



Legislation Details (With Text)

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**File created:** 3/14/2022      **In control:** City Council/Public Finance and Economic Development Authority/Parking Authority/Successor Agency to the Redevelopment Agency

**On agenda:** 5/2/2022      **Final action:** 5/2/2022

**Title:** SUBJECT: Approval of Density Bonus #22-01, Initiated by Visionary Homes of California, LLC, on Behalf Evan R. Rahilly and Marlea Massey, Trustees, Property Owners and Approval of Certain Concessions to Development Standards to Allow the Construction of 108-Unit Affordable Apartment Complex at 1808 Parsons Avenue

REPORT IN BRIEF

Considers the approval of a Regulatory Agreement with Visionary Home Builders of California, Inc., granting certain concessions to development standards to allow the construction of 108-unit affordable apartment complex generally located on the east side of Parsons Avenue, approximately 300 feet south of Yosemite Parkway (Hwy 140) (1808 Parsons Ave).

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 Visionary Home Builders of California, Inc., for the property located at 1808 Parsons Avenue to construct a 108-unit affordable apartment complex; 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. Guide to the California Density Bonus Law, Meyers-Nave, 4. Floor Plans.pdf, 5. Elevations.pdf, 6. Justification & Pro-forma, 7. Planning Commission Resolution #4089, 8. Planning Commission Staff Report #22-204, 9. Regulatory Agreement, 10. Draft Presentation.pdf

Date	Ver.	Action By	Action	Result
5/2/2022	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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## Apartment Complex at 1808 Parsons Avenue

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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 2021-22 Goal No. 4 - Housing and Homelessness.

### **DISCUSSION**

This is a request to consider Density Bonus #22-01 to grant a concession and waiver of certain development standards in accordance with California State Density Bonus Law. The granting of the concession and waiver would allow for the construction of a 108-unit affordable housing project on a 4.59-acre parcel located on the east side of Parsons Avenue, south of Yosemite Parkway (Hwy 140) (refer to the Location Map at Attachment 1 and Site Plan at Attachment 2). One of the units would be dedicated to an on-site manager.

### 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. The requested density is allowed to exceed the density established by the General Plan and/or Zoning. Additionally, the developer may ask for concessions and waivers to certain design standards that may make the project infeasible. A request for the concessions and waivers may be made even if a request for an increase in density is not needed. The request being made with this application is for concessions and waivers, not an increase in density.

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.

### Proposed Project

The proposed project would be located on a 4.59-acre parcel on the east side of Parsons Avenue, south of Yosemite Parkway (Hwy 140) (Attachment 1). The project would construct a 108-unit apartment complex with 107 affordable housing units and a manager’s unit. The site would be composed of five three-story apartment buildings and a single-story community/office building to provide services and amenities to the tenants (see the Site Plan at Attachment 2). The five apartment buildings would be enclosed within a 6-foot-tall wrought-iron fence to create a gated community. The apartments would include a variety of one-, two-, three-, and four-bedroom units (see the Floor Plans at Attachment 4). The proposed apartment buildings would be three-stories with an overall height of 45 feet. The proposed building elevations are provided at Attachment 5.

The proposed affordable housing project (107 affordable units and 1 unit would be dedicated to an on-site manager) would provide affordable housing to tenants whose income is less than 60% 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 based on household size:

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

In order for the project to be constructed, a General Plan Amendment and Zone Change were needed to amend the General Plan land use designation from Thoroughfare Commercial (CT) to High-Medium Density (HMD) Residential and change the zoning from Thoroughfare Commercial (C-T) to R-3-1.5. The Planning Commission considered General Plan Amendment #22-02 and Zone Change #430 at their meeting on March 23, 2022, and recommended approval of these changes to the City Council. The Council will consider these items prior to considering the Density Bonus request.

Requested Concession and Waiver

In order to provide the affordable housing units, the developer has requested a deviation from certain design standards. As previously described, Density Bonus law allows concessions, incentives, waivers, and reductions in order to allow for the construction of affordable housing. These concessions and waivers are allowed even if an increase in density is not needed. Based on the income level served by the proposed units, this project is eligible for 4 concessions or incentives. In addition to those concessions or incentives, the City may not impose any development standard that would physically preclude the construction of the affordable housing units.

The requested concession is described below along with the justification for the concession (*in italics*).

Roof-mounted Mechanical Equipment (Concession)

The applicant is requesting relief 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.*

The requested waiver is described below along with the justification for the waiver (*in italics*).

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. If Zone Change #430 is approved, the site would have a height limitation of 35 feet. In order to construct 3-story units, an increase in height is needed. Therefore, a waiver of the height requirement for an R-3-1.5 zone 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. The size of the site would not accommodate the number of units proposed, the associated parking, and open space without constructing three-story buildings.*

Based on the affordability, the project is eligible for four concessions. There is no limit to the number of waivers that may be requested. Without the requested concession and waiver, the project would not be feasible to build. The requested concession would not result in any of the conditions defined by state law that would result in the denial of the requested concession. Therefore, the concession complies with State Density Bonus Law. Because the project is eligible for the requested concession, the City may not apply any development standards that would place a financial burden on the project and preclude the construction of the project. The applicant has requested the waiver to the height requirement. Because the project would not be feasible without allowing 3-story buildings, the requested waiver complies with state law.

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 pro-forma is provided at Attachment 6.

#### 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 107 affordable housing units for individuals with an income not exceeding 60% 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 9 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.

Although this application was initiated by Visionary Home Builders of California, Inc. on behalf of Evan R. Rahilly and Marlea Massey, Trustees, property owners, the property has now been purchased by Bella Vista, LLC, a subsidiary of Visionary Home Builders of California, Inc. Bella Vista, LLC would enter into the Regulatory Agreement and develop the property if the project is approved.

#### Environmental Review

The adoption of the resolution is exempt from review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Sections 15061(b)(3) (Common Sense Exemption) because it can be seen with certainty that the adoption of the resolution will not have a significant effect on the environment and none of the circumstances in CEQA Guidelines Section 15300.2 apply.

#### 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 March 23, 2022. The Planning Commission recommended approval to the City Council (refer to Planning Commission Resolution #4089 at Attachment 7). Planning Commission Staff Report #22-204 is provided at Attachment 8.

#### City Council Action

The City Council is being asked to approve the Affordable Housing Regulatory Agreement at Attachment 9 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 Impact Fees at the time of building permit issuance. However, as an affordable housing project, those fees may be reduced on a case-by-case basis. 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. Guide to the California Density Bonus Law, Meyers-Nave
4. Floor Plans
5. Elevations
6. Justification & Pro-forma
7. Planning Commission Resolution #4089
8. Planning Commission Staff Report #22-204
9. Regulatory Agreement
10. Draft Presentation