



# CITY of BRISBANE

## Planning Commission Meeting Agenda

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Thursday, May 09, 2024 at 7:30 PM • Hybrid Regular Meeting

• Brisbane City Hall 50 Park Place, Brisbane CA

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

### TO ADDRESS THE COMMISSION

#### In Person:

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

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

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

#### Remote Participation:

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

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

#### Remote Public Comments:

Meeting participants are encouraged to submit public comments in writing in advance of the meeting. Aside from commenting while in the Zoom webinar the following email and text line will be also monitored during the meeting and public comments received will be noted for the record during Oral Communications or during an Item.

**Email:** [jswiecki@brisbaneca.org](mailto:jswiecki@brisbaneca.org) or **Text:** 415-713-9266

**Zoom Webinar:** (please use the latest version: [zoom.us/download](https://zoom.us/download))

[brisbaneca.org/pc-zoom](https://brisbaneca.org/pc-zoom)

**Webinar ID:** 970 0458 3387

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

**SPECIAL ASSISTANCE**

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

**WRITINGS THAT ARE RECEIVED AFTER THE AGENDA HAS BEEN POSTED**

All written communications are provided to the Planning Commission. Any written communication that is received after the agenda has been posted but before 4 p.m. of the day of the meeting will be available for public inspection at the front lobby in City Hall and online at [brisbaneca.org/meetings](http://brisbaneca.org/meetings). Any writings that are received after the agenda has been posted but after 4 p.m. of the day of the meeting will be available on the internet at the start of the meeting ([brisbaneca.org/meetings](http://brisbaneca.org/meetings)), at which time the materials will be distributed to the Planning Commission.

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

**CALL TO ORDER**

**ROLL CALL**

**ADOPTION OF AGENDA**

**CONSENT CALENDAR**

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

- A. [Approval of draft meeting minutes of April 25, 2024](#)

**ORAL COMMUNICATIONS** (Limited to a total of 15 minutes)

**WRITTEN COMMUNICATIONS**

**OLD BUSINESS**

**NEW BUSINESS**

- B. [PUBLIC HEARING: Zoning Text and Map Amendment 2024-RZ-1, R-1 Residential District and the R-BA Brisbane Acres Residential District in entirety; recommendation to City Council on zoning text and map amendment 2024-RZ-1 amending regulations within Title 16 and 17 of the Brisbane Municipal Code to add the R-TUO residential two unit overlay district as new chapter 17.05 and related amendments; and finding that](#)

[this project is exempt from environment review under CEQA Guidelines Sections 15061\(b\)\(1\) & \(3\), Section 15183; City of Brisbane, applicant.](#)

- C. [\*\*PUBLIC HEARING: Zoning Text Amendment 2024-RZ-2, City-wide;\*\* recommendation to City Council on omnibus zoning amendments to modify the development standards for multifamily and residential mixed use zoning districts consistent with California Senate Bill SB 478 \(“housing opportunity act”\) and as provided in the 2023-2031 Housing Element for building heights, lot coverage and floor area ratios, and related amendments, including, but not limited to, organizational amendments and amendments to development regulation exceptions and Zoning Administrator procedures; and finding that this project is exempt from environment review under CEQA Guidelines Sections 15061\(b\)\(3\), Section 15183; City of Brisbane, applicant.](#)

**ITEMS INITIATED BY STAFF**

**ITEMS INITIATED BY THE COMMISSION**

**ADJOURNMENT**

- C. Adjournment to the regular meeting of May 23, 2024.

**APPEALS PROCESS**

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

**File Attachments for Item:**

A. Approval of draft meeting minutes of April 25, 2024



DRAFT  
BRISBANE PLANNING COMMISSION  
Action Minutes of April 25, 2024  
Hybrid Meeting

ROLL CALL

Present: Commissioners Funke, Lau, Patel, and Sayasane  
Absent: Gooding  
Staff Present: Director Swiecki, Principal Planner Ayres, Associate Planner Robbins

CALL TO ORDER

Chairperson Lau called the meeting to order at 7:30 p.m.

ADOPTION OF AGENDA

A motion by Commissioner Funke, seconded by Commissioner Sayasane to adopt the agenda. Motion approved 4-0.

CONSENT CALENDAR

A motion by Commissioner Funke, seconded by Commissioner Patel to adopt the consent calendar (agenda item A). Motion approved 4-0.

ORAL COMMUNICATIONS

There were none.

WRITTEN COMMUNICATIONS

Chairperson Lau acknowledged written correspondence pertaining to construction noise.

NEW BUSINESS

**B. PUBLIC HEARING: 3708 Bayshore Boulevard; Grading Review 2024-EX-4, Use Permit 2024-UP-3, Lot Merger 2024-LLA-2, Habitat Conservation Plan Compliance 2024-HCP-1; SCRO-1 Zoning District; Expansion of the current contractor’s storage yard permitted under UP-9-12; and finding that this project is categorically exempt from environmental review under CEQA guidelines Sections 15301 and 15311; Sean Brennan, applicant; MK Yard LLC, owner.**

Associate Planner Robbins gave the presentation and clarified how the one-time, Habitat Conservation Fee payment is collected and allocated.

Chairperson Lau opened the public hearing.

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With no one else wishing to address the Commission, a motion by Commissioner Patel, seconded by Commissioner Sayasane to close the public hearing was approved 4-0.

After deliberation, a motion by Commissioner Sayasane, seconded by Commissioner Funke to approve the application via adoption of Resolution 2024-EX-4, 2024-UP-3, 2024-LLA-2, 2024-HCP-1 was approved 4-0.

Chairperson Lau read the appeal procedure.

#### ITEMS INITIATED BY STAFF

Director Swiecki noted that the County-wide commissioner training will commence in May and will provide information for the Commission to participate.

#### ITEMS INITIATED BY THE COMMISSION

Referring to the written correspondence regarding construction noise, Commissioner Patel asked about city requirements.

Director Swiecki responded that the City's noise ordinance regulates construction-related noise issues such as permitted hours and sound levels of construction equipment.

#### ADJOURNMENT

Chairperson Lau declared the meeting adjourned to the next regular meeting of May 9, 2024, at approximately 7:54 p.m.

Attest:

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John A. Swiecki, Community Development Director

NOTE: A full video record of this meeting can be found on the City's YouTube channel at [www.youtube.com/BrisbaneCA](http://www.youtube.com/BrisbaneCA), on the City's website at <http://www.brisbaneca.org/meetings>, or on DVD (by request only) at City Hall.

**File Attachments for Item:**

**B. PUBLIC HEARING: Zoning Text and Map Amendment 2024-RZ-1, R-1 Residential District and the R-BA Brisbane Acres Residential District in entirety;** recommendation to City Council on zoning text and map amendment 2024-RZ-1 amending regulations within Title 16 and 17 of the Brisbane Municipal Code to add the R-TUO residential two unit overlay district as new chapter 17.05 and related amendments; and finding that this project is exempt from environment review under CEQA Guidelines Sections 15061(b)(1) & (3), Section 15183; City of Brisbane, applicant.



## PLANNING COMMISSION AGENDA REPORT

**Meeting Date:** 5/9/2024

**From:** Ken Johnson, Senior Planner

**Subject: Zoning Map and Text Amendment 2024-RZ-1** – zoning text and map amendment 2024-RZ-1 amending regulations within Title 16 and 17 of the Brisbane Municipal Code to add the R-TUO residential two unit overlay district as new chapter 17.05 and related amendments; and finding that this project is exempt from environment review under CEQA Guidelines Sections 15061(b)(1) & (3), Section 15183; City of Brisbane, applicant.

**REQUEST:** To amend the zoning text provisions and zoning map, to add Chapter 17.05 to Title 17 of the Brisbane Municipal Code (BMC) establishing an overlay zoning district for urban lot split and two-unit developments within the single-family residential zoning districts, consistent with Senate Bill SB 9 (2021) and update related provisions in Title 16 and 17. The BMC chapters and sections to be amended are outlined below, under Applicable Code Sections.

**RECOMMENDATION:** Via adoption of Resolution 2024-RZ-1, recommend that City Council adopt Zoning Text and Map Amendment 2024-RZ-1, as provided in Exhibits A and B of Attachment A.

**ENVIRONMENTAL DETERMINATION:** The adoption of this ordinance is exempt from the California Environmental Quality Act (CEQA) pursuant to California Government Code Section 15061(b)(1) & (3), Section 15183 relating to the implementation of the Housing Element, and because it involves code amendments pursuant to California Government Code Section 65852.21(j) and Section 66411.7(n) relating to the implementation of SB 9 (2021). The exceptions requiring further review as might be necessary to examine a project specific significant effects does not apply.

**APPLICABLE CODE SECTIONS:** Procedures for zoning amendments are provided in BMC Chapter 17.50. The proposed updates for this amendment pertain to establishing an overlay zoning district providing for urban lot splits and two-unit developments within the single-family residential zoning districts, for the R-1 Residential District and R-BA Brisbane Acres Residential District, and related amendments. The following BMC chapters or sections are applicable to this amendment, with the proposed action indicated for each:

BMC Title 16:

- Section 16.12.040 - Tentative and final parcel map—Exceptions to requirements - amend.

BMC Title 17:

- Section 17.02.120 - Carport definition – amend.

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- Section 17.02.220 - Driveway definition – amend.
- Section 17.02.230 - Duplex definition - delete and include in the dwelling definition.
- Section 17.02.235 - Dwelling definition - amend.
- Section 17.04.010 - Establishment of Districts - amend to add the R-TUO Residential two unit overlay district.
- Chapter 17.05 - Residential Two Unit Overlay District – add.

Zoning Map – amend to add the R-TUO Residential Two Unit Overlay district.

Additionally, although not proposed for amendment as part of this ordinance, BMC Chapters 17.06 and 17.12 provide the R-1 and R-BA zoning provisions, which the new district would overlay. The R-1 and R-BA provisions would remain effective, except where specifically addressed within the overlay zoning.

**BACKGROUND:** California Senate Bill SB 9 (2021) was codified as Gov’t Code Sections 65852.21(j) and 66411.7(n). These codes became effective on January 1, 2022 and require jurisdictions statewide to permit two-unit primary dwellings in the single-family residential zoning districts on lots where one single-family dwelling would normally be permitted or for single-family lots to be split into two lots. For Brisbane, this is applicable to the R-1 Residential District and the R-BA Brisbane Acres Residential District.

Although property owners may invoke the provisions of SB 9, absent a City ordinance, the revised 2023-2031 Housing Element (Housing Element), adopted City Council and certified by the State in May 2023, includes a program for Brisbane to update its zoning ordinance to implement SB 9. That is:

*“Program 2.A.6: Adopt implementing ordinance for ministerial duplex conversions and single-family lot splits as provided by Government Code Sections 65852.21 and 66411.7.”*

State law also allows jurisdictions to adopt objective standards through local ordinance, so long as they would not preclude two unit developments that would otherwise comply with the law. This is discussed further in the next section.

Following adoption of the Housing Element, the Planning Commission held four workshops during their regularly scheduled public meetings, between June 2023 and February 2024 to discuss the implications of the provisions of a draft ordinance addressing SB 9, as well as other Housing Element related zoning amendments that are provided as a separate draft ordinance. The links to the workshop reports, minutes and videos are provided with the weblinks in Attachment C of this report.

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**DISCUSSION:** As noted above, the purpose of this amendment would be to add Chapter 17.05 to Title 17, to establish the R-TUO Residential Two Unit Overlay District zoning and update the zoning map to show its limits, which extend over the entire R-1 Residential District and the R-BA Brisbane Acres Residential District. Related definitions within Chapter 17.02 would also be amended. The amendment to Title 16 – Subdivisions would provide a cross reference within the tentative and final parcel map exceptions section to the new Chapter 17.05, within Title 17. Attachment A provides the draft Planning Commission Resolution and draft zoning text and map amendments as Exhibits A and B. A redlined version of the draft ordinance is also provided as Attachment B.

The key provisions of draft ordinance are outlined as follows, by BMC section:

Section 17.05.030 Definitions: This section provides a number of definitions that are generally taken from state law and are specific to the new overlay district chapter. Additional updates are also provided within Chapter 17.02 - Definitions that have broader applicability, beyond the overlay district. A few of the key definitions are as follows:

*“Two-unit Development’ means a proposed housing development that contains two primary dwelling units on a single lot.”*

*“Urban Lot Split’ means a subdivision of an existing lot of record in a single-family zoning district into no more than two separate legal lots, which subdivision satisfies all of the criteria and standards set forth in this Chapter and Government Code Section 66411.7.”*

A cross reference is also provided to Section 17.02.235.G, to add a definition for primary unit, *“Primary dwelling unit’ or ‘Main Dwelling’ means a dwelling unit that is not an accessory dwelling unit or a junior accessory dwelling unit.”*

The ordinance, consistent with state law, allows for two “primary units” on an existing lot of record, or, as an alternative, the lot may be split and up to two primary units may be located on each of the two resultant lots. Accessory dwelling units (ADUs) and junior accessory dwelling units (JADUs) may also be permitted, but the total number of units for primary units, ADUs and JADUs may not exceed four for the original lot area. Further discussion of the potential lot configurations is provided below.

Section 17.05.040 - Eligibility and Section 17.05.050 - Anti-displacement/Eligibility Criteria: These two sections in the draft ordinance outline a number of criteria for eligibility and may be referenced in their entirety in the Attachment A or B. The provisions limit the lots that may be eligible to those that are within the two single family residential zones, those that are not in wetlands or where there is habitat for protected species, among other requirements. The provisions, in accordance with state law, are also to protect tenants from evictions.

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Section 17.05.060 Permitted Uses: This section identifies duplex dwellings and dwelling groups as permitted uses, which otherwise would not be permitted in the R-1 or R-BA districts. A duplex is comprised of two primary dwelling units attached within a single building with shared wall(s) or ceiling, whereas a dwelling group is comprised of detached primary dwelling units. The underlying R-1 and R-BA district zoning would also still allow for single family dwellings, ADUs and JADUs, as it currently does.

Section 17.05.070 Two Unit Developments without an Urban lot Split: This section details the development standards for a lot developed with two primary units without splitting the lot. The following table is excerpted from the draft ordinance and provides the various development scenarios:

Development Scenario Options on a Single Lot without Urban Lot Split	Single Family Dwelling	Duplex Dwelling (two attached primary units")	Two-unit Dwelling Group (two detached primary units")	ADU	JADU	Total Dwelling Units
Type A.	NA	2				2
Type B.	NA		2			2
Type C.	NA	2		1		3
Type D.	NA		2	1		3
Type E.	NA	2		2		4
Type F.	NA		2	2		4
Type G.	NA		2	1	1	4

Single family dwellings are shown on this table as not applicable (NA), since the overlay district provisions do not apply to the development of a single family dwelling (SFD) on a lot of record in either the R-1 or R-BA zoning district. Also, by current State and City provisions, only one JADU may be built on a lot and it must be attached to one of the two-unit dwelling group structures, City regulations do not allow the development of a JADU in conjunction with a duplex or multifamily building. ADU and JADU provisions are further provided in Chapter 17.43 - Accessory Dwelling Units and Junior Accessory Dwelling Units and would not be amended with this ordinance. Current ADU and JADU provisions allow for an ADU to be attached or detached to a SFD on a single lot. A JADU may be permitted in addition to an ADU, but it must be attached to the SFD and the ADU must then be detached, per Chapter 17.43.

Some other key provisions are as follows:

- Per State law, the City must allow primary dwelling units to be 800 square feet in floor area. However, this would not preclude the owner from developing a larger primary unit,

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if it complies with the underlying district floor area ratio (FAR) limits. It would also not preclude the owner from developing to a smaller floor area, as long as it is in compliance with the California Building Code (CBC).

- Per State law, minimum side and rear setbacks would be 4 feet from the lot line. This is a reduction in the required district setbacks for many lots, except in the R-1 district where the side lot line would normally be required to be only 3 feet for lots of 30 feet in width or less.
- In cases where the 4 foot setback would be less than the underlying district standard setback, an objective standard for height of 25 feet is proposed. Note that this height is suggested by staff to be the same as recently adopted state law for ADU heights, which may also have 4 foot setbacks. This same objective standard would apply to any primary unit on an R-BA ridgeline lot, since the design permit provisions for ridgeline lots would not apply in the case of a two unit development using the overlay standards. This would be a reduction from the current district height limit of 35 feet in the R-BA district and the 30 height limit in the R-1. (Note that the draft ordinance 2024-RZ-2, which the Commission will hear separately, would raise the underlying district heights to 36 feet.)
- Each primary dwelling unit would be required to have a minimum of one standard size off-street parking space. That may be uncovered or covered by a carport. Garage parking may also be provided, as an owner's option in addition to the minimum parking, but it may not count toward meeting the required parking. The provision of not counting garage parking toward the minimum requirement is proposed as a result of Planning Commission concerns raised about the use of garage spaces for other uses besides parking, such as storage, and the limited number of street parking spaces in many of the R-1 residential neighborhoods. Note that JADU or ADU off-street parking is generally not required, with some exceptions depending on distance to public transportation.
- Shared driveways may also be permitted, given the proposed amendment to the driveway definition, but where parking is required for the different units, they must be independently accessible (i.e. not in tandem with another unit).
- Short term rentals would not be permitted for any of the units on the lot.

17.05.080 Urban Lot Splits: Under state law, an alternative to developing two primary units, plus up to two ADUs or an ADU and JADU, for four units total on a single existing lot, is to split the lot into two lots of similar size and then develop up to four units across both lots. This is subject to a number of requirements to allow for ministerial approval of a parcel map to split a property, as



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outlined in the draft ordinance. In such cases, the development scenarios may include two units on each lot, or three units on one lot and one on the other. That may include either one or two primary units on a resultant lot following a lot split. That's the same total potential unit count as without a lot split as described above, but there are some additional provisions that would apply.

The various development scenarios are provided in Tables a and b in Section 17.05.080.C.1 of the draft ordinance (see Attachment A). Table a shows the development potential on a single lot after an urban lot split and Table b shows how the development on the two lots may then be combined, to not exceed four units. The two tables are designed to be used together. The draft development provisions are further provided in Section 17.05.080.C and some of the key provisions are outlined as follows:

- All of the development provisions and use restrictions outlined above for two unit developments would be applicable to urban lot splits.
- For an urban lot split, both resultant lots must be at least 1,200 square feet.
- The size difference between the two resultant lots must be in the proportion range of 50:50 to 40:60, so they would be near the same size.

Procedurally, whether as a two unit development or pursuant to an urban lot split (following ministerial parcel map approval), development using the overlay district provisions would be effectuated through the building permit process and the single property or resultant two properties would have a deed restriction, on a form acceptable to the City, that would detail the various restrictions on the property. That would be recorded with the County and carry with the land.

This draft ordinance was provided to the Public Works Director/City Engineer, Building Department, North County Fire Authority and City's Legal Counsel and comments have been incorporated.

Finally, correspondence received from the public prior to publication of this report are included in Attachment D. One such correspondence outlines a recent ruling by a Los Angeles Superior Court judge's ruling on SB 9 (Attachment D). The correspondent requested that any hearing and decision on this zoning and map amendment be postponed. Planning staff consulted with the City's Legal Counsel, Michael Roush, who indicated that the decision is from a trial court in Southern California that concerns just five cities and has no binding effect on other trial courts or other cities. Also, the cities in question are charter cities, not general law cities, such as Brisbane, and the decision hinged on that SB 9 conflicts with the land use authority of those cities under their charters. As such, the decision is not relevant to SB 9 as it applies to the City of Brisbane.

Any comments received after publication will be provided to the Commission separately.

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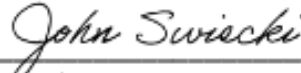
**ATTACHMENTS:**

- A. Draft Resolution 2021-RZ-1
  - Exhibit A -Draft ordinance, zoning text amendment
  - Exhibit B - Draft zoning map amendment
- B. Redlined copy of proposed zoning text amendments
- C. Workshop links:
  - a. February 22, 2024 ([Memorandum to PC](#)) ([Minutes](#))
  - b. December 5, 2023 ([Memorandum to PC](#)) ([Minutes](#))
  - c. October 26, 2023 ([Memorandum to PC](#)) ([Minutes](#))
  - d. June 8, 2023 ([Memorandum to PC](#)) ([Minutes](#))
- D. Public Correspondence



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Ken Johnson, Senior Planner



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John Swiecki, Community Development Director

**ATTACHMENT A**

**DRAFT**

**RESOLUTION 2024-RZ-1**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BRISBANE  
RECOMMENDING CITY COUNCIL APPROVAL OF ZONING TEXT AND MAP AMENDMENT 2024-RZ-1  
AMENDING BRISBANE MUNICIPAL CODE TITLES 16 AND 17, TO AMEND SECTION 16.12.040 -  
TENTATIVE AND FINAL PARCEL MAP- EXCEPTIONS TO REQUIREMENTS, ADD CHAPTER 17.05  
RESIDENTIAL OVERLAY, TO PROVIDE FOR URBAN LOT SPLITS AND TWO-UNIT DEVELOPMENTS IN  
SINGLE FAMILY RESIDENTIAL ZONES, AND TO AMEND SECTION 17.02.235, TO ADD A DEFINITION FOR  
“PRIMARY DWELLING UNIT” OR “MAIN DWELLING”, AND TO AMEND SECTIONS 17.02.120 AND  
17.02.220 DEFINING CARPORTS AND DRIVEWAYS**

WHEREAS, Senate Bill 9 (“SB 9”), which amended Section 66452.6 of the Government Code and added Sections 65852.21 and 66411.7 to the Government Code, to allow for streamlined ministerial approval of two-unit development and urban lot splits within single-family zoned areas, was signed by the Governor of California on September 16, 2021; and

WHEREAS, these changes to the Government Code became effective on January 1, 2022; and

WHEREAS, SB 9 requires cities and counties, including the City of Brisbane, to ministerially approve a parcel map for an urban lot split and/or a proposed housing development containing a maximum of two primary residential units within a single-family residential zone, if the proposal meets certain statutory criteria; and

WHEREAS, SB 9 specifies that proposed projects and subdivisions cannot be proposed in prohibited locations under Government Code Section 65913.4(a)(6)(B)-(K) such as lands within an earthquake fault zone, federally designated flood plan, historic district or property, and high fire hazard severity zone as defined under state law; and

WHEREAS, SB 9 further restricts the standards and regulations that local agencies, including the City of Brisbane, may impose to only objective zoning, subdivision, and design standards that do not conflict with the statute and where those standards must not physically preclude a unit size of at least 800 square feet or qualifying urban lot split; and

Whereas, no parcel within the overlay district is located within one-half mile walking distance of either a high-quality transit corridor, as defined in subdivision (b) of Section 21155 of the Public Resources Code, or a major transit stop, as defined in Section 21064.3 of the Public Resources Code, or within one block of a car share facility.

WHEREAS, the City seeks to regulate development pursuant to SB 9 through the implementation of regulations concerning duplex residential developments and urban lot splits; and

WHEREAS, pursuant to Section 65852.21(j) and 66411.7(n) of the Government Code, a local agency may adopt an ordinance to implement SB 9; and

WHEREAS, City Council adopted the revised 2023-2031 Housing Element (Housing Element) on May 18, 2023, which was subsequently certified by the California Department of Housing and Community Development; and

WHEREAS, the Housing Element includes Program 2.A.6, "Adopt implementing ordinance for ministerial duplex conversions and single-family lot splits as provided by Government Code Sections 65852.21 and 66411.7", and

WHEREAS, the draft ordinance attached as Exhibit A to this resolution proposes amendments to Title 16 and Title 17; and

WHEREAS, Exhibit B to this resolution proposes amendment to the zoning map to establish a new R-TUO Residential Two Unit Overlay District, to overlay the R-1 Residential District and the R-BA Residential Brisbane Acres District; and

WHEREAS, on May 9, 2024, the Planning Commission conducted a hearing of the application, 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 Planning Commission reviewed and considered the staff memorandum relating to said application, and the written and oral evidence presented to the Planning Commission in support of and in opposition to the application; and

WHEREAS, adoption of this ordinance is exempt from the California Environmental Quality Act (CEQA) pursuant to California Government Code Section 15061(b)(1) & (3), Section 15183 relating to the implementation of the Housing Element, and because it involves code amendments pursuant to California Government Code Section 65852.21(j) and Section 66411.7(n) relating to the implementation of SB 9; 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.

ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2024, by the following vote:

AYES:  
NOES:  
ABSENT:

\_\_\_\_\_  
ALEX LAU, Chairperson

ATTEST:

\_\_\_\_\_  
JOHN SWIECKI, Community Development Director

**EXHIBIT A**

**DRAFT ORDINANCE NO. \_\_\_\_  
AN ORDINANCE OF THE CITY OF BRISBANE  
AMENDING BRISBANE MUNICIPAL CODE TITLES 16 AND 17 – TO ADD CHAPTER 17.05 RESIDENTIAL  
OVERLAY TO PROVIDE FOR URBAN LOT SPLITS AND TWO-UNIT DEVELOPMENTS IN SINGLE FAMILY  
RESIDENTIAL ZONES AND TO AMEND SECTION 17.02.235 TO ADD A DEFINITION FOR “PRIMARY  
DWELLING UNIT” OR “MAIN DWELLING” AND TO MODIFY SECTIONS 17.02.120 AND 17.02.220  
DEFINING CARPORTS AND DRIVEWAYS AND TO AMEND THE ZONING MAP TO ADD THE R-TUO  
RESIDENTIAL TWO UNIT OVERLAY DISTRICT**

Now, the City Council of the City of Brisbane hereby ordains as follows:

**SECTION 1. Section 16.12.040 - Tentative and final parcel map—Exceptions to requirements is amended as follows:**

**16.12.040 - Tentative and final parcel map- Exceptions to requirements**

A tentative parcel map and final parcel map shall not be required in the following cases:

- A. Where the subdivision is created by a short-term lease, terminable by either party on not more than thirty (30) days' written notice, of a portion of the operating right-of-way of a railroad corporation, as defined by Section 230 of the Public Utilities Code;
- B. Where land is conveyed to or from a government agency, public entity or public utility, or to a subsidiary of a public utility for rights-of-way, unless a showing is made in individual cases that public policy necessitates a parcel map.
- C. Where an urban lot split is proposed, see Chapter 17.05 of Title 17 of this Municipal Code.

\*\*\*\*\*

**SECTION 4. Section 17.02.120 - Carport is amended, as follows:**

17.02.120 - Carport. "Carport" means an accessory structure or a portion of a main structure designed for the storage of motor vehicles having a roof or other solid covering and enclosed on no more than two (2) sides.

\*\*\*\*\*

**SECTION 5. Section 17.02.220 - Driveway is amended, as follows:**

17.02.220 - Driveway. "Driveway" means a private roadway which provides access to off-street parking or loading spaces, and the use of which is limited to persons residing on the site, their invitees, or persons working on the site. A driveway may be shared, to serve two or more lots, by access easement across one or more of the affected lots. This does not include private streets as defined in Section 17.02.750.

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**SECTION 2: Section 17.02.230 - Duplex is hereby deleted in its entirety.**

\*\*\*\*\*

**SECTION 3. Section 17.02.235 - Dwelling is amended to add a definition for “Duplex dwelling” and “Primary dwelling unit” or “Main Dwelling”, as follows:**

**17.02.235 - Dwelling.**

"Dwelling" means a place that is used as the personal residence of the occupants thereof, including transitional housing as defined in California Health and Safety Code Section 50675.2(h) and supportive housing as defined in California Health and Safety Code Sections 50675.14(b)(2) and (3). The term includes factory-built or manufactured housing, such as mobile homes, but excludes trailers, campers, tents, recreational vehicles, hotels, motels, boarding houses and temporary structures.

- A. "Duplex dwelling" means a building containing two dwelling units totally separated from each other by a wall, floor or ceiling; provided, however, that a building containing a single-family dwelling and a lawful accessory dwelling unit or junior accessory dwelling unit shall not be deemed a duplex.
- B. "Dwelling group" means a group of two (2) or more detached buildings located upon the same site, each of which contains one or more dwelling units.
- C. "Dwelling unit" means a room or group of rooms including living, sleeping, eating, cooking and sanitation facilities, constituting a separate and independent housekeeping unit, designed, occupied, or intended for occupancy by one family on a permanent basis. Permanent residency shall mean continuous occupancy of the dwelling unit for a period of thirty (30) days or more.
- D. "Multiple-family dwelling" means a building or site containing three (3) or more dwelling units (also see "duplex"). The term includes single-room-occupancy dwelling units, typically comprised of one or two (2) rooms (which may include a kitchen and/or a bathroom, in addition to a bed), that are restricted to occupancy by no more than two (2) persons.
- E. "Accessory dwelling unit" means a separate dwelling unit created upon a site that contains a single-family dwelling, duplex, or multiple-family dwelling. Subject to the restrictions of this title, the accessory dwelling unit may be within, attached to, or detached from the single-family dwelling, duplex, or multiple-family dwelling. An accessory dwelling unit shall include permanent provisions for living, sleeping, eating, cooking, and sanitation. The term "secondary dwelling unit" shall have the same meaning throughout this title.
- F. "Junior accessory dwelling unit" means a dwelling unit that is no more than five hundred (500) square feet in size and contained entirely within a single-family dwelling. A junior accessory dwelling unit may include separate sanitation facilities, or may share sanitation facilities with the single-family dwelling. Junior accessory dwelling units are distinguished from accessory dwelling units in that they: (1) must include the conversion of existing, legally permitted floor area within an existing single-family dwelling; (2) must be owner occupied, or the main dwelling be owner occupied; and (3) are subject to unique standards that are not applicable to accessory dwelling units, as specified in Chapter 17.43 of this Title.
- G. "Primary dwelling unit" or "Main Dwelling" means a dwelling unit that is not an accessory dwelling unit or a junior accessory dwelling unit.

H. "Single-family dwelling" means a dwelling unit constituting the only principal structure upon a single site (excluding any lawfully established accessory dwelling unit that may be located within the same structure on upon the same site). The term includes employee housing for six (6) or fewer persons, residential care facilities, licensed by the state to provide twenty-four-hour nonmedical care, serving six (6) or fewer persons (not including the operator, the operator's family or persons employed as staff) in need of supervision, personal services, or assistance essential for sustaining the activities of daily living or for the protection of the individual. Also see "Group care home" for seven (7) or more persons.

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**SECTION 6. Section 17.04.010 - Establishment of Districts is amended to add the "R-TUO Residential two unit overlay district" as follows:**

The districts into which the city is divided are hereby established and designated as follows:

- A. R-1 Residential district.
- B. R-2 Residential district.
- C. R-3 Residential district.
- D. R-BA: Brisbane acres residential district.
- E. R-TUO Residential two unit overlay district.
- F. C-1: Commercial mixed use district.
- G. NCRO: Central Brisbane commercial district.
- H. HC: Beatty heavy commercial district.
- I. SCRO-1: Southwest Bayshore commercial district.
- J. SP-CRO: Sierra Point commercial district.
- K. TC-1: Crocker Park trade commercial district.
- L. TC-2: Southeast Bayshore trade commercial district.
- M. MLB: Marsh Lagoon Bayfront district.
- N. O-S: Open space district.
- O. P-D: Planned development district.
- P. PAOZ: Parkside overlay district.
- Q. R-MHP: Residential mobile home park district.

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**Section 7. Chapter 17.05 Residential Two Unit Overlay District is added to Title 17 as follows:**

**17.05 Residential Two Unit Development Overlay District.**

**17.05.010 Purpose.** The purpose of this Chapter is to allow no more than two detached or attached primary dwelling units on one lot of record, establish objective standards for the District, and regulate certain subdivisions of a lot of record in single-family zoning districts, in accordance with State law. This Chapter shall be implemented and interpreted in conjunction with California Government Code Sections 65852.21 and 66411.7, as may be amended, and applicable objective standards and procedures set forth in Chapters 17.06, 17.12, 17.43, 16.12, 16.16, and 16.20 of the Brisbane Municipal Code.

**17.05.020 Applicability and Relation to Other Sections.** This Chapter is provided as an overlay district to the R-1 and R-BA residential districts, to comply with State law, and to carry out the purpose of Section 17.05.010, and, unless specifically addressed within this Chapter, the R-1 and R-BA district standards shall apply, as applicable. This Chapter also allows for ministerial approval of urban lot splits in conjunction with Chapter 16.16 and 16.20 of this Code.

This chapter shall not supersede the provisions of Section 17.01.060 - Requirement For Lot of Record and Infrastructure Improvements-- but applications shall be considered in concert with the provisions of that Section.

This chapter may be applied to a substandard lot, as further described in Section 17.47.030- Exceptions – Lot Area, Lot Dimensions and Lot Lines, if the substandard lot is a lot of record, as defined in Section 17.02.490.

**17.05.030 Definitions**

For the purposes of this Chapter, the following definitions apply. Terms not defined herein shall be based upon the definitions in Chapter 17.02.

- A. "Access Corridor" means an access easement or the "pole" of a flag lot that provides vehicular access to the public right-of-way, that is free of features that obstruct ingress/egress to a lot.
- B. "Acting in Concert" means the property owner, or a person as an agent or representative of the property owner, knowingly participating with another person in joint activity or parallel action toward a common goal of subdividing an adjacent parcel.
- C. "Car Share Facility" means one or more parking space(s) that have been designated permanently for car share vehicles, where the vehicles are leased for short periods of time, often by the hour.
- D. "Department" means the Community Development Department.
- E. "Existing Exterior Structural Wall" means and constitutes the original bottom plate and original top plate in its existing position, original studs (with the exception for new window framing), and capable of standing without support
- F. "Flag or Panhandle Lot" means a parcel which includes a strip of land that is owned in fee that is used primarily for vehicular access from a public or private street to the major portion of the parcel.
- G. "High Quality Transit Corridor" means a corridor with fixed bus route service with service intervals no longer than 15 minutes during peak commute hours, or as defined in State law.
- H. "Major Transit Stop" means a site containing any of the following: (i) an existing rail or bus rapid transit station; (ii) a ferry terminal served by either a bus or rail transit service; or (iii) the intersection of two or more major bus routes with a frequency of service intervals of 15 minutes or less during the morning and afternoon peak commute periods, or as defined in state law.
- I. "Primary Dwelling Unit" or "Primary Unit" means the same as defined in section 17.02.235.G.
- J. "Specific, adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date an application was deemed complete.
- K. "Two-unit Development" means a proposed housing development that contains two primary dwelling units on a single lot.



- L. “Urban Lot Split” means a subdivision of an existing lot of record in a single-family zoning district into no more than two separate legal lots, which subdivision satisfies all of the criteria and standards set forth in this Chapter and Government Code Section 66411.7.

**17.05.040 Eligibility.**

- A. To be eligible for a two-unit development or urban lot split as specified in this Chapter, the application shall meet all of the following criteria:
  - 1. The lot is a lot of record and is located within the R-1 Residential zoning district or the R-BA Brisbane Acres Residential zoning district.
  - 2. The owner(s) of the lot has not exercised the owner’s rights under Government Code Chapter 12.75 (commencing with Section 7060) of Division 7 of Title 1 to withdraw accommodations from rent or lease within 15 years before the date that the application has been submitted.
  - 3. The lot is not within a historic district or property included on the State Historic Resources Inventory, as defined in Section 5020.1 of the Public Resources Code, or within a site that is designated or listed as a city or county landmark or historic property or district pursuant to a city or county ordinance.
  - 4. The lot does not contain any of the site conditions listed in Government Code section 65913.4, subdivision (a)(6)(B-K), or successor provisions or as amended, which includes, but is not limited to, lands within wetlands, a very high fire hazard severity zone, a special flood hazard area subject to inundation by the 1 percent annual chance flood (100-year flood), habitat for protected species, and lands under a conservation easement.
  - 5. The lot has not previously been subdivided under this Chapter, or under Government Code section 66411.7.
  - 6. For urban lot splits, Prior to a lot split being recorded, the property owner(s) shall sign an affidavit stating that the owner, or a member or members of the owner’s immediate family, intends to occupy one of the dwelling units as the person’s principal residence for a minimum of three years. This requirement shall not apply to an applicant that is a “community land trust,” as defined in clause (ii) of subparagraph (C) of paragraph (11) of subdivision (a) of Section 402.1 of the Revenue and Taxation Code, or is a “qualified nonprofit corporation” as described in Section 214.15 of the Revenue and Taxation Code.

**17.05.050 Anti-displacement/Eligibility Criteria.**

- A. Development under this Chapter shall not result in displacement of tenants from:
  - 1. A lot that is subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate, low, or very low income.
  - 2. A lot that is subject to any form of rent or price control through the City’s valid exercise of its police power.
- B. Development under this Chapter shall not result in:
  - 1. Demolition or alteration as defined in Section 15.10.040.A or B of a dwelling unit that has been occupied by a tenant in the last three years.
  - 2. Demolition of a building, or alteration as defined in Section 15.10.040.A or B, when the building is occupied by a tenant.

**17.05.060 Permitted Uses.** The following uses, defined in Chapter 17.02 - Definitions, are permitted in this overlay zoning district in accordance with the development standards and are added to the permitted uses provided in Chapters 17.06 - R-1 Residential District and 17.12 - R-BA Brisbane Acres Residential District of this title:

- A. Duplex dwellings.
- B. Dwelling groups of two primary dwelling units per lot.

**17.05.070 Two Unit Developments without an Urban Lot Split.** A Two Unit Development on a lot of record that has not been split under the urban lot split provisions of this Chapter shall comply with the development standards provided in this section.

**A. Development Standards.** Where not expressly stated, the R-1 and R-BA zoning district development standards, set forth in Chapters 17.06 and 17.12, and ADU and JADU development standards set forth in Chapter 17.43, shall apply. For urban lot split development standards see Section 17.05.080.C.

1. Number of dwelling units. Development of up to four dwelling units may be built in the same lot area typically used for a single-family residence, without an urban lot split, as follows:

Development Scenario Options on a Single Lot without Urban Lot Split	Single Family Dwelling	Duplex Dwelling (two attached primary units")	Two-unit Dwelling Group (two detached primary units")	ADU	JADU	Total Dwelling Units
Type A.	NA	2				2
Type B.	NA		2			2
Type C.	NA	2		1		3
Type D.	NA		2	1		3
Type E.	NA	2		2		4
Type F.	NA		2	2		4
Type G.	NA		2	1	1	4

Notes:

- 1. NA: Not applicable. Development of a single-family dwelling on a lot of record may be permitted per the zoning district standards, provided in Chapter 17.06 and 17.12, without invoking the two unit overlay provisions.
- 2. See Chapter 17.43 for applicable development regulations for ADU's or JADU's..
- 3. Four units are the maximum that may be permitted on a lot.
- 4. If Types A through D are initially developed, one or two ADUs may later be added up to the maximum allowed, Types E or F, subject to the provisions of this Chapter.

2. Primary Dwelling Unit Size. Each of the primary dwelling units shall be permitted to be at least 800 square feet in floor area, regardless of the zoning district's lot coverage and floor area ratio (FAR) limits. For primary dwelling units over 800 square feet, the zoning district floor area standards shall apply; provided, however, this shall not preclude the option to construct smaller primary dwelling units in compliance with the state building code. The minimum floor area for each unit shall be as permitted by the state building code.

3. Lot coverage. The R-1 or R-BA district lot coverage limit shall apply except where it would preclude development of new primary units of 800 square feet, or retention of the lot coverage of an existing primary unit or addition of accessory dwelling unit, in compliance with the provisions of this Chapter and Chapter 17.43 of this Title.

4. Side and Rear Setbacks. Minimum side and rear setbacks for the primary dwelling units shall be 4 feet, except for the following:

- (a) Where the underlying district development standards allow for a lesser setback, the district standards shall apply.
- (b) No setback shall be required for an existing legal non-conforming structure, or a replacement structure constructed in the same location and to the same dimensions as an existing legal non-conforming structure.

5. Height of Primary Dwelling Units.

- (a) Where a primary dwelling unit utilizes the 4-foot side or rear setback allowance, for a reduced setback versus the district's setback, no portion of the building that is located in the area between the 4-foot setback and the district's setback minimum shall exceed 25 feet in height.
- (b) The maximum height of any primary dwelling unit on a ridgeline lot within the R-BA district, as defined in Section 17.02.695, shall be 25 feet, except for (i) an existing legal non-conforming structure, (ii) a replacement structure constructed in the same location and to the same dimensions as an existing legal non-conforming structure, or (iii) as approved by design review permit per Section 17.12.040.L.

6. Off-Street Parking.

(a) A minimum of one standard size, off-street parking space (uncovered or carport) for each primary dwelling unit shall be required (refer to Chapter 17.34 for parking space design standards). Garage parking space(s) shall not count towards meeting the minimum parking requirements.

(b) Shared driveways may be permitted to serve more than one dwelling unit, subject to approval by the City Engineer, based on finding that a shared driveway will not pose a hazard to public safety. See the definition of driveway in Section 17.02.220 of this title.

(c) Notwithstanding the parking requirements indicated above, no off-street parking shall be required if:

- (i) The lot is located within one-half mile walking distance of either a transit stop located in a high-quality transit corridor, as defined in Public Resources Code Section 21155(b), or a major transit stop, as defined in Public Resources Code Section 21064.3; or
- (ii) There is a designated parking area for one or more car-share facilities within one block of the lot.

**17.05.080 Urban Lot Splits.** The City may approve a parcel map for an urban lot split ministerially, subject to the procedures, requirements and development standards provided in this section.

**A. Ministerial Parcel Map Procedures.** The parcel map shall be prepared following the tentative map form and procedures provided in Chapter 16.16 - Tentative Map Procedures and Chapter 16.20- Final Map Procedures, except that the parcel map shall be approved by the City Engineer. The City Engineer shall have authority to waive specific requirements provided in Chapter 16.16 and Chapter 16.20, if the City Engineer deems the requirements inapplicable, given the site location or other characteristics.

**B. Ministerial Parcel Map Requirements.** A parcel map for an urban lot split shall meet the requirements of Chapter 16.16 and 16.20 of the Municipal Code, as deemed applicable by the City Engineer, and all of the following requirements:

1. The parcel map subdivides an existing lot of record to create no more than two legal lots of record of approximately equal lot area provided that one lot shall not be smaller than 40 percent of the lot area of the original lot of record proposed for subdivision.
2. Both newly created lots of record shall be no smaller than 1,200 square feet.
3. The zoning district lot width and depth dimension minimums shall not apply.
4. Flag lots may be approved. The flagpole portion, whether part of the flag lot or an easement on the flag lot, shall have a minimum width of 12 feet to accommodate a driveway, unless a lesser width is approved by the City Engineer. The location and dimensions of driveways are subject to approval by the City Engineer as set forth in Section 12.24.015.
5. Both parcels resulting from the urban lot split shall have access to, provide access to, or adjoin the public right-of-way through right-of-way frontage or recorded access easements.
6. The approved parcel map shall include a notation that the parcels were created using the Urban Lot Split provisions of this Chapter and the resulting parcels cannot be further subdivided under this Chapter.
7. The urban lot split conforms to all applicable objective requirements of the Subdivision Map Act, except as otherwise expressly provided in this Chapter.
8. The parcel being subdivided was not established through prior exercise of an urban lot split as provided for in this Chapter.
9. Neither the property owner of the parcel being subdivided nor any person acting in concert with the property owner has previously subdivided an adjacent parcel using an urban lot split as provided for in this Chapter.

**C. Development Standards for Urban Lot Splits.** Development on lots that have been split under this Chapter shall comply with the development standards provided in this section. Where not expressly stated, the R-1 and R-BA zoning district development standards, set forth in Chapters 17.06 and 17.12, and ADU and JADU development standards set forth in Chapter 17.43, shall apply.

1. Number of dwelling units. With an urban lot split, development of no more than four dwelling units may be built in the same lot area that would otherwise be used for a single-family residence, as shown in Tables a and b provided below. Note that Tables a and b are to be used together to detail possible development scenarios following an urban lot split. Table a provides various development scenarios that are possible on a single lot, following a lot split, as Types A through I. Table b shows how the scenario types may then be combined for the two resultant lots. For example, if one resultant lot is developed with three units (Types F, G, H or I), the second resultant lot may only be developed with a single family dwelling (Type A), for a maximum of four units on the two resultant lots.

a. Number and Types of Units- With Urban Lot Split

Development Scenario Options for Each Resultant Lot Following Split	Single Family Residence	Duplex	Two-unit Dwelling Group	ADU	JADU <sup>(2)</sup>	Total Units per lot
Type A	1					1
Type B	1			1		2
Type C	1				1	2
Type D		2				2
Type E			2			2
Type F	1			1	1	3
Type G		2		1		3
Type H			2	1		3
Type I			2		1	3

Notes:

- Urban lot splits may utilize a combination of buildout types A – H, provided that all of the following conditions are met: a) the total number of units does not exceed four across the two lots, b) each of the two lots is to be developed with at least one primary dwelling unit, and c) development of ADUs and JADUs shall comply with Chapter 17.43.
- JADU's are not permitted as a part of building that contains 2 or more units (i.e. duplex).

b. Lot Split - Resulting Lot Buildout Scenarios. The following table shows the total units that may be achieved by applying the development scenario options from Table 17.05.080.C.1.a to the two resultant lots.

RESULTANT LOT 2 (Housing Unit Totals)	RESULTANT LOT 1 (Housing Unit Totals)									
	Buildout Type (units)	Type A (1)	Type B (2)	Type C (2)	Type D (2)	Type E (2)	Type F (3)	Type G (3)	Type H (3)	Type I (3)
Type A (1)	2	3	3	3	3	3	4	4	4	4
Type B (2)	3	4	4	4	4	4	NP	NP	NP	NP
Type C (2)	3	4	4	4	4	4	NP	NP	NP	NP
Type D (2)	3	4	4	4	4	4	NP	NP	NP	NP
Type E (2)	3	4	4	4	4	4	NP	NP	NP	NP
Type F (3)	4	NP	NP	NP	NP	NP	NP	NP	NP	NP
Type G (3)	4	NP	NP	NP	NP	NP	NP	NP	NP	NP
Type H (3)	4	NP	NP	NP	NP	NP	NP	NP	NP	NP
Type I (3)	4	NP	NP	NP	NP	NP	NP	NP	NP	NP

Note: NP: Not Permitted for the buildout scenario. Buildout scenario may not exceed four units.

2. Primary Dwelling Unit Size. Each of the primary dwelling units shall be permitted to be at least 800 square feet in floor area, regardless of the zoning district's lot coverage and floor area ratio (FAR) limits. For primary dwelling units over 800 square feet, the zoning district floor area standards shall apply; provided, however, this shall not preclude the option to construct smaller primary dwelling units in compliance with the state building code. The minimum floor area for each unit shall be as permitted by the state building code.

3. Lot coverage. The zoning district's lot coverage limit shall not apply where it would preclude development of new primary units of at least 800 square feet, retention of the lot coverage of an existing primary unit or addition of accessory dwelling unit, in compliance with the provisions of this Chapter and Chapter 17.43 of this Title.

4. Side and Rear Setbacks. Minimum side and rear setbacks for the primary dwelling units shall be four feet, except for the following:

(a) Where the underlying zoning district development standards allow for a lesser setback, the district standards shall prevail.

(b) No setback shall be required for an existing legal non-conforming structure, or a replacement structure constructed in the same location and to the same dimensions as an existing legal non-conforming structure.

5. Height of Primary Units.

(a) Where a primary dwelling unit utilizes the 4-foot side or rear setback allowance, for a reduced setback versus the district's setback, no portion of the building that is located in the area between the four 4-foot setback and the district's setback minimum shall exceed 25 feet in height.

(b) The maximum height of any primary dwelling unit on a ridgeline lot within the R-BA district, as defined in Section 17.02.695, shall be 25 feet, except for (i) an existing legal non-conforming structure, (ii) a replacement structure constructed in the same location and to the same dimensions as an existing legal non-conforming structure, or (iii) as approved by design permit per Section 17.12.040.L.

6. Off-Street Parking.

(a) A minimum of one standard size, off-street parking space (uncovered or carport) for each primary dwelling unit shall be required (refer to Chapter 17.34 for parking space design standards). Garage parking space(s) shall not count towards meeting the minimum parking requirements.

(b) Shared driveways may be permitted to serve more than one lot, subject to approval by the City Engineer, based on finding that the driveway will not pose a hazard to public safety. See the definition of driveway in Section 17.02.220 of this title.

(c) Notwithstanding the parking requirements indicated above, no off-street parking shall be required if:

- (iii) The lot is located within one-half mile walking distance of either a transit stop located in a high-quality transit corridor, as defined in Public Resources Code Section 21155(b), or a major transit stop, as defined in Public Resources Code Section 21064.3; or
- (iv) There is a designated parking area for one or more car-share facilities within one block of the parcel.

7. Deed Restriction. A property owner utilizing the provisions of this Chapter shall record a deed restriction, in a form acceptable to the City, that does the following:

- (a) Where applicable, documents that the lot split complies with the provisions of this Chapter and restrictions provided in Government Code section 66411.7.
- (b) Expressly prohibits any rental of any dwelling unit on the property or properties for a term of 30 days or less.

**17.05.090 Requirement for a Building Permit**

Demolition, alteration or construction of any building shall require building permit(s). All construction shall be in conformance with the most recent edition of the California Model Codes with any applicable Brisbane amendments.

**17.05.100 Condominiums**

Condominiums may be established for primary dwelling units in accordance with Chapter 17.30 - Condominiums. Establishment of condominiums shall be subject to ministerial approval by the Community Development Director, based on conformance with the applicable provisions of this chapter and Chapter 17.30.

**17.05.110 Findings of Denial.** The City may deny a two-unit housing development or urban lot split, based upon a preponderance of the evidence, that the proposed housing development would have a specific, adverse impact, as defined in Section 17.05.030.J.

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**SECTION 8:** 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 9:** This Ordinance shall be in full force and effect thirty days after its passage and adoption.

\_\_\_\_\_  
Terry O'Connell, 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:

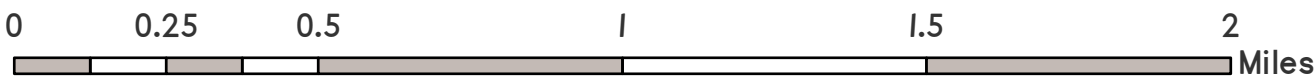
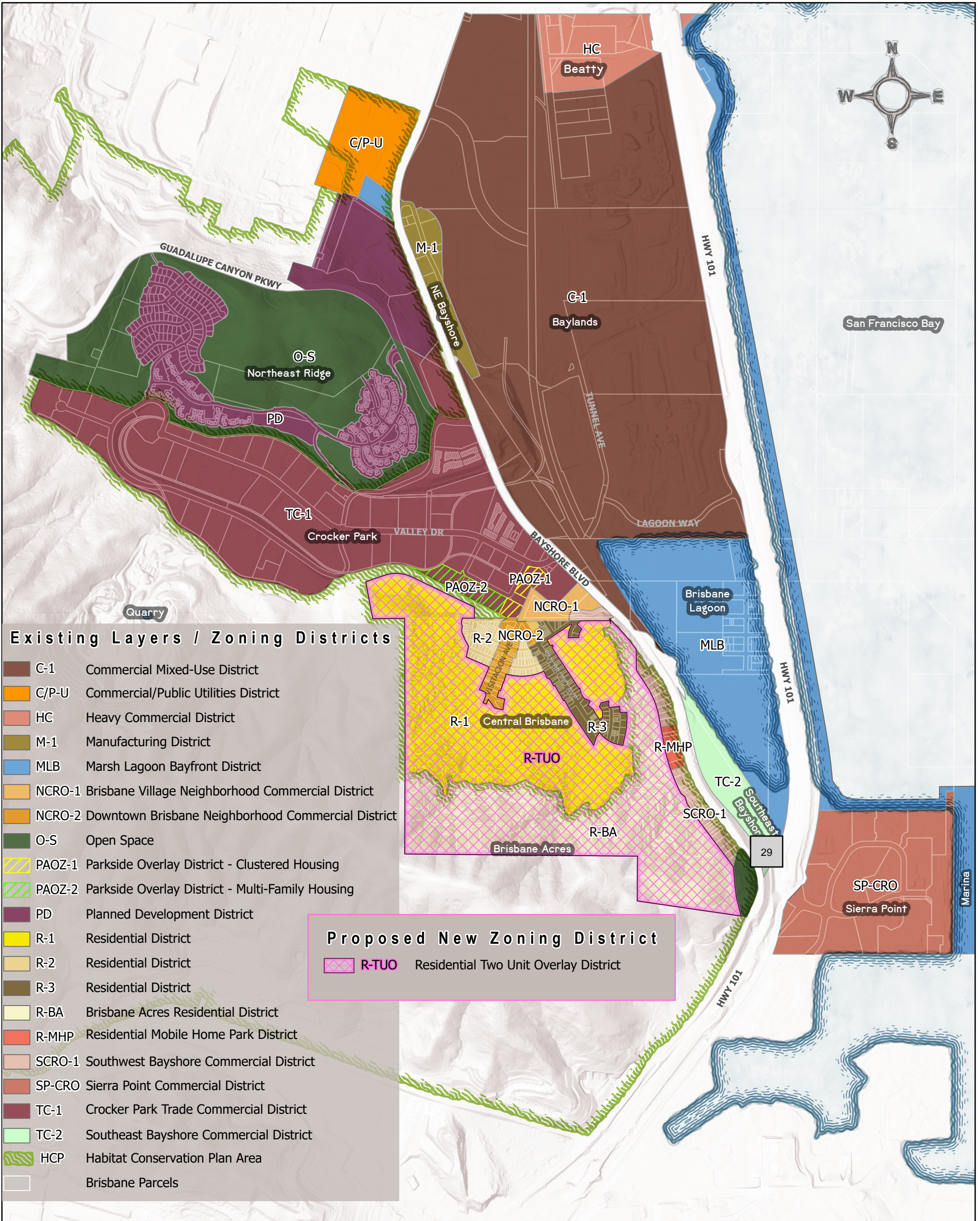
APPROVED AS TO FORM:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
City Attorney



# Proposed New Zoning District



Parcel and HCP GIS data provided by San Mateo County  
Zoning GIS data provided by City of Brisbane





## ATTACHMENT B REDLINED DRAFT ORDINANCE

**Note:** Red text indicates proposed as new or strikeout amendments to the Brisbane Municipal Code (BMC).

**Section 16.12.040 - Tentative and final parcel map—Exceptions to requirements is amended as follows:**

**16.12.040 - Tentative and final parcel map- Exceptions to requirements**

A tentative parcel map and final parcel map shall not be required in the following cases:

A. Where the subdivision is created by a short-term lease, terminable by either party on not more than thirty (30) days' written notice, of a portion of the operating right-of-way of a railroad corporation, as defined by Section 230 of the Public Utilities Code;

B. Where land is conveyed to or from a government agency, public entity or public utility, or to a subsidiary of a public utility for rights-of-way, unless a showing is made in individual cases that public policy necessitates a parcel map.

C. Where an urban lot split is proposed, see Chapter 17.05 of Title 17 of this Municipal Code.

**Section 17.02.120 - Carport is amended, as follows:**

17.02.120 - Carport. "Carport" means an accessory structure or a portion of a main structure designed for the storage of motor vehicles having a roof or other solid covering and enclosed on no more than two (2) sides.

~~"Carport" means an accessory structure or a portion of a main structure designed for the storage of motor vehicles having a permanent roof and not enclosed on two (2) or more sides.~~

**Section 17.02.220 - Driveway is amended, as follows:**

17.02.220 - Driveway. "Driveway" means a private roadway which provides access to off-street parking or loading spaces, and the use of which is limited to persons residing on the site, their invitees, or persons working on the site. A driveway may be shared, to serve two or more lots, by access easement across one or more of the affected lots. This does not include private streets as defined in Section 17.02.750.

~~on a single site, the use of which is limited to persons residing or working on the site and their invitees, licensees and business visitors.~~

**Section 17.02.230 - Duplex is hereby deleted in its entirety.**

**Section 17.02.235 - Dwelling is amended to add a definition for “Duplex dwelling” and “Primary dwelling unit” or “Main Dwelling”, as follows:**

**17.02.235 - Dwelling.**

"Dwelling" means a place that is used as the personal residence of the occupants thereof, including transitional housing as defined in California Health and Safety Code Section 50675.2(h) and supportive housing as defined in California Health and Safety Code Sections 50675.14(b)(2) and (3). The term includes factory-built or manufactured housing, such as mobile homes, but excludes trailers, campers, tents, recreational vehicles, hotels, motels, boarding houses and temporary structures.

- A. "Duplex dwelling" means a building containing two dwelling units totally separated from each other by a wall, floor or ceiling; provided, however, that a building containing a single-family dwelling and a lawful accessory dwelling unit or junior accessory dwelling unit shall not be deemed a duplex.
- B. ~~A.~~ "Dwelling group" means a group of two (2) or more detached buildings located upon the same site, each of which contains one or more dwelling units.
- C. ~~B.~~ "Dwelling unit" means a room or group of rooms including living, sleeping, eating, cooking and sanitation facilities, constituting a separate and independent housekeeping unit, designed, occupied, or intended for occupancy by one family on a permanent basis. Permanent residency shall mean continuous occupancy of the dwelling unit for a period of thirty (30) days or more.
- D. ~~C.~~ "Multiple-family dwelling" means a building or site containing three (3) or more dwelling units (also see "duplex"). The term includes single-room-occupancy dwelling units, typically comprised of one or two (2) rooms (which may include a kitchen and/or a bathroom, in addition to a bed), that are restricted to occupancy by no more than two (2) persons.
- E. ~~D.~~ "Accessory dwelling unit" means a separate dwelling unit created upon a site that contains a single-family dwelling, duplex, or multiple-family dwelling. Subject to the restrictions of this title, the accessory dwelling unit may be within, attached to, or detached from the single-family dwelling, duplex, or multiple-family dwelling. An accessory dwelling unit shall include permanent provisions for living, sleeping, eating, cooking, and sanitation. The term "secondary dwelling unit" shall have the same meaning throughout this title.
- F. ~~E.~~ "Junior accessory dwelling unit" means a dwelling unit that is no more than five hundred (500) square feet in size and contained entirely within a single-family dwelling. A junior accessory dwelling unit may include separate sanitation facilities, or may share sanitation facilities with the single-family dwelling. Junior accessory dwelling units are distinguished from accessory dwelling units in that they: (1) must include the conversion of existing, legally permitted floor area within an existing single-family dwelling; (2) must be owner occupied, or the main dwelling be owner occupied; and (3) are subject to unique standards that are not applicable to accessory dwelling units, as specified in Chapter 17.43 of this Title.
- G. "Primary dwelling unit" or "Main Dwelling" means a dwelling unit that is not an accessory dwelling unit or a junior accessory dwelling unit.
- H. ~~F.~~ "Single-family dwelling" means a dwelling unit constituting the only principal structure upon a single site (excluding any lawfully established accessory dwelling unit that may be located within the same structure on upon the same site). The term includes employee housing for six (6) or fewer persons, residential care facilities, licensed by the state to provide twenty-four-hour nonmedical care, serving six (6) or fewer persons (not including the operator, the operator's

family or persons employed as staff) in need of supervision, personal services, or assistance essential for sustaining the activities of daily living or for the protection of the individual. Also see "Group care home" for seven (7) or more persons.

**Section 17.04.010 - Establishment of Districts is amended to add the “R-TUO Residential two unit overlay district” as follows:**

The districts into which the city is divided are hereby established and designated as follows:

- A. R-1 Residential district.
- B. R-2 Residential district.
- C. R-3 Residential district.
- D. R-BA: Brisbane acres residential district.
- E. **R-TUO Residential two unit overlay district.**
- F. ~~E~~-C-1: Commercial mixed use district.
- G. ~~F~~-NCRO: Central Brisbane commercial district.
- H. ~~G~~-HC: Beatty heavy commercial district.
- I. ~~H~~-SCRO-1: Southwest Bayshore commercial district.
- J. ~~I~~-SP-CRO: Sierra Point commercial district.
- K. ~~J~~-TC-1: Crocker Park trade commercial district.
- L. ~~K~~-TC-2: Southeast Bayshore trade commercial district.
- M. ~~L~~-MLB: Marsh Lagoon Bayfront district.
- N. ~~M~~-O-S: Open space district.
- O. ~~N~~-P-D: Planned development district.
- P. ~~O~~-PAOZ: Parkside overlay district.
- Q. ~~P~~-R-MHP: Residential mobile home park district.

**Chapter 17.05 Residential Two Unit Overlay District is added to Title 17 as follows:**

**17.05 Residential Two Unit Development Overlay District.**

**17.05.010 Purpose.** The purpose of this Chapter is to allow no more than two detached or attached primary dwelling units on one lot of record, establish objective standards for the District, and regulate certain subdivisions of a lot of record in single-family zoning districts, in accordance with State law. This Chapter shall be implemented and interpreted in conjunction with California Government Code Sections 65852.21 and 66411.7, as may be amended, and applicable objective standards and procedures set forth in Chapters 17.06, 17.12, 17.43, 16.12, 16.16, and 16.20 of the Brisbane Municipal Code.

**17.05.020 Applicability and Relation to Other Sections.** This Chapter is provided as an overlay district to the R-1 and R-BA residential districts, to comply with State law, and to carry out the purpose of Section 17.05.010, and, unless specifically addressed within this Chapter, the R-1 and R-BA district standards shall apply, as applicable. This Chapter also allows for ministerial approval of urban lot splits in conjunction with Chapter 16.16 and 16.20 of this Code.

This chapter shall not supersede the provisions of Section 17.01.060 - Requirement For Lot of Record and Infrastructure Improvements-- but applications shall be considered in concert with the provisions of that Section.

This chapter may be applied to a substandard lot, as further described in Section 17.47.030- Exceptions – Lot Area, Lot Dimensions and Lot Lines, if the substandard lot is a lot of record, as defined in Section 17.02.490.

**17.05.030 Definitions**

For the purposes of this Chapter, the following definitions apply. Terms not defined herein shall be based upon the definitions in Chapter 17.02.

- A. “Access Corridor” means an access easement or the “pole” of a flag lot that provides vehicular access to the public right-of-way, that is free of features that obstruct ingress/egress to a lot.
- B. “Acting in Concert” means the property owner, or a person as an agent or representative of the property owner, knowingly participating with another person in joint activity or parallel action toward a common goal of subdividing an adjacent parcel.
- C. “Car Share Facility” means one or more parking space(s) that have been designated permanently for car share vehicles, where the vehicles are leased for short periods of time, often by the hour.
- D. “Department” means the Community Development Department.
- E. “Existing Exterior Structural Wall” means and constitutes the original bottom plate and original top plate in its existing position, original studs (with the exception for new window framing), and capable of standing without support
- F. “Flag or Panhandle Lot” means a parcel which includes a strip of land that is owned in fee that is used primarily for vehicular access from a public or private street to the major portion of the parcel.
- G. “High Quality Transit Corridor” means a corridor with fixed bus route service with service intervals no longer than 15 minutes during peak commute hours, or as defined in State law.
- H. “Major Transit Stop” means a site containing any of the following: (i) an existing rail or bus rapid transit station; (ii) a ferry terminal served by either a bus or rail transit service; or (iii) the intersection of two or more major bus routes with a frequency of service intervals of 15 minutes or less during the morning and afternoon peak commute periods, or as defined in state law.
- I. “Primary Dwelling Unit” or “Primary Unit” means the same as defined in section 17.02.235.G.
- J. “Specific, adverse impact” means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date an application was deemed complete.
- K. “Two-unit Development” means a proposed housing development that contains two primary dwelling units on a single lot.
- L. “Urban Lot Split” means a subdivision of an existing lot of record in a single-family zoning district into no more than two separate legal lots, which subdivision satisfies all of the criteria and standards set forth in this Chapter and Government Code Section 66411.7.

**17.05.040 Eligibility.**

- A. To be eligible for a two-unit development or urban lot split as specified in this Chapter, the application shall meet all of the following criteria:
  - 1. The lot is a lot of record and is located within the R-1 Residential zoning district or the R-BA Brisbane Acres Residential zoning district.
  - 2. The owner(s) of the lot has not exercised the owner’s rights under Government Code Chapter 12.75 (commencing with Section 7060) of Division 7 of Title 1 to withdraw accommodations from rent or lease within 15 years before the date that the application has been submitted.
  - 3. The lot is not within a historic district or property included on the State Historic Resources Inventory, as defined in Section 5020.1 of the Public Resources Code, or within a site that is designated or listed as a city or county landmark or historic property or district pursuant to a city or county ordinance.
  - 4. The lot does not contain any of the site conditions listed in Government Code section 65913.4, subdivision (a)(6)(B-K), or successor provisions or as amended, which includes, but is not limited to, lands within wetlands, a very high fire hazard severity zone, a special flood hazard area subject to inundation by the 1 percent annual chance flood (100-year flood), habitat for protected species, and lands under a conservation easement.
  - 5. The lot has not previously been subdivided under this Chapter, or under Government Code section 66411.7.
  - 6. For urban lot splits, Prior to a lot split being recorded, the property owner(s) shall sign an affidavit stating that the owner, or a member or members of the owner’s immediate family, intends to occupy one of the dwelling units as the person’s principal residence for a minimum of three years. This requirement shall not apply to an applicant that is a “community land trust,” as defined in clause (ii) of subparagraph (C) of paragraph (11) of subdivision (a) of Section 402.1 of the Revenue and Taxation Code, or is a “qualified nonprofit corporation” as described in Section 214.15 of the Revenue and Taxation Code.

**17.05.050 Anti-displacement/Eligibility Criteria.**

- A. Development under this Chapter shall not result in displacement of tenants from:
  - 1. A lot that is subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate, low, or very low income.
  - 2. A lot that is subject to any form of rent or price control through the City’s valid exercise of its police power.
- B. Development under this Chapter shall not result in:
  - 1. Demolition or alteration as defined in Section 15.10.040.A or B of a dwelling unit that has been occupied by a tenant in the last three years.
  - 2. Demolition of a building, or alteration as defined in Section 15.10.040.A or B, when the building is occupied by a tenant.

**17.05.060 Permitted Uses.** The following uses, defined in Chapter 17.02 - Definitions, are permitted in this overlay zoning district in accordance with the development standards and are added to the permitted uses provided in Chapters 17.06 - R-1 Residential District and 17.12 - R-BA Brisbane Acres Residential District of this title:

- A. Duplex dwellings.

**B. Dwelling groups of two primary dwelling units per lot.**

**17.05.070 Two Unit Developments without an Urban Lot Split.** A Two Unit Development on a lot of record that has not been split under the urban lot split provisions of this Chapter shall comply with the development standards provided in this section.

**A. Development Standards.** Where not expressly stated, the R-1 and R-BA zoning district development standards, set forth in Chapters 17.06 and 17.12, and ADU and JADU development standards set forth in Chapter 17.43, shall apply. For urban lot split development standards see Section 17.05.080.C.

1. Number of dwelling units. Development of up to four dwelling units may be built in the same lot area typically used for a single-family residence, without an urban lot split, as follows:

Development Scenario Options on a Single Lot without Urban Lot Split	Single Family Dwelling	Duplex Dwelling (two attached primary units")	Two-unit Dwelling Group (two detached primary units")	ADU	JADU	Total Dwelling Units
Type A.	NA	2				2
Type B.	NA		2			2
Type C.	NA	2		1		3
Type D.	NA		2	1		3
Type E.	NA	2		2		4
Type F.	NA		2	2		4
Type G.	NA		2	1	1	4

Notes:

1. NA: Not applicable. Development of a single-family dwelling on a lot of record may be permitted per the zoning district standards, provided in Chapter 17.06 and 17.12, without invoking the two unit overlay provisions.
2. See Chapter 17.43 for applicable development regulations for ADU's or JADU's..
3. Four units are the maximum that may be permitted on a lot.
4. If Types A through D are initially developed, one or two ADUs may later be added up to the maximum allowed, Types E or F, subject to the provisions of this Chapter.

2. Primary Dwelling Unit Size. Each of the primary dwelling units shall be permitted to be at least 800 square feet in floor area, regardless of the zoning district's lot coverage and floor area ratio (FAR) limits. For primary dwelling units over 800 square feet, the zoning district floor area standards shall apply; provided, however, this shall not preclude the option to construct smaller primary dwelling units in compliance with the state building code. The minimum floor area for each unit shall be as permitted by the state building code.

3. Lot coverage. The R-1 or R-BA district lot coverage limit shall apply except where it would preclude development of new primary units of 800 square feet, or retention of the lot coverage of an existing primary unit or addition of accessory dwelling unit, in compliance with the provisions of this Chapter and Chapter 17.43 of this Title.

4. Side and Rear Setbacks. Minimum side and rear setbacks for the primary dwelling units shall be 4 feet, except for the following:

- (a) Where the underlying district development standards allow for a lesser setback, the district standards shall apply.
- (b) No setback shall be required for an existing legal non-conforming structure, or a replacement structure constructed in the same location and to the same dimensions as an existing legal non-conforming structure.

5. Height of Primary Dwelling Units.

- (a) Where a primary dwelling unit utilizes the 4-foot side or rear setback allowance, for a reduced setback versus the district’s setback, no portion of the building that is located in the area between the 4-foot setback and the district’s setback minimum shall exceed 25 feet in height.
- (b) The maximum height of any primary dwelling unit on a ridgeline lot within the R-BA district, as defined in Section 17.02.695, shall be 25 feet, except for (i) an existing legal non-conforming structure, (ii) a replacement structure constructed in the same location and to the same dimensions as an existing legal non-conforming structure, or (iii) as approved by design review permit per Section 17.12.040.L.

6. Off-Street Parking.

(a) A minimum of one standard size, off-street parking space (uncovered or carport) for each primary dwelling unit shall be required (refer to Chapter 17.34 for parking space design standards). Garage parking space(s) shall not count towards meeting the minimum parking requirements.

(b) Shared driveways may be permitted to serve more than one dwelling unit, subject to approval by the City Engineer, based on finding that a shared driveway will not pose a hazard to public safety. See the definition of driveway in Section 17.02.220 of this title.

(c) Notwithstanding the parking requirements indicated above, no off-street parking shall be required if:

- (i) The lot is located within one-half mile walking distance of either a transit stop located in a high-quality transit corridor, as defined in Public Resources Code Section 21155(b), or a major transit stop, as defined in Public Resources Code Section 21064.3; or
- (ii) There is a designated parking area for one or more car-share facilities within one block of the lot.

**17.05.080 Urban Lot Splits.** The City may approve a parcel map for an urban lot split ministerially, subject to the procedures, requirements and development standards provided in this section.

**A. Ministerial Parcel Map Procedures.** The parcel map shall be prepared following the tentative map form and procedures provided in Chapter 16.16 - Tentative Map Procedures and Chapter 16.20- Final Map Procedures, except that the parcel map shall be approved by the City Engineer. The City Engineer shall have authority to waive specific requirements provided in Chapter 16.16 and Chapter 16.20, if the City Engineer deems the requirements inapplicable, given the site location or other characteristics.



**B. Ministerial Parcel Map Requirements.** A parcel map for an urban lot split shall meet the requirements of Chapter 16.16 and 16.20 of the Municipal Code, as deemed applicable by the City Engineer, and all of the following requirements:

1. The parcel map subdivides an existing lot of record to create no more than two legal lots of record of approximately equal lot area provided that one lot shall not be smaller than 40 percent of the lot area of the original lot of record proposed for subdivision.
2. Both newly created lots of record shall be no smaller than 1,200 square feet.
3. The zoning district lot width and depth dimension minimums shall not apply.
4. Flag lots may be approved. The flagpole portion, whether part of the flag lot or an easement on the flag lot, shall have a minimum width of 12 feet to accommodate a driveway, unless a lesser width is approved by the City Engineer. The location and dimensions of driveways are subject to approval by the City Engineer as set forth in Section 12.24.015.
5. Both parcels resulting from the urban lot split shall have access to, provide access to, or adjoin the public right-of-way through right-of-way frontage or recorded access easements.
6. The approved parcel map shall include a notation that the parcels were created using the Urban Lot Split provisions of this Chapter and the resulting parcels cannot be further subdivided under this Chapter.
7. The urban lot split conforms to all applicable objective requirements of the Subdivision Map Act, except as otherwise expressly provided in this Chapter.
8. The parcel being subdivided was not established through prior exercise of an urban lot split as provided for in this Chapter.
9. Neither the property owner of the parcel being subdivided nor any person acting in concert with the property owner has previously subdivided an adjacent parcel using an urban lot split as provided for in this Chapter.

**C. Development Standards for Urban Lot Splits.** Development on lots that have been split under this Chapter shall comply with the development standards provided in this section. Where not expressly stated, the R-1 and R-BA zoning district development standards, set forth in Chapters 17.06 and 17.12, and ADU and JADU development standards set forth in Chapter 17.43, shall apply.

1. Number of dwelling units. With an urban lot split, development of no more than four dwelling units may be built in the same lot area that would otherwise be used for a single-family residence, as shown in Tables a and b provided below. Note that Tables a and b are to be used together to detail possible development scenarios following an urban lot split. Table a provides various development scenarios that are possible on a single lot, following a lot split, as Types A through I. Table b shows how the scenario types may then be combined for the two resultant lots. For example, if one resultant lot is developed with three units (Types F, G, H or I), the second resultant lot may only be developed with a single family dwelling (Type A), for a maximum of four units on the two resultant lots.

a. Number and Types of Units- With Urban Lot Split

Development Scenario Options for Each Resultant Lot Following Split	Single Family Residence	Duplex	Two-unit Dwelling Group	ADU	JADU <sup>(2)</sup>	Total Units per lot
Type A	1					1
Type B	1			1		2
Type C	1				1	2
Type D		2				2
Type E			2			2
Type F	1			1	1	3
Type G		2		1		3
Type H			2	1		3
Type I			2		1	3

Notes:

- Urban lot splits may utilize a combination of buildout types A – H, provided that all of the following conditions are met: a) the total number of units does not exceed four across the two lots, b) each of the two lots is to be developed with at least one primary dwelling unit, and c) development of ADUs and JADUs shall comply with Chapter 17.43.
- JADU's are not permitted as a part of building that contains 2 or more units (i.e. duplex).

b. Lot Split - Resulting Lot Buildout Scenarios. The following table shows the total units that may be achieved by applying the development scenario options from Table 17.05.080.C.1.a to the two resultant lots.

		RESULTANT LOT 1 (Housing Unit Totals)								
RESULTANT LOT 2 (Housing Unit Totals)	Buildout Type (units)	Type A (1)	Type B (2)	Type C (2)	Type D (2)	Type E (2)	Type F (3)	Type G (3)	Type H (3)	Type I (3)
	Type A (1)	2	3	3	3	3	4	4	4	4
	Type B (2)	3	4	4	4	4	NP	NP	NP	NP
	Type C (2)	3	4	4	4	4	NP	NP	NP	NP
	Type D (2)	3	4	4	4	4	NP	NP	NP	NP
	Type E (2)	3	4	4	4	4	NP	NP	NP	NP
	Type F (3)	4	NP	NP	NP	NP	NP	NP	NP	NP
	Type G (3)	4	NP	NP	NP	NP	NP	NP	NP	NP
	Type H (3)	4	NP	NP	NP	NP	NP	NP	NP	NP
	Type I (3)	4	NP	NP	NP	NP	NP	NP	NP	NP

Note: NP: Not Permitted for the buildout scenario. Buildout scenario may not exceed four units.

2. Primary Dwelling Unit Size. Each of the primary dwelling units shall be permitted to be at least 800 square feet in floor area, regardless of the zoning district's lot coverage and floor area ratio (FAR) limits. For primary dwelling units over 800 square feet, the zoning district floor area standards shall apply; provided, however, this shall not preclude the option to construct smaller primary dwelling units in compliance with the state building code. The minimum floor area for each unit shall be as permitted by the state building code.

3. Lot coverage. The zoning district's lot coverage limit shall not apply where it would preclude development of new primary units of at least 800 square feet, retention of the lot coverage of an existing primary unit or addition of accessory dwelling unit, in compliance with the provisions of this Chapter and Chapter 17.43 of this Title.

4. Side and Rear Setbacks. Minimum side and rear setbacks for the primary dwelling units shall be four feet, except for the following:

(a) Where the underlying zoning district development standards allow for a lesser setback, the district standards shall prevail.

(b) No setback shall be required for an existing legal non-conforming structure, or a replacement structure constructed in the same location and to the same dimensions as an existing legal non-conforming structure.

5. Height of Primary Units.

(a) Where a primary dwelling unit utilizes the 4-foot side or rear setback allowance, for a reduced setback versus the district's setback, no portion of the building that is located in the area between the four 4-foot setback and the district's setback minimum shall exceed 25 feet in height.

(b) The maximum height of any primary dwelling unit on a ridgeline lot within the R-BA district, as defined in Section 17.02.695, shall be 25 feet, except for (i) an existing legal non-conforming structure, (ii) a replacement structure constructed in the same location and to the same dimensions as an existing legal non-conforming structure, or (iii) as approved by design permit per Section 17.12.040.L.

6. Off-Street Parking.

(a) A minimum of one standard size, off-street parking space (uncovered or carport) for each primary dwelling unit shall be required (refer to Chapter 17.34 for parking space design standards). Garage parking space(s) shall not count towards meeting the minimum parking requirements.

(b) Shared driveways may be permitted to serve more than one lot, subject to approval by the City Engineer, based on finding that the driveway will not pose a hazard to public safety. See the definition of driveway in Section 17.02.220 of this title.

(c) Notwithstanding the parking requirements indicated above, no off-street parking shall be required if:

- (iii) The lot is located within one-half mile walking distance of either a transit stop located in a high-quality transit corridor, as defined in Public Resources Code Section 21155(b), or a major transit stop, as defined in Public Resources Code Section 21064.3; or
- (iv) There is a designated parking area for one or more car-share facilities within one block of the parcel.

7. Deed Restriction. A property owner utilizing the provisions of this Chapter shall record a deed restriction, in a form acceptable to the City, that does the following:

- (a) Where applicable, documents that the lot split complies with the provisions of this Chapter and restrictions provided in Government Code section 66411.7.
- (b) Expressly prohibits any rental of any dwelling unit on the property or properties for a term of 30 days or less.

**17.05.090 Requirement for a Building Permit**

Demolition, alteration or construction of any building shall require building permit(s). All construction shall be in conformance with the most recent edition of the California Model Codes with any applicable Brisbane amendments.

**17.05.100 Condominiums**

Condominiums may be established for primary dwelling units in accordance with Chapter 17.30 - Condominiums. Establishment of condominiums shall be subject to ministerial approval by the Community Development Director, based on conformance with the applicable provisions of this chapter and Chapter 17.30.

**17.05.110 Findings of Denial.** The City may deny a two-unit housing development or urban lot split, based upon a preponderance of the evidence, that the proposed housing development would have a specific, adverse impact, as defined in Section 17.05.030.J.

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**WORKSHOP LINKS**

- a. February 22, 2024 ([Memorandum to PC](#)) ([Minutes](#))
- b. December 5, 2023 ([Memorandum to PC](#)) ([Minutes](#))
- c. October 26, 2023 ([Memorandum to PC](#)) ([Minutes](#))
- d. June 8, 2023 ([Memorandum to PC](#)) ([Minutes](#))

**Sent:** Saturday, April 27, 2024 11:14 AM  
**To:** Padilla, Ingrid <[cityclerk@ci.brisbane.ca.us](mailto:cityclerk@ci.brisbane.ca.us)>  
**Subject:** Article about SB9 and rezoning

Hi Ingrid - Could you please share this article as soon as possible with the Brisbane City Council, the Brisbane Planning Commission, our attorney, Tom McMorrow, Planning Staff and the City Manager?

I am requesting that we postpone making any decisions or holding hearings on Zoning Text and Map Amendment 2024-RZ-1. This rezoning will have a very severe impact on Brisbane.

Thank you.

Respectfully, Michele Salmon

## SINGLE-FAMILY ZONING LAW

# Ruling could upend housing

## Judge overturns law that allows splitting properties

BY KATE TALERICO

[KTALERICO@BAYAREANEWSGROUP.COM](mailto:KTALERICO@BAYAREANEWSGROUP.COM)

A controversial housing law that abolished single-family zoning across California has been ruled unconstitutional by a Los Angeles County judge, but the narrow ruling is likely to be appealed by the state and it's unclear how it might affect the Bay Area.

Passed in 2021, Senate Bill 9 allows single-family homeowners to split their lots in two and build two homes on each lot — allowing up to four units in a lot previously zoned for just one.

Five Southern California cities — Redondo Beach, Carson, Torrance, Whittier and Del Mar — sued the state in 2022, claiming the law was unconstitutional because it interfered with local authority over land use and zoning.

The Los Angeles County Superior Court judge's ruling, issued Monday, means that SB 9 can't be applied in these five cities. The judge is expected to produce a ruling in the next month that could strike down SB 9 in cities across the state.

What will happen in the Bay Area remains to be seen. For now, legal experts say SB 9 still applies. But if the ruling next month applies more widely, the law could be struck down in what are known as charter cities, those that have authority over municipal affairs, even when they might be at odds with a state statute. California has more than 120 charter cities, including Oakland, San Jose and San Francisco, meaning SB 9 could be upended in the region's three largest cities.

The attorney general's office said it is reviewing the decision and “will consider all options in defense of SB 9.”

Housing advocates worry that the court ruling chips away at a key piece of legislation intended to increase density around the state.

“The writing is on the wall for this particular court ruling to upend future SB 9 processing,” said Rafa Sonnenfeld, policy director at the San Francisco-based pro-housing group YIMBY Action.

UC Davis law professor Chris Elmendorf called it “the most ridiculous opinion that any court has issued in a housing-related case.”

At the heart of the case is local authority and what gives the state the right to usurp control. In California, the constitution requires that state laws stepping on cities’ local control must show a reasonable relationship between the stated intention and the design of the law.

In the case of SB 9, that stated intention was improving housing affordability.

The dominant theory in housing policy in recent years is that the state’s decadeslong undersupply of housing has pushed up the cost of rent and homeownership and that building more housing — both market-rate and subsidized — will improve affordability. That was reflected in SB 9’s design, which allows for more homes to be built via lot splits. In contrast to state-subsidized affordable housing or deed restrictions that cap rent, the affordable housing created through SB 9 would be what housing policymakers call “naturally occurring.”

But the judge, Curtis Kin, ruled that the legislature’s intention — housing affordability — didn’t match up with the design. Because SB 9 doesn’t require any of the units constructed to actually be below-market-rate, it was not “reasonably related and sufficiently narrowly tailored” to ensuring access to affordable housing, and therefore unconstitutional.

The judge’s opinion echoed critics’ doubts that increasing supply actually boosts affordability.

“The decision confirms that most of these so-called housing affordability laws are a sham and won’t result in much-needed affordable housing,” said Susan Candell, a Lafayette city councilmember and proponent of the Our Neighborhood Voices initiative, which seeks to return local land-use decisions back to cities.

“In Redondo Beach, we support laws that reasonably address the crisis in affordable housing, but this isn’t one of them,” City Attorney Michael Webb said. “This would just create more market rate housing.”

The opinion is a victory for CalCities, a group lobbying on behalf of the state’s cities, which submitted an amicus brief arguing that SB 9 has stripped cities of their discretion to determine the location, density and site characteristics of housing without ensuring the construction of more affordable housing units.

“The court’s ruling reaffirms the foundational principle that land use planning and zoning are local matters,” League of California Cities Executive Director and CEO Carolyn Coleman said in a statement.

But pro-housing advocates say the judge’s ruling relies on a narrow definition of housing affordability.



“It’s clear that the legislature intended for ‘affordable housing’ to mean the naturally affordable housing that happens with more production,” Sonnenfeld said. “But the ambiguity over the phrase ‘affordable housing’ is unfortunately causing some confusion in the courts. That could be easily fixed by the legislature.”

Ben Bear, CEO of BuildCasa, a startup that helps homeowners split their lots under SB 9 and sell them to developers, said SB 9 enables housing affordability by increasing supply of small starter homes, “which makes all housing more affordable through the chain reaction effect.”

“We’ve seen that SB 9 units can sell for 30%-50% less per unit than other single-family homes due to increased density,” Bear said.

Advocates hope the legislature revives an SB 9 clean-up bill proposed last year by Sen. Toni Atkins, a San Diego Democrat, that could also clarify the law’s intention and resolve the judge’s concerns.

Even Candell of the Lafayette City Council acknowledged that a simple cleanup to SB 9 could render the Los Angeles Court’s decision moot.

“We’ve lost the war,” she said. “We can’t undo all these laws one by one.”

**File Attachments for Item:**

**C. PUBLIC HEARING: Zoning Text Amendment 2024-RZ-2, City-wide;** recommendation to City Council on omnibus zoning amendments to modify the development standards for multifamily and residential mixed use zoning districts consistent with California Senate Bill SB 478 (“housing opportunity act”) and as provided in the 2023-2031 Housing Element for building heights, lot coverage and floor area ratios, and related amendments, including, but not limited to, organizational amendments and amendments to development regulation exceptions and Zoning Administrator procedures; and finding that this project is exempt from environment review under CEQA Guidelines Sections 15061(b)(3), Section 15183; City of Brisbane, applicant.



## PLANNING COMMISSION AGENDA REPORT

**Meeting Date:** 5/9/2024

**From:** Ken Johnson, Senior Planner

**Subject:** **Zoning Text Amendments to Title 17** – Omnibus Zoning Amendments to modify the development standards for multifamily and residential mixed use zoning districts consistent with California Senate Bill SB 478 (“housing opportunity act”) and as provided in the 2023-2031 Housing Element for building heights, lot coverage and floor area ratios, and related amendments, including, but not limited to, organizational amendments and amendments to development regulation exceptions and Zoning Administrator procedures; and finding that this project is exempt from environment review under CEQA Guidelines Sections 15061(b)(3), Section 15183; City of Brisbane, applicant.

**REQUEST:** To amend the zoning text provisions in a number of Chapters in the Brisbane Municipal Code (BMC), as outlined in the Applicable Codes Section of this report. This includes updates to the residential and mixed use development standards consistent with California Senate Bill SB 478 (“housing opportunity act”) and as provided in the 2023-2031 Housing Element. It also includes reorganization of the development standards in the residential district zoning for clarity and updates to the procedures for planning permit approvals and appeals.

**RECOMMENDATION:** Via Resolution 2024-RZ-2, recommend that City Council adopt Zoning Text Amendment 2024-RZ-2, as provided in Exhibit A of Attachment A.

**ENVIRONMENTAL DETERMINATION:** The adoption of this ordinance is exempt from the California Environmental Quality Act (CEQA) pursuant to California Government Code Section 15061(b)(3), Section 15183 relating to the implementation of the Housing Element. The exception requiring further review as might be necessary to examine a project specific significant effects does not apply.

**APPLICABLE CODE SECTIONS:** Procedures for zoning amendments are provided in BMC Chapter 17.50. The following BMC chapters or sections contained within Title 17 – Zoning are applicable to this amendment, with the proposed action indicated for each:

- Section 17.02.065 - Outside Wall definition – delete and include in Wall definition.
- Section 17.02.785 - Wall definition – new, but amended from Outside Wall definition.
- Section 17.06.040 - R-1 Development Regulations - amended.
- Section 17.08.040 - R-2 Development Regulations - amended.
- Section 17.10.040 - R-3 Development Regulations - amended.

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- Section 17.12.040 - R-BA Development Regulations - amended.
- Section 17.12.045 - Ridgeline Development – new section, relocated from Section 17.12.040.
- Section 17.14.060 - NCRO-2 Development Regulations - amended.
- Section 17.16.040 - SCRO-1 Development Regulations - amended.
- Section 17.27.040 - POAZ-1 Development Regulations - amended.
- Section 17.27.050 - POAZ-2 Development Regulations - amended.
- Sections 17.032.050 to 17.32.080 - various exceptions to district development regulations – relocated to new Chapter 17.47 and amended.
- Section 17.42.070 - Amendment of Design Permits – Minor Modifications - amended.
- Chapter 17.46 - Variances – amended.
- Chapter 17.47 - Exceptions to District Development Regulations – new chapter from relocated sections 17.32.050 to 17.32.080.
- Chapter 17.52 - Appeals – amended.
- Chapter 17.56 - Administration – retitled to Zoning Administrator and amended.

Note that the provisions of this ordinance would not supersede the provisions of the ordinance proposed for adoption via application number 2024-RZ-1, which would establish an R-TUO Residential Two Unit Overlay district, provided separately.

**BACKGROUND:** California Senate Bill SB 478 (2021) was codified as Government Code Section 65913.11. This law became effective on January 1, 2022 and requires that a local agency allow minimum floor area ratios (FARs) of at least 1.0 for 3 to 7 unit developments and 1.25 for 8 to 10 unit developments. A local agency may not impose a lot coverage requirement that would physically preclude a housing development project that would meet the FAR requirements for 3 to 10 units. Also, a local agency may not deny a housing development project in the range of 3 to 10 units on an existing lot solely on the basis that it doesn't meet the minimum lot size. For Brisbane, this is applicable to the R-2 and R-3 residential Districts and the NCRO-1 and SCRO-1 mixed use districts. The R-2 and R-3 districts currently have FAR limits of 0.72 and the NCRO-2 and SCRO-1 do not have FAR maximums.

On May 18, 2023, City Council adopted the revised 2023-2031 Housing Element (Housing Element) and it was subsequently certified by the California Department of Housing and Community Development (HCD). It includes a program for Brisbane to update its zoning ordinance to increase the height in the multifamily districts to 36 feet to more reasonably allow for 3 story developments. Additionally, other goals, policies and programs are provided to encourage development of housing, prevent displacement, provide for accessibility and to remove unreasonable government constraints to the provision of housing, as follows:

*Goal 2: Facilitate and support the production of housing at all income levels, but especially affordable housing.*

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*Policy 2.A: Provide zoning for a balance of housing types, sizes (bedrooms), tenure and the inclusion of affordable, senior and special needs dwelling units in multi-family developments consistent with the RHNA.*

- *Program 2.A.12: Amend the zoning ordinance for all districts that allow multifamily residential uses, to allow for building heights of at least 36 feet, to be able to accommodate 3-story development.*

*Goal 7: Avoid unreasonable government constraints to the provision of housing.*

*Policy 7.A: Improve the development review and approval process.*

- *Program 7.A.1: Continue to evaluate and implement changes to the zoning ordinance and permitting process to simplify and streamline approval of projects that meet the City's housing goals.*
- *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).*

Following adoption of the Housing Element, the Planning Commission held workshops on June 8, 2023 and February 22, 2024, during their regularly scheduled public meetings, to discuss the provisions of a draft ordinance addressing SB 478 along with proposed amendments to address these other items. The links to the workshop reports and minutes are provided with the links in the Attachments section of this report.

During the workshops, the Planning Commission indicated a desire to provide for equity in terms of height across the various residential districts as well as consistent floor area ratio standards for 3 unit developments and larger.

Also, since this ordinance touches on the development standards for all of the residential and mixed use districts, with the exception of the POAZ-1 and POAZ-2 districts which are addressed through the Parkside Precise Plan, as well as the related exceptions to development standards, a comprehensive zoning amendment has been proposed.

**DISCUSSION:** The ordinance updates the residential zoning regulations as provided in the Housing Element programs, provides for reorganization of certain sections, and updates and clarifies procedural requirements for planning permits. The draft ordinance is provided as Exhibit A of Attachment A and a redlined version is provided as Attachment B. The redlined version

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shows only proposed substantive amendments and does not show redlines for edits that were made for reorganizational purposes.

The key amendments provided in the draft ordinance are as follows:

**Sections 17.02.065 and 17.02.785 Definitions:** The definitions provided in Chapter 17.02 apply to any district within the City. The definition in Section 17.02.785 - Outside Wall is updated to provide the definition under the broader definition of Wall and to further clarify the types of outside walls, such as “interior to a lot” or “exterior”. This definition is only for clarity, without substantive changes, and is tied to building articulation provisions later in the ordinance.

**Section 17.06.040 - Development Regulations (R-1 Residential District):** This section of the R-1 Residential zoning district regulations has been reformatted to a table for clarity. The only substantive amendment would be to increase the height for dwellings and structures that are not within the standard setback areas to 36 feet, from the current height limit of either 28 feet for lots with less than a 20 percent slope, or 30 feet for lots with a slope of 20 percent or greater. This is consistent with the requirements established under the Housing Element.

**Section 17.08.040 - Development Regulations (R-2 Residential District):** This section of the R-2 Residential zoning district regulations has been reformatted to a table for clarity. The substantive amendments would be to increase the height for dwellings and structures that are not within the standard setback areas to 36 feet and for multifamily developments of three units or more, the floor area ratio (FAR) would be amended to 1.25 from 0.72, consistent with SB 478. The lot coverage limit would remain at 50 percent, except that over 50 percent may be approved by the planning director, if required to meet the 1.25 FAR. Also, per SB 478 there would be no requirement for the lot area for a lot of record, for multifamily developments of 3 units or more.

**Section 17.10.040 - Development Regulations (R-3 Residential District):** This section of the R-3 Residential zoning district regulations has been reformatted to a table for clarity. The substantive amendments are similar to the R-2 district. The height limit for dwellings and structures that are not within the standard setback areas would be increased to 36 feet and for multifamily developments of three units or more, the floor area ratio (FAR) would be amended to 1.25 from 0.72, consistent with SB 478. The lot coverage limit would remain at 60 percent, except that lot coverage exceeding 60 percent may be approved by the planning director, if required to meet the 1.25 FAR for developments of 3 or more units on a lot. Also, per SB 478 there would be no requirement for the lot area for a lot of record, for multifamily developments of 3 units or more.

**Section 17.12.040 - Development Regulations (R-BA Brisbane Acres Residential District):** This section of the R-BA zoning district regulations has been reformatted to a table for clarity. Similar to the R-1 district, the amendment would increase the height for dwellings and structures that are not within the standard setback areas to 36 feet, from the current height limit of 35 feet. The subsection pertaining to ridgeline development would be relocated to a stand-alone section, but

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no substantive amendments are proposed for this section. This would be similar to the organizational structure for clustered development in the R-BA, since there is a planning permit process for both types of developments.

**Section 17.14.060 - Development regulations for the NCRO-2 district:** The substantive amendment for this section would be the change in height, from the current maximum of 35 feet, when authorized by a design permit, to 36 feet consistent with the Housing Element program. Note that any principal structure in this district requires design permit review and approval by the Planning Commission. Per SB 478, there would be no requirement for the lot area for an existing lot of record, for multifamily developments of 3 units or more. The fencing requirements would also be amended, primarily for clarity, but would also allow for greater flexibility on the height for screening abutting residential district property, so that 8 feet would no longer be the required minimum, but it would establish a maximum height of 10 feet. Currently, no maximum height is specified. Fences would be subject to Zoning Administrator approval, unless it is part of a design permit subject to Planning Commission approval.

**Section 17.16.040 - Development regulations for the SCRO-1 district:** The substantive amendment for this section would be the change in height, from the current maximum of 35 feet, to 36 feet, consistent with the Housing Element program. Also, per SB 478, there would be no requirement for the lot area for an existing lot of record, for multifamily developments of 3 units or more.

**Sections 17.27.040 and 17.27.050 - Development regulations for the PAOZ-1 and PAOZ-2 districts:** For consistency with procedures for fence and wall exceptions provided for other districts, such permit applications would be by the Zoning Administrator instead of the Planning Commission.

**Sections 17.32.050 to 17.32.080 - various exceptions to development regulations:** These sections would be removed from Chapter 17.32 - General Use Regulations. The provisions would be relocated and amended as a new "Chapter 17.47 - Exceptions to District Development Regulations", as described below.

**Section 17.42.070 - Amendment of Design Permit – Minor Modifications:** This amendment would retitle the section to "Amendment of Design Permit – Modifications" and instead of naming the Planning Commission only as the approving authority, amendments may be approved by the Zoning Administrator or the Planning Commission, as set forth in Section 17.56.090, depending on whether it is a major or minor modification. Proposed amendments to Section 17.56.090 are described below.

**Section 17.46 - Variances:** This chapter currently names either the Planning Commission or the Zoning Administrator as the approving authority for "variances from the strict application of the terms of this title". In practice, variances have been reviewed by the Planning Commission and,

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for clarity and consistency with practice, the reference to the Zoning Administrator would be deleted.

**Chapter 17.47 - Exceptions to District Development Regulations:** This new chapter would include the following sections:

- 17.47.010 - Purpose of Chapter
- 17.47.020 - Applicability
- 17.47.030 - Exceptions to Lot area, lot dimensions and lot lines
- 17.47.040 - Height Limit Exceptions
- 17.47.050 - Setback Exceptions
- 17.47.060 - Exception Modification Procedures
- 17.47.070 - Requests for reasonable accommodations.
- 17.47.080 - Nonconforming Structures and Features.

This is largely a reorganization for clarity to distinguish exceptions as separate from Chapter 17.32 - General Uses, such as conditional uses in all districts, wireless telecommunications facilities, etc. The reorganization would provide a vehicle to clarify and update the processing procedures for the various exception permits and provide more consistent processing of the various exceptions. These are outlined as follows:

Exceptions to Lot area, lot dimensions and lot lines: The provisions of this section would remain largely unchanged, except to cross reference and allow that lots may be created by urban lot split, through the new Chapter 17.05.

Height Limit Exceptions: This section has been reformatted to a table for clarity. The height limit exceptions section, at present, names flag poles, church steeples, radio and other towers as part of a class of exceptions having a use permit requirement and these are proposed to be removed from this section. Flag poles would be removed since height limits are included within a new setback exception type. Where a flag pole is proposed interior to a developed lot, not within the setback area, the standard district height provisions would apply. Churches may be conditionally permitted in any district in accordance with BMC Section 17.32.020.B.1 and telecommunications facilities are provided for in Section 17.32.032.

This section also currently includes a procedure for approving accessibility improvements for accommodation of those with a disability. This section has been relocated to a section at the end of this new Chapter 17.47, to allow for administrative permitting through the building permit process. See further discussion below.

Setback Exceptions: This section has been reformatted to tables for clarity. Also, the various procedures for application for a modification to setback exception would be normalized to a single process that's provided in the draft new Section 17.47.060 - Exception Modification Procedures.



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A few setback exception standards are proposed to be updated, following discussion at the Planning Commission workshops. Subject to certain conditions, including compliance with the California Building Code (CBC), these include: 1) adding an exception for garages and carports on through lots to have a zero setback from the rear lot line, the same as currently exists for the front, subject to City Engineer approval; 2) stairs, ramps and landings to a building entrance may have a zero side setback; 3) decorative water features and decorative artwork would have no side setback requirement which is the same as currently allowed for the front and rear; and 4) a new exception has been added for flag poles and flags.

Fences, hedges and walls would be included in the setback exceptions chapter and the provisions have been updated. That's largely for clarity, but a few notable amendments are as follows:

The current provisions allow for 8 foot wood fences in the residential districts, side and rear setbacks only, with the top two feet being in lattice. The draft provisions would allow up to 7 feet of solid fence, but if the fence is as high as 8 feet then the top 2 feet must be lattice or a similar open pattern. The 7 foot solid fence height correlates to the threshold for when a building permit would be required per the CBC. Within certain commercial districts that have an public, open campus feel, such as the SP-CRO Sierra Point Commercial District, or are public facing, such as the NCRO-1 and NCRO-2, a fence exception permit would be required for any fence. Alternatively, fences may be approved as part of a design permit, if the fence is part of a new development project that would already be going to the Planning Commission for design review.

Under other requirements for fences, a non-substantive amendment to the requirement for fences within the HCP has been included in the other requirements section, to provide clearer language that any such fencing must be consistent with the HCP operating program for the site or other required permitting consistent with the HCP requirements. Also, gated driveways are not currently addressed in the code and so these would be subject to planning director approval, to verify that the gate would not create a safety hazard.

For retaining walls, although not a substantive change, the conditions for walls over 6 feet in height have been updated to match the same conditions provided for retaining walls that may be approved through the grading ordinance provisions in BMC Section 15.01.110.B.2.

Exception Modification Procedures: As indicated above, exception modification procedures would be normalized to one process through the Zoning Administrator, as detailed in the proposed new Section 17.47.060. Zoning Administrator decisions are to be reported to the Planning Commission at least 7 days prior to the expiration of the 10-day appeal period and decisions may be appealed to the Planning Commission. Appeals timeframes and procedures are also proposed to be updated in Section 17.52, as described below.

Requests for reasonable accommodations. Consistent with Housing Element Program 7.A.3, requests for reasonable accommodations would be deleted from the height and setback

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exceptions and made a separate subsection within this new chapter. Unlike the other exceptions, which would require a decision by the Zoning Administrator, reasonable accommodations would be subject to a building permit where it has been demonstrated that the current or future accessibility feature cannot be otherwise addressed through the applicable district height or setbacks provisions. As with all of the exceptions, the accessibility improvement will be required to be constructed in compliance with state and local building and fire codes.

**Chapter 17.52 - Appeals:** Various appeals timeframes are provided in Title 17 for different applications. While this update is not an attempt to address all of these, it would serve to provide more structure and consistency to the time periods and process. Except where specified otherwise in Title 17, decisions of either the Planning Director or the Zoning Administrator would be subject to 10 day appeals periods. Appeal periods are currently 7 days for the Zoning Administrator and 15 days for Planning Director decisions. The Planning Commission appeals are currently 15 days for most applications, except where specified otherwise in the code, and would remain as is. This section would add a procedure for two Planning Commissioners to be able to appeal a decision of the Zoning Administrator, to be heard by the Commission, similar to the process for two City Council members to be able to appeal a decision of the Planning Commission.

**Chapter 17.56 - Zoning Administrator:** Finally, Section 17.56 would be retitled from Administration to Zoning Administrator, to more accurately reflect its contents. The amendment would update the list of application types subject to zoning administrator approval. It also further updates and fleshes out the procedures for evaluating and hearing proposed modifications to planning permits into three types:

- Substantial conformance – may be approved through the building permit review process.
- Minor modification – generally subject to review and approval by the Zoning Administrator following the procedure set forth in Chapter 17.56.
- Major modification - subject to review and approval by the original decision-making body, whether the Zoning Administrator or the Planning Commission.

Procedures for public notice of Zoning Administrator applications and hearing procedures are also provided along with a cross reference to the appeals process provided in Chapter 17.52 and requirements for reporting decisions to the Planning Commission.

This draft ordinance was provided to the Public Works Director/City Engineer, Building Department, North County Fire Authority and City's Legal Counsel and comments have been incorporated into it.

Finally, no correspondence was received from the public prior to publication of this report. Any comments received after publication will be provided to the Commission separately.

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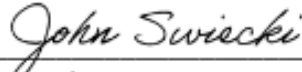
**ATTACHMENTS:**

- A. Draft Resolution 2024-RZ-2
  - Exhibit A -Draft ordinance, zoning text amendment
- B. Redlined copy of proposed zoning text amendments
- C. Workshop links:
  - a. February 22, 2024 ([Memorandum to PC](#)) ([Minutes](#))
  - b. June 8, 2023 ([Memorandum to PC](#)) ([Minutes](#))



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Ken Johnson, Senior Planner



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John Swiecki, Community Development Director

**ATTACHMENT A****DRAFT**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BRISBANE  
RECOMMENDING CITY COUNCIL APPROVAL  
OF ZONING TEXT AMENDMENT 2024-RZ-2**

**AMENDING BRISBANE MUNICIPAL CODE TITLE 17 – OMNIBUS ZONING AMENDMENTS TO MODIFY THE DEVELOPMENT STANDARDS FOR MULTIFAMILY AND RESIDENTIAL MIXED USE ZONING DISTRICTS CONSISTENT WITH CALIFORNIA SENATE BILL SB 478 (“HOUSING OPPORTUNITY ACT”); FOR ADMINISTRATIVE RESTRUCTURING OF THE DEVELOPMENT STANDARDS SECTIONS FOR THE RESIDENTIAL ZONING DISTRICTS; TO CLARIFY THE REVIEWING AUTHORITY FOR DESIGN PERMIT MODIFICATIONS IN CHAPTER 17.42 AND VARIANCES IN CHAPTER 17.46; CREATE A SEPARATE CHAPTER AND UPDATE EXCEPTIONS TO THE DISTRICT DEVELOPMENT REGULATIONS AS A NEW CHAPTER 17.47; TO UPDATE THE APPEALS PROCEDURES IN CHAPTER 17.52; AND RE-TITLE AND UPDATE THE ZONING ADMINISTRATOR PROCEDURES IN CHAPTER 17.56.**

WHEREAS, City Council adopted the revised 2023-2031 Housing Element (Housing Element) on May 18, 2023, which was subsequently certified by the California Department of Housing and Community Development; and

WHEREAS, the Housing Element provides certain goals, policies and programs aimed at facilitating development of new housing, maintaining existing housing, streamlining housing development permitting and providing for special needs populations, including Programs 2.A.12, 7.A.1 and 7.A.3; and

WHEREAS, Senate Bill 478 (“SB 478”), which was signed by the Governor on September 28, 2021, added Government Code Section 65913.11 (Government Code) to require that a local agency shall not impose floor area ratio standards of less than 1.0 for three to seven unit developments or less than 1.25 for eight to ten unit developments, in the zoning districts that allow for multifamily development; and

WHEREAS, the Government Code requires that a local agency may not impose a lot coverage requirement that would physically preclude a housing development project that meets the requirements established in the Government Code from achieving the floor area ratio allowed; and

WHEREAS, these changes to the Government Code became effective on January 1, 2022; and

WHEREAS, SB 478 does not prohibit a local agency from imposing any zoning or design standards, including, but not limited to, building height and setbacks, on a housing development project that meets the requirements of the Government Code other than zoning or design standards that establish floor area ratios or lot size requirements that expressly conflict with the standards in subdivision; and

WHEREAS, the City seeks to update Title 17 consistent with the Government Code and the Housing Element goals, policies and programs and to clarify and simplify provisions contained in Title 17; and

WHEREAS, the draft ordinance attached as Exhibit A to this resolution proposes amendments to Title 17; and

WHEREAS, on May 9, 2024, the Planning Commission conducted a hearing of the application, 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 Planning Commission reviewed and considered the staff memorandum relating to said application, and the written and oral evidence presented to the Planning Commission in support of and in opposition to the application; and

WHEREAS, adoption of this ordinance is not a project under the California Environmental Quality Act (CEQA) pursuant to California Government Code Section 15061(b)(3) because it involves code amendments that would not cause a significant effect on the environment and Section 15183 relating to the implementation of the Housing Element; 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.

ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2024, by the following vote:

AYES:  
NOES:  
ABSENT:

\_\_\_\_\_  
ALEX LAU, Chairperson

ATTEST:

\_\_\_\_\_  
JOHN SWIECKI, Community Development Director

EXHIBIT A

DRAFT ORDINANCE NO.\_\_\_\_  
AN ORDINANCE OF THE CITY OF BRISBANE  
AMENDING BRISBANE MUNICIPAL CODE TITLE 17 – OMNIBUS ZONING AMENDMENTS  
TO MODIFY THE DEVELOPMENT STANDARDS FOR MULTIFAMILY AND RESIDENTIAL MIXED USE  
ZONING DISTRICTS CONSISTENT WITH CALIFORNIA SENATE BILL SB 478 (“HOUSING OPPORTUNITY  
ACT”); FOR ADMINISTRATIVE RESTRUCTURING OF THE DEVELOPMENT STANDARDS SECTIONS FOR THE  
RESIDENTIAL ZONING DISTRICTS; TO CLARIFY THE REVIEWING AUTHORITY FOR DESIGN PERMIT  
MODIFICATIONS IN CHAPTER 17.42 AND VARIANCES IN CHAPTER 17.46; CREATE A SEPARATE  
CHAPTER AND UPDATE EXCEPTIONS TO THE DISTRICT DEVELOPMENT REGULATIONS AS A NEW  
CHAPTER 17.47; TO UPDATE THE APPEALS PROCEDURES IN CHAPTER 17.52; AND RE-TITLE AND  
UPDATE THE ZONING ADMINISTRATOR PROCEDURES IN CHAPTER 17.56.

**SECTION 1: Section 17.02.065 - Outside Wall is hereby deleted in its entirety.**

**Section 2: New Section 17.02.785 - Wall, is added to read as follows:**

17.02.785 - Wall.

“Wall” means a vertical structure that encloses or divides an area of land or interior spaces of a building. See also the definition of retaining wall in Section 17.02.690 of this Chapter. A wall, as provided in the following sub-definitions, is part of a building or structure and is not a fence. Fence is defined in Section 17.02.300 and provided in Section 17.47.050.B.

- A. "Outside wall" means any wall that defines the exterior boundaries of a building or structure, including the following:
  - a. Front outside wall – generally that wall or walls parallel to the front lot line
  - b. Rear outside wall – generally that wall or walls parallel to the rear lot line
  - c. Side outside wall – generally that wall or walls parallel to the side lot line
- B. "Exterior (front, rear or side) outside wall" means a front, rear or side outside wall generally parallel to a street.
- C. "Interior (front, rear or side) outside wall" means a front, rear or side outside wall other than an exterior side outside wall.
- D. “Inside Wall” or “Interior Wall” means a wall that is inside the boundaries of a structure, that is not an outside wall.

**SECTION 3: Section 17.06.040 - Development Regulations, of Chapter 17.06 - R-1 Residential District, is amended to read as follows:**

**17.06.040 - Development regulations.**

The following development regulations shall apply to any lot in the R-1 district:

**(Subsections A- I combined to amended Subsection A.)**

A. Table 17.06.040.A: R-1 District Development Regulations

Type	Description	Single-family Dwelling	Exceptions and Notes
Density of Development – maximum		1 DU/5,000 square feet	A single-family dwelling may be constructed on a lot of record with an area of less than 5,000 square feet, subject to the provisions of this chapter and the limitations set forth in Section 17.47.030 Exceptions to Lot area, lot dimensions and lot lines. See Chapter 17.05 of this title for urban lot split and two-unit development provisions.
Lot Dimensions	Lot Area – minimum	5,000 square feet	
	Lot Width - minimum	50 feet	
	Lot Depth - minimum	100 feet	
Setback minimums	Front: For dwellings and structures, except garages and carports.	15 feet for lots with a slope of less than 15 percent; or  10 feet for lots with a slope of 15 percent or greater; or  Where 50 percent or more of the lots of record in a block have been improved with single-family dwellings, the average distance of the front outside wall of the single-family structures from the front lot line on the same side of the street, if less than 10 or 15 feet, as otherwise applicable.	That portion of the structure that is subject to this setback exception (within the district standard setback area) shall not exceed 20 feet in height measured from finish grade.
	Front: For garages and carports.	10 feet	See exception allowing for lesser setback by City Engineer approval in Section 17.47.050
	Side: For dwellings and structures on lots greater than or equal to 50 feet wide .	5 feet	See setback exceptions in Chapter 17.47. Does not apply to garages and carports accessed from a street or alley.
	Side: For dwellings and structures on lots less than 50 feet wide, except garages and carports accessed from a street or alley.	10 percent of the lot width, but not less than 3 feet.	See setback exceptions in Chapter 17.47
	Side: For garages or carports accessed from a street or alley along that side of the lot.	10 feet	See exception allowing for lesser setback by City Engineer approval in Section 17.47.050
	Rear	10 feet	See exceptions in Chapter 17.47, including decks and an allowance for a lesser setback for garages and carports on through lots, by

Type	Description	Single-family Dwelling	Exceptions and Notes
			City Engineer approval, in Section 17.47.050.
Coverage	Lot Coverage	40 percent of lot area	See lot coverage definition in Section 17.02.495.
Floor Area	Floor Area Ratio: For lots greater than three thousand seven hundred (3,700) square feet.	0.72	See definition of floor area and floor area ratio in Section 17.02.315.
	Floor Area Ratio: For lots less than or equal to three thousand seven hundred (3,700) square feet	0.72, plus up to 200 square feet for a garage parking space	
Height	Height of dwellings and structures, if not within the setback areas and at least 15 feet from the front lot line.	36 feet	See the definition of height in Section 17.02.400.  See various exceptions in Chapter 17.47.  See the exception for garages in the front setback in Table 17.47.050.A
	Height of dwellings and structures for the area within 15 feet of the front lot line, where less than a 15 foot setback is permitted.	20 feet above finish grade	
	Height of garages and carports when permitted within the front setback area	15 feet above the elevation of the center of the adjacent street when permitted by Section 17.47.050 of this title.	
Articulation	Front: outside walls greater than 20 ft by 20 ft	30 percent	Articulation requirements are as a cumulative area.  See definition of articulation in Section 17.02.050 and the definitions of outside walls, interior and exterior side outside walls in Section 17.02.065 of this title.  Exempt from articulation requirements: <ul style="list-style-type: none"> <li>• Single story 1 and 2 car garages.</li> <li>• Accessory structures not exceeding a floor area of 120 square feet.</li> <li>• Walls that are smaller than those listed in this table.</li> </ul>
	Side: exterior side outside walls greater than 20 ft by 20 ft on greater than or equal to 40 ft wide lots	20 percent	
	Side: interior side outside walls greater than 20 ft by 20 ft	NA	
	Rear: Rear outside wall greater than 20 ft by 20 ft	30 percent	
Landscaping	Front Setback Area for lots with greater than or equal to 30 ft front lot line (minimum)	15 percent	New and rehabilitated, irrigated landscapes are subject to the provisions of the water



Type	Description	Single-family Dwelling	Exceptions and Notes
	Rear of newly constructed main structure on a downslope lot	Screened with trees and shrubs in accordance with a landscape plan approved by the planning director	conservation in landscaping ordinance (refer to Chapter 15.70) or the latest state provisions, whichever is more effective in conserving water.

Note: See also, Chapter 17.47 - Exceptions to District Development Regulations.

- B. 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.
  
- C. Recycling Area Requirements. For new subdivisions containing an area where solid waste is collected and loaded in a location which serves five (5) or more living units, adequate, accessible and convenient areas for depositing, collecting and loading recyclable materials in receptacles shall be provided to serve the needs of the living units which utilize the area. This requirement shall also apply to all institutional buildings and city facilities (including buildings, structures, and outdoor recreation areas owned by the city) where solid waste is collected and loaded. 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.

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**SECTION 4: 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:

**(Subsections A - I combined to amended Subsection A.)**

- A. Table 17.08.040.A: R-2 District Development Regulations

Type	Description	Single-family Dwelling	Two-units	Multi-family (three or more primary dwelling units)	Exceptions and Notes
Density of Development – maximum		1 DU/2,500 square feet			Except a lot having an area of 4,950 square feet or greater shall be considered conforming for a development density of two units.
Lot Dimensions	Lot Area – minimum	5,000 square feet	4,950 square feet	No Requirement for lot of record	
	Lot Width - minimum	50 feet	50 feet		
	Lot Depth - minimum	100 feet	100 feet		
Setback minimums	Front: For dwellings and structures, except garages and carports.	15 feet for lots with a slope of less than 15 percent; or  10 feet for lots with a slope of 15 percent or greater; or  Where 50 percent or more of the lots of record in a block have been improved with single-family dwellings, the average distance of the front outside wall of the single-family structures from the front lot line on the same side of the street, if less than 10 or 15 feet, as otherwise applicable.			That portion of the structure that is subject to this setback exception (within the district standard setback area) shall not exceed 20 feet in height from finish grade. See height definition in section 17.02.400.
	Front: For garages and carports.	10 feet			See exception allowing for lesser setback by City Engineer approval in Section 17.47.050
	Side: For dwellings and structures on lots greater than or equal to 50 feet wide except garages and carports accessed from a street or alley.	5 feet			See setback exceptions in Chapter 17.47
	Side: For dwellings and structures on lots less than 50 feet wide, except garages and carports accessed from a street or alley.	10 percent of the lot width, but not less than 3 feet.			See setback exceptions in Chapter 17.47
	Side: For garages or carports accessed from a street or alley along that side of the lot.	10 feet			See exception allowing for lesser setback by City Engineer approval in Section 17.47.050
	Rear	10 feet			See exceptions in Chapter 17.47, including decks and an allowance for a lesser setback for garages and carports on through lots, by City Engineer approval, in Section 17.47.050.

Type	Description	Single-family Dwelling	Two-units	Multi-family (three or more primary dwelling units)	Exceptions and Notes
Coverage	Lot Coverage	50 percent of lot area			See lot coverage definition in Section 17.02.495. Lot coverage over 50 percent may be approved by the planning director, if required to meet the 1.25 FAR for developments of 3 or more units on a lot.
Floor Area	Floor Area Ratio: For lots greater than three thousand seven hundred (3,700) square feet.	0.72	0.72	1.25	See definition of floor area and floor area ratio in Section 17.02.315.
	Floor Area Ratio: For lots less than or equal to three thousand seven hundred (3,700) square feet	0.72, plus up to 200 square feet for a garage parking space.	0.72, plus up to 400 square feet for garage parking spaces.	1.25	
Height	Height of dwellings and structures, if not within the setback areas and at least 15 feet from the front lot line.	36 feet			See the definition of height in Section 17.02.400.  See various exceptions in Chapter 17.47.  See the exception for garages in the front setback in Table 17.47.050.A
	Height of dwellings and structures for the area within 15 feet of the front lot line, where less than a 15-foot setback is permitted.	20 feet			
	Height of garages and carports when permitted within the front setback area	15 feet above the elevation of the center of the adjacent street when permitted by Section 17.47.050 of this title.			
Articulation	Front: outside walls greater than 20 ft by 20 ft	30 percent			Articulation requirements are as a cumulative area. See definition of articulation in Section 17.02.050 and the definitions of outside walls, interior and exterior side outside walls in Section 17.02.065 of this title.
	Side: exterior side outside walls that are greater than 20 ft by 20 ft on greater than or equal to 40 ft wide lots	20 percent			
	Side: interior side outside walls	NA			
	Rear: Rear outside wall	30 percent			Exempt from articulation requirements: <ul style="list-style-type: none"> <li>• Single story 2 car garages.</li> <li>• Accessory structures not exceeding a floor</li> </ul>

Type	Description	Single-family Dwelling	Two-units	Multi-family (three or more primary dwelling units)	Exceptions and Notes
					area of 120 square feet. <ul style="list-style-type: none"> <li>• Walls that are smaller than those listed in this table.</li> <li>• Where superseded by objective design standards established in Chapter 17.45 - Housing Development Permits.</li> </ul>
Landscaping	Front Setback Area for lots with greater than or equal to 30 ft front lot line (minimum)	15 percent			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.
	Rear of newly constructed main structure on a downslope lot	Screened with trees and shrubs in accordance with a landscape plan approved by the planning director			

Notes:

1. Certain development regulations may be superseded for housing development projects, as defined in Chapter 17.02, by objective design standards provided in Chapter 17.45 - Housing Development Permits.
2. See also, Chapter 17.47 - Exceptions to District Development Regulations.

B. 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.

C. 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 5: Section 17.10.040 - Development Regulations, of Chapter 17.10 - R-3 Residential District, is amended to read as follows:**

**17.10.040 - Development regulations.**

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

**(Subsections A - I combined to amended Subsection A.)**

A. Table 17.10.040.A: R-3 District Development Regulations

Type	Description	Single-family Dwelling	Two-units	Multi-family (three or more primary dwelling units)	Exceptions and Notes
Density of Development – maximum		1 DU/1,500 square feet			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.
Lot Dimensions	Lot Area – minimum	5,000 square feet	5,000 square feet	No Requirement for lot of record	
	Lot Width - minimum	50 feet	50 feet		
	Lot Depth - minimum	100 feet	100 feet		
Setback minimums	Front: For dwellings and structures, except garages and carports.	15 feet for lots with a slope of less than 15 percent; or 10 feet for lots with a slope of 15 percent or greater; or Where 50 percent or more of the lots of record in a block have been improved with single-family dwellings, the average distance of the front outside wall of the single-family structures from the front lot line on the same side of the street, if less than 10 or 15 feet, as otherwise applicable.			That portion of the structure that is subject to this setback exception (within the district standard setback area) shall not exceed 20 feet in height from finish grade. See height definition in section 17.02.400.
	Front: For garages and carports.	18 feet			

Type	Description	Single-family Dwelling	Two-units	Multi-family (three or more primary dwelling units)	Exceptions and Notes
	Side: For dwellings and structures on lots greater than or equal to 50 feet wide except garages and carports accessed from a street or alley.	5 feet			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 10 feet, except where a lesser distance is determined by the city engineer to be safe in terms of pedestrian and vehicular traffic.
	Side: For dwellings and structures on lots less than 50 feet wide, except garages and carports accessed from a street or alley.	10 percent of the lot width, but not less than 3 feet.			
	Side: For garages or carports accessed from a street or alley along that side of the lot.	10 feet			See exception allowing for lesser setback by City Engineer approval in Section 17.47.050
	Rear	10 feet			See exceptions in Chapter 17.47, including decks and an allowance for a lesser setback for garages and carports on through lots, by City Engineer approval, in Section 17.47.050.
Coverage	Lot Coverage	60 percent of lot area			See lot coverage definition in Section 17.02.495. Lot coverage over 60 percent may be approved by the planning director, if required to meet the 1.25 FAR for developments of three or more units on a lot.
Floor Area	Floor Area Ratio: For lots greater than three thousand seven hundred (3,700) square feet.	0.72	0.72	1.25	See definition of floor area and floor area ratio in Section 17.02.315.
	Floor Area Ratio: For lots less than or equal to three thousand seven hundred (3,700) square feet	0.72, plus up to 200 square feet for a garage parking space.	0.72, plus up to 400 square feet for garage parking spaces.	1.25	
Height	Height of dwellings and structures, if not within the setback areas and at least 15 feet from the front lot line.	36 feet			See the definition of height in Section 17.02.400.  See various exceptions in Chapter 17.47.  See the exception for garages in the front setback in Table 17.47.050.A
	Height of dwellings and structures for the area within 15 feet of the front lot line, where less than a 15-foot setback is permitted.	20 feet			

Type	Description	Single-family Dwelling	Two-units	Multi-family (three or more primary dwelling units)	Exceptions and Notes
	Height of garages and carports when permitted within the front setback area	15 feet above the elevation of the center of the adjacent street when permitted by Section 17.47.050 of this title.			
Articulation	Front: outside walls greater than 20 ft by 20 ft	30 percent			Articulation requirements are as a cumulative area. See definition of articulation in Section 17.02.050 and the definitions of outside walls, interior and exterior side outside walls in Section 17.02.065 of this title.
	Side: exterior side outside walls that are greater than 20 ft by 20 ft on greater than or equal to 40 ft wide lots	20 percent			
	Side: interior side outside walls	NA			
	Rear: rear outside wall.	30 percent			Exempt from articulation requirements: <ul style="list-style-type: none"> <li>• Single story 2 car garages.</li> <li>• Accessory structures not exceeding a floor area of 120 square feet.</li> <li>• Walls that are smaller than those listed in this table.</li> <li>• Where superseded by objective design standards established in Chapter 17.45 - Housing Development Permits.</li> </ul>
Landscaping	Front Setback Area for lots with greater than or equal to 30 ft front lot line (minimum)	15 percent			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.
	Rear of newly constructed main structure on a downslope lot.	Screened with trees and shrubs in accordance with a landscape plan approved by the planning director			
	Sites with Three (3) or More Units	Not less than ten percent (10 percent) of the lot area shall be improved with landscaping.			

Notes:

1. Certain development regulations may be superseded for housing development projects, as defined in Chapter 17.02, by objective design standards provided in Chapter 17.45 - Housing Development Permits.
2. See also, Chapter 17.47 - Exceptions to District Development Regulations.

- B. 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.
- C. 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 6: Section 17.12.040 - Development Regulations, of Chapter 17.12 - R-BA Brisbane Acres Residential District, is amended to read as follows:**

**17.12.040 - Development regulations.**

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

**(Subsections A- H combined to amended Subsection A.)**

A. Table 17.12.040.A: R-BA District Development Regulations

Type	Description	Single-family Dwelling	Exceptions and Notes
Density of Development – maximum		1 DU/20,000 square feet	Not more than one single-family dwelling shall be located on each lot in the R-BA District, except as otherwise provided in Section 17.12.050, Density transfer, and Section 17.12.055,
Lot Dimensions	Lot Area – minimum	20,000 square feet	
	Lot Width - minimum	110 feet	
	Lot Depth - minimum	140 feet	



Type	Description	Single-family Dwelling	Exceptions and Notes
			<p>Clustered development, of this chapter, or Chapter 17.05 of this title for urban lot split and two-unit development provisions.</p> <p>A single-family dwelling may be constructed on a lot of record with an area of less than 20,000 square feet, subject to the provisions of this chapter and the limitations set forth in Section 17.01.060 of Chapter 17.01 of this title.</p> <p>See also Chapter 17.05 of this title for urban lot split and two-unit development provisions.</p>
Setback minimums	Front.	10 feet	See exception allowing for lesser garage setback by City Engineer approval in Section 17.47.050.
	Side: For dwellings and structures, except garages and carports accessed from a street or alley	10 percent of the lot width, but in no event more than 15 feet or less than 5 feet.	See also setback exceptions in Chapter 17.47
	Side: For garages or carports accessed from a street or alley along that side of the lot.	10 feet	See exception allowing for lesser setback by City Engineer approval in Section 17.47.050
	Rear.	10 feet	See exceptions in Chapter 17.47, including decks and an allowance for a lesser setback for garages and carports on through lots, by City Engineer approval, in Section 17.47.050.
Coverage	Lot Coverage	25 percent of lot area	<p>See lot coverage definition in Section 17.02.495.</p> <p>See provisions for two-unit developments and urban lot splits in Chapter 17.05.</p>
Floor Area	Floor Area Ratio	0.72 provided, however, that in no event shall the floor area of all buildings on a lot exceed 5,500 square feet	<p>Accessory dwelling units and junior accessory dwelling units are excepted from the floor area ratio limits as permitted in Chapter 17.43</p> <p>See definition of floor area and floor area ratio in Section 17.02.315.</p>

Type	Description	Single-family Dwelling	Exceptions and Notes
			See provisions for two-unit developments and urban lot splits in Chapter 17.05.
Height	The maximum height of any structure outside the side and rear setbacks and more than 20 feet from the front lot line.	36 feet	See the definition of height in Section 17.02.400.  See various exceptions in Chapter 17.47.  See other exception for garages in the front setback in Table 17.47.050.A
	The maximum height of any structure within twenty (20) feet from the front lot line, .	Residential structures on sites sloping down from the adjacent street may be constructed to a height of twenty (20) feet above the elevation of the center of the street.	
		Garages and carports may be constructed to a height of 15 feet above the elevation of the center of the adjacent street and may exceed a height of thirty-six (36) feet, but the height of any permitted living area underneath shall not exceed 36 feet from finish grade.	
Articulation	Front: outside walls greater than 20 ft by 20 ft	30 percent	Articulation requirements are as a cumulative area. See definition of articulation in Section 17.02.050 and the definitions of outside walls, interior and exterior side outside walls in Section 17.02.065 of this title.  Exempt from articulation requirements: <ul style="list-style-type: none"> <li>• Single story 2 car garages.</li> <li>• Accessory structures not exceeding a floor area of 120 square feet.</li> <li>• Walls that are smaller than those listed in this table.</li> </ul>
	Side: exterior side outside walls that are greater than 20 ft by 20 ft on greater than or equal to 40 ft wide lots	20 percent	
	Side: interior side outside walls	NA	
	Rear: rear outside wall	30 percent	

Note: See also, Chapter 17.47 - Exceptions to District Development Regulations.

- B. Wildland Interface. The development shall incorporate such measures as the fire chief may deem necessary to protect against the spread of fire between the site and the adjacent wildland.
- C. HCP Compliance. All development within the R-BA District, except as provided in Section 17.01.060, shall comply with the requirements of the San Bruno Mountain Area Habitat Conservation Plan (HCP), including site activity review, environmental assessments, and

operating programs for planned management units, consistent with the objectives and obligations set forth in the HCP.

**(Subsection J. Articulation Requirements, removed. See Table 17.12.040.A, above.)**

D. Landscaping Requirements.

1. Landscape Plan. All development proposals and re-landscaping projects subject to the water conservation in landscaping ordinance (Chapter 15.70), except as permitted in Section 17.01.060 of Chapter 17.01 of this title, shall include a landscape plan to be approved by the planning director in consultation with the HCP plan operator. The plan shall show all proposed landscaping and the location of all protected trees and rare plants. The landscape plan shall be consistent with all of the following objectives:

- a. Preservation of protected trees and rare plants to the greatest extent possible;
- b. Use of plants that are compatible with the natural flora and fauna, and are not invasive to the HCP area;
- c. Use of water conserving plants;
- d. Use of plants that will effectively screen structures and blend with the natural landscape; and
- e. Use of landscaping that is fire resistant.

2. 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.

**(Subsection L. Ridgeline, removed. See new Section 17.12.045 below.)**

- E. Canyon Watercourses and Wetlands. Development of the site, including any temporary disturbance, shall be set back 30 feet in each direction from the center line of any watercourse, and 20 feet from the boundary of any wetlands. The specific location of watercourse center lines and wetland boundaries shall be determined by qualified personnel under the city's direction.
- F. Trails. The development shall incorporate public access trails to the extent feasible given the environmental sensitivities of the site.
- G. 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 paragraph 3 of subsection L. of Section 17.12.040 and Chapters 17.34 and 17.38 of this title.
- H. Recycling Area Requirements. For new subdivisions containing an area where solid waste is collected and loaded in a location which serves five (5) or more living units, adequate, accessible and convenient areas for depositing, collecting and loading recyclable materials in receptacles shall be provided to serve the needs of the living units which utilize the area. This requirement shall also apply to all institutional buildings and city facilities (including buildings, structures, and outdoor recreation areas owned by the city) where solid waste is collected and loaded. 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.

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**SECTION 7: New Section 17.12.045 - Ridgeline Development is added to Chapter 17.12 R-BA Brisbane Acres Residential District as follows:**

**17.12.045 - Ridgeline Development.**

- A. Ridgeline. Development on any site through which a ridgeline runs as identified in Figure 17.02.695, Ridgelines, shall be subject to design permit approval, except for accessory dwelling units and junior accessory dwelling units and except as provided in Section 17.01.060.
  - 1. In addition to the required contents of application for design permit set forth in Section 17.42.020, story poles certified by a licensed architect, surveyor, civil engineer or contractor to represent the height of the proposed building shall be erected at the locations of its outer corners and roof peaks according to a plan pre-approved by the planning director. The upper one-foot length of each pole shall be painted OSHA yellow so as to be clearly visible from a distance.
  - 2. In addition to the findings required for issuance of design permits set forth in Section 17.42.040, the planning commission shall find that the building's placement, height, bulk and landscaping will preserve those public views of the San Bruno Mountain State and County Park as seen from the Community Park and from the Bay Trail along the Brisbane Lagoon and Sierra Point shorelines that are found to be of community-wide value. Methods to accomplish this may include varying the building's roofline to reflect the ridgeline's topography, orienting the building to minimize the impact of its profile upon public views, locating the building on the lower elevations of the site, and reducing the building's height below the maximum permitted in the district.
  - 3. An existing structure may be repaired or replaced in accordance with Section 17.38.090 without design permit approval, but any alteration or expansion which raises any portion of the roofline or increases the building's lot coverage shall be subject to design permit approval under this section.

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**SECTION 8: Section 17.14.060 - Development regulations for the NCRO-2 district 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, except that a lot of record that is less than 2,500 square feet, created prior to January 1, 2022, shall be recognized as conforming for 3 or more dwelling units as part of a mixed-use development, pursuant to Section 17.14.040.K.2.

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

D. Setbacks. The minimum required setbacks for any lot in the NCRO-2 district, except as provided in Chapter 17.47, shall be as follows:

- 1. Front setback: No requirement.
- 2. Side Setback: No requirement, except a 10 foot setback shall be required on the side where abutting any residential district.
- 3. Rear Setback: 10 feet.

**(Subsection E no change)**

F. Height of Structures. The maximum height of any structure, except as provided in Chapter 17.47, shall be 36 feet.

G. Fencing Requirements. Fencing shall be subject to zoning administrator review as set forth in Section 17.47.060, except where subject to a design permit per Section 17.14.110. If the site is next to a residential district, a fence not to exceed 10 feet in height, that screens the site from the abutting residential property rear or side yard areas shall be installed along the property line.

**(Subsections H, I and J no change)**

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**SECTION 9: 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, except that a lot of record that is less than 7,500 square feet, created prior to January 1, 2022, shall be recognized as conforming for 3 or more dwelling units.

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

D. Setbacks. The minimum required setbacks for any lot, except as provided in Chapter 17.47, shall be as follows:

- 1. Front setback:
  - a. Residential/Mixed Use: 10 feet;

- b. Commercial Uses: 25 feet for commercial uses;
  - c. Exception: The setbacks may be reduced to zero 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: 5 feet;
  - b. Commercial Uses: 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: 10 feet.

**(Subsection E, no change.)**

F. Height of Structures. The maximum height of any structure, except as provided in Chapter 17.47, shall be 36 feet.

**(Subsections G, H, I, J, K, L and M, no change.)**

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**SECTION 10: Section 17.27.040 - Development Regulations for the PAOZ-1 District is amended to read as follows:**

Development regulations for the PAOZ-1 district are as follows:

**(Subsections A, B, C, D, E and F, no change.)**

G. Height.

1. Buildings and Architectural Features. The maximum building height shall be 38 feet and 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 10 feet above the maximum building height.

2. Fences and Walls. Fences and walls in front yards shall be no more than 3 feet in height from the adjacent sidewalk. Fences and walls in side yards shall not exceed 6 feet in height. Deviations from maximum fence and wall heights shall require approval by the zoning administrator as provided in Chapter 17.47.

(Subsections H, I, J, K, L and M, no change.)

**SECTION 11: Section 17.27.050 - Development Regulations for the PAOZ-2 District is amended to read as follows:**

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

(Subsections A, B, C, D, E and F, no change.)

**G. Height.**

1. Buildings and Architectural Features. The maximum building height shall be 38 feet and 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 10 feet above the maximum building height.

2. Fences and Walls. Fences and walls in front yards shall be no more than 3 feet in height from the adjacent sidewalk. Fences and walls in side yards shall not exceed 6 feet in height. Deviations from maximum fence and wall heights shall require approval by the zoning administrator as provided in Chapter 17.47.

(Subsections H, I, J, K, L and M, no change.)

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**SECTION 12: Sections 17.032.050 - Fences, hedges and walls, 17.032.055 - Exceptions – Lot area, lot dimensions and lot lines, 17.32.060 - Exceptions – Height Limit, 17.32.070 - Exceptions – Setback requirements, and 17.32.080 - Requests for reasonable accommodations are hereby deleted in their entirety.**

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**SECTION 13: Section 17.42.070 - Amendment of design permit—Minor modifications is amended to read as follows:**

**17.42.070 - Amendment of design permit—Modifications.**

A. Amendments or modifications to a design permit shall require approval by the zoning administrator as set forth in Section 17.56.090 of this title, or by the planning commission if referred by the zoning administrator.

**SECTION 14: Chapter 17.46 - Variances is amended to read as follows:**

**Chapter 17.46 - VARIANCES**

**17.46.010 - Application—Required circumstances.**

Applications for variances from the strict application of the terms of this title may be made and variances granted when the following circumstances are found to apply:

- A. That any variance granted shall be subject to such conditions as will assure that the adjustment thereby authorized shall not constitute a grant of special privilege inconsistent with the limitations upon other properties in the vicinity and district in which the subject property is located;
- B. That because of special circumstances applicable to subject property, including size, shape, topography, location or surroundings, the strict application of this title is found to deprive subject property of privileges enjoyed by other properties in the vicinity and under identical zone classification.

**17.46.020 - Application—Form—Contents.**

Application for variance shall be made in writing by a property owner, lessee, purchaser in escrow, or optionee with the consent of the owners, on a form prescribed by the planning director. The application shall be accompanied by a fee, set by the city council, a plan of the details of the variance requested and evidence showing:

- A. That the granting of the variance will not be contrary to the intent of this title or to the public safety, health and welfare; and
- B. That due to special conditions or exceptional characteristics of the property or its location, the strict application of this chapter results in practical difficulties and unnecessary hardship. "Hardship," as used in this chapter does not mean personal or financial hardship but refers to the conditions in subsection B of Section 17.46.010.

**17.46.030 - Application—Hearing date—Notice.**

The planning commission shall conduct a public hearing on the application for a variance. Notice of such hearing shall be given as set forth in Chapter 17.54.

**17.46.040 - Granting.**

- A. After the conclusion of the public hearing or continuations thereof, the planning commission may grant or deny a variance from the strict application of the regulations established by this chapter. The commission may impose any reasonable conditions deemed necessary to achieve the purpose of this title.
- B. A variance shall be effective the seventh (7th) day after planning commission approval unless the action is appealed to the city council, in which case the variance shall not be effective until final action upon the appeal.

**17.46.050 - Nonconforming uses not allowed.**



The use of lands or buildings not in conformity with the regulations specified for the district in which such lands or buildings are located may not be allowed by the granting of a variance.

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**SECTION 15: New Chapter 17.47 - Exceptions to District Development Regulations is added to read as follows:**

**17.47 - EXCEPTIONS TO DISTRICT DEVELOPMENT REGULATIONS**

**17.47.010 - Purpose of Chapter**

The purpose of this chapter is to provide standards and procedures for recognition of certain substandard lots as legal lots for development, as well as exceptions to specified district development regulations for certain structures and other built features.

**17.47.020 - Applicability**

Unless indicated otherwise in this title, the exceptions provided in this chapter shall apply to all districts.

**17.47.030 - Exceptions to Lot area, lot dimensions and lot lines.**

Lots sizes and dimensions shall conform to the district development regulations, except as provided herein.

**A. Substandard Lots.**

1. No substandard lot shall be independently developed if it is less than 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 5,000 square feet in area may be developed as a standard site under the applicable district regulations.
2. In any R district, single-family dwellings only may be erected on any substandard lot less than 5,000 square feet in area, if the lot was not owned in common with contiguous property in the same district on October 27, 1969.
3. As an exception to A.1, a property in the R-1 Residential district consisting of 4 contiguous lots of record totaling at least 9,650 square feet that were owned in common on October 27, 1969, may be developed as 2 sites, each consisting of one pair of contiguous lots.
4. 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.
5. Contiguous substandard lots owned in common may be subject to merger in compliance with this section and Municipal Code Chapter 16.12.

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 lot area and dimensions subject to the provisions of the Two-unit Development Residential Overlay District - R-1 and R-BA Districts, 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.

**D. 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. Where each lot is a substandard lot as defined in Section 17.02.490.H, a lot line adjustment may be utilized to effectuate an urban lot split, subject to the provisions of the two-unit development residential overlay district, as set forth in Chapter 17.05.

**E. 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 planning director, as prescribed by Chapter 16.12 of Title 16, Subdivisions.

**17.47.040 - Height Limit Exceptions**

Heights of structures shall conform to the district development regulations, except as provided herein.

**A. Height Exception Limits.**

The following height limit exceptions in Table 17.47.040.A apply to all zoning districts:

**Table 17.47.040.A**

Type	Applicability	Height Exception	Eligible for Modification?
Chimney	Chimney not exceeding 3 feet in width or depth.	Feature may be less than or equal to 5 feet over the district height limit, or as required to comply with the California Building Code.	No. Modification to the height exception provided may only be by variance, per Chapter 17.46, subject to the findings therein.
Miscellaneous structures	Cupolas, monuments, water tanks, mechanical appurtenances and similar structures.	Subject to use permit approval by the Planning Commission.	No. Modification to the height exception provided may only be by use permit, per Chapter 17.40 of this title, subject to the findings therein.

Type	Applicability	Height Exception	Eligible for Modification?
Rooftop solar	Rooftop solar energy systems, including those for water heating as well as photovoltaic purposes.	Feature may be less than or equal to 24 inches above the roofline of the structure on which it is mounted, measured from the exterior roofing material to the highest point of the panel, regardless of the building height. If greater than 24 inches above the roofline and over the district height limit, the feature is subject to approval by the zoning administrator, per Section 17.32.060.B.	Yes (see Section 17.47.060)

Note: Height exceptions may be superseded by objective design standards established in this title, including but not limited to the POAZ Parkside Overlay District and Housing Development Permits.

**17.47.050 - Setback Exceptions**

Setbacks from lot lines to buildings and structures shall conform to the district development regulations, except as provided herein.

**A. Setback Exception Limits.** Notwithstanding any other provision of this title, certain structures or portions thereof may extend into a front, rear or side setback area to the extent permitted by Table 17.47.050.A and subject to applicable building and fire codes:

**Table 17.47.050.A**

Type	Applicability	Required Front Setback (ft)	Required Rear Setback (ft)	Required Side Setback (ft)
Residential Garages, Carports and Parking Decks in the R-1, R-2, R-3 and R-BA districts	<ul style="list-style-type: none"> <li>If located within the setback area, a garage, carport, or parking deck may not exceed 15 feet in height above the centerline of the adjacent street.</li> <li>Notwithstanding the allowable exceptions, placement is subject to approval by the city engineer, based upon a finding that no traffic or safety hazard will be created.</li> <li>A garage or carport in compliance with this subsection may exceed the district height limit, but the height of any permitted living space underneath shall not exceed the district height limit.</li> </ul>	0	Interior rear: NA  Exterior rear (through lots): 0	Interior side: NA  Exterior side (i.e. corner street or alley lots): 0
Overhanging Architectural Features	Includes such features as eaves and cornices that extend from the wall of a building and into the setback area.	5	7	2.5
Gutters and downspouts		5	7	2
Cantilevered Windows	<ul style="list-style-type: none"> <li>Includes window(s) extending from the wall of a building into the setback area such as bay windows, box windows, etc.</li> <li>To qualify for the exception, the window may not include floor area. If the window includes a built-in bench seat or shelf, 16 inches or higher from the floor, without steps, the area will not be counted as floor area regardless of the clear height above the bench or step (see also Floor Area defined, Section 17.02.315).</li> </ul>	5	7	3
Decks and Balconies	Either free-standing or attached to a building.	5	5	NA

Type	Applicability	Required Front Setback (ft)	Required Rear Setback (ft)	Required Side Setback (ft)
Roof Decks and associated guardrails over a garage that is subject to a setback exception	<ul style="list-style-type: none"> <li>Roof decks over garages that are subject to the garage setback exception may not be covered by a roofed or unroofed structure (i.e. pergola over a roof deck), except that the portion of a deck covered by an eave from an adjacent building segment may cover the portion of the deck not to exceed 3 feet from the edge of the building wall</li> </ul>	0	Interior rear: NA  Exterior rear (i.e. through lots): 0	NA
Stairs, Ramps and Landings to a building entrance	<ul style="list-style-type: none"> <li>Applies only to unenclosed stairs, ramps or landings.</li> <li>May not drain onto the neighbor's property.</li> <li>Materials within a setback must be non-combustible, to the satisfaction of the building official.</li> </ul>	0	5	0
Awning over a building entrance or landing	<ul style="list-style-type: none"> <li>Allowed as a type of projection from a building.</li> <li>May not drain to the neighbor's property.</li> <li>In all zoning districts except the R-1 District, to be eligible for a side setback exception, the awning may project no more than 3 feet from the building into the side setback area.</li> <li>In the R-1 District, to be eligible for a side setback exception the awning may extend 4 feet from the building into the side setback area but shall not extend over the abutting property.</li> </ul>	5	5	All districts except R-1: 2.5  R-1 district only: 0

Type	Applicability	Required Front Setback (ft)	Required Rear Setback (ft)	Required Side Setback (ft)
Roofed Accessory Structures (such as detached home offices and art studios, sheds and gazebos)	<ul style="list-style-type: none"> <li>The portion of the structure encroaching within the setback area may not exceed 10 feet in height measured from lowest grade immediately adjacent to the structure’s exterior walls or the alignment of the supporting posts.</li> <li>The square footage of the portion of the structure encroaching within the setback area may not exceed 120 square feet.</li> <li>These exceptions do not apply to accessory dwelling units. ADU development regulations are contained in Chapter 17.43.</li> </ul>	NA	5	Interior side: 3 Exterior side: NA
Unroofed Accessory Structures (such as arbors, trellises, pergolas and gateways)	The structure’s portion within the setback area may not exceed 10 feet in height and may not cover more than 15 percent of the front setback area	0	5	3
Ponds, Fountains and Similar Decorative Water Features	Feature must not exceed 6 feet in height. <sup>(2)</sup>	0	0	0
Decorative Artwork	Feature must not exceed 6 feet in height. The artwork shall not block access to a building entrance or otherwise create a safety hazard.	0	0	0
Flag pole & flag	<ul style="list-style-type: none"> <li>Not more than 1 pole per lot</li> <li>Height of pole less than or equal to 20 feet</li> <li>Individual flag size than or equal to 3 by 5 ft, with up to two on a pole</li> <li>Flag may not extend over the property line when fully extended.</li> <li>May not include advertising.</li> <li>Unlighted only.</li> <li>Flags shall be maintained in good repair.</li> </ul>	5	5	NA
Accessory Dwelling Units		See Chapter 17.43.		
Fences, hedges and walls		See Section 17.47.050.B		

**Notes:**

1. NA: Not applicable. In such cases, the standard setback provided in the zoning district’s development regulations shall prevail.
2. The exceptions set forth in this Table shall not be construed to include chimney boxes, swimming pools and spas, exposed plumbing, or mechanical equipment such as heating and air conditioning units or pool pumps, and no exceptions to the setback requirements shall be permitted for any of these structures.
3. The exceptions set forth in this Table do not waive the requirement to obtain any other required permits from the City, including, but not limited to, a building permit. New construction or tenant improvements on commercial properties may also require a design permit, in which case the requested exception may be included in the design permit application.
4. In a case of conflict between the setback exceptions listed here and other laws, regulations or conditions of approval, the most stringent requirements shall prevail.
5. Fire Code may prohibit certain materials from use within setback areas.
6. Non-combustible flatwork, such as concrete pavers and stone on grade, are not subject to setbacks and may be placed anywhere within a setback area.
7. Setback exceptions may be superseded by objective design standards established in this title, including but not limited to the POAZ Parkside Overlay District and Housing Development Permits.
8. See the definition of setback in Section 17.02.715 - Setback – Setback Area.

**B. Fences, hedges and walls within setbacks.** Fences, hedges and walls may be erected within setback areas as provided herein.

**1. Fences.**

**a. Height and Fence Type Allowances.** Where a fence, as defined in Section 17.02.300, is to be constructed in a setback area, the following regulations shall apply, except where otherwise indicated in Section 17.47.050.B.1.b. See also the definition of height for fences and walls in Section 17.02.400.C.

Table 17.47.050.B.1

Zoning District	Height Limit – Front Setback (feet)	Height Limit - Side and Rear Setbacks, except that portion extending to the front setback area (feet)	Special provisions
R-1	6	7 or 8*	*If the top 2 feet of a fence is constructed of lattice, or other open pattern, to the satisfaction of the planning director, the fence may be 8 ft in total height in the side and rear setbacks, but not extending into front setback. Otherwise, where lattice or a similar open pattern is not included the limit is 7 ft, but the fence must step down to 6 ft in the front setback area.
R-2	6	7 or 8*	
R-3	6	7 or 8*	
R-BA	6	7 or 8*	

Zoning District	Height Limit – Front Setback (feet)	Height Limit - Side and Rear Setbacks, except that portion extending to the front setback area (feet)	Special provisions
R-MHP	8***	8***	***Fence heights may be up to ten (10) feet along the mobile home park perimeter abutting a public right-of-way.
C-1	8	8	
M-1	8	8	
SCRO-1	8	8	
TC-2	8	8	
HC	8	8	
C/P-U	8	8	
PAOZ-1	As provided in Section 17.27.040.G.2.		
PAOZ-2	As provided in Section 17.27.050.G.2.		
NCRO-1	By setback exception permit for fences on developed sites, per Section 17.47.060. By design permit when associated with new development, or modification of a design permit for existing development when associated with other development modification(s) that is subject to a design modification permit. See Chapter 17.42 for design permits and Section 17.56.090 for modification of a design permit. See also the district development standards for fence provisions.		
NCRO-2			
PD			
SP-CRO			
TC-1			
All Districts	Temporary chain-link demolition/construction barricades not exceeding eight (8) feet in height are permitted in all districts, subject to removal prior to final inspection.		

**b. Overriding Factors and Other Requirements**

- i. In any district, where the director of public works determines that traffic visibility would be affected, due to the location of the fence being near or adjacent to the public right-of-way, the fence height may be required to be reduced, to the satisfaction of the director.
- ii. Where a fence is proposed to be constructed, or has been constructed, adjacent to city property, a boundary survey or other evidence of the location of the fence shall be submitted to the director of public works upon request if the director determines that a question exists as to whether the fence encroaches on public property.
- iii. In all districts, the following materials are prohibited: razor wire, barbed wire and similar materials with sharp edges or points.
- iv. Chain-link fences may not be constructed in or adjacent to residential districts and are required to be black or green vinyl coated, except as approved by the planning director where the fence is not readily within public view or is otherwise screened from view by landscaping.
- v. For fences within the San Bruno Mountain Area Habitat Conservation Plan (HCP), within the R-BA, SCRO-1 and certain PD districts, the height, location and/or design of fences may be subject to



restrictions for protection or passage of butterflies, consistent with the site’s HCP operating program or other required permitting consistent with HCP requirements.

- vi. When construction of a fence would impair the visibility of address numbers on a house, such numbers shall be relocated with approval of the fire prevention officer, or the fence may be required to be lowered.
- vii. Gated driveways are subject to approval by the planning director, based on a determination that the gate will not create a safety hazard.
- viii. A building permit may be required for construction of a fence, depending on such factors as height or location relative to a retaining wall, and is subject to building official determination.

**2. Retaining Walls**

**a. Height.** Where a retaining wall, as defined in Section 17.02.690, is to be constructed in a setback area, the provisions in Table 17.47.050.B.2 shall apply. See also the definition of height for fences and walls in Section 17.02.400.C.

Table 17.47.050.B.2 Retaining Walls in Setback Areas

All Zoning Districts	Permitted Height in All Setback Areas	Special Provisions
	6 feet or less of exposed wall surface	None
	More than 6 feet	Greater than 6 feet of exposed wall surface, where one or more of the following conditions are met, to the satisfaction of the planning director: <ul style="list-style-type: none"> <li>(i) Walls shall be architecturally integrated with proposed or existing structures on the site;</li> <li>(ii) Wall faces shall be decorative and treated with color, texture, architectural features, trelliswork or other means to visually break up the wall expanses;</li> <li>(iii) Walls shall be screened with water conserving, non-invasive landscaping that at maturity will soften and reduce the visible expanse of walls;</li> <li>(iv) Other means that ensure that the walls are designed to be as visually unobtrusive as possible.</li> </ul>

**b. Overriding Factors and Other Requirements.**

- i. Where construction of a retaining wall would result in grading, the provisions of Chapter 15.01 shall apply. If planning commission review of a grading permit is required, per Section 15.01.110, the retaining wall design will be considered as part of the planning commission’s grading review.

- ii. A building permit is generally required for construction of a retaining wall, subject to building official determination.

**3. Hedges**

**a. Height Limit:** Where a hedge, as defined in Section 17.02.390, is to be established within a setback area, the height limit shall be as shown in Table 17.47.050.B.3:

Table 17.47.050.B.3 Hedges within Setbacks

	Permitted Height in All Setback Areas
Hedges in all zoning districts	8 feet

**b. Overriding Factors and Other Requirements**

In any district, where the director of public works determines that traffic visibility would be affected, due to the location of the hedge being near or adjacent to the public right-of-way, the height may be required to be reduced to less than 8 feet, to the satisfaction of the director.

**4. Modification to Fence, Wall and Hedge Exceptions:** All other exceptions, or modification to exceptions, pertaining to fences, walls or hedges shall require approval by the zoning administrator, as provided in Section 17.47.060.

**17.47.060 - Exception Modification Procedures**

Modifications to the height and setback exceptions specified in sections 17.47.040 and 17.47.050 of this Chapter are subject to zoning administrator approval and are subject to the following procedures, except as indicated otherwise:

- A. **Application form, fee and plans.** An application for a height or setback exception shall be made in writing by the owners of the property, lessee, purchaser in escrow, or optionee with the consent of the owners, on a form prescribed by the planning director. At a minimum, the application shall be accompanied by a fee, set by the city council, and plans showing the details of the proposed feature.
- B. **Findings.** The zoning administrator may approve an exception if the zoning administrator makes the following findings, as applicable.
  - 1. Height Exception Modifications for a rooftop solar system may be approved if the zoning administrator makes the finding that the feature would not result in a specific adverse impact upon the public health and safety.

2. Setback Exception Modifications may be approved for any of the structures or features listed in Table 17.47.050.A if the zoning administrator makes the findings that:
  - a. The setback exception modification/the feature or structure will not create any significant adverse impacts upon adjacent properties in terms of loss of safety, privacy, noise or glare.
  - b. The feature will be constructed in a sound and workmanlike manner, in compliance with all applicable provisions of the building and fire codes.
  - c. Structures are designed to be compatible with the primary dwelling(s) on the site.
  - d. Architectural features are designed to be compatible with the building on which they are located.
  
3. Fence, hedge or wall Exception Modifications may be approved if the zoning administrator makes the findings that:
  - a. The proposed fence, hedge or wall will not create a safety hazard for pedestrians or vehicular traffic.
  - b. The appearance of the fence, hedge or wall is compatible with the design, appearance and scale of the existing buildings and structures in the neighboring area.
  
- C. **Notice procedure and action by the zoning administrator.** The procedure for action by the zoning administrator shall be as provided in Chapter 17.56.
  
- D. **Appeals:** The decision of the zoning administrator or planning commission shall be effective on the close of the appeal period, unless an appeal has been filed pursuant to Chapter 17.52 of this title.
  
- E. **Notice to the Planning Commission:** All decisions of the zoning administrator shall be reported to the planning commission by email at least seven (7) days prior to the expiration of the appeal period. If any two members of the planning commission indicate in writing a desire to appeal the decision it shall be considered appealed and placed on the next available commission agenda, following the public hearing notice procedures provided in Chapter 17.54.

**17.47.070 - Requests for reasonable accommodations.**

Modifications or exceptions to the regulations set forth in Title 17 that are not otherwise addressed in Sections 17.32.060.B and C 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 may be granted by the planning director through a building permit, if through the building permit application it has been demonstrated that:

- A. The exception is necessary for current or future accessibility to the property or building by persons with disabilities that cannot be addressed within either the applicable zoning district height limits or setbacks, or through the exceptions provided in Sections 17.32.060.B and C.
- B. The accessibility improvement(s) will be constructed in compliance with all applicable provisions of the state and local building and fire codes.

**17.47.080 - Nonconforming Structures and Features.** Any structure, architectural feature, wall, or other improvement lawfully constructed within a setback area or over the height limit and constituting a nonconforming structure as defined in [Section 17.02.560](#), may be allowed to continue in accordance with [Chapter 17.38](#) of this title.

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**SECTION 16: Chapter 17.52 - Appeals is amended to read as follows:**

**Chapter 17.52 - APPEALS**

**Sections:**

**17.52.005 - Appeal from planning director.**

Any person may appeal to the planning commission any order, requirement, decision, determination or other action of the planning director with regard to any matter arising under this title, including any determination concerning the contents, subject matter or completeness of any application, any determination concerning which permit or other approval is required.

**17.52.007 - Appeal from zoning administrator.**

- A. Appeals from the decision of the zoning administrator, except decisions related to housing development permits as set forth in Chapter 17.45 of this title, shall be made to the planning commission.
- B. Appeals from decisions of the zoning administrator relating to housing development permits as set forth in Chapter 17.45 of this title shall be made to the city council.

**17.52.010 - Appeal from planning commission.**

Any person may appeal to the city council any order, requirement, decision, determination or other action of the planning commission in the manner provided in this title, including any planning commission decision of an appeal from an order, requirement, decision, determination or other action of the planning director or zoning administrator.

**17.52.020 - Method and timing.**

- A. All appeals shall be in writing and filed with, and on a form prescribed by, the city clerk and shall be accompanied by a fee, as set by the city council, and shall clearly state the reason for appeal.
- B. The appeal shall be filed according to the following schedule, unless specified otherwise in this title:

- a. Appeal of Planning Director decision: close of business ten (10) days after the decision
- b. Appeal of Zoning Administrator decision: close of business ten (10) days after the decision
- c. Appeal of planning commission decision: close of business fifteen (15) days after the decision

If the appeal closing date would be on a weekend or City observed holiday, the appeal date shall be the close of business on the next business day.

C. In addition to the above, any two (2) members of the planning commission may appeal a decision of the zoning administrator, according to the schedule provided, by filling the appeal in writing with the city clerk. Written appeal to the city clerk may include email. The mere fact that two (2) members of the planning commission have filed an appeal does not of itself require disqualification of either such commission member from hearing and/or deciding the item.

D. In addition to the above, any two (2) members of the city council may appeal any decision, according to the schedule provided, by filling the appeal in writing with the city clerk. The mere fact that two (2) members of the city council have filed an appeal does not of itself require disqualification of either such councilmembers from hearing and/or deciding the item.

E. Upon receipt of such appeal, the city clerk shall notify the planning department and the applicant. A time shall then be set as soon as practical but within sixty (60) days after the receipt of such appeal (unless the applicant agrees otherwise) for a public hearing. Notice of such hearing shall be given as set forth in Chapter 17.54.

**17.52.030 - Planning department report.**

The planning department, upon receipt of the notice of appeal, shall prepare a report of the facts pertaining to the decision and shall submit such report to the appeal hearing body along with the department's recommendation and the reasons for the action.

**17.52.040 - Action on appeal.**

The planning commission or city council shall conduct a de novo hearing on the appeal. At the close of the public hearing, the appeal hearing body may affirm, reverse or modify the decision, either at the same meeting or at such later meeting as the body may determine, for any basis permitted by law. If action is not taken on the appeal within sixty (60) days after the clerk's receipt of the appeal, unless the applicant otherwise agrees or the appeal hearing body has determined that additional time was needed in order for it to make an informed decision, the original action shall be deemed affirmed. To reverse or modify the decision shall require a majority of the quorum

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**SECTION 17: Chapter 17.56 - Administration is amended to read as follows:**

**Chapter 17.56 - ZONING ADMINISTRATOR**

**Sections:**

**17.56.010 - Zoning administrator—Function created.**

There is created the function of zoning administrator which shall be carried out by the planning director.

**17.56.020 - Zoning administrator—Powers and duties.**

The zoning administrator shall have all the powers and duties of a board of zoning adjustment as set forth in Section 65900 through 65909 of Article 3 of Chapter 4 of Title 7 of the Government Code of the state.

**17.56.030 - Zoning administrator—Action on applications.**

A. Except as otherwise provided in this title, the zoning administrator shall decide the following, unless referred by the zoning administrator to the planning commission:

- 1. Administrative design review in the POAZ districts pursuant to Section 17.27.060.A;
- 2. Wireless telecommunication facilities pursuant to Section 17.32.032;
- 3. Height and setback exception modification permits pursuant to Section 17.47.060;
- 4. Certain sign permits pursuant to Section 17.36.060;
- 5. Amendments or modifications to a design permit pursuant to Section 17.42.070;
- 6. Housing development permits pursuant to Section 17.45.050;
- 7. Zoning conformance pursuant to Section 17.56.080;
- 8. Planning application modifications pursuant to Section 17.56.090.
- 9. Interim use permit extensions pursuant to Section 17.41.080.D

B. In connection with the applications provided for in this section, the zoning administrator shall have all the duties and responsibilities set forth in this title for the planning commission.

**17.56.080 - Zoning conformance.**

Zoning conformance shall be determined in conjunction with, and as a part of, building permits. If it has been determined that any proposed construction is not in conformity with the regulations for the district in which the construction is to be located, the determination shall be provided by the zoning administrator, or the zoning administrator’s designee. No building permit shall be issued until the zoning conformance has been confirmed by the zoning administrator or the designee.

**17.56.090 - Planning Permit Modifications.**

An applicant may request modifications to a previously approved planning permit prior to or during construction. Examples of such modifications include alteration to an approved building or structure, change in configuration of site improvements, or modification or deletion of conditions of approval. A modification shall not automatically extend the approval expiration date beyond that of the original planning application.

Modifications are classified in three ways based on the significance of the proposed change and amount of additional review required: A) substantial conformance, B) minor, or C) major. The Zoning Administrator shall determine the type of modification required based on the criteria specified below.

A. Substantial Conformance. Modifications that are in substantial conformance with the original planning application can be approved as part of the building permit review process.

1. Substantial conformance is generally defined as a modification or change that:
  - a. Results in a project with reduced or inconsequential changes in size, scale, design, or intensity; or
  - b. Is necessary to accommodate parking requirements, utility configurations or other mechanical or operational components of a project identified during building permit review or construction;
  - c. Is in order to comply with updated Federal or State laws including but not limited to, the Americans with Disabilities Act, Building Code requirements, or Fire Code requirements; or
  - d. Cumulatively would not result in substantive changes to the overall project.
2. Public notification shall not be required for substantial conformance modifications.

B. Minor Modification. Modifications that result in minor changes to an approved planning application require review and approval by the Zoning Administrator, except if otherwise specified in this title or through the approved planning application conditions of approval.

1. Minor modification is generally defined as a modification where all of the following circumstances apply:
  - a. The modification would not result in a Major Modification, as defined below, to the approved site plan or project design;
  - b. The modification would not significantly change the nature of the approved use(s);
  - c. The modification would not significantly intensify the approved use(s); and
  - d. The modification would not result in any new or substantially greater environmental effects than the originally approved project.
2. Procedures for minor modifications are set forth in Section 17.56.110, or, where otherwise provided in this title, according to the original permitting procedures.

C. Major Modification. Modifications that result in a significant change, or “substantial modification” as provided in Section 17.42.010.A or this title, require review and approval by the original decision-making body, whether zoning administrator or planning commission except if otherwise specified in this title or as specified through the approved planning application conditions of approval. If the

original decision maker was the planning commission or city council, whether in the first instance or on appeal, then public noticing and a public hearing by the planning commission are required.

1. A modification to a project is considered major if any of the following circumstances in paragraphs a, b, c, d or e apply:

- a. The modifications involve substantive changes to the approved site plan or project design. A substantive change, for the purpose of this section, includes but is not limited to:
  - i. A change that is visually conspicuous from the public right-of-way or adjacent properties; or
  - ii. A change that results in non-conformance with City standards or policies; or
  - iii. A change that alters the intent of a project-specific condition of approval; or

b. The modifications significantly change the nature of the approved use; or

c. The modifications significantly intensify the approved use; or

d. The modifications may result in new or substantially greater environmental impacts than the originally approved project; or

e. The modifications involve major policy decisions or unique land use characteristics, as determined by the Zoning Administrator.

**17.56.100 - Other Permits.**

Zoning Administrator approvals of permit types provided elsewhere in this title shall be subject to the findings and procedures provided therein. Where procedures are not otherwise provided in this title, the zoning administrator procedures shall be as set forth in Section 17.56.110.

**17.56.110 - Procedures.**

A. Procedures for major modifications to approved planning permits shall follow the same permitting procedures as the original application, as provided elsewhere in this title.

B. The following procedures shall apply to minor modifications and other zoning administrator permits, unless provided otherwise in this title.

- 1. **Application form, fee and plans.** Application shall be made in writing by the owner(s) of the property, lessee, purchaser in escrow, or optionee with the consent of the owners, on a form prescribed by the planning director. At a minimum, the application shall be accompanied by a fee, set by the city council, and plans showing and describing the details of the proposed.

2. **Notice procedure and action by the zoning administrator.**

- a. **Notice of recommended decision and action:**
  - i. The zoning administrator shall provide notice of the application and publish a staff report with a recommended decision to grant or deny the permit at least ten (10) days prior to a decision on the permit application. The notice shall be mailed to all



owners of property adjacent to, and directly across the street from, the exterior boundaries of the subject property.

- ii. If no written public comments are received objecting to the recommended decision by the date indicated on the notice, at least ten (10) days following the issuance of the notice, the zoning administrator shall act on the application consistent with the recommendation contained in the staff report and the decision shall be effective immediately.

**b. Public hearing, when required:**

- i. If written public comments objecting to the recommended decision are received, that relate to the required findings, the zoning administrator shall hold a public hearing on the application. Notice of the hearing shall be given to all owners of property adjacent to, or directly across the street from the exterior boundaries of the subject property, and any party that has requested notice or provided written public comments on the application. The notice of public hearing shall be mailed not less than ten (10) or more than thirty (30) days before the date of the hearing. Alternatively, the zoning administrator may refer the application to the planning commission for public hearing and decision.
- ii. The zoning administrator, or if referred, the planning commission, may either grant or deny the application subject to the required finding(s). The zoning administrator or planning commission may grant the permit subject to such conditions as deemed necessary or appropriate to meet the required findings.

3. **Appeals:** The decision of the zoning administrator or planning commission shall be effective on the close of the appeal period, unless an appeal has been filed pursuant to Chapter 17.52 of this title.

4. **Zoning administrator—Reporting decisions to planning commission.** All decisions of the zoning administrator that are subject to public hearing shall be reported to the planning commission by email at least seven (7) days prior to the expiration of the appeal period. If any two members of the planning commission indicate in writing, including email, a desire to appeal the decision it shall be considered appealed and placed on the next available commission agenda, following the public hearing notice procedures provided in Chapter 17.54.

\*\*\*\*\*

**SECTION 18:** 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 19:** This Ordinance shall be in full force and effect thirty days after its passage and adoption.

\_\_\_\_\_  
Terry O'Connell, 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:

APPROVED AS TO FORM:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
City Attorney

## ATTACHMENT B REDLINED DRAFT ORDINANCE 2024-RZ-2

**Note:** The Brisbane Municipal Code (BMC) Sections provided in this draft represent reformatting of the development regulations for most of the districts that allow residential uses and exceptions to development regulations that are applicable to all districts. Reformatting is to a table format and non-substantive changes are not shown. The **Red text** indicates substantive proposed changes.

### **SECTION 1: Section 17.02.065 - Outside Wall is hereby deleted in its entirety.**

~~17.02.065 – Outside wall.~~

~~"Outside wall" means any wall that defines the exterior boundaries of a structure.~~

~~A. "Front outside wall," "rear outside wall" and "side outside wall" respectively mean the outside wall that is generally parallel to the front, rear or side lot line of the site.~~

~~B. "Exterior side outside wall" means a side outside wall generally parallel to a street. "Interior side outside wall" means any side outside wall other than an exterior side outside wall.~~

### **Section 2: New Section 17.02.785 - Wall, is added to read as follows:**

~~17.02.785 - Wall.~~

~~"Wall" means a vertical structure that encloses or divides an area of land or interior spaces of a building. See also the definition of retaining wall in Section 17.02.690 of this Chapter. A wall, as provided in the following sub-definitions, is part of a building or structure and is not a fence. Fence is defined in Section 17.02.300 and provided in Section 17.47.050.B.~~

- ~~A. "Outside wall" means any wall that defines the exterior boundaries of a building or structure, including the following:
 
  - ~~a. Front outside wall – generally that wall or walls parallel to the front lot line~~
  - ~~b. Rear outside wall – generally that wall or walls parallel to the rear lot line~~
  - ~~c. Side outside wall – generally that wall or walls parallel to the side lot line~~~~
- ~~B. "Exterior (front, rear or side) outside wall" means a front, rear or side outside wall generally parallel to a street.~~
- ~~C. "Interior (front, rear or side) outside wall" means a front, rear or side outside wall other than an exterior side outside wall.~~
- ~~D. "Inside Wall" or "Interior Wall" means a wall that is inside the boundaries of a structure, that is not an outside wall.~~

### **SECTION 3: Section 17.06.040 - Development Regulations, of Chapter 17.06 - R-1 Residential District, is amended to read as follows:**

**17.06.040 - Development regulations.**

The following development regulations shall apply to any lot in the R-1 district:

**(Subsections A- I combined to amended Subsection A.)**

A. Table 17.06.040.A: R-1 District Development Regulations

Type	Description	Single-family Dwelling	Exceptions and Notes
Density of Development – maximum		1 DU/5,000 square feet	A single-family dwelling may be constructed on a lot of record with an area of less than 5,000 square feet, subject to the provisions of this chapter and the limitations set forth in Section 17.47.030 Exceptions to Lot area, lot dimensions and lot lines.  See Chapter 17.05 of this title for urban lot split and two-unit development provisions.
Lot Dimensions	Lot Area – minimum	5,000 square feet	
	Lot Width - minimum	50 feet	
	Lot Depth - minimum	100 feet	
Setback minimums	Front: For dwellings and structures, except garages and carports.	15 feet for lots with a slope of less than 15 percent; or  10 feet for lots with a slope of 15 percent or greater; or  Where 50 percent or more of the lots of record in a block have been improved with single-family dwellings, the average distance of the front outside wall of the single-family structures from the front lot line on the same side of the street, if less than 10 or 15 feet, as otherwise applicable.	That portion of the structure that is subject to this setback exception (within the district standard setback area) shall not exceed 20 feet in height measured from finish grade.
	Front: For garages and carports.	10 feet	
	Side: For dwellings and structures on lots greater than or equal to 50 feet wide	5 feet	
	Side: For dwellings and structures on lots less than 50 feet wide, except garages and carports accessed from a street or alley.	10 percent of the lot width, but not less than 3 feet.	
	Side: For garages or carports accessed from a street or alley along that side of the lot.	10 feet	

Type	Description	Single-family Dwelling	Exceptions and Notes
	Rear	10 feet	See exceptions in Chapter 17.47, including decks and an allowance for a lesser setback for garages and carports on through lots, by City Engineer approval, in Section 17.47.050.
Coverage	Lot Coverage	40 percent of lot area	See lot coverage definition in Section 17.02.495.
Floor Area	Floor Area Ratio: For lots greater than three thousand seven hundred (3,700) square feet.	0.72	See definition of floor area and floor area ratio in Section 17.02.315.
	Floor Area Ratio: For lots less than or equal to three thousand seven hundred (3,700) square feet	0.72, plus up to 200 square feet for a garage parking space	
Height	Height of dwellings and structures, if not within the setback areas and at least 15 feet from the front lot line.	<del>28 feet, or 30 feet for lots with a slope of 20 percent or more.</del> 36 feet	See the definition of height in Section 17.02.400.  See various exceptions in Chapter 17.47.  See the exception for garages in the front setback in Table 17.47.050.A
	Height of dwellings and structures for the area within 15 feet of the front lot line, where less than a 15 foot setback is permitted.	20 feet above finish grade	
	Height of garages and carports when permitted within the front setback area	15 feet above the elevation of the center of the adjacent street when permitted by Section 17.47.050 of this title.	
Articulation	Front: outside walls greater than 20 ft by 20 ft	30 percent	Articulation requirements are as a cumulative area. See definition of articulation in Section 17.02.050 and the definitions of outside walls, interior and exterior side outside walls in Section 17.02.065 of this title.  Exempt from articulation requirements: <ul style="list-style-type: none"> <li>• Single story 1 and 2 car garages.</li> <li>• Accessory structures not exceeding a floor area of 120 square feet.</li> <li>• Walls that are smaller than those listed in this table.</li> </ul>
	Side: exterior side outside walls greater than 20 ft by 20 ft on greater than or equal to 40 ft wide lots	20 percent	
	Side: interior side outside walls greater than 20 ft by 20 ft	NA	
	Rear: Rear outside wall greater than 20 ft by 20 ft	30 percent	
Landscaping	Front Setback Area for lots with greater than or equal to 30 ft front lot line (minimum)	15 percent	New and rehabilitated, irrigated landscapes are subject to the provisions of the water

Type	Description	Single-family Dwelling	Exceptions and Notes
	Rear of newly constructed main structure on a downslope lot	Screened with trees and shrubs in accordance with a landscape plan approved by the planning director	conservation in landscaping ordinance (refer to Chapter 15.70) or the latest state provisions, whichever is more effective in conserving water.

Note: See also, Chapter 17.47 - Exceptions to District Development Regulations.

B. ~~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.

C. ~~K~~ Recycling Area Requirements. For new subdivisions containing an area where solid waste is collected and loaded in a location which serves five (5) or more living units, adequate, accessible and convenient areas for depositing, collecting and loading recyclable materials in receptacles shall be provided to serve the needs of the living units which utilize the area. This requirement shall also apply to all institutional buildings and city facilities (including buildings, structures, and outdoor recreation areas owned by the city) where solid waste is collected and loaded. 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.

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**SECTION 4: 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:

**(Subsections A - I combined to amended Subsection A.)**

A. Table 17.08.040.A: R-2 District Development Regulations

Type	Description	Single-family Dwelling	Two-units	Multi-family (three or more primary dwelling units)	Exceptions and Notes
Density of Development – maximum		1 DU/2,500 square feet			Except a lot having an area of 4,950 square feet or greater shall be considered conforming for a development density of two units.
Lot Dimensions	Lot Area – minimum	5,000 square feet	4,950 square feet	No Requirement for lot of record <del>4,950</del> for 3 units NA-50 NA-100	
	Lot Width - minimum	50 feet	50 feet		
	Lot Depth - minimum	100 feet	100 feet		
Setback minimums	Front: For dwellings and structures, except garages and carports.	<p>15 feet for lots with a slope of less than 15 percent; or</p> <p>10 feet for lots with a slope of 15 percent or greater; or</p> <p>Where 50 percent or more of the lots of record in a block have been improved with single-family dwellings, the average distance of the front outside wall of the single-family structures from the front lot line on the same side of the street, if less than 10 or 15 feet, as otherwise applicable.</p>			That portion of the structure that is subject to this setback exception (within the district standard setback area) shall not exceed 20 feet in height from finish grade. See height definition in section 17.02.400.
	Front: For garages and carports.	10 feet			
	Side: For dwellings and structures on lots greater than or equal to 50 feet wide except garages and carports accessed from a street or alley.	5 feet			
	Side: For dwellings and structures on lots less than 50 feet wide, except garages and carports accessed from a street or alley.	10 percent of the lot width, but not less than 3 feet.			
	Side: For garages or carports accessed from a street or alley along that side of the lot.	10 feet			
	Rear	10 feet			

Type	Description	Single-family Dwelling	Two-units	Multi-family (three or more primary dwelling units)	Exceptions and Notes
					approval, in Section 17.47.050.
Coverage	Lot Coverage	50 percent of lot area			See lot coverage definition in Section 17.02.495. <b>Lot coverage over 50 percent may be approved by the planning director, if required to meet the 1.25 FAR for developments of 3 or more units on a lot.</b>
Floor Area	Floor Area Ratio: For lots greater than three thousand seven hundred (3,700) square feet.	0.72	0.72	<b>1.25</b> <del>0.72</del>	See definition of floor area and floor area ratio in Section 17.02.315.
	Floor Area Ratio: For lots less than or equal to three thousand seven hundred (3,700) square feet	0.72, plus up to 200 square feet for a garage parking space.	0.72, plus up to 400 square feet for garage parking spaces.	<b>1.25</b> <del>0.72, plus up to four hundred (400) square feet for garage parking spaces.</del>	
Height	Height of dwellings and structures, if not within the setback areas and at least 15 feet from the front lot line.	<b><del>28 feet, or 30 feet for lots with a slope of 20 percent or more.</del></b> <b>36 feet</b>			See the definition of height in Section 17.02.400.  See various exceptions in Chapter 17.47.  See the exception for garages in the front setback in Table 17.47.050.A
	Height of dwellings and structures for the area within 15 feet of the front lot line, where less than a 15-foot setback is permitted.	20 feet			
	Height of garages and carports when permitted within the front setback area	15 feet above the elevation of the center of the adjacent street when permitted by Section 17.47.050 of this title.			
Articulation	Front: outside walls greater than 20 ft by 20 ft	30 percent			Articulation requirements are as a cumulative area.  See definition of articulation in Section 17.02.050 and the definitions of outside walls, interior and exterior side outside walls in Section 17.02.065 of this title.
	Side: exterior side outside walls that are greater than 20 ft by 20 ft on greater than or equal to 40 ft wide lots	20 percent			
	Side: interior side outside walls	NA			
	Rear: Rear outside wall	30 percent			



Type	Description	Single-family Dwelling	Two-units	Multi-family (three or more primary dwelling units)	Exceptions and Notes
					Exempt from articulation requirements: <ul style="list-style-type: none"> <li>• Single story 2 car garages.</li> <li>• Accessory structures not exceeding a floor area of 120 square feet.</li> <li>• Walls that are smaller than those listed in this table.</li> <li>• Where superseded by objective design standards established in Chapter 17.45 - Housing Development Permits.</li> </ul>
Landscaping	Front Setback Area for lots with greater than or equal to 30 ft front lot line (minimum)	15 percent			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.
	Rear of newly constructed main structure on a downslope lot	Screened with trees and shrubs in accordance with a landscape plan approved by the planning director			

Notes:

1. Certain development regulations may be superseded for housing development projects, as defined in Chapter 17.02, by objective design standards provided in Chapter 17.45 - Housing Development Permits.
2. See also, Chapter 17.47 - Exceptions to District Development Regulations.

**B. ~~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.

**C. ~~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 5: Section 17.10.040 - Development Regulations, of Chapter 17.10 - R-3 Residential District, is amended to read as follows:**

**17.10.040 - Development regulations.**

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

**(Subsections A - I combined to amended Subsection A.)**

A. Table 17.10.040.A: R-3 District Development Regulations

Type	Description	Single-family Dwelling	Two-units	Multi-family (three or more primary dwelling units)	Exceptions and Notes
Density of Development – maximum		1 DU/1,500 square feet			
Lot Dimensions	Lot Area – minimum	5,000 square feet	5,000 square feet	No Requirement for lot of record <del>4,950 for 3 units</del> NA-50 NA-100	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.
	Lot Width - minimum	50 feet	50 feet		
	Lot Depth - minimum	100 feet	100 feet		
Setback minimums	Front: For dwellings and structures, except garages and carports.	15 feet for lots with a slope of less than 15 percent; or  10 feet for lots with a slope of 15 percent or greater; or			That portion of the structure that is subject to this setback exception (within the district standard setback area) shall not exceed 20 feet in height

Type	Description	Single-family Dwelling	Two-units	Multi-family (three or more primary dwelling units)	Exceptions and Notes
		Where 50 percent or more of the lots of record in a block have been improved with single-family dwellings, the average distance of the front outside wall of the single-family structures from the front lot line on the same side of the street, if less than 10 or 15 feet, as otherwise applicable.			from finish grade. See height definition in section 17.02.400.
	Front: For garages and carports.	18 feet			If the front setback is less than 15 feet as provided for slope over 20 percent or by block average setbacks, then the garage setback minimum shall be three (3) feet behind the front wall of the main structure.  If the garage setback exemptions set forth in Section 17.47.050.A of this Title apply, the regulations of that section shall prevail.
	Side: For dwellings and structures on lots greater than or equal to 50 feet wide except garages and carports accessed from a street or alley.)	5 feet			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 10 feet, except where a lesser distance is determined by the city engineer to be safe in terms of pedestrian and vehicular traffic.
	Side: For dwellings and structures on lots less than 50 feet wide, except garages and carports accessed from a street or alley.	10 percent of the lot width, but not less than 3 feet.			
	Side: For garages or carports accessed from a street or alley along that side of the lot.	10 feet			See exception allowing for lesser setback by City Engineer approval in Section 17.47.050
	Rear	10 feet			See exceptions in Chapter 17.47, including decks and an allowance for a lesser setback for garages and carports on through lots, by City Engineer approval, in Section 17.47.050.
Coverage	Lot Coverage	60 percent of lot area			See lot coverage definition in Section 17.02.495.

Type	Description	Single-family Dwelling	Two-units	Multi-family (three or more primary dwelling units)	Exceptions and Notes
					Lot coverage over 60 percent may be approved by the planning director, if required to meet the 1.25 FAR for developments of three or more units on a lot.
Floor Area	Floor Area Ratio: For lots greater than three thousand seven hundred (3,700) square feet.	0.72	0.72	<del>0.72</del> 1.25	See definition of floor area and floor area ratio in Section 17.02.315.
	Floor Area Ratio: For lots less than or equal to three thousand seven hundred (3,700) square feet	0.72, plus up to 200 square feet for a garage parking space.	0.72, plus up to 400 square feet for garage parking spaces.	<del>0.72</del> 1.25	
Height	Height of dwellings and structures, if not within the setback areas and at least 15 feet from the front lot line.	<del>28 feet, or 30 feet for lots with a slope of 20 percent or more.</del> 36 feet			See the definition of height in Section 17.02.400.  See various exceptions in Chapter 17.47.  See the exception for garages in the front setback in Table 17.47.050.A
	Height of dwellings and structures for the area within 15 feet of the front lot line, where less than a 15-foot setback is permitted.	20 feet			
	Height of garages and carports when permitted within the front setback area	15 feet above the elevation of the center of the adjacent street when permitted by Section 17.47.050 of this title.			
Articulation	Front: outside walls greater than 20 ft by 20 ft	30 percent			Articulation requirements are as a cumulative area. See definition of articulation in Section 17.02.050 and the definitions of outside walls, interior and exterior side outside walls in Section 17.02.065 of this title.
	Side: exterior side outside walls that are greater than 20 ft by 20 ft on greater than or equal to 40 ft wide lots	20 percent			
	Side: interior side outside walls	NA			
	Rear: rear outside wall.	30 percent			Exempt from articulation requirements: <ul style="list-style-type: none"> <li>• Single story 2 car garages.</li> <li>• Accessory structures not exceeding a floor area of 120 square feet.</li> </ul>

Type	Description	Single-family Dwelling	Two-units	Multi-family (three or more primary dwelling units)	Exceptions and Notes
					<ul style="list-style-type: none"> <li>Walls that are smaller than those listed in this table.</li> <li>Where superseded by objective design standards established in Chapter 17.45 - Housing Development Permits.</li> </ul>
Landscaping	Front Setback Area for lots with greater than or equal to 30 ft front lot line (minimum)	15 percent			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.
	Rear of newly constructed main structure on a downslope lot.	Screened with trees and shrubs in accordance with a landscape plan approved by the planning director			
	Sites with Three (3) or More Units	Not less than ten percent (10 percent) of the lot area shall be improved with landscaping.			

Notes:

1. Certain development regulations may be superseded for housing development projects, as defined in Chapter 17.02, by objective design standards provided in Chapter 17.45 - Housing Development Permits.
2. See also, Chapter 17.47 - Exceptions to District Development Regulations.

B. ~~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.

C. ~~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 6: Section 17.12.040 - Development Regulations, of Chapter 17.12 - R-BA Brisbane Acres Residential District, is amended to read as follows:**

**17.12.040 - Development regulations.**

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

**(Subsections A- H combined to amended Subsection A.)**

A. Table 17.12.040.A: R-BA District Development Regulations

Type	Description	Single-family Dwelling	Exceptions and Notes
Density of Development – maximum		1 DU/20,000 square feet	Not more than one single-family dwelling shall be located on each lot in the R-BA District, except as otherwise provided in Section 17.12.050, Density transfer, and Section 17.12.055, Clustered development, of this chapter, or Chapter 17.05 of this title for urban lot split and two-unit development provisions.  A single-family dwelling may be constructed on a lot of record with an area of less than 20,000 square feet, subject to the provisions of this chapter and the limitations set forth in Section 17.01.060 of Chapter 17.01 of this title.  See also Chapter 17.05 of this title for urban lot split and two-unit development provisions.
Lot Dimensions	Lot Area – minimum	20,000 square feet	
	Lot Width - minimum	110 feet	
	Lot Depth - minimum	140 feet	

Type	Description	Single-family Dwelling	Exceptions and Notes
Setback minimums	Front.	10 feet	See exception allowing for lesser garage setback by City Engineer approval in Section 17.47.050.
	Side: For dwellings and structures, except garages and carports accessed from a street or alley	10 percent of the lot width, but in no event more than 15 feet or less than 5 feet.	See also setback exceptions in Chapter 17.47
	Side: For garages or carports accessed from a street or alley along that side of the lot.	10 feet	See exception allowing for lesser setback by City Engineer approval in Section 17.47.050
	Rear.	10 feet	See exceptions in Chapter 17.47, including decks and an allowance for a lesser setback for garages and carports on through lots, by City Engineer approval, in Section 17.47.050.
Coverage	Lot Coverage	25 percent of lot area	See lot coverage definition in Section 17.02.495.  See provisions for two-unit developments and urban lot splits in Chapter 17.05.
Floor Area	Floor Area Ratio	0.72 provided, however, that in no event shall the floor area of all buildings on a lot exceed 5,500 square feet	Accessory dwelling units and junior accessory dwelling units are excepted from the floor area ratio limits as permitted in Chapter 17.43  See definition of floor area and floor area ratio in Section 17.02.315.  See provisions for two-unit developments and urban lot splits in Chapter 17.05.
Height	The maximum height of any structure outside the side and rear setbacks and more than 20 feet from the front lot line.	35 feet	See the definition of height in Section 17.02.400.  See various exceptions in Chapter 17.47.
		36 feet	
	The maximum height of any structure within twenty (20) feet from the front lot line, .	Residential structures on sites sloping down from the adjacent street may be constructed to a height of twenty (20) feet above the elevation of the center of the street.  Garages and carports may be constructed to a height of 15 feet above the elevation of the center of the adjacent street and may exceed a height of thirty-six (36) feet, but the height of any permitted living	See other exception for garages in the front setback in Table 17.47.050.A

Type	Description	Single-family Dwelling	Exceptions and Notes
		area underneath shall not exceed 36 feet from finish grade.	
Articulation	Front: outside walls greater than 20 ft by 20 ft	30 percent	Articulation requirements are as a cumulative area. See definition of articulation in Section 17.02.050 and the definitions of outside walls, interior and exterior side outside walls in Section 17.02.065 of this title.
	Side: exterior side outside walls that are greater than 20 ft by 20 ft on greater than or equal to 40 ft wide lots	20 percent	
	Side: interior side outside walls	NA	
	Rear: rear outside wall	30 percent	Exempt from articulation requirements: <ul style="list-style-type: none"> <li>• Single story 2 car garages.</li> <li>• Accessory structures not exceeding a floor area of 120 square feet.</li> <li>• Walls that are smaller than those listed in this table.</li> </ul>

Note: See also, Chapter 17.47 - Exceptions to District Development Regulations.

- B. ~~H.~~ Wildland Interface. The development shall incorporate such measures as the fire chief may deem necessary to protect against the spread of fire between the site and the adjacent wildland.
- C. ~~I.~~ HCP Compliance. All development within the R-BA District, except as provided in Section 17.01.060, shall comply with the requirements of the San Bruno Mountain Area Habitat Conservation Plan (HCP), including site activity review, environmental assessments, and operating programs for planned management units, consistent with the objectives and obligations set forth in the HCP.

**(Subsection J. Articulation Requirements, removed. See Table 17.12.040.A, above.)**

- D. ~~K.~~ Landscaping Requirements.
  1. Landscape Plan. All development proposals and re-landscaping projects subject to the water conservation in landscaping ordinance (Chapter 15.70), except as permitted in Section 17.01.060 of Chapter 17.01 of this title, shall include a landscape plan to be approved by the planning director in consultation with the HCP plan operator. The plan shall show all proposed landscaping and the location of all protected trees and rare plants. The landscape plan shall be consistent with all of the following objectives:
    - a. Preservation of protected trees and rare plants to the greatest extent possible;
    - b. Use of plants that are compatible with the natural flora and fauna, and are not invasive to the HCP area;
    - c. Use of water conserving plants;



- d. Use of plants that will effectively screen structures and blend with the natural landscape; and
- e. Use of landscaping that is fire resistant.

2. 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.

**(Subsection L. Ridgeline, removed. See new Section 17.12.045 below.)**

- E. ~~M.~~ Canyon Watercourses and Wetlands. Development of the site, including any temporary disturbance, shall be set back 30 feet in each direction from the center line of any watercourse, and 20 feet from the boundary of any wetlands. The specific location of watercourse center lines and wetland boundaries shall be determined by qualified personnel under the city's direction.
- F. ~~N.~~ Trails. The development shall incorporate public access trails to the extent feasible given the environmental sensitivities of the site.
- G. ~~O.~~ 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 paragraph 3 of subsection L. of Section 17.12.040 and Chapters 17.34 and 17.38 of this title.
- H. ~~P.~~ Recycling Area Requirements. For new subdivisions containing an area where solid waste is collected and loaded in a location which serves five (5) or more living units, adequate, accessible and convenient areas for depositing, collecting and loading recyclable materials in receptacles shall be provided to serve the needs of the living units which utilize the area. This requirement shall also apply to all institutional buildings and city facilities (including buildings, structures, and outdoor recreation areas owned by the city) where solid waste is collected and loaded. 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.

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**SECTION 7: New Section 17.12.045 - Ridgeline Development is added to Chapter 17.12 R-BA Brisbane Acres Residential District as follows:**

**17.12.045 - Ridgeline Development.**

- A. Ridgeline. Development on any site through which a ridgeline runs as identified in Figure 17.02.695, Ridgelines, shall be subject to design permit approval, except for accessory dwelling units and junior accessory dwelling units and except as provided in Section 17.01.060.

1. In addition to the required contents of application for design permit set forth in Section 17.42.020, story poles certified by a licensed architect, surveyor, civil engineer or contractor to represent the height of the proposed building shall be erected at the locations of its outer corners and roof peaks according to a plan pre-approved by the planning director. The upper one-foot length of each pole shall be painted OSHA yellow so as to be clearly visible from a distance.
  
2. In addition to the findings required for issuance of design permits set forth in Section 17.42.040, the planning commission shall find that the building's placement, height, bulk and landscaping will preserve those public views of the San Bruno Mountain State and County Park as seen from the Community Park and from the Bay Trail along the Brisbane Lagoon and Sierra Point shorelines that are found to be of community-wide value. Methods to accomplish this may include varying the building's roofline to reflect the ridgeline's topography, orienting the building to minimize the impact of its profile upon public views, locating the building on the lower elevations of the site, and reducing the building's height below the maximum permitted in the district.
  
3. An existing structure may be repaired or replaced in accordance with Section 17.38.090 without design permit approval, but any alteration or expansion which raises any portion of the roofline or increases the building's lot coverage shall be subject to design permit approval under this section.

\*\*\*\*\*

**SECTION 8: Section 17.14.060 - Development regulations for the NCRO-2 district 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, **except that a lot of record that is less than 2,500 square feet, created prior to January 1, 2022, shall be recognized as conforming for 3 or more dwelling units as part of a mixed-use development, pursuant to Section 17.14.040.K.2.**

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

D. Setbacks. The minimum required setbacks for any lot in the NCRO-2 district, except as provided in Chapter 17.47, shall be as follows:

1. Front setback: No requirement.
  
2. Side Setback: No requirement, except a 10 foot setback shall be required on the side where abutting any residential district.
  
3. Rear Setback: 10 feet.

**(Subsection E no change)**

F. Height of Structures. The maximum height of any structure, except as provided in Chapter 17.47, shall be ~~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~~ 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.~~

G. Fencing Requirements. Fencing shall be subject to zoning administrator review as set forth in Section 17.47.060, except where subject to a design permit per Section 17.14.110. If the site is next to a residential district, a fence not to exceed 10 feet in height, that screens the site from the abutting residential property rear or side yard areas shall be installed along the property line.

**(Subsections H, I and J no change)**

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**SECTION 9: 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, ~~except that a lot of record that is less than 7,500 square feet, created prior to January 1, 2022, shall be recognized as conforming for 3 or more dwelling units.~~

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

D. Setbacks. The minimum required setbacks for any lot, except as provided in ~~Chapter 17.47~~, shall be as follows:

1. Front setback:

- a. Residential/Mixed Use: 10 feet;
- b. Commercial Uses: 25 feet for commercial uses;
- c. Exception: The setbacks may be reduced to zero 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: 5 feet;

b. Commercial Uses: 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: 10 feet.

**(Subsection E, no change.)**

F. Height of Structures. The maximum height of any structure, except as provided in Chapter 17.47, shall be ~~thirty-five (35) feet~~36 feet.

**(Subsections G, H, I, J, K, L and M, no change.)**

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**SECTION 10: Section 17.27.040 - Development Regulations for the PAOZ-1 District is amended to read as follows:**

Development regulations for the PAOZ-1 district are as follows:

**(Subsections A, B, C, D, E and F, no change.)**

G. Height.

1. Buildings and Architectural Features. The maximum building height shall be 38 feet and 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 10 feet above the maximum building height.

2. Fences and Walls. Fences and walls in front yards shall be no more than 3 feet in height from the adjacent sidewalk. Fences and walls in side yards shall not exceed 6 feet in height. Deviations from maximum fence and wall heights shall require approval by the ~~planning commission zoning administrator~~ as provided in ~~Section 17.32.050.B.5. of this title~~ Chapter 17.47.

**(Subsections H, I, J, K, L and M, no change.)**

**SECTION 11: Section 17.27.050 - Development Regulations for the PAOZ-2 District is amended to read as follows:**

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

(Subsections A, B, C, D, E and F, no change.)

G. Height.

1. Buildings and Architectural Features. The maximum building height shall be 38 feet and 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 10 feet above the maximum building height.

2. Fences and Walls. Fences and walls in front yards shall be no more than 3 feet in height from the adjacent sidewalk. Fences and walls in side yards shall not exceed 6 feet in height. Deviations from maximum fence and wall heights shall require approval by the ~~planning commission zoning administrator~~ as provided in ~~Section 17.32.050.B.5. of this title~~ Chapter 17.47.

(Subsections H, I, J, K, L and M, no change.)

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**SECTION 12: Sections 17.032.050 - Fences, hedges and walls, 17.032.055 - Exceptions – Lot area, lot dimensions and lot lines, 17.32.060 - Exceptions – Height Limit, 17.32.070 - Exceptions – Setback requirements, and 17.32.080 - Requests for reasonable accommodations are hereby deleted in their entirety.**

~~17.32.050 – Fences, hedges and walls.~~

~~A. General Regulations. Fences, hedges and walls may be erected subject to the following conditions:~~

~~1. Unless otherwise provided elsewhere in this title, fences, hedges and walls not exceeding six (6) feet in height may be constructed in any district within any required setback area, except as follows:~~

~~a. Where the director of public works determines that visibility would be affected, the height of fences, hedges and walls shall be reduced to not less than three (3) feet.~~

~~b. Chain link fences shall not be constructed in or adjoining any R residential district, except as provided in subsections (B)(4) and (B)(5).~~

~~c. Razor wire, barbed wire and similar materials with sharp edges or points shall not be used for fencing in any district, except as provided in subsection (B)(5). Other non-standard fencing materials may be similarly restricted per guidelines approved by the planning commission.~~

~~d. As a condition of approval for properties subject to the San Bruno Mountain Area Habitat Conservation Plan, the planning commission shall restrict the height, location and/or design of fencing to maintain sufficient openness to allow passage of butterflies while remaining consistent with building code requirements.~~

~~2. Where a fence is proposed to be constructed, or has been constructed, adjacent to city property, a boundary survey or other evidence of the location of the fence shall be submitted to the director of public works upon request if the director determines that a question exists as to whether the fence encroaches on public property.~~

~~3. When construction of a fence impairs the visibility of address numbers on a house, such numbers shall be relocated with approval of the fire prevention officer.~~

~~B. Exceptions.~~

~~1. The community development director may approve retaining walls located in any required setback area having a height (as defined in Section 17.02.400) in excess of six (6) feet and falling within any one of the following categories:~~

~~a. The surface of the retaining wall is treated with coloring, texture, architectural features, trelliswork, or other means that will visually divide the height of the retaining wall into horizontal sections of no more than six (6) feet.~~

~~b. Water conserving, non-invasive landscaping of sufficient size at maturity will be planted and maintained to provide screening so that no more than six (6) feet of the height of the retaining wall would remain visible.~~

~~c. The retaining wall is located on a cut slope so that it is not readily visible from off the site.~~

~~2. Fence heights may exceed six (6) feet through the addition of up to two (2) feet of wooden lattice on top within the required side and rear setbacks in the R-1, R-2, R-3, R-BA and NCRO-2 districts, but not within the front setback required per the district's development regulations.~~

~~3. Metal rail and picket fences and black or dark green vinyl-coated chain-link fences not exceeding eight (8) feet in height may be constructed in the C-1, TC-1 and M-1 districts.~~

~~4. Temporary chain-link demolition/construction barricades not exceeding eight (8) feet in height are permitted in all districts, subject to removal prior to final inspection.~~

~~5. In the R-MHP district, fence heights may be constructed up to eight (8) feet along the mobile home park perimeter, except that fence heights may be constructed up to ten (10) feet along the mobile home park perimeter abutting a public right-of-way.~~

~~6. All other exceptions to the general regulations set forth in subsection 17.32.050(A) shall require approval by the planning commission. Application for such exception shall be filed with the community development director and shall be accompanied by payment of a processing fee in such amount as established from time to time by resolution of the city council. The planning commission may grant the exception upon making all of the following findings:~~

~~a. The exception is necessary by reason of unusual or special circumstances or conditions relating to the property in order to gain full use and enjoyment of the property.~~

~~b. The proposed fence, hedge or wall will not create a safety hazard for pedestrians or vehicular traffic.~~

~~c. The appearance of the fence, hedge or wall is compatible with the design, appearance and scale of the existing buildings and structures in the neighboring area.~~

~~17.32.055—Exceptions—Lot area, lot dimensions and lot lines.~~

~~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.~~

~~2. In any R district, single family dwellings only may be erected on any substandard lot less than five thousand (5,000) square feet in area, if the lot was not owned in common with contiguous property in the same district on October 27, 1969.~~

~~3. As an exception to subsection (A)(1), 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.~~

~~4. 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.~~

~~5. Contiguous substandard lots owned in common may be subject to merger in compliance with this section and Municipal Code Chapter 16.12.~~

~~B. 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.~~

~~17.32.060 Exceptions— Height limit.~~

~~A. Chimneys which do not exceed three (3) feet in width or depth may exceed the height limit by no more than five (5) feet except as required to comply with the California Building Code.~~

~~B. Where cupolas, flag poles, monuments, radio and other towers, water tanks, church steeples, mechanical appurtenances and similar structures are permitted in a district, height limits therefore may be exceeded upon the securing of a use permit. Wireless telecommunications facilities shall be subject to the height exception procedures set forth in Section 17.32.035.~~

~~C. Rooftop solar energy systems may exceed the maximum building height limit of the applicable zoning district in accordance with the following procedures:~~

~~1. Rooftop solar energy systems, including those for water heating as well as photovoltaic purposes, that do not extend more than twenty four (24) inches above the roofline of the structure on which they are mounted, measured from the exterior roofing material to the highest point of the panel, are exempt from maximum building height limits in all zoning districts.~~

~~2. Rooftop solar energy systems that extend more than twenty four (24) inches above the roofline of the structure on which they are mounted, measured from the exterior roofing material to the highest point of the panel, may exceed the height limit through approval of an administrative permit by the zoning administrator. If the zoning administrator determines that the granting of the permit would not result in a specific adverse impact upon the public health and safety, the zoning administrator shall give written notice of the intended approval to property owners and occupants on both sides of, to the rear of and directly across the street from the site on which the system is proposed to be located. The notice shall generally describe the nature, design and location of the proposed system and advise the recipients that they may submit written comments on the intended decision by a certain date, which shall be not less than twenty one (21) days from the date of mailing the notice. The notice shall also advise the recipients that they have the right to appeal a decision of the zoning administrator to the planning commission. The zoning administrator shall send a copy of the final decision on the application to each person who has submitted written comments within the time prescribed in the notice.~~

~~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.~~

~~17.32.070—Exceptions—Setback requirements.~~

~~A. Notwithstanding any other provision of this title, certain structures or portions thereof may extend into a front, rear or side setback area to the extent permitted by the following chart:~~

~~1. Projections from a Building.~~

~~a. Overhanging Architectural Features (Such as Eaves, Cornices Canopies, Rain Gutters and Downspouts).~~

~~Front setback area; May extend 3 feet from the building into the front setback area, but no closer than 5 feet from the front lot line.~~



~~Rear setback area:; May extend 3 feet from the building into the rear setback area, but no closer than 7 feet from the rear lot line.~~

~~Side setback area:; May extend 3 feet from the building into the side setback area, but no closer than 2½ feet from the side lot line. Rain gutters and downspouts may extend no closer than 2 feet from the side lot line. In the R-1 district, a noncombustible awning over the main entrance to a residence located at the side of the structure may extend 4 feet from the building into any portion of the side setback area, but shall not extend over or drain onto the abutting property.~~

~~b. Cantilevered Windows No Greater Than Ten (10) Feet in Length That Do Not Include Any Floor Area (Such as Bay, Box, Bow, and Greenhouse Windows).~~

~~Front setback area:; May extend 3 feet from the building into the front setback area, but no closer than 5 feet from the front lot line.~~

~~Rear setback area:; May extend 3 feet from the building into the rear setback area, but no closer than 7 feet from the rear lot line.~~

~~Side setback area:; May extend 2 feet into the side setback area, but no closer than 3 feet from the side lot line.~~

~~c. Supported Decks, Cantilevered Decks and Balconies.~~

~~Front setback area: May extend 5 feet from the building into the front setback area, but no closer than 5 feet from the front lot line. Decks may be located atop a garage or carport approved under Section 17.32.070.A.3.a. and may extend to the front of the garage, but the railings of such deck may not exceed fifteen 15 feet in height above the elevation of the center of the adjacent street or 4 feet from the surface of the deck, whichever is less, while at the same time maintaining the minimum railing height required by the building code.~~

~~Rear setback area:; May extend 5 feet from the building into the rear setback area, but no closer than 5 feet from the rear lot line. This exception shall not apply to the NCRO district.~~

~~Side setback area:; No exception permitted.~~

~~Modifications. The planning commission may approve a modification to the foregoing exceptions if there are not more than two (2) units on the site and the planning commission is able to make all of the following findings:~~

- ~~i. The modification is necessary in order to gain access to the property or to the dwelling unit on the property.~~
- ~~ii. The modification is necessary because of unusual or special circumstances relating to the configuration of the property.~~
- ~~iii. The visual impacts of the modification have been minimized.~~

~~d. Deck Railings within Setback Areas.~~

~~Front setback area:; May not be higher than 4 feet from the surface of the deck.~~

~~Rear setback area; May not be higher than 4 feet from the surface of the deck.~~

~~Side setback area; No exception permitted.~~

~~e. Stairs, Ramps and Landings (That Are Open and Uncovered and Serve Buildings with No More Than Two Units):~~

~~Front setback area; No more than 1 set of stairs per dwelling unit may extend from the building into the front setback area. Each set of stairs must lead to the front entrance of the unit. The height of the stairway within the front setback area shall not exceed 20 feet. Stairs on grade, sidewalks, and other flatwork constructed of noncombustible materials may be located anywhere within the front setback area.~~

~~Rear setback area; No more than 1 set of stairs per dwelling unit may extend from the building into the rear setback area, but no closer than 5 feet from the rear lot line. Stairs on grade, sidewalks, and other flatwork constructed of noncombustible materials may be located anywhere within the rear setback area.~~

~~Side setback area; No more than 1 set of stairs per dwelling unit may extend from the building into the side setback area, but no closer than 3 feet from the side lot line. Stairs on grade, sidewalks, and other flatwork constructed of noncombustible materials may be located anywhere within the side setback area.~~

~~Modifications. The planning commission may approve a modification to the foregoing exceptions for stairs, ramps and landings if there are not more than two units on the site and the planning commission is able to make all of the following findings:~~

- ~~i. The modification is necessary in order to gain access to the property or to the dwelling unit on the property.~~
- ~~ii. The modification is necessary because of unusual or special circumstances relating to the configuration of the property.~~
- ~~iii. The visual impacts of the modification have been minimized.~~

~~The planning commission may also approve a modification to the foregoing exceptions as part of a design permit being granted for three (3) or more units on the site, if the commission is able to make all of the findings listed above.~~

~~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.~~

~~2. Small Free-Standing Structures.~~

~~a. Small Accessory Buildings and Roofed Structures (Such as Gazebos, Greenhouses, Garden and Utility Sheds).~~

~~Front setback area:; No exception permitted.~~

~~Rear setback area:; May be placed at any location within the rear setback area which is not less than 5 feet from the rear lot line or 3 feet from the interior side lot line, provided the building or structure, or portion thereof, within the rear setback area does not exceed 8 feet in height and does not have a floor area in excess of 120 square feet.~~

~~Side setback area:; May be placed at any location within the interior side setback area which is not less than 3 feet from the interior side lot line, provided the building or structure, or portion thereof, within the interior side setback area does not exceed 8 feet in height and does not have a floor area in excess of 120 square feet. No exception is permitted for an exterior side setback area.~~

~~Modifications. The zoning administrator may approve a modification to the foregoing exceptions for small accessory buildings and roofed structures, following the conduct of a hearing with ten (10) days' notice thereof being given to the owners of all adjacent properties, if the zoning administrator is able to make all of the following findings:~~

- ~~i. The modification will not result in overbuilding the site or result in the removal of significant greenscape.~~
- ~~ii. The modification will not create any significant adverse impacts upon adjacent properties in terms of loss of privacy, noise, or glare.~~
- ~~iii. The accessory structure is designed to be compatible with the primary dwelling(s) on the site.~~

~~A building permit shall be required to construct or install any accessory structure for which a modification has been granted under this subsection.~~

~~b. Unroofed and Openwork Roofed Garden Structures (Such as Arbors, Porticos, Trellises and Lath Houses).~~

~~Front setback area:; May not exceed 8 feet in height or cover more than 15% of the front setback area.~~

~~Rear setback area:; May be placed at any location within the rear setback area which is not less than 5 feet from the rear lot line, provided the structure, or portion thereof, within the rear setback area does not exceed 8 feet in height and does not cover more than 15% of the rear setback area.~~

~~Side setback area:; May be placed at any location within the side setback area which is not less than 3 feet from the side lot line, provided the structure, or portion thereof, within the side setback area does not exceed 8 feet in height and does not cover more than 15% of the side setback area.~~

~~Modifications. The zoning administrator may approve a modification to the foregoing exceptions for unroofed and openwork roofed garden structures, following the conduct of a hearing with ten (10) days' notice thereof being given to the owners of all adjacent properties, if the zoning administrator is able to make all of the following findings:~~

- ~~i. The modification will not result in overbuilding the site or result in the removal of significant greenscape.~~
- ~~ii. The modification will not create any significant adverse impacts upon adjacent properties in terms of loss of privacy, noise, or glare.~~
- ~~iii. The accessory structure is designed to be compatible with the primary dwelling(s) on the site.~~

~~3. Miscellaneous Improvements.~~

~~a. Garages and Carports and Parking Decks on Slopes of Fifteen Percent (15%) or Greater.~~

~~Front setback area:; Garages, carports and parking decks not more than 15 feet in height above the elevation of the center of the adjacent street in the R-1, R-2 and R-3 Districts and parking decks in the R-BA District may be placed at any location within the front setback area provided: (i) there is no encroachment into any side setback area, and (ii) the garage is approved by the city engineer, based upon a finding that no traffic or safety hazard will be created.~~

~~Rear setback area:; On through lots, garages, carports and parking decks not more than 15 feet in height above the elevation of the center of the adjacent street may be placed at any location within the rear setback area provided: (i) there is no encroachment into any side setback area, and (ii) the garage is approved by the city engineer, based upon a finding that no traffic or safety hazard will be created.~~

~~Side setback area:; No exception permitted.~~

~~b. Decorative Artwork, Ponds, Fountains and Similar Water Features, Not More Than Six (6) Feet in Height.~~

~~Front setback area:; May be placed at any location within the front setback area.~~

~~Rear setback area:; May be placed at any location within the rear setback area.~~

~~Side setback area:; No exception permitted.~~

~~c. Existing Permitted Garages or Accessory Buildings Converted into Accessory Dwelling Units.~~

~~Front setback area:; May be placed at any location within the front setback area.~~

~~Rear setback area:; May be placed at any location within the rear setback area.~~

~~Side setback area:; May be placed at any location within the side setback area.~~

~~4. Accessory Dwelling Units.~~

~~a. Exceptions to the setback requirements for accessory dwelling units shall be as established in Chapter 17.43.~~

~~B. The exceptions set forth in subsection A. of this Section 17.32.070 shall not be construed to include chimney boxes, swimming pools and spas, exposed plumbing, or mechanical equipment such as heating and air conditioning units or pool pumps, and no exceptions to the setback requirements shall be permitted for any of these structures.~~

~~C. Any structure, architectural feature, wall, or other improvement lawfully constructed within a setback area and constituting a nonconforming structure as defined in Section 17.02.560, may be allowed to continue in accordance with Chapter 17.38 of this title.~~

~~17.32.080—Requests for reasonable accommodations.~~

~~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.~~

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**SECTION 13: Section 17.42.070 - Amendment of design permit—Minor modifications is amended to read as follows:**

**17.42.070 - Amendment of design permit—~~Minor m~~Modifications.**

A. Amendments or modifications to a design permit shall require approval by the ~~planning commission, except that the~~ zoning administrator as set forth in Section 17.56.090 of this title, or by the planning commission if referred by the zoning administrator. ~~shall have authority to approve the following matters:~~

~~1. Any items which, under the terms of the design permit, have been delegated to the zoning administrator for approval, either as a condition for issuance of the permit or at any time thereafter;~~

~~2. Minor changes during the course of construction which do not materially affect the use, nature, appearance, quality or character of the project.~~

~~B. The application requirements, public hearing procedures and findings required for amendments or modifications to a design permit shall be as prescribed in Sections 17.42.020, 17.42.030 and 17.42.040 of this chapter.~~

**SECTION 14: Chapter 17.46 - Variances is amended to read as follows:**

**Chapter 17.46 - VARIANCES**

**17.46.010 - Application—Required circumstances.**

Applications for variances from the strict application of the terms of this title may be made and variances granted when the following circumstances are found to apply:

- A. That any variance granted shall be subject to such conditions as will assure that the adjustment thereby authorized shall not constitute a grant of special privilege inconsistent with the limitations upon other properties in the vicinity and district in which the subject property is located;
- B. That because of special circumstances applicable to subject property, including size, shape, topography, location or surroundings, the strict application of this title is found to deprive subject property of privileges enjoyed by other properties in the vicinity and under identical zone classification.

**17.46.020 - Application—Form—Contents.**

Application for variance shall be made in writing by a property owner, lessee, purchaser in escrow, or optionee with the consent of the owners, on a form prescribed by the ~~planning director-zoning administrator~~. The application shall be accompanied by a fee, set by the city council, a plan of the details of the variance requested and evidence showing:

- A. That the granting of the variance will not be contrary to the intent of this title or to the public safety, health and welfare; and
- B. That due to special conditions or exceptional characteristics of the property or its location, the strict application of this chapter results in practical difficulties and unnecessary hardship. "Hardship," as used in this chapter does not mean personal or financial hardship but refers to the conditions in subsection B of Section 17.46.010.

**17.46.030 - Application—Hearing date—Notice.**

The planning commission shall conduct a public hearing on the application for a variance. Notice of such hearing shall be given as set forth in Chapter 17.54.

**17.46.040 - Granting.**

- A. After the conclusion of the public hearing or continuations thereof, the planning commission ~~or zoning administrator~~ may grant or deny a variance from the strict application of the regulations established by this chapter. The commission may impose any reasonable conditions deemed necessary to achieve the purpose of this title.
- B. A variance shall be effective the seventh (7th) day after planning commission ~~or zoning administrator~~ approval unless the action is appealed to the city council, ~~or in the case of the zoning administrator, to the planning commission,~~ in which case the variance shall not be effective until final action upon the appeal.

**17.46.050 - Nonconforming uses not allowed.**

The use of lands or buildings not in conformity with the regulations specified for the district in which such lands or buildings are located may not be allowed by the granting of a variance.

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**SECTION 15: New Chapter 17.47 - Exceptions to District Development Regulations is added to read as follows:**

**17.47 - EXCEPTIONS TO DISTRICT DEVELOPMENT REGULATIONS**

**17.47.010 - Purpose of Chapter**

The purpose of this chapter is to provide standards and procedures for recognition of certain substandard lots as legal lots for development, as well as exceptions to specified district development regulations for certain structures and other built features.

**17.47.020 - Applicability**

Unless indicated otherwise in this title, the exceptions provided in this chapter shall apply to all districts.

**17.47.030 - Exceptions to Lot area, lot dimensions and lot lines.**

Lots sizes and dimensions shall conform to the district development regulations, except as provided herein.

**A. Substandard Lots.**

1. No substandard lot shall be independently developed if it is less than 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 5,000 square feet in area may be developed as a standard site under the applicable district regulations.
2. In any R district, single-family dwellings only may be erected on any substandard lot less than 5,000 square feet in area, if the lot was not owned in common with contiguous property in the same district on October 27, 1969.
3. As an exception to A.1, a property in the R-1 Residential district consisting of 4 contiguous lots of record totaling at least 9,650 square feet that were owned in common on October 27, 1969, may be developed as 2 sites, each consisting of one pair of contiguous lots.

- 4. 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.
- 5. Contiguous substandard lots owned in common may be subject to merger in compliance with this section and Municipal Code Chapter 16.12.

**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 lot area and dimensions subject to the provisions of the Two-unit Development Residential Overlay District - R-1 and R-BA Districts, as set forth in Chapter 17.05.

**C. ~~B.~~ 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.

**D. ~~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. **Where each lot is a substandard lot as defined in Section 17.02.490.H, a lot line adjustment may be utilized to effectuate an urban lot split, subject to the provisions of the two-unit development residential overlay district, as set forth in Chapter 17.05.**

**E. ~~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 planning director, as prescribed by Chapter 16.12 of Title 16, Subdivisions.

### 17.47.040 - Height Limit Exceptions

Heights of structures shall conform to the district development regulations, except as provided herein.

#### A. Height Exception Limits.

The following height limit exceptions in Table 17.47.040.A apply to all zoning districts:

**Table 17.47.040.A**



Type	Applicability	Height Exception	Eligible for Modification?
Chimney	Chimney not exceeding 3 feet in width or depth.	Feature may be less than or equal to 5 feet over the district height limit, or as required to comply with the California Building Code.	No. Modification to the height exception provided may only be by variance, per Chapter 17.46, subject to the findings therein.
Miscellaneous structures	Cupolas, <del>flag poles</del> , monuments, water tanks, mechanical appurtenances and similar structures. <del>Church steeples, radio and other towers</del>	Subject to use permit approval by the Planning Commission.	No. Modification to the height exception provided may only be by use permit, per Chapter 17.40 of this title, subject to the findings therein.
Rooftop solar	Rooftop solar energy systems, including those for water heating as well as photovoltaic purposes.	Feature may be less than or equal to 24 inches above the roofline of the structure on which it is mounted, measured from the exterior roofing material to the highest point of the panel, regardless of the building height. If greater than 24 inches above the roofline and over the district height limit, the feature is subject to approval by the zoning administrator, per Section 17.32.060.B.	Yes (see Section 17.47.060)

Note: Height exceptions may be superseded by objective design standards established in this title, including but not limited to the POAZ Parkside Overlay District and Housing Development Permits.

~~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.~~

**17.47.050 - Setback Exceptions**

Setbacks from lot lines to buildings and structures shall conform to the district development regulations, except as provided herein.

**A. Setback Exception Limits.** Notwithstanding any other provision of this title, certain structures or portions thereof may extend into a front, rear or side setback area to the extent permitted by Table 17.47.050.A and subject to applicable building and fire codes:

**Table 17.47.050.A**

Type	Applicability	Required Front Setback (ft)	Required Rear Setback (ft)	Required Side Setback (ft)
Residential Garages, Carports and Parking Decks in the R-1, R-2, R-3 and R-BA districts	<ul style="list-style-type: none"> <li>If located within the setback area, a garage, carport, or parking deck may not exceed 15 feet in height above the centerline of the adjacent street.</li> <li>Notwithstanding the allowable exceptions, placement is subject to approval by the city engineer, based upon a finding that no traffic or safety hazard will be created.</li> <li>A garage or carport in compliance with this subsection may exceed the district height limit, but the height of any permitted living space underneath shall not exceed the district height limit.</li> </ul>	0	Interior rear: NA  Exterior rear (through lots): 0	Interior side: NA  Exterior side (i.e. corner street or alley lots): 0
Overhanging Architectural Features	Includes such features as eaves and cornices that extend from the wall of a building and into the setback area.	5	7	2.5
Gutters and downspouts		5	7	2

Type	Applicability	Required Front Setback (ft)	Required Rear Setback (ft)	Required Side Setback (ft)
Cantilevered Windows	<ul style="list-style-type: none"> <li>Includes window(s) extending from the wall of a building into the setback area such as bay windows, box windows, etc.</li> <li>To qualify for the exception, the window may not include floor area. If the window includes a built-in bench seat or shelf, 16 inches or higher from the floor, without steps, the area will not be counted as floor area regardless of the clear height above the bench or step (see also Floor Area defined, Section 17.02.315).</li> </ul>	5	7	3
Decks and Balconies	Either free-standing or attached to a building.	5	5	NA
Roof Decks and associated guardrails over a garage that is subject to a setback exception	<ul style="list-style-type: none"> <li>Roof decks over garages that are subject to the garage setback exception may not be covered by a roofed or unroofed structure (i.e. pergola over a roof deck), except that the portion of a deck covered by an eave from an adjacent building segment may cover the portion of the deck not to exceed 3 feet from the edge of the building wall</li> </ul>	0	Interior rear: NA  Exterior rear (i.e. through lots): 0	NA
Stairs, Ramps and Landings to a building entrance	<ul style="list-style-type: none"> <li>Applies only to unenclosed stairs, ramps or landings.</li> <li>May not drain onto the neighbor's property.</li> <li>Materials within a setback must be non-combustible, to the satisfaction of the building official.</li> </ul>	0	5	0

Type	Applicability	Required Front Setback (ft)	Required Rear Setback (ft)	Required Side Setback (ft)
Awning over a building entrance or landing	<ul style="list-style-type: none"> <li>Allowed as a type of projection from a building.</li> <li>May not drain to the neighbor's property.</li> <li>In all zoning districts except the R-1 District, to be eligible for a side setback exception, the awning may project no more than 3 feet from the building into the side setback area.</li> <li>In the R-1 District, to be eligible for a side setback exception the awning may extend 4 feet from the building into the side setback area but shall not extend over the abutting property.</li> </ul>	5	5	<p>All districts except R-1: 2.5</p> <p>R-1 district only: 0</p>
Roofed Accessory Structures (such as detached home offices and art studios, sheds and gazebos)	<ul style="list-style-type: none"> <li>The portion of the structure encroaching within the setback area may not exceed <del>8</del>-10 feet in height measured from lowest grade immediately adjacent to the structure's exterior walls or the alignment of the supporting posts.</li> <li>The square footage of the portion of the structure encroaching within the setback area may not exceed 120 square feet.</li> <li>These exceptions do not apply to accessory dwelling units. ADU development regulations are contained in Chapter 17.43.</li> </ul>	NA	5	<p>Interior side: 3</p> <p>Exterior side: NA</p>
Unroofed Accessory Structures (such as arbors, trellises, pergolas and gateways)	The structure's portion within the setback area may not exceed <del>8</del> -10 feet in height and may not cover more than 15 percent of the front setback area	0	5	3
Ponds, Fountains and Similar Decorative Water Features	Feature must not exceed 6 feet in height. <sup>(2)</sup>	0	0	NA-0

Type	Applicability	Required Front Setback (ft)	Required Rear Setback (ft)	Required Side Setback (ft)
Decorative Artwork	Feature must not exceed 6 feet in height. The artwork shall not block access to a building entrance or otherwise create a safety hazard.	0	0	<del>NA</del> 0
Flag pole & flag	<ul style="list-style-type: none"> <li>• Not more than 1 pole per lot</li> <li>• Height of pole less than or equal to 20 feet</li> <li>• Individual flag size than or equal to 3 by 5 ft, with up to two on a pole</li> <li>• Flag may not extend over the property line when fully extended.</li> <li>• May not include advertising.</li> <li>• Unlighted only.</li> <li>• Flags shall be maintained in good repair.</li> </ul>	5	5	NA
Accessory Dwelling Units		See Chapter 17.43.		
Fences, hedges and walls		See Section 17.47.050.B		

**Notes:**

1. NA: Not applicable. In such cases, the standard setback provided in the zoning district’s development regulations shall prevail.
2. The exceptions set forth in this Table shall not be construed to include chimney boxes, swimming pools and spas, exposed plumbing, or mechanical equipment such as heating and air conditioning units or pool pumps, and no exceptions to the setback requirements shall be permitted for any of these structures.
3. The exceptions set forth in this Table do not waive the requirement to obtain any other required permits from the City, including, but not limited to, a building permit. New construction or tenant improvements on commercial properties may also require a design permit, in which case the requested exception may be included in the design permit application.
4. In a case of conflict between the setback exceptions listed here and other laws, regulations or conditions of approval, the most stringent requirements shall prevail.
5. Fire Code may prohibit certain materials from use within setback areas.
6. Non-combustible flatwork, such as concrete pavers and stone on grade, are not subject to setbacks and may be placed anywhere within a setback area.
7. Setback exceptions may be superseded by objective design standards established in this title, including but not limited to the POAZ Parkside Overlay District and Housing Development Permits.
8. See the definition of setback in Section 17.02.715 - Setback – Setback Area.

**B. Fences, hedges and walls within setbacks.** Fences, hedges and walls may be erected within setback areas as provided herein.

**1. Fences.**

**a. Height and Fence Type Allowances.** Where a fence, as defined in Section 17.02.300, is to be constructed in a setback area, the following regulations shall apply, except where otherwise indicated in Section 17.47.050.B.1.b. See also the definition of height for fences and walls in Section 17.02.400.C.

Table 17.47.050.B.1

Zoning District	Height Limit – Front Setback (feet)	Height Limit - Side and Rear Setbacks, except that portion extending to the front setback area (feet)	Special provisions
R-1	6	7 or 8*	*If the top 2 feet of a fence is constructed of lattice, or other open pattern, to the satisfaction of the planning director, the fence may be 8 ft in total height in the side and rear setbacks, but not extending into front setback. <b>Otherwise, where lattice or a similar open pattern is not included the limit is 7 ft, but the fence must step down to 6 ft in the front setback area.</b>
R-2	6	7 or 8*	
R-3	6	7 or 8*	
R-BA	6	7 or 8*	
R-MHP	8***	8***	***Fence heights may be up to ten (10) feet along the mobile home park perimeter abutting a public right-of-way.
C-1	8	8	
M-1	8	8	
SCRO-1	8	8	
TC-2	8	8	
HC	8	8	
C/P-U	8	8	
PAOZ-1	As provided in Section 17.27.040.G.2.		
PAOZ-2	As provided in Section 17.27.050.G.2.		
NCRO-1	<b>By setback exception permit for fences on developed sites, per Section 17.47.060. By design permit when associated with new development, or modification of a design permit for existing development when associated with other development modification(s) that is subject to a design modification permit. See Chapter 17.42 for design permits and Section 17.56.090 for modification of a design permit. See also the district development standards for fence provisions.</b>		
NCRO-2			
PD			
SP-CRO			
TC-1			
All Districts	Temporary chain-link demolition/construction barricades not exceeding eight (8) feet in height are permitted in all districts, subject to removal prior to final inspection.		

**b. Overriding Factors and Other Requirements**

- i. In any district, where the director of public works determines that traffic visibility would be affected, due to the location of the fence being near or adjacent to the public right-of-way, the fence height

may be required to be reduced, **to the satisfaction of the director.** ~~shall be reduced to not less than three (3) feet~~

- ii. Where a fence is proposed to be constructed, or has been constructed, adjacent to city property, a boundary survey or other evidence of the location of the fence shall be submitted to the director of public works upon request if the director determines that a question exists as to whether the fence encroaches on public property.
- iii. In all districts, the following materials are prohibited: razor wire, barbed wire and similar materials with sharp edges or points.
- iv. Chain-link fences may not be constructed in or adjacent to residential districts and are required to be black or green vinyl coated, except as approved by the planning director where the fence is not readily within public view or is otherwise screened from view by landscaping.
- v. For fences within the San Bruno Mountain Area Habitat Conservation Plan (HCP), within the R-BA, SCRO-1 and certain PD districts, the height, location and/or design of fences may be subject to restrictions for protection or passage of butterflies, consistent with the site’s HCP operating program or other required permitting consistent with HCP requirements. ~~As a condition of approval for properties subject to the San Bruno Mountain Area Habitat Conservation Plan, the planning commission shall restrict the height, location and/or design of fencing to maintain sufficient openness to allow passage of butterflies while remaining consistent with building code requirements.~~
- vi. When construction of a fence would impair the visibility of address numbers on a house, such numbers shall be relocated with approval of the fire prevention officer, ~~or the fence may be required to be lowered.~~
- vii. ~~Gated driveways are subject to approval by the planning director, based on a determination that the gate will not create a safety hazard.~~
- viii. A building permit may be required for construction of a fence, depending on such factors as height or location relative to a retaining wall, and is subject to building official determination.

**2. Retaining Walls**

**a. Height.** Where a retaining wall, as defined in Section 17.02.690, is to be constructed in a setback area, the provisions in Table 17.47.050.B.2 shall apply. See also the definition of height for fences and walls in Section 17.02.400.C.

**Table 17.47.050.B.2 Retaining Walls in Setback Areas**

All Zoning Districts	Permitted Height in All Setback Areas	Special Provisions
	6 feet or less of exposed wall surface	None
	More than 6 feet	<p>Greater than 6 feet of exposed wall surface, where one or more of the following conditions are met, to the satisfaction of the planning director:</p> <ul style="list-style-type: none"> <li>(i) Walls shall be architecturally integrated with proposed or existing structures on the site;</li> <li>(ii) Wall faces shall be decorative and treated with color, texture, architectural features, trelliswork or other means to visually break up the wall expanses;</li> <li>(iii) Walls shall be screened with water conserving, non-invasive landscaping that at maturity will soften and reduce the visible expanse of walls;</li> <li>(iv) Other means that ensure that the walls are designed to be as visually unobtrusive as possible</li> </ul> <p><b>(Note: Taken from BMC Section 15.01.110.B.2)</b></p> <p><del>a. The surface of the retaining wall is treated with coloring, texture, architectural features, trelliswork, or other means that will visually divide the height of the retaining wall into horizontal sections of no more than six (6) feet.</del></p> <p><del>b. Water conserving, non-invasive landscaping of sufficient size at maturity will be planted and maintained to provide screening so that no more than six (6) feet of the height of the retaining wall would remain visible.</del></p> <p><del>c. The retaining wall is located on a cut slope so that it is not readily visible from off the site.</del></p>

**b. Overriding Factors and Other Requirements.**

- i. Where construction of a retaining wall would result in grading, the provisions of Chapter 15.01 shall apply. If planning commission review of a grading permit is required, per Section 15.01.110, the retaining wall design will be considered as part of the planning commission’s grading review.
- ii. A building permit is generally required for construction of a retaining wall, subject to building official determination.

**3. Hedges**

**a. Height Limit:** Where a hedge, as defined in Section 17.02.390, is to be established within a setback area, the height limit shall be as shown in Table 17.47.050.B.3:



**Table 17.47.050.B.3 Hedges within Setbacks**

	Permitted Height in All Setback Areas
Hedges in all zoning districts	8 feet

**b. Overriding Factors and Other Requirements**

In any district, where the director of public works determines that traffic visibility would be affected, due to the location of the hedge being near or adjacent to the public right-of-way, the height may be required to be reduced to less than 8 feet, to the satisfaction of the director.

**4. Modification to Fence, Wall and Hedge Exceptions:** All other exceptions, or modification to exceptions, pertaining to fences, walls or hedges shall require approval by the zoning administrator, as provided in Section 17.47.060.

**17.47.060 - Exception Modification Procedures**

Modifications to the height and setback exceptions specified in sections 17.47.040 and 17.47.050 of this Chapter are subject to zoning administrator approval and are subject to the following procedures, except as indicated otherwise:

- A. **Application form, fee and plans.** An application for a height or setback exception shall be made in writing by the owners of the property, lessee, purchaser in escrow, or optionee with the consent of the owners, on a form prescribed by the planning director. At a minimum, the application shall be accompanied by a fee, set by the city council, and plans showing the details of the proposed feature.
- B. **Findings.** The zoning administrator may approve an exception if the zoning administrator makes the following findings, as applicable.
  - 1. Height Exception Modifications for a rooftop solar system may be approved if the zoning administrator makes the finding that the feature would not result in a specific adverse impact upon the public health and safety.
  - 2. Setback Exception Modifications may be approved for any of the structures or features listed in Table 17.47.050.A if the zoning administrator makes the findings that:
    - a. The setback exception modification/the feature or structure will not create any significant adverse impacts upon adjacent properties in terms of loss of safety, privacy, noise or glare.
    - b. The feature will be constructed in a sound and workmanlike manner, in compliance with all applicable provisions of the building and fire codes.
    - c. Structures are designed to be compatible with the primary dwelling(s) on the site.
    - d. Architectural features are designed to be compatible with the building on which they are located.
  - 3. Fence, hedge or wall Exception Modifications may be approved if the zoning administrator makes the findings that:

- a. The proposed fence, hedge or wall will not create a safety hazard for pedestrians or vehicular traffic.
  - b. The appearance of the fence, hedge or wall is compatible with the design, appearance and scale of the existing buildings and structures in the neighboring area.
- C. **Notice procedure and action by the zoning administrator.** The procedure for action by the zoning administrator shall be as provided in Chapter 17.56.
- D. **Appeals:** The decision of the zoning administrator or planning commission shall be effective on the close of the appeal period, unless an appeal has been filed pursuant to Chapter 17.52 of this title.
- E. **Notice to the Planning Commission:** All decisions of the zoning administrator shall be reported to the planning commission by email at least seven (7) days prior to the expiration of the appeal period. If any two members of the planning commission indicate in writing a desire to appeal the decision it shall be considered appealed and placed on the next available commission agenda, following the public hearing notice procedures provided in Chapter 17.54.

**17.47.070 - Requests for reasonable accommodations.**

Modifications or exceptions to the regulations set forth in Title 17 that are not otherwise addressed in Sections 17.32.060.B and C 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 may be granted by the planning director through a building permit, if through the building permit application it has been demonstrated that:

- A. The exception is necessary for current or future accessibility to the property or building by persons with disabilities that cannot be addressed within either the applicable zoning district height limits or setbacks, or through the exceptions provided in Sections 17.32.060.B and C.
- B. The accessibility improvement(s) will be constructed in compliance with all applicable provisions of the state and local building and fire codes.

**17.47.080 - Nonconforming Structures and Features.** Any structure, architectural feature, wall, or other improvement lawfully constructed within a setback area or over the height limit and constituting a nonconforming structure as defined in [Section 17.02.560](#), may be allowed to continue in accordance with [Chapter 17.38](#) of this title.

\*\*\*\*\*

**SECTION 16: Chapter 17.52 - Appeals is amended to read as follows:**

**Chapter 17.52 - APPEALS**

**Sections:**

**17.52.005 - Appeal from planning director.**

Any person may appeal to the planning commission any order, requirement, decision, determination or other action of the planning director with regard to any matter arising under this title, including any determination concerning the contents, subject matter or completeness of any application, any determination concerning which permit or other approval is required.

~~Any person may appeal to the planning commission any order, requirement, decision, determination or other action of the planning director with regard to any matter arising under this title, including any determination concerning the contents, subject matter or completeness of any application, any determination concerning which permit or other approval is required, and any determination pursuant to Sections or . Any such appeal shall be in writing and shall be filed with the planning department within fifteen (15) days after the action complained of. The appeal shall be accompanied by a fee, as set by the city council, and shall clearly state the reason for appeal. Upon receipt of such an appeal, the planning department, acting under the direction of the planning director, shall bring the appeal before the planning commission within thirty (30) days and shall notify the appellant and (if different) the applicant of the date and time of the planning commission meeting at which the appeal will be heard. No other notice need be given, except such additional notice as may be required by state or other law. The planning commission shall proceed to hear and determine the appeal at the same meeting or at such later meeting as it shall determine, and in connection therewith may continue the same from time to time.~~

**17.52.007 - Appeal from zoning administrator.**

A. Appeals from the decision of the zoning administrator, except decisions related to housing development permits as set forth in Chapter 17.45 of this title, shall be made to the planning commission.

B. Appeals from decisions of the zoning administrator relating to housing development permits as set forth in Chapter 17.45 of this title shall be made to the city council.

**17.52.010 - Appeal from planning commission.**

Any person may appeal to the city council any order, requirement, decision, determination or other action of the planning commission in the manner provided in this title, including any planning commission decision of an appeal from an order, requirement, decision, determination or other action of the planning director or zoning administrator.

**17.52.020 - Method and timing.**

A. All appeals shall be in writing and filed with, ~~and on a form prescribed by,~~ the city clerk and shall be accompanied by a fee, as set by the city council, and shall clearly state the reason for appeal.

B. The appeal shall be filed according to the following schedule, unless specified otherwise in this title:

- a. Appeal of Planning Director decision: close of business ~~ten (10) fifteen (15)~~ days after the decision
- b. Appeal of Zoning Administrator decision: close of business ten (10) days after the decision

c. Appeal of planning commission decision: close of business fifteen (15) days after the decision

If the appeal closing date would be on a weekend or City observed holiday, the appeal date shall be the close of business on the next business day.

C. In addition to the above, any two (2) members of the planning commission may appeal a decision of the zoning administrator, according to the schedule provided, by filling the appeal in writing with the city clerk. Written appeal to the city clerk may include email. The mere fact that two (2) members of the planning commission have filed an appeal does not of itself require disqualification of either such commission member from hearing and/or deciding the item.

D. In addition to the above, any two (2) members of the city council may appeal any decision, according to the schedule provided, by filling the appeal in writing with the city clerk. The mere fact that two (2) members of the city council have filed an appeal does not of itself require disqualification of either such councilmembers from hearing and/or deciding the item.

E. Upon receipt of such appeal, the city clerk shall notify the planning department and the applicant. A time shall then be set as soon as practical but within sixty (60) days after the receipt of such appeal (unless the applicant agrees otherwise) for a public hearing. Notice of such hearing shall be given as set forth in Chapter 17.54.

**17.52.030 - Planning department report.**

The planning department, upon receipt of the notice of appeal, shall prepare a report of the facts pertaining to the decision and shall submit such report to the appeal hearing body along with the department's recommendation and the reasons for the action.

**17.52.040 - ~~Council~~ Action on appeal.**

The planning commission or city council shall conduct a de novo hearing on the appeal. At the close of the public hearing, the appeal hearing body may affirm, reverse or modify the decision, either at the same meeting or at such later meeting as the body may determine, for any basis permitted by law. If action is not taken on the appeal within sixty (60) days after the clerk's receipt of the appeal, unless the applicant otherwise agrees or the appeal hearing body has determined that additional time was needed in order for it to make an informed decision, the original action shall be deemed affirmed. To reverse or modify the decision shall require a majority of the quorum

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**SECTION 17: Chapter 17.56 - Administration is amended to read as follows:**

**Chapter 17.56 - ZONING ADMINISTRATOR ADMINISTRATION**

**Sections:**

**17.56.010 - Zoning administrator—Function created.**

There is created the function of zoning administrator which shall be carried out by the planning director.

**17.56.020 - Zoning administrator—Powers and duties.**

The zoning administrator shall have all the powers and duties of a board of zoning adjustment as set forth in Section 65900 through 65909 of Article 3 of Chapter 4 of Title 7 of the Government Code of the state.

**17.56.030 - Zoning administrator—Action on applications.**

A. Except as otherwise provided in this title, the zoning administrator shall decide the following, unless referred by the zoning administrator to the planning commission:

- 1. Administrative design review in the POAZ districts pursuant to Section 17.27.060.A;
- 2. Wireless telecommunication facilities pursuant to Section 17.32.032;
- 3. Height and setback exception modification permits pursuant to Section 17.47.060;
- 4. Certain sign permits pursuant to Section 17.36.060;
- 5. Amendments or modifications to a design permit pursuant to Section 17.42.070;
- 6. Housing development permits pursuant to Section 17.45.050;
- 7. Zoning conformance pursuant to Section 17.56.080;
- 8. Planning application modifications pursuant to Section 17.56.090.
- 9. Interim use permit extensions pursuant to Section 17.41.080.D
- 10. ~~Variance, accessibility improvements, large family daycare homes~~

B. In connection with the applications provided for in this section, the zoning administrator shall have all the duties and responsibilities set forth in this title for the planning commission.

**17.56.080 - Zoning conformance.**

Zoning conformance shall be determined in conjunction with, and as a part of, building permits. If it has been determined that any proposed construction is not in conformity with the regulations for the district in which the construction is to be located, the determination shall be provided by the zoning administrator, or the zoning administrator’s designee. No building permit shall be issued until the zoning conformance has been confirmed by the zoning administrator or the ~~authorized representative designee~~.

**17.56.090 - Planning ~~Application Permit~~ Modifications.**

An applicant may request modifications to a previously approved planning permit prior to or during construction. Examples of such modifications include alteration to an approved building or structure, change in configuration of site improvements, or modification or deletion of conditions of approval. A modification shall not automatically extend the approval expiration date beyond that of the original planning application.

Modifications are classified in three ways based on the significance of the proposed change and amount of additional review required: A) substantial conformance, B) minor, or C) major. The Zoning Administrator shall determine the type of modification required based on the criteria specified below.

**A. Substantial Conformance.** Modifications that are in substantial conformance with the original planning application can be approved as part of the building permit review process.

1. Substantial conformance is generally defined as a modification or change that:

- a. Results in a project with reduced or inconsequential changes in size, scale, design, or intensity; or
- b. Is necessary to accommodate parking requirements, utility configurations or other mechanical or operational components of a project identified during building permit review or construction;
- c. Is in order to comply with updated Federal or State laws including but not limited to, the Americans with Disabilities Act, Building Code requirements, or Fire Code requirements; or
- d. Cumulatively would not result in substantive changes to the overall project.

2. Public notification shall not be required for substantial conformance modifications.

**B. Minor Modification.** Modifications that result in minor changes to an approved planning application require review and approval by the Zoning Administrator, except if otherwise specified in this title or through the approved planning application conditions of approval.

1. Minor modification is generally defined as a modification where all of the following circumstances apply:

- a. The modification would not result in a Major Modification, as defined below, to the approved site plan or project design;
- b. The modification would not significantly change the nature of the approved use(s);
- c. The modification would not significantly intensify the approved use(s); and
- d. The modification would not result in any new or substantially greater environmental effects than the originally approved project.
- e. ~~A maximum of twenty percent (20percent) reduction in lot area, building coverage and yard requirements;~~
- f. ~~A maximum of twenty percent (20percent) increase in the height limit in fence, wall and hedge requirements.~~

2. Procedures for minor modifications are set forth in Section 17.56.110, or, where otherwise provided in this title, according to the original permitting procedures.

C. Major Modification. Modifications that result in a significant change, or “substantial modification” as provided in Section 17.42.010.A or this title, require review and approval by the original decision-making body, whether zoning administrator or planning commission except if otherwise specified in this title or as specified through the approved planning application conditions of approval. If the original decision maker was the planning commission or city council, whether in the first instance or on appeal, then public noticing and a public hearing by the planning commission are required.

1. A modification to a project is considered major if any of the following circumstances in paragraphs a, b, c, d or e apply:

- a. The modifications involve substantive changes to the approved site plan or project design. A substantive change, for the purpose of this section, includes but is not limited to:
  - i. A change that is visually conspicuous from the public right-of-way or adjacent properties; or
  - ii. A change that results in non-conformance with City standards or policies; or
  - iii. A change that alters the intent of a project-specific condition of approval; or
- b. The modifications significantly change the nature of the approved use; or
- c. The modifications significantly intensify the approved use; or
- d. The modifications may result in new or substantially greater environmental impacts than the originally approved project; or
- e. The modifications involve major policy decisions or unique land use characteristics, as determined by the Zoning Administrator.

**17.56.100 - Other Permits.**

Zoning Administrator approvals of permit types provided elsewhere in this title shall be subject to the findings and procedures provided therein. Where procedures are not otherwise provided in this title, the zoning administrator procedures shall be as set forth in Section 17.56.110.

**17.56.110 - Procedures.**

A. Procedures for major modifications to approved planning permits shall follow the same permitting procedures as the original application, as provided elsewhere in this title.

B. The following procedures shall apply to minor modifications and other zoning administrator permits, unless provided otherwise in this title.

- 1. **Application form, fee and plans.** Application shall be made in writing by the owner(s) of the property, lessee, purchaser in escrow, or optionee with the consent of the owners, on a form prescribed by the planning director. At a minimum, the application shall be accompanied by a fee, set by the city council, and plans showing and describing the details of the proposed.
- 2. **Notice procedure and action by the zoning administrator.**

- a. **Notice of recommended decision and action:**
  - i. The zoning administrator shall provide notice of the application and publish a staff report with a recommended decision to grant or deny the permit at least ten (10) days prior to a decision on the permit application. The notice shall be mailed to all owners of property adjacent to, and directly across the street from, the exterior boundaries of the subject property.
  - ii. If no written public comments are received objecting to the recommended decision by the date indicated on the notice, at least ten (10) days following the issuance of the notice, the zoning administrator shall act on the application consistent with the recommendation contained in the staff report and the decision shall be effective immediately.
  
- b. **Public hearing, when required:**
  - i. If written public comments objecting to the recommended decision are received, that relate to the required findings, the zoning administrator shall hold a public hearing on the application. Notice of the hearing shall be given to all owners of property adjacent to, or directly across the street from the exterior boundaries of the subject property, and any party that has requested notice or provided written public comments on the application. The notice of public hearing shall be mailed not less than ten (10) or more than thirty (30) days before the date of the hearing. Alternatively, the zoning administrator may refer the application to the planning commission for public hearing and decision.
  - ii. The zoning administrator, or if referred, the planning commission, may either grant or deny the application subject to the required finding(s). The zoning administrator or planning commission may grant the permit subject to such conditions as deemed necessary or appropriate to meet the required findings.
  
- 3. **Appeals:** The decision of the zoning administrator or planning commission shall be effective on the close of the appeal period, unless an appeal has been filed pursuant to Chapter 17.52 of this title.
  
- 4. **Zoning administrator—Reporting decisions to planning commission.** All decisions of the zoning administrator that are subject to public hearing shall be reported to the planning commission by email at least seven (7) days prior to the expiration of the appeal period. If any two members of the planning commission indicate in writing, including email, a desire to appeal the decision it shall be considered appealed and placed on the next available commission agenda, following the public hearing notice procedures provided in Chapter 17.54.

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**WORKSHOP LINKS**

- a. February 22, 2024 ([Memorandum to PC](#)) ([Minutes](#))
- b. June 8, 2023 ([Memorandum to PC](#)) ([Minutes](#))