



CITY COUNCIL AGENDA REPORT

Meeting Date: May 4, 2023

From: Thomas McMorrow, City Attorney

Subject: Briefing on Senate Bill 423 (2023)

PURPOSE

To ensure the City of Brisbane is aware of major policies or regulations being discussed at the State level that may impact residential development in the City.

BACKGROUND: SENATE BILL 35

The Council will no doubt remember Senate Bill 35 (Weiner) from 2017, which created a process by which the City's review of some new development proposals could be limited to being "ministerial."

SB 423 is important because it would make SB 35 permanent and also limit the authority of the City's Planning Commission in certain, limited circumstances, while imposing greater responsibility on the City's Planning Director (or equivalent) in similarly limited circumstances.

As background to our summary of SB 423 below, you may find this Senate Housing Committee summary of SB 35 (from its [analysis](#) of SB 423) useful:

SB 35 (Wiener) created a streamlined approval process for infill projects with two or more residential units in localities that have failed to produce sufficient housing to meet their RHNA. The streamlined approval process requires some level of affordable housing to be included in the housing development. To receive the streamlined process for housing developments, the developer must demonstrate that the development meets a number of requirements including that the development is not on an environmentally sensitive site or would result in the demolition of housing that has been rented out in the last ten years. Localities must provide written documentation to the developer if there is a failure to meet the specifications for streamlined approval, within [a] specified a period of time. If the locality does not meet those deadlines, the development shall be deemed to satisfy the requirements for streamlined approval and must be approved by right.

[E]xisting law requires HCD to determine when a locality is subject to the streamlining and ministerial approval process in SB 35 (Wiener) based on the number of units issued building permits as reported in the annual production report that local governments submit each year as part of housing elements. Streamlining can be turned on at the beginning of the term of housing element (generally eight years but in some cases five) and turned off halfway through if a local government is permitting enough units to meet a proportional

share of the RNHA at all income levels (low-, moderate-, and above moderate-income). If a local government is not permitting enough units to meet its above moderate and its lower income RHNA, a development must dedicate 10% of the units to lower income in the development to receive streamlined, ministerial approval. If the jurisdiction is permitting its above moderate-income and not the lower SB 423 (Wiener) income RHNA, then developments must dedicate 50% of the units for lower income to have access to streamlining.

Setting the stage for SB 423, the Senate Housing Committee also opines that SB 35 has had a positive impact since its passage:

According to data provided by local governments in their annual progress reports (APRs) between 2018 and 2021 statewide, SB 35 has resulted in 19,239 units, 60% of which are affordable to lower income households. This is like an undercount, as some cities have shared with the author and committee that more projects have been approved than HCD has data. For example, San Francisco has received 26 total SB 35 project applications, for a total of 3,404 units, 2,970 of which are affordable. One affordable housing developer, Related, testified in a joint oversight hearing of the Senate Housing Committee and Assembly Housing and Community Development Committee on February 28th, 2023 that they have entitled 818 Units in seven projects, with another 1176 in process — some just months away. In the same hearing, a representative of San Francisco testified that SB 35 has reduced housing permitting times in San Francisco by four times (3-6 months versus 18-24 months). The committee received examples from a regional affordable housing group that their members reduced approval timelines between six and 24 months, depending on the jurisdiction. Clear timelines for affordable housing permitting is particularly critical as affordable developers often require between eight and 12 different sources of funding to make an affordable housing development pencil financially, and any delays risk the loss of available public funds.

Senate Bill 423

State Senator Anthony Weiner (D-San Francisco) is authoring [Senate Bill \(SB\) 423](#) this year. SB 423 is coauthored by Senator Melissa Hurtado (D-Bakersfield) and Assemblymembers Buffy Wicks (D-Berkeley) and Tim Grayson (D-Concord). Senator Weiner chairs the Senate's Housing Committee and Assemblymember Wicks, who is the principal coauthor of SB 423, chairs the Assembly's Housing and Community Development Committee.

1. *Would Remove Sunset Date of Current Requirement re Ministerial Approval of Certain Residential Developments*

SB 423 would repeal the January 2026, sunset date in current law that authorizes a developer to submit an application for a multifamily housing development that is subject to the streamlined, ministerial approval process provided for in SB 35 if the development satisfies specified objective

planning standards (e.g., that the developer has committed to record a land use restriction or covenant providing that any lower or moderate-income housing units required shall remain available at affordable housing costs or rent to persons and families of lower or moderate-income for minimum periods of time specified in the law).

2. *Would Further Streamline Local Approvals by Limiting the Authority of the Planning Commission to Approve Projects and Vest the City's Planning Director with the Responsibility to Essentially Unconditionally Approve Projects Meeting Objective Planning Standards*

SB 423 would remove the authority of a local government's planning commission to conduct public oversight of a development and would only authorize a limited design review to be conducted by the commission. (This would, in effect, mean the City's Planning Commission would no longer have authority to review and approve projects subject to SB 423 or be permitted to conduct any public oversight of such projects.)

SB 423 would also amend existing law that requires a local government to approve a development if the local government determines the development is consistent with the objective planning standards to instead require approval if a local government's planning director determines the development is consistent with the objective planning standards. In addition, the bill would prohibit a local government from requiring, prior to approving a development that meets the requirements of the streamlining provisions, compliance with any standards necessary to receive a post entitlement permit or studies, information, or other materials that do not pertain directly to determining whether the development is consistent with the objective planning standards.

3. *Would Revise Definition of "Objective Planning Standards"*

SB 423 would modify the current "objective planning standards" in a number of ways, including deleting the standard that prohibits a multifamily housing development from being subject to the streamlined, ministerial approval process if the development is located in a coastal zone, and by providing an alternative definition for "affordable housing costs" for a development that dedicates 100% of units, exclusive of a manager's unit or units, to lower income households.

SB 423 would also delete the objective planning standards requiring developers to pay at least prevailing wages in favor of permitting a developer to certify to the local government that certain wage and labor standards will be met, including a requirement that all construction workers be paid at least the general prevailing wage.

The analysis of SB 423 hyperlinked above provides a detailed summary of the proposed new law for those interested in reviewing more than this summary. We have also hyperlinked the bill itself for ease of reference.

FISCAL IMPACT

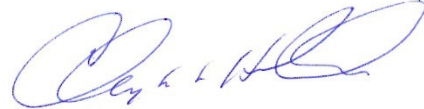
It is not clear if SB 423 would have a fiscal impact on the City, however if there is any impact it would be negligible. The most likely outcome would be that the administrative costs of project reviews subject to the law would be reduced.

MEASURE OF SUCCESS

The City's ability to successfully introduce and comply with changes in certain project approvals.



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