



CITY of BRISBANE

Planning Commission Meeting Agenda

Thursday, October 26, 2023 at 7:30 PM • Hybrid Regular Meeting

• Brisbane City Hall 50 Park Place, Brisbane CA

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

TO ADDRESS THE COMMISSION

In Person:

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

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

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

Remote Participation:

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

Remote Public Comments:

Meeting participants are encouraged to submit public comments in writing in advance of the meeting. 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 or **Text:** 415-713-9266

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

brisbaneca.org/pc-zoom

Webinar ID: 970 0458 3387

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

SPECIAL ASSISTANCE

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

WRITINGS THAT ARE RECEIVED AFTER THE AGENDA HAS BEEN POSTED

All written communications are provided to the Planning Commission. Any written communication that is received after the agenda has been posted but before 4 p.m. of the day of the meeting will be available for public inspection at the front lobby in City Hall and online at brisbaneca.org/meetings. Any writings that are received after 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), 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 August 24, 2023](#)

ORAL COMMUNICATIONS (Limited to a total of 15 minutes)

WRITTEN COMMUNICATIONS

OLD BUSINESS

None

NEW BUSINESS

None

WORKSHOP

- B. [Discussion of Preliminary Zoning Ordinance Amendments for Compliance with SB 9](#)

ITEMS INITIATED BY STAFF

ITEMS INITIATED BY THE COMMISSION

ADJOURNMENT

C. Adjournment to the regular meeting of November 9, 2023

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. 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 August 24, 2023

DRAFT
BRISBANE PLANNING COMMISSION
Action Minutes of August 24, 2023
Hybrid Meeting

ROLL CALL

Present: Commissioners Gooding, Lau, and Sayasane
Absent: Commissioner Funke and Patel
Staff Present: Director Swiecki, Senior Planner Johnson, Associate Planner Robbins

CALL TO ORDER

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

ADOPTION OF AGENDA

A motion by Commissioner Sayasane, seconded by Commissioner Gooding to adopt the agenda. Motion approved 3-0.

CONSENT CALENDAR

A motion by Commissioner Gooding, seconded by Commissioner Sayasane to adopt the consent calendar (agenda items A and B). Motion approved 3-0.

ORAL COMMUNICATIONS

There were none.

WRITTEN COMMUNICATIONS

There were three written communications regarding agenda item D.

NEW BUSINESS

- C. **PUBLIC HEARING: 5 Beatty Ave; 2023-UP-5, 2023-UP-6, 2023-EX-2;** HC and C-1 districts; Baylands Interim Use Permit, Parking Modification Use Permit and Grading Permit to allow for parking of approximately 199 San Francisco District School buses and placement of an approximately 2,880 square foot office trailer for bus operations management on a 3.3 acre, gravel surfaced site, which was formerly used for San Francisco 49ers parking; with grading of approximately 493 cubic yards of cut and 240 cubic yards of fill to level certain settlement monitoring stations and soil berms; and finding that this project is categorically exempt from environmental review under CEQA Guidelines Section 15301 and 15304(a)(e); Travis Duncan, applicant; Baylands Development Inc. (BDI), owner.

Senior Planner Johnson gave the staff presentation and answered questions about the number of buses, anticipated traffic related to previous interim uses at the site, and grading requirements for stormwater runoff. He also specified staff added an additional condition of approval to the draft resolution to ensure compliance with C/CAG's Transportation Demand Management trip reduction measures.

Vice Chairperson Lau opened the public hearing.

Travis Duncan, applicant, and Vivek Garg, Zum business owner, addressed the Commission and answered questions regarding how employees will access to the site, as well as parking accommodations for the buses and employee vehicles, reporting of accidents and trip and usage logs, and security of the site.

Michele Salmon, Brisbane resident, spoke in opposition to the project.

With no one else wishing to address the Commission, a motion by Commissioner Gooding, seconded by Commissioner Sayasane to close the public hearing was approved 3-0.

After deliberation, a motion by Commissioner Gooding, seconded by Commissioner Sayasane, to approve the application via adoption of Resolution 2023-UP-5, 2023-UP-6, 2023-EX-2 was approved 3-0.

Vice Chairperson Lau read the appeals procedure.

D. PUBLIC HEARING: 3708 Bayshore Boulevard; Use Permit 2022-UP-7, Grading Review 2022-EX-5, Lot Merger 2022-LLA-3, Habitat Conservation Plan Compliance 2022-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 staff presentation and answered questions about the proposed grading, how firms that perform biological assessments for the City are selected and the contents of the attached biological assessment, and the ability of the Planning Commission to request a peer review of geotechnical reports.

Vice Chairperson Lau opened the public hearing.

Sean Brennan, applicant, addressed the Commission, and answered questions about the grading, potential fire risks from dry brush, and the contents of the geotechnical report, primarily about slope stability.

Michele Salmon, Brisbane resident, spoke against the project.

Vice Chairperson Lau noted the written communications received regarding this item were not in favor of the project.

With no one else wishing to address the Commission, a motion by Commissioner Gooding, seconded by Commissioner Sayasane to close the public hearing was approved 3-0.

After deliberation, a motion by Commissioner Sayasane, seconded by Commissioner Gooding, to continue the request off-calendar, and to be readvertised, to allow the applicant to submit additional information about grading and slope stability at the site.

ITEMS INITIATED BY STAFF

There were none.

ITEMS INITIATED BY THE COMMISSION

There were none.

ADJOURNMENT

Vice Chairperson Lau declared the meeting adjourned to the next regular meeting of September 14, 2023 at approximately 10:00 p.m.

Attest:

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, 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. Discussion of Preliminary Zoning Ordinance Amendments for Compliance with SB 9



MEMORANDUM

DATE: October 26, 2023
TO: Planning Commission
FROM: Planning Staff
SUBJECT: Workshop – Discussion of Preliminary Zoning Ordinance Amendments for Compliance with State Senate Bill SB 9

OBJECTIVE

The purpose of tonight's workshop is for the Planning Commission to review and discuss a preliminary zoning ordinance amendment to address SB 9 (2021).

BACKGROUND

Tonight's workshop continues a conversation that was begun with the Planning Commission in the workshop of June 8, 2023, following the State's certification of the Housing Element on May 25, 2023, to implement Housing Element programs.

That workshop primarily focused on proposed floor area ratio changes and elimination of lot size minimums for multi-family or mixed-use developments of 3-10 units, as required under California Senate Bill SB 478 (2021) as well as some other amendments relating to building heights and exceptions.

Tonight's workshop will focus on the preliminary draft ordinance for compliance with SB 9, which allows for two-unit primary dwellings on a lot where one single-family dwelling would normally be permitted. This would apply to the single-family residential zoning districts only.

It's anticipated that the ordinance for compliance with SB 478 and the ordinance for SB 9 compliance would be brought together for public hearings with the Planning Commission later this year, for the Commission's recommendation to the City Council.

DISCUSSION

The City's adoption of an SB 9 consistency ordinance is included in Housing Element Program 2.A.6, *which states, "Adopt implementing ordinance for ministerial duplex conversions and single-family lot splits as provided by Government Code Sections 65852.21 and 66411.7."* This program is provided under the Housing Element's Goal 2, *"Facilitate and support the production of housing at all income levels, but especially affordable housing"* and 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”.

The ordinance would establish an overlay zoning district that would allow for lot splits or two primary dwelling units on lots that zoned for a single-family residence. Accessory dwelling units (ADUs) and junior accessory dwelling units (JADUs) may also be permitted, consistent with the current ordinance BMC Chapter 17.43. The overlay would affect Brisbane’s two single family zoning districts, the R-1 Residential District and the R-BA Brisbane Acres Residential District. These are shown on the linked zoning map. It would not apply to the mixed-use or multifamily zoning districts.

The provisions of the ordinance fall into a few key categories, which are outlined and summarized below:

1. Eligibility, restrictions and anti-displacement standards
2. Development regulations for a) Two-unit developments without a lot split, or b) with a lot split
3. Urban Lot Split procedures and map requirements

1. Eligibility, restrictions and anti-displacement standards

As indicated above, the overlay zoning would only apply to the R-1 And R-BA zoning districts. Within the R-BA it would have limited applicability, since much of the district does not have public infrastructure (i.e. road access, water and sewer) which would be a requirement for development under the provisions of the draft ordinance. Development under the ordinance would have other environmental restrictions, such as not being on property with endangered species habitat.

Given these restrictions, the overlay would primarily apply to the R-1 zoning district and some properties within the lower portions of the R-BA.

There are several provisions required under state law that are intended to protect renters from displacement. These include not displacing tenants from a lot that is subject to recorded low-income rental restrictions, or demolition or alteration of a unit that has been occupied by a tenant in the last three years.

2. Development regulations

The draft ordinance separates development with or without a lot split into separate sections. In either case, two primary dwelling units, plus up to two accessory dwelling units, or junior accessory dwelling units may be permitted on a lot currently zoned for a single-family residence, plus a JADU and an ADU. Whether by lot split or development on the existing lot without a lot split, the maximum number of dwelling units would be four, with at least two of them being primary dwelling units. The three tables, provided below, show different scenarios for development without or with a lot split. Table A shows six scenarios without a lot split. Tables B and C together show how the different types of units could be

distributed across two resultant lots following a lot split. Note that JADUs are not permitted on duplexes and so, while shown for completeness, they do not factor into Table A. For Table B, each row shows a buildout type that could occur on a single lot following a lot split. The intent is that any two rows (buildout types) could be combined, as long as the total for the two rows does not exceed four units. Table C illustrates the various buildout combinations for the two resultant lots.

Table A. Number of Units - Scenarios Without a Lot Split

Development Scenario Options on a Single Lot	Single Family Residence	Duplex Dwelling (two attached primary units")	Two-unit Dwelling Group (two detached primary units")	ADU	JADU	Total Units Limit
1.	NA	2			NA	2
2.	NA		2		NA	2
3.	NA	2		1	NA	3
4.	NA		2	1	NA	3
5.	NA	2		2	NA	4
6.	NA		2	2	NA	4

Table B. Description of Number of Units/Types - With a Lot Split

Buildout Type - Development Scenario Options for Each Resultant Lot Following Split	Single Family Residence	Duplex	Two-unit Dwelling Group	ADU	JADU	Total Units
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
For the total dwelling unit yield across both resultant lots (combine any two resultant lot buildout types that does not exceed 4 units). See Table C for buildout scenarios.						

Table C. Lot Split - Resultant Lot Buildout Scenarios

RESULTANT LOT 2	RESULTANT LOT 1								
	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 A (1)	2	3	3	3	3	4	4	4
	Type B (2)	3	4	4	4	4	NP	NP	NP
	Type C (2)	3	4	4	4	4	NP	NP	NP
	Type D (2)	3	4	4	4	4	NP	NP	NP
	Type E (2)	3	4	4	4	4	NP	NP	NP
	Type F (3)	4	NP	NP	NP	NP	NP	NP	NP
	Type G (3)	4	NP	NP	NP	NP	NP	NP	NP
	Type H (3)	4	NP	NP	NP	NP	NP	NP	NP

Notes:

See Table B for Description of units for each type

NP: Not permitted.

Six illustrative examples are provided in Table D - Buildout Examples, which show how different lot sizes and buildout scenarios could occur. The first two are without a lot split and the other four would be with a lot split. All are intended for illustrative purposes only. A discussion of these examples is provided on the pages that follow.

Table D. Buildout Examples

	Lot	Lot Area (sq ft)	Lot Split - Percent of original Lot	Buildout Potential for Primary Dwellings – with Floor Area Ratio Maximum (FAR) of 0.72 or 800 sq ft minimum	JADU - Floor Area Maximum (sq ft)	ADU - Floor Area Maximum (sq ft) - with 800 sq ft max and 16 ft height*	Parking Spaces (off street except as noted)
Without Lot Split							
Example 1: 2,000 sq ft Lot	Original Lot – w/out overlay zoning	2,000		SFR – 1,400	500	800	1
	Two-unit development - via overlay zoning	2,000	NA	(2) Duplex: 800+800= 1,600	NP	NA*	2
Example 2: 5,000 sq ft Lot	Original Lot – w/out overlay zoning	5,000		SFR - 3,600	500	800	4 (2 +2 on or off)
	Two-unit development - via overlay	5,000	NA	(2) Duplex: 1,800+1,800= 3,600	NP	(2) ADUs: 800 + 800	2

	zoning						
With a Lot Split							
Example 3: 3,000 sq ft Lot	Original Lot	3,000		SFR - 2,160	500	800	3
	Resultant Lot 1 – Type B	1,200	40	(1) SFR: 864	NA	(1) ADU: 800	1
	Resultant Lot 2 – Type D	1,800	60	(2) Duplex: 800 + 800 = 1,600	NP	NA	2
Example 4: 3,000 sq ft Lot	Original Lot	3,000		SFR - 2,160	500	800	3
	Resultant Lot 1 – Type E	1,200	40	(2) Dwelling Group: 800 + 800 = 1600	NA	NA	2
	Resultant Lot 2 – Type D	1,800	60	(2) Duplex: 800 + 800 = 1,600	NP	NA	2
Example 5: 5,000 sq ft lot	Original Lot Size	5,000		SFR - 3,600	500	800	4 (2 + 2 on or off)
	Resultant Lot 1 – Type B	2,000	40	(1) SFR: 1,440	NA	(1) ADU: 800	1
	Resultant Lot 2 – Type D	3,000	60	(2) Duplex: 1,080+1,080 = 2,160	NP	NA	2
Example 6: 7,000 sq ft lot	Original Lot Size	7,000		SFR - 5,040	500	800	4 (2 + 2 on or off)
	Resultant Lot 1 – Type A	2,800	40	(1) SFR: 2,016	NA	NA	1
	Resultant Lot 2 – Type G	4,200	60	(2) Duplex: 1,512+1,512 = 3,024	NP	(1) ADU: 800	2

Notes:

- Shading indicates buildout utilized with the lot splits.
- NP: Not permitted. JADUs are permitted to be attached to a single-family dwelling only and were not used in these examples. See Tables B and C for potential applicable scenarios.
- ADUs are limited to detached units not to exceed 800 sq ft and 16 ft in height, without a JADU present on the site, in order to not be included in the FAR calculation. Otherwise ADUs may be up to 1,000 sq ft.
- All duplex dwelling unit examples assume an even split of floor area between the two units.
- The City's parking ordinance ties parking to lot frontage and floor area of a single-family dwelling and requires covered parking in some cases (see BMC Section 17.34.020 for details). Parking for resultant lots may be uncovered and is limited to one space per primary unit, per state law.
- *ADUs are not shown in example #1, as this is unlikely to be feasible, given the small lot constraints.

There are a few key take-aways in the buildout examples:

- Lot split ratio and size: With a lot split, consistent with state law, the lots are to be no more than a 40:60 size ratio with each resultant lot not less than 1,200 square feet. That ratio was used for all four of the lot split examples. At that ratio, a 3,000 square foot lot would be required, although a lot split could theoretically be done on a lot as small as 2,400 square feet, at a 50:50 ratio, for two 1,200 square foot lots, although space constraints may preclude it. Note, for reference, a graph showing the distribution of lot sizes in the R-1 district is provided later in this report (Graph A).
- Lot size without a lot split: State law does not specify a minimum lot size for a two-unit development without a lot split, so the two-unit development provisions could theoretically be applied to even the smallest lots in Brisbane. Although, invoking these provisions would

increase the parking requirements from one space to two (see further discussion below) and likely preclude such actions in most cases.

- iii. Primary dwelling unit size minimum: The City must permit primary units to be at least 800 square feet in floor area, per state law, whether with or without a lot split. However, even at the smallest lot size of 1,200 square feet, by lot split, the City's maximum floor area ratio of 0.72 would still prevail, with a 864 square foot floor area, as shown in Example 3. Note that the owner may develop to a smaller than 800 square foot size at her/his option.

Although it is not necessary to invoke the 800 square foot minimum for a lot split, given the FAR and lot size minimum noted above, it could be invoked for two-unit developments on smaller lots, as illustrated in Example 1. The threshold for a lot size to potentially invoke the minimum floor area of 800 sq ft per unit is 2,222 sq ft or less, given the 0.72 FAR. While some owners may choose to utilize the ordinance to allow for separate conveyance of units as condominiums, it is unlikely that such small lots would also include ADUs given other development restrictions. If so, they would likely be very small units given the other development requirements (i.e. setbacks, height and parking).

- iv. Lot coverage: State law is silent on lot coverage. However, the district's underlying lot coverage maximum of 40 percent would likely preclude the required allowance for two-unit developments on small lots. To address this, it's suggested that lot coverage for the R-1 district be waived by the overlay zoning and thus the floor area minimums and maximums, height limits and required setbacks would control the development envelopes.
- v. Setbacks & height: The state requires cities to allow for 4-foot side and rear setbacks. The R-1 district standards allow for 3-foot side setbacks for lots of 30 feet wide or less and rear setbacks 10-feet. For lots more than 30 feet wide, the setback is 10 percent of the lot width up to 50-foot wide lots. At lot widths of 50 feet or greater the minimum side setback is 5-feet. The City's height standard is currently 28 or 30 feet depending on the lot slope. The Planning Commission, in its June workshop, discussed increasing that to 36 feet. As an objective standard, for primary units, staff is suggesting a 16-foot height limit where a building is to be located within the state's allowed required setback. This would be consistent with that allowed for detached ADUs. For the interior of the lot, outside the zoning district's setback areas, the standard height limits would apply.

Within the R-BA district, a design permit is required for any lot that is defined as a ridgeline lot. Since the state's regulations do not allow for a design permit, an objective standard of 24 feet is provided in the draft ordinance for primary units. This is to allow for two story developments while still reducing the building's height versus the 35-foot height limit for the district, consistent with BMC Section 17.12.040.L. This is also consistent with the two-story single-

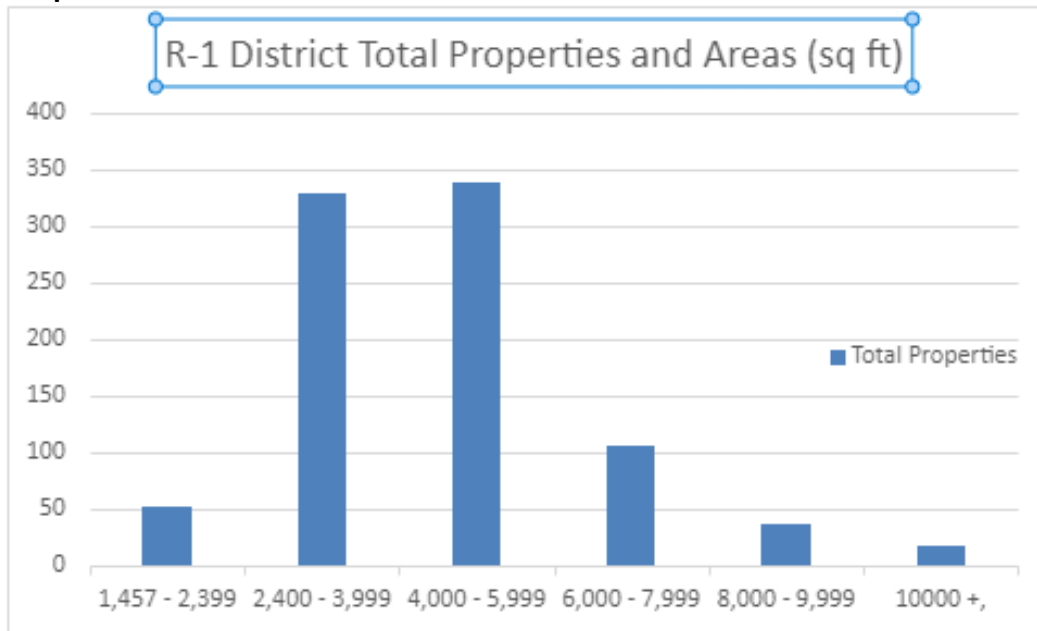
family dwellings that were approved in recent years on the prominent ridgeline along Thomas Avenue.

- vi. **Parking:** For parking, state law limits what the City may require, to 1 off-street parking space for each of the primary dwelling units. There are also exceptions that would eliminate the requirement for any parking, for proximity to high-quality transit or car-share, but these do not currently apply to the R-1 or R-BA zoning districts. The City's off-street parking minimums range from 1 space for studios and 1-bedroom units, up to 4 spaces for single family dwellings over 1,800 sq ft on lots with 37.5 feet or more of frontage. Throughout the R-1 district, no parking is required for ADUs or JADUs. Parking differences for the lots before utilizing the ordinance and after are illustrated in the examples. In some examples, more parking would be required and in others less.

To put the lot size provisions into perspective, the R-1 district includes approximately 880 properties, most of which range in area from approximately 2,500 sq ft to 6,000 square feet. The average lot size is approximately 4,506 square feet. That average excludes 17 properties that are 10,000 square feet or more, since they could be split without invoking SB 9, and 52 properties that would be too small to split to two lots, given the 1,200 square foot minimum for each resultant lot. Note that the original 1906 subdivision, that would later become Brisbane, had standard lot sizes of 25 wide by 100 deep for 2,500 square foot lots. In 1969, that standard was changed to 50 feet by 100 feet for 5,000 square foot lots. However, the zoning adopted in 1969 recognized substandard lots as legal non-conforming; except that contiguous lots owned by the same owner, and too small in area to be separate 5,000 square foot lots, would be considered as conforming for a single-family dwelling.

The chart below shows the current number of properties at various size ranges. While it's difficult to quantify how many owners may take advantage of the zoning overlay in the coming years, the sweet spot for most owners is likely to be for those lots at approximately 5,000 square feet up to 10,000 square feet, especially for the lot split provisions. In the lower lot size range, parking is likely a deterrent since each primary unit requires an off-street space and ADUs do not. Under the current zoning, any size lot may have an ADU and a JADU and those do not require parking.

Graph A – R-1 District Distribution of Lot Sizes



As a final note on development potential and standards, while the development standards in this preliminary draft ordinance largely reflect the provisions of state law, the state does allow for objective standards to be adopted by individual cities. One such objective standard, that was included for consideration is the building height limitation of 16 feet for structures that would utilize the state's allowed setback exception of 4 feet. The Commission may modify this or add other suggested objective standards for Council's consideration.

3. Urban Lot Split procedures and map requirements

State law requires cities to process eligible urban lot split applications ministerially. Under normal circumstances, a lot split would be processed through a tentative and final parcel map, in accordance with BMC Title 16, which includes Planning Commission and City Council approval of a tentative parcel map and final parcel map. Much of what's included in development of a tentative parcel map is technical in nature and subject to review and approval by the City Engineer and Planning Director prior to review by the Planning Commission.

Given the ministerial nature, specific to urban lot splits, the preliminary draft ordinance would address this as part of the overlay requirements, with a cross reference to Title 16. These overlay provisions are provided in Attachment B.

NEXT STEPS

Staff anticipates presenting a draft ordinance to the Commission later this year, for public hearing and recommendation to City Council.

ATTACHMENTS

- A. [Zoning Map](#) (weblink)
- B. Preliminary Draft Ordinance
- C. [R-1 Residential Zoning District](#) (weblink)
- D. [R-BA Brisbane Acres Residential Zoning District](#) (weblink)
- E. [Title 16 Subdivision](#) (weblink)
- F. Senate Bill SB-9, as adopted and amended
- G. ABAG Informational Handout



Ken Johnson, Senior Planner



John Swiecki, Community Development Director

ATTACHMENT A

Zoning Map (weblink)

https://www.brisbaneca.org/sites/default/files/fileattachments/community_development/page/14981/2021_zoning_districts_by_gis_compress.pdf

ATTACHMENT B

PRELIMINARY DRAFT OF SB 9 COMPLIANCE ORDINANCE PROVISIONS FOR PLANNING COMMISSION WORKSHOP

DRAFT AMENDMENTS TO TITLE 17

TO AMEND SECTION 17.02.235 - DWELLING OF TITLE 17 OF THE BRISBANE MUNICIPAL CODE WOULD BE AMENDED TO ADD A DEFINITION FOR “PRIMARY DWELLING UNIT” OR “MAIN DWELLING”

AND

TO ADD CHAPTER 17.05 TWO-UNIT RESIDENTIAL OVERLAY (R-1 AND R-BA) TO PROVIDE FOR REGULATIONS CONCERNING DUPLEX RESIDENTIAL DEVELOPMENTS AND URBAN LOT SPLITS IN SINGLE FAMILY RESIDENTIAL ZONES

Section 17.02.235 - Dwelling of Title 17 of the Brisbane Municipal Code would be amended to add a definition for “Primary dwelling unit” or “Main Dwelling”, as shown in blue below. Other sub-definitions within the “Dwelling” definition are provided for reference.

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. "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.

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.

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.

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.

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.

F. "Primary dwelling unit" or "Main Dwelling" means that dwelling unit(s) on the property that is not an accessory dwelling unit or a junior accessory dwelling unit.

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 2. Chapter 17.05 of the Brisbane Municipal Code would be added to Title 17 as follows:

17.05 Two-unit Development Residential Overlay District - R-1 and R-BA Districts.

17.05.010 Purpose. The purpose of this Chapter is to allow up to two detached or attached primary dwelling units on one parcel, establish objective standards, and to regulate subdivision of parcels in single family zoned areas, Brisbane's R-1 and R-BA residential 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 amended, and applicable objective standards and procedures contained within Chapters 17.06, 17.12, 17.43, Chapter 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, per Section 17.05.010, and, unless specifically addressed within this chapter, the district standards shall apply. It also allows for ministerial approval of urban lot splits in conjunction with Chapter 16.16.

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 substandard lots, as further described in Section 17.32.055 - Exceptions – Lot Area, Lot Dimensions and Lot Lines, if the subject lot is recognized by the City as 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 contained 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 owner, or a person as an agent or representative of the owner, knowingly participating with another person in joint activity or parallel action toward a common goal of subdividing the 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. For the purposes of determining setbacks, the property line parallel to the primary right-of-way and part of the major portion of the parcel shall be the front property line. Maximum floor area ratio (FAR) shall be based on the gross square footage 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". See section 17.02.235.F.
- 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 the application was deemed complete. (Gov. Code, § 65589.5, subd. (d)(2).)
- K. "Two-unit Development" means a proposed housing development that contains two primary dwelling units as set forth in this chapter and Government Code Sections 65852.21"
- L. "Urban Lot Split" means a subdivision of an existing legal single-family zoned lot into no more than two separate single-family zoned lots that meet all of the criteria and standards set forth in this Chapter and Government Code Section 66411.7, as amended.

17.05.040 Eligibility.

- A. To be eligible for a two-unit development or urban lot split as specified in this Chapter, the proposal shall meet all of the following criteria:

1. The lot is located within the R-1 Residential or R-BA Brisbane Acres Residential single-family zoning districts.
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 development proponent submits an application.
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 as amended), 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), 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, lands under conservation easement.
5. The lot has not previously been subdivided under this Chapter, or under Govt Code section 66411.7.

17.05.050 Anti-displacement Standards.

- 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.
- A. Development under this chapter shall not result in:
 1. Demolition or alteration of a dwelling unit that has been occupied by a tenant in the last three years.
 2. Demolition or alteration of exterior or structural walls to a building occupied by a tenant of more than 25 percent, as determined by the building official.

17.05.060 Permitted Uses.

- A. Single-family dwellings.
- B. Duplex dwellings.
- C. Two-unit dwelling group.
- D. Accessory Dwelling Units (ADUs) and Junior Accessory Dwelling Units (JADUs), subject to Chapter 17.43.
- E. Home Occupations: as an accessory use, subject to Chapter 17.44.

17.05.070 Two Unit Developments without Urban Lot Split. Development on a single, legally established lot, 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 units. This section allows for the development of up to four (4) units to 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	Single Family Residence	Duplex Dwelling (two attached primary units")	Two-unit Dwelling Group (two detached primary units")	ADU	JADU	Total Units Limit
1.	NA	2			NA	2
2.	NA		2		NA	2
3.	NA	2		1	NA	3
4.	NA		2	1	NA	3
5.	NA	2		2	NA	4
6.	NA		2	2	NA	4

Notes:

1. Development of a single-family residence with an ADU and/or JADU is not subject to regulation under this chapter. See Chapters 17.06, 17.12, 17.34 and 17.43 for applicable development regulations.
2. Four (4) units is the maximum that may be permitted on a lot.

2. Unit Size.

Primary units: Each of the primary dwellings shall be permitted to be 800 square feet in floor area, regardless of the district's lot coverage and floor area ratio (FAR) limits. For primary dwelling units over 800 square feet, the district floor area standards shall apply. This shall not preclude the owner's option of construction of smaller primary dwelling units in compliance with the state building code.

ADU and/or JADU: An ADU or JADU shall comply with the unit size standards provided in Chapter 17.43.

3. Lot coverage. Within the R-1 district, the district's lot coverage limit shall not apply.

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

- (a) Where the underlying 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 unit utilizes the 4-foot side or rear setback allowance, for a reduced setback versus the district's setback, no portion of the building within the district's setback area shall exceed 16 feet in height.
- (b) The maximum height of any primary dwelling unit on a ridgeline lot within the R-BA district, as identified in Section 17.02.695, shall be 24 feet, except 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, or as approved by design permit per Section 17.12.040.L.

6. Off-Street Parking. A minimum of one standard size, off-street parking space (covered or uncovered) per primary unit is required. Refer to Chapter 17.34 for parking space design standards. No parking shall be required if:

- (a) The parcel is located within one-half mile walking distance of either a 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
- (b) There is a designated parking area for one or more car-share vehicles within one block of the parcel.

17.05.080 Urban Lot Splits. A parcel map for an urban lot split may be approved ministerially, subject to the ministerial parcel map 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 may be approved ministerially by the City Engineer, without Planning Commission or City Council approval, as allowed by state law. The City Engineer shall have authority to waive specific requirements provided in Chapter 16.16 and Chapter 16.20, if deemed unnecessary to an urban lot split parcel map.

B. Ministerial Parcel Map Requirements. A parcel map for an urban lot split shall meet all of the following requirements:

1. The parcel map subdivides an existing parcel to create no more than two new parcels of approximately equal lot area provided that one parcel shall not be smaller than 40 percent of the lot area of the original parcel proposed for subdivision.
2. Both newly created parcels shall be no smaller than 1,200 square feet. The district lot width and depth dimension minimums shall not apply
3. Flag lots may be approved. The flagpole portion, whether this is part of the flag lot or an easement to 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, per Section 12.24.015 of Title 12.

4. Both parcels resulting from the urban lot split have access to, provide access to, or adjoin the public right-of-way through right-of-way frontage or recorded access easements (as a Covenant of Easement on the parcel map).
5. 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 Section.
6. The urban lot split conforms to all applicable objective requirements of the Subdivision Map Act (Division 2 (commencing with Section 66410)), except as otherwise expressly provided in this Section.
7. The parcel being subdivided was not established through prior exercise of an urban lot split as provided for in this Chapter.
8. Neither the owner of the parcel being subdivided nor any person acting in concert with the 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 the provisions of 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 units. This section allows for the development of up to four (4) units to be built in the same lot area typically used for a single-family residence, with a lot split, as shown in Tables a and b:

a. Description of Number of Units/Types - With a Lot Split

Buildout Type - Development Scenario Options for Each Resultant Lot Following Split	Single Family Residence	Duplex	Two-unit Dwelling Group	ADU	JADU	Total Units
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

Note: 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 (4) across the two lots, b) each of the two lots is to be developed with at least one primary unit, and c) development of ADUs and JADUs are to be in compliance with Chapter 17.43.

b. Lot Split - Resultant Lot Buildout Scenarios

	RESULTANT LOT 1								
RESULTANT LOT 2	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 A (1)	2	3	3	3	3	4	4	4
	Type B (2)	3	4	4	4	4	NP	NP	NP
	Type C (2)	3	4	4	4	4	NP	NP	NP
	Type D (2)	3	4	4	4	4	NP	NP	NP
	Type E (2)	3	4	4	4	4	NP	NP	NP
	Type F (3)	4	NP	NP	NP	NP	NP	NP	NP
	Type G (3)	4	NP	NP	NP	NP	NP	NP	NP
	Type H (3)	4	NP	NP	NP	NP	NP	NP	NP

Note: NP: Not Permitted for the buildout scenario. Buildout scenario may not exceed four (4) units.

2. Unit Size.

Primary units: Each of the primary dwellings shall be permitted to be at least 800 square feet in floor area, regardless of the district's lot coverage and floor area ratio (FAR) limits. Otherwise, the district standards shall apply. This shall not preclude the owner's option of construction of smaller primary dwelling units in compliance with the state building code.

ADU and/or JADU: An ADU or JADU shall comply with the unit size standards provided in Chapter 17.43.

3. Lot coverage. The district's lot coverage limit shall not apply.

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

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

- (c) Where a primary unit utilizes the 4-foot side or rear setback allowance, for a reduced setback versus the district's setback, no portion of the building within the district's setback area shall exceed 16 feet in height.

- (d) The maximum height of any primary dwelling unit on a ridgeline lot within the R-BA district, as identified in Section 17.02.695, shall be 24 feet, except 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, or as approved by design permit per Section 17.12.040.L.

6. Off-Street Parking. A minimum of one standard size, off-street parking space (covered or uncovered) per primary unit is required. Refer to Chapter 17.34 for parking space design standards. No parking shall be required if:

- (c) The parcel is located within one-half mile walking distance of either a 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
- (d) There is a designated parking area for one or more car-share vehicles within one block of the parcel.

17.05.090 Requirement for Building Permit

Building demolition, alteration and construction shall require building permit(s) for compliance with the applicable provisions of Title 15 and the state building code, as determined by the building official.

17.05.100 Conveyance of Separate Units on a Single Lot.

Condominiums may be established for two-unit developments in accordance with Chapter 17.30 - Condominiums. Establishment of condominiums shall be subject to ministerial approval by the Planning Director, based on conformance with the applicable provisions of this chapter and Chapter 17.30.

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

- A. Where applicable, documents that the lot split , complies with the provisions of this Chapter and restriction provided in Govt Code section 66411.7.
- B. Expressly prohibits any rental of any dwelling on the subject property or properties for a term of 30 days or less.
- C. For urban lot splits, the property owner(s) shall sign an affidavit stating that the owner, or owner's immediate family, intends to occupy one of the housing units as their principal residence for a minimum of three years from the date of the approval of the urban lot split. 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. (Ord. 2000 § 2, (2021))

17.05.120 Findings of Denial. (Reference: Gov. Code, §§ 65852.21, subd. (d); 66411.7, subd. (d)) The City may deny a two-unit housing development or urban lot split subject to this chapter, based upon a preponderance of the evidence, that the proposed housing development would have a specific, adverse impact, as defined in Government Code section 65589.5, subdivision (d)(2), upon public health and safety or the physical environment and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact.

ATTACHMENT C

R-1 Residential Zoning District (weblink)

https://library.municode.com/ca/brisbane/codes/municipal_code?nodeId=TIT17ZO_CH17.06REDI

ATTACHMENT D

R-BA Brisbane Acres Residential Zoning District (weblink)

https://library.municode.com/ca/brisbane/codes/municipal_code?nodeId=TIT17ZO_CH17.12BRACREDI

ATTACHMENT E

Title 16 Subdivision (weblink)

https://library.municode.com/ca/brisbane/codes/municipal_code?nodeId=TIT16SU

GOVERNMENT CODE - GOV

TITLE 7. PLANNING AND LAND USE [65000 - 66499.58] (*Heading of Title 7 amended by Stats. 1974, Ch. 1536.)*

DIVISION 1. PLANNING AND ZONING [65000 - 66301] (*Heading of Division 1 added by Stats. 1974, Ch. 1536.)*

CHAPTER 4. Zoning Regulations [65800 - 65912] (*Chapter 4 repealed and added by Stats. 1965, Ch. 1880.)*

ARTICLE 2. Adoption of Regulations [65850 - 65863.13] (*Article 2 added by Stats. 1965, Ch. 1880.)*

65852.21. (a) A proposed housing development containing no more than two residential units within a single-family residential zone shall be considered ministerially, without discretionary review or a hearing, if the proposed housing development meets all of the following requirements:

(1) The parcel subject to the proposed housing development is located within a city, the boundaries of which include some portion of either an urbanized area or urban cluster, as designated by the United States Census Bureau, or, for unincorporated areas, a legal parcel wholly within the boundaries of an urbanized area or urban cluster, as designated by the United States Census Bureau.

(2) The parcel satisfies the requirements specified in subparagraphs (B) to (K), inclusive, of paragraph (6) of subdivision (a) of Section 65913.4.

(3) Notwithstanding any provision of this section or any local law, the proposed housing development would not require demolition or alteration of any of the following types of housing:

(A) Housing 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.

(B) Housing that is subject to any form of rent or price control through a public entity's valid exercise of its police power.

(C) Housing that has been occupied by a tenant in the last three years.

(4) The parcel subject to the proposed housing development is not a parcel on which an owner of residential real property has exercised the owner's rights under 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 development proponent submits an application.

(5) The proposed housing development does not allow the demolition of more than 25 percent of the existing exterior structural walls, unless the housing development meets at least one of the following conditions:

(A) If a local ordinance so allows.

(B) The site has not been occupied by a tenant in the last three years.

(6) The development is not located 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.

(b) (1) Notwithstanding any local law and except as provided in paragraph (2), a local agency may impose objective zoning standards, objective subdivision standards, and objective design review standards that do not conflict with this section.

(2) (A) The local agency shall not impose objective zoning standards, objective subdivision standards, and objective design standards that would have the effect of physically precluding the construction of up to two units or that would physically preclude either of the two units from being at least 800 square feet in floor area.

(B) (i) Notwithstanding subparagraph (A), no setback shall be required for an existing structure or a structure constructed in the same location and to the same dimensions as an existing structure.

(ii) Notwithstanding subparagraph (A), in all other circumstances not described in clause (i), a local agency may require a setback of up to four feet from the side and rear lot lines.

(c) In addition to any conditions established in accordance with subdivision (b), a local agency may require any of the following conditions when considering an application for two residential units as provided for in this section:

(1) Off-street parking of up to one space per unit, except that a local agency shall not impose parking requirements in either of the following instances:

(A) The parcel 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.

(B) There is a car share vehicle located within one block of the parcel.

(2) For residential units connected to an onsite wastewater treatment system, a percolation test completed within the last 5 years, or, if the percolation test has been recertified, within the last 10 years.

(d) Notwithstanding subdivision (a), a local agency may deny a proposed housing development project if the building official makes a written finding, based upon a preponderance of the evidence, that the proposed housing development project would have a specific, adverse impact, as defined and determined in paragraph (2) of subdivision (d) of Section 65589.5, upon public health and safety or the physical environment and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact.

(e) A local agency shall require that a rental of any unit created pursuant to this section be for a term longer than 30 days.

(f) Notwithstanding Section 65852.2 or 65852.22, a local agency shall not be required to permit an accessory dwelling unit or a junior accessory dwelling unit on parcels that use both the authority contained within this section and the authority contained in Section 66411.7.

(g) Notwithstanding subparagraph (B) of paragraph (2) of subdivision (b), an application shall not be rejected solely because it proposes adjacent or connected structures provided that the structures meet building code safety standards and are sufficient to allow separate conveyance.

(h) Local agencies shall include units constructed pursuant to this section in the annual housing element report as required by subparagraph (I) of paragraph (2) of subdivision (a) of Section 65400.

(i) For purposes of this section, all of the following apply:

(1) A housing development contains two residential units if the development proposes no more than two new units or if it proposes to add one new unit to one existing unit.

(2) The terms “objective zoning standards,” “objective subdivision standards,” and “objective design review standards” mean standards that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal. These standards may be employed in alternative objective land use specifications adopted by a

local agency, and may include, but are not limited to, housing overlay zones, specific plans, inclusionary zoning ordinances, density bonus ordinances.

(3) “Local agency” means a city, county, or city and county, whether general law or chartered.

(j) A local agency may adopt an ordinance to implement the provisions of this section. An ordinance adopted to implement this section shall not be considered a project under Division 13 (commencing with Section 21000) of the Public Resources Code.

(k) Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code), except that the local agency shall not be required to hold public hearings for coastal development permit applications for a housing development pursuant to this section.

(Added by Stats. 2021, Ch. 162, Sec. 1. (SB 9) Effective January 1, 2022.)

GOVERNMENT CODE - GOV

TITLE 7. PLANNING AND LAND USE [65000 - 66499.58] (*Heading of Title 7 amended by Stats. 1974, Ch. 1536.)*

DIVISION 2. SUBDIVISIONS [66410 - 66499.40] (*Division 2 added by Stats. 1974, Ch. 1536.)*

CHAPTER 1. General Provisions and Definitions [66410 - 66424.6] (*Chapter 1 added by Stats. 1974, Ch. 1536.)*

ARTICLE 1. General Provisions [66410 - 66413.5] (*Article 1 added by Stats. 1974, Ch. 1536.)*

66411.7. (a) Notwithstanding any other provision of this division and any local law, a local agency shall ministerially approve, as set forth in this section, a parcel map for an urban lot split only if the local agency determines that the parcel map for the urban lot split meets all the following requirements:

(1) The parcel map subdivides an existing parcel to create no more than two new parcels of approximately equal lot area provided that one parcel shall not be smaller than 40 percent of the lot area of the original parcel proposed for subdivision.

(2) (A) Except as provided in subparagraph (B), both newly created parcels are no smaller than 1,200 square feet.

(B) A local agency may by ordinance adopt a smaller minimum lot size subject to ministerial approval under this subdivision.

(3) The parcel being subdivided meets all the following requirements:

(A) The parcel is located within a single-family residential zone.

(B) The parcel subject to the proposed urban lot split is located within a city, the boundaries of which include some portion of either an urbanized area or urban cluster, as designated by the United States Census Bureau, or, for unincorporated areas, a legal parcel wholly within the boundaries of an urbanized area or urban cluster, as designated by the United States Census Bureau.

(C) The parcel satisfies the requirements specified in subparagraphs (B) to (K), inclusive, of paragraph (6) of subdivision (a) of Section 65913.4.

(D) The proposed urban lot split would not require demolition or alteration of any of the following types of housing:

(i) Housing 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.

(ii) Housing that is subject to any form of rent or price control through a public entity's valid exercise of its police power.

(iii) A parcel or parcels on which an owner of residential real property has exercised the owner's rights under 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 development proponent submits an application.

(iv) Housing that has been occupied by a tenant in the last three years.

(E) The parcel is not located 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.

(F) The parcel has not been established through prior exercise of an urban lot split as provided for in this section.

(G) Neither the owner of the parcel being subdivided nor any person acting in concert with the owner has previously subdivided an adjacent parcel using an urban lot split as provided for in this section.

(b) An application for a parcel map for an urban lot split shall be approved in accordance with the following requirements:

(1) A local agency shall approve or deny an application for a parcel map for an urban lot split ministerially without discretionary review.

(2) A local agency shall approve an urban lot split only if it conforms to all applicable objective requirements of the Subdivision Map Act (Division 2 (commencing with Section 66410)), except as otherwise expressly provided in this section.

(3) Notwithstanding Section 66411.1, a local agency shall not impose regulations that require dedications of rights-of-way or the construction of offsite improvements for the parcels being created as a condition of issuing a parcel map for an urban lot split pursuant to this section.

(c) (1) Except as provided in paragraph (2), notwithstanding any local law, a local agency may impose objective zoning standards, objective subdivision standards, and objective design review standards applicable to a parcel created by an urban lot split that do not conflict with this section.

(2) A local agency shall not impose objective zoning standards, objective subdivision standards, and objective design review standards that would have the effect of physically precluding the construction of two units on either of the resulting parcels or that would result in a unit size of less than 800 square feet.

(3) (A) Notwithstanding paragraph (2), no setback shall be required for an existing structure or a structure constructed in the same location and to the same dimensions as an existing structure.

(B) Notwithstanding paragraph (2), in all other circumstances not described in subparagraph (A), a local agency may require a setback of up to four feet from the side and rear lot lines.

(d) Notwithstanding subdivision (a), a local agency may deny an urban lot split if the building official makes a written finding, based upon a preponderance of the evidence, that the proposed housing development project would have a specific, adverse impact, as defined and determined in paragraph (2) of subdivision (d) of Section 65589.5, upon public health and safety or the physical environment and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact.

(e) In addition to any conditions established in accordance with this section, a local agency may require any of the following conditions when considering an application for a parcel map for an urban lot split:

(1) Easements required for the provision of public services and facilities.

(2) A requirement that the parcels have access to, provide access to, or adjoin the public right-of-way.

(3) Off-street parking of up to one space per unit, except that a local agency shall not impose parking requirements in either of the following instances:

(A) The parcel 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.

(B) There is a car share vehicle located within one block of the parcel.

- (f) A local agency shall require that the uses allowed on a lot created by this section be limited to residential uses.
- (g) (1) A local agency shall require an applicant for an urban lot split to sign an affidavit stating that the applicant intends to occupy one of the housing units as their principal residence for a minimum of three years from the date of the approval of the urban lot split.
- (2) This subdivision 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.
- (3) A local agency shall not impose additional owner occupancy standards, other than provided for in this subdivision, on an urban lot split pursuant to this section.
- (h) A local agency shall require that a rental of any unit created pursuant to this section be for a term longer than 30 days.
- (i) A local agency shall not require, as a condition for ministerial approval of a parcel map application for the creation of an urban lot split, the correction of nonconforming zoning conditions.
- (j) (1) Notwithstanding any provision of Section 65852.2, 65852.21, 65852.22, 65915, or this section, a local agency shall not be required to permit more than two units on a parcel created through the exercise of the authority contained within this section.
- (2) For the purposes of this section, “unit” means any dwelling unit, including, but not limited to, a unit or units created pursuant to Section 65852.21, a primary dwelling, an accessory dwelling unit as defined in Section 65852.2, or a junior accessory dwelling unit as defined in Section 65852.22.
- (k) Notwithstanding paragraph (3) of subdivision (c), an application shall not be rejected solely because it proposes adjacent or connected structures provided that the structures meet building code safety standards and are sufficient to allow separate conveyance.
- (l) Local agencies shall include the number of applications for parcel maps for urban lot splits pursuant to this section in the annual housing element report as required by subparagraph (I) of paragraph (2) of subdivision (a) of Section 65400.
- (m) For purposes of this section, both of the following shall apply:
- (1) “Objective zoning standards,” “objective subdivision standards,” and “objective design review standards” mean standards that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal. These standards may be embodied in alternative objective land use specifications adopted by a local agency, and may include, but are not limited to, housing overlay zones, specific plans, inclusionary zoning ordinances, and density bonus ordinances.
- (2) “Local agency” means a city, county, or city and county, whether general law or chartered.
- (n) A local agency may adopt an ordinance to implement the provisions of this section. An ordinance adopted to implement this section shall not be considered a project under Division 13 (commencing with Section 21000) of the Public Resources Code.
- (o) Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code), except that the local agency shall not be required to hold public hearings for coastal development permit applications for urban lot splits pursuant to this section.
- (Added by Stats. 2021, Ch. 162, Sec. 2. (SB 9) Effective January 1, 2022.)*

SENATE BILL 9 (SB 9): AN OVERVIEW

WHAT IT IS AND HOW IT IMPACTS RESIDENTIAL LAND USE

Senate Bill 9 (SB 9) is a new California State Law taking effect **January 1, 2022**.

SB 9 changes existing limits on how many homes can be built on a lot zoned as single-family. Similar to previous state legislation on Accessory Dwelling Units (ADUs), SB 9 is intended to support the availability of more modestly priced homes by encouraging building of smaller houses on small lots.



WHAT DOES SB 9 DO?

SB 9 MAKES IT EASIER TO:

BUILD UP TO 4 HOMES
ON A PARCEL IN A SINGLE-FAMILY ZONE



SUBDIVIDE A LOT INTO TWO
THAT CAN BE SMALLER THAN REQ. MIN. SIZE

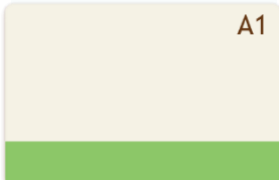











Used together, this allows **4 HOMES** where 1 was primary home was allowed before.

SB 9 makes this easier by waiving public hearings for the two actions.

WHAT CAN I DO ON MY LOT?

Add new homes to existing parcel • Divide existing house into multiple units • Divide parcel and add homes

Illustrations are based on a preliminary analysis of the law. Details are subject to change and are for informational purposes only. See the following page for qualification details and limitations.

	VACANT LOT	LOT WITH SINGLE-FAMILY HOME	LOT WITH NONCONFORMING DUPLEX ¹	LOT WITH SINGLE-FAMILY HOME AND AN ADU
BEFORE	<p>A1</p>  <p>No units</p>	<p>B1</p>  <p>1 PRIMARY UNIT</p>	<p>C1</p>  <p>2 PRIMARY UNITS</p>	<p>D1</p>  <p>1 PRIMARY UNIT + 1 ADU/JADU²</p>
ADD UNITS, NO LOT SPLIT	<p>A2</p>  <p>Up to 2 PRIMARY UNITS + Up to 2 ADUs/JADUs³</p>	<p>B2</p>  <p>Up to 2 PRIMARY UNITS⁴ + Up to 2 ADUs/JADUs³</p>	<p>C2</p>  <p>(No additional units)⁵</p>	<p>D2</p>  <p>Up to 2 PRIMARY UNITS⁴ + 1 ADU/JADU³</p>
ADD UNITS AND LOT SPLIT	<p>A3</p>  <p>Up to 4 TOTAL UNITS</p>	<p>B3</p>  <p>Up to 4 TOTAL UNITS</p>	<p>C3</p>  <p>Up to 4 TOTAL UNITS</p>	<p>D3</p>  <p>Up to 4 TOTAL UNITS</p>

If you're **NOT** splitting a lot:

- SB 9 does not limit the number of ADUs/JADUs (B2, D2) - but other laws might.

If you **ARE** splitting a lot:

- Jurisdictions **can** limit the 2 lots to 4 units total, including any ADUs/JADUs, and may choose not to permit ADUs/JADUs.



SINGLE-UNIT DEVELOPMENTS

SB 9 can be used to develop single units - but projects must comply with all SB 9 requirements.

1 Legally constructed but not currently permitted. Check your local ordinance for nonconforming use policies.
2 Junior Accessory Dwelling Units (JADUs) are small (max. 500ft²) rentable units within a single-family structure. See your jurisdiction's specifications for more details.

3 The exact number and type of ADUs/JADUs allowed should be confirmed based on project specifics.
4 Added primary unit can be new construction or a split of the existing house.
5 Check local nonconforming use rules for more information about ADUs/JADUs.

REFERENCE ANY QUALIFICATION MATERIALS FROM YOUR JURISDICTION FOR MORE SPECIFICS.

2-UNIT DEVELOPMENTS & LOT SPLITS

- Located in a **SINGLE-FAMILY RESIDENTIAL ZONE**
- Located in an **URBANIZED AREA** or **URBAN CLUSTER**, as defined by the U.S. Census Bureau (*essentially, an area with at least 2,500 people*)⁶
- Not in a state/local **HISTORIC DISTRICT** / not an **HISTORIC LANDMARK**

Lots in these areas may not be eligible or may need to meet additional qualifications:⁷

- **PRIME FARMLAND** or farmland of statewide importance
- **WETLANDS**
- Identified for **CONSERVATION** or **UNDER CONSERVATION EASEMENT**
- **HABITAT** for protected species
- Within a **VERY HIGH FIRE HAZARD SAFETY ZONE**
- A **HAZARDOUS WASTE SITE**
- Within a delineated **EARTHQUAKE FAULT ZONE**
- Within a **100-YEAR FLOODPLAIN OR FLOODWAY**

The project cannot alter or demolish:

- Deed-restricted **AFFORDABLE HOUSING**
- **RENT-CONTROLLED HOUSING**
- Housing on parcels with an **ELLIS ACT EVICTION** in the last 15 yrs.
- Housing **OCCUPIED BY A TENANT** currently or in the last 3 yrs.



ADDTL. QUALIFICATIONS 2-UNIT DEVELOPMENTS

- Project **DOES NOT REMOVE MORE THAN 25% OF EXTERIOR WALLS** on a site that has a tenant or has had a tenant in the last 3 yrs. (*even if the rental unit itself isn't altered*)

ADDTL. QUALIFICATIONS LOT SPLITS

- **LOT IS SPLIT ROUGHLY IN HALF** - smaller lot is at least 40% of the original lot⁸
- Each new lot is **AT LEAST 1,200FT²**⁹ (*This means the original lot must be at least 2,400ft² for a 50/50 split; 3,000ft² if a 60/40 split.*)
- Lot is **NOT ADJACENT TO ANOTHER LOT SUBDIVIDED** by you (or done in concert with you) using SB 9
- Lot was **NOT CREATED BY A PREVIOUS SB 9 SPLIT**

ADDITIONAL LIMITATIONS ON SB 9 PROJECTS

CONTACT YOUR LOCAL JURISDICTION FOR ADDITIONAL DETAILS ON SB 9 PROJECT LIMITATIONS.

2-UNIT DEVELOPMENTS & LOT SPLITS

- **PARKING:** Your jurisdiction cannot require more than one off-street parking space per unit, and cannot require any parking spaces if the parcel is close to transit (as defined in the law)
- **NO SHORT-TERM RENTAL:** Units created by SB 9 cannot be used for short-term rentals (less than 30 days)
- **HOAS:** SB 9 does not change rules or restrictions put in place by homeowners' associations.
- **LOCAL STANDARDS:** Jurisdictions may set zoning, subdivision, and design standards for SB 9 projects, but they must be objective and they cannot preclude two units of at least 800ft² on each lot.
- **PUBLIC HEALTH AND SAFETY:** Your project can be denied if it creates a "specific, adverse impact on public health and safety."¹⁰

ADDTL. LIMITATIONS 2-UNIT DEVELOPMENTS

- You may be required to do a **PERCOLATION TEST** if you have on-site wastewater treatment

ADDTL. LIMITATIONS LOT SPLITS

- The project is limited to **RESIDENTIAL USES ONLY**
- **OWNER-OCCUPANCY:** Applicant must sign an affidavit saying they intend to live in one of the units for 3+ years after approval
- Your jurisdiction cannot require **CORRECTION OF NONCONFORMING ZONING CONDITIONS**
- Your jurisdiction may require **EASEMENTS FOR PUBLIC SERVICES AND FACILITIES** and/or to have access to the public right-of-way

WHAT DOES THE PROCESS LOOK LIKE?



STEP 1 Applicant submits SB 9 application to local jurisdiction.



STEP 2 Local jurisdiction determines whether application is complete within 30 days of submittal.



STEP 3 Once application is complete, local staff reviews the application and determines whether to approve and conditions of approval.

⁶ Urbanized areas/urban cluster maps are on the U.S. Census Bureau website.

⁷ As defined in Government Code § 65913.4(a)(6)(B)-(K).

⁸ Each new lot can be smaller than required min. lot size per local zoning.

⁹ This number may be lowered by local ordinance.

¹⁰ Must be determined in writing by a building official, based on inconsistency with objective standards and without feasible mitigation measures.