



MEMORANDUM

DATE: June 8, 2023

TO: Planning Commission

FROM: Planning Staff

SUBJECT: Workshop – Discussion of Preliminary Zoning Ordinance Amendments for Compliance with SB 478, Housing Element Implementation and Zoning Ordinance Cleanup

OBJECTIVE

The purpose of tonight’s workshop is for the Planning Commission to review and discuss potential zoning ordinance amendments to address California Senate Bill SB 478, certain Housing Element programs, and additional zoning ordinance cleanup associated with exceptions to development standards.

BACKGROUND

SB 478, effective as of January 1, 2022, sets minimum floor area ratios (FARs) and eliminates lot size minimums for multi-family or mixed-use developments of 3-10 units. The details of this bill were presented to the Planning Commission last November along with details on other housing-related bills AB 2011, SB 9, and SB 6. Implementation of those bills will require additional studies and engagement at a future Commission meeting.

The City’s 2023-2031 Housing Element was adopted by the City Council on May 18, 2023 and certified by the State on May 25, 2023. The Housing Element contains many programs committing to amending the zoning ordinance in a variety of ways. The preliminary zoning amendments presented this evening would begin to implement Housing Element programs as described below. A future Commission workshop is planned to review the implementation schedule for all Housing Element programs involving zoning amendments.

Beyond the changes mandated by State law and the Housing Element, staff is also proposing that sections of the zoning ordinance impacted by the required revisions also be revised and reformatted. Most of these changes are for clarity and do not involve changes to existing standards. However, some changes (detailed below) would modify existing standards. This workshop is not intended to be a review of a complete proposed ordinance at this point in time. Rather, following tonight’s discussion staff will draft up an ordinance that will be subject to formal Commission review at a public hearing.

DISCUSSION

Zoning Amendments for SB 478 Compliance

SB 478 mandates increased floor area ratios for developments that include 3-10 dwelling units (including mixed-use) in residential and mixed-use districts. It requires that cities allow at least a 1.0 FAR for 3-7 unit developments and at least a 1.25 FAR for 8-10 unit developments, and prohibits applying minimum lot size requirements so long as the property is a legal lot. The City may still apply objective design standards and parking requirements so long as they would not physically preclude the project from achieving the allowed FAR. To comply, the City will need to amend the maximum FAR in the R-2 and R-3 districts and the minimum lot sizes in the R-2, R-3, NCRO-2, and SCRO-1 districts for 3-10 unit residential and mixed-use projects only. Current standards will remain in effect for 1-2 and 11+ unit developments. FAR limits in the NCRO-2 and SCRO-1 district currently comply with the State requirements.

A sample of these mandated amendments is shown in table format (Attachment A), for the R-2 zoning district development regulations. These amendments would be integrated into the R-3, NCRO-2, and SCRO-1 district chapters (not yet included).

Zoning Amendments for Housing Element Implementation

Program 2.A.12: "Amend the zoning ordinance for all districts that allow multifamily residential uses, to allow for building heights of at least 36 feet, to be able to accommodate 3-story development."

Changes to the multifamily and mixed-use height limits are proposed within the affected district development regulations to allow for 36-foot building heights to better accommodate development of three-story buildings. This change is shown in the sample development regulations excerpt in Attachment A and would be carried through to all districts where multifamily and mixed-use developments are allowed, except where higher residential/mixed-use buildings are already allowed. Those districts include the R-3, NCRO-2, and SCRO-1 districts. The PAOZ-2 overlay district already allows 40-foot height limits (three-story limit). In mixed-use districts, this height limit would apply only to residential and mixed-use buildings, not commercial buildings which would retain a 35-foot height limit in the SCRO-1 district and in the NCRO-2 district (note: 35-foot limit in the NCRO-2 district with design permit approval).

Housing Element Goal 7: "Avoid unreasonable government constraints to the provision of housing"
Program 7.A.1" "...simplify and streamline approval of projects that meet the City's housing goals"

Changes are proposed to the reasonable accommodation and accessibility improvement permit procedures in BMC Chapter 17.32 to consolidate the procedures into one section, eliminate subjective findings of approval, and provide for ministerial approval of such requests. Additionally, to encourage aging in place and inclusivity, the accessibility improvement may be requested for a prospective need and not just an existing need, when it may be too late to be fully utilized, consistent with Goal 4: "Protect residents from displacement".

Clean-up Zoning Amendments: Minor Adjustments to Exceptions and Formatting

Consolidation of Existing Exceptions to Development Standards: The above-outlined zoning amendments provide an opportunity to simplify and clarify other associated development standards and reformat such standards to be more easily read and understood by staff and the public. The preliminary amendments presented in Attachment C would consolidate existing exceptions to development standards into BMC Chapter 17.32, such as setback and height exceptions, which currently exist in various chapters in the Zoning Ordinance. In addition to bringing all exceptions into one place, the preliminary zoning amendments propose presenting the exceptions in a single table for clarity.

Consolidate Setback Exception Modifications: Chapter 17.32 provides for modifications to setback exceptions, but the procedures and findings are inconsistent between the various exceptions. Additionally, the existing setback exception modifications vest decision-making with the Planning Commission in some cases and the Zoning Administrator in others.

To provide for more consistent processing of requests to modify the exceptions, those various sections would be consolidated to a single, uniform process, with a decision by the Zoning Administrator, following a public hearing. As with any Zoning Administrator applications, the Zoning Administrator may refer an application to the Planning Commission, or a decision of the Zoning Administrator may be appealed to the Planning Commission.

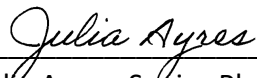
Formatting Revisions: As indicated above, both the district regulations and setback exceptions would be in table format (Attachments A and C), to be easier for the public to understand and for staff to implement. Excerpts of the existing ordinance is also provided for comparison (Attachments B and D). If the Planning Commission concurs, the proposed format would be applied to the other affected zoning districts and brought back to the Commission for further review.

NEXT STEPS

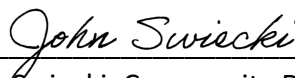
Staff anticipates presenting a draft ordinance this summer.

ATTACHMENTS

- A. Preliminary Draft Amendments to R-2 Zoning District Development Standards
- B. Excerpt of Current BMC Section 17.08.040 - R-2 Residential District Development Regulations
- C. Preliminary Draft Amendments to Setback and Height Exceptions and Definitions
- D. Excerpt of Current BMC Section 17.32.060 Exceptions – Height Limit and Section 17.32.070 - Exceptions – Setback Requirements
- E. Workshop Memorandum to the Planning Commission 11/10/22 - Overview and Discussion of New Housing Laws



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Ken Johnson, Senior Planner

ATTACHMENT A

Preliminary DRAFT

Revised BMC Section 17.08.040 - Development Regulations, R-2 Residential District

(Note: Proposed substantive changes are shown in redline, but reformatting is not. See also the Setback and Height Exceptions sections)

	Single-family Dwelling	Duplex	Multi-family 3 to 10 Units	Multi-family 11 or more units	Notes and Cross References
Density of Development – maximum	1 DU/2,500 sq ft				
Lot Area – minimum (sq ft)	5,000	4,950	NA	5,000	See also Section 17.32.055
Lot Width - minimum (ft)	50 NA	50 NA	50 NA	50	
Lot Depth - minimum (ft)	100 NA	100 NA	100 NA	100	
Setback - front	15	15	15	15	See also Section 17.32.070
Setback – side for ≥50 ft wide lot (ft)	5	5	5	5	See also Section 17.32.070
Setback – side for <50 ft wide lot (ft)	10% of lot width, but not less than 3 ft, if allowed by the Uniform Building Code.				See also Section 17.32.070
Setback – rear (ft)	10	10	10	10	See also Section 17.32.070
Lot Coverage (% of lot area)	50	50	50*	50	See exception in Section ____.
Floor Area Ratio (floor area/lot area)	0.72	0.72	1.0 for 3 to 7 units 1.25 for 8 to 10 units	0.72	
Height of Structures (ft) on lots with slope of <20%	28	28	28 36	28 36	For garages in the setback area, see height of garages exception 17.32.070.
Height of Structures (ft) on lots with slope of ≥20%	30	30	30 36	30 36	For garages in the setback area, see height of garages exception 17.32.070.
Articulation -front outside walls > 20 ft by 20 ft	30%	30%	30%	30%	Articulation requirements may be superseded by objective design standards, where applicable. Also, see definitions in 17.02.050 & 065
Articulation – interior side outside walls	NA	NA	NA	NA	See definitions in 17.02.050 & 065
Articulation -exterior side outside walls > 20 ft by 20 ft on <40 ft wide lots	NA	NA	NA	NA	
Articulation -exterior side outside walls > 20 ft by 20 ft on ≥40 ft wide lots	20%	20%	20%	20%	See definitions in 17.02.050 & 065
Landscaping front setback area (%) on lots with ≥ 30 ft front lot line	15	15	15	15	See also, Chapter 15.70 - Water Conservation in Landscaping Ordinance.
Landscaping downslope lots	Rear of main structure screening to be approved by the planning director.				
Recycling Area requirements	See description below				

Current BMC Provisions

Excerpt of R-2 Residential District

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 covered parking space designed to accommodate a full-size automobile shall be excluded from the calculation of floor area ratio; provided, however, such exclusion shall not exceed a total area of two hundred (200) 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.

PRELIMINARY DRAFT ZONING TEXT AMENDMENTS

FOR WORKSHOP DISCUSSION 06/08/2023

(Note: Substantive content changes are shown in redline, but reformatting is not. See the referenced code sections for comparison.)

17.32.060 - Exceptions—Height limit.

A. Chimneys which do not exceed three (3) feet in width or depth may exceed the height limit by no more than five (5) feet except as required to comply with the California Building Code.

B. Where cupolas, flag poles, monuments, radio and other towers, water tanks, church steeples, mechanical appurtenances and similar structures are permitted in a district, height limits therefore may be exceeded upon the securing of a use permit. Wireless telecommunications facilities shall be subject to the height exception procedures set forth in Section 17.32.035.

C. Rooftop solar energy systems may exceed the maximum building height limit of the applicable zoning district in accordance with the following procedures:

1. Rooftop solar energy systems, including those for water heating as well as photovoltaic purposes, that do not extend more than twenty-four (24) inches above the roofline of the structure on which they are mounted, measured from the exterior roofing material to the highest point of the panel, are exempt from maximum building height limits in all zoning districts.

2. Rooftop solar energy systems that extend more than twenty-four (24) inches above the roofline of the structure on which they are mounted, measured from the exterior roofing material to the highest point of the panel, may exceed the height limit through approval of an administrative permit by the zoning administrator. If the zoning administrator determines that the granting of the permit would not result in a specific adverse impact upon the public health and safety, the zoning administrator shall give written notice of the intended approval to property owners and occupants on both sides of, to the rear of and directly across the street from the site on which the system is proposed to be located. The notice shall generally describe the nature, design and location of the proposed system and advise the recipients that they may submit written comments on the intended decision by a certain date, which shall be not less than twenty-one (21) days from the date of mailing the notice. The notice shall also advise the recipients that they have the right to appeal a decision of the zoning administrator to the planning commission. The zoning administrator shall send a copy of the final decision on the application to each person who has submitted written comments within the time prescribed in the notice.

D. Reasonable Accommodation for existing or prospective use by person(s) with disabilities are provided for in Section 17.32.080.

~~Exceptions to the height limit to accommodate accessibility improvements (such as elevators and wheelchair van garage spaces) may be allowed upon the granting of an accessibility improvement permit by the zoning administrator, following the conduct of a hearing with ten (10) days' notice thereof being given to property owners and occupants on both sides of, to the rear of and directly across the street from the site. The zoning administrator may issue the accessibility improvement permit if he or she finds and determines that:~~

~~1.~~

~~The exception is necessary to meet special needs for accessibility of a person having a disability which impairs his or her ability to access the property.~~

~~2.~~

~~Visual impacts of the accessibility improvements exceeding the height limit will be minimized.~~

~~3.~~

~~The accessibility improvements will not create any significant adverse impacts upon adjacent properties in terms of loss of privacy, noise or glare.~~

~~4.~~

~~The accessibility improvements will be constructed in a sound and workmanlike manner, in compliance with all applicable provisions of the building and fire codes.~~

17.32.070 - Exceptions – Setback Requirements

A. Notwithstanding any other provision of this title, certain structures or portions thereof may extend into a front, rear or side setback area to the extent permitted by the following chart and subject to applicable building and fire codes:

Type	Description or Qualifier	Front Setback (ft)	Rear Setback (ft)	Side Setback (ft)
Residential structure	Applicable to all lots where fifty percent (50%) or more of the lots of record in a block have been improved with dwellings.	The block's average distance of the front outside wall of the dwelling from the front lot line.	NA	NA
	Lots with a slope of $\geq 15\%$. See definition of slope in section 17.02.730. That portion of the structure that is subject to this setback exception (within the district standard setback area) shall not exceed 20 feet in height. See height definition in section 17.02.400.	10 ft or block average, whichever is less.	NA	NA
Garages, Carports and Parking Decks	<p>a. Not more than 15 feet in height above the centerline of the adjacent street.</p> <p>b. Notwithstanding the allowable exceptions, placement is subject to approval by the city</p>	0	Interior rear: NA	Interior side: NA

	<p>engineer, based upon a finding that no traffic or safety hazard will be created.</p> <p>c. A garage or carport in compliance with this subsection may exceed the district height limit, but the height of any permitted living area underneath shall not exceed the district height limit.</p>		Exterior rear (i.e. through lots): 0	Exterior side (i.e. corner street or alley lots): 0
Overhanging Architectural Features	Includes such features as eaves and cornices that extend from the wall of a building and into the setback area.	5	7	2.5
Gutters and downspouts		5	7	2
Cantilevered Windows	<p>a. Includes window(s) extending from the wall of a building into the setback area such as bay windows, box windows, etc..</p> <p>b. To qualify for the exception, the window may not include floor area. If the window includes a built-in bench seat or shelf, 16 inches or higher from the floor, without steps, the area will not be counted as floor area regardless of the clear height above the bench or step (see also Floor Area defined, Section 17.02.315).</p>	5	7	3
Decks and Balconies	Either free-standing or extending from a building.	5	5	NA
Roof Decks and associated guardrails over a garage that is subject to a setback exception.	<p>a. Roof decks over garages that are subject to the garage setback exception may not be covered by a roofed or unroofed structure (i.e. pergola over a roof deck), except that the</p> <p>b. portion of a deck covered by an eave from an adjacent building segment may cover the portion of the deck not to exceed 3 feet from the edge of the building wall</p> <p>c. Roof decks for ADUs are not included, but ADUs are addressed separately in Chapter 17.43.</p>	0	Interior rear: NA Exterior rear (i.e. through lots): 0	NA
Stairs, Ramps and Landings to a building entrance	Includes stairs, ramps or landings that are unenclosed. May not drain onto the neighbor's property. Materials must be non-combustible in the side setback, to the satisfaction of the building official.	0	5	3-0
Awning over a building entrance or landing	Allowed as a type of projection from a building. May not drain to the neighbor's property.	5	7.5	0

Roofed Accessory Structures (such as detached home offices and art studios, sheds and gazebos)	<ul style="list-style-type: none"> a. The building or structure portion within the setback area may not exceed <u>810</u> feet in height <u>measured from lowest grade immediately adjacent to the wall or the alignment of the supporting posts</u> and may not have a floor area within the setback area in excess of 120 square feet. b. These exceptions do not apply to accessory dwelling units. See Chapter 17.43. 	NA	5	Interior side: 3 Exterior side: NA
Unroofed Accessory Structures (such as arbors, trellises, pergolas and gateways)	The structure's portion within the setback area may not exceed <u>8 10</u> feet in height and may not cover more than 15% of the front setback area	0	5	3
Ponds, Fountains and Similar Decorative Water Features	Feature to be ≤ Six (6) Feet in Height May not include swimming pools, spas or exposed plumbing for water features.	0	0	NA 2
Decorative Artwork	Feature to be ≤ Six (6) Feet in Height. The artwork shall not block access to a building entrance or otherwise create a safety hazard.	0	0	NA-0
Flag pole & flag	<ul style="list-style-type: none"> a. Not more than one (1) pole per lot b. Height of pole ≤ twenty (20) feet c. Individual flag size ≤ 4 by 6 ft, with up to two on a pole d. May not include advertising. e. Unlighted only. f. Flags shall be maintained in good repair. 	5	5	NA
Accessory Dwelling Units		See BMC Chapter 17.43.		
Fences, hedges and walls		See BMC Section 17.32.050		
<u>Accessibility Exceptions (I.e. Reasonable Accommodations)</u>		<u>See BMC Section 17.32.080</u>		

Notes:

1. NA: Not applicable. In such cases, the standard setback provided in the zoning district's development regulations shall prevail.

2. The exceptions set forth in this Table shall not be construed to include chimney boxes, swimming pools and spas, exposed plumbing, or mechanical equipment such as heating and air conditioning units or pool pumps, and no exceptions to the setback requirements shall be permitted for any of these structures.
3. The exceptions do not waive the requirement to obtain any other required permits from the City, including, but not limited to, a building permit. New construction or tenant improvements on commercial properties may also require a design permit, in which case the requested exception may be included in the design permit application. In a case of conflict between the setback exceptions listed here and other laws, regulations or conditions of approval, the most stringent requirements shall prevail.
4. Fire Code may prohibit certain materials from use within setback areas.
5. Non-combustible flatwork, such as concrete pavers and stone on grade, are not subject to setbacks and so are not listed as exceptions.

B. Modifications to Setback Exceptions

Modifications to the setback exceptions referenced in Section 17.32.070, are subject to zoning administrator approval, except when referred by the zoning administrator to the planning commission.

Application form, fee and plans. Application for a setback exception modification shall be made in writing by the owners of the property, lessee, purchaser in escrow, or optionee with the consent of the owners, on a form prescribed by the city. The application shall be accompanied by a fee, set by the city council, and plans showing the details of the proposed use.

Public Hearing by Zoning Administrator. The zoning administrator shall conduct a public hearing on the application for a setback exception modification, following a 10-day public notice, to be mailed to the adjacent property owners.

Action on application. The zoning administrator shall act as the approving authority for all setback exception modification applications. The zoning administrator may grant the permit as applied for or in modified for if, on the basis of the application and the evidence submitted, the zoning administrator is able to make all of the findings prescribed below. A decision of the zoning administrator may be appealed to the planning commission, per Section 17.56.100

Findings for granting a setback exception modification.

For any of the setback exceptions listed in Table 17.32.070.A a setback exception modification may be granted by the zoning administrator following the conduct of a hearing, if the zoning administrator is able to make all of the following findings:

- I. It will not create any significant adverse impacts upon adjacent properties in terms of loss of safety, privacy, noise or glare.
- II. The modification feature will be constructed in a sound and workmanlike manner, in compliance with all applicable provisions of the building and fire codes.
- III. Structures are designed to be compatible with the primary dwelling(s) on the site.
- IV. Architectural features are designed to be compatible with the building on which they are located.

Setback Exceptions for Accessory Dwelling Units. Exceptions to the setback requirements for accessory dwelling units shall be as established in [Chapter 17.43](#).

Nonconforming Features. Any structure, architectural feature, wall, or other improvement lawfully constructed within a setback area and constituting a nonconforming structure as defined in [Section 17.02.560](#), may be allowed to continue in accordance with [Chapter 17.38](#) of this title.

17.32.080 - Requests for reasonable accommodations.

~~Modifications or exceptions to the regulations set forth in Title 17 may be requested as reasonable accommodations for housing designed for, intended for occupancy by, or with supportive services for, persons with disabilities, if the accommodation would not impose an undue financial or administrative burden upon the city and would not require a fundamental alteration in the nature of the applicable regulation. Such requests may be~~

~~granted by the zoning administrator through application for an accessibility improvement permit, following the conduct of a hearing with ten (10) days' notice thereof being given to property owners and occupants on both sides of, to the rear of and directly across the street from the site. The zoning administrator may issue the accessibility improvement permit if he or she finds and determines that:~~

~~A. The accommodation is necessary to meet special needs for a person having a disability and cannot be addressed through the exceptions under Sections 17.32.060 and 17.32.070.~~

~~B. Any visual impacts of the accommodation will be minimized.~~

~~C. The accommodation will not create any significant adverse impacts upon adjacent properties in terms of loss of privacy, noise or glare.~~

~~D. Any construction resulting from the accommodation will be done in a sound and workmanlike manner, in compliance with all applicable provisions of the building and fire codes.~~

Modifications or exceptions to the regulations set forth in Title 17, that are not otherwise addressed in Sections 17.32.060 or 17.32.070, may be granted as reasonable accommodations, for residential and non-residential improvements or new development, designed for, intended for occupancy by, or with supportive services for, persons with disabilities. Such requests may be granted by the planning director through a building permit:

I. The exception is necessary for current or future accessibility to the property or building by disabled people that cannot be addressed within either the applicable zoning district height limits or setbacks, or through the exceptions provided in Sections 17.32.060 & 17.32.070.

II. The accessibility improvement(s) will be constructed in compliance with all applicable provisions of the state and local building and fire codes.

17.02.715 - Setback—Setback area. (Note: No change suggested at this time. The definition is provided for reference only.)

A. "Setback" means the horizontal distance measured perpendicularly from a lot line to a corresponding parallel line within a lot, which is the boundary of any specified front, side or rear setback. The front and rear setback shall extend to the side property lines.

B. "Setback area" means the area between a lot line and the corresponding setback in which no structures shall be allowed except as permitted by this title.

ATTACHMENT D

Current BMC Provisions (excerpt)

17.32.070 - Exceptions—Setback requirements.

A. Notwithstanding any other provision of this title, certain structures or portions thereof may extend into a front, rear or side setback area to the extent permitted by the following chart:

1. Projections from a Building.

a. Overhanging Architectural Features (Such as Eaves, Cornices Canopies, Rain Gutters and Downspouts).

Front setback area:	May extend 3 feet from the building into the front setback area, but no closer than 5 feet from the front lot line.
Rear setback area:	May extend 3 feet from the building into the rear setback area, but no closer than 7 feet from the rear lot line.
Side setback area:	May extend 3 feet from the building into the side setback area, but no closer than 2½ feet from the side lot line. Rain gutters and downspouts may extend no closer than 2 feet from the side lot line. In the R-1 district, a noncombustible awning over the main entrance to a residence located at the side of the structure may extend 4 feet from the building into any portion of the side setback area, but shall not extend over or drain onto the abutting property.

b. Cantilevered Windows No Greater Than Ten (10) Feet in Length That Do Not Include Any Floor Area (Such as Bay, Box, Bow, and Greenhouse Windows).

Front setback area:	May extend 3 feet from the building into the front setback area, but no closer than 5 feet from the front lot line.
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Rear setback area:	May extend 3 feet from the building into the rear setback area, but no closer than 7 feet from the rear lot line.
Side setback area:	May extend 2 feet into the side setback area, but no closer than 3 feet from the side lot line.

c. Supported Decks, Cantilevered Decks and Balconies.

Front setback area:	May extend 5 feet from the building into the front setback area, but no closer than 5 feet from the front lot line. Decks may be located atop a garage or carport approved under Section 17.32.070.A.3.a. and may extend to the front of the garage, but the railings of such deck may not exceed fifteen 15 feet in height above the elevation of the center of the adjacent street or 4 feet from the surface of the deck, whichever is less, while at the same time maintaining the minimum railing height required by the building code.
Rear setback area:	May extend 5 feet from the building into the rear setback area, but no closer than 5 feet from the rear lot line. This exception shall not apply to the NCRO district.
Side setback area:	No exception permitted.

Modifications. The planning commission may approve a modification to the foregoing exceptions if there are not more than two (2) units on the site and the planning commission is able to make all of the following findings:

- i. The modification is necessary in order to gain access to the property or to the dwelling unit on the property.
- ii. The modification is necessary because of unusual or special circumstances relating to the configuration of the property.
- iii. The visual impacts of the modification have been minimized.

d. Deck Railings within Setback Areas.

Front setback area:	May not be higher than 4 feet from the surface of the deck.
Rear setback area:	May not be higher than 4 feet from the surface of the deck.
Side setback area:	No exception permitted.

e. Stairs, Ramps and Landings (That Are Open and Uncovered and Serve Buildings with No More Than Two Units).

Front setback area:	No more than 1 set of stairs per dwelling unit may extend from the building into the front setback area. Each set of stairs must lead to the front entrance of the unit. The height of the stairway within the front setback area shall not exceed 20 feet. Stairs on grade, sidewalks, and other flatwork constructed of noncombustible materials may be located anywhere within the front setback area.
Rear setback area:	No more than 1 set of stairs per dwelling unit may extend from the building into the rear setback area, but no closer than 5 feet from the rear lot line. Stairs on grade, sidewalks, and other flatwork constructed of noncombustible materials may be located anywhere within the rear setback area.
Side setback area:	No more than 1 set of stairs per dwelling unit may extend from the building into the side setback area, but no closer than 3 feet from the side lot line. Stairs on grade, sidewalks, and other flatwork constructed of noncombustible materials may be located anywhere within the side setback area.

Modifications. The planning commission may approve a modification to the foregoing exceptions for stairs, ramps and landings if there are not more than two units on the site and the planning commission is able to make all of the following findings:

- i. The modification is necessary in order to gain access to the property or to the dwelling unit on the property.
- ii. The modification is necessary because of unusual or special circumstances relating to the configuration of the property.
- iii. The visual impacts of the modification have been minimized.

The planning commission may also approve a modification to the foregoing exceptions as part of a design permit being granted for three (3) or more units on the site, if the commission is able to make all of the findings listed above.

f. Accessibility Improvements (Such as Ramps, Elevators, and Lifts).

All Setback Areas. Accessibility improvements, such as ramps, elevators and lifts, may be allowed within any front, rear or side area setback upon the granting of an accessibility improvement permit by the zoning administrator, following the conduct of a hearing with ten (10) days' notice thereof being given to the owners of all adjacent properties. The zoning administrator may issue the accessibility improvement permit if he or she finds and determines that:

- i. The exception is necessary to meet special needs for accessibility of a person having a physical handicap which impairs his or her ability to access the property and cannot be addressed through the standard exceptions to the setback area requirements under this [Section 17.32.070](#).
- ii. Visual impacts of the accessibility improvements located within a setback area have been minimized.
- iii. The accessibility improvements will not create any significant adverse impacts upon adjacent properties in terms of loss of privacy, noise or glare.
- iv. The accessibility improvements will be constructed in a sound and workmanlike manner, in compliance with all applicable provisions of the building and fire codes.

2. Small Free-Standing Structures.

- a. Small Accessory Buildings and Roofed Structures (Such as Gazebos, Greenhouses, Garden and Utility Sheds).

Front setback area:	No exception permitted.
Rear setback area:	May be placed at any location within the rear setback area which is not less than 5 feet from the rear lot line or 3 feet from the interior side lot line, provided the building or structure, or portion thereof, within the rear setback area does not exceed 8 feet in height and does not have a floor area in excess of 120 square feet.
Side setback area:	May be placed at any location within the interior side setback area which is not less than 3 feet from the interior side lot line, provided the building or structure, or portion thereof, within the interior side setback area does not exceed 8 feet in height and does not have a floor area in excess of 120 square feet. No exception is permitted for an exterior side setback area.

Modifications. The zoning administrator may approve a modification to the foregoing exceptions for small accessory buildings and roofed structures, following the conduct of a hearing with ten (10) days' notice thereof being given to the owners of all adjacent properties, if the zoning administrator is able to make all of the following findings:

- i. The modification will not result in overbuilding the site or result in the removal of significant greenscape.
- ii. The modification will not create any significant adverse impacts upon adjacent properties in terms of loss of privacy, noise, or glare.
- iii. The accessory structure is designed to be compatible with the primary dwelling(s) on the site.

A building permit shall be required to construct or install any accessory structure for which a modification has been granted under this subsection.

- b. Unroofed and Openwork Roofed Garden Structures (Such as Arbors, Porticos, Trellises and Lath Houses).

Front setback area:	May not exceed 8 feet in height or cover more than 15% of the front setback area.
Rear setback area:	May be placed at any location within the rear setback area which is not less than 5 feet from the rear lot line, provided the structure, or portion thereof, within the rear setback area does not exceed 8 feet in height and does not cover more than 15% of the rear setback area.
Side setback area:	May be placed at any location within the side setback area which is not less than 3 feet from the side lot line, provided the structure, or portion thereof, within the side setback area does not exceed 8 feet in height and does not cover more than 15% of the side setback area.

Modifications. The zoning administrator may approve a modification to the foregoing exceptions for unroofed and openwork roofed garden structures, following the conduct of a hearing with ten (10) days' notice thereof being given to the owners of all adjacent properties, if the zoning administrator is able to make all of the following findings:

- i. The modification will not result in overbuilding the site or result in the removal of significant greenscape.
- ii. The modification will not create any significant adverse impacts upon adjacent properties in terms of loss of privacy, noise, or glare.
- iii. The accessory structure is designed to be compatible with the primary dwelling(s) on the site.

3. Miscellaneous Improvements.

- a. Garages and Carports and Parking Decks on Slopes of Fifteen Percent (15%) or Greater.

Front setback area:	Garages, carports and parking decks not more than 15 feet in height above the elevation of the center of the adjacent street in the R-1, R-2 and R-3 Districts and parking decks in the R-BA District may be placed at any location within the front setback area provided: (i) there is no encroachment into any side setback area, and (ii)
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	the garage is approved by the city engineer, based upon a finding that no traffic or safety hazard will be created.
Rear setback area:	On through lots, garages, carports and parking decks not more than 15 feet in height above the elevation of the center of the adjacent street may be placed at any location within the rear setback area provided: (i) there is no encroachment into any side setback area, and (ii) the garage is approved by the city engineer, based upon a finding that no traffic or safety hazard will be created.
Side setback area:	No exception permitted.

b. Decorative Artwork, Ponds, Fountains and Similar Water Features, Not More Than Six (6) Feet in Height.

Front setback area:	May be placed at any location within the front setback area.
Rear setback area:	May be placed at any location within the rear setback area.
Side setback area:	No exception permitted.

c. Existing Permitted Garages or Accessory Buildings Converted into Accessory Dwelling Units.

Front setback area:	May be placed at any location within the front setback area.
Rear setback area:	May be placed at any location within the rear setback area.
Side setback area:	May be placed at any location within the side setback area.

4. Accessory Dwelling Units.

a. Exceptions to the setback requirements for accessory dwelling units shall be as established in [Chapter 17.43](#).

B. The exceptions set forth in subsection A. of this [Section 17.32.070](#) shall not be construed to include chimney boxes, swimming pools and spas, exposed plumbing, or mechanical equipment such as heating and air conditioning units or pool pumps, and no exceptions to the setback requirements shall be permitted for any of these structures.

C. Any structure, architectural feature, wall, or other improvement lawfully constructed within a setback area and constituting a nonconforming structure as defined in [Section 17.02.560](#), may be allowed to continue in accordance with [Chapter 17.38](#) of this title.

(Ord. 483B § 3, 2003; Ord. 483A § 1, 2003; Ord. 372 § 13, 1992; Ord. 349 § 7, 1989; Ord. 298 § 6.7, 1984).

(Ord. No. 576, § 5, 5-19-16; Ord. No. 615, § 3 2-2-17; Ord. No. [653](#), § 24, 10-15-20)



MEMORANDUM

DATE: November 10, 2022
TO: Planning Commission
FROM: Planning Staff
SUBJECT: Workshop – Overview and Discussion of New State Housing Laws

OBJECTIVE

The purpose of tonight's workshop is to dive into several new State housing laws effective in 2022 and taking effect in 2023 that impact the City's zoning regulations.

BACKGROUND

For the past several years, the State has implemented various laws to encourage residential development by reducing or eliminating local control over how municipalities permit and review certain types of residential development applications. The most prominent examples of these changes in Brisbane are to the City's accessory dwelling unit (ADU) regulations and the City's residential design review procedures relative to the adoption of objective design standards.

The laws we'll review tonight build upon this trend with further reaching impacts to the City's zoning regulations:

- SB 9 (effective 1/1/2022): Allows smaller lot sizes and duplex conversions without discretionary review in single-family zoning districts, provided numerous requirements are met.
- SB 478 (effective 1/1/2022): Sets minimum FARs and eliminates lot size minimums for multi-family or mixed-use developments of 3-10 units.
- AB 2011 and SB 6 (effective **7/1/2023**): Allows eligible residential development on commercially zoned land, subject to numerous restrictions and criteria.

DISCUSSION

SB 9: Ministerial lot splits and duplex conversions

SB 9 establishes a ministerial (non-discretionary) approval process for property owners in the R-1 and R-BA residential districts to subdivide their property into two lots that are smaller than the district's minimum lot size requirement. It also allows single-family property owners to convert existing structures or build new duplexes on single-family lots. Applied for simultaneously, it could result in four homes being constructed on properties that otherwise would be limited to two homes (single-family plus an accessory dwelling unit) by the zoning regulations. Attachment A provides an overview of different scenarios that property owners could pursue under SB 9.

SB 9 does not reduce lot sizes or change permitted uses across the board; property owners must invoke its requirements for a specific project. Further, there are numerous caveats and eligibility criteria embedded into SB 9 that are intended to limit speculative use of the statute and ensure it results in the modestly scaled infill development the legislature intended.

Criteria include:

- New units may be limited to 800 sq ft in floor area
- Property owners must reside on one of the properties or units for at least 3 years
- One parking space may be required per unit
- New lots must be roughly the same size and no less than 1200 sq ft
- Properties may only be subdivided once - no serial subdivisions
- Properties with habitat for listed species are ineligible
- Properties occupied by tenants in the past three years are ineligible

Additional limitations are noted in Attachment A.

When considering how the City may implement SB9 here are a few discussion points for the Commission’s consideration:

- Should the City allow units larger than 800 sq ft to be developed on lots resulting from lot splits or new duplex units?
 - o Consider now: The City may limit units to 800 sq ft and may only require 1 parking space for those units. However, the City could consider allowing larger units if additional parking is provided in line with existing parking requirements.
 - o Consider later: Program 2.A.5 of the draft Housing Element proposes studying zoning districts where reductions to minimum lot sizes may be appropriate to allow infill development of small homes. Consideration of larger unit sizes and appropriate development standards could be deferred to this more comprehensive future study.

SB 478: Increased FAR and No Minimum Lot Size for 3-10 Unit Developments

Floor area ratios (FAR) control the massing of a building on a lot and are calculated as a ratio of the total floor area of all structures on a given lot divided by the lot size (see Table 1 below for examples of square footages resulting from FARs). Floor area includes the square footage of all floors of a building or structure with at least 6 ft of interior floor to ceiling height, measured from the interior face of exterior walls. Maximum residential FARs in multi-family residential and mixed-use districts are shown in the table below.

Table 1. Multi-Family and Mixed-use District FARs and Minimum Lot Sizes

District	Max. FAR	Min. Lot Size	Max. Sq Ft (standard lot)
R-2	0.72	5,000 SF* (2,500 SF/unit)	3,600 SF
R-3	0.72	5,000 SF*; (1,500 SF/unit)	3,600 SF
NCRO-2	2.4	2,500 SF	6,000 SF
SCRO-1	2.8	7,500 SF (1,500 SF/unit for 3+ units)	21,000 SF

*4,950 SF acceptable for 2-unit development

SB 478 mandates that cities allow at least a 1.0 FAR for 3-7 unit developments and at least a 1.25 FAR for 8-10 unit developments, and prohibits applying minimum lot size requirements so long as the property is a legal lot. The City may still apply objective design standards and parking requirements so long as they would not physically preclude the project from achieving the allowed FAR. To comply, the City will need to amend the maximum FAR in the R-2 and R-3 districts and the minimum lot sizes in the R-2, R-3, NCRO-2, and SCRO-1 districts for 3-10 unit residential and mixed-use projects only. Current standards will remain in effect for 1-2 and 11+ unit developments.

AB 2011 and SB 6: Residential Development in Commercial Districts

These two laws allow a developer to propose a residential or mixed-use development in commercial zoning districts without requiring a zoning amendment. In Brisbane, the impacted commercial districts are limited to the NCRO districts and SP-CRO districts based on the criteria in the statute. There are a couple key differences between the two laws that are summarized in detail in Attachment B. Notably, AB 2011 projects must provide a certain amount of affordable housing, must be reviewed ministerially, and are exempt from CEQA, while SB 6 projects are subject to typical review procedures under the Housing Accountability Act and are not exempt from CEQA unless the developer invokes other streamlining statutes (e.g., SB 35). Both AB 2011 and SB 6 projects must conform with objective design standards in effect at the time a development application is submitted.

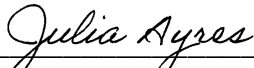
In 2022 the City adopted objective design standards that would apply to both AB 2011 and SB 6 projects, and procedures for streamlined project review that would apply to AB 2011 projects. Some adjustments may be required to those ordinances to reflect the specific standards and processes in the statutes. However, the City Council deferred adopting objective standards for the NCRO districts until further study could be completed. It is anticipated this work will occur in the spring and summer of 2023. The effective date of AB 2011 and SB 6 is July 1, 2023.

NEXT STEPS

Staff anticipates presenting a draft ordinance implementing SB 9 and SB 478, which are already in effect, to the Commission in January 2023, with adoption by the City Council following in February. Implementation of AB 2011 and SB 6 will require additional studies and engagement related to objective standards applicable to the NCRO districts; a specific work plan will be provided in January 2023.

ATTACHMENTS

- A. [SB 9 Handout](#)
- B. [AB 2011 and SB 6 Handout from ABAG](#)



Julia Ayres, Senior Planner



John Swiecki, Community Development Director