



CITY COUNCIL AGENDA REPORT

Meeting Date: September 5, 2024

From: John Swiecki, Community Development Director

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

SUPPLEMENTAL REPORT

This matter has been continued from the City Council meetings of June 6 and July 18 2024. To further explain the requirements of SB 9 (which is currently in effect and will remain in effect whether or not 2024-RZ-1 is adopted) city-prepared Frequently Asked Questions (FAQS) have been updated and are available at [2024-RZ-1 | Brisbane, CA \(brisbaneca.org\)](https://www.brisbaneca.org/2024-RZ-1) The previous City Council report and related Planning Commission reports are attached for reference and contain a detailed analysis of the proposed amendment.

RECOMMENDATION

Introduce the ordinance amending the zoning text and zoning map to establish the R-TUO Residential Two Unit Overlay district and related code amendments, as provided in Attachment 4 of the July 18 2024 City Council report.

ATTACHMENTS

1. July 18 2024 City Council Report

John Swiecki

John Swiecki, Community Development Director

Jeremy Dennis

Jeremy Dennis, City Manager



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SUPPLEMENTAL REPORT

COMMUNITY GOAL/RESULT

Safe Community - Residents and visitors will experience a sense of safety.

PURPOSE

To amend the zoning ordinance to establish regulations for urban lot splits and two-unit developments consistent with the requirements of Senate Bill SB 9.

RECOMMENDATION

Introduce the ordinance amending the zoning text and zoning map to establish the R-TUO Residential Two Unit Overlay district and related code amendments, as provided in Attachment 4.

BACKGROUND

On June 6, 2024, City Council continued the public hearing on this matter to allow for additional time for the public review. The City Council further directed staff to provide additional background information and explanation of the proposed amendment, and to increase the level of public awareness and engagement.

The June 6, 2024 agenda report and previous Planning Commission workshops and hearing reports are provided in Attachment 5 for reference and include detailed information regarding the proposed ordinance.

DISCUSSION:

As directed by City Council, staff has prepared informational webpages for SB 9, including graphics which illustrate buildout examples. The July Star included a front-page article summarizing the proposed amendment as well as a hyperlink to the new web pages. See the hyperlink to a new draft ordinances webpage, [Draft Ordinances | City of Brisbane, CA \(brisbaneca.org\)](https://www.brisbaneca.org/Draft-Ordinances), and the SB 9 specific webpage, [2024-RZ-1 | City of Brisbane, CA \(brisbaneca.org\)](https://www.brisbaneca.org/2024-RZ-1)

Information regarding the proposed amendment was also included in the July 3 Brisbane Blast and on the City's social media platforms. As part of the Blast, the City included a link to a new community outreach platform "Engage Brisbane", which allows community members to provide responses to questions on the objective standards that are included in the ordinance. Also, although this item was continued to tonight's date specific, new public notices were posted on July 5th. The City's electronic sign boards at the Community Park and the Northeast Ridge have also been utilized to advertise tonight's public hearing. Since the June 6th public hearing to the time of this writing, no written comments have been received. If any comments are received prior to the July 18th meeting, they will be provided separately to City Council.

The new webpages include substantial information on a number of issues associated with the requirements and implications of SB 9 and answers some key questions that have been raised. These are addressed through frequently asked questions (FAQs) on the webpage referenced above. The FAQs also contain the graphic illustrations requested by Council. See weblink [2024-RZ-1 | City of Brisbane, CA \(brisbaneca.org\)](https://www.brisbaneca.org/2024-RZ-1) for additional information.

Key considerations include:

- SB 9 became effective statewide in January 2022, including Brisbane. The City is obligated under state law to process applications that demonstrate compliance with SB 9, whether or not the City adopts an ordinance. Since SB 9 took effect in 2022, owners on a total of 4 lots within Brisbane have applied for SB 9 developments, although no development permits have been approved.
- Development under SB 9 allows for property owners to either add an additional unit on their lot (two-unit development) or subdivide their lot into 2 lots (urban lot split), subject to certain restrictions. This is applicable to the R-1 Residential District (R-1) and the R-BA Brisbane Acres Residential District (R-BA). Currently, without using SB 9, lots within these districts may be developed with a single family dwelling, an accessory dwelling unit (ADU) and a junior accessory dwelling unit (JADU), for a maximum of (3) units total. Although many variations on development under SB 9 can be achieved, it allows for no more than a total of four (4) units within the original lot area. This represents one more unit than

allowed under current zoning regulations. Attachments 1 and 2 illustrate several theoretical SB 9 development scenarios.

- Concerns have been raised about the applicability of SB 9 to the R-BA zoning district. While SB 9 theoretically applies to the R-BA district as a whole, there are several SB-9 eligibility criteria that could limit its applicability to any given lot within the district. Specifically, lots containing endangered butterfly habitat are not eligible for SB 9 development. Additionally, SB 9 allows that a public agency may deny a project that would have a specific adverse impact upon public health and safety that cannot be mitigated. Consistent with that provision, to promote public safety, Brisbane Municipal Code Section 17.01.060 does not allow for development of new dwelling units on lots that do not have public infrastructure. Therefore, lots within the R-BA district which lack access to public roadways and infrastructure would be ineligible for SB 9 development. As a result of these criteria, it is likely that many existing R-BA zoned lots would not be eligible for SB 9 development. Any lot in the R-BA zone applying for an SB 9 development would need to demonstrate that all criteria for SB 9 eligibility have been met. Lastly, many lots within the upper Acres have been acquired by the City for open space purposes (see Attachment 3), further reducing the number of lots in the R-BA District with development potential.
- Adoption of the proposed ordinance allows the City to impose objective standards on SB 9 developments. The draft ordinance includes objective standards restricting the height of buildings within the state's allowable setback areas and on R-BA ridgeline lots. The draft ordinance also requires that the minimum of one off-street parking space per primary unit be uncovered or within a carport, to help ensure these spaces are used for parking. Garage spaces may be provided in addition to the minimum uncovered or carport spaces. It also allows for shared driveways to help preserve on-street parking.
- If the draft ordinance is not approved, property owners will still have the right to proceed with SB 9 developments subject to state regulations. The City will be unable to apply any other development standards.

FISCAL IMPACT

None.

MEASURE OF SUCCESS

To provide clear provisions in the BMC in compliance with SB 9 (2021).

ATTACHMENTS

1. Webpage excerpts - Selected graphic illustrations and FAQs
2. Website hyperlinks (including additional illustrations):
 - a) [Draft Ordinances | City of Brisbane, CA \(brisbaneca.org\)](#)
 - b) [2024-RZ-1 | City of Brisbane, CA \(brisbaneca.org\)](#)
3. R-BA City Ownership Map
4. Draft Ordinance - Text and Map Amendment
5. City Council Agenda Report, June 6, 2024
(includes links to Planning Commission reports and minutes)



John Swiecki, Community Development Director



Jeremy Dennis, City Manager

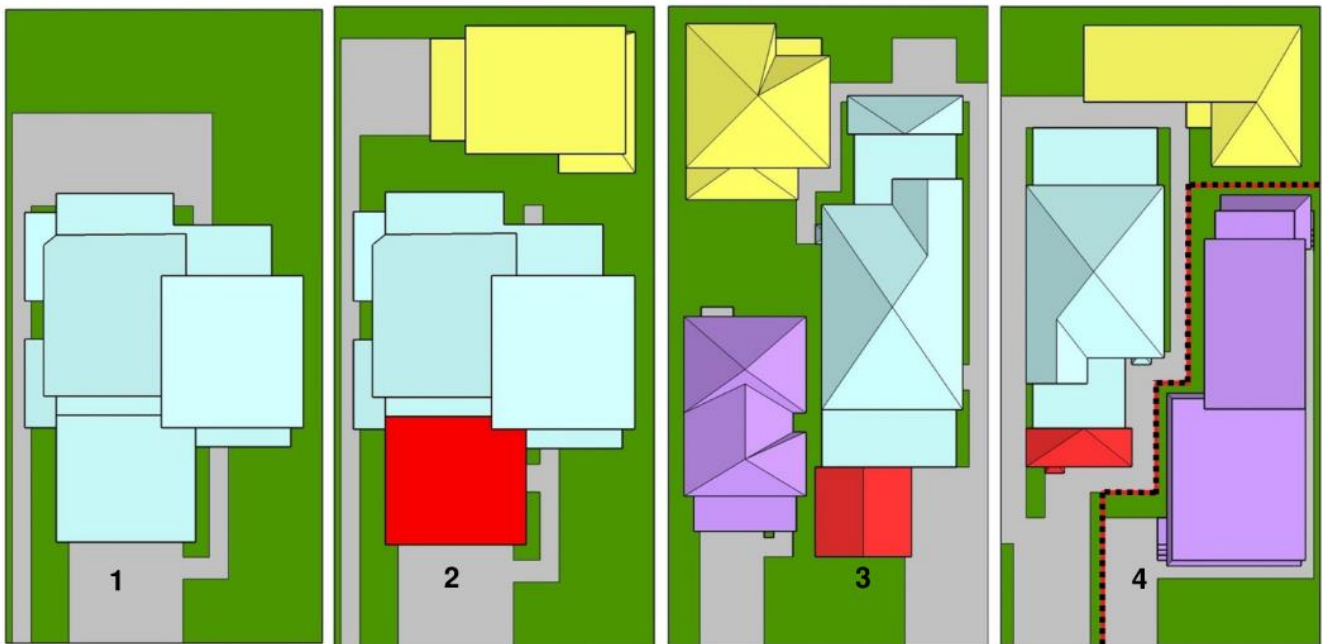
For FAQs and additional illustrations, see [2024-RZ-1 | City of Brisbane, CA \(brisbaneca.org\)](https://www.brisbaneca.org/2024-RZ-1)

Selected R-1 Buildout Scenarios

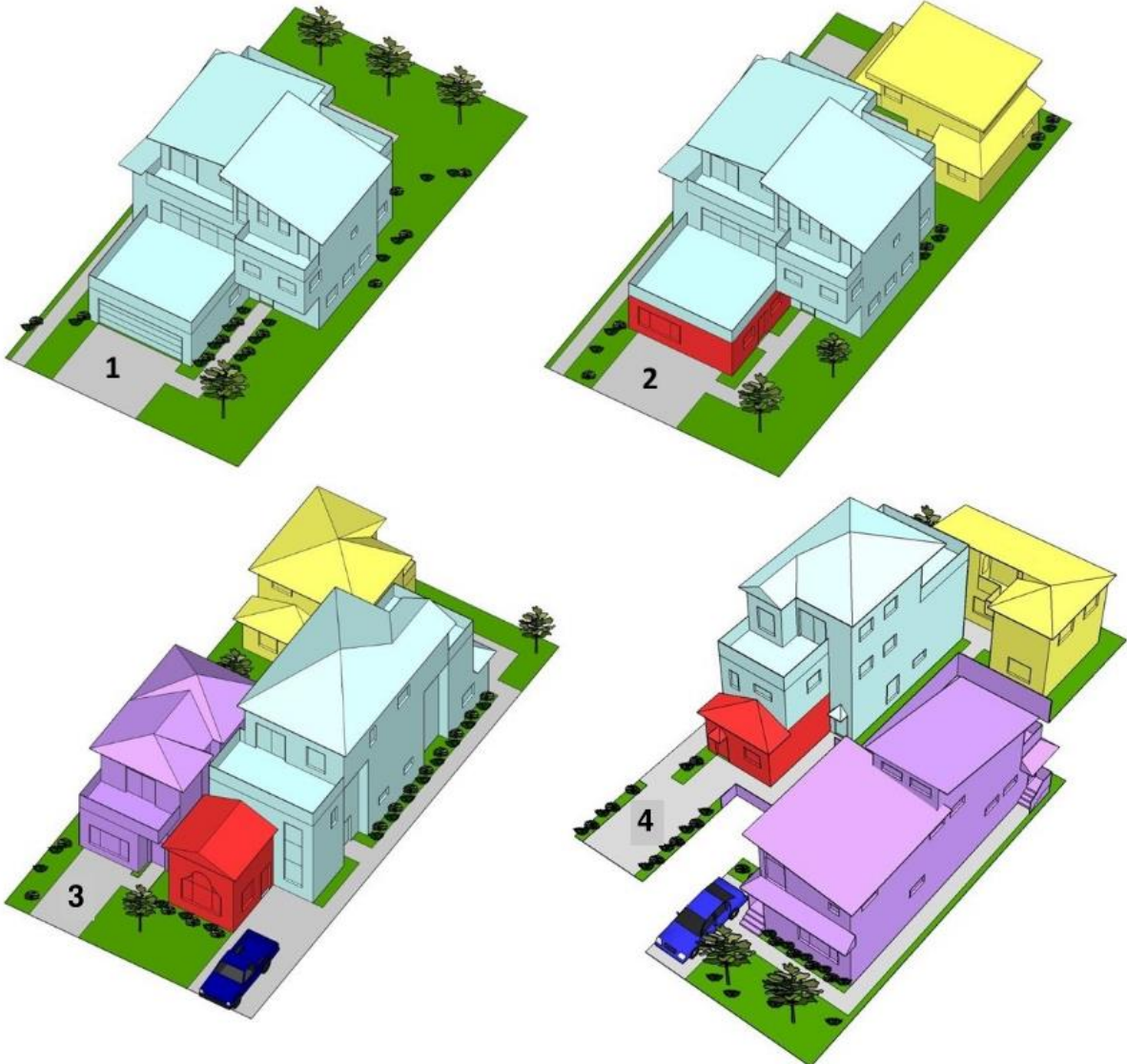
From left to right:

1. Single family dwelling (blue) on standard R-1 lot, per district regulations
2. Single family dwelling, accessory dwelling (yellow) and junior accessory dwelling (red), per district regulations.
3. SB 9 two unit development with second primary dwelling unit (purple)
4. SB 9 urban lot split with second primary dwelling unit (purple).

R-1 District Site Plan Views:



R-1 District Axonometric Views



Frequently Asked Questions

Why should the City adopt a local ordinance to address SB 9?

In 2021 the Governor signed SB 9, which became effective for jurisdictions state-wide in January 2022 and the City is currently processing applications pursuant to SB 9.

Through adoption of a local ordinance the City may include objective development standards, as long as those standards wouldn't preclude development that would otherwise be compliant with the provisions of SB 9. Objective standards are including in the draft ordinance for 1) parking and 2) building heights within setbacks and on ridgeline lots, as further described below. A local ordinance would provide for clarity in the City's implementation of SB 9 provisions. The draft ordinance would also commit the City to providing an informational notice to the owners of neighboring properties upon approval of a development project under SB 9.

SB 9 refers to urban lot splits and two unit developments. What's the difference between the two?

"Two unit developments" generally refers to the development of two primary dwelling units on a an existing lot, or on a lot created through an urban lot split.

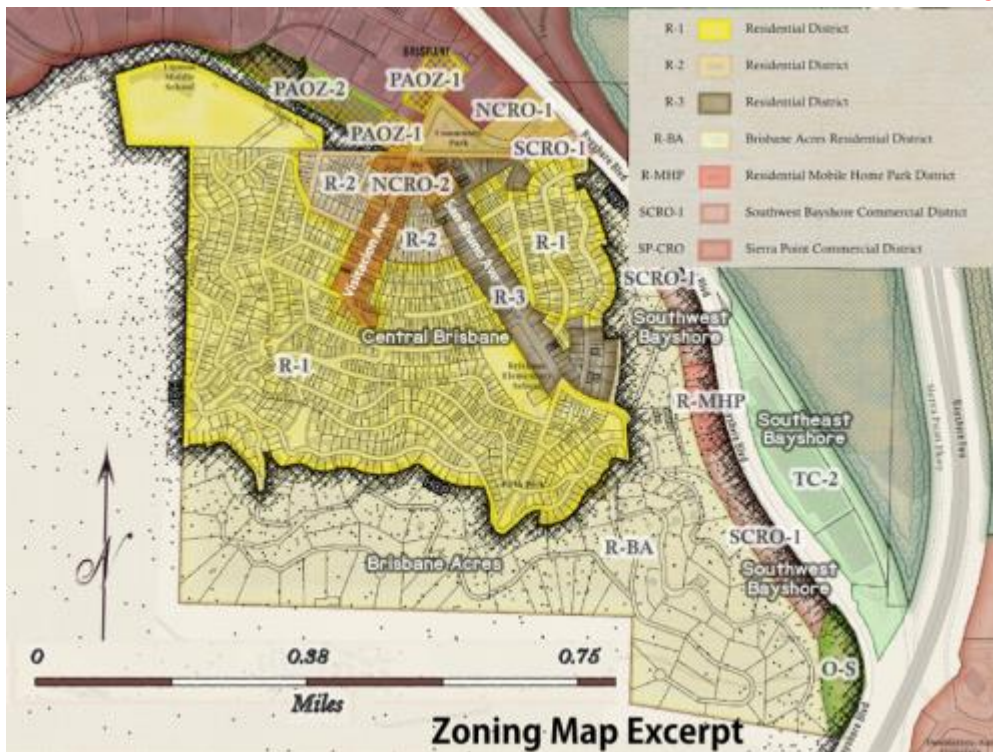
An "urban lot split" is a ministerial split of one single family residential lot into two lots pursuant to the provisions of SB 9. Each resultant lot may have a two unit development or a combination of primary dwelling units and JADUs or ADUs. In any case, the maximum development that may occur over the original lot area is 4 dwelling units. That's one more than may otherwise be permitted.

The draft ordinance is proposed as an overlay district. What does this mean?

An overlay district does not alter the underlying district standards. The overlay district (R-TUO Residential Two Unit zoning district) standards would only apply to those properties that apply for a permit pursuant to the provisions of SB 9 and are approved for development consistent with SB 9.

Which properties in Brisbane are subject to SB 9?

SB 9 only applies to single family zoning districts, which in Brisbane are the R-1 and R-BA zoning districts. These districts are shown in yellow on the zoning map excerpt (see also our [Interactive Zoning Map](#)):



What development is currently allowed within the R-1 zoning district and what does SB 9 allow?

The current lot size standard in the R-1 zone is 5,000 sq ft, although a number of smaller lots are recognized as legal lots, generally in the range of 2,500 sq ft to 5,000 sq ft based on older lot size standards. The R-1 zoning allows for one single family dwelling unit, one attached junior accessory dwelling unit (JADU) and one accessory dwelling unit (ADU) on a lot, irrespective of size, assuming the applicable development standards are met.

SB 9 allows for one additional dwelling unit on that same lot area, either following an “urban lot split” or as a “two unit development” on the existing lot, subject to a number of qualifying criteria and restrictions. An urban lot split is a ministerial division of one legal lot into two lots and a two unit development allows for two primary dwelling units, such as two single family dwellings or a duplex on a lot. Regardless of whether SB 9 is implemented by an urban lot split or by a two unit development on the existing lot, the total dwelling unit count for the original lot area may not exceed four units, including accessory dwelling units, versus three units under the current zoning for both districts. There are various potential buildout configurations and comparison examples for:

1. what may be developed under the R-1 zoning without SB 9;
2. a two unit development; and
3. an urban lot split.

These are theoretical examples based on a maximum buildout. Additional examples based on a maximum buildout are available at this [link](#).

What development is currently permitted in the R-BA zone and what will SB 9 allow?

The lot size standard in the R-BA zone is 20,000 sq ft. The R-BA zoning currently allows for one single family dwelling unit, one attached junior accessory dwelling unit (JADU) and one accessory dwelling unit (ADUs) on a lot. SB 9 allows for one additional dwelling unit on that same lot area, either following an “urban lot split” or as a “two unit development” on the existing lot, subject to a number of qualifying criteria and restrictions.

One such qualifying criteria is that the lot may not have endangered species habitat. The R-BA district as a whole is within the San Bruno Mountain Habitat Conservation Plan area and a number of the properties, especially in the upper reaches of the district are likely to contain habitat for endangered butterfly species and would therefore be excluded. Another is that the lot must have infrastructure access for safety and utilities. Many of the lots do not currently have such access or utilities. Since this cost is borne by the property owner for development, this will likely continue to prove to be cost prohibitive, especially for those properties that are distant from existing infrastructure and on steep terrain.

Are there any other limitations on when SB 9 applies?

The endangered species and infrastructure restrictions are applicable to much of the R-BA district, but there are a number of other requirements and restrictions that may apply to either the R-1 and R-BA. Some of these are as follows:

- The lot does not contain wetlands;
- The lot may not be in a very high fire hazard severity zone;
- The lot may not contain habitat for protected species;
- The lot may not be on lands under a conservation easement;
- The lot has not previously been subdivided via urban lot split;
- For urban lot splits, prior to a lot split being recorded, the property owner(s) shall sign an affidavit stating that the owner, or a member or members of the owner’s immediate family, intends to occupy one of the dwelling units as the person’s principal residence for a minimum of three years; and
- Development may not result in demolition of a dwelling unit that has been occupied by a tenant in the last three years and other tenant displacement protections.

What is the net increase in the number of housing units that may be developed on a given lot using the SB 9 provisions versus what may currently be developed without using SB 9?

The net increase in dwelling units on a given lot is one (1) unit. Currently a lot of record in either the R-BA or the R-1 district maybe developed with a single family dwelling (SFD), an accessory dwelling unit (ADU) and a junior accessory dwelling unit (JADU) without invoking SB 9 provisions. SB 9 provides for one more unit as a primary dwelling unit. That may be as a detached unit (resulting in a two unit dwelling group) or as a duplex. If the lot is split, as an urban lot split under the SB 9, the mix of units between the two resultant lots may range from 1 to 3 units, but the total across both resultant lots may not exceed 4 units.

How many units might be developed city-wide as a result of SB 9?

This is unknown. Since SB 9 took effect in 2022, owners on a total of 4 lots have applied for SB 9 development via two unit development or an urban lot split, although no development permits have yet been approved. For reference, [case studies on three of these projects](#) as provided on the City's website. Also, while there are approximately 880 lots in the R-1 district, lot size, topography, existing construction and other constraints could make SB 9 developments impractical or infeasible. Access and habitat constraints would also likely reduce the feasibility of SB-9 development throughout the R-BA zone.

What permits would be required for a two unit development or urban lot split?

For a two unit development without a lot split, a property owner would need to obtain a building permit, which would include documentation on eligibility.

For an urban lot split, prior to obtaining the building a lot split would be required, via separate planning application.

As part of the above referenced permits, a deed restriction would be recorded on the property, identifying the property as being developed through SB 9 and subjecting it to certain development and use restrictions, as provided in the ordinance.

Whether the development under SB 9 is a two unit development on the existing lot, or the owner chooses to apply for an urban lot split, prior to submitting for a building permit, the applications require ministerial approval by the City, as long as they meet all of the requirements of SB 9.

Additional information related to the process in Brisbane for Urban Lot Splits & Two-Unit Developments is available on the City's website. [Urban Lot Splits & Two-Unit Developments in Single-Family Zones | City of Brisbane, CA \(brisbaneca.org\)](https://www.brisbaneca.org/urban-lot-splits-two-unit-developments)

In an urban lot split, do the two resultant lots need to be the same size?

No, but they must be close in size. Pursuant to state law, the allowable size ratio between two resultant lots must be in the range of 40:60 to 50:50. For a 5,000 SF lot, that would be resultant lots in the range of 2,000 SF and 3,000 SF, to 2,500 SF and 2,500 SF, respectively.

Is there a maximum size of the dwelling units that may be permitted under SB 9?

The underlying district floor area limits would apply. For the [R-1 district](#) that floor area ratio is 0.72, or 3,600 sq ft on a 5,000 sq ft lot, except that the City must allow for primary dwelling units of at least 800 sq ft. An owner may voluntarily develop a smaller unit subject to California Building Code requirements. For the [R-BA district](#), the maximum FAR is also 0.72, except that the total floor area may not exceed 5,500 sq ft.

What development standards apply to units developed under SB 9 provisions?

SB 9 provides that a jurisdiction may not require more than a 4 foot building setback from the side or rear lot lines. Comparing this to the current R-1 district standards, the minimum side setbacks range from 3 to 5 feet, depending on the lot width, and the rear setback requirement is 10 feet. In the R-BA district, the minimum rear setback is also 10 feet and the side setbacks range from 5 to 15 feet, depending on the lot width.

Following the Planning Commission's workshops and public hearing on the draft ordinance, the Commission recommended an objective standard, that the area between the zoning district's standard setback area and the state's 4 foot allowance, the building height may not exceed 25 feet. The current standard in the R-1 district is 28 to 30 feet depending on the slope. Additionally, the 25 foot limit would apply to ridgeline lots within the R-BA district. The current height limit for buildings in the R-BA district is 35 feet. (Note, under the draft ordinance [2024-RZ-2](#) a height limit of 36 feet has been proposed for both the R-1 and R-BA districts.)

Also, per SB 9 provisions, the City may not require more than one parking space for each primary dwelling unit. Following the Planning Commission's workshops and public hearing on the draft ordinance, the Commission has recommended an objective standard, that the parking requirement may only be met by off-street uncovered parking or by parking covered by a carport. While garage spaces may be provided, as an owner's option, they would not count towards the minimum requirement. This proposed standard stemmed from a concern over the common practice of use of garages for storage other than parking.

It has also been proposed that shared driveways should be permitted. This would be to allow for fewer driveway curb-cuts, to help minimize impacts to existing street parking.

Note that, where the R-1 or R-BA zoning district standards are not specifically superseded by the standards provided through SB 9, the underlying zoning district standards would apply.

How are accessory dwelling units or junior accessory dwelling units affected by SB 9?

The development provisions for ADUs and JADUs are contained in [BMC Chapter 17.43](#). These provisions would not be changed by the ordinance. That is with the exception that, the use of a property for an ADU or JADU might be superseded by development of a primary dwelling unit through SB 9, but where an ADU or JADU is allowed, the provisions of Chapter 17.43 would still apply.

Since there was a lawsuit over SB 9 in southern California, how will this affect Brisbane?

A recent ruling by a Los Angeles Superior Court judge's overturning SB 9 applied to five charter cities in Southern California. The City's Legal Counsel indicated that the decision has no effect on other trial courts or other cities. Also, the cities in question are charter cities, not general law cities, such as Brisbane, and the decision hinged on SB 9 conflicting with the land use authority of those cities under their charters. As such, the decision is not relevant to SB 9 as it applies to the City of Brisbane.

Are there some buildout examples?

Subject to certain restrictions, SB 9 allows for two-unit developments and urban lot splits in the [R-1 Residential District](#) and [R-BA Brisbane Acres Residential District](#). No more than two primary units may be built on a single lot, whether before or after a lot split, and no more than 4 units (including ADUs and JADUs) may be built across the original lot area.

Consistent with SB 9, [the draft ordinance](#) provides tables showing the possible scenarios. A few of the many possibilities have been illustrated on the [City's website](#), based on a 5,000 sq ft lot in the [R-1 district](#) and a 20,000 sq ft lot in the [R-BA district](#).

Click here for [sample scenarios of Two Unit Developments and Urban Lot Splits](#) and three [Brisbane case studies](#).

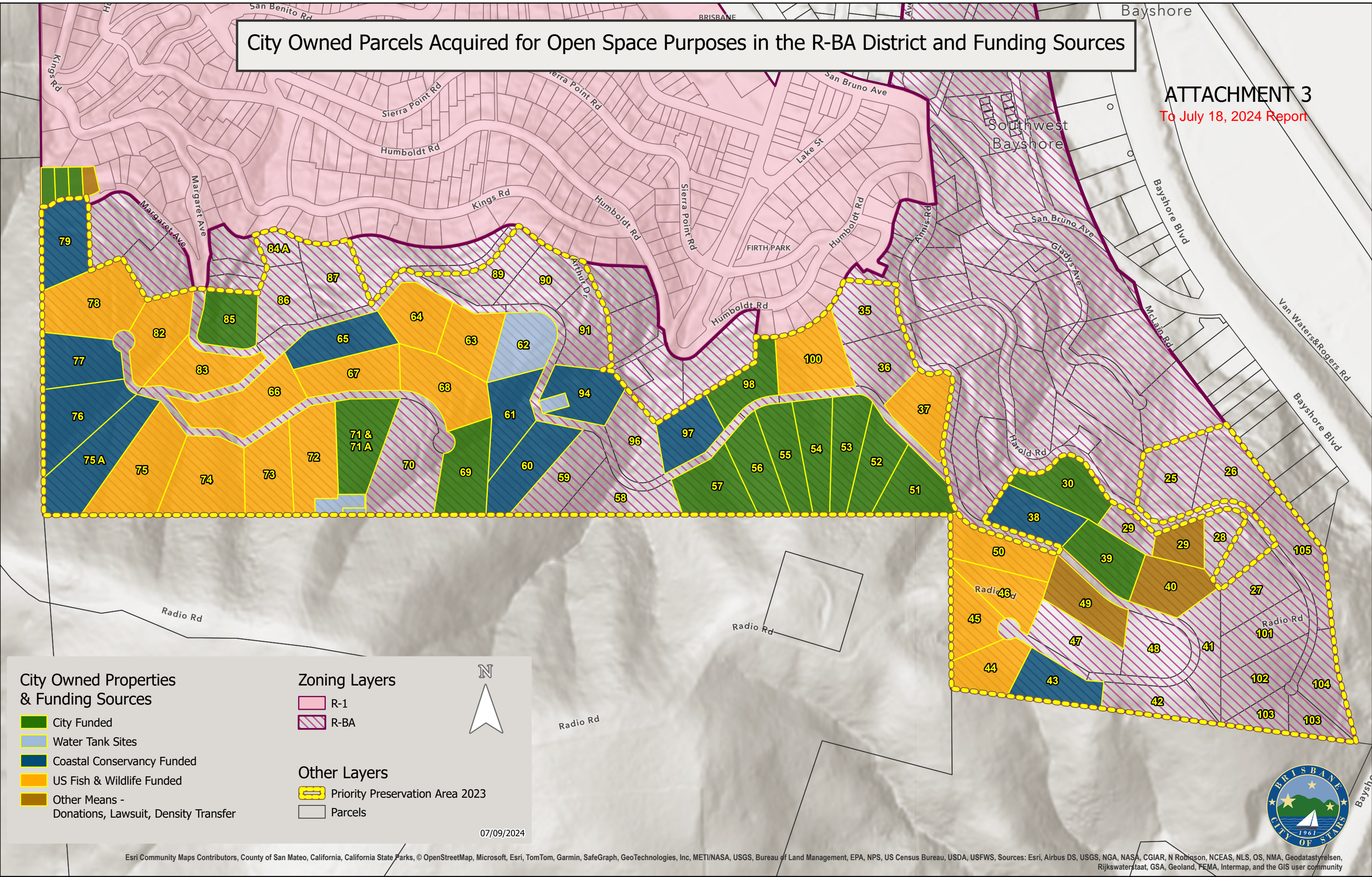
ATTACHMENT 2
To July 18, 2024 Report

Website hyperlinks:

- a) [Draft Ordinances | City of Brisbane, CA \(brisbaneca.org\)](#)
- b) [2024-RZ-1 | City of Brisbane, CA \(brisbaneca.org\)](#)

City Owned Parcels Acquired for Open Space Purposes in the R-BA District and Funding Sources

ATTACHMENT 3
To July 18, 2024 Report



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

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

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

16.12.040 - Tentative and final parcel map- Exceptions to requirements

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

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

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

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

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

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

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

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

17.02.235 - Dwelling.

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

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

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

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

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

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

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

17.05 Residential Two Unit Development Overlay District.

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

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

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

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

17.05.030 Definitions

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

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

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

17.05.040 Eligibility.

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

17.05.050 Anti-displacement/Eligibility Criteria.

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

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

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

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

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

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

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

Notes:

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

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

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

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

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

5. Height of Primary Dwelling Units.

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

6. Off-Street Parking.

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

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

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

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

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

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

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

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

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

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

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

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

Notes:

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

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

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

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

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

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

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

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

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

5. Height of Primary Units.

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

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

6. Off-Street Parking.

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

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

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

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

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

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

17.05.090 Requirement for a Building Permit

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

17.05.100 Notices

Upon issuance of a building permit for a two unit development under Section 17.05.070 or a building permit following an urban lot split under Section 17.05.080, the City shall provide an informational notice to the property owners adjacent to and directly across the street from the subject site(s). The notice shall provide a brief description of the project and information on how to view approved plans.

17.05.110 Condominiums

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

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

SECTION 8: If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of Brisbane hereby declares that it would have passed this Ordinance and each section,

subsection, sentence, clause and phrase thereof, irrespective of the fact that one or more sections, subsections, sentences, clauses or phrases may be held invalid or unconstitutional.

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

Terry O'Connell, Mayor

* * *

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

AYES:

NOES:

ABSENT:

ABSTAIN:

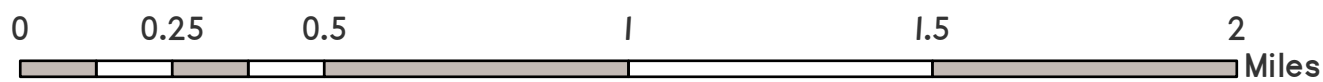
Mayor

ATTEST:

APPROVED AS TO FORM:

City Clerk

City Attorney



CITY OF BRISBANE CALIFORNIA





CITY COUNCIL AGENDA REPORT

Meeting Date: June 6, 2024

From: John Swiecki, Community Development Director

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

COMMUNITY GOAL/RESULT

Safe Community - Residents and visitors will experience a sense of safety.

PURPOSE

To amend the zoning ordinance to establish regulations for urban lot splits and two-unit developments consistent with the requirements of Senate Bill SB 9.

RECOMMENDATION

Introduce the ordinance amending the zoning text and zoning map to establish the R-TUO Residential Two Unit Overlay district and related code amendments, as provided in Attachments 1 and 2.

BACKGROUND

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

Property owners may invoke the provisions of SB 9, absent a City ordinance. Since January 2022, the City has had four such applications submitted, two for urban lot splits and two for two unit

developments. Although SB 9 may be invoked without City regulations, the revised 2023-2031 Housing Element (Housing Element) includes a program for Brisbane to update its zoning ordinance to implement SB 9. That is:

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

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

The Planning Commission held workshops in 2023 to early 2024 on the proposed regulations, then a held a public hearing on May 9, 2024. The Planning Commission, by a vote of 4-0, recommended that City Council adopt the proposed ordinance. The Planning Commission resolution, draft minutes and agenda report are provided in Attachments 4, 5 and 6. Public correspondence is provided in Attachment 7.

Correspondence and the Planning Commission’s discussion referenced a recent ruling by a Los Angeles Superior Court judge’s overturning SB 9 as it applies to five charter cities in Southern California and its potential applicability to Brisbane. The City’s Legal Counsel indicated that the decision has no effect on other trial courts or other cities. Also, the cities in question are charter cities, not general law cities, such as Brisbane, and the decision hinged on SB 9 conflicting with the land use authority of those cities under their charters. As such, the decision is not relevant to SB 9 as it applies to the City of Brisbane.

DISCUSSION:

SB 9 allows for owners of certain eligible lots within the single-family zoning districts to either split an existing lot of record to two lots, or to keep the lot as-is and develop it with two primary units where one single family dwelling would otherwise be permitted. Note that a primary dwelling unit is a housing unit that is not a junior accessory dwelling unit (JADU) or accessory dwelling unit (ADU). Primary dwelling unit is a broad term that, for the purposes of the proposed overlay district, may include single family dwellings, duplex dwelling units and two-unit dwelling groups. In multifamily zoning districts a primary unit may also refer to units within a multifamily development.

State law and Brisbane code also allows for JADUs and ADUs, both on lots with single family dwellings and those established through SB 9. There are various ways that development under SB 9 could be accomplished, but in essence the maximum number of units that could be permitted by invoking SB 9 is four units and the maximum without SB 9 is three units. Note that per SB 9, the permitting process would be ministerial, whether the development is as a two unit development on an existing lot, or by urban lot split.

Specific provisions, as required by SB 9, allow for the following:

- Primary dwelling units of 800 square feet in floor area must be allowed, regardless of the underlying district's floor area ratio (FAR) maximums. Note that JADU and ADU sizes are provided in BMC Chapter 17.43, consistent with state law, and these would not change.
- The district's lot coverage limits may not be used to prevent development that would otherwise comply with the development standards.
- Required side and rear setbacks shall not exceed 4 feet.
- No more than 1 off-street parking space per primary dwelling unit may be required by the City.
- For urban lot splits, the two resultant lots must each be at least 1,200 square feet and the size difference between the lot must be in the proportion range of 50:50 to 40:60, so they would be near the same size.

Additional provisions proposed in the draft ordinance are outlined below, with further discussion on the next page:

- In cases where the 4 foot setback would be less than the underlying district setback, a height limit of 25 feet is proposed as discussed below. The existing district setback standards range from 3 to 5 feet for the side and 10 feet in the rear in the R-1 district and 5 to 15 feet for the side and 10 feet in the rear in the R-BA district.
- Each primary dwelling unit would be required to have a minimum of one standard size off-street parking space, as indicated above, and that parking may be either uncovered or covered by a carport. Garage parking may also be provided, as an owner's option in addition to the minimum parking, but it may not count toward meeting the required parking.
- Shared driveways may be permitted.

Height Limit: The 25 foot height limit is proposed for that portion of a primary dwelling that is located between the underlying district setback and the 4 foot setback allowed by SB 9. For example, the rear setback for structures in the R-1 district is 10 feet minimum from the rear lot line, whereas SB 9 reduces that setback to a 4 feet minimum. The 25 foot height limit would apply to that portion of a structure located between the 10 foot and 4 foot setbacks.

The height of 25 feet is proposed as it is the same as recently adopted state law for ADU heights, which may also have 4 foot setbacks. This same objective standard would apply to any primary

unit on an R-BA ridgeline lot, since the design permit provisions for ridgeline lots would not apply in the case of a two unit development using the overlay standards. This would be a reduction from the current district height limit of 35 feet in the R-BA district and the 30 height limit in the R-1. (Note that the draft ordinance 2024-RZ-2, which is also on the agenda for tonight, would raise the underlying district heights to 36 feet, but the 25 foot limit would apply to that portion of a structure that's within the normal setback area.)

Parking & Shared Driveways: As noted above, each primary dwelling unit would be required to have a minimum of one standard size off-street parking space. That may be uncovered or covered by a carport. Garage parking may also be provided, as an owner's option in addition to the minimum parking, but it may not count toward meeting the required parking. The provision of not counting garage parking toward the minimum requirement is proposed as a result of Planning Commission concerns raised about the use of garage spaces for other uses besides parking, such as storage, and the limited number of on-street parking spaces in many of the R-1 residential neighborhoods. Note that JADU or ADU off-street parking generally is not required, with some exceptions depending on distance to public transportation, and this would not be changed through this ordinance.

Shared driveways may also be permitted, given the proposed amendment to the driveway definition, but where parking is required for the different units, they must be independently accessible (i.e. not in tandem with another unit). Note that the amendment to allow for shared driveways would be within Chapter 17.02 - Definitions, so it would extend beyond the overlay zoning district.

The Planning Commission recommended an additional provision following the public hearing, that an informational notice to be sent to adjacent property owners upon issuance of a building permit approval, for projects approved utilizing the overlay provisions. That has been included in the draft ordinance as Section 17.05.100 - Notices.

Correspondence received prior to the Planning Commission hearing was duly considered by the Commission and is provided for reference in Attachment 7.

FISCAL IMPACT

None.

MEASURE OF SUCCESS

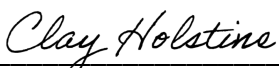
To provide clear provisions in the BMC in compliance with SB 9 (2021).

ATTACHMENTS

1. ~~Draft Ordinance Establishing the R-TUO Zoning District~~ Provided separately
2. ~~Draft Zoning Map Amendment Showing the Proposed R-TUO District~~
3. Redlined Draft Ordinance
4. Planning Commission Resolution 2024-RZ-1
5. Draft Planning Commission Meeting Minutes, May 9, 2024
6. Planning Commission Agenda Report, May 9, 2024
7. Correspondence



John Swiecki, Community Development Director



Clay Holstine, City Manager

REDLINED DRAFT ORDINANCE

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

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

16.12.040 - Tentative and final parcel map- Exceptions to requirements

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

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

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

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

Section 17.02.120 - Carport is amended, as follows:

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

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

Section 17.02.220 - Driveway is amended, as follows:

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

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

Section 17.02.230 - Duplex is hereby deleted in its entirety.

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

17.02.235 - Dwelling.

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

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

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

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

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

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

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

17.05 Residential Two Unit Development Overlay District.

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

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

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

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

17.05.030 Definitions

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

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

17.05.040 Eligibility.

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

17.05.050 Anti-displacement/Eligibility Criteria.

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

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

- A. Duplex dwellings.

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

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

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

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

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

Notes:

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

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

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

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

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

5. Height of Primary Dwelling Units.

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

6. Off-Street Parking.

- (a) A minimum of one standard size, off-street parking space (uncovered or carport) for each primary dwelling unit shall be required (refer to Chapter 17.34 for parking space design standards). Garage parking space(s) shall not count towards meeting the minimum parking requirements.
- (b) Shared driveways may be permitted to serve more than one dwelling unit, subject to approval by the City Engineer, based on finding that a shared driveway will not pose a hazard to public safety. See the definition of driveway in Section 17.02.220 of this title.
- (c) Notwithstanding the parking requirements indicated above, no off-street parking shall be required if:
 - (i) The lot is located within one-half mile walking distance of either a transit stop located in a high-quality transit corridor, as defined in Public Resources Code Section 21155(b), or a major transit stop, as defined in Public Resources Code Section 21064.3; or
 - (ii) There is a designated parking area for one or more car-share facilities within one block of the lot.

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

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

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

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

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

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

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

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

Notes:

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

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

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

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

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

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

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

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

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

5. Height of Primary Units.

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

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

6. Off-Street Parking.

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

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

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

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

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

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

17.05.090 Requirement for a Building Permit

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

17.05.100 Notices

Upon issuance of a building permit for a two unit development under Section 17.05.070 or a building permit following an urban lot split under Section 17.05.080, the City shall provide an informational notice to the property owners adjacent to and directly across the street from the subject site(s). The notice shall provide a brief description of the project and information on how to view approved plans.

17.05.110 Condominiums

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

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

RESOLUTION 2024-RZ-1

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

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

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

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

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

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

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

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

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

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

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

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

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

WHEREAS, on May 9, 2024, the Planning Commission conducted a hearing of the application, publicly noticed in compliance with Brisbane Municipal Code Chapters 1.12 and 17.54, at which time any person interested in the matter was given an opportunity to be heard; and

WHEREAS, the Planning Commission reviewed and considered the staff memorandum relating to said application, and the written and oral evidence presented to the Planning Commission in support of and in opposition to the application; and

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

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

ADOPTED this ninth day of May, 2024, by the following vote:

AYES: Funke, Lau, Patel, and Sayasane


NOES: NA

ABSENT: Gooding

ATTEST:



JOHN SWIECKI, Community Development Director


PAMALA SAYASANE, Vice Chairperson
for ALEX LAU, Chairperson

DRAFT
BRISBANE PLANNING COMMISSION
Action Minutes of May 9, 2024
Hybrid Meeting

ROLL CALL

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

CALL TO ORDER

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

ADOPTION OF AGENDA

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

CONSENT CALENDAR

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

ORAL COMMUNICATIONS

There were none.

WRITTEN COMMUNICATIONS

Chairperson Lau acknowledged written correspondence pertaining to New Business Items A and B

NEW BUSINESS

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

Senior Planner Johnson presented staff report to the Commission.

Commissioner Sayasane asked about the pending court decision on SB 9 in the Los Angeles Superior Court and whether the City's decision on the ordinance should be postponed until after that ruling has further played out. Director Swiecki responded, noting that Brisbane's legal counsel had reviewed this matter and indicated that the decision is from a trial court in southern California and is only applicable to those specific charter cities. It would not be applicable to Brisbane which is a general law city. In response to an inquiry as to what would happen if SB9 was repealed or invalidated, Mr. Swiecki responded the City could amend its zoning regulations accordingly.

Commissioner Patel asked about whether there were notification procedures included in the draft ordinance. Staff responded that there were not, since lot splits and two-unit developments are to be ministerial, per SB 9. Mr Swiecki noted an informational notification could be provided.

Chairperson Lau opened the public hearing.

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

After discussion, a motion was made by Commissioner Patel and seconded by Commissioner Funke to approve the application, including an informational notification provision to adjacent property owners, via adoption of Resolution 2024-RZ-1. The motion was approved 4-0.

Chairperson Lau read the appeal procedure.

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

Senior Planner Johnson presented staff report to the Commission.

Senior Planner Johnson responded to the Commission's questions regarding the balance between lot coverage and the floor area ratio for multifamily developments that would have a 1.25 floor area ratio maximum, the process for Planning Commission appeals on Zoning Administrator items, the rationale for increasing the height limit to 36 feet, the difference between minor versus and major modifications, and the neighbor notification process for Zoning Administrator applications.

Chairperson Lau opened the public hearing.

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

A motion was made by Commissioner Patel and seconded by Commissioner Sayasane to approve the application via adoption of Resolution 2024-RZ-2. The motion was approved 4-0.

Chairperson Lau read the appeal procedure.

ITEMS INITIATED BY STAFF

Director Swiecki noted the following:

1. County-wide planning commissioner training will be held at the end of May,
2. The City Council authorized staff to initiate the Bank of America planning process.
3. Jeremy Dennis was hired as the new City Manager.

ITEMS INITIATED BY THE COMMISSION

Commissioner Sayasane announced she registered for the commissioner training and invited the other members to join.

ADJOURNMENT

Chairperson Lau adjourned the meeting at approximately 8:44 p.m. to the next regular meeting of May 23, 2024.

Attest:

John A. Swiecki, Community Development Director

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