



## PLANNING COMMISSION AGENDA REPORT

**Meeting Date:** 5/9/2024

**From:** Ken Johnson, Senior Planner

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

**REQUEST:** To amend the zoning text provisions and zoning map, to add Chapter 17.05 to Title 17 of the Brisbane Municipal Code (BMC) establishing an overlay zoning district for urban lot split and two-unit developments within the single-family residential zoning districts, consistent with Senate Bill SB 9 (2021) and update related provisions in Title 16 and 17. The BMC chapters and sections to be amended are outlined below, under Applicable Code Sections.

**RECOMMENDATION:** Via adoption of Resolution 2024-RZ-1, recommend that City Council adopt Zoning Text and Map Amendment 2024-RZ-1, as provided in Exhibits A and B of Attachment A.

**ENVIRONMENTAL DETERMINATION:** The adoption of this ordinance is exempt from the California Environmental Quality Act (CEQA) pursuant to California Government Code Section 15061(b)(1) & (3), Section 15183 relating to the implementation of the Housing Element, and because it involves code amendments pursuant to California Government Code Section 65852.21(j) and Section 66411.7(n) relating to the implementation of SB 9 (2021). The exceptions requiring further review as might be necessary to examine a project specific significant effects does not apply.

**APPLICABLE CODE SECTIONS:** Procedures for zoning amendments are provided in BMC Chapter 17.50. The proposed updates for this amendment pertain to establishing an overlay zoning district providing for urban lot splits and two-unit developments within the single-family residential zoning districts, for the R-1 Residential District and R-BA Brisbane Acres Residential District, and related amendments. The following BMC chapters or sections are applicable to this amendment, with the proposed action indicated for each:

BMC Title 16:

- Section 16.12.040 - Tentative and final parcel map—Exceptions to requirements - amend.

BMC Title 17:

- Section 17.02.120 - Carport definition – amend.

2024-RZ-1  
May 9, 2024 Meeting

- Section 17.02.220 - Driveway definition – amend.
- Section 17.02.230 - Duplex definition - delete and include in the dwelling definition.
- Section 17.02.235 - Dwelling definition - amend.
- Section 17.04.010 - Establishment of Districts - amend to add the R-TUO Residential two unit overlay district.
- Chapter 17.05 - Residential Two Unit Overlay District – add.

Zoning Map – amend to add the R-TUO Residential Two Unit Overlay district.

Additionally, although not proposed for amendment as part of this ordinance, BMC Chapters 17.06 and 17.12 provide the R-1 and R-BA zoning provisions, which the new district would overlay. The R-1 and R-BA provisions would remain effective, except where specifically addressed within the overlay zoning.

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

Although property owners may invoke the provisions of SB 9, absent a City ordinance, the revised 2023-2031 Housing Element (Housing Element), adopted City Council and certified by the State in May 2023, includes a program for Brisbane to update its zoning ordinance to implement SB 9. That is:

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

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

Following adoption of the Housing Element, the Planning Commission held four workshops during their regularly scheduled public meetings, between June 2023 and February 2024 to discuss the implications of the provisions of a draft ordinance addressing SB 9, as well as other Housing Element related zoning amendments that are provided as a separate draft ordinance. The links to the workshop reports, minutes and videos are provided with the weblinks in Attachment C of this report.

**DISCUSSION:** As noted above, the purpose of this amendment would be to add Chapter 17.05 to Title 17, to establish the R-TUO Residential Two Unit Overlay District zoning and update the zoning map to show its limits, which extend over the entire R-1 Residential District and the R-BA Brisbane Acres Residential District. Related definitions within Chapter 17.02 would also be amended. The amendment to Title 16 – Subdivisions would provide a cross reference within the tentative and final parcel map exceptions section to the new Chapter 17.05, within Title 17. Attachment A provides the draft Planning Commission Resolution and draft zoning text and map amendments as Exhibits A and B. A redlined version of the draft ordinance is also provided as Attachment B.

The key provisions of draft ordinance are outlined as follows, by BMC section:

Section 17.05.030 Definitions: This section provides a number of definitions that are generally taken from state law and are specific to the new overlay district chapter. Additional updates are also provided within Chapter 17.02 - Definitions that have broader applicability, beyond the overlay district. A few of the key definitions are as follows:

*“Two-unit Development’ means a proposed housing development that contains two primary dwelling units on a single lot.”*

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

A cross reference is also provided to Section 17.02.235.G, to add a definition for primary unit, *“Primary dwelling unit’ or ‘Main Dwelling’ means a dwelling unit that is not an accessory dwelling unit or a junior accessory dwelling unit.”*

The ordinance, consistent with state law, allows for two “primary units” on an existing lot of record, or, as an alternative, the lot may be split and up to two primary units may be located on each of the two resultant lots. Accessory dwelling units (ADUs) and junior accessory dwelling units (JADUs) may also be permitted, but the total number of units for primary units, ADUs and JADUs may not exceed four for the original lot area. Further discussion of the potential lot configurations is provided below.

Section 17.05.040 - Eligibility and Section 17.05.050 - Anti-displacement/Eligibility Criteria: These two sections in the draft ordinance outline a number of criteria for eligibility and may be referenced in their entirety in the Attachment A or B. The provisions limit the lots that may be eligible to those that are within the two single family residential zones, those that are not in wetlands or where there is habitat for protected species, among other requirements. The provisions, in accordance with state law, are also to protect tenants from evictions.

Section 17.05.060 Permitted Uses: This section identifies duplex dwellings and dwelling groups as permitted uses, which otherwise would not be permitted in the R-1 or R-BA districts. A duplex is comprised of two primary dwelling units attached within a single building with shared wall(s) or ceiling, whereas a dwelling group is comprised of detached primary dwelling units. The underlying R-1 and R-BA district zoning would also still allow for single family dwellings, ADUs and JADUs, as it currently does.

Section 17.05.070 Two Unit Developments without an Urban lot Split: This section details the development standards for a lot developed with two primary units without splitting the lot. The following table is excerpted from the draft ordinance and provides the various development scenarios:

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

Single family dwellings are shown on this table as not applicable (NA), since the overlay district provisions do not apply to the development of a single family dwelling (SFD) on a lot of record in either the R-1 or R-BA zoning district. Also, by current State and City provisions, only one JADU may be built on a lot and it must be attached to one of the two-unit dwelling group structures, City regulations do not allow the development of a JADU in conjunction with a duplex or multifamily building. ADU and JADU provisions are further provided in Chapter 17.43 - Accessory Dwelling Units and Junior Accessory Dwelling Units and would not be amended with this ordinance. Current ADU and JADU provisions allow for an ADU to be attached or detached to a SFD on a single lot. A JADU may be permitted in addition to an ADU, but it must be attached to the SFD and the ADU must then be detached, per Chapter 17.43.

Some other key provisions are as follows:

- Per State law, the City must allow primary dwelling units to be 800 square feet in floor area. However, this would not preclude the owner from developing a larger primary unit,

if it complies with the underlying district floor area ratio (FAR) limits. It would also not preclude the owner from developing to a smaller floor area, as long as it is in compliance with the California Building Code (CBC).

- Per State law, minimum side and rear setbacks would be 4 feet from the lot line. This is a reduction in the required district setbacks for many lots, except in the R-1 district where the side lot line would normally be required to be only 3 feet for lots of 30 feet in width or less.
- In cases where the 4 foot setback would be less than the underlying district standard setback, an objective standard for height of 25 feet is proposed. Note that this height is suggested by staff to be the same as recently adopted state law for ADU heights, which may also have 4 foot setbacks. This same objective standard would apply to any primary unit on an R-BA ridgeline lot, since the design permit provisions for ridgeline lots would not apply in the case of a two unit development using the overlay standards. This would be a reduction from the current district height limit of 35 feet in the R-BA district and the 30 height limit in the R-1. (Note that the draft ordinance 2024-RZ-2, which the Commission will hear separately, would raise the underlying district heights to 36 feet.)
- Each primary dwelling unit would be required to have a minimum of one standard size off-street parking space. That may be uncovered or covered by a carport. Garage parking may also be provided, as an owner's option in addition to the minimum parking, but it may not count toward meeting the required parking. The provision of not counting garage parking toward the minimum requirement is proposed as a result of Planning Commission concerns raised about the use of garage spaces for other uses besides parking, such as storage, and the limited number of street parking spaces in many of the R-1 residential neighborhoods. Note that JADU or ADU off-street parking is generally not required, with some exceptions depending on distance to public transportation.
- Shared driveways may also be permitted, given the proposed amendment to the driveway definition, but where parking is required for the different units, they must be independently accessible (i.e. not in tandem with another unit).
- Short term rentals would not be permitted for any of the units on the lot.

17.05.080 Urban Lot Splits: Under state law, an alternative to developing two primary units, plus up to two ADUs or an ADU and JADU, for four units total on a single existing lot, is to split the lot into two lots of similar size and then develop up to four units across both lots. This is subject to a number of requirements to allow for ministerial approval of a parcel map to split a property, as

outlined in the draft ordinance. In such cases, the development scenarios may include two units on each lot, or three units on one lot and one on the other. That may include either one or two primary units on a resultant lot following a lot split. That's the same total potential unit count as without a lot split as described above, but there are some additional provisions that would apply.

The various development scenarios are provided in Tables a and b in Section 17.05.080.C.1 of the draft ordinance (see Attachment A). Table a shows the development potential on a single lot after an urban lot split and Table b shows how the development on the two lots may then be combined, to not exceed four units. The two tables are designed to be used together. The draft development provisions are further provided in Section 17.05.080.C and some of the key provisions are outlined as follows:

- All of the development provisions and use restrictions outlined above for two unit developments would be applicable to urban lot splits.
- For an urban lot split, both resultant lots must be at least 1,200 square feet.
- The size difference between the two resultant lots must be in the proportion range of 50:50 to 40:60, so they would be near the same size.

Procedurally, whether as a two unit development or pursuant to an urban lot split (following ministerial parcel map approval), development using the overlay district provisions would be effectuated through the building permit process and the single property or resultant two properties would have a deed restriction, on a form acceptable to the City, that would detail the various restrictions on the property. That would be recorded with the County and carry with the land.

This draft ordinance was provided to the Public Works Director/City Engineer, Building Department, North County Fire Authority and City's Legal Counsel and comments have been incorporated.

Finally, correspondence received from the public prior to publication of this report are included in Attachment D. One such correspondence outlines a recent ruling by a Los Angeles Superior Court judge's ruling on SB 9 (Attachment D). The correspondent requested that any hearing and decision on this zoning and map amendment be postponed. Planning staff consulted with the City's Legal Counsel, Michael Roush, who indicated that the decision is from a trial court in Southern California that concerns just five cities and has no binding effect on other trial courts or other cities. Also, the cities in question are charter cities, not general law cities, such as Brisbane, and the decision hinged on that SB 9 conflicts with the land use authority of those cities under their charters. As such, the decision is not relevant to SB 9 as it applies to the City of Brisbane.

Any comments received after publication will be provided to the Commission separately.

2024-RZ-1  
May 9, 2024 Meeting

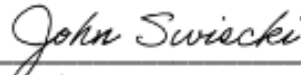
**ATTACHMENTS:**

- A. Draft Resolution 2021-RZ-1
  - Exhibit A -Draft ordinance, zoning text amendment
  - Exhibit B - Draft zoning map amendment
- B. Redlined copy of proposed zoning text amendments
- C. Workshop links:
  - a. February 22, 2024 ([Memorandum to PC](#)) ([Minutes](#))
  - b. December 5, 2023 ([Memorandum to PC](#)) ([Minutes](#))
  - c. October 26, 2023 ([Memorandum to PC](#)) ([Minutes](#))
  - d. June 8, 2023 ([Memorandum to PC](#)) ([Minutes](#))
- D. Public Correspondence



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Ken Johnson, Senior Planner



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John Swiecki, Community Development Director

## ATTACHMENT A

### DRAFT

#### RESOLUTION 2024-RZ-1

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2024, by the following vote:

AYES:

NOES:

ABSENT:

\_\_\_\_\_  
ALEX LAU, Chairperson

ATTEST:

\_\_\_\_\_  
JOHN SWIECKI, Community Development Director

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

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

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

**16.12.040 - Tentative and final parcel map- Exceptions to requirements**

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

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

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

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

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

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

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

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

**17.02.235 - Dwelling.**

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

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

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

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

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

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

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

**17.05 Residential Two Unit Development Overlay District.**

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

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

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

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

### **17.05.030 Definitions**

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

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

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

**17.05.040 Eligibility.**

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

**17.05.050 Anti-displacement/Eligibility Criteria.**

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

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

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

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

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

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

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

Notes:

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

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

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

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

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

5. Height of Primary Dwelling Units.

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

6. Off-Street Parking.

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

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

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

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

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



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

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

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

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

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

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

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

Notes:

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

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

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

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

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

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

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

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

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

5. Height of Primary Units.

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

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

6. Off-Street Parking.

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

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

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

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

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

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

#### **17.05.090 Requirement for a Building Permit**

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

#### **17.05.100 Condominiums**

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

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

\*\*\*\*\*

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

\*\*\*\*\*

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

\_\_\_\_\_  
Terry O'Connell, Mayor

\* \* \*

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

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

\_\_\_\_\_  
Mayor

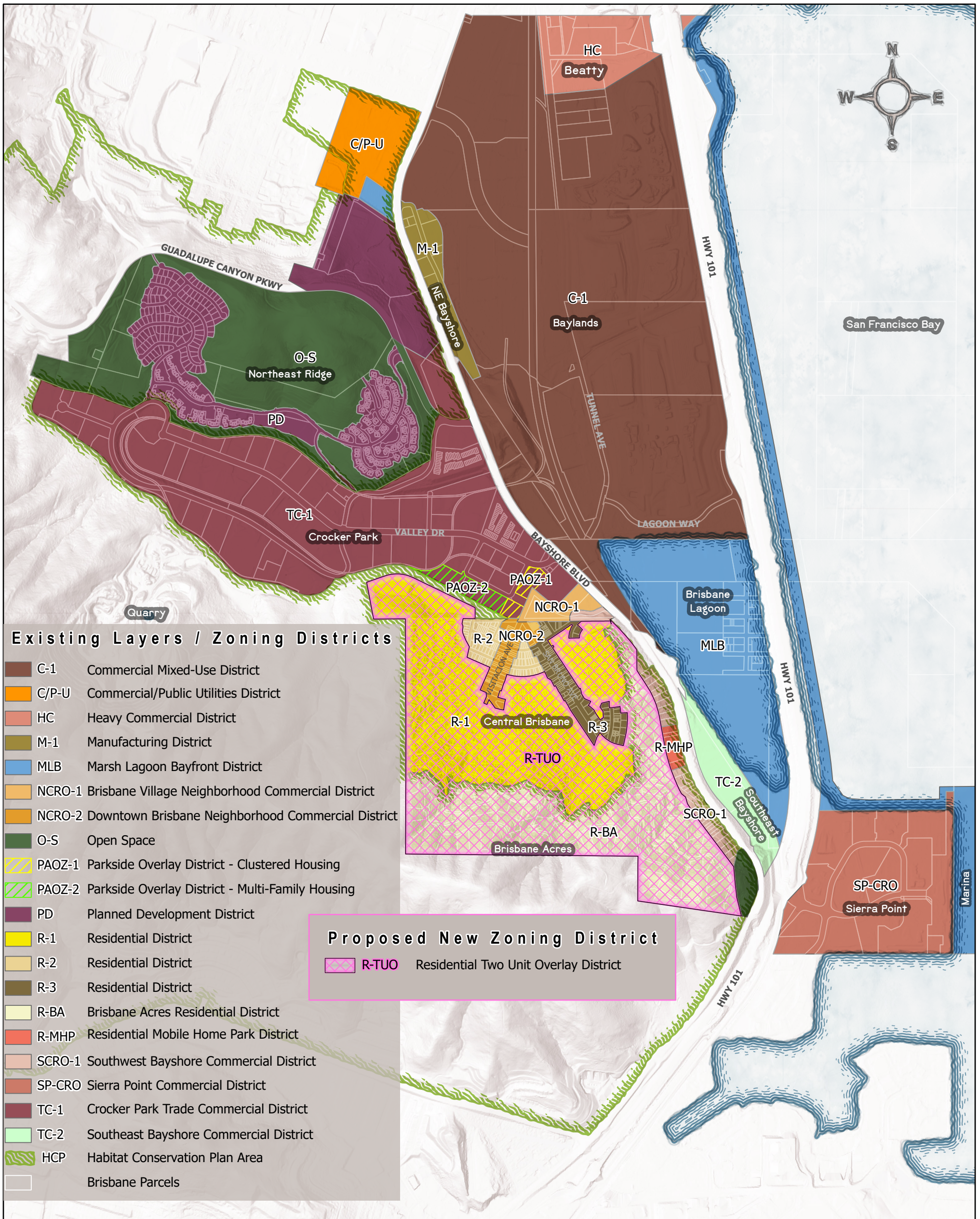
ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
City Attorney

# Proposed New Zoning District



### Existing Layers / Zoning Districts

- C-1 Commercial Mixed-Use District
- C/P-U Commercial/Public Utilities District
- HC Heavy Commercial District
- M-1 Manufacturing District
- MLB Marsh Lagoon Bayfront District
- NCRO-1 Brisbane Village Neighborhood Commercial District
- NCRO-2 Downtown Brisbane Neighborhood Commercial District
- O-S Open Space
- PD Planned Development District
- R-1 Residential District
- R-2 Residential District
- R-3 Residential District
- R-BA Brisbane Acres Residential District
- R-MHP Residential Mobile Home Park District
- SCRO-1 Southwest Bayshore Commercial District
- SP-CRO Sierra Point Commercial District
- TC-1 Crocker Park Trade Commercial District
- TC-2 Southeast Bayshore Commercial District
- HCP Habitat Conservation Plan Area
- Brisbane Parcels

### Proposed New Zoning District

- R-TU Residential Two Unit Overlay District



Parcel and HCP GIS data provided by San Mateo County  
Zoning GIS data provided by City of Brisbane



## ATTACHMENT B REDLINED DRAFT ORDINANCE

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

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

#### **16.12.040 - Tentative and final parcel map- Exceptions to requirements**

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

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

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

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

### **Section 17.02.120 - Carport is amended, as follows:**

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

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

### **Section 17.02.220 - Driveway is amended, as follows:**

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

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

### **Section 17.02.230 - Duplex is hereby deleted in its entirety.**

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

**17.02.235 - Dwelling.**

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

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



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

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

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

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

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

**17.05 Residential Two Unit Development Overlay District.**

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

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

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

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

### **17.05.030 Definitions**

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

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

### **17.05.040 Eligibility.**

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

**17.05.050 Anti-displacement/Eligibility Criteria.**

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

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

- A. Duplex dwellings.

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

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

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

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

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

Notes:

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

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

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

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

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

5. Height of Primary Dwelling Units.

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

6. Off-Street Parking.

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

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

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

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

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

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

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

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

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

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

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

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

Notes:

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

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

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

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

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

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

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

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

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

5. Height of Primary Units.

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

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

6. Off-Street Parking.

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

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

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



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

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

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

#### **17.05.090 Requirement for a Building Permit**

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

#### **17.05.100 Condominiums**

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

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

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**WORKSHOP LINKS**

- a. February 22, 2024 ([Memorandum to PC](#)) ([Minutes](#))
- b. December 5, 2023 ([Memorandum to PC](#)) ([Minutes](#))
- c. October 26, 2023 ([Memorandum to PC](#)) ([Minutes](#))
- d. June 8, 2023 ([Memorandum to PC](#)) ([Minutes](#))

**ATTACHMENT D**

**Sent:** Saturday, April 27, 2024 11:14 AM

**To:** Padilla, Ingrid <[cityclerk@ci.brisbane.ca.us](mailto:cityclerk@ci.brisbane.ca.us)>

**Subject:** Article about SB9 and rezoning

Hi Ingrid - Could you please share this article as soon as possible with the Brisbane City Council, the Brisbane Planning Commission, our attorney, Tom McMorrow, Planning Staff and the City Manager?

I am requesting that we postpone making any decisions or holding hearings on Zoning Text and Map Amendment 2024-RZ-1. This rezoning will have a very severe impact on Brisbane.

Thank you.

Respectfully, Michele Salmon

## SINGLE-FAMILY ZONING LAW

# Ruling could upend housing

## Judge overturns law that allows splitting properties

BY KATE TALERICO

[KTALERICO@BAYAREANEWSGROUP.COM](mailto:KTALERICO@BAYAREANEWSGROUP.COM)

A controversial housing law that abolished single-family zoning across California has been ruled unconstitutional by a Los Angeles County judge, but the narrow ruling is likely to be appealed by the state and it's unclear how it might affect the Bay Area.

Passed in 2021, Senate Bill 9 allows single-family homeowners to split their lots in two and build two homes on each lot — allowing up to four units in a lot previously zoned for just one.

Five Southern California cities — Redondo Beach, Carson, Torrance, Whittier and Del Mar — sued the state in 2022, claiming the law was unconstitutional because it interfered with local authority over land use and zoning.

The Los Angeles County Superior Court judge's ruling, issued Monday, means that SB 9 can't be applied in these five cities. The judge is expected to produce a ruling in the next month that could strike down SB 9 in cities across the state.

What will happen in the Bay Area remains to be seen. For now, legal experts say SB 9 still applies. But if the ruling next month applies more widely, the law could be struck down in what are known as charter cities, those that have authority over municipal affairs, even when they might be at odds with a state statute. California has more than 120 charter cities, including Oakland, San Jose and San Francisco, meaning SB 9 could be upended in the region's three largest cities.

The attorney general's office said it is reviewing the decision and “will consider all options in defense of SB 9.”

Housing advocates worry that the court ruling chips away at a key piece of legislation intended to increase density around the state.

“The writing is on the wall for this particular court ruling to upend future SB 9 processing,” said Rafa Sonnenfeld, policy director at the San Francisco-based pro-housing group YIMBY Action.

UC Davis law professor Chris Elmendorf called it “the most ridiculous opinion that any court has issued in a housing-related case.”

At the heart of the case is local authority and what gives the state the right to usurp control. In California, the constitution requires that state laws stepping on cities’ local control must show a reasonable relationship between the stated intention and the design of the law.

In the case of SB 9, that stated intention was improving housing affordability.

The dominant theory in housing policy in recent years is that the state’s decadeslong undersupply of housing has pushed up the cost of rent and homeownership and that building more housing — both market-rate and subsidized — will improve affordability. That was reflected in SB 9’s design, which allows for more homes to be built via lot splits. In contrast to state-subsidized affordable housing or deed restrictions that cap rent, the affordable housing created through SB 9 would be what housing policymakers call “naturally occurring.”

But the judge, Curtis Kin, ruled that the legislature’s intention — housing affordability — didn’t match up with the design. Because SB 9 doesn’t require any of the units constructed to actually be below-market-rate, it was not “reasonably related and sufficiently narrowly tailored” to ensuring access to affordable housing, and therefore unconstitutional.

The judge’s opinion echoed critics’ doubts that increasing supply actually boosts affordability.

“The decision confirms that most of these so-called housing affordability laws are a sham and won’t result in much-needed affordable housing,” said Susan Candell, a Lafayette city councilmember and proponent of the Our Neighborhood Voices initiative, which seeks to return local land-use decisions back to cities.

“In Redondo Beach, we support laws that reasonably address the crisis in affordable housing, but this isn’t one of them,” City Attorney Michael Webb said. “This would just create more market rate housing.”

The opinion is a victory for CalCities, a group lobbying on behalf of the state’s cities, which submitted an amicus brief arguing that SB 9 has stripped cities of their discretion to determine the location, density and site characteristics of housing without ensuring the construction of more affordable housing units.

“The court’s ruling reaffirms the foundational principle that land use planning and zoning are local matters,” League of California Cities Executive Director and CEO Carolyn Coleman said in a statement.

But pro-housing advocates say the judge’s ruling relies on a narrow definition of housing affordability.

“It’s clear that the legislature intended for ‘affordable housing’ to mean the naturally affordable housing that happens with more production,” Sonnenfeld said. “But the ambiguity over the phrase ‘affordable housing’ is unfortunately causing some confusion in the courts. That could be easily fixed by the legislature.”

Ben Bear, CEO of BuildCasa, a startup that helps homeowners split their lots under SB 9 and sell them to developers, said SB 9 enables housing affordability by increasing supply of small starter homes, “which makes all housing more affordable through the chain reaction effect.”

“We’ve seen that SB 9 units can sell for 30%-50% less per unit than other single-family homes due to increased density,” Bear said.

Advocates hope the legislature revives an SB 9 clean-up bill proposed last year by Sen. Toni Atkins, a San Diego Democrat, that could also clarify the law’s intention and resolve the judge’s concerns.

Even Candell of the Lafayette City Council acknowledged that a simple cleanup to SB 9 could render the Los Angeles Court’s decision moot.

“We’ve lost the war,” she said. “We can’t undo all these laws one by one.”