



## Legislation Text

---

File #: 20-353, Version: 1

---

*Report Prepared by: Scott McBride, Director of Development Services, Housing Division/Department of Development Services*

**SUBJECT:** Approving Disposition and Development Agreement Between the City of Merced Acting on its Own Behalf and as the Housing Successor and Merced CA Apartments L.P., a Delaware Limited Partnership; and, Approving a Subordination Agreement Between the City of Merced and Bank of America, N.A.; and, Adoption of Resolution Approving a Community Housing Development Organization Home Investments Partnerships Loan to Central Valley Coalition for Affordable Housing in the Principal Amount of \$1,145,000, Approving and Authorizing the Execution of Deed Restriction Covenant and Loan Agreement, Promissory Note, Regulatory Agreement and Declaration of Restrictive Covenants, and Deed of Trust and Security Agreement with Merced CA Apartments L.P.: Adoption of a Resolution as the Housing Successor Agency to the City of Merced Redevelopment Agency, Approving a Housing Successor Loan to Merced CA Apartments, L.P. a Delaware Limited Partnership, in the Principal Amount of \$1,200,000, Approving and Authorizing Agreement Containing Covenants Affecting Real Property, Notice of Affordability Restrictions on Transfer of Property, Promissory Note, Deed of Trust and Security Agreement, Deed Restriction Covenants and Loan Agreement, Regulatory Agreement and Declaration of Restrictive Covenants, and Authorizing the Interim City Manager to Execute and Make Necessary Changes to the Agreements as well as Execute any and all Other Future Documents Necessary for the Project, Subject to Said Agreements and/or Documents being Approved as to Form by the City Attorney

### REPORT IN BRIEF

Considers various actions including the approval of a Disposition Development Agreement (DDA), a Community Housing Development Organization (CHDO) Home Investments Partnerships (HOME) Loan, and a Housing Successor Agency (HSA) Loan to Merced CA Apartments L.P., a Delaware Limited Partnership for the Childs and B Street Transit Oriented Development (TOD) Affordable Housing Project.

### RECOMMENDATION

**City Council** - Adopt a motion:

- A. Approving a Disposition and Development Agreement between the City of Merced and Merced CA Apartments L.P., a Delaware Limited Partnership; and,
- B. Approving a Subordination agreement between the City of Merced and Bank of America, N.A; and,

C. Adopting **Resolution 2020-64**, a Resolution of the City Council of the City of Merced, California, Approving a Community Housing Development Organization Home Investments Partnerships Loan to Central Valley Coalition for Affordable Housing in the principal amount of \$1,145,000, approving and authorizing the execution of a loan agreement, regulatory agreement, related loan documents, and authorizing certain other actions in connection therewith; and,

D. Adopting **Resolution 2020-65**, a Resolution of the City Council of the City of Merced, California, acting as the Housing Successor Agency to the City of Merced Redevelopment Agency, approving a Housing Successor Loan to Merced CA Apartments, L.P., in the principal amount of \$1,200,000, approving and authorizing the execution of a loan agreement, regulatory agreement and related loan documents, and authorizing certain other actions in connection therewith; and,

E. Authorizing the Interim City Manager to execute any and all documents to fulfill the terms and conditions of the DDA and make changes to the Agreements identified herein as well as execute any and all other future documents that may be necessary for the project, subject to the agreements and/or documents being approved as to by form by the City Attorney.

## ALTERNATIVES

1. Approve as recommended by staff; 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

Merced City Charter, Section 200. HOME authority is provided pursuant to HUD regulations HOME Investment Partnership Program; 24 CFR Part 92.201. Housing Successor Agency Authority is pursuant to the California Health and Safety Code Section 34176 and 34176.1. HUD 108 Authority is provided in Title 24 of the Code of Federal Regulations, Part 570 (the U.S. Housing and Urban Development regulations concerning CDBG including Subpart M of these regulations), Sections 570.705(c) - Loan Guarantees and 570.706 - Federal Guarantee, Subrogation.

## CITY COUNCIL PRIORITIES

This action is consistent with the adopted Goals and Priorities of the City of Merced City Council. The project has also been included in the Adopted Housing and Urban Development (HUD) Consolidated Plan and Annual Plan.

## DISCUSSION

The City Council has pledged commitments of support and taken various approval actions related to the Childs and B Street Transit Oriented Development (TOD) Affordable Housing Project including the following;

- Issuance of a Request for Proposals (RFP) to solicit qualified developers for the Childs and B St. site in March 2017.
- Awarding approval of the RFP to the Richman Group and Central Valley Coalition for

Affordable Housing in May 2017.

- Execution of a Ground Lease and Option to Purchase with Merced County for 1137 B Street, site location with Merced County in 2018.
- Execution of an Exclusive Negotiating Agreement with the project developer in October 2018.
- First Amendment to the Exclusive Negotiating Agreement in January 2019
- Approval of an Enforceable Commitment Agreement in February 2019 outlining the City's commitment of \$6,580,000 in funds from various funds and sources
- Adoption of City Council Resolution 2019-06 in February 2019 authorizing the application to the State of California Affordable Housing Sustainable Communities (AHSC) program for funding.
- Approval of City Council Resolution 2019-82 in December 2019 authorizing the application and issuance of bonds under the California Statewide Community Development Authority (CSCDA) for project financing.
- Acceptance of Monetary Donation from the Central Valley Opportunity Fund (CVOF) in May 2020 in the amount of \$1,080,000 for land acquisition costs
- The City and Merced County have closed escrow for the project site at 1137 B Street.
- Approval of City Council Resolution 2020-49 on September 8, 2020 authorizing a HUD 108 Loan Application to Housing and Urban Development in an amount of \$2,000,000

The City is now in position to take final actions to implement the project which includes the approval of the DDA which will facilitate the transfer of property to the Developer, Merced CA Apartments. L.P, a Delaware Limited Partnership. The partnership is comprised of the Richman Group and the Central Valley Coalition for Affordable Housing which is a local nonprofit affordable housing developer and manager.

The DDA includes various other commitments, requirements, and responsibilities necessary to implement the project. The following is a summary of some aspects of the agreement;

- **Sale and Purchase, Section 201** - the site, 4.03 acres, will be sold to the Developer for the sum of \$1,080,000 which will be repaid over 55 years. There is an associated Note secured by a Deed of Trust.
- **Condition of Site, Section 212** - this addresses performance timing or due diligence leading to acquisition of the site by the developer. It also addresses other issues related to insurance.
- **Affordability Covenants, Section 325** - this lists the specific requirements for income qualified units that must be provided in the project.
- **City Enterprise Funds, Section 328** - Total pledge is \$1,470,000. These are public improvements the development would have been responsible for in whole or in part that are being assumed by the City in support of the project. The funds will be transferred to the Developer, but the City will initiate the improvements. Repayment will then be requested back from the Developer by the City.
- **HOME Loan, Section 329** - this section references the HOME Loan pledge to the project in the amount of \$1,145,000. Adopted by a separate Resolution.
- **HUD 108, Section 330** - the Council previously approved the preparation and submittal of the application for \$2,000,000 under the program. As noted, City will repay this through future HUD funding allocations. The cost with interest is approximately \$2,500,000. Repayment will occur using the Community Development Block Grant Program (CDBG) allocation. The term

is 20 years. Should the city not receive entitlement funds from HUD the commitment to repay the HUD 108 loan still exists. The requirement may be fulfilled using Program Income that the City has received. That source is treated by HUD in the same manner as annual contributions. It is received when prior loans are repaid. Additionally, the DDA provides a mechanism for the developer to make a payment subject to the Net Cash Flow process, Section 334. However, the term is 55 years for consistency with all other financing pieces.

- **Housing Successor Agency Loan, Section 331** - this section references the low- and moderate-income asset funds or Housing Asset Funds commitment from the City acting in its capacity as the Housing Successor Agency. The funding amount is \$1,200,000. Adopted by a separate resolution.
- **AHSC Loan, Section 332** - Total funding awarded to the project is \$13,950,000. This is in two distinct funding commitments. One is directly to the project developer in the form of a loan in the amount of \$11,087,700. The City received a separate grant commitment of \$2,862,300. These will be used on specific offsite improvements and the community park. Additionally, a portion is pledged to the purchase of an electric bus that will be provided to the area Transit Authority for use in the bus route serving the site. That component was budgeted in the application at \$700,500 leaving a net for the City improvements of \$2,162,250.
- **Rental Subsidy and Bus Pass Subsidy, Section 335** - contains provisions related to acquiring Section 8 Vouchers and Bus Pass Subsidy for the permanent supportive units. The Housing Authority and HUD have already approved the project vouchers.
- **Fee Deferral, Section 336** - this section lists the amount and type of fees and charges that are due to the City for the project. They will be deferred to final occupancy for cash flow purposes.

In addition to the DDA, the requested approval actions also include approval of a Subordination Agreement between the City of Merced and Bank of America, N.A. This instrument creates a lien or security order for the debts against the project.

Other approval actions include the Resolution approving a Community Housing Development Organization (CHDO) HOME Investment Partnership (HOME) loan funding commitment in the amount of \$1,145,000. HOME is a program administered by HUD. The City, as an Entitlement Community, receives funding each year for HOME eligible activities. The HOME Resolution also contains specific forms of agreement, covenants, a Promissory Note and Deed of Trust that are necessary to formalize the transaction. Also included is a Deed of Trust and Security Agreement.

A separate Resolution committing Housing Successor Agency (HSA) Funds in the amount of \$1,200,000 is being requested for approval. These are former low- and moderate-income asset funds collected by the former Merced Redevelopment Agency which was dissolved by the State Legislature. The City of Merced chose to act as the Housing Successor Agency which assumed responsibility for the former agency housing or low- and moderate-income assets included funding, agreements - obligations, and real property. Similar to HOME, these funds also have specific requirements for eligibility and income that are reflected in the specific forms of agreement, covenants, a Promissory Note and Deed of Trust.

Both the HOME funds, and HSA funds will be repaid using a calculation based on Net Cash Flow, Section 334 of the DDA. This section defines how revenues will be distributed based on position and standing of the specific commitments. Separate from the City's financial contributions, other funding

sources such as the Affordable Housing & Sustainable Communities (AHSC), tax credits, bonds, and other financial notes also require repayment by the Developer.

## **IMPACT ON CITY RESOURCES**

As noted, there are commitments of funding made to the project. The commitments are from Housing Funds, Enterprise Funds, and are not from the General Fund. The commitments have terms associated with each. There is a potential that repayment may not occur in a given year based on Net Cash Flow. The various agreements and security instruments do provide security to the City however its subordinate to other funding sources. Other than the HUD108 loan, the City is not obligated to repay any other funding sources being used by the developer which are associated with the project.

## **ATTACHMENTS**

1. Disposition and Development Agreement between the City of Merced and Merced CA Apartments, L.P., a Delaware Limited Partnership
2. Subordination Agreement between the City of Merced and Bank of America, N.A.
3. Resolution 2020-64 Approving a Home Investments Partnerships (HOME) Loan to Merced CA Apartments, L.P. a Delaware Limited Partnership
4. HOME CHDO Deed Restriction Covenant and Loan Agreement
5. HOME CHDO Promissory Note
6. HOME CHDO Regulatory Agreement and Declaration of Restrictive Covenants
7. HOME CHDO Deed of Trust and Security Agreement
8. Resolution 2020-65 as the Housing Successor Agency to the Merced Redevelopment Agency, approving a Housing Successor Loan to Merced CA Apartments, L.P., a Delaware Limited Partnership
9. HSA Agreement Containing Covenants Affecting Real Property
10. HSA Notice of Affordability Restrictions on Transfer of Property
11. HSA Promissory Note
12. HSA Deed of Trust and Security Agreement
13. HSA Deed Restriction Covenant and Loan Agreement
14. HSA Regulatory Agreement and Declaration of Restrictive Covenants