

# STAFF REPORT



## COMMUNITY DEVELOPMENT

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**DATE:** June 8, 2021

**TO:** Justin Hess, City Manager

**FROM:** Patrick Prescott, Community Development Director  
VIA: Fred Ramirez, Assistant Community Development Director  
BY: Shipra Rajesh, Associate Planner

**SUBJECT: Introduction of an Ordinance Updating Regulations for Supportive Housing, Transitional Housing, and Emergency Shelters Consistent with State Laws**

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### **RECOMMENDATION**

Introduce AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BURBANK AMENDING TITLE 10, CHAPTER 1 (ZONING) IN ORDER TO UPDATE THE REGULATIONS FOR SUPPORTIVE HOUSING, TRANSITIONAL HOUSING, AND EMERGENCY SHELTERS CONSISTENT WITH STATE LAWS. (Project No. 21-0000043) (Attachment 1)

### **EXECUTIVE SUMMARY**

The proposed Ordinance, referred to as a Zone Text Amendment (ZTA) to the Burbank Municipal Code (BMC), would include an update to definitions for supportive housing, transitional housing, and target population. In addition, the proposed ZTA would identify the number of zoning districts in which supportive housing and transitional housing may operate as permitted and conditional uses pursuant to State law. Finally, the proposed ZTA would modify the development standards for emergency shelters to align with State requirements. All changes proposed under the ZTA would ensure implementation of Housing Element Programs No. 12 (Transitional and Supportive Housing) and No. 16 (Homeless Shelter and Emergency Services), both of which are to be completed by the end of the current Housing Element planning and implementation period, which concludes in October 2021.

### **BACKGROUND**

The *Burbank2035* General Plan, adopted in 2013, is a State-mandated policy document that provides guidance in shaping the future physical growth and development of the City. The Housing Element of the General Plan establishes goals, policies, and implementation programs to make adequate provision for the housing needs of all economic segments of

the community during the 8-year Housing Element planning period. The Housing Element update for 2021-2029 (6<sup>th</sup> Cycle) includes an assessment of the City's housing needs and an inventory of resources and constraints relevant to meeting those needs, as well as identification of sites for potential housing within the City. To meet the objectives of State law and achieve State certification of the Housing Element, all jurisdictions in the State are required to make zoning code updates to address new requirements affecting the regulation of supportive housing and transitional housing<sup>1</sup> as well as emergency shelters<sup>2</sup>, as defined in State law (further discussed below).

These new requirements (provided in Attachments 3 and 4) will increase the number of zoning districts that allow transitional and supportive housing as a permitted or conditionally permitted use; remove barriers to the development of supportive housing, transitional housing, and emergency shelters; and streamline the process of approving supportive housing. The proposed ZTA to update regulations on transitional housing, supportive housing, and emergency shelters is required to maintain consistency with the State Housing Laws. The proposed ZTA addresses the General Plan Housing Element's program requirements during the current planning period (2014-2021), as well as State requirements of the next Housing Element cycle (2021-2029). Moreover, the proposed ZTA is consistent with the City's Affordable Housing Strategy and housing production goals that were established by the City Council in 2019 to accommodate the need for housing at all affordability levels by facilitating construction of 12,000 new housing units through 2035.

## **DISCUSSION**

### **Special Needs Housing - Definitions**

Supportive housing, transitional housing, and emergency shelters, broadly fall under the term "special needs housing." The ZTA proposes updated regulations pertaining to special needs housing that focus on providing housing for people experiencing homelessness and people falling under the category of "target population." Per California Health and Safety Code Section 53260(d), target population includes *"adults with low income having one or more disabilities, including mental illness, HIV or AIDS, substance abuse, or other chronic health conditions, or individuals eligible for services under the Lanterman Developmental Disabilities Services Act (Division 4.5 of the Welfare and Institutions Code, commencing with Section 4500) and may, among other populations, include families with children, elderly persons, young adults aging out of the foster care system, individuals exiting from institutional settings, veterans, or homeless people"*.

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<sup>1</sup> Assembly Bill-2162, encourages development of Transitional and Supportive Housing within the City. More specifically, the State law requires that transitional and supportive housing be treated as a residential use. Additionally, supportive housing, that meets State specified criteria, shall be allowed by-right in all residential and non-residential zoning districts that allows residential and mixed-use developments.

<sup>2</sup> Assembly Bill-139, focuses on facilitating development of Emergency Shelters (Attachment 4). More specifically, the law requires emergency shelters to be allowed by-right within at least one of the zoning districts with sufficient capacity to accommodate the need for emergency shelter. Additionally, it specifies that emergency shelters should provide sufficient parking for its staff.

The purpose of State laws governing supportive housing, transitional housing, and emergency shelters is to establish regulations that facilitate affordable housing for people who fall within the definition of “target population” as follows:

- *Supportive housing* is permanent affordable housing for target population with no limit on length of stay. Additionally, supportive housing provides on- or off- site services to assist the residents in retaining the housing, improving their health status, and maximizing their ability to live and, when possible, work in the community.
- *Transitional housing* is defined as buildings that are configured as rental housing developments that are operated under specified program requirements. Residents of transitional housing are provided assistance for a pre-determined period of time, which shall not be less than six months. After the termination of assistance, the unit is recirculated to another eligible program recipient. Transitional housing can take the form of any rental housing type including single family and multi-family units and may include supportive services that allow individuals to gain necessary life skills in support of independent living.
- *Emergency shelters* are defined as housing with minimal support services for homeless people that is limited to occupancy of 6 months or less. Additionally, no individual or household can be denied shelter because of inability to pay.

It should be noted that transitional and supportive housing and emergency shelters, are different from a community care facility. Per Section 1502 of California Health and Safety Code a community care facility means any facility, place, or building that is maintained and operated to provide nonmedical residential care, day treatment, adult daycare, or foster family agency services for children, adults, or children and adults, including, but not limited to, the physically handicapped, mentally impaired, incompetent persons, and abused or neglected children, and includes (but is not limited to) residential facility, adult day program, therapeutic day services facility, foster family home, small family home, and social rehabilitation facility. State law identifies a minimum length of stay of six months for transitional housing and emergency shelters and an unlimited length of stay for supportive housing. Whereas, the State law does not have any such requirement for community care facilities.

As a part of the proposed ZTA, BMC Section 10-1-203 would be amended to update existing definitions of transitional housing and supportive housing and include a definition of target population.

#### Transitional and Supportive Housing Regulations

*State Requirements.* State law mandates that supportive and transitional housing be treated as a residential use and must be allowed in all zoning districts that allow residential uses, subject to similar restrictions. In other words, in zoning districts that allow residential use, transitional and supportive housing must be subject to the same standards that govern the development of residential units. Additionally, State law further specifies that

supportive housing in particular shall be a use “by right,” not subject to any discretionary permit, in all the zoning districts where multifamily and mixed uses are permitted, including nonresidential zones that allow multi-family uses, if the proposed development meets certain State-specified criteria. This includes, but is not limited to, an affordability restriction for 55 years, and dedication of 100% of the units to lower income households as defined.

*Current City Regulations.* Currently, the BMC allows supportive and transitional housing within C-2 (Commercial Limited Business), C-3 (Commercial General Business), and C-4 (Commercial Unlimited Business) zones, subject to approval of Conditional Use Permit. Additionally, transitional and supportive housing are a permitted use in R-3 (Medium Density Residential) and R-4 (High Density Residential) zones. The BMC currently does not allow supportive and transitional housing in R-1, R-1-H (Single Family Residential) zones, and R-2 (Low Density Residential) zones, and other commercial and industrial zones, barring C-2, C-3, and C-4 zones.

*Proposed Update to the Burbank Municipal Code.* In light of the State required updates pertaining to transitional and supportive housing, the proposed ZTA would amend the following BMC sections of Title 10:

- Section 10-1-203: Definitions

Section 10-1-203 of Title 10 of Burbank Municipal Code is amended to include definition of target population, and update existing definitions of supportive housing and transitional housing.

- Table 10-1-602: Permitted Uses in the R-1 and R-1-H Zones

Table 10-1-602 is updated to include supportive and transitional housing as a permitted use in the R-1 and R-1-H zones.

- Table 10-1-627: Permitted Uses in the Multiple Family Residential Zones

Table 10-1-627 is being updated to include supportive and transitional housing as a permitted use in the R-2 zone.

- Table 10-1-502: Uses In All Zones (Except Residential Zones)

Additionally, Table 10-1-502 is updated to include supportive and transitional housing as a permitted or conditionally permitted use, respectively, in all the non-residential zones that allow residential use either as a permitted use or a conditionally permitted use.

### Emergency Shelters

*State Requirements.* State law pertaining to emergency shelters specifies that emergency shelters should be a permitted use, not subject to any discretionary permits, in at least

one of the zoning districts with sufficient capacity to accommodate the need for emergency shelter within the city. Additionally, except a few objective development standards, emergency shelters may only be subject to those development and management standards that apply to residential or commercial development within the same zone. Moreover, off-street parking for emergency shelters should not exceed the required parking for other uses within the same zone. In addition, State law specifies that the provider shall include sufficient parking to accommodate all on-site staff.

*Current City Regulations.* Currently, the BMC allows emergency shelters as a by-right use in the M-2 (General Industrial) zone, and emergency shelters are allowed subject to a Conditional Use Permit in M-1 (Limited Industrial) and BCCM (Burbank Center Commercial Manufacturing) zones.

*Proposed Update to the Burbank Municipal Code*

To comply with the State-mandated updates to emergency shelters, the ZTA proposes the following amendments to Section 10-1-1122: Emergency Shelter Development Standards of Title 10 of BMC:

- **INTAKE/WAITING AREAS:**  
Regulations pertaining to intake/waiting areas have been updated to include prohibition of queuing of clients outside of approved intake/waiting areas.
- **NOISE:**  
Noise regulations for emergency shelters have been updated to remove restrictions on timing for intake of residents in non-enclosed areas. Additionally, emergency shelters will be subject to the same noise restrictions that are applicable to other permitted uses within the same zone.
- **PARKING:**  
Determination of the number of required off-street parking for emergency shelters based on the number of beds is removed from BMC Section 10-1-1122. Per the requirements of State law, parking standards for emergency shelters cannot exceed the parking standards for other uses allowed within the same zone. Additionally, State law specifies that sufficient parking should be provided to accommodate all staff working in the emergency shelter.
- **CLIENT RESTRICTIONS:**  
Regulations on screening of clients and restrictions on intake of clients is removed from the Section 10-1-1122.
- **SECURITY:**  
Standards for emergency shelters that require approval of security plans by the Chief of Police and screening of clients are removed from the 'Security' sub-section of BMC Section 10-1-1122. Additionally, the sub-section has been updated to mandate inclusion of contact information for a 24-hour manager within security plans.

- **STORAGE:**  
Regulations pertaining to the requirement of storage space for emergency shelter residents has been removed from BMC Section 10-1-1122.

#### Feedback from Community Meeting

A community meeting on the proposed ZTA was held on February 17, 2021, to provide information to the public on the proposed State-mandated updates. During the meeting, staff responded to questions about the effects of the proposed State-mandated updates on supportive housing service providers and residents. In responding to questions, City staff noted that the proposed updates to regulations on supportive housing would facilitate development of supportive housing within the City by increasing the number of zoning districts that allow this type of housing as a permitted use or conditionally permitted use. Staff also noted that any new supportive or transitional housing would be required to comply with all applicable development standards for residential units within the same zone, including density, height, floor area, lot coverage, and setbacks.

Additionally, one attendee raised a question regarding proposed updates resulting in proximity of emergency shelters to residential neighborhoods and schools. Currently, emergency shelters are allowed by-right in the M-2 (General Industrial) zone and allowed subject to approval of Conditional Use Permit in M-1 (Limited Industrial) and BCCM (Burbank Center Commercial Manufacturing) zones. The proposed ZTA will not make any changes to these standards. Moreover, residential units are not allowed in M-1, M-2 and BCCM zones, and schools are not allowed in M-1 and M-2 zones.

Another question was raised regarding inclusion of domestic violence victims within the definition of “target population” and expand the definition accordingly. Staff noted that although domestic violence victims are not explicitly identified within target population, the definition of target population pursuant to California Health and Safety Code Section 53260(d) is overarching, wherein inclusion of domestic violence victims is implied within the broad scope of “*other populations including (but not limited to) families with children, elderly persons, young adults aging out of the foster care system, individuals exiting from institutional settings, veterans, or homeless people*”.

#### Planning Board Recommendation

On April 12, 2021 Planning Board held a hearing to consider the proposed ZTA. At the public hearing, the Board considered public comments and staff’s recommendation. After deliberation, the Board voted to decline staff’s recommendation to update the zoning regulations for supportive and transitional housing, and adopted an alternate resolution recommending the City Council to amend the regulations for emergency shelters.

The Planning Board expressed the following concerns:

- Permitting transitional and supportive housing in single family residential zones will adversely impact the existing character of the neighborhood.
- Transitional and supportive housing are commercial uses and should not be permitted by-right in R-1 and R-1-H zones.

- Such housing will tend to have high occupancy rate and will not be a good fit in R-1 and R-1-H zones.
- Allowing transitional and supportive housing in R-1 and R-1-H zones as a permitted use does not promote ownership of housing.
- Supportive and transitional housing will require more off-street parking than other residential units in R-1 and R-1-H zones.

While the Planning Board's concerns are understood, the Board's recommendation does not comply with State law. The draft ordinance included as Attachment 1 incorporates all State-required updates to transitional housing, supportive housing, and emergency shelter regulations. The existing Housing Element (5<sup>th</sup> cycle 2014-2021) includes Program No. 12 for Transitional and Supportive Housing which addressed adoption of the proposed ordinance. Further, the City's draft Housing Element Update (6<sup>th</sup> cycle 2021-2029) was presented to the City Council on May 25, 2021. The updated Housing Element is currently under review by the California Department of Housing and Community Development (HCD) and will not be certified by HCD if the adopted ordinance is inconsistent with State law. Failure to maintain a State-certified Housing Element could result in enforcement action by the State Attorney General to take legal action against the City, including halting discretionary actions and issuance of building permits, and imposition of fines of up to \$100,000 per month until it is brought into compliance. Housing Elements that are State-compliant protect from litigation as there is a presumption of legal validity in the courts and, further, Housing Element certification is necessary to qualify for a variety of State funds, such as the Senate Bill 2 and Local Early Action Planning (LEAP) grant funds recently awarded to the City.

The proposed ordinance updates the use table for R-1 and R-1-H single family zones to allow transitional and supportive housing as a permitted use. State housing law mandates that supportive housing and transitional housing be treated as residential uses, subject to all the development standards that regulate development of single-family and multi-family dwellings. Both supportive and transitional housing are primarily intended to provide affordable housing opportunities to very-low and low-income families. Supportive housing provides permanent housing, and transitional housing provides short term housing to low and very-low income families. The proposed ZTA is also intended to remove constraints to housing by allowing transitional and supportive housing as a by-right or conditionally permitted use based on the zoning district, and to create equal housing opportunities for special needs groups within the community including those that are homeless.

Unless there are specific requirements set forth by a funding agency based on program needs, the applicable occupancy for supportive and transitional housing is the same as any other similarly-zoned single family residential dwelling. In addition, the off-street parking requirement for supportive and transitional housing will be similar to other single family residential zoned properties.

#### Environmental Assessment

The proposed ZTA has been reviewed for compliance with the California Environmental Quality Act (CEQA). Based on City staff's assessment, the Draft Ordinance (Attachment

1) 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.”

The proposed State-mandated amendments to Title 10 Chapter 1 of the BMC categorize transitional and supportive housing as residential uses, that will be permitted or conditionally permitted in all zones where other residential uses are currently allowed, subject to the same development standards that apply to other dwellings of the same type in the same zone. Additionally, the ordinance would allow supportive housing as a by-right use in all the zones that allow residential use—if the proposed development complies with criteria specified in Article 11 (commencing with Section 65650), within Chapter 3 of Division 1 of Title 7 of the Government Code—subject to the same development standards that are applicable to other residential uses in the same zones. Moreover, the Project proposes changes to development standards for emergency shelters to maintain consistency with the State law.

The Project would not allow any new uses and would not change the amount of physical development that is currently allowed pursuant to the zoning ordinances. Allowing the proposed uses in zones where residential development is already permitted by-right or conditionally would not alter the residential nature of the affected zone. Further, the proposed ZTA would assure that the City’s zoning regulations are consistent with the City’s General Plan Housing Element and applicable State Housing laws. As a result, there is no possibility that the project may have a significant effect on the environment.

### **FISCAL IMPACT**

The proposed ZTA will not have a negative fiscal impact on the City’s budget. The special needs housing developed under the proposed ZTA would continue to be processed through City planning and building plan check providing the project’s fair share of current building and development fees.

### **CONCLUSION**

The proposed ZTA to amend Title 10, Chapter 1 (Zoning) of BMC would result in amendments to the definitions of transitional housing and supportive housing and include a definition for target population, update use tables in residential and non-residential zoning districts to include supportive and transitional housing as a residential use subject to same restrictions as other residential use, and update development standards for emergency shelters. The proposed ZTA is required to ensure compliance with State law as well as maintain consistency with City’s existing and updated General Plan Housing Element. Compliance with the State Housing Law is essential for a State-certified Housing Element, to maintain eligibility for State housing and infrastructure funds, and to prevent potential litigation resulting from noncompliant zoning regulations that is inconsistent with the City’s Housing Element and applicable State law. Additionally, the ZTA will help to



facilitate development of housing that is affordable to lower income households including creating new opportunities to house the homeless, all of which is consistent with the City's Affordable Housing Strategy and housing production goals established by the City Council.

## **ATTACHMENTS**

Attachment 1	AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BURBANK AMENDING TITLE 10, CHAPTER 1 (ZONING) TO UPDATE REGULATIONS FOR SUPPORTIVE HOUSING, TRANSITIONAL HOUSING, AND EMERGENCY SHELTERS CONSISTENT WITH APPLICABLE STATE LAWS.
Attachment 2	Redlined Ordinance
Attachment 3	Assembly Bill 2162
Attachment 4	Assembly Bill 139
Attachment 5	Overview of Proposed Changes to Regulations on Supportive and Transitional Housing, and Emergency Shelters
Attachment 6	A Resolution of the Planning Board of the City of Burbank Recommending the City Council Adopt an Ordinance of the City Council of the City of Burbank Amending Title 10, Chapter 1 (Zoning) in Order to Update the Regulations for Emergency Shelters, Consistent with Applicable State Laws
Attachment 7	Planning Board Minutes April 12, 2021
Correspondences	