

# City of Brisbane

## Agenda Report

TO: Honorable Mayor and City Council

FROM: Community Development Director via City Manager

SUBJECT: Proposed Ordinance No. 612 - Update existing subdivision and public noticing regulations to be consistent with current California Government Code and Civil Code requirements, and amend the discretionary review process for new condominium developments.

DATE: November 3, 2016

### **City Council Goals:**

To provide for effective and efficient delivery of City services. (Goal #1)

### **Purpose:**

To update various sections of Title 16, Subdivisions, and Title 17, Zoning, of the Brisbane Municipal Code to achieve consistency with California Government Code and Civil Code regulations pertaining to condominiums and public noticing requirements, and to streamline the review process for new condominium developments.

### **Recommendation:**

That the City Council introduce Ordinance No. 612.

### **Background:**

The draft ordinance proposes text amendments to the Subdivision Ordinance (BMC Title 16) to accomplish the following:

- Amend procedures for final parcel map waiver to apply to all stages of a parcel map, consistent with Government Code §66428.
- Amend procedures for final subdivision map waiver for a condominium project on a single parcel, consistent with Government Code §66428.
- Update outdated references to Civil Code sections pertaining to condominium subdivisions throughout the Title.

The proposed text amendments to the Zoning Ordinance (BMC Title 17) would:

- Eliminate Condominium Use Permit requirement for new condominium developments to streamline the City's review process.
- Update public noticing requirements to be consistent with applicable Government Code requirements.

The Planning Commission held a public hearing to review the draft text amendments on September 22, 2016, and recommended approval by a vote of 4-0 (Parker absent). Since the Planning Commission hearing, staff has recommended a revision to the proposed amendments to BMC 17.30.040, related to Civil Code requirements for declarations of covenants and restrictions. That change is highlighted in the attached table of redlined text.

### **Discussion:**

The proposed revisions are discussed in detail in the attached Planning Commission report dated September 22, 2016. The key recommendations are summarized below.

#### **Parcel Map and Subdivision Map Waivers**

BMC Section 16.12.050 currently allows a final parcel map to be waived, subject to review and approval by the Planning Commission. This is inconsistent with Government Code §66428, which requires municipalities to provide a waiver procedure for all stages of a parcel map. The amendments to BMC §16.12.050 would eliminate this inconsistency.

BMC Section 16.12.025 currently allows a final subdivision map for a condominium project on a single parcel to be waived, in tandem with the tentative subdivision map approval by the Planning Commission. The proposed text amendments would amend this waiver procedure to apply to tentative and final subdivision maps for condominium projects on a single parcel, as allowed by Government Code §66428.

Additionally, as both parcel map and subdivision map waiver procedures described above are administrative in nature, the text amendments would authorize the Planning Director to process waiver applications.

#### **Public Noticing Regulations**

The proposed text amendments would update the City's noticing and posting provisions contained in BMC Chapters 17.50 and 17.54, consistent with Government Code Requirements:

- Clarify the noticing requirements for zoning ordinance amendments that apply to real property (including a change to the zoning designation of property or properties), versus amendments that are citywide in scope. (Per Government Code §65090 and §65091.)
- Expand the noticing requirements established in BMC Chapter 17.54 to include design permit and planned development permits, as the existing text only refers to variance and use permits.

- Eliminate references to publication of notices within a newspaper of general circulation, consistent with BMC Chapter 1.12, which declares that there is no newspaper of general circulation serving the City of Brisbane.

A flow chart of the Government Code’s public noticing regulations is included in the attached Planning Commission agenda report.

## **Condominium Regulations**

### *Discretionary Review for New Condominium Construction*

New condominium developments currently require both a Condominium Use Permit and a Design Permit. In processing these applications, it has become evident that the required findings for both permits include redundancies. This leads to duplicative work on behalf of the applicant, staff, and the Planning Commission when evaluating a condominium project. The primary intent of the Use Permit findings are to ensure the project is consistent with the underlying General Plan and zoning land use designations, and that the development would not result in negative impacts to the community’s health, safety, or welfare. The Design Permit findings of approval address, collectively, the intent and substance of the Use Permit findings as they pertain to new development.

Streamlining the review process for newly constructed condominiums is consistent with the City’s housing policies, including Housing Element Policy H.I.1 and Program H.I.1.a which direct the City to reduce regulatory constraints on the development of new housing, especially infill housing and housing that adds to the mix of types, size, tenure and affordability. Housing Element Program H.I.1.a calls for the city to “Continue to evaluate and implement changes to the zoning ordinance and permitting process to simplify and streamline approval of projects that meet the City’s housing goals.”

Applications for new condominium developments would be required to demonstrate compliance with the existing condominium development regulations in BMC Chapter 17.30. City staff would continue to review condominium plans and governing documents to ensure compliance with the State Civil Code requirements, which are non-discretionary (or “ministerial”) in nature. Condominium conversions would continue to be subject to Use Permit approval, consistent with Housing Element Program H.B.4.a.

### **Fiscal Impact:**

None to the City. City costs associated with processing planning applications are paid by the applicant through the payment of processing fees. Any reduction in City processing costs will result in cost savings to the applicant.

**Measure of Success:**

A streamlined review process for requests for parcel and subdivision map waivers and new condominium project applications, and public noticing requirements that comply with the California Government Code requirements.

**Attachments:**

Draft Ordinance No. 612

Table of redlined text

Planning Commission agenda report from September 22, 2016 meeting (with attachments)

Draft Planning Commission minutes of September 22, 2016



John Swiecki, Community Development Director



Clay Holstine, City Manager

RESOLUTION NO. RZ-4-16

RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BRISBANE  
RECOMMENDING APPROVAL OF ZONING TEXT AMENDMENT RZ-4-16  
TO THE CITY COUNCIL  
AMENDING CHAPTERS 16.08, 16.12, 16.24, 17.02, 17.28, 17.30,  
17.40, 17.42, 17.46, 17.50 & 17.54  
TO UPDATE REGULATIONS PERTAINING TO SUBDIVISION MAP WAIVERS,  
CONDOMINIUM DEVELOPMENTS  
AND PUBLIC NOTICING REQUIREMENTS

WHEREAS, California laws regulating the subdivision and development of condominium developments are contained in the Davis-Stirling Act of the California Civil Code; and

WHEREAS, on January 1, 2014, the Davis-Stirling Act was completely reorganized and renumbered and is currently contained within Sections 4000-6150 of the Civil Code; and

WHEREAS, the proposed draft Ordinance would update various Chapters in Title 16, Subdivisions, and Title 17, Zoning, of the Brisbane Municipal Code to be consistent with the reorganization of the Davis-Stirling Act; and

WHEREAS, the proposed draft Ordinance would update Chapter 16.12 of Title 16, Subdivisions, of the Brisbane Municipal Code, to be consistent with California Government Code Section 66428 regarding waiver procedures for parcel maps and subdivision maps; and

WHEREAS, the proposed draft Ordinance would update the City's public noticing requirements in various Chapters of Title 17, Zoning, of the Brisbane Municipal Code to be consistent with the requirements of California Government Code Sections 65090 and 65091;

WHEREAS, the proposed draft Ordinance would eliminate the requirement for a Conditional Use Permit for newly-constructed condominiums to allow for streamlined application processing for applications that otherwise comply with the underlying zoning district development regulations, pursuant to Housing Element Program H.I.1.a; and

WHEREAS, on September 22<sup>nd</sup>, 2016, the Planning Commission held a public hearing on a draft ordinance containing all above-referenced zoning text amendments; and

WHEREAS, the minutes of the Planning Commission meeting of September 22<sup>nd</sup>, 2016 are attached and incorporated by reference as part of this resolution; and

WHEREAS, the project is consistent with the City's General Plan and per State CEQA Guidelines Section 15183(a)--this proposal falls within a class of projects which are consistent with existing zoning or general plan policies for which an EIR was certified and shall therefore not require further review; and

WHEREAS, the exception to CEQA Guidelines Section 15183(a) requiring environmental review as might be necessary to examine project specific significant effects does not apply.

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.

AYES: Anderson, Do, Munir, Reinhardt

NOES: None.

ABSENT: Parker



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Tuong Van Do  
Chairperson

ATTEST:



JOHN A. SWIECKI, Community Development Director

**draft**  
**ORDINANCE NO. 612**

**AN ORDINANCE OF THE CITY OF BRISBANE  
AMENDING BMC CHAPTERS 16.08, 16.12, 16.24, 17.02, 17.28, 17.30,  
17.40, 17.42, 17.46, 17.50 & 17.54 TO  
UPDATE REGULATIONS PERTAINING TO  
SUBDIVISION MAP WAIVERS, CONDOMINIUM DEVELOPMENTS, AND  
PUBLIC NOTICING REQUIREMENTS**

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

**SECTION 1:** Section 16.08.020 in Chapter 16.08- Definitions of the Municipal Code is amended to read as follows:

**16.08.020- Advisory Agency.**

Except where otherwise specified in this Title, "advisory agency" means the Brisbane planning commission which is charged with the duty of reviewing the design and improvements of proposed divisions of real property, the imposing of conditions thereon and having the authority to approve, conditionally approve or disapprove said divisions.

**SECTION 2:** Section 16.08.280 in Chapter 16.08 - Definitions of the Municipal Code is amended to read as follows:

**16.08.280 - Subdivision.**

- A. "Subdivision" means the division, by any subdivider, of any unit or units of improved or unimproved land, or any portion thereof, shown on the latest equalized county assessment roll as a unit or as contiguous units, for the purpose of sale, lease or financing, whether immediate or future. Property shall be considered as contiguous units, even if it is separated by roads, streets, utility easement or railroad rights-of-way.
- B. "Subdivision" also includes the following:
  - 1. A condominium project, as defined in Sections 4125 of the Civil Code;
  - 2. A community apartment project, as defined in Section 4105 of the Civil Code;
  - 3. The conversion of five (5) or more existing dwelling units to a stock cooperative, as defined in Section 4190 of the Civil Code.
- C. "Subdivision" does not include:
  - 1. Leases of agricultural land for agricultural purposes. As used in this section the term "agricultural purposes" means the cultivation of food or fiber or the grazing or pasturing of livestock;
  - 2. Short-term leases, terminable by either party on not more than thirty (30) days' notice in writing, of a portion of the operating right-of-way of a railroad corporation defined as such by Section 230 of the Public Utilities Code unless a showing is made in individual cases, under substantial evidence, before the city council, that public policy necessitates the application of such regulations to such short-term leases in such individual cases;

3. The financing or leasing of apartments, offices, stores or similar space within apartment buildings, industrial buildings, commercial buildings, mobile home parks or trailer parks;
  4. Mineral, oil, or gas leases;
  5. Land dedicated for cemetery purposes under the Health and Safety Code of the state;
  6. Boundary line or exchange agreements to which the State Lands Commission or a local agency holding a trust grant of tide and submerged lands is a party;
  7. Any separate assessment under Section 2188.7 of the Revenue and Taxation Code;
  8. The financing or leasing of any parcel of land, or any portion thereof, in conjunction with the construction of commercial or industrial buildings on a single parcel;
  9. The financing or leasing of existing separate commercial or industrial buildings on a single parcel;
  10. A lot line adjustment, approved by the planning director, where no additional parcels are created and no substandard lot is created.
- D. A conveyance of land to a government agency, public entity or public utility shall not be considered a division of land for purposes of computing the number of parcels.

**SECTION 3:** Section 16.12.010 in Chapter 16.12 – Tentative And Final Parcel Maps And Subdivision Maps—Where Required of the Municipal Code is amended to read as follows:

**16.12.010 - Tentative and final subdivision map—When required.**

A tentative and final subdivision map shall be required for the following:

- A. All subdivisions creating five (5) or more parcels;
- B. Five (5) or more condominiums as defined in Section 4125 of the Civil Code;
- C. A community apartment project containing five (5) or more parcels;
- D. The conversion of five (5) or more existing dwelling units to a stock cooperative.

**SECTION 4:** Section 16.12.025 in Chapter 16.12 – Tentative And Final Parcel Maps And Subdivision Maps—Where Required of the Municipal Code is amended to read as follows:

**16.12.025 – Tentative and Final subdivision map—Waiver of requirements.**

A subdivider may apply for a waiver of the requirements for a tentative and final subdivision map under Section 16.12.010.B for a condominium project of five (5) or more units on a single parcel. The Planning Director may waive such requirements if the Planning Director finds that the proposed subdivision complies with requirements established pursuant to this title as to the following:

- A. Area;
- B. Improvement and design;
- C. Floodwater drainage control;
- D. Appropriate improved public roads;
- E. Sanitary disposal facilities;
- F. Water supply availability;
- G. Environmental protection;
- H. Recorded monumentation of the boundaries of the parcels;
- I. Other requirements of this title and the Subdivision Map Act.

**SECTION 5:** Section 16.12.030 in Chapter 16.12 – Tentative And Final Parcel Maps And Subdivision Maps—Where Required of the Municipal Code is amended to read as follows:

**16.12.030 - Tentative and final parcel map—When required.**

A tentative parcel map and final parcel map shall be required for the following:

- A. All subdivisions creating less than five (5) parcels;
- B. Less than five (5) condominiums;
- C. A community apartment project containing less than five (5) parcels;
- D. The conversion of less than five (5) existing dwelling units to a stock cooperative;
- E. All subdivisions for which tentative and final subdivision maps are not required due to an exception set forth in Section 16.12.020.

In lieu of applying for a tentative parcel map, a subdivider may elect to apply for a tentative or vesting tentative subdivision map for any subdivision under this section in compliance with the procedures for tentative and vesting tentative subdivision maps contained in section 16.16.120.

**SECTION 6:** Section 16.12.050 in Chapter 16.12 – Tentative And Final Parcel Maps And Subdivision Maps—Where Required of the Municipal Code is amended to read as follows:

**16.12.050 - Parcel map—Waiver of requirements.**

A subdivider may apply for a waiver of the requirements for a tentative and final parcel map under section 16.12.030. The Planning Director may waive such requirements if the Planning Director finds that the proposed subdivision complies with requirements established pursuant to this title as to the following:

- A. Area;
- B. Improvement and design;
- C. Floodwater drainage control;
- D. Appropriate improved public roads;
- E. Sanitary disposal facilities;
- F. Water supply availability;
- G. Environmental protection;
- H. Recorded monumentation of the boundaries of the parcels;
- I. Other requirements of this title and the Subdivision Map Act.

**SECTION 7:** Section 16.24.040 in Chapter 16.24- Park Improvements- Bay Access of the Municipal Code is amended to read as follows:

**16.24.040 - Dedication credits for park and recreational improvements and for private open space.**

- A. If the subdivider provides park and recreational improvements to the dedicated land, the value of the improvements together with any equipment located thereon shall be a credit against the payment of fees or dedication of land required by this chapter.

- B. If a condominium project or other common interest development provides private open space within the development which is usable for active recreational uses, the value of such land shall be a credit against the payment of fees or dedication of land required by this chapter.

**SECTION 8:** Section 16.24.050 in Chapter 16.24- Park Improvements- Bay Access of the Municipal Code is amended to read as follows:

**16.24.050 - Dedication timing of determination and payment.**

- A. At the time of approval of the tentative map, the approving agency shall determine pursuant to this chapter the land to be dedicated and/or the fees to be paid by the subdivider. At the time of filing of the final map or final parcel map, the subdivider shall dedicate the land or pay the fees as previously determined, except as provided below.
- B. Open space covenants for private park or recreational facilities shall be submitted to the city upon the filing of the final subdivision or parcel map and shall be recorded contemporaneously with such map.
- C. At the time of approval of the final map, the approving agency shall specify when development of the park and recreational facilities shall be commenced.
- D. Any waiver of a tentative and final subdivision map or parcel map pursuant to Section 16.12.025 or Section 16.12.050 shall nevertheless be subject to dedication of land, payment of fees and/or recordation of open space covenants as required by this chapter.

**SECTION 9:** Section 17.02.150 in Chapter 17.02- Definitions of the Municipal Code is amended to read as follows:

**17.02.150 - Condominium.**

"Condominium" means a building, or group of buildings, in which dwelling units, commercial/retail/office/warehouse spaces, floor areas, or other portions of the property are owned individually or restricted for the exclusive use of a single owner, and the structure, common areas, and common facilities are owned by all the owners on a proportional, undivided basis. The individual ownership interest may include a fee, a life estate, a leasehold, or a right of use during a specific period of time. As used in this title, the term includes "community apartment project" and "stock cooperative" as defined by State Civil Code Sections 4105 and 4190.

**SECTION 10:** Section 17.28.050 in Chapter 17.28 – PD Planned Development District of the Municipal Code is amended to read as follows:

**17.28.050 - Public hearing by planning commission—Notice.**

The planning commission shall conduct a public hearing on the application for a PD Permit. Notice of such hearing shall be given as set forth in Chapter 17.54.

**SECTION 11:** Section 17.30.020 in Chapter 17.30 – Condominiums of the Municipal Code is amended to read as follows:

**17.30.020 –Applicability.**

- A. New construction: Construction of new condominium projects containing three or more units shall be subject to the development standards set forth in Section 17.30.030 and design permit requirement set forth in Section 17.30.040 of this Chapter.
- B. Residential condominium conversions: Before the conversion of any existing structure to condominiums, the developer, builder or other person seeking to convert the existing structure shall first obtain from the planning commission a use permit pursuant to the provisions of Chapter 17.40 and Section 17.30.045 of this chapter. Residential condominium conversions include conversion of a mixed-use development with residential units.

**SECTION 12:** Section 17.30.040 in Chapter 17.30 – Condominiums of the Municipal Code is amended to read as follows:

**17.30.040 – New Condominiums – Design Permit Submittal Requirements.**

- A design permit shall be required for newly constructed condominium projects containing three or more units, subject to the procedures established in Chapter 17.42. Condominium design permit applications shall be accompanied by the following materials:
- A. A map to a workable scale, showing the site in relation to surrounding property, existing roads and other existing improvements;
  - B. A site plan, showing existing and proposed improvements, locations of buildings on the ground, orientation of buildings, utilities, public services, public facilities, streets and alleys, landscaping, and the boundaries of the projects, including the details necessary to demonstrate compliance with the applicable development standards per Section 17.30.030;
  - C. Drawings showing how airspace is to be divided within the condominium consistent with the requirements for a "condominium plan" per California Civil Code Section 4285;
  - D. Application for tentative parcel or subdivision map approval, including a copy of the tentative parcel or subdivision map, unless a map waiver is processed per Section 16.12.050 or Section 16.12.025 of Title 16, Subdivisions.
  - E. Project plans demonstrating compliance with Section 17.30.030 of this Chapter and the development regulations of the zoning district in which the property is located;
  - F. A copy of the proposed declaration of restrictions (for condominium projects with unit-owners associations), or maintenance agreement (for smaller condominium projects without unit-owners associations) as required by the provisions of the Civil Code of the state, including the following:
    - 1. A requirement for binding arbitration for tie votes;
    - 2. Provisions addressing property, general liability, earthquake and flood insurance responsibilities;
    - 3. Provisions addressing maintenance responsibilities for roof, gutters, sidewalks, painting, landscaping, any habitat areas subject to the San Bruno Mountain Area Habitat

Conservation Plan, and other common area improvements (including timing of maintenance items and method to apportion costs);

4. Provisions for the reconstruction of the project in accordance with codes in effect at the time of such reconstruction, in the event of the destruction of the condominium project;
  5. A provision specifying that the city of Brisbane is named as a third-party beneficiary for enforcement purposes, if recommended by the city attorney; and
- G. Any information deemed necessary or desirable in assisting the commission in its determinations.

**SECTION 13:** A new Section 17.30.045 is added to Chapter 17.30 – Condominiums of the Municipal Code to read as follows:

**17.30.045 – Residential Condominium Conversions- Use Permit Submittal Requirements.**

A use permit shall be required for residential condominium conversions. The application for a use permit for a residential condominium conversion (including conversion of a mixed-use development with residential units) shall include, in addition to the requirements in Section 17.30.040, the following information:

- A. A building history report, including the following:
  1. The date of construction of all elements of the project,
  2. A statement of the major uses of the project since construction,
  3. The date and description of each major repair or renovation of any element since the date of construction,
  4. The name and address of each present tenant of the project,
  5. In the event that any of the information in subsections a through d cannot be provided, an affidavit or declaration setting forth in detail all efforts undertaken to discover such information and reasons why the information cannot be obtained;
- B. A property inspection report prepared by a licensed civil engineer, structural engineer, architect, general building contractor and/or general engineering contractor, determining the level of current building and fire code compliance for and describing the condition and estimating the useful life of each of the following elements of each structure within the project:
  1. Foundations,
  2. Structural elements,
  3. Interior walls, ceilings and floors (inspected for termite, dry rot or water damage, including toxic mold),
  4. Roofs,
  5. Drainage systems,
  6. Exterior sidings and finishes,
  7. Paved surfaces,
  8. Mechanical systems,
  9. Electrical systems,
  10. Plumbing systems, including sewer systems,
  11. Landscaping,
  12. Sprinkler systems for landscaping,
  13. Utility delivery systems,
  14. Central or community heating and air conditioning systems,
  15. Fire protection systems, including any automatic sprinkler systems,
  16. Alarm systems and property security in general,

- 17. Smoke detectors and any required carbon monoxide alarms,
- 18. Standpipe systems;
- C. Written certification from a licensed appliance repair contractor on the working condition of all private and common appliances and mechanical equipment;
- D. Written certification from a licensed painting contractor on the condition of all exterior painted surfaces;
- E. Written certification from a licensed roofing contractor on the condition of all roofs;
- F. A structural pest control report prepared by a licensed structural pest control operator pursuant to Section 8516 of the Business and Professions Code;
- G. An acoustical test data report on the noise attenuation characteristics of existing party walls, floors and ceilings prepared by a licensed acoustical consultant, based upon a representative sampling of the units, identifying any current building code standards for exterior and interior noise transmission that cannot be met.
- H. A summary of average rents for each bedroom type of rental unit, and a detailed unit history containing the following information:
  - 1. Location of unit,
  - 2. Number of rooms,
  - 3. Size of unit in square feet,
  - 4. Rental rate during two (2) years preceding the date of submittal of the application, indicating dates of rental rate increases,
  - 5. Duration of occupancy of present tenants;
- I. A housing and tenant relocation report prepared by a qualified consultant approved by the planning director, containing the following information:
  - 1. The number of multiple dwelling rental units which will remain after the conversion,
  - 2. The nature and type of relocation assistance proposed by the applicant, including financial assistance and the provision of alternative housing facilities, including relocation programs,
  - 3. Vacancy information in rental units and the availability thereof within the city of Brisbane,
  - 4. The proposed schedule of meetings which the applicant plans or proposes to hold with tenants to explain the application and its ramifications to the tenants,
  - 5. The proposed phasing or timing schedule of conversion and sale of units,
  - 6. Whether existing tenants will be given any discount from otherwise applicable sales prices,
  - 7. Any plan for temporary displacement of tenants who purchase units,
  - 8. A description of the demographic composition of the tenants, including information on age, persons per unit, persons over age sixty-two (62), number of permanent disabled persons, and tenure per unit,
  - 9. Suitable proof of compliance with the residential tenant notification requirements in Government Code Sections 66452.17 and 66452.18.

**SECTION 14:** Section 17.30.050 in Chapter 17.30 – Condominiums of the Municipal Code is amended to read as follows:

**17.30.050 – Condominium Conversion – Notice.**

- A. In addition to the requirements set forth in Chapter 17.54, notice shall be given to the residential tenants in any building proposed to be converted to condominiums, concurrent with the notice required by Section 16.16.190(D) of Title 16, Subdivisions.
- B. Copies of the staff report for condominium conversion applications shall be sent to the residential tenants of the subject building, as well as to the applicant, per Government Code Section 66452.3.

**SECTION 15:** Section 17.30.060 in Chapter 17.30 – Condominiums of the Municipal Code is amended to read as follows:

**17.30.060 – Condominium Conversion- Findings.**

In addition to the findings required for the granting of a use permit as set forth in Section 17.40.060, no use permit for a residential condominium conversion (including conversion of a mixed-use development with residential units) shall be granted unless the planning commission also finds and determines that:

- A. The condominium conversion will not adversely affect the rental market by not reducing the residential rental vacancy rate to less than five percent (5%); or
- B. The condominium conversion will provide unique housing opportunities for very-low-, low- and/or moderate-income households, not currently found among comparable market-rate condominium units, that exceed the requirements of the municipal code's basic inclusionary requirement by providing one more affordable unit than required in Section 17.31.030(B)(3), based upon proposed sales prices, financing and projected monthly dues, in addition to other factors as determined by the planning commission. For example, if comparable market-rate units are currently not affordable to moderate-income households at an affordable ownership cost as defined in Section 17.31.010(A)(1), the project will include more units affordable to moderate-income households than would be required, and for projects of five (5) or fewer units, which would not be subject to the inclusionary requirement, at least one unit affordable to moderate-income households would be provided. If comparable market-rate units are currently affordable to moderate-income households, the project will include more units affordable to low-income households at an affordable ownership cost as defined in Section 17.31.010(A)(2) than would be required, and for projects of five (5) or fewer units, which would not be subject to the inclusionary requirement, at least one unit affordable to low-income households would be provided.

**SECTION 16:** Section 17.30.070 in Chapter 17.30 – Condominiums of the Municipal Code is amended to read as follows:

**17.30.070 – Action by planning commission—Mandatory conditions.**

The planning commission may either grant or deny the application for the condominium design permit or use permit. If granted, the planning commission may impose such conditions and requirements as it deems appropriate in order to make all of the use permit findings prescribed in Section 17.30.060 or design permit findings prescribed in Section 17.42.040. In addition, the following mandatory conditions shall be included in every condominium design permit or use permit, as applicable:

- A. The required off-street parking spaces, excluding any guest parking spaces, shall be assigned to and included in the ownership of each individual condominium unit and shall not be sold or transferred except with the sale of such unit.
- B. For residential condominium conversions (including conversion of a mixed-use development with residential units), any hazardous and unsafe conditions identified through the inspection required per Section 17.30.045.B shall be corrected prior to the first sale of any of the converted units.

**SECTION 17:** Section 17.30.080 in Chapter 17.30 – Condominiums of the Municipal Code is amended to read as follows:

**17.30.080 – Condominium conversion- Appeals.**

- A. Any decision or determination made by the planning commission pursuant to this chapter for a condominium conversion use permit may be appealed to the city council in accordance with the procedures set forth in Sections 17.52.010 and 17.52.020 of this title, except that the appeal shall be filed within ten (10) calendar days after the date on which the decision or determination is rendered, consistent with Section 16.44.020 and Government Code Section 66452.5.
- B. Notice of any appeal regarding a use permit for residential condominium conversions (including conversion of a mixed-use development with residential units) shall be given to residential tenants of the building subject to the proposed condominium conversion, consistent with Section 16.44.050(B)(3) and Government Code Section 66452.5.

**SECTION 18:** Section 17.40.040 in Chapter 17.40- Use Permits of the Municipal Code is amended to read as follows:

**17.40.040 - Public hearing by planning commission-Notice.**

The planning commission shall conduct a public hearing on the application for a Use Permit. Notice of such hearing shall be given as set forth in Chapter 17.54.

**SECTION 19:** Section 17.42.020 in Chapter 17.42- Design Permits of the Municipal Code is amended to read as follows:

**17.42.020 - Application for design permit.**

- A. Contents of Application. Application for a design permit shall be filed with the planning director on such form as the planning director shall prescribe. The application shall be accompanied by legible and reproducible sets of completely dimensioned, scaled site development and architectural plans, with bar scales, showing such of the following items as the planning director deems appropriate in order to evaluate and process the application:
  - 1. Existing and/or proposed structures with floor plans (with the use of each room/space labeled), roof plans, and elevations of all sides of the existing and/or proposed structures, identifying colors and materials as appropriate, indicating the height from natural grade on each elevation of the tallest points of the structure (cross-sections may also be required based upon the complexity of the design), and including UBC type of construction;
  - 2. For covered projects as defined by Section 15.80.030, green building documentation per Section 15.80.060(A) sufficient to be approved per Section 15.80.060(C).
  - 3. Accurately dimensioned property lines, setbacks, structures on adjacent properties (and their uses), streets, easements, existing and proposed utilities, and building coverage and lot area calculations;

4. Location of existing trees by size (circumference measured twenty-four (24) inches above grade) and type, indicating those proposed for removal;
  5. Conceptual landscaping plans showing species, common name, size and number of plantings, with description of proposed plantings (height at maturity, time to maturity, color, drought/wind/salt tolerance, and deciduousness), calculation of the total square footage of proposed irrigated landscaped area and explanation of proposed method of irrigation;
  6. Existing and proposed parking facilities, including the dimensions of parking spaces, number and location of spaces designated as compact or handicapped spaces, and a calculation of the number of parking spaces required by this title or any other applicable regulations;
  7. Paving details, improved street width (curb-to-curb), sidewalks, and driveway cuts;
  8. Existing and proposed topography of the property (at five (5) foot intervals), clearly indicating any proposed grading and filling and the amounts in cubic yards of proposed excavation, fill and removal from the site. If requested by the planning director, a soils report and/or geotechnical study shall also be furnished;
  9. Drainage details, exterior lighting, trash enclosures, signs, fences and method of screening exterior mechanical equipment (including rooftop air-conditioning units, transformers and public utilities);
  10. Material and color samples and colored rendering of the project;
  11. Photographs of the Site. Photomontages of the proposal may also be required dependent upon the visual significance of the proposal.
- B. Application Fee. The application shall be accompanied by the payment of a processing fee in such amount as established from time to time by resolution of the city council. In addition to the processing fee, the applicant shall also deposit such amounts as the planning director may require from time to time to cover the cost of any environmental investigations or reports, geotechnic and engineering reports, review of green building documentation, and such other investigations and reports that may be required by the city in connection with the processing of the application.
- C. Newly Constructed Condominiums. In addition to the information listed in this section, an application for a design permit for newly constructed condominiums, as defined in BMC 17.30.020.A, shall also include the materials stipulated in Section 17.30.040.

**SECTION 20:** Section 17.42.030 in Chapter 17.42- Design Permits of the Municipal Code is amended to read as follows:

**17.42.030 - Public hearing by planning commission-Notice.**

The planning commission shall conduct a public hearing on the application for a Design Permit. Notice of such hearing shall be given as set forth in Chapter 17.54.

**SECTION 21:** Section 17.46.030 in Chapter 17.46- Variances of the Municipal Code is amended to read as follows:

**17.46.030 - Public hearing by planning commission-Notice.**

The planning commission shall conduct a public hearing on the application for a Variance. Notice of such hearing shall be given as set forth in Chapter 17.54.

**SECTION 22:** Section 17.50.020 in Chapter 17.50 – Amendments of the Municipal Code is amended to read as follows:

**17.50.020 - Public hearing requirement.**

- A. A public hearing shall be scheduled within sixty (60) days of receipt of a petition or resolution of intention of amendment to this Title.
- B. Notice of the time and place of such hearing, and the purpose thereof, shall be given in the manner designated in Chapter 17.54.

**SECTION 23:** Section 17.54.020 in Chapter 17.54 – Public Hearings of the Municipal Code is amended to read as follows:

**17.54.020 - Amendments—Notice requirements.**

When a public hearing is held by the planning commission or the city council to consider the adoption of a zoning ordinance or an amendment to a zoning ordinance, which amendment changes any property from one (1) zone to another or imposes any regulation listed in California Government Code Section 65860 not theretofore imposed or removes or modifies any such regulation theretofore imposed, notice of the time and place of the hearing including a general explanation of the matter to be considered and including a general description of the area affected shall be given at least ten (10) calendar days before the hearing in the following manner:

- A. The notice shall be posted in at least three (3) public places in the city as designated by the City Council in Chapter 1.12.
- B. In rezoning, the notice shall be posted in at least three (3) public places in the area to be rezoned.
- C. If the proposed zoning ordinance or amendment affects the permitted uses of real property, in addition to notice by posting, the city shall refer to the latest assessor's roll and give notice of the hearing by mail or delivery to all persons, including businesses, corporations or other public or private entities, owning real property within three hundred (300) feet of the proposed zoning change.
- D. The city shall give notice by first class mail to any person who has filed a written request therefore with the planning director. Such a request may be submitted at any time during the calendar year and shall apply for the balance of such calendar year. A reasonable fee, as set by the city council, shall be imposed on persons requesting such notice.
- E. If mailed notice is required pursuant to subsection (c) of this section, and the proposed zoning change has been requested by a person other than the property owner as such property owner is shown on the last equalized assessment roll, mailed notice shall also be given to the owner of the property as shown on the last equalized assessment roll.

- F. The city may give additional notice of the hearing in such other manner as it may deem necessary or desirable.
- G. Any hearing may be continued from time to time.

**SECTION 24:** Section 17.54.030 in Chapter 17.54 – Public Hearings of the Municipal Code is amended to read as follows:

**17.54.030 - Use permits, variances, design permits planned development permits, and appeals—  
Notice requirements.**

- A. Whenever an application for a variance, use permit, design permit, or planned development permit, or revocation or modification of same or an appeal from the action taken thereon, is submitted to the body or person charged with conducting a public hearing thereon, notice of hearing shall be given by notice through the United States mails, with postage prepaid using addresses from the last equalized assessment roll, or alternatively, from such other records of the assessor or tax collector as contain more recent addresses in the opinion of the body, and by posting the notice in the posting locations designated by the City Council in Chapter 1.12.
- B. Notice shall be given to all owners of property within three hundred (300) feet of the exterior boundaries of the property for which an application is being heard. The notices shall be mailed not less than ten (10) or more than thirty (30) days before the scheduled hearing.
- C. Notices shall specify the type and magnitude of the application to be considered, the place where copies of the application may be reviewed, the time, date and place of the hearing and the right to appear and be heard.

**SECTION 25:** Where a use permit, design permit or variance approval has been issued through final action by the City prior to the effective date of this Ordinance, or where such planning permit approval is not required and a complete building permit application has been submitted prior to the effective date of this Ordinance, the holder of such use permit, design permit or variance approval or complete building permit application may proceed to construct the improvements or establish the use authorized by such permit or approval and the same shall be exempted from any conflicting regulations that may be contained in this Ordinance.

**SECTION 26:** 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 27:** This Ordinance shall be in full force and effect thirty days after its passage and adoption.

\* \* \*

The above and foregoing Ordinance was regularly introduced and after the waiting time required by law, was thereafter passed and adopted at a regular meeting of the City Council of the City of Brisbane held on the \_\_\_\_\_ day of \_\_\_\_\_, 2016, by the following vote:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

\_\_\_\_\_  
Mayor Clifford Lentz

ATTEST:

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

APPROVED AS TO FORM:

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

## RZ-4-16 Proposed Amendments: Redline Text

### Title 16 - Subdivisions

Chapter/Section	Proposed Text
16.08.020- Advisory Agency.	<u>Except where otherwise specified in this Title</u> , "advisory agency" means the Brisbane planning commission which is charged with the duty of reviewing the design and improvements of proposed divisions of real property, the imposing of conditions thereon and having the authority to approve, conditionally approve or disapprove said divisions.
16.08.280 - Subdivision. (Subsection B only)	B. "Subdivision" also includes the following: <ol style="list-style-type: none"> <li>1. A condominium project, as defined in Section <del>4125 4350</del> of the Civil Code;</li> <li>2. A community apartment project, as defined in Section <del>4105 44004</del> of the <u>Civil Code Business and Professions Code</u>;</li> <li>3. The conversion of five (5) or more existing dwelling units to a stock cooperative, as defined in Section <del>4190 44003-2</del> of the <u>Civil Business and Professions Code</u>.</li> </ol>
16.12.010 - Tentative and final subdivision map— When required.	A tentative and final subdivision map shall be required for the following: <ol style="list-style-type: none"> <li>A. All subdivisions creating five (5) or more parcels;</li> <li>B. Five (5) or more condominiums as defined in Section <del>4125 783</del> of the Civil Code;</li> <li>C. A community apartment project containing five (5) or more parcels;</li> <li>D. The conversion of <u>five (5) or more existing a dwelling units</u> to a stock cooperative <u>containing five (5) or more dwelling units</u>.</li> </ol>
16.12.025 – <u>Tentative and Final subdivision map—Waiver of requirements.</u>	<u>A subdivider may apply for a waiver of the requirements for a tentative and final subdivision map may be waived under Section 16.12.010.B for the construction of a condominium project of five (5) or more units on a single parcel. if The planning commission Planning Director may waive such requirements if the Planning Director reviews an application for waiver, accompanied by a tentative subdivision map, and finds that the proposed division of land subdivision complies with requirements established pursuant to this title as to the following:</u> <ol style="list-style-type: none"> <li>A. Area;</li> <li>B. Improvement and design;</li> <li>C. Floodwater drainage control;</li> <li>D. Appropriate improved public roads;</li> <li>E. Sanitary disposal facilities;</li> <li>F. Water supply availability;</li> <li>G. Environmental protection;</li> <li>H. Recorded monumentation of the boundaries of the parcels;</li> <li>I. Other requirements of this title and the Subdivision Map Act.</li> </ol>
16.12.030 - Tentative and final parcel map— When required.	A tentative parcel map and final parcel map shall be required for the following: <ol style="list-style-type: none"> <li>A. All subdivisions creating less than five (5) parcels;</li> <li>B. Less than five (5) condominiums <del>as defined in Section 783 of the Civil Code</del>;</li> <li>C. A community apartment project containing less than five (5) parcels;</li> <li>D. The conversion of <u>less than five (5) existing dwelling units to a stock cooperative a dwelling to a stock cooperative containing less than five (5) dwelling units</u>;</li> <li>E. All subdivisions for which tentative and final subdivision maps are not required due to an exception set forth in Section 16.12.020.</li> </ol> <p><u>In lieu of applying for a tentative parcel map, a subdivider may elect to apply for a tentative or vesting tentative subdivision map for any subdivision under this section in</u></p>

Chapter/Section	Proposed Text
	<u>compliance with the procedures for tentative and vesting tentative subdivision maps contained in section 16.16.120.</u>
16.12.050 - <del>Final</del> Parcel map— Waiver of requirements.	A subdivider may apply for a waiver of the requirements for a <u>tentative and final</u> parcel map <u>under section 16.12.030. may be waived if the planning commission</u> <u>The Planning Director may waive such requirements if the Planning Director accompanied by a tentative parcel map, and</u> finds that the proposed <u>division of land subdivision</u> complies with requirements established pursuant to this title as to the following: <ul style="list-style-type: none"> <li>A. Area;</li> <li>B. Improvement and design;</li> <li>C. Floodwater drainage control;</li> <li>D. Appropriate improved public roads;</li> <li>E. Sanitary disposal facilities;</li> <li>F. Water supply availability;</li> <li>G. Environmental protection;</li> <li>H. Recorded monumentation of the boundaries of the parcels;</li> <li>I. Other requirements of this title and the Subdivision Map Act.</li> </ul>
16.24.040 - Dedication credits for park and recreational improvements and for private open space.	A. If the subdivider provides park and recreational improvements to the dedicated land, the value of the improvements together with any equipment located thereon shall be a credit against the payment of fees or dedication of land required by this chapter. B. If a condominium project or other common interest development <del>as defined in Civil Code Section 1351(e)</del> provides private open space within the development which is usable for active recreational uses, the value of such land shall be a credit against the payment of fees or dedication of land required by this chapter.
16.24.050 - Dedication timing of determination and payment.	A. At the time of approval of the tentative map, the approving agency shall determine pursuant to this chapter the land to be dedicated and/or the fees to be paid by the subdivider. At the time of filing of the final map or final parcel map, the subdivider shall dedicate the land or pay the fees as previously determined, except as provided below. B. Open space covenants for private park or recreational facilities shall be submitted to the city upon the filing of the final subdivision or parcel map and shall be recorded contemporaneously with such map. C. At the time of approval of the final map, the approving agency shall specify when development of the park and recreational facilities shall be commenced. D. Any <del>approval of a</del> waiver of a <u>tentative and final subdivision map or</u> parcel map pursuant to <u>Section 16.12.025 or</u> Section 16.12.050 shall <u>nevertheless</u> be subject to dedication of land, payment of fees and/or recordation of open space covenants as required by this chapter.

## Title 17- Condominiums

Chapter/Section	Proposed Text
17.02.150 - Condominium.	"Condominium" means a building, or group of buildings, in which dwelling units, commercial/retail/office/warehouse spaces, floor areas, or other portions of the property are owned individually or restricted for the exclusive use of a single owner, and the structure, common areas, and common facilities are owned by all the owners on a proportional, undivided basis. The individual ownership interest may include a

Chapter/Section	Proposed Text
	<p>fee, a life estate, a leasehold, or a right of use during a specific period of time. As used in this title, the term includes "community apartment project" and "stock cooperative" as defined by State Civil Code Sections <del>4105 1351(d)</del> and <del>4190 (m)</del>.</p>
<p>17.30.020 – <del>Use permit required</del> Applicability.</p>	<p><u>A. New construction: Construction of new condominium projects containing three or more units shall be subject to the development standards set forth in Section 17.30.030 and design permit requirement set forth in Section 17.30.040 of this Chapter.</u></p> <p><u>B. Residential condominium conversions:</u> Before <del>issuance of any building permit for any condominium and before</del> the conversion of any existing structure to condominiums, the developer, builder or other person seeking to <del>construct the project or</del> convert the existing structure shall first obtain from the planning commission a use permit pursuant to the provisions of Chapter 17.40 and <u>Section 17.30.045 of this chapter. Residential condominium conversions include conversion of a mixed-use development with residential units.</u></p>
<p>17.30.040 - - <del>Application for condominium use permit</del> New Condominiums – Design Permit Submittal Requirements.</p>	<p><del>A. The application for a use permit for newly constructed condominiums or condominium conversions</del> <u>A design permit shall be required for the new construction of condominium projects containing three or more units, subject to the procedures established in Chapter 17.42. Condominium design permit applications shall be accompanied by the following materials:</u></p> <ul style="list-style-type: none"> <li>A. A map to a workable scale, showing the site in relation to surrounding property, existing roads and other existing improvements;</li> <li>B. A site plan, showing existing and proposed improvements, locations of buildings on the ground, orientation of buildings, utilities, public services, public facilities, streets and alleys, landscaping, and the boundaries of the projects, including the details necessary to demonstrate compliance with the applicable development standards per Section 17.30.030;</li> <li>C. Drawings showing how airspace is to be divided within the condominium consistent with the requirements for a "condominium plan" per California Civil Code <del>Sections 1531(e) and (f)</del> <u>Section 4285;</u></li> <li>D. Application for <u>a</u> tentative parcel or subdivision map <del>approval</del>, including a copy of the tentative parcel or subdivision map, <u>unless the Planning Director has waived the requirement for such map as provided in Section 16.12.050 or Section 16.12.025 of Title 16, Subdivisions.</u></li> <li>E. <u>Project plans demonstrating compliance with Section 17.30.030 of this Chapter and the development regulations of the zoning district in which the property is located;</u></li> <li>F. A copy of the proposed declaration of restrictions (for condominium projects with unit-owners associations), or maintenance agreement (for smaller condominium projects without unit-owners associations) as required by the provisions of <del>Section 4355</del> <u>4250</u> of the Civil Code of the state, including the following: <ul style="list-style-type: none"> <li>1. A requirement for binding arbitration for tie votes;</li> <li>2. Provisions addressing property, general liability, earthquake and flood insurance responsibilities;</li> <li>3. Provisions addressing maintenance responsibilities for roof, gutters, sidewalks, painting, landscaping, any habitat areas subject to the San Bruno Mountain Area Habitat Conservation Plan, and other common</li> </ul> </li> </ul>

Chapter/Section	Proposed Text
	<p>area improvements (including timing of maintenance items and method to apportion costs);</p> <ol style="list-style-type: none"> <li>4. Provisions for the reconstruction of the project in accordance with codes in effect at the time of such reconstruction, in the event of the destruction of the condominium project;</li> <li>5. A provision specifying that the city of Brisbane is named as a third-party beneficiary for enforcement purposes, if recommended by the city attorney.</li> </ol> <p>G. Any information deemed necessary or desirable in assisting the commission in its determinations.</p> <p><del>B. The application for a use permit for newly constructed condominiums shall be accompanied by an application for a design permit as provided by Sections 17.01.105 and 17.42.010 of this title. The planning director may determine that the application for the design permit shall be processed first, prior to completion and processing of the application for the condominium use permit.</del></p>
<p><u>17.30.045 - Residential Condominium Conversions- Use Permit Submittal Requirements</u></p>	<p><del>C. A use permit shall be required for residential condominium conversions.</del> The application for a use permit for a residential condominium conversion (including conversion of a mixed-use development with residential units) shall include, in addition to the requirements in Section 17.30.040<del>A</del>, the following information:</p> <ol style="list-style-type: none"> <li>A. A building history report, including the following: <ol style="list-style-type: none"> <li>1. The date of construction of all elements of the project,</li> <li>2. A statement of the major uses of the project since construction,</li> <li>3. The date and description of each major repair or renovation of any element since the date of construction,</li> <li>4. The name and address of each present tenant of the project,</li> <li>5. In the event that any of the information in subsections a through d cannot be provided, an affidavit or declaration setting forth in detail all efforts undertaken to discover such information and reasons why the information cannot be obtained;</li> </ol> </li> <li>B. A property inspection report prepared by a licensed civil engineer, structural engineer, architect, general building contractor and/or general engineering contractor, determining the level of current building and fire code compliance for and describing the condition and estimating the useful life of each of the following elements of each structure within the project: <ol style="list-style-type: none"> <li>1. Foundations,</li> <li>2. Structural elements,</li> <li>3. Interior walls, ceilings and floors (inspected for termite, dry rot or water damage, including toxic mold),</li> <li>4. Roofs,</li> <li>5. Drainage systems,</li> <li>6. Exterior sidings and finishes,</li> <li>7. Paved surfaces,</li> <li>8. Mechanical systems,</li> <li>9. Electrical systems,</li> <li>10. Plumbing systems, including sewer systems,</li> <li>11. Landscaping,</li> <li>12. Sprinkler systems for landscaping,</li> <li>13. Utility delivery systems,</li> <li>14. Central or community heating and air conditioning systems,</li> <li>15. Fire protection systems, including any automatic sprinkler systems,</li> <li>16. Alarm systems and property security in general,</li> <li>17. Smoke detectors and any required carbon monoxide alarms,</li> </ol> </li> </ol>

Chapter/Section	Proposed Text
	<p>18. Standpipe systems;</p> <p>C. Written certification from a licensed appliance repair contractor on the working condition of all private and common appliances and mechanical equipment;</p> <p>D. Written certification from a licensed painting contractor on the condition of all exterior painted surfaces;</p> <p>E. Written certification from a licensed roofing contractor on the condition of all roofs;</p> <p>F. A structural pest control report prepared by a licensed structural pest control operator pursuant to Section 8516 of the Business and Professions Code;</p> <p>G. An acoustical test data report on the noise attenuation characteristics of existing party walls, floors and ceilings prepared by a licensed acoustical consultant, based upon a representative sampling of the units, identifying any current building code standards for exterior and interior noise transmission that cannot be met.</p> <p>H. A summary of average rents for each bedroom type of rental unit, and a detailed unit history containing the following information:</p> <ol style="list-style-type: none"> <li>1. Location of unit,</li> <li>2. Number of rooms,</li> <li>3. Size of unit in square feet,</li> <li>4. Rental rate during two (2) years preceding the date of submittal of the application, indicating dates of rental rate increases,</li> <li>5. Duration of occupancy of present tenants;</li> </ol> <p>I. A housing and tenant relocation report prepared by a qualified consultant approved by the planning director, containing the following information:</p> <ol style="list-style-type: none"> <li>1. The number of multiple dwelling rental units which will remain after the conversion,</li> <li>2. The nature and type of relocation assistance proposed by the applicant, including financial assistance and the provision of alternative housing facilities, including relocation programs,</li> <li>3. Vacancy information in rental units and the availability thereof within the city of Brisbane,</li> <li>4. The proposed schedule of meetings which the applicant plans or proposes to hold with tenants to explain the application and its ramifications to the tenants,</li> <li>5. The proposed phasing or timing schedule of conversion and sale of units,</li> <li>6. Whether existing tenants will be given any discount from otherwise applicable sales prices,</li> <li>7. Any plan for temporary displacement of tenants who purchase units,</li> <li>8. A description of the demographic composition of the tenants, including information on age, persons per unit, persons over age sixty-two (62), number of permanent disabled persons, and tenure per unit,</li> <li>9. Suitable proof of compliance with the residential tenant notification requirements in Government Code Sections 66452.17 and 66452.18.</li> </ol>
<p>17.30.050 – <u>Condominium Conversion</u> – Notice.</p>	<p>A. In addition to the requirements set forth in Chapter 17.54, notice shall be given to the residential tenants in any building proposed to be converted to condominiums, concurrent with the notice required by Section 16.16.190(D) <u>of Title 16, Subdivisions.</u></p> <p>B. Copies of the staff report for condominium conversion applications shall be sent to the residential tenants of the subject building, as well as to the applicant, per Government Code Section 66452.3.</p>

Chapter/Section	Proposed Text
<p>17.30.060 – <u>Condominium Conversion-Findings</u>.</p>	<p><del>A.</del> In addition to the findings required for the granting of a use permit as set forth in Section 17.40.060, no use permit for a residential condominium conversion (including conversion of a mixed-use development with residential units) shall be granted unless the planning commission also finds and determines that:</p> <p>A. The condominium conversion will not adversely affect the rental market by not reducing the residential rental vacancy rate to less than five percent (5%); or</p> <p>B. The condominium conversion will provide unique housing opportunities for very-low-, low- and/or moderate-income households, not currently found among comparable market-rate condominium units, that exceed the requirements of the municipal code's basic inclusionary requirement by providing one more affordable unit than required in Section 17.31.030(B)(3), based upon proposed sales prices, financing and projected monthly dues, in addition to other factors as determined by the planning commission. For example, if comparable market-rate units are currently not affordable to moderate-income households at an affordable ownership cost as defined in Section 17.31.010(A)(1), the project will include more units affordable to moderate-income households than would be required, and for projects of five (5) or fewer units, which would not be subject to the inclusionary requirement, at least one unit affordable to moderate-income households would be provided. If comparable market-rate units are currently affordable to moderate-income households, the project will include more units affordable to low-income households at an affordable ownership cost as defined in Section 17.31.010(A)(2) than would be required, and for projects of five (5) or fewer units, which would not be subject to the inclusionary requirement, at least one unit affordable to low-income households would be provided.</p>
<p>17.30.070 - Action by planning commission—Mandatory conditions.</p>	<p>The planning commission may either grant or deny the application for the condominium <u>design permit or</u> use permit. If granted, the planning commission may impose such conditions and requirements as it deems appropriate in order to make all of the <u>use permit</u> findings prescribed in Section 17.30.060 <u>or design permit findings prescribed in Section 17.42.040.</u> <del>but</del> <u>In addition,</u> the following mandatory conditions shall be included in every condominium <u>design permit or</u> use permit, as applicable:</p> <p>A. The required off-street parking spaces, excluding any guest parking spaces, shall be assigned to and included in the ownership of each individual condominium unit and shall not be sold or transferred except with the sale of such unit.</p> <p>B. For residential condominium conversions (including conversion of a mixed-use development with residential units), any hazardous and unsafe conditions identified through the inspection required per Section <del>17.30.060</del> <u>17.30.045.B</u> shall be corrected prior to the first sale of any of the converted units.</p>
<p>17.30.080 – <u>Condominium conversion- Appeals</u>.</p>	<p>A. Any decision or determination made by the planning commission pursuant to this chapter <u>for a condominium conversion use permit</u> may be appealed to the city council in accordance with the procedures set forth in Sections 17.52.<del>40</del><u>10</u> and 17.52.020 of this title, except that the appeal shall be filed within ten (10) calendar days after the date on which the <u>planning commission made its</u> decision or determination <del>is rendered, consistent with</del> <u>as provided in</u> Section 16.44.020 and Government Code Section 66452.5.</p> <p>B. Notice of any appeal regarding a use permit for residential condominium conversions (including conversion of a mixed-use development with residential</p>

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	<p>units) shall be given to residential tenants of the building subject to the proposed condominium conversion, <del>consistent with</del> <u>as provided in</u> Section 16.44.050(B)(3) and Government Code Section 66452.5.</p>
<p>17.42.020 - Application for design permit.</p>	<p>A. Contents of Application. Application for a design permit shall be filed with the planning director on such form as the planning director shall prescribe. The application shall be accompanied by legible and reproducible sets of completely dimensioned, scaled site development and architectural plans, with bar scales, showing such of the following items as the planning director deems appropriate in order to evaluate and process the application:</p> <ol style="list-style-type: none"> <li>1. Existing and/or proposed structures with floor plans (with the use of each room/space labeled), roof plans, and elevations of all sides of the existing and/or proposed structures, identifying colors and materials as appropriate, indicating the height from natural grade on each elevation of the tallest points of the structure (cross-sections may also be required based upon the complexity of the design), and including UBC type of construction;</li> <li>2. For covered projects as defined by Section 15.80.030, green building documentation per Section 15.80.060(A) sufficient to be approved per Section 15.80.060(C).</li> <li>3. Accurately dimensioned property lines, setbacks, structures on adjacent properties (and their uses), streets, easements, existing and proposed utilities, and building coverage and lot area calculations;</li> <li>4. Location of existing trees by size (circumference measured twenty-four (24) inches above grade) and type, indicating those proposed for removal;</li> <li>5. Conceptual landscaping plans showing species, common name, size and number of plantings, with description of proposed plantings (height at maturity, time to maturity, color, drought/wind/salt tolerance, and deciduousness), calculation of the total square footage of proposed irrigated landscaped area and explanation of proposed method of irrigation;</li> <li>6. Existing and proposed parking facilities, including the dimensions of parking spaces, number and location of spaces designated as compact or handicapped spaces, and a calculation of the number of parking spaces required by this title or any other applicable regulations;</li> <li>7. Paving details, improved street width (curb-to-curb), sidewalks, and driveway cuts;</li> <li>8. Existing and proposed topography of the property (at five (5) foot intervals), clearly indicating any proposed grading and filling and the amounts in cubic yards of proposed excavation, fill and removal from the site. If requested by the planning director, a soils report and/or geotechnical study shall also be furnished;</li> <li>9. Drainage details, exterior lighting, trash enclosures, signs, fences and method of screening exterior mechanical equipment (including rooftop air-conditioning units, transformers and public utilities);</li> <li>10. Material and color samples and colored rendering of the project;</li> <li>11. Photographs of the Site. Photomontages of the proposal may also be required dependent upon the visual significance of the proposal.</li> </ol> <p>B. Application Fee. The application shall be accompanied by the payment of a processing fee in such amount as established from time to time by resolution of</p>

Chapter/Section	Proposed Text
	<p>the city council. In addition to the processing fee, the applicant shall also deposit such amounts as the planning director may require from time to time to cover the cost of any environmental investigations or reports, geotechnic and engineering reports, review of green building documentation, and such other investigations and reports that may be required by the city in connection with the processing of the application.</p> <p><u>C. Newly Constructed Condominiums. In addition to the information listed in this section, an application for a design permit for newly constructed condominiums, as defined in BMC 17.30.020.A, shall also include the materials stipulated in Section 17.30.040.</u></p>

## Title 17- Public Noticing

Chapter/Section	Proposed Text
17.28.050 - Public hearing by planning commission— Notice.	<p>The planning commissions shall conduct a public hearing on the application for a PD permit. Notice of the public hearing shall be given <u>as set forth in Chapter 17.54. not less than ten (10) days nor more than thirty (30) days prior to the date of the hearing by mailing, postage prepaid, a notice of the time and place of the hearing to the applicant and to all persons whose names appear on the latest available assessment roll of the county as owning property within three hundred (300) feet of the boundaries of the site which is the subject of the PD permit application. Notice of the public hearing shall also be posted at each location within the city where agendas for planning commission meetings are routinely posted.</u></p>
17.40.040 - Application— Public hearing— Notice. Public hearing by planning commission- Notice.	<p><u>The planning commission shall conduct a public hearing on the application for a Use Permit. Upon receipt of an application for a use permit, the secretary of the planning commission shall set a date for a public hearing on such application; such hearing shall be held within forty five (45) days after the filing of the application.</u> Notice of such hearing shall be given as set forth in Chapter 17.54.</p>
17.42.030 - Public hearing by planning commission- Notice.	<p>The planning commission shall conduct a public hearing on the application for a Design Permit. Notice of such hearing shall be given <u>as set forth in Chapter 17.54 not less than ten (10) days nor more than thirty (30) days prior to the date of the hearing by mailing, postage prepaid, a notice of the time and place of the hearing to the applicant and to all persons whose names appear on the latest available assessment roll of the county as owning property within three hundred (300) feet of the boundaries of the site which is the subject of the permit application. Notice of the public hearing shall also be posted at each location within the city where agendas for planning commission meetings are routinely posted.</u></p>
17.46.030- Public hearing by planning commission- Notice.	<p><u>The planning commission shall conduct a public hearing on the application for a Variance. Upon receipt of an application for a variance, the secretary of the planning commission shall set a date for a public hearing on such application; such hearing shall be held within forty five (45) days after the filing of the application.</u> Notice of such hearing shall be given as set forth in Chapter 17.54.</p>
17.50.020 - Public hearing requirement.	<p>A. <u>A public hearing shall be scheduled within sixty (60) days of receipt of a petition or resolution of intention of amendment to this Title.</u>  <u>Upon a receipt of a petition or resolution of intention of amendment, the planning</u></p>

Chapter/Section	Proposed Text
	<p><del>commission secretary shall set a date for a public hearing thereon, but not later than sixty (60) days after the receipt of such petition or resolution.</del></p> <p>B. <del>If the proposed amendment consists of a change in the boundaries of any district, the planning commission shall give</del> Notice of the time and place of such hearing, and the purpose thereof, <del>shall be given</del> in the manner designated in <del>Section 17.54.020 Chapter 17.54</del>. <del>If the proposed amendment is of a matter of general or citywide scope, notice thereof shall be given as provided in Section 17.54.030.</del></p>
<p>17.54.020 - Amendments— Notice requirements.</p>	<p>When a public hearing is held by the planning commission or the city council to consider the adoption of a zoning ordinance or an amendment to a zoning ordinance, which amendment changes any property from one (1) zone to another or imposes any regulation listed in California Government Code Section 65860 not theretofore imposed or removes or modifies any such regulation theretofore imposed, notice of the time and place of the hearing including a general explanation of the matter to be considered and including a general description of the area affected shall be given at least ten (10) calendar days before the hearing in the following manner:</p> <p>A. The notice shall be <del>published at least once in a newspaper of general circulation, published and circulated in the city or, if there is none, it shall be</del> posted in at least three (3) public places in the city <del>as designated by the City Council in Chapter 1.12</del>.</p> <p>B. In rezoning, the notice shall be <del>published at least once in a newspaper of general circulation, published and circulated in the area to be rezoned or, if there is none, it shall be</del> posted in at least three (3) public places in the area to be rezoned.</p> <p>C. <del>If the proposed zoning ordinance or amendment affects the permitted uses of real property,</del> in addition to notice by <del>publication or</del> posting, the city shall refer to the latest assessor's roll and give notice of the hearing by mail or delivery to all persons, including businesses, corporations or other public or private entities, owning real property within three hundred (300) feet of the proposed zoning change.</p> <p>D. The city shall give notice by first class mail to any person who has filed a written request therefor with the planning director. Such a request may be submitted at any time during the calendar year and shall apply for the balance of such calendar year. A reasonable fee, as set by the city council, shall be imposed on persons requesting such notice.</p> <p>E. <del>If mailed notice is required pursuant to subsection (c) of this section, in the event that the</del> <del>and the</del> proposed zoning change has been requested by a person other than the property owner as such property owner is shown on the last equalized assessment roll, <del>the planning director shall also give</del> mailed notice <del>shall also be given</del> to the owner of the property as shown on the last equalized assessment roll.</p> <p>F. The city may give additional notice of the hearing in such other manner as it may deem necessary or desirable.</p> <p>G. Any hearing may be continued from time to time.</p>
<p>17.54.030 - Use permits, variances, <u>design permits and planned development permits</u> and appeals—Notice</p>	<p>A. Whenever an application for a variance, <del>or a conditional</del> use permit, <u>design permit</u>, or <del>other</del> <u>planned development</u> permit, <del>for or</del> revocation or modification of same or an appeal from the action taken thereon, is submitted to the body or person charged with conducting a public hearing thereon, notice of hearing shall be given by notice through the United States mails, with postage prepaid using addresses from the last equalized assessment roll, or alternatively, from such other records of the assessor or tax collector as contain more recent addresses in the opinion of the body, <del>or by both publication at least once in a</del></p>

Chapter/Section	Proposed Text
requirements.	<p><del>newspaper of general circulation, published and circulated in the city, and by posting the notice in at least three (3) conspicuous places close to the property affected the posting locations designated by the City Council in Chapter 1.12.</del></p> <p>B. <del>When mailed notice is used,</del> Notice shall be given to all owners of property within <del>one three</del> hundred (<del>100 300</del>) feet of the exterior boundaries of the property for which an application is being heard. The notices shall be mailed not less than ten (10) or more than thirty (30) days before the scheduled hearing.</p> <p><del>C. When posted notice is used, posting shall be on utility poles on both sides of the property frontage and across the street from the subject property.</del></p> <p><u>C. D.</u> Notices <del>specified in subsections B and C</del> shall specify the type and magnitude of the application to be considered, the place where copies of the application may be reviewed, the time, date and place of the hearing and the right to appear and be heard.</p>

# *City of Brisbane*

## *Planning Commission Agenda Report*

**TO:** Planning Commission For the Meeting of 9/22/16

**FROM:** Julia Capasso, Associate Planner, via  John Swiecki, Community Development Director

**SUBJECT:** **Zoning Text Amendment RZ-4-16** for amendments to Title 16, Subdivisions, and Title 17, Zoning, of the Brisbane Municipal Code (BMC) to update existing subdivision and public noticing regulations to be consistent with current California Government Code and Civil Code requirements, and to amend the discretionary review process for newly constructed condominium developments; City of Brisbane, applicant; Locations: Citywide.

**REQUEST:** The draft ordinance would amend various sections of Title 16, Subdivisions, and Title 17, Zoning, of the Brisbane Municipal Code to achieve consistency with California Government Code and Civil Code regulations pertaining to condominiums and public noticing requirements. Also proposed are amendments to the discretionary permitting process for newly constructed condominium developments. The proposed zoning amendments would not change existing zoning district classifications or the boundaries of any zoning district for any property.

**RECOMMENDATION:** Recommend that the City Council adopt the ordinance amending the zoning text based on the discussion and analysis presented in the agenda report, via adoption of Resolution RZ-4-16.

**ENVIRONMENTAL DETERMINATION:** The project is consistent with the General Plan per State CEQA Guidelines Section 15183(a)--this proposal falls within a class of projects which are consistent with existing zoning or general plan policies for which an EIR was certified and shall therefore not require further review. The exception to this section requiring environmental review as might be necessary to examine project specific significant effects does not apply.

**APPLICABLE CODE SECTIONS:** State condominium development regulations are located in §4000-6150 of the California Civil Code ("The Davis-Stirling Act"). Referenced State subdivision regulations are located in Sections 66424, 66426, and 66428 of the California Government Code, otherwise referred to as the Subdivision Map Act. State regulations pertaining to public noticing of discretionary permit applications and zoning text amendments are contained in Sections 65090 and 65091 of the Government Code. The City's subdivision and condominium development regulations are located in Brisbane Municipal Code (BMC) Chapters 16.08, 16.12, 16.24, 17.02, and 17.30. Design Permits are addressed in BMC Chapter 17.42. BMC Chapters 17.50 and 17.54 address noticing provisions for zoning text amendments and

discretionary permits. BMC Chapter 1.12 establishes citywide public notice locations and declares there is no newspaper of general circulation serving the City.

## **DISCUSSION:**

### **Subdivision Regulations**

The State's subdivision regulations are established in the Subdivision Map Act of the Government Code, commencing with §66428. Brisbane's subdivision ordinance, located in BMC Title 16, requires tentative and final "subdivision" maps to be prepared for subdivisions of five or more housing units or parcels (corresponding with the State's tentative and final map regulations).

For subdivisions of four or fewer housing units or parcels, the City's subdivision ordinance requires preparation of "tentative" and "final" parcel maps (corresponding with the State's parcel map regulations). A final parcel or subdivision map may be waived, as allowed by BMC Sections 16.12.025 and 16.12.050. The waiver application for final parcel or subdivision maps is also subject to review and approval by the Planning Commission.

The proposed subdivision ordinance amendments would update the existing waiver procedures for parcel and subdivision maps established in BMC §16.12.025 and §16.12.050 to fully comply with the requirements of the Subdivision Map Act (Government Code §66428), as described below. The proposed text amendments would also update references to outdated Civil Code sections throughout Title 16 (refer to redline text provided in Attachment A).

#### *Parcel Map Waiver Procedures*

Brisbane's subdivision ordinance currently provides a waiver procedure for "final" parcel maps, to be processed in tandem with the tentative parcel map approval by the Planning Commission. In order to waive the "final" parcel map, the Planning Commission must find that the map complies with the subdivision ordinance's requirements for lot area, improvement and design, floodwater drainage control, appropriate improved public roads, sanitary disposal facilities, water supply availability, environmental protection, recorded monumentation of the boundaries of the parcels, and other applicable requirements of the subdivision ordinance.

The City's existing waiver procedure for "final" parcel maps is inconsistent with Government Code §66428, which requires municipalities to provide a waiver procedure for all stages of a parcel map. The amendments to BMC §16.12.050 would eliminate this inconsistency.

Additionally, as the parcel map waiver procedure is administrative in nature, the proposed text amendments would authorize the Planning Director to process the parcel map waiver. This is consistent with the parcel map waiver procedures of other San Mateo County jurisdictions, including San Mateo County and the City of San Bruno.

### *Subdivision Map Waiver Procedures for Condominiums*

BMC Section 16.12.025 provides a final subdivision map waiver for a condominium project on a single parcel. The final subdivision map waiver is processed in tandem with the tentative subdivision map approval by the Planning Commission. In order to waive the final subdivision map, the Planning Commission must find that the map complies with the subdivision ordinance's requirements for lot area, improvement and design, floodwater drainage control, appropriate improved public roads, sanitary disposal facilities, water supply availability, environmental protection, recorded monumentation of the boundaries of the parcels, and other applicable requirements of the subdivision ordinance.

The proposed text amendments would amend the existing waiver procedure to apply to tentative *and* final subdivision maps for condominium projects on a single parcel, as allowed by Government Code §66428. Similarly to the parcel map waiver procedure, the proposed text amendments would allow the waiver procedure to be processed administratively. No changes are proposed to the required findings that must be made in order to grant the requested waiver.

### **Condominium Regulations**

#### *Update Civil Code References*

The California Civil Code governs the condominium development process. The proposed text amendments, shown in redline in Attachment A, would update outdated Civil Code references within the City's subdivision and zoning ordinances. Excerpts of the applicable Civil Code sections are provided in Attachment C.

#### *Eliminate Use Permit Requirement for New Condominium Construction*

Under the current regulations, a condominium project (defined as either new construction or conversion of an existing rental property into condominiums) is subject to a Conditional Use Permit (CUP). Under these current regulations, an application for a condominium conversion project requires a CUP, and an application for new condominium construction of three or more units requires a CUP and a Design Permit (see discussion below).

The proposed text amendments to BMC Chapter 17.30 would eliminate the requirement for a CUP for new condominium construction in order to streamline the development review process for new projects that are consistent with development regulations of the underlying zoning district. All specialized condominium development standards contained in BMC §17.30.030 would remain applicable to project review and approval under the Design Permit for new construction and the CUP for condominium conversions. These amendments are consistent with Housing Element Policy H.I.1, and specifically Program H.I.1.a, which calls for the city to "Continue to evaluate and implement changes to the zoning ordinance and permitting process to simplify and streamline approval of projects that meet the City's housing goals."

Eliminating the CUP requirement for newly constructed condominiums would reduce redundancies in project approval findings and allow for streamlined application review, while

maintaining discretionary review and strict development and community impact standards through the Design Permit process. City staff would continue to review condominium plans and governing documents to ensure compliance with the State Civil Code requirements, which are non-discretionary (or “ministerial”) in nature. The resulting streamlined process for newly constructed condominiums is consistent with the City’s housing policies, including Housing Element Policy H.I.1 and Program H.I.1.a which direct the City to reduce regulatory constraints on the development of new housing, especially infill housing and housing that adds to the mix of types, size, tenure and affordability.

Attachment D provides additional supporting analysis for eliminating the CUP requirement for newly constructed condominiums.

#### *Retain Design Permit Requirement for New Condominium Construction*

All new multi-family developments containing three or more units (including condominium projects) require approval of a Design Permit per BMC Chapter 17.42, subsection 17.42.010.A. Under the proposed text amendments, new condominium construction projects would continue to be subject to Design Permit approval, with the modification that projects containing two units (duplexes) would be exempt. This exemption is suggested in order bring the Design Permit requirements for condominiums into conformity with the Design Permit applicability established in BMC 17.42.010.B, which states in part:

*No design permit shall be required for the construction or substantial modification of any single-family dwelling, secondary dwelling unit, **duplex**, or accessory structure, unless part of a dwelling group totaling three (3) or more units or part of a mixed use development, or a design permit for such structure has been required as a condition of a development approval granted by the city. [Emphasis added]*

Under the proposed text amendments, Design Permit applications for new condominium developments of three or more units would be required to demonstrate compliance with the existing condominium development regulations in BMC Chapter 17.30.

#### **Public Noticing Regulations**

The California Government Code establishes legal requirements for public noticing of zoning ordinance amendments and public hearings for variances and use permits. The proposed revisions to BMC Chapters 17.50 and 17.54 would update the City’s noticing and posting provisions to be consistent with the Government Code and Chapter 1.12 of the Municipal Code. Generally, the proposed text amendments are intended to:

- Clarify the noticing requirements for zoning ordinance amendments that apply to real property (including a change to the zoning designation of property or properties), versus amendments that are citywide in scope. (Per Government Code §65090 and §65091.)

- Expand the noticing requirements established in BMC Chapter 17.54 to include design permit and planned development permits, as existing language only refers to variance and use permits.
- Eliminate references to publication of notices within a newspaper of general circulation, consistent with BMC Chapter 1.12, which declares that there is no newspaper of general circulation serving the City of Brisbane.

Attachment E shows a flow chart of the Government Code's public noticing regulations for the Commission's reference.

### **STAFF RECOMMENDATION**

Adoption of the attached draft Resolution RZ-4-16 recommending approval of the proposed subdivision and zoning text amendments to the City Council.

### **ATTACHMENTS:**

- ~~A. Table of Redlined Text~~ — **Not included**
- B. Excerpts from California Government Code (Subdivision Map Act)
- C. Excerpts from California Civil Code condominium regulations (Davis-Stirling Act)
- D. Expanded discussion of CUP requirement for newly constructed condominium developments
- E. Government Code Public Noticing Requirements Flow Chart
- ~~F. Draft Resolution RZ-4-16 (including the Draft Ordinance)~~ — **Not included**

**Excerpts from the California Government Code**  
**Subdivision Map Act**

66415. "Advisory agency" means a designated official or an official body charged with the duty of making investigations and reports on the design and improvement of proposed divisions of real property, the imposing of requirements or conditions thereon, or having the authority by local ordinance to approve, conditionally approve or disapprove maps.

66428. (a) Local ordinances may require a tentative map where a parcel map is required by this chapter. A parcel map shall be required for subdivisions as to which a final or parcel map is not otherwise required by this chapter, unless the preparation of the parcel map is waived by local ordinance as provided in this section.

A parcel map shall not be required for either of the following:

(1) Subdivisions of a portion of the operating right-of-way of a railroad corporation, as defined by Section 230 of the Public Utilities Code, that are created by short-term leases (terminable by either party on not more than 30 days' notice in writing).

(2) Land conveyed to or from a governmental agency, public entity, public utility, or for land conveyed to a subsidiary of a public utility for conveyance to that public utility for rights-of-way, unless a showing is made in individual cases, upon substantial evidence, that public policy necessitates a parcel map. For purposes of this subdivision, land conveyed to or from a governmental agency shall include a fee interest, a leasehold interest, an easement, or a license.

(b) A local agency shall, by ordinance, provide a procedure for waiving the requirement for a parcel map, imposed by this division, including the requirements for a parcel map imposed by Section 66426. The procedure may include provisions for waiving the requirement for a tentative and final map for the construction of a condominium project on a single parcel. The ordinance shall require a finding by the legislative body or advisory agency, that the proposed division of land complies with requirements established by this division or local ordinance enacted pursuant thereto as to area, improvement and design, floodwater drainage control, appropriate improved public roads, sanitary disposal facilities, water supply availability, environmental protection, and other requirements of this division or local ordinance enacted pursuant thereto. In any case, where the requirement for a parcel map is waived by local ordinance pursuant to this section, a tentative map may be required by local ordinance.

(c) If a local ordinance does not require a tentative map where a parcel map is required by this division, the subdivider shall have the option of submitting a tentative map, or if he or she desires to obtain the rights conferred by Chapter 4.5 (commencing with Section 66498.1), a vesting tentative map.

**Excerpts from the California Civil Code  
Condominium Regulations ("Davis-Stirling Act")**

**4100.** "Common interest development" means any of the following:

- (a) A community apartment project.
- (b) A condominium project.
- (c) A planned development.
- (d) A stock cooperative.

**4105.** "Community apartment project" means a development in which an undivided interest in land is coupled with the right of exclusive occupancy of any apartment located thereon.

**4125.** (a) A "condominium project" means a real property development consisting of condominiums.

(b) A condominium consists of an undivided interest in common in a portion of real property coupled with a separate interest in space called a unit, the boundaries of which are described on a recorded final map, parcel map, or condominium plan in sufficient detail to locate all boundaries thereof. The area within these boundaries may be filled with air, earth, water, or fixtures, or any combination thereof, and need not be physically attached to land except by easements for access and, if necessary, support. The description of the unit may refer to (1) boundaries described in the recorded final map, parcel map, or condominium plan, (2) physical boundaries, either in existence, or to be constructed, such as walls, floors, and ceilings of a structure or any portion thereof, (3) an entire structure containing one or more units, or (4) any combination thereof.

(c) The portion or portions of the real property held in undivided interest may be all of the real property, except for the separate interests, or may include a particular three-dimensional portion thereof, the boundaries of which are described on a recorded final map, parcel map, or condominium plan. The area within these boundaries may be filled with air, earth, water, or fixtures, or any combination thereof, and need not be physically attached to land except by easements for access and, if necessary, support.

(d) An individual condominium within a condominium project may include, in addition, a separate interest in other portions of the real property.

**4190.** (a) "Stock cooperative" means a development in which a corporation is formed or availed of, primarily for the purpose of holding title to, either in fee simple or for a term of years, improved real property, and all or substantially all of the shareholders of the corporation receive a right of exclusive occupancy in a portion of the real property, title to which is held by the corporation. The owners' interest in the corporation, whether evidenced by a share of stock, a certificate of membership, or otherwise, shall be deemed to be an interest in a common interest development and a real estate development for purposes of subdivision (f) of Section 25100 of the Corporations Code.

(b) A "stock cooperative" includes a limited equity housing cooperative which is a stock cooperative that meets the criteria of Section 817.

**4285.** A condominium plan shall contain all of the following:

(a) A description or survey map of a condominium project, which shall refer to or show monumentation on the ground.

(b) A three-dimensional description of a condominium project, one or more dimensions of which may extend for an indefinite distance upwards or downwards, in sufficient detail to identify the common area and each separate interest.

(c) A certificate consenting to the recordation of the condominium plan pursuant to this act that is signed and acknowledged as provided in Section 4290.

**Expanded Discussion of CUP Requirement for  
Newly-Constructed Condominiums**

The term “condominium” describes the ownership structure of a property and its private and common improvements, including structures, housing units, outdoor spaces, and landscaping. (BMC §17.020.150 and CCC §4125 and §6542). Whether a property is owned or rented is referred to as its “tenure.” The tenure of a building does not change its underlying land use.

As provided in California planning law, Conditional Use Permits (CUPs) are required for land uses that may be desirable to a community but for which additional discretion is prudent, or for uses that potentially could be detrimental to a community. Currently, BMC §17.30.020 requires a CUP for both newly constructed condominium developments (regardless of land use) and residential condominium conversions (conversions of existing residential structures that are currently rented into ownership units). It should be noted that the City’s General Plan Housing Element requires CUP’s specifically for residential condominium conversions (Policy H.B.4).

*CUP for Residential Condominium Conversions*

For a condominium conversion, there is a clear nexus between the CUP and the proposed change residential in tenure from rental to ownership. The CUP provides an avenue for the Planning Commission to evaluate potential negative impacts to the City’s affordable rental housing supply, as well as the suitability of existing structures for condominium occupancy. The BMC requires special application materials for a residential condominium conversion CUP, including building condition reports, existing rental rates, and a tenant relocation analysis.

Recognizing the unique potential impacts of a residential condominium conversion, special findings are required to approve a residential condominium conversion CUP in addition to the standard CUP findings (see BMC §17.30.060). For example, in order to approve a condominium conversion CUP the Commission must find that the rental vacancy rate in the City of Brisbane is at least 5% of the available rental stock, and that the conversion would provide dedicated units for low and moderate-income households. These special findings directly relate to the potential community impacts of a residential condominium conversion, and the CUP is an appropriate tool to mitigate or avoid those impacts.

*CUP for Newly Constructed Condominiums*

However, the nexus between the CUP requirement and the proposed “use” for newly constructed condominiums is less clear. Under the current BMC regulations, both a CUP and a Design Permit are required for newly constructed condominium developments. These two sets of permit findings overlap and many are redundant, as illustrated in the table below. The thirteen required Design Permit findings address the development’s form, design, and scale, compatibility of the proposed project with the neighborhood, General Plan and specific plan consistency, impacts to traffic and parking, and other important considerations impacting the suitability of a multi-family development regardless of whether it is intended to be owned as condominiums or rented.

The BMC additionally requires that all newly constructed multi-family, commercial, or industrial development (regardless of intended tenure) comply with the development regulations of the underlying zoning district in regards to permitted land use, density/intensity, parking, building height, and other physical development standards. Condominium developments are also subject to specific development standards in BMC §17.30.030 that must be incorporated into

**Attachment D**

the project design, including useable outdoor living area and on-site storage. These existing development regulations within the BMC ensure that newly constructed condominium developments would not negatively impact surrounding development and the community at large.

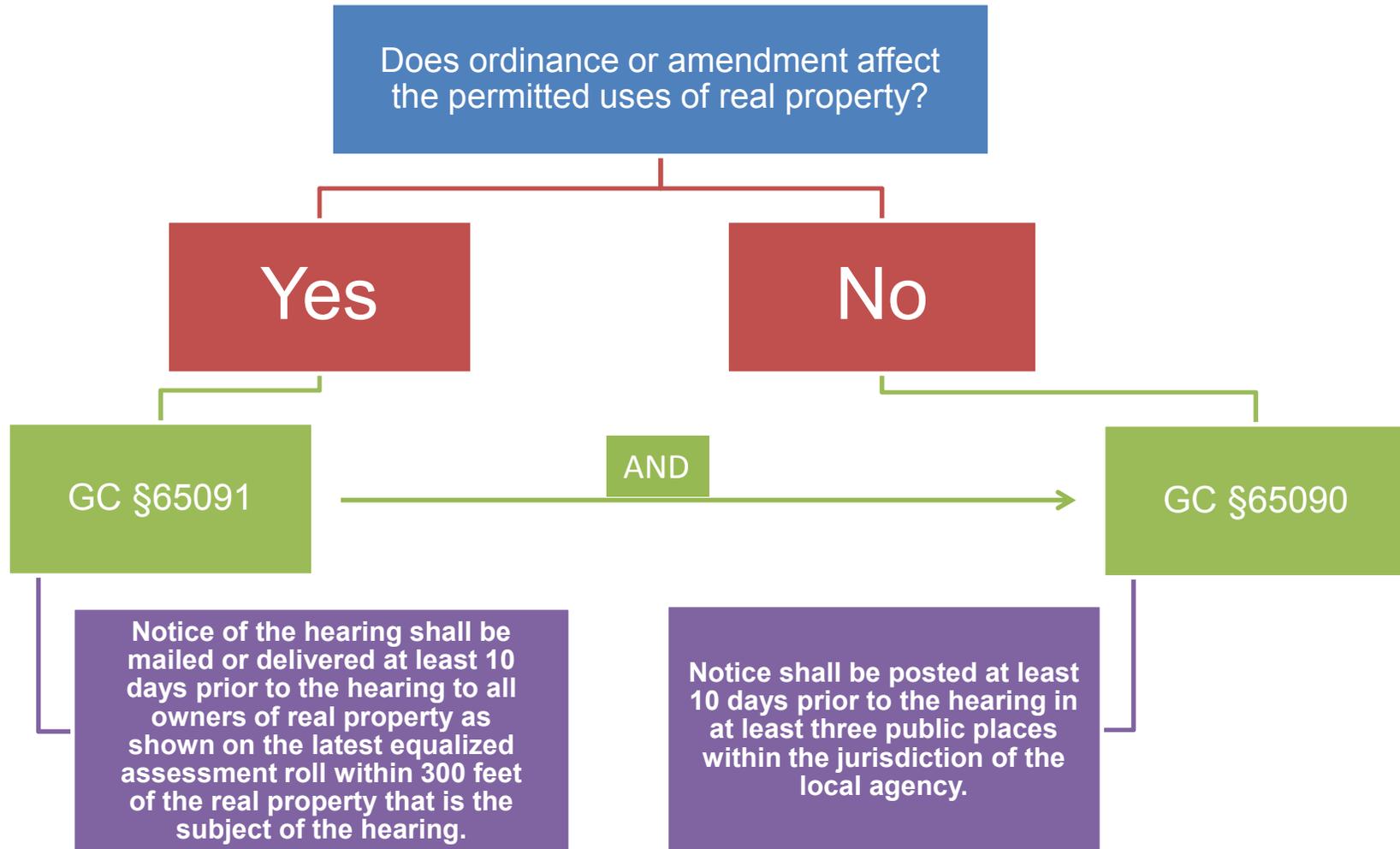
Eliminating the CUP requirement for newly constructed condominiums would reduce redundancies in project approval findings and allow for streamlined application review, while maintaining discretionary review and strict development and community impact standards through the Design Permit process. City staff would continue to review condominium plans and governing documents to ensure compliance with the State Civil Code requirements, which are non-discretionary (or “ministerial”) in nature. The resulting streamlined process for newly constructed condominiums is consistent with the City’s housing policies, including Housing Element Policy H.I.1 and Program H.I.1.a which direct the City to reduce regulatory constraints on the development of new housing, especially infill housing and housing that adds to the mix of types, size, tenure and affordability.

Design Permit Findings	Use Permit Findings	
	Adjacent uses and structures; general and/or specific plan compliance	Not detrimental to the health, safety, comfort and general welfare; not injurious or detrimental to property or the general welfare of the city
The proposal's scale, form and proportion, are harmonious, and the materials and colors used complement the project.	X	X
The orientation and location of buildings, structures, open spaces and other features integrate well with each other and maintain a compatible relationship to adjacent development.	X	
Proposed buildings and structures are designed and located to mitigate potential impacts to adjacent land uses.	X	X
The project design takes advantage of natural heating and cooling opportunities through building placement, landscaping and building design to the extent practicable, given site constraints, to promote sustainable development and to address long term affordability.	X	X
For hillside development, the proposal respects the topography of the site and is designed to minimize its visual impact. Significant public views of San Francisco Bay, the Brisbane Lagoon and San Bruno Mountain State and County Park are preserved.	X	X
The site plan minimizes the effects of traffic on abutting streets through careful layout of the site with respect to location, dimensions of vehicular and pedestrian entrances and exit drives, and through the provision of adequate off-street parking. There is an adequate circulation pattern within the boundaries of the development. Parking facilities are adequately surfaced, landscaped and lit.	X	X
The proposal encourages alternatives to travel by automobile where appropriate, through the provision of facilities for pedestrians and bicycles, public transit stops and access to other means of transportation.		X

**Attachment D**

The site provides open areas and landscaping to complement the buildings and structures. Landscaping is also used to separate and screen service and storage areas, break up expanses of paved area and define areas for usability and privacy. Landscaping is generally water conserving and is appropriate to the location. Attention is given to habitat protection and wildland fire hazard as appropriate.	X	X
The proposal takes reasonable measures to protect against external and internal noise.	X	X
Consideration has been given to avoiding off-site glare from lighting and reflective building materials.	X	
Attention is given to the screening of utility structures, mechanical equipment, trash containers and rooftop equipment.	X	
Signage is appropriate in location, scale, type and color, and is effective in enhancing the design concept of the site.	X	
Provisions have been made to meet the needs of employees for outdoor space.		X

### Zoning Ordinance Adoption or Amendment Flow Chart



Chairperson Do opened the public hearing.

Wing Lee, project architect, addressed the Commission in support of the application and answered their questions regarding the proposed exterior building materials, site drainage and stormwater management, landscape design, window design and placement, and rooftop solar and solar readiness, roof materials, and the proposed color palette.

Hubert Chan, son of the property owner, addressed the Commission in support of the application.

Barbara Ebel, Brisbane resident, provided several suggestions to improve the home's passive solar design.

Wing Lee, project architect, addressed Ms. Ebel's suggestions.

Seeing no additional speakers, Commissioner Munir moved and Commissioner Anderson seconded to close the public hearing. The motion passed 4-0.

After deliberation, Commissioner Munir moved to approve Design Permit DP-2-15, Grading Permit EX-4-15, and Secondary Dwelling Unit Permit SDU-2-15, via adoption of Resolution DP-2-15/EX-4-15/SDU-2-15, modified to include advisory conditions of approval to recommend a root barrier for the proposed bamboo plantings and for rooftop solar to be incorporated into the final design. Commissioner Anderson seconded and the motion passed 4-0.

Chairperson Do read the appeals process.

- 2. PUBLIC HEARING: Zoning Text Amendment RZ-4-16;** Zoning Text Amendments to Title 16, Subdivisions, and Title 17, Zoning, of the Brisbane Municipal Code (BMC) to update existing subdivision and public noticing regulations to be consistent with current California Government Code and Civil Code requirements, and to amend the discretionary review process for newly constructed condominium developments; City of Brisbane, applicant; Various owners; Various APNs.

Associate Planner Capasso presented the staff report and answered Commissioners' questions regarding permitted zones for new condominium developments and the table included in the staff report comparing the Design Permit and Use Permit findings.

Chairperson Do opened the public hearing. Seeing no speakers present in the audience, Commissioner Anderson moved and Commissioner Reinhardt seconded to close the public hearing. The motion passed 4-0.

Commissioner Anderson moved approval of RZ-4-16 via adoption of Resolution RZ-4-16, seconded by Commissioner Munir. The motion was approved 4-0.