



## CITY COUNCIL AGENDA REPORT

**Meeting Date:** September 17, 2020

**From:** John Swiecki, Community Development Director

**Subject:** Proposed Ordinance No. 657 (Zoning Text Amendment RZ-1-20); Zoning amendments to amend existing floor area ratio exemption for garages on substandard lots in residential zoning districts

### **Community Goal/Result**

Community Building

### **Purpose**

To amend the Brisbane Municipal Code (BMC) to increase the Floor Area Ratio (FAR) exemption from 200 sq ft to 400 sq ft for garages on lots 3,700 sq ft or smaller in size in the R-1, R-2, and R-3 Residential zoning districts.

### **Recommendation**

That the City Council introduce Ordinance No. 657.

### **Background**

On September 5, 2019, the City Council initiated a zoning text amendment to increase the FAR exemption for garages on small lots in the R-1, R-2, and R-3 Residential districts to increase the potential supply of off-street parking in those districts. Attachment 3.F has a detailed history of the origin and evolution of the current FAR covered parking exemption.

On May 14, 2020, the Planning Commission unanimously adopted Resolution RZ-1-20 recommending that the current FAR exemption be increased to 400 sq ft, or the equivalent of a two-car garage, as provided in the attached draft Ordinance 657 (Attachment 1). (Note: RZ-1-20 also contained zoning amendments to the City's accessory dwelling unit regulations, which will be presented separately to the Council as Ordinance No. 653.) The Planning Commission agenda report, draft meeting minutes, and adopted resolution are attached for reference and include a detailed description of the proposed zoning amendments. (See Attachment 3.)

### **Discussion**

Current zoning regulations establish an allowance whereby 200 square foot of garage area is excluded from the floor area ratio (FAR) calculation for lots 3,700 square feet in size or less developed with a single-family dwelling in the R-1, R-2, and R-3 Residential zoning districts. The proposed ordinance would increase the exemption to 400 square feet, the equivalent of a two-car garage per the City's garage design standards.

The intent of the ordinance is to promote/encourage the provision of off-street parking, while as a practical matter it would also increase the functional FAR and allow for larger homes on these lots. Lot coverage would still limit the overall footprint of the single-family dwelling.

The Council should note that draft Ordinance 653 would codify current State law which allows garages to be converted to accessory dwelling units without the provision of replacement off-street parking. This is in contrast with existing provisions in Chapter 17.34 that mandate that garages not be converted to any other use that would impair their basic use as storage for motor vehicles, a provision has traditionally presented a challenge to enforce on lots of all sizes.

### **Fiscal Impact**

None.

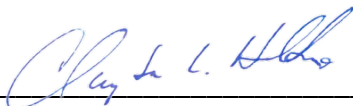
### **Measure of Success**

Adoption of zoning regulations that incentivize the development of additional off-street parking in the City's residential neighborhoods.

### **Attachments**

1. Draft Ordinance No. 657
2. Redline Copy of proposed Zoning Text Amendments
3. May 14, 2020 Planning Commission Resolution RZ-1-20 (Excerpt), Minutes, and Agenda Report
4. City Council meeting minutes of September 5, 2019 (Excerpt)

  
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John Swiecki, Community Development Director

  
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Clay Holstine, City Manager

ATTACHMENT 1

DRAFT ORDINANCE NO. 657

**draft**  
**ORDINANCE NO. 657**

**AN ORDINANCE OF THE CITY OF BRISBANE  
AMENDING SECTIONS 17.06.040, 17.08.040, AND 17.10.040  
OF THE BRISBANE MUNICIPAL CODE  
CONCERNING THE FLOOR AREA RATIO EXEMPTION  
FOR GARAGES ON SMALL LOTS**

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

**SECTION 1: Section 17.06.040 – Development regulations of Chapter 17.06 of the Zoning Ordinance is amended to read as follows:**

**17.06.040 - Development regulations.**

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

(Subsections A-E, no change.)

- F. Floor Area Ratio. The maximum floor area ratio for all buildings on a lot shall be 0.72. Where the size of the lot is three thousand seven hundred (3,700) square feet or less, no more than two covered parking spaces designed to accommodate full-size automobiles shall be excluded from the calculation of floor area ratio; provided, however, such exclusion shall not exceed a total area of four hundred (400) square feet.

(Subsections G-K, no change.)

**SECTION 2: Section 17.08.040 – Development regulations of Chapter 17.08 of the Zoning Ordinance is amended to read as follows:**

**17.08.040 - Development regulations.**

The following development regulations shall apply to any lot in the R-2 district:

(Subsections A-E, no change.)

- F. Floor Area Ratio. The maximum floor area ratio for all buildings on a lot shall be 0.72, subject to the following exclusions:
- a. In the case of single-family dwellings, where the size of the lot is three thousand seven hundred (3,700) square feet or less, no more than two covered parking spaces designed to accommodate full-size automobiles shall be excluded from the calculation of floor area ratio; provided, however, such exclusion shall not exceed a total area of four hundred (400) square feet.

(Paragraph 2, no change.)

(Subsections G-K, no change.)

**SECTION 3: Section 17.10.040 – Development regulations of Chapter 17.10 of the Zoning Ordinance is amended to read as follows:**

**17.10.040 - Development regulations.**

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

(Subsections A-E, no change.)

F. Floor Area Ratio. The maximum floor area ratio for all buildings on a lot shall be 0.72, subject to the following exclusions:

- a. In the case of single-family dwellings, where the size of the lot is three thousand seven hundred (3,700) square feet or less, no more than two covered parking spaces designed to accommodate full-size automobiles shall be excluded from the calculation of floor area ratio; provided, however, such exclusion shall not exceed a total area of four hundred (400) square feet.

(Paragraph 2, no change.)

(Subsections G-K, no change.)

**SECTION 4:** Where a use permit, design permit or variance approval has been issued through final action by the City prior to the effective date of this Ordinance, or where such planning permit approval is not required and a complete building permit application has been submitted prior to the effective date of this Ordinance, the holder of such use permit, design permit or variance approval or complete building permit application may proceed to construct the improvements or establish the use authorized by such permit or approval and the same shall be exempted from any conflicting regulations that may be contained in this Ordinance.

**SECTION 5:** 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 6:** This Ordinance shall be in full force and effect thirty days after its passage and adoption.

\* \* \*

The above and foregoing Ordinance was regularly introduced and after the waiting time required by law, was thereafter passed and adopted at a regular meeting of the City Council of the City of Brisbane held on the seventeenth day of September 2020, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

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Terry O'Connell, Mayor

ATTEST:

APPROVED AS TO FORM:

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City Clerk



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City Attorney

ATTACHMENT 2

REDLINE COPY OF PROPOSED AMENDMENTS

## Proposed Zoning Text Amendments: RZ-1-20 FAR Parking Exception

### 17.06.040 - Development regulations.

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

A. Lot Area.

1. The minimum area of any lot shall be five thousand (5,000) square feet.
2. A single-family dwelling may be constructed on a lot of record with an area of less than five thousand (5,000) square feet, subject to the provisions of this chapter and the limitations set forth in Section 17.32.100.

B. Density of Development. Not more than one single-family dwelling shall be located on each lot in the R-1 district.

C. Lot Dimensions. The minimum dimensions of any lot shall be as follows:

Width	Depth
50 feet	100 feet

D. Setbacks. The minimum required setbacks for any lot, except as provided in Section 17.32.070, shall be as follows:

1. Front setback: Fifteen (15) feet, with the following exceptions:

- a. Where the lot has a slope of fifteen percent (15%) or greater, the minimum front setback may be reduced to ten (10) feet.
- b. Where fifty percent (50%) or more of the lots of record in a block have been improved with single-family dwellings, the minimum front setback may be the average distance of the front outside wall of the single-family structures from the front lot line, if less than fifteen (15) feet. Notwithstanding the foregoing, the minimum front setback for garages or carports shall be ten (10) feet, except where a lesser distance is determined by the city engineer to be safe in terms of pedestrian and vehicular traffic.

2. Side setback: five (5) feet, with the exception that a lot having a width of less than fifty (50) feet may have a side setback reduced to ten percent (10%) of the lot width, but in no event less than three (3) feet or the minimum setback required by the Uniform Building Code, whichever is greater. Notwithstanding the foregoing, the minimum side setback for garages or carports accessed from a street or alley along that side of the lot shall be ten (10) feet, except where a lesser distance is determined by the city engineer to be safe in terms of pedestrian and vehicular traffic.

3. Rear setback: Ten (10) feet.

E. Lot Coverage. The maximum coverage by all structures on any lot shall be forty percent (40%).



F. Floor Area Ratio. The maximum floor area ratio for all buildings on a lot shall be 0.72. Where the size of the lot is three thousand seven hundred (3,700) square feet or less, ~~one~~ no more than two covered parking spaces designed to accommodate ~~a~~ full-size automobiles shall be excluded from the calculation of floor area ratio; provided, however, such exclusion shall not exceed a total area of ~~two~~ four hundred ~~(200)~~ (400) square feet.

G. Height of Structures.

1. Except as otherwise provided in paragraph 2 of this subsection G and in Section 17.32.060, the maximum height of any structure shall be as follows:
  - a. Twenty-eight (28) feet, for lots having a slope of less than twenty percent (20%); or
  - b. Thirty (30) feet, for lots having a slope of twenty percent (20%) or more.
2. For a distance of fifteen (15) feet from the front lot line, the height of any structure shall not exceed twenty (20) feet as measured from finish grade; provided, however, garages and carports may be constructed to a height of fifteen (15) feet above the elevation of the center of the adjacent street when permitted by Section 17.32.070 of this title. A garage or carport in compliance with this subsection may exceed a height of thirty (30) feet, but the height of any permitted living area underneath shall not exceed thirty (30) feet from finish grade.

H. Articulation Requirements. Unless exempted, outside walls that are greater in size than twenty (20) feet in width and twenty (20) feet in height shall have a cumulative area of articulation as follows:

1. Front outside wall: Thirty percent (30%) articulation.
2. Side outside walls:
  - a. Interior side outside wall: No articulation requirement.
  - b. Exterior side outside wall: Where the structure is located on a lot having an average width of forty (40) feet or greater, the articulation requirement for the exterior side outside wall shall be twenty percent (20%). No articulation shall be required for the exterior side outside wall of structures located on lots having an average width of less than forty (40) feet.
3. Rear outside wall: Thirty percent (30%) articulation.
4. Exemptions: Single story two (2) car garages and accessory structures not exceeding a floor area of one hundred twenty (120) square feet shall be exempted from all articulation requirements.

I. Landscaping Requirements.

1. Front Setback. A minimum of fifteen percent (15%) of the front setback area shall be landscaped where the lot has a front lot line of thirty (30) feet or greater.
  2. Downslope Lots. The rear of any newly constructed main structure on a downslope lot shall be screened with trees and shrubs in accordance with a landscape plan approved by the planning director.
  3. Irrigated Landscapes. New and rehabilitated, irrigated landscapes are subject to the provisions of the water conservation in landscaping ordinance (refer to Chapter 15.70) or the latest state provisions, whichever is more effective in conserving water.
- J. Nonconforming Residential Structures and Uses. Nonconforming residential structures and nonconforming residential uses, as defined in Section 17.02.560, may be repaired, restored, reconstructed, enlarged or expanded in accordance with the provisions of Chapters 17.38 and 17.34 of this title.
- K. Recycling Area Requirements. For new subdivisions containing an area where solid waste is collected and loaded in a location which serves five (5) or more living units, adequate, accessible and convenient areas for depositing, collecting and loading recyclable materials in receptacles shall be provided to serve the needs of the living units which utilize the area. This requirement shall also apply to all institutional buildings and city facilities (including buildings, structures, and outdoor recreation areas owned by the city) where solid waste is collected and loaded. The area shall be located and fully enclosed so as to adequately protect neighboring uses from adverse impacts such as noise, odor, vectors, wind-blown litter or glare. The area shall be designed to prevent storm water run-on to the area and runoff from the area, and roofs shall be designed to drain away from neighboring properties. A sign clearly identifying all recycling and solid waste collection and loading areas and the materials accepted therein shall be posted adjacent to all points of direct access to the area.

**17.08.040 - Development regulations.**

The following development regulations shall apply to any lot in the R-2 district:

A. Lot Area.

1. The minimum area of any lot shall be five thousand (5,000) square feet, except as otherwise provided in subsection B of this Section 17.08.040.
2. A single-family dwelling may be constructed on a lot of record with an area of less than five thousand (5,000) square feet, subject to the provisions of this chapter and the limitations set forth in Section 17.32.100.

B. Density of Development. The minimum lot area for each dwelling unit on the site shall be two thousand five hundred (2,500) square feet; provided, however, a lot having an area of four thousand nine hundred fifty (4,950) square feet or greater shall be considered conforming for a development density of two (2) units.

C. Lot Dimensions. The minimum dimensions of any lot shall be as follows:

Width	Depth
50 feet	100 feet

D. Setbacks. The minimum required setbacks for any lot, except as provided in Section 17.32.070, shall be as follows:

1. Front setback: Fifteen (15) feet, with the following exceptions:
  - a. Where the lot has a slope of fifteen percent (15%) or greater, the minimum front setback may be reduced to ten (10) feet.
  - b. Where fifty percent (50%) or more of the lots of record in a block have been improved with single-family dwellings, the minimum front setback may be the average distance of the front outside wall of the single-family structures from the front lot line, if less than fifteen (15) feet. Notwithstanding the foregoing, the minimum front setback for garages or carports shall be ten (10) feet, except where a lesser distance is determined by the city engineer to be safe in terms of pedestrian and vehicular traffic.
2. Side setback: five (5) feet, with the exception that a lot having a width of less than fifty (50) feet may have a side setback reduced to ten percent (10%) of the lot width, but in no event less than three (3) feet or the minimum setback required by the Uniform Building Code, whichever is greater. Notwithstanding the foregoing, the minimum side setback for garages, or carports accessed from a street or alley along that side of the lot shall be ten (10) feet, except where a lesser distance is determined by the city engineer to be safe in terms of pedestrian and vehicular traffic.
3. Rear setback: Ten (10) feet.

E. Lot Coverage. The maximum coverage by all structures on any lot shall be fifty percent (50%).

F. Floor Area Ratio. The maximum floor area ratio for all buildings on a lot shall be 0.72, subject to the following exclusions:

1. In the case of single-family dwellings, where the size of the lot is three thousand seven hundred (3,700) square feet or less, ~~one no more than two~~ covered parking spaces~~s~~ designed to accommodate~~a~~ full-size automobiles~~s~~ shall be excluded from the calculation of floor area ratio; provided, however, such exclusion shall not exceed a total area of ~~two-four~~ hundred ~~(200)(400)~~ square feet.

2. In the case of duplexes and multiple-family dwellings, the area of all covered parking spaces required to be provided for the site shall be excluded from the calculation of floor area ratio; provided, however, such exclusion shall not exceed a total area of four hundred (400) square feet per unit.

G. Height of Structures.

1. Except as otherwise provided in paragraph 2 of this subsection G and in Section 17.32.060, the maximum height of any structure shall be as follows:

a. Twenty-eight (28) feet, for lots having a slope of less than twenty percent (20%); or

b. Thirty (30) feet, for lots having a slope of twenty percent (20%) or more.

2. For a distance of fifteen (15) feet from the front lot line, the height of any structure shall not exceed twenty (20) feet as measured from finish grade; provided, however, garages and carports may be constructed to a height of fifteen (15) feet above the elevation of the center of the adjacent street when permitted by Section 17.32.070 of this title. A garage or carport in compliance with this subsection may exceed a height of thirty (30) feet, but the height of any permitted living area underneath shall not exceed thirty (30) feet from finish grade.

H. Articulation Requirements. Unless exempted, outside walls that are greater in size than twenty (20) feet in width and twenty (20) feet in height shall have a cumulative area of articulation as follows:

1. Front outside wall: Thirty percent (30%) articulation.

2. Side outside walls:

a. Interior side outside wall: No articulation requirement.

b. Exterior side outside wall: Where the structure is located on a lot having an average width of forty (40) feet or greater, the articulation requirement for the exterior side outside wall shall be twenty percent (20%). No articulation shall be required for the exterior side outside wall of structures located on lots having an average width of less than forty (40) feet.

3. Rear outside wall: Thirty percent (30%) articulation.
  4. Exemptions: Single story two (2) car garages and accessory structures not exceeding a floor area of one hundred twenty (120) square feet shall be exempted from all articulation requirements.
- I. Landscaping Requirements.
1. Front Setback. A minimum of fifteen percent (15%) of the front setback area shall be landscaped where the lot has a front lot line of thirty (30) feet or greater.
  2. Downslope Lots. The rear of any newly constructed main structure on a downslope lot shall be screened with trees and shrubs in accordance with a landscape plan approved by the planning director.
  3. Irrigated Landscapes. New and rehabilitated, irrigated landscapes are subject to the provisions of the water conservation in landscaping ordinance (refer to Chapter 15.70) or the latest state provisions, whichever is more effective in conserving water.
- J. Nonconforming Residential Structures and Uses. Nonconforming residential structures and nonconforming residential uses, as defined in Section 17.02.560, may be repaired, restored, reconstructed, enlarged or expanded in accordance with the provisions of Chapters 17.38 and 17.34 of this title.
- K. Recycling Area Requirements:
1. Adequate, accessible and convenient areas for depositing, collecting and loading recyclable materials in receptacles shall be provided. The area shall be located and fully enclosed so as to adequately protect neighboring uses from adverse impacts such as noise, odor, vectors, wind-blown litter or glare. The area shall be designed to prevent storm water run-on to the area and runoff from the area, and roofs shall be designed to drain away from neighboring properties. A sign clearly identifying all recycling and solid waste collection and loading areas and the materials accepted therein shall be posted adjacent to all points of direct access to the area.
  2. This requirement shall apply to all new residential buildings having five (5) or more living units, institutional buildings and city facilities (including buildings, structures, and outdoor recreation areas owned by the city) where solid waste is collected and loaded. This requirement shall also apply to such existing developments for which building permit applications are submitted within a twelve-month period collectively adding thirty percent (30%) or more to the existing floor area of the development project.

**17.10.040 - Development regulations.**

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

A. Lot Area.

1. The minimum area of any lot shall be five thousand (5,000) square feet, except as otherwise provided in subsection B of this section.
2. A single-family dwelling may be constructed on a lot of record with an area of less than five thousand (5,000) square feet, subject to the provisions of this chapter and the limitations set forth in Section 17.32.100.

B. Density of Development. The minimum lot area for each dwelling unit on the site shall be one thousand five hundred (1,500) square feet; provided, however, a lot having an area of four thousand nine hundred fifty (4,950) square feet or greater shall be considered conforming for a development density of three (3) units.

C. Lot Dimensions. The minimum dimensions of any lot shall be as follows:

Width	Depth
50 feet	100 feet

D. Setbacks. The minimum required setbacks for any lot, except as provided in Section 17.32.070, shall be as follows:

1. Front setback: Fifteen (15) feet, with the following exceptions:
  - a. Where the lot has a slope of fifteen percent (15%) or greater, the minimum front setback may be reduced to ten (10) feet.
  - b. Where fifty percent (50%) or more of the lots of record in a block have been improved with single-family dwellings, the minimum front setback may be the average distance of the front outside wall of the single-family structures from the front lot line, if less than fifteen (15) feet. Notwithstanding the foregoing, the minimum front setback for garages or carports shall be ten (10) feet, except where a lesser distance is determined by the city engineer to be safe in terms of pedestrian and vehicular traffic.
2. Side setback: five (5) feet, with the exception that a lot having a width of less than fifty (50) feet may have a side setback reduced to ten percent (10%) of the lot width, but in no event less than three (3) feet or the minimum setback required by the Uniform Building Code, whichever is greater. Notwithstanding the foregoing, the minimum side setback for garages, or carports accessed from a street or alley along that side of the lot shall be ten (10) feet, except where a lesser distance is determined by the city engineer to be safe in terms of pedestrian and vehicular traffic.
3. Rear setback: Ten (10) feet.

- E. Lot Coverage. The maximum coverage by all structures on any lot shall be sixty percent (60%).
- F. Floor Area Ratio. The maximum floor area ratio for all buildings on a lot shall be 0.72, subject to the following exclusions:
1. In the case of single-family dwellings, where the size of the lot is three thousand seven hundred (3,700) square feet or less, ~~one no more than two~~ covered parking spaces~~s~~ designed to accommodate ~~a~~ full-size automobiles~~s~~ shall be excluded from the calculation of floor area ratio; provided, however, such exclusion shall not exceed a total area of ~~two four~~ hundred ~~(200)(400)~~ square feet.
  2. In the case of duplexes and multiple-family dwellings, the area of all covered parking spaces required to be provided for the site shall be excluded from the calculation of floor area ratio; provided, however, such exclusion shall not exceed a total area of four hundred (400) square feet per unit.
- G. Height of Structures.
1. Except as otherwise provided in paragraph 2 of this subsection G and in Section 17.32.060, the maximum height of any structure shall be as follows:
    - a. Twenty-eight (28) feet, for lots having a slope of less than twenty percent (20%); or
    - b. Thirty (30) feet, for lots having a slope of twenty percent (20%) or more.
  2. For a distance of fifteen (15) feet from the front lot line, the height of any structure shall not exceed twenty (20) feet as measured from finish grade; provided, however, garages and carports may be constructed to a height of fifteen (15) feet above the elevation of the center of the adjacent street when permitted by Section 17.32.070 of this title. A garage or carport in compliance with this subsection may exceed a height of thirty (30) feet, but the height of any permitted living area underneath shall not exceed thirty (30) feet from finish grade.
- H. Articulation Requirements. Unless exempted, outside walls that are greater in size than twenty (20) feet in width and twenty (20) feet in height shall have a cumulative area of articulation as follows:
1. Front outside wall: Thirty percent (30%) articulation.
  2. Side outside walls:
    - a. Interior side outside wall: No articulation requirement.
    - b. Exterior side outside wall: Where the structure is located on a lot having an average width of forty (40) feet or greater, the articulation requirement for the exterior side outside wall shall be twenty percent (20%). No articulation shall be required for the exterior side outside wall of structures located on lots having an average width of less than forty (40) feet.

3. Rear outside wall: Thirty percent (30%) articulation.
4. Exemptions: Single story two (2) car garages and accessory structures not exceeding a floor area of one hundred twenty (120) square feet shall be exempted from all articulation requirements.

I. Landscaping Requirements.

1. Front Setback. A minimum of fifteen percent (15%) of the front setback area shall be landscaped where the lot has a front lot line of thirty (30) feet or greater.
2. Downslope Lots. The rear of any newly constructed main structure on a downslope lot shall be screened with trees and shrubs in accordance with a landscape plan approved by the planning director.
3. Sites with Three (3) or More Units. Not less than ten percent (10%) of the lot area shall be improved with landscaping where three (3) or more dwelling units are located on the same site.
4. Irrigated Landscapes. New and rehabilitated, irrigated landscapes are subject to the provisions of the water conservation in landscaping ordinance (refer to Chapter 15.70) or the latest state provisions, whichever is more effective in conserving water.

J. Nonconforming Residential Structures and Uses. Nonconforming residential structures and nonconforming residential uses, as defined in Section 17.02.560, may be repaired, restored, reconstructed, enlarged or expanded in accordance with the provisions of Chapters 17.38 and 17.34 of this title.

K. Recycling Area Requirements:

1. Adequate, accessible and convenient areas for depositing, collecting and loading recyclable materials in receptacles shall be provided. The area shall be located and fully enclosed so as to adequately protect neighboring uses from adverse impacts such as noise, odor, vectors, wind-blown litter or glare. The area shall be designed to prevent storm water run-on to the area and runoff from the area, and roofs shall be designed to drain away from neighboring properties. A sign clearly identifying all recycling and solid waste collection and loading areas and the materials accepted therein shall be posted adjacent to all points of direct access to the area.
2. This requirement shall apply to all new residential buildings having five (5) or more living units, institutional buildings and city facilities (including buildings, structures, and outdoor recreation areas owned by the city) where solid waste is collected and loaded. This requirement shall also apply to such existing developments for which building permit applications are submitted within a twelve-month period collectively adding thirty percent (30%) or more to the existing floor area of the development project.



ATTACHMENT 3

PLANNING COMMISSION AGENDA REPORT

# *City of Brisbane*

## *Planning Commission Agenda Report*

**TO:** Planning Commission For the Meeting of 5/14/2020

**SUBJECT:** Zoning Text Amendment RZ-1-20; Zoning Text Amendments to update the City’s existing Accessory Dwelling Unit (ADU) regulations and increase the Floor Area Ratio (FAR) exemption for covered parking on small lots to 400 square feet; City of Brisbane, applicant; Citywide.

**REQUEST:** Recommend City Council adoption of proposed zoning text amendments to:

- (1) Increase the FAR exemption for covered parking for lots 3,700 square feet or smaller in size in the R-1, R-2, and R-3 Residential zoning districts; and
- (2) Update the existing ADU regulations in Title 17 to comply with State law.

**RECOMMENDATION:** Recommend City Council adoption of Zoning Text Amendment RZ-1-20 via adoption of Resolution RZ-1-20.

**ENVIRONMENTAL DETERMINATION:** The project is statutorily exempt from the requirements of California Environmental Quality Act (CEQA) pursuant to Section 15282(h) of the CEQA Guidelines, which exempts adoption of an ordinance regarding ADUs in single-family and multifamily residential zones. In addition to being statutorily exempt from CEQA, the project falls within a class of projects which are consistent with existing zoning or general plan policies for which an EIR was certified and shall therefore not require further review. The exception to this exemption does not apply.

**APPLICABLE CODE SECTIONS:**

- General provisions ([BMC Chapter 17.01](#))
- “Dwelling” defined in [Chapter 17.02](#)
- R-1 Residential District ([BMC Chapter 17.06](#))
- R-2 Residential District ([BMC Chapter 17.08](#))
- R-3 Residential District ([BMC Chapter 17.10](#))
- R-BA Residential District ([BMC Chapter 17.12](#))
- Downtown Brisbane Neighborhood Commercial District ([BMC Chapter 17.14](#))
- Southwest Bayshore Commercial District ([BMC Chapter 17.16](#))
- Parkside Overlay District ([BMC Chapter 17.27](#))
- Planned Development District ([BMC Chapter 17.28](#)).
- Setback exceptions ([BMC Chapter 17.32](#))
- Off-street parking ([BMC Chapter 17.34](#))
- Nonconforming uses and structures ([BMC Chapter 17.38](#))
- Accessory Dwelling Units ([BMC Chapter 17.43](#))

RZ-1-20  
May 14, 2020 Meeting  
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## ANALYSIS AND FINDINGS:

### 1. Floor Area Ratio Parking Exemption

#### Background

Lots 3,700 square feet or less in the R-1, R-2, and R-3 Residential Districts with a single-family dwelling are currently granted a 200 square foot exemption for covered parking (equivalent to one parking space) when calculating the floor area ratio (FAR) for the property. The origin and timeline of the FAR exemption for covered parking on small lots is described in Attachment F.

On July 17, 2019, the City Council Planning Issues Subcommittee met to discuss amending the FAR exemption for garages on small lots and on September 5, 2019 the City Council initiated a zoning text amendment to increase the FAR exemption for garages on small lots as a means to increasing the supply of available off-street parking in residential areas.

#### Draft Ordinance

The draft ordinance would increase the FAR exemption for covered parking to 400 square feet, or the equivalent of two parking spaces, for single-family dwellings in the R-1, R-2, and R-3 Residential zoning districts, matching the original 400 square foot exemption passed in 2002. No change is made towards its limitation to lots 3,700 square feet or less.

### 2. Accessory Dwelling Units

#### Background

In 2019, the California State Legislature passed a flurry of bills pertaining to Accessory Dwelling Units (ADUs) (see Attachments C, D, and E) that became effective January 1, 2020. The City's current ADU regulations (BMC Chapter 17.43) were last updated in May 2018 (Ordinance 626) and must be updated to comply with current State law.

These new State laws require local agencies to:

- Permit ADUs in any zoning district zoned for single or multifamily dwellings (including mixed use zones);
- Allow ADUs in multifamily buildings;
- Permit ADUs in a planned developments regardless of any existing covenant, condition, or restriction(CC&Rs);
- Exempt ADUs meeting certain size, height, and setback limitations from FAR and lot coverage limits;
- Allow conversion or demolition of a garage, carport, or covered parking structure in conjunction with the construction of an ADU without replacement off-street parking;
- Permit a junior ADU (JADU) in addition to an ADU on single family lots;
- Allow conversion of legal nonconforming accessory structures into ADUs;
- Require that rentals of ADUs must be for a term longer than 30 consecutive days;

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- Eliminate owner-occupancy requirements for ADUs; and
- Require owner-occupancy for JADUs.

The primary goal of the State when passing this new legislation was to increase affordable housing by easing regulations on ADUs.

### **Draft Ordinance**

The draft ordinance proposes a complete overhaul of the existing Chapter 17.43, Accessory Dwelling Units of the BMC and a number of minor amendments to other sections of the BMC to comply with the new State regulations. Below is a list of the major amendments the draft ordinance addresses.

#### ➤ **Zoning Districts**

<b>State Legislation:</b>	<ul style="list-style-type: none"> <li>▪ ADUs must be permitted in all residential and mixed-use zones, with limited exceptions.</li> <li>▪ CC&amp;Rs that prohibit or restrict ADUs and JADUs for single family dwellings are null and void.</li> </ul>
<b>Existing BMC:</b>	<ul style="list-style-type: none"> <li>▪ ADUs allowed in R-1, R-2, R-3, R-BA, and SCRO-1 zoning districts only.</li> </ul>
<b>Draft Ordinance:</b>	<ul style="list-style-type: none"> <li>▪ ADUs allowed in any zone that permits residential uses either by right or conditionally (R-1, R-2, R-3, R-BA, NCRO-2, SCRO-1, PAOZ-1, PAOZ-2 and PD zoning districts) with an existing or proposed single-family or multiple-family dwelling.</li> </ul>

#### ➤ **Unrestricted ADUs**

<b>State Legislation:</b>	<ul style="list-style-type: none"> <li>▪ Must allow an “unrestricted ADU” up to 800 square feet that is at least 16 feet in height with 4 foot side and rear yard setbacks on any residential lot.</li> </ul>
<b>Existing BMC:</b>	<ul style="list-style-type: none"> <li>▪ ADUs may be limited or restricted by lot coverage, FAR, and development standards.</li> </ul>
<b>Draft Ordinance:</b>	<ul style="list-style-type: none"> <li>▪ “Unrestricted ADUs” less than 16 feet tall and 800 square feet or less in size are exempt from lot coverage, FAR, and other development standards.</li> <li>▪ Any ADU greater than 800 square feet and/or 16 feet tall shall be included in the calculation of floor area, lot coverage, and open space requirements.</li> </ul>

#### ➤ **Junior Accessory Dwelling Units**

<b>State Legislation:</b>	<ul style="list-style-type: none"> <li>▪ JADUs must be allowed in any zone that allow single-family dwellings;</li> <li>▪ JADUs shall be contained within existing walls of main dwelling, owner occupied, and no more than 500 square feet.</li> <li>▪ Single-family dwellings may have one detached ADU up to 800 square feet and less than 16 feet tall and a JADU.</li> </ul>
<b>Existing BMC:</b>	<ul style="list-style-type: none"> <li>▪ JADUs not permitted.</li> </ul>

<b>Draft Ordinance:</b>	<ul style="list-style-type: none"> <li>▪ Defines JADU as a dwelling unit no more than 500 square feet in size contained entirely within a single-family dwelling. A JADU may share sanitation facilities with the single-family dwelling and are distinguished from ADUs in that they:           <ol style="list-style-type: none"> <li>(1) must include the conversion of existing, legally permitted floor area within an existing single-family dwelling; and</li> <li>(2) must be owner occupied, or the main dwelling be owner occupied; and</li> <li>(3) are subject to unique standards that are not applicable to ADUs.</li> </ol> </li> <li>▪ JADUs permitted only in conjunction with an existing or proposed single-family dwelling; may have a detached ADU and JADU.</li> </ul>
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➤ **Accessory Dwelling Units in Multiple-Family Dwellings**

<b>State Legislation:</b>	<ul style="list-style-type: none"> <li>▪ ADUs permitted in multiple-family dwellings.</li> <li>▪ At least one attached ADU shall be allowed; the total number of attached ADUs permitted is limited to 25% of the total number of existing dwelling units.</li> <li>▪ Attached ADUs shall be allowed within existing portions of multiple-family dwellings that are not used as livable space, including, but not limited to, storage rooms, boiler rooms, passageways, attics, basements, or garages; attached ADUs shall not be created within any portion of the habitable area of an existing dwelling unit in a multiple-family dwelling.</li> <li>▪ No more than two additional detached ADUs may be permitted; each detached ADU shall be limited to a height of 16 feet, a total floor area of 800 square feet, and a minimum side and rear setback of 4 feet.</li> </ul>
<b>Existing BMC:</b>	<ul style="list-style-type: none"> <li>▪ ADUs not permitted in multiple-family dwellings.</li> </ul>
<b>Draft Ordinance:</b>	<ul style="list-style-type: none"> <li>▪ ADUs are permitted in multiple-family dwellings in any zone that allows residential uses either by right or conditionally.</li> <li>▪ Complies with new state laws regulating quantity, location, and size of ADUs in multiple-family dwellings.</li> </ul>

➤ **Setbacks and Height**

<b>State Legislation:</b>	<ul style="list-style-type: none"> <li>▪ Setbacks: 4-foot side and rear setbacks; rebuilds or conversions may maintain nonconforming setbacks.</li> </ul>
<b>Existing BMC:</b>	<ul style="list-style-type: none"> <li>▪ Setbacks: Front: Per district regulations; Side: 5-3 feet based on lot width; Rear: 10 feet; Converted structures may retain existing nonconforming setbacks.</li> <li>▪ Height: established by underlying zone.</li> </ul>
<b>Draft Ordinance:</b>	<ul style="list-style-type: none"> <li>▪ Setbacks: Front: no change; Side: 3-4 feet based on lot width; rebuilds or converted structures may maintain nonconforming setbacks.</li> <li>▪ Height: established by underlying zone; two-story limit; “unrestricted ADUs” limited to 16 feet.</li> </ul>

➤ **Parking**

<b>State Legislation:</b>	<ul style="list-style-type: none"> <li>▪ One parking space for ADUs except no parking required when located within one-half mile of transit.</li> <li>▪ When a garage, carport, or covered parking structure is demolished or converted in conjunction with the construction of an ADU, any parking spaces that were provided by such garage, carport, or covered parking structure are not required to be replaced.</li> <li>▪ No parking required for JADU.</li> </ul>
<b>Existing BMC:</b>	<ul style="list-style-type: none"> <li>▪ No off-street parking required for ADUs.</li> </ul>
<b>Draft Ordinance:</b>	<ul style="list-style-type: none"> <li>▪ No off-street parking required for ADUs except in the R-BA or PD zoning districts; one parking space required in R-BA and PD except no parking is required when located within one-half mile of transit.</li> <li>▪ Complies with new state laws regulating parking facility conversions to ADUs and parking requirements for JADUs.</li> </ul>

➤ **Owner Occupancy and Short-Term Rentals**

<b>State Legislation:</b>	<ul style="list-style-type: none"> <li>▪ Cannot require owner occupancy for ADUs; JADUs shall require owner occupancy restrictions.</li> <li>▪ ADUs and JADUs cannot be rented for less than 30 consecutive days.</li> </ul>
<b>Existing BMC:</b>	<ul style="list-style-type: none"> <li>▪ Owner occupancy required for all ADUs.</li> <li>▪ Short term rentals (STR) currently banned in City; RZ-2-19 would permit STR in ADUs legally established before April 1, 2017.</li> </ul>
<b>Draft Ordinance:</b>	<ul style="list-style-type: none"> <li>▪ Complies with new state laws regulating owner occupancy restrictions and STR for ADUs and JADUs.</li> <li>▪ RZ-2-19 would permit STR in ADUs legally established before April 1, 2017.</li> </ul>

**ATTACHMENTS:**

- A. Draft Resolution RZ-1-20 (including draft ordinance) **(Resolution only)**
- B. Redline copy of proposed zoning text amendments **(Not provided)**
- C. ~~Department of Housing and Community Development Memorandum addressing California Law regarding ADUs and JADUs~~
- D. ~~Government Code Sections 65852.2 and 6585.22, relating to ADUs~~
- E. ~~Summary of new State legislation~~
- F. History of FAR covered parking exception
- G. **May 14, 2020 Planning Commission Draft Meeting Minutes**

  
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 Jeremiah Robbins, Associate Planner

  
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 John Swiecki, Community Development Director

ATTACHMENT 3.A  
RESOLUTION RZ-1-20

## RESOLUTION NO. RZ-1-20

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BRISBANE  
RECOMMENDING CITY COUNCIL APPROVAL OF ZONING TEXT AMENDMENT RZ-1-20  
AMENDING REGULATIONS CONCERNING ACCESSORY DWELLING UNITS AND  
JUNIOR ACCESSORY DWELLING UNITS TO COMPLY WITH STATE LAW AND  
REVISING THE FLOOR AREA RATIO EXEMPTION FOR COVERED PARKING ON SMALL LOTS

**WHEREAS**, the City Council adopted the Housing Element for the 2015-2022 cycle on April 2, 2015 via Resolution No. 2015-08; and

**WHEREAS**, Housing Element Goal H.B establishes the community's aspiration to maintain a diverse housing stock in Brisbane; and

**WHEREAS**, Housing Element Policy H.B.1 encourages the construction of a balance of housing types, sizes, and tenure, and the inclusion of affordable dwelling units in multiple-family developments; and

**WHEREAS**, Housing Element Policy H.I.1 encourages reducing regulatory constraints on the development of new housing, especially infill housing and housing that adds to the mix of types, size, tenure and affordability of the local housing stock; and

**WHEREAS**, effective January 1, 2020, Senate Bill 13, Assembly Bill 68, and Assembly Bill 881 amended Sections 65852.2 and 65852.22 of the Government Code and changed the requirements for local governments relating to accessory dwelling units (ADUs) and junior ADUs (JADUs); and

**WHEREAS**, the City's current ordinance regarding ADUs must be updated to comply with current State law; and

**WHEREAS**, on September 5, 2019, the City Council initiated a zoning text amendment to increase the floor area ratio exemption for covered parking on lots equal to or less than 3,700 square feet in area; and

**WHEREAS**, the draft ordinance attached as Exhibit A to this resolution proposes amendments to Title 17 (Zoning) of the Brisbane Municipal Code in order to comply with current State law regarding ADUs and JADUs; and

**WHEREAS**, the draft ordinance attached as Exhibit A to this resolution proposes amendments to Title 17 (Zoning), specifically existing Chapters 17.06 (R-1 Residential District), 17.08 (R-2 Residential District), and 17.10 (R-3 Residential District), to increase the floor area ratio exemption for covered parking on lots equal to or less than 3,700 square feet in area; and

**WHEREAS**, on May 14, 2020, the Planning Commission conducted a hearing of the draft ordinance concerning ADUs and JADUs and revisions to the floor area ratio covered parking exemption for small lots, 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 draft ordinance is statutorily exempt from the provisions of the California Environmental Quality Act (CEQA) per Section 15282(h) of the CEQA Guidelines and categorically exempt from CEQA per Section 15183(a) of the CEQA Guidelines, and the exceptions to the categorical exemption are inapplicable.



**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 14th of May 2020 by the following vote:

AYES: Gomez, Gooding, Mackin, Patel, and Sayasane

NOES: None

ABSENT: None

*Pamala Sayasane*  
PAMALA SAYASANE  
Chairperson

ATTEST:

*John Swiecki*  
\_\_\_\_\_  
JOHN SWIECKI, Community Development Director

ATTACHMENT 3.F

SUMMARY OF FAR COVERED PARKING EXCEPTION

Attachment F  
Summary of FAR covered parking exception

- ORD #463** (2002): Introduced FAR limit of .72 with a 400 sq ft exception for covered parking. The intent was to limit overbuilding – homes too large or too tall on too small of lots – pursuant to policies in the 1994 General Plan. The parking exception was to encourage the construction of garages in Central Brisbane.
- ORD #485** (2004): Added a 3,700 sq ft lot size limit to the application of the parking exception for covered parking and reduced it from 400 sq ft to 200 sq ft for single family homes. (400 sq ft remained the exception for multifamily dwellings.) City Council concerned 400 sq ft exception still permitted homes that were inconsistent with the character of the community and 1994 General Plan policies. Since smaller lots only required one covered parking space the exception was reduced to 200 sq ft, or the area of one parking space.
- ORD #562** (2011): Removed 200 sq ft covered parking exception in R-BA district. Remained in R-1/R-2/R-3 zoning districts. There were no lots that would meet the 3700 sq ft lot size limitation in Brisbane Acres.
- ORD #576** (2016): Added text under Chapter 17.34 - Off-Street Parking of the BMC related to the covered parking exception. “The floor area of garages and carports shall not be included in measuring floor area to calculate the parking requirements, except for any floor area exceeding four hundred (400) square feet within a garage or carport exclusively for the use of a single residential unit.” No change was made to the application or limitations of the exception.
- ORD #615** (2017): Slight modification to the wording of the text under Section 17.34.020.B of the BMC. No change was made to the application or limitations of the exception.

ATTACHMENT 3.G  
PLANNING COMMISSION MEETING MINUTES

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DRAFT

The Planning Commission discussed with staff their concerns with their purview of authority when reviewing grading permits, particularly with potential impact to site hydrology.

At the request of staff, the meeting was recessed for 5 minutes to address technical issues associated with the call-in public access to the meeting.

Chairperson Sayasane brought the meeting back to order and the recognized members of the public wishing to address the Commission.

Prem Lall, Brisbane resident, spoke against the project.

There were no other members of the public wishing to address the Commission.

After some discussion, Commissioner Mackin made a motion to deny the applicant's request for reconsideration and adopt findings of denial for the project, but later withdrew the motion.

Following further discussion, Commissioner Patel moved to grant the applicant's request to reconsider the application at a future public hearing. Commissioner Gooding seconded the motion and the motion was approved 5-0.

#### NEW BUSINESS

**D. Zoning Text Amendment RZ-1-20; Various zoning districts;** Zoning text amendments to update the existing accessory dwelling unit (ADU) regulations in the zoning ordinance to comply with updated State regulations, and to increase the existing floor area ratio (FAR) exception of 200 square feet to 400 square feet for covered parking on substandard lots; City of Brisbane, applicant.

Associate Planner Robbins gave the staff presentation.

The Planning Commission identified concerns about potential implications of increasing the FAR covered parking exception in conjunction with the required, limitations on ADU parking requirements in State legislation.

Chairperson Sayasane opened the public hearing.

With no one coming forward to address the Commission, Commissioner Gooding moved to close the public hearing. Commissioner Gomez seconded the motion and it was approved 5-0.

Following deliberation, Commissioner Mackin moved to recommend City Council adoption of the draft ordinance by adopting Resolution RZ-1-20. Commissioner Gooding seconded the motion and the motion was approved 5-0.

Chairperson Sayasane read the appeals process of Planning Commission actions.

#### ITEMS INITIATED BY STAFF

ATTACHMENT 4

CITY COUNCIL MEETING MINUTES  
SEPTEMBER 5, 2019 (EXCERPT)

- Executive Management: The pay schedule will reflect a market adjustment of 3.5% for the City Clerk position and a 2% pay increase for all covered positions in the bargaining group.

CM Conway made a motion, seconded by CM Cunningham, to approve of Resolution No. 2019-56 to update the Master Pay Schedule. The motion was passed unanimously by all present.

Ayes: Councilmembers Conway, Cunningham, Lentz, O'Connell and Mayor Davis

Noes: None

Absent: None

## **NEW BUSINESS**

### **A. Proposed Zoning Text Amendment-Floor Area Ratio Exemption for Garages on Small Lots**

Community Development Director Swiecki reported that Zoning Ordinance (BMC Section 17.06.040) establishes a maximum floor area ratio of .72 in the R-1 residential zone. It further provides that when the lot size is 3,700 square feet or less, a covered parking space not exceeding 200 square feet is excluded from the floor area calculation.

He added that this issue of increasing the garage area that can be excluded from the floor area calculation on small lots is being considered as a means of increasing the supply of available off street parking in residential areas. He reported that the Planning Issues Subcommittee reviewed this item at a meeting on July 17, 2019. Both members were agreeable to referring the matter to the Planning Commission for additional study.

After some Council discussion, CM Conway made a motion, seconded by CM Cunningham, to authorize the Planning Commission to initiate a zoning text amendment increasing the floor area ratio exemption for garages on small lots. The motion was passed unanimously by all present.

Ayes: Councilmembers Conway, Cunningham, Lentz, O'Connell and Mayor Davis

Noes: None

Absent: None

## **STAFF REPORTS**

### **A. City Manager's Report on upcoming activities**

Administrative Services Director Schillinger reported on the upcoming activities throughout the City.