

STAFF REPORT



COMMUNITY DEVELOPMENT

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SUBJECT: Introduction of an Ordinance Amending the Burbank Municipal Code to Implement Burbank 2021-2029 Housing Element Program No. 22 Related to the Update of Project Appeal Procedures

RECOMMENDATION

Introduce AN ORDINANCE OF THE COUNCIL OF THE CITY OF BURBANK AMENDING TITLE 9, CHAPTER 3 (ENVIRONMENTAL PROTECTION) AND TITLE 10, CHAPTER 1 (ZONING) OF THE BURBANK MUNICIPAL CODE TO IMPLEMENT BURBANK 2021-2029 HOUSING ELEMENT PROGRAM NO. 22 RELATED TO THE UPDATE OF PROJECT APPEAL PROCEDURES, AND MAKING OTHER RELATED AMENDMENTS (PROJECT NUMBER 24-0001518, ZONE TEXT AMENDMENT AND CODE TEXT AMENDMENT) (Attachment 1).

EXECUTIVE SUMMARY

The proposed Ordinance (Ordinance) will eliminate constraints to the development of housing and streamline the general project review and approval process by updating appeal procedures in the City's Zoning Code, consistent with the City Council adopted and State certified 2021-2029 Housing Element, Housing Plan Program No. 22 and making other relevant changes discussed in this report. If the Ordinance is approved, staff will also implement updated appeal forms and incorporate easier to understand language into public notices. Finally, the Ordinance includes proposed changes to Title 9, Chapter 3 (Environmental Protection) to ensure that the City's local public notice of environmental

decisions and associated appeals process is brought into alignment with requirements of state law including the California Environmental Quality Act (CEQA). Staff recommends the City Council adopt the attached Ordinance to update existing appeal procedures for discretionary land use applications in the Burbank Municipal Code (BMC).

BACKGROUND

2021-2029 Housing Element

On September 27, 2022, the City Council adopted the Burbank 2021-2029 Housing Element (Housing Element). As required by State law, the Housing Element includes a “Housing Plan”, which defines the specific actions the City is required to undertake to achieve the goals and policies of the Housing Element. The Housing Plan includes 27 programs (Attachment 3). Program No. 22 calls for the streamlining of project review and approval processes by updating project appeal procedures, updating the appeals forms, and clarifying the required language related to appeals on public notice documents.

Existing Zoning Code Appeal Constraints

Currently, the City’s appeal procedures for development projects are outlined in BMC § 10-1-1907.1 through § 10-1-1907.3, as well as in various subsections of BMC Title 10 (Zoning Regulations). Generally, any person may appeal a decision by the Director or Planning Commission to approve, conditionally approve, or deny a project application within 15 days of the decision. Appellants are required to explain the reasons for the appeal, although reference to specific BMC sections justifying the appeal is not currently required. Additionally, the existing appeal process may include up to two rounds of administrative appeal of a Director-level decision by allowing an appellant to seek Planning Commission review of the Director’s decision, followed by City Council review of the Planning Commission’s decision, thereby delaying the final decision on a project.

Other BMC Constraints

Outside of Title 10, the BMC contains other procedural requirements that apply to land use decisions that can also delay or constrain housing development. BMC Title 9, Chapter 3 (Environmental Protection) outlines the City’s local process for demonstrating compliance with the CEQA. This Chapter establishes unique local procedures for public notification of environmental determinations and related appeals, that are in addition to, and contrary to, the procedures outlined in State law. This duplicative and inconsistent process can add unnecessary time and expense to final project approvals and cause uncertainty for project applicants and confusion for the public.

DISCUSSION

Proposed Zone Text Amendments (ZTA)

To fulfill Housing Plan Program No. 22, the City must update project appeal procedures to streamline project review and approval. The following summarizes the proposed amendments to BMC Title 10 (Zoning Regulations) intended to partially fulfil Program No.

22. A detailed summary table explaining all proposed amendments is attached (Attachment 4). The proposed changes include the following:

- 1) Update the appeal process for land use entitlements as established in the BMC, including the initial and final review bodies for discretionary land use applications. For projects where the Community Development Director is the original decision maker, the Planning Commission will be the final decision-making body to hear related appeals. For projects where the Planning Commission is the original decision maker, the City Council will remain the final decision-making body to hear related appeals.**

This change will streamline the current appeal process by allowing planning entitlements to be appealed once – from the Director to the Planning Commission for Director-level decisions, such as Development Review (DR) and Administrative Use Permits (AUP), or from the Planning Commission to the City Council for Commission-level decisions, such as Conditional Use Permits (CUP) and Variances. The update will also require that appellants state the legal basis for the appeal to clarify the scope and reduce the likelihood of frivolous appeals.

- 2) Amend the Zoning Use List in BMC § 10-1-502 to amend the permissibility of “Multifamily Residential with Nonresidential Use” from a Commission-level CUP to a Director-level AUP.**

The permissibility of uses within commercial zones is currently outlined in the Zoning Use List found in BMC § 10-1-502. The use “Multifamily Residential with Nonresidential Use” (commonly known as “Mixed-Use”) currently requires a Planning Commission-level CUP approval unless the project is otherwise allowed by State law through the ministerial streamlined approval process (i.e., Senate Bill 35, Assembly Bill 2011). This amendment will require Director-level AUPs for these projects and streamline the review process for this type of housing as directed by Housing Plan Program No. 22.

- 3) Consolidate and standardize the appeal procedures into BMC §§ 10-1-1907.2 and 10-1-1907.3.**

This amendment will standardize and streamline the appeal procedures for both Director and Planning Commission decisions for all entitlement applications under BMC §§ 10-1-1907.2 and 10-1-1907.3. Currently, the appeal procedures are listed in multiple locations in the Zoning Code with certain inconsistencies between them regarding application processing and public noticing. Amendments are proposed to BMC sections that contain references to appeal procedures outlined elsewhere in the

Zoning Code to standardize all appeals under the procedures outlined in BMC §§ 10-1-1907.2 and 10-1-1907.3.

4) Clarify that appeal procedures in Title 10 (Zoning Regulations) apply only to discretionary decisions and any decision to disapprove a ministerial Development Review application.

Currently, the BMC does not clearly distinguish between the appeal procedures for discretionary and ministerial decisions, which can cause confusion and uncertainty for applicants and the public. Under BMC §§ 10-1-1908 *et seq.*, the Development Review process serves as a mechanism to inform the community about certain development projects and verify that a project complies with the BMC, while expediting and streamlining the building permit process. Therefore, ministerial Development Review applications are similar to State mandated ministerial approvals, which require decisions that do not involve personal judgment and are based on a review of consistency with objective development standards. Upon confirming that a project is consistent with all BMC requirements, the ministerial Development Review must be approved leaving little basis for appeal. However, to provide an administrative remedy in the event a ministerial project is wrongly denied, staff recommends adding language to clarify that appeals may be filed with the Planning Commission for ministerial Development Review disapprovals, in addition to all discretionary Development Review application determinations.

Other Proposed BMC Amendments

1) Amend the notice and appeal process of environmental decisions to be consistent with State CEQA law.

BMC § 9-3-107 includes a local Public Notice of Environmental Decision (PNOED) process that requires posting notices of decisions at the Planning Division counter when the City prepares an environmental impact report (EIR), Negative Declaration, or declares a project exempt from CEQA. The PNOED process is in addition to the noticing requirements mandated by the State under CEQA, which require posting broader notice with the County Clerk and State Clearinghouse in the Office of Planning and Research (Cal. Pub. Resources Code § 21152). BMC § 9-3-108 outlines steps to appeal environmental decisions to the Planning Commission, which differs from the administrative appeal process created by state law that allows environmental appeals to be filed directly with the City Council (Cal. Pub. Resources Code § 21151(c)). This creates confusion and may add unnecessary time and expense to final project approvals. To reduce uncertainty, staff recommends updating the PNOED process to conform with state CEQA noticing requirements and provide a direct process to

administratively appeal CEQA determinations to the City Council under BMC § 10-1-1907.3.

2) Notification Requirements for Zone Text Amendments

Finally, on January 1, 2025, Assembly Bill (AB) 2904 (Attachment 2) became effective, requiring 20 calendar days' prior notice of Planning Commission public hearings on proposed zoning ordinances and amendments that affect permitted uses of real property (Cal. Govt. Code § 65854(b)(2)). The BMC currently requires notices of such hearings to be posted 10 business days in advance of the Planning Commission hearing. Therefore, the BMC must be amended to reflect this State-mandated new 20-day notice requirement.

Additional Administrative Actions to Implement Housing Program No. 22

The following administrative actions do not require City Council review and if the Ordinance is approved, the following remaining requirements under Housing Program No. 22 will be implemented.

1. Update the appeal form to specify that appellants need to clearly identify the findings/criteria that are the basis of the appeal.
2. Update the public notices and agendas with additional language to require that issues raised by an appellant during the appeal hearing be limited to only those topics specified in the appeal.

Findings for Approval of a Zone Text Amendment

Pursuant to California Government Code § 65860, the City Council must find that the proposed ZTA is consistent with the objectives, policies, general land uses, and programs specified in the Burbank2035 General Plan. As recommended by the Planning Commission (Attachment 6), the ZTA is compatible with Burbank 2035 General Plan Housing Element Goals 2 and 4 for the reasons provided in Attachment 5.

Planning Commission Recommendation

The Planning Commission considered the proposed ZTA and Ordinance during their noticed public hearing on January 13, 2025. After a brief presentation from staff, public testimony, and deliberation, the Planning Commission voted 3-0 to adopt a resolution recommending City Council approve the proposed Ordinance (Attachment 6).

COMMUNITY OUTREACH

In conformance with BMC § 10-1-1994, staff provided public notice in a newspaper of general circulation in the City on February 8, 2025 for the City Council public hearing on the proposed Ordinance, including the ZTA and amendments to the BMC. Additional notifications for the public hearing were distributed via the City Calendar and the Planning Division website.

ENVIRONMENTAL REVIEW

The proposed Ordinance has been evaluated under the CEQA and requires no further CEQA review. The proposed ZTA and amendments to the City's appeal procedures and initial and final reviewing bodies for multifamily residential housing with nonresidential use projects (mixed use projects) are consistent with the 2021-2029 Burbank Housing Element and as such, were contemplated and studied in the Program Environmental Impact Report for the 2021-2029 Housing Element (SCH No. 2021020393), certified in September 2022. Pursuant to CEQA Guidelines § 15183(a), no further environmental review is required for the ZTA. Furthermore, none of the proposed BMC amendments within the proposed Ordinance require CEQA review because they only involve administrative and procedural updates to the BMC. Adoption of the Ordinance is covered by the common-sense 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 (CEQA Guidelines § 15061(b)(3)). Additionally, pursuant to CEQA Guidelines § 15378, the proposed Ordinance is not considered a "project" subject to the requirements of CEQA because the Ordinance has no potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. Instead, the proposed Ordinance involves modifications to administrative noticing requirements and procedural updates to internal review and approval bodies that will result in no direct or indirect physical changes to the environment.

FISCAL IMPACT

A slight fiscal impact to the City's General Fund is projected by adopting the proposed Ordinance. Removing the ability to file a second appeal to City Council for a decision originally made by the Director then subsequently appealed to Planning Commission may have an impact to the amount of appeal application fees collected. Amending the permissibility of Mixed-Use projects from a CUP to an AUP may also have an impact on the amount of application fees collected given the lesser fee for an AUP application. However, as these fees are for cost recovery reasons only, the reduction in fees will be offset by staff's availability to undertake other work assignments. These include the intake and processing of other projects in the furtherance of City Council and community goals and programs. All other amendments proposed under this Ordinance are not expected to produce a fiscal impact to the General Fund.

CONCLUSION

The proposed Ordinance will implement measures to fulfill the requirements of the 2021-2029 Housing Element Housing Plan Program No. 22, to remove constraints to housing and streamline project review and approval processes by amending the BMC and updating existing appeal procedures for land use projects as stated in the BMC Title 10, Chapter 1, Zoning. The other related changes in the Ordinance to the City's

environmental review procedures in Title 9, Chapter 3 (Environmental Protection), and the notice of Planning Commission public hearing procedures are necessary to align the City's procedures with State law and will also further streamline the process to facilitate the development of housing.

ATTACHMENTS

Attachment 1 – Proposed Ordinance

Attachment 2 – AB 2904

Attachment 3 – Burbank 2021-2029 Housing Element – Housing Plan

Attachment 4 – Summary of Proposed Amendments

Attachment 5 – Findings for Approval of a Zone Text Amendment

Attachment 6 – Resolution of Planning Commission Meeting dated January 13, 2025

Correspondences