



## Legislation Text

---

File #: 23-536, Version: 1

---

*Report Prepared by: Julie Nelson, Acting Planning Manager, and Leah Brown, Management Analyst, Development Services*

**SUBJECT:** Public Hearing to Consider a Resolution Approving the Sale of the Housing Successor Agency Properties at 1815 and 1823 I Street, and 205 and 211 W. 18<sup>th</sup> Street, and 202 W. 19<sup>th</sup> Street; Accepting the Summary Report Pursuant to Section 33433 of the California Health and Safety Code; Approving a Disposition and Development Agreement Between the City of Merced (Acting on its Own Behalf and as the Housing Successor) and Linc Housing for the Development of a 54-Unit Apartment Complex with 53 Affordable Units; and Approval of Density Bonus #23-01 Initiated by Linc Housing, Corporation to Allow Concessions for the Development of the Affordable Complex on 5 Parcels Generally Located at the Northwest Corner of 18<sup>th</sup> and I Streets and the Southwest Corner of 19<sup>th</sup> and I Streets

### REPORT IN BRIEF

Considers approving a Resolution approving the sale of the housing successor agency properties at 1815 and 1823 I Street, and 205 and 211 W. 18<sup>th</sup> Street, and 202 W. 19<sup>th</sup> Street, including accepting the Section 33433 report. Then consider various actions including the approval of the Disposition and Development Agreement between the City of Merced Acting on its Own Behalf and as the Housing Successor and Linc I Street Apts, LP for the development of affordable housing; approving a Regulatory Agreement setting up the terms of affordability; Deed Restriction and Loan Agreement for the Permanent Local Housing Allocation funds, approving Density Bonus #23-01, granting certain concessions to Development Standards to allow the construction of a 54-unit apartment complex consisting of 53 affordable housing units, a manager's unit, and a courtyard area on 5 parcels generally located at the northwest corner of 18<sup>th</sup> and I Streets and the southwest corner of 19<sup>th</sup> and I Streets; and Environmental Review #23-19.

### RECOMMENDATION

**City Council** - Hold a Public Hearing for the 33433 Report and Adopt a motion:

- A. Adopting **Resolution 2024-08**, a Resolution of the City Council of the City of Merced, California, Approving a Disposition and Development Agreement Between the City of Merced and Linc I Street Apts. LP and Making Certain Findings and Approvals under Section 33433 of the California Health and Safety Code; and,
- B. Approving the Sale of Housing Successor Agency properties at 1815 and 1823 I Street, and 205 and 211 W. 18<sup>th</sup> Street, and 202 W. 19<sup>th</sup> Street; and,
- C. Accepting the Summary Report Pursuant to Section 33433 of the California Health and Safety Code; and,

D. Finding that the adoption of the Regulatory Agreement (RA) is exempt from review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15194 and 15332; and,

E. Approving the Environmental Review #23-19 (Categorical Exemption); and,

F. Approving Density Bonus #23-01 and the Affordable Housing Regulatory Agreement to allow the construction of the affordable apartment complex on 5 parcels generally located at the northwest corner of 18<sup>th</sup> and I Streets and the southwest corner of 19<sup>th</sup> and I Streets; and,

G. Authorizing the City Manager to make any minor changes to the PLHA loan agreements should the State require language changes, subject to the agreements and/or documents being approved as to form by the City Attorney; and,

H. Authorizing the City Manager to execute all agreements and documents to fulfill the terms and conditions of the disposition of the property per the DDA, the RA, DB, and any future documents that may be necessary for the project, subject to the agreements and/or documents being approved as to form by the City Attorney.

## **ALTERNATIVES**

1. Approve as recommended by staff and Planning Commission (Density Bonus only); or,
2. Approve, subject to other than recommended by staff (identify specific findings and/or conditions amended to be addressed in City Council motion); or,
3. Deny; or,
4. Refer to City Staff for reconsideration of 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**

Charter of the City of Merced, Section 200, et seq., California Government Code Sections 65915-65918 (Density Bonus Law), and Merced Municipal Code Section 20.56 - Density Bonus.

## **CITY COUNCIL PRIORITIES**

This action is consistent with the adopted FY 2023-2024 Goals and Priorities, and Pro-Housing Policies of the City of Merced.

## **DISCUSSION**

The project site is comprised of four individual parcels at the northwest corner of 18<sup>th</sup> and I Streets and one parcel at the southwest corner of 19<sup>th</sup> and I Streets (Attachment 4). There was a total of four dwellings on three of the four parcels at 18<sup>th</sup> and I Streets and 5 dwellings at the corner of 19<sup>th</sup> and I Streets. All the units were demolished between 2009 and 2010.

The City's Redevelopment Agency purchased these properties in the early 2000's. After the dissolution of the Redevelopment Agency, the property was transferred to the City of Merced Public Financing and Economic Development Authority. In 2012, the City of Merced Public Financing and Economic Development Authority transferred the property to the City of Merced as the Housing Successor Agency to the former Redevelopment Agency.

In 2020, Assembly Bill 1486 amended the Surplus Land Act requiring cities to offer to sell surplus properties to affordable housing developers and other entities before offering them for sale on the open market. The subject sites are five of ten residential sites that went through this process.

In April 2021, the City of Merced issued a Request for Proposals (RFP) to solicit interest from perspective affordable housing development partners for these Housing Successor Agency properties. Linc answered that RFP and in January 2022, with City Council direction and authority, the City entered into an Exclusive Negotiating Agreement for the five parcels in question.

In November 2022, the City Council approved a commitment of the 2021-2023 Permanent Local Housing Allocation (PLHA) funds of approximately \$1,608,830 to Linc Housing ("Linc") for the development of the I Street affordable housing project.

A Public Hearing must now be held to dispose of the property. Section 33433 of the California Health and Safety Code requires that before any property acquired in whole or in part, directly or indirectly, with tax increment moneys is sold or leased for development pursuant to the redevelopment plan, the sale or lease shall first be approved by the legislative body by resolution after a public hearing.

The properties are being sold below market rate at \$1.00 each parcel. The Site was purchased by the Former Redevelopment Agency with Low- and Moderate-Income Housing Set Aside Funds for the purpose of achieving its redevelopment goals of alleviating blight and producing affordable housing. The total acquisition cost was \$546,190.52.

Attachment 13 is a Disposition Development Agreement (DDA) that includes a Regulatory Agreement Containing Covenants Affecting Real Property (RA), with attachments. The purpose of such agreements is to provide terms and the process for property conveyance, memorialize the property donation as local financial support to the project, and secure the affordability of the project for 55 years. An appraisal conducted in July 2022, determined the "as is" value of the property to be \$405,000.00 with a "highest and best use" of the sites as higher density apartments.

Other attachments included are for the PLHA loan agreement. Although staff requested that the state make any comments or edits on the draft agreements, after four months, they have not made any comments. They may still request minimal changes to access the funds. Due to the timing of the adoption of our Housing Element pending in 2024, these documents need to be completed so that the funds can be accessed and liquidated for Linc's predevelopment costs. Should any minimal changes be requested by the state, it is requested that the City Manager with City Attorney review be permitted to make those changes.

This is also a request to consider Density Bonus #23-01 which would permit an increase in density and provides for concessions to development standards to allow the construction of 53 affordable housing units, a manager's unit, and a courtyard area on 5 parcels totally approximately 0.52 acres, generally located at the northwest corner of 18<sup>th</sup> and I Streets and the southwest corner of 19<sup>th</sup> and I Streets (refer to the Location Map at Attachment 4 and the Site Plan at Attachment 5).

### Density Bonus

A Density Bonus is needed to allow the number of units proposed on the site and to allow certain

concessions to design standards. 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 originally adopted a local Density Bonus Ordinance in 1993 and amended it in 2016 (included in Zoning Ordinance Chapter 20.56) to comply with State law at the time the ordinance was adopted. Several updates to SDBL have occurred since the Zoning Ordinance was adopted in 2016, 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](#), (revised January 2023) prepared by Jon Goetz and Tom Sakai of the Meyers-Nave Law Firm, is attached with permission of the authors (Attachment 6).

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. The City may require an agreement to memorialize the affordability component of the development, or any other incentives given to assist the project. This agreement (Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants) is provided at Attachment 12.

The developer's goal is to produce affordable housing for those extremely low to low-income households earning 30% to 60% of AMI. The Area Median Income for 2023 in Merced County is \$83,800. For reference the Income Limits calculated by HCD for 2023 are attached for reference (Attachment 7).

State statutory limits are based on federal limits set and periodically revised by the U.S. Department of Housing and Urban Development (HUD) for the Section 8 Housing Choice Voucher Program. HUD's limits are based on surveys of local area median income (AMI). The commonly used income categories are approximately as follows, subject to variations for household size and other factors:

- Acutely low income: 0-15% of AMI

- Extremely low income: 15-30% of AMI
- Very low income: 30% to 50% of AMI
- Lower income: 50% to 80% of AMI; the term may also be used to mean 0% to 80% of AMI
- Moderate income: 80% to 120% of AMI

“Affordable housing cost” for lower-income households is defined in State law as not more than 30 percent of gross household income with variations (Health and Safety Code Section 50052.5). The comparable federal limit, more widely used, is 30 percent of gross income, with variations. “Housing cost” commonly includes rent or mortgage payments, utilities (gas, electricity, water, sewer, garbage, recycling, green waste), and property taxes and insurance on owner-occupied housing.

As part of the implementation process for a Density Bonus, the developer/property owner will enter into a Regulatory Agreement (RA) specifying the length of time the units will be kept affordable and the specific affordability level. This agreement will be recorded on the title and will remain in effect until released at the end of the affordability term. This is often referred to as a covenant. In this specific case, the agreement will have specific requirements to accommodate the Housing Successor Agency and Surplus Lands Act. Both have specific requirements for affordability and will include a term of 55 years for rental housing.

### Project Description

The proposed project is located on I Street between 18<sup>th</sup> and 19<sup>th</sup> Streets (Attachment 4). The project would provide 53 affordable housing units and one manager’s unit for a total of 54 units. The site has a General Plan designation of High Density (HD) Residential and is zoned R-4. The site is located within one-half mile of a major transit stop (the Amtrak station at 24<sup>th</sup> and K Streets and the Transportation Center at 16<sup>th</sup> and O Streets).

A four-story building (Building A) with 39 units would occupy the northwest corner of 18<sup>th</sup> and I Streets and a three-story building (Building B) with 15 units would occupy the southwest corner of 19<sup>th</sup> & I Streets for a total of 54 units (refer to the Site Plan at Attachment 5).

The project includes two building types - Type A at the corner of 18th and I Streets and Type B at the corner of 19th and I Streets. Building Type A is a four-story building with 39 units. The height of this building at the top of the stairway/elevator shaft would be 48 feet, but the majority of the building would have a height of 44 feet to the top of the parapet (refer to the Building Elevations at Attachment 8). All the units in this building, except for the manager’s unit are 1 bedroom, 1 bath units (refer to the Floor Plans at Attachment 9). The manager’s unit, located on the 4th floor, is a 3 bedroom, 2 bath unit. The building also includes a laundry room for the tenants, the community room, manager’s office, a trash room, a maintenance room, and an electrical room. The upper levels are accessible by elevator or by stairs. There are three off-street covered parking spaces (one handicap accessible).

All the units in Building Type B (three-story) at the corner of 19th and I Streets are 1 bedroom, 1 bath units. This building would have a maximum height at the stairway/elevator shaft of 38 feet. The top of the parapet would be 34 feet. Both these heights are within the height limit for the R-4 zone. This building would consist of five 1-bedroom, 1 bath units on each of the three levels. A trash room, electrical room, and bike storage would also be provided. The tenants of this building would use the community amenities (i.e., laundry, courtyard, community room) in Building A.

Planning Commission Action

The Density Bonus was presented to the Planning Commission on June 7, 2023. The Planning Commission recommended approval of the Environmental Review #23-19 (Categorical Exemption - Attachment 10) and Density Bonus #23-01 by a unanimous vote of those present (2 absent, 1 vacancy) (refer to Planning Commission Resolution #4114 at Attachment 11). No public hearing or additional neighborhood notifications are required per State statues and local ordinances.

Specific Findings for a Density Bonus are required by Section 20.56 of the City's Zoning Ordinance. Those Findings are provided at Exhibit A of Planning Commission Resolution #4114 (Attachment 11). Additional information regarding the State Density Bonus Law is provided in Attachment 6. It should be noted that the City may not add conditions to any Density Bonus approval.

The table below shows the applicant's request and whether the request is considered a concession, incentive, waiver, or reduction (refer to Finding A of Planning Commission Resolution #4114 for information on the differences between each type of request). As previously mentioned, the project is eligible for 4 concessions.

In 2019, AB 1763 was approved which allows a project that provides housing for low and very low-income residents a density bonus of up to 80% of the allowable units. Additionally, this Bill eliminated all restrictions on density if a project is located within one-half mile of a major transit stop such as a rail station or bus stop with a minimum of 15-minute headways. AB 1763 also allows a height increase of up to three additional stories or 33 feet. However, if the project receives a waiver from maximum controls on density, it is not eligible for the waiver or reduction of any development standards which would otherwise be available.

The project site is within ½ mile of a major transit stop (the transportation center at 16<sup>th</sup> Street and O Street and the Amtrak Station at 24<sup>th</sup> and K Streets). Therefore, the City is prohibited from placing any limits on the density of the project. Additionally, the project is eligible for the height increase as described above.

Standard	Requested Concessions/Incentives	Type of Request
----------	----------------------------------	-----------------

Setbacks	<p>Reduced setbacks for exterior yards. The R-4 zone requires a 15-foot setback for exterior, front yards, a 10-foot setback for side exterior yards on corner lots, other yards may have a 5-foot setback. Merced Municipal Code (MMC) Section 20.46.040 establishes design standards for any multi-family dwelling with 5 or more units (or 3 or more units on corner lots). Section 20.46.040 (A) (1) states: Building construction shall not exceed the plan established by 1:1 height and setback ration from any exterior property line of a lot or parcel, for more than 50 percent of the allowable building area at any established distance from said exterior property line. The applicant is requesting a 10-foot reduction for the exterior yard setback required by the R-4 zoning. The applicant is also requesting relief from the setback requirements of Section 20.46.040 as it would be impossible to construct this project to meet those requirements.</p>	Concession
Private Outdoor Space	<p>Allow relief from the requirement of Private Outdoor Space as required by MMC Section 20.46.030 (I) (1) and (2). MMC Section 20.46.030 (I) (1) and (2) states that every unit should have a private outdoor usable space, if feasible, of a minimum size of 5 feet by 8 feet.</p>	Concession

Mechanical Equipment	Allow roof-mounted mechanical equipment if screened from public view. Roof-mounted mechanical equipment is prohibited by Zoning Ordinance Section 20.46.040 (A) (5a).	Concession
Reduction in the number of trees	Reduction in the number of trees required for the site per MMC Section 20.46.040 (A) (2). The requested reduction would reduce the number of trees from 18 to 14.	Concession

City Council Action

The City Council is being asked to adopt a resolution to approve the sale of the property, approve the DDA with attachments, and approve the Affordable Housing Regulatory Agreement at Attachment 12 and authorize the City Manager to execute the agreement.

**IMPACT ON CITY RESOURCES**

The transfer of the property is valued at \$405,000 and is considered a financial support of the project. The project would impact City services by creating additional housing units that would require City services. The project would be required to pay Public Facilities Financing Fees (PFFP) 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. 33433 Public Hearing Notice
2. 33433 Report
3. Resolution 2024-08
4. Location map
5. Site Plan
6. Guide to the California Density Bonus Law
7. Merced County HCD Income Limits
8. Building Elevations
9. Floor Plans
10. Environmental Review #23-19 (Categorical Exemption)
11. Planning Commission Resolution #4114

12. Affordable Housing Regulatory Agreement - Density Bonus
13. Disposition Development Agreement
14. All Attachments to the DDA, including Loan Agreements for PLHA
15. Presentation