

# *City of Brisbane*

## *Agenda Report*

TO: Mayor and City Council

FROM: Director of Community Development and City Attorney

SUBJECT: Ordinance No. 575

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. 575.

### **Background and Discussion:**

Ordinance No. 575 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 implementing programs mandated by the City's adopted Housing Element and to bring the City's zoning regulations into compliance with State law. A new Section 1 has therefore been added to the Ordinance to express this purpose and intent.

### **Fiscal Impact:**

None

### **Measure of Success:**

Implementation of the programs contained in the City's General Plan Housing Element.

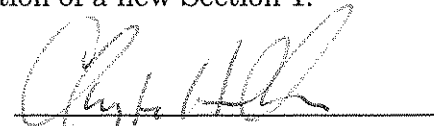
**Attachments:**

Ordinance No. 575, as introduced, with the addition of a new Section 1.



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Director of Community Development  
John Swiecki



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City Manager  
Clay Holstine

**Revised Draft  
ORDINANCE NO. 575**

**AN ORDINANCE OF THE CITY OF BRISBANE AMENDING  
CHAPTER 16.32, LOT LINE ADJUSTMENTS; CHAPTER 17.08, R-  
2 RESIDENTIAL DISTRICT; CHAPTER 17.10, R-3 RESIDENTIAL  
DISTRICT; AND CHAPTER 17.32, GENERAL USE  
REGULATIONS; 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.d calls for amending the Zoning Ordinance to provide a permit process consistent with the “modification” permitted in the Subdivision Ordinance (BMC Section 16.36.040) to allow property to be split into sites that meet the minimum lot area standard even if they do not meet the minimum lot dimension standards.

B. 2007-2014 Housing Element Program H.I.1.e directs the City to clarify the substandard lot provisions.

C. 2007-2014 Housing Element Program H.D.1.b requires amending the R-2 and R-3 Districts regulations to allow multiple-family dwellings to be developed as detached buildings without Use Permit approval.

D. The intent of these programs is to encourage the provision of new infill housing opportunities by reducing government constraints.

E. The purpose of this ordinance is to implement the foregoing programs in the City’s adopted Housing Element, as required by State law.

**SECTION 2:** Chapter 16.32 of the Municipal Code is amended in its entirety to read as follows:

**Chapter 16.32 - LOT LINE ADJUSTMENTS**

**Sections:**

16.32.010 - Filing of lot line adjustment application.

16.32.020 - Submittal requirements.

16.32.030 - Actions by planning director.

16.32.040 - Recordation.

**16.32.010 - Filing of lot line adjustment application.** The owners of real property may apply for a lot line adjustment between four or fewer existing adjoining parcels, where the land taken from one parcel is added to an adjoining parcel, and where a greater number of parcels than originally existed is not thereby created, by filing an application with the planning director and upon payment of the required application fee.

**16.32.020 - Submittal requirements.** A. The applicant shall file with the planning director two full size sets and one reduced set suitable for recordation of a completely dimensioned, scaled site development plan, with bar scale, at a scale of not more than one inch equals one hundred feet (1" = 100'). The plan shall accurately locate all existing rights-of-way, easements and existing structures. The property lines indicated shall be obtained from existing recorded maps. The plan shall indicate all dimensions and courses of existing and proposed property lines, the assessor's parcel numbers, the zoning of the property, the area of each existing parcel, and the resultant area of the revised lots. The plan shall contain a certification by the licensed professional preparing the plan.

B. Legal descriptions of the existing properties, of the portion of the property to be transferred, and of the affected properties reflecting the proposed lot line adjustment shall be submitted, to be used in the deed effecting the transfer. Descriptions shall also be provided for any existing or proposed easements.

C. A preliminary title report shall be submitted to determine if any of the parcels are encumbered by a deed of trust or mortgage, the liens of which must be modified to correspond to the new lot line, so that a foreclosure will not create an illegal parcel, and to identify any existing easements.

**16.32.030 - Actions by planning director.** A. The planning director shall approve the application for a lot line adjustment if he or she finds the following:

1. The parcels resulting from the lot line adjustment shall conform to the general plan, any applicable specific plan, and zoning and building ordinances and shall not increase the degree of noncompliance or otherwise increase the discrepancy between existing conditions and the requirements of the zoning ordinance, even though the resulting parcels may not fully comply with the development regulations of the applicable zoning district; and

2. The lot line adjustment granted shall be subject to such conditions as necessary to facilitate the relocation of existing utilities, infrastructure, or easements.

3. No record of survey shall be required for a lot line adjustment unless required by Section 8762 of the Business and Professions Code.

**16.32.040 - Recordation.** Within one year of the date of approval, a signed and notarized Approval of Lot Line Adjustment form prepared by the planning director shall be recorded by the applicant, concurrent with any deed transferring property in compliance with the approved Lot Line Adjustment.

**SECTION 3:** Section 17.08.020 in Chapter 17.08 of the Municipal Code is amended to read as follows:

**17.08.020 - Permitted uses.** The following permitted uses shall be allowed in the R-2 district:

- A. Single-family dwellings.
- B. Duplexes.
- C. Multiple family dwellings containing not more than six dwelling units.
- D. Dwelling groups.
- E. Accessory structures and uses incidental to a permitted use.
- F. Home occupations, conducted in accordance with the regulations prescribed in Chapter 17.44 of this title.
- G. Small family day care homes.

**SECTION 4:** Section 17.08.030 in Chapter 17.08 of the Municipal Code is amended to read as follows:

**17.08.030 - Conditional uses.** The following conditional uses may be allowed in the R-2 district, upon the granting of a use permit pursuant to Chapter 17.40 of this title:

- A. Cultural facilities.
- B. Day care centers.
- C. Educational facilities.
- D. Group care homes.
- E. Large family day care homes.
- F. Mobilehome parks.
- G. Multiple family dwellings containing seven or more dwelling units.
- H. Meeting halls.
- I. Places of worship.

**SECTION 5:** Section 17.10.020 in Chapter 17.10 of the Municipal Code is amended to read as follows:

**17.10.020 - Permitted uses.** The following permitted uses shall be allowed in the R-3 district:

- A. Multiple-family dwellings;
- B. Single-family dwellings;
- C. Duplexes;
- D. Dwelling groups.
- E. Accessory structures and uses incidental to a permitted use.
- F. Home occupations, conducted in accordance with the regulations prescribed in Chapter 17.44 of this title.
- G. Small family day care homes.

**SECTION 6:** Section 17.10.030 in Chapter 17.10 of the Municipal Code is amended to read as follows:

**17.10.030 - Conditional uses.** The following conditional uses may be allowed in the R-3 district, upon the granting of a use permit pursuant to Chapter 17.40 of this title:

- A. Cultural facilities;
- B. Day care centers;
- C. Educational facilities;
- D. Group care homes;
- E. Large family day care homes;
- F. Mobilehome parks;
- G. Meeting halls;
- H. Places of worship.

**SECTION 7:** Section 17.32.055 is added to Chapter 17.32 of the Municipal Code to read as follows:

**17.32.055 – Exceptions—lot area, lot dimensions and lot lines.**

**A. Limitations on substandard lots.**

1. No substandard lot shall be independently developed if it is less than 5,000 square feet in area and if it was owned in common with contiguous property in the same district on October 27, 1969. A substandard lot at least 5,000 square feet in area may be developed as a standard site under the applicable district regulations.

2. In any R district, single-family dwellings only may be erected on any substandard lot less than 5,000 square feet in area, if the lot was not owned in common with contiguous property in the same district on October 27, 1969.

3. As an exception to Subsection 1, a property in the R-1 Residential District consisting of 4 contiguous lots of record totaling at least 9,650 square feet that were owned in common on October 27, 1969, may be developed as two sites, each consisting of one pair of contiguous lots.

4. Any substandard lot created through a parcel map, resubdivision or lot line adjustment approved by the City after October 27, 1969, shall be recognized as a standard site.

5. Contiguous substandard lots owned in common may be subject to merger in compliance with this section and Municipal Code Chapter 16.12.

**B. Modification in conjunction with application for tentative map.** The planning commission may approve an application for a modification to the lot dimension regulations set forth in Title 17, Zoning, for real property located in any subdivision proposed in compliance with Title 16, Subdivisions, subject to the following findings:

1. The property is of such size or shape, or is subject to such title limitations of record, or is affected by such topographical location or conditions, or is to be devoted to such use that it is impossible, impractical or undesirable in a particular case for the subdivider to fully conform to the regulations;

2. Each lot or parcel subject to the modification will be capable of being developed in accordance with the other applicable provisions of the zoning ordinance, and

3. The modification conforms with the spirit and purpose of this title.

C. Lot line adjustment. In compliance with the procedures set forth in Chapter 16.32 of Title 16, Subdivisions, the planning director may approve a lot line adjustment that will not increase the degree of noncompliance or otherwise increase the discrepancy between existing conditions and the requirements of the Zoning Ordinance, even though the resulting parcels may not fully comply with the development regulations of the applicable zoning district.

D. Elimination of interior lot lines. A property owner may eliminate an interior lot line between record lots in common ownership through recordation of a Declaration of Merger signed by the property owner and acknowledged by the Community Development Director.

**SECTION 8:** Section 17.32.100 in Chapter 17.32 of the Municipal Code is repealed its entirety.

**SECTION 9:** Where a use permit, design permit or variance approval has been issued through final action by the City prior to the effective date of this Ordinance, or where such planning permit approval is not required and a complete building permit application has been submitted prior to the effective date of this Ordinance, the holder of such use permit, design permit or variance approval or complete building permit application may proceed to construct the improvements or establish the use authorized by such permit or approval and the same shall be exempted from any conflicting regulations that may be contained in this Ordinance.

**SECTION 10:** 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 11:** 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