



## Legislation Details (With Text)

<b>File #:</b>	21-988	<b>Version:</b>	1	<b>Name:</b>	
<b>Type:</b>	Consent Item	<b>Status:</b>		Passed	
<b>File created:</b>	12/8/2021	<b>In control:</b>	City Council/Public Finance and Economic Development Authority/Parking Authority/Successor Agency to the Redevelopment Agency		
<b>On agenda:</b>	1/3/2022	<b>Final action:</b>	1/3/2022		

**Title:** SUBJECT: Approval of Density Bonus #21-01 Initiated by UP Holdings, LLC, to Allow an Increase in Density and Concessions to Development Standards to Allow the Construction of a 66-unit Apartment Complex Including 65 Affordable Permanent Supportive Housing Units, a Manager's Unit, and a Community/Office Area Within a Three-Story Building on a 1.54-Acre Parcel, Generally Located on the West Side of Park Avenue, Between Olive Avenue and Alexander Avenue and the Approval of a Regulatory Agreement with Mercy Village L.P. (Future Property Owner) to Memorialize the Affordability and Density Bonus

### REPORT IN BRIEF

Considers the approval of a Regulatory Agreement with Mercy Village L.P. granting a Density Bonus and certain concessions to development standards to allow the construction of 66-unit apartment complex consisting of 65 affordable permanent supportive housing units, a manager's unit, and a community/office area within a three-story building at 3015 Park Avenue.

### RECOMMENDATION

City Council - Adopt a motion:

A. Finding that the adoption of the Regulatory Agreement is exempt from review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15061(b)(3); and

B. Approving the Affordable Housing Regulatory Agreement with Mercy Village L.P., for the property located at 3015 Park Avenue to construct a 66-unit apartment complex consisting of 65 permanent supportive housing units and 1 manager's unit; and,

C. Authorizing the City Manager or Deputy City Manager to execute the agreement.

### Sponsors:

### Indexes:

### Code sections:

**Attachments:** 1. Location Map.pdf, 2. Site Plan.pdf, 3. Meyers-Nave, 4. Applicant info & pro-forma.pdf, 5. Planning Commission Resolution, 6. Planning Commission Staff Report, 7. Categorical Exemption, 8. Agreement

Date	Ver.	Action By	Action	Result
1/3/2022	1	City Council/Public Finance and Economic Development Authority/Parking Authority/Successor Agency to the Redevelopment Agency	approved	Pass

*Report Prepared by: Julie Nelson, Senior Planner, Development Services Department*

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## ALTERNATIVES

- 1. Approve the request as recommended by Planning Commission and staff; or,
- 2. Deny the request; or,
- 3. Approve, subject to modifications as conditioned by Council; or
- 4. Refer back to staff for reconsideration of specific items (specific items to be addressed in City Council motion); or,
- 5. Continue to a future City Council meeting (date and time to be specified in City Council motion).

## AUTHORITY

California Government Code Sections 65915-65918 (Density Bonus Law) and Merced Municipal Code Section 20.56 - Density Bonus.

## CITY COUNCIL PRIORITIES

The proposed density bonus to allow the construction of 65 permanent supportive housing units further City Council Goal No. 4 - Housing and Homelessness.

## DISCUSSION

This is a request to consider Density Bonus #21-01 which permits an increase in density and provides for concessions and waivers of development standards to allow the construction of 65 affordable permanent supportive housing units, a manager's unit, and a community/office area within a three-story building on a 1.54-acre parcel, generally located on the west side of Park Avenue, between Olive Avenue and Alexander Avenue (Attachments 1 and 2).

## Density Bonus Law

The California State Density Bonus Law (SDBL) was adopted in 1976 in recognition of California's acute and growing affordable housing needs. The SDBL has been amended multiple times since adoption in response to evolving housing conditions, to provide clarification on the legislation, to respond to legal and implementation challenges, and to incorporate new or expanded provisions. The SDBL, as originally enacted, sought to address the affordable housing shortage by encouraging development of low- and moderate-income units; over time, the law was expanded to recognize the need for housing for households at a wider range of income levels and with specialized needs.

The SDBL incentivizes affordable and other specialized housing production by requiring local agencies to grant an increase to the maximum allowable residential density for eligible projects, and to support the development of eligible projects at greater residential densities by granting incentives, concessions, waivers, or reductions to applicable development regulations. An example of a concession or incentive is a reduction in the number of parking spaces that may be required for a project, or an increase in the allowable building height that applies to the project. The SDBL applies to projects providing five or more residential units, including mixed-use developments. Density bonuses and associated incentives, concessions, waivers, or reductions are intended to offset the financial burden of constructing affordable or specialized units.

The City of Merced has adopted a local Density Bonus Ordinance (included in Zoning Ordinance Chapter 20.56) that complied with State law at the time the ordinance was adopted. Several updates to SDBL have occurred since the Zoning Ordinance was adopted in 2016, however, and the City's local Ordinance is currently inconsistent with State law. However, the City is committed to complying with State law and will be updating our local ordinance in the future.

To provide additional information and a more in-depth overview of the SDBL, the document entitled Guide to the California Density Bonus Law, prepared by Jon Goetz and Tom Sakai of the Meyers-Nave Law Firm, is provided at Attachment 3.

One of the basic elements of this law is that a development that meets the requirements of the state law is entitled to receive the density bonus to increase the density of a project by right. This means that no discretionary review is required to allow an increase in the density of a project. However, the City may require an agreement to memorialize the affordability component of the development, or any other incentives given to assist the project. It should be noted that the additional density requested may exceed what is allowed by the General Plan and Zoning designations. The amount of increase allowed is based on the number of affordable units for each income level (refer to Density Bonus Chart on Page 4 of Attachment 3).

The City is required to grant the concession or incentive proposed by the developer unless it finds one of the following:

- That the proposed concession or incentive does not result in identifiable and actual cost reductions; or,
- Would cause a public health or safety project; or,
- Would cause an environmental problem; or,
- Would harm historical property; or,

- Would be contrary to law.

The City has the burden of proof in the event it declines to grant a requested incentive or concession. Financial incentives, fee waivers, and reductions in dedication requirements may be, but are not required to be, granted by the City.

The number of required incentives or concessions is based on the percentage of affordable units in the project as shown in the table below:

No. of Incentives / Concessions	Very Low- Income Percentage	Low-Income Percentage	Moderate Income Percentage
1	5%	10%	10%
2	10%	17%	20%
3	15%	24%	30%
4	100% Low/Very Low/Mod (20% Moderate allowed)	100% Low/Very Low/Mod (20% Moderate allowed)	100% Low/Very Low/Mod (20% Moderate allowed)

A concession or incentive is defined as:

1. A reduction in site development standards or a modification of zoning requirements or architectural design requirements that exceed the minimum State building standards, such as reductions in setback, square footage, or vehicular and bicycle parking space requirements. The requested concession or incentive must result in an identifiable and actual cost reduction to provide for affordable housing costs or rents.
2. Approval of mixed-use zoning for housing projects if associated commercial, office, industrial, or other land uses will reduce the cost of the housing project, and existing or planned development in the immediate area.
3. Other regulatory incentives or concessions that result in identifiable and actual cost reductions to provide for affordable housing costs, which may include the provision of direct financial incentives or land for the housing development by the City.

Concessions and incentives are differentiated from waivers and reductions in the SDBL. Projects that are eligible for a density bonus, and that are approved for concessions or incentives, cannot be subjected to any development standard that will have the effect of physically precluding the construction of the project. If a local development standard is found to have this effect, applicants have the option of requesting a waiver or reduction of any development standard that may preclude completion of the project; there is no limit on the number of waivers that may be requested. Waivers or reductions do not take the place of concessions or incentives that the project is qualified to receive.

In addition to waivers or reductions, upon request from the developer, SDBL states that the City may not require more than the following parking ratios for a density bonus project:

Studio	1 space
1 Bedroom	1 space

2 Bedroom	1.5 spaces
3 Bedroom	1.5 spaces
4 Bedroom	2.5 spaces

Additionally, SDBL provides that if a project consists solely of rental units, exclusive of a manager's unit, with an affordable housing cost to lower income families, and the development is either a special needs housing development or a supportive housing development, the City shall not impose any minimum vehicular parking requirement.

SDBL includes other provisions for the reduction of parking based on proximity to transit and the income level served and number of units provided.

### Proposed Project

The proposed project would be located on a 1.54-acre site on the west side of Park Avenue, between Olive Avenue and Alexander Avenue (3015 Park Avenue). The project would construct 66 apartments units within a three-story building. Sixty-five of the units would be one-bedroom/1bath, permanent-supportive housing units and one unit would be a two bedroom/2bath manager's unit. The building would also include a community space and office area (refer to the Site Plan at Attachment 2). Information provided by the applicant supporting their request for a Density Bonus and Concession and Waivers, along with the project Pro-forma is provided at Attachment 4.

The site has a General Plan designation of High-Medium Density (HMD) Residential. This land use designation allows 12-24 units/acre. The site is zoned Planned Development (P-D) #4 and is designated for multi-family on the Site Utilization Plan (SUP) for P-D #4. Currently, the site is owned by the Stan Shore Trust, but is being purchased by Mercy Village, L.P. (an entity associated with UP Holdings LLC, project applicant).

The proposed project would provide permanent supportive housing to tenants whose income is less than 30% of the Area Median Income (AMI). The Area Median Income for 2021 in Merced County is \$70,700. The table below shows the income limits for the different income levels:

No. of Persons in Household	1	2	3	4	5	6	7	8
Extremely Low Income	\$14,700	\$17,420	\$21,960	\$26,500	\$31,040	\$35,580	\$40,120	\$44,660
Very Low Income	\$24,500	\$28,000	\$31,500	\$34,950	\$37,750	\$40,550	\$43,350	\$46,150
Low Income	\$39,150	\$44,750	\$50,350	\$55,900	\$60,400	\$64,850	\$69,350	\$73,800
Median Income	\$49,500	\$56,550	\$64,650	\$70,700	\$76,350	\$82,000	\$87,650	\$93,300
Moderate Income	\$59,400	\$67,900	\$76,350	\$84,850	\$91,650	\$98,450	\$105,200	\$112,000

### Background

Planned Development (P-D) #4 was established in 1966, at which time the project site was designated for multi-family development. The site has remained undeveloped for many years despite having approvals for projects in 1996 and in 2002.

In 1996, the Planning Commission approved Conditional Use Permit (CUP) #920 to allow the construction of a 72-unit, 80-bed assisted elderly care facility. The project was 54,000 square feet with two-story buildings. This project was never constructed; and subsequently in 2002, CUP #1018 was approved which approved the construction of a 70-unit, three-story senior apartment project. Construction on this project was started but was never completed. Any construction started on the site would have to be removed prior to the construction of any future projects.

### Requested Density

The applicant has requested an 80% increase in the density allowed on the project site. Based on the General Plan designation of HMD, the 1.54-acre site would be allowed a maximum of 37 units. As previously explained, Density Bonus law allows the requested density to exceed the density allowed by the General Plan and Zoning designations. The applicant is requesting a total of 66 units (65 permanent supportive housing affordable units and 1 onsite manager unit), which is an 80% increase over the allowed number of units. Because all the units, except the manager's unit, will be income-restricted to tenants whose income does not exceed 30% of the Area Median Income, the project is eligible for an 80% increase in the number of units allowed (refer to the Density Bonus Chart at Page 4 of Attachment 3). Thus, the requested density of 66 units is in compliance with the Density Bonus law.

### Concessions and Waivers

Once a density bonus is requested, the applicant is also eligible for certain concessions and waivers of design standards. As described above, the number of concessions allowed is based on the number of affordable units and the income level being served. In this case, the project would provide 100% of its units to individuals whose income does not exceed 30% of the area median income, so the project would be allowed a total of 4 concessions.

Projects that are approved for concessions or incentives shall not be subjected to any development standard that would have the effect of physically precluding the construction of the project. If a standard is determined to have this effect, the developer may request a waiver of the standard. There is no limit to the number of waivers allowed.

Below is a list of the requested concessions and waivers along with the applicant's justification for needing the concession or waiver. The applicant has requested 3 concessions and 4 waivers. However, after further review of the Density Bonus Law, it was determined that the requested concession for parking is not required (see explanation below). Without the requested concessions, the project would not be feasible to build as permanent supportive housing units. The requested concessions would not result in any of the conditions previously described as reasons a City may deny a requested concession. Therefore, the concessions comply with State Density Bonus Law.

Because the project is eligible for the requested concessions, the City may not apply any development standards that would place a financial burden on the project and preclude the construction of the project. Therefore, the requested waivers also comply with state law.

### Parking

The applicant has requested a reduction in the number of parking spaces for the project. This

request was previously considered a concession and presented to the Planning Commission as such. However, further review of SDBL found that Government Code Section 65915 (p) (4) provides that no minimum parking requirements may be applied to a project that provides 100% rental units for permanent supportive housing (refer to page 21 of Attachment 3). Because this project consists of 100% rental units for permanent supportive housing, no parking requirements can be applied. Therefore, a concession is not needed for parking.

Although no parking can be required, the proposed project would provide a total of 30 parking spaces (refer to the Site Plan at Attachment 2).

#### Height (Waiver)

The applicant is requesting an increase in height from a maximum of 35' to a maximum of 45'. This increase allows the construction of three-story buildings rather than two-story buildings. The site is zoned Planned Development (P-D) #4 and has a General Plan designation of High-Medium Density (HMD) Residential. There are no specific standards for P-D #4, therefore, the City relies on the zoning category that corresponds with the General Plan designation. In this case, the R-3 zoning district corresponds with the General Plan designation of HMD. The maximum height allowed in the R-3 zoning district is 35'. Therefore, in order to construct a three-story building, an increase in the allowable height is required.

#### *Justification:*

Increasing the height of the buildings allows for greater efficiencies by enabling a greater building mass. This enables greater densities which reduces the cost of land per unit.

#### Setbacks (Waiver)

As explained above, staff is relying on the standards for the R-3 zoning district. This district requires a minimum 15' exterior yard setback. Additionally, Zoning Ordinance Section 20.46.040 (A)(1) requires a 1:1 height and setback ratio from an exterior property line for at least 50% of the building frontage. Based on the proposed 45' height of the buildings, the 1:1 ratio would require a portion of the building to be set back 45' from the property line.

#### *Justification:*

Decreasing setbacks allows for a greater building envelope which increases the efficiency of the development and decreases project costs per unit. Given the limitations of the lot size and shape, the required 1:1 height and setback ratio is not feasible and would render the development infeasible.

#### Lot Area Per Unit (Waiver)

As previously described, staff is relying on the standards for the R-3 zoning district. This standard allows one unit for every 1,500 square feet of lot area. The development proposes one unit for every 1,260 square feet of lot area.

#### *Justification:*

Decreasing lot area per dwelling unit allows for a greater building envelope which increases the

efficiency of the development and decreases project costs per unit.

#### Roof-mounted Mechanical Equipment (Concession)

The applicant is requesting a waiver from Zoning Ordinance Section 20.46.040 (A)(5a) which prohibits roof-mounted mechanical equipment.

##### *Justification:*

Allowing roof-mounted mechanical equipment screened from public view allows more space on the ground for this small parcel. Placing mechanical equipment on the ground takes up space that could be otherwise used for open space or general outdoor area. Additionally, the cost of a roof-mounted HVAC unit is typically less because the entire unit is on the roof. Ground-mounted units require a portion of the unit to be inside the living area. This not only takes up space but adds cost to the apartment unit.

#### Safety and Defensible Space (Concession)

The applicant is requesting a waiver from Zoning Ordinance Section 20.46.030 (H)(2) which requires the number of apartments that enter their front door from the same hallway or courtyard be limited to 12 (or as otherwise approved by City staff) so that residents can learn to distinguish fellow neighbors from visitors and/or intruders.

##### *Justification:*

Given the limitations of the site, the building has been designed to maximize the limited space. The proposed design provides for all 66 units to be within the same three-story building. Limiting the number of units allowed to share an entrance to the building would limit the design, which in turn, would increase costs, and would limit the total number of units that could be built on the site.

#### Private Outdoor Space (Waiver)

Zoning Ordinance Section 20.46.030 (I) requires each unit to be provided with a minimum private outdoor area of 5' x 8' (40 sq. ft.). The applicant is requesting a waiver or reduction in this requirement.

##### *Justification:*

Due to the limited size of the site and the number of affordable units being provided, adding 40 square feet of outdoor private space would reduce the number of units that would be able to be constructed due to the added area needed to accommodate the outdoor space. Additionally, substantial costs are attached to providing balconies and private patios. These costs would either lead to a reduction in the number of units or render the project infeasible.

#### Zoning Ordinance Findings

Merced Municipal Code Section 20.56.080 (C) establishes specific findings that must be made to approve a Density Bonus. These findings are as following:



1. *The findings included in Section 20.56.030 (land Donation) if the density bonus is based all or in part on donation of land.*

This finding does not apply as the project does not include land donation.

2. *The findings included in Section 20.56.040 (Child Care Facilities) if the density bonus, incentive, or concession is based all or in part on the inclusion of a childcare facility.*

This finding does not apply as the project does not include a childcare facility.

3. *The findings included in Section 20.56.070 (Modifying Development Standards) if the incentive or concession includes mixed use development.*

This finding does not apply as the project does not include a mixed-use development.

4. *If a waiver or modification is requested, the developer has to prove by submitting substantial evidence that the waiver or modification is necessary to make the housing units economically feasible.*

The requested concessions and waivers were provided above along with the justification for each request. Documentation provided by the applicant, including the justification for each request and a pro-forma is provided at Attachment 4.

#### Affordable Housing Regulatory Agreement

Although the City has little discretion on granting a density bonus or concessions and waivers, State Density Bonus Law does allow the City to require an agreement to memorialize the affordability of the project.

This project would provide 65 permanent supportive housing units for individuals with an income not exceeding 30% of the area's median income. The affordability of the project would last for an initial period of 55 years. The proposed agreement at Attachment 8 provides covenants that stipulate this affordability period as well as limitations on rent increases, lease provisions, security deposits and other items. This agreement would be recorded and run with the land for the duration of the 55-year period.

The property is currently owned by Stan Shore Trust but is in the process of being purchased by Mercy Village L.P. (a limited partnership associated with UP Holdings, LLC). The regulatory agreement would be with Mercy Village, L.P. as the new property owner. If approved, the agreement would not be immediately executed, but would be executed once the ownership has changed and construction financing has been finalized. The agreement at Attachment 8 has not been reviewed by the applicant, but not yet signed since the ownership has not yet changed.

#### Environmental Review

The approval of an agreement is exempt from review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Sections 15194 (Affordable Housing Exemption), 15332 (In-fill Development Projects), and 15162 (Subsequent EIRS and Negative Declarations), because it can be seen with certainty that the approval of the agreement will not have a significant effect on the environment and none of the circumstances in CEQA Guidelines Section 15300.2 applies. The Categorical Exemption is provided at Attachment 7.

#### Planning Commission Action

The Zoning Ordinance states that the City Council may request a recommendation from the Planning Commission prior to taking action on a Density Bonus request. Due to time constraints for obtaining funding for this project, staff felt it was best to take the request before the Planning Commission for a recommendation rather than coming to the Council and the Council requesting the recommendation. In an effort to streamline this process, staff anticipates eliminating the Planning Commission recommendation when the Density Bonus section of the Zoning Ordinance is updated.

The Planning Commission considered this request at their meeting on December 8, 2021. The Planning Commission recommended approval to the City Council (refer to Planning Commission Resolution #4081 at Attachment 5). Planning Commission Staff Report #21-956 is provided at Attachment 6.

### City Council Action

The City Council is being asked to approve the Affordable Housing Regulatory Agreement at Attachment 8 and authorize the City Manager or Deputy City Manager to execute the agreement.

### **IMPACT ON CITY RESOURCES**

The project would impact City services by creating additional housing units that would require typical City services. The project would be required to pay Public Facilities Financing Fees (PFFP) and Impact Fees at the time of building permit issuance. As an affordable housing project, the property owner could apply for a Welfare Exemption for property taxes that would preclude the City from collecting any special taxes for this property. Additionally, certain laws preclude the City from charging for police and fire services through the Community Facilities District (CFD). Although the City could create and assess for landscape and lighting through a maintenance district, there would be no landscape to maintain in the public right-of-way and only one or two streetlights. None of the surrounding development in this area is within a CFD or Maintenance District. The process for annexation into the CFD is costly (approximately \$25,000) and would be the responsibility of the developer. Therefore, because of these reasons, staff has determined that this project should not be annexed into the CFD.

### **ATTACHMENTS**

1. Location map
2. Site Plan
3. Meyers-Nave
4. Applicant info & pro-forma
5. Planning Commission Resolution
6. Planning Commission Staff Report
7. Categorical Exemption
8. Agreement