



## **CITY COUNCIL AGENDA REPORT**

**Meeting Date:** December 4, 2025

**From:** Jeremy Dennis, City Manager

**Subject:** Discussion/Direction, Nonconformity Use Application to Properties Adjacent to Community Park

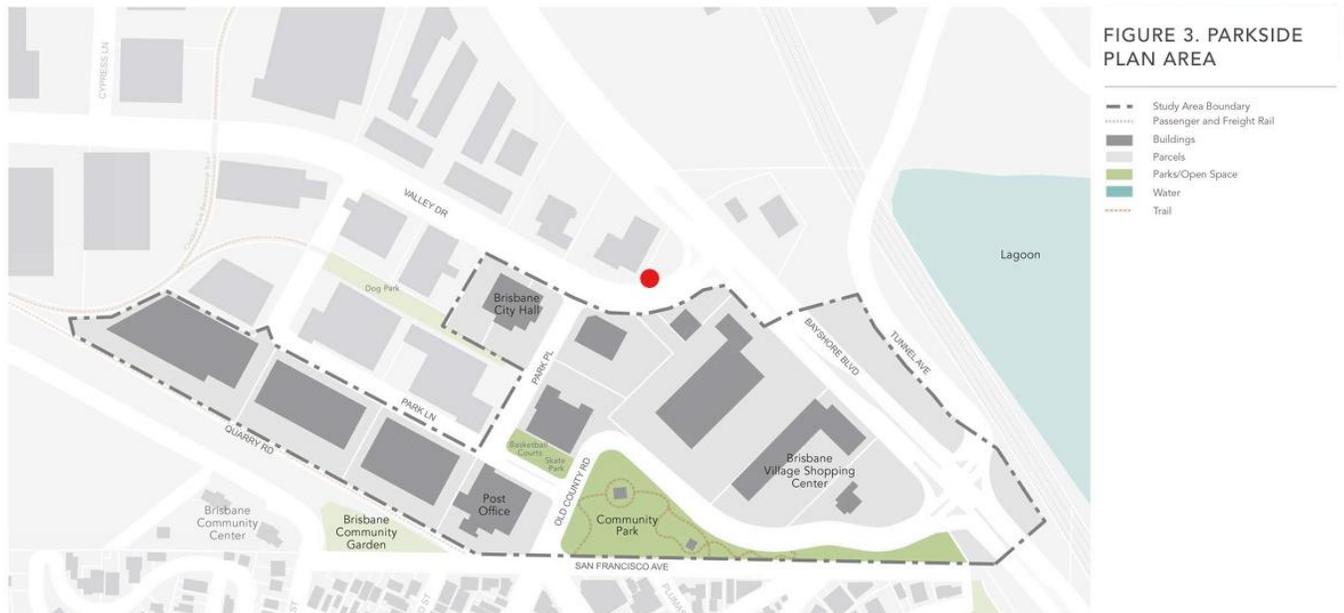
### **Recommendation**

As requested by Mayor Lentz and Mayor Pro Tem Mackin, staff recommend that the City Council provide direction to staff regarding the potential use of nonconformity code for properties adjacent to the Community Park.

### **Background**

At the November 20, 2025 City Council Meeting, a study session was held regarding the 70 Old County Road Planning Program. Good City Company, consultant under contract to the City on this project, presented an update on community engagement to date. This initial community outreach consisted of: two Open Houses, two Pop-Up Workshops, and a Vision Concept Survey. Council was given comprehensive data on community feedback including preferred concepts, suggestions, and visions.

The Council recently formed an ad hoc subcommittee to review potential options for the entrance to Brisbane. This part of Brisbane, generally understood to be the “Parkside” area, consists of approximately 25 acres of publicly and privately owned properties including the City-owned 70 Old County Road parcel. The Subcommittee was created to examine potential for incorporation of preferred concepts expressed by residents during recent community outreach.



## Discussion

### Nonconformity Regulations

The City of Brisbane Zoning Ordinance (BMC Title 17) establishes the City’s zoning districts and specifies permitted and conditionally permitted uses with each zoning district. Title 17 further sets forth regulations governing non-conforming uses which are existing uses that do not comply with the existing zoning regulations.

The City has the legal authority to establish zoning districts and apply zoning districts to private property to provide for the orderly development of the City in accordance with established goals and policies. The City’s land use goals and policies are set forth in the General Plan and zoning districts are applied to properties, consistent with the General Plan.

If the City determines that the City’s long term development pattern should be modified for the City’s health, safety and welfare, the City has the right to amend the General Plan and zoning on private property or properties, subject to the public hearing process. If the City were to amend the general plan and rezone properties such that existing land uses do not conform to the new regulations, such uses would be considered legal nonconforming and subject the nonconforming use provisions set forth in BMC 17.38 (attached).

In general, the nonconforming use provisions are intended to facilitate the transition of nonconforming uses to conforming uses over time while protecting existing use rights. While

### **Nonconformity Use Application to Properties Adjacent to Community Park**

existing nonconforming uses are permitted to continue operations, they are not allowed to expand or transition from one nonconforming use to another.

It would be up to the City Council to direct staff to initiate a general plan amendment and rezoning that would render an existing use nonconforming.

Properties Suggested for Nonconformity Regulations

Mayor Lentz and Mayor Pro Tem Mackin recommend that the City Council direct staff and the Planning Commission to consider implementation of nonconformity regulations on the warehouse properties that are immediately adjacent to the Community Park located at (Attachment 2):

- 125 Valley (Heirloom)
- 41 Park Place (SFO Apparel)
- 280 Old County Road (Post Office)

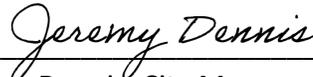
Such regulations would be in place temporarily as staff work with the Parkside 2 Subcommittee and the potentially affected property owners. Implementation would ensure that Council has adequate time to consider planning options for the subject area under review.

**Fiscal Impact**

Should the City Council wish to pursue the application of nonconformity regulations temporarily on the properties above, staff resources would be required to produce relevant work product, as well as supporting the Planning Commission on their review.

**Attachments:**

1. Relevant Excerpts, Section 17.38 Brisbane Municipal Code (Nonconforming Use)
2. Map of Planning Area

  
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Jeremy Dennis, City Manager

**EXCERPTS BMC Section 17.38**

**17.38.020 - Change or replacement of nonconforming use.**

A . A nonconforming use shall not be changed to or replaced by another nonconforming use.

B. A nonconforming use which is changed to or replaced by a conforming use shall not be re-established. Where any portion of a nonconforming facility is changed from a nonconforming use to a conforming use, such portion shall thereafter only be used for a conforming use.

**17.38.30 - Expansion of nonconforming uses.**

A. Except as otherwise provided in subsection B. of this [17.38.030](#) and Section [17.38.110](#) of this chapter, a nonconforming use may not be enlarged, expanded or intensified. This prohibition shall include any enlargement, expansion or intensification of a nonconforming use which:

1. Increases the site area or floor area occupied by the nonconforming use; or
- 2 Increases the amount, volume, or intensity of nonconforming business use, or the machinery, equipment, trade fixtures or other personal property utilized in the conduct of such use; or
3. Displaces any conforming use occupying a structure or site.

**17.38.040 - Maintenance and repair of nonconforming facility.**

A. Nonconforming facilities may be continued, maintained and repaired so as to protect the health and safety of the occupants and preserve the useful life of the structure.

B, Nonconforming facilities may be remodeled and the interior reconfigured so long as there is no enlargement, expansion, or intensification of the nonconforming use, except as otherwise permitted by subsection B. of Section [17.38.030](#).

(Ord. 478 § 2(part), 2003).

**17.38.050 - Abandonment of nonconforming uses.**

**A.** Whenever a nonconforming nonresidential use has been abandoned, such use shall not be resumed or re-established and all subsequent uses of the site shall conform with the requirements of this title. Discontinuance of a nonconforming nonresidential use for a period of one hundred twenty (120) consecutive days or more shall conclusively be presumed an abandonment of such use; provided, however, discontinuance under any of the following circumstances shall not be considered an abandonment of the use:

1. Any discontinuance of use in connection with a pending sale or other transfer of ownership or management of the nonconforming use to a designated person or persons and the discontinuance of use is solely for the purpose of accomplishing the sale or transfer.
2. Any discontinuance of use during a reasonable period of reconstruction or replacement of the damaged or destroyed nonconforming facility, where such reconstruction or replacement is permitted under the provisions of Section [17.38.060](#).
3. Any other circumstance found by the planning commission to have been beyond the reasonable control of the person conducting the use, and such person commences the activity necessary for re-establishment of the use and prosecutes the same diligently to completion.

**17.38.060 - Reconstruction or replacement of nonconforming facility.**

A nonconforming facility which is damaged or destroyed may be reconstructed or replaced for continued occupancy by the nonconforming use or uses previously conducted therein, subject to the following limitations:

- A. The site area or floor area occupied by the nonconforming use, and the intensity of activity conducted by the nonconforming use, subsequent to reconstruction or replacement of the facility shall not exceed that existing prior to the damage or destruction of the facility, except as otherwise permitted by subsection B. of [17.38.030](#).
- B. The reconstructed or replaced facility shall comply with all of the applicable regulations of this title, other than the use of the structure, and all applicable provisions of the building, health, and fire codes.

