

STAFF REPORT



COMMUNITY DEVELOPMENT

DATE: May 16, 2023

TO: Justin Hess, City Manager

FROM: Patrick Prescott, Community Development Director
VIA: Fred Ramirez, Asst. Community Development Director – Planning
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SUBJECT: Introduction of an Ordinance to Amend the Streamlined Ministerial Review and Public Oversight Process for Development Projects Submitted Under the Streamlined Ministerial Approval Process Pursuant to Government Code Sections 65913.4 (SB 35) and 65912.100 (AB 2011)

RECOMMENDATION

Introduce 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 (SB 35) and 65912.100 (AB 2011). (Zone Text Amendment No. 23-0001259) (Attachment 1).

BACKGROUND

The City of Burbank is subject to the streamlined, ministerial approval process of Senate Bill (SB) 35 for residential developments as a result of insufficient progress in providing housing units against the regional housing need assessment (RHNA) allocation during the fifth planning cycle (2014 – 2021). The purpose of SB 35 is to create a streamlined ministerial approval process for cities that have not made sufficient progress toward meeting their RHNA allocation and to process development applications expeditiously. In addition to SB 35, the City is required to comply with the provisions of Assembly Bill (AB) 2011 that was signed by Governor Newsom on September 28, 2022 and will become effective on July 1, 2023. AB 2011 allows streamlined, ministerial review process for housing projects in commercial zones and corridors that meet certain objective standards

and affordability and site criteria that is similar to the SB 35 streamlined ministerial review process.

On January 4, 2022, the City Council adopted an ordinance establishing a ministerial review and public oversight process for SB 35 applications requiring two rounds of Council review: an initial review for determination of site eligibility on receipt of a Notice of Intent (NOI) to submit an SB 35 application, and a final Council review for the approval of an SB 35 application (Attachment 3). At the October 25, 2022, Council meeting, then Vice Mayor Anthony requested staff to bring back the existing streamlined ministerial review and public oversight process for SB 35 applications for the new Council's review and consideration. Usually, staff presents a two-step report to the Council prior to presenting an ordinance for the Council's consideration. Due to the urgency of AB 2011, which will be effective on July 1, 2023, and staff's support to improve the efficiency of the existing streamlined ministerial review process for projects submitted under SB 35, staff is skipping the first step of the two-step report process and presenting an ordinance for Council's consideration. The proposed Zone Text Amendment (ZTA) and the associated Ordinance amends the City's existing ministerial review and public oversight process for SB 35 applications by allowing the Community Development Director to review the site eligibility on receipt of a NOI to submit a SB 35 application, while maintaining Council review for final approval of SB 35 applications. Additionally, the Ordinance will implement a streamlined, ministerial review process and public oversight process for AB 2011 applications submitted pursuant to Government Code Section 65912.100.

Recognizing that both SB 35 and AB 2011 incorporate identical streamlined ministerial review processes for multi-family housing projects, the proposed ZTA and the associated Ordinance amend the code to expand the scope of the City's streamlined ministerial review process, which would apply to all AB 2011 projects in addition to SB 35 projects. In a similar fashion to SB 35 projects, Council will also undertake a ministerial review process for final approval of an AB 2011 application. Further, since AB 2011 will allow development of qualifying residential and mixed-use projects in commercial zones and corridors, planning staff is working on a ZTA updating objective development standards that would apply to all residential and mixed-use projects in nonresidential zones and will be presented for the Council's consideration on May 23, 2023.

DISCUSSION

SB 35 Streamlined, Ministerial Review Process

SB 35 became effective in 2018 and established a streamlined ministerial approval process for qualifying housing projects that met certain specified criteria (SB 35 Projects), for cities that have not made sufficient progress toward meeting their RHNA allocation (Attachment 4). Cities are limited to evaluating SB 35 Projects against objective zoning standards, objective subdivision standards, and objective design review standards in effect at the time a NOI to submit an SB 35 Project is submitted to the City. Additionally,

SB 35 requires that cities streamline the processing of SB 35 Projects through strict processing timelines. The SB 35 Project review process broadly includes two steps:

1. NOI Application to apply for a Streamlined Ministerial Approval Process:
The first step is for a prospective applicant to submit a NOI Application to the City for a potentially eligible SB 35 project. Within 30 days of receipt of an NOI application, the City must begin the notification and consultation process with the California Native American tribes that are traditionally and culturally affiliated with the geographic area of the Project site providing information on the proposed development. NOI process is deemed complete once Tribal Consultation process is concluded pursuant Government Code Section 65913.4(b) (included in Attachment 4).
2. SB 35 Application for a Streamlined Ministerial Approval process:
After completing the NOI Application, which includes the Tribal Consultation process and the preparation of enforceable agreement(s) with each of the responding tribes and the City, an applicant may submit a SB 35 project application for the City's ministerial review.

AB 2011 Streamlined, Ministerial Review Process

AB 2011, also known as the Affordable Housing and High Road Jobs Act of 2022, allows streamlined, ministerial review for housing development that meets certain objective standards, and affordability and site criteria, on commercially zoned sites where office, retail, or parking use are permitted by right (Attachment 5). Development projects submitted under AB 2011 will undergo a preliminary review for analysis of site eligibility as well as a project's compliance with specified objective standards and affordability requirements. Once a project is determined to comply with the specified objective standards, affordability criterion, and site eligibility requirement specified in Government Code Sections 65912.111 through 65912.113 and 65912.121 through 65912.123, it will be eligible for a streamlined, ministerial review and public oversight process pursuant to Government Code Sections 65912.114 and 65912.124, similar to the SB 35 streamlined, ministerial review process codified in Government Code Section 65913.4.

In addition to providing for a streamlined, ministerial review and public oversight process for SB 35 projects, the proposed Ordinance will also implement a streamlined, ministerial review process and public oversight process for AB 2011 applications submitted pursuant to Government Code Section 65912.100.

Current City Streamlined, Ministerial Review Process for SB 35 Applications

Council adopted Ordinance No. 22-3,964 on January 4, 2022, establishing a streamlined ministerial review and public oversight process for SB 35 applications pursuant to the requirements in California Government Code Section 65913.4 (Attachment 3). The ordinance establishes a two-step Council review process for reviewing SB 35 applications.

1. NOI Application: Council review of NOI for verifying site eligibility, which occurs within 60 days of receipt of the NOI application. After completing the NOI to submit an application for streamlined ministerial approval process, which includes Tribal Consultation pursuant to Government Code Section 65913.4, an applicant may submit an application for streamlined ministerial approval processing to the City [Burbank Municipal Code (BMC) Section 10-1-19302(A)].

2. SB 35 Application: Council review of Community Development Director's determination of a project's consistency with objective zoning standards, objective subdivision standards, and objective design review standards applicable to the project, which 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 [Burbank Municipal Code (BMC) Section 10-1-19302(C)].

Proposed Changes to the City's SB 35 Streamlined, Ministerial Review Process

The proposed updates to Ordinance No. 22-3,964 include an amendment to the existing two-step Council review process as well as inclusion of standards that require additional environmental assessment for certain sites. Additionally, recognizing that both SB 35 and AB 2011 incorporate similar streamlined, ministerial review processes for qualifying housing projects (as codified in Government Code Sections 65913.4, 65912.114, and 65912.124), the proposed Ordinance includes text to implement a streamlined, ministerial review process and public oversight process for AB 2011 applications submitted pursuant to Government Code Section 65912.100. These updates are discussed below (Attachment 2).

- 1) Update to Sections 10-1-1909(E): Streamlined Ministerial Approval Process; 10-1-19300 (A): Purpose; Section 10-1-19300 (B): Intent; and Section 10-1-19302: Streamlined Ministerial Approval Process:
Sections 10-1-1909(E), 10-1-19300 (A) & (B), and 10-1-19302 are being updated to include reference to California Government Code Section 65912.100, to provide for a streamlined ministerial review process for AB 2011 development applications that qualify for such a process by showing compliance with Government Code Sections 65912.111 through 65912.113 and 65912.121 through 65912.123.

- 2) Update to Section 10-1-19302(A): Notice of Intent to Submit a SB 35 Application:
 - a) This proposed update would enable planning staff review for determination of site eligibility for SB 35 applications, while maintaining Council review for the final approval of a project.

- b) Additionally, this sub-section is proposed to be updated to provide clarification on the documents that are required from an applicant for SB 35 development projects after completion of NOI and Tribal Consultation. Currently, the existing ordinance specifies submission of both a building permit and SB 35 application after completion of the NOI and Tribal Consultation. The proposed update would require an applicant to submit an SB 35 streamlined ministerial approval process application demonstrating a project's eligibility under California Government Code Section 65913.4, after completion of NOI and Tribal Consultation. The applicant will be allowed to submit a building permit application after City Council approval of the SB 35 application.
- 3) Update to Section 10-1-19302(B): Community Development Director Determinations; & Section 10-1-19302 (C): City Council Ministerial Design Review/Public Oversight: Sections 10-1-19302 (B) & (C) contain the streamlined, ministerial review and public oversight process for SB 35 development projects. These Sections are being amended to include reference to California Government Code Sections 65912.114 and 65912.124, to implement a streamlined, ministerial review and public oversight process for AB 2011 development projects. The proposed update will amend the code to expand the scope of the City's streamlined ministerial review process, which would apply to all AB 2011 projects in addition to SB 35 projects. Moreover, the proposed Ordinance will require Council to undertake a ministerial review process for final approval of both SB 35 and AB 2011 projects.
- 4) Update to Section 10-1-19302(D): Submission of Application and Payment of Fees: This Section has been amended to update the list of documents that an applicant will be required to submit along with a SB 35 application after approval of the NOI and completion of Tribal Consultation. Per the proposed update an applicant will be required to submit Phase I Environmental Site Assessment (ESA) if a site is 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 during the NOI site eligibility review. Further, if Phase 1 ESA recommends further analysis, including preparation of a Phase II ESA or any additional environmental site assessments, the developer will be required to submit the additional environmental site assessment studies as a part of the application. Moreover, the developer will be responsible for any and all costs related to third party review of these additional environmental site assessment documents.

Additionally, the Section is proposed to be updated to include reference to California Government Code Section 65812.100, to establish submittal requirements for AB 2011 development projects, in addition to SB 35 development projects.

5) Update to Section 10-1-19303: Changes to State Law:

This Section specifies the course of action in case of any changes to the State law. The proposed update expands the purview of this Section to capture any future changes to California Government Code Section 65812.100 for AB 2011 development projects, in addition to Government Code Section 65913.4 for SB 35 development projects.

ENVIRONMENTAL ASSESSMENT

The requested ZTA and proposed Ordinance have been reviewed for compliance with the California Environmental Quality Act (CEQA). The proposed updates to Title 10, Chapter 1 of Burbank Municipal Code seek to amend the City's streamlined ministerial review and public oversight process for development projects submitted under SB 35 (Government Code Section 65913.4) and AB 2011 (Government Code Section 65912.100). The proposed Ordinance will not affect the City's underlying zoning and/or land use designation as currently exists in the City's Zoning Ordinance and the Burbank2035 General Plan. As a result, the proposed ZTA and associated proposed Ordinance will not have a significant adverse impact on the environment.

The proposed Ordinance has been determined to be exempt from CEQA review pursuant to State CEQA Guidelines, Article 18: Statutory Exemptions, Section 15061(B)(3). This section of CEQA establishes a statutory exemption for "The activity is covered by the commonsense exemption that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA." Additionally, pursuant to Government Code Sections 65912.114(o) and 65912.124(o), 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, the proposed Ordinance is exempt from CEQA.

FISCAL IMPACT

The proposed ZTA and the associated Ordinance seek to amend the City's streamlined ministerial review and public oversight process for development projects submitted under SB 35 (Government Code Section 65913.4). Additionally, the ZTA expands the scope of the City's streamlined, ministerial review and public oversight process to implement a process for development projects submitted under AB 2011 (Government Code Section 65912.100). The ZTA proposes updates to an existing process and does not propose any changes to the established cost recovery application fees for the NOI and SB 35 application or implement any new fee for an AB 2011 application. Therefore, the proposed ZTA and Ordinance will not have an impact on the City's budget.

CONCLUSION

Staff has prepared an update to the City's streamlined, ministerial review process for SB 35 applications to allow planning staff review of site eligibility on receipt of a NOI to submit a SB 35 application, while maintaining the City Council review for final approval of SB 35 applications. Additionally, the Ordinance will implement a streamlined, ministerial review process and public oversight process for AB 2011 applications submitted pursuant to Government Code Section 65912.100. Furthermore, the proposed updates include language that require an applicant to provide Phase 1 and Phase 2 ESA for sites that are identified as hazardous by the Burbank Fire Department in conjunction with application submittals for both SB 35 and AB 2011 development projects.

The State approved the SB 35 streamlined ministerial approval process to address the State's Housing Crisis. Moreover, the recently signed bill AB 2011 (effective July 1, 2023), will allow 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. The purpose of SB 35 and AB 2011 is to streamline the development review process to encourage the production of housing. The City is subject to the requirements of AB 2011, which will sunset in 2033. Additionally, the City is subject to the requirements of SB 35, as a result of issuing only 26% of permits against its fifth cycle (2014-2021) RHNA allocations and as such have not met the RHNA obligation during the previous eight-year planning period of the City's Housing Element. 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 sixth planning cycle (2021-2029) i.e., by April 2025, to attain exemption from SB 35's streamlined, ministerial approval process for residential developments.

ATTACHMENTS

Attachment 1 - Draft Ordinance
Attachment 2 - Redlined Ordinance
Attachment 3 - Ordinance No. 22-3,964
Attachment 4 - Government Code Section 65913.4
Attachment 5 - Assembly Bill 2011
Correspondences