

City of Brisbane

Agenda Report

TO: Mayor and City Council

FROM: Director of Community Development and City Attorney

SUBJECT: Ordinance No. 574

DATE: For Council Meeting on December 3, 2012

City Council Goals:

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

Purpose:

To bring the City's merger ordinance into compliance with State law.

Recommendation:

Adopt Ordinance No. 574.

Background and Discussion:

Ordinance No. 574 was introduced at the regular Council meeting on November 26, 2012. At that time the Council requested that language be added to indicate the intent and purpose of the ordinance. The Council wanted to make it clear that the ordinance was being enacted for the purpose of bringing the City's merger ordinance into compliance with current State law and did not represent the adoption of a policy by the City to initiate involuntary mergers of land owned by persons who did not request the merger. A new Section 1 has therefore been added to the Ordinance to express this purpose and intent.

Fiscal Impact:

None

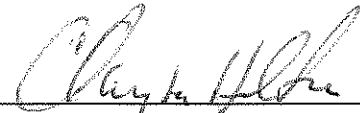
Measure of Success:

Elimination of the existing conflict between the City's merger ordinance and State law.

Attachments:

Ordinance No. 574, as introduced, with the addition of a new Section 1.



Director of Community Development
John Swiecki

City Manager
Clay Holstine

Revised Draft
ORDINANCE NO. 574

**AN ORDINANCE OF THE CITY OF BRISBANE AMENDING
CHAPTER 16.12, TENTATIVE AND FINAL PARCEL MAPS AND
SUBDIVISION MAPS—WHERE REQUIRED, OF THE
MUNICIPAL CODE**

**THE CITY COUNCIL OF THE CITY OF BRISBANE HEREBY ORDAINS
AS FOLLOWS:**

SECTION 1: The City Council hereby finds and determines as follows:

A. 2007-2014 Housing Element Program H.I.1.e calls for updating the Subdivision Ordinance's lot merger procedures to be consistent with State law.

B. The intent of this program is to encourage the provision of new infill housing opportunities by reducing government constraints upon substandard lots that predate the City's minimum lot size standards.

C. The current provisions in the Municipal Code broadly allow for the merger of lots which do not conform to either the minimum lot size or the minimum lot width requirements in the Zoning Ordinance, which exceeds the merger standards of State law. This proposed amendment will reduce the City's authority to initiate mergers in a manner consistent with state law.

D. The City's substandard lot provisions assume that adjoining substandard lots that are in common ownership will be merged together to create standard building sites. For the City to initiate such mergers, the City's merger provisions must comply with the State Subdivision Map Act (Government Code Sections 66451.10-66451.33).

E. Consistent with Government Code Section 66499.20¾, an alternative is provided to allow property owners to voluntarily merge lots without requiring the City to initiate such mergers.

F. The purpose of this Ordinance is to bring the City's merger ordinance into compliance with State law and not to establish a city-wide program for involuntary mergers against the wishes of property owners.

SECTION 2: Section 16.12.060 in Chapter 16.12 of the Municipal Code is amended to read as follows:

16.12.060 - Merger of parcels initiated by the City. A. The City Council may merge contiguous parcels held by the same owner as of the date that notice of intention to determine status is recorded, if any one of the parcels does not conform to

the applicable zoning ordinance standard for minimum lot area and if all of the following requirements are satisfied:

1. At least one of the affected parcels is undeveloped by any structure for which a building permit was issued or for which a building permit was not required at the time of construction, or is developed only with an accessory structure or accessory structures, or is developed with a single structure, other than an accessory structure, that is also partially sited on a contiguous parcel or unit.

2. With respect to any affected parcel, one or more of the following conditions exists:

- a. Comprises less than 5,000 square feet in area at the time of the determination of merger.
- b. Was not created in compliance with applicable laws and ordinances in effect at the time of its creation.
- c. Does not meet current standards for sewage disposal and domestic water supply.
- d. Does not meet any adopted slope stability standards.
- e. Has no legal access which is adequate for vehicular and safety equipment access and maneuverability per applicable codes.
- f. Its development would create health or safety hazards in violation of applicable codes.
- g. Is inconsistent with the applicable general plan and any applicable specific plan, other than minimum lot size or density standards.

B. To initiate merger, the City Council shall adopt a notice of intention to determine status of the affected parcels. The notice shall be mailed by certified mail to the then current record owner of the property, notifying the owner that the affected parcels may be merged pursuant to standards specified in the merger ordinance, and advising the owner of the opportunity within 30 days after recording of the notice to file with the City Clerk a request for a hearing on determination of status and to present evidence at the hearing that the property does not meet the criteria for merger. The notice of intention to determine status shall be filed for record with the county recorder on the date that notice is mailed to the property owner.

C. Upon receiving a request for a hearing on determination of status from the owner of the affected property, the City Clerk shall fix a time, date, and place for a hearing to be conducted by the City Council, and shall notify the property owner of that time, date, and place for the hearing by certified mail. The hearing shall be conducted not more than 60 days following the City Clerk's receipt of the property owner's request for the hearing, but may be postponed or continued with the mutual consent of the City Council and the property owner. At the hearing, the property owner shall be given the opportunity to present any evidence that the affected property does not meet the standards for merger specified in the merger ordinance. At the conclusion of the hearing, the City Council shall make a determination that the affected parcels are to be merged or are not to be merged and shall so notify the owner of its determination. A determination of nonmerger may be made whether or not the affected property meets the standards for merger. If a determination of merger is made, a notice of merger specifying the names of the record owners and including a legal description of the property shall be recorded within 30 days after conclusion of the hearing.

D. If, within 30 days of filing the notice of intention, the owner does not file a request for a hearing, the City Council may make a determination that the affected parcels are to be merged or are not to be merged. If a determination of merger is made, a notice of merger specifying the names of the record owners and including a legal description of the property shall be recorded no later than 90 days following the mailing of notice of intention.

E. If the City Council determines that the subject property shall not be merged, it shall cause to be recorded a release of the notice of intention to determine status and shall mail a clearance letter to the then current owner of record.

SECTION 3: Section 16.12.070 in Chapter 16.12 of the Municipal Code is amended to read as follows:

16.12.070 - Merger of parcels initiated by the property owner. Contiguous parcels held by the same owner may be merged by recordation of a Declaration of Lot Merger signed by the property owner and acknowledged by the planning director.

SECTION 4: Section 16.12.080 in Chapter 16.12 of the Municipal Code is repealed in its entirety.

SECTION 5: If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of Brisbane hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that one or more sections, subsections, sentences, clauses or phrases may be held invalid or unconstitutional.

SECTION 6: This Ordinance shall be in full force and effect thirty days after its passage and adoption.

* * *

The above and foregoing Ordinance was regularly introduced and after the waiting time required by law, was thereafter passed and adopted at a regular meeting of the City Council of the City of Brisbane held on the _____ day of _____, 2012, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney