



City Council AGENDA REPORT

DATE: 08/22/24

AGENDA OF: 09/10/24

DEPARTMENT: Planning and Community Development

SUBJECT: Ministerial Design Review Authority for Affordable Streamlined Ministerial Projects with a Density Bonus. Location: Citywide. CEQA: Not a Project. (PL)

RECOMMENDATION: Motion to direct staff to do the following, which will supersede the direction provided at the September 7, 2021, City Council Meeting:

- 1) Conduct the objective, ministerial Design Review of revisions to the 831 Water Street Project, including potential revisions to the Density Bonus approval, administratively with the option to refer the project to the Planning Commission; and
 - 2) Any future requests for an affordable housing streamlined ministerial project that include a Density Bonus request shall be reviewed by the Zoning Administrator at a noticed public hearing with the option to refer review to the Planning Commission.
[Environmental Determination: Not a Project]
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BACKGROUND: Senate Bill 35 (SB35) was approved by Governor Newsom on September 29, 2017, and became effective on January 1, 2018. The bill amends the language in Government Code Section 65913.4 to allow for qualifying housing development proposals to be subject only to a streamlined, ministerial approval process, and not subject to a Use Permit. The wording of SB35 indicated that a Design Review or “Public Oversight” of the development may be conducted by a “local government’s planning commission or any equivalent board or commission responsible for review and approval of development projects, or the city council or board of supervisors, as appropriate.”

SB35 is only applicable in a locality where the State Housing and Community Development Department (HCD) has determined that the number of units that have been issued building permits is less than the locality’s share of regional housing needs, by income category, for that reporting period. The total number of building permits issued towards qualifying housing is reviewed four years into the Housing Element cycle and at the end of the eight-year cycle. Specifically, projects qualify for SB35 by providing at least 10% of the total units at low-income level in jurisdictions that are not meeting their above moderate housing units or 50% at the low income level in jurisdictions not meeting their low or very low income affordable units.

In July 2021, the Planning Department received an application for a mixed-use development at 831, 823, and 833 Water Street (“831 Water Street”) to be processed pursuant to SB35. At the time, SB35 was a viable option for streamlining housing development in that full compliance with the City’s Regional Housing Needs Assessment (RHNA) allocation had not yet been achieved at the very low-income level. Based on the city’s housing numbers at the time of application submittal, an SB35 project would need to provide at least 50% of the units at the low-income level to be eligible, which was proposed in the 831 Water Street application.

The City determined that the 831 Water Street project would require a Design Review/Public Oversight meeting, and the City Council served as the hearing body for that meeting, which was allowed pursuant to the language in SB35. The project was ultimately found consistent with objective standards and the Density Bonus granted.

During the review of the 831 Water St. project, a Special Meeting of the City Council was held on September 7, 2021, to familiarize the City Council and community with SB35 legislation. At the special meeting, the City Council provided the following direction to staff for the future processing of other affordable housing streamlined ministerial projects that include a density bonus request:

Councilmember Cummings moved, seconded by Councilmember Kalantari-Johnson, to confirm that applications involving requests for both Affordable Housing Streamlined Ministerial Approval and Density Bonus require City Council to make the determination of consistency with objective standards and to consider for approval any associated Density Bonus requests as part of a public oversight meeting to occur within 60 days of receipt of application for a project with 150 or fewer units or 90 days of application receipt for a project with more than 150 units.

On October 11, 2023, Governor Newsom approved Senate Bill 423 (SB 423) which, among other things, amends the language added to Government Code Section 65913.4 by SB35 to eliminate the ability for the City Council to conduct design review for such project. SB 423 made the following changes to the Government Code section:

“Any design review ~~or public oversight~~ of the development may be conducted by the local government’s planning commission or any equivalent board or commission responsible for design review.” ~~And approval of development projects, or the city council or board of supervisors, as appropriate. [Government Code Section 65913.4(d)]~~

This item seeks to amend the City Council’s direction to clarify direction for review of potential future modifications to the 831 Water Street project and to clarify direction for Design Review of future SB423 (formerly SB35) and other affordable housing streamlined ministerial projects that include a Density Bonus.

DISCUSSION: The applicant for the 831 Water Street project has made the City aware that they intend to submit revisions to the project design to accommodate a 100% affordable housing development. Since the adoption of SB423, the revisions can no longer be considered by the City Council. A formal application for modifications to the 831 Water Street project has not been submitted, therefore, the extent of the final proposed changes is unknown. The Zoning Ordinance

allows for Minor Modifications to permits to be processed at the staff level and for Major Modifications to be processed by the hearing body that acted on the original permit. While this project is ministerial and would not trigger a Major or Minor Modification as a discretionary permit, staff recommends that the City Council provide direction for staff to review such modifications administratively and without a public hearing, with the option to refer the project to the Planning Commission. The ministerial review would continue to be confirmation of consistency with applicable objective standards.

Regarding future SB423 projects, as of June 3, 2024, the State verified the City's annual progress report and acknowledged that the City met all RHNA categories; therefore, SB423 does not apply in the City until 2028 at the earliest. However, the direction provided by the City Council at the September 7, 2021, meeting is not specific to SB423 projects and would apply to objective Design Review associated with any affordable housing streamlined ministerial review that includes a Density Bonus request, such as a density bonus project proposed under Assembly Bill 2011 (Multi-Family Residential Projects on Commercially Zoned Land) or Senate Bill 2162 (Affordable Supportive Housing).

In the event that SB423 is triggered based on the City's RHNA numbers in four years or the City receives an application for any affordable housing streamlined ministerial review process with a Density Bonus request, it is recommended that the City Council direct staff to conduct the associated Design Review at a Zoning Administrator public hearing, consistent with Section 24.16.270(1) of the Zoning Ordinance, with the option to refer projects to the Planning Commission, consistent with Section 24.04.130 of the Zoning Ordinance. While the Zoning Ordinance currently requires a public hearing for density bonus projects, the City has very little discretion in such decisions and a public hearing is not consistent with the intent of most streamlining legislation that call for ministerial review; therefore, staff anticipates presenting the Council with future proposed amendments to the code that would allow a fully ministerial review process for an affordable housing streamlined ministerial project with a density bonus. Further, those future amendments are expected to be more consistent with the various objectives in the General Plan 2030 Housing Element, such as the following:

2.2g. Adopt an ordinance that allows 100 percent affordable residential development that conforms to applicable objective standards, not including density bonus waivers and concessions/incentives, to be considered a "by-right" use that only requires ministerial Planning approval and Building Permits to be constructed in residential and mixed-use zones.

2.2h. Adopt SB 35 application review processes for eligible projects that meet the requirements established in Government Code Section 65913.41.

2.2i. Create a packet outlining land use and development information that helps to facilitate affordable housing production, particularly low and extremely low income units, on faith-based organization sites, and provide that information, along with staff contact details, to owners and occupants of faith-based sites within the city at least every two years. Assist property owners in the development of housing including assisting with entitlements, outreach and contact with affordable housing

developers, supporting funding applications, providing technical assistance, and granting incentives such as waiving fees and reducing development standards.

To reiterate, the changes require code amendments and are not proposed at this time. The action before the Council at this meeting is solely to revise the prior, September 7, 2021, Council action directing staff to have the Council act on the Design Review of an Affordable Housing Streamlined Ministerial Review project that includes a Density Bonus. Rather than the Council reviewing such action, the Zoning Administrator would review said action at a public hearing, with the option to refer that action to the Planning Commission. The Zoning Administrator's action could be appealed to the Planning Commission. For SB 423 projects (or if precluded by other State legislation), the Planning Commission's decision cannot be appealed to the City Council, as the Council is expressly excluded from presiding over such determinations of consistency with objective standards.

Any objective Design Review associated with an Affordable Housing Streamlined Ministerial Review project that does *not* also propose a Density Bonus will continue to be reviewed administratively by staff.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) DETERMINATION: The recommended amended City Council direction is not considered to be a project under the Section 21065 of CEQA in that the direction will not cause either a direct or reasonably foreseeable indirect physical change in the environment. The direction is related to process only and each application will be evaluated for CEQA compliance at the time of submittal.

HEALTH IN ALL POLICIES (HiAP): HiAP is a collaborative approach to improving the health of all people by incorporating health considerations into decision-making across sectors and policy areas. HiAP is based on 3 pillars: equity, public health, and sustainability. The goal of HiAP is to ensure that all decision-makers are informed about the health, equity, and sustainability impacts of various policy options during the policy development process. The recommended amended direction supports the pillar of equity in that processing of the 831 Water Street project revisions and other future affordable housing projects will be streamlined consistent with State law and relevant General Plan policies. Such projects will continue to be noticed consistent with the Community Outreach Policy for Planning Projects and Design Review will ensure compliance with objective standards which will further ensure that the projects meet the pillars of health and sustainability that are codified in our local ordinance. The recommended City Council direction is consistent with the three pillars of the HiAP.

FISCAL IMPACT: None

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Approved By:
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ATTACHMENT:

1. September 7, 2021 City Council Special Meeting Minutes