

City of Brisbane

Agenda Report

TO: Honorable Mayor and City Council

FROM: Community Development Director via City Manager

SUBJECT: Ordinance No. 566 (Zoning Text Amendment RZ-6-11) to Amend Brisbane Municipal Code Titles 16 and 17 Regarding Condominiums

DATE: September 16, 2013

City Council Goals:

To provide for effective and efficient delivery of City services (Goal #1).
To preserve and enhance livability and diversity of neighborhoods (Goal #14).

Purpose:

To update the Subdivision Ordinance so as to be consistent with current State law in regards to condominiums, dedication of land for park and recreation purposes, and passive or natural heating/cooling opportunities in subdivision design; and to amend the Zoning Ordinance to clarify condominium approval procedures and to revise the condominium development standards.

Recommendation:

That the City Council introduce Ordinance No. 566.

Background:

2007-2014 Housing Element Policy H.B.4 directs the City to “discourage the conversion of existing apartment buildings to condominiums or cooperatives unless it is demonstrated that such conversion would not adversely affect the rental market or that the conversion would provide unique housing opportunities for very-low-, low- and/or moderate-income households.” This policy would be implemented through the changes recommended by the Planning Commission in Sections 16.16.220.A, 17.30.010 & 17.30.060. Also see Section 16.24.060.D.

Housing Element Program H.B.4.a calls for refining the Zoning Ordinance standards for condominium conversions to reflect this City policy and current State law. To accomplish this, Sections 17.02.150 & 17.30.010-080 were recommended to be revised.

In addition, the Subdivision Ordinance was recommended to be updated to be consistent with the State Subdivision Map Act. These changes were contained in Sections 16.12.010-030, 16.16.190.D, 16.20.270.E & 16.24.010-060 of the recommended ordinance. For purposes of clarity, Section 16.24.090 of the current ordinance was recommended to be relocated as Sections 16.16.220.G & 16.16.230.H.

The Planning Commission recommended approval of the proposed ordinance as Zoning Text Amendment RZ-6-11.

The City Council first heard the recommended ordinance at its meeting of October 15, 2012, during which a number of questions were raised. At the subsequent meeting of November 26, 2012, the Planning Issues Subcommittee, consisting of Councilmembers Conway and O'Connell, was established to conduct a detailed review of draft planning ordinances in advance of public hearings.

Summary of Subcommittee Issues:

The subcommittee met March 12 and June 5, 2013, to consider the issues raised at the first City Council hearing. In response to comments regarding exemptions to the requirement for park and recreational land dedication, the Subcommittee recommends that Section 16.24.060.D of the draft ordinance be revised to require that moderate-income condominium projects dedicate land or pay in-lieu fees, since neither Government Code Section 66477 nor Housing Element Program H.H.1.a exempt them.

To address concerns raised at the first hearing regarding carbon monoxide alarms and toxic mold, draft Section 17.30.040.C.2.q is recommended to include carbon monoxide alarms, when required by California Building Code Section 420.4 for "a building containing a fuel-burning appliance or a building that has an attached garage," among the item to be addressed in the property inspection report required for condominium conversion applications. In addition, the list of structural elements to be inspected is recommended to be amended to include "interior walls, ceilings and floors (inspected for termite, dry rot or water damage, including toxic mold)" as Section 17.30.040.C.2.c. The misnumbering in draft Section 17.30.040.C is recommended to be corrected.

A number of minor clarifications are also recommended. Amendments to Sections 16.16.220.A and 16.16.230.A are proposed to clarify that General Plan consistency is required for condominium projects.

To be consistent with Government Code Section 66477(a)(7), Section 16.24.020 of the draft ordinance is recommended for revision to include condominium projects of more than 50 units, along with subdivisions of more than 50 lots, as being subject to the requirement for dedication of land for parks and recreation facilities (cf. Section 16.24.030).

To avoid confusion regarding the term “planned development” as used by the Civil Code in defining a “common interest development” versus its use in Brisbane’s Zoning Ordinance, draft Section 16.24.040.B is recommended to be reworded to replace the reference to “community apartment project, stock cooperative or planned development” with a reference directly to Civil Code Section 1351(c).

To avoid confusion regarding the term “dedicated” as used in Sections 16.24.010-050 (in reference to setting aside land for parks), the term is recommended to be changed to “restricted” in Sections 16.24.060.D & E (in reference to affordable units provided within a proposed project).

To elaborate upon what is meant by "unique housing opportunities for very-low, low-and/or moderate-income households" in Housing Element Policy H.B.4, Section 17.30.060.A.2 is recommended to be clarified in regards to the circumstances under which a proposed condominium conversion could be approved, even though the resulting residential rental vacancy rate would be less than 5%. In this instance, “unique housing opportunities” would provide more affordable units than would be required by the City’s inclusionary housing program (BMC Section 17.31.020.X), and for projects that would not be subject to the inclusionary housing program (of 5 or fewer units), at least 1 affordable unit would be provided. To take into account the current disparity between sales prices for older condominiums in Brisbane versus moderate-income affordability levels based upon Countywide median incomes, the ordinance would specify that such unique housing opportunities are not currently found among comparable market-rate condominium units. For example, if comparable market-rate units are currently affordable to moderate-income households based upon the Countywide median income, then the project should include more units affordable to low-income households than would be required by the inclusionary requirement (see the May 1, 2013 Subcommittee report for further details).

Attachments:

“Redline” Version of Draft Condominium Ordinance Amendments Revised per Council Subcommittee

Revised Draft Ordinance No. 566

February 6, 2013 Subcommittee Report, including:

Responses to Comments at 10/15/12 Meeting

List Submitted by Dana Dillworth at 10/15/12 Council Meeting

Draft Revised Redline Version of Condominium Ordinance Amendments

10/15/12 City Council Agenda Report with Attachments

Government Code Section 66477 (Quimby Act)

March 12, 2013 Subcommittee Report

May 1, 2013 Subcommittee Report

John Swiecki, Community Development Director

Clay Holstine, City Manager

"REDLINE" VERSION OF DRAFT CONDOMINIUM ORDINANCE
AMENDMENTS REVISED PER COUNCIL SUBCOMMITTEE

Changes in the current Municipal Code recommended by the Planning Commission are indicated ~~by striking through~~ the existing language to be deleted and putting the new language *in italics*. Further clarifications recommended by the Council Subcommittee are indicated in *blue italics*.

**Title 16
SUBDIVISIONS**

Chapter 16.12

***TENTATIVE AND FINAL PARCEL MAPS AND SUBDIVISION MAPS-WHERE
REQUIRED***

16.12.010 – Tentative and final subdivision map—When required.

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

- A. All subdivisions creating five (5) or more parcels;
- B. Five (5) or more condominiums as defined in Section ~~783 1350~~ of the Civil Code;
- C. A community apartment project containing five (5) or more parcels;
- D. The conversion of a dwelling to a stock cooperative containing five (5) or more dwelling units.

16.12.020 – Tentative and final subdivision map—Exceptions to requirements.

In the following cases where a tentative and final subdivision map would be required per Section 16.12.010, a tentative and final parcel map shall be required instead:

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

- A. ~~Where~~ *Where* the land before division contains less than five (5) acres, each parcel created by the division abuts upon a maintained public street or highway, and no dedications or improvements are required by the city council; provided, however, that this section shall not be applicable to *the conversion of any existing structure to* condominiums, community apartments, *or* and stock cooperatives ~~projects~~ described in Section 16.12.010;
- B. Each parcel created by the division has a gross area of twenty (20) acres or more and has an approved access to a maintained public street or highway;
- C. The land consists of a parcel or parcels of land having approved access to a public street or highway, which comprises part of a tract of land zoned for industrial or commercial development, and which has the approval of the city council as to street alignments and widths; ~~or~~
- D. Each parcel created by the division has a gross area of not less than forty (40) acres or is not less than a quarter of a quarter section; *or*

E. The land being subdivided is solely the creation of an environmental subdivision pursuant to Section 66418.2 of the Government Code.

16.12.025 – Final subdivision map—Waiver of requirements. *The requirements for a final subdivision map may be waived for the construction of a condominium project on a single parcel, if the planning commission reviews an application for waiver, accompanied by a tentative subdivision map, and finds that the proposed division of land complies with requirements established pursuant to this title as to the following:*

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

16.12.030 – Tentative and final parcel map—When required. A tentative parcel map and final parcel map shall be required for the following:

- A. All subdivisions creating less than five (5) parcels;
- B. Less than five (5) condominiums as defined in Section 783 of the Civil Code;
- C. A community apartment project containing less than five (5) parcels;
- D. The conversion of a dwelling to a stock cooperative containing less than five (5) dwelling units;
- E. All subdivisions for which tentative and final *subdivision* maps are not required due to an exception set forth in Section 16.12.020.

16.12.040 – Tentative and final parcel map—Exceptions to requirements.

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

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

16.12.050 – Final parcel map—Waiver of requirements. The requirements for a final parcel map may be waived if the planning commission reviews an application for waiver, accompanied by a tentative parcel map, and finds that the proposed division of land complies with requirements established pursuant to this title as to the following:

- A. Area;
- B. Improvement and design;

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

Chapter 16.16
TENTATIVE MAP PROCEDURES

16.16.190 – Public hearing.

- A. When the application is deemed complete, the planning director shall schedule a public hearing at which the tentative map shall be considered by the planning commission.
- B. Not less than ten (10) days before the public hearing the planning director shall give notice of the time and place thereof and a general description of the location of the proposed subdivision by posting in at least three public places in the city.
- C. Not less than ten (10) days prior to such hearing there shall be mailed, postage prepaid, a notice of the time and place of such hearing and a general description of the locale and the proposed subdivision to all persons whose names and addresses appear on the last equalized assessment roll as owning real property within three hundred (300) feet from the exterior boundaries of the proposed subdivision.
- D. In the case of a proposed conversion of residential real property to a condominium project, community apartment project or stock cooperative project, said notice of the public hearing shall be given by United States mail to each tenant of the subject property. In addition to notice of the time and place of the public hearing, the notice shall include notification of the tenants' right to appear and be heard. *Copies of the staff report for condominium conversion applications shall be sent to the residential tenants of the subject building, as well as to the applicant, per Government Code Section 66452.3.*
- E. Fees may be collected from the subdivider for expenses incurred under this section.
- F. The planning commission shall conduct a public hearing on the application for the tentative map.

16.16.220 Action by planning commission -- Findings for approval.

After the conclusion of the public hearing the planning commission shall approve or conditionally approve the tentative map if it makes all of the following findings:

- A. The tentative map, together with the provisions of its design and improvement is consistent with the general plan and any applicable specific plan. ~~This subsection shall not be applicable to condominium projects or stock cooperatives which consist solely of the subdivision of airspace in an existing structure unless such general plan contains definite objectives and policies,~~

~~specifically directed to the conversion of existing buildings into condominium projects or stock cooperatives.~~

B. The real property to be subdivided, and each lot or parcel to be created is of such character that it can be used safely for building purposes without danger to health or peril from fire, flood, geologic hazard or other menace.

C. Each lot or parcel to be created will constitute a buildable site and will be capable of being developed in accordance with the applicable provisions of the zoning ordinance.

D. The site is physically suitable for the type and proposed density of development.

E. The design of the subdivision and improvements, and the type of improvements is not likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat, or to cause serious public health problems.

F. The design of the subdivision or type of improvements will not conflict with easement, acquired by the public at large, for access through, or use of, property within the proposed subdivision. The planning commission may approve a map if it finds that alternate easements for access or for use will be provided, and that these will be substantially equivalent to ones previously acquired by the public. This subsection shall only be applicable to easements of record or easements established by judgment in a court of competent jurisdiction.

G. The design of the subdivision will provide for future passive or natural heating or cooling opportunities, to the extent feasible, in terms of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social and technological factors.

1. Examples of passive or natural heating and cooling opportunities in subdivision design include design of lot size configuration to permit orientation of a structure in an east-west alignment for southern exposure and to take advantage of shade or prevailing breezes.

2. In providing for future passive or natural heating or cooling opportunities in the design of the subdivision, consideration has been given to local climate, contour and configuration of the parcel to be subdivided, and to other design and improvement requirements, without resulting in reduced allowable densities or the percentage of a lot which may be occupied by a building or structure under the zoning ordinance as applicable at the time of filing of the tentative map.

3. The requirements of this section do not apply to condominium projects which consist of the subdivision of airspace in an existing building when no new structures are added.

16.16.230 Action by planning commission – When disapproval of tentative map is required.

The planning commission shall deny approval of a tentative map if it makes any of the following findings:

A That the tentative map is not consistent with the general plan or any applicable specific plan. ~~This subsection shall not apply to condominium projects or stock cooperatives which consist of the subdivision of airspace in an existing structure where no new units are to be constructed or added, unless the~~

~~general plan or applicable specific plans contain definite objectives and policies, specifically directed to the conversion of existing buildings into condominium projects or stock cooperatives;~~

B. That the design or improvement of the proposed subdivision is not consistent with the general plan or any applicable specific plan;

C. That the site is not physically suitable for the type of development;

D. That the site is not physically suitable for the proposed density of development;

E. That the design of the subdivision or the proposed improvements are likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat;

F. That the design of the subdivision or the types of improvements is likely to cause serious public health problems;

G. That the design of the subdivision or the type of improvements will conflict with easements acquired by the public at large, for access through or use of, property within the proposed subdivision, and that no alternative easement for access or for use will be provided which will be substantially equivalent to ones previously acquired by the public.

H. That the design of the subdivision will not provide for feasible future passive or natural heating or cooling opportunities; the requirements of this section do not apply to condominium projects which consist of the subdivision of airspace in an existing building when no new structures are added.

Chapter 16.20 FINAL MAP PROCEDURES

16.20.270 – City council consideration and review of final maps.

A. After the final map has been checked and approved as provided above, and when all certificates, except for the approval certificate of the city clerk appearing on the final map have been signed and, where necessary, acknowledged, the city engineer shall transmit the final map to the city clerk for action by the city council.

B. The city council shall within a period of ten (10) days after the filing of the final map for approval, or at its next regular meeting, approve the final map if the map meets the requirements and conditions which were applicable to the subdivision at the time of the approval of the tentative map imposed by the Subdivision Map Act and by this title. The foregoing time limit may be extended by mutual consent of the city council and the subdivider.

C. The city council shall not approve the final map unless it finds that the proposed subdivision, together with the provisions for its design and improvement is consistent with the general plan of the city or any applicable specific plan. The city council shall deny approval of the final map if it makes any of the findings set forth in Section 16.16.230. Any such disapproval shall be accompanied by a finding identifying the requirements or conditions which have not been met or performed.

D. Concurrently with the approval of the final map the city council shall accept or reject such offers of dedication as it deems advisable. As a condition precedent to the acceptance of any roads or streets, pedestrianways, drainage channels, easements and other rights-of-way, the city council shall require the subdivider, at his option, to either improve, or in writing agree to improve the streets, pedestrianways, drainage channels, easements and other rights-of-way in the subdivision. The agreement shall be accompanied by adequate security to secure performance.

E. The city council shall not approve the final map for subdivision to be created from the conversion of residential real property into a condominium project, a community apartment project, or a stock cooperative project unless it finds all of the following:

1. Each of the tenants of the proposed condominium, community apartment project, or stock cooperative project has received, pursuant to Section ~~66452.18~~ ~~66452.9~~ of the Government Code, written notification of intention to convert at least sixty (60) days prior to the filing of a tentative map pursuant to Section 66542 of the Government Code. There shall be a further finding that each such tenant, and each person applying for the rental of a unit in such residential real property, has, or will have, received all applicable notices and rights now or hereafter required by this title or Sections 66451 through 66469 of the Government Code. In addition, a finding shall be made that each tenant has received ten (10) days' written notification that an application for a public report will be, or has been, submitted to the Department of Real Estate, *that the period for each tenant's right to purchase begins with the issuance of the final public report*, and that such report will be available on request. *The subdivider shall also give written notice that the public report from the Department of Real Estate has been received within five (5) days from receipt.* The written notices to tenants required by this subdivision shall be deemed satisfied if such notices comply with the legal requirements for service by mail *and the requirements of Section 66427.1 of the Government Code.*

2. Each of the tenants of the proposed condominium, community apartment project, or stock cooperative project has been, or will be, given written notification within ten (10) days of approval of a final map for the proposed conversion.

3. Each of the tenants of the proposed condominium, community apartment project, or stock cooperative project has been, or will be, given one hundred eighty (180) days' written notice of intention to convert prior to termination of tenancy due to the conversion or proposed conversion. The provisions of this subdivision shall not alter or abridge the rights or obligations of the parties in performance of their covenants, including, but not limited to, the provision of services, payment of rent or the obligations imposed by Sections 1941, 1941.1, and 1941.2 of the Civil Code.

4. Each of the tenants of the proposed condominium, community apartment project, or stock cooperative project has been, or will be, given notice of an exclusive right to contract for the purchase of his or her respective unit upon the same terms and conditions that such unit will be initially offered to the general public or terms more favorable to the tenant. The right shall run for a

period of not less than ninety (90) days from the date of issuance of the subdivision public report pursuant to Section 11018.2 of the Business and Professions Code, unless the tenant gives prior written notice of his or her intention not to exercise the right.

5. This section and Section 16.20.280 shall not diminish, limit or expand, other than as provided in these sections, the authority of any city, county, or city and county to approve or disapprove condominium projects.

Chapter 16.24
PARK IMPROVEMENTS -- BAY ACCESS -- NATURAL HEATING AND COOLING

16.24.010 Dedication of land for park and recreational purposes.

The subdivider shall provide for adequate and appropriate recreational facilities for the subdivision by the dedication of land in the subdivision or by the payment of fees in lieu thereof, in accordance with the conditions and requirements of this section; provided, however, that the requirements of this section may be satisfied by a development agreement between the subdivider and city council. *The land, fees, or combination thereof are to be used only for the purpose of developing new or rehabilitating existing neighborhood or community park or recreational facilities to serve the subdivision. Any fees collected shall be committed within five years after the payment of the fees or the issuance of building permits on one-half of the lots created by the subdivision, whichever occurs later.*

16.24.020 Amounts of area to be dedicated.

Where there are *more than* fifty (50) ~~or more~~ lots to be established in the subdivision *or when a condominium project, stock cooperative, or community apartment project exceeds fifty (50) dwelling units even though the number of parcels may be less than fifty (50)*, and where land therein can be properly located for public recreational facilities in accordance with the *policies and standards for parks and recreation facilities contained in the* general plan or *applicable specific plan*, the subdivider shall dedicate an area for such purposes on the basis of ~~two (2)~~ *three (3)* acres dedicated for each ~~fifty (50) acres~~ *1,000 population* within the subdivision to be developed, *assuming 2.35 persons per proposed unit.*

16.24.030 Dedication -- Payment of fees in lieu.

Where there are ~~less than~~ fifty (50) lots *or less* in the ~~subdivision or fifty (50) units or less in a residential condominium project, stock cooperative, or community apartment project, or where the subdivision is of fifty (50) lots or more but land within the subdivision cannot be located on a part of the subdivision as outlined in the general plan,~~ the subdivider shall, in lieu of dedication of land, pay a fee in a sum equivalent to the following formula: *Number of proposed units times 2.35 persons per household divided by 1,000 times 3 acres times the fair market value of 1 acre of the subject property as Average number in household times recreational standard (4.50 acres per 1,000 population) times fair market*

~~value equals amount to be paid per family unit. Minimum requirements per household unit shall be as follows:~~

~~A. Single-family and duplex areas: Three (3) times 0.0045 times fair market value;~~

~~B. Multiple-family areas: Two and one-half (2-1/2) times 0.0045 times fair market value.~~

~~16.24.040 Dedication -- Amount of fee in lieu.~~

~~Where a fee is required to be paid in lieu of land dedication, the amount of such fee shall be based upon fair market value of the amount of land which would otherwise be required to be dedicated pursuant to Section 16.24.030. The fair market value shall be determined by the planning director at the time of the filing of the tentative map; provided, however, that the city council may by resolution establish a fee per dwelling unit to be constructed based upon an estimate of current land values of residential property within the city, and such fee shall be determinative of the fee to be paid by the subdivider in lieu of dedication pursuant to this section. A residential condominium project, stock cooperative, or community apartment project with more than fifty (50) units may be required to dedicate land, even though the number of lots may be less than fifty (50), or pay a fee in lieu.~~

~~16.24.040 16.24.050 Dedication -- Credits for park and recreational improvements and for private open space.~~

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

~~B. If a condominium project or other common interest development as defined in Civil Code Section 1351(c), community apartment project, stock cooperative or planned development provides private open space within the development which is usable for active recreational uses, the value of such land shall be a credit against the payment of fees or dedication of land required by this chapter.~~

~~A. Where private open space for park and recreational purposes is provided in a proposed subdivision and such space is proposed to be privately owned and maintained by the future residents thereof, credit may be given against the requirement of land dedication or payment of fees in lieu of dedication pursuant to Sections 16.24.010 through 16.24.070, provided:~~

~~1. That yards, court yards, setbacks and other open areas required to be maintained by the zoning and building ordinances shall not be included in the computation of such private open space; and~~

~~2. That the private ownership and maintenance of the open space is adequately provided by recorded written agreement, conveyance or restrictions; and~~

~~3. That the use of the private open space is restricted for park and recreational purposes by recorded covenant, which runs with the land in favor of the future owners of the property and cannot be defeated or eliminated without the consent of the city; and~~

- ~~4. That the proposed private open space is reasonably adapted for use for park and recreational purposes taking into consideration such factors as size, shape, topography, geography, access and location; and~~
- ~~5. That facilities proposed for the open space are in substantial accordance with the provisions of the general plan; and~~
- ~~6. That the open space for which credit is given is a minimum of three (3) acres and provides all of the local park basic elements listed below:
 - ~~a. Children's play apparatus area;~~
 - ~~b. Landscape park-like and quiet areas;~~
 - ~~c. Family picnic area;~~
 - ~~d. Game court area;~~
 - ~~e. Turf playfield.~~~~
- ~~B. Before credit is given, the agency shall make written findings that the standards of this section are met.~~

16.24.050 16.24.060 Dedication -- Timing of determination and payment.

A. At the time of approval of the tentative map, the approving agency shall determine pursuant *to this chapter Sections 16.24.020 and 16.24.030* the land to be dedicated and/or the fees to be paid by the subdivider. At the time of filing of the final map or final parcel map, the subdivider shall dedicate the land or pay the fees as previously determined, except as provided *below in Section 16.24.070.*

B. Open space covenants for private park or recreational facilities shall be submitted to the city upon the filing of the final subdivision or parcel map and shall be recorded contemporaneously with such map.

C. At the time of approval of the final map, the approving agency *of the final map* shall specify when development of the park and recreational facilities shall be commenced.

D. Any approval of a waiver of a final parcel map pursuant to Section 16.12.050 shall be subject to dedication of land, payment of fees and/or recordation of open space covenants as required by this chapter.

16.24.060 16.24.070 Exemptions.

The provisions of Sections 16.24.010 through *16.24.050 16.24.060* shall not apply to:

A. Subdivisions containing less than five (5) parcels *and not used for residential purposes*; provided, however, that a condition of approval *may be attached to the approval of a the tentative* parcel map *may require* that if a building permit is requested for construction of a residential structure or structures on one (1) or more of the parcels within four (4) years, the fee may be required to be paid by the owner of each such parcel as a condition to the issuance of such permit;

B. Condominium projects or stock cooperatives *that which* consist of the subdivision of airspace in an existing apartment building *that which* is more than five (5) years old when no dwelling units are added;

C. *Commercial or industrial subdivisions; Parcel maps for a division containing less than five (5) parcels for a shopping center containing more than*

~~three hundred thousand (300,000) square feet of gross leasable area and no residential development or uses.~~

~~D. Condominium projects restricted so as dedicated to be affordable to households with very-low, or low, or moderate incomes, subject to restrictions approved by the City and recorded with the County of San Mateo, for which outdoor areas are provided in compliance with Section 17.30.030;~~

~~E. Condominium projects designed and restricted to dedicated for use by households with one or more members who are 62 years of age or older, subject to restrictions approved by the City and recorded with the County of San Mateo.~~

16.24.070 16.24.080 Bay access.

A. No tentative or final subdivision or parcel map of any subdivision fronting upon the shoreline of San Francisco Bay shall be approved unless the subdivision provides or has available reasonable public access by fee or easement from public highways to land below the ordinary high water mark within or at a reasonable distance from the subdivision.

B. Any public access route or routes provided by the subdivider shall be expressly designated on the tentative or final map, and such map shall expressly designate the governmental entity to which such route or routes are dedicated.

C. Reasonable public access shall be determined by the planning commission.

D. In making the determination at what shall be reasonable public access, the planning commission shall consider:

1. That access may be by highway, foot trail, bike trail, horse trail, or any other means of travel;
2. The size of the subdivision;
3. The type of shoreline and appropriate public use;
4. The likelihood of trespass on private property and reasonable means of avoiding such trespass.

~~16.24.090 Passive or natural heating and cooling.~~

~~A. The design of a subdivision for which a tentative map is required shall provide, to the extent feasible, for future passive or natural heating or cooling opportunities in the subdivision.~~

~~B. Examples of passive or natural heating and cooling opportunities in subdivision design include design of lot size configuration to permit orientation of a structure in an east-west alignment for southern exposure and to take advantage of shade or prevailing breezes.~~

~~C. In providing for future passive or natural heating or cooling opportunities in the design of a subdivision, consideration shall be given to local climate, to contour, to configuration of the parcel to be subdivided, and to other design and improvement requirements. Such provision shall not be imposed so as to result in reducing allowable densities or the percentage of a lot which may be occupied by a building or structure under the zoning ordinance as applicable at the time of filing of the tentative map.~~

~~D. The requirements of this section do not apply to condominium projects which consist of the subdivision of airspace in an existing building when no new structures are added.~~

~~E. For the purposes of this section, "feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social and technological factors.~~

Title 17 ZONING

Chapter 17.02 DEFINITIONS

17.02.150 Condominium. "Condominium" means a building, or group of buildings, in which dwellings units, ~~commercial/retail/office/warehouse spaces offices, retail sales or rental spaces~~, floor areas, or other portions of the property are owned individually or restricted for the exclusive use of a single owner, and the structure, common areas, and common facilities are owned by all the owners on a proportional, undivided basis. The individual ownership interest may include a fee, a life estate, a leasehold, or a right of use during a specific period of time. *As used in this title, the term includes "community apartment project" and "stock cooperative" as defined by State Civil Code Sections 1351(d) and (m).*

Chapter 17.30 CONDOMINIUMS

17.30.010 Purpose:

~~The city council finds and determines that condominiums, community apartments, and stock cooperatives differ from apartments in numerous respects, and that, for the benefit of public health, safety, and welfare, such projects should be treated differently from apartments. The city council, therefore, states its express intent to treat such projects differently from apartments and like structures for the protection of the community and the purchasers of condominiums, community apartments, and stock cooperatives.~~

Purposes of chapter

The purpose of this chapter is to regulate the development of new residential, commercial and mixed-use condominiums and the conversion of existing units to such condominiums, with the objectives of encouraging local equity ownership, while discouraging the conversion of existing rental housing to condominiums or cooperatives unless it is demonstrated that such conversions would not adversely affect the rental market or would provide unique housing opportunities for very-low, low- and/or moderate-income households, in addition to the objectives set forth in Section 17.01.030.

17.30.020 Use Permit required s --- Conversions --- New construction projects.

A. Before ~~final approval and~~ issuance of any building permit for any condominium, ~~community apartments, or stock cooperative project~~, and before

the conversion of any existing structure to condominiums, ~~community apartments, or stock cooperatives~~, the developer, builder or other person seeking to construct the project or convert the existing structure shall first obtain from the planning commission a use permit ~~for new construction, or conversion, as the case may be~~ pursuant to the provisions of Chapter 17.40 and this Chapter.

~~B. Such permit shall be issued only upon the approval of the planning commission, or the city council, on appeal, after it has been determined that such project or existing structures conform to the general plan, all applicable zoning regulations, and, in the case of the conversions, to all other city requirements.~~

~~C. Use permits shall be evaluated and processed pursuant to Chapter 17.40. No use permit for a conversion or for new construction shall be granted unless the planning commission, or the city council on appeal, finds that the granting of the application will not under the circumstances of the particular case, be detrimental to the health, safety, morals or general welfare of the persons residing or working in the neighborhoods of the proposed project or conversion, or be injurious or detrimental to property and improvements in the neighborhood or to the general welfare of the city.~~

17.30.030 Development standards.

A. ~~The following development regulations shall apply to all newly-constructed condominiums and condominium conversions for residential and/or commercial occupancies:~~

1. ~~A. Use, Height, Yard, and Other Regulations.~~ Regulations governing the use, building height, required yards, building separation, signs, off-street parking, and other explicit regulations, where applicable and where not governed by the provisions of this chapter, shall be those of the district within which the development is located.

2. ~~B. Density.~~ The maximum allowable density in any residential condominium shall be the density specified for the district in which the condominium is located.

~~C. Outdoor Common Area. In all residential condominiums the outdoor common area, exclusive of all structures, shall contain an area having a slope of not more than ten percent (10%) and a minimum area per unit as follows:~~

~~1. For horizontal condominiums, seven hundred fifty (750) square feet per unit; and~~

~~2. For vertical condominiums:~~

~~a. Where structures average two (2) stories or less, five hundred (500) square feet per unit;~~

~~b. Where structures average between two (2) and three (3) stories, four hundred (400) square feet per unit; and~~

~~c. Where structures average three (3) stories or more, three hundred (300) square feet per unit.~~

~~D. Right-of-Way. The rights-of-way, and improvements thereon, for all streets, whether to be public or private, shall be approved by the commission.~~

3. ~~Separate and independent water, sewer, electrical, gas, and telecommunications systems shall be provided for each unit. Exceptions may be approved by the Planning Commission when the applicant satisfactorily~~

demonstrates, through the provision of adequate CC&Rs and/or other appropriate measures, that the benefits of shared utilities/facilities outweigh the detriments for the project, in terms of the arrangement (side-by-side versus stacked) and/or number of units proposed.

B. The following development regulations shall apply to newly-constructed residential condominiums and residential condominium conversions (including residential units in mixed-use developments):

1. All permanent mechanical equipment, such as motors, compressors, pumps and compactors that could be a source of structural vibration or structure-borne noise shall be shock mounted with inertia blocks or bases and/or vibration isolators.

2. Either washer and drier hookups shall be provided for each unit or 1 washer and 1 drier shall be installed in a laundry room for every 5 units

3. 125 cubic feet of enclosed storage area shall be provided for each unit.

4. Outdoor areas shall be provided for active or passive recreational use for a total combined area equal to 400 sq. ft. per unit. Such areas may include decks, patios, lawns with a slope not exceeding 10%, and landscaped areas accessed with walkways and provided with permanent seating, but shall not include walkways that serve as the required means of egress. Such areas may be for use in common or dedicated to private use. Exceptions may be approved by the Planning Commission if adequate alternatives are proposed on site or available in the vicinity.

17.30.040 ~~Development application.~~— Application for condominium use permit.

A. ~~The Applications for a use permits for newly-constructed condominiums or condominium conversions econdominium developments~~ shall be accompanied by the following:

1. ~~A.~~ A map to a workable scale, showing the site in relation to surrounding property, existing roads and other existing improvements;

2. ~~B.~~ A site plan, showing *existing and* proposed improvements, locations of buildings on the ground, orientation of buildings, utilities, public services, public facilities, streets and alleys, landscaping, and the boundaries of the projects, including the details necessary to demonstrate compliance with the applicable development standards per Section 17.30.030;

3. ~~C.~~ Drawings showing how airspace is to be divided within the condominium *consistent with the requirements for a "condominium map" per California Civil Code Sections 1531 (e) & (f)*;

4. ~~D.~~ *Application for tentative parcel or subdivision map approval, including a A-copy of the tentative parcel or subdivision map, except where a vesting tentative map is to be used for the development project, in which case a use permit for the condominium, community apartments, or stock cooperative project shall be approved prior to or concurrently with the vesting tentative map;*

5. ~~E.~~ Floor plans and elevations of all *existing and* proposed buildings and structures, *including the details necessary to demonstrate compliance with the applicable development standards per Section 17.30.030;*

6. ~~F.~~ A copy of the *proposed* declaration of restrictions (*for condominium projects with unit-owners associations*) and ~~proposed management arrangement relating to the projects, or maintenance agreement (for smaller condominium projects without unit-owners associations)~~ as required by the provisions of Section 1355 of the Civil Code of the state, *including the following:*

- a. *A requirement for binding arbitration for tie votes;*
- b. *Provisions addressing property, general liability, earthquake and flood insurance responsibilities;*
- c. *Provisions addressing maintenance responsibilities for roof, gutters, sidewalks, painting, landscaping, any habitat areas subject to the San Bruno Mountain Area Habitat Conservation Plan, and other common area improvements (including timing of maintenance items and method to apportion costs);*
- d. *Provisions for the reconstruction of the project in accordance with codes in effect at the time of such reconstruction, in the event of the destruction of the condominium project.*
- e. *A provision specifying that the City of Brisbane is named as a third-party beneficiary for enforcement purposes, if recommended by the city attorney; and*

7. ~~G.~~ Any information deemed necessary or desirable in assisting the commission in its determinations.

~~17.30.050 Conversion application.~~

B. *The application for a use permit for newly-constructed condominiums shall be accompanied by an application for a design permit as required by Sections 17.01.105 and 17.42.010 of this title. The planning director may determine that the application for the design permit shall be processed first, prior to completion and processing of the application for the condominium use permit.*

C. The application for a use permit for a ~~conversion project residential condominium conversion (including conversion of a mixed-use development with residential units)~~ shall include, in addition to the requirements *in Section 17.30.040.A imposed elsewhere*, the following information:

~~A. Original building plans, landscaping plans and other plans showing the locations of all buildings and structures, utility facilities and landscaping;~~

~~B. A tentative subdivision map, except where a vesting tentative map is to be used for the conversion project, in which case a use permit for the conversion project shall be approved prior to or concurrently with the vesting tentative map;~~

1. ~~C.1.~~ A building history report, including the following:
 - a. The date of construction of all elements of the project,
 - b. A statement of the major uses of the project since construction,
 - c. The date and description of each major repair or renovation of any element since the date of construction,
 - d. The name and address of each present tenant of the project,

~~e. 2. Failure to provide information required by subdivision 1 of this subsection shall be accompanied by~~ *In the event that any of the information in subsections a. through d. cannot be provided, an affidavit or declaration setting*

forth in detail all efforts undertaken to discover such information and reasons why the information cannot be obtained;

~~2. D-4.~~ A property *inspection* report *prepared by a licensed civil engineer, structural engineer, architect, general building contractor and/or general engineering contractor, determining the level of current building and fire code compliance for and* describing the condition and estimating the useful life of each of the following elements of each structure within the project:

- a. Foundations,
- b. Structural elements,
- c. *Interior walls, ceilings and floors (inspected for termite, dry rot or water damage, including toxic mold),*
- d. ~~e.~~ Roofs,
- e. ~~d.~~ Drainage systems,
- f. ~~e.~~ Exterior sidings and finishes,
- g. ~~f.~~ Paved surfaces,
- h. ~~g.~~ Mechanical systems,
- i. ~~h.~~ Electrical systems,
- j. ~~i.~~ Plumbing systems, including sewer systems,
- k. ~~j.~~ Landscaping,
- l. ~~k.~~ Sprinkler systems for landscaping,
- m. ~~l.~~ Utility delivery systems,
- n. ~~m.~~ Central or community heating and air conditioning systems,
- o. ~~n.~~ Fire protection systems, including any automatic sprinkler systems,
- p. ~~o.~~ Alarm systems *and property security in general,*
- q. ~~p.~~ Smoke detectors *and any required carbon monoxide alarms,*
- r. ~~q.~~ Standpipe systems;

~~2. Such report shall be presented by a licensed engineer. In addition, a statement of the condition of all appliances in each unit shall be submitted;~~

3. *Written certification from a licensed appliance repair contractor on the working condition of all private and common appliances and mechanical equipment;*

4. *Written certification from a licensed painting contractor on the condition of all exterior painted surfaces;*

5. *Written certification from a licensed roofing contractor on the condition of all roofs;*

6. ~~E.~~ A structural pest control report prepared by a licensed structural pest control operator pursuant to Section 8516 of the Business and Professions Code;

7. *An acoustical test data report on the noise attenuation characteristics of existing party walls, floors and ceilings prepared by a licensed acoustical consultant, based upon a representative sampling of the units, identifying any current Building Code standards for exterior and interior noise transmission that cannot be met.*

8. ~~F.~~ A summary of average rents for each bedroom type of rental unit, and a detailed unit history containing the following information:

- a. ~~1.~~ Location of unit,

- ~~b. 2.~~ Number of rooms,
- ~~c. 3.~~ Size of unit in square feet,
- ~~d. 4.~~ Rental rate during two (2) years preceding the date of submittal of the application, indicating dates of rental rate increases,
- ~~e. 5.~~ Duration of occupancy of present tenants;

~~9. G.~~ A housing and tenant relocation report. ~~Such report shall be prepared by a qualified consultant approved by .At the discretion of the planning director, the consultant shall be selected either by the director or the applicant. The cost of the report shall be borne by the applicant. The report shall contain~~ing the following information:

- ~~a. 1.~~ The number of multiple dwelling rental units which will remain ~~in the city~~ after the conversion,

- ~~b. 2.~~ The nature and type of relocation assistance proposed by the applicant, including financial assistance and the provision of alternative housing facilities, including relocation programs,

- ~~c. 3.~~ Vacancy information in rental units and the availability thereof:

- ~~a. Within San Mateo County in general, and~~

- ~~b. Within northern San Mateo County in particular, including territory within the city cities of Daly City, Pacifica, South San Francisco, Brisbane, Colma, San Bruno, Millbrae, and Burlingame, and the adjacent unincorporated territory,~~

- ~~d. 4.~~ The proposed schedule of meetings which the applicant plans or proposes to hold with tenants to explain the application and its ramifications to the tenants,

- ~~e. 5.~~ The proposed phasing or timing schedule of conversion and sale of units,

- ~~f. 6.~~ Whether existing tenants will be given any discount from otherwise applicable sales prices,

- ~~g. 7.~~ Any plan for temporary displacement of tenants who purchase units,

- ~~h. 8.~~ A description of the demographic composition of the tenants, including information on age, persons per unit, persons over age sixty-two (62), number of permanent disabled persons, and tenure per unit;

- ~~i. Suitable proof of compliance with the residential tenant notification requirements in Government Code Sections 66452.17 and 66452.18.~~

17.30.050 Notice.

~~A. In addition to the requirements set forth in Chapter 17.54, notice shall be given to the residential tenants in any building proposed to be converted to condominiums, concurrent with the notice required by Section 16.16.190.D.~~

~~B. Copies of the staff report for condominium conversion applications shall be sent to the residential tenants of the subject building, as well as to the applicant, per Government Code Section 66452.3.~~

17.30.060 Findings.

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

1. The condominium conversion will not adversely affect the rental market by not reducing the residential rental vacancy rate to less than 5.0% or

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

17.30.070 Action by planning commission—Mandatory conditions.

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

A. The required off-street parking spaces, excluding any guest parking spaces, shall be assigned to and included in the ownership of each individual condominium unit and shall not be sold or transferred except with the sale of such unit.

B. For residential condominium conversions (including conversion of a mixed-use development with residential units), any hazardous and unsafe conditions identified through the inspection required per Section 17.30.060 shall be corrected prior to the first sale of any of the converted units.

17.30.060 Property inspection and compliance.

~~Prior to the conveyance of any unit, the premises shall be inspected by a licensed civil engineer to ascertain that the structures are consistent with the public health and safety. Such inspection shall be performed at the expense of the applicant. Hazardous and unsafe conditions shall be alleviated and repaired prior to the conveyance of any unit, regardless of whether the condition may~~

~~have complied with the provisions of this title at the time of original construction. The project must meet, at a minimum, the standards as were in effect as of the date of construction of the structure within the project.~~

17.30.080 Appeals.

A. *Any decision or determination made by the planning commission pursuant to this chapter may be appealed to the city council in accordance with the procedures et forth in Sections 17.52.101 and 17.52.020 of this title, except that the appeal shall be filed within ten (10) calendar days after the date on which the decision or determination is rendered, consistent with Section 16.44.020 and Government Code Section 66452.5.*

B. *Notice of any appeal regarding a use permit for residential condominium conversions (including conversion of a mixed-use development with residential units) shall be given to residential tenants of the building subject to the proposed condominium conversion, consistent with Section 16.44.050.B.3 and Government Code Section 66452.5.*