



CITY of BRISBANE

Planning Commission Meeting Agenda

Thursday, September 26, 2024 at 7:30 PM • Hybrid Meeting
• Brisbane City Hall 50 Park Place, Brisbane CA

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

TO ADDRESS THE COMMISSION

In Person:

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

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

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

Remote Participation:

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

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

Remote Public Comments:

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

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

Webinar ID: 970 0458 3387

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

SPECIAL ASSISTANCE

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

WRITINGS THAT ARE RECEIVED AFTER THE AGENDA HAS BEEN POSTED

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

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

CALL TO ORDER

ROLL CALL

ADOPTION OF AGENDA

CONSENT CALENDAR

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

None

ORAL COMMUNICATIONS (Limited to a total of 15 minutes)

WRITTEN COMMUNICATIONS

OLD BUSINESS

None

NEW BUSINESS

None

WORKSHOP

- A. [Density Bonus and Inclusionary Housing Ordinance Workshop](#)

The purpose of this workshop is to review possible proposed changes to the draft Density Bonus and Inclusionary Housing Ordinance previously reviewed and recommended for approval by the Planning Commission in 2019.

ITEMS INITIATED BY STAFF

ITEMS INITIATED BY THE COMMISSION

ADJOURNMENT

B. Adjournment to the regular meeting of October 10, 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 are required to make a formal appeal. For additional information, please contact the City Clerk at 415-508-2110.

File Attachments for Item:

A. Density Bonus and Inclusionary Housing Ordinance Workshop

The purpose of this workshop is to review possible proposed changes to the draft Density Bonus and Inclusionary Housing Ordinance previously reviewed and recommended for approval by the Planning Commission in 2019.



MEMORANDUM

DATE: September 26, 2024
 TO: Planning Commission
 FROM: Julia Ayres, Principal Planner
 SUBJECT: Workshop – Discussion of Proposed Adjustments to Draft Density Bonus and Inclusionary Housing Ordinance

OBJECTIVE

The purpose of tonight’s workshop is to:

- 1) Revisit the draft Density Bonus and Inclusionary Housing Ordinance recommended by the Planning Commission for Council approval in 2019; and
- 2) Review preliminary proposed revisions to the draft ordinance.

BACKGROUND

State Law Context

California planning and zoning law authorizes cities and counties to adopt ordinances that require residential developments to include a certain percentage of units affordable to moderate and low income households. These types of regulatory requirements are commonly referred to as “inclusionary zoning.”

Additionally, since the 1970’s, California planning law has mandated a “density bonus” program that allows housing developers to achieve greater residential densities than would otherwise be allowed by the applicable zoning ordinance, and diverge from other zoning requirements such as height or parking, in exchange for providing affordable housing units or housing dedicated to special needs groups such as seniors and disabled persons. State density bonus law dictates the increase in density, number of incentives and concessions, and reduction of parking requirements a project is eligible for request based on the percentage of affordable housing provided. Cities must also waive or reduce any development standard that would physically prevent the project to be built at the requested density. Projects providing the required amount of affordable housing can request incentives or concessions or waivers or reductions in development standards without an increase in density.

In adopting ordinances to implement the State density bonus program, cities can adopt regulations that go above and beyond the State provisions, but cannot adopt regulations that limit what State density bonus law allows. In other words, the State program is the floor.

City Ordinance

The City adopted an inclusionary housing and density bonus ordinance in 2009 (BMC Chapter 17.31; Attachment A). The ordinance sets forth inclusionary requirements for rental and for-

sale housing projects of six units or more. The ordinance also sets forth the City's procedures to implement the State density bonus program, which is available for projects of at least five or more units.

2019 Update to City Ordinance

The adopted 2015-2022 Housing Element and subsequent changes in State law regarding the imposition of inclusionary requirements on rental housing required updates to the City's 2009 ordinance. In the period of July 2018 to March 2019, the Planning Commission hosted six public workshops to consider updates to the ordinance before holding a public hearing in April 2019 and recommending a draft ordinance for City Council approval (Resolution RZ-5-18; Attachment B). The draft ordinance has the following key components:

- Reduce the minimum unit threshold for inclusionary housing from six units to five units.
- Utilize a percentage-based inclusionary requirement for rental and for-sale housing developments instead of the current sliding scale requirement.
 - o Rental projects: 15% for households earning 60% of the area median income
 - o For-sale Projects:
 - 5-10 units: 15% for households earning 120% of the area median income
 - 11+ units: 10% for households earning 120% of the area median income; 5% for households earning 80% of the area median income
- Allow rental projects to opt to pay an in-lieu fee instead of constructing units.
- Allow rental projects to request City Council approval for various alternatives to constructing units on-site:
 - o Off-site construction.
 - o Dedication of land.
 - o Funding of affordable or special needs housing project.
 - o Other alternatives; e.g., acquisition and rehabilitation of inclusionary units, conversion of existing market-rate units to inclusionary units, or construction of special needs housing projects or programs (shelters, transitional housing, etc.).
- Eliminate ability for for-sale projects to meet inclusionary requirement with accessory dwelling units (ADUs)
- Create a density bonus incentive for small projects not eligible for bonuses under State density bonus law, and grant additional concessions or incentives than required by State law for projects that exceed the density bonus qualifications
- Separate the inclusionary housing requirements and density bonus requirements into separate Chapters (currently they are combined in Chapter 17.31) to ease their implementation

2019-Present

Since April 2019, Council consideration of the ordinance was put on hold due to an evolving regulatory environment at the State level, the 2023-2031 Housing Element process, and efforts to create an Affordable Housing Strategic Plan which included an evaluation of the draft ordinance’s inclusionary housing provisions. Now that these larger policy endeavors have been completed, it would be appropriate to advance the draft ordinance once again with some key adjustments, summarized in the Discussion below.

DISCUSSION

The proposed changes to the draft ordinance fall into two main categories: mandatory changes required to comply with current State law, and recommended changes not required by State law.

Mandatory Changes to Comply with State Law

Density Bonus Provisions

- Revise ordinance to allow a qualified non-profit housing corporation to be an eligible purchaser for a for-sale target unit when that has not been transferred to an eligible household within 180 days of issuance of a Certificate of Occupancy (AB 323, 2023)
- Amend “Development Standard” definition to be consistent with current State law
- Update the reasonable documentation the City can require to be submitted to support eligibility for requested density bonuses, incentives or concessions, or waivers of development standards per current State law (AB 1287, 2023).
- Clearly spell out Density Bonus application requirements to more fully comply with State law requiring local ordinances to adopt processing procedures.
- Include equity sharing agreement requirements in State Density Bonus law for for-sale units that allow the seller of the unit to retain the value of any improvements, the downpayment, and the seller’s proportionate share of appreciation at the time of resale (shared with the City).

Inclusionary Housing Provisions

- Add provision that a qualified nonprofit housing corporation is eligible to purchase a for-sale unit if that unit has not found an eligible household within 180 days of C of O (AB 323, 2023)

Recommended (Non-Mandatory) Changes for Consideration

Density Bonus Provisions

None.

Inclusionary Housing Provisions

A key recommendation of the Affordable Housing Strategic Plan (AHSP; adopted 2023) is to incorporate more flexibility into the draft inclusionary housing ordinance. An evaluation of the draft inclusionary housing ordinance is included in Appendix B of the AHSP (see Attachment B). Providing flexibility in complying with inclusionary requirements is typically considered a best practice, as residential construction markets rise and fall with land values, interest rates, and availability of capital. As a result of this evaluation, staff has actively engaged in collaborative policy conversations to learn from other jurisdictions’ experiences in implementing inclusionary housing regulations.

Staff has put forth several policy considerations for the Planning Commission to explore tonight that would bake in more flexibility for developers to comply with the inclusionary housing provisions of the draft ordinance, in alignment with the priority areas highlighted in the AHSP analysis.

Broaden Alternatives to On-Site Construction

- Consider reincorporating 2009 ordinance provision to allow for-sale developments to meet inclusionary requirements via rental accessory dwelling units
 - 2019 ordinance eliminated ability for for-sale to meet inclusionary requirement with ADU’s and provides no alternatives for for-sale; on-site construction is required
- Other alternatives for for-sale projects
 - Consider allowing for-sale projects the same alternatives outlined in the draft ordinance for rental projects which include
 - In-lieu fee
 - For any size project or for small projects (e.g., 15 or fewer lots/units)
 - Voluntary (any size) or mandatory (small projects)
 - Off-site construction
 - Land dedication
 - Funding of off-site project by nonprofit developer
 - Acquisition, rehabilitation, and conversion of naturally occurring affordable housing into deed-restricted affordable housing or funding such a project

Broaden Incentives

- Consider adding incentive to allow clustering of inclusionary units in separate buildings from market-rate, subject to certain standards
 - Require connectivity, high quality design, etc.
 - Require development/management by nonprofit housing corporations and financial contribution by market-rate developer
- Consider fee waivers
 - To encourage on-site construction, could consider fee waivers tracked to

inclusionary requirement (e.g., 15% inclusionary requirement = 15% fee reduction)

- Consider equity share agreement for for-sale inclusionary units to allow households to build equity (similar to density bonus program)

NEXT STEPS

- Future workshops as needed
- Public hearing(s) for revised draft ordinance and recommendation to City Council
- City Council public hearings in 2025

ATTACHMENTS

- A. BMC Chapter 17.31 (Existing Ordinance)
- B. Resolution RZ-5-18 (Draft Ordinance)
- C. Affordable Housing Strategic Plan excerpts
 - 1. Appendix B
 - 2. Appendix C

Julia Ayres
Julia Ayres, Principal Planner

John Swiecki
John Swiecki, Community Development Director

Title 17 - ZONING
Chapter 17.31 INCLUSIONARY HOUSING AND DENSITY BONUSES

Chapter 17.31 INCLUSIONARY HOUSING AND DENSITY BONUSES

Sections:

17.31.010 Basis and purposes.

- A. Rental and owner-occupied housing in the city has become steadily more expensive. Housing costs have gone up faster than incomes for many groups in the community.
- B. Many persons who work in the city, who have grown up or have family ties in the city, who already live in the city but must move, or who wish to live in the city for other reasons, cannot afford housing in the city.
- C. Federal and state government programs do not provide nearly enough affordable housing or subsidies to satisfy the housing needs of moderate, lower or very low income households.
- D. Rising land prices have been a key factor in preventing development of new affordable housing. New housing construction in the city which does not include affordable units aggravates the existing shortage of affordable housing by absorbing the supply of available residential land. This reduces the supply of land for affordable housing and increases the price of remaining residential land. Providing the affordable units required by this chapter will help to ensure that part of the city's remaining developable land is used to provide affordable housing.
- E. The city wishes to retain an economically balanced community, with housing available to very low income, lower income and moderate income households. The city's general plan implements the established policy of the state of California that each community should foster an adequate supply of housing for persons at all economic levels.
- F. An economically balanced community is only possible if part of the new housing built in the city is affordable to households with limited incomes. Requiring builders of new housing to include some housing affordable to households at a range of incomes is fair, not only because new development without affordable units contributes to the shortage of affordable housing, but also because zoning and other ordinances concerning new housing in the city should be consistent with the community's goal to foster an adequate supply of housing for persons at all economic levels.
- G. In enacting this chapter it is also the intent of the city of Brisbane to implement the goals, objectives, and policies of the city's general plan housing element, which includes a goal to encourage the provision of housing affordable to a variety of household income levels (Policy H1); the elderly and persons with disabilities (Policy H2); and identifies a density bonus policy and an inclusionary housing policy as methods to encourage the development of affordable housing (Goals H2f, H6a, H7a, and H11j).
- H. This chapter is also intended to implement Sections 65915, 65915.5, and 65917 of the California Government Code, governing density bonuses, by providing incentives required therein for the production of housing for very low, lower income, and senior households and for the production of housing for moderate income households residing in common interest developments.

(Ord. No. 537, § 1, 2-17-09)

17.31.020 Definitions.

- A. **Affordable Ownership Cost.** Average monthly housing costs, during the first calendar year of a household's occupancy, including mortgage payments, property taxes, homeowners insurance, homeowners association

dues, if any, and reasonable allowances for utilities and for maintenance and repair costs, which do not exceed the following:

1. For moderate income households: One hundred ten percent (110%) of area median income, adjusted for assumed household size based on unit size, multiplied by thirty-five percent (35%), and divided by twelve (12);
 2. For lower income households: Seventy percent (70%) of area median income, adjusted for assumed household size based on unit size, multiplied by thirty percent (30%) and divided by twelve (12);
 3. For very low income households: Fifty percent (50%) of area median income, adjusted for assumed household size based on unit size, multiplied by thirty percent (30%) and divided by twelve (12).
- B. Affordable Rent. Monthly rent, including utilities and all fees for housing services, including parking, which does not exceed the following:
1. For lower income households: Sixty percent (60%) of area median income, adjusted for assumed household size based on unit size, multiplied by thirty percent (30%), and divided by twelve (12);
 2. For very low income households: Fifty percent (50%) of area median income, adjusted for assumed household size based on unit size, multiplied by thirty percent (30%), and divided by twelve (12).
- C. Affordable Units. Inclusionary units or target units.
- D. Area Median Income. Area median income for San Mateo County as published by the state of California pursuant to California Code of Regulations, Title 25, Section 6932, or successor provision.
- E. Assumed Household Size Based on Unit Size. A household of one person in a studio apartment, two (2) persons in a one bedroom unit, three (3) persons in a two bedroom unit and one additional person for each additional bedroom thereafter.
- F. Child Care Center. Child care center has the same meaning as day care center, defined in Section 17.02.190, as an establishment licensed by the state providing group day care services for seven (7) or more children other than those resident on the site. The term includes nurseries, nursery schools, preschools, play groups, and after school group care, but does not include large family day care homes operated in the provider's own home.
- G. Common Interest Development. Any of the following, as defined in Civil Code section 1351(c): a community apartment project; a condominium project; a planned development; or a stock cooperative.
- H. Density Bonus. A density increase over the otherwise allowable maximum residential density, as described in Section 17.31.050 of this chapter.
- I. Density Bonus Units. Those residential units granted pursuant to the provisions of this chapter which exceed the otherwise allowable maximum residential density for the development site.
- J. Developer Affordable Housing Agreement. A recorded agreement between a developer and the city as described in Section 17.31.140 of this chapter to ensure that the inclusionary housing and density bonus requirements of this chapter are satisfied.
- K. Development Standard. Any site or construction condition that applies to a residential project pursuant to any ordinance, general plan, specific plan, or other local condition, law, policy, resolution, or regulation. As used in this paragraph, the term "site and construction conditions" means standards that specify the physical development of a site and buildings on the site in a residential project, but do not include any of the following:
1. The permitted uses of a site;
 2. Any city fees, including dedication fees;

3. Affordable housing requirements;
 4. Building standards approved by the California Building Standards Commission as provided in California Health and Safety Code Section 18901 et seq.; or
 5. The requirements of Brisbane's Green Building Ordinance as set forth in Title 15, Chapter 15.80 of this code.
- L. Dwelling Unit. Shall have the meaning set forth in Section 17.02.235.
- M. Eligible Household. A household whose household income does not exceed the maximum specified in Section 17.31.140 for a given affordable unit.
- N. First Approval. The first of the following approvals to occur with respect to a residential project: subdivision approval, building permit or any permit or approval under the Zoning Ordinance.
- O. For-Sale Project. A residential project, or portion thereof, where the dwelling units are offered to the public for purchase.
- P. Household Income. The combined adjusted gross income for all adult persons living in a dwelling unit as calculated for the purpose of the Section 8 Program under the United States Housing Act of 1937, as amended, or its successor.
- Q. Incentives or Concessions. Regulatory concessions as listed in Section 17.31.060.
- R. Inclusionary Units. Dwelling units within a residential project which are consistent with the zoning district's density standard and which are required by Section 17.31.030 of this chapter to be rented at affordable rents or sold at an affordable ownership cost to specified households.
- S. Lower Income Household. A household whose income does not exceed the lower income limits applicable to San Mateo County, as published by the state of California pursuant to California Code of Regulations, Title 25, Section 6932, or successor provision.
- T. Maximum Residential Density. The maximum number of residential units permitted by the city's zoning ordinance on the date the application is deemed complete.
- U. Moderate Income Household. A household whose income does not exceed the moderate income limits applicable to San Mateo County, as published by the state of California pursuant to California Code of Regulations, Title 25, Section 6932, or successor provision.
- V. Market-Rate Unit. Any unit within a residential project which is not an affordable unit.
- W. Rental Project. A residential project, or portion thereof, comprised of dwelling units which are intended to be rented, or are actually offered for rent, to tenants upon completion, whether or not a condominium or subdivision map is recorded as part of the residential project.
- X. Residential Project. Any parcel map, subdivision map, use permit, building permit, or other city approval which, for purposes of the inclusionary requirement set forth in Section 17.31.030, results in a net increase of at least six (6) or more dwelling units and/or residential lots or parcels or combination thereof, and for purposes of a density bonus as set forth in 17.31.050, results in a net increase of at least five (5) or more dwelling units and/or residential lots or parcels or combination thereof. A residential project may include, but is not limited to, new construction, conversion of existing dwelling units to condominium ownership, creation of residential lots, conversion of an existing nonresidential building to residential use, and the addition of dwelling units to an existing multifamily dwelling.
- Y. Senior Citizen Housing Development. A residential project of thirty-five (35) or more dwelling units as defined in California Civil Code Section 51.3, a mobile home park that limits residency to persons eligible to reside in a senior citizen housing development pursuant to California Civil Code Section 798.76 or 799.5, or a

residential project of any number of dwelling units for senior citizens with disabilities provided such project complies with federal and state fair housing laws.

- Z. Target Units. Dwelling units affordable to moderate, low, or very low income households within a residential project that qualify the project for a density bonus if provided as required under Section 17.31.050 of this chapter.
- AA. Very Low Income Household. A household whose income does not exceed the very low income limits applicable to San Mateo County, as published by the state of California pursuant to California Code of Regulations, Title 25, Section 6932, or successor provision.

(Ord. No. 537, § 1, 2-17-09)

17.31.030 Basic inclusionary requirement.

- A. This section shall apply to all residential projects with six (6) or more dwelling units, except for the following:
 - 1. Residential projects which are developed pursuant to the terms of a development agreement executed prior to the effective date of this chapter, provided that such residential projects shall comply with any affordable housing requirements included in the development agreement.
 - 2. Residential projects if exempted by Government Code Section 66474.2 or 66498.1, provided that such residential projects shall comply with any predecessor ordinance in effect on the date the application for the development was deemed complete.
- B. In a residential project with six (6) or more dwelling units, units shall be made available exclusively at affordable rents or affordable ownership cost for both rental and for-sale projects as prescribed in the chart in subsection (B)(3) below.
 - 1. For purposes of calculating the number of inclusionary units required by this section, any density bonus units authorized pursuant to this chapter shall not be counted as part of the residential project.
 - 2. In order to prevent evasion of the provisions of this chapter, contemporaneous construction of six (6) or more dwelling units on a lot, or on contiguous lots for which there is evidence of common ownership or control, even though not covered by the same city land use approval, shall also be considered a single residential project. Construction shall be considered contemporaneous if any building permits are issued within five (5) years following the date of completion of any earlier construction.
 - 3. Chart Showing Inclusionary Requirements:

Total # of Units in Project	For-Sale Project		Rental Project	
	Units Required to be Affordable to Low-Income Households	Units Required to be Affordable to Moderate-Income Households	Units to be Affordable to Very-Low Income	Units to be Affordable to Low Income Households
0–5	0	0	0	0
6–10	0	1	0	1
11–15	1	1	1	1
16–20	1	2	1	2
21–25	1	3	1	3
26–30	2	3	2	3
31–40	2	4	2	4
41–50	2	5	2	5

51—60	3	6	3	6
61—70	3	7	3	7
71—80	4	8	4	8
81—90	4	9	4	9
91—100	5	10	5	10
101—110	5	11	5	11
111—120	6	12	6	12
121—130	6	13	6	13
131—140	7	14	7	14
141—150	7	15	7	15
151—160	8	16	8	16
161—170	8	17	8	17
171—180	9	18	9	18
181—190	9	19	9	19
191—200	10	20	10	20

Note: For projects of more than two hundred (200) units, the pattern set in the above chart shall be continued, with the numbers in the second and fourth columns being increased by one for each twenty (20) additional units, and the numbers in the third and fifth columns being increased by one for each ten (10) additional units.

(Ord. No. 537, § 1, 2-17-09)

17.31.040 Inclusionary housing incentives.

- A. The following incentives shall apply to all residential projects that provide one or more inclusionary units in accordance with the provisions of this chapter:
1. Single-family detached inclusionary units need not be constructed on lots the same size as the market-rate units in the same residential development, but the lots may be no smaller than the minimum standard for the applicable zoning district, except as provided by Section 17.31.060(B)(1).
 2. Inclusionary units may be smaller in size than market-rate units in the same residential development.
 3. Inclusionary units may consist of different unit types than market-rate units in the same residential development. Secondary dwelling units proposed as inclusionary units shall be required to be rented at affordable rents per Section 17.31.030(B)(3) of this chapter, as specified in a regulatory agreement, covenant, deed of trust, or other document approved by the city council pursuant to Section 17.31.150(B) of this chapter, in addition to being subject to the requirements of Chapter 17.43 of this title.
 4. Inclusionary units may have different interior finishes and features than market-rate units in the same residential development, as long as the finishes and features are durable and of good quality.

(Ord. No. 537, § 1, 2-17-09)

17.31.050 Density bonuses—Calculation of bonus.

- A. Very Low and Lower Income Housing and Senior Housing. A residential project is eligible for a twenty percent (20%) density bonus if the applicant seeks a density bonus and agrees to provide one of the following:

1. Ten percent (10%) of the total dwelling units of the residential project as target units affordable to lower income households;
 2. Five percent (5%) of the total dwelling units of the residential project as target units affordable to very low income households; or
 3. A senior citizen housing development.
- B. Moderate Income Housing. A residential project is eligible for a five percent (5%) density bonus if it meets all of the following criteria:
1. The applicant seeks a density bonus and agrees to provide at least ten percent (10%) of the total dwelling units as target units affordable to moderate income households;
 2. The residential project is a common interest development as defined by Section 1351 of the California Civil Code; and
 3. All of the dwelling units in the residential project are offered to the public for purchase.
- C. Additional Density Bonus. The density bonus for which the residential project is eligible shall increase if the percentage of target units affordable to very low, lower, and moderate income households exceeds the base percentage established in subsections A and B above, as follows:
1. Very Low Income Units. For each one percent (1%) increase above five percent (5%) in the percentage of target units affordable to very low income households, the density bonus shall be increased by two and one-half percent (2.5%) up to a maximum of thirty-five percent (35%).
 2. Lower Income Units. For each one percent (1%) increase above ten percent (10%) in the percentage of target units affordable to lower income households, the density bonus shall be increased by one and one-half percent (1.5%) up to a maximum of thirty-five percent (35%).
 3. Moderate Income Ownership Units. For each one percent (1%) increase above ten percent (10%) of the percentage of target units reserved for sale at an ownership cost affordable to moderate income households, the density bonus shall be increased by one percent (1%) up to a maximum of thirty-five percent (35%).
- D. When calculating the number of permitted density bonus units, any calculations resulting in fractional units shall be rounded to the next larger integer.
- E. The density bonus units shall not be included when determining the number of target units required to qualify for a density bonus. When calculating the required number of target units, any calculations resulting in fractional units shall be rounded to the next larger integer.
- F. The developer may request a lesser density bonus than the project is entitled to, but no reduction will be permitted in the number of required target units pursuant to subsection A above. Regardless of the number of target units, no residential project may be entitled to a density bonus of more than thirty-five percent (35%).
- G. Inclusionary units will not be counted as target units. Target units qualifying a project for a density bonus must be provided in addition to required inclusionary units. Where a site has no maximum residential density, no density bonus need be granted.
- H. Each residential project is entitled to only one density bonus, which may be selected based on the percentage of either target units affordable to very low income households, target units affordable to lower income households, or target units affordable to moderate income households, or the project's status as a senior citizen housing development. Density bonuses from more than one category may not be combined,

(Ord. No. 537, § 1, 2-17-09)

17.31.060 Development standards modified as density bonus incentive or concession.

- A. Subject to the findings included in Section 17.31.130, when a developer seeks a density bonus, the city shall grant incentives or concessions as follows:
1. One incentive or concession for projects that include any one of the following:
 - a. At least ten percent (10%) of the total units as target units affordable to lower income households;
 - b. At least five percent (5%) of the total dwelling units as target units affordable to very low income households; or
 - c. At least ten percent (10%) of the total dwelling units in a common interest development as target units affordable to moderate income households.
 2. Two incentives or concessions for projects that include any one of the following:
 - a. At least twenty percent (20%) of the total dwelling units as target units affordable to lower income households;
 - b. At least ten percent (10%) of the total dwelling units as target units affordable to very low income households; or
 - c. At least twenty percent (20%) of the total dwelling units in a common interest development as target units affordable to moderate income households.
 3. Three incentives or concessions for projects that include any one of the following:
 - a. At least thirty percent (30%) of the total dwelling units as target units affordable to lower income households;
 - b. At least fifteen percent (15%) of the total dwelling units as target units affordable to very low income households; or
 - c. At least thirty percent (30%) of the total dwelling units in a common interest development as target units affordable to moderate income households.
- B. Standards for Incentives and Concessions:
1. For purposes of this chapter, concessions and incentives include reductions in site development standards, modifications of zoning code or architectural design requirements, and other incentives or concessions defined in Government Code Section 65915(l) that result in identifiable, financially sufficient, and actual cost reductions, as identified by a financial pro forma submitted by the applicant.
 2. Each proposed structure in a required yard setback shall count as one concession or incentive.
 3. The following concessions and incentives shall require approval by the city council, even though the residential project may otherwise only require approval by the planning commission:
 - a. Deferring collection of impact fees on market-rate units until issuance of certificate of occupancy;
 - b. Any direct financial assistance, including that for purchasers of target units;
 - c. Any regulatory incentives or concessions not related to the zoning ordinance's development standards or parking requirements, such as incentives involving infrastructure standards or mixed-use zoning.
- C. Applicants may seek a waiver or modification of development standards that will have the effect of precluding the construction of a residential project meeting the criteria of Section 17.31.050 at the densities

or with the incentives or concessions permitted by this section. The applicant shall show that the waiver or modification is necessary to make the residential project economically feasible based upon appropriate financial analysis and documentation as specified in Section 17.31.120.

- D. Nothing in this section requires the city to provide direct financial incentives for the residential project, including but not limited to the provision of publicly owned land or waiver of fees or dedication requirements.

(Ord. No. 537, § 1, 2-17-09)

17.31.070 Density bonus for land donation.

A residential project that is eligible for a density bonus shall be eligible for an additional density bonus when an applicant for a residential project chooses to dedicate land to the City for the construction of very low income housing that meets the requirements set forth in California Government Code Section 65915(h).

(Ord. No. 537, § 1, 2-17-09)

17.31.080 Density bonus for child care facilities.

A residential project that is eligible for a density bonus and includes a child care facility that will be located on the premises of, as part of, or adjacent to the residential project shall be eligible for an additional density bonus or an additional concession or incentive that contributes significantly to the economic feasibility of the construction of the child care facility if the requirements set forth in Government Code Section 65915(i) are met.

(Ord. No. 537, § 1, 2-17-09)

17.31.090 Density bonus in condominium conversions.

A residential project for a conversion of existing rental apartments to condominiums shall be eligible for a density bonus or other incentives of equivalent financial value if the requirements in Government Code Section 65915.5 are met.

(Ord. No. 537, § 1, 2-17-09)

17.31.100 Summary tables.

Density Bonus Summary				
Types of Affordable Units Providing Eligibility for a Density Bonus	Minimum %	Bonus Granted	Additional Bonus for Each 1% Increase over the Minimum %	% Target Units Required for Maximum 35% Bonus
A density bonus may be selected from only one category, except that bonuses for land donation may be combined with others, up to a maximum of 35%, and an additional sq. ft. bonus may be granted for a child care center facility.				

Very low income	5%	20%	2.5%	11%
Lower-income	10%	20%	1.5%	20%
Moderate income (ownership units only)	10%	5%	1%	40%
Senior housing project	100% senior	20%	—	—
Land donation for very low income housing	10% of market-rate units	15%	1%	30% of market-rate units
Condominium conversion - moderate income	33%	25% ^(A)	—	—
Condominium conversion - lower income	15%	25% ^(A)	—	—
Child care center	—	Sq. ft. in child care center ^(A)	—	—
Notes: (A) Or an incentive of equal value, at the city's option.				

Incentives and Concessions Summary			
Target Units or Category	% of Target Units		
Pursuant to State Density Bonus			
Very low income	5%	10%	15%
Lower income	10%	20%	30%
Moderate income (ownership units only)	10%	20%	30%
Maximum Incentive(s)/Concession(s) ^{(A)(B)(C)(D)}	1	2	3
Notes: (A) A concession or incentive may be requested only if an application is also made for a density bonus. (B) Concessions or incentives may be selected from only one category (very low, lower, or moderate). (C) No concessions or incentives are available for land donation. (D) Condominium conversions and child care centers facilities may have one concession or a density bonus at the City's option, but not both.			

(Ord. No. 537, § 1, 2-17-09)

17.31.110 Time performance required for inclusionary and density bonus compliance.

- A. No building permit shall be issued for any market-rate unit until the permittee has obtained permits for affordable units sufficient to meet the requirements of Section 17.31.030 and, if a density bonus has been requested, Section 17.31.050. No final inspection for occupancy for any market-rate unit shall be completed until the permittee has constructed the affordable units required by Section 17.31.030 and Section 17.31.050. The time requirements set forth in this subsection for issuance of building permits for market-rate units and for final inspections for occupancy for market-rate units may be modified to accommodate phasing schedules, model variations, or other factors in a residential project, if the city determines this will provide greater public benefit and a developer affordable housing agreement acceptable to the community development director or the community development director's designee pursuant to Section 17.31.140 so provides.
- B. Conditions to carry out the purposes of this chapter shall be imposed on the first approval for a residential project.

(Ord. No. 537, § 1, 2-17-09)

17.31.120 Affordable housing plan submittal.

- A. An affordable housing plan shall be submitted as part of the application for first approval of any residential project. The affordable housing plan shall include the following information:
1. For each construction phase, the affordable housing plan shall specify, at the same level of detail as the application for the residential project: the number, unit type, tenure, number of bedrooms and baths, approximate location, size, and design, construction and completion schedule of all affordable units, phasing of affordable units in relation to market-rate units, and marketing plan. The affordable housing plan shall specify the methods to be used to verify incomes of renters or purchasers, and specify a financing mechanism for the on-going administration and monitoring of the affordable units. The rent or sale price shall be calculated by the city.
 2. Number and location of all inclusionary units and level of affordability.
 3. Where any density bonuses, incentives, concessions, waivers or modifications of development standards, or modified parking standards are being requested, the affordable housing plan shall include the following:
 - a. A description of any requested density bonuses, incentives, concessions, waivers or modifications of development standards, or modified parking standards.
 - b. Identification of the base project without the density bonus, number and location of all target units qualifying the project for a density bonus, level of affordability of the target units, and identification of the bonus units.
 - c. For all incentives and concessions except those listed in Section 17.31.040, a pro forma demonstrating that the requested incentives and concessions result in identifiable, financially sufficient, and actual cost reductions.
 - d. For waivers or modifications of development standards: (i) a pro forma demonstrating that the waiver or modification is necessary to make the residential project economically feasible based upon appropriate financial analysis and documentation; and (ii) evidence that the development standards for which a waiver is requested will have the effect of precluding the construction of the residential project at the densities or with the incentives or concessions permitted by this chapter.

- e. The pro formas required in subsection (A)(3)(c) and (A)(3)(d) shall also include: (i) the actual cost reduction achieved through the incentive, concession, waiver, or modification; and (ii) evidence that the cost reduction allows the developer to provide affordable rents or affordable sales prices. The cost of reviewing any required pro forma data submitted in support of a request for a concession, incentive, waiver or modification, including but not limited to the cost to the city of hiring a consultant to review the pro forma, shall be borne by the applicant.
 - f. If a density bonus or concession is requested for a senior housing project, the application shall provide evidence that units in the residential project shall be occupied by a senior citizen or other person eligible to reside in a senior housing project.
 - g. If a density bonus or concession is requested for a land donation, the application shall show the location of the land to be dedicated and provide evidence that each of the findings in Government Code Section 65915(h) can be made.
 - h. If a density bonus or concession is requested for a child care facility, the application shall show the location and square footage of the child care facility and provide evidence that the findings included in Government Code Section 65915(i) can be made.
 - i. If a mixed use building or development is proposed, the application shall provide evidence that the required findings listed in Section 17.31.130(C) can be made.
4. If the applicant is proposing a modification of the requirement set forth in Section 17.31.110 that the target and/or inclusionary units be constructed concurrently with the market-rate units, the affordable housing plan shall describe the proposed phasing at the same level of detail as required in the application for the residential project, specify the security to be provided to the city to ensure that the target units and inclusionary units will be constructed, and explain how the proposed phasing would provide greater public benefit than providing the target units and/or inclusionary units concurrently with the market-rate units.
- B. Upon submittal, the community development director shall determine if the affordable housing plan conforms to the provisions of this chapter. No application for a first approval for a residential project subject to the inclusionary housing requirements or requesting a density bonus, incentives, concessions, or waivers may be deemed complete unless an affordable housing plan is submitted conforming to the provisions of this chapter.

(Ord. No. 537, § 1, 2-17-09)

17.31.130 City review of affordable housing plan.

- A. An affordable housing plan shall be reviewed as part of the first approval of the residential project. Any decision regarding an affordable housing plan may be appealed in accordance with the applicable procedure set forth in Chapter 17.52 of this title. For incentives and concessions requested under Section 17.31.060(B)(3), the city council shall be the approving authority for the affordable housing plan, even though the approving authority for the residential project might otherwise be the planning commission. In accordance with state law, neither the granting of a concession or incentive, nor the granting of a density bonus, shall be interpreted, in and of itself, to require a general plan amendment, zoning change, or other discretionary approval.
- B. The plan for the inclusionary units shall be approved if it is in conformance with Section 17.31.030 of this chapter.
- C. Before approving a request for a density bonus, incentive, concession, waiver, or modification, the approving authority shall make the following findings:

1. The residential project is eligible for a density bonus and any concessions, incentives, waivers, modifications, or reduced parking standards requested; conforms to all standards for affordability included in this chapter; and includes a financing mechanism for all implementation and monitoring costs.
 2. Any requested incentive or concession will result in identifiable, financially sufficient, and actual cost reductions based upon appropriate financial analysis and documentation.
 3. If the density bonus is based all or in part on dedication of land, the approval body has made the findings included in Government Code Section 65915(h).
 4. If the density bonus, incentive, or concession is based all or in part on the inclusion of a child care facility, the approval body has made the finding included in Government Code Section 65915(i).
 5. If the incentive or concession includes mixed use buildings or developments, the approving authority has made the finding included in Government Code Section 65915(k)(2).
 6. If a waiver or modification is requested, the waiver or modification is necessary to make the housing units economically feasible by providing appropriate financial analysis and documentation as described in Section 17.31.120, and the development standards will have the effect of precluding the construction of the residential project at the densities or with the incentives or concessions permitted by this section.
- D. The approving authority may deny a request for an incentive or concession for which the findings set forth in Section 17.31.130(C) can be made only if it makes a written finding, based upon substantial evidence, of either of the following:
1. The incentive or concession is not required to provide for affordable rents or affordable ownership costs; or
 2. The incentive or concession would have a specific adverse impact upon public health or safety, or the physical environment, or on any real property that is listed in the California Register of Historic Resources, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to lower, very low and moderate income households. For the purpose of this subsection, "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 that the application was deemed complete.
- E. The approving authority may deny a requested waiver or modification for which the findings set forth in Section 17.31.130(C) can be made only if it makes a written finding, based upon substantial evidence, of either of the following:
1. The modification would have a specific adverse impact upon health, safety, or the physical environment, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to lower, very low and moderate income households. For the purpose of this subsection, "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 that the application was deemed complete; or
 2. The modification would have an adverse impact on any real property that is listed in the California Register of Historic Resources.
- F. The approval body may deny a density bonus or concession that is based on the provision of child care facilities and for which the required findings can be made only if it makes a written finding, based on substantial evidence, that the city already has adequate child care facilities.

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

(Ord. No. 537, § 1, 2-17-09)

17.31.140 Developer affordable housing agreement.

- A. Developers subject to the inclusionary housing requirements set forth in this chapter and developers requesting a density bonus, incentive, concession, waiver, modification, or revised parking standard pursuant to this chapter shall enter into a developer affordable housing agreement with the city. A developer affordable housing agreement shall be made a condition of the discretionary planning permits for all residential projects pursuant to this chapter and shall be recorded as a restriction on any parcels on which the target or inclusionary units will be constructed.
- B. The developer affordable housing agreement shall be recorded prior to, or concurrently with, the final or parcel map, or, where the residential project does not include a map, prior to issuance of a building permit for any structure in the residential projects. The developer affordable housing agreement shall run with the land and bind all future owners and successors in interest.
- C. The developer affordable housing agreement shall be in a form provided by the city and shall include, without limitation, the following:
1. The total number of units approved for the residential project, the number, location, and level of affordability of the target units and the inclusionary units.
 2. Standards for determining affordable rent or affordable ownership cost for the target units and any inclusionary units.
 3. The location, unit size in square feet, and number of bedrooms of target units and any inclusionary units.
 4. Provisions to ensure initial and continuing affordability in accordance with the requirements of this chapter, including the execution and recordation of subsequent agreements ensuring continued affordability pursuant to Section 17.31.150.
 5. If applicable, a schedule for completion and occupancy of target units and inclusionary units in relation to construction of market-rate units and specification of the security provided to the city to ensure that the target and/or inclusionary units will be constructed.
 6. A description of any incentives, concessions, waivers, or reductions being provided by the city.
 7. A description of remedies for breach of the agreement by either party. The city may identify tenants or qualified purchasers as third party beneficiaries under the agreement.
 8. Procedures for qualifying tenants and prospective purchasers of target units, including any preferences.
 9. Provisions requiring maintenance of records to demonstrate compliance with this chapter.
 10. Other provisions to ensure implementation and compliance with this chapter.
 11. In the case of senior citizen housing developments, the developer affordable housing agreement shall provide that units in the residential development shall be occupied by senior citizens or other persons eligible to reside in such a project.

12. Developer affordable housing agreements for land dedication, child care facilities, and condominium conversion shall ensure continued compliance with all conditions included in Sections 17.31.070, 17.31.080, and 17.31.090 respectively.

(Ord. No. 537, § 1, 2-17-09)

17.31.150 Continued affordability and initial occupancy.

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

1. "Resale restriction agreement" means an agreement, covenant, deed of trust, or other document, approved as to form by the city council, which is executed by the property owner and recorded against each affordable unit to insure that such unit remains affordable for the applicable term. The city manager is hereby granted the authority to execute the resale restriction agreement and any related documents following approval of form documents by the city council.
2. "Transfer" means any sale, conveyance, assignment, or other change of ownership, whether voluntary or involuntary, of any legal or equitable interest in an affordable unit. Where the affordable unit is owned by a corporation, limited liability company, general or limited partnership, or other form of business entity, a transfer of the unit shall be deemed to have occurred upon transfer of fifty percent (50%) or more of the ownership interest in such entity. Notwithstanding the foregoing, the following transfers shall be exempt from the requirement that the transferee qualify as an eligible household:
 - a. Any transfer to a spouse or domestic partner of the transferor, where the spouse or domestic partner becomes a co-owner of the affordable unit with the transferor;
 - b. Any transfer by devise or inheritance to a spouse or domestic partner of the transferor upon the transferor's death, where the spouse or domestic partner continues to occupy the unit as his or her principal place of residence;
 - c. Any transfer between spouses as part of a marriage dissolution proceeding;
 - d. Any transfer to an inter vivos revocable trust in which the transferor is the beneficiary;
 - e. The granting of the lien or other security interest in the unit as security for a loan and such loan complies with any applicable requirements of the resale restriction agreement.

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

3. Domestic partner means two (2) persons who have filed a declaration of domestic partnership with the California Secretary of State pursuant to Division 2.5, beginning with Section 297, of the California Family Code and such registration was in full force and effect at the time of the transfer or on the date of the transferor's death. A copy of the domestic partnership registration shall be provided to the city upon request.
- B. Owner-Occupied Target Units and Inclusionary Units. A resale restriction, agreement shall be recorded against each for-sale target unit and for-sale inclusionary unit to ensure that the unit remains affordable for a term of forty-five (45) years. Upon any transfer of the unit (as defined in Section 17.31.150(A)(2)) during the term of the resale restriction agreement, the transferee shall execute and record a new resale restriction agreement for a term of forty-five (45) years, commencing from the date of such transfer. If a unit is inherited and such transfer is not exempt under Section 17.31.150(A)(2), the beneficiaries may live in the unit and assume the obligations in the homeowner documents if he/she income qualifies; if he/she does not income qualify, he/she must sell the unit according to the resale restriction agreement, following a grace

period not to exceed one year. Owner-occupied inclusionary units that are later rented shall be rented at a rent affordable to the corresponding income level as designated in Section 17.31.030(C).

- C. **Rental Target Units and Inclusionary Units.** A resale restriction agreement or regulatory agreement shall be recorded against each residential project containing rental target units and inclusionary rental units to ensure that the rental target units and inclusionary rental units remain affordable for a minimum term of fifty-five (55) years. Upon any transfer of the project (as defined in Section 17.31.150(A)(2)) during the term of the resale restriction agreement or regulatory agreement, the transferee shall execute and record a new resale restriction agreement or regulatory agreement for a term of fifty-five (55) years, commencing from the date of such transfer. A longer period of time may be specified if required by any construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program. Rental inclusionary units that are later sold shall be affordable upon sale to the corresponding income level as designated in Section 17.31.030(C).
- D. **Eligibility Requirements.** No household shall be permitted to begin occupancy of a target or inclusionary unit unless the city or its designee has approved the household's eligibility, unless the household has been exempted under Section 17.31.150(A)(2). If the city or its designee maintains a list of, or otherwise identifies, eligible households, initial and subsequent occupants of target and inclusionary units shall be selected first from the list of identified households, to the maximum extent possible, in accordance with guidelines approved by the city council or its designee.

(Ord. No. 537, § 1, 2-17-09)

17.31.160 Implementation and enforcement.

- A. The city council may adopt guidelines, by resolution, to assist in the implementation of all aspects of this chapter.
- B. No permit, license, subdivision map, or other approval or entitlement for a residential project shall be issued, including without limitation a final inspection for occupancy or certificate of occupancy, until all requirements applicable to the residential project at such time pursuant to this chapter have been satisfied.
- C. The city attorney shall be authorized to enforce the provisions of this chapter and all affordable housing agreements, regulatory agreements, resale controls, deeds of trust, or similar documents placed on target units, by civil action and any other proceeding or method permitted by law.
- D. Failure of any official or agency to fulfill the requirements of this chapter shall not excuse any applicant or owner from the requirements of this chapter.
- E. The remedies provided for herein shall be cumulative and not exclusive and shall not preclude the city from any other remedy or relief to which it otherwise would be entitled under law or equity.

(Ord. No. 537, § 1, 2-17-09)

17.31.170 Waivers of inclusionary housing requirement.

- A. Notwithstanding any other provision of this chapter, the inclusionary housing requirements of Section 17.31.030 of this chapter may be waived, adjusted, or reduced if an applicant shows, based on substantial evidence, that there is no reasonable relationship between the impact of a proposed residential development and the requirements of this chapter, or that applying the requirements of this chapter would take property in violation of the United States or California Constitutions, or that it would otherwise have an unconstitutional application to the property.

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- B. Any request for a waiver, adjustment, or reduction under this section shall be submitted concurrently with the affordable housing plan required by Section 17.31.120. The request for a waiver, reduction, or adjustment shall set forth in detail the factual and legal basis for the claim.
- C. The request for a waiver, adjustment, or reduction shall be reviewed and considered in the same manner and at the same time as the affordable housing plan. In making a determination on an application for waiver, adjustment, or reduction, the applicant shall bear the burden of presenting substantial evidence to support the claim. The city may assume each of the following when applicable:
1. That the applicant will provide the most economical inclusionary units feasible meeting the requirements of this chapter.
 2. That the applicant is likely to obtain housing subsidies when such funds are reasonably available.
- D. The waiver, adjustment, or reduction may be approved only to the extent necessary to avoid an unconstitutional result, after adoption of written findings, based on substantial evidence, supporting the determinations required by this section.

(Ord. No. 537, § 1, 2-17-09)

RESOLUTION NO. RZ-5-18

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

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

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

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

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

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

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

Reso. RZ-5-18
Density Bonus/Inclusionary Housing Ord.

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

AYES: Gomez, Gooding, Mackin, Sayasane.

NOES: None.

ABSENT: Patel.


PAMALA SAYASANE
Chairperson

ATTEST:


JOHN SWIECKI, Community Development Director

draft
ORDINANCE NO. _____

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

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

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

Chapter 17.29 – DENSITY BONUSES

Sections:

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

17.29.010 – Purposes of chapter.

- A. The City of Brisbane enacts this chapter to implement the goals, objectives, and policies of the City's general plan housing element relative to administering a density bonus program to encourage the provision of housing affordable to a variety of household income levels, seniors, and persons with disabilities.
- B. This chapter is also intended to implement Sections 65915, 65915.5, and 65917 of the California Government Code, or successor regulations, governing density bonuses and other incentives required therein for the production of housing for very low income, lower income, moderate income, and senior households.

17.29.020 - Definitions.

- A. Affordable Housing Agreement. A recorded agreement between a property owner and the City to ensure that the density bonus requirements of this Chapter are satisfied.
- B. Affordable Ownership Cost. The affordable ownership cost for for-sale target units shall be as specified in California Health and Safety Code Section 50052.5, as may be amended over time.
- C. Affordable Rent. The affordable rent for rental target units shall be as specified in California Health and Safety Code Section 50053, as may be amended over time.
- D. Approving Authority. The City decision-making body acting on an application for a housing development subject to the requirements of this Chapter, including the City Council, Planning Commission, or Community Development Director.
- E. Child Care Facility. Child care facility shall have the same meaning as defined in Government Code Section 65915(h)(4), as may be amended over time.
- F. City. The City of Brisbane or the Brisbane Housing Authority.

Draft Density Bonus/Inclusionary Housing Ord.

- G. **City Council.** The City Council of the City of Brisbane as established in Title 2 of this Code or the Board Members of the Brisbane Housing Authority
- H. **City Manager.** The City Manager of the City of Brisbane as established in Title 2 of this Code, the City Manager's designee, the Executive Director of the Brisbane Housing Authority or the Executive Director's designee.
- I. **Common Interest Development.** As defined in California Civil Code Section 4100, as may be amended over time.
- J. **Community Development Director.** The Director of the Community Development Department responsible for overseeing implementation of Title 17 of this Code, or the Community Development Director's designee.
- K. **Density Bonus.** A density increase over the otherwise allowable maximum residential density, as defined in this Section 17.29.020, pursuant to Government Code Section 65915(f) and 65915.5, as may be amended over time.
- L. **Development Standard.** A development standard shall be as defined by Government Code Section 65915(o)(1), as may be amended over time. As used in this Chapter, the term "development standard" does not include any of the following:
1. The permitted uses of a site;
 2. Affordable housing requirements;
 3. Building standards approved by the California Building Standards Commission as provided in California Health and Safety Code Section 18901 et seq.; or
 4. The requirements of Brisbane's Green Building Ordinance as set forth in Title 15, Chapter 15.80 of this Code.
- M. **Domestic Partner.** Domestic partner means two (2) persons who have filed a declaration of domestic partnership with the California Secretary of State pursuant to Division 2.5, beginning with Section 297, of the California Family Code and such registration was in full force and effect at the time of the transfer or on the date of the transferor's death. A copy of the domestic partnership registration shall be provided to the city upon request.
- N. **Dwelling Unit.** Dwelling unit shall have the meaning set forth in Section 17.02.235 of this Code.
1. **Density Bonus Unit.** Those dwelling units granted pursuant to the provisions of this Chapter which exceed the otherwise allowable maximum residential density for the development site.
 2. **Market-Rate Unit.** Any dwelling unit within a housing development that is not a target unit.
 3. **Target Units.** Dwelling units affordable to moderate, low, or very low income households within a housing development that qualify the project for a density bonus.
- O. **Eligible Household.** A household whose household income qualifies the household for occupancy of density bonus units provided under this Chapter.
- P. **First Approval.** The first of the following approvals to occur with respect to a housing development: subdivision approval, building permit or any permit or approval under the Zoning Ordinance.
- Q. **Household Income.** Household income shall be the gross income of the household as calculated pursuant to Title 25 California Code of Regulations, §6914, as amended, or its successor. The household income categories addressed in this Chapter shall be defined as follows:

Draft Density Bonus/Inclusionary Housing Ord.

1. **Area Median Income.** Area median income for San Mateo County as published by the State of California pursuant to California Code of Regulations, Title 25, Section 6932, as may be amended over time.
 2. **Lower Income Household.** A household whose income does not exceed the lower income limits applicable to San Mateo County, as published annually by the State of California pursuant to California Code of Regulations, Title 25, Section 6932, as may be amended over time.
 3. **Moderate Income Household.** A household whose income does not exceed the moderate income limits applicable to San Mateo County, as published annually by the State of California pursuant to California Code of Regulations, Title 25, Section 6932, as may be amended over time.
 4. **Very Low Income Household.** A very low income household shall be as defined by California Health and Safety Code Section 50105, as may be amended over time.
- R. **Housing Authority.** “Housing Authority” shall mean the Brisbane Housing Authority, as established by Resolution of the City Council. For the purposes of this Chapter, “Housing Authority” shall have the same meaning as “City.”
- S. **Housing Development.** Any parcel map, subdivision map, use permit, building permit, or other city approval which results in a net increase of at least five (5) or more dwelling units and/or residential lots or combination thereof. A housing development may include, but is not limited to, new construction, conversion of existing dwelling units to condominium ownership, creation of residential lots, conversion of an existing nonresidential building to residential use, and the addition of dwelling units to an existing multifamily dwelling. A housing development shall include units or lots intended for sale or for rent.
1. **For-Sale Housing Development.** A housing development, or portion thereof, where the dwelling units or lots are offered to the public for purchase.
 2. **Rental Housing Development.** A housing development, or portion thereof, comprised of dwelling units which are intended to be rented, or are actually offered for rent, to tenants upon completion, whether or not a condominium or subdivision map is recorded as part of the housing development.
 3. **Senior Citizen Housing Development.** A senior citizen housing development shall be as defined per Government Code Section 65915(b)(1)(C), as may be amended over time.
- T. **Incentives or Concessions.** Incentives or concessions shall be as defined in the Government Code Section 65915(k) and 65915.5, as identified by a financial pro forma submitted by the applicant per 17.31.120 of this Code.
- U. **Maximum Residential Density.** The maximum number of dwelling units permitted by the City's zoning ordinance on the date the application is deemed complete.
- V. **Modified Parking Standards.** Modifications to the parking standards that would otherwise apply to a housing development under Chapter 17.34 of this Code, as described in Government Code Section 65915(p), as may be amended from time to time.
- W. **Resale Restriction Agreement.** An agreement, covenant, deed of trust, or other document, approved by the City Council, which is executed by the property owner and recorded against each target unit to insure that such unit remains affordable for the applicable term.
- X. **Specific Adverse Impact.** A "specific adverse impact" shall have the same meaning as the meaning provided in the Government Code Section 65589.5, as may be amended from time to time.

17.29.030 - Density bonuses.

- A. The City shall grant a density bonus, incentives and concessions, waivers or reductions in development standards, and/or modified parking standards requested by applicants for approval of a housing development project of at least five units, to the extent required pursuant to Sections 65915 and 65915.5 of the Government Code, as may be amended over time.
 - 1. A developer of a housing development containing between two (2) and four (4) dwelling units or lots may request City Council approval of a density bonus as shown in Table 17.29.030. The City shall waive or reduce any development standard that may preclude development of such a project subsection B of this Section 17.29.030.

Table 17.29.030

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

- 2. A developer of a housing development that exceeds the qualifications for a density bonus per Government Code Section 65915 may request that the City grant one additional incentive or concession above the maximum number prescribed by Government Code Section 65915(d)(2), as applicable to the project.
 - 3. A developer may request a lesser density bonus than the project is entitled to, but no reduction will be permitted in the number of required target units pursuant to subsection A of this Section 17.29.030.
 - 4. Where a site has no maximum residential density, no density bonus need be granted. However, the City shall grant incentives or concessions and waivers or reductions in development standards requested by applicants pursuant to Government Code Sections 65915(d) and 65915(e).
 - 5. Inclusionary units required pursuant to Chapter 17.31 will be counted as target units for the purposes of calculating a density bonus.
- B. The following concessions and incentives shall require approval by the City Council, even though the housing development may otherwise only require approval by the Planning Commission:
 - 1. Deferring collection of development impact fees on market-rate units until issuance of certificate of occupancy;
 - 2. Any direct financial assistance, including that for purchasers of target units;
 - 3. Any regulatory incentives or concessions not related to the zoning ordinance's development standards or parking requirements, such as incentives involving infrastructure standards or mixed-use zoning.
 - C. Nothing in this section requires the City to provide direct financial incentives for the housing development, including but not limited to the provision of publicly owned land.
 - D. In accordance with state law, neither the granting of a concession or incentive, nor the granting of a density bonus, shall be interpreted, in and of itself, to require a general plan amendment, zoning change, or other discretionary approval.

17.29.040 - Affordable housing plan for density bonus projects.

- A. An affordable housing plan shall be submitted as part of the application for first approval of any housing development for which a density bonus, incentives or concessions, or waivers or reductions of development standards are requested. No application for a first approval shall be deemed complete unless an affordable housing plan is submitted conforming to the provisions of this section.
- B. The affordable housing plan shall include the following information:
1. All information required for affordable housing plans for inclusionary units pursuant to Section 17.31.060.C of Chapter 17.31, as applicable to the project.
 2. Description of the base project without the requested density bonus, the number and location of all target units qualifying the project for a density bonus, the level of affordability of the target units, and identification of the density bonus units.
 3. Description of any requested density bonuses, incentives, concessions, waivers or modifications of development standards, and/or modified parking standards.
 - a. For all requested incentives and concessions, a pro forma demonstrating the requested incentives and concessions result in identifiable and actual cost reductions to provide for affordable ownership cost or rent, as appropriate to the project. The cost of reviewing any required pro forma data submitted in support of a request for a concession or incentive, including but not limited to the cost to the City of hiring a consultant to review the pro forma, shall be borne by the applicant.
 - b. For all requested waivers or reductions of development standards, written evidence that (i) the development standards for which a waiver or reduction is requested will physically preclude the construction of the housing development at the densities or with the incentives or concessions permitted by this chapter; (ii) the waiver or reduction would not have a specific, adverse impact, or, if a specific, adverse impact would occur, that the impact could feasibly be mitigated or avoided; (iii) the waiver or reduction would not have an adverse impact on any real property that is listed in the California Register of Historical Resources; and (iv) the waiver or reduction would not be contrary to any state or federal law.
 - c. If a density bonus or concession is requested for a land donation, the application shall show the location of the land to be dedicated and provide evidence that each of the findings in Government Code Section 65915(g) can be made.
 - d. If a density bonus or concession is requested for a child care facility, the application shall show the location and square footage of the child care facility and provide evidence that the findings in Government Code Section 65915(i) can be made.
 - e. If a density bonus or concession is requested for a mixed use development, as defined in Chapter 17.02 of this Code, the application shall provide evidence that the required findings in Government Code Section 65915(k)(2) can be made.
 9. The applicant may request a modification of the requirement set forth in Section 17.29.060 of this Chapter that the target units be constructed concurrently with the market-rate units. In that case, the affordable housing plan shall describe the proposed phasing at the same level of detail as required in the application for the housing development, specify the security to be provided to the City to ensure that the affordable units will be constructed, and explain how the proposed phasing would provide greater public benefit than providing the target units concurrently with the market-rate units.

- C. The affordable housing plan for density bonus projects shall be reviewed by the Planning Commission or City Council, as appropriate to the application, simultaneously with any other permit applications associated with the first approval for the housing development. The City Council shall be the approving authority for the affordable housing plan where incentives or concessions pursuant to Section 17.29.030 of this Code are requested, even though the approving authority for the housing development might otherwise be the Planning Commission.
- D. A request for a minor modification of an approved affordable housing plan may be granted by the community development director if the modification is substantially in compliance with the original affordable housing plan and conditions of approval. A minor modification is technical in nature, as opposed to substantive or material. Substantive or material changes to the affordable housing plan shall be processed in the same manner as the original plan.

17.29.050 - Affordable housing agreement.

- A. **Applicability.** Recordation of an affordable housing agreement shall be made a condition of the first approval for all housing developments subject to the requirements of this chapter to ensure implementation of all requirements of this Chapter. The affordable housing agreement shall be recorded prior to, or concurrently with, the final or parcel map, or, where the housing development does not include a map, prior to issuance of a building permit for any structure in the housing development. The affordable housing agreement shall run with the land and bind all future owners and successors in interest.
- B. **Definitions.** The following definitions shall be applicable to such terms as used in this section:
1. "Successor in interest" means any person or persons, other than a transferee defined in subparagraph b of paragraph 2 of this subsection B, vested in legal title to the target unit by reason of the death of the owner of a target unit. For the purposes of this section, the household income of a successor in interest will be calculated consistent with the calculation of household income as defined in Section 17.29.020.Q of this Chapter.
 2. "Transfer" means any sale, conveyance, assignment, or other change of ownership, whether voluntary or involuntary, of any legal or equitable interest in a target unit. Where the target unit is owned by a corporation, limited liability company, general or limited partnership, or other form of business entity, a transfer of the unit shall be deemed to have occurred upon transfer of fifty percent (50%) or more of the ownership interest in such entity. Notwithstanding the foregoing, the following transfers shall be exempt from the requirement that the transferee qualify as an eligible household:
 - a. Any transfer to a spouse or domestic partner of the transferor, where the spouse or domestic partner becomes a co-owner of the target unit with the transferor;
 - b. Any transfer by devise or inheritance to a spouse or domestic partner of the transferor upon the transferor's death, where the spouse or domestic partner continues to occupy the unit as his or her principal place of residence;
 - c. Any transfer between spouses as part of a marriage dissolution proceeding;
 - d. Any transfer to an inter vivos revocable trust in which the transferor is the beneficiary;
 - e. The granting of the lien or other security interest in the unit as security for a loan and such loan complies with any applicable requirements of the resale restriction agreement.

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

- C. The affordable housing agreement shall be in a form provided by the City and shall include the following, without limitation:
1. All information provided in the affordable housing plan pursuant to Section 17.29.040 of this Chapter.
 2. Continued affordability of the target units, as follows:
 - a. For-Sale Target Units. The affordable housing agreement shall require that a resale restriction agreement, in a form approved by the City, be recorded against each for-sale target unit when the target unit is first transferred to an eligible purchaser. The resale restriction agreement shall provide that target units in for-sale housing developments shall remain affordable in perpetuity and that the affordability provisions be applicable to any subsequent transferees or successors in interest

The resale restriction agreement shall also provide that the for-sale target unit shall not be rented and that a successor in interest shall not be exempt from meeting the household income eligibility requirements as are transferees under paragraph 2 of subsection B of this section; provided, however, a successor interest may reside in the unit, subject to the obligations of the resale restriction agreement, if a successor in interest's household income qualifies the successor in interest as provided in Section 17.29.020 Q of this Chapter. If the household income of the successor in interest does not qualify, the successor in interest must sell the unit as set forth in the resale restriction agreement, following a grace period not to exceed one year.
 - b. Rental Target Units. The affordable housing agreement shall be recorded against each housing development containing rental target units to ensure that the target units remain affordable for a minimum term as specified in Government Code Section 65915(c)(1); provided, however, if the target units in the housing development are also inclusionary housing units as defined in Chapter 17.31, the target units shall remain affordable in perpetuity as required by Chapter 17.31

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

Rental target units that are later converted to for-sale units, e.g., converted to condominiums, and then sold shall be sold as for-sale target units and the requirements of subparagraph a of paragraph 2 of subsection B of this Section shall apply.
 3. The affordable housing agreement shall specify that no household shall be permitted to begin occupancy of a target unit unless the Community Development Director has approved the household's eligibility, unless the household has been exempted under paragraph 2 of subsection B of this Section 17.29.050. If the City maintains a list of, or otherwise identifies, eligible households, initial and subsequent occupants of target units shall be selected first from the list of identified households, to the maximum extent possible, in accordance with guidelines approved by the City Council.
 4. Affordable housing agreements for land dedication, child care facilities, and condominium conversions shall ensure continued compliance with all conditions included in Government Code Sections 65915 and 65915.5.
 5. Affordable housing agreements for senior citizen housing developments shall provide that units in the residential development shall be occupied by senior citizens or other persons eligible to reside in such a project.

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6. The affordable housing agreement shall include provisions requiring maintenance of records to demonstrate compliance with this Chapter.
 7. The affordable housing agreement shall include a description of remedies for breach of the affordable housing agreement by either party. The City may identify tenants or qualified purchasers as third party beneficiaries under the agreement.
- D. The affordable housing agreement shall include any other provisions determined necessary by the City Attorney to ensure implementation and compliance with this Chapter.

17.29.060 - Implementation and enforcement.

- A. No permit, license, subdivision map, or other approval or entitlement for a housing development shall be issued, including without limitation a final inspection for occupancy, until all requirements applicable to the housing development at such time pursuant to this Chapter have been satisfied.
1. No building permit shall be issued for any market rate unit until the permittee has obtained permits for target units sufficient to meet the requirements of Section 17.29.030 of this Chapter, and, if the project includes inclusionary housing units pursuant to Chapter 17.31 of this Chapter, Section 17.31.030 of this Code. No final inspection for occupancy for any market-rate unit shall be completed until the permittee has constructed the target units required by Section 17.29.030 of this Chapter.
 2. The time requirements set forth in this Section for issuance of building permits for market-rate units and for final inspections for occupancy for market-rate units may be modified to accommodate phasing schedules, model variations, or other factors in a housing development within the submitted affordable housing plan pursuant to Sections 17.29.040 of this Chapter, if the City determines this will provide greater public benefit and an affordable housing agreement pursuant to Section 17.29.050 of this Chapter has been accepted by the community development director.
- B. Conditions to carry out the purposes of this Chapter shall be imposed on the first approval for a housing development.
- C. The City Attorney is authorized to enforce the provisions of this Chapter and all affordable housing agreements, regulatory agreements, resale controls, deeds of trust, or similar documents placed on target units, by civil action and any other proceeding or method permitted by law.
- D. The City Manager is authorized to execute the resale restriction agreement and any related documents following approval of the resale restriction agreement by the Community Development Director and the City Attorney.
- E. Failure of any official or agency to fulfill the requirements of this Chapter shall not excuse any applicant or owner from the requirements of this Chapter.
- F. The remedies provided for herein shall be cumulative and not exclusive and shall not preclude the City from any other remedy or relief to which it otherwise would be entitled under law or equity.

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

Chapter 17.31 - INCLUSIONARY HOUSING

Sections:

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

17.31.010 - Basis and purposes.

- A. Rental and owner-occupied housing in the City has become steadily more expensive. Housing costs have gone up faster than incomes for many groups in the community.
- B. Many persons who work in the City, who have grown up or have family ties in the City, who already live in the City but must move due to increasing housing costs, or who wish to live in the City for other reasons, cannot afford housing in the city.
- C. Federal and state government programs do not provide nearly enough affordable housing opportunities or subsidies to satisfy the housing needs of moderate, lower or very low income households.
- D. Rising land prices have been a key factor in preventing development of new affordable housing. New housing construction in the City which does not include inclusionary units aggravates the existing shortage of affordable housing by absorbing the supply of available residential land. This reduces the supply of land for affordable housing and increases the price of remaining residential land. Providing the inclusionary units required by this Chapter will help to ensure that part of the City's remaining developable land is used to provide affordable housing.
- E. The City wishes to retain an economically balanced community, with housing available to very low income, lower income and moderate income households. The City's general plan implements the established policy of the State of California that each community should foster an adequate supply of housing for households at all economic levels.
- F. An economically balanced community is only possible if part of the new housing built in the City is affordable to households with limited incomes. Requiring builders of new housing to include some housing affordable to households at a range of incomes is fair, not only because new development without inclusionary units contributes to the shortage of affordable housing, but also because zoning and other ordinances concerning new housing in the City should be consistent with the community's goal to foster an adequate supply of housing for households at all economic levels.
- G. In enacting this Chapter it is also the intent of the City of Brisbane to implement the goals, objectives, and policies of the City's general plan housing element, which encourages the provision of housing affordable to a variety of household income levels, seniors, and persons with disabilities, and identifies an inclusionary housing policy as methods to encourage the development of affordable housing.

17.31.020 - Definitions.

- A. **Affordable Housing Agreement.** A recorded agreement between a property owner and the City to ensure that the inclusionary housing requirements of this Chapter are satisfied.
- B. **Affordable Ownership Cost.** The affordable ownership cost for for-sale target units shall be as specified in California Health and Safety Code Section 50052.5, as may be amended over time.
- C. **Affordable Rent.** The affordable rent for rental target units shall be as specified in California Health and Safety Code Section 50053, as may be amended over time.
- D. **Approving Authority.** The City decision-making body acting on an application for a housing development subject to the requirements of this Chapter, including the City Council, Planning Commission, or Community Development Director.
- E. **City.** The City of Brisbane or the Brisbane Housing Authority.
- F. **City Council.** The City Council of the City of Brisbane as established in Title 2 of this Code or the Board Members of the Brisbane Housing Authority.
- G. **City Manager.** The City Manager of the City of Brisbane as established in Title 2 of this Code, the City Manager's designee, the Executive Director of the Brisbane Housing Authority or the Executive Director's designee.
- H. **Community Development Director.** The Director of the Community Development Department responsible for overseeing implementation of Title 17 of this Code, or the Community Development Director's designee.
- I. **Domestic Partner.** Domestic partner means two (2) persons who have filed a declaration of domestic partnership with the California Secretary of State pursuant to Division 2.5, beginning with Section 297, of the California Family Code and such registration was in full force and effect at the time of the transfer or on the date of the transferor's death. A copy of the domestic partnership registration shall be provided to the city upon request.
- J. **Dwelling Unit.** Dwelling unit shall have the meaning set forth in Section 17.02.235 of this Code.
 - 1. **Inclusionary Unit.** Dwelling unit within a housing development that is required by Section 17.31.030 of this Chapter to be rented at affordable rents or sold at an affordable ownership cost to specified households. Inclusionary units are considered target units as that term is defined in Chapter 17.29 of this Code.
 - 2. **Market-Rate Unit.** Any unit within a housing development that is not an inclusionary unit.
- K. **Eligible Household.** A household whose household income qualifies the household for occupancy of inclusionary units provided under this Chapter.
- L. **First Approval.** The first of the following approvals to occur with respect to a housing development: subdivision approval, building permit or any permit or approval under the Zoning Ordinance.
- M. **Household Income.** Household income shall be the gross income of the household as calculated pursuant to Title 25 California Code of Regulations, §6914, as amended, or its successor. The household income categories addressed in this Chapter shall be defined as follows:
 - 1. **Area Median Income.** Area median income for San Mateo County as published by the State of California pursuant to California Code of Regulations, Title 25, Section 6932, as may be amended over time.

2. Lower Income Household. A household whose income does not exceed the lower income limits applicable to San Mateo County, as published annually by the State of California pursuant to California Code of Regulations, Title 25, Section 6932, as may be amended over time.
 3. Moderate Income Household. A household whose income does not exceed the moderate income limits applicable to San Mateo County, as published annually by the State of California pursuant to California Code of Regulations, Title 25, Section 6932, as may be amended over time.
 4. Very Low Income Household. A very low income household shall be as defined by California Health and Safety Code Section 50105, as may be amended over time.
- N. Housing Authority. "Housing Authority" shall mean the Brisbane Housing Authority, as established by Resolution of the City Council. For the purposes of this Chapter, "Housing Authority" shall have the same meaning as "City."
- O. Housing Development. Any parcel map, subdivision map, use permit, building permit, or other City approval which results in a net increase of at least five (5) or more dwelling units and/or residential lots or combination thereof. A housing development may include, but is not limited to, new construction, conversion of existing dwelling units to condominium ownership, creation of residential lots, conversion of an existing nonresidential building to residential use, and the addition of dwelling units to an existing multifamily dwelling. A housing development shall include units or lots intended for sale or for rent.
1. For-Sale Housing Development. A housing development, or portion thereof, where the dwelling units or lots are offered to the public for purchase.
 2. Rental Housing Development. A housing development, or portion thereof, comprised of dwelling units which are intended to be rented, or are actually offered for rent, to tenants upon completion, whether or not a condominium or subdivision map is recorded as part of the housing development.
- P. Maximum Residential Density. The maximum number of residential units permitted by the City's zoning ordinance on the date the application is deemed complete.
- Q. Resale restriction agreement. An agreement, covenant, deed of trust, or other document, approved by the City Council, which is executed by the property owner and recorded against each inclusionary unit to insure that such unit remains affordable for the applicable term.

17.31.030 - Inclusionary requirement.

- A. Applicability. The inclusionary requirements established in this section shall apply to all housing developments with five (5) or more dwelling units, except for the following:
1. Housing developments that are developed pursuant to the terms of a development agreement executed prior to the effective date of this Chapter, provided that such housing developments shall comply with any affordable housing requirements included in the development agreement.
 2. Housing development tentative maps or vesting tentative maps exempted by Government Code Section 66474.2 or 66498.1, provided that such maps shall comply with any predecessor ordinance in effect on the date the application for the map was deemed complete.
- B. Inclusionary Requirements.
1. For-sale Housing Developments. A for-sale housing development subject to the inclusionary requirements of this Chapter shall provide the following inclusionary lots or units, unless an alternative is approved pursuant to Section 17.31.050 of this Chapter:

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- a. A for-sale housing development with five (5) to ten (10) dwelling units or lots must provide fifteen percent (15%) of the units at affordable ownership costs for moderate income households.
 - b. A for-sale housing development of eleven (11) or more dwelling units or lots must provide ten percent (10%) of the units at affordable ownership costs for moderate income households and five percent (5%) of the units or lots at affordable ownership costs for lower income households.
2. Rental Housing Developments. A rental housing development with five (5) or more dwelling units must provide fifteen percent (15%) of the units at affordable rents to very low income households, unless an alternative is elected pursuant to Section 17.31.050 of this Chapter.
- C. For purposes of calculating the number of inclusionary units required by this section, any calculations resulting in fractional units shall be rounded to the next larger integer. Additionally, any density bonus units authorized pursuant to Chapter 17.29 of this Code shall not be counted as part of the housing development.
- D. Contemporaneous construction of five (5) or more dwelling units on a lot, or on contiguous lots for which there is evidence of common ownership or control, even though not covered by the same City land use approval, shall also be considered a single housing development. Construction shall be considered contemporaneous if any building permits are issued within five (5) years following the date of completion of any earlier construction.

17.31.040 - Inclusionary housing incentives.

- A. The following incentives shall apply to all housing developments that provide one or more inclusionary units in accordance with the provisions of this Chapter:
1. Single-family detached inclusionary units need not be constructed on lots the same size as the market-rate units in the same residential development, but the lots may be no smaller than the minimum standard for the applicable zoning district, except as provided by Section 17.31.060(B)(1) of this Chapter.
 2. Inclusionary units may be smaller in size than market-rate units in the same residential development.
 3. Inclusionary units may have different interior finishes and features than market-rate units in the same residential development, as long as the finishes and features are durable and of good quality, as determined by the Community Development Director.

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

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

- B. An applicant for a rental housing development subject to the inclusionary requirements of this Chapter may request City Council approval of one or more of the following alternatives as an alternative to constructing the inclusionary units within the housing development, as described within the affordable housing plan for inclusionary units prepared pursuant to subsection 17.31.060.B.3 of this Chapter:
1. **Off-Site Construction.** The applicant may request to construct some or all of the inclusionary units at a location within the City outside of the residential development. Off-site inclusionary units shall be located on sites that are compatible with adjacent land uses, appropriately zoned for the intended residential development, and are in proximity to or will provide access to employment opportunities, urban services, major roads or other public transit facilities.
 2. **Dedication of Land.** The applicant may dedicate land within the City to the City or another public entity that provides affordable housing that is suitable for affordable housing development. The land shall meet all of the requirements of Government Code Section 65915(g). The value of the land shall be not less than the sum of the in-lieu fee that would be due under subsection A.1 of this Section 17.31.050. The valuation of any land offered in-lieu shall be determined by an appraisal made by an appraiser mutually agreed upon by the City and the applicant. Costs associated with the appraisal shall be borne by the applicant.
 3. **Funding of Affordable or Special Needs Housing Project.** The applicant may make a contribution to a special needs housing project or program or other affordable housing project in the City in an amount equivalent to the in-lieu fee payment due under subsection A.1 of this Section 17.31.050.
 4. **Other Alternatives.** The City Council may approve other alternatives to the construction of new inclusionary units. Alternatives may include, but are not limited to, acquisition and rehabilitation of inclusionary units, conversion of existing market-rate units to inclusionary units, or construction of special needs housing projects or programs (shelters, transitional housing, etc.).

17.31.060 - Affordable housing plan for inclusionary units.

- A. An affordable housing plan for inclusionary units shall be submitted as part of the application for first approval of any housing development for which inclusionary units are required by this Chapter, except where payment of an in-lieu fee is elected by the applicant for a rental housing development pursuant to Section 17.31.050 of this Chapter. No application for a first approval may be deemed complete unless an affordable housing plan, if required, is submitted conforming to the provisions of this Chapter.
- B. If the applicant has requested a density bonus pursuant to Chapter 17.29 of this Code, the affordable housing plan required under this Section shall be combined with the affordable housing plan for target units required pursuant to Section 17.29.040 of this Code.
- C. The affordable housing plan for inclusionary units shall include the following information:
1. For housing developments proposing to construct the inclusionary units within the development, the affordable housing plan shall specify, at the same level of detail as the application for the housing development:
 - a. The number, type, tenure, number of bedrooms and baths, approximate location, size, and design of all inclusionary units;
 - b. Construction phasing of inclusionary units in relation to market-rate units and overall construction schedule. If the developer intends to construct the inclusionary units in separate phases from the market-rate unit construction, the affordable housing plan shall

- specify the security to be provided to the City to ensure that the inclusionary units will be constructed, and explain how the proposed phasing would provide greater public benefit than providing the inclusionary units concurrently with the market-rate units;
- c. Marketing plan;
 - d. Methods to be used to verify incomes of tenant households or purchaser households;
 - e. Procedures for qualifying tenant households and prospective purchaser households of inclusionary units, including any preferences.
 - f. A financing mechanism, the particulars and the amount of which shall be determined by the City at the time the affordable housing plan is approved, to cover the City's costs for the on-going administration and monitoring of the affordability provisions applicable to the inclusionary units.
2. If an applicant requests City Council approval of alternatives to constructing the inclusionary units within a rental housing development pursuant to subsection 17.31.050.B of this Chapter, the affordable housing plan shall describe the requested alternatives.
 3. The affordable housing plan shall state the affordable rent or ownership costs of the inclusionary units, as calculated by the Community Development Director.
 4. If the applicant wishes to request a modification of the requirements set forth in Section 17.31.090 of this Chapter that the inclusionary units be constructed concurrently with the market-rate units, the affordable housing plan shall describe the proposed phasing at the same level of detail as required in the application for the housing development. Additionally, the plan shall specify the security to be provided to the City to ensure that the inclusionary units will be constructed, and explain how the proposed phasing would provide greater public benefit than providing the inclusionary units concurrently with the market-rate units.
- C. The affordable housing plan for inclusionary units shall be reviewed by the Planning Commission or City Council, as appropriate to the application, simultaneously with any other permit applications associated with the first approval for the housing development.

17.31.070 – Adjustment or reduction of inclusionary housing requirement.

- A. An applicant may request City Council approval of an adjustment or reduction of the inclusionary housing requirements of this Chapter if an applicant demonstrates that the requested adjustment or reduction would better implement the goals, objectives, and policies of the City's general plan housing element, which encourages the provision of housing affordable to a variety of household income levels, seniors, and persons with disabilities. The City Council, in its sole discretion, will determine whether to approve the applicant's request based on the City's progress in meeting its housing goals, objectives, and policies at the time the request is made.
- B. Any request for an adjustment or reduction under this section shall be submitted concurrently with the affordable housing plan required by Section 17.31.060 of this Chapter. The request for a reduction or adjustment shall set forth in detail the factual basis for the adjustment or reduction.

17.31.080 - Affordable housing agreement.

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

development. The affordable housing agreement shall run with the land and bind all future owners and successors in interest.

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

1. "Successor in interest" means any person or persons, other than a transferee defined in subparagraph b of paragraph 2 of this subsection B, vested in legal title to the target unit by reason of the death of the owner of a target unit. For the purposes of this section, the household income of a successor in interest will be calculated consistent with the calculation of household income as defined in Section 17.29.020.Q of this Chapter.
2. "Transfer" means any sale, conveyance, assignment, or other change of ownership, whether voluntary or involuntary, of any legal or equitable interest in an inclusionary unit. Where the inclusionary unit is owned by a corporation, limited liability company, general or limited partnership, or other form of business entity, a transfer of the inclusionary unit shall be deemed to have occurred upon transfer of fifty percent (50%) or more of the ownership interest in such entity. Notwithstanding the foregoing, the following transfers shall be exempt from the requirement that the transferee qualify as an eligible household:
 - a. Any transfer to a spouse or domestic partner of the transferor, where the spouse or domestic partner becomes a co-owner of the inclusionary unit with the transferor;
 - b. Any transfer by devise or inheritance to a spouse or domestic partner of the transferor upon the transferor's death, where the spouse or domestic partner continues to occupy the inclusionary unit as his or her principal place of residence;
 - c. Any transfer between spouses as part of a marriage dissolution proceeding;
 - d. Any transfer to an inter vivos revocable trust in which the transferor is the beneficiary;
 - e. The granting of the lien or other security interest in the unit as security for a loan and such loan complies with any applicable requirements of the resale restriction agreement.

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

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

1. All information provided in the affordable housing plan pursuant to Sections 17.31.060 of this Chapter.
2. Continued affordability of the inclusionary units, as follows:
 - c. For-Sale Target Units. The affordable housing agreement shall require that a resale restriction agreement, in a form approved by the City, be recorded against each for-sale target unit when the target unit is first transferred to an eligible purchaser. The resale restriction agreement shall provide that target units in for-sale housing developments shall remain affordable in perpetuity and that the affordability provisions be applicable to any subsequent transferees or successors in interest

The resale restriction agreement shall also provide that the for-sale target unit shall not be rented and that a successor in interest shall not be exempt from meeting the household income eligibility requirements as are transferees under paragraph 2 of subsection B of this section; provided, however, a successor interest may reside in the unit, subject to the obligations of the resale restriction agreement, if a successor in interest's household income qualifies the successor in interest as provided in Section 17.29.020 Q of this

Chapter. If the household income of the successor in interest does not qualify, the successor in interest must sell the unit as set forth in the resale restriction agreement, following a grace period not to exceed one year.

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

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

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

3. The affordable housing agreement shall specify that no household shall be permitted to begin occupancy of an inclusionary unit unless the Community Development Director has approved the household's eligibility, unless the household has been exempted under subsection B of this Section 17.31.080. If the City maintains a list of, or otherwise identifies, eligible households, initial and subsequent occupants of inclusionary units shall be selected first from the list of identified households, to the maximum extent possible, in accordance with guidelines approved by the City Council.
4. Affordable housing agreements for housing developments intended to be occupied by households with one or more members who are sixty-two (62) years of age or older shall provide that dwelling units in the residential development shall be occupied by persons eligible to reside in such a project.
5. The affordable housing agreement shall include provisions requiring maintenance of records to demonstrate compliance with this Chapter.
6. The affordable housing agreement shall include a description of remedies for breach of the agreement by either party. The City may identify tenant households or qualified purchaser households as third party beneficiaries under the agreement.
- D. The affordable housing agreement shall include any other provisions determined necessary by the City Attorney to ensure implementation and compliance with this Chapter.

17.31.090 - Implementation and enforcement.

- A. No permit, license, subdivision map, or other approval or entitlement for a housing development shall be issued, including without limitation a final inspection for occupancy, until all requirements applicable to the housing development at such time pursuant to this Chapter have been satisfied.
1. No building permit shall be issued for any market-rate unit until the permittee has obtained permits for inclusionary units sufficient to meet the requirements of Section 17.31.030 of this Chapter, and, if a density bonus has been requested pursuant to Chapter 17.29, Section 17.29.030 of this Code. No final inspection for occupancy for any market-rate unit shall be

Draft Density Bonus/Inclusionary Housing Ord.

completed until the permittee has constructed the inclusionary units required by Section 17.31.030 of this Chapter.

2. The time requirements set forth in this Section for issuance of building permits for market-rate units and for final inspections for occupancy for market-rate units may be modified to accommodate phasing schedules, model variations, or other factors in a housing development within the submitted affordable housing plan pursuant to Sections 17.31.060 of this Chapter, if the City determines this will provide greater public benefit and an affordable housing agreement pursuant to Section 17.31.080 of this Chapter has been accepted by the community development director.
- B. Conditions to carry out the purposes of this Chapter shall be imposed on the first approval for a housing development.
 - C. The City Attorney is authorized to enforce the provisions of this Chapter and all affordable housing agreements, regulatory agreements, resale controls, deeds of trust, or similar documents placed on inclusionary units, by civil action and any other proceeding or method permitted by law.
 - D. The City Manager is authorized to execute the resale restriction agreement and any related documents following approval by the Community Development Director and the City Attorney.
 - E. Failure of any official or agency to fulfill the requirements of this Chapter shall not excuse any applicant or owner from the requirements of this Chapter.
 - F. The remedies provided for herein shall be cumulative and not exclusive and shall not preclude the City from any other remedy or relief to which it otherwise would be entitled under law or equity.

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

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

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

* * *

The above and foregoing Ordinance was regularly introduced and after the waiting time required by law, was thereafter passed and adopted at a regular meeting of the City Council of the City of Brisbane held on the _____ day of _____, 2019, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Mayor Madison Davis

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

Appendix B: Analysis of Inclusionary Housing Policies

Purpose and Context

In 2019, the Brisbane Planning Commission considered draft updates to the City’s Inclusionary Housing and Density Bonuses Ordinance, originally adopted in 2009. The Commission’s study of the ordinance included both discrete changes to comply with current State law and a broader re-envisioning of the program in light of current and projected housing development patterns in the City. The Planning Commission ultimately recommended an updated ordinance for approval by the City Council. However, the City Council has not yet considered the draft ordinance.

This section reviews the updates to Brisbane’s draft Inclusionary Housing and Density Bonus Ordinance recommended by the Planning Commission in 2019 and provides recommendations that will ensure the ordinance is consistent with the larger goals of the AHSP. As a part of this review, we analyzed inclusionary housing policies across a sample of jurisdictions in the region to inform current best practices and identify alternatives for program design. This review was juxtaposed against case studies of successful mixed-income development projects delivered through inclusionary policies in the region.

Background

Inclusionary housing ordinances (IHO) are a rapidly growing policy used by local governments with goals of increasing affordable housing supply. Through an IHO, cities require or encourage developers to create below-market rental apartments or for-sale homes in connection with the local zoning approval of a proposed market-rate development project. Through an IHO policy, cities across the Bay Area have sought to harness the complex, ever-changing dynamics of market-rate real estate development to achieve a fixed policy objective.

While often paired, inclusionary housing and density bonuses are two separate tools with distinctive goals.

One tool to incent developers to build below-market units is to allow density bonuses, which can enhance feasibility in areas where development is already occurring. The State of California has adopted density bonus regulations that apply to jurisdictions throughout the State regardless of whether those jurisdictions have adopted implementing ordinances. Cities may adopt implementing ordinances that include density bonus provisions that go above and beyond the State’s regulations but may not reduce density bonuses below those permitted by the State. Defined simply, a density bonus allows developers to build larger buildings (in terms of units per acre, height, or floor area ratio) to offset the loss of income in providing below-market rate units. It can improve a development’s financial feasibility so long as the increase in net income outweighs the marginal increase in cost (and

risk). Below-market-rate units provided through an inclusionary housing program can be used to qualify for a density bonus.

Designing inclusionary housing and density bonus ordinances can be complex and controversial. Local jurisdictions must navigate affordable housing goals and other public benefits while also understanding that the effectiveness of tools is shaped by the local market for housing. If set-aside or affordability requirements are too stringent, local governments run the risk of a net loss of housing supply (both affordable and market rate). This undersupply by extension perpetuates the problem the policy is intended to mitigate. And if requirements are too loose, jurisdictions risk having a policy that is ineffective at meeting local housing objectives and the needs of their residents. Consequently, local jurisdictions must understand the conditions of their respective market to calibrate the policy, mitigate potential adverse impacts, and incent the production of affordable housing.

Brisbane's Proposed Inclusionary Housing Ordinance

Brisbane's draft IHO would replace its current sliding scale for inclusionary requirements with a flat share of 15% for both rental and for-sale projects. It would also reduce the minimum project size from six units to five units to align with the State density bonus threshold.

Brisbane's draft IHO distinguishes affordability requirements by tenure (rental/for-sale), size, and affordability level.

Figure 1: Summary of Draft Brisbane Inclusionary Housing Ordinance

Units	Rental	For-sale
0 to 4 units	Exempt	Exempt
5 to 10 units	15% set-aside @ 50% AMI	15% set-aside @ 120% AMI
11+ units	15% set-aside @ 60% AMI	10% set-aside @ 120% AMI 5% set-aside at 80% AMI

State law also requires that cities provide at least one alternative to providing on-site units for rental housing projects. Alternatives may include payment of an in-lieu fee, land dedication, providing set-aside requirements off-site, or another negotiated alternative.

Evaluating Inclusionary Trade-Offs: Markings of a Successful Policy

Like other investments, residential development (market rate) competes for capital in a marketplace that balances risk against rates of return. When rates of return in a particular area are low relative to alternative investments, capital flows elsewhere. This presents a challenge for inclusionary policies that require mixed-income development, which adversely impacts development feasibility (through lower net income per unit) unless there are mitigating factors.

When designing inclusionary policies, jurisdictions must consider the trade-offs associated with different policy levers that may include:

Mandatory vs. voluntary status. Throughout the state, most programs are mandatory, with wide variety in where and when the requirements apply. For example, some mandatory programs apply only in the context of a zoning change. As of November 2021, there are 150 jurisdictions in California with inclusionary housing programs, and less than 20 programs are voluntary.

Set-aside amount. Typically, jurisdictions have set-asides between 10 and 20 percent, but a few places have much higher requirements and some places have sliding requirements based on the number of units in the project or the level of affordability.

Eligibility and term. Most policies in California set income eligibility requirements aimed at households that earn between 60 and 120 percent of AMI.

Types and locations of development. Some policies exempt projects based on project size (number of units) or type (condominium, redevelopment, or adaptive use). Some policies have specific requirements by neighborhood.

Alternatives. Some policies in the state allow developers to make use of in lieu payments into a local housing fund or provide the below-market units off-site.

Incentives. Most policies provide incentives to encourage participation or to offset the impacts of mandatory policies. Common incentives include some combination of direct subsidies, tax abatements, density bonuses, and reduced parking requirements.

Observations in Recent Research

In a recent analysis conducted by the Up for Growth Foundation,²³ researchers interviewed advocates, developers, and practitioners on their opinions and preferences of inclusionary housing policy factors. Key findings included:

- More than half of advocates and nearly three-fourths of practitioners favor maximizing the number of income-restricted units produced under IH policies, even if that means not every building is mixed income.
 - More than half of advocates and nearly two-thirds of developers and practitioners favor greater unit set-asides over deeper affordability.
 - Advocates were split evenly between maximizing units set aside versus optimizing for the duration of affordability, while most developers and practitioners prioritize maximizing units set aside.
-

In addition to the policy levers identified above, several other factors are also indicative of successful IHO policies. The most important among these is favorable market conditions. Research from the Urban Land Institute²⁴ found that:

²³ Up For Growth Foundation. "Missed Opportunities: Assessing and Leveraging Requirements, Incentives, & Tradeoffs in Affordable Housing Development." Policy Brief #1. April 2022.

²⁴ The Economics of Inclusionary Development, 2016. Urban Land Institute.

“The single most important factor for an IZ²⁵ policy to achieve its goals is a significant and sustained level of market-rate development in the local market. If a community is not currently experiencing a material amount of new development, an IZ policy will not generate a meaningful number of new workforce housing units.”

Another important consideration is ensuring the policy is responsive to variance in market conditions. Rent levels (and sales prices) vary across a market. All else equal, this means that a uniform IHO policy will disproportionately impact different segments of the same market. Where the spread between market rents and affordable thresholds are higher, the policy will have a greater adverse impact because it will be harder for new residential projects to pencil.

Finally, policies that include mechanisms to reevaluate and revise the policy over time are best at responding to changes in market conditions over time.

The Role of Incentives in Inclusionary Policy

Unless income potential is sufficiently high to support the inclusion of below-market units in mixed-income properties, development incentives are often required to mitigate or fully offset the loss of income. This is achieved through development incentives. Communities can offer an array of incentives, ranging from density bonuses (required in California law) to zoning variances, fee waivers, or even direct subsidies.

A density bonus is a common incentive used in inclusionary housing programs. It provides an increase in allowed dwelling units per acre, floor area ratio, or height, which typically means that more housing units can be built on a single site. However, in many markets, other land development regulations or market conditions may make density bonuses useless. For example, a bonus that provides additional units per acre, but not additional height, may not result in additional development capacity. For density bonuses to be successful, three considerations should be addressed:

- Effects of density bonuses can vary substantially based on market conditions because they are typically only attractive in markets where more square footage will result in greater profitability. Density bonuses will not incentivize developers in markets where new development is less profitable.
- Increasing the density or height of a development can nudge projects into a higher-cost category depending on building materials or increased parking requirements. When this is the case, the bonus is not effective.
- Increased density may reduce the efficiency of the building or generate layouts that are less appealing, such as reducing natural light, courtyards, or other open spaces which may yield less profitability.

²⁵ The terms Inclusionary Zoning (IZ) and Inclusionary Housing are often used interchangeably.

IHO Case Studies in Peer Cities

A review of inclusionary housing policies among peer cities provides a comparison of how other communities have addresses similar housing challenges within a similar regional market context. We conducted case studies of seven cities in the region, comparing requirements to Brisbane's ordinance.

Figure 2: Case Study Summary of Peer City IHO Policies (2022)

	Colma	Daly City	Fremont	Pacifica	San Mateo	South San Francisco	Redwood City	Brisbane (proposed)
Year of Adoption	2017	2018	2021	2007	2004	2018	2021	N/A
Mandatory or Voluntary	Mandatory	Mandatory	Mandatory	Mandatory	Mandatory	Mandatory	Mandatory	Mandatory
Min Set-aside Amount	20% of total project units	20% of total project units and set-aside requirement varies	10% of total project units and set-aside requirement varies	15% of total project units	20% of total project units	10% of total project units	15% of total project units and set-aside requirement varies	15% of total project units ²⁶
Max set-aside	None specified	Non specified	15% of total project units	None specified	None specified	None specified	None specified	None specified
Lowest Income Served	50% AMI	120% AMI	50% AMI	50% AMI	50% AMI	30% AMI	30% AMI	50% AMI
Highest Income Served	120% AMI	120% AMI	110% AMI	120% AMI	120% AMI	110% AMI	120% AMI	120% AMI
Tenure Type	For-sale	For-sale	Rental and for-sale	Rent and for-sale	Rent and for-sale	Rent and for-sale	Rent and for-sale	Rent and for-sale
Term	45 years	55 years	55 years	55 years	55 years	55 years	55 years	N/A
Types of development	All types	Condominium, stock cooperative, community apartment, or attached or detached single-family home	Condominium, stock cooperative, community apartment, or attached or detached single-family home	Condominium, single-family home, common interest development and mutual housing associations	Not specified	Attached or detached single-family home, condominium, stock cooperative or community apartment	All types except ADUs	Not specified
Location of development	Entire jurisdiction	Entire jurisdiction	Entire jurisdiction	Entire jurisdiction	Entire jurisdiction	Entire jurisdiction	Entire jurisdiction	Entire jurisdiction
Alternatives	In-lieu fee	off-site units, donate land	off-site units	off-site units, in-lieu fee, donate land	off-site units, rehab-regulated units, in-lieu fee, donate land	Off-site units, in-lieu fee, dedication of land, construction of ADUs, negotiated funding	off-site units, donate land, purchase existing units	In-lieu fee; Applicant may request approval of an adjustment to the inclusionary requirements
Incentives	Density bonus, other zoning variance, unit concession	Density bonus waivers	Density bonus	Density bonus, other zoning variance, fee reduction/waiver	Density bonus, expedited permitting, fee reduction/waiver	Offsets may include incentives provided to the City to developments qualifying for a density bonus	Density bonus, fee waiver	Density bonus

²⁶ Proposed ordinance requires inclusionary units for rental projects to be targeted to very low-income households. Proposed ordinance requires inclusionary units for for-sale projects to be targeted toward moderate-income households (five to ten units/lots) and 10% to moderate-income households and 5% to low-income households for 11+ units/lots.

These case studies revealed the following themes:

- Most of the jurisdictions have a constant minimum set-aside consistent with the draft IHO ordinance updates.
- All but one city requires a 55-year affordability term. Colma is the exception, which requires a 45-year term.
- Most cities' IHO covers both rental and for-sale development. Two cities (Colma, Daly City) target for-sale only.
- Affordability levels vary across different cities and by tenure. IHO policies that target rental properties are split. Three cities target very low-income households (50% AMI) or lower and two others target extremely low-income (30% AMI) households.
- Set-aside rates are inversely related to affordability level. For example, South San Francisco has the lowest affordability level for rental (30% AMI) but only requires a 10% set-aside at this threshold.
- IHO policies that apply to for-sale development are generally targeting moderate-income households (120% AMI) at 15% to 20% set-aside levels.
- With a few exceptions, most cities offer a range of alternatives. Allowing affordable units to be built off-site (six cities) and in-lieu fees (five cities) are the most common alternatives. Other options offered include land dedication (five cities), purchase and rehab of existing units (two cities), and specially negotiated alternatives (one city).
- Most jurisdictions combine the state-mandated density bonus with at least one other incentive, most commonly a fee waiver and/or zoning variance.

“In California, the requirements in most inclusionary policies adopted so far have fallen within the 10-20% range - 15% being the most common.”²⁷

- Local Government Commission

Recommendations for Brisbane

Based on the preceding research and analysis, we propose the following recommendations for Brisbane's IHO:

Include a review and revise mechanism. The policy should include a specified intermediate-term mechanism (three to four years) to review the effectiveness of the policy to respond to changes in market conditions as appropriate.

Offer more alternatives than just an in-lieu fee. Offering multiple avenues to meet inclusionary requirements is established precedent in the region. A poorly calibrated policy risks stifling development altogether, perpetuating a lack of affordability. Increasing the number of options available as alternatives and incentives to draw from will reduce this risk considerably. Options could include land dedication, off-site development, rehabilitation, or an

²⁷ Local Government Commission. California Inclusionary Factsheet. November 2018

objective process for a negotiated alternative. The city should balance these alternatives against its administrative capacity and/or appetite for direct intervention in affordable housing development.

Allow for-sale projects to meet inclusionary requirements by providing rental units. In markets like Brisbane, the inclusionary requirement has a bigger impact on feasibility in the for-sale market. Unless providing ownership opportunities for moderate-income households is a strong priority that cannot be met through another program, the city should consider offering an alternative that lets for-sale development meet inclusionary requirements by including affordable rental units (at lower affordability levels).

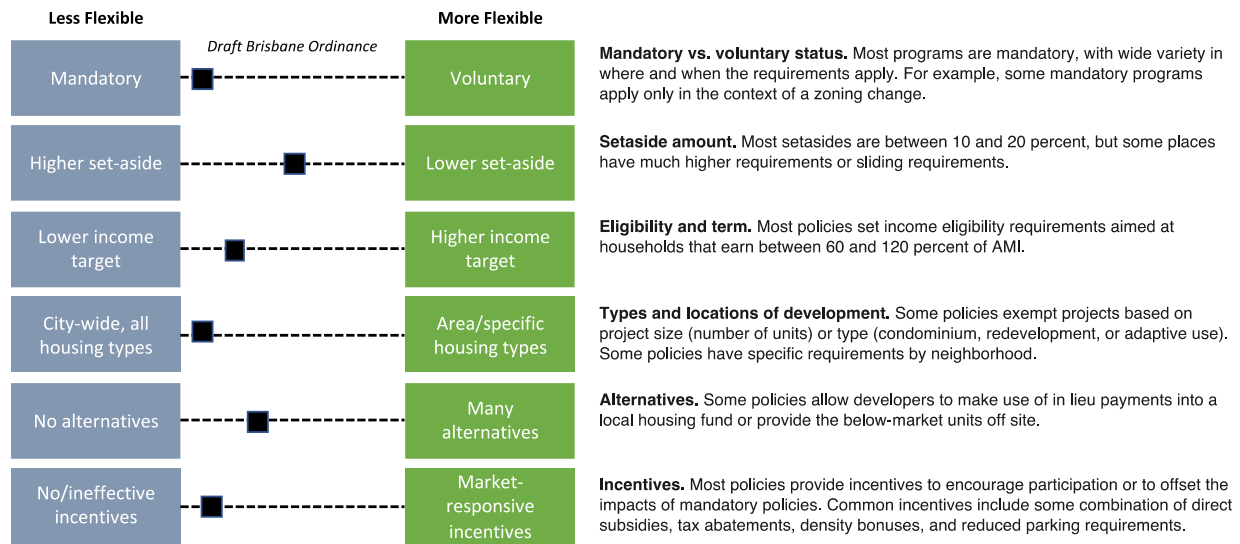
Do not adopt a maximum in-lieu fee. If it is a desired alternative (as recommended), the city will conduct a study to assess the maximum feasible in-lieu fee as an alternative. It is strongly recommended that the city does not adopt the maximum fee. The city should consider the trade-offs of meeting production objectives against the risk of disrupting market fundamentals.

Use care in calibrating resale controls for for-sale inclusionary units. A major advantage of inclusionary policies targeting for-sale development is the opportunity to build wealth through ownership of a home. Where resale controls require homes to be resold at an affordable price to another low-income household, these benefits are not realized. The city should take care in crafting an equity sharing policy that provides homeowners the advantages of wealth building but preserves affordability. One way of balancing these interests is a policy that splits equity built through appreciation between the city and the homeowner (typically sunseting after a period of time). Proceeds to the city can be used to invest in future programs.

Calibrate the policy to conditions in Central Brisbane. The variance in market conditions between Central Brisbane and the Baylands is likely to be considerable. The Baylands is a highly unique development scenario where a negotiated developer agreement is going to be a more effective mechanism to meeting community objectives. As such, the city should consider Central Brisbane the target geography for IHO policies or, alternatively, craft separate requirements for each geography or by development scale.

Prioritize monetary/variance incentives over density bonus (in Central Brisbane). The existing development form in Central Brisbane is generally low density, in part due to parcelization, historical land use, topography, and market conditions. If Central Brisbane is the target geography, then higher-density development that could capitalize on density bonuses is not going to be consistent with the existing development pattern. Density bonuses are likely to be an ineffective incentive in Central Brisbane. The city should alternatively offer monetary incentives such as fee waivers or zoning variances like parking requirements.

Figure 3: Flexibility of Brisbane’s Proposed IHO Policy



Appendix C: Inclusionary Housing Project Case Studies

This appendix highlights case studies of successful mixed-income projects developed under inclusionary housing among peer cities. In these case studies we can observe the conditions that resulted in cross-subsidization of affordable units in mixed-income projects derived from policy and market conditions.

150 Charter Street, Redwood City



Website: <https://www.redwoodcity.org/city-hall/current-projects/development-projects?id=98>

Developer:	LMT Home Corporation
Total Units:	72 for-sale units
BMR Units:	11 BMR units
Typology:	Multifamily residential
IHO Parameters:	
Requirement:	Mandatory
Min set-aside amount:	15% of total project units
Lowest Income:	30% AMI
Highest Income:	120% AMI
Term:	55 years
Types of development:	All types except ADUs.
Opt outs:	Off-site units, donate land, purchase existing units
Incentives:	Linkage/Impact Fee Waiver
Tenure Type:	Rental and for-sale

849 Veterans Blvd, Redwood City



Website: <https://www.redwoodcity.org/city-hall/current-projects/development-projects?id=59>

Developer:	Sares Regis Group
Total Units:	83 for-rent units
BMR Units:	7 BMR units
Typology:	Multifamily apartments.
IHO Parameters:	
Requirement:	Mandatory
Min set-aside amount:	15% of total project units
Lowest Income:	30% AMI
Highest Income:	120% AMI
Term:	55 years
Types of development:	All types except ADUs.
Opt outs:	Off-site units, donate land, purchase existing units
Incentives:	Linkage/Impact Fee
Tenure Type:	Rental and for-sale

Greystar IV, Redwood City



Website: <https://www.redwoodcity.org/city-hall/current-projects/development-projects?id=62>

Developer:	Greystar
Total Units:	350 units
BMR Units:	35 BMR units
Typology:	Multifamily apartment
IHO Parameters:	
Requirement:	Mandatory
Min set-aside amount:	15% of total project units
Lowest Income:	30% AMI
Highest Income:	120% AMI
Term:	55 years
Types of development:	All types except ADUs.
Opt outs:	Off-site units, donate land, purchase existing units
Incentives:	Linkage/Impact Fee Waiver
Tenure Type:	Rental and for-sale

401 S Norfolk St, San Mateo City



Website: <https://www.apartments.com/401-s-norfolk-st-san-mateo-ca/vlj4y2e/>

Developer:	Unknown
Total Units:	67 units
BMR Units:	7 BMR units.
Typology:	Multifamily apartments.
IHO Parameters:	
Requirement:	Mandatory
Min set-aside amount:	20% of total project units
Lowest Income:	50% AMI
Highest Income:	120% AMI
Term:	55 years
Types of development:	Unspecified.
Opt outs:	On-site units, off-site units, rehab-regulated units, in-lieu fee, donate land.
Incentives:	Density bonus, expedited permitting, fee reduction/waiver
Tenure Type:	Rental and for-sale

Montara, San Mateo



Website: <https://bridgehousing.com/properties/montara/>

Developer:	Bridge Housing
Total Units:	68 units
BMR Units:	68 BMR units
Typology:	Multifamily apartments.
IHO Parameters:	
Requirement:	Mandatory
Min set-aside amount:	20% of total project units
Lowest Income:	50% AMI
Highest Income:	120% AMI
Term:	55 years
Types of development:	Unspecified.
Opt outs:	On-site units, off-site units, rehab-regulated units, in-lieu fee, donate land.
Incentives:	Density bonus, expedited permitting, fee reduction/waiver
Tenure Type:	Rental and for-sale

801 Fassler, City of Pacifica



Website: <http://www.801fassleravenue.com/>

Developer:	Samir Sharma
Total Units:	24 units (6 buildings)
BMR Units:	4 BMR units
Typology:	Townhome
IHO Parameters:	
Requirement:	Mandatory
Min set-aside amount:	15% of total project units
Lowest Income:	50% AMI
Highest Income:	120% AMI
Term:	55 years
Types of development:	Condominium, single-family home, common interest developments, and mutual housing associations.
Opt outs:	On-site units, off-site units, in-lieu fee, donate land.
Incentives:	Density bonus, other zoning variance, fee reduction/waiver.
Tenure Type:	Rental and for-sale

Embark Apartments, 44762 Old Warm Springs Blvd, Fremont



Website: <https://www.apartments.com/embark-apartments-fremont-ca/c2hfn5g/>

Developer:	Fairfield Residential
Total Units:	422 for-rent units
BMR Units:	102 BMR units
Typology:	Multifamily apartment
IHO Parameters:	
Requirement:	Mandatory
Min set-aside amount:	10% of total project units
Lowest Income:	50% AMI
Highest Income:	110% AMI
Term:	55 years
Types of development:	Condominium, stock cooperative, community apartment, or attached or detached single-family home.
Opt outs:	On-site units, off-site units
Incentives:	Density bonus
Tenure Type:	Rental and for-sale

Projects in Environmental Review Stage in City of Pacifica

570 Crespi Drive, City of Pacifica

The 570 Crespi Drive Project (“Project”) would include development of one two-story mixed-use building (Building A) and two three-story residential buildings (Buildings B and C). The Project site would include the entirety of the 570 Crespi Drive parcel and a portion of the 540 Crespi Drive parcel. The Project would also include a condominium subdivision to create one commercial condominium and 19 residential condominiums. Building A would consist of 3,165 square feet (sf) of commercial space on the ground floor and three residential units on the second floor. Buildings B and C would be three stories each and would contain seven and nine townhomes, respectively, for a projectwide total of 19 units. The buildings would be constructed on the northernmost half of the site, while the southernmost half of the site would remain undisturbed. Construction of the project would require removal of at least two heritage trees, as defined in the Pacifica Municipal Code. Three of the units would be ownership Below Market Rate (BMR) units pursuant to the City’s Inclusionary Ordinance. In addition, the Project would involve off-site improvements, including construction of a new driveway and associated parking spaces within the northern portion of the existing Pacifica Community Center located immediately to the west at 540 Crespi Drive.

- 3 BMR units
- Still in EIR phase
- Confirmed IHO by contacting City of Pacifica

930 Oddstad Blvd, City of Pacifica

In response to the declining school-age population in the area, the Pacifica School District closed the former Oddstad Elementary School in 2005. Since then, the need for affordable housing options for the District’s current and future workforce has increased. The project proposes to demolish the existing, nonoperational elementary school in order to construct 70 residential units, 11 of which will be below-market-rate affordable housing units pursuant to the City of Pacifica Municipal Code, as well as community amenities and other site improvements such as landscaping and parking (Figure 3: Site Plan). To accommodate the proposed development, the project will amend the existing General Plan land use designation from Oddstad School to Low Density Residential, which allows for a density range of 3 to 9 dwelling units per acre. In addition, the site’s zoning designation will be amended from Single-Family Residential (R-1) to Planned Development District (P-D). Entitlements requested from the applicant include the following and are collectively referenced as File No. 2020-009:

- 10 BMR units
- Still in EIR phase
- Confirmed IHO by contacting City of Pacifica