

# *City of Brisbane*

## *Planning Commission Agenda Report*

**TO:** Planning Commission For the Meeting of 02/27/2018

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

**SUBJECT:** Zoning Text Amendment RZ-2-18; R-1, R-2, R-3, R-BA, and SCRO-1 Zoning Districts; Zoning Text Amendments to Chapters 17.02, 17.08, 17.10, 17.12, 17.16, and 17.43 of Title 17, Zoning, of the Brisbane Municipal Code to update accessory dwelling unit regulations in the R-BA, R-2, R-3, and SCRO-1 zoning districts consistent with current State law; City of Brisbane, applicant.

**REQUEST:** Amend the Zoning Ordinance to update accessory dwelling unit regulations in the residential districts and SCRO-1 district to ensure consistency with State law as recently amended.

**RECOMMENDATION:** Recommend City Council approval of Zoning Text Amendment RZ-2-18 via adoption of Resolution RZ-2-18, containing the findings and conditions of approval.

**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:** The definitions of single-family, multi-family, and accessory dwelling units are located in Section 17.02.235 of the Brisbane Municipal Code (BMC). The R-1 Residential district regulations are located in Chapter 17.06, the R-2 Residential district regulations are located in Chapter 17.08, the R-3 Residential district regulations are located in Chapter 17.10, and the R-BA Residential District regulations are located in Chapter 17.12. The SCRO-1 district regulations are located in Chapter 17.16. Accessory dwelling unit standards are contained in Chapter 17.43. State regulations are contained in Section 65852.2 of the California Government Code.

### **BACKGROUND AND DISCUSSION:**

In 2017, the City Council amended the Zoning Ordinance's accessory dwelling unit (ADU) regulations to be consistent with then-current State legislation. Specifically, those amendments included:

- Elimination of on-site parking requirements for ADUs in the R-1 and R-BA district (the only Districts in which they are currently permitted);
- Implementation of a ministerial building permit approval process for ADUs resulting from conversions of existing space within a single-family dwelling in the R-1 or R-BA districts;
- Elimination of minimum lot size requirement in the R-1 district (not required by State law).

In September 2017, Governor Jerry Brown signed several housing-related bills into law, including Senate Bill 229, containing new changes to State law pertaining to ADU regulation. The bill requires local governments to allow ADUs in any zone that allows single-family or multi-family uses, whereas the previous statute only required jurisdictions to allow ADUs in single-family zones. In Brisbane, the R-1 and the R-BA Residential districts are considered “single-family zones,” and historically ADUs were only allowed in the R-1 and R-BA Residential zones consistent with the letter of the law, even though the R-2 and R-3 Residential districts and SCRO-1 Southwest Bayshore Commercial district also allow single-family dwellings.

This updated statute triggers amendments to the City’s Zoning Ordinance to allow ADUs wherever single-family or multi-family dwellings are permitted, including the R-2, R-3, and SCRO-1 districts, including consideration of minimum lot size requirements. Additionally, it triggers amendments to existing R-BA district regulations pertaining to how many ADUs may be allowed on new lots created as a result of a density transfer or clustered development Use Permit.

#### Elimination of Minimum Lot Size Requirements for All ADUs

State law allows local governments some discretion in limiting where ADUs may be located based on criteria such as the adequacy of water and sewer services. When the City Council adopted amendments to the ADU regulations in 2017, the Council opted to voluntarily eliminate the minimum lot size requirement in the R-1 Residential district. However, no change was made to the minimum lot size requirement of 20,000 sq ft for ADUs in the R-BA Residential district. As the City is obligated to allow ADUs in the R-2, R-3 and SCRO-1 districts, it must consider whether it wishes to impose a lot size limitation within those districts. The proposed zoning text amendments would eliminate the minimum lot size in all districts to be consistent with the intent of State law to allow ADUs wherever single-family or multi-family dwellings are allowed.

#### *Infrastructure Constraints and Compatibility*

Sites within the R-2, R-3, and SCRO-1 districts are nearly all served by public roads and adequate utility infrastructure, and may be expected to pose few constraints to ADU development. However, the R-BA district generally lacks adequate roadway infrastructure and utilities and is located within the San Bruno Mountain Habitat Conservation Plan (HCP) area, which requires special consideration of any development related to habitat impacts and compatibility. Both of these factors are unique to the R-BA district and warrant close consideration in the context of any development regulations.

However, existing policies in the Zoning Ordinance and the HCP address these unique factors of concern:

- Section 17.01.060, Subsection A of the BMC stipulates that any site proposed for development must install infrastructure improvements to serve the existing or proposed structure or use in accordance with City standards. Any development within the R-BA district- whether new construction or modifications to existing development – is thus required to bring all infrastructure and utilities into compliance with current codes.
- Section 17.01.060, Subsection B of the BMC caps additions to existing development with substandard infrastructure at 100 sq ft; any additions beyond that trigger roadway and infrastructure upgrades under Subsection A. If a property owner of an existing developed substandard lot wanted to build a new ADU (i.e., add new floor area), that project would not be exempt from the infrastructure requirements.
- The HCP requires any new development or changes to existing development within the HCP area to be studied for compliance with the HCP. If applicable, environmental impacts of any development or redevelopment would be required to be analyzed and mitigated under CEQA.

Additionally, consistent with the 2016 updates to State law, the City amended its ADU regulations to allow existing single-family dwellings in the R-1 and R-BA districts to convert existing space in an existing single-family dwelling or accessory structure into an ADU with only a building permit and without the need to comply with the minimum lot size requirement (BMC Section 17.43.020.B).

Considering that the Zoning Ordinance imposes strict requirements for infrastructure improvements for development or redevelopment of any substandard lot in any district, and that the HCP requires detailed study and consideration of potential conflicts between development and sensitive habitat on the mountain in the R-BA district, it is recommended that the minimum lot size required to establish ADUs in all districts be eliminated. This is shown in the zoning text amendments to BMC Chapter 17.43, Section 17.43.020, in the enclosed redline text amendments and draft ordinance.

#### R-BA Residential District Text Amendments: Density Transfer and Clustered Development

Current ADU regulations in BMC Chapter 17.43 stipulate that properties in the R-BA Residential district may only be developed with ADUs if the property complies with the minimum 20,000 sq ft lot size of the district. However, in the case of a density transfer per BMC Section 17.12.050 whereby the receiving property is subdivided into lots at least 5,000 sq ft in area, one ADU is allowed per each 20,000 sq ft of the site receiving the transfer units. In a hypothetical scenario, this means a 20,000 sq ft lot receiving a density transfer of two units from a 40,000 sq ft lot would be eligible to be subdivided into three lots developed with single-family homes. However, only one of those lots would be allowed to also be developed with an ADU.

This is inconsistent with the provisions in the Government Code requiring ADUs to be permitted wherever single-family dwellings are permitted and with the recommendation described above to eliminate minimum lot size requirements. The proposed text revisions, shown in the attached redline text and draft ordinance, would allow each lot resulting from a density transfer to be developed with a single-family dwelling and an ADU.

**ATTACHMENTS:**

- A. Redline text of proposed zoning text amendments
- B. Draft Resolution RZ-2-18 with draft ordinance
- C. Excerpts from California Government Code

# **ATTACHMENT A**

## **RZ-2-18 Proposed Zoning Text Amendments: Redline Text**

Black text = Existing Municipal Code text

Red underline text = Proposed new Municipal Code text

~~Red strikeout~~ = Proposed deleted Municipal Code text

### **Chapter 17.02 - DEFINITIONS**

17.02.235 - Dwelling.

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

- A. "Dwelling group" means a group of two (2) or more detached buildings located upon the same site, each of which contains one or more dwelling units.
- 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. "Accessory 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 an accessory dwelling unit permit or building permit has been granted pursuant to Chapter 17.43 of this title. Subject to the restrictions of this title, the accessory dwelling unit may be within, attached to, or detached from the single-family dwelling. An accessory dwelling unit shall include permanent provisions for living, sleeping, eating, cooking, and sanitation. The term "secondary dwelling unit" shall have the same meaning throughout this title.
- E. "Single-family dwelling" means a dwelling unit constituting the only principal structure upon a single site (excluding any lawfully established accessory dwelling unit that may be located within the same structure on upon the same site). The term includes employee housing for six (6) or fewer persons, residential care facilities, licensed by the state to provide twenty-four (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.

## **Chapter 17.08 - R-2 RESIDENTIAL DISTRICT**

### **17.08.020 - Permitted uses.**

The following permitted uses shall be allowed in the R-2 district:

- A. Single-family dwellings and accessory dwelling units associated with an existing or proposed single-family dwelling in compliance with Chapter 17.43.
- B. Duplexes.
- C. Multiple family dwellings containing not more than six (6) dwelling units.
- D. Dwelling groups.
- E. Accessory structures and uses incidental to a permitted use, including personal cultivation of cannabis in compliance with Title 8, Chapter 8.12.
- F. Home occupations, conducted in accordance with the regulations prescribed in Chapter 17.44 of this title.
- G. Small family day care homes.

## **Chapter 17.10 - R-3 RESIDENTIAL DISTRICT**

### **17.10.020 - Permitted uses.**

The following permitted uses shall be allowed in the R-3 district:

- A. Multiple-family dwellings;
- B. Single-family dwellings and accessory dwelling units associated with an existing or proposed single-family dwelling in compliance with Chapter 17.43;
- C. Duplexes;
- D. Dwelling groups;
- E. Accessory structures and uses incidental to a permitted use, including personal cultivation of cannabis in compliance with Title 8, Chapter 8.12;
- F. Home occupations, conducted in accordance with the regulations prescribed in Chapter 17.44 of this title;
- G. Small family day care homes.



## Chapter 17.12 – R-BA BRISBANE ACRES RESIDENTIAL DISTRICT

### 17.12.050 - Density transfer.

- A. In order to facilitate preservation of lands in the R-BA district with significant environmental resources, one or more additional dwelling units within the R-BA district, in addition to the dwelling unit otherwise permitted on a particular site, may be constructed under the conditions set forth in this Section 17.12.050. As used herein, the additional dwelling units are called "transfer units." The density transfer shall comply with all of the following requirements:
1. One transfer unit may be allocated to the site receiving the density transfer for each twenty thousand (20,000) square feet of land of the total area of the site or sites from which the transfer units are taken which is permanently dedicated to open space. No transfer units shall be allocated for any remaining portion less than twenty thousand (20,000) square feet. The method of retaining the dedicated land in permanent open space shall be approved by the city council upon recommendation of the planning commission and shall be implemented before any building or grading permit is issued for development on the site receiving the transfer units. Where dedicated open space is proposed to remain in private ownership, the applicant and property owner shall execute an agreement with the city for the continued maintenance of the open space, to be recorded with the county of San Mateo prior to issuance of any grading or building permits.
  2. The site from which the transfer units are taken must be found to have value as open space based upon one or more of the following considerations:
    - a. Contiguous with San Bruno Mountain State and County Park;
    - b. Contains intact native vegetation;
    - c. Contains endangered butterfly habitat;
    - d. Contains permanent or semi-permanent wetlands;
    - e. Forms a portion of a significant watercourse;
    - f. Does not adjoin developed parcels on more than one side.

In making this determination, the planning commission and the city council shall be guided by the city's open space plan. The density transfer value of undeveloped "paper streets" in the upper Brisbane Acres may be recognized, once it is established that they are not subject to claims of access rights by easement or necessity from any remaining private property owners in the upper Brisbane Acres.
  3. The site receiving the transfer units must be found suitable for development with increased density based on all of the following considerations:
    - a. Has a total area of not less than twenty thousand (20,000) square feet;
    - b. Does not contain any of the features of value for open space as described in subsections (A)(2)(a) through (A)(2)(e) of this section;
    - c. Is adjacent to or relatively near existing development and infrastructure.

4. The type of development permitted on the site receiving the transfer units shall be single-family dwellings only, or single-family dwellings with accessory dwelling units consistent with the provisions of Chapter 17.43 of this Title. The site shall be subdivided into lots with a minimum lot area of five thousand (5,000) square feet subject to the maximum density permitted per Sections 17.12.040(A), 17.12.040(B) and 17.12.050(A)(1). ~~One secondary dwelling unit may be allowed per twenty thousand (20,000) square feet of the site receiving the transfer units if otherwise in compliance with the requirements of Chapter 17.43, but no additional secondary dwelling units shall be allocated to that site as part of the density transfer.~~
- B. A use permit granted by the city council shall be required for all density transfers pursuant to this section. The use permit shall first be considered by the planning commission which shall make its recommendation to the city council. In addition to the findings for issuance of a use permit prescribed by Section 17.40.060 of this title, the approving authority shall find and determine that:
1. The transfer units will be sited, designed and constructed to avoid adverse effects upon environmentally sensitive areas both on and off site, such as disturbance of watercourses and hazardous geologic conditions;
  2. The site receiving the transfer units will be served by infrastructure that meets city standards, as determined by the director of public works;
  3. The site receiving the transfer units will have adequate parking and vehicular circulation; and
  4. The proposed development of the site receiving the transfer units will be compatible with adjacent and nearby development and is designed to minimize its visual impact.
- If the density transfer requires any other permits or discretionary approvals, except for the design permit required by Section 17.12.050(C), the applications for such permits or approvals shall be filed and processed concurrently with the application for the density transfer use permit.
- C. As a condition of approval of the use permit referred to in Section 17.12.050(B), a design permit shall be required for any density transfer.

#### 17.12.055 - Clustered development.

- A. Consistent with the San Bruno Mountain Area Habitat Conservation Plan's goal of protecting forty percent (40%) of the Brisbane Acres as conserved habitat, adjustments to the minimum lot area, lot width and lot depth standards referred in Section 17.12.040(C) may be granted under the conditions set forth in this Section 17.12.055.
1. One ~~unit~~ single-family dwelling shall be permitted for each twenty thousand (20,000) square feet of the total area of the site. ~~In addition, one secondary dwelling unit may be allowed for each twenty thousand (20,000) square feet of the total area of the site, if otherwise in compliance with the requirements of Chapter 17.43.~~ Accessory dwelling units consistent with the provisions of Chapter 17.43 of this Title shall be

- permitted for each single-family dwelling. Permitted units shall not be clustered as multiple-family dwellings.
2. A minimum of forty percent (40%) of the total area of the site shall be permanently dedicated as conserved habitat. The method of retaining the dedicated land as conserved habitat shall be approved by the city council upon recommendation of the planning commission and shall be implemented before any building or grading permit is issued for development on the site receiving the transfer units. Where dedicated land is proposed to remain in private ownership, the applicant and property owner shall execute an agreement with the city for the continued maintenance of the conserved habitat, to be recorded with the county of San Mateo prior to issuance of any grading or building permits.
  3. The site shall be subdivided into lots no less than five thousand (5,000) square feet in area. Street right-of-way shall be provided in compliance with city standards.
  4. No clustered development shall be allowed on any site less than forty thousand (40,000) square feet in area.
- B. A use permit granted by the city council shall be required for all clustered developments pursuant to this section. The use permit shall first be considered by the planning commission which shall make its recommendation to the city council. In addition to the findings for issuance of a use permit prescribed by Section 17.40.060 of this title, the approving authority shall find and determine that:
1. The units in the clustered development will be sited, designed and constructed to avoid adverse effects upon environmentally sensitive areas both on and off site, such as disturbance of watercourses and hazardous geologic conditions;
  2. The units in the clustered development will be sited adjacent to or relatively near existing infrastructure, and extension of such infrastructure to serve the clustered development will meet city standards, as determined by the director of public works;
  3. The clustered development will have adequate parking and vehicular circulation; and
  4. The clustered development will be compatible with adjacent and nearby development and is designed to minimize its visual impact.
  5. The use permit will be subject to such conditions as will assure that native vegetation is satisfactorily provided, improved and/or maintained within the area dedicated as conserved habitat.
- Applications for subdivision and any other permits or discretionary approvals, except for the design permit required by Section 17.12.055(C), shall be filed and processed concurrently with the application for the clustered development use permit.
- C. As a condition of approval of the use permit referred to in Section 17.12.055(B), a design permit shall be required for the units in any clustered development.

## **Chapter 17.16 - SCRO-1 SOUTHWEST BAYSHORE COMMERCIAL DISTRICT**

### 17.16.020 - Permitted uses.

A. The following are permitted uses in the SCRO-1 district:

1. Emergency shelters in compliance with Section 17.16.040.
2. Accessory dwelling units associated with an existing single-family dwelling, in compliance with the provisions of Chapter 17.43 of this Title.

### 17.16.030 - Conditional uses.

A. Allowable Conditional Uses. The following conditional uses, not otherwise permitted per Section 17.16.020(A), may be allowed in the Southwest Bayshore district, upon the granting of a use permit pursuant to Chapter 17.40 of this title and if conducted in accordance with the performance standards set forth in Section 17.16.050 of this chapter:

1. Commercial recreation/commercial gym and health facilities;
2. Contractor's yards;
3. Convalescent homes;
4. Cultural facilities;
5. Duplex dwelling units;
6. Educational facilities;
7. Emergency shelters with more than twelve (12) beds;
8. Financial institutions;
9. Food production;
10. Group care homes;
11. Hotels;
12. Large family day care homes;
13. Light fabrication;
14. Live/work developments;
15. Media studios;
16. Medical facilities;
17. Meeting halls;
18. Mobilehome parks in compliance with Section 17.32.110;
19. Motels;
20. Multiple-family dwellings and dwelling groups;
21. Offices;

22. Outdoor sales and rental;
23. Personal services;
24. Places of worship;
25. Printing;
26. Product showrooms;
27. Research and development, where the planning director determines, as a result of a risk analysis performed in accordance with Policy No. 166.1 of the general plan, that the use of hazardous materials will not constitute a major component of the research and development activities to be conducted on the site. Research and development involving cannabis is additionally subject to the requirements in Chapter 17.33;
28. Restaurants;
29. Retail sales and rental;
30. Single-family dwellings and single-family dwellings with accessory dwelling units in compliance with the provisions of Chapter 17.43 of this Title;
31. Storage;
32. Veterinary clinics;
33. Warehousing;
34. Single-room occupancy units.

B. Mixed Uses. A combination of any residential and nonresidential uses listed in subsection A of this section, or in Section 17.16.020, may be allowed as a mixed use within the same structure or upon the same site when specifically authorized by the use permit granted for each individual conditional use and upon such additional conditions as the approving authority may deem necessary or appropriate to insure the compatibility of such mixed uses.

C. Night Operations. Night operations associated with the conduct of any uses listed in subsection A of this section (except residential uses) shall require a use permit when subject to the provisions of Section 17.16.070 of this chapter.

## Chapter 17.43 - ACCESSORY DWELLING UNITS

### 17.43.030 - Applicability and requirements.

- A. Newly Constructed Accessory Dwelling Units. A newly constructed accessory dwelling unit shall be established or occupied only by an accessory dwelling unit permit granted by the director of community development pursuant to the provisions of this subsection as a ministerial act, in accordance with Section 65852.2 of the California Government Code. An existing nonconforming dwelling unit may be designated as an accessory ~~secondary~~ dwelling unit subject to compliance with the requirements of this subsection.

Newly constructed accessory dwelling units shall comply with all of the following development standards:

1. Zoning Districts. Accessory dwelling units may only be established or occupied in the R-1, ~~R-2, R-3, or R-BA Brisbane Acres~~ residential districts ~~or the R-BA Brisbane Acres residential district~~ or in the SCRO-1 district, associated with an existing or proposed single-family dwelling, per the applicable district regulations.
2. Lot Size. ~~If the lot is located in the R-1 District, there is no minimum lot size requirement. If the lot is located in the R-BA Brisbane Acres residential district, a minimum lot size of twenty thousand (20,000) square feet is required.~~
3. One Accessory Dwelling Unit per Site. Only one accessory dwelling unit shall be permitted on any one site; provided, however, where a site already contains two (2) or more dwelling units that exist as legally established nonconforming uses, no additional accessory dwelling units shall be allowed on that site.
4. Attached or Detached. The accessory dwelling unit may be attached to or constructed within the main dwelling or may be detached from the main dwelling on the site.
5. Unit Size. The accessory dwelling unit shall not exceed one thousand (1,000) square feet in floor area.
6. Floor Area Ratio. The floor area of the accessory dwelling unit shall be included in calculating the floor area ratio for the site on which the accessory dwelling unit is located.
7. Parking. Parking spaces for the main dwelling and accessory dwelling units shall be provided in accordance with the requirements set forth in Chapter 17.34.
8. Access. As required by Section 17.01.060 of the Municipal Code, the site on which the accessory dwelling unit is located shall have a legal means of access that complies with the street standards set forth in Section 12.24.010.
9. Utilities. The site is served by adequate water, sewer, and storm drain facilities which comply with city standards. An accessory dwelling unit shall not be considered a new residential use for the purposes of calculating connection fees or capacity charges for water and sewer service provided by the city.
10. Compliance with Codes. The accessory dwelling unit and all new construction on the site that will be performed in connection therewith shall comply with all applicable

provisions of this title and all applicable building, health and fire codes, with the following exception:

- a. Accessory dwelling units shall not be required to provide fire sprinklers if fire sprinklers are not required for the main dwelling, as determined by the building official consistent with BMC Section 15.08.140.
- B. Conversion Accessory Dwelling Units: Notwithstanding subsection A of this Section 17.43.020, an accessory dwelling unit resulting from the conversion of existing building space shall be established by a city issued building permit and shall be exempt from the development standards of Section 17.43.020(A) if it meets the following requirements, as determined by the community development director:
1. It is contained within the existing space of a single-family dwelling or accessory structure, as defined in Chapter 17.02, ~~within a single family residential zone~~; and
  2. It has an independent exterior access from the existing residence; and
  3. It has sufficient side and rear setbacks for fire safety.

## **ATTACHMENT B**



Draft  
RESOLUTION RZ-2-18

A RESOLUTION OF THE PLANNING COMMISSION OF BRISBANE  
RECOMMENDING CITY COUNCIL APPROVAL OF  
ZONING TEXT AMENDMENT RZ-2-18  
AMENDING ACCESSORY DWELLING UNIT REGULATIONS CONSISTENT WITH  
STATE LAW

WHEREAS, Senate Bill 229 was signed into law by Governor Jerry Brown in September 2017 to amend California Government Code Section 65852.2 pertaining to local government accessory dwelling unit regulations; and

WHEREAS, the proposed draft Ordinance would update the City's accessory dwelling unit regulations in various Chapters of Title 17, Zoning, of the Brisbane Municipal Code to be consistent with the updated requirements of California Government Code Section 65852.2;

WHEREAS, the updated regulations mandated by the State legislation is consistent with policies and programs contained in the City's Housing Element, including Housing Element Program H.B.1.e and Housing Element Policy H.I.1; and

WHEREAS, on February 27, 2018, the Planning Commission conducted a hearing of the application, publicly noticed in compliance with Brisbane Municipal Code Chapters 1.12 and 17.54, at which time any person interested in the matter was given an opportunity to be heard; and

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

WHEREAS, the Planning Commission finds that the proposed project is categorically exempt from the provisions of the California Environmental Quality Act; pursuant to Section 15183(a) of the State CEQA Guidelines, and the exception to this section do 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 in Exhibit A.

ADOPTED this 27<sup>th</sup> day of February, 2018, by the following vote:

AYES:

NOES:

ABSENT:

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Jameel Munir  
Chairperson

ATTEST:

JOHN A. SWIECKI, Community Development Director

**EXHIBIT A**  
**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE CITY OF BRISBANE**  
**AMENDING BMC CHAPTERS 17.02, 17.08, 17.10, 17.12, 17.16, AND 17.43 TO**  
**AMEND REGULATIONS PERTAINING TO**  
**ACCESSORY DWELLING UNITS**

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

**SECTION 1: Section 17.02.235 - Dwelling 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) and (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 (2) 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. "Accessory dwelling unit" means a separate dwelling unit created upon a site that contains a single-family dwelling and for which an accessory dwelling unit permit or building permit has been granted pursuant to [Chapter 17.43](#) of this title. Subject to the restrictions of this title, the accessory dwelling unit may be within, attached to, or detached from the single-family dwelling. An accessory dwelling unit shall include permanent provisions for living, sleeping, eating, cooking, and sanitation. The term "secondary dwelling unit" shall have the same meaning throughout this title.
- E. "Single-family dwelling" means a dwelling unit constituting the only principal structure upon a single site (excluding any lawfully established accessory dwelling unit that may be located within the same structure on upon the same site). The term includes employee housing for six (6) or fewer persons, residential care facilities, licensed by the state to provide twenty-four (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 17.08.020 - Permitted uses in Chapter 17.08 - R-2 Residential District of the Municipal Code is amended to read as follows:**

17.08.020 - Permitted uses.

The following permitted uses shall be allowed in the R-2 district:

- A. Single-family dwellings and accessory dwelling units associated with an existing or proposed single-family dwelling in compliance with Chapter 17.43.
- B. Duplexes.
- C. Multiple family dwellings containing not more than six (6) dwelling units.
- D. Dwelling groups.
- E. Accessory structures and uses incidental to a permitted use, including personal cultivation of cannabis in compliance with Title 8, Chapter 8.12.
- F. Home occupations, conducted in accordance with the regulations prescribed in Chapter 17.44 of this title.
- G. Small family day care homes.

**SECTION 3: Section 17.10.020 - Permitted uses in Chapter 17.10 - R-3 Residential District of the Municipal Code is amended to read as follows:**

17.10.020 - Permitted uses.

The following permitted uses shall be allowed in the R-3 district:

- A. Multiple-family dwellings;
- B. Single-family dwellings and accessory dwelling units associated with an existing or proposed single-family dwelling in compliance with Chapter 17.43;
- C. Duplexes;
- D. Dwelling groups;
- E. Accessory structures and uses incidental to a permitted use, including personal cultivation of cannabis in compliance with Title 8, Chapter 8.12;
- F. Home occupations, conducted in accordance with the regulations prescribed in Chapter 17.44 of this title;
- G. Small family day care homes.

**SECTION 4: Section 17.12.050 - Density transfer in Chapter 17.12 – R-BA Brisbane Acres Residential District of the Municipal Code is amended to read as follows:**

17.12.050 - Density transfer.

- A. In order to facilitate preservation of lands in the R-BA district with significant environmental resources, one or more additional dwelling units within the R-BA district, in addition to the dwelling unit otherwise permitted on a particular site, may be

constructed under the conditions set forth in this Section 17.12.050. As used herein, the additional dwelling units are called "transfer units." The density transfer shall comply with all of the following requirements:

1. One transfer unit may be allocated to the site receiving the density transfer for each twenty thousand (20,000) square feet of land of the total area of the site or sites from which the transfer units are taken which is permanently dedicated to open space. No transfer units shall be allocated for any remaining portion less than twenty thousand (20,000) square feet. The method of retaining the dedicated land in permanent open space shall be approved by the city council upon recommendation of the planning commission and shall be implemented before any building or grading permit is issued for development on the site receiving the transfer units. Where dedicated open space is proposed to remain in private ownership, the applicant and property owner shall execute an agreement with the city for the continued maintenance of the open space, to be recorded with the county of San Mateo prior to issuance of any grading or building permits.
2. The site from which the transfer units are taken must be found to have value as open space based upon one or more of the following considerations:
  - a. Contiguous with San Bruno Mountain State and County Park;
  - b. Contains intact native vegetation;
  - c. Contains endangered butterfly habitat;
  - d. Contains permanent or semi-permanent wetlands;
  - e. Forms a portion of a significant watercourse;
  - f. Does not adjoin developed parcels on more than one side.

In making this determination, the planning commission and the city council shall be guided by the city's open space plan. The density transfer value of undeveloped "paper streets" in the upper Brisbane Acres may be recognized, once it is established that they are not subject to claims of access rights by easement or necessity from any remaining private property owners in the upper Brisbane Acres.

3. The site receiving the transfer units must be found suitable for development with increased density based on all of the following considerations:
  - a. Has a total area of not less than twenty thousand (20,000) square feet;
  - b. Does not contain any of the features of value for open space as described in subsections (A)(2)(a) through (A)(2)(e) of this section;
  - c. Is adjacent to or relatively near existing development and infrastructure.
4. The type of development permitted on the site receiving the transfer units shall be single-family dwellings only, or single-family dwellings with accessory dwelling units consistent with the provisions of Chapter 17.43 of this Title. The site shall be subdivided into lots with a minimum lot area of five thousand (5,000) square feet subject to the maximum density permitted per Sections 17.12.040(A), 17.12.040(B) and 17.12.050(A)(1).

B. A use permit granted by the city council shall be required for all density transfers pursuant to this section. The use permit shall first be considered by the planning commission which shall make its recommendation to the city council. In addition to the findings for issuance of a use permit prescribed by Section 17.40.060 of this title, the approving authority shall find and determine that:

1. The transfer units will be sited, designed and constructed to avoid adverse effects upon environmentally sensitive areas both on and off site, such as disturbance of watercourses and hazardous geologic conditions;
2. The site receiving the transfer units will be served by infrastructure that meets city standards, as determined by the director of public works;
3. The site receiving the transfer units will have adequate parking and vehicular circulation; and
4. The proposed development of the site receiving the transfer units will be compatible with adjacent and nearby development and is designed to minimize its visual impact.

If the density transfer requires any other permits or discretionary approvals, except for the design permit required by Section 17.12.050(C), the applications for such permits or approvals shall be filed and processed concurrently with the application for the density transfer use permit.

C. As a condition of approval of the use permit referred to in Section 17.12.050(B), a design permit shall be required for any density transfer.

**SECTION 5: Section 17.12.055 - Clustered development in Chapter 17.12 – R-BA Brisbane Acres Residential District of the Municipal Code is amended to read as follows:**

**17.12.055 - Clustered development.**

- A. Consistent with the San Bruno Mountain Area Habitat Conservation Plan's goal of protecting forty percent (40%) of the Brisbane Acres as conserved habitat, adjustments to the minimum lot area, lot width and lot depth standards referred in Section 17.12.040(C) may be granted under the conditions set forth in this Section 17.12.055.
1. One single-family dwelling shall be permitted for each twenty thousand (20,000) square feet of the total area of the site. Accessory dwelling units consistent with the provisions of Chapter 17.43 of this Title shall be permitted for each single-family dwelling. Permitted units shall not be clustered as multiple-family dwellings.
  2. A minimum of forty percent (40%) of the total area of the site shall be permanently dedicated as conserved habitat. The method of retaining the dedicated land as conserved habitat shall be approved by the city council upon recommendation of the planning commission and shall be implemented before any building or grading permit is issued for development on the site receiving the transfer units. Where dedicated land is proposed to remain in private ownership, the applicant and property owner shall execute an agreement with the city for the continued maintenance of the

- conserved habitat, to be recorded with the county of San Mateo prior to issuance of any grading or building permits.
3. The site shall be subdivided into lots no less than five thousand (5,000) square feet in area. Street right-of-way shall be provided in compliance with city standards.
  4. No clustered development shall be allowed on any site less than forty thousand (40,000) square feet in area.
- B. A use permit granted by the city council shall be required for all clustered developments pursuant to this section. The use permit shall first be considered by the planning commission which shall make its recommendation to the city council. In addition to the findings for issuance of a use permit prescribed by Section 17.40.060 of this title, the approving authority shall find and determine that:
1. The units in the clustered development will be sited, designed and constructed to avoid adverse effects upon environmentally sensitive areas both on and off site, such as disturbance of watercourses and hazardous geologic conditions;
  2. The units in the clustered development will be sited adjacent to or relatively near existing infrastructure, and extension of such infrastructure to serve the clustered development will meet city standards, as determined by the director of public works;
  3. The clustered development will have adequate parking and vehicular circulation; and
  4. The clustered development will be compatible with adjacent and nearby development and is designed to minimize its visual impact.
  5. The use permit will be subject to such conditions as will assure that native vegetation is satisfactorily provided, improved and/or maintained within the area dedicated as conserved habitat.
- Applications for subdivision and any other permits or discretionary approvals, except for the design permit required by Section 17.12.055(C), shall be filed and processed concurrently with the application for the clustered development use permit.
- C. As a condition of approval of the use permit referred to in Section 17.12.055(B), a design permit shall be required for the units in any clustered development.

**SECTION 6: Section 17.16.020 - Permitted uses in Chapter 17.16 - SCRO-1 Southwest Bayshore Commercial District of the Municipal Code is amended to read as follows:**

17.16.020 - Permitted uses.

- A. The following are permitted uses in the SCRO-1 district:
1. Emergency shelters in compliance with Section 17.16.040.
  2. Accessory dwelling units associated with an existing single-family dwelling, in compliance with the provisions of Chapter 17.43 of this Title.

**SECTION 7: Section 17.16.030 - Conditional uses in Chapter 17.16 - SCRO-1 Southwest Bayshore Commercial District of the Municipal Code is amended to read as follows:**

### 17.16.030 - Conditional uses.

A. Allowable Conditional Uses. The following conditional uses, not otherwise permitted per Section 17.16.020(A), may be allowed in the Southwest Bayshore district, upon the granting of a use permit pursuant to Chapter 17.40 of this title and if conducted in accordance with the performance standards set forth in Section 17.16.050 of this chapter:

1. Commercial recreation/commercial gym and health facilities;
2. Contractor's yards;
3. Convalescent homes;
4. Cultural facilities;
5. Duplex dwelling units;
6. Educational facilities;
7. Emergency shelters with more than twelve (12) beds;
8. Financial institutions;
9. Food production;
10. Group care homes;
11. Hotels;
12. Large family day care homes;
13. Light fabrication;
14. Live/work developments;
15. Media studios;
16. Medical facilities;
17. Meeting halls;
18. Mobilehome parks in compliance with Section 17.32.110;
19. Motels;
20. Multiple-family dwellings and dwelling groups;
21. Offices;
22. Outdoor sales and rental;
23. Personal services;
24. Places of worship;
25. Printing;
26. Product showrooms;
27. Research and development, where the planning director determines, as a result of a risk analysis performed in accordance with Policy No. 166.1 of the general plan, that the use of



hazardous materials will not constitute a major component of the research and development activities to be conducted on the site. Research and development involving cannabis is additionally subject to the requirements in Chapter 17.33;

28. Restaurants;
29. Retail sales and rental;
30. Single-family dwellings and single-family dwellings with accessory dwelling units in compliance with the provisions of Chapter 17.43 of this Title;
31. Storage;
32. Veterinary clinics;
33. Warehousing;
34. Single-room occupancy units.

B. Mixed Uses. A combination of any residential and nonresidential uses listed in subsection A of this section, or in Section 17.16.020, may be allowed as a mixed use within the same structure or upon the same site when specifically authorized by the use permit granted for each individual conditional use and upon such additional conditions as the approving authority may deem necessary or appropriate to insure the compatibility of such mixed uses.

C. Night Operations. Night operations associated with the conduct of any uses listed in subsection A of this section (except residential uses) shall require a use permit when subject to the provisions of Section 17.16.070 of this chapter.

**SECTION 7: Section 17.43.030 - Applicability and requirements in Chapter 17.43 - Accessory Dwelling Units of the Municipal Code is amended to read as follows:**

**17.43.030 - Applicability and requirements.**

- A. Newly Constructed Accessory Dwelling Units. A newly constructed accessory dwelling unit shall be established or occupied only by an accessory dwelling unit permit granted by the director of community development pursuant to the provisions of this subsection as a ministerial act, in accordance with Section 65852.2 of the California Government Code. An existing nonconforming dwelling unit may be designated as an accessory dwelling unit subject to compliance with the requirements of this subsection.

Newly constructed accessory dwelling units shall comply with all of the following development standards:

1. Zoning Districts. Accessory dwelling units may only be established or occupied in the R-1, R-2, R-3, or R-BA Brisbane Acres residential districts, or in the SCRO-1 district, associated with an existing or proposed single-family dwelling, per the applicable district regulations.
2. Lot Size. There is no minimum lot size requirement.
3. One Accessory Dwelling Unit per Site. Only one accessory dwelling unit shall be permitted on any one site; provided, however, where a site already contains two (2) or

- more dwelling units that exist as legally established nonconforming uses, no additional accessory dwelling units shall be allowed on that site.
4. Attached or Detached. The accessory dwelling unit may be attached to or constructed within the main dwelling or may be detached from the main dwelling on the site.
  5. Unit Size. The accessory dwelling unit shall not exceed one thousand (1,000) square feet in floor area.
  6. Floor Area Ratio. The floor area of the accessory dwelling unit shall be included in calculating the floor area ratio for the site on which the accessory dwelling unit is located.
  7. Parking. Parking spaces for the main dwelling and accessory dwelling units shall be provided in accordance with the requirements set forth in Chapter 17.34.
  8. Access. As required by Section 17.01.060 of the Municipal Code, the site on which the accessory dwelling unit is located shall have a legal means of access that complies with the street standards set forth in Section 12.24.010.
  9. Utilities. The site is served by adequate water, sewer, and storm drain facilities which comply with city standards. An accessory dwelling unit shall not be considered a new residential use for the purposes of calculating connection fees or capacity charges for water and sewer service provided by the city.
  10. Compliance with Codes. The accessory dwelling unit and all new construction on the site that will be performed in connection therewith shall comply with all applicable provisions of this title and all applicable building, health and fire codes, with the following exception:
    - a. Accessory dwelling units shall not be required to provide fire sprinklers if fire sprinklers are not required for the main dwelling, as determined by the building official consistent with BMC Section 15.08.140.
- B. Conversion Accessory Dwelling Units: Notwithstanding subsection A of this Section 17.43.020, an accessory dwelling unit resulting from the conversion of existing building space shall be established by a city issued building permit and shall be exempt from the development standards of Section 17.43.020(A) if it meets the following requirements, as determined by the community development director:
1. It is contained within the existing space of a single-family dwelling or accessory structure, as defined in Chapter 17.02; and
  2. It has an independent exterior access from the existing residence; and
  3. It has sufficient side and rear setbacks for fire safety.

**SECTION 8:** 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 9:** 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 10:** 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 \_\_\_\_\_, 2018, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

\_\_\_\_\_  
Mayor W. Clarke Conway

ATTEST:

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

APPROVED AS TO FORM:

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

## **ATTACHMENT C**

## State of California

### GOVERNMENT CODE

#### Section 65852.2 - Excerpts only

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65852.2. (a) (1) A local agency may, by ordinance, provide for the creation of accessory dwelling units in areas zoned to allow single-family or multifamily use. The ordinance shall do all of the following:

(A) Designate areas within the jurisdiction of the local agency where accessory dwelling units may be permitted. The designation of areas may be based on criteria that may include, but are not limited to, the adequacy of water and sewer services and the impact of accessory dwelling units on traffic flow and public safety.

(B) (i) Impose standards on accessory dwelling units that include, but are not limited to, parking, height, setback, lot coverage, landscape, architectural review, maximum size of a unit, and standards that prevent adverse impacts on any real property that is listed in the California Register of Historic Places.

(ii) Notwithstanding clause (i), a local agency may reduce or eliminate parking requirements for any accessory dwelling unit located within its jurisdiction.

(C) Provide that accessory dwelling units do not exceed the allowable density for the lot upon which the accessory dwelling unit is located, and that accessory dwelling units are a residential use that is consistent with the existing general plan and zoning designation for the lot.

(D) Require the accessory dwelling units to comply with all of the following:

(i) The unit may be rented separate from the primary residence, but may not be sold or otherwise conveyed separate from the primary residence.

(ii) The lot is zoned to allow single-family or multifamily use and includes a proposed or existing single-family dwelling.

(iii) The accessory dwelling unit is either attached or located within the living area of the proposed or existing primary dwelling or detached from the proposed or existing primary dwelling and located on the same lot as the proposed or existing primary dwelling.

(iv) The total area of floorspace of an attached accessory dwelling unit shall not exceed 50 percent of the proposed or existing primary dwelling living area or 1,200 square feet.

(v) The total area of floorspace for a detached accessory dwelling unit shall not exceed 1,200 square feet.

(vi) No passageway shall be required in conjunction with the construction of an accessory dwelling unit.

(vii) No setback shall be required for an existing garage that is converted to an accessory dwelling unit or to a portion of an accessory dwelling unit, and a setback