

# *City of Brisbane*

## *Agenda Report*

**TO:** Honorable Mayor and City Council

**FROM:** Community Development Director via City Manager

**SUBJECT:** Ordinance No. 567, Zoning Text Amendment RZ-7-11 to Amend Brisbane Municipal Code Title 17 Regarding Planning Permit Expirations, Extensions, Revocations, Appeal Periods, Hearing Deadlines and Notification Requirements

**DATE:** Meeting of January 17, 2012

CONTINUED TO FEBRUARY 6, 2012

### **City Council Goals:**

To provide for effective and efficient delivery of City services. (Goal#1)

### **Purpose:**

To simplify and clarify Zoning Ordinance procedural provisions pertaining to planning permit expirations and extensions and other procedures related to hearing and appeal deadlines and notification requirements.

### **Recommendation:**

That the City Council Introduce Ordinance No. 567.

### **Background:**

The adopted Zoning Ordinance sets forth procedures for all planning permits processed by the City. These procedures address processing timelines, permit expiration dates, appeal deadlines, among other requirements. As the Zoning Ordinance has been amended incrementally over time and the provisions of state planning law governing the City's procedures change over time, a number of the procedures established within the Zoning Ordinance are now either internally inconsistent or inconsistent with the provisions of state law. The proposed amendment is intended to clean-up the existing procedures and eliminate inconsistencies that have been identified. Additionally, there are policy issues regarding the appropriate length of time planning permits should be active, and the appropriate procedures for considering time extensions. These issues are discussed in detail in the attached Planning Commission report dated November 10, 2011. The Planning Commission unanimously recommended approval of the proposed Text Amendment as attached to this report.

## **Discussion:**

While the attached Planning Commission reports and minutes provide a detailed analysis of the recommended changes, a brief summary is provided below.

### **Term of Approval**

As noted in the attached Planning Commission report, the term length of approval varies among different types of planning permits granted by the City. The basis for such differences is unclear, and creates inconsistencies for projects which require multiple planning permits. The current procedures also fail to reflect that the State of California has the unilateral ability to extend the time limits of approved subdivision maps, and frequently does so in slow economic times. This creates term inconsistencies in cases where a project involves a subdivision map along with other planning permits. The proposed amendment standardizes the term of approval among various permits, and further provides for the automatic extension of permits associated with a tentative map where the state has extended the tentative map.

While the existing Zoning Code limits approvals to either 1 or 2 years, experience shows that many projects are unable to obtain financing and building permits within this relatively short time window, especially in slow economic times. The result is that many projects face the added expense and uncertainty of obtaining a time extension. To reflect these conditions, the Planning Commission is recommending a standard 3-year term of approval for planning applications. The language further provides for automatic extensions of projects with tentative maps, where the state has statutorily extended the tentative map. It further reflects that project approvals with a concurrent Development Agreement will remain active for the term length of the Development Agreement.

### **Time Extensions**

Currently all time extensions for permits approved by the Planning Commission require subsequent Planning Commission action. Time extensions typically represent an opportunity to assess whether there are changes in either the project, regulatory requirements or environmental conditions which warrant a re-examination of the project or the conditions of approval. A time extension is not normally treated as a new public hearing on the project as previously approved. However, the findings for approving time extensions as set forth in the Zoning Code are not consistent with standard practice. In some cases there are no specific findings required for the granting of a time extension. In other cases the findings are the same as for the original approval, which in practice means the "time extension" is essentially a new hearing on the previously approved project.

The original staff recommendation to the Planning Commission was for the Zoning Administrator to be authorized to grant no more than a two year extension (a total of 5 years from the original approval date) subject to specific findings that are no changes to circumstances or environmental conditions warranting either a more comprehensive review of the project or new conditions of approval.

While the Planning Commission concurred that in many cases the granting of a time extension should be a routine matter handled by the Zoning Administrator subject to the findings noted

above, they were uncomfortable in allowing such a process for all planning permits. Additionally, they were unable to define specific conditions or terms under which they would allow for a Zoning Administrator time extension process. Therefore, the zoning text language recommended by the Planning Commission would require the Planning Commission to decide on a case by case basis as part of the original project approval whether or not subsequent time extensions could be granted by the Zoning Administrator.

The alternate available to the City Council is to incorporate language originally recommended by staff to allow for Zoning Administrator approval of time extensions subject to the findings noted above. This would provide procedural certainty and consistent standards of review for all time extensions. This approach would further be consistent with Housing Element Program H.I.1, which calls for implementation of “changes to the zoning ordinance and permitting process to simplify and streamline approval of projects that meet the City’s housing goals.”

An issue not addressed in the Planning Commission’s review relates to the status of cases adopted prior to the effective date of this ordinance. Under the language recommended by the Planning Commission there is no basis for granting time extensions, so all such cases would expire and be subject to a new approval process. Under the alternate language proposed by staff, the Zoning Administrator would have the ability to grant time extensions subject to the findings previously described.

Lastly, the time extension language originally recommended by the Planning Commission included a reference to a 5-year term from the effective permit date. This includes both the original 3-year approval plus 2 year extension. It is recommended that this phrase be eliminated from the time extension provisions to avoid leaving the incorrect impression that a 5-year time extension could be granted.

#### **Appeal Periods and Public Notification Requirements**

There are currently a number of different appeal periods specified within the Zoning Code for different types of applications, which creates potential inconsistencies for projects involving multiple permits. It is recommended that a standard 15 day appeal period be established for all planning permits. The exception would be permits associated with a tentative map, as state law establishes a 10 day appeal period for maps and the appeal period for the related planning permit should be the same.

Many of the public notification requirements set forth in the Zoning Code do not fully comply with the provisions of state law, and the proposed text amendment will eliminate such inconsistencies.

#### **Fiscal Impact:**

None.

#### **Measure of Success:**

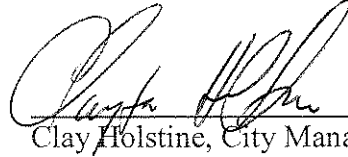
Improving the Zoning Code by eliminating internal inconsistencies and conflicts with state law.

**Attachments:**

Redline Version of Staff and Planning Commission Recommended Changes BMC Chapters  
16.16, 17.28, 17.42, 17.46, 17.48, 17.52, & 17.56  
Planning Commission Resolution RZ-7-11 with Draft Ordinance attached  
Planning Commission Minutes for 11/10/11 Meeting (excerpt)  
Agenda Report for 11/10/11 Planning Commission Meeting



\_\_\_\_\_  
John Swiecki, Community Development Director



\_\_\_\_\_  
Clay Holstine, City Manager

**REDLINE VERSION OF STAFF AND PLANNING COMMISSION RECOMMENDED  
CHANGES TO BMC CHAPTERS 16.16, 17.28, 17.42, 17.46, 17.48, 17.52, 17.54 &  
17.56**

**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*. Changes recommended by the Planning Commission are in red, and changes recommended by staff are in blue.**

Title 16

SUBDIVISIONS

Chapter 16.16

TENTATIVE MAP PROCEDURES

16.16.270 – *Expiration and Time extensions of approved tentative maps.*

An approved or conditionally approved tentative map shall expire *three (3) years* ~~twenty-four (24) months~~ after its approval or conditional approval *or as provided by state law*. The expiration of the approved or conditionally approved tentative map shall terminate all proceedings and no final map shall be filed without first processing an application for a new tentative map. Upon application by the subdivider to the planning director, filed prior to the expiration of the approved or conditionally approved tentative map, the time within which such map expires may be extended by the planning commission. No extension period shall exceed *two (2) years* ~~twelve (12) months~~.

Title 17

ZONING

Chapter 17.28

PD PLANNED DEVELOPMENT DISTRICT

17.28.050 Public hearing by planning commission-Notice. *The planning commission shall conduct a public hearing on the application for a Planned Development Permit. Notice of such hearing shall be given as set forth in Chapter 17.54.* ~~The planning commissions shall conduct a public hearing on the application for PD permit. Notice of the public hearing shall be given not less than ten (10) days nor more than thirty (30) days prior to the date of the hearing by mailing, postage prepaid, a notice of the time and place of the hearing to the applicant and to all persons whose names appear on the latest available assessment roll of the county as owning property within three hundred (300) feet of the boundaries of the site which is the subject of the PD permit~~

~~application. Notice of the public hearing shall also be posted at each location within the city where agendas for planning commission meetings are routinely posted.~~

#### Section 17.28.110 – Expiration of PD permit--Extensions

*A. Planned Development Permits shall expire three (3) years (unless a different period of time is designated by the approving body) from their effective date at the end of the appeal period or, if appealed, upon final approval, if application for a Building Permit for the project has not yet been submitted, if the Building Permit application submitted has been abandoned, or if the Building Permit issued for the project becomes invalid under the California Building Code; except that a Planned Development Permit issued in conjunction with a Tentative Map shall expire concurrently with the Tentative Map, including automatic extensions through the State Subdivision Map Act. Subject to specific provision, a Development Agreement adopted by the City Council may require that a related Planned Development Permit shall have the same expiration date as the Development Agreement.*

~~A PD permit granted pursuant to this chapter shall expire twenty four (24) months from the date on which such permit became effective, unless prior to such expiration date a building permit is issued and construction is commenced on the site or structure constituting the subject of the PD permit, or a certificate of occupancy is issued for such site or structure, or, if no building permit or certificate of occupancy is required, the use or activity authorized by the PD permit is commenced upon the site.~~

B. A PD permit may be extended for a period or periods of time not exceeding two (2) years ~~thirty six (36) months~~. The application for extension shall be filed prior to the expiration date of the permit and shall be accompanied by payment of a processing fee in such amount as established from time to time by resolution of the city council. A public hearing shall be conducted on the application for extension and notice thereof shall be given in the same manner as prescribed in Section 17.28.050 of this chapter. ~~Extension of a PD permit is not a matter of right and the approving authority may deny the application or grant the same subject to conditions. No extension shall be granted unless the approving authority is able to make all of the findings required for approval of the original permit. The application for extension may be acted upon by the planning commission unless, under the terms of the PD permit, such extension requires approval by the city council or the matter is appealed to the city council pursuant to Section 17.28.150.~~

### Chapter 17.40

#### USE PERMITS

~~17.40.040 Application—Public hearing—Notice. Public hearing by planning commission—Notice. The planning commission shall conduct a public hearing on the application for a Use Permit. Upon receipt of an application for a use permit, the secretary of the planning commission shall set a date for a public hearing on such application: such hearing shall be held within forty five (45) days after the filing of the application. Notice of such hearing shall be given as set forth in Chapter 17.54.~~

17.40.060.C. A use permit shall be effective fifteen (15) days following the date on which the Use Permit was granted by the Zoning Administrator or Planning Commission, or, if appealed pursuant to Chapter 17.52 of this title, upon final approval ~~the seventh day after planning commission approval unless the action is appealed to the city council, in which case the permit shall not be effective until a final decision on the appeal has been made by the city council.~~ Use Permits approved in conjunction with a Tentative Map shall be subject to a ten (10) day appeal period pursuant to Chapter 16.44 of Title 16, Subdivisions.

17.40.080 Expiration. Use Permits shall expire three (3) years (unless a different period of time is designated by the approving body) from their effective date at the end of the appeal period or, if appealed, upon final approval, if the approved use has not yet been established; except that a Use Permit issued in conjunction with a Variance, Design Permit, Planned Development Permit and/or Tentative Map shall expire concurrently with the Variance, Design Permit, Planned Development Permit or Tentative Map, including any automatic extensions thereof through the State Subdivision Map Act. Subject to specific provision, a Development Agreement adopted by the City Council may require that a related Use Permit shall have the same expiration date as the Development Agreement.

17.40.090 Extension. A. ~~At the time of initial approval, the approving authority may specify the circumstances under which the use permit may be extended by the zoning administrator for a period not to exceed two (2) years or five (5) years from the effective date of the Use Permit. The application for extension shall be filed prior to the expiration date of the Use Permit and shall be accompanied by payment of a processing fee in such amount as established from time to time by resolution of the city council.~~

B. If the zoning administrator determines that an extension should be granted, written notice of such intended decision shall be given to all persons shown on the latest adopted tax roll as owning property within three hundred (300) feet from the boundaries of the project site. Notice shall also be posted at each location within the city where agendas for planning commission meetings are routinely posted. The notice shall advise that any person shall have ten (10) days from the date of the mailing of the notice to submit a written request for a hearing on the intended approval of the extension, which shall be held not less than fifteen (15) days from the date of mailing the notice. The notice shall also advise of the right to appeal a decision of the zoning administrator to the planning commission.

C. No extension shall be granted unless a finding is made that there have been no substantial changes in the circumstances or applicable land use regulations under which the findings required for approval of the original permit were made. The zoning administrator may refer any extension application to the planning commission for a decision thereon if the zoning administrator is unable to make the required finding. An application referred by the zoning administrator to the planning commission shall be processed in accordance with the same procedure applicable to an appeal.

D. An extension of a use permit approved concurrently with a vesting tentative map may be granted subject to modified conditions of approval or denied, only if the vested right granted by Section 16.42.090.A is not violated.

## DESIGN PERMITS

17.42.030 Public hearing by planning commission-Notice. The planning commission shall conduct a public hearing on the application for a Design Permit. Notice of such hearing shall be given *as set forth in Chapter 17.54* ~~not less than ten (10) days nor more than thirty (30) days prior to the date of the hearing by mailing, postage prepaid, a notice of the time and place of the hearing to the applicant and to all persons whose names appear on the latest available assessment roll of the county as owning property within three hundred (300) feet of the boundaries of the site which is the subject of the permit application. Notice of the public hearing shall also be posted at each location within the city where agendas for planning commission meetings are routinely posted.~~

17.42.050.B. *Design Permits shall become effective fifteen (15) days following the date on which the Design Permit was granted by the Zoning Administrator or Planning Commission, or, if appealed pursuant to Chapter 17.52 of this title, upon final approval. Design Permits approved in conjunction with a Tentative Map shall be subject to a ten (10) day appeal period pursuant to Chapter 16.44 of Title 16, Subdivisions. The design permit shall become effective upon the expiration of fifteen (15) days following the date on which the design permit was granted by the planning commission, unless an appeal has been taken to the city council pursuant to Chapter 17.52 of this title.*

### 17.42.060 – Expiration of design permit—Extensions

~~A. Design Permits shall expire three (3) years (unless a different period of time is designated by the approving body) from their effective date at the end of the appeal period or, if appealed, upon final approval, if application for a Building Permit for the project has not yet been submitted, if the Building Permit application submitted has been abandoned, or if the Building Permit issued for the project becomes invalid under the California Building Code; except that a Design Permit issued in conjunction with a Tentative Map shall expire concurrently with the Tentative Map, including automatic extensions through the State Subdivision Map Act. Subject to specific provision, a Development Agreement adopted by the City Council may require that a related Design Permit shall have the same expiration date as the Development Agreement. A design permit granted pursuant to this chapter shall expire twenty-four (24) months from the date on which such permit became effective, unless prior to such expiration date a building permit for the structure which is the subject to the permit is issued and construction is commenced.~~

B. A design permit may be extended by the planning commission for a period or periods of time not exceeding thirty-six (36) months. The application for extension shall be filed prior to the expiration date of the permit and shall be accompanied by payment of a processing fee in such amount as established from time to time by resolution of the city council. A public hearing shall be conducted on the application for extension and notice thereof shall be given in the same manner as prescribed in Section 17.42.030 of this chapter. Extension of a design permit is not a matter of right and the approving authority may deny the application or grant the same subject to conditions.



**17.42.065 – Extensions.** *A. ~~At the time of initial approval, the approving authority may specify the circumstances under which the design permit may be extended by the zoning administrator for a period not to exceed two (2) years or five (5) years from the effective date of the Design Permit. The application for extension shall be filed prior to the expiration date of the design permit and shall be accompanied by payment of a processing fee in such amount as established from time to time by resolution of the city council.~~*

*B. If the zoning administrator determines that an extension should be granted, written notice of such intended decision shall be given to all persons shown on the latest adopted tax roll as owning property within three hundred (300) feet from the boundaries of the project site. Notice shall also be posted at each location within the city where agendas for planning commission meetings are routinely posted. The notice shall advise that any person shall have ten (10) days from the date of the mailing of the notice to submit a written request for a hearing on the intended approval of the extension, which shall be held not less than fifteen (15) days from the date of mailing the notice. The notice shall also advise of the right to appeal a decision of the zoning administrator to the planning commission.*

*C. No extension shall be granted unless a finding is made that there have been no substantial changes in the circumstances or applicable land use regulations under which the findings required for approval of the original permit were made. The zoning administrator may refer any extension application to the planning commission for a decision thereon if the zoning administrator is unable to make the required finding. An application referred by the zoning administrator to the planning commission shall be processed in accordance with the same procedure applicable to an appeal.*

*D. An extension of a design permit approved concurrently with a vesting tentative map may be granted subject to modified conditions of approval or denied, only if the vested right granted by Section 16.42.090.A is not violated.*

## Chapter 17.46

### VARIANCES

~~17.46.030 Application—Hearing date—Notice. Public hearing by planning commission—Notice. The planning commission shall conduct a public hearing on the application for a Variance. Upon receipt of an application for a variance, the secretary of the planning commission shall set a date for a public hearing on such application; such hearing shall be held within forty-five (45) days after the filing of the application. Notice of such hearing shall be given as set forth in Chapter 17.54.~~

*17.46.040.B. Variances shall become effective fifteen (15) days following the date on which the Variance was granted by the Zoning Administrator or Planning Commission, or, if appealed pursuant to Chapter 17.52 of this title, upon final approval. Variances approved in conjunction with a Tentative Map shall be subject to a ten (10) day appeal period pursuant to Chapter 16.44 of Title 16, Subdivisions. A variance shall be effective the seventh day after planning commission or zoning administrator approval unless the action is appealed to the city council, or*

~~in the case of the zoning administrator, to the planning commission, in which case the variance shall not be effective until final action upon the appeal.~~

17.46.060 *Expiration.* Variances shall expire three (3) years (unless a different period of time is designated by the approving body) from their effective date at the end of the appeal period or, if appealed, upon final approval, if application for a Building Permit for the project has not yet been submitted, if the Building Permit application submitted has been abandoned, or if the Building Permit issued for the project becomes invalid under the California Building Code; except that a Variance issued in conjunction with a Tentative Map shall expire concurrently with the Tentative Map, including automatic extensions through the State Subdivision Map Act. Subject to specific provision, a Development Agreement adopted by the City Council may require that a related Variance shall have the same expiration date as the Development Agreement.

17.46.070 *Extension.* A. ~~At the time of initial approval, the approving authority may specify the circumstances under which the variance may be extended by the zoning administrator for a period not to exceed two (2) years or five (5) years from the effective date of the Variance. The application for extension shall be filed prior to the expiration date of the variance and shall be accompanied by payment of a processing fee in such amount as established from time to time by resolution of the city council.~~

B. If the zoning administrator determines that an extension should be granted, written notice of such intended decision shall be given to all persons shown on the latest adopted tax roll as owning property within three hundred (300) feet from the boundaries of the project site. Notice shall also be posted at each location within the city where agendas for planning commission meetings are routinely posted. The notice shall advise that any person shall have ten (10) days from the date of the mailing of the notice to submit a written request for a hearing on the intended approval of the extension, which shall be held not less than fifteen (15) days from the date of mailing the notice. The notice shall also advise of the right to appeal a decision of the zoning administrator to the planning commission.

C. No extension shall be granted unless a finding is made that there have been no substantial changes in the circumstances or applicable land use regulations under which the findings required for approval of the original permit were made. The zoning administrator may refer any extension application to the planning commission for a decision thereon if the zoning administrator is unable to make the required finding. An application referred by the zoning administrator to the planning commission shall be processed in accordance with the same procedure applicable to an appeal.

D. An extension of a variance approved concurrently with a vesting tentative map may be granted subject to modified conditions of approval or denied, so long as the vested right granted by Section 16.42.090.A is not violated.

## Chapter 17.48

### REVOCATION OF USE PERMIT OR VARIANCE

~~17.48.010 Permit or variance Null and void when. Any use permit or variance shall be null and void if not used within one (1) year from the date of the approval thereof or within any~~

~~different period of time, if so designated by the planning commission or city council. In addition, any use permit or variance shall be null and void if a subsequent use permit or variance is approved for the same property and dealing with the same subject.~~

## Chapter 17.52

### APPEALS

#### 17.52.005 Appeal from planning director *or zoning administrator*.

Any person may appeal to the planning commission any order, requirement, decision, determination or other action of the planning director *or zoning administrator* with regard to any matter arising under this title, including any determination concerning the contents, subject matter or completeness of any application, any determination concerning which permit or other approval is required, and any determination pursuant to Sections 17.02.080 or 17.02.090. Any such appeal shall be in writing and shall be filed with the planning department within fifteen (15) days after the action complained of. The appeal shall be accompanied by a fee, as set by the city council, and shall clearly state the reason for appeal. Upon receipt of such an appeal, the planning department, acting under the direction of the planning director, shall bring the appeal before the planning commission within thirty (30) days and shall notify the appellant and (if different) the applicant of the date and time of the planning commission meeting at which the appeal will be heard, *in addition to the notice required per Section 17.54.030*. ~~No other notice need be given, except such additional notice as may be required by state or other law.~~ The planning commission shall proceed to hear and determine the appeal at the same meeting or at such later meeting as it shall determine, and in connection therewith may continue the same from time to time.

#### 17.52.020 – Method

A. An appeal of a planning commission action shall be in writing and filed with the city clerk within fifteen (15) days after the final action of the planning commission. The appeal shall be accompanied by a fee, as set by the city council, and shall clearly state the reason for appeal. Upon receipt of such appeal, the city clerk shall notify the planning commission and shall set a time, within thirty (30) days after the receipt of such appeal, for a public hearing by the city council on such appeal. Notice of such hearing shall be given as set forth in Chapter 17.54.

B. In addition to the above, if any two (2) members of the city council within the fifteen (15) day period request in writing to the city clerk that the action of the planning commission be considered by the council as an appeal, the clerk shall notify the planning commission and the applicant and shall ~~place the matter for public hearing on the next available council agenda~~ *set the matter for hearing before the council at the earliest available date and cause notice of such hearing to be given as set forth in Chapter 17.54.* The mere fact that an appeal is made by two (2) members of the city council, as provided in this subsection, does not of itself require disqualification of either such councilmember from hearing and/or deciding the appeal.

C. *If the deadline for filing any appeal specified in this title falls upon a Saturday, Sunday, holiday or any other day on which the city offices are closed for the entire day for any reason, the deadline shall be by close of business on the first business day thereafter.*

## Chapter 17.54

### PUBLIC HEARINGS

17.54.030 – Use Permits, variances, *design permits and planned development permits* and appeals—Notice requirements.

A. Whenever an application for a variance, or a conditional use permit or *design permit or planned development* other permit, for revocation or modification of same or an appeal from the action taken thereon, is submitted to the body or person charged with conducting a public hearing thereon, *notice of the public hearing shall be given not less than ten (10) days nor more than thirty (30) days prior to the date of the hearing by mail to the applicant and to all persons whose names appear on the latest available assessment roll of the county as owning property within three hundred (300) feet of the boundaries of the site which is the subject of the permit application. Notice of the public hearing shall also be posted at each location within the city where agendas for planning commission meetings are routinely posted, notice of hearing shall be given by notice through the United States mails, with postage prepaid using addresses from the last equalized assessment roll, or alternatively, from such other records of the assessor or tax collector as contain more recent addresses in the opinion of the body, or by both publication at least once in a newspaper of general circulation, published and circulated in the city, and by posting the notice in at least three (3) conspicuous places close to the property affected.*

~~B. When mailed notice is used, notice shall be given to all owners of property within one hundred (100) feet of the exterior boundaries of the property for which an application is being heard. The notices shall be mailed not less than ten (10) or more than thirty (30) days before the scheduled hearing.~~

~~C. When posted notice is used, posting shall be on utility poles on both sides of the property frontage and across the street from the subject property.~~

~~D. Notices specified in subsections B and C shall specify the type and magnitude of the application to be considered, the place where copies of the application may be reviewed, the time, date and place of the hearing and the right to appear and be heard. The notice shall include the date, time, and place of a public hearing, the identity of the hearing body or officer, a general explanation of the matter to be considered, and a general description, in text or by diagram, of the location of the real property, if any, that is the subject of the hearing.~~

## Chapter 17.56

### ZONING ADMINISTRATOR ADMINISTRATION

17.56.030.A.10. *Applications for extension of Use Permit, Variance or Design Permit approvals as provided by the conditions of the original approval.*

17.56.040 – Zoning administrator-Reporting decisions to planning commission. All decisions of the zoning administrator, except decisions relating to the granting or denial of a sign permit pursuant to Chapter 17.36, shall be reported to the planning commission prior to the expiration of the appeal period. If any member of the planning commission desires to appeal the decision it

shall be considered appealed and placed on the next commission agenda. *The secretary to the planning commission shall set the matter for hearing before the planning commission at the earliest available date and cause notice of such hearing to be given as set forth in Chapter 17.54.*

17.56.050 – Zoning administrator-Variiances. A. ~~The zoning administrator shall be governed by the provisions of this title in the granting of variances and shall grant the same only when making the findings required by the pertinent provisions of this title. The zoning administrator shall use the procedure and make findings required by the provisions of Chapter 17.46 prior to granting a variance.~~

B. The zoning administrator may refer any applications for a variance directly to the planning commission without holding a hearing or without making a decision thereon, and the planning commission shall then proceed to hear such applications as provided in this title.

~~17.56.060 — Zoning administrator Variance granting. The zoning administrator shall use the procedure and make findings required by the provisions of Chapter 17.46 prior to granting a variance.~~

~~17.56.080 17.56.100 -- Effective date and Appeals. Appeals from the dDecisions of the zoning administrator shall become effective fifteen (15) days following the date on which the approval was granted, or, if appealed pursuant to Chapter 17.52 of this title, upon final approval. may be made to the planning commission within seven (7) days after the action of the zoning administrator. Upon receipt of an appeal, the zoning administrator shall forward the same, together with the records on the matter, to the planning commission. The secretary to the planning commission shall set the matter for hearing before the planning commission at the earliest available date and cause notice of such hearing to be given as set forth in Chapter 17.54. The planning commission shall consider the matter in the same manner as an application for a variance.~~

~~17.56.110 — Variiances effective date. — No variance granted by the zoning administrator shall have any force or effect until the applicant thereof actually receives such variance signed by the zoning administrator and designating thereon any conditions of its issuance that may have been imposed by the zoning administrator. No variance shall be issued until the time for filing an appeal from the decision of the zoning administrator has expired or, in the event of such appeal, until after a final decision has been rendered on the appeal by the planning commission, or by the city council in the event of a further appeal from the decision of the planning commission.~~

RESOLUTION NO. RZ-7-11

RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BRISBANE  
RECOMMENDING ZONING TEXT AMENDMENT RZ-7-11 TO THE CITY COUNCIL,  
SUCH TEXT AMENDMENTS PERTAINING TO  
CITY OF BRISBANE MUNICIPAL CODE TITLE 17, ZONING;  
CHAPTER 17.28, PD PLANNED DEVELOPMENT DISTRICT; CHAPTER 17.40, USE PERMITS;  
CHAPTER 17.42, DESIGN PERMITS; CHAPTER 17.46, VARIANCES;  
CHAPTER 17.48, REVOCATION OF USE PERMIT OR VARIANCE; CHAPTER 17.52, APPEALS;  
CHAPTER 17.54, PUBLIC HEARINGS; AND CHAPTER 17.56, ADMINISTRATION

WHEREAS, 1994 General Plan Policy 4 calls for the City to “Acknowledge the fundamental rights of citizens to freely act and to use their own property, except to the extent government rules or regulations are necessary for the public health and safety and for protection of the environment;” and

WHEREAS, Policy 5 directs the City to “Use the least intrusive rules and regulations consistent with overall governmental needs and State and Federal law;” and

WHEREAS, Policy 6 requires that the City to “Set clear and definitive standards for all rules and regulations;” and

WHEREAS, 2007-2014 Housing Element Program H.I.1.a dictates that the City “Continue to evaluate and implement changes to the zoning ordinance and permitting process to simplify and streamline approval of projects that meet the City’s housing goals;” and

WHEREAS, amending the Zoning Ordinance to provide clear and consistent procedures regulating planning permit expirations, extensions and revocations, appeal periods, public hearing deadlines and notification requirements would streamline processing, while protecting the public health and safety and the environment, consistent with governmental needs and State law; and

WHEREAS, on November 10, 2011, the Planning Commission held a public hearing on the draft ordinance; and

WHEREAS, the minutes of the Planning Commission meeting of November 10, 2011, are attached and incorporated by reference as part of this resolution; and

WHEREAS, minor zoning amendments where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment are not subject to the California Environmental Quality Act per the general rule is contained in State CEQA Guidelines Section 15061(b)(3).

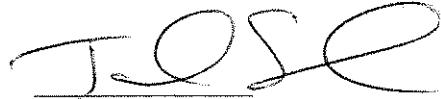
NOW, THEREFORE, based upon the evidence presented, both written and oral, the Planning Commission of the City of Brisbane hereby RECOMMENDS that the City Council adopt the attached ordinance.



JAMEEL MUNIR  
Chairman

I hereby certify that the foregoing Resolution No. RZ-7-11 was duly and regularly passed and adopted by the Brisbane Planning Commission at a regular meeting thereof held on November 10, 2011, by the following roll call vote:

AYES:           Cunningham, Do, Parker, Reinhardt, Munir  
NOES:           None  
ABSENT:        None

A handwritten signature in black ink, appearing to read "JOSE", written over a horizontal line.

JOHN SWIECKI  
Community Development Director

DRAFT  
ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF BRISBANE AMENDING CHAPTER 16.16, TENTATIVE MAP PROCEDURES; CHAPTER 17.28, PD PLANNED DEVELOPMENT DISTRICT; CHAPTER 17.42, DESIGN PERMITS; CHAPTER 17.46, VARIANCES; CHAPTER 17.48, REVOCATION OF USE PERMIT OR VARIANCE; CHAPTER 17.52, APPEALS; CHAPTER 17.54, PUBLIC HEARINGS; AND CHAPTER 17.56, ADMINISTRATION; OF THE MUNICIPAL CODE

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

**SECTION 1:** Section 16.16.270 of Chapter 16.16, Tentative Map Procedures, is amended to read as follows:

**16.16.270 – Expiration and time extensions of approved tentative maps.** An approved or conditionally approved tentative map shall expire three (3) years after its approval or conditional approval or as provided by state law. The expiration of the approved or conditionally approved tentative map shall terminate all proceedings and no final map shall be filed without first processing an application for a new tentative map. Upon application by the subdivider to the planning director, filed prior to the expiration of the approved or conditionally approved tentative map, the time within which such map expires may be extended by the planning commission. No extension period shall exceed two (2) years.

**SECTION 2:** Section 17.28.050 of Chapter 17.28, PD Planned Development District, is amended to read as follows:

**17.28.050 Public hearing by planning commission-Notice.** The planning commission shall conduct a public hearing on the application for a planned development permit. Notice of such hearing shall be given as set forth in Chapter 17.54.

**SECTION 3:** Section 17.28.110 of Chapter 17.28, PD Planned Development District, is amended to read as follows:

**Section 17.28.110 – Expiration of PD permit—Extensions.** A. Planned Development Permits shall expire three (3) years (unless a different period of time is designated by the approving body) from their effective date at the end of the appeal period or, if appealed, upon final approval, if application for a Building Permit for the project has not yet been submitted, if the Building Permit application submitted has been abandoned, or if the Building Permit issued for the project becomes invalid under the California Building Code; except that a Planned Development Permit issued in conjunction with a Tentative Map shall expire concurrently with the Tentative Map, including automatic extensions through the State Subdivision Map Act. Subject to specific provision, a Development Agreement adopted by the City Council may require that a related Planned Development Permit shall have the same expiration date as the Development Agreement.

B. A PD permit may be extended for a period or periods of time not exceeding two (2) years. The application for extension shall be filed prior to the expiration date of the permit and shall be accompanied by payment of a processing fee in such amount as established from time to time by resolution of the city council. A public hearing shall be conducted on the application for extension and notice thereof shall be given in the same manner as prescribed in Section 17.28.050 of this chapter. No extension shall be granted unless the approving authority is able to make all of the findings required for approval of the original permit. The application for extension may be acted upon by the planning commission unless, under the terms of the PD permit, such extension requires approval by the city council or the matter is appealed to the city council pursuant to Section 17.28.150.

**SECTION 4:** Section 17.40.040 of Chapter 17.40, Use Permits, is amended to read as follows:

**17.40.040 Public hearing by planning commission-Notice.** The planning commission shall conduct a public hearing on the application for a use permit. Notice of such hearing shall be given as set forth in Chapter 17.54.

**SECTION 5:** Section 17.40.060 of Chapter 17.40, Use Permits, is amended to read as follows:

**17.40.060 Granting.** A. In considering an application, the planning commission shall consider and give due regard to the nature and condition of all adjacent uses and structures, and to general and specific plans for the area in question.

B. The planning commission shall determine whether or not the establishment, maintenance or operation of the use applied for will, under the circumstances of the particular case, be detrimental to the health, safety, comfort and general welfare of the persons residing or working in the neighborhood of such proposed use, or whether it will be injurious or detrimental to property and improvements in the neighborhood or the general welfare of the city. If the planning commission finds that the aforementioned conditions will not result from the particular use applied for, it may grant the use permit.

C. A use permit shall be effective fifteen (15) days following the date on which the use permit was granted by the zoning administrator or planning commission, or, if appealed pursuant to Chapter 17.52 of this title, upon final approval. Use permits approved in conjunction with a tentative map shall be subject to a ten (10) day appeal period pursuant to Chapter 16.44 of Title 16, Subdivisions.

**SECTION 6:** Section 17.40.080 is added to Chapter 17.40, Use Permits, to read as follows:

**17.40.080 Expiration.** Use permits shall expire three (3) years (unless a different period of time is designated by the approving body) from their effective date at the end of the appeal period or, if appealed, upon final approval, if the approved use has not yet been established; except that a use permit issued in conjunction with a variance, design permit, planned development permit and/or tentative map shall expire concurrently with the variance, design permit, planned development permit and/or tentative map, including any automatic extensions thereof through



the State Subdivision Map Act. Subject to specific provision, a development agreement adopted by the city council may require that a related use permit shall have the same expiration date as the development agreement.

**SECTION 7:** Section 17.40.090 is added to Chapter 17.40, Use Permits, to read as follows:

**17.40.090 Extension.** A. At the time of initial approval, the approving authority may specify the circumstances under which the use permit may be extended by the zoning administrator for a period not to exceed two (2) years or five (5) years from the effective date of the Use Permit. The application for extension shall be filed prior to the expiration date of the Use Permit and shall be accompanied by payment of a processing fee in such amount as established from time to time by resolution of the city council.

B. If the zoning administrator determines that an extension should be granted, written notice of such intended decision shall be given to all persons shown on the latest adopted tax roll as owning property within three hundred (300) feet from the boundaries of the project site. Notice shall also be posted at each location within the city where agendas for planning commission meetings are routinely posted. The notice shall advise that any person shall have ten (10) days from the date of the mailing of the notice to submit a written request for a hearing on the intended approval of the extension, which shall be held not less than fifteen (15) days from the date of mailing the notice. The notice shall also advise of the right to appeal a decision of the zoning administrator to the planning commission.

C. No extension shall be granted unless a finding is made that there have been no substantial changes in the circumstances or applicable land use regulations under which the findings required for approval of the original permit were made. The zoning administrator may refer any extension application to the planning commission for a decision thereon if the zoning administrator is unable to make the required finding. An application referred by the zoning administrator to the planning commission shall be processed in accordance with the same procedure applicable to an appeal.

D. An extension of a permit approved concurrently with a vesting tentative map may be granted subject to modified conditions of approval or denied, only if the vested right granted by Section 16.42.090.A is not violated.

**SECTION 8:** Section 17.42.030 of Chapter 17.42, Design Permits, is amended to read as follows:

**17.42.030 Public hearing by planning commission-Notice.** The planning commission shall conduct a public hearing on the application for a design permit. Notice of such hearing shall be given as set forth in Chapter 17.54.

**SECTION 9:** Section 17.42.050 of Chapter 17.42, Design Permits, is amended to read as follows:

**17.42.050 Action by planning commission.** A. The planning commission may either grant or deny the application for design permit and may grant the permit subject to such conditions as the

planning commission deems necessary or appropriate in order to make the findings prescribed by Section 17.42.040.

B. Design permits shall become effective fifteen (15) days following the date on which the design permit was granted by the zoning administrator or planning commission, or, if appealed pursuant to Chapter 17.52 of this title, upon final approval. design permits approved in conjunction with a tentative map shall be subject to a ten (10) day appeal period pursuant to Chapter 16.44 of Title 16, Subdivisions.

**SECTION 10:** Section 17.42.060 of Chapter 17.42, Design Permits, is amended to read as follows:

**17.42.060 – Expiration of design permit** Design permits shall expire three (3) years (unless a different period of time is designated by the approving body) from their effective date at the end of the appeal period or, if appealed, upon final approval, if application for a building permit for the project has not yet been submitted, if the building permit application submitted has been abandoned, or if the building permit issued for the project becomes invalid under the California Building Code; except that a design permit issued in conjunction with a tentative map shall expire concurrently with the tentative map, including automatic extensions through the State Subdivision Map Act. Subject to specific provision, a development agreement adopted by the city council may require that a related design permit shall have the same expiration date as the development agreement.

**SECTION 11:** Section 17.42.065 is added to Chapter 17.42, Design Permits, to read as follows:

**17.42.065 – Extensions.** A. At the time of initial approval, the approving authority may specify the circumstances under which the design permit may be extended by the zoning administrator for a period not to exceed two (2) years or five (5) years from the effective date of the design permit. The application for extension shall be filed prior to the expiration date of the design permit and shall be accompanied by payment of a processing fee in such amount as established from time to time by resolution of the city council.

B. If the zoning administrator determines that an extension should be granted, written notice of such intended decision shall be given to all persons shown on the latest adopted tax roll as owning property within three hundred (300) feet from the boundaries of the project site. Notice shall also be posted at each location within the city where agendas for planning commission meetings are routinely posted. The notice shall advise that any person shall have ten (10) days from the date of the mailing of the notice to submit a written request for a hearing on the intended approval of the extension, which shall be held not less than fifteen (15) days from the date of mailing the notice. The notice shall also advise of the right to appeal a decision of the zoning administrator to the planning commission.

C. No extension shall be granted unless a finding is made that there have been no substantial changes in the circumstances or applicable land use regulations under which the findings required for approval of the original permit were made. The zoning administrator may refer any extension application to the planning commission for a decision thereon if the zoning administrator is unable to make the required finding. An application referred by the zoning

administrator to the planning commission shall be processed in accordance with the same procedure applicable to an appeal.

D. An extension of a design permit approved concurrently with a vesting tentative map may be granted subject to modified conditions of approval or denied, only if the vested right granted by Section 16.42.090.A is not violated.

**SECTION 12:** Section 17.46.030 of Chapter 17.46, Variances, is amended to read as follows:

**17.46.030 Public hearing by planning commission-Notice.** The planning commission shall conduct a public hearing on the application for a variance. Notice of such hearing shall be given as set forth in Chapter 17.54.

**SECTION 13:** Section 17.46.040 of Chapter 17.46, Variances, is amended to read as follows:

**17.46.040 Granting.** A. After the conclusion of the public hearing or continuations thereof, the planning commission or zoning administrator may grant or deny a variance from the strict application of the regulations established by this chapter. The commission or zoning administrator may impose any reasonable conditions deemed necessary to achieve the purpose of this title.

B. Variances shall become effective fifteen (15) days following the date on which the variance was granted by the zoning administrator or planning commission, or, if appealed pursuant to Chapter 17.52 of this title, upon final approval. Variances approved in conjunction with a tentative map shall be subject to a ten (10) day appeal period pursuant to Chapter 16.44 of Title 16, Subdivisions.

**SECTION 14:** Section 17.46.060 is added to Chapter 17.46, Variances, to read as follows:

**17.46.060 Expiration.** Variances shall expire three (3) years (unless a different period of time is designated by the approving body) from their effective date at the end of the appeal period or, if appealed, upon final approval, if application for a building permit for the project has not yet been submitted, if the building permit application submitted has been abandoned, or if the building permit issued for the project becomes invalid under the California Building Code; except that a variance issued in conjunction with a tentative map shall expire concurrently with the tentative map, including automatic extensions through the State Subdivision Map Act. Subject to specific provision, a development agreement adopted by the city council may require that a related variance shall have the same expiration date as the development agreement.

**SECTION 15:** Section 17.46.070 is added to Chapter 17.46, Variances, to read as follows:

**17.46.070 Extension.** A. At the time of initial approval, the approving authority may specify the circumstances under which the variance may be extended by the zoning administrator for a period not to exceed two (2) years or five (5) years from the effective date of the variance. The application for extension shall be filed prior to the expiration date of the variance and shall

be accompanied by payment of a processing fee in such amount as established from time to time by resolution of the city council.

B. If the zoning administrator determines that an extension should be granted, written notice of such intended decision shall be given to all persons shown on the latest adopted tax roll as owning property within three hundred (300) feet from the boundaries of the project site. Notice shall also be posted at each location within the city where agendas for planning commission meetings are routinely posted. The notice shall advise that any person shall have ten (10) days from the date of the mailing of the notice to submit a written request for a hearing on the intended approval of the extension, which shall be held not less than fifteen (15) days from the date of mailing the notice. The notice shall also advise of the right to appeal a decision of the zoning administrator to the planning commission.

C. No extension shall be granted unless a finding is made that there have been no substantial changes in the circumstances or applicable land use regulations under which the findings required for approval of the original permit were made. The zoning administrator may refer any extension application to the planning commission for a decision thereon if the zoning administrator is unable to make the required finding. An application referred by the zoning administrator to the planning commission shall be processed in accordance with the same procedure applicable to an appeal.

D. An extension of a variance approved concurrently with a vesting tentative map may be granted subject to modified conditions of approval or denied, only if the vested right granted by Section 16.42.090.A is not violated.

**SECTION 16:** Section 17.48.010 of Chapter 17.48, Revocation of Use Permit or Variance, is repealed in its entirety.

**SECTION 17:** Section 17.52.005 of Chapter 17.52, Appeals, is amended to read as follows:

**17.52.005 Appeal from planning director or zoning administrator.** Any person may appeal to the planning commission any order, requirement, decision, determination or other action of the planning director or zoning administrator with regard to any matter arising under this title, including any determination concerning the contents, subject matter or completeness of any application, any determination concerning which permit or other approval is required, and any determination pursuant to Sections 17.02.080 or 17.02.090. Any such appeal shall be in writing and shall be filed with the planning department within fifteen (15) days after the action complained of. The appeal shall be accompanied by a fee, as set by the city council, and shall clearly state the reason for appeal. Upon receipt of such an appeal, the planning department, acting under the direction of the planning director, shall bring the appeal before the planning commission within thirty (30) days and shall notify the appellant and (if different) the applicant of the date and time of the planning commission meeting at which the appeal will be heard, in addition to the notice required per Section 17.54.030. The planning commission shall proceed to hear and determine the appeal at the same meeting or at such later meeting as it shall determine, and in connection therewith may continue the same from time to time.

**SECTION 18:** Section 17.52.020 of Chapter 17.52, Appeals, is amended to read as follows:

**17.52.020 – Method.** A. An appeal of a planning commission action shall be in writing and filed with the city clerk within fifteen (15) days after the final action of the planning commission. The appeal shall be accompanied by a fee, as set by the city council, and shall clearly state the reason for appeal. Upon receipt of such appeal, the city clerk shall notify the planning commission and shall set a time, within thirty (30) days after the receipt of such appeal, for a public hearing by the city council on such appeal. Notice of such hearing shall be given as set forth in Chapter 17.54.

B. In addition to the above, if any two (2) members of the city council within the fifteen (15) day period request in writing to the city clerk that the action of the planning commission be considered by the council as an appeal, the clerk shall notify the planning commission and the applicant and shall set the matter for hearing before the council at the earliest available date and cause notice of such hearing to be given as set forth in Chapter 17.54. The mere fact that an appeal is made by two (2) members of the city council, as provided in this subsection, does not of itself require disqualification of either such councilmember from hearing and/or deciding the appeal.

C. If the deadline for filing any appeal specified in this title falls upon a Saturday, Sunday, holiday or any other day on which the city offices are closed for the entire day for any reason, the deadline shall be by close of business on the first business day thereafter.

**SECTION 19:** Section 17.54-030 of Chapter 17.54, Public Hearings, is amended to read as follows:

**17.54.030 – Use Permits, variances, design permits and planned development permits— Notice requirements.**

A. Whenever an application for a variance, or a use permit or design permit or planned development permit, for revocation or modification of same or an appeal from the action taken thereon, is submitted to the body or person charged with conducting a public hearing thereon, notice of the public hearing shall be given not less than ten (10) days nor more than thirty (30) days prior to the date of the hearing by mail to the applicant and to all persons whose names appear on the latest available assessment roll of the county as owning property within three hundred (300) feet of the boundaries of the site which is the subject of the permit application. Notice of the public hearing shall also be posted at each location within the city where agendas for planning commission meetings are routinely posted, or by both publication at least once in a newspaper of general circulation, published and circulated in the city, and by posting the notice in at least three (3) conspicuous places close to the property affected.

B. The notice shall include the date, time, and place of a public hearing, the identity of the hearing body or officer, a general explanation of the matter to be considered, and a general description, in text or by diagram, of the location of the real property, if any, that is the subject of the hearing.

**SECTION 20:** Chapter 17.56, Administration, is amended to read as follows:

## Chapter 17.56 ZONING ADMINISTRATOR

**17.56.010 – Zoning administrator—Function created.** There is created the function of zoning administrator which shall be carried out by the planning director.

**17.56.020 – Zoning administrator—Powers and duties.** The zoning administrator shall have all the powers and duties of a board of zoning adjustment as set forth in Section 65900 through 65909 of Article 3 of Chapter 4 of Title 7 of the Government Code of the state.

**17.56.030 – Zoning administrator—Action on applications.** A. Except as otherwise provided in this chapter, the zoning administrator shall hear and decide the following:

1. Applications for zoning conformances;
2. Applications for variances;
3. Applications for minor modifications;
4. Applications for certain sign permits, in accordance with the provisions of Chapter 17.36 of this title;
5. Applications for administrative permits for wireless telecommunication facilities, in accordance with the provisions of Section 17.32.032 of this title;
6. Applications for administrative permits for solar energy systems, in accordance with the provisions of Section 17.32.060.C;
7. Applications for accessibility improvement permits, in accordance with the provisions of Sections 17.32.060.D, 17.32.070.A, I and 17.32.080;
8. Applications for large family day care homes, per State Health and Welfare Code Sections 1597.46(a)(3) and 1597.465; and
9. Applications for amendments or modifications to a design permit, per Section 17.42.070.
10. Applications for extension of use permit, variance or design permit approvals as provided by the conditions of the original approval.

B. In connection with the applications provided for in this section, the zoning administrator shall have all the duties and responsibilities set forth in this title for the planning commission.

**17.56.040 – Zoning administrator-Reporting decisions to planning commission.** All decisions of the zoning administrator, except decisions relating to the granting or denial of a sign permit pursuant to Chapter 17.36, shall be reported to the planning commission prior to the expiration of the appeal period. If any member of the planning commission desires to appeal the decision it shall be considered appealed. The secretary to the planning commission shall set the matter for hearing before the planning commission at the earliest available date and cause notice of such hearing to be given as set forth in Chapter 17.54.

**17.56.050 – Zoning administrator-Variances.** A. The zoning administrator shall use the procedure and make findings required by the provisions of Chapter 17.46 prior to granting a variance.

B. The zoning administrator may refer any applications for a variance directly to the planning commission without holding a hearing or without making a decision thereon, and the planning commission shall then proceed to hear such applications as provided in this title.

**17.56.060 – Zoning administrator—Zoning conformance.** Zoning conformance shall be determined in conjunction with and as a part of, building permits and shall be so indicated by the

zoning administrator if it has been determined that any proposed construction is in conformity with the regulations for the district in which the construction is to be located. No building permit shall be issued until the zoning conformance portion thereof has been completed by the zoning administrator or his authorized representative.

**17.56.070 – Minor modifications.** A. Defined. For the purpose of this section, "minor modifications" means:

- 1. A maximum of twenty percent (20%) reduction in lot area, building coverage and yard requirements;
  - 2. A maximum of twenty percent (20%) increase in the height limit in fence, wall and hedge requirements.
- B. Granting. The zoning administrator shall use the procedure and make the findings required by the provisions of Chapter 17.46 prior to granting a minor modification; provided, however, a public hearing shall not be required.
- C. Notices. Notice of approval of minor modifications approved by the zoning administrator shall be mailed to owners of property within seventy-five (75) feet of the exterior boundaries of the subject property. The property owners shall be informed of their right of appeal.
- D. Fees. Filing fees for minor modifications shall be as set by the city council.

**17.56.080 -- Effective date and appeals.** Decisions of the zoning administrator shall become effective fifteen (15) days following the date on which the approval was granted, or, if appealed pursuant to Chapter 17.52 of this title, upon final approval.

**SECTION 21:** Where a use permit, design permit, building permit or variance approval has been issued through final action by the City prior to the effective date of this Ordinance, the holder of such permit or approval 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 22:** 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 23:** 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 \_\_\_\_\_, 2011, by the following vote:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

ATTEST:

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

APPROVED AS TO FORM:

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

\_\_\_\_\_  
Mayor

BRISBANE PLANNING COMMISSION  
Action Minutes of November 10, 2011  
Regular Meeting  
(excerpt)

NEW BUSINESS

2. **PUBLIC HEARING: Zoning Text Amendment RZ-7-11** to Amend Brisbane Municipal Code Title 17; Chapter 17.28, PD Planned Development District; Chapter 17.40, Use Permits; Chapter 17.42, Design Permits; Chapter 17.46, Variances; Chapter 17.48, Revocation of Use Permit or Variance; Chapter 17.52, Appeals; Chapter 17.54, Public Hearings; and Chapter 17.56, Administration; Regarding Planning Permit Expirations, Extensions and Revocations, Appeal Periods, Hearing Deadlines and Notification Requirements; City of Brisbane, applicant

Senior Planner Tune presented the agenda report, recommending that the Commission be given the option, when approving Use Permits, Design Permits and Variances, of allowing a streamlined process for Zoning Administrator approval of extensions.

Chairman Munir questioned how Development Agreements would be treated under the proposed ordinance. Senior Planner Tune explained that they were not specifically addressed in this ordinance, but that the City Attorney would be attending the Commission's next meeting to discuss the subject. Director Swiecki added that the time limits for permits under a Development Agreement are set by the City Council when the Development Agreement is originally approved.

In response to a question from Commissioner Do, Senior Planner Tune explained that planning permits would remain valid as long as building permits for the approved project were being diligently pursued per the timelines established in the California Building Code. Commissioner Do requested that this reference be incorporated into the ordinance.

Commissioner Do asked for clarification of what "substantial changes in circumstances or applicable land use regulations" would prohibit extensions by the Zoning Administrator. The Commission discussed possible criteria, baselines and thresholds. Senior Planner Tune suggested that the ordinance authorize the Commission to identify parameters for the circumstances under which the Zoning Administrator could approve extensions.

Seeing no one in the audience, Chairman Munir dispensed with opening and closing the public hearing and said he would entertain a motion. Commissioner Do made the motion to adopt Resolution RZ-7-11, recommending that the City Council adopt the draft ordinance, as revised. The motion was seconded by Commissioner Cunningham and adopted, 5-0.

# City of Brisbane Planning Commission Agenda Report

RZ-7-11  
11/10/11 Meeting  
Page 2

time was being taken up by extension requests for minor projects that might be better addressed through a more streamlined review process.

**STAFF ANALYSIS:** The proposed revisions are highlighted in the attached Draft Redline Ordinance.

**Expirations**—As shown in the attached Time Limits Table, the terms for which planning and subdivision permits currently remain valid vary. While the Brisbane Municipal Code sets a 1-year term as standard for Use Permits and Variances, 2 years is the term for Design Permits, Planned Development Permits and Tentative Maps.

Given current economic conditions, not even a 2-year term has proven long enough (o line up financings, get a Building Permit issued and commence construction, particularly given the restriction on grading during the 6 months of the year designated as the "wet season" (October 15th through April 15th per Brisbane Municipal Code Sections 15.01.040.41 & 15.01.270). Then there are difficulties in trying to keep up with Building Code changes, since new editions typically come out in 3 to 6 year cycles (while zoning amendments may occur more frequently, enacting ordinances will usually specifically exempt projects that have received planning approvals but have not yet obtained Building Permits).

Staff recommends that a consistent 3-year term be set for planning permits, as well as tentative maps. Three years is the maximum length of time tentative maps may remain valid, if the 2 year minimum standard set by the Subdivision Map Act is lengthened by local ordinance [Government Code Sections 66452.6(a) & 66463.5, attached]. To provide flexibility, the approving body should be authorized to impose a different term if appropriate. Sign Reviews, Secondary Dwelling Unit Permits and the like, because they are approved administratively, would not be addressed by the recommended ordinance.

The goal line for planning permits to reach before expiration currently also varies by permit type. Per BMC Section 17.48.010, Use Permits logically expire "if not used" before the deadline. Design Permits expire "unless prior to such expiration date a building permit for the structure which is the subject of the permit is issued and construction is commenced" per BMC Section 17.42.060.A. BMC Section 17.28.110.A identifies alternative endpoints for Planned Development Permits as "a building permit is issued and construction is commenced on the site or structure constituting the subject of the PD permit, or a certificate of occupancy is issued for such site or structure, or, if no building permit or certificate of occupancy is required, the use or activity authorized by the PD permit is commenced upon the site." In practice, the standard condition of approval usually adopted for Variances specifies that they shall expire "if a building

TO: Planning Commission

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

SUBJECT: **Zoning Text Amendment RZ-7-11** to Amend Brisbane Municipal Code Title 17, Chapter 17.28, PD Planned Development District; Chapter 17.40, Use Permits; Chapter 17.42, Design Permits; Chapter 17.46, Variances; Chapter 17.48, Revocation of Use Permit or Variance; Chapter 17.52, Appeals; Chapter 17.54, Public Hearings; and Chapter 17.56, Administration; Regarding Planning Permit Expirations, Extensions and Revocations, Appeal Periods, Hearing Deadlines and Notification Requirements; City of Brisbane, applicant.

**REQUEST:** Amendments to the Zoning Ordinance are proposed to provide greater consistency regarding expiration of planning permits, to coordinate planning permit approvals with the building permit and subdivision processes, and to eliminate inconsistencies in appeal periods, hearing deadlines and public notice procedures. A new process for approving extensions of Use Permits, Design Permits and Variances through the Zoning Administrator is proposed.

The draft ordinance would also amend Section 16.16.270 of the Subdivision Ordinance to lengthen the standard approval term for tentative maps from 2 years to 3 and the maximum extension period from 1 year to 2.

**RECOMMENDATION:** Recommend that the City Council adopt the draft ordinance, via adoption of Resolution RZ-7-11.

**ENVIRONMENTAL DETERMINATION:** For minor zoning amendments where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to the California Environmental Quality Act (CEQA). This general rule is contained in State CEQA Guidelines Section 15061(b)(3).

**BACKGROUND:** Recent applications that have come before the Planning Commission have raised questions regarding concurrent subdivision and planning permit approvals and the process for granting extensions to such approvals. Given current economic conditions, the number of approved projects that were not able to get started before expiration has been on the increase. It was thought that lengthening and coordinating the initial term for most planning permits would help address these issues. On the one hand, the Commission expressed concerns that it retain the ability to impose new conditions when granting extensions to address changes in technology that may have occurred since a project's original approval. On the other hand, the Commission's

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permit has not yet been issued for the approved project or if a building permit has been issued but allowed to lapse.

Staff recommends that all planning permits involving construction refer to the same points in the development timeline in order to set consistent deadlines. To avoid the issues raised by the project-in-process at 3836 Bayshore Boulevard, staff suggests that planning permits remain valid as long as a building permit is being diligently pursued through the application, issuance and inspection process. Per 2010 California Building Code Section 105.3.2 (attached), building permit applications are deemed abandoned if the permit has not been issued within 180 days, "unless such application has been pursued in good faith;" except that the building official may grant one or more 90-day extensions. Per CBC Section 105.5 (attached), once a building permit is issued, it "shall become invalid" unless work is begun within 180 days or if the work is suspended or abandoned for 180 days. BMC Sections 15.12.130.B & C (attached) have amended the Building Code to set 1-year limits on single-family residential building permits and 2-year limits on all other building permits, with 1-year extensions in either case subject to approval by the building official. Accordingly, staff recommends that planning permits shall expire if application for a Building Permit for the project has not yet been submitted, if the Building Permit application submitted has been abandoned, or if the Building Permit issued for the project becomes invalid.

**Concurrent Terms**--The various permits approved by the Planning Commission for a project should run concurrently, particularly if a Tentative Map is involved. Such an approach would follow the lead set by Government Code Section 65863.9, which specifies that any Planned Development Permit approved by a local agency in conjunction with a Tentative Subdivision Map shall not expire sooner than the approved Tentative Map or any extension thereof, unless specified otherwise. In response to economic downturns, the State occasionally adopts legislation that automatically extends the life of Tentative Parcel Maps, Tentative Subdivision Maps and Vesting Tentative Maps (most recently via AB 208 adopting Government Code Section 66452.23). Although this legislation also extends any related State approvals, it does not extend any other local approvals. In comparison, Government Code Section 65863.9 specifies that any Planned Development Permit approved by a local agency in conjunction with a Tentative Subdivision Map shall not expire sooner than the approved Tentative Map or any extension thereof, unless specified otherwise. Similarly, Development Agreements adopted per Government Code Sections 65864-65869.5 and City Council Resolution No. 88-10 may include a provision that the related planning permit approvals shall have the same expiration date as the Development Agreement.

Accordingly, staff recommends that the Zoning Ordinance be amended to provide that planning permits issued in conjunction with a Tentative Map shall expire concurrently with the Tentative Map, including automatic extensions through the State Subdivision Map Act. The recommended ordinance also notes that a Development Agreement adopted by the City Council

G. 2. 3.

may include a provision requiring that a related planning permit shall have the same expiration date as the Development Agreement.

For Use Permits and Design Permits approved concurrently with Vesting Tentative Maps, please refer to BMC Section 16.42.090.C.

**Extensions**--Currently, the Zoning Ordinance only addresses extensions for Planned Development Permits, Design Permits and Use Permits for Interim Uses in the Baylands. Per BMC Section 17.28.110.B, "Extension of a PD permit is not a matter of right and the approving authority may deny the application or grant the same subject to conditions. No extension shall be granted unless the approving authority is able to make all of the findings required for approval of the original permit." Planned Development Permits may be extended for not more than 36 months. Extensions of Design Permits in BMC Section 17.42.060.B are subject to similar provisions. Regarding Use Permits for Interim Uses in the Baylands, BMC Section 17.41.090 states, "There is no vested right or legal entitlement to an extension and the decision on any application for extension shall be within the sole discretion of the approving authority." Such Use Permits may be extended for up to 5 years by the Zoning Administrator per BMC Section 17.41.080.D, unless the original permit was expressly declared to be nonrenewable or unless the original approving body (Planning Commission or City Council, see BMC Sections 17.41.080.A & B) specified itself as the approving authority for any and all extensions of that permit.

Per Government Code Section 66452.6(e), the Subdivision Ordinance provides for the extension of Tentative Parcel Maps and Tentative Subdivision Maps by the Planning Commission. BMC Section 16.16.270 specifically limits each extension to no more than 12 months. The Government Code generally limits the total length of any extensions to 6 years.

Because State law requires that the City provide for the extension of tentative map approvals, staff recommends that extensions also be provided for concurrent planning permit approvals. If extension applications must be processed under those circumstances, staff recommends that the Commission consider allowing for them for all Use Permits, Variances, Design Permits and Planned Development Permits, so as to be consistent. If the initial term of approval for planning permits is going to be 3 years, it is recommended that the Zoning Ordinance provide for a standard one-time 2-year extension, for a total potential term of 5 years, the maximum currently allowed for Design Permits and Planned Development Permits.

If a project is not able to get underway within 5 years, then it would have to start the process all over. If a project is expected to take more than 5 years to get started from the beginning, then the applicant should propose a Development Agreement with the initial application submittals, allowing a longer timeframe for approvals.

G. 2. 4.

To address the Commission's concerns that providing a process for approving extensions would deprive it of the ability to impose new conditions to address changes in technology that may have occurred since a project's original approval, the current language in BMC Sections 17.28.110.B (regarding Planned Development Permits) and 17.42.060.B (regarding Design Permits) could be included in the Use Permit and Variance chapters as well, to advise applicants that approval of permits extensions is not guaranteed:

*There is no vested right or legal entitlement to an extension, and the decision on any application for extension, including denial or modification of the conditions of approval, shall be within the sole discretion of the approving authority.*

The difficulty with this approach is that providing a process for granting "time extensions" creates an expectation that approval would be routine except under the most unusual of circumstances. To "use the least intrusive rules and regulations consistent with overall governmental needs and State and Federal law" (General Plan Policy 5) and "...implement changes to the zoning ordinance and permitting process to simplify and streamline approval of projects that meet the City's housing goals" (Housing Element Program 11.1.1.a), the extension approval process should be narrowly focused so as to truly be a "time extension", with limited scope and findings, and not a complete reopening of the original project approval. Thus, staff recommends that the language above be deleted and that approval of extensions be based upon findings of no substantial changes in circumstances or applicable land use regulations (see below).

To address the Commission's concern that much of its time is being taken up by requested extensions of various approvals for smaller projects, staff recommends that that duty could be delegated to the Community Development Director acting as Zoning Administrator (see BMC Chapter 17.56) at the time of initial approval of the permit. A procedure similar to that used for wireless telecommunications facilities (see attached Administrative Approval Process Table) is recommended:

*At the time of initial approval, the approving authority may specify that the Use Permit/Variance/Design Permit may be extended by the zoning administrator for a period not to exceed two (2) years or five (5) years from the effective date of the Use Permit/Variance/Design Permit. The application for extension shall be filed prior to the expiration date of the Use Permit/Variance/Design Permit and shall be accompanied by payment of a processing fee in such amount as established from time to time by resolution of the city council.  
If the zoning administrator determines that an extension should be granted, written notice of such intended decision shall be given to all persons shown on the latest adopted tax*

G. 2. 5.

*roll as owning property within three hundred (300) feet from the boundaries of the project site. Notice shall also be posted at each location within the city where agendas for planning commission meetings are routinely posted. The notice shall advise that any person shall have ten (10) days from the date of the mailing of the notice to submit a written request for a hearing on the intended approval of the extension, which shall be held not less than fifteen (15) days from the date of mailing the notice. The notice shall also advise of the right to appeal a decision of the zoning administrator to the planning commission.*

*No extension shall be granted unless a finding is made that there have been no substantial changes in the circumstances or applicable land use regulations under which the findings required for approval of the original permit were made. The zoning administrator may refer any extension application to the planning commission for a decision thereon if the zoning administrator is unable to make the required finding. An application referred by the zoning administrator to the planning commission shall be processed in accordance with the same procedure applicable to an appeal.*

This approach would give the Commission the option of not initially approving a project subject to potential extension by the Zoning Administrator; instead, if the permit were to expire, the applicant would have to reapply for approval by the Commission. Note that this extension process would not be provided for Planned Development Permits, which specifically require a public hearing before the Planning Commission and/or City Council per BMC Section 17.28.110.B. Also note that Government Code Section 66452.6(e) specifically requires that tentative map extensions be approved by either the City Council or Planning Commission.

If the additional duty of approving extensions is assigned to the Zoning Administrator, it should be noted in BMC Section 17.56.030, which lists the specific powers and duties assigned to the Zoning Administrator in Brisbane, as provided by California Government Code Sections 65900 & 65901. For clarity's sake, staff suggests that Chapter 17.56, Administration, be renamed "Zoning Administrator." BMC Section 17.56.040 should be revised to include a line from Section 17.56.100 to require that an appeal of a Zoning Administrator action taken up by a Planning Commissioner shall be subject to the public hearing, scheduling and notification procedures in Chapter 17.54 (see above). Similar language could be used in BMC Section 17.52.020.B regarding appeals of Planning Commission actions by members of the City Council.

**Appeal Periods and the Effective Date of Approval**—Currently, Use Permits, Variances and Zoning Administrator decisions become effective the 7th day after approval according to BMC Sections 17.40.060.C, 17.46.040.B, 17.56.100 & 17.56.11, but this is inconsistent with the 15-day appeal period provided by BMC Section 17.52.020.A. Note that, per the State Subdivision Map Act, actions taken under BMC Title 16, Subdivisions, are subject to a 10-day appeal period (see BMC Sections 16.44.010 & 16.44.020).

G. 2. 6.



Staff recommends that the appeal periods for Use Permit, Variances and Design Permits should be consistent and coordinated with any concurrent subdivision approvals, so that the permits would become effective (upon expiration of the appeal period) at the same time. The 15-day appeal period would apply, except for planning permits approved in conjunction with a tentative map which would be subject to a 10-day appeal period. Note that there is no appeal period applicable to Planned Development Permits or vesting tentative maps, because by ordinance they require the approval of the City Council.

The Municipal Code currently does not clarify how appeal deadlines are interpreted if they fall on a day on which City Hall is closed (weekends or holidays) or when City Hall closes early (Fridays at 1 p.m.). Per BMC Section 1.02.070, "day" means calendar day, midnight to midnight, including weekends and holidays. A 15-day appeal period means that the deadline for submitting the appeal is by close of business on the 15<sup>th</sup> calendar day after the approving body takes action. If the deadline falls upon a weekend or holiday or any other day that the city offices are closed for the entire day, the ordinance should clarify that the deadline is the first "business day" (as defined by BMC Section 1.02.010) thereafter.

**Hearing Notification**—The current provisions regarding how public hearing dates are set and given public notice for Use Permits (BMC Section 17.40.040), Variances (BMC Section 17.46.030) and appeals of decisions by the Planning Commission (BMC Section 17.54.030) and Zoning Administrator (BMC Section 17.56.040) conflict with State law.

According to the Permit Streamlining Act (Government Code Section 65943), the City has 30 days to review planning permit applications to determine whether they are complete. Once deemed complete, an application's environmental status must be determined within another 30 days (State CEQA Guidelines Section 15102). If it is then determined that a project is categorically exempt from the California Environmental Quality Act, the City must act on the application within 60 days [Government Code Section 6590(a)(4)], or 50 days for Tentative Parcel or Subdivision Maps (Government Code Sections 65952.1 & 66452.1). If a Negative Declaration is required, it must be completed and adopted within 180 days from the date the application was deemed complete (State CEQA Guidelines Section 15107), and the City then has 60 days more to act on the application [Government Code Section 65950(a)(3)]. If an Environmental Impact Report (EIR) is required, the City must act on the application within 180 days from certification of the EIR [Government Code Section 65950(a)(1)]. Exceptions to and extensions of these deadlines are provided in Government Code Sections 65943(d), 65950(a)(2) & (b) and 65957.

Government Code Section 65091(a)(4) specifies that when a provision of the Code requires notice of a public hearing to be given, such notice shall be mailed or delivered at least 10 days prior to the hearing to all owners of real property as shown on the latest equalized assessment roll within 300 feet of the real property that is the subject of the hearing. Such public notice is

G. 2. 7.

required for rezonings (Government Code Section 65853), specific types of Zoning Ordinance amendments (Government Code Sections 65850 & 65854), Variances and Use Permits, including the revocation, modification or appeal of any Variance or Use Permit [Government Code Section 65905(a)].

To assure consistency, the chapters on Planned Development Permits, Use Permits, Design Permits and Variances are recommended to include cross references to the updated notification requirements to be provided in Chapter 17.54, Appeals. The section regarding Zoning Administrator appeals would also be updated, consistent with revised Chapter 17.54.

**ATTACHMENTS:**

- Draft Resolution RZ-7-11 with Draft Ordinance
- Time Limits Table
- Government Code Sections 66452.6, 66452.23 & 66463.5
- 2010 California Building Code Sections 105.3.2 & 105.5
- Brisbane Municipal Code Section 15.12.130
- Government Code Sections 65090-92, 65094, 65096, 65850, 65853, 65854, 65856, 65857, 65901 & 65905
- Administrative Approval Process Table
- Draft Redline Ordinance

G. 2. 8.

RESOLUTION NO. RZ-7-11  
draft  
RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BRISBANE  
RECOMMENDING ZONING TEXT AMENDMENT RZ-7-11 TO THE CITY COUNCIL,  
SUCH TEXT AMENDMENTS PERTAINING TO  
CITY OF BRISBANE MUNICIPAL CODE TITLE 17, ZONING;  
CHAPTER 17.28, PD PLANNED DEVELOPMENT DISTRICT; CHAPTER 17.40, USE PERMITS;  
CHAPTER 17.42, DESIGN PERMITS; CHAPTER 17.46, VARIANCES;  
CHAPTER 17.48, REVOCATION OF USE PERMIT OR VARIANCE; CHAPTER 17.52, APPEALS;  
CHAPTER 17.54, PUBLIC HEARINGS; AND CHAPTER 17.56, ADMINISTRATION

WHEREAS, 1994 General Plan Policy 4 calls for the City to "Acknowledge the fundamental rights of citizens to freely act and to use their own property, except to the extent government rules or regulations are necessary for the public health and safety and for protection of the environment;" and

WHEREAS, Policy 5 directs the City to "Use the least intrusive rules and regulations consistent with overall governmental needs and State and Federal law;" and

WHEREAS, Policy 6 requires that the City to "Set clear and definitive standards for all rules and regulations;" and

WHEREAS, 2007-2014 Housing Element Program H.11.a dictates that the City "Continue to evaluate and implement changes to the zoning ordinance and permitting process to simplify and streamline approval of projects that meet the City's housing goals;" and

WHEREAS, amending the Zoning Ordinance to provide clear and consistent procedures regulating planning permit expirations, extensions and revocations, appeal periods, public hearing deadlines and notification requirements would streamline processing, while protecting the public health and safety and the environment, consistent with governmental needs and State law; and

WHEREAS, on November 10, 2011, the Planning Commission held a public hearing on the draft ordinance; and

WHEREAS, the minutes of the Planning Commission meeting of November 10, 2011, are attached and incorporated by reference as part of this resolution; and

WHEREAS, minor zoning amendments where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment are not subject to the California Environmental Quality Act per the general rule is contained in State CEQA Guidelines Section 15061(b)(3).

NOW, THEREFORE, based upon the evidence presented, both written and oral, the Planning Commission of the City of Brisbane hereby RECOMMENDS that the City Council adopt the attached ordinance.

JAMEEL MUNIR  
Chairman

G. 2. 9

I hereby certify that the foregoing Resolution No. RZ-7-11 was duly and regularly passed and adopted by the Brisbane Planning Commission at a regular meeting thereof held on November 10, 2011, by the following roll call vote:

AYES:  
NOES:  
ABSENT:

JOHN SWIECKI  
Community Development Director

G. 2. 10.

DRAFT  
ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF BRISBANE AMENDING CHAPTER 16.16, TENTATIVE MAP PROCEDURES; CHAPTER 17.28, PD PLANNED DEVELOPMENT DISTRICT; CHAPTER 17.42, DESIGN PERMITS; CHAPTER 17.46, VARIANCES; CHAPTER 17.48, REVOCATION OF USE PERMIT OR VARIANCE; CHAPTER 17.52, APPEALS; CHAPTER 17.54, PUBLIC HEARINGS; AND CHAPTER 17.56, ADMINISTRATION; OF THE MUNICIPAL CODE

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

**SECTION 1:** Section 16.16.270 of Chapter 16.16, Tentative Map Procedures, is amended to read as follows:

**16.16.270 – Expiration and time extensions of approved tentative maps.** An approved or conditionally approved tentative map shall expire three (3) years after its approval or conditional approval or as provided by state law. The expiration of the approved or conditionally approved tentative map shall terminate all proceedings and no final map shall be filed without first processing an application for a new tentative map. Upon application by the subdivider to the planning director, filed prior to the expiration of the approved or conditionally approved tentative map, the time within which such map expires may be extended by the planning commission. No extension period shall exceed two (2) years.

**SECTION 2:** Section 17.28.050 of Chapter 17.28, PD Planned Development District, is amended to read as follows:

**17.28.050 Public hearing by planning commission-Notice.** The planning commission shall conduct a public hearing on the application for a planned development permit. Notice of such hearing shall be given as set forth in Chapter 17.54.

**SECTION 3:** Section 17.28.110 of Chapter 17.28, PD Planned Development District, is amended to read as follows:

**Section 17.28.110 – Expiration of PD permit—Extensions.** A. Planned Development Permits shall expire three (3) years (unless a different period of time is designated by the approving body) from their effective date at the end of the appeal period or, if appealed, upon final approval, if application for a Building Permit for the project has not yet been submitted, if the Building Permit application submitted has been abandoned, or if the Building Permit issued for the project becomes invalid; except that a Planned Development Permit issued in conjunction with a Tentative Map shall expire concurrently with the Tentative Map, including automatic extensions through the State Subdivision Map Act. Subject to specific provision, a Development Agreement adopted by the City Council may require that a related Planned Development Permit shall have the same expiration date as the Development Agreement.

G. 2.11.

B. A PD permit may be extended for a period or periods of time not exceeding two (2) years. The application for extension shall be filed prior to the expiration date of the permit and shall be accompanied by payment of a processing fee in such amount as established from time to time by resolution of the city council. A public hearing shall be conducted on the application for extension and notice thereof shall be given in the same manner as prescribed in Section 17.28.050 of this chapter. No extension shall be granted unless the approving authority is able to make all of the findings required for approval of the original permit. The application for extension may be acted upon by the planning commission unless, under the terms of the PD permit, such extension requires approval by the city council or the matter is appealed to the city council pursuant to Section 17.28.150.

**SECTION 4:** Section 17.40.040 of Chapter 17.40, Use Permits, is amended to read as follows:

**17.40.040 Public hearing by planning commission-Notice.** The planning commission shall conduct a public hearing on the application for a use permit. Notice of such hearing shall be given as set forth in Chapter 17.54.

**SECTION 5:** Section 17.40.060 of Chapter 17.40, Use Permits, is amended to read as follows:

**17.40.060 Granting.** A. In considering an application, the planning commission shall consider and give due regard to the nature and condition of all adjacent uses and structures, and to general and specific plans for the area in question.

B. The planning commission shall determine whether or not the establishment, maintenance or operation of the use applied for will, under the circumstances of the particular case, be detrimental to the health, safety, comfort and general welfare of the persons residing or working in the neighborhood of such proposed use, or whether it will be injurious or detrimental to property and improvements in the neighborhood or the general welfare of the city. If the planning commission finds that the aforementioned conditions will not result from the particular use applied for, it may grant the use permit.

C. A use permit shall be effective fifteen (15) days following the date on which the use permit was granted by the zoning administrator or planning commission, or, if appealed pursuant to Chapter 17.52 of this title, upon final approval. Use permits approved in conjunction with a tentative map shall be subject to a ten (10) day appeal period pursuant to Chapter 16.44 of Title 16, Subdivisions.

**SECTION 6:** Section 17.40.080 is added to Chapter 17.40, Use Permits, to read as follows:

**17.40.080 Expiration.** Use permits shall expire three (3) years (unless a different period of time is designated by the approving body) from their effective date at the end of the appeal period or, if appealed, upon final approval, if the approved use has not yet been established; except that a use permit issued in conjunction with a variance, design permit, planned development permit and/or tentative map shall expire concurrently with the variance, design permit, planned development permit and/or tentative map, including any automatic extensions thereof through

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the State Subdivision Map Act. Subject to specific provision, a development agreement adopted by the city council may require that a related use permit shall have the same expiration date as the development agreement.

**SECTION 7:** Section 17.40.090 is added to Chapter 17.40, Use Permits, to read as follows:

**17.40.090 Extension.** A. At the time of initial approval, the approving authority may specify that the use permit may be extended by the zoning administrator for a period not to exceed two (2) years or five (5) years from the effective date of the Use Permit. The application for extension shall be filed prior to the expiration date of the Use Permit and shall be accompanied by payment of a processing fee in such amount as established from time to time by resolution of the city council.

B. If the zoning administrator determines that an extension should be granted, written notice of such intended decision shall be given to all persons shown on the latest adopted tax roll as owning property within three hundred (300) feet from the boundaries of the project site. Notice shall also be posted at each location within the city where agendas for planning commission meetings are routinely posted. The notice shall advise that any person shall have ten (10) days from the date of the mailing of the notice to submit a written request for a hearing on the intended approval of the extension, which shall be held not less than fifteen (15) days from the date of mailing the notice. The notice shall also advise of the right to appeal a decision of the zoning administrator to the planning commission.

C. No extension shall be granted unless a finding is made that there have been no substantial changes in the circumstances or applicable land use regulations under which the findings required for approval of the original permit were made. The zoning administrator may refer any extension application to the planning commission for a decision thereon if the zoning administrator is unable to make the required finding. An application referred by the zoning administrator to the planning commission shall be processed in accordance with the same procedure applicable to an appeal.

D. An extension of a permit approved concurrently with a vesting tentative map may be granted subject to modified conditions of approval or denied, only if the vested right granted by Section 16.42.090.A is not violated.

**SECTION 8:** Section 17.42.030 of Chapter 17.42, Design Permits, is amended to read as follows:

**17.42.030 Public hearing by planning commission-Notice.** The planning commission shall conduct a public hearing on the application for a design permit. Notice of such hearing shall be given as set forth in Chapter 17.54.

**SECTION 9:** Section 17.42.050 of Chapter 17.42, Design Permits, is amended to read as follows:

**17.42.050 Action by planning commission.** A. The planning commission may either grant or deny the application for design permit and may grant the permit subject to such conditions as the

planning commission deems necessary or appropriate in order to make the findings prescribed by Section 17.42.040.

B. Design permits shall become effective fifteen (15) days following the date on which the design permit was granted by the zoning administrator or planning commission, or, if appealed pursuant to Chapter 17.52 of this title, upon final approval. design permits approved in conjunction with a tentative map shall be subject to a ten (10) day appeal period pursuant to Chapter 16.44 of Title 16, Subdivisions.

**SECTION 10:** Section 17.42.060 of Chapter 17.42, Design Permits, is amended to read as follows:

**17.42.060 – Expiration of design permit** Design permits shall expire three (3) years (unless a different period of time is designated by the approving body) from their effective date at the end of the appeal period or, if appealed, upon final approval, if application for a building permit for the project has not yet been submitted, if the building permit application submitted has been abandoned, or if the building permit issued for the project becomes invalid; except that a design permit issued in conjunction with a tentative map shall expire concurrently with the tentative map, including automatic extensions through the State Subdivision Map Act. Subject to specific provision, a development agreement adopted by the city council may require that a related design permit shall have the same expiration date as the development agreement.

**SECTION 11:** Section 17.42.065 is added to Chapter 17.42, Design Permits, to read as follows:

**17.42.065 – Extensions.** A. At the time of initial approval, the approving authority may specify that the design permit may be extended by the zoning administrator for a period not to exceed two (2) years or five (5) years from the effective date of the design permit. The application for extension shall be filed prior to the expiration date of the design permit and shall be accompanied by payment of a processing fee in such amount as established from time to time by resolution of the city council.

B. If the zoning administrator determines that an extension should be granted, written notice of such intended decision shall be given to all persons shown on the latest adopted tax roll as owning property within three hundred (300) feet from the boundaries of the project site. Notice shall also be posted at each location within the city where agendas for planning commission meetings are routinely posted. The notice shall advise that any person shall have ten (10) days from the date of the mailing of the notice to submit a written request for a hearing on the intended approval of the extension, which shall be held not less than fifteen (15) days from the date of mailing the notice. The notice shall also advise of the right to appeal a decision of the zoning administrator to the planning commission.

C. No extension shall be granted unless a finding is made that there have been no substantial changes in the circumstances or applicable land use regulations under which the findings required for approval of the original permit were made. The zoning administrator may refer any extension application to the planning commission for a decision thereon if the zoning administrator is unable to make the required finding. An application referred by the zoning administrator to the planning commission shall be processed in accordance with the same procedure applicable to an appeal.

G. 2-14

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D. An extension of a design permit approved concurrently with a vesting tentative map may be granted subject to modified conditions of approval or denied, only if the vested right granted by Section 16.42.090.A is not violated.

**SECTION 12:** Section 17.46.030 of Chapter 17.46, Variances, is amended to read as follows:

**17.46.030 Public hearing by planning commission-Notice.** The planning commission shall conduct a public hearing on the application for a variance. Notice of such hearing shall be given as set forth in Chapter 17.54.

**SECTION 13:** Section 17.46.040 of Chapter 17.46, Variances, is amended to read as follows:

**17.46.040 Granting.** A. After the conclusion of the public hearing or continuations thereof, the planning commission or zoning administrator may grant or deny a variance from the strict application of the regulations established by this chapter. The commission or zoning administrator may impose any reasonable conditions deemed necessary to achieve the purpose of this title.

B. Variances shall become effective fifteen (15) days following the date on which the variance was granted by the zoning administrator or planning commission, or, if appealed pursuant to Chapter 17.52 of this title, upon final approval. Variances approved in conjunction with a tentative map shall be subject to a ten (10) day appeal period pursuant to Chapter 16.44 of Title 16, Subdivisions.

**SECTION 14:** Section 17.46.060 is added to Chapter 17.46, Variances, to read as follows:

**17.46.060 Expiration.** Variances shall expire three (3) years (unless a different period of time is designated by the approving body) from their effective date at the end of the appeal period or, if appealed, upon final approval, if application for a building permit for the project has not yet been submitted, if the building permit application submitted has been abandoned, or if the building permit issued for the project becomes invalid; except that a variance issued in conjunction with a tentative map shall expire concurrently with the tentative map, including automatic extensions through the State Subdivision Map Act. Subject to specific provision, a development agreement adopted by the city council may require that a related variance shall have the same expiration date as the development agreement.

**SECTION 15:** Section 17.46.070 is added to Chapter 17.46, Variances, to read as follows:

**17.46.070 Extension.** A. At the time of initial approval, the approving authority may specify that the variance may be extended by the zoning administrator for a period not to exceed two (2) years or five (5) years from the effective date of the variance. The application for extension shall be filed prior to the expiration date of the variance and shall be accompanied by payment of a processing fee in such amount as established from time to time by resolution of the city council.

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B. If the zoning administrator determines that an extension should be granted, written notice of such intended decision shall be given to all persons shown on the latest adopted tax roll as owning property within three hundred (300) feet from the boundaries of the project site. Notice shall also be posted at each location within the city where agendas for planning commission meetings are routinely posted. The notice shall advise that any person shall have ten (10) days from the date of the mailing of the notice to submit a written request for a hearing on the intended approval of the extension, which shall be held not less than fifteen (15) days from the date of mailing the notice. The notice shall also advise of the right to appeal a decision of the zoning administrator to the planning commission.

C. No extension shall be granted unless a finding is made that there have been no substantial changes in the circumstances or applicable land use regulations under which the findings required for approval of the original permit were made. The zoning administrator may refer any extension application to the planning commission for a decision thereon if the zoning administrator is unable to make the required finding. An application referred by the zoning administrator to the planning commission shall be processed in accordance with the same procedure applicable to an appeal.

D. An extension of a variance approved concurrently with a vesting tentative map may be granted subject to modified conditions of approval or denied, only if the vested right granted by Section 16.42.090.A is not violated.

**SECTION 16:** Section 17.48.010 of Chapter 17.48, Revocation of Use Permit or Variance, is repealed in its entirety.

**SECTION 17:** Section 17.52.005 of Chapter 17.52, Appeals, is amended to read as follows:

**17.52.005 Appeal from planning director or zoning administrator.** Any person may appeal to the planning commission any order, requirement, decision, determination or other action of the planning director or zoning administrator with regard to any matter arising under this title, including any determination concerning the contents, subject matter or completeness of any application, any determination concerning which permit or other approval is required, and any determination pursuant to Sections 17.02.080 or 17.02.090. Any such appeal shall be in writing and shall be filed with the planning department within fifteen (15) days after the action complained of. The appeal shall be accompanied by a fee, as set by the city council, and shall clearly state the reason for appeal. Upon receipt of such an appeal, the planning department, acting under the direction of the planning director, shall bring the appeal before the planning commission within thirty (30) days and shall notify the appellant and (if different) the applicant of the date and time of the planning commission meeting at which the appeal will be heard, in addition to the notice required per Section 17.54.030. The planning commission shall proceed to hear and determine the appeal at the same meeting or at such later meeting as it shall determine, and in connection therewith may continue the same from time to time.

**SECTION 18:** Section 17.52.020 of Chapter 17.52, Appeals, is amended to read as follows:

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**17.52.020 – Method.** A. An appeal of a planning commission action shall be in writing and filed with the city clerk within fifteen (15) days after the final action of the planning commission. The appeal shall be accompanied by a fee, as set by the city council, and shall clearly state the reason for appeal. Upon receipt of such appeal, the city clerk shall notify the planning commission and shall set a time, within thirty (30) days after the receipt of such appeal, for a public hearing by the city council on such appeal. Notice of such hearing shall be given as set forth in Chapter 17.54.

B. In addition to the above, if any two (2) members of the city council within the fifteen (15) day period request in writing to the city clerk that the action of the planning commission be considered by the council as an appeal, the clerk shall notify the planning commission and the applicant and shall set the matter for hearing before the council at the earliest available date and cause notice of such hearing to be given as set forth in Chapter 17.54. The mere fact that an appeal is made by two (2) members of the city council, as provided in this subsection, does not of itself require disqualification of either such councilmember from hearing and/or deciding the appeal.

C. If the deadline for filing any appeal specified in this title falls upon a Saturday, Sunday, holiday or any other day on which the city offices are closed for the entire day for any reason, the deadline shall be by close of business on the first business day thereafter.

**SECTION 19:** Section 17.54.030 of Chapter 17.54, Public Hearings, is amended to read as follows:

**17.54.030 – Use Permits, variances, design permits and planned development permits—Notice requirements.**

A. Whenever an application for a variance, or a use permit or design permit or planned development permit, for revocation or modification of same or an appeal from the action taken thereon, is submitted to the body or person charged with conducting a public hearing thereon, notice of the public hearing shall be given not less than ten (10) days nor more than thirty (30) days prior to the date of the hearing by mail to the applicant and to all persons whose names appear on the latest available assessment roll of the county as owning property within three hundred (300) feet of the boundaries of the site which is the subject of the permit application. Notice of the public hearing shall also be posted at each location within the city where agendas for planning commission meetings are routinely posted, or by both publication at least once in a newspaper of general circulation, published and circulated in the city, and by posting the notice in at least three (3) conspicuous places close to the property affected.

B. The notice shall include the date, time, and place of a public hearing, the identity of the hearing body or officer, a general explanation of the matter to be considered, and a general description, in text or by diagram, of the location of the real property, if any, that is the subject of the hearing.

**SECTION 20:** Chapter 17.56, Administration, is amended to read as follows:

#### Chapter 17.56

#### ZONING ADMINISTRATOR

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**17.56.010 – Zoning administrator—Function created.** There is created the function of zoning administrator which shall be carried out by the planning director.

**17.56.020 – Zoning administrator—Powers and duties.** The zoning administrator shall have all the powers and duties of a board of zoning adjustment as set forth in Section 65900 through 65909 of Article 3 of Chapter 4 of Title 7 of the Government Code of the state.

**17.56.030 – Zoning administrator—Action on applications.** A. Except as otherwise provided in this chapter, the zoning administrator shall hear and decide the following:

1. Applications for zoning conformance;
2. Applications for variances;
3. Applications for minor modifications;
4. Applications for certain sign permits, in accordance with the provisions of Chapter 17.36 of this title;
5. Applications for administrative permits for wireless telecommunication facilities, in accordance with the provisions of Section 17.32.032 of this title;
6. Applications for administrative permits for solar energy systems, in accordance with the provisions of Section 17.32.060.C;
7. Applications for accessibility improvement permits, in accordance with the provisions of Sections 17.32.060.D, 17.32.070.A.1.f and 17.32.080;
8. Applications for large family day care homes, per State Health and Welfare Code Sections 1597.46(a)(3) and 1597.465; and
9. Applications for amendments or modifications to a design permit, per Section 17.42.070.

10. Applications for extension of use permit, variance or design permit approvals as provided by the conditions of the original approval.

B. In connection with the applications provided for in this section, the zoning administrator shall have all the duties and responsibilities set forth in this title for the planning commission.

**17.56.040 – Zoning administrator-Reporting decisions to planning commission.** All decisions of the zoning administrator, except decisions relating to the granting or denial of a sign permit pursuant to Chapter 17.36, shall be reported to the planning commission prior to the expiration of the appeal period. If any member of the planning commission desires to appeal the decision it shall be considered appealed. The secretary to the planning commission shall set the matter for hearing before the planning commission at the earliest available date and cause notice of such hearing to be given as set forth in Chapter 17.54.

**17.56.050 – Zoning administrator-Variances.** A. The zoning administrator shall use the procedure and make findings required by the provisions of Chapter 17.46 prior to granting a variance.

B. The zoning administrator may refer any applications for a variance directly to the planning commission without holding a hearing or without making a decision thereon, and the planning commission shall then proceed to hear such applications as provided in this title.

**17.56.060 – Zoning administrator—Zoning conformance.** Zoning conformance shall be determined in conjunction with and as a part of, building permits and shall be so indicated by the

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zoning administrator if it has been determined that any proposed construction is in conformity with the regulations for the district in which the construction is to be located. No building permit shall be issued until the zoning conformance portion thereof has been completed by the zoning administrator or his authorized representative.

**17.56.070 – Minor modifications.** A. Defined. For the purpose of this section, "minor modifications" means:

- 1. A maximum of twenty percent (20%) reduction in lot area, building coverage and yard requirements;
- 2. A maximum of twenty percent (20%) increase in the height limit in fence, wall and hedge requirements;
- B. Granting. The zoning administrator shall use the procedure and make the findings required by the provisions of Chapter 17.46 prior to granting a minor modification; provided, however, a public hearing shall not be required.
- C. Notices. Notice of approval of minor modifications approved by the zoning administrator shall be mailed to owners of property within seventy-five (75) feet of the exterior boundaries of the subject property. The property owners shall be informed of their right of appeal.
- D. Fees. Filing fees for minor modifications shall be as set by the city council.

**17.56.080 -- Effective date and appeals.** Decisions of the zoning administrator shall become effective fifteen (15) days following the date on which the approval was granted, or, if appealed pursuant to Chapter 17.52 of this title, upon final approval.

**SECTION 21:** Where a use permit, design permit, building permit or variance approval has been issued through final action by the City prior to the effective date of this Ordinance, the holder of such permit or approval 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 22:** 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 23:** 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 \_\_\_\_\_, 2011, by the following vote:

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AYES:  
NOES:  
ABSENT:  
ABSTAIN:

ATTEST:

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

APPROVED AS TO FORM:

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

\_\_\_\_\_  
Mayor

DRAFT "REDLINE" ORDINANCE

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 16

SUBDIVISIONS

Chapter 16.16

TENTATIVE MAP PROCEDURES

16.16.270 - *Expiration and* Time extensions of approved tentative maps. An approved or conditionally approved tentative map shall expire ~~thirty (30)~~ *thirty (30)* days ~~twelve (12)~~ months after its approval or conditional approval *as provided by state law*. The expiration of the approved or conditionally approved tentative map shall terminate all proceedings and no final map shall be filed without first processing an application for a new tentative map. Upon application by the subdivider to the planning director, filed prior to the expiration of the approved or conditionally approved tentative map, the time within which such map expires may be extended by the planning commission. No extension period shall exceed ~~two (2)~~ *twelve (12)* months.

Title 17

ZONING

Chapter 17.28

PD PLANNED DEVELOPMENT DISTRICT

17.28.050 Public hearing by planning commission-Notice. *The planning commission shall conduct a public hearing on the application for a Planned Development Permit. Notice of such hearing shall be given as set forth in Chapter 17.54. The planning commission shall conduct a public hearing on the application for PD permit. Notice of the public hearing shall be given not less than ten (10) days not more than thirty (30) days prior to the date of the hearing by mailing postage prepaid a notice of the time and place of the hearing to the applicant and to all persons whose names appear on the latest available assessment roll of the county as owning property within three hundred (300) feet of the boundaries of the site which is the subject of the PD permit application. Notice of this public hearing shall also be posted at each location within the city where agendas for planning commission meetings are routinely posted.*

Section 17.28.110 - Expiration of PD permit-Extensions

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A. *Planned Development Permits shall expire three (3) years (unless a different period of time is designated by the approving body) from their effective date at the end of the appeal period or, if appealed, upon final approval. If application for a Building Permit for the project has not yet been submitted, if the Building Permit application submitted has been abandoned, or if the Building Permit issued for the project becomes invalid, except that a Planned Development Permit issued in conjunction with a Tentative Map shall expire concurrently with the Tentative Map, including automatic extensions through the State Subdivision Map Act. Subject to specific provision, a Development Agreement adopted by the City Council may require that a related Planned Development Permit shall have the same expiration date as the Development Agreement.*

A. PD permit granted pursuant to this chapter shall expire twenty-four (24) months from the date on which such permit became effective, unless prior to such expiration date a building permit is issued and construction is commenced on the site or structure constituting the subject of the PD permit, or a certificate of occupancy is issued for such site or structure, or, if no building permit or certificate of occupancy is required, the use of activity authorized by the PD permit is commenced upon the site.

B. A PD permit may be extended for a period or periods of time not exceeding two (2) years thirty-six (36) months. The application for extension shall be filed prior to the expiration date of the permit and shall be accompanied by payment of a processing fee in such amount as established from time to time by resolution of the city council. A public hearing shall be conducted on the application for extension and notice thereof shall be given in the same manner as prescribed in Section 17.28.050 of this chapter. Extension of a PD permit is not a matter of right and the approving authority may deny the application of a PD permit to the same subject to conditions. No extension shall be granted unless the approving authority is able to make all of the findings required for approval of the original permit. The application for extension may be acted upon by the planning commission unless, under the terms of the PD permit, such extension requires approval by the city council or the matter is appealed to the city council pursuant to Section 17.28.150.

Chapter 17.40

USE PERMITS

17.40.040 Application- Public hearing-Notice. *Public hearing by planning commission-Notice. The planning commission shall conduct a public hearing on the application for a Use Permit. Upon receipt of an application for a use permit, the secretary of the planning commission shall set a date for a public hearing on such application. Each hearing shall be held within forty-five (45) days after the filing of the application. Notice of such hearing shall be given as set forth in Chapter 17.54.*

17.40.060.C. A use permit shall be effective fifteen (15) days following the date on which the Use Permit was granted by the Zoning Administrator or Planning Commission, or, if appealed pursuant to Chapter 17.52 of this title, upon final approval the seventh day after planning commission approval unless the action is appealed to the city council, in which case the permit shall not be effective until a final decision on the appeal has been made by the city council. Use

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Permits approved in conjunction with a Tentative Map shall be subject to a ten (10) day appeal period pursuant to Chapter 16.44 of Title 16, Subdivisions.

17.40.080 Expiration. Use Permits shall expire three (3) years unless a different period of time is designated by the approving body from their effective date at the end of the appeal period or, if appealed, upon final approval, at the approved use has not yet been established, except that a Use Permit issued in conjunction with a Variance, Design Permit, Planned Development Permit and/or Tentative Map shall expire concurrently with the Variance, Design Permit, Planned Development Permit or Tentative Map, including any automatic extensions thereof through the State Subdivision Maps Act. Subject to specific provisions, a Development Agreement adopted by the City Council may require that a related Use Permit shall have the same expiration date as the Development Agreement.

17.40.090 Extension. 1. At the time of initial approval, the approving authority may specify that the use permit may be extended by the zoning administrator for a period not to exceed two (2) years or five (5) years from the effective date of the Use Permit. The application for extension shall be filed prior to the expiration date of the Use Permit and shall be accompanied by payment of a processing fee in such amount as established from time to time by resolution of the city council.

2. If the zoning administrator determines that an extension should be granted, written notice of such intended decision shall be given to all persons shown on the latest adopted tax roll as owning property within three hundred (300) feet from the boundaries of the project site. Notice shall also be posted at each location within the city where agendas for planning commission meetings are routinely posted. The notice shall advise that any person shall have ten (10) days from the date of the mailing of the notice to submit a written request for a hearing on the intended approval of the extension, which shall be held not less than fifteen (15) days from the date of mailing the notice. The notice shall also advise of the right to appeal a decision of the zoning administrator to the planning commission.

3. No extension shall be granted unless a finding is made that there have been no substantial changes in the circumstances or applicable land use regulations under which the findings required for approval of the original permit were made. The zoning administrator may refer any extension application to the planning commission for a decision thereon if the zoning administrator is unable to make the required finding. An application referred by the zoning administrator to the planning commission shall be processed in accordance with the same procedure applicable to an appeal.

4. An extension of a use permit approval concurrently with a vesting tentative map may be granted subject to modified conditions of approval or denied, only if the vested right granted by Section 16.42.090(A) is not violated.

#### Chapter 17.42

#### DESIGN PERMITS

17.42.030 Public hearing by planning commission-Notice. The planning commission shall conduct a public hearing on the application for a Design Permit. Notice of such hearing shall be

given as set forth in Chapter 17.54 not less than ten (10) days, not more than thirty (30) days prior to the date of the hearing, by mailing postage prepaid a notice of the time and place of the hearing to the applicant and to all persons whose names appear on the latest available assessment roll of the county as owning property within three hundred (300) feet of the boundaries of the site, which is the subject of the permit application. Notice of the public hearing shall also be posted at each location within the city where agendas for planning commission meetings are routinely posted.

17.42.050 B. Design Permits shall become effective fifteen (15) days following the date on which the Design Permit was granted by the Zoning Administrator or Planning Commission, or if appealed pursuant to Chapter 17.52 of this title, upon final approval. Design Permits approved in conjunction with a Tentative Map shall be subject to a ten (10) day appeal period pursuant to Chapter 16.44 of Title 16, Subdivisions. The design permit shall become effective upon the expiration of fifteen (15) days following the date on which the design permit was granted by the planning commission, unless an appeal has been taken on to the city council pursuant to Chapter 17.52 of this title.

17.42.060 - Expiration of design permit - Extensions

A. Design Permits shall expire three (3) years unless a different period of time is designated by the approving body from their effective date at the end of the appeal period or, if appealed, upon final approval, if application for a Building Permit for the project has not yet been submitted, if the Building Permit application submitted has been abandoned, or if the Building Permit issued for the project becomes invalid, except that a Design Permit issued in conjunction with a Tentative Map shall expire concurrently with the Tentative Map, including automatic extensions through the State Subdivision Maps Act. Subject to specific provision, a Development Agreement adopted by the City Council may require that a related Design Permit shall have the same expiration date as the Development Agreement. A design permit granted pursuant to this chapter shall expire twenty-four (24) months from the date on which such permit became effective, unless prior to such expiration date a building permit for the structure, which is the subject to the permit is issued and construction is commenced.

B. A design permit may be extended by the planning commission for a period or periods of time not exceeding thirty-six (36) months. The application for extension shall be filed prior to the expiration date of the permit and shall be accompanied by payment of a processing fee in such amount as established from time to time by resolution of the city council. A public hearing shall be conducted on the application for extension and notice thereof shall be given in the same manner as prescribed in Section 17.42.030 of this chapter. Extension of a design permit is not a matter of right and the approving authority may deny the application or grant the same, subject to conditions.

17.42.065 - Extensions. A. At the time of initial approval, the approving authority may specify that the design permit may be extended by the zoning administrator for a period not to exceed two (2) years or five (5) years from the effective date of the design permit. The application for extension shall be filed prior to the expiration date of the design permit and shall be accompanied by payment of a processing fee in such amount as established from time to time by resolution of the city council.

B. If the zoning administrator determines that an extension should be granted, written notice of such intended decision shall be given to all persons shown on the latest adopted map or zoning property within three hundred (300) feet from the boundaries of the project site. Notice shall also be posted at each location within the city where agendas for planning commission meetings are routinely posted. The notice shall advise that any person shall have ten (10) days from the date of the mailing of the notice to submit a written request for a hearing on the intended approval of the extension, which shall be held not less than fifteen (15) days from the date of mailing the notice. The notice shall also advise of the right to appeal a decision of the zoning administrator to the planning commission.

C. No extension shall be granted unless a finding is made that there have been no substantial changes in the circumstances or applicable land use regulations under which the findings required for approval of the original permit were made. The zoning administrator may refer any extension application to the planning commission for a decision thereon if the zoning administrator is unable to make the required findings. An application referred by the zoning administrator to the planning commission shall be processed in accordance with the same procedure applicable to an appeal.

D. An extension of a design permit approved concurrently with a vesting tentative map may be granted subject to modified conditions of approval or denied only if the vested right granted by Section 16.42.090, 1 is not violated.

#### Chapter 17.46

#### VARIANCES

17.46.030 Application—Hearing date—Notice. Public hearing by planning commission—Notice. The planning commission shall conduct a public hearing on the application for a Variance. Upon receipt of an application for a variance, the secretary of the planning commission shall set a date for a public hearing on such application, such hearing shall be held within forty-five (45) days after the filing of the application. Notice of such hearing shall be given as set forth in Chapter 17.54.

17.46.040.B. Variances shall become effective fifteen (15) days following the date on which the Variance was granted by the Zoning Administrator or Planning Commission, or, if approved pursuant to Chapter 17.52 of this title, upon final approval. Variances approved in conjunction with a Tentative Map shall be subject to a ten (10) day appeal period pursuant to Chapter 16.44 of Title 16, Subdivisions. A variance shall be effective the seventh day after planning commission or zoning administrator approval unless the action is appealed to the city council or in the case of the zoning administrator approval to the planning commission, in which case the variance shall not be effective until final action upon the appeal.

17.46.060 Expiration. Variances shall expire three (3) years (unless a different period of time is designated by the approving body) from their effective date of the end of the appeal period or, if appealed, upon final approval, if application for a Building Permit for the project has not yet been submitted, if the Building Permit application submitted has been abandoned, or if the Building Permit issued for the project becomes invalid, except that a Variance issued in

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conjunction with a Tentative Map shall expire concurrently with the Tentative Map, including automatic extensions through the State Subdivision Map Act. Subject to specific provision, a Development Agreement adopted by the City Council may require that a related Variance shall have the same expiration date as the Development Agreement.

17.46.070 Extension. At the time of initial approval, the approving authority may specify that the variance may be extended by the zoning administrator for a period not to exceed two (2) years or five (5) years from the effective date of the variance. The application for extension shall be filed prior to the expiration date of the variance and shall be accompanied by payment of a processing fee in such amount as established from time to time by resolution of the city council.

B. If the zoning administrator determines that an extension should be granted, written notice of such intended decision shall be given to all persons shown on the latest adopted map or zoning property within three hundred (300) feet from the boundaries of the project site. Notice shall also be posted at each location within the city where agendas for planning commission meetings are routinely posted. The notice shall advise that any person shall have ten (10) days from the date of the mailing of the notice to submit a written request for a hearing on the intended approval of the extension, which shall be held not less than fifteen (15) days from the date of mailing the notice. The notice shall also advise of the right to appeal a decision of the zoning administrator to the planning commission.

C. No extension shall be granted unless a finding is made that there have been no substantial changes in the circumstances or applicable land use regulations under which the findings required for approval of the original permit were made. The zoning administrator may refer any extension application to the planning commission for a decision thereon if the zoning administrator is unable to make the required findings. An application referred by the zoning administrator to the planning commission shall be processed in accordance with the same procedure applicable to an appeal.

D. An extension of a variance approved concurrently with a vesting tentative map may be granted subject to modified conditions of approval or denied, so long as the vested right granted by Section 16.42.090, 1 is not violated.

#### Chapter 17.48

#### REVOCACTION OF USE PERMIT OR VARIANCE

17.48.010—Permit or variance null and void when—Any use permit or variance shall be null and void if not used within one (1) year from the date of the approval thereof or within any different period of time, if so designated by the planning commission or city council, in addition, any use permit or variance shall be null and void if a subsequent use permit or variance is approved for the same property and dealing with the same subject.

#### Chapter 17.52

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APPEALS

17.52.005 Appeal from planning director or zoning administrator.

Any person may appeal to the planning director or zoning administrator with regard to any determination or other action of the planning director or zoning administrator concerning the contents, subject matter or completeness of any application, any determination concerning which permit or other approval is required, and any determination pursuant to Sections 17.02.080 or 17.02.090. Any such appeal shall be in writing and shall be filed with the planning department within fifteen (15) days after the action complained of. The appeal shall be accompanied by a fee, as set by the city council, and shall clearly state the reason for appeal. Upon receipt of such an appeal, the planning department, acting under the direction of the planning director, shall bring the appeal before the planning commission within thirty (30) days and shall notify the appellant and (if different) the applicant of the date and time of the planning commission meeting at which the appeal will be heard. In addition to the notice required per Section 17.54.050, ~~the~~ other notice ~~shall be given, except that additional notice may be required by state or other law.~~ The planning commission shall proceed to hear and determine the appeal at the same meeting or at such later meeting as it shall determine, and in connection therewith may continue the same from time to time.

17.52.020 - Method

A. An appeal of a planning commission action shall be in writing and filed with the city clerk within fifteen (15) days after the final action of the planning commission. The appeal shall be accompanied by a fee, as set by the city council, and shall clearly state the reason for appeal. Upon receipt of such appeal, the city clerk shall notify the planning commission and shall set a time, within thirty (30) days after the receipt of such appeal, for a public hearing by the city council on such appeal. Notice of such hearing shall be given as set forth in Chapter 17.54. B. In addition to the above, if any two (2) members of the city council within the fifteen (15) day period request in writing to the city clerk that the action of the planning commission be considered by the council as an appeal, the clerk shall notify the planning commission and the applicant and shall place the matter for public hearing on the next available event agenda set the matter for hearing before the council at the earliest available date and cause notice of such hearing to be given as set forth in Chapter 17.54. The mere fact that an appeal is made by two (2) members of the city council, as provided in this subsection, does not of itself require disqualification of either such councilmember from hearing and/or deciding the appeal. C. If the deadline for filing any appeal specified in this title falls upon a Saturday, Sunday, holiday or any other day on which the city offices are closed for the entire day for any reason, the deadline shall be by close of business on the first business day thereafter.

Chapter 17.54

PUBLIC HEARINGS

17.54.030 - Use Permits, variances, design permits and planned development permits and appeals. Notice requirements.

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A. Whenever an application for a variance, or a conditional use permit or design permit or planned development other permit, for revocation or modification of same or an appeal from the action taken thereon, is submitted to the body or person charged with conducting a public hearing thereon, notice of the public hearing shall be given not less than ten (10) days nor more than thirty (30) days prior to the date of the hearing by mail to the applicant and to all persons whose names appear on the latest available assessment roll of the county as owning property within three hundred (300) feet of the boundaries of the site which is the subject of the permit application. Notice of the public hearing shall also be posted at each location within the city where agendas for planning commission meetings are routinely posted, notice of hearing shall be given by notice through the United States mail, with postage prepaid using addresses from the last equalized assessment roll, or alternatively, from such other records as the assessor or tax collector ascertain more recent addresses to the opinion of the body; or by both publication at least once in a newspaper of general circulation, published and circulated in the city, and by posting the notice in at least three (3) conspicuous places close to the property affected.

B. When mailed, notice is used, notice shall be given to all owners of property within one hundred (100) feet of the exterior boundaries of the property for which an application is being heard. The notices shall be mailed not less than ten (10) or more than thirty (30) days before the scheduled hearing.

C. When posted, notice is used, posting shall be on utility poles on both sides of the property frontage and across the street from the subject property.

D. Notices specified in subsections B and C shall specify the type and magnitude of the application to be considered, the place where copies of the application may be reviewed, the time, date and place of the hearing and the right to appear and be heard. The notice shall include the date, time, and place of a public hearing, the identity of the hearing body or officer, a general explanation of the matter to be considered, and a general description, in text or by diagram, of the location of the real property, if any, that is the subject of the hearing.

Chapter 17.56

ZONING ADMINISTRATION

17.56.030.A.10. Applications for extension of Use Permit. Variance or Design Permit approvals as provided by the conditions of the original approval.

17.56.040 - Zoning administrator-Reporting decisions to planning commission. All decisions of the zoning administrator, except decisions relating to the granting or denial of a sign permit pursuant to Chapter 17.36, shall be reported to the planning commission prior to the expiration of the appeal period. If any member of the planning commission desires to appeal the decision it shall be considered appealed and placed on the next commission agenda. The secretary to the planning commission shall set the matter for hearing before the planning commission at the earliest available date and cause notice of such hearing to be given as set forth in Chapter 17.54.

17.56.050 - Zoning administrator-Variances. A. The zoning administrator shall be governed by the provisions of this title in the granting of variances and shall grant the same only when

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making the findings required by the pertinent provisions of this title. The zoning administrator shall use the procedure and make findings required by the provisions of Chapter 17.46 prior to granting a variance.

B. The zoning administrator may refer any applications for a variance directly to the planning commission without holding a hearing or without making a decision thereon, and the planning commission shall then proceed to hear such applications as provided in this title.

17.56.060 — Zoning administrator variance granting. The zoning administrator shall use the procedure and make findings required by the provisions of Chapter 17.46 prior to granting a variance.

17.56.080 17.56.100 — *Effective date and Appeals.* Appeals from the decisions of the zoning administrator shall become effective fifteen (15) days following the day on which the appeal was granted, or, if appeal of previous to Chapter 17.52 of this title, upon final approval may be made to the planning commission within seven (7) days after the receipt of the zoning administrator. Upon receipt of an appeal, the zoning administrator shall forward the same together with the records on the matter to the planning commission. The secretary to the planning commission shall set the matter for hearing before the planning commission at the earliest available date and cause notice of such hearing to be given as set forth in Chapter 17.54. The planning commission shall consider the matter in the same manner as an application for a variance.

17.56.110 — Variance effective date. No variance granted by the zoning administrator shall have any force or effect until the applicant thereon actually receives such variance signal by the zoning administrator and designating the terms and conditions of the variance that may have been imposed by the zoning administrator. No variance shall be issued until the time for filing an appeal from the decision of the zoning administrator has expired or, in the event of such appeal until after a final decision has been rendered on the appeal by the planning commission or by the city council in the event of a further appeal from the decision of the planning commission.