feet, but the height of any permitted living area underneath the garage or carport shall not exceed thirty-six (~~30)~~ 36) feet from finish grade.

H. Articulation Requirements. Unless exempted, outside walls that are greater in size than twenty (20) feet in width and twenty (20) feet in height shall have a cumulative area of articulation as follows:

1. Front outside wall: Thirty percent (30%) articulation.

2. Side outside walls:

a. Interior side outside wall: No articulation requirement.

b. Exterior side outside wall: Where the structure is located on a lot having an average width of forty (40) feet or greater, the articulation requirement for the exterior side outside wall shall be twenty percent (20%). No articulation shall be required for the exterior side outside wall of structures located on lots having an average width of less than forty (40) feet.

3. Rear outside wall: Thirty percent (30%) articulation.

4. Exemptions: Single story two (2) car garages and accessory structures not exceeding a floor area of one hundred twenty (120) square feet shall be exempted from all articulation requirements.

I. Landscaping Requirements.

1. Front Setback. A minimum of fifteen percent (15%) of the front setback area shall be landscaped where the lot has a front lot line of thirty (30) feet or greater.

2. Downslope Lots. The rear of any newly constructed main structure on a downslope lot shall be screened with trees and shrubs in accordance with a landscape plan approved by the planning director.

3. Sites with Three (3) or More Units. Not less than ten percent (10%) of the lot area shall be improved with landscaping where three (3) or more dwelling units are located on the same site.

4. Irrigated Landscapes. New and rehabilitated, irrigated landscapes are subject to the provisions of the water conservation in landscaping ordinance (refer to Chapter 15.70) or the latest state provisions, whichever is more effective in conserving water.

J. Nonconforming Residential Structures and Uses. Nonconforming residential structures and nonconforming residential uses, as defined in Section 17.02.560, may be repaired, restored, reconstructed, enlarged or expanded in accordance with the provisions of Chapters 17.38 and 17.34 of this title.

K. Refuse and Recycling Area Requirements.

1. So as to adequately protect neighboring uses from adverse impacts such as noise, odor, vectors, wind-blown litter or glare, areas for depositing, collecting and loading refuse and recyclable materials shall be provided and fully enclosed within an enclosure a minimum of six (6) feet tall. All receptacles for collection and recycling shall be completely screened from view at street level. All enclosures and gates shall be designed to withstand heavy use. Wheel stops or curbs shall be provided to prevent dumpsters from banging into walls of enclosure. The area shall be designed to prevent storm water run-on to the area and runoff from the area, and roofs shall be designed to drain away from neighboring properties. Lighting shall be provided at all enclosures for nighttime security and use. Lights shall be full cutoff luminaires, as certified by the manufacturer, with the light source directed downward and away from adjacent residences. A sign clearly identifying all recycling and solid waste collection and loading areas and the materials accepted therein shall be posted adjacent to all points of direct access to the area.

2. This requirement shall apply to all new residential buildings having five (5) or more living units, institutional buildings and city facilities (including buildings, structures, and outdoor recreation areas owned by the city) where solid waste is collected and loaded. This requirement shall also apply to such existing developments for which building permit applications are submitted within a twelve-month period collectively adding thirty percent (30%) or more to the existing floor area of the development project.

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SECTION 3: Section 17.14.060 - Development Regulations for the NCRO-2 District, of Chapter 17.14 - NCRO Neighborhood Commercial District NCRO-1 Brisbane Village NCRO-2 Downtown Brisbane, is amended to read as follows:

Development regulations for the NCRO-2 district are as follows:

A. Lot Area. The minimum area of any lot in the NCRO-2 district shall be two thousand five hundred (2,500) square feet; provided however, pursuant to State law, a housing development project of three (3) units, proposed on an existing legal lot of record, shall not be denied solely on the basis that the lot area of that lot does not meet the minimum lot area.

B. Lot Dimensions. The minimum dimensions of any newly established lot in the NCRO-2 district shall be as follows:

Width	Depth
25 feet	No requirement

C. Density of Residential Use. Dwelling unit density in a mixed use shall be established by the use permit.

D. Setbacks. The minimum required setbacks for any lot in the NCRO-2 district, except as provided in Section 17.32.070, shall be as follows:

1. Front setback: No requirement (0).
2. Side Setback: No requirement (0), except a ten (10) foot setback shall be required on the side setback where abutting any residential district.
3. Rear Setback: Ten (10) feet.

E. Lot Coverage. The maximum coverage by all structures on any lot in the NCRO-2 district shall be ninety percent (90%) except that, pursuant to State law, the maximum lot coverage maximum shall not preclude a housing development project of at least three (3) units but not more than ten (10) units that otherwise meets the requirements of this Chapter and Government Code Section 65913.11, as such requirements are determined by the building official; in such instance, no variance shall be required.

F. Height of Structures. The maximum height of any structure, except as provided in Section 17.32.060, shall be thirty-six (36) feet ~~twenty-eight (28) feet, except that the height may extend to thirty-five (35) feet when authorized by a design permit granted pursuant to Chapter 17.42 of this title and provided the approving authority is able to make the findings set forth in Section 17.14.110 of this chapter~~.

G. Fencing Requirements. If the site is next to a residential district, a wood fence of not less than eight (8) feet in height that adequately screens the site from the adjacent residential property shall be installed along the property line abutting the residential district. The planning director may approve deviations from the material and height requirements set forth in the preceding sentence, based upon a finding that the modified fence is more appropriate for the site and the adjacent residential property.

H. Storefronts. All uses at street level facing Visitacion and/or San Bruno Avenues shall be storefronts, as defined in Section 17.02.746 of this title, except for entrances to uses above or behind the storefronts. Such uses shall comply with the following additional requirements:

1. The minimum floor area for a storefront use is six hundred (600) square feet. The approving authority may approve a lesser floor area if the approving authority finds that such lesser area is as large as possible for the intended storefront use, given the size, configuration, and physical constraints of the structure and the site.

2. No off-street parking shall be located on any portion of the site between the curb line and the storefront.

3. New construction shall incorporate the necessary vents and chases into the building design so as to allow future changes in occupancy of the storefront area.

4. Single-family dwellings in which mixed uses are conducted shall have a storefront character as viewed from the street.

I. Passive Open Space. Usable passive open space shall be provided for residential uses of at least sixty (60) square feet per unit. Such passive open space may be provided as individual patios or decks, or as common patio or garden area, or any combination thereof. Notwithstanding that an attached or detached accessory dwelling unit greater than eight hundred (800) square feet is added to an existing residential use, there shall be no reduction in the amount of required usable passive open space for the other residential use. If an existing residential use has passive open space that does not conform to the sixty (60) square feet per unit requirement, the addition of an attached or detached accessory dwelling unit greater than eight hundred (800) square feet to that use shall not further reduce the amount of passive open space. The addition of an attached or detached accessory dwelling unit that is eight hundred (800) feet or less may result in a loss of the required usable passive open space for the other residential uses, including the loss of non-forming passive open space.

J. Recycling Area Requirements.

1. Adequate, accessible and convenient areas for depositing, collecting and loading recyclable materials in receptacles shall be provided. The area shall be located and fully enclosed so as to adequately protect neighboring uses from adverse impacts such as noise, odor, vectors, wind-blown litter or glare. The area shall be designed to prevent storm water run-on to the area and runoff from the area, and roofs shall be designed to drain away from neighboring properties. A sign clearly identifying all recycling and solid waste collection and loading areas and the materials accepted therein shall be posted adjacent to all points of direct access to the area.

2. This requirement shall apply to all new commercial or institutional buildings, residential buildings having five (5) or more living units, and city facilities (including buildings, structures, and outdoor recreation areas owned by the city) where solid waste is collected and loaded. This requirement shall also apply to any existing development for which building permit applications are submitted within a twelve-month period collectively adding thirty percent (30%) or more to the existing floor area of the development project. For existing developments occupied by multiple tenants, this requirement shall apply to building permit applications submitted by any tenant within a twelve-month period collectively adding thirty percent (30%) or more to the existing floor area of that portion of the development which said tenant leases. Such recycling areas shall, at a minimum, be sufficient in capacity, number, and distribution to serve that portion of the development project which said tenant leases.

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SECTION 4: Section 17.16.040 - Development Regulations, of Chapter 17.16 - SCRO-1 Southwest Bayshore Commercial District, is amended to read as follows:

Development regulations in the Southwest Bayshore district are as follows:

A. Lot Area.

1. The minimum area of any lot shall be seven thousand five hundred (7,500) feet; provided however, pursuant to State law, a housing development project of three (3) units, proposed on an existing legal lot of record, shall not be denied solely on the basis that the lot area of that lot does not meet the minimum lot area.

B. Density of Development. The minimum lot area for each dwelling unit on a site shall be as follows:

1. Single-family dwellings: Seven thousand five hundred (7,500) square feet;

2. Duplex dwellings: Three thousand seven hundred fifty (3,750) square feet;

3. Multiple-family dwellings and dwelling groups: One thousand five hundred (1,500) square feet;

4. Mixed use or live/work development: Dwelling unit density shall be determined by the use permit.

5. Notwithstanding the minimum lot areas per dwelling unit in paragraphs 3 and 4 of this subsection B, pursuant to State law, a housing development project of three units on an existing legal lot of record shall not be denied solely on the basis that the lot area of that existing lot does not meet the minimum lot area per dwelling unit in paragraphs 3 and 4.

C. Lot Dimensions. The minimum dimensions of any lot shall be as follows:

Width	Depth
50 feet	No requirement

D. Setbacks. The minimum required setbacks for any lot, except as provided in Section 17.32.070, shall be as follows:

1. Front setback:

    a. Residential/Mixed Use: Ten (10) feet;

    b. Commercial Uses: Twenty-five (25) feet for commercial uses;

c. Exception: The setbacks may be reduced to zero (0) where development includes dedication to public right-of-way for a frontage access road and sidewalk, to the satisfaction of the city engineer and fire department.

2. Side setback:

a. Residential/Mixed Use: Five (5) feet;

b. Commercial Uses: Fifteen (15) feet;

c. Exception: The planning commission may approve exceptions to the side setback regulations for commercial uses through the granting of a use permit.

3. Rear setback: Ten (10) feet.

E. Lot Coverage. The maximum coverage by all structures on any lot shall be seventy percent (70%); provided, however, pursuant to State law, the maximum lot coverage shall not preclude a housing development project of at least three (3) units but not more than ten (10) units that otherwise meets the requirements of this Chapter and Government Code Section 65913.11, as such requirements are determined by the building official; in such instance, no variance shall be required.

F. Height of Structures. The maximum height of any structure, except as provided in Section 17.32.060, shall be ~~thirty-five (35)~~ thirty-six (36) feet.

G. Fencing Requirements. If the site is next to a residential district, a wood fence of not less than eight (8) feet in height that adequately screens the site from the adjacent residential district shall be installed along the property line abutting the residential district. The planning director may approve deviations from the material and height requirements set forth in the preceding sentence, based upon a finding that the modified fence is more appropriate for the site and the adjacent residential district.

H. Open Space. Usable open space shall be provided for residential uses of at least sixty (60) square feet per unit. Such open space shall not be less than five (5) feet in any dimension and may be provided as individual patios or decks, or as common patio or garden area, or any combination thereof.

Notwithstanding that an attached or detached accessory dwelling unit greater than eight hundred (800) square feet is added to an existing residential use, there shall be no reduction in the amount of required usable open space for the other residential use. If an existing residential use has open space that does not conform to the sixty (60) square feet per unit requirement, the addition of an attached or detached accessory dwelling unit greater than eight hundred (800) square feet to that use shall not further reduce the amount of open space. The addition of an attached or detached accessory dwelling unit that is eight hundred (800) feet or less may result in a loss of the required usable open space for the other residential uses, including the loss of non-conforming open space.

I. Landscaping Requirements.

1. Not less than ten percent (10%) of the lot area shall be improved with landscaping. The addition of an attached or detached accessory dwelling unit greater than eight hundred (800) square feet shall not result in a loss of the required landscape area. The addition of an attached or detached accessory dwelling unit that is eight hundred (800) square feet or less may result in a loss of the required landscape area.

2. Plant materials shall be drought resistant and non-invasive as required by the planning director.

3. Landscaping required under this section, including replacement landscaping, shall be installed according to detailed plans approved by the planning director. The landscape plans shall be consistent with the following objectives:

a. Use of plants that are not invasive;

b. Use of water conserving plants; and

c. Use of plants and other landscape features that are appropriate to the context.

4. Irrigated Landscapes. New and rehabilitated, irrigated landscapes are subject to the water conservation in landscaping ordinance (refer to Chapter 15.70) or the latest state provisions, whichever is more effective in conserving water.

J. Screening Requirements.

1. Outside storage of pallets or containers used for transportation and delivery of items related to the uses conducted on the site shall not be located in any required setback from a street and shall be screened from off-site view to the extent it is reasonable to do so.

2. The off-site visibility of exterior equipment such as heating and ventilation units, above-ground storage tanks, compactors and compressors, shall be mitigated through such measures as may be reasonable under the circumstances, including, but not limited to, the installation of screening, fencing, painting, or landscaping, or any combination of the foregoing.

3. The screening requirements set forth in subsections H.1. and H.2. of this section are not intended to be exclusive and the approving authority may require, as a condition of the use permit, such other and additional screening measures as it deems necessary or appropriate to mitigate any potential adverse visual and audible impacts created by the intended use.

K. Refuse and Recycling Area Requirements.

1. So as to adequately protect neighboring uses from adverse impacts such as noise, odor, vectors, wind-blown litter or glare, areas for depositing, collecting and loading refuse and recyclable materials shall be provided and fully enclosed within an enclosure a minimum of six (6) feet tall. All receptacles for collection and recycling shall be completely screened from view at street level. All enclosures and gates should be detailed to withstand heavy use. Wheel stops or curbs shall be provided to prevent dumpsters from banging into walls of enclosure. The area shall be designed to prevent storm water run-on to the area and runoff from the area, and roofs shall be designed to drain away from neighboring properties. Lighting shall be provided at enclosures for nighttime security and use. Lights shall be full cutoff luminaires, as certified by the manufacturer, with the light source directed downward and away from adjacent residences. A sign clearly identifying all recycling and solid waste collection and loading areas and the materials accepted therein shall be posted adjacent to all points of direct access to the area.

2. This requirement shall apply to all new commercial or institutional buildings, residential buildings having five (5) or more living units, and city facilities (including buildings, structures,

and outdoor recreation areas owned by the city) where solid waste is collected and loaded. This requirement shall also apply to any existing development for which building permit applications are submitted within a twelve-month period collectively adding thirty percent (30%) or more to the existing floor area of the development project. For existing developments occupied by multiple tenants, this requirement shall apply to building permit applications submitted by any tenant within a twelve-month period collectively adding thirty percent (30%) or more to the existing floor area of that portion of the development which said tenant leases. Such recycling areas shall, at a minimum, be sufficient in capacity, number, and distribution to serve that portion of the development project which said tenant leases.

L. Emergency Shelters. Development standards for emergency shelters shall be the same as for residential development in the district, except density of development regulations, and emergency shelters that meet the following requirements are exempt from the requirement of a design permit and use permit:

1. No emergency shelter shall be allowed to be located within three hundred (300) feet of another emergency shelter.

2. The required setbacks for new development shall be:

   a. Front setback: Ten (10) feet; except that the front setback may be reduced to zero (0) where development includes dedication to public right-of-way for a frontage access road and sidewalk, to the satisfaction of the city engineer and fire department.

   b. Side setback: Five (5) feet; except that the planning commission may approve exceptions to the side setback regulations through the granting of a use permit.

   c. Rear setback: Ten (10) feet.

3. A maximum of twelve (12) persons (twelve (12) beds) to be served nightly.

4. Each resident shall be provided personal living space.

5. Bathrooms and bathing facilities shall be provided, adequate for the number of residents.

6. Laundry facilities or services shall be provided on site, adequate for the number of residents.

7. The length of stay for individual clients shall not exceed six (6) months, or as allowed by state law.

8. Staff and services shall be provided to assist residents to obtain permanent shelter and income.

9. For security, the facility shall provide outdoor lighting of common areas, entries, parking areas, pathways, in compliance with Section 17.16.050.E.

10. For security, the shelter shall be adequately staffed twenty-four (24) hours a day, seven (7) days a week.

11. Parking shall be as specified in Chapter 17.34.

12. Outdoor activities, such as recreation, eating, and staging for drop-off, intake, and pick-up, may be conducted at the facility, between the hours of five (5:00) a.m. and ten (10:00) p.m. A night operations use permit is required for outdoor activities between the hours of ten (10:00) p.m. and five (5:00) a.m., as provided for in Section 17.16.070.

13. The facility may provide the following:

a. Kitchen facilities;

b. Dining area;

c. Recreation room;

d. Training and counseling support services;

e. Child care facilities;

f. Other facilities or services that are accessory to an emergency shelter.

14. Prior to commencing operation, the emergency shelter provider must have a written management plan, which shall be provided to the planning director. The management plan must include provisions for staff training, resident identification process, neighborhood outreach, policies regarding pets, the timing and placement of outdoor activities, provisions for residents' meals (including special dietary needs), medical care, mental health care, dental care, temporary storage of residents' personal belongings, safety and security, provisions in case of area-wide emergencies, screening of residents to ensure compatibility with services provided at the facility, plans to help secure other provisions for those who may not be part of the shelter's target population, computer access for residents, and training, counseling and social service programs for residents, as applicable.

M. Mobile Home Parks.

1. Mobile home parks in the SCRO-1 district shall be subject to the development and parking standards established in Chapter 17.11 of this title.

2. Conversion, closure, or cessation of a mobile home park in the SCRO-1 district shall be subject to the procedures established in Section 17.11.090 of this title.

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SECTION 5: Section 17.27.050 - Development Regulations for the POAZ-2 District, of Chapter 17.27 - POAZ Parkside Overlay District, is amended to read as follows:

Development regulations for the PAOZ-2 district are as follows:

A. Lot Area. There is no minimum lot area.

B. Density of Development. The minimum development density for any site shall be twenty-four (24) dwelling units per acre and the maximum development density shall be twenty-eight (28) dwelling units per acre.

C. Lot Dimensions. There are no minimum lot dimensions.

D. Setbacks. The minimum required setbacks for any building shall be as follows:

1. Front: Five (5) feet minimum, twenty (20) feet maximum.

Any architectural projection (including lobbies, porches, stoops, canopies, and other entry-related architectural features) may extend up to two (2) feet into the required front setback area.

2. Side: Five (5) feet minimum.

Upper floor second and third-story balconies may extend up to two (2) feet into the required side setback area.

3. Street Side: Ten (10) feet minimum and maximum.

4. Rear: Fifteen (15) feet minimum.

E. Lot Coverage. The maximum coverage by all structures on any lot shall be sixty percent (60%); provided, however, pursuant to State law, the maximum lot coverage shall not preclude a housing development project of at least three (3) units but not more than ten (10) units that otherwise meets the requirements of this Chapter and Government Code Section 65913.11, as such requirements are determined by the building official; in such instance, no variance shall be required.

F. Floor Area Ratio. There is no maximum floor area ratio.

G. Height.

1. Buildings and Architectural Features. The maximum building height shall be forty (40) feet and three (3) stories. Architectural features, including chimneys, elevators, towers, turrets, eaves, skylights or roof windows, utilities, utility penthouses, and solar panels, are allowed to project up to a maximum of ten (10) feet above the maximum building height.

2. Fences and Walls. Fences and walls in front yards shall be no more than three (3) feet in height from the adjacent sidewalk. Fences and walls in side yards shall not exceed six (6) feet in height. Deviations from the fence and wall heights shall require approval by the planning commission as set forth in Section 17.32.050.B.5. of this title.

H. Landscaping Requirements. Not less than twenty percent (20%) of the lot area shall be landscaped. New and rehabilitated, irrigated landscapes are subject to the provisions of the water conservation in landscaping ordinance (refer to Chapter 15.70) or the latest state provisions, whichever is more effective in conserving water. Landscaping shall conform to the development standards established in Section 3.5 of the Parkside Precise Plan. The addition of an attached or detached accessory dwelling unit greater than eight hundred (800) square feet shall not result in a loss of the required landscaping area. The addition of an attached or detached accessory dwelling unit that is eight hundred (800) square feet or less may result in a loss of the required landscape area.

I. Open Area Requirements. At least one hundred (100) square feet of open area per dwelling unit shall be provided. The open area may be met through a combination of common or private open areas provided on-site. Open areas shall be usable and shall support residents' passive and/or active use. The computation of open areas may include amenities and structures designed to enhance usability, such as swimming pools, rooftop gardens or decks, fountains, planters, benches, and usable landscaping. The addition of an attached or detached accessory dwelling unit greater than eight hundred (800) square feet shall not result in a loss of the required open areas. The addition of an attached or detached accessory dwelling unit that is eight hundred (800) square feet or less may result in a loss of the required open area.

J. Building Design. All buildings shall substantially comply with the building design standards established in Section 3.3 of the Parkside Precise Plan. Projects that do not comply with those building design standards shall be subject to design review as set forth in Section 17.27.060B., in addition to any other discretionary review required by the specific deviations.

K. Site Design. All projects shall substantially comply with the site design standards established in Section 3.4 of the Parkside Precise Plan. Projects that do not comply with those site design standards shall be subject to design review as set forth in Section 17.27.060.B., in addition to any other discretionary review required by the specific deviations.

L. Parking. Required on-site parking and additional guest parking shall be as established in Section 17.34.020 of this title for multiple-family developments and accessory dwelling units.

1. Design Requirements. Off-street parking facilities shall comply with the design standards as set forth in Table 1, which appears immediately following this section.

2. Short-term and long-term parking for bicycles in the PAOZ-2 district shall be provided as follows: Long-Term: 1/10 units; Short-Term: 1/20 units. Bicycle parking design shall conform to the standards established in Section 3.4 of the Parkside Precise Plan.

M. Recycling Area Requirements.

1. Adequate, accessible and convenient areas for depositing, collecting and loading recyclable materials in receptacles shall be provided. The area shall be located and fully enclosed so as to adequately protect neighboring uses from adverse impacts such as noise, odor, vectors, wind-blown litter or glare. The area shall be designed to prevent storm water run-on to the area and runoff from the area, and roofs shall be designed to

drain away from neighboring properties. A sign clearly identifying all recycling and solid waste collection and loading areas and the materials accepted therein shall be posted adjacent to all points of direct access to the area.

2. These requirements shall apply to all new residential buildings having five (5) or more living units, institutional buildings and city facilities (including buildings, structures, and outdoor recreation areas owned by the city) where solid waste is collected and loaded. These requirements shall also apply to existing development project for which building permit applications are submitted within a twelve-month period that collectively add thirty percent (30%) or more to the existing floor area of the development project.

*****

SECTION 6: Section 17.32.055 - Exceptions—Lot area, lot dimensions and lot lines, of Chapter 17.32 - General Use Regulations, is amended to read as follows:

A. Limitations on Substandard Lots.

~~1. No substandard lot shall be independently developed if it is less than five thousand (5,000) square feet in area and if it was owned in common with contiguous property in the same district on October 27, 1969. A substandard lot at least five thousand (5,000) square feet in area may be developed as a standard site under the applicable district regulations.~~

1. R-1, R-2 and R-3 Districts:

a. ~~. In any R district, single-family dwellings only may be erected on any~~ A substandard lot of record, less than five thousand (5,000) square feet in area, shall be considered conforming for a single-family dwelling, if the lot was not owned in common with contiguous property in the same district on October 27, 1969.
1.

b. ~~3. As an exception to subsection (A)(1), a~~ A property in the R-1 Residential District consisting of four (4) contiguous lots of record totaling at least nine thousand six hundred fifty (9,650) square feet that were owned in common on October 27, 1969, may be developed as two (2) sites, each consisting of one pair of contiguous lots.

c. . Contiguous substandard lots owned in common may be subject to merger in compliance with this section and ~~Municipal Code~~ Chapter 16.12.

1. Districts where multifamily or mixed-use development is permitted: A legal lot of record that does not meet the District minimum lot size may be developed as a housing development project as provided in the applicable District regulations and Government Code Section 65913.11.

2. All Districts:

a. In any District, a substandard lot may be developed under the exceptions provided in the applicable District regulations.

b. Any substandard lot created through a parcel map, resubdivision or lot line adjustment approved by the city after October 27, 1969, shall be recognized as a standard ~~site~~ lot.

B. Urban Lot Split. A lot may be created and developed in the R-1 and R-BA districts that does not conform to the District lot area and dimension requirements, subject to the requirements of the Two-unit Development Residential Overlay District, as set forth in Chapter 17.05.

C. Modification in Conjunction with Application for Tentative Map. The planning commission may approve an application for a modification to the lot dimension regulations set forth in Title 17, Zoning, for real property located in any subdivision proposed in compliance with Title 16, Subdivisions, subject to the following findings:

1. The property is of such size or shape, or is subject to such title limitations of record, or is affected by such topographical location or conditions, or is to be devoted to such use that it is impossible, impractical or undesirable in a particular case for the subdivider to fully conform to the regulations;

2. Each lot or parcel subject to the modification will be capable of being developed in accordance with the other applicable provisions of the zoning ordinance; and

3. The modification conforms with the spirit and purpose of this title.

C. Lot Line Adjustment. In compliance with the procedures set forth in Chapter 16.32 of Title 16, Subdivisions, the planning director may approve a lot line adjustment that will not increase the degree of noncompliance or otherwise increase the discrepancy between existing conditions and the requirements of the Zoning Ordinance, even though the resulting parcels may not fully comply with the development regulations of the applicable zoning district.

D. Elimination of Interior Lot Lines. A property owner may eliminate an interior lot line between record lots in common ownership through recordation of a declaration of merger signed by the property owner and acknowledged by the community development director.

*****

SECTION 7: Section 17.32.060 - Exceptions – Height Limit, of Chapter 17.32 - General Use Regulations, is amended to read as follows:

(Subsections A, B and C, no change.)

~~D. Exceptions to the height limit to accommodate accessibility improvements (such as elevators and wheelchair van garage spaces) may be allowed upon the granting of an accessibility improvement permit by the zoning administrator, following the conduct of a hearing with ten (10) days' notice thereof being given to property owners and occupants on both sides of, to the rear of and directly across the street from~~

~~the site. The zoning administrator may issue the accessibility improvement permit if he or she finds and determines that:~~

~~1. The exception is necessary to meet special needs for accessibility of a person having a disability which impairs his or her ability to access the property.~~

~~2. Visual impacts of the accessibility improvements exceeding the height limit will be minimized.~~

~~3. The accessibility improvements will not create any significant adverse impacts upon adjacent properties in terms of loss of privacy, noise or glare.~~

~~4. The accessibility improvements will be constructed in a sound and workmanlike manner, in compliance with all applicable provisions of the building and fire codes.~~

D. Exceptions to the height limit to accommodate accessibility improvements (such as elevators) may be permitted pursuant to Section 17.32.080 of this Chapter.

*****

SECTION 8: Section 17.32.070 - Exceptions – Setback requirements, of Chapter 17.32 - General Use Regulations, is amended to read as follows:

(Subsections A.1.a, A.1.b, A.1.c, A.1.d and A.1.e, no change.)

~~A.1.f. Accessibility Improvements (Such as Ramps, Elevators, and Lifts).~~

~~All Setback Areas. Accessibility improvements, such as ramps, elevators and lifts, may be allowed within any front, rear or side area setback upon the granting of an accessibility improvement permit by the zoning administrator, following the conduct of a hearing with ten (10) days' notice thereof being given to the owners of all adjacent properties. The zoning administrator may issue the accessibility improvement permit if he or she finds and determines that:~~

~~i. The exception is necessary to meet special needs for accessibility of a person having a physical handicap which impairs his or her ability to access the property and cannot be addressed through the standard exceptions to the setback area requirements under this Section 17.32.070.~~

~~Ii. Visual impacts of the accessibility improvements located within a setback area have been minimized.~~

~~Iii. The accessibility improvements will not create any significant adverse impacts upon adjacent properties in terms of loss of privacy, noise or glare.~~

~~Iv. The accessibility improvements will be constructed in a sound and workmanlike manner, in compliance with all applicable provisions of the building and fire codes.~~

A.1.f. Accessibility Improvements (such as ramps). Exceptions to the setbacks to accommodate accessibility Improvements may be permitted pursuant to Section 17.32.080 of this Chapter.

(Subsections A.2, A.3 and A.4, no change.)

(Subsections B and C, no change.)

*****

SECTION 9: Section 17.32.080 - Requests for reasonable accommodations, of Chapter 17.32 - General Use Regulations, is amended to read as follows:

~~Modifications or exceptions to the regulations set forth in Title 17 may be requested as reasonable accommodations for housing designed for, intended for occupancy by, or with supportive services for, persons with disabilities, if the accommodation would not impose an undue financial or administrative burden upon the city and would not require a fundamental alteration in the nature of the applicable regulation. Such requests may be granted by the zoning administrator through application for an accessibility improvement permit, following the conduct of a hearing with ten (10) days' notice thereof being given to property owners and occupants on both sides of, to the rear of and directly across the street from the site. The zoning administrator may issue the accessibility improvement permit if he or she finds and determines that:~~

~~A. The accommodation is necessary to meet special needs for a person having a disability and cannot be addressed through the exceptions under Sections 17.32.060 and 17.32.070.~~

~~B. Any visual impacts of the accommodation will be minimized.~~

~~C. The accommodation will not create any significant adverse impacts upon adjacent properties in terms of loss of privacy, noise or glare.~~

~~D. Any construction resulting from the accommodation will be done in a sound and workmanlike manner, in compliance with all applicable provisions of the building and fire codes.~~

Modifications or exceptions to the regulations set forth in Title 17 that are not otherwise addressed in Sections 17.32.060.B and C of this Chapter may be granted as reasonable accommodations for residential and non-residential improvements, or for new development, when designed for, intended for occupancy by, or with supportive services for, persons with disabilities. Such requests shall be granted by the planning director through a building permit, if the building permit application demonstrated that:

A. The exception is necessary for current or future accessibility to the property or building by persons with disabilities and such accessibility cannot be addressed within either the applicable zoning district height limits or setbacks, or through other exceptions provided in this Title.

B. The accessibility improvement(s) will be constructed in compliance with all applicable provisions of the state and local building and fire codes concerning accessibility for persons with disabilities.

*****

File Attachments for Item:

K. Zoning Text Amendment 2025-RZ-01-- Consider Introduction of Ordinance to Update the City's Density Bonus and Inclusionary Housing Ordinance

(Staff is recommending to introduce an ordinance to amend the zoning ordinance's inclusionary housing and density bonus regulations, currently located in BMC Ch. 17.31, to comply with current State law and implement the Housing Element. This item 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 COUNCIL AGENDA REPORT

Meeting Date: April 17, 2025

From: John Swiecki, Community Development Director

Subject: Zoning Text Amendment 2025-RZ-01; Introduction and First Reading of Draft Ordinance to Update the City's Density Bonus and Inclusionary Housing Ordinance

Adoption of the draft ordinance 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.

Community Goal/Result
Community Building; Fiscally Prudent

Purpose

To amend the zoning ordinance's inclusionary housing and density bonus regulations to comply with current State law and implement the Housing Element.

Recommendation

Introduce the ordinance amending the zoning text to update the inclusionary housing and density bonus regulations currently located in BMC Ch. 17.31, as provided in Attachment 1.

Background

2009 Ordinance

The City Council adopted an inclusionary housing and density bonus ordinance in 2009 (BMC Chapter 17.31; Attachment 4). The inclusionary provisions require rental and for-sale housing developments of six or more units or lots to provide a certain number of housing units that are affordable to and occupied by low income and/or moderate-income households. The ordinance also contains the City's procedures to implement the State density bonus program, which is available for housing projects of at least five units.

2019 Draft Ordinance

In 2018, the Planning Commission studied updates to the 2009 ordinance to implement programs in the 2015 Housing Element and bring the ordinance into compliance with State laws impacting the ordinance. In April 2019 the Commission recommended Council approval of a draft ordinance ("the 2019 draft ordinance") addressing State law requirements in effect at the time and the 2015 Housing Element policies.

City Council consideration of the 2019 draft ordinance was delayed 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.

2025 Draft Ordinance

In 2024, staff revisited the draft ordinance to address programs in the new 2023-2031 Housing Element, strategies in the 2024 Affordable Housing Strategic Plan, and current State law. Recommended revisions to the 2019 ordinance were reviewed at Planning Commission workshops in the fall of 2024.

Following those workshops, on February 27, 2025, the Commission considered a revised draft ordinance at a public hearing and voted unanimously to recommend City Council approval of the ordinance. This revised draft ordinance (“2025 draft ordinance”) is included as Attachment 1, and the February 27, 2025 Planning Commission agenda report is attached as Attachment 5. Staff has not provided a redlined version of the 2009 ordinance showing changes proposed by the 2025 draft ordinance because of the significant structural changes proposed. Tables summarizing substantive revisions proposed to the 2009 ordinance are provided in the Discussion section below.

Housing Subcommittee Review

The City Council housing subcommittee met to review the draft 2025 ordinance on March 13, 2025. The subcommittee’s recommendations are summarized in the Discussion section below.

Discussion

The 2025 draft ordinance (Attachment 1) extracts the density bonus regulations into a standalone chapter (new chapter 17.29). Inclusionary housing regulations remain in Chapter 17.31. Beyond this structural change, the 2025 draft ordinance proposes the following substantive revisions to the density bonus and inclusionary housing ordinance:

Density Bonus Provisions

Updated Provision	State Law or Policy Requirement
Eliminate State density bonus tables from implementing ordinance and replace with reference to State law	Government Code Sections 65915-65918
Create a density bonus for small projects under 5 units	2015 Housing Element Program H.B.5.a
Grant additional concessions or incentives than required by State law for projects that exceed the density bonus qualifications	2023 Housing Element Program 2.C.1
Extend rental target unit affordability term from 55 years to in perpetuity	No State Law or other Policy; Planning Commission recommendation
Require one-to-one replacement of lost units	2023 Housing Element Program 3.A.5
Allow one additional incentive or concession if the density bonus project includes family-sized target units (units with three or more bedrooms) affordable to low- to extremely low-income households	2023 Housing Element Program 2.C.1
Affordability in perpetuity for both rental and for-sale	2023 Housing Element Program 4.A.11
Direct staff to prepare implementation guidelines that address topics including income verification and household qualification procedures, procedures for	No State Law or other Policy; Planning Commission recommendation

successors in interest, and other implementation provisions, and extracting such provisions from the ordinance	

Inclusionary Housing Ordinance (BMC Ch. 17.31)

Updated Provision	State Law or Policy Requirement
Reduce project size threshold from 6 or more units/lots to 5 or more units/lots	No State Law or other Policy; Planning Commission recommendation
15% inclusionary requirement instead of the current sliding scale	Rental: Government Code Section 65850.01 For-sale: No State Law or other Policy; Planning Commission recommendation
Affordable rental units must be affordable to very low income households (rather than a mix of low and very low income households)	No State Law or other Policy; Planning Commission recommendation
Provide alternatives to on-site construction of affordable units, including:	
Any rental project can choose to pay an in-lieu fee	Government Code Section 65850
Any for-sale project of 15 or fewer units/lots can choose to pay an in-lieu fee	2023 Housing Element Program 2.E.4, Affordable Housing Strategic Plan Strategy A-5
City Council may approve other alternatives for for-sale or rental projects, including off-site construction, land donation, conversion of market-rate units, funding affordable or special needs housing project, or in-lieu fee for for-sale projects of more than 15 units/lots	2023 Housing Element Program 2.E.4, Affordable Housing Strategic Plan Strategy A-5
Affordability in perpetuity for both rental and for-sale	2023 Housing Element Program 4.A.11
Require an in-lieu fee for fractional inclusionary requirements that cannot be rounded up to the nearest whole integer	No State Law or other Policy; Planning Commission recommendation
Modify incentives to:	
Continue to allow affordable units to be smaller than market-rate units, but require comparable total square footage	No State Law or other Policy; Planning Commission recommendation
Acknowledge that ADUs provided by for-sale developments may be able to be sold IF the City amends its ADU regulations to allow ADUs to be sold. (Separate ordinance would be required, not proposed in this ordinance.)	No State Law or other Policy; Planning Commission recommendation
Direct staff to prepare implementation guidelines that address topics including income verification and household qualification procedures, procedures for successors in interest, and other implementation	No State Law or other Policy; Planning Commission recommendation

provisions, and extracting such provisions from the ordinance	

Draft Implementation Guidelines

HEART of San Mateo County provides housing policy consulting services to the City. HEART staff is preparing an implementing guidelines document containing detailed procedures for administering the density bonus and inclusionary housing ordinances, as referenced in the draft ordinance. This document would be maintained and updated by City staff.

Housing Subcommittee Recommendations

The Housing Subcommittee (Mayor Lentz, Councilmember Davis) met on March 13, 2025 to review the draft ordinance. The subcommittee made the following recommendation for the full Council's consideration:

- Eliminate incentive for for-sale inclusionary housing developments to meet inclusionary requirements by providing affordable accessory dwelling units (Section 17.31.040.D of the draft ordinance). The subcommittee considered this option problematic in terms of on-going management, monitoring, and tracking. If this incentive would be eliminated, for-sale developments would need to construct affordable units as for-sale single-family dwellings, unless they opted to pay an in-lieu fee (projects of 15 or fewer units) or requested Council approval of another alternative means of compliance.

The draft ordinance in Attachment 1 has been modified to eliminate this incentive, shown in tracked changes on page 13 of the ordinance, for the Council's consideration.

Inclusionary In-Lieu Fee: Setting the Fee Amounts

Implementation of the draft ordinance would require the City to adopt in-lieu fees for inclusionary housing, as well as new fees for administration of the ordinance's requirements. In-lieu fees would be maintained in the City's low and moderate income housing fund to fund a variety of the City's programs related to preserving existing affordable housing stock, creating new affordable housing, or assisting low-income households. Staff has provided recommended in-lieu fees in Attachment 3. Should the Council move to introduce the draft ordinance, a Resolution will be prepared amending the Master Fee Schedule to adopt the proposed fees at the next City Council meeting.

Adopting an in-lieu fee for rental inclusionary housing developments is proposed to meet the State-required opt-in alternative for rental projects in the inclusionary policy. While not required by State law, an in-lieu fee is also proposed for opt-in payment by small for-sale projects (15 or fewer units/lots), or for discretionary approval by the City Council for larger for-sale projects, which is consistent with the City's Housing Element policy to provide more alternatives for compliance with the inclusionary housing ordinance.

In-lieu fees are not development impact or mitigation fees and are therefore not subject to the Mitigation Fee Act. The proposed in-lieu fees shown in Attachment 3 are based on the "affordability gap" between market-rate housing prices and the maximum affordable purchase price for low and moderate-income households. The affordability gap is a helpful tool for targeting appropriate in-lieu fees because it represents the cost the developer incurs for providing the unit. The proposed in-lieu fees are similar to those of neighboring jurisdictions, shown in the benchmarking analysis provided in Attachment 6. As this fee is set independently from the cost of an individual development, for some developers, paying the fee will be preferable to providing the unit on-site. For some developments, the opposite may be the case. The City Council may also adjust these fees to incentivize a particular outcome. For example, if the City Council wished to incentivize building units on-site, the City Council could consider increasing the in-lieu fees.

Local Preferences

"Local preferences" are requirements that affordable units provided to comply with City regulations or 100% affordable housing developments have "preferences" to serve or market the affordable housing units to certain target populations. For example, a requirement that current or former Brisbane residents be given priority in leasing or selling affordable units would be considered a local preference. Local preferences are not established in the draft ordinance. Should the Council wish to consider local preferences, staff can prepare some background information on the legal requirements for studying and establishing such preferences in compliance with State and Federal fair housing laws.

Fiscal Impact

None at this time. Adoption of an inclusionary in-lieu fee will generate affordable housing revenues, but it is difficult to forecast potential revenue as it depends on project size and type, and whether in-lieu fee payments are proposed at all by a project developer as opposed to on-site construction or other compliance alternatives.

Environmental Review

Adoption of the draft ordinance 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.

Measure of Success

Inclusionary housing and density bonus regulations that comply with State law and implement the City's Housing Element policies to encourage and facilitate development of affordable housing in Brisbane.

Attachments

1. Draft Ordinance

2. Resolution 2025-RZ-01
3. Proposed In-Lieu Fees and other Administrative Fees
4. BMC Chapter 17.31, Inclusionary Housing And Density Bonuses (hyperlink)
5. February 27, 2025 Planning Commission agenda report and attachments
6. San Mateo County benchmarking analysis of inclusionary housing regulations

John Swiecki

John Swiecki, Community Development Director

Jeremy Dennis

Jeremy Dennis, City Manager

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.

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
R-3	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.
13. 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.
    a. 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.

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, 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.

d. 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.

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 inclusionary 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

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, on February 27, 2025, the Planning Commission held a public hearing on the attached ordinance (Exhibit A), publicly noticed in compliance with Brisbane Municipal

Code Chapters 1.12 and 17.54, at which time any person interested in the matter was given an opportunity to be heard; 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: Funke, Gooding, Lau, Patel, Sayasane
NOES: None
ABSENT: None

Alex Lau
Chairperson

ATTEST:

John Swiecki

John Swiecki, Community Development Director

Proposed Fees: Inclusionary Housing and Density Bonus Ordinance Update

Fee	Land Use Type	Amount
In-Lieu Fee	Rental 5+ units	$378,346 per unit or fraction thereof*
	For Sale, 5-10 units	$236,558 per unit/lot or fraction thereof*
	For Sale, 11 + units	$265,717 per unit/lot or fraction thereof*
Administrative Fees		
Review of Eligibility for BMR Unit applicant (Developer)	Rental	$125 per application
Annual monitoring fee (Developer/Property Management)	Rental	$150 per unit
Fine for failure to provide documentation for homeowner monitoring (Homeowner)	For-Sale; any size	$1000 (after 90 days) $1000 additional for every 30 days
BMR Homeowner Subordination Request (Homeowner)	For-Sale; any size	$125 per request

* For projects for which application of the inclusionary requirement results in a fractional unit less than 0.5, an in-lieu fee shall be assessed as an equivalent fraction of the fee charged for a whole unit.

ATTACHMENT 4
(Hyperlink)

BMC Chapter 17.31

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.

<u>State Law Context</u>

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.

<u>City Ordinance</u>

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.

<u>2019 Update to City Ordinance</u>

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).

<u>2019-Present</u>

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.

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.

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.

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~~QP~~. 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~~S~~R~~. 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.~~

~~RS~~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~~.

~~WVW~~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.

~~XWX~~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.

~~XY~~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.~~

~~YZ~~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 off 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.

4~~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. AnThe 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 agreements.

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~~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. 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 athe 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;

~~l.~~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.

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.

~~54. 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:

~~c.~~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.

K.

Preliminary Proposed In-Lieu Fees

ATTACHMENT 5

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

JS

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)~~ Not included

C. Relevant 2015-2022 Housing Element excerpts

D. AB 1505 excerpts

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

K.

ATTACHMENT 5

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

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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:

K.

ATTACHMENT 5

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.

(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

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.

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.

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

Jurisdiction	Project Size Threshold	Rental On-site Income Requirements	Ownership On-site Income Requirements	Alternatives	In-Lieu Fee Levels	When are in lieu fees required?	Term of Affordability	Links
Atherton	N/a	N/a	N/a	N/a	N/a	N/a	N/a	
Belmont	25 units	>25 units: Housing impact fees 25+ units: 15% @ 80% AMI	>25 units: Pay housing impact fees 25+ units: 15% @ 120% AMI	Off-site For-sale: >24 units, 15% @ 80-120% AMI For-rent: >24 units: 15% @ 50-80% AMI				
Brisbane: Proposed Draft Ordinance	5 units	15% @ 50% AMI	5-10 Units: 15% @ 120% AMI 11+ Units: 10% @ 120% AMI; 5% @ 80% AMI	In-Lieu Fee: Rental (any size); for-sale 15 or fewer lots/units Land Donation, Off-Site Construction, Conversion, Special Needs Project Funding: Rental or For-Sale with City Council approval In-Lieu Fee: For-Sale 16+ units/lots with City Council approval	For-Sale 5-10 Units: $236,558 For-Sale 11+ Units: $265,717 Rental: $378,346	N/A	Perpetuity (all)	
Colma	5 units	Housing Impact Fee	20% @ 50-120% AMI	Combination Land-donation Off site	Make up the gap between the amount of development capital typically expected to be available based on the amount to be received by a Developer or owner from Affordable Sales Price or Affordable Rent and anticipated cost of constructing the Inclusionary Units			Inclusionary Housing Ordinance
Daly City	20 units for rental; 15 units for ownership	10% @ 80% AMI	20% @ 120% AMI	In-lieu fee	Alternative for rental only: $48/s.f. ; required for rental: $35sf; required for ownership: $45/sf	Rental: 5-20 units, Ownership: 5-14 units	55 years	Inclusionary Housing Ordinance
East Palo Alto	5 units	5+ units: 20% of net new 5% @ 35% AMI & 10% @ 50% AMI & 5% @ 60% AMI	5+ units: 20% of net new 10% @ 80% AMI & 10% @ 120% AMI	In-lieu fee Off site Other	Rental: $273,400 (per affordable unit) Ownership: $259,600 (per affordable unit)		Perpetuity	Inclusionary Housing Ordinance
Foster City	5 units	10% @50% AMI 5% @ 80% AMI 5% @ 120% AMI	20% @ 120% AMI	In-lieu fee	Rental: $75.32/sq ft ; Sale: $48.21/sq ft There are some other disclaimers in the fee schedule	9 units and lower Fractional units		Below Market Rate Inclusionary Housing Program
Half Moon Bay	10 units	25% of all units: 6% @ 50% AMI & 7% @ 80% AMI & 7% @ 120% AMI			20% of building permit valuation for the market rate units			Inclusionary Housing Ordinance
Hillsborough	N/a	N/a	N/a	N/a	N/a	N/a	N/a	
Menlo Park	1 unit	1-20 units: 10% @ 50-120% AMI 20 or more units: 15% @ 50-120% AMI		Acquisition and rehabilitation of existing units In-lieu fees Land dedication Off-site			55 years for rental	Below Market Rate Housing Program
Millbrae	10 units	5% @ 50% AMI 10% @ 80% AMI	15% @ 120% AMI	As an alternative to the fee payment, may be able to provide an additional on-site inclusionary unit	May be allowed for fractional units less than 0.5 or residential developments four to nine units	Residential developments with 4 to 9 units	55 years rental, 45 years ownership	

Pacifica	8 units	15% of all units: (In redevelopment area) 30% @ 50% AMI 40% @ 80% AMI (Outside redevelopment area) 50% @ 80% AMI 50% @ 120% AMI	Each subsequent purchaser shall be limited to the lesser of: Original purchase price, plus the percentage increase AMI from date of original purchase, plus cost of any capital improvement expenditures greater than 1% of original purchase price, minus costs necessary to bring unit up to code; Fair market value	Combination of below In-lieu Land dedication Off-site	Reflect the estimated cost to provide the BMR unit		55 years rental; 45 years ownerships	Inclusionary Housing Ordinance
Portola Valley	Subdivision developments		15% of lots			In-lieu fees required for fractional lots, if the developer does not wish		Inclusionary Lot Requirements in Municipal Code
Redwood City	20 units	5% @ 50% AMI 10% @ 120% AMI	15% @ 80-120% AMI	In lieu Unit size (affordable units may be 20% smaller than MR units) Other		Payment for fractional units	55 years rental, 30 years ownership	Affordable Housing Programs
San Bruno	5 units	15% of units: 10% @ 50% AMI 5% @ 50% AMI	5+ units: 15% of units: 20% @ 80% AMI 10% @ 120% AMI	In lieu Off-site Convert owner units to rentals: 5% @ 50% AMI 5% @ 80% AMI 5% @ 120% AMI	In-lieu fee will provide at least an equivalent number of affordable units at the same or lower income levels as required		55 years rental, 45 years ownership	Inclusionary Housing Ordinance
San Carlos	5 units	15% of units: 10% @ 50% AMI 5% @ 80% AMI	5-7 units: 20% @ 80% AMI 7+ units: 15% @ 80% AMI	Land dedication Off-site	Difference between affordable sales price or rent and the fair market value for the unit: no event shall the in lieu fee exceed cost of mitigating the impact of market-rate units		Perpetuity; Perpetuity renewal at resale for ownership	Inclusionary Housing Ordinance
San Mateo	11 units	15% @ 80% AMI	15% @ 120% AMI		Rental: (.1-.4) units: 33,452 - $133,807 (5-10) units: 167,259 - $334,517 Owner: (.1-.4) units: 30,701 - $122,802 (5-10) units: 153,503 - $307,005	5-10 units		Inclusionary Housing Ordinance
San Francisco	10 units	15% @ 80% AMI, 5% @ 120% AMI, 5% @ middle-income	6% @ 80% AMI, 6% @ middle-income	Combination Off-site units On-site units Small sites	$199.5/s.f. gross (per s.f. of affordable housing that would've been provided on site)			Inclusionary Affordable Housing Program
San Mateo County	5	20%; all low, very low, extremely low	20%; half may be moderate, the rest any combo of low/very low/extemely low	In-lieu, land dedication, offsite units; may substitute disabled or large family units	Based on an established portion of construction cost, for a comparable unit; differs from County impact fee		55 years	
South San Francisco	5 units	15% of units: 5% @ 50% AMI 9% @ 80% AMI	15% of units: 7.5% @ 80% AMI 7.5% @ 120% AMI	In-lieu fee	Determined by City Council		55 years for rental, 55 years for renew at resale for ownership	Inclusionary Housing Ordinance
Woodside	N/a	N/a	N/a	N/a	N/a	N/a	N/a	

File Attachments for Item:

L. Approve 2025 Council Priorities

(Staff is recommending to approve the 2025 Council Priorities. There is no fiscal impact associated with adopting FY 2025-26 priorities; the FY 2025-26 Budget will reflect any projects associated with the three priorities.)

CITY COUNCIL AGENDA REPORT

Meeting Date: April 17, 2025

From: Jeremy Dennis, City Manager

Subject: FY 2025-26 Council Priorities

Recommendation

Staff recommend that the City Council adopt priorities for FY 2025-26

Background

On March 22, 2025, the City Council met in a special meeting/workshop to discuss their ideas for priorities in the coming fiscal year. This meeting was the first in many years to discuss shared priorities.

From that discussion, three priorities were agreed to:

- Fiscal Health of the City
- Increase maintenance for existing City facilities and infrastructure and determine long-term use opportunities for City facilities
- Tap into the Brisbane volunteer spirit by expanding volunteer opportunities

Discussion

Staff recommend that the City Council discuss the above language and refine the priorities, as needed.

If there are specific projects that the Council would like to discuss for inclusion in the FY 2025-26 budget, it would be appropriate to have that discussion under this agenda item.

Staff will develop materials to promote the City Council's priorities.

Fiscal Impact

There is no fiscal impact associated with adopting FY 2025-26 priorities; the FY 2025-26 Budget will reflect any projects associated with the three priorities.

Jeremy Dennis

Jeremy Dennis, City Manager

File Attachments for Item:

N. Countywide Assignments and Subcommittee Reports

i. Report Out on Subcommittee Meetings ii. Upcoming Subcommittee Meetings

CITY of BRISBANE

Council Subcommittee Update

From March 29th, 2025 to April 11th, 2025

1. Report Out on Subcommittees/Committees

A. Emergency Preparedness Subcommittee 4/2 2:00pm Davis, Kern

The subcommittee discussed potential issues that may arise during an emergency, including evacuating upper streets or seniors who may be homebound. They also discussed community concerns around trees and bushes near homes (not having a defensible space) and power supply locations during a long-term power outage. Around communications, NCFA Chief Myers and his team began a new monthly podcast around safety and emergencies that is on their website (https://northcountyfire.gov/), will continue to have drills and outreach events. NCFA has hired Blue Flamingo Marketing (https://blueflamingomarketing.com/) to create a community communications plan to increase education and preparation around emergency events. For seniors, NCFA will visit the Senior Lunch to connect, and Davis and Kern discussed reaching out to Brisbane Village Helping Hands to talk about having a list of homebound seniors in case they need assistance during an emergency.

To view the agenda:
https://www.brisbaneca.org/citycouncil/meeting/emergency-preparedness-subcommittee-meeting

B. SPP Parks & Open Space Subcommittee 4/7 2:30pm Kern, Lentz

The subcommittee discussed Sierra Point Parkway opportunities regarding parks and open space. They would like to take a holistic approach with the area, considering parcel R, broader amenity ideas and the future of the marina. Considering ensuing sea-level rise impacts, the subcommittee reviewed CMG Landscape Architecture's 2022 and 2023 draft plans. To strategically address these long-term challenges, the subcommittee concepted a prioritized, coordinated, and phased approach. Specifically, the subcommittee tasked staff to contact CMG to request the development of a streamlined plan utilizing all previously completed planning work outlining the essential initial stages, such as the relocation of the Bay Trail, representing the minimum necessary work to proactively adapt to rising sea levels while adding amenities/features as funding becomes available.

Next Steps: Staff to talk with CMG about options.

To view the agenda:
https://www.brisbaneca.org/citycouncil/meeting/sierra-point-parkway-parks-open-space-subcommittee

C. Liaison to OSEC Subcommittee **4/9** **2:00pm** **Mackin, O'Connell**
OSEC Salmon & Walker

The liaisons reviewed Open Space & Ecology Committee's (OSEC) Annual Workplan. OSEC has a strong and very full workplan with reviewing the Quarry and Baylands Developments, and now possibly be reviewing the PGE and SF acquisition. They are also working on a strategic plan to reduce greenhouse gas emissions from existing buildings and transportation as Brisbane is behind the State's 2030 goals. Another one of OSEC's goals is to support the health and growth of the urban tree canopy in Brisbane.

To view the agenda and OSEC's 2025 Workplan:
https://www.brisbaneca.org/citycouncil/meeting/liaison-osec-subcommittee-meeting

2. Upcoming Subcommittees:

Economic Development Subcommittee 4/24 2:00pm Kern, Lentz

Discuss rebranding of Economic Development to Economic Vitality. Meeting requested by staff.

Public Art Advisory Committee 4/28 5:15pm Davis, O'Connell

Review upcoming potential projects. Meeting requested by staff.

3. Proposed Subcommittees:

Does any councilmember wish to propose any items for a subcommittee to discuss?