

# STAFF REPORT



## COMMUNITY DEVELOPMENT

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**DATE:** November 1, 2022

**TO:** Justin Hess, City Manager

**FROM:** Patrick Prescott, Community Development Director  
Via: Fred Ramirez, Assistant Community Development Director  
Scott Plambaeck, Planning Manager  
By: Shipra Rajesh, Senior Planner

**SUBJECT:** Adoption of a Resolution and Consideration of the Community Development Director's Determination and Approval of the Ministerial Design Review for a Multifamily Residential Project at 2814 W. Empire Avenue, Pursuant to Burbank Municipal Code Title 10, Chapter 1 (Zoning), Division 12 (Streamlined Ministerial Approval Process) and Senate Bill 35 (CA Government Code Section 65913.4)

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### **RECOMMENDATION**

Adopt A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BURBANK CONFIRMING THE COMMUNITY DEVELOPMENT DIRECTOR'S DETERMINATION THAT PROJECT NO. 21-0003649, LOCATED AT 2814 W. EMPIRE AVENUE IS CONSISTENT WITH ALL APPLICABLE OBJECTIVE GENERAL PLAN, ZONING, AND DESIGN REVIEW STANDARDS AND APPROVING THE PROJECT'S STREAMLINED MINISTERIAL DESIGN REVIEW.

### **DISCUSSION**

The Project is a 148-unit apartment style, one hundred percent affordable, seven-story multi-family residential development located at 2814 W. Empire Avenue. It was submitted to the City as an SB 35 Residential Streamlined Ministerial Approval Process Application pursuant to Senate Bill (SB) 35 (Government Code Section 65913.4) and subject to the corresponding requirements in Burbank Municipal Code Title 10, Chapter 1 (Zoning), Division 12 (Streamlined Ministerial Approval Process).

Applications that are eligible for streamlined review pursuant to SB 35 and that comply with the City's objective design and development standards (i.e., zoning, general plan, and subdivision standards) do not require any discretionary permit (such as a conditional use permit or development review) and are not subject to environmental review pursuant to the California

Environmental Quality Act (CEQA). Staff has reviewed the proposed Project for SB 35 eligibility using the previously submitted Notice of Intent to submit an SB 35 application (Attachment 2) as well as the current SB 35 application submittal with associated materials in support of the Project's compliance with applicable objective design review and development standards (Attachments 3 & 4).

Based on the analysis, as presented in this report, the Community Development Director recommends that the City Council adopt the attached Resolution (Attachment 1) and confirm the Director's determination that the Project is consistent with the applicable objective general plan and zoning standards, and objective design review standards applicable to the Project based on its underlying zoning designation of M-2 (General Industrial) and General Plan land use designation of Regional Commercial; and approve the Ministerial Design Review of the Project.

## **BACKGROUND**

### **Project Description**

The Project site at 2814 W. Empire Avenue is 37,445 square feet and is improved with an approximate 7,500 square feet one-story restaurant use and a surface parking lot with 35 parking stalls located towards the rear of the lot. The Project proposes demolition of all the existing structures on the Project site to construct a 148-unit seven-story multi-family residential development. The Project is 100% proposed affordable rental units with 83 units designated for extremely low and very-low-income households, and 62 units<sup>1</sup> designated for low-income households. The units will be deed restricted as affordable units for 55 years (Table 1). To summarize, the Project proposes the following:

- 145 rental units, all of which are affordable, and will be deed restricted for a period of 55 years pursuant to California Government Code Section 65913.4(a)(4) to be affordable for extremely low-, very low-, and low-income households. Please refer to Table 1 for breakdown of the affordability level.
- Three management units at market rate.
- Seven on-site parking stalls and eighteen bicycle stalls on the first floor of the proposed seven-story building. Additionally, the first floor will include a manager's office, lobby area, two recreation rooms, and ten dwelling units.
- 138 dwelling units will be accommodated in the remaining floors (2<sup>nd</sup> through 7<sup>th</sup> floor) of the proposed building, with 23 units on each floor. The dwelling units include one-, two-, and three-bedroom units ranging from 450 to 900 sq. ft. in size.
- 1,800 square feet landscaped open space (recreational area) located towards the rear of the proposed building.
- A 20-foot-wide fire access lane abutting the east elevation of the proposed building.

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<sup>1</sup> The Project contains three management units that do not alter its one hundred percent affordable designation. (Gov. Code § 65915(b)(1)(G).)

**Table 1: Affordability level of the proposed units**

Affordability Level	% County Area Median Income (AMI)	No. of Units
Extremely Low Income	30% AMI	66
Very-Low Income	50% AMI	17
Low Income	80% AMI	62
Market Rate		3 (Manager's Units)
Total		148

**State Density Bonus Law and Ministerial Streamline Approval**

Additionally, the Project is requesting density bonus and concessions or incentives pursuant to State Density Bonus law and an exemption from the on-site parking requirement pursuant to the SB 35 streamlined ministerial approval process, as discussed below.

- **Exemption from the required front yard setback:** Pursuant to California Government Code Section 65915(d)(2)(D), the Project is eligible for up to four incentives or concessions because 100% of all units in the proposed Project, including total units and density bonus units, but exclusive of manager's units, are for extremely low-, very low-, and low-income households. The Project is requesting a concession to allow an exemption from the required 15 feet front yard setback pursuant to California Government Code Section 65915(d)(2)(D).
- **Exemption from maximum allowed density:** Pursuant to California Government Code Section 65915(f)(3)(D)(ii), the Project is eligible for unlimited density because 100% of the units proposed under the Project are affordable to extremely low-, very low-, and low-income households and the Project site is located within one-half mile distance of major transit stops. In this case, the Project is requesting a density of 172 units per acre while the maximum allowable density is 58 units per acre based on the Project site's General Plan Land Use Designation of Regional Commercial. Specifically, the Project is located within one-half mile of two major public transit stations – the Project is approximately 68 feet from the Empire/Niagara bus stop and approximately 0.41 miles from the Regional Intermodal Transportation Center (RITC). Public Resources Code Section 21064.3 defines a Major Transit Stop as a site containing a rail or bus rapid station or the intersection of two or more major bus routes with a frequency of service interval of 15 minutes or less during the morning and afternoon peak headway periods.
- **Exemption from maximum allowed building height:** The Project qualifies for an increase in building height from the maximum allowed 50 feet to 75.75 feet pursuant to California Government Code Section 65915(d)(2)(D), which allows for a 33-foot increase in height if a multifamily development is located within half a mile distance of a major transit stop and proposes 100% of all units as affordable units.

- **Exemption from the required on-site parking standards:** Pursuant to California Government Code Section 65913.4(e)(1)(A) and Section 102(t) of the updated streamlined ministerial approval process HCD guidelines, the Project is eligible for exemption from on-site parking requirements because it is located within one-half mile of public transit.

Grading activities for the Project will generally include excavating and recompacting the topsoil of the previously graded site, including stormwater capture and treatment devices. The proposed development and site design do not propose any excavation that will exceed 10 feet below existing grade. Further, the Project does not propose any subdivision and/or lot-line adjustment to change the existing configuration of the lot containing the Project site. The SB 35 project application submitted on April 25, 2022, is included as Attachment 3. The Project set of architectural and landscape plans that were submitted on September 8, 2022, are included as Attachment 4.

### Existing and Surrounding Land Uses

<b>Table 2: General Property and Surrounding Land Use Information</b>	
<b>Address</b>	2814 West Empire Avenue
<b>Cross Streets</b>	Empire Avenue and N. Niagara Street
<b>Assessor's Parcel Number (Existing)</b>	2464-001-017
<b>General Plan Designation</b>	Regional Commercial (Max. 1.25 FAR and 58 units/acre density)
<b>Zoning</b>	M-2 (General Industrial)
<b>Property Size</b>	37,445 square feet
<b>Current Development</b>	The Project site is currently developed with an approximate 7,500 sq. ft. one-story restaurant and a surface parking lot with 35 parking stalls
<b>Street Classification and Width</b>	Empire Avenue: Major Arterial at 80 ft. wide N. Niagara Street: Local Street at 60 ft. wide
<b>Surrounding Neighborhood: North</b>	Office use is located directly north of the Project site
<b>South</b>	Single family residential use separated by railway tracks and Vanowen St., which is a collector street
<b>West</b>	Custom manufacturing and commercial use
<b>East</b>	Open space - Robert E. Gross Park is located directly east of the Project site

## **Project Timeline**

The Project timeline and submission of SB 35 documentation proceeded as outlined below:

- June 29, 2021 – SB 35 Notice of Intent (NOI) application was received
- July 28, 2021 – Tribal consultation was requested (via email and US mail)
- August 29, 2021 – Consultation with the Fernandeano Tataviam Band of Mission Indians
- September 23, 2021, and January 24, 2022 – Consultation with the Gabrieleno Band of Mission Indians-Kizh Nation
- November 12, 2021 – Applicant submitted complete SB 35 NOI application
- January 6, 2022 – Letter from the City to the Applicant Confirming Project application was complete and eligible for SB 35 streamlined ministerial processing after completion of the tribal agreement
- January 13, 2022 – Enforceable Agreement finalized between Tataviam and the City
- January 28, 2022– Enforceable Agreement finalized between Kizh Nation and the City
- April 25, 2022– SB 35 application was received
- September 8, 2022 – Applicant submitted complete SB 35 application

## **SB 35 Project Submittals & Tribal Consultation**

On June 29, 2021, the Applicant, ABS Properties, Inc., submitted a NOI to Submit a Streamlined Ministerial and Eligibility Checklist application. The City reviewed the NOI application and related documents and after two rounds of review, on January 6, 2022, the City notified the applicant that the NOI was complete and would be eligible for streamlined ministerial processing after the completion of the binding Enforceable Agreement between the City and interested tribes.

The City notified the tribes of the proposed Project on July 28, 2021, in compliance with AB 168<sup>2</sup>. The City received a request for consultation from the Gabrieleno Band of Mission Indians-Kizh Nation on August 2, 2021, and from Fernandeano Tataviam Band of Mission Indians (Tataviams) on July 30, 2021. The City initiated tribal consultation soon thereafter, which led to an agreement between the Tataviams and the City on January 13, 2022 and agreement between Kizh Nation and the City on January 28, 2022 (Attachment 5). With the Enforceable Agreement in place and the completed NOI, the Applicant was eligible to submit an SB 35 Streamlined Ministerial Application for the Project.

## **SB 35 Review Timeframes**

On April 25, 2022, the Applicant submitted a complete application for streamlined ministerial approval processing under SB 35, which triggers the timelines for a streamlined review. In accordance with SB 35 and the City's SB 35 Streamlined Ministerial Approval Process (Burbank Municipal Code Title 10, Chapter 1, Division 12), the City must undertake the following actions: First, within sixty (60) days of submittal of the Project's SB 35 application, the

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<sup>2</sup> Assembly Bill (AB) 168, which took effect on September 25, 2020, advises that projects with pending applications under SB 35 should engage in tribal consultation to ensure compliance with the requirements of AB 168. Tribal consultation was initiated once a preliminary SB 35 application was submitted. The City obtained a list of tribes to be notified from the Native American Heritage Commission and sent a notice to each tribe with details of the proposed Project and an invitation to consult with the City regarding cultural resources. See HCD Guidelines Section 301(a)(2)(A).

Community Development Director is required to provide the Applicant with a determination of consistency with applicable objective design and development standards for projects of 150 units or less. Second, the City Council shall conduct a ministerial design review of the SB 35 Project and approve, conditionally approve, or deny the application within ninety (90) calendar days of receipt of the SB 35 application. A complete SB 35 application for the Project was received on September 8, 2022. Based on this receipt date, a ministerial design review determination must be rendered regarding the Project by December 7, 2022 (90 days from the date of the submitted application of September 8, 2022), pursuant to California Government Code Section 65913.4(d)(1).

The Project is before the City Council at this time so that the Council can review the Community Development Director's determination of the Project's compliance with all applicable design and development standards and confirm whether they agree or not with that determination within the State-mandated 90 days. Furthermore, it is being presented to the City Council as part of the ministerial design review hearing so that the Council can consider public input on the Project in its entirety and make a final decision on the SB 35 Project. Failure to render a determination on the Project's compliance with all objective design review and development standards within the specified 90-day period will have the effect of deeming the Project to comply with all objective design review and development standards.

## **ANALYSIS**

The following discussion provides an overview of the Project's compliance with objective design review and development standards, in the Burbank Municipal Code (inclusive of zoning and subdivision standards), and the *Burbank2035* General Plan goals and policies as well as provides a response to the specific points that are included in the department design review comments. Under the oversight of the Community Development Director, City planning staff has analyzed each point that is referenced in the department design review comments and as a result has compiled the various City Department's requirements on the development of the proposed Project as part of the Project's standard Conditions of Approval that are included herein as Exhibit 1 of Attachment 1.

### **Objective Standards Defined**

State law defines "objective standards" as "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 and the public official prior to submittal." Objective standards applicable to the Project can be found in the *Burbank2035* General Plan and the City objective design review and development standards contained in the Burbank Municipal Code (BMC). These are included in the Project's Conditions of Approval in Exhibit 1 of Attachment 1. The attached Resolution (Exhibit 2 of Attachment 1) identifies the objective design review and development standards that apply to the Project. The standards applied were limited to standards found in the *Burbank2035* General Plan, Burbank Municipal Code, and City Zoning documents noted above.

## Consistency with City's Objective Zoning Standards

The Project site is zoned M-2 (General Industrial) and is subject to all M-2 zone objective design review and development standards. These standards include objective criteria pertaining to allowable square footage (lot coverage), building height, building setbacks, required on-site parking, open space, and landscaping. As noted in Attachment 1, Exhibit 2 – Objective Standards Consistency Analysis Table, the Project was reviewed for and found to be consistent with all M-2 zone development standards—except for the specific development standards for front yard setbacks, on-site parking, and building height, that are requested concessions and exemptions permitted under the State Density Bonus law and SB 35 streamlined ministerial approval process.

Specifically, the Project is consistent with the objective development standards under the following categories: BMC Title 10, Chapter 1, Article 6, Division 5 *Affordable Housing Incentives*; Article 8, Division 2, *M-2 Industrial Zone*; Article 11, *General Property Development Regulations*; Article 12, *General Yard and Space Standards*; Article 13, *General Height Standards*; Article 14, *General Off-Street Parking Standards*; and Article 16, *General Vehicular Access Standards*. Below is an overview of the Project's design and amenities (Attachment 4, Project Plans).

- **Landscaping:** The Project proposes 70% landscaping in the exposed side yard area along the west property line and 50% landscaping in the exposed side yard along the east property line, consistent with the landscaping requirements of BMC Section 10-1-812(C). The landscaping proposed includes two trees in the front setback area, eleven trees in the east side yard setback and thirteen trees in the west side yard setback area, along with shrubs and groundcover. All the proposed trees are 36" box in size. The proposed landscaping will be irrigated with equipment that promotes water conservation.
- **Setbacks:** BMC Section 10-1-812(C) does not require any side yard and rear yard setback for development in M-2 zone. However, the Project provides a 5-foot side yard setback along the west elevation, a 26-foot side yard setback along the east elevation, and a 22-foot 8-inch setback along the rear elevation of the proposed building. Additionally, the Project is requesting exemption from front yard setback as a concession, pursuant to Government Code Section 65915(d)(2)(D), to accommodate the proposed building after dedicating land for widening the sidewalk along Empire Avenue consistent with the 15-foot standard as noted in the *Burbank2035* General Plan Mobility Element Table M-2.
- **Architectural Design:** The proposed building is oriented towards Empire Avenue and incorporates visual variation by providing surface breaks and building modulation along the front elevation and west elevation. The Project utilizes the building modulation along the west elevation to provide a 950 sq. ft. landscaped planter area on the second floor. Additionally, the building incorporates a recessed main entrance and different building materials along all the elevations including stucco and concrete base façade, dark brown vinyl window frame, metal siding panel, and clearly defined ground floor entrances to enhance visual interest of the proposed building as viewed from the street level.

Moreover, the primary colors for the exterior finishes are complementary and include a combination of neutral and earth tone colors. Further, all the building elevations include appropriate fenestration in the way of windows, doors, and decorative elements that add to the open feel of the buildings and ensure that pedestrians and the adjacent neighborhood are not surrounded by blank walls.

- **Open Space:** BMC does not require the Project to provide any open space. However, the Project provides an 1,800 sq. ft. common open space including 36” box trees, seating area, and a play area towards the rear of the proposed building, going beyond the required objective standards contained in BMC. The landscaping and related amenities will ensure that the Project site provides needed shade and aesthetically pleasing vegetation.

### **Consistency with the *Burbank2035* General Plan Objective Standards**

The Project has been reviewed for conformance with the *Burbank2035* General Plan and is consistent with the applicable goals and policies outlined therein—except for the specific development standard pertaining to maximum allowed density. The maximum allowed density for Regional Commercial Land Use designation is 58 units per acre. However, the Project qualifies for unlimited density pursuant to California Government Code Section 65915(f)(3)(D)(ii), because 100% of the units proposed under the Project (excluding the three managers units) are affordable to extremely low-, very low-, and low- income households and the Project site is located within one half mile of two major public transit stops. As referenced in the Objective Standards Consistency Analysis Table in Attachment 1, Exhibit 2 the proposed Project is consistent with the applicable objective policies that are outlined in the Noise, Land Use, and Mobility Element of the *Burbank2035* General Plan. The table in Attachment 1, Exhibit 2 demonstrates that the Project meets several objectives, as discussed below:

- **Street Improvements:** As a part of the Project, the sidewalk along Empire Avenue will be widened to 15 feet, complying with the standard sidewalk width requirement for Regional Commercial General Plan Land Use designation and consistent with the goals of *Burbank2035* Mobility Element. Furthermore, the Project will provide street trees along Empire Avenue.
- **Pedestrian Mobility:** Additionally, a traffic signal warrant study was conducted as a part of the Project to analyze installation of traffic control signal and pedestrian crosswalk at the intersection of Empire Avenue and Catalina Street for improving accessibility to transit stops located on Empire Avenue and reduce vehicle-pedestrian conflicts, consistent with the goals of *Burbank2035* Mobility Element. Based on the results of the study, the Developer has agreed to install a High Intensity Activated Crosswalk (HAWK) beacon at the intersection of Empire Avenue and Catalina Street as a part of the Project’s design features. The HAWK beacon and traffic control signal are community benefits/amenities that would 1) improve accessibility for the residents of the project to transits stop located on the north side of Empire Avenue and 2) reduce the chance of vehicle vs. pedestrian conflicts due to uncontrolled pedestrian crossing at the intersection.

- **Affordable Workforce Housing:** The Project is consistent with the *Burbank2035* Land Use Element as it proposes development that is consistent with the Regional Commercial land use designation by creating new opportunities for affordable and workforce housing for the neighboring employment centers that is compatible with the Citywide objective of reducing the City's three-to-one jobs to housing imbalance and promoting economic development. The proposed development will encourage a mix of residential use with existing non-residential land uses in the neighborhood that will support the diverse needs of the community.
- **Noise Reducing Design Features:** The Project will incorporate noise reducing design features including double-pane glass window and exterior walls with appropriate Sound Transmission Class (STC) rating as well as landscape buffer along the rear property line to maintain interior noise level at 45 dba, consistent with the goals of *Burbank2035* Noise Element.

Attachment 1, Exhibit 2 provides the Objective Standards Consistency Analysis Table, which provides details regarding the Project's consistency with the City's objective zoning standards and *Burbank2035* General Plan objective standards.

### **Community Benefits**

The Project is an infill development near transit that provides housing for low-, very low- and extremely low-income households. The Project's design and placement of the building adjacent to public-right-of-way ties it in with the surrounding commercial, residential, and recreational uses and will help create a walkable and pedestrian-friendly environment.

Pursuant to California Department of Housing and Community Development (HCD) SB35 Guidelines Section 403(b), the Project is not required to provide prevailing wages and employ skilled and trained workforce because 100% of the proposed units are affordable units. However, in addition to providing 100% affordable housing, the Project has also committed to pay prevailing wages, going beyond the labor provisions in the streamlined ministerial approval process (see Attachment 6).

### **STANDARD CONDITIONS OF APPROVAL**

Burbank City Staff has provided standard Conditions of Approval, pursuant to SB 35, which are included in Exhibit 1 of Attachment 1. SB 35 allows approval of ministerial processing to include standard conditions of approval if those conditions are objective and broadly applicable to development within the locality, regardless of streamlined approval, and such conditions implement objective standards that have been adopted prior to submission of a development application.

### **ENVIRONMENTAL REVIEW**

The California Environmental Quality Act (CEQA) (Division 13, commencing with section 21000) of the Public Resources Code) does not apply to projects qualifying for the Streamlined Ministerial Approval Process. As a result, the Project is not subject to CEQA review. Moreover, an SB 35 project applicant cannot be required to prepare any studies that would otherwise be

required under CEQA (i.e., traffic, air quality, noise, etcetera). The City can only require an applicant to abide by objective planning standards that were in effect at the time the SB 35 application was submitted.

### **PUBLIC NOTIFICATION**

In compliance with applicable City and State noticing requirements, Council Meeting Public Notices were mailed to property owners and tenants within a 1,000-foot radius of the Project site and a public notice was published in the Los Angeles Times newspaper ten business days prior to the City Council hearing. In addition, the Project description sign was also posted at the Project site. As of the writing of this report, staff received five public comments on the Project – four via email and one phone call. Three public comments were general inquiries regarding the Project. One of the comments pertained to concerns regarding noise and disturbance resulting from future construction activities. Additionally, one of the comments pertained to concerns regarding the height, on-site parking, and density of the Project. Staff responded to all the public comments providing information on the Project as well as the Streamlined Ministerial Review process and State Density Bonus law which allows the Project to develop at the proposed density and height.

### **CONCLUSION**

Staff recommends the City Council conditionally approve the Project. Having met all criteria per California Government Code 65913.4, the proposed Project qualifies for the Streamlined Ministerial Approval Process under SB 35 and the City’s Streamlined Ministerial Approval Process (Burbank Municipal Code Title 10, Chapter 1, Article 19, Division 12).

Based on the prior review and analysis, it is the Community Development Director’s determination that the Project meets all the findings required for approval under SB 35. Furthermore, Project approval is warranted as the Project is consistent with the applicable General Industrial (M-2) Zone objective development standards and objective design standards contained in Article 11 of BMC, the applicable *Burbank2035* General Plan goals and objective policies, and the applicable requirements for a housing development project of this type under local and State Density Bonus Law, the City’s Inclusionary Housing Ordinance, and the applicable provisions of the Housing Accountability Act (Government Code Section 65589.5).

### **ATTACHMENTS**

- Attachment 1 – Resolution
  - Attachment 2 – SB 35 NOI Application – June 2021 (*attachments to the application provided under separate cover – see Attachment 3*)
  - Attachment 3 – SB 35 Application – April 2022
  - Attachment 4 – Project Development Plans
  - Attachment 5 – Tribal Enforceable Agreements
  - Attachment 6 – Prevailing Wage Certification Letter
  - Attachment 7 – Correspondences received as of October 20, 2022
- Correspondences