

STAFF REPORT



COMMUNITY DEVELOPMENT

DATE: December 10, 2024

TO: Justin Hess, City Manager

FROM: Patrick Prescott, Community Development Director

VIA: Fred Ramirez, Assistant Community Development Director

Scott Plambaeck, Planning Manager

BY: Amanda Landry, Principal Planner

SUBJECT: Introduction of an Ordinance Amending the Zoning Map and the Burbank Municipal Code to Create a New 2021-2029 Housing Element Opportunity Sites Overlay Zone to Implement Required 2021-2029 Housing Element Programs Pursuant to State Law

RECOMMENDATION

Introduce AN ORDINANCE OF THE COUNCIL OF THE CITY OF BURBANK AMENDING THE ZONING MAP AND TITLE 10: ZONING REGULATIONS OF THE BURBANK MUNICIPAL CODE TO CREATE A NEW 2021-2029 HOUSING ELEMENT OPPORTUNITY SITES OVERLAY ZONE TO IMPLEMENT REQUIRED 2021-2029 HOUSING ELEMENT PROGRAM ACTIONS PURSUANT TO STATE LAW (Zone Map Amendment, Zone Text Amendment; Project No. 24-0004926) (Attachment 1).

BACKGROUND

State law mandates that each city adopt a General Plan, which must include chapters, or “Elements”, intended to address a variety of state mandated land development issues, including a mandatory Housing Element. The City of Burbank has a certified Housing Element, which was adopted by the City Council (Council) on September 27, 2022. One of the primary requirements addressed in the adopted 2021-2029 Housing Element is the identification of sites for future housing development and evaluation of the adequacy of these sites for fulfilling the City’s fair share of regional housing needs, which is based on the Southern California Association of Governments Regional Housing Needs Assessment (RHNA). Since Burbank is a built-out community with few remaining vacant residential sites, the City plans to accommodate the level of housing growth by using a combination of the following methods:

- Pending and entitled residential projects with occupancy post June 30, 2021;
- Housing opportunity sites in the Downtown Transit Oriented Development (TOD) Specific Plan and Golden State Specific Plan (GSSP);
- Accessory dwelling units; and
- Rehabilitation of market rate rental units and providing as long-term affordable housing using the City's committed assistance.

Table 1-41 of the adopted 2021-2029 Housing Element (Attachment 2) identified 19 sites as opportunity sites capable of accommodating additional eligible housing development potential needed to meet the City's obligated RHNA allocation. The sites were identified as those most suitable for residential development during the 2021-2029 planning period. The sites were also selected due to their proximity to several resources, including but not limited to transit, grocery stores, medical facilities, jobs, and open space. 12 of the sites are in the proposed Downtown Burbank TOD Specific Plan and seven are within the proposed GSSP area.

Upon rezoning, the sites will have the combined increased capacity for up to 6,066 dwelling units. The sites, combined with other properties that are already zoned and sites identified as part of the "buffer sites" in the Housing Element, the City will have sufficient sites to accommodate our RHNA allocation. Since the City does not have a shortfall of sites zoned to accommodate the RHNA for lower income households, the City is not subject to the adequate sites program requirement under Government Code § 65583(f) and 65583.2(h). The requirement to rezone the Sites is formalized in the 2021-2029 Housing Element Housing Plan Program No. 5 (Attachment 3). The Housing Plan, inclusive of Program No. 5, defines the specific actions the City will undertake to achieve the goals and policies of the Housing Element, and they are organized around Burbank's five housing goals. The City's Housing Element Programs encompass existing programs; programs revised in response to the review of program accomplishments and the current and projected funding sources; and new programs added to address unmet housing needs and new statutory requirements.

Pursuant to Government Code § 65583(c)(1)(A), for jurisdictions that have their housing elements certified by the California Department of Housing and Community Development (HCD) by the statutory deadline or no more than 120 days after the deadline, those jurisdictions must complete any required rezoning within three years of the date the Housing Element was adopted. The City of Burbank adopted a certified 2021-2029 Housing Element on October 22, 2022, therefore the final deadline to complete the rezoning is February 15, 2025. Failure may result in HCD deeming the City's Housing Element out of compliance, leaving the City exposed to a variety of consequences.

Government Code § 65583(g) describes the penalties for jurisdictions that fail to implement the promised rezoning by the deadline. Discretion to issue building permits is limited with respect to residential projects that are at least 49% affordable and are located on a to-be-rezoned site. Specifically, jurisdictions are prohibited from requiring a conditional use permit or other discretionary permit for such projects. Ultimately, jurisdictions are also prohibited from disapproving such projects unless they can make project-specific health and safety findings that are supported by substantial evidence. Jurisdictions that miss the rezoning deadline are subjected to HCD review of the inaction with potential revocation of prior Housing Element approval. At that point, all penalties associated with Housing Element noncompliance, such as the Builder's Remedy¹, will apply. If the City fails to complete the rezoning necessary to meet its RHNA allocation, Burbank could be deemed out of compliance which would result in major consequences, such as:

- Ineligibility for major state funding sources for affordable housing construction (such as the Affordable Housing and Sustainable Communities grant, the Infill Infrastructure Grant, etc.);
- Weakened control over local zoning (known as the “Builder’s Remedy”);
- Court imposed fines; and
- Other court action to force compliance.

DISCUSSION

The proposed Project will create a new 2021-2029 Housing Element Opportunity Sites – Overlay Zone (HEOS-OZ) (Attachment 4), which will identify and designate the relevant Sites and amend the Zoning Use List to facilitate residential development on the sites, consistent with the 2021-2029 Housing Element, such prior to the implementation of the Downtown Burbank TOD Specific Plan and the GSSP. Upon Council adoption of the Downtown Burbank TOD Specific Plan or the GSSP, the sites within the boundaries of the adopted specific plan would also re-zoned to be consistent with the specific plan.

Proposed Code Text Amendments:

1. BMC § 10-1-301: “Establishment of Zones” will be amended to include the following symbol and description:

HEOS-OZ: Housing Element Opportunity Sites Overlay Zone

2. A second footnote will be added to the General Plan Consistency Table wherever found throughout BMC Title 10 (Zoning Regulations) as follows:

¹ A legal process that allows developers to build certain housing projects without complying with local zoning or general plan requirements.

Burbank2035 Land Use Designation	Maximum FAR	Maximum Residential Density^{1, 2}
Corridor Commercial	1.0 FAR	27 du/acre
Regional Commercial	1.25 FAR	58 du/acre
Downtown Commercial	2.5 FAR	87 du/acre
South San Fernando Commercial	1.25 FAR	43 du/acre
North Victory Commercial/Industrial	1.0 FAR	27 du/acre
Rancho Commercial	0.6 FAR	20 du/acre
Media District Commercial	1.1 FAR	58 du/acre
Golden State Commercial/Industrial	1.25 FAR	27 du/acre
Institutional	Max. floor area determined by Zoning	--
Open Space	Max. floor area determined by Zoning	--
Airport	Max. floor area determined by Zoning	--

¹ with discretionary approval.

² *Notwithstanding the maximum densities listed in this General Plan Consistency Table, for each site within the 2021-2029 Housing Element Opportunity Sites Overlay Zone (2021-2029 HEOS-OZ), the maximum residential density shall be the total net units for that site as listed in the column titled "Proposed Specific Plan Total Net Units" of Table 1-41 in the adopted 2021-2029 Burbank Housing Element. All other underlying base zoning land uses and development standards and procedures shall continue to apply.*

3. A footnote will be added to the table BMC § 10-1-626.5 as follows:

General Plan Land Use Designation	Maximum Density¹
Low Density Residential	14 units/acre
Medium Density Residential	27 units/acre
High Density Residential	43 units/acre

¹ *Notwithstanding the maximum densities listed in this General Plan Consistency Table, for each site within the 2021-2029 Housing Element Opportunity Sites Overlay Zone (2021-2029 HEOS-OZ), the maximum residential density shall be the total net units for that site as listed in the column titled "Proposed Specific Plan Total Net Units" of Table 1-41 in the adopted 2021-2029 Burbank Housing Element. All other underlying base zoning land uses and development standards and procedures shall continue to apply.*

4. The following modifications are proposed to the Zoning Use List in BMC § 10-1-502:

a. A new column titled "HEOS-OZ" shall be inserted into the Zoning Use List table.

b. The column will be populated with a new footnote #16 that reads:

“Land uses are permitted as provided in the base zone. Unless otherwise provided in this Code, the building and development standards applicable to proposed uses in the 2021-2029 HEOS-OZ will be the same standards applicable to such uses within the base zone, including but not limited to standards adopted in the Burbank 2021-2029 Housing Element, the Burbank Municipal Code, and any other laws, rules or regulations that apply to the proposed use within the base zone.”

PLANNING COMMISSION RECOMMENDATION

The Planning Commission considered the project on October 28, 2024 and voted 4-0 to adopt the attached Resolution recommending that the Council approve the project (Attachment 5).

ENVIRONMENTAL REVIEW

The amendments proposed as part of this Project are consistent with the development density established by 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 California Environmental Quality Act (CEQA) Guidelines § 15183(a), no further environmental review is required for this Project (Attachment 6). In addition, all applicants proposing any development on the Sites must demonstrate compliance with all existing protocols for mitigation, monitoring, and reporting as identified in the 2021-2029 Housing Element Program EIR. The purpose of the standards is to provide predictability for applicants to demonstrate how their proposed project will avoid a significant effect to the environment in accordance with applicable Federal and State laws. These standards cover several environmental topics included in City-adopted Program Environmental Impact Reports (PEIRs), pertaining to cultural resources including historic resources, offer for Native American consultation, archaeological surveys, and monitoring; biological resources including identification of sensitive biological resources, delineation of wetlands, provision of wetland buffers, and avoidance of impacts to environmentally sensitive habitat areas; construction noise reduction measures and onsite noise reduction; paleontological resources including standard protocols and monitoring; and protection of the public health and safety from wildfire risk per State Fire and Building Codes.

FISCAL IMPACT

The proposed Project inclusive of the rezoning of designated housing opportunity sites will have not have a negative fiscal impact to the City’s General Fund. Future development of any of the sites will result in new permit and development impact fees in addition to reappraisal of property by the Los Angeles County Assessor, which will result in new property tax revenue to the City.

However, if the Project is not effective by February 15, 2025, HCD may deem the City out of compliance with State housing law and subject to enforcement action by the State. If the Council were to delay or decide not to proceed with the recommended Project, there is a high risk of accelerated enforcement by HCD and/or the State Attorney General's office, which could result in significant fiscal impacts to the City's General Fund and could make the City ineligible for future State grant funding opportunities.

CONCLUSION

The proposed Project would establish the 2021-2029 HEOS-OZ to formally identify the sites on the Zone Map and establish the allowable development capacity for each site. This action would satisfy the intent of Housing Program No. 5 (Housing Opportunity Sites & Rezone Program). Additionally, the Project will create consistency between the Sites' zoning and General Plan designations and facilitate residential development on those Sites, consistent with the adopted 2021-2029 Housing Element. Additionally, the proposed Project is consistent with and will create consistency between the Burbank 2035 General Plan, adopted 2021-2029 Housing Element, and the provisions of Title 10 (Zoning Regulations), Chapter 1 (Zoning) of the BMC, and is therefore compatible with objectives, policies, general land uses, and programs specified therein.

ATTACHMENTS

Attachment 1 – Ordinance

Attachment 2 – Table 1- 41 and Exhibit 1-5 from the 2021-2029 Housing Element

Attachment 3 – 2021-2029 Housing Element Housing Plan Program No. 5

Attachment 4 – Proposed Housing Element Opportunity Sites Overlay Zone

Attachment 5 – Planning Commission Resolution No. 3474, dated October 28, 2024

Attachment 6 – Final EIR for the Burbank Housing and Safety Element Update (State Clearinghouse No. 2021020393) Finding of Consistency

Correspondences