

City of Brisbane

Planning Commission Agenda Report

TO: Planning Commission For the Meeting of 10/27/11

FROM: Tim Tune, Senior Planner, via John Swiecki, Community Development Director

SUBJECT: Implementation of Housing Element Program H3a Regarding Condominium Conversions

RECAP. At the October 13th study session, staff reviewed the State's current condominium laws (see attached Condominium Approval Process under State Subdivision Map Act) and the City's condominium policies and procedures. This study session will identify issues regarding condominium conversions and condominiums in general to be addressed in the Municipal Code.

RECOMMENDATION. Provide direction to staff to prepare a draft ordinance for recommendation to the City Council, and adopt the attached draft Resolution No. RZ-6-11a to formally initiate the zoning text amendment process.

ISSUES TO ADDRESS. A section-by-section review of the current Zoning Ordinance standards for condominium conversions contained in Brisbane Municipal Code Chapter 17.30, as well as the general condominium regulations throughout the Municipal Code, finds several issues to be addressed in order to be consistent with current State law and City policy:

Should condominium conversions be prohibited when the rental vacancy rate in Brisbane is less than 5%, unless the conversion would provide more units affordable to very-low-, low- and/or moderate-income households than required by the current inclusionary housing program?

Should the "outdoor common area" formula be changed to a simple requirement of 400 sq. ft. of common/private outdoor area for active/passive recreational use per unit?

Are any special standards for noise proofing needed in the condominium ordinance, given the 2010 California Building Code requirements for noise proofing between dwelling units?

Should the requirement for a final subdivision map be waived for construction of a condominium project on a single parcel, if appropriate findings can be made?

Should no final map waiver be allowed for condominium conversion projects, to assure that the California Government Code's notification requirements to tenants are met?

The section-by-section review of the current ordinance also identifies a number of lesser issues concerning procedure, consistency, formatting and so on, that are also addressed below:

Definitions: The definition of “condominium” provided in BMC Section 17.02.150 should be expanded to include “community apartment project” and “stock cooperative” as defined by State Civil Code Sections 1351(d) and (m). These three terms are already defined in the Subdivision Ordinance in BMC Section 16.08.280.B.

Purpose: BMC Section 17.30.010 of the condominium ordinance (see attached Draft Redline Ordinance) should be updated to incorporate the intent of the General Plan Program 8c, as well as Policy H.B.4 and Program H.B.4.a:

Program 8c: Encourage local equity ownership in local development in order to retain more economic benefits within the community.

Policy H.B.4 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.

Program H.B.4.a Refine the current Zoning Ordinance standards for condominium conversions of existing rental units to reflect current law and City policy.

Please refer to the attached Draft Redline Ordinance for language suggested by staff.

Permits—Conversions—New Construction Projects. BMC Section 17.30.02.A requires Use Permit approval for newly constructed or converted condominiums. The requirement for a planning permit could be considered a disincentive toward encouraging home ownership, counter to General Plan Program 8c, but it is a necessary means to require submittal of a condominium plan, if one cannot be specifically required through the subdivision permit process per Government Code Section 66427. The condominium plan per California Civil Code Sections 1531 (e) & (f) includes “(1) a description or survey map of a condominium project, which shall refer to or show monumentation on the ground, (2) a three-dimensional description of a condominium project, one or more dimensions of which may extend for an indefinite distance upwards or downwards, in sufficient detail to identify the common areas and each separate interest, and (3) a certificate consenting to the recordation of the condominium plan...”

The standard Use Permit findings are required for approval of condominium conversions, as well as for new condominium construction. There is no specific finding addressing Housing Element Policy H.B.4’s requirement that it be demonstrated that a proposed condominium conversion will not adversely affect the rental market (see below). Detailed reports on vacancy rate information

are required to complete Use Permit applications for condominium conversions (BMC Section 17.30.050.G.3), but the ordinance includes no standard against which to judge whether a project's impact will be "detrimental to the general welfare" in terms of the availability of rental housing for any displaced tenants in a condominium conversion project, as well as in terms of the greater impact upon the City's rental housing stock.

At one time, the Association of Bay Area Governments (ABAG) had suggested 4.5% as an optimal vacancy rate for the Bay Area, which was identified in the 1985, 1990-1997, 1999-2006 and 2007-2014 Housing Elements as an optimal vacancy rate toward which to strive. ABAG's "Blueprint 2001" states, "For rental housing, a five-percent vacancy rate is considered necessary to permit ordinary mobility." The California Department of Finance established 5.0% as the target rental vacancy rates used in determining the regional housing need allocation for the 2007-2014 Housing Element planning period. The 2010 U.S. Census found the rental vacancy rate in Brisbane to be 2.0%, down from 4.1% in 2000. Staff suggests that 5% be specified as the minimum rental vacancy rate below which condominium conversions would not typically be permitted.

An alternative approach is taken by the Cities of Foster City and Half Moon Bay, where the number of units that may be converted is limited to the number of new rental units constructed the previous year, with any surpluses from earlier years being carried over. Foster City and Pacifica also use a semi-annual ranking procedure to select which applications will be considered.

Housing Element Policy H.B.4 would allow condominium conversions, even in a tight rental market, if it could be demonstrated that the conversion would "provide unique housing opportunities for very-low-, low- and/or moderate-income households." The City's density bonus ordinance and inclusionary housing program (BMC Chapter 17.31) could be a means to help provide such opportunities. Per BMC Sections 17.31.090 & 17.31.100 and Government Code Section 65915.5, condominium conversion projects of 5 or more units in which at least 33% of the total units are designated for moderate-income households qualify for an incentive equivalent in value to a 25% density bonus. BMC Section 17.31.030.B.3 requires that all housing developments of 6 or more units, including condominium conversion projects (per BMC Section 17.31.020.X), provide 10-19% of the units be affordable to low-income households and/or moderate-income households. Any minimum affordability standards in the condominium conversion ordinance should take into consideration these standards in the density bonus ordinance and inclusionary housing program.

While condominium conversion projects of less than 5 units do not qualify for density bonuses, and condominium conversion projects of less than 6 units would not be subject to the inclusionary housing program, small rental complexes should still be protected from conversion in a tight rental market unless provisions are made for their affordability. The City of

Burlingame, for example, outright prohibits condominium conversions in projects of 20 or fewer units, while the Cities of Half Moon Bay, Redwood City and South San Francisco prohibit conversions for less than 5 units (the City of Daly City prohibits any condominium projects of less than 20 units). It has not been the City of Brisbane's policy, though, to prohibit small condominium projects.

Staff suggests that condominium conversions be prohibited when the rental vacancy rate in Brisbane is less than 5%, unless the conversion would provide more units affordable to very-low-, low- and/or moderate-income households than required by the current inclusionary housing program. This would mean that for projects of 5 or fewer units, which would not be subject to the inclusionary housing project, at least 1 affordable unit would be required to be provided. The affordability of these units should be confirmed through proposed sales prices, financing and projected monthly dues, in addition to other factors as determined by the Planning Commission.

Development Standards. Per BMC Section 17.30.030, the typical zoning district development standards for minimum setbacks, maximum height limits, etc., apply to condominiums the same as for any other form of construction. An exception is the current requirement for outdoor common area for residential condominiums, which is not applicable to single-family or rental multi-family development (except in the NCRO-2 District per BMC Section 17.14.060.I, see below). There are other standards that the Commission may wish to consider imposing on condominiums to distinguish them from rental housing. It should then be made clear which of these requirements would apply only to residential condominiums, as opposed to commercial ones, and which would apply only to newly constructed condominiums, as opposed to condo conversions.

Outdoor Common Area. BMC Section 17.30.030.C sets standards for providing "outdoor common area" with a maximum 10% slope standard for such areas, based upon the height of the building and the number and type of units. "Horizontal" townhouse developments are required to provide more outdoor common area than are "vertical" stacked flats. Short stacked-flat developments are required to provide more outdoor common area than taller ones. The standard appears to be based upon assumptions of how much outdoor common area certain types and sizes of projects can accommodate, rather than upon typical need.

<u>Condominium Type</u>	<u>Outdoor Common Area</u>
Horizontal	750 sq. ft.
Vertical--	
≤ 2 Stories	500 sq. ft.
2 - 3 Stories	400 sq. ft.
≥ 3 Stories	300 sq. ft.

In contrast to condominiums, mixed-use residential units in the NCRO-2 District are required to provide 60 sq. ft. of passive open space per unit, either individually or collectively, regardless of the type of unit or height of the building (BMC Section 17.14.060.I). Logically, if condominium

occupants need a specific amount of relatively flat outdoor common area, then the same standard should apply to all types of units, regardless of whether they are located beside (“horizontal”) or atop (“vertical”) one another or are in buildings of any number of stories.

The current requirements date back to 1969. At that time, the ordinance included the provision that “[t]he requirements of this Section may be met in, all or part by any equivalent open ground area which is a part to any individual condominium.” Thus, it was clearly the intent of the ordinance to accept “private” outdoor areas as part of the overall requirement and not limit such outdoor areas to those held in common. To avoid confusion, it might be preferable to simply use the term “outdoor area.”

When reviewing the City’s approved condominium projects (see attached chart), the difficulties in meeting the current standard become apparent. While the intent of the requirement appears to have been to assure that useable outdoor areas such as decks, patios, playgrounds and picnic spots would be provided, the Planning Commission frequently cited any landscaped area, regardless of slope or other suitability for active use, in granting exceptions to the requirement.

Staff suggests that any new standard clearly spell out what types of space will be accepted as “outdoor area” (for example, turfed areas could be included, but not other forms of landscaping), and findings for exceptions should be specified. A minimum dimension for such areas might also be considered (4 ft., for example, would be the minimum width for a sidewalk path through a landscaped area). The simplest overall standard would be 400 sq. ft. per unit, the average outdoor area provided per unit for all of the condominium projects that have been approved to date (see attached chart).

If the Commission desires to assure that each unit has its own private outdoor space, the ordinance could specify a minimum square footage of deck or patio area to be dedicated to each unit’s exclusive use. Conversely, the ordinance could also specify that a minimum percentage of the total outdoor area be available for common use. If the Commission were willing to accept exercise rooms and indoor pools and spas as contributing to the requirement for “outdoor areas,” restrictions should be specified. For example, the Planning Commission, at its discretion, could allow up to 25% of the 400 sq. ft. requirement to be met with indoor common areas dedicated to active recreational use. This would still leave an average of at least 300 sq. ft. of outdoor area per unit, which is the minimum currently required for vertical condominiums in tall buildings.

At its meeting of March 13, 2003, when this matter last studied, the Planning Commission agreed to the following draft language:

All residential condominium projects shall provide outdoor areas 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, and may be for use in common or dedicated to private use.

Utilities. The Commission should consider whether provision of independent water, sewer, power, telecommunications and other utilities, as well as any security alarm systems, should be a standard requirement for new condominium projects and condominium conversions. For example, while it may be practical and economical for larger condominium developments to share a sewer connection, a two-unit project with no homeowners association to oversee maintenance may find itself divided over who was responsible for a shared sewer line problem. The City of Half Moon Bay specifically requires separate sewer laterals for all “horizontal” condominiums (townhouses). Individual gas and electrical meters allow each unit to be billed separately, and separate water shut-off valves allow plumbing repairs to be made in one unit without turning off the water supply for the entire building, yet there may be cases where the Planning Commission may find that providing such independent utilities may be impractical and excessively expensive.

Staff suggests for newly-constructed condominiums, the ordinance should require separate and independent water, sewer, electrical, gas, telecommunications and security alarm systems, as well as trash and recycling receptacles, for each unit. The ordinance should allow for approval of exceptions when the applicant demonstrates to the Planning Commission’s satisfaction, through the provision of adequate CC&Rs and/or other appropriate measures, that the benefits of shared utilities/facilities outweighs the detriments for the project, in terms of the arrangement (“vertical” vs. “horizontal”) and/or number of units proposed.

For condominium conversions, separate and independent water, electrical, gas, telecommunications and security alarm systems (but not sewer systems), as well as trash and recycling receptacles, should be required for each unit. Allowance should be made for approval of exceptions as with newly-constructed condominiums.

Storage and Laundry Facilities. Some cities have specific private storage and laundry facility requirements for condominium projects. The City of Half Moon Bay requires at least 125 cu. ft. of enclosed, weatherproofed and lockable storage space per unit, while the City of Burlingame requires that 200 sq. ft. of private storage space be provided for each unit. A typical modular storage unit found in shared garages is generally 2-5 ft. deep by 4-8 ft. wide by 5-7 ft. tall with an average capacity of 125 cu. ft. Accordingly, staff suggests a requirement of 125 cubic feet of enclosed storage area for each unit.

The Cities of Burlingame, Pacifica and San Mateo require at least 1 washer and drier for each 5 units. Staff suggests that the development regulations for new condominiums and condo conversions should be revised to include requirements for the provision of either washer and drier hookups for each unit or 1 washer and 1 drier installed in a laundry room for every 5 units.

Noise Proofing. When it last reviewed this subject in 2003, the Planning Commission preliminarily recommended that certain noise proofing measures be required for newly-constructed residential condominiums. Based upon the condominium ordinances of the Cities of Pacifica and Half Moon Bay, it was suggested that for newly-constructed residential condominiums (including residential units in mixed-use developments), noise proofing should be required via standards specifying that common walls between condominium units must be constructed of 2" by 4"s with not less than R-11 rated insulation, and that common floor-ceilings between condo units and between units and garages must have not less than R-19 rated insulation. In addition, all common walls should be caulked at the ceiling and floor, with no electrical outlets installed back-to-back in common walls; plumbing should not be installed in common walls of "horizontal" (side-by-side/townhouse) condominium units, and that for "vertical" (stacked) condos, if plumbing is in a common wall, it must be double-walled.

For newly-constructed residential and mixed-use condominiums and residential/mixed-use condominium conversions, it was suggested that all permanent mechanical equipment, such as motors, compressors, pumps and compactors that could be a source of structural vibration or structure-borne noise should be required to be shock-mounted with inertia blocks or bases and/or vibration isolators.

Since then, the California Building Code has been updated to incorporate new sound transmission standards for attached dwelling units. Per Code Section 12.07.6, all wall and floor-ceiling assemblies separating dwelling units from each other and from public or service areas, including garages and mechanical spaces, are required to meet a sound transmission class (STC) rating of 50. With STC-50 construction, very loud sounds, such as music, would be muffled to the point where most people next door would not be annoyed. This type of construction would fall between a double layer of ½" drywall on each side of wood studs with batt insulation (STC-45) and 5/8" drywall on each side of 2"x4" steel studs on 24" centers with special sound insulation installed in between. R-13 insulation is required for walls and R-19 for ceilings. Penetrations or openings in construction assemblies for plumbing, electrical outlets, etc. must be sealed, lined, insulated or otherwise treated to maintain the required rating. The Building Code has similar standards for structure-borne noise (vibration) applicable to floor-ceiling assemblies. These standards appear to be sufficient to address noise concerns between condominium units.

Development/Conversion Applications. BMC Sections 17.30.040 and .050 contain separate lists of application requirements for new condominium developments and for condominium conversions, although in some cases the same submittal requirements might apply to both. For example, because Government Code Section 66427 prohibits a requirement for a condominium subdivision map to show the buildings or the manner in which the buildings or the air space above the property shown on the map are to be divided, these details should be required for any application for a Use Permit for condominium conversions, just as they are already required for such applications for new condominium development. The submitted plans should be required

to include the details necessary to demonstrate compliance with the applicable Development Regulations.

Declaration of Restrictions/Maintenance Agreement. The Use Permit application checklist for condominium conversions should also include a copy of “the declaration of restrictions and proposed management arrangement relating to the project as required by California Civil Code Section 1355” (typically referred to as the declaration of covenants, conditions and restrictions or CC&Rs), just as is required for Use Permits for new construction of condominiums.

The Commission should also consider how the condominium ordinance should address any requirements for CC&Rs that the City deems necessary. While a declaration of restrictions is typically used to govern larger condominium projects, simpler “maintenance agreements” are used for small condominium projects to avoid the requirement for a homeowners association, but this may result in the need for each unit to take on greater responsibilities.

The required CC&Rs (for projects with unit-owners associations) or maintenance agreement (for smaller projects without a unit-owners association) should require binding arbitration to resolve deadlocked tie votes and should address property, general liability, earthquake and flood insurance responsibilities and maintenance responsibilities for roof, gutters, sidewalks, painting, landscaping, and other common area improvements (including timing of maintenance items and method to apportion costs). The CC&Rs or maintenance agreement should include 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 development (as is required by the City of Burlingame). The CC&Rs or maintenance agreement should also specify that the City be named as a third-party beneficiary for enforcement purposes, if recommended by the City Attorney (as is done in the Cities of Daly City and Half Moon Bay).

For projects within the jurisdiction of the San Bruno Mountain Area Habitat Conservation Plan, continued maintenance of any required landscaping, including habitat, must be addressed.

Condominium Conversion Reports. For condominium conversions, the application checklist should include the property inspection report (BMC Section 17.30.060) with the building history report (BMC Section 17.30.050.C). The ordinance should be revised to allow the property inspection report to be prepared by a licensed structural engineer, architect, general building contractor or general engineering contractor, in addition to a civil engineer (as allowed by the Cities of Burlingame, Half Moon Bay and Redwood City).

For residential/mixed-use condominium conversions, an acoustical test data report on the noise attenuation characteristics of existing party walls and ceilings prepared by a licensed acoustical consultant should be required, based upon a representative sampling of the units, so that potential buyers can be notified of any current Building Code standards for exterior and interior noise

transmission that cannot be met (City of Burlingame). Written certification from a licensed appliance repair contractor on the working condition of all private and common appliances and mechanical equipment should be required, and similar reports from a licensed painting contractor and a licensed roofing contractor should also be required (per the Cities of Burlingame, Half Moon Bay and Pacifica).

For all condominium conversions, the applicant should also be required to submit suitable proof of compliance with the residential tenant notification requirements for tentative map applications in Government Code Sections 66452.8 and 66452.9 and BMC Section 16.20.270.E.1 (for the applicant's tenant notification responsibilities regarding final maps, see Government Code Section 66427.1 and BMC Sections 16.20.270.E.2 through 5). Per Government Code Section 66427.1.(b), such written notice shall "comply with the legal requirements for service by mail" (see BMC Section 16.16.190.D).

Concurrent Applications. Per BMC Section 17.01.105, concurrent processing of multiple applications is required for projects subject to approval of more than one planning permit, unless otherwise determined by the Planning Director. The Use Permit application submittal requirements for condominium development projects present one of those situations in which it may be critical to review the Design Permit application knowing that the project is intended as a condominium development, while at the same time the applicant may face unnecessary expenses in preparing and revising engineered condominium plans and accompanying legal documents for a project that may change substantially through the design review process. The best approach may be to require concurrent initial submittal of the Design Permit and Use Permit applications but to allow staggered processing to resolve the design issues before following up with the condominium details. Note that Design Permits are not required for projects with only 2 units.

BMC Section 17.30.040.D currently requires concurrent submittal of a tentative subdivision map with Use Permit applications for condominiums (also see BMC Section 16.45.050.B for vesting tentative maps). As explained above, although the tentative map application would be submitted concurrently with the Design Permit and Use Permit applications, it would be processed with the Use Permit after the Design Permit has been approved. This avoids the restriction imposed by Government Code Section 66427, prohibiting the City from denying approval of a parcel, tentative or final map of a condominium project because of the design or location of the buildings on the property if they otherwise comply with City ordinances.

Property Inspection and Compliance. BMC Section 17.30.060 is unusual in that it appears to require an inspection by a licensed civil engineer for any hazardous and unsafe conditions prior to the sale of any condominium, without specifying that this presumably applies only to the first sale of units in a condominium conversion project. No other residential sales are subject in the Municipal Code to such inspection requirements. The intent, though, appears to be similar to that of BMC Section 15.08.140 which requires that buildings being expanded or altered by more

than 50% must be improved or repaired to eliminate any existing health or safety hazards. It might be more appropriate to revise BMC Section 17.30.060 to require, as a standard condition of approval for condominium conversions, correction of any health and safety hazards identified in the report on the condition of the building included in the Use Permit application submittal (see above and below).

Notice. It may be appropriate to include a separate section in the condominium ordinance for notice procedures specifically for Planning Commission public hearings on proposed condominium conversions, consistent with the requirement for tenant notification per BMC Section 16.16.190.D.

The requirement per Government Code Section 66452.3 that copies of the staff report for condominium conversion applications be sent to the tenants of the subject building, as well as to the applicant, should also be addressed in a section on notice procedures.

See above regarding the applicant's responsibilities for giving notice to tenants per BMC Section 16.44.050.B.3 and Government Code Sections 66452.17 & 66452.18 regarding tentative maps, and BMC Section 16.20.270.E and Government Code Section 66427.1 regarding final maps. Also note that there are specific notification requirements in the event of an appeal per BMC Section 16.44.050.B.3 and Government Code Section 66452.5.

It is noted here, although it need not be stated in the condominium ordinance, that Government Code Section 664727.2 requires that subdivision applications for condominium conversions must be acted upon with 120 days of the application being complete.

Findings: As discussed above, Use Permits for new condominium construction and condominium conversions are currently only subject to the standard Use Permit findings. Staff suggests that specific findings for residential condominium conversion be added (per Housing Element Policy H.B.4) to require:

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, based upon proposed sales prices, financing and projected monthly dues, in addition to other factors as determined by the planning commission.

Standard Conditions of Approval: The City of Burlingame includes a provision that "Required off-street parking spaces, except guest parking spaces, shall be included in the ownership of each individual condominium unit and shall not be sold or transferred except with the sale of such unit" in its condominium ordinance. Staff suggests that, as a standard condition of approval,

required off-street parking spaces, except guests parking spaces, should be included in the ownership of each individual condominium unit and should not be sold or transferred except with the sale of such unit.

For residential/mixed-use condominium conversions, a standard condition of approval should be that any hazardous and unsafe conditions identified through the inspection required per BMC Section 17.30.060 be corrected prior to the first sale of any of the converted units.

Appeals. The Commission may also consider including a separate section in the condominium ordinance for appeal procedures, if they are not appropriately addressed in BMC Chapter 17.52. Actions on Use Permits for condominium conversions would currently be subject to a 15-day appeal period, while the concurrent Tentative Parcel or Subdivision Map application would be subject to a 10-day appeal period per Government Code Section 66452.5 and BMC Section 16.44.020. It might be advisable to specifically shorten the Use Permit appeal period to correspond with that for the Tentative Map. The requirement in BMC Section 16.44.050.B.3 (per Government Code Section 66452.5) that notice of any appeals must be given to residential tenants of any buildings subject to a proposed condominium conversion should be cross referenced in the condominium ordinance.

Subdivision Ordinance. BMC Title 16 is not directly subject to the Planning Commission's review, but there are condominium issues that relate to the subdivision ordinance that should be considered here.

Condominiums. As noted in the previous study session, the State Subdivision Map Act generally requires tentative and final subdivision maps for condominium projects of 5 or more units and tentative and final parcel maps for projects of 4 or fewer units, yet does not require that such maps actually delineate the units. Apparently recognizing that recording a final map that does not actually show the condominium units would be pointless, the Map Act requires that local ordinance provide for the waiver of the requirement for a final parcel map, subject to the finding that the proposal complies with adopted requirements regarding area, improvement and design, floodwater drainage control, appropriate improved public roads, sanitary disposal facilities, water supply availability, environmental protection, etc. Local ordinance may also waive the requirement for a final subdivision map for the construction of a 5-or-more-unit condominium project on a single parcel.

BMC Sections 16.12.010.B, C & D require tentative and final subdivision maps for condominium projects of 5 or more units, but BMC Section 16.12.020.A specifically excludes condominium projects from the exception provided by Government Code Sections 66426(a) & (f) that requires a parcel map instead of tentative and final subdivision maps for projects creating five or more condominiums on a site less than 5 acres in size that abuts a maintained public street, if no dedications or improvements are required. BMC Sections 16.12.030.B, C & D

require tentative and final parcel maps for condominium projects of less than 5 condominium units. BMC Section 16.12.050 provides for a process to allow for the waiver of a final parcel map.

Staff suggests that the Subdivision Ordinance be amended to provide for the waiver of a final subdivision map for construction of a condominium project on a single parcel, if the same findings required for waiver of a parcel map can be made. Although a condominium conversion project, regardless of the number of units, could likely qualify for the parcel map exception and final parcel map waiver under the Map Act, there are very specific notification requirements for final subdivision map approval for such projects in the Government Code. For this reason, staff suggests that a final subdivision map should still be required for a condominium conversion project to assure that adequate notice is given to any tenants.

Notice. Consistent with Government Code Section 66452.3 and BMC Section 17.30.050.B, a requirement should be added to BMC Section 16.16.190.D that 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.

Findings. The findings required to be made by the Planning Commission for tentative maps in BMC Section 16.16.220.A includes the line "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," which should be deleted, since the General Plan does contain Policy H.B.4 and Program H.B.4.a directed at condominium conversions (see above). According to the State Attorney General, the Subdivision Map Act allows the City to deny approval of a subdivision map for a condominium conversion project that would individually or cumulatively in conjunction with other conversions in the community result in a major displacement of tenants, a scarcity of rental units, or a defeat of General Plan goals to encourage open occupancy and promote low and moderate income housing.

The subdivision ordinance includes an exception for condominium conversions to the passive heating/cooling design requirements per Government Code Section 66473.1, but these requirements (BMC Section 16.24.090) are not listed with the other findings for approval or disapproval of tentative maps (BMC Sections 16.16.220 & 16.16.230). It might make more sense to move BMC Section 16.24.090 into these other two sections.

The findings required for Final Map approval of proposed condominium conversions in BMC Section 16.20.270.E need to be updated to reflect recent amendments in Government Code Section 66427.1. Please note that per Government Code Section 66452.8(c), a final map for condominium conversion cannot be denied for failure by the subdivider or agent to give the

required notice to prospective residential tenants per Section 66452.8 referenced in Section 66427.1.

Parkland Dedication and In-Lieu Fees. BMC Sections 16.24.010-070 regarding requirement for parkland dedication and payment of in-lieu fees should be updated to reflect current state law and 2010 U.S. Census results. The timeline for dedication, fee payment and construction in BMC Section 16.24.060 should be clarified as to how it would apply to condominium projects.

The Quimby Act (Government Code Section 66477) allows cities, by ordinance, to require the dedication of land for park or recreational purposes or the payment of in-lieu fees. In calculating these amounts for a proposed subdivision, the population of the subdivision is projected using the average number of persons per household as disclosed by the most recent available federal census. The amount of land is not to exceed 3 acres of park area per 1,000 persons, unless the city's existing amount of neighborhood and community park area exceeds this limit, in which case the city may adopt a higher standard not to exceed five acres per 1,000 persons.

Because they are considered subdivisions, condominium projects are subject to these requirements, with the specific exception of condominium projects or stock cooperatives converting existing apartment buildings more than 5 years old without adding any units. Credit for private open space can be given in specified instances per Government Code Section 66477(e).

According to the 2010 U.S. Census, Brisbane had a total population of 4,282 on April 1, 2010, with 1,821 total households. This amounts to 2.35 persons per household, up from 2.20 in 2000. The City currently has 10.89 acres of existing neighborhood and community park area:

<u>Facility</u>	<u>Acreage</u>
Community Center/Library Park	0.11
Sierra Point Par Course/Picnic Area	0.25
Playground at 4 Solano Street	0.25
Skateboard Park	0.25
Bicentennial Walkways	0.37
Firth Park	0.50
Community Swimming Pool	0.66
Community Park	2.00
Mission Blue Park	6.50
TOTAL	10.89

Thus, the City currently provides 2.54 acres of neighborhood and community park area per 1,000 population. This is less than past calculations due to the increased population without an increase in “existing neighborhood and community parks of the city” [Government Code Section 66477(a)(2)(A)]. Accordingly, consistent with General Plan Policies 95 & 96 and Program 88c, the City can require the dedication of land for park or recreational purposes or the payment of in-lieu fees at a ratio of 3 acres of park area per 1,000 persons, assuming 2.35 persons per household the proposed subdivision or condominium project is designed to accommodate.

To clarify, proposed Section 16.24.050.D would require dedication of land, payment of fees and/or recordation of open space covenants to be completed prior to recordation of the Final Parcel Map Waiver for condominium projects.

ATTACHMENTS:

- Condominium Approval Process under State Subdivision Map Act
- Chart of Approved Outdoor Common Area
- Draft Redline Ordinance
- Draft Resolution RZ-6-11a

CONDOMINIUM APPROVAL PROCESS UNDER STATE SUBDIVISION MAP ACT

<u># of Units</u>	<u>Map Requirements</u>	<u>Waiver Procedure</u>	<u>Special Notice</u>
≤4	Tentative Parcel Map [optional by local ordinance per Govt Code Sect 66428(a)]		For condo conversion, 60 days prior to filing [Govt Code Sect 66452.8 & 66452.9] and 3 days prior to hearing [Govt Code Sect 66452.3]
≥5	Final Parcel Map [per Govt Code Sect 66428(a)]	If proposed parcels comply with adopted requirements regarding area, improvement, design, drainage, street improvements, sewers, water supply, environmental protection, etc. [per Govt Code Sect 66428(b)]	
	Tentative Subdivision Map & Final Subdivision Map [per Govt Code Sect 66426]	For condo construction on a single parcel, if parcel complies with adopted requirements regarding area, improvement, design, drainage, street improvements, sewers, water supply, environmental protection, etc. [optional by local ordinance per Govt Code Sect 66428(b)]	See above. For condo conversion final subdivision map, see Govt Code Sect 66427.1
	--or--		
	Parcel Map if (a) Site < 5 acres, each parcel abuts public street, and no dedications or improvements required; (b) Each parcel ≥ 20 acres and has access to public street; (c) Land has access to public street and zoned commercial or industrial; (d) Each parcel ≥ 40 acres; or (e) Land is an “environmental subdivision” [per Govt Code Sect 66426(f)]		

APPROVED OUTDOOR COMMON AREA

Address	Site Area (Sq. Ft.)	Number of Units	Average Unit Area (Sq. Ft.)	Total Outdoor Common Area with $\leq 10\%$ Slope (Sq. Ft.)	Percentage of Site Area	Outdoor Common Area	
						Average Sq. Ft. per Unit	Sq. Ft. per Unit Sq. Ft.
41-49 Joy Avenue	39,640+/-	20	843	840* (20 decks, 42 sq. ft. each)	2% (64% ¹)	42 (1,277 ¹)	0.05 (1.51 ¹)
737 San Bruno Ave.	13,678	8	902	922** (4 patios, 153-180 sq. ft. each, plus 4 decks, 64 sq. ft. each)	7% (28% ²)	115 (475 ²)	0.13 (0.53 ²)
Altamar at the Ridge	618,552	214	1,363	73,960 (decks, patios, exit balconies, outdoor spa area, 2 tot lots)	12%	346	0.25
Viewpoint at the Ridge	643,000+/-	160	1,855	122,245 (entries, decks, tot lot, spa)	19%	764	0.41
237-239 Tulare St.	5,280+/-	2	1,891	850+/- (terraced rear yards)	16%	425	0.22
20-38 Plumas St.	10,000	5	955	3,375***	34%	675	0.71
1 San Bruno Ave.	14,986+/-	15 residential	995+/-	7,360 (roof decks and balconies)	49%	491	0.49
AVERAGE					20% (32% ³)	408 (636 ³)	0.32 (0.59 ³)

* The Joy Condominiums development was granted a Variance to the per-unit requirement of 500 sq. ft. of outdoor common area with a slope of not more than 10%, since in addition to 1,864 square feet of flower beds, approximately 24,700 sq. ft. of landscaped open area (picnic table, bench, children's play structure) with a slope greater than 10% was provided.

**The Brisbane Terrace development was granted a Variance to the 400 sq. ft. of common area per unit requirement since 2,880 sq. ft. of landscaping and 3,732 sq. ft. of "other open area" were provided on this steep site.

***This Habitat for Humanity project was granted a Variance to the 750 sq. ft. of common area per unit requirement as part of the incentives and concessions granted to this affordable housing project in lieu of a density bonus.

¹including 24,700 sq. ft. of landscaped open area with slope greater than 10%

²including 2,880 sq. ft. of landscaping

³including ¹ and ², above

"REDLINE" VERSION OF CONDOMINIUM ORDINANCE AMENDMENTS

Proposed changes in the current Municipal Code are indicated ~~by striking through~~ the existing language to be deleted and putting the new language *in italics*.

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 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:~~

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.~~

B. ~~The following development regulations shall apply to all newly-constructed condominiums:~~

1. *Separate and independent water, sewer, electrical, gas, telecommunications and security alarm systems, as well as trash and recycling receptacles, shall be provided for each unit.*

2. *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.*

C. *The following development regulations shall apply to newly-constructed residential condominiums (including residential units in mixed-use developments):*

1. *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.*

2. *125 cubic feet of enclosed storage area shall be provided for each unit.*

3. *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.*

D. *The following development regulations shall apply to all condominium conversions:*

1. *Separate and independent water, electrical, gas, telecommunications and security alarm systems (but not sewer systems), as well as trash and recycling receptacles, shall be provided for each unit.*

2. *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.*

E. *The following development regulations shall apply to residential condominium conversions (including conversions of mixed-use developments with residential units):*

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.*

17.30.040 Development application.– Application for condominium use permit.

A. ~~The Applications~~ for a use permits for newly-constructed condominiums or condominium conversions ~~condominium 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 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.1.~~ A property *inspection* report *prepared by a licensed civil engineer, structural engineer, architect, general building contractor or general engineering contractor*, 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. Roofs,
- d. Drainage systems,
- e. Exterior sidings and finishes,
- f. Paved surfaces,
- g. Mechanical systems,
- h. Electrical systems,
- i. Plumbing systems, including sewer systems,
- j. Landscaping,
- k. Sprinkler systems for landscaping,
- l. Utility delivery systems,
- m. Central or community heating and air conditioning systems,
- n. Fire protection systems, including any automatic sprinkler systems,
- o. Alarm systems,
- p. Smoke detectors,
- 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;~~

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

3. ~~Written certification from a licensed painting contract on the condition of all exterior painted surfaces;~~
4. ~~Written certification from a licensed roofing contractor on the condition of all roofs;~~
5. ~~E.~~ A structural pest control report prepared by a licensed structural pest control operator pursuant to Section 8516 of the Business and Professions Code;
6. ~~An acoustical test data report on the noise attenuation characteristics of existing party walls 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.~~
7. ~~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;
8. ~~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:
 - (1.) ~~a.~~ Within San Mateo County in general, and
 - (2.) ~~b.~~ Within northern San Mateo County in particular, including territory within the 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, based upon proposed sales prices, financing and projected monthly dues, in addition to other factors as determined by the planning commission.

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 set 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.

**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 T~~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;
- 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, 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, 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.~~

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.~~

draft
RESOLUTION NO. RZ-6-11a

RESOLUTION OF INTENTION TO CONSIDER AMENDMENTS TO
THE CITY OF BRISBANE MUNICIPAL CODE TITLE 17, ZONING,
REGARDING CONDOMINIUMS

WHEREAS, on January 18, 2011, the City Council adopted the 2007-2014 Housing Element; and

WHEREAS, the Planning Commission has determined that amending Municipal Code Chapter 17.30 to discourage condominium conversions unless such conversion would not adversely affect the rental market or provide unique housing opportunities for very-low-, low- and/or moderate-income households would be consistent with Housing Element Policy H.B.4, as well as General Plan Program 8c; and

WHEREAS, amending Municipal Code Chapter 17.30 to refine the current Zoning Ordinance standards for condominium conversions of existing rental units to reflect current law and City policy would be consistent with Housing Element Program H.B.4.a.

NOW, THEREFORE, BE IT RESOLVED, that the City of Brisbane Planning Commission intends to consider amendments to the Title 17, Zoning, of the Brisbane Municipal Code.

JAMEEL MUNIR
Chairman

I hereby certify that the foregoing Resolution No. RZ-6-11a was duly and regularly passed and adopted by the Brisbane Planning Commission at a regular meeting thereof held on October 27, 2011, by the following roll call vote:

AYES:
NOES:
ABSENT:

JOHN SWIECKI
Community Development Director