City of Brisbane
Agenda Report

TO: Honorable Mayor and City Council

FROM: Community Development Director via City Manager

SUBJECT: Proposed Ordinance No. 615 - Zoning Text Amendment RZ-5-16 to bring the City's zoning regulations pertaining to accessory (secondary) dwelling units into compliance with updated California Government Code requirements.

DATE: January 5, 2017

City Council Goals:

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

Purpose:

To update various sections of Title 17, Zoning, of the Brisbane Municipal Code to achieve consistency with recently updated California Government Code regulations pertaining to accessory (secondary) dwelling units.

Recommendation:

That the City Council introduce Ordinance No. 615.

Background:

The State adopted legislation in the fall of 2016 intended to stimulate the production of accessory (secondary) dwelling units (ADUs) through a variety of measures, including but not limited to procedural streamlining (specifically prescribed development standards) and restrictions on ADU development fees. Cities are obligated to either adopt new regulations or amend their existing ADU regulations to comply with State requirements. If a jurisdiction fails to comply, ADUs would be permitted subject to the State regulations.

Since the City of Brisbane already regulates ADUs, the proposed zoning text amendment is intended to bring the City's regulations into compliance with the new State laws, as described in detail in the attached Planning Commission report dated November 10, 2016 and summarized in the *Discussion* section of this report. The Planning Commission held a public hearing to review the draft text amendment on November 10, 2016, and recommended approval by a vote of 4-0 (Reinhardt absent).

Discussion:

The proposed text amendment addresses both State-mandated procedural requirements and development standards as summarized below:

Procedural Requirements

Under the City's existing regulations set forth in Chapter 17.43 of the Municipal Code, ADUs (secondary dwelling units) require a planning permit and must comply with a series of performance standards, including but not limited to minimum lot size, parking, setbacks, and maximum unit size.

While the City's current procedures apply to attached or detached ADUs (attached or detached), the new State legislation created a separate set of procedures and standards for a subset of ADUs created through the conversion of space in an existing home or accessory building in a single-family residential zone. These "Conversion ADUs" must have exterior access and the structure they are in must comply with minimum setbacks for fire safety (not zoning). If those requirements are met, "Conversion ADUs" must be approved through the issuance of a building permit and are exempt from the other development standards, including minimum lot size requirements. No additional parking can be required; however, in the case where the "Conversion ADU" results from the conversion of a garage, the City can require on-site replacement of parking. However, the City may not require those replacement parking spaces to be covered, and these new spaces are not subject to the City's setback or configuration (i.e. tandem) requirements.

Development Standards

Maximum Unit Size

The new State legislation establishes a maximum floor area of 1,200 square-feet for new ADUs. At the time the legislation was adopted, it was unclear if jurisdictions could establish a smaller maximum unit size than the State standard. The Planning Commission (at the recommendation of staff) recommended increasing the maximum unit size from 1,000 to 1,200 square-feet consistent with the State maximum. However, subsequent to the Planning Commission hearing, an implementation memorandum from the State Housing and Community Development Department (HCD) indicates that local jurisdictions may establish maximum unit sizes less than 1,200 square-feet, so long as the maximum size "does not burden ADU development." The City's existing ADU regulations establish a maximum unit size of 1,000 square-feet, which can comfortably accommodate a two-bedroom unit. It is recommended that the draft ordinance be revised to retain the previous City-adopted maximum of 1,000 square feet.

Elimination of Off-street Parking Requirements

The City is pre-empted by the new State regulations from requiring additional parking for new ADUs due to the State-mandated parking exemption for ADUs located within one-half mile (2,640 feet) of a public transit stop. As shown in Attachment C to the November 10, 2016

Planning Commission agenda report, this applies to all but a few R-1 and R-BA zoned lots. While parking could technically be required for ADUs on these few lots, staff believes it would be inappropriate to treat them differently from the remainder of the applicable zoning districts. The ordinance as recommended applies the parking exemption to ADUs in the entirety of the R-1 and R-BA zones.

Water and Sewer Connections

Other components of the State legislation include provisions for calculating utility connection fees or capacity charges, including water and sewer service. Local agencies may not require new or separate utility connections or connection fees or capacity charges for ADUs that are contained within an existing residence or accessory structure. Connection fees and capacity charges may be assessed for attached and detached ADUs, so long as they are proportionate to the burden of the unit on the water or sewer system and do not exceed the reasonable cost of providing the service. The City Engineer has reviewed the existing sewer and utility connection procedures and fee structure contained in Brisbane Municipal Code Title 13, and determined that the City's existing regulations comply with the new Government Code requirements.

Fiscal Impact:

None.

Measure of Success:

Adoption of an updated permitting process and development standards for ADUs that maximizes City control while complying with new California Government Code requirements.

Attachments:
Table of redlined text
Planning Commission Resolution RZ-5-16
Draft Ordinance No. 615
Planning Commission agenda report from November 10, 2016 meeting
Planning Commission minutes of November 10, 2016

John Swiecki, Community Development Director

Clay Holstine, City Manager

Draft Ordinance 615: Redline Text

Chapter 17.02- Definitions

Chapter/Section	Proposed Text
17.02.230 - Duplex.	"Duplex" means a building containing two dwelling units totally separated from each other by a wall, floor or ceiling; provided, however, that a building containing a single-family dwelling and a lawful accessory ~~secondary~~ dwelling unit shall not be deemed a duplex.
17.02.235 - Dwelling.	D. "Accessory ~~Secondary~~ dwelling unit" means a separate dwelling unit created upon a site within the R-1 or R-BA district that contains a single-family dwelling and for which an accessory dwelling unit permit or building permit has been granted pursuant to Chapter 17.43 of this title. Subject to the restrictions of this title, the accessory ~~secondary~~ dwelling unit may be within, attached to, or detached from the single-family dwelling. An accessory dwelling unit shall include permanent provisions for living, sleeping, eating, cooking, and sanitation. The term "secondary dwelling unit" shall have the same meaning throughout this Title. E. "Single-family dwelling" means a dwelling unit constituting the only principal structure upon a single site (excluding any lawfully established accessory ~~secondary~~ dwelling unit that may be located within the same structure on upon the same site). The term includes residential care facilities, licensed by the state to provide twenty-four (24) hour nonmedical care, serving six (6) or fewer persons (not including the operator, the operator's family or persons employed as staff) in need of supervision, personal services, or assistance essential for sustaining the activities of daily living or for the protection of the individual. Also see "Group care home" for seven (7) or more persons.

Chapter 17.32- General Use Regulations

Chapter/Section	Proposed Text
17.32.070 - Exceptions—Setback requirements.	A.3.Miscellaneous Improvements. a. Garages and Carports and Parking Decks on Slopes of Fifteen Percent (15%) or Greater.

Front setback area:	Garages, carports and parking decks not more than fifteen (15) feet in height above the elevation of the center of the adjacent street may be placed at any location within the front setback area provided: (i) there is no encroachment into any side setback area, and (ii) the garage is approved by the city engineer, based upon a finding that no traffic or safety hazard will be created.
Rear setback area:	On through lots, garages, carports and parking decks not more than fifteen (15) feet in height above the elevation of the center of the adjacent street may be placed at any location within the rear setback area provided: (i) there is no encroachment into any side setback area, and (ii) the garage is approved by the city engineer, based upon a finding that no traffic or safety hazard will be created.
Side setback area:	No exception permitted.

Chapter/Section	Proposed Text
	b. Decorative Artwork, Ponds, Fountains and Similar Water Features, Not More Than Six (6) Feet in Height.

Front setback area:	May be placed at any location within the front setback area.
Rear setback area:	May be placed at any location within the rear setback area.
Side setback area:	No exception permitted.

c. Existing Permitted Garages or Accessory Buildings Converted into Accessory Dwelling Units

Front setback area:	May be placed at any location within the front setback area.
Rear setback area:	May be placed at any location within the rear setback area.
Side setback area:	May be placed at any location within the side setback area.

d. Accessory Dwelling Units Built Above Existing Permitted Garages

Front setback area:	No exception permitted.
Rear setback area:	May extend into rear setback no closer than five (5) feet from the rear lot line.
Side setback area:	No exception permitted.

Chapter 17.34- Off-Street Parking

Chapter/Section	Proposed Text
17.34.020- Minimum requirements.	A. The following minimum parking requirements shall apply to all buildings erected, new uses commenced, and to the area of extended uses commenced after the effective date of this Chapter. For any use not specifically mentioned in this Chapter, the planning commission shall determine the amount of parking required. All required off-street parking facilities shall be on-site unless specified differently in this Chapter or as permitted under Title 12 of this Code. Required off-street parking facilities need not be provided as covered parking unless specified differently in this chapter:

Uses:		Parking Requirements:
Single-family dwellings and group care homes--		
	Studio or 1-bedroom dwellings not more than 900 square feet in floor area:	1 off-street space (uncovered or covered)
	All other dwellings not exceeding 1,800 square feet in floor area:	1 off-street space plus 1 space which shall be in a garage or carport
	Dwellings exceeding 1,800 square feet in floor	2 off-street spaces plus 1 space which shall be in a garage or carport

Chapter/Section	Proposed Text			
			area on lots having less than 37.5 feet in frontage: Dwellings exceeding 1,800 square feet in floor area on lots of 37.5 feet frontage or greater:	2 on-street or off-street spaces plus 2 spaces which shall be in a garage or carport See Section 17.34.020.B.1 regarding garage and carport exclusions from the floor area calculation. Additional guest parking spaces shall be provided for all residential subdivisions of 5 (five) or more single-family residences, at the rate of 1 parking space for every 5 (five) units. Such spaces shall be located entirely within the public right-of-way and available for public use. Any accessible parking spaces required per Section 17.34.040.D shall count as guest parking spaces.
		Accessory ~~secondary~~ dwelling units		No off-street parking required. ~~1 off-street space (uncovered or coered), plus 1 off-street space (uncovered or covered) if over 900 square feet in floor area and/or if more than 1 bedroom.~~ ~~See Section 17.34.020.B.1 regarding garage and carport exclusions from the floor area calculation.~~
		Duplex or multiple family dwelling units; Mobilehome park units Studios 1-bedroom units 2-bedroom units 3-bedroom units or larger		1 (uncovered or covered) space per unit. 1 ½ spaces (1 of which shall be covered) per unit; only 1 (covered) space required for units not over 900 square feet in floor area. 1 ½ spaces (1 of which shall be covered) per unit. 2 spaces (1 of which shall be covered) per unit, plus 1 (uncovered or covered) space for units over 2,700 square feet See Section 17.34.020.B.1 regarding garage and carport exclusions from the floor area calculation. Additional guest parking spaces shall be

Chapter/Section	Proposed Text		
			provided for all developments of 5 (five) or more units at the rate of 1 parking space for every 5 (five) units. The accessible parking spaces required per Section 17.34.040.D shall count as guest parking spaces.
		Emergency shelters	0.35 space per bed plus 1 space per staff member on the largest shift.
		Hotels, motels	1 space per unit, plus applicable requirements for restaurants, bars and meeting halls.
		Cultural facilities, meeting halls and places of worship	1 space for each 50 square feet of assembly area or 1 space for each 4 fixed seats, whichever is greater, plus 1 space for each 300 square feet of the remaining floor area of the building (meeting rooms not exceeding 750 square feet and ancillary to an office use shall be included with the floor area of the office in calculating the parking requirement for the office use).
		Commercial recreation	3 spaces per ball court; 2.5 spaces per batting cage; 4 spaces per lane for bowling alleys; 2 spaces per tee for golf courses; 20 spaces per playing field; 2 spaces per shooting range; 2 spaces per horse stall for stables; 1 space per 100 square feet of water area for swimming pools. For commercial recreation uses that do not fall within the above categories, 1 parking space shall be required for every 4 fixed seats for spectators, 1 parking space per each 200 square feet of floor area used for indoor commercial recreation, and 1 parking space per each 1,000 square feet of site area used for outdoor commercial recreation.
		Marinas	1 space per 0.75 berths.
		Schools - public private or commercial	1 space for each classroom and office.
		Hospitals	1 space per bed plus 1 space for each 2 employees on the largest shift.
		Financial services	1 space for each 200 square feet of gross floor area.
		Administrative office	1 space for each 300 square feet of gross floor area.
		Professional office	1 space for each 250 square feet of gross floor area.
		Retail stores, restaurants, bars, offices	1 space for each 300 square feet of gross floor area.
		Service stations	2 spaces for each working bay plus 1

Chapter/Section	Proposed Text		
			space for each employee on the largest shift.
		Warehousing, light fabrication, food production, media studios, printing	1 space for each 1,000 square feet of gross floor area.
		Convalescent hospitals, sanitariums, rest homes	1 space for each 7 beds plus 1 space for each 2 employees on the largest shift.

Chapter 17.43- Secondary Dwelling Units

Chapter/Section	Proposed Text
17.43	Accessory ~~Secondary~~ Dwelling Units
17.43.010 - Purposes of chapter.	Accessory ~~secondary~~ dwelling units are permitted under the provisions of this chapter to achieve the following purposes: A. To provide opportunities to establish accessory ~~secondary~~ dwelling units on building sites developed with single-family dwellings. B. To provide affordable housing to meet the needs of Brisbane citizens. C. To ensure that the development of accessory ~~secondary~~ dwelling units is compatible with existing development and reflects the diversity of the community. D. D. To implement and promote the goals and policies of the general plan so as to guide and manage residential development in the city in accordance with such plan.
17.43.020 - Definitions	In addition to the definitions set forth in Chapter 17.02, all of which are applicable to this chapter, the following words and phrases shall have the meanings respectively ascribed to them in this section, unless the context or the provision clearly requires otherwise: A. "Living area" means the interior habitable area of a dwelling unit, including basements and attics but not including a garage or any accessory structure. B. "Main dwelling" means that dwelling unit on the property that is not an accessory dwelling unit. C. "Public transit" means a transit stop served by at least one publicly provided form of transportation.
17.43.030~~020~~ – Applicability and Requirements ~~Permit Required~~.	A. Newly Constructed Accessory Dwelling Units: A newly constructed accessory ~~secondary~~ dwelling unit shall ~~may~~ be established ~~or occupied only if~~ by an accessory ~~secondary~~ dwelling unit permit granted by the director of community development pursuant to the provisions of this subsection ~~Chapter. If the proposed unit complies with the requirements of this chapter, the permit shall be issued~~ as a ministerial act, in accordance with Section 65852.2 of the California Government Code. An existing nonconforming ~~or a constructed~~ dwelling unit may be designated as an accessory ~~secondary~~ dwelling unit subject to compliance with the requirements of this subsection. Newly constructed accessory dwelling units shall comply with all of the following development standards: 1. Zoning Districts. Accessory dwelling units may only be established or occupied in the R-1 residential district or the R-BA Brisbane Acres residential district. 2. Lot Size. The minimum lot area of any site on which an accessory dwelling unit may be located shall not be less than five thousand (5,000) square feet, if the lot is located in the R-1 District, or twenty thousand (20,000) square feet, if the lot is located in the R-BA Brisbane Acres residential district. 3. One Accessory Dwelling Unit per Site. Only one accessory dwelling unit shall be

	permitted on any one site; provided, however, where a site already contains two or more dwelling units that exist as legally established nonconforming uses, no additional accessory dwelling units shall be allowed on that site. 4. Attached or Detached. The accessory dwelling unit may be attached to or constructed within the main dwelling or may be detached from the main dwelling on the site. 5. Unit Size. a. Detached accessory dwelling unit: Maximum floor area of one thousand (1,000) square feet. b. Attached accessory dwelling unit: Maximum floor area of one thousand (1,000) square feet, or 50% of the existing living area of the main dwelling, whichever is less. 6. Floor Area Ratio. The floor area of the accessory dwelling unit shall be included in calculating the floor area ratio for the site on which the accessory dwelling unit is located. 7. Parking. Parking spaces for the main dwelling and accessory dwelling units shall be provided in accordance with the requirements set forth in Chapter 17.34. 8. Access. As required by Section 17.01.060 of the Municipal Code, the site on which the accessory dwelling unit is located shall have a legal means of access that complies with the street standards set forth in Section 12.24.010. 9. Utilities. The site is served by adequate water, sewer, and storm drain facilities which comply with city standards. An accessory dwelling unit shall not be considered a new residential use for the purposes of calculating connection fees or capacity charges for water and sewer service provided by the City. 10. Compliance with Codes. The accessory dwelling unit and all new construction on the site that will be performed in connection therewith shall comply with all applicable provisions of this title and all applicable building, health and fire codes, with the following exception: a. Accessory dwelling units shall not be required to provide fire sprinklers if fire sprinklers are not required for the main dwelling, as determined by the Building Official consistent with Section 15.08.140. B. Conversion Accessory Dwelling Units: Notwithstanding subsection A of this section 17.43.020, an accessory dwelling unit resulting from the conversion of existing building space shall be established by a City issued building permit and shall be exempt from the development standards of 17.43.020.A if it meets the following requirements, as determined by the Community Development Director: 1. It is contained within the existing space of a single-family dwelling or accessory structure, as defined in Chapter 17.02, within a single-family residential zone; and 2. It has an independent exterior access from the existing residence; and 3. It has sufficient side and rear setbacks for fire safety.
17.43.040 - Owner occupancy restrictions.	Either the main dwelling or the accessory ~~secondary~~ dwelling unit shall be occupied by the record owner of the property ~~site~~ as the owner's principal place of residence. In the case of ownership by a corporation, limited liability company, partnership, trust or association, either the main dwelling or the accessory ~~secondary~~ dwelling unit shall be the principal place of residence of an officer, director, shareholder, or member of the company, a partner in the partnership, a trustor or beneficiary of the trust, a member of the association, or an employee of any such organization.
17.43.050 - Recordation of accessory ~~secondary~~ dwelling unit	The original accessory ~~secondary~~ dwelling unit permit agreement shall be recorded in the office of the county recorder. All of the conditions applicable to the permit shall be set forth therein, and such ~~use permit~~ agreement shall run with the land and be binding upon successive owners and occupants of the property.

permit agreement.	
17.43.060 - Modification or revocation of accessory ~~secondary~~ dwelling unit permit.	A. The city shall retain continuing jurisdiction over any accessory dwelling unit permit issued under this Chapter and may, at any time, modify or revoke the permit, upon the occurrence of any of the following events: 1. The holder of the permit has failed to comply with any of the conditions set forth in the permit; or 2. The holder of the permit has violated the occupancy restriction set forth in Section 17.43.040 of this chapter; or 3. The accessory dwelling unit has been eliminated through alteration of the structure in which such unit was contained. B. Prior to any modification or revocation of the accessory dwelling unit permit, the director of community development shall conduct a hearing on the proposed action. Written notice of such hearing shall be given to the permittee not less than ten (10) days prior to the date of the hearing.

RESOLUTION NO. RZ-5-16

RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BRISBANE RECOMMENDING APPROVAL OF ZONING TEXT AMENDMENT RZ-5-16 TO THE CITY COUNCIL AMENDING CHAPTERS 17.02, 17.32, 17.34, AND 17.43 OF THE BRISBANE MUNICIPAL CODE TO UPDATE REGULATIONS PERTAINING TO ACCESSORY DWELLING UNITS

WHEREAS, the Assembly and Senate of the California State Legislature passed bills amending the review and approval procedures for accessory dwelling units contained in Government Code Section 65852.2, those bills being identified as AB 2299 and SB 1069; and

WHEREAS, the amendments contained within AB 2299 and SB 1069 are generally intended to streamline the accessory dwelling unit approval process and encourage accessory dwelling unit production by eliminating regulatory constraints in local jurisdictions; and

WHEREAS, on September 27, 2016 Governor Jerry Brown approved AB 2299 and SB 1069, adopting the amendments to Government Code Section 65852.2, the provisions of which are effective January 1, 2017; and

WHEREAS, the amendments to Government Code Section 65852.2 require local jurisdictions with existing accessory dwelling unit ordinances to amend those ordinances to be consistent with the updated Government Code requirements; and

WHEREAS, the proposed draft Ordinance would update the City's accessory dwelling unit regulations in various Chapters of Title 17, Zoning, of the Brisbane Municipal Code to be consistent with the updated requirements of California Government Code Section 65852.2;

WHEREAS, the streamlined approval process mandated by the State legislation is consistent with policies and programs contained in the City's Housing Element, including Housing Element Program H.B.1.e and Housing Element Policy H.I.1; and

WHEREAS, on November 10th, 2016, the Planning Commission held a public hearing on a draft ordinance containing all above-referenced zoning text amendments; and

WHEREAS, the minutes of the Planning Commission meeting of November 10th, 2016 are attached and incorporated by reference as part of this resolution; and

WHEREAS, the project is consistent with the City's General Plan and per State CEQA Guidelines Section 15183(a)--this proposal falls within a class of projects which are consistent with existing zoning or general plan policies for which an EIR was certified and shall therefore not require further review; and

WHEREAS, the exception to CEQA Guidelines Section 15183(a) requiring environmental review as might be necessary to examine project specific significant effects does not apply.

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.

AYES: Anderson, Do, Munir, Parker
NOES: None.
ABSENT: Reinhardt

TuongVan Do
Chairperson

ATTEST:

JOHN SWIECKI, Community Development Director

draft
ORDINANCE NO. 615

AN ORDINANCE OF THE CITY OF BRISBANE AMENDING BMC CHAPTERS 17.02, 17.32, 17.34, AND 17.43 TO AMEND REGULATIONS PERTAINING TO ACCESSORY DWELLING UNITS

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

SECTION 1: Section 17.02.230 – Duplex in Chapter 17.02 – Definitions of the Municipal Code is amended to read as follows:

17.02.230 - Duplex.

"Duplex" means a building containing two dwelling units totally separated from each other by a wall, floor or ceiling; provided, however, that a building containing a single-family dwelling and a lawful accessory dwelling unit shall not be deemed a duplex.

SECTION 2: Section 17.02.235- Dwelling in Chapter 17.02- Definitions of the Municipal Code is amended to read as follows:

"Dwelling" means a place that is used as the personal residence of the occupants thereof, including transitional housing as defined in California Health and Safety Code Section 50675.2(h) and supportive housing as defined in California Health and Safety Code Sections 50675.14(b)(2) & (3). The term includes factory-built or manufactured housing, such as mobilehomes, but excludes trailers, campers, tents, recreational vehicles, hotels, motels, boarding houses and temporary structures.

A. "Dwelling group" means a group of two or more detached buildings located upon the same site, each of which contains one or more dwelling units.

B. "Dwelling unit" means a room or group of rooms including living, sleeping, eating, cooking and sanitation facilities, constituting a separate and independent housekeeping unit, designed, occupied, or intended for occupancy by one family on a permanent basis.

C. "Multiple-family dwelling" means a building or site containing three (3) or more dwelling units (also see "duplex"). The term includes single-room-occupancy dwelling units, typically comprised of one or two (2) rooms (which may include a kitchen and/or a bathroom, in addition to a bed), that are restricted to occupancy by no more than two (2) persons.

D. "Accessory dwelling unit" means a separate dwelling unit created upon a site within the R-1 or R-BA district that contains a single-family dwelling and for which an accessory dwelling unit permit or building permit has been granted pursuant to Chapter 17.43 of this title. Subject to the restrictions of this title, the accessory dwelling unit may be within, attached to, or detached from the single-family dwelling. An accessory dwelling unit shall include permanent provisions for living, sleeping, eating, cooking, and sanitation. The term “secondary dwelling unit” shall have the same meaning throughout this Title.

E. "Single-family dwelling" means a dwelling unit constituting the only principal structure upon a single site (excluding any lawfully established accessory dwelling unit that may be located within the same structure on upon the same site). The term includes employee housing for six (6) or fewer persons,

residential care facilities, licensed by the state to provide twenty-four (24) hour nonmedical care, serving six (6) or fewer persons (not including the operator, the operator's family or persons employed as staff) in need of supervision, personal services, or assistance essential for sustaining the activities of daily living or for the protection of the individual. Also see "Group care home" for seven (7) or more persons.

SECTION 3: Section 17.32.070 in Chapter 17.32 - General Use Regulations of the Municipal Code is amended to read as follows:

Section 17.32.070- Exceptions- Setback Requirements

A. Notwithstanding any other provision of this title, certain structures or portions thereof may extend into a front, rear or side setback area to the extent permitted by the following chart:

1. Projections from a Building.

a. Overhanging Architectural Features (Such as Eaves, Cornices Canopies, Rain Gutters and Downspouts).

Front setback area:	May extend three (3) feet from the building into the front setback area, but no closer than five (5) feet from the front lot line.
Rear setback area:	May extend three (3) feet from the building into the rear setback area, but no closer than seven (7) feet from the rear lot line.
Side setback area:	May extend three (3) feet from the building into the side setback area, but no closer than two and one-half (2½) feet from the side lot line. Rain gutters and downspouts may extend no closer than two (2) feet from the side lot line. In the R-1 district, a noncombustible awning over the main entrance to a residence located at the side of the structure may extend four (4) feet from the building into any portion of the side setback area, but shall not extend over or drain onto the abutting property.

b. Cantilevered Windows No Greater Than Ten (10) Feet in Length that Do Not Include Any Floor Area (Such as Bay, Box, Bow, and Greenhouse Windows).

Front setback area:	May extend three (3) feet from the building into the front setback area, but no closer than five (5) feet from the front lot line.
Rear setback area:	May extend three (3) feet from the building into the rear setback area, but no closer than seven (7) feet from the rear lot line.
Side setback area:	May extend two (2) feet into the side setback area, but no closer than three (3) feet from the side lot line.

c. Supported Decks, Cantilevered Decks and Balconies.

Front	May extend five (5) feet from the building into the front setback area, but no closer

setback area:	than five (5) feet from the front lot line. Decks may be located atop a garage or carport approved under Section 17.32.070(A)(3)(a) and may extend to the front of the garage, but the railings of such deck may not exceed fifteen (15) feet in height above the elevation of the center of the adjacent street or four (4) feet from the surface of the deck, whichever is less, while at the same time maintaining the minimum railing height required by the building code.
Rear setback area:	May extend five (5) feet from the building into the rear setback area, but no closer than five (5) feet from the rear lot line. This exception shall not apply to the NCRO district.
Side setback area:	No exception permitted.

Modifications. The planning commission may approve a modification to the foregoing exceptions if there are not more than two (2) units on the site and the planning commission is able to make all of the following findings:

i. The modification is necessary in order to gain access to the property or to the dwelling unit on the property.

ii. The modification is necessary because of unusual or special circumstances relating to the configuration of the property.

iii. The visual impacts of the modification have been minimized.

d. Deck Railings within Setback Areas.

Front setback area:	May not be higher than four (4) feet from the surface of the deck.
Rear setback area:	May not be higher than four (4) feet from the surface of the deck.
Side setback area:	No exception permitted.

e. Stairs, Ramps and Landings (That Are Open and Uncovered and Serve Buildings with No More Than Two Units).

Front setback area:	No more than one set of stairs per dwelling unit may extend from the building into the front setback area. Each set of stairs must lead to the front entrance of the unit. The height of the stairway within the front setback area shall not exceed twenty (20) feet. Stairs on grade, sidewalks, and other flatwork constructed of noncombustible materials may be located anywhere within the front setback area.
Rear setback area:	No more than one set of stairs per dwelling unit may extend from the building into the rear setback area, but no closer than five (5) feet from the rear lot line. Stairs on grade, sidewalks, and other flatwork constructed of noncombustible materials may be located anywhere within the rear setback area.
Side	No more than one set of stairs per dwelling unit may extend from the building into the

setback area:	side setback area, but no closer than three (3) feet from the side lot line. Stairs on grade, sidewalks, and other flatwork constructed of noncombustible materials may be located anywhere within the side setback area.

Modifications. The planning commission may approve a modification to the foregoing exceptions for stairs, ramps and landings if there are not more than two units on the site and the planning commission is able to make all of the following findings:

i. The modification is necessary in order to gain access to the property or to the dwelling unit on the property.

ii. The modification is necessary because of unusual or special circumstances relating to the configuration of the property.

iii. The visual impacts of the modification have been minimized.

The planning commission may also approve a modification to the foregoing exceptions as part of a design permit being granted for three (3) or more units on the site, if the commission is able to make all of the findings listed above.

f. Accessibility Improvements (Such as Ramps, Elevators, and Lifts).

All Setback Areas. Accessibility improvements, such as ramps, elevators and lifts, may be allowed within any front, rear or side area setback upon the granting of an accessibility improvement permit by the zoning administrator, following the conduct of a hearing with ten (10) days notice thereof being given to the owners of all adjacent properties. The zoning administrator may issue the accessibility improvement permit if he or she finds and determines that:

i. The exception is necessary to meet special needs for accessibility of a person having a physical handicap which impairs his or her ability to access the property and cannot be addressed through the standard exceptions to the setback area requirements under this Section 17.32.070.

ii. Visual impacts of the accessibility improvements located within a setback area have been minimized.

iii. The accessibility improvements will not create any significant adverse impacts upon adjacent properties in terms of loss of privacy, noise or glare.

iv. The accessibility improvements will be constructed in a sound and workmanlike manner, in compliance with all applicable provisions of the building and fire codes.

2. Small Free-Standing Structures.

a. Small Accessory Buildings and Roofed Structures (Such as Gazebos, Greenhouses, Garden and Utility Sheds).

Front	No exception permitted.

setback area:	
Rear setback area:	May be placed at any location within the rear setback area which is not less than five (5) feet from the rear lot line or three (3) feet from the interior side lot line, provided the building or structure, or portion thereof, within the rear setback area does not exceed eight (8) feet in height and does not have a floor area in excess of one hundred twenty (120) square feet.
Side setback area:	May be placed at any location within the interior side setback area which is not less than three (3) feet from the interior side lot line, provided the building or structure, or portion thereof, within the interior side setback area does not exceed eight (8) feet in height and does not have a floor area in excess of one hundred twenty (120) square feet. No exception is permitted for an exterior side setback area.

Modifications. The zoning administrator may approve a modification to the foregoing exceptions for small accessory buildings and roofed structures, following the conduct of a hearing with ten (10) days notice thereof being given to the owners of all adjacent properties, if the zoning administrator is able to make all of the following findings:

i. The modification will not result in overbuilding the site or result in the removal of significant greenscape.

ii. The modification will not create any significant adverse impacts upon adjacent properties in terms of loss of privacy, noise, or glare.

iii. The accessory structure is designed to be compatible with the primary dwelling(s) on the site.

A building permit shall be required to construct or install any accessory structure for which a modification has been granted under this subsection.

b. Unroofed and Openwork Roofed Garden Structures (Such as Arbors, Porticos, Trellises and Lath Houses).

Front setback area:	May not exceed eight (8) feet in height or cover more than fifteen percent (15%) of the front setback area.
Rear setback area:	May be placed at any location within the rear setback area which is not less than five (5) feet from the rear lot line, provided the structure, or portion thereof, within the rear setback area does not exceed eight (8) feet in height and does not cover more than fifteen percent (15%) of the rear setback area.
Side setback area:	May be placed at any location within the side setback area which is not less than three (3) feet from the side lot line, provided the structure, or portion thereof, within the side setback area does not exceed eight (8) feet in height and does not cover more than fifteen percent (15%) of the side setback area.

Modifications. The zoning administrator may approve a modification to the foregoing exceptions for unroofed and openwork roofed garden structures, following the conduct of a hearing with ten (10) days notice thereof being given to the owners of all adjacent properties, if the zoning administrator is able to make all of the following findings:

i. The modification will not result in overbuilding the site or result in the removal of significant greenscape.

ii. The modification will not create any significant adverse impacts upon adjacent properties in terms of loss of privacy, noise, or glare.

iii. The accessory structure is designed to be compatible with the primary dwelling(s) on the site.

3. Miscellaneous Improvements.

a. Garages and Carports and Parking Decks on Slopes of Fifteen Percent (15%) or Greater.

Front setback area:	Garages, carports and parking decks not more than fifteen (15) feet in height above the elevation of the center of the adjacent street in the R-1, R-2 and R-3 Districts and parking decks in the R-BA District may be placed at any location within the front setback area provided: (i) there is no encroachment into any side setback area, and (ii) the garage is approved by the city engineer, based upon a finding that no traffic or safety hazard will be created.
Rear setback area:	On through lots, garages, carports and parking decks not more than fifteen (15) feet in height above the elevation of the center of the adjacent street may be placed at any location within the rear setback area provided: (i) there is no encroachment into any side setback area, and (ii) the garage is approved by the city engineer, based upon a finding that no traffic or safety hazard will be created.
Side setback area:	No exception permitted.

b. Decorative Artwork, Ponds, Fountains and Similar Water Features, Not More Than Six (6) Feet in Height.

Front setback area:	May be placed at any location within the front setback area.
Rear setback area:	May be placed at any location within the rear setback area.
Side setback area:	No exception permitted.

c. Existing Permitted Garages or Accessory Buildings Converted into Accessory Dwelling Units

Front setback area:	May be placed at any location within the front setback area.

Rear setback area:	May be placed at any location within the rear setback area.
Side setback area:	May be placed at any location within the side setback area.

d. Accessory Dwelling Units Built Above Existing Permitted Garages

Front setback area:	No exception permitted.
Rear setback area:	May extend into rear setback no closer than five (5) feet from the rear lot line.
Side setback area:	No exception permitted.

B. The exceptions set forth in subsection 17.32.070(A) of this section shall not be construed to include chimney boxes, swimming pools and spas, exposed plumbing, or mechanical equipment such as heating and air conditioning units or pool pumps, and no exceptions to the setback requirements shall be permitted for any of these structures.

C. Any structure, architectural feature, wall, or other improvement lawfully constructed within a setback area and constituting a nonconforming structure as defined in Section 17.02.560, may be allowed to continue in accordance with the provisions of Chapter 17.38 of this title.

SECTION 4: Section 17.34.020- Minimum requirements.in Chapter 17.34 -Off-Street Parking of the Municipal Code is amended to read as follows:

17.34.020- Minimum requirements.

A. The following minimum parking requirements shall apply to all buildings erected, new uses commenced, and to the area of extended uses commenced after the effective date of this Chapter. For any use not specifically mentioned in this Chapter, the planning commission shall determine the amount of parking required. All required off-street parking facilities shall be on-site unless specified differently in this Chapter or as permitted under Title 12 of this Code. Required off-street parking facilities need not be provided as covered parking unless specified differently in this chapter:

Uses:		Parking Requirements:
Single-family dwellings and group care homes--		
	Studio or 1-bedroom dwellings not more than 900 square feet in floor area:	1 off-street space (uncovered or covered)
	All other dwellings not exceeding 1,800 square feet in floor area:	1 off-street space plus 1 space which shall be in a garage or carport

	Dwellings exceeding 1,800 square feet in floor area on lots having less than 37.5 feet in frontage:	2 off-street spaces plus 1 space which shall be in a garage or carport
	Dwellings exceeding 1,800 square feet in floor area on lots of 37.5 feet frontage or greater:	2 on-street or off-street spaces plus 2 spaces which shall be in a garage or carport See Section 17.34.020.B.1 regarding garage and carport exclusions from the floor area calculation. Additional guest parking spaces shall be provided for all residential subdivisions of 5 (five) or more single-family residences, at the rate of 1 parking space for every 5 (five) units. Such spaces shall be located entirely within the public right-of-way and available for public use. Any accessible parking spaces required per Section 17.34.040.D shall count as guest parking spaces.
Accessory dwelling units		No off-street parking required.
Duplex or multiple family dwelling units; Mobilehome park units Studios 1-bedroom units 2-bedroom units 3-bedroom units or larger		1 (uncovered or covered) space per unit. 1 ½ spaces (1 of which shall be covered) per unit; only 1 (covered) space required for units not over 900 square feet in floor area. 1 ½ spaces (1 of which shall be covered) per unit. 2 spaces (1 of which shall be covered) per unit, plus 1 (uncovered or covered) space for units over 2,700 square feet See Section 17.34.020.B.1 regarding garage and carport exclusions from the floor area calculation. Additional guest parking spaces shall be provided for all developments of 5 (five) or more units at the rate of 1 parking space for every 5 (five) units. The

	accessible parking spaces required per Section 17.34.040.D shall count as guest parking spaces.
Emergency shelters	0.35 space per bed plus 1 space per staff member on the largest shift.
Hotels, motels	1 space per unit, plus applicable requirements for restaurants, bars and meeting halls.
Cultural facilities, meeting halls and places of worship	1 space for each 50 square feet of assembly area or 1 space for each 4 fixed seats, whichever is greater, plus 1 space for each 300 square feet of the remaining floor area of the building (meeting rooms not exceeding 750 square feet and ancillary to an office use shall be included with the floor area of the office in calculating the parking requirement for the office use).
Commercial recreation	3 spaces per ball court; 2.5 spaces per batting cage; 4 spaces per lane for bowling alleys; 2 spaces per tee for golf courses; 20 spaces per playing field; 2 spaces per shooting range; 2 spaces per horse stall for stables; 1 space per 100 square feet of water area for swimming pools. For commercial recreation uses that do not fall within the above categories, 1 parking space shall be required for every 4 fixed seats for spectators, 1 parking space per each 200 square feet of floor area used for indoor commercial recreation, and 1 parking space per each 1,000 square feet of site area used for outdoor commercial recreation.
Marinas	1 space per 0.75 berths.
Schools - public private or commercial	1 space for each classroom and office.
Hospitals	1 space per bed plus 1 space for each 2 employees on the largest shift.
Financial services	1 space for each 200 square feet of gross floor area.
Administrative office	1 space for each 300 square feet of gross floor area.
Professional office	1 space for each 250 square feet of gross floor area.
Retail stores, restaurants, bars, offices	1 space for each 300 square feet of gross floor area.
Service stations	2 spaces for each working bay plus 1 space for each employee on the largest shift.
Warehousing, light fabrication, food production, media studios, printing	1 space for each 1,000 square feet of gross floor area.

Convalescent hospitals, sanitariums, rest homes	1 space for each 7 beds plus 1 space for each 2 employees on the largest shift.

B. The minimum parking requirements shall be calculated according to the following:

1. All references to square feet shall be in regards to floor area as defined in Chapter 17.02. The floor area of garages and carports shall not be included in measuring floor area to calculate the parking requirements, except for any floor area exceeding 400 square feet within a garage or carport exclusively for the use of a single residential unit.

2. When more than one use subject to the parking requirements occupies a site, the requirements for each use shall be calculated separately. The floor area occupied by accessory uses, such as hallways, bathrooms, breakrooms, utility rooms and storage closets, shall be included in the calculation of the parking requirements for the associated primary use.

3. No parking shall be required for accessory structures 200 square feet or less in floor area.

4. When application of the parking requirements results in a fractional number, all fractions shall be rounded up from 0.5 to the next whole number, except when specified otherwise. No parking shall be required for uses for which the requirement is less than 0.5 space.

SECTION 5: Chapter 17.43 - Secondary Dwelling Units of the Municipal Code is amended to read as follows:

Chapter 17.43 - ACCESSORY DWELLING UNITS

17.43.010 - Purposes of chapter.
Accessory dwelling units are permitted under the provisions of this chapter to achieve the following purposes:

A. To provide opportunities to establish accessory dwelling units on building sites developed with single-family dwellings.
B. To provide affordable housing to meet the needs of Brisbane citizens.
C. To ensure that the development of accessory dwelling units is compatible with existing development and reflects the diversity of the community.
D. To implement and promote the goals and policies of the general plan so as to guide and manage residential development in the city in accordance with such plan.

17.43.020 - Definitions
In addition to the definitions set forth in Chapter 17.02, all of which are applicable to this chapter, the following words and phrases shall have the meanings respectively ascribed to them in this section, unless the context or the provision clearly requires otherwise:

A. "Living area" means the interior habitable area of a dwelling unit, including basements and attics but not including a garage or any accessory structure.
B. "Main dwelling" means that dwelling unit on the property that is not an accessory dwelling unit.

C. “Public transit” means a transit stop served by at least one publicly provided form of transportation.

17.43.030 – Applicability and Requirements.

A. Newly Constructed Accessory Dwelling Units: A newly constructed accessory dwelling unit shall be established or occupied only by an accessory dwelling unit permit granted by the director of community development pursuant to the provisions of this subsection as a ministerial act, in accordance with Section 65852.2 of the California Government Code. An existing nonconforming dwelling unit may be designated as an accessory secondary dwelling unit subject to compliance with the requirements of this subsection.

Newly constructed accessory dwelling units shall comply with all of the following development standards:

1. Zoning Districts. Accessory dwelling units may only be established or occupied in the R-1 residential district or the R-BA Brisbane Acres residential district.
2. Lot Size. The minimum lot area of any site on which an accessory dwelling unit may be located shall not be less than five thousand (5,000) square feet, if the lot is located in the R-1 District, or twenty thousand (20,000) square feet, if the lot is located in the R-BA Brisbane Acres residential district.
3. One Accessory Dwelling Unit per Site. Only one accessory dwelling unit shall be permitted on any one site; provided, however, where a site already contains two or more dwelling units that exist as legally established nonconforming uses, no additional accessory dwelling units shall be allowed on that site.
4. Attached or Detached. The accessory dwelling unit may be attached to or constructed within the main dwelling or may be detached from the main dwelling on the site.
5. Unit Size.

   a. Detached accessory dwelling unit: Maximum floor area of one thousand (1,000) square feet.

   b. Attached accessory dwelling unit: Maximum floor area of one thousand (1,000) square feet, or 50% of the existing living area of the main dwelling, whichever is less.
6. Floor Area Ratio. The floor area of the accessory dwelling unit shall be included in calculating the floor area ratio for the site on which the accessory dwelling unit is located.
7. Parking. Parking spaces for the main dwelling and accessory dwelling units shall be provided in accordance with the requirements set forth in Chapter 17.34.
8. Access. As required by Section 17.01.060 of the Municipal Code, the site on which the accessory dwelling unit is located shall have a legal means of access that complies with the street standards set forth in Section 12.24.010.
9. Utilities. The site is served by adequate water, sewer, and storm drain facilities which comply with city standards. An accessory dwelling unit shall not be considered a new residential use for the purposes of calculating connection fees or capacity charges for water and sewer service provided by the City.

10. Compliance with Codes. The accessory dwelling unit and all new construction on the site that will be performed in connection therewith shall comply with all applicable provisions of this title and all applicable building, health and fire codes, with the following exception:

    a. Accessory dwelling units shall not be required to provide fire sprinklers if fire sprinklers are not required for the main dwelling, as determined by the Building Official consistent with BMC Section 15.08.140.

B. Conversion Accessory Dwelling Units: Notwithstanding subsection A of this section 17.43.020, an accessory dwelling unit resulting from the conversion of existing building space shall be established by a City issued building permit and shall be exempt from the development standards of 17.43.020.A if it meets the following requirements, as determined by the Community Development Director:

1. It is contained within the existing space of a single-family dwelling or accessory structure, as defined in Chapter 17.02, within a single-family residential zone; and
2. It has an independent exterior access from the existing residence; and
3. It has sufficient side and rear setbacks for fire safety.

17.43.040 - Owner occupancy restrictions.

Either the main dwelling or the accessory dwelling unit shall be occupied by the record owner of the property as the owner's principal place of residence. In the case of ownership by a corporation, limited liability company, partnership, trust or association, either the main dwelling or the accessory dwelling unit shall be the principal place of residence of an officer, director, shareholder, or member of the company, a partner in the partnership, a trustor or beneficiary of the trust, a member of the association, or an employee of any such organization.

17.43.050 - Recordation of accessory dwelling unit permit agreement.

The original accessory dwelling unit permit agreement shall be recorded in the office of the county recorder. All of the conditions applicable to the permit shall be set forth therein, and such agreement shall run with the land and be binding upon successive owners and occupants of the property.

17.43.060 - Modification or revocation of accessory dwelling unit permit.

A. The city shall retain continuing jurisdiction over any accessory dwelling unit permit issued under this Chapter and may, at any time, modify or revoke the permit, upon the occurrence of any of the following events:

1. The holder of the permit has failed to comply with any of the conditions set forth in the permit; or
2. The holder of the permit has violated the occupancy restriction set forth in Section 17.43.040 of this chapter; or
3. The accessory dwelling unit has been eliminated through alteration of the structure in which such unit was contained.

B. Prior to any modification or revocation of the accessory dwelling unit permit, the director of community development shall conduct a hearing on the proposed action. Written notice of

such hearing shall be given to the permittee not less than ten (10) days prior to the date of the hearing.

17.43.070 - Appeals.
Any decision or determination by the director of community development pursuant to this chapter may be appealed to the city council in accordance with the procedure set forth in Chapter 17.52 of this title.

SECTION 6: Where a use permit, design permit or variance approval has been issued through final action by the City prior to the effective date of this Ordinance, or where such planning permit approval is not required and a complete building permit application has been submitted prior to the effective date of this Ordinance, the holder of such use permit, design permit or variance approval or complete building permit application may proceed to construct the improvements or establish the use authorized by such permit or approval and the same shall be exempted from any conflicting regulations that may be contained in this Ordinance.

SECTION 7: 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 8: 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 _____, 2017, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

_____
Mayor Lori Liu

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney

City of Brisbane
Planning Commission Agenda Report

TO: Planning Commission For the Meeting of 11/10/16

FROM: Julia Capasso, Associate Planner, via John Swiecki, Community Development Director

SUBJECT: **Zoning Text Amendment RZ-5-16** for amendments to Chapters 17.02, 17.32, 17.34, and 17.43 of Title 17, Zoning, of the Brisbane Municipal Code to update existing secondary dwelling unit regulations to be consistent with recently adopted amendments to Section 65852.2 of the California Government Code; City of Brisbane, applicant; Location: Citywide.

REQUEST: The proposed zoning text amendments in Chapters 17.02, 17.32, 17.34, and 17.43 of the Brisbane Municipal Code (BMC) would update existing accessory (secondary) dwelling unit regulations to comply with recently adopted amendments to the California Government Code. The amendments are intended to increase accessory dwelling unit (ADU) production throughout the state, and would generally streamline the review and approval process for ADUs. The proposed zoning amendments would not change existing zoning district classifications or the boundaries of any zoning district for any property.

RECOMMENDATION: Recommend that the City Council adopt the ordinance amending the zoning text based on the discussion and analysis presented in the agenda report, via adoption of Resolution RZ-5-16.

ENVIRONMENTAL DETERMINATION: The project is consistent with the General Plan per State CEQA Guidelines Section 15183(a)--this proposal falls within a class of projects which are consistent with existing zoning or general plan policies for which an EIR was certified and shall therefore not require further review. The exception to this section requiring environmental review as might be necessary to examine project specific significant effects does not apply.

APPLICABLE CODE SECTIONS: State ADU regulations are located in Section 65852.2 of the California Government Code. The City's accessory (secondary) dwelling unit regulations are located in BMC Chapter 17.43 (Secondary Dwelling Units). Parking requirements for accessory dwelling units are located in BMC Chapter 17.34. BMC Chapter 17.32 contains general regulations, including setback exceptions, applicable to a variety of building and land uses throughout the City. Chapter 17.02 provides a definition of ADUs.

DISCUSSION:

Prior to the recently adopted amendments, Section 65852.2 of the California Government Code, authorized local jurisdictions to allow for and regulate the establishment of ADUs in single-

family residential zones, and established that ADUs are not counted when calculating density in a single-family zone. At the time, the Government Code allowed local jurisdictions to adopt a local ordinance that designated geographic areas or zones in which ADUs may be permitted, and imposed development standards on ADUs. The Government Code did not stipulate the development standards that cities could include in local ordinances; rather, cities were permitted to develop regulations based on the unique constraints and considerations applicable to their communities. Consistent with the Government Code provisions in effect at the time, the City adopted an Ordinance in 2003 that allowed for the establishment of ADUs in the R-1 and R-BA zoning districts, subject to compliance with defined development standards, including minimum lot sizes, maximum unit size, and off-street parking requirements.

On September 27, 2016, Governor Brown signed legislation amending Section 65852.2 of the California Government Code. The amendments are intended to mitigate, or in some cases eliminate, certain development standards applicable to accessory dwelling units that are considered by the Legislature to limit their development. Significantly, the amendments stipulate the maximum development standards that cities may apply to ADUs in their local ordinances, eliminating cities' ability to adopt unique standards based on their local context.

Additionally, the legislation requires local jurisdictions to update their ADU ordinances to be consistent with the Government Code by January 1, 2017. Should the ADU ordinance not be updated by this date, the local ordinance will become null and void until such a time as a compliant ordinance is adopted. In that intervening period between January 1, 2017 and adoption of the updated ordinance, any new ADU applications received by the City would be subject only to the State-prescribed requirements. The full text of the legislation is attached to this staff report (see Attachment B).

The updated provisions relevant to zoning regulations are summarized below:

Development Standard	Current BMC Standard	New California Government Code Provision
Legal terminology	"Secondary Dwelling Unit"	"Accessory Dwelling Unit"
Maximum Unit Size	1,000 SF	Detached ADU: 1200 SF max. Attached ADU: 50 percent of the existing living area, or 1,200 square feet, whichever is less.
Off-street Parking	Studio or 1 Bedroom up to 900 SF: 1 off-street space More than 1 bedroom or over 900 SF: 2 off-street spaces	No off-street parking requirements if ADU is - Within ½ mi of transit, or - Part of an existing single-family dwelling or accessory structure, or - Within 1 block of a designated car-share parking space.
Accessory Dwelling Unit Permit	Accessory Dwelling Unit Permit approval by the Planning	New ADUs resulting from conversion of existing space in a single-family dwelling or accessory structure in a single-family district must be approved ministerially

Development Standard	Current BMC Standard	New California Government Code Provision
	Director required	(building permit only), if exterior access is provided and structure complies with setbacks for fire safety. ADU Permit still required for ADUs resulting from addition of living space (attached or detached).
Garage conversions to ADUs	Must comply with minimum setbacks	No setbacks required
	Replacement of lost covered parking	Replacement parking spaces are required, but do not have to be covered or otherwise comply with setbacks

Zoning Text Amendments

The attached draft resolution RZ-5-16 sets forth text amendments to the City's existing accessory dwelling unit regulations to achieve consistency with the new State regulations. The most significant changes to the City's regulations pertaining to zoning requirements are summarized below.

Elimination of Off-street Parking Requirement

The City is pre-empted by the new State regulations from requiring additional parking for new ADUs, whether established by new construction or by the conversion of existing building area, due to the State-mandated parking exemption for ADUs located within one-half mile (2,640 feet) of a public transit stop. As shown in Attachment C, this exemption applies to the majority of the R-1 and R-BA zoning districts, due to the multiple transit stops served by Samtrans Route 292 along Bayshore Boulevard, and the public commuter shuttle stops along San Bruno Avenue. As discussed further below, the City can require that parking spaces eliminated by conversion of a garage into an ADU be replaced on-site. However, the City cannot require those replacement spaces to be covered, and the parking spaces will not be subject to setback or configuration (i.e., tandem) standards.

Multiple Types of ADUs

The new State regulations effectively create two different types of ADUs for regulatory purposes. ADUs that that are created through new construction (either as building additions or detached buildings) can be regulated through a local ADU permit. The City can establish and enforce development standards such as minimum lot size, lot coverage, and others (unless pre-empted by State law, such as off-street parking as described above).

The second type of ADU now defined in State law is an ADU created from the conversion of space within existing single-family dwelling or accessory building, within a single-family residential zone. These "Conversion ADUs" must have exterior access for the unit and the structure they are in must comply with minimum setbacks for fire safety. If those requirements

are met, "Conversion ADUs" must be approved ministerially through the issuance of a building permit.

As previously noted, in the cases of the conversion of an existing garage (attached or detached) into an ADU, the new State regulations allow the City to require the displaced parking spaces to be replaced on the property. However, the City is not allowed to require those parking spaces to be covered, and the parking spaces may be located in any location or configuration on the property.

Housing Element Implementation

Though the State has mandated that the City amend its ADU regulations, it should be noted that encouraging the development of ADUs by streamlining the approval processes is consistent with the City's Housing Element Policy H.B.1, Program H.B.1.e, and Policy H.I.1.

STAFF RECOMMENDATION

Adoption of the attached draft Resolution RZ-5-16 recommending approval of the proposed zoning text amendments to the City Council.

ATTACHMENTS:

A. ~~Table of Redlined Text~~
B. Amended California Government Code Section 65852.2
C. Map of Parcels within One-Half Mile of Public Transit Stop
D. ~~Draft Resolution RZ-5-16 (including the Draft Ordinance)~~

Amended California Government Code Section 65852.2

65852.2.

(a) (1) A local agency may, by ordinance, provide for the creation of accessory dwelling units in single-family and multifamily residential zones. The ordinance shall do all of the following:

(A) Designate areas within the jurisdiction of the local agency where accessory dwelling units may be permitted. The designation of areas may be based on criteria, that may include, but are not limited to, the adequacy of water and sewer services and the impact of accessory dwelling units on traffic and public safety.

(B) (i) Impose standards on accessory dwelling units that include, but are not limited to, parking, height, setback, lot coverage, landscape, architectural review, maximum size of a unit, and standards that prevent adverse impacts on any real property that is listed in the California Register of Historic Places.

(ii) Notwithstanding clause (i), a local agency may reduce or eliminate parking requirements for any accessory dwelling unit located within its jurisdiction.

(C) Provide that accessory dwelling units do not exceed the allowable density for the lot upon which the accessory dwelling unit is located, and that accessory dwelling units are a residential use that is consistent with the existing general plan and zoning designation for the lot.

(D) Require the accessory dwelling units to comply with all of the following:

(i) The unit is not intended for sale separate from the primary residence and may be rented.

(ii) The lot is zoned for single-family or multifamily use and contains an existing, single-family dwelling.

(iii) The accessory dwelling unit is either attached to the existing dwelling or located within the living area of the existing dwelling or detached from the existing dwelling and located on the same lot as the existing dwelling.

(iv) The increased floor area of an attached accessory dwelling unit shall not exceed 50 percent of the existing living area, with a maximum increase in floor area of 1,200 square feet.

(v) The total area of floorspace for a detached accessory dwelling unit shall not exceed 1,200 square feet.

(vi) No passageway shall be required in conjunction with the construction of an accessory dwelling unit.

(vii) No setback shall be required for an existing garage that is converted to a accessory dwelling unit, and a setback of no more than five feet from the side and rear lot lines shall be required for an accessory dwelling unit that is constructed above a garage.

(viii) Local building code requirements that apply to detached dwellings, as appropriate.

(ix) Approval by the local health officer where a private sewage disposal system is being used, if required.

(x) (I) Parking requirements for accessory dwelling units shall not exceed one parking space per unit or per bedroom. These spaces may be provided as tandem parking on an existing driveway.

(II) Offstreet parking shall be permitted in setback areas in locations determined by the local agency or through tandem parking, unless specific findings are made that parking in setback areas or tandem parking is not feasible based upon specific site or regional topographical or fire and life safety conditions, or that it is not permitted anywhere else in the jurisdiction.

(III) This clause shall not apply to a unit that is described in subdivision (d).

(xi) When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit, and the local agency requires that those offstreet parking spaces be replaced, the replacement spaces may be located in any configuration on the same lot as the accessory dwelling unit, including, but not limited to, as covered spaces, uncovered spaces, or tandem spaces, or by the use of mechanical automobile parking lifts. This clause shall not apply to a unit that is described in subdivision (d).

(2) The ordinance shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(3) When a local agency receives its first application on or after July 1, 2003, for a permit pursuant to this subdivision, the application shall be considered ministerially without discretionary review or a hearing, notwithstanding Section 65901 or 65906 or any local ordinance regulating the issuance of variances or special use permits, within 120 days after receiving the application. A local agency may charge a fee to reimburse it for costs that it incurs as a result of amendments to this paragraph enacted during the 2001–02 Regular Session of the Legislature, including the costs of adopting or amending any ordinance that provides for the creation of an accessory dwelling unit.

(4) An existing ordinance governing the creation of an accessory dwelling unit by a local agency or an accessory dwelling ordinance adopted by a local agency subsequent to the effective date of the act adding this paragraph shall provide an approval process that includes only ministerial provisions for the approval of accessory dwelling units and shall not include any discretionary processes, provisions, or requirements for those units, except as otherwise provided in this subdivision. In the event that a local agency has an existing accessory dwelling unit ordinance that fails to meet the requirements of this subdivision, that ordinance shall be null and void upon the effective date of the act adding this paragraph and that agency shall thereafter apply the standards established in this subdivision for the approval of accessory dwelling units, unless and until the agency adopts an ordinance that complies with this section.

(5) No other local ordinance, policy, or regulation shall be the basis for the denial of a building permit or a use permit under this subdivision.

(6) This subdivision establishes the maximum standards that local agencies shall use to evaluate a proposed accessory dwelling unit on a lot zoned for residential use that contains an existing single-family dwelling. No additional standards, other than those provided in this subdivision, shall be utilized or imposed, except that a local agency may require an applicant for a permit issued pursuant to this subdivision to be an owner-occupant or that the property be used for rentals of terms longer than 30 days.

(7) A local agency may amend its zoning ordinance or general plan to incorporate the policies, procedures, or other provisions applicable to the creation of an accessory dwelling unit if these provisions are consistent with the limitations of this subdivision.

(8) An accessory dwelling unit that conforms to this subdivision shall be deemed to be an accessory use or an accessory building and shall not be considered to exceed the allowable density for the lot upon which it is located, and shall be deemed to be a residential use that is consistent with the existing general plan and zoning designations for the lot. The accessory dwelling unit shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(b) When a local agency that has not adopted an ordinance governing accessory dwelling units in accordance with subdivision (a) receives its first application on or after July 1, 1983, for a permit to create an accessory dwelling unit pursuant to this subdivision, the local agency shall accept the application and approve or disapprove the application ministerially without discretionary review pursuant to subdivision (a) within 120 days after receiving the application.

(c) A local agency may establish minimum and maximum unit size requirements for both attached and detached accessory dwelling units. No minimum or maximum size for an accessory dwelling unit, or size based upon a percentage of the existing dwelling, shall be established by ordinance for either attached or detached dwellings that does not permit at least an efficiency unit to be constructed in compliance with

local development standards. Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence.

(d) Notwithstanding any other law, a local agency, whether or not it has adopted an ordinance governing accessory dwelling units in accordance with subdivision (a), shall not impose parking standards for an accessory dwelling unit in any of the following instances:

(1) The accessory dwelling unit is located within one-half mile of public transit.

(2) The accessory dwelling unit is located within an architecturally and historically significant historic district.

(3) The accessory dwelling unit is part of the existing primary residence or an existing accessory structure.

(4) When on-street parking permits are required but not offered to the occupant of the accessory dwelling unit.

(5) When there is a car share vehicle located within one block of the accessory dwelling unit.

(e) Notwithstanding subdivisions (a) to (d), inclusive, a local agency shall ministerially approve an application for a building permit to create within a single-family residential zone one accessory dwelling unit per single-family lot if the unit is contained within the existing space of a single-family residence or accessory structure, has independent exterior access from the existing residence, and the side and rear setbacks are sufficient for fire safety. Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence.

(f) (1) Fees charged for the construction of accessory dwelling units shall be determined in accordance with Chapter 5 (commencing with Section 66000) and Chapter 7 (commencing with Section 66012).

(2) Accessory dwelling units shall not be considered new residential uses for the purposes of calculating local agency connection fees or capacity charges for utilities, including water and sewer service.

(A) For an accessory dwelling unit described in subdivision (e), a local agency shall not require the applicant to install a new or separate utility connection directly between the accessory dwelling unit and the utility or impose a related connection fee or capacity charge.

(B) For an accessory dwelling unit that is not described in subdivision (e), a local agency may require a new or separate utility connection directly between the accessory dwelling unit and the utility. Consistent with Section 66013, the connection may be subject to a connection fee or capacity charge that shall be proportionate to the burden of the proposed accessory dwelling unit, based upon either its size or the number of its plumbing fixtures, upon the water or sewer system. This fee or charge shall not exceed the reasonable cost of providing this service.

(g) This section does not limit the authority of local agencies to adopt less restrictive requirements for the creation of an accessory dwelling unit.

(h) Local agencies shall submit a copy of the ordinance adopted pursuant to subdivision (a) to the Department of Housing and Community Development within 60 days after adoption.

(i) As used in this section, the following terms mean:

(1) “Living area” means the interior habitable area of a dwelling unit including basements and attics but does not include a garage or any accessory structure.

(2) “Local agency” means a city, county, or city and county, whether general law or chartered.

(3) For purposes of this section, “neighborhood” has the same meaning as set forth in Section 65589.5.

(4) “Accessory dwelling unit” means an attached or a detached residential dwelling unit which provides complete independent living facilities for one or more persons. It shall include permanent

provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family dwelling is situated. An accessory dwelling unit also includes the following:

(A) An efficiency unit, as defined in Section 17958.1 of Health and Safety Code.

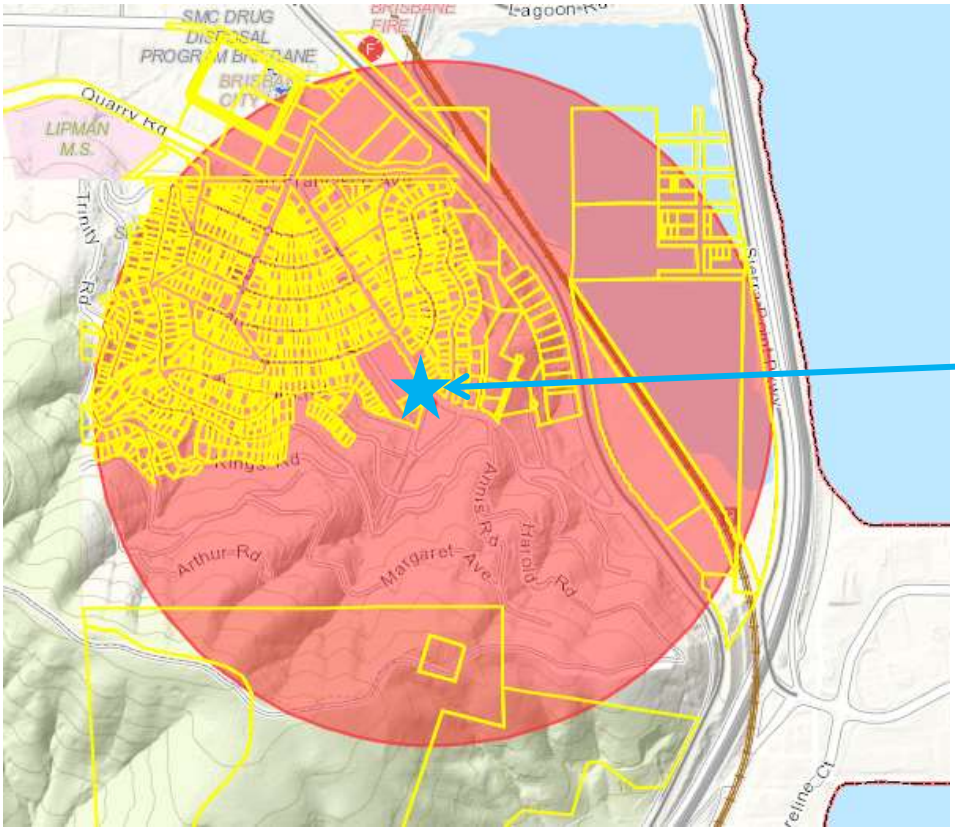
(B) A manufactured home, as defined in Section 18007 of the Health and Safety Code.

(5) “Passageway” means a pathway that is unobstructed clear to the sky and extends from a street to one entrance of the accessory dwelling unit.

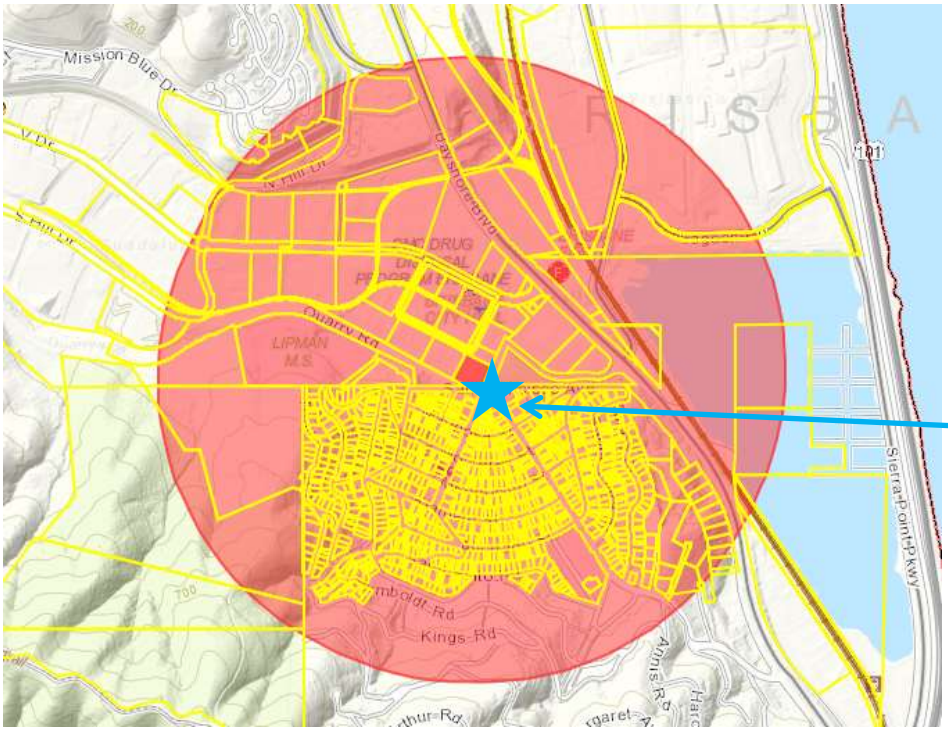
(j) Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act (Division 20 (commencing with Section 30000) of the Public Resources Code), except that the local government shall not be required to hold public hearings for coastal development permit applications for accessory dwelling units.

Attachment C

Map of Parcels within One-Half Mile of Public Transit



Public Transit Stop at San Bruno Ave and Glen Park Way



Public Transit Stop at 280 Old County Road (Post Office)

BRISBANE PLANNING COMMISSION
Action Minutes of November 10, 2016
Regular Meeting

A. CALL TO ORDER

Chairperson Do called the meeting to order at 7:31 p.m.

B. ROLL CALL

Present: Commissioners Do, Anderson, Munir, and Parker.
Absent: Commissioner Reinhardt.
Staff Present: Community Development Director Swiecki, Senior Planner Johnson and Associate Planner Capasso.

C. ADOPTION OF AGENDA

Commissioner Anderson moved and Commissioner Parker seconded to adopt the agenda. The motion was approved 4-0.

D. CONSENT CALENDAR

1. APPROVAL OF DRAFT ACTION MINUTES
   i. September 22, 2016 regular meeting
   ii. October 13, 2016 regular meeting

Commissioner Parker noted she was absent at the September 22 meeting. Chairperson Do noted she was absent from the October 13 meeting. Commissioner Munir asked for the October 13 minutes to be revised to include more detail about the Commission's discussion of Item G.1, 500 Sierra Point Road. Commissioner Anderson moved to approve the September 22 minutes and to continue the October 13 meeting minutes to a future meeting. Commissioner Parker seconded the motion and it was approved 4-0.

E. ORAL COMMUNICATIONS (limit to a total of 15 minutes)

There were none.

F. WRITTEN COMMUNICATIONS

Chairperson Do reviewed written communications received from the Housing Leadership Council.

G. NEW BUSINESS

1. **PUBLIC HEARING: Zoning Text Amendment RZ-5-16**; Zoning Text Amendments to Chapters 17.32, 17.34, and 17.43 of Title 17, Zoning, of the Brisbane Municipal Code to update existing accessory (secondary) dwelling unit regulations to be consistent with

recently adopted amendments to Section 65852.2 of the California Government Code; City of Brisbane, applicant.

Associate Planner Capasso presented the staff report. She answered Commissioner's questions regarding on-site replacement of displaced parking spaces in the case of a garage conversion to an accessory dwelling unit (ADU), the limit of one ADU per lot, the parking exemption for properties within ½ mile of a public transit stop.

Chairperson Do opened the public hearing.

Paul Bouscal asked staff to address when minimum lot size requirements would be applied under the new regulations. Staff clarified that minimum lot size requirements are a prerequisite requirement only for ADUs resulting from new floor area, and did not apply to conversion of existing space within a single-family home or accessory building in a single-family district.

Mr. Bouscal asked how the County Assessor's office would classify an accessory dwelling unit in its property assessment. Staff recommended that Mr. Bouscal follow-up directly with the County Assessor.

Commissioner Anderson moved and Commissioner Parker seconded to close the public hearing. The motion was approved 4-0.

Commissioner Anderson asked staff to notify the applicant of UP-5-16, 500 Sierra Point Road, of the application status under the new ADU regulations. Commissioner Anderson moved adoption of Resolution RZ-5-16, seconded by Commissioner Munir. The motion was approved 4-0.

H. ITEMS INITIATED BY STAFF

1. 2016 California Building Code update

Senior Planner Johnson presented the staff memorandum regarding the triennial update of the California Building Code and answered the Commission's questions regarding the proposed local energy code's rooftop solar requirement for commercial and mixed-use properties, clarification of the "cool roof" requirements, the need to prepare a cost effectiveness study to adopt stricter standards than the State's, new building code requirements for window glazing, and whether the Federal government could impact State building codes.

Chairperson Do asked if a cost effectiveness study was financially feasible. Director Swiecki said there was no established budget and the Council would have to authorize any expenses for such a study.

I. ITEMS INITIATED BY THE COMMISSION

1. Standards for home sizes/lot coverage/floor area ratio- Central Brisbane.

After a brief discussion, it was the consensus of the Commission to postpone the discussion item to after the City Council had appointed the three open Commission seats.