



MEMORANDUM

DATE: 14 February 2019

TO: Planning Commission

FROM: John Swiecki, Community Development Director and Michael Roush, City Attorney

SUBJECT: State Housing Law Implementation

A number of California housing bills took effect in 2018 which potentially have implications on many local jurisdictions, including the City of Brisbane. This memo is focused on the requirements of the Housing Accountability Act as set forth in Government Code Section 65589.5 as well as SB 35 and the implications of these regulations on the City of Brisbane.

Housing Accountability Act (HAA)

The Housing Accountability Act, (HAA) which applies to all residential projects, severely limits the City's ability to deny or reduce the density of projects which comply with "objective development (ie zoning and/or design review) standards" established under the City's zoning regulations. For purposes of the HAA, objective zoning and design review standards mean *standards that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal.*

The City may deny or reduce the density of a residential project which complies with objective standards **only** if the project results in a specific, adverse impact upon public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. *A "specific, adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.*

City Ordinances

The City's zoning ordinance includes many objective development standards that apply to residential projects including but not limited to density, building height, setbacks, floor area ratio and lot coverage. In addition to these objective standards, single family residences along identified ridgelines and multi-family residential projects with 3 or more units are also subject to design review. In certain zones such as NCRO-2 and SW Bayshore, residential projects are subject to the granting of a conditional use permit in addition to a design permit.

In reviewing the required findings for design permits and conditional use permits as set forth in the zoning ordinance, it appears that many of the required findings are not objective standards and therefore cannot be used as a basis for denying or reducing the density of residential projects. Some of these subjective findings are annotated in red in the attached for reference purposes.

It should be noted that subjective findings can be used as a basis to require alterations to the design of residential projects as long as the resulting modifications do not create a reduction in density. Subjective design standards can also still be applied to non-residential projects.

SB 35

Senate Bill 35 (2017 Legislative session) establishes a streamlined and ministerial approval process for qualifying residential and mixed use projects. The eligibility requirements for SB 35 streamlining are set forth in the bill and attached for reference. Some of the eligibility criteria relate to the site (ie limited to urban infill sites, cannot be invoked for hazardous sites, earthquake fault zones, high fire danger sites) while other eligibility criteria (percentage of affordable units, adherence to paying prevailing wage for construction, etc.) are specific to actual projects.

While there are areas within Brisbane that are potentially eligible for SB 35 streamlining (NCRO-2, SW Bayshore, R-2, R-3, Parkside), the issue of whether or not developers would attempt to exercise SB 35 streamlining procedures is unknown. To qualify for SB 35 streamlining in Brisbane, a project would need to designate 50% of the units as affordable. To date there are no existing or proposed projects in Brisbane developed by for-profit developers that maintain 50% affordable units.

If an SB 35 project is submitted, the statute requires a ministerial review process and imposes very strict timelines for the city to undertake and complete this review. Failure of the city to act with prescribed timelines would ultimately lead to the project being deemed approved. In order to implement SB 35, city staff has prepared a checklist for any project wherein the developer is proposing to exercise SB 35 streamlining procedures. The checklist places the burden on the project applicant to clearly demonstrate that their project qualifies for SB 35 processing.

Under SB 35 streamlining procedures, the city is limited to undertaking a ministerial review process to verify that the project complies with “objective development standards” as discussed under the HAA section of this memo. Requirements for discretionary review through a design or use permit would be rendered inapplicable. Additionally, SB 35 severely limits the amount of parking the City may require for SB 35- eligible projects.

Next Steps

City staff is initiating a zoning code text amendment to ensure that the City’s zoning ordinance better conforms with the provisions of state law. Points of emphasis would be to modify the required findings for residential projects consistent with the provisions of state law, and to establish objective design review standards. Examples of objective standards can

be found in the Parkside Precise Plan and several examples are attached for reference purposes. While the Planning Commission will have additional opportunities to provide input into and review subsequent draft ordinance language, any feedback the Commission wishes to offer at this point would be welcome.

Attachments

- Design Permit Findings
- Use Permit Findings
- SB 35 Provisions
- Parkside Precise Plan Excerpts

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ATTACHMENT 1

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Design permit findings (BMC 17.42.040)

The planning commission may grant a design permit as applied for or in modified form if, on the basis of the application and the evidence submitted, the commission finds and determines that the proposed development is consistent with the general plan and any applicable specific plan and the commission also makes such of the following findings as may be applicable to the proposed development:

- A. The proposal's scale, form and proportion, **are harmonious**, and the materials and colors used **complement** the project.
- B. The orientation and location of buildings, structures, open spaces and other features **integrate well with each other and maintain a compatible relationship to adjacent development.**
- C. Proposed buildings and structures are designed and located to mitigate potential impacts to adjacent land uses
- D. The project design takes advantage of natural heating and cooling opportunities **through building placement, landscaping and building design to the extent practicable, given site constraints, to promote sustainable development** and to address long term affordability.
- E. **For hillside development, the proposal respects the topography of the site and is designed to minimize its visual impact. Significant public views of San Francisco Bay, the Brisbane Lagoon and San Bruno Mountain State and County Park are preserved.**
- F. The site plan **minimizes the effects of traffic on abutting streets through careful layout of the site with respect to location, dimensions of vehicular and pedestrian entrances and exit drives**, and through the provision of adequate off-street parking. There is an **adequate circulation pattern** within the boundaries of the development. Parking facilities are **adequately surfaced, landscaped and lit.**
- G. The proposal encourages alternatives to travel by automobile **where appropriate**, through the provision of facilities for pedestrians and bicycles, public transit stops and access to other means of transportation.
- H. The site provides **open areas and landscaping to complement the buildings and structures.** Landscaping is also used to separate and screen service and storage areas, break up expanses of paved area and define areas for usability and privacy. Landscaping is generally water conserving and is appropriate to the location. Attention is given to habitat protection and wildland fire hazard **as appropriate.**
- I. The proposal takes **reasonable measures** to protect against external and internal noise.
- J. **Consideration has been given** to avoiding off-site glare from lighting and reflective building materials.
- K. **Attention is given** to the screening of utility structures, mechanical equipment, trash containers and rooftop equipment.
- L. Signage is appropriate in location, scale, type and color, and is effective in enhancing the design concept of the site.

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Use Permit findings 17.40.060

- 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.

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SB 35 Provisions (Excerpts)

(a) A development proponent may submit an application for a development that is subject to the streamlined, ministerial approval process provided by subdivision (b) and not subject to a conditional use permit if the development satisfies all of the following objective planning standards:

(1) The development is a multifamily housing development that contains two or more residential units.

(2) The development is located on a site that satisfies all of the following:

(A) A site that is a legal parcel or parcels located in a city if, and only if, the city boundaries include some portion of either an urbanized area or urban cluster, as designated by the United States Census Bureau, or, for unincorporated areas, a legal parcel or parcels wholly within the boundaries of an urbanized area or urban cluster, as designated by the United States Census Bureau.

(B) A site in which at least 75 percent of the perimeter of the site adjoins parcels that are developed with urban uses. For the purposes of this section, parcels that are only separated by a street or highway shall be considered to be adjoined.

(C) A site that is zoned for residential use or residential mixed-use development, or has a general plan designation that allows residential use or a mix of residential and nonresidential uses, with at least two-thirds of the square footage of the development designated for residential use.

(3) If the development contains units that are subsidized, the development proponent already has recorded, or is required by law to record, a land use restriction for the following applicable minimum durations:

(A) Fifty-five years for units that are rented.

(B) Forty-five years for units that are owned.

(5) The development, excluding any additional density or any other concessions, incentives, or waivers of development standards granted pursuant to the Density Bonus Law in Section 65915, is consistent with objective zoning standards and objective design review standards in effect at the time that the development is submitted to the local government pursuant to this section. For purposes of this paragraph, “objective zoning standards” and “objective design review standards” mean standards that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal. These standards may be embodied in alternative objective land use specifications adopted by a city or county, and may include, but are not limited to, housing overlay zones, specific plans, inclusionary zoning ordinances, and density bonus ordinances, subject to the following:

(A) A development shall be deemed consistent with the objective zoning standards related to housing density, as applicable, if the density proposed is compliant with the maximum density allowed within that land use designation, notwithstanding any specified maximum unit allocation that may result in fewer units of housing being permitted.

(B) In the event that objective zoning, general plan, or design review standards are mutually inconsistent, a development shall be deemed consistent with the objective zoning standards pursuant to this subdivision if the development is consistent with the standards set forth in the general plan.

- (6) The development is not located on a site that is any of the following:
- (A) A coastal zone, as defined in Division 20 (commencing with Section 30000) of the Public Resources Code.
 - (B) Either prime farmland or farmland of statewide importance, as defined pursuant to United States Department of Agriculture land inventory and monitoring criteria, as modified for California, and designated on the maps prepared by the Farmland Mapping and Monitoring Program of the Department of Conservation, or land zoned or designated for agricultural protection or preservation by a local ballot measure that was approved by the voters of that jurisdiction.
 - (C) Wetlands, as defined in the United States Fish and Wildlife Service Manual, Part 660 FW 2 (June 21, 1993).
 - (D) Within a very high fire hazard severity zone, as determined by the Department of Forestry and Fire Protection pursuant to Section 51178, or within a high or very high fire hazard severity zone as indicated on maps adopted by the Department of Forestry and Fire Protection pursuant to Section 4202 of the Public Resources Code. This subparagraph does not apply to sites excluded from the specified hazard zones by a local agency, pursuant to subdivision (b) of Section 51179, or sites that have adopted fire hazard mitigation measures pursuant to existing building standards or state fire mitigation measures applicable to the development.
 - (E) A hazardous waste site that is listed pursuant to Section 65962.5 or a hazardous waste site designated by the Department of Toxic Substances Control pursuant to Section 25356 of the Health and Safety Code, unless the Department of Toxic Substances Control has cleared the site for residential use or residential mixed uses.
 - (F) Within a delineated earthquake fault zone as determined by the State Geologist in any official maps published by the State Geologist, unless the development complies with applicable seismic protection building code standards adopted by the California Building Standards Commission under the California Building Standards Law (Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code), and by any local building department under Chapter 12.2 (commencing with Section 8875) of Division 1 of Title 2.
 - (G) Within a flood plain as determined by maps promulgated by the Federal Emergency Management Agency, unless the development has been issued a flood plain development permit pursuant to Part 59 (commencing with Section 59.1) and Part 60 (commencing with Section 60.1) of Subchapter B of Chapter I of Title 44 of the Code of Federal Regulations.
 - (H) Within a floodway as determined by maps promulgated by the Federal Emergency Management Agency, unless the development has received a no-rise certification in accordance with Section 60.3(d)(3) of Title 44 of the Code of Federal Regulations.
 - (I) Lands identified for conservation in an adopted natural community conservation plan pursuant to the Natural Community Conservation Planning Act (Chapter 10 (commencing with Section 2800) of Division 3 of the Fish and Game Code), habitat conservation plan pursuant to the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), or other adopted natural resource protection plan.
 - (J) Habitat for protected species identified as candidate, sensitive, or species of special status by state or federal agencies, fully protected species, or species protected by the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code), or the Native Plant Protection Act (Chapter 10 (commencing with Section 1900) of Division 2 of the Fish and Game Code).
 - (K) Lands under conservation easement.

- (7) The development is not located on a site where any of the following apply:
- (A) The development would require the demolition of the following types of housing:
- (i) Housing that is subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate, low, or very low income.
 - (ii) Housing that is subject to any form of rent or price control through a public entity's valid exercise of its police power.
 - (iii) Housing that has been occupied by tenants within the past 10 years.
- (B) The site was previously used for housing that was occupied by tenants that was demolished within 10 years before the development proponent submits an application under this section.
- (C) The development would require the demolition of a historic structure that was placed on a national, state, or local historic register.
- (D) The property contains housing units that are occupied by tenants, and units at the property are, or were, subsequently offered for sale to the general public by the subdivider or subsequent owner of the property.

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Figure 7. At least 40% of the planes of the exterior walls along public streets shall vary in depth and/or direction (see K at right).



Primary facades of buildings shall be oriented toward the street.

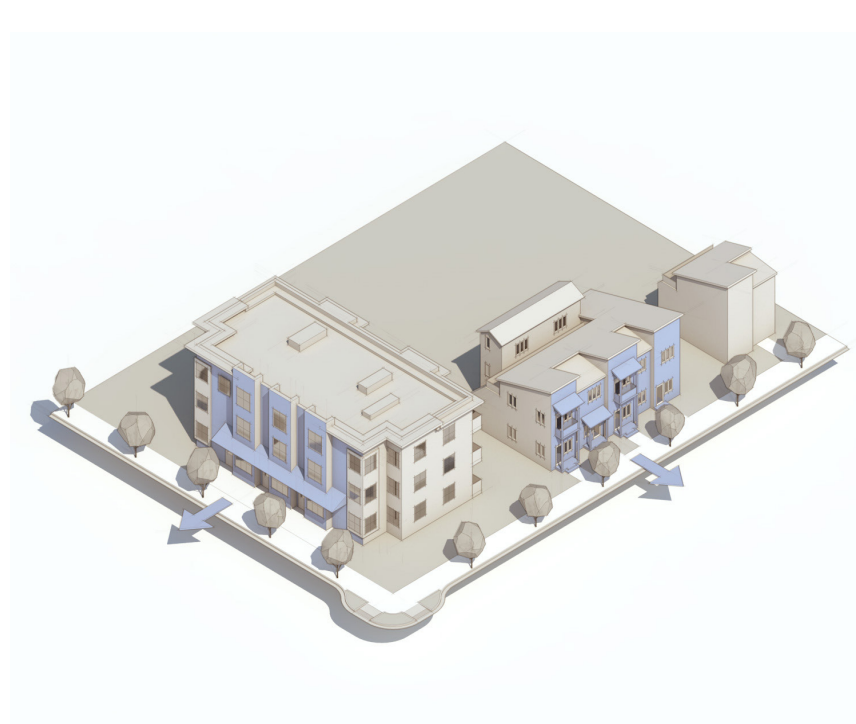


Figure 8. Orient primary building facades and entrances toward the street (see M at right).



Articulation in the wall planes of buildings will help create a sense of quality, detail and visual interest.

Building Articulation

- K. Front walls shall have offsets of a minimum of one (1) foot for every 25 feet of length (“Figure 7. Façade articulation diagram” on page 32).
- L. Building facades shall incorporate details such as window trim, window recesses, cornices, changes in material, color, or other design elements in an integrated composition.
- M. At least 50% of the planes of the exterior walls along public streets shall vary in depth and/or direction through the use of cornices, recesses, bay windows, and overhangs (Figure 7 on page 32).
- N. Secondary facades must have an appropriate level of architectural refinement and detail consistent with primary facades.

Orientation

- O. Orient primary building facades and entrances toward the street (Figure 8 on page 32).
- P. Orient primary and secondary building facades and common active gathering spaces on the southeast sides of buildings to maximize natural sunlight, ventilation, and passive heating and cooling.
- Q. Orient secondary facades onto shared and private open areas.
- R. Buildings shall not cast shadows greater than 14 feet deep on adjacent parcels to the east on Winter Solstice, December 21,

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Residential Development on Park Lane shall allow public access to Quarry Road.



Figure 10. Provide easy and safe multi-modal access to, from, and within new housing developments (see A, B and C at right).

3.4 SITE DESIGN AND ON-SITE PARKING

This section establishes requirements for site access from the public rights-of-way and off-street parking requirements for new residential uses. Parking requirements for uses not included within the Parkside Area Overlay Zones shall be as set forth in BMC Chapter 17.34.

3.4.1 INTERNAL AND EXTERNAL SITE ACCESS

Intent: Provide easy and safe multi-modal access to, from, and within new housing developments (Figure 10 on page 34).

General Standards

These standards shall apply to all new housing developments within the PAOZ-1 and PAOZ-2 overlay zones.

- A. Locate new curb cuts at least 20 feet from intersections or street turns of 90 degrees or more to allow for adequate queuing and visibility.
- B. Driveways shall provide a minimum five-foot-wide, level accessible path of travel across the driveway. (“Figure 10. Access Path Across Driveway” on page 34)
- C. All pedestrian footpaths within a residential project shall be at least five feet wide and clear of any obstructions.

PAOZ-1 Standards

- D. In the PAOZ-1 District, development at 43 Park Place shall include a publicly accessible bicycle and pedestrian path at least eight (8) feet wide linking Old County Road to City Hall,

subject to recordation of a non-exclusive access easement to allow public use of the path.

- E. In the PAOZ-1 District, direct vehicular access to units shall not be taken from Park Place or Old County Road.

PAOZ-2 Standards

- F. In the PAOZ-2 District, development at 260-280 Old County Road and 91-99 Park Lane must provide a publicly accessible bicycle and pedestrian path at least eight (8) feet wide between Park Lane and the terminus of Quarry Road at San Francisco Avenue, and record a non-exclusive access easement to allow public use of the path. These parcels may share the path if developed simultaneously. If the parcels are developed separately, the first parcel to be developed shall accommodate the path.
- G. In the PAOZ-2 District, vehicular access to parking areas shall be taken only from Park Lane.