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MEMORANDUM

TO: Mayor London Breed; Board of Supervisors; Board of Appeals; Planning Commission; Historic Preservation Commission; Building Inspection Commission; Public Works Commission; Public Utilities Commission; Public Health Commission

FROM: Austin Yang *AY*
Deputy City Attorney

DATE: November 8, 2023

RE: Assembly Bill 1114 (Haney) – Recent Amendments to Government Code Section 65913.3; Permit Streamlining Requirements for Housing Development Projects

On October 25, 2023, the California Department of Housing and Community Development (“HCD”) issued its Policies and Practices Review for San Francisco. In the report, HCD finds that the City’s “local rules around discretionary permitting and post-entitlement appeals prevent full implementation of the goals and aims of state housing laws.” This past year, the City has faced increasing scrutiny over its permitting review and appeals of housing projects. As one means of addressing this issue, the State recently enacted Assembly Bill 1114 (Haney) (“AB 1114”). As of January 1, 2024, that bill makes Government Code Section 65913.3, which generally imposes tight time frames for cities to review and process permits, apply to the City. As initially enacted in 2022, California Government Code Section 65913.3 only applied to nondiscretionary permits. Because all permits in San Francisco are discretionary – and subject to appeal under California Supreme Court precedent and the City’s Charter – the City was generally not subject to Government Code Section 65913.3.

But AB 1114 makes all postentitlement phase permits, including building permits, for designated housing development projects (i.e., projects with all residential units, transitional or supportive housing, or where at least two-thirds of the square footage is for residential use), whether discretionary or nondiscretionary, subject to the streamlining requirements and not subject to appeal. AB 1114 will impact how the City reviews and processes building permits, as well as appeals to the Board of Appeals. In addition, other state laws, such as the recently enacted Senate Bill 423 (Wiener) (“SB 423”), require streamlined approval of certain permits for eligible housing projects, including subsequent permits required for those projects. (We are also issuing an accompanying memorandum on SB 423 today).

Because the City was not subject to, and therefore did not implement Section 65913.3 when the Legislature initially enacted it in AB 2234, we briefly describe the obligations of Section 65913.3, including the recent changes made in AB 1114; the consequences of City non-compliance; exceptions to the timing requirements where the City makes certain findings of significant, quantifiable, direct, and unavoidable impacts, based on objective, identified, and

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written public health or safety standards, policies, or conditions; and the potential for tolling of certain required time limits for City review.

In sum, the City must implement these four main changes for qualified housing development projects beginning January 1, 2024: (1) update its website resources; (2) determine whether applications are complete within 15 business days after receiving them; (3) complete permit review within 30-60 business days after determining an application is complete, depending on the size of the project; and (4) allow a permit applicant to appeal any City finding that the application is not complete or does not comply with the applicable permit standards, and not hold any appeal for postentitlement phase permits for any project that does comply, all as further described below. A postentitlement phase permit includes “nondiscretionary permits and reviews ... after the entitlement process ... to begin construction of a development project” and “all building permits and other permits issued under the California Building Standards Code..., or any applicable local building code for the construction, demolition, or alteration of buildings, whether discretionary or nondiscretionary.”

Website resources:

- Post one or more lists specifying in detail the information that will be required from any applicant for a postentitlement phase permit. Although the City may revise the list(s), any revised list shall not apply to any permit pending review. (Gov’t Code § 65913.3(a).)
- Post complete approved applications and complete postentitlement phase permits for the following types of housing projects: accessory dwelling unit, duplex, multifamily, mixed use, and townhome. (*Id.*) The City may post examples of additional types of housing projects.
- Provide an option for postentitlement phase permits to be applied for, completed, and retrieved by the applicant online. The website must list the current processing status of the permit and note whether it is being reviewed by the City or if action is required from the applicant. If the permits cannot be applied for via the website, the City must accept applications by electronic mail, until the website option is available.

Completeness:

- The City has 15 business days from receipt of the application to determine whether a postentitlement phase permit application is complete. (Gov’t Code § 65913.3(b)(1).) The incompleteness determination is limited to the items included in the initial list of application requirements. Resubmittal in response to a notice of incomplete application triggers a new 15 business days review by the City. (*Id.*) Failure of the City to respond to the originally submitted or resubmitted material within 15 business days results in the application being deemed complete. (*Id.*)

Project review:

- **For housing projects with 25 units or fewer**, the City must complete review and either return in writing a full set of comments with a comprehensive request for revisions, or return the approved permit application within 30 business days after the local agency determines that an application is complete. (Gov’t Code § 65913.3(c)(1).)

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- **For housing projects with 26 units or more**, the City must complete review and either return in writing a full set of comments with a comprehensive request for revisions, or return the approved permit application within 60 business days after the local agency determines that an application is complete. (Gov't Code § 65913.3(c)(2).)
- If the City determines that the application is non-compliant within the applicable time frame, the City must provide the applicant with a list of items that are non-compliant and a description of how the applicant can remedy those items of non-compliance. (Gov't Code § 65913.3(d)(1).)
- If the City denies the permit based on a determination that the application is non-compliant, the applicant may attempt to remedy the application, and the resubmittal is subject to the same timelines. (Gov't Code § 65913.3(d)(1).)
- The City is not limited in the amount of feedback that it provides or revisions that it may request of an applicant. (Gov't Code § 65913.3(g).)
- The City and applicant may mutually agree to an extension of any time limit in Section 65913.3. But the City cannot require such an agreement as a condition of accepting or processing the application, unless the City obtains the agreement to allow concurrent processing of related approvals or for environmental review. (Gov't Code § 65913.3(i).)

Appeals:

- If the City determines that the permit is incomplete or does not comply with the permit standards, then the City must provide an appeal to the governing body of the agency, or if there is no governing body, the director of the agency. Here, for building permits, the City can provide for that appeal to the Building Inspection Commission, or through a Board of Supervisors ordinance, to the Planning Commission, or both. (Gov't Code § 65913.3(e)(1).)
- Any final determination on an applicant's appeal must be issued within 60 business days of filing the appeal for housing projects with 25 units or fewer, and 90 business days for housing projects with 26 or more units. (Gov't Code § 65913.3(e)(2).)
- Once the City determines that the permit is compliant, the City must not hold any appeals or additional hearings. (Gov't Code § 65913.3(c)(3).)

Consequences of City Non-Compliance:

- Any failure by the City to adhere to the time frames in Section 65913.3 constitutes a violation of the Housing Accountability Act. (Gov't Code § 65913.3(f).) Potential consequences include: administrative enforcement by the State Department of Housing and Community Development, and/or lawsuits seeking injunctive relief, including attorneys' fees. Failure to comply with the court order could result in fines starting at \$10,000 per housing unit, and potentially up to \$50,000 per housing unit. (Gov't Code § 65589.5(k).)

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Exceptions:

- **Potential specific, adverse impact on public health or safety.** The time limits do not apply if, within the time limits specified above, the City makes written findings based on substantial evidence in the record that the proposed permit might have a specific, adverse impact on public health or safety and that additional time is necessary to process the application. (Gov't Code § 65913.3(c)(4).) “Specific, adverse impact” means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified, and written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.
- **Tolling.** Also, the City’s time to review the permits are tolled if the permit requires review by an outside governmental entity.