

Eff.: ORDINANCE NO. _____

AN ORDINANCE OF THE COUNCIL OF THE CITY OF BURBANK AMENDING TITLE 10, CHAPTER 1 (ZONING) IN ORDER TO AMEND THE STREAMLINED MINISTERIAL REVIEW AND PUBLIC OVERSIGHT PROCESS FOR APPLICATIONS SUBMITTED UNDER THE STREAMLINED MINISTERIAL APPROVAL PROCESS PURSUANT TO GOVERNMENT CODE SECTIONS 65913.4 and 65912.100. (Project No. 23-0001259)

City Attorney's Synopsis

This Ordinance amends Title 10 of the Burbank Municipal Code to update the streamlined ministerial review and public oversight process for multifamily housing development projects submitted in compliance with Senate Bill 35 and Assembly Bill 2011, codified as California Government Code Section 65913.4 and 65912.100.

THE CITY COUNCIL OF THE CITY OF BURBANK FINDS, DETERMINES AND DECLARES THAT:

A. California Senate Bill 35 ("SB 35") (Government Code Section 65913.4) was signed by Governor Jerry Brown on September 29, 2017 and became effective January 1, 2018. SB 35 applies to cities and counties that have not made sufficient progress toward meeting their affordable housing goals for above-moderate and lower-income levels as mandated by the State. SB 35 requires cities and counties to streamline the review and approval of certain affordable housing projects by providing a ministerial process.

B. Through 2020, the City of Burbank had issued 697 building permits for housing units or 26 percent out of the City's 2,684 Regional Housing Needs Assessment (RHNA) allocation. Pursuant to the requirements under SB 35, the City did not have at least 50% permitting progress for an applicable income category as noted in the City's RHNA allocation and therefore is subject to SB 35 (Government Code Section 65913.4).

C. The City is required to have at least 50% permitting progress for applicable income categories as noted in the City's RHNA allocation during the First Half Reporting Period of the 6th planning cycle (2021-2029) to attain exemption from SB 35's streamlined, ministerial approval process for residential developments.

D. Assembly Bill 2011 ("AB 2011") (Government Code Section 65912.100) was signed by Governor Gavin Newsom on September 28, 2022 and will become effective on July 1, 2023. AB 2011 allows streamlined, ministerial review process for housing projects that meet certain objective standards and affordability and site criteria that is similar to SB 35 streamlined ministerial review process.

E. On January 4, 2022, pursuant to the requirements in California Government Code Section 65913.4, the City Council adopted Ordinance No. 22-3,964 establishing a

ministerial review and public oversight process for SB 35 applications that requires two rounds of City Council review, an initial review for determination of site eligibility on receipt of a Notice of Intent (NOI) to submit a SB35 application, and a final City Council ministerial design review for the approval of SB 35 application.

F. After a year of implementation of Ordinance No. 22-3,964, the City Council directed staff to bring back the existing streamlined ministerial review and public oversight process for SB 35 applications for further consideration.

G. This Ordinance will amend the existing City streamlined ministerial review and public oversight process for SB 35 applications submitted pursuant to Government Code Section 65913.4 by establishing City planning staff review of site eligibility on receipt of a NOI to submit a SB35 application, while maintaining the City Council ministerial design review for final approval of SB 35 applications. Additionally, the Ordinance will implement a streamlined, ministerial review process and public oversight process, which includes final review and approval consideration by the City Council for AB 2011 applications submitted pursuant to Government Code Section 65912.100.

H. This Ordinance shall be applicable to all pending and future applications submitted pursuant to Government Code Sections 65913.4 and 65912.100.

I. Pursuant to the California Environmental Quality Act (“CEQA”) and the City’s local CEQA Guidelines, the City Council in the exercise of its independent judgment finds that the adoption of the proposed ordinance to update the streamlined ministerial review and public oversight process for SB 35 applications is covered by the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment. The City Council has determined that the adoption of this ordinance, which would update the established review procedures for eligible project applications designating the City Council as the appropriate decision-making body pursuant to Government Code Section 65913.4, will not have a significant environmental effect and therefore, adoption of this ordinance is exempt from CEQA pursuant to Section 15061(b)(3) of the State CEQA Guidelines (14 CCR § 15061(b)(3)).

J. Additionally, pursuant to Government Code Sections 65912.114(o) and 65912.124(o), the City Council has determined that adoption of this ordinance for implementing a streamlined, ministerial review process for AB 2011 applications shall not be considered a “project” under Division 13 (commencing with Section 21000) of the Public Resources Code and therefore, adoption of this ordinance is exempt from CEQA.

THE COUNCIL OF THE CITY OF BURBANK DOES ORDAIN AS FOLLOWS:

1. All the findings set forth above are true and correct and are incorporated herein as if restated in their entirety.
2. Section 10-1-1909 of the Burbank Municipal Code, entitled “Submission of Development Review”, is amended by adding subsection E as follows:

E. STREAMLINED MINISTERIAL APPROVAL PROCESS

Development projects submitted pursuant to California Government Code Sections 65913.4 and 65912.100, as may be amended from time to time, shall be processed through a streamlined ministerial approval process as outlined in Article 19, Division 12, entitled STREAMLINED MINISTERIAL APPROVAL PROCESS, commencing with Section 19300, et. seq.

3. Article 19 of the Burbank Municipal Code, entitled “Zoning Procedures and Amendments”, is amended to include a new Division 12 as follows:

Division 12. Streamlined Ministerial Approval Process

10-1-19300: PURPOSE AND INTENT:

A. PURPOSE.

The City Council declares and finds all the following:

1. The California Legislature finds and declares that ensuring access to affordable housing is a matter of statewide concern.
2. Pursuant to Senate Bill (SB) 35 and Assembly Bill (AB) 2011, a development proponent may submit an application for a development that is subject to the streamlined, ministerial approval process provided by California Government Code Sections 65913.4 and 65912.100, and not be subject to a conditional use permit or any other discretionary local government review or approval.
3. The City Council shall undertake ministerial design review and public oversight as provided for in SB 35 and AB 2011 (California Government Code Sections 65913.4, 65912.114, and 65912.124).

B. INTENT.

The intent of this Division is, to the extent permissible by law, establish a streamlined ministerial review and public oversight process for the City Council’s final review and approval of SB 35 and AB 2011 applications pursuant to the requirements in California Government Code Sections 65913.4 and 65912.100.

10-1-19301: DEFINITIONS:

All terms not defined below shall, unless their context suggests otherwise, be interpreted in accordance with the definition established in Government Code sections 65913.4 and 65912.100, and the Guidelines published by the California Department of Housing and Community Development (referred to herein as the Guidelines).

“Application” means a submission requesting Streamlined Ministerial Approval pursuant to Government Code section 65913.4 and the Guidelines, which contain information

pursuant to Section 300(b) describing the development's compliance with the criteria outlined in Article IV of the Guidelines.

"Ministerial processing" or "ministerial approval" means a process for development approval involving little or no personal judgment by the public official as to the wisdom or manner of carrying out the project. The public official merely ensures that the proposed development meets all the "objective zoning standards," "objective subdivision standards," and "objective design review standards" in effect at the time that the application is submitted to the local government but uses no special discretion or judgment in reaching a decision.

"Ministerial approval" means approval of a project that complies with requirements and guidelines as set forth in Government Code Section 65913.4 that is non-discretionary and cannot require a conditional use permit or other discretionary local government review or approval.

"Objective zoning standard", "objective subdivision standard", and "objective design review standard" means 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 applicant or development proponent and the public official prior to submittal, and includes only such standards as are published and adopted by ordinance or resolution by a local jurisdiction before submission of a development application.

10-1-19302: STREAMLINED MINISTERIAL APPROVAL PROCESS

Development projects submitted pursuant to California Government Code Section 65913.4 shall be reviewed in accordance with the procedures set forth in Subsection (b) of Section 65913.4, and development projects submitted pursuant to California Government Code Section 65912.100 shall be reviewed in accordance with the procedures set forth in Government Code Sections 65912.114 and 65912.124. ~~a~~As such procedures may be amended from time to time, and as further set forth in this Division 12.

A. NOTICE OF INTENT TO SUBMIT A SB 35 APPLICATION

(1) The development proponent shall submit to the local government a notice of its intent to submit an application. The notice of intent (NOI) shall be in the form of a preliminary application that includes all of the information described in Section 65941.1.

(2) Upon receipt of a NOI, the Community Development Director shall engage in a scoping consultation regarding the proposed development with any California Native American tribe that is traditionally and culturally affiliated with the geographic area of the proposed development as required by Section 65913.4(b), as may be amended from time to time.

(3) After completing the NOI to submit an application for streamlined ministerial approval process (also referred to as SB 35 processing) and Tribal Consultation process pursuant to Government Code Section 65913.4, subsection (b), an applicant may submit an application for streamlined ministerial approval processing to the City. The applicant must submit an SB 35 streamlined ministerial approval process application demonstrating the proposed project's eligibility under California Government Code Section 65913.4. Once an application is submitted, the process set forth in subsections B-F, below, shall be followed.

B. COMMUNITY DEVELOPMENT DIRECTOR DETERMINATIONS FOR SB 35 AND AB 2011 APPLICATIONS

(1) The Community Development Director shall review the applications submitted pursuant to California Government Code Sections 65913.4 and 65912.100 as applicable and determine if a project is consistent with or conflicts with any of the objective zoning standards, objective subdivision standards, and objective design review standards applicable to the project. The Community Development Director's review of the project shall be completed within 60 days of an application submittal for projects of 150 or fewer units, and 90 days for projects consisting of more than 150 units.

(2) If the City provides written comments as to any conflicts in the objective standards, or requests additional information to make such a determination, then the 60- or 90-day timeline will restart upon submittal of a revised development application in response to such written notice. The City's written comments shall specify the standard or standards with which the development conflicts and shall provide an explanation for the reason or reasons the development conflicts with that standard or standards, within the timeframe specified.

(3) If the application can be brought into compliance with minor changes to the proposal, the City, in lieu of making detailed findings, will allow the applicant to correct any deficiencies within the timeframes noted subsection B(2) above.

(4) If the City fails to provide the required documentation determining consistency within these timeframes, the development shall be deemed to satisfy the City's objective planning standards and shall be deemed consistent.

(5) The Community Development Director's determination shall be forwarded to the City Council for Council consideration as part of the ministerial design review/public oversight process as provided for in subsection C, below, under California Government Code Sections 65913.4 and 65912.100.

C. CITY COUNCIL MINISTERIAL DESIGN REVIEW/PUBLIC OVERSIGHT FOR SB 35 AND AB 2011 APPLICATIONS

The City Council, at a noticed public meeting, shall undertake ministerial design review and public oversight as provided for in California Government Code Sections 65913.4, 65912.114, and 65912.124. City Council review shall include review of the Community Development Director's determination as outlined in subsection B above. Furthermore, the City Council's review under this process shall be objective and strictly focused on the project's compliance with the criteria required for a streamlined project pursuant to the California Government Code Sections 65913.4 and 65912.100, and consistency with City reasonable objective zoning standards, objective subdivision standards, and objective design review standards applicable to the project, which have been adopted prior to the applications submittal to the City and are applicable to other developments within the City.

The City Council's review and a final determination on whether an application complies with the criteria under California Government Code Sections 65913.4 and 65912.100, and the reasonable objective zoning standards, objective subdivision standards, and objective design review standards applicable to the project must be completed in 90 days for projects with 150 or fewer units and 180 days for projects with more than 150 units, measured from the date of the application submittal.

The City Council's ministerial review and public oversight process shall not in any way inhibit, chill or preclude the ministerial approval of the project if it is in compliance with criteria specified in Government Code Sections 65913.4 and 65912.100, and consistent with the objective zoning standards, objective subdivision standards, and objective design review standards applicable to the project.

D. SUBMISSION OF APPLICATION AND PAYMENT OF FEES FOR SB 35 AND AB 2011 APPLICATIONS

Application for development projects submitted pursuant to California Government Code Sections 65913.4 and 65812.100 shall be made as follows:

- 1) On forms furnished by the Community Development Director.
- 2) Signed by the owner of the property or his duly authorized agent and sworn to by declaration or before a notary public.
- 3) Filed with the Community Development Director.
- 4) Submitted with the City SB 35 or AB 2011 Checklist Application as may be amended from time to time to comply with changes to applicable State law.
- 5) Submitted with a payment of application fees based on the City adopted fee schedule.
- 6) Submitted with a Phase I Environmental Site Assessment (ESA) for sites identified by the Burbank Fire Department (the Fire Marshall) as having a history

of hazardous materials use or storage and any associated follow-up environmental site assessment. Developer shall be responsible for any cost related to third party review of Phase I ESA.

7) When the Phase 1 ESA recommends further study including preparation of a Phase II ESA or any additional environmental site assessments, the developer shall submit the additional studies as a part of the application. The developer shall be responsible for any and all cost related to third party review of additional environmental documents.

E. NOTICE OF PUBLIC HEARING

The public hearing on an application hereunder shall be scheduled within the time frames provided for in subsection C, above. The City Clerk shall give notice of the hearing as follows:

1) Notice of the hearing shall contain the date, time and place of the hearing and the location and proposed development project seeking City approval.

2) Notice shall be published once in a newspaper of general circulation in the City at least ten (10) business days before the hearing.

3.) Notice shall also be mailed, postage prepaid, at least ten (10) business days before the hearing to owners of property and occupants within a radius of 1,000 feet of the exterior boundaries of the property of the proposed development project.

F. MODIFICATION

Applicant can request modification of approval after ministerial review and approval but prior to issuance of final building permit pursuant to California Government Code Section 65914.3, subsection(g). If the modification request falls within the parameters in Section 65913.4, subsection (g), (3) (A) or (B)1, then such modification shall be subject to review pursuant to Subsections B- E, above. Otherwise, the modification shall be reviewed by the Community Development Director to confirm compliance with California Government Code Section 65913.4.

10-1-19303: CHANGES TO STATE LAW

Notwithstanding any of the foregoing, any future amendments to Government Code Sections 65913.4 and/or 65912.100 or the Guidelines that conflict with any provision of this Division 12 shall supersede the conflicting provision in Division 12.

4. If any section, subsection, sentence, clause, phrase, or word of this Ordinance is for any reason held to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed and adopted this Ordinance, and each and all

provisions hereof, irrespective of the fact that one or more provisions may be declared invalid.

5. This Ordinance shall become effective at 12:01 a.m. on the thirty-first (31st) day after the date of adoption.

PASSED AND ADOPTED this ____ day of _____, 2023.

Konstantine Anthony
Mayor

Approved as to Form:
Office of the City Attorney

Attest:

Kimberley Clark, City Clerk

By: _____
Joseph H. McDougall
City Attorney

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss.
CITY OF BURBANK)

I, Kimberley Clark, City Clerk of the City of Burbank, do hereby certify that the foregoing Ordinance No. _____ was duly and regularly passed and adopted by the Council of the City of Burbank at its regular meeting held on the ____ day of _____, 2023, by the following vote:

AYES:

NOES:

ABSENT:

I further certify that said Synopsis was published as required by law in a newspaper of general circulation in the City of Burbank, California within 14 days following of the ordinance's adoption on _____.

Kimberley Clark, City Clerk