

# *City of Brisbane*

## *Agenda Report*

TO: Honorable Mayor and City Council

FROM: Community Development Director via City Manager

SUBJECT: Proposed Ordinance No. 606- Amend Brisbane Municipal Code Title 17 to amend sections of Chapter 17.02, Definitions, Chapter 17.32, General Use Regulations, and Chapter 17.52, Appeals

DATE: March 17, 2016

### **City Council Goals:**

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

### **Purpose:**

To update the Brisbane Municipal Code Title 17 (Zoning Code) to implement Housing Element Program H.B.1.f, modify existing regulations to achieve internal consistency within the Municipal Code, and to amend the appeals process for Planning Commission decisions per the recommendations of the City Council Policy Subcommittee.

### **Recommendation:**

That the City Council introduce Ordinance No. 606.

### **Background/Discussion:**

The Planning Commission considered the proposed zoning text amendments summarized below at the February 11, 2016 meeting, and adopted Planning Commission Resolution RZ-1-16 recommending Council approval of the proposed amendments. The Planning Commission agenda report and draft meeting minutes are attached for reference.

#### *Amendments to BMC Chapter 17.02, Definitions*

Program H.B.1.f of the City's 2015-2022 Housing Element, adopted on April 2, 2015, requires the City to amend the definition of "single-family dwelling" to include employee housing for six or fewer employees, consistent with California Health and Safety Code Section 17021.5. The Health and Safety Code precludes the City from requiring a conditional use permit, variance, or other zoning clearance for employee housing that serves six or fewer employees that wouldn't otherwise be required of a family dwelling of the same type in the same zone.

*Amendments to BMC Chapter 17.32, General Use Regulations*

The draft Ordinance proposed several discrete amendments to sections of BMC Chapter 17.32, General Use Regulations, intended to achieve consistency within and between different Chapters of the Municipal Code and to better reflect current application review procedures. These are described in detail in the attached Planning Commission report. The proposed amendments would not result in any material change to existing development regulations.

*Amendments to BMC Chapter 17.52, Appeals*

The proposed amendments to Chapter 17.52 were prepared by the City Attorney at the City Council's direction in light of developing case law that, in some instances, have invalidated a City Council decision following an appeal from a Planning Commission decision when a Council member's statements made prior to the hearing showed an unacceptable probability of bias.

The proposed amendments are intended to revise the time frame in which appeals must be heard; change the terminology from a "Council appeal" to a "Council referral"; clarify why a Council referral does not disqualify the referring Council members from participating in the hearing; clarify procedural steps in processing an appeal or referral; and create a timeframe in which the City Council must consider an appeal/referral.

The proposed amendments were reviewed and supported by City Council's Policy Committee, comprised at the time of Mayor Lentz and former Council member Miller.

**Fiscal Impact:**

None.

**Measure of Success:**

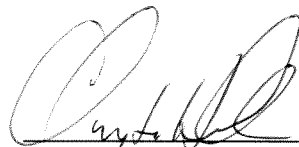
Bringing the City's building regulations and permit processing policies into compliance with State law.

**Attachments:**

- Draft Ordinance No. 606
- Table of Redline Text
- Planning Commission Resolution RZ-1-16
- February 11, 2016 Planning Commission Agenda Report and Draft Minutes
- Written correspondence



John Swiecki, Community Development Director



Clay Holstine, City Manager

**draft**  
**ORDINANCE NO. 606**

**AN ORDINANCE OF THE CITY OF BRISBANE AMENDING CHAPTER 17.02, DEFINITIONS; CHAPTER 17.32, GENERAL USE REGULATIONS; AND CHAPTER 17.52, APPEALS OF TITLE 17 OF THE MUNICIPAL CODE.**

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

**SECTION 1:** Section 17.02.235 in Chapter 17.02 - Definitions of the Municipal Code is amended to read as follows:

**17.02.235- Dwelling**

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

A. "Dwelling group" means a group of two or more detached buildings located upon the same site, each of which contains one or more dwelling units.

B. "Dwelling unit" means a room or group of rooms including living, sleeping, eating, cooking and sanitation facilities, constituting a separate and independent housekeeping unit, designed, occupied, or intended for occupancy by one family on a permanent basis.

C. "Multiple-family dwelling" means a building or site containing three (3) or more dwelling units (also see "duplex"). The term includes single-room-occupancy dwelling units, typically comprised of one or two (2) rooms (which may include a kitchen and/or a bathroom, in addition to a bed), that are restricted to occupancy by no more than two (2) persons.

D. "Secondary dwelling unit" means a separate dwelling unit created upon a site within the R-1 or R-BA district that contains a single-family dwelling and for which a use permit has been granted pursuant to Chapter 17.43 of this title. Subject to the restrictions of this title, the secondary dwelling unit may be attached to or detached from the single-family dwelling.

E. "Single-family dwelling" means a dwelling unit constituting the only principal structure upon a single site (excluding any lawfully established secondary dwelling unit that may be located within the same structure on upon the same site). The term includes employee housing for six (6) or fewer persons, residential care facilities, licensed by the state to provide twenty-four (24) hour nonmedical care, serving six (6) or fewer persons (not including the operator, the operator's family or persons employed as staff) in need of supervision, personal services, or assistance essential for sustaining the activities of daily living or for the protection of the individual. Also see "Group care home" for seven (7) or more persons.

**SECTION 2:** Section 17.32.130 in Chapter 17.32 – General Use Regulations of the Municipal Code is amended to read as follows:

**17.32.130 - Horses- Keeping Generally**

Horses may be kept in any district except R-1, R-2, R-3, NCRO and SCRO-1, subject to the securing of a use permit as provided in Chapter 17.40.

**SECTION 3:** Section 17.32.190 in Chapter 17.32 – General Use Regulations of the Municipal Code is amended to read as follows:

**17.32.190 - Solar Energy Systems**

To encourage the use of solar energy systems, the systems shall be permitted to the extent that they conform to the regulations for structures contained in this chapter. Solar energy systems to be installed on the roof of an existing building may exceed the height limit through approval of an administrative permit by the zoning administrator in accordance with the process established in 17.32.060.C. Where the systems would not conform to the regulations for the district within which they would be located and no exceptions to those regulations are applicable, they shall be treated as conditional uses, subject to obtaining a use permit, which shall be approved, provided the establishment and use of the system would pose no threat to the public health and safety. Reasonable restrictions or conditions may be imposed, provided they do not significantly increase the cost of the system or significantly decrease its efficiency.

**SECTION 4:** Section 17.32.200 in Chapter 17.32 – General Use Regulations of the Municipal Code is amended to read as follows:

**17.32.200 - Television satellite receivers.**

A. Equipment designed to receive satellite television signals for non-commercial use on residential structures may be permitted in all districts subject to compliance with the provisions of subsections B, C, and D of this section. Satellite television receivers intended for commercial use are permitted in all commercial districts subject to obtaining a use permit.

B. Such equipment shall not be placed on the roofs of structures in residential districts and may be placed on the roofs of commercial structures only if the roof is constructed to be capable of supporting such equipment.

C. Such equipment shall be set back at least ten (10) feet from any property line.

D. The equipment shall be designed and located so as to minimize visual impact of the equipment from off the site.

**SECTION 5:** Section 17.32.220 in Chapter 17.32 – General Use Regulations of the Municipal Code is amended to read as follows:

**17.32.220 - Grading permit-When required.**

Any grading, as defined in Section 15.01.040, shall require a permit from the planning commission when more than two hundred fifty (250) cubic yards of material are involved in any single operation, or if more than fifty (50) cubic yards of material is to be removed from any single parcel of land, or when grading is not otherwise approved in connection with issuance of a building permit. (Reference: Section 15.01.081.)

**SECTION 6:** Section 17.32.230 in Chapter 17.32 – General Use Regulations of the Municipal Code is amended to read as follows:

**17.32.230 - Flood hazard areas.**

All building permit applications shall be reviewed in compliance with the procedures and standards for floodplain management established in Chapter 15.56, Floodplain Management.

**SECTION 7:** Section 17.52.020 in Chapter 17.52 – Appeals of the Municipal Code is amended to read as follows:

**17.52.020- Appeals and Referrals.**

A. An appeal of a planning commission action shall be in writing and filed with the city clerk within fifteen (15) days after the final action of the planning commission. The appeal shall be accompanied by a fee, as set by the city council, and shall clearly state the reason for appeal. Upon receipt of such appeal, the city clerk shall notify the planning department and shall set a time as soon as practical but within 60 days after the receipt of such appeal (unless the applicant agrees otherwise), for a public hearing by the city council on such appeal. Notice of such hearing shall be given as set forth in Chapter 17.54.

B. In addition to the above, within 15 days after final action of the planning commission any two (2) members of the city council may request in writing to the city clerk that the decision of the planning commission be referred to the city council. The referral shall state briefly the grounds for the referral. The clerk shall notify the planning department and the applicant and shall place the matter for public hearing as soon as practical but within 60 days after receipt of the referral unless the applicant agrees otherwise or the city council determines that additional time is needed in order for it reach an informed decision. Because (a) a referral does not necessarily mean disagreement with the decision of the planning commission, (b) the application may be of City wide interest, (c) new information may have come to light after the planning commission's decision and/or (d) perceived procedural irregularities with the planning commission's process, the mere fact that two members of the city council have requested the decision be referred to the city council, as provided in this subsection, does not of itself require disqualification of either such councilmember from hearing and/or deciding the item.

**SECTION 8:** Section 17.52.030 in Chapter 17.52 – Appeals of the Municipal Code is amended to read as follows:

**17.52.030 - Planning department action.**

The planning department, upon receipt of the notice of appeal or a referral, shall prepare a report of the facts pertaining to the decision of the planning commission and shall submit such report to the city council along with the department's recommendation and the reasons for the commission's action.

**SECTION 9:** Section 17.52.040 in Chapter 17.52 – Appeals of the Municipal Code is amended to read as follows:

**17.52.040 - Council action.**

The city council shall conduct a de novo hearing on the appeal or the referral. At the close of the public hearing, the city council may affirm, reverse or modify the decision of the planning commission, either at the same meeting or at such later meeting as the council may determine, for any basis permitted by law. If the council does not take action on the appeal or referral within sixty (60) days after the clerk's receipt of the appeal or referral, unless the applicant otherwise agrees, the planning commission action

shall be deemed affirmed. To reverse or modify the planning commission decision shall require three affirmative votes.

**SECTION 10:** 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 11:** 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 12:** 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:

*Michael H Roush*  
\_\_\_\_\_  
City Attorney

**RZ-1-16 Proposed Amendments: Redline Text**

Chapter/Section	Proposed Text
17.02.235 - Dwelling. Subsection E.	E. "Single-family dwelling" means a dwelling unit constituting the only principal structure upon a single site (excluding any lawfully established secondary dwelling unit that may be located within the same structure <del>on</del> <u>or</u> upon the same site). The term includes <u>employee housing for six (6) or fewer persons</u> , residential care facilities, licensed by the state to provide twenty-four (24) hour nonmedical care, serving six (6) or fewer persons (not including the operator, the operator's family or persons employed as staff) in need of supervision, personal services, or assistance essential for sustaining the activities of daily living or for the protection of the individual. Also see "Group care home" for seven (7) or more persons.
17.32.130- Horses- Keeping generally.	Horses may be kept in any district except <del>R-1-5,000</del> , R-2, R-3, <del>G-2</del> <u>NCRO</u> and <del>H-1</del> <u>SCRO-1</u> , subject to the securing of a use permit as provided in Chapter 17.40.
17.32.190 – Solar Energy Systems.	To encourage the use of solar energy systems, the systems shall be permitted to the extent that they conform to the regulations for structures contained in this chapter. <u>Solar energy systems to be installed on the roof of an existing building may exceed the height limit through approval of an administrative permit by the zoning administrator in accordance with the process established in 17.32.060.C.</u> Where the systems would not conform to the regulations for the district within which they would be located <u>and no exceptions to those regulations are applicable</u> , they shall be treated as conditional uses, subject to obtaining a use permit, which shall be approved, provided the establishment and use of the system would pose no threat to the public health and safety. Reasonable restrictions or conditions may be imposed, provided they do not significantly increase the cost of the system or significantly decrease its efficiency.
17.32.200 - Television satellite receivers.	A. Equipment designed to receive satellite television signals <u>for non-commercial use on residential structures</u> may be permitted in all districts, <u>subject to compliance with the provisions of subsections B, C, and D of this section.</u> <u>Satellite television receivers intended for commercial use are permitted in all commercial districts subject to obtaining a use permit.</u> B. Such equipment shall not be placed on the roofs of structures in residential districts and may be placed on the roofs of commercial structures only if the roof is constructed to be capable of supporting such equipment. C. Such equipment shall be set back at least ten (10) feet from any property line. D. The equipment shall be designed and located so as to minimize visual impact of the equipment from off the site.
17.32.220- Grading permit-When required.	Any grading, as defined in Section <del>42.08.020</del> <u>15.01.040</u> , shall require a permit from the planning commission when more than two hundred fifty (250) cubic yards of material are involved in any single operation, or if more than fifty (50) cubic yards of material is to be removed from any single parcel of land, or when grading is not otherwise approved in connection with issuance of a building permit. (Reference: Section <del>42.08.420</del> <u>15.01.081</u> .)
17.32.230 - Flood hazard areas.	All building permit applications shall be reviewed <del>by the public works director to determine whether proposed building sites will be reasonably safe from flooding.</del> All reviews with respect to flood hazard areas will be based on the Federal Insurance Administration Flood Hazard Boundary Map H-01 to H-03 <u>in compliance with the procedures and standards for floodplain management established in Chapter 15.56.</u> ( <del>Reference: Chapter 15.56.</del> )

Chapter/Section	Proposed Text
<p><u>17.52.020- Method.</u></p>	<p>17.52.020- <del>Method</del> Appeals and Referrals.</p> <p>A. An appeal of a planning commission action shall be in writing and filed with the city clerk within fifteen (15) days after the final action of the planning commission. The appeal shall be accompanied by a fee, as set by the city council, and shall clearly state the reason for appeal. Upon receipt of such appeal, the city clerk shall notify the planning <del>commission</del> <u>department</u> and shall set a time <u>as soon as practical but within 60 days</u> after the receipt of such appeal <u>(unless the applicant agrees otherwise)</u>, for a public hearing by the city council on such appeal. Notice of such hearing shall be given as set forth in Chapter 17.54.</p> <p>B. In addition to the above, <u>if within 15 days after final action of the planning commission any two (2) members of the city council</u> <del>within the fifteen (15) day period</del> <u>may request in writing to the city clerk that the action decision of the planning commission be considered by the council as an appeal, referred to the city council.</u> <u>The referral shall state briefly the grounds for the referral.</u> <del>¶The clerk shall notify the planning commission department and the applicant and shall place the matter for public hearing on the next available council agenda.</del> <u>as soon as practical but within 60 days after receipt of the referral unless the applicant agrees otherwise or the city council determines that additional time is needed in order for it reach an informed decision.</u> <u>Because (a) a referral does not necessarily mean disagreement with the decision of the planning commission, (b) the application may be of City wide interest, (c) new information may have come to light after the planning commission's decision and/or (d) perceived procedural irregularities with the planning commission's process,</u> <del>¶the mere fact that two members of the city council have requested the decision be referred to the city council,</del> <u>as provided in this subsection, does not of itself require disqualification of either such councilmember from hearing and/or deciding the appeal item.</u></p>
<p><u>17.52.030 - Planning commission action.</u></p>	<p>17.52.030 - <del>Planning commission department</del> <u>action.</u></p> <p>The <del>planning commission department</del>, upon receipt of the notice of appeal <u>or a referral</u>, shall prepare a report of the facts pertaining to the decision of the planning commission and shall submit such report to the city council along with the <u>department's recommendation and the reasons for the commission's action.</u></p>
<p><u>17.52.040 - Council action.</u></p>	<p><del>The public hearing by the city council may be continued from time to time</del> <u>city council shall conduct a de novo hearing on the appeal or the referral.</u> At the close of the public hearing, the city council may affirm, reverse or modify the decision of the planning commission, either at the same meeting or at such later meeting as the council may determine, for any basis permitted by law. If the council does not take action on the appeal or <del>votes to continue the matter until a later meeting</del> <u>referral</u> within sixty (60) days after the <del>close of the public hearing</del> <u>clerk's receipt of the appeal or referral, unless the applicant otherwise agrees,</u> the planning commission action shall be deemed affirmed. To reverse or modify the planning commission decision shall require <del>the three affirmative votes of three fifths (3/5) of the city council.</del></p>



RESOLUTION NO. RZ-1-16

RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BRISBANE  
RECOMMENDING APPROVAL OF  
ZONING TEXT AMENDMENT RZ-1-16 TO THE CITY COUNCIL  
SUCH TEXT AMENDMENTS PERTAINING TO CITY OF BRISBANE MUNICIPAL CODE TITLE  
17, ZONING; CHAPTER 17.02, DEFINITIONS, CHAPTER 17.32, GENERAL USE REGULATIONS,  
AND CHAPTER 17.52, APPEALS

WHEREAS, on April 2, 2015, the Brisbane City Council adopted the 2015-2022 Housing Element, including Program H.B.1.f obligating the City to amend its definition of “single-family dwelling” contained in Brisbane Municipal Code Section 17.02.235 to be consistent with the requirements of the California Health and Safety Code, no later than January, 2016; and

WHEREAS, City staff has additionally proposed amendments to various terms and regulations within the Zoning Ordinance that are internally inconsistent or require clarification to ease their implementation, located within Chapter 17.02, Definitions, and Chapter 17.32, General Use Regulations; and

WHEREAS, at the direction of the City Council the City Attorney drafted revisions to the appeals procedures contained in Chapter 17.52, those revisions being reviewed by the City Council Policy Committee at two subsequent meetings after which a consensus on the proposed revisions was reached; and

WHEREAS, on February 11<sup>th</sup>, 2016, the Planning Commission held a public hearing on a draft ordinance containing all above-referenced zoning text amendments; and

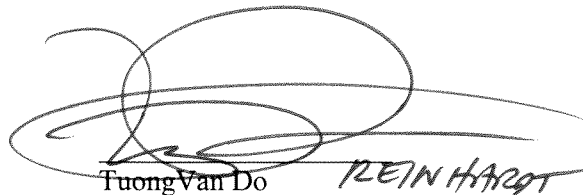
WHEREAS, the minutes of the Planning Commission meeting of February 11<sup>th</sup>, 2016 are attached and incorporated by reference as part of this resolution; and

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: Do, Munir, Parker, Reinhardt  
NOES:  
ABSENT: Anderson



Tuong Van Do      REINHART

Chairperson

ATTEST:  
  
JOHN SWIECKI, Community Development Director

3. **PUBLIC HEARING: Zoning Text Amendment RZ-1-16;** Amend Title 17 of the Brisbane Municipal Code to implement Housing Element Program H.B.1.f amending the definition of “Single-family dwelling,” modify existing regulations to achieve internal consistency within the Municipal Code, and to amend the appeals process for Planning Commission decisions. Chapters to be amended include Chapter 17.02, Definitions, Chapter 17.32, General Use Regulations, and Chapter 17.52, Appeals; City of Brisbane, applicant.

Associate Planner Capasso gave the agenda report. She answered questions of the Commissioners’ regarding residential television satellite receivers, floodplain administration regulations in the Municipal Code, recent projects that involved City Council appeals, and how the proposed amendments to Chapter 17.52, Appeals would be implemented.

There being no one present in the audience, the Commission moved on to consider adoption of the ordinance. Commissioner Munir moved adoption of Resolution RZ-1-16 recommending City Council approval of the draft ordinance. The motion was seconded by Commissioner Reinhardt and approved 4-0.

#### H. ITEMS INITIATED BY STAFF

Director Swiecki announced the next Baylands deliberation meeting was scheduled for the regular meeting of February 25, 2016.

#### I. ITEMS INITIATED BY THE COMMISSION

The Commission shared their appreciation of the Get Healthy San Mateo County information pamphlets distributed by staff. Commissioner Munir inquired about the Community Choice Energy (CCE) countywide proposal and Director Swiecki replied that the City Council would be voting on a resolution to join the CCE program at their February 18, 2016 meeting. Chairperson Do read the appeals process.

#### J. ADJOURNMENT to the Regular Meeting of February 25, 2016 at 7:30 p.m.

Commissioner Munir moved and Commissioner Parker seconded to adjourn to the regular meeting of February 25, 2016 at 7:30 p.m. The motion passed 4-0 and the meeting adjourned at 9:38 p.m.

Attest:

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John A. Swiecki, Community Development Director

NOTE: A full video record of this meeting can be found on DVD at City Hall and the City’s website at [www.brisbaneca.org](http://www.brisbaneca.org).

# City of Brisbane Planning Commission Agenda Report

**TO:** Planning Commission  
For the Meeting of 2/11/16

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

**SUBJECT:** **Zoning Text Amendment RZ-1-16** for amendments to Title 17, Zoning, of the Brisbane Municipal Code (BMC) to implement Housing Element Program H.B.1.f, modify existing regulations to achieve internal consistency within the Municipal Code, and to amend the appeals process for Planning Commission decisions. Chapters to be amended include Chapter 17.02, Definitions, Chapter 17.32, General Use Regulations, and Chapter 17.52, Appeals; City of Brisbane, applicant; Locations: Citywide.

**REQUEST:** This application is to amend various sections of the City's Zoning Ordinance, Title 17 of the Brisbane Municipal Code. Amendments include an updated definition of "single-family dwelling" pursuant to Housing Element Program H.B.1.f, and modifications of various existing development regulations to achieve consistency between other Municipal Code regulations and current development review practice. The City Attorney has additionally drafted amendments to the procedures regulating the processing of appeals of Planning Commission actions, per the direction of the City Council Policy Committee. These amendments do not propose changes to zoning district classifications or to 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-1-16.

**ENVIRONMENTAL DETERMINATION:** The project is consistent with the City's 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 law requires that city zoning ordinances be consistent with a city's general plan, per Government Code §65860. Brisbane Municipal Code §17.54.020 includes notice provisions for zoning text amendments, which were completed prior to this hearing. Amendments are proposed to Chapters 17.02, Definitions, Chapter 17.32, General Use Regulations, and Chapter 17.52, Appeals.

**DISCUSSION:**

The proposed amendments have been separated out into three different sections: the amendment to the definition of "single-family dwelling" required by the Housing Element; amendments to achieve internal consistency throughout the Municipal Code; and amendments proposed by the City Council Policy Committee. A table showing the proposed amendments in redline is attached to this report.

**Amendment Required by 2015-2022 Housing Element**

Program H.B.1.f of the City's 2015-2022 Housing Element, adopted by the City Council on April 2, 2015, obligates the City to amend the definition of "single-family dwelling" to comply with California Health and Safety Code Section 17021.5. The proposed amendment would ensure that the use of a single-family dwelling as employee housing for six or fewer residents would not be considered "a boarding house, rooming house, hotel, dormitory, or other similar term that implies that the employee housing is a business run for profit or differs in any other way from a family dwelling." California Health and Safety Code Section 17021.5 precludes the City from requiring a conditional use permit, variance, or other zoning clearance for employee housing that serves six or fewer employees that wouldn't otherwise be required of a family dwelling of the same type in the same zone.

**Amendments Required to Achieve Internal Consistency within Municipal Code**

With the exception of the proposed amendment to BMC 17.32.200.A, the proposed amendments summarized below are intended to achieve consistency within and between different Chapters of the Municipal Code and would have no impact on the application of existing development regulations or application review procedures.

**Amendments to BMC 17.32.130- Horses-Keeping generally**

- The existing Code language refers to outdated zoning districts R-1-5,000, C-2, and H-1 Ordinance 463, adopted in 2002, reclassified those districts as the R-1, NCRO, and SCRO-1 districts, respectively. This amendment corrects the outdated zoning district references

**Amendments to BMC 17.32.190 – Solar Energy Systems.**

- This section, adopted in 1984, requires a conditional use permit for any solar energy system that does not conform to the development regulations of the district in which it is located. This is inconsistent with Ordinance 558, adopted in 2011, which added Section 17.32.060 C establishing a height exception permit process for roof-mounted solar energy systems. The proposed amendments add a reference to Section 17.32.060 C, and further add flexible language to acknowledge future adoption of other exception processes.

**Amendments to BMC 17.32.200- Satellite television receivers**

- Subsection A currently requires approval of a use permit prior to installation of any satellite television receiver. This requirement appears to be intended to regulate the installation of large-scale, commercial receivers. For example, the Planning Commission approved a conditional use permit for broadcast satellite television equipment in 1987 for

a commercial broadcasting company at 100 Valley Drive. However, the existing code language is overly broad and amendments are proposed to clarify that the use permit requirement applies only to satellite television receivers for commercial use as opposed to small-scale receivers intended for personal residential use. Residential receivers would be subject to compliance with criteria for placement on structures outlined in the existing Code language.

**Amendments to BMC 17.32.220- Grading permit-When required.**

- The proposed amendments would update references to the location of grading regulations in the Municipal Code.

**Amendments to BMC 17.32.230 - Flood hazard areas.**

- This Code section contains an outdated reference to flood hazard mapping and other provisions for reviewing development applications for compliance with flood hazard regulations. The proposed amendments would update this section to refer to the floodplain administration regulations contained in BMC Chapter 15.56, which establish reference maps and delegates authority of floodplain administration.

**Amendments to Appeals Process Proposed by City Council Policy Committee**

In light of developing case law that in some instances have invalidated a City Council decision following an appeal from a Planning Commission decision when a Council member's statements made prior to the hearing showed an unacceptable probability of bias, the City Council directed the City Attorney to review the current procedures concerning appeals from decisions of the Planning Commission. Currently, Chapter 17.52 of the Brisbane Municipal Code authorizes appeals to the City Council from Planning Commission decisions in two ways. Generally, anyone may file within 15 days of the decision a written appeal stating the grounds for the appeal and paying the required fee (BMC 17.52.020.A). In addition, any two City Council members may file an "appeal" within 15 days of the commission's decision (BMC 17.52.020.B). Section 17.52.030 calls for the Planning Commission to prepare a report and submit such a report to the City Council. The City Council then hears the appeal and may affirm, reverse or modify the commission's decision per BMC 17.52.040.

The proposed amendments to Chapter 17.52 are intended to accomplish several things: revise the time frame in which appeals must be heard; change the terminology from a "Council appeal" to a "Council referral"; clarify why a Council referral does not disqualify the referring Council members from participating in the hearing; establish that the planning department and not the commission prepares the report and recommendation to the City Council; and create a time frame in which the City Council must make a decision concerning the appeal/referral.

The proposed revisions to the appeals procedures summarized below were presented to the City Council's Policy Committee, composed of Mayor Lentz and former Council member Miller. The Policy Committee considered these revisions at two meetings and reached consensus as to amendments to the Chapter as summarized below.

**Amendments to Section 17.52.020**

G.3.3

- The City Council will hear appeals from Planning Commission decisions "as soon as practical" but within 60 days after the city clerk's receipt of the appeal; currently the time frame for the appeal to be heard is 30 days. Staff anticipates that most appeals will continue to be heard within 30 days but due to other matters on Council agendas, it may not always be practical to schedule the hearing within a 30 day period.
- Rather than two Council members filing an "appeal" of a Commission decision, the two Council members will request the city clerk to "refer" the decision of the Commission to the full Council. While this may be seen as just semantics, the "referral" language is less pejorative and is consistent with the two Council members who have requested the referral having an open mind about the item, notwithstanding that they have asked for a full Council review. The current language in Section 17.52.020 B that reflects that the fact that the item has been referred does not require disqualification of the two Council members is strengthened by added language that states the reasons for the referral (a) does not necessarily mean disagreement with the Commission's decision, (b) may be because the item is a matter of citywide interest, (c) may be due to new information that has come to light and/or (d) may be because of perceived procedural irregularities with the Commission's process.
- As with the scheduling of the hearing following an appeal, Section 17.52.020 B is proposed to be amended so that the scheduling of the hearing following a referral will likewise be conducted "as soon as practical" but within 60 days unless the City Council determines that additional time is required in order for it to make an informed decision.

**Amendments to Section 17.52.030**

- The proposed amendments to Section 17.52.030 would reflect the actual practice that it is the Planning Department, not the Planning Commission, that will prepare the report to the City Council, along with the Department's recommendations and the reasons for the Commission's action. This amendment would address the current timing constraint that often delays scheduling appeal hearings. No changes are proposed to the standard contents of the report to the City Council.

**Amendments to Section 17.52.040**

- Section 17.52.040 is proposed to be amended to clarify that the City Council's review is de novo, but if the Council does not take action on the appeal or referral within 60 days of the city clerk's receipt of the appeal or referral, unless the applicant otherwise agrees, the commission's action shall be deemed affirmed.

**STAFF RECOMMENDATION**

Adoption of the attached draft Resolution RZ-1-16 recommending approval of the proposed zoning text amendments to the City Council.

**ATTACHMENTS:**

- Table of Redlined Text
- Draft Resolution RZ-1-16 (including the Draft Ordinance)

G.3.4

**RZ-1-16 Proposed Amendments: Redline Text**

17.02.235 - Dwelling Subsection E.	<p><b>Proposed Text</b></p> <p>E. "Single-family dwelling" means a dwelling unit constituting the only principal structure upon a single site (excluding any lawfully established secondary dwelling unit that may be located within the same structure on or upon the same site). The term includes employee housing for six (6) or fewer persons, residential care facilities, licensed by the state to provide twenty-four (24) hour nonmedical care, serving six (6) or fewer persons (not including the operator, the operator's family or persons employed as staff) in need of supervision, personal services, or assistance essential for sustaining the activities of daily living or for the protection of the individual. Also see "Group care home" for seven (7) or more persons.</p>
17.32.130 - Horses-keeping generally.	<p>Horses may be kept in any district except R-1-S-000, R-2, R-3, C-2 NCRQ and H-1 SCRO-I, subject to the securing of a use permit as provided in Chapter 17.40.</p>
17.32.190 - Solar Energy Systems.	<p>To encourage the use of solar energy systems, the systems shall be permitted to the extent that they conform to the regulations for structures contained in this chapter. Solar energy systems to be installed on the roof of an existing building may exceed the height limit through approval of an administrative permit by the zoning administrator in accordance with the process established in 17.32.060 C. Where the systems would not conform to the regulations for the district within which they would be located and no exceptions to those regulations are applicable, they shall be treated as conditional uses, subject to obtaining a use permit, which shall be approved, provided the establishment and use of the system would pose no threat to the public health and safety. Reasonable restrictions or conditions may be imposed, provided they do not significantly increase the cost of the system or significantly decrease its efficiency.</p>
17.32.200 - Television satellite receivers.	<p>A. Equipment designed to receive satellite television signals for non-commercial use on residential structures may be permitted in all districts, subject to compliance with the provisions of subsections B, C, and D of this section. Satellite television receivers intended for commercial use are permitted in all commercial districts subject to obtaining a use permit.</p> <p>B. Such equipment shall not be placed on the roofs of structures in residential districts and may be placed on the roofs of commercial structures only if the roof is constructed to be capable of supporting such equipment.</p> <p>C. Such equipment shall be set back at least ten (10) feet from any property line.</p> <p>D. The equipment shall be designed and located so as to minimize visual impact of the equipment from off the site.</p>
17.32.220 - Grading permit-When required.	<p>Any grading, as defined in Section 12.08.020-15.01.040, shall require a permit from the planning commission when more than two hundred fifty (250) cubic yards of material are involved in any single operation, or if more than fifty (50) cubic yards of material is to be removed from any single parcel of land, or when grading is not otherwise approved in connection with issuance of a building permit. (Reference: Section 12.08.120 15.01.061.)</p>
17.32.230 - Flood hazard areas.	<p>All building permit applications shall be reviewed by the public works director to determine whether proposed building sites will be reasonably safe from flooding. All reviews with respect to flood hazard areas will be based on the Federal Insurance Administration Flood Hazard Boundary Map H-01-4-H-03 in compliance with the procedures and standards for floodplain management established in Chapter 15.55. (Reference: Chapter 15.56.)</p>

Chapter/Section 17.52.020- Method	<p><b>Proposed Text</b></p> <p>17.52.020- Method Appeals and Referrals.</p> <p>A. An appeal of a planning commission action shall be in writing and filed with the city clerk within fifteen (15) days after the final action of the planning commission. The appeal shall be accompanied by a fee, as set by the city council, and shall clearly state the reason for appeal. Upon receipt of such appeal, the city clerk shall notify the planning commission department and shall set a time as soon as practical but within 60 days after the receipt of such appeal. (Unless the applicant agrees otherwise), for a public hearing by the city council on such appeal. Notice of such hearing shall be given as set forth in Chapter 17.54.</p> <p>B. In addition to the above, if within 15 days after final action of the planning commission any two (2) members of the city council within the fifteen (15) day period may request in writing to the city clerk that the action decision of the planning commission be considered by the council as an appeal, referred to the city council. The referral shall state briefly the grounds for the referral. The clerk shall notify the planning commission department and the applicant and shall place the matter for public hearing on the next available council agenda, as soon as practical but within 60 days after receipt of the referral unless the applicant agrees otherwise or the city council determines that additional time is needed in order for it reach an informed decision. Because (a) a referral does not necessarily mean disagreement with the decision of the planning commission, (b) the application may be of City wide interest, (c) new information may have come to light after the planning commission's decision and/or (d) perceived procedural irregularities with the planning commission's process, the mere fact that two members of the city council have requested the decision be referred to the city council, as provided in this subsection, does not of itself require disqualification of either such councilmember from hearing and/or deciding the appeal item.</p>
17.52.030 - Planning commission action.	<p>17.52.030 - Planning commission department action.</p> <p>The planning commission department, upon receipt of the notice of appeal or a referral, shall prepare a report of the facts pertaining to the decision of the planning commission and shall submit such report to the city council along with the department's recommendation and the reasons for the commission's action.</p>
17.52.040 - Council action.	<p>The public hearing by the city council may be continued from time to time. City council shall conduct a de novo hearing on the appeal or the referral. At the close of the public hearing, the city council may affirm, reverse or modify the decision of the planning commission, either at the same meeting or at such later meeting as the council may determine, for any basis permitted by law. If the council does not take action on the appeal or votes to continue the matter until a later meeting referral within sixty (60) days after the close of the public hearing clerk's receipt of the appeal or referral unless the applicant otherwise agrees, the planning commission action shall be deemed affirmed. To reverse or modify the planning commission decision shall require the three affirmative votes of three-fifths (3/5) of the city council.</p>

draft  
RESOLUTION NO. RZ-1-16

RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BRISBANE  
RECOMMENDING APPROVAL OF  
ZONING TEXT AMENDMENT RZ-1-16 TO THE CITY COUNCIL  
SUCH TEXT AMENDMENTS PERTAINING TO CITY OF BRISBANE MUNICIPAL CODE TITLE  
17, ZONING; CHAPTER 17.02, DEFINITIONS, CHAPTER 17.32, GENERAL USE REGULATIONS,  
AND CHAPTER 17.52, APPEALS

WHEREAS, on April 2, 2015, the Brisbane City Council adopted the 2015-2022 Housing Element, including Program H.B.1.f obligating the City to amend its definition of "single-family dwelling" contained in Brisbane Municipal Code Section 17.02.235 to be consistent with the requirements of the California Health and Safety Code, no later than January, 2016; and

WHEREAS, City staff has additionally proposed amendments to various terms and regulations within the Zoning Ordinance that are internally inconsistent or require clarification to ease their implementation, located within Chapter 17.02, Definitions, and Chapter 17.32, General Use Regulations; and

WHEREAS, at the direction of the City Council the City Attorney drafted revisions to the appeals procedures contained in Chapter 17.52, those revisions being reviewed by the City Council Policy Committee at two subsequent meetings after which a consensus on the proposed revisions was reached; and

WHEREAS, on February 11<sup>th</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 February 11<sup>th</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:

NOES:

ABSENT:

ATTEST:

\_\_\_\_\_  
Tuong Van Do  
Chairperson

JOHN SWIECKI, Community Development Director

G.3.7

draft  
ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF BRISBANE AMENDING CHAPTER 17.02, DEFINITIONS; CHAPTER 17.32, GENERAL USE REGULATIONS; AND CHAPTER 17.52, APPEALS OF TITLE 17 OF THE MUNICIPAL CODE.

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

**SECTION 1:** Section 17.02.235 in Chapter 17.02 - Definitions of the Municipal Code is amended to read as follows:

**17.02.235- Dwelling**

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

A. "Dwelling group" means a group of two or more detached buildings located upon the same site, each of which contains one or more dwelling units.

B. "Dwelling unit" means a room or group of rooms including living, sleeping, eating, cooking and sanitation facilities, constituting a separate and independent housekeeping unit, designed, occupied, or intended for occupancy by one family on a permanent basis.

C. "Multiple-family dwelling" means a building or site containing three (3) or more dwelling units (also see "duplex"). The term includes single-room-occupancy dwelling units, typically comprised of one or two (2) rooms (which may include a kitchen and/or a bathroom, in addition to a bed), that are restricted to occupancy by no more than two (2) persons.

D. "Secondary dwelling unit" means a separate dwelling unit created upon a site within the R-1 or R-BA district that contains a single-family dwelling and for which a use permit has been granted pursuant to Chapter 17.43 of this title. Subject to the restrictions of this title, the secondary dwelling unit may be attached to or detached from the single-family dwelling.

E. "Single-family dwelling" means a dwelling unit constituting the only principal structure upon a single site (excluding any lawfully established secondary dwelling unit that may be located within the same structure on upon the same site). The term includes employee housing for six (6) or fewer persons, residential care facilities, licensed by the state to provide twenty-four (24) hour nonmedical care, serving six (6) or fewer persons (not including the operator, the operator's family or persons employed as staff) in need of supervision, personal services, or assistance essential for sustaining the activities of daily living or for the protection of the individual. Also see "Group care home" for seven (7) or more persons.

**SECTION 2:** Section 17.32.130 in Chapter 17.32 - General Use Regulations of the Municipal Code is amended to read as follows:

**17.32.130 - Horses- Keeping Generally**

Horses may be kept in any district except R-1, R-2, R-3, NCRO and SCRO-1, subject to the securing of a use permit as provided in Chapter 17.40.

G.3.8

**SECTION 3:** Section 17.32.190 in Chapter 17.32 – General Use Regulations of the Municipal Code is amended to read as follows:

**17.32.190 - Solar Energy Systems**

To encourage the use of solar energy systems, the systems shall be permitted to the extent that they conform to the regulations for structures contained in this chapter. Solar energy systems to be installed on the roof of an existing building may exceed the height limit through approval of an administrative permit by the zoning administrator in accordance with the process established in 17.32.060.C. Where the systems would not conform to the regulations for the district within which they would be located and no exceptions to those regulations are applicable, they shall be treated as conditional uses, subject to obtaining a use permit, which shall be approved, provided the establishment and use of the system would pose no threat to the public health and safety. Reasonable restrictions or conditions may be imposed, provided they do not significantly increase the cost of the system or significantly decrease its efficiency.

**SECTION 4:** Section 17.32.200 in Chapter 17.3 – General Use Regulations of the Municipal Code is amended to read as follows:

**17.32.200 - Television satellite receivers.**

- A. Equipment designed to receive satellite television signals for non-commercial use on residential structures may be permitted in all districts subject to compliance with the provisions of subsections B, C, and D of this section. Satellite television receivers intended for commercial use are permitted in all commercial districts subject to obtaining a use permit.
- B. Such equipment shall not be placed on the roofs of structures in residential districts and may be placed on the roofs of commercial structures only if the roof is constructed to be capable of supporting such equipment.
- C. Such equipment shall be set back at least ten (10) feet from any property line.
- D. The equipment shall be designed and located so as to minimize visual impact of the equipment from off the site.

**SECTION 5:** Section 17.32.220 in Chapter 17.32 – General Use Regulations of the Municipal Code is amended to read as follows:

**17.32.220 - Grading permit-When required.**

Any grading, as defined in Section 15.01.040, shall require a permit from the planning commission when more than two hundred fifty (250) cubic yards of material are involved in any single operation, or if more than fifty (50) cubic yards of material is to be removed from any single parcel of land, or when grading is not otherwise approved in connection with issuance of a building permit. (Reference: Section 15.01.081.)

**SECTION 6:** Section 17.32.230 in Chapter 17.32 – General Use Regulations of the Municipal Code is amended to read as follows:

**17.32.230 - Flood hazard areas.**

All building permit applications shall be reviewed in compliance with the procedures and standards for floodplain management established in Chapter 15.56, Floodplain Management.

**SECTION 7:** Section 17.52.020 in Chapter 17.52 – Appeals of the Municipal Code is amended to read as follows:

**17.52.020- Appeals and Referrals.**

A. An appeal of a planning commission action shall be in writing and filed with the city clerk within fifteen (15) days after the final action of the planning commission. The appeal shall be accompanied by a fee, as set by the city council, and shall clearly state the reason for appeal. Upon receipt of such appeal, the city clerk shall notify the planning department and shall set a time as soon as practical but within 60 days after the receipt of such appeal (unless the applicant agrees otherwise), for a public hearing by the city council on such appeal. Notice of such hearing shall be given as set forth in Chapter 17.54.

B. In addition to the above, within 15 days after final action of the planning commission any two (2) members of the city council may request in writing to the city clerk that the decision of the planning commission be referred to the city council. The referral shall state briefly the grounds for the referral. The clerk shall notify the planning department and the applicant and shall place the matter for public hearing as soon as practical but within 60 days after receipt of the referral unless the applicant agrees otherwise or the city council determines that additional time is needed in order for it reach an informed decision. Because (a) a referral does not necessarily mean disagreement with the decision of the planning commission, (b) the application may be of City wide interest, (c) new information may have come to light after the planning commission's decision and/or (d) perceived procedural irregularities with the planning commission's process, the mere fact that two members of the city council have requested the decision be referred to the city council, as provided in this subsection, does not of itself require disqualification of either such councilmember from hearing and/or deciding the item.

**SECTION 8:** Section 17.52.030 in Chapter 17.52 – Appeals of the Municipal Code is amended to read as follows:

**17.52.030 - Planning department action.**

The planning department, upon receipt of the notice of appeal or a referral, shall prepare a report of the facts pertaining to the decision of the planning commission and shall submit such report to the city council along with the department's recommendation and the reasons for the commission's action.

**SECTION 9:** Section 17.52.040 in Chapter 17.52 – Appeals of the Municipal Code is amended to read as follows:

**17.52.040 - Council action.**

The city council shall conduct a de novo hearing on the appeal or the referral. At the close of the public hearing, the city council may affirm, reverse or modify the decision of the planning commission, either at the same meeting or at such later meeting as the council may determine, for any basis permitted by law. If the council does not take action on the appeal or referral within sixty (60) days after the clerk's receipt of the appeal or referral, unless the applicant otherwise agrees, the planning commission action shall be deemed affirmed. To reverse or modify the planning commission decision shall require three affirmative votes.

**SECTION 10:** 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 11:** 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 12:** 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



## Capasso, Julia

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**From:** Swiecki, John  
**Sent:** Tuesday, February 16, 2016 10:29 AM  
**To:** Capasso, Julia  
**Subject:** FW: Planning Commission Meeting 2/11

-----Original Message-----

From: Spediacci, Sheri  
Sent: Tuesday, February 16, 2016 10:14 AM  
To: Swiecki, John  
Subject: FW: Planning Commission Meeting 2/11

Hi John, For your records and forwarding to PC. Thanks, Sheri

-----Original Message-----

From: Dana Dillworth [<mailto:earthhelp@earthlink.net>]  
Sent: Thursday, February 11, 2016 7:32 PM  
To: Spediacci, Sheri  
Subject: Planning Commission Meeting 2/11

I will be unable to come to tonight's meeting but have a few comments:

Re: RZ-1-16

under 17.52-020-Method

I think the referral should always state to a "full city council"

I am concerned that dropping the language of appeal, as there is no language here that states that the matter is suspended until heard, yet it is assumed with an appeal.

Last line I think should state  
decision to be referred to the "full city council for public hearing."

Thank you,  
Dana