

ORDINANCE NO. 3726-C.S.

AN ORDINANCE AMENDING SECTION 9-4-9 OF THE ZONING CODE TO PREZONE 32.88 ACRES OF UNINCORPORATED AREA TO HEAVY INDUSTRIAL, (P)M-2 ZONE, PROPERTY LOCATED EAST OF LODI AVENUE AND NORTH OF WHITMORE AVENUE

WHEREAS, a verified application for an amendment to Section 9-4-9 of the Zoning Map was filed by G3 Enterprises, Inc., and DOT California 2019, LLC, on October 6, 2020, to prezone to Heavy Industrial, M-2 zone, property located east of Lodi Avenue and North of Whitmore Avenue, and

WHEREAS, after a public hearing held on December 7, 2020, it was found and determined by the Planning Commission that the requested zone change will not be detrimental to the public health, safety or welfare because the prezone of unincorporated area to Heavy Industrial (P-M-2) Zone would provide for development that is compatible with adjacent industrial uses, the requested zone change will result in an orderly planned use of land because it would facilitate industrial development that is compatible with adjacent industrial uses, and the requested zone change is in accordance with the community objectives as set forth in the Modesto Urban Area General Plan and any applicable specific plans(s) because the allowed use of the Heavy Industrial (P-M-2) Zone is consistent with the site's General Plan Land Use Designation of Industrial, and

WHEREAS, by Resolution No. 2020-18, adopted on December 7, 2020, the Planning Commission recommended to the Council that the application of G3 Industries, Inc., and DOT California 2019, LLC, to amend Section 9-4-9 of the Zoning Map to prezone the hereinafter described property to Heavy Industrial, (P)M-2, be approved.

NOW, THEREFORE, the Council of the City of Modesto does ordain as follows:

SECTION 1. After a public hearing held on January 26, 2021, in the Tenth Street Place Chambers located at 1010 10th Street, Modesto, California, this Council finds and determines as follows:

1. The requested change will not be detrimental to the public health, safety or welfare because the prezone of unincorporated area to Heavy Industrial (P-M-2) Zone would provide for development that is compatible with adjacent industrial uses.
2. The requested change will result in an orderly planned use of land because it would facilitate industrial development that is compatible with adjacent industrial uses.
3. The requested change is in accordance with the community's objectives as set forth in the General Plan and any applicable specific plan(s) because the allowed use of the Heavy Industrial (P-M-2) Zone is consistent with the site's General Plan Land Use Designation of Industrial.

SECTION 2. ZONING CHANGE. Section 9-4-9 of the Zoning Map is hereby amended to prezone the following described property to Heavy Industrial, (P)M-2:

Prezone to P-M-2

All of the Real Property as described in the Grant Deed recorded as DOC-2020-0068632-00, Stanislaus County Records, shown as PARCEL NO. 2 on Sheet 2 of 2 of EXHIBIT "C" of the Certificate of Lot Line Adjustment recorded as DOC-2017-0090151-00, Stanislaus County Records, together with a portion of the Real Property designated "1" in the Grant Deed (Correcting) recorded as DOC-2019-0036251-00, Stanislaus County Records and shown as PARCEL NO. 1 on said sheet 2 of 2 of EXHIBIT "C", lying in the West half of Section 9, Township 4 South, Range 9 East, Mount Diablo Meridian, County of Stanislaus, State of California, more particularly described as follows:

BEGINNING at the Southwest corner of the Whitmore No. 1 Addition to the City of Modesto by Instrument No. 73-55823, Stanislaus County Records, being the intersection of the southerly extension of the West line of the Map of Whitmore Industrial Park No. 1 filed in Volume 27 of Maps at Page 49, Stanislaus County Records, with the South line of said Section 9, said South line being the centerline of Whitmore Avenue as shown on said Map and also being the North line of the West landing Specific Plan

Reorganization to the City of Ceres recorded as DOC-2012-0048746-00, Stanislaus County recorded as; thence commencing the following six courses:

1. North 89°51'00" West, 760.98 feet, along said South line of the intersection of said South line with the Southerly extension of the West line of Lodi Avenue as shown on the Parcel Map filed in Book 42 of Parcel maps at Page 24, Stanislaus County Recorders; thence,
2. North 0°00'20" West, 950.07 feet, along said West line of the Lodi Avenue to the Northwest corner of said Lodi Avenue; thence,
3. South 89°50'04" East, 60.00 feet, along the North line of said Lodi Avenue to the Northeast corner of said Lodi Avenue being the southeastern most corner of PARCEL B as shown on said Parcel Map; thence,
4. North 0°00'20" West, 1010.54 feet, along the East line of said PARCEL B also being the West line of said PARCEL NO. 1, to the Northeast corner of said PARCEL B also being the Northwest corner of said PARCEL NO. 1, said corner lying on a south line of the Glenn Avenue Industrial Park Reorganization to the City of Modesto recorded as DOC-2005-0042056, Stanislaus County Records; thence,
5. South 89°50'38" East, 701.92 feet, along last said South line being the North line of said PARCEL NO. 1 to the Northwest corner of said Whitmore No. 1 Addition to the City of Modesto; thence,
6. South 0°01'19" West, 1960.51 feet, along the West line of said Whitmore No.1 Addition to the City of Modesto to the Point of Beginning.

Containing 32.88 Acres, more or less.

APNs: 086.013.017 and 086.013.018

SECTION 3. ZONING MAP. Section 9-4-9 of the Zoning Map of the City of Modesto is amended to appear as set forth on the map attached hereto, which is hereby made a part of this ordinance by reference.

SECTION 4. EFFECTIVE DATE. This ordinance shall go into effect and be in full force and operation from and after thirty (30) days after its final passage and adoption.

SECTION 5. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in The Modesto Bee, the official newspaper of the City of Modesto, setting forth the title of this ordinance, the date of its introduction and the places where this ordinance is posted.

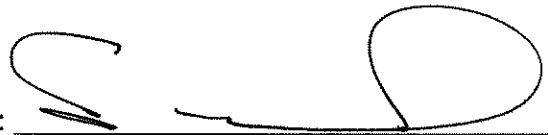
The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 26th day of January, 2021, by Councilmember Zoslocki, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Kenoyer, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Escutia-Braaton, Kenoyer, Madrigal, Ricci, Wright, Zoslocki, Mayor Brandvold

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: _____



TED BRANDVOLD, Mayor

ATTEST:

By: _____



STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: _____



JOSE M. SANCHEZ, City Attorney

APPROVED AS TO DESCRIPTION:

By: _____



Community & Economic Development
Department, Planning Division

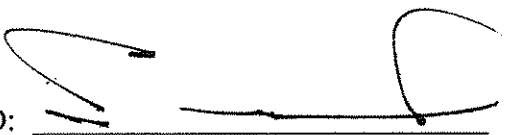
FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 2nd day of February, 2021, Councilmember Kenoyer moved its final adoption, which motion being duly seconded by Councilmember Wright, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Escutia-Braaton, Kenoyer, Madrigal, Ricci, Wright, Zoslocki, Mayor Brandvold

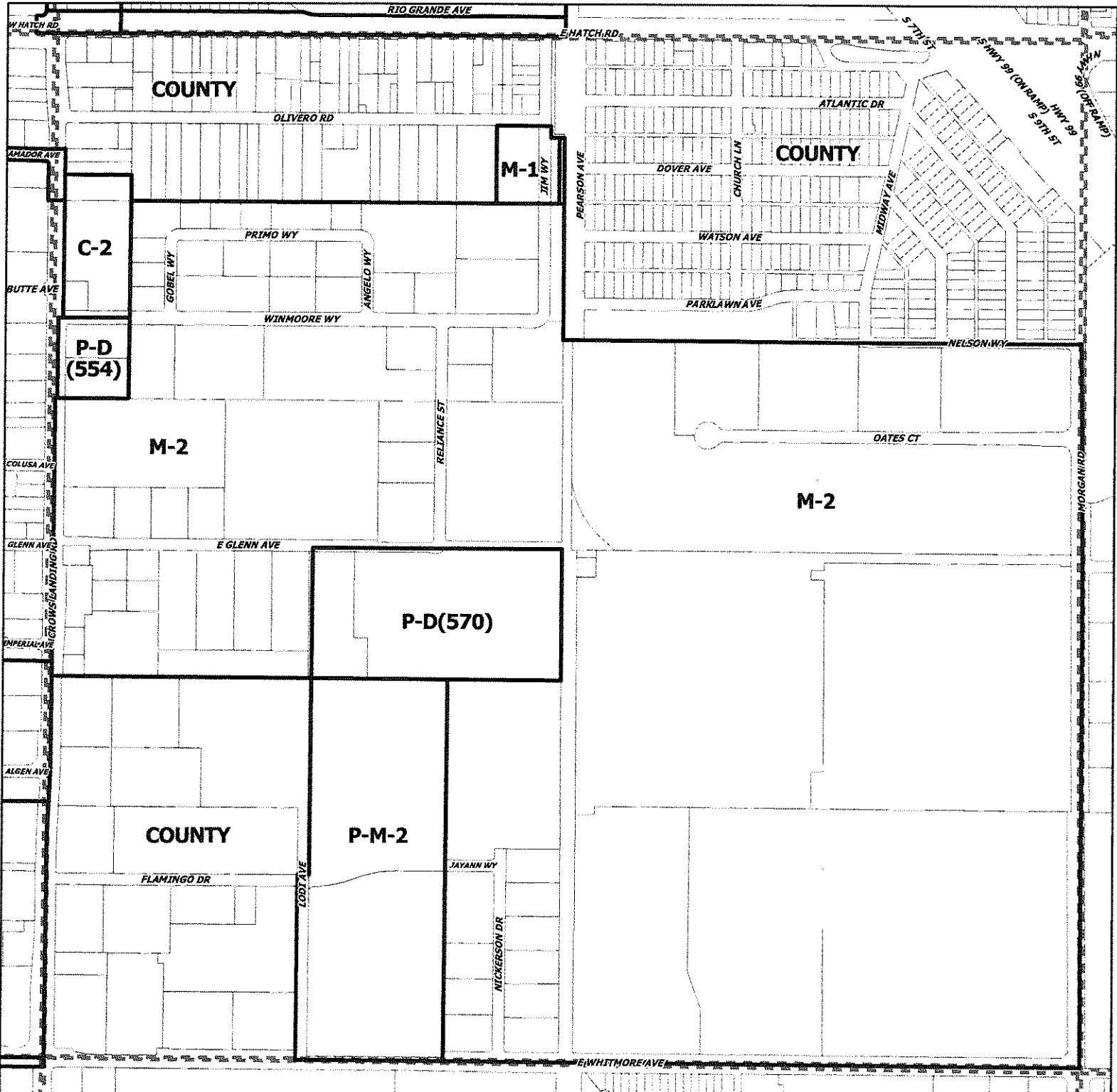
NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: 
MAYOR, TED BRANDVOLD

ATTEST: 
STEPHANIE LOPEZ, City Clerk

Effective Date: March 4, 2021



1 inch = 700 feet

Ord. 3726-C.S.

ZONING MAP OF THE CITY OF MODESTO

9-4-9

ORDINANCE NO. 3727-C.S.

AN ORDINANCE AMENDING SECTION 32-3-9 OF THE ZONING MAP TO REZONE FROM MEDIUM-HIGH DENSITY RESIDENTIAL (R-3) ZONE TO PLANNED DEVELOPMENT ZONE, P-D(610), PROPERTY LOCATED 133 TUOLUMNE BOULEVARD

The Council of the City of Modesto does ordain as follows:

SECTION 1. ZONING CHANGE. Section 32-3-9 of the Zoning Map is hereby amended to reclassify the following described property from Medium-High Residential, R-3, to Planned Development, P-D(610):

R-3 to P-D(610)

Real property In the City of Modesto, County of Stanislaus, State of California, described as follows:

LOTS 24, 25, 26 AND 27 IN BLOCK 305 OF THE CITY OF MODESTO, AS PER MAP FILED DECEMBER 21, 1942, IN VOLUME 15 OF MAPS PAGE 305, STANISLAUS COUNTY RECORDS AND ALL THAT PORTION OF SECTION 32, TOWNSHIP 3 SOUTH, RANGE 9 EAST, MOUNT DIABLO BASE AND MERIDIAN, DESCRIBED AS FOLLOWS: BEING A PORTION OF ABANDONED TUOLUMNE BOULEVARD BY RESOLUTION #1046 RECORDED NARCH 28, 1968, IN VOLUME 2213 OF OFFICIAL RECORDS AT PAGE 290, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWESTERN CORNER OF LOT 24 OF BLOCK 305 OF THE CITY OF MODESTO, AS PER MAP FILED DECEMBER 21, 1942, IN VOLUME 15 OF MAPS, AT PAGE 305, STANISLAUS COUNTY RECORDS; THENCE ALONG THE SOUTHEASTERN MNE OF LOTS 24, 25, 26 AND 27 NORTH 47° 13' 22" EAST 100.00 FEET; THENCE ALONG SOUTHEASTERLY PROJECTION OF THE NORTHEASTERN LINE OF LOT 27, SOUTH 42° 46' 38" EAST, 66.61 FEET; THENCE SOUTH 22° 46' 45" WEST 38.47 FEET; THENCE ALONG A TANGENT CURVE CONCAVE TO THE NORTH HAVING A RADIUS OF 25.00 FEET A CENTRAL ANGLE OF 90° 00' AND AN ARC LENGTH OF 39.27 FEET; THENCE NORTH 67° 13' 15" WEST 77.02 FEET TO THE POINT OF BEGINNING.

Also including the easterly one-half of Calaveras Avenue and the northerly one-half of Tuolumne Boulevard, all immediately adjacent to the above described property.

Totaling 19,602 square feet, more or less.

APN: 102-015-031-000

SECTION 2. USES. The following uses shall be permitted in said P-D(610)

Zone if the plan for construction conforms in principle to the approved plan:

1. On the first floor uses consistent with those allowed in the Medium-High Density Residential (R-3) and Neighborhood Commercial (C-1) Zones except for restaurants with seating and medical office uses.
2. On the second-floor residential uses as allowed in the Medium-High Density Residential (R-3) Zone.
3. In the basement, residential uses as allowed in the Medium-High Density Residential (R-3) Zone.

SECTION 3. ZONING MAP. Section Map 32-3-9 of the Zoning Map of the City of Modesto is amended to appear as set forth on the map attached hereto, which is hereby made a part of this ordinance by reference.

SECTION 4. EFFECTIVE DATE. This ordinance shall go into effect and be in full force and operation from and after thirty (30) days after its final passage and adoption.

SECTION 5. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in *The Modesto Bee*, the official newspaper of the City of Modesto, setting forth the title of this ordinance, the date of its introduction and the places where this ordinance is posted.

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 26th day of January, 2021, by Councilmember Escutia-Braaton, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Zoslocki, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Escutia-Braaton, Kenoyer, Madrigal, Ricci, Wright, Zoslocki, Mayor Brandvold

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: _____


TED BRANDVOLD, Mayor

ATTEST:


By: 
STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: 
JOSE M. SANCHEZ, City Attorney

APPROVED AS TO DESCRIPTION:

By: 
Community & Economic Development
Department, Planning Division

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 2nd day of February, 2021, Councilmember Kenoyer moved its final adoption, which motion being duly seconded by Councilmember Wright, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Escutia-Braaton, Kenoyer, Madrigal, Ricci, Wright, Zoslocki, Mayor Brandvold

NOES: Councilmembers: None

ABSENT: Councilmembers: None

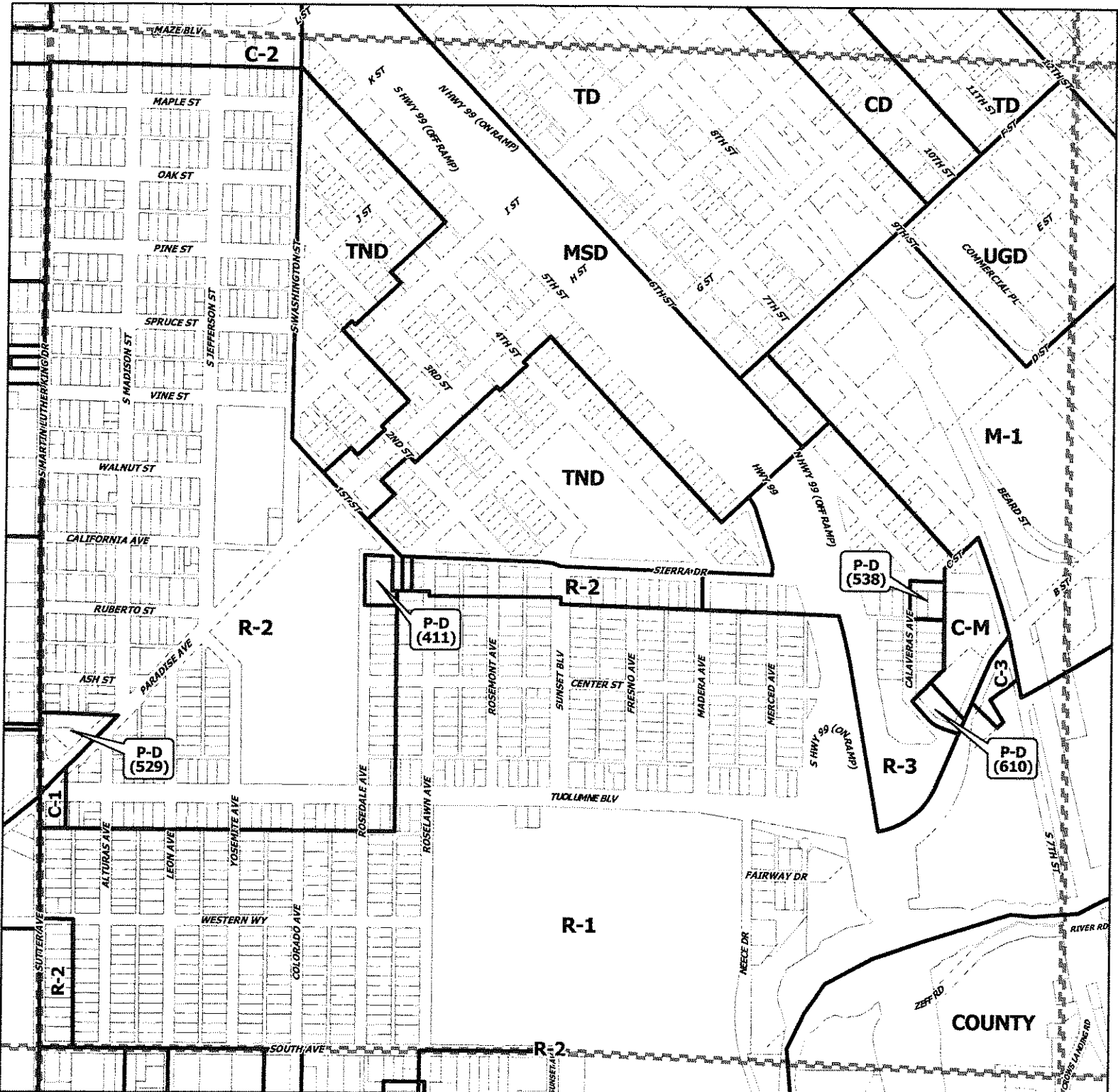
APPROVED: 

MAYOR, TED BRANDVOLD

ATTEST: 

STEPHANIE LOPEZ, City Clerk

Effective Date: March 4, 2021



ZONING MAP OF THE CITY OF MODESTO

32-3-9



1 inch = 700 feet

Ord. 3727-C.S.

ORDINANCE NO. 3728-C.S.

AN ORDINANCE AMENDING THE PRECISE PLAN FOR AREA NO. 30 IN THE VILLAGE ONE SPECIFIC PLAN AREA TO AMEND THE CIRCULATION PLAN AND UTILITY PLANS, PROPERTY LOCATED BETWEEN FINE AVENUE AND CLAUS ROAD, SOUTH OF SHARON AVENUE AND NORTH OF MERLE AVENUE (NRB INVESTMENTS, LLC)

WHEREAS, the City Council, on October 16, 1990, adopted the Village One Specific Plan, pursuant to California Government Code Section 65450 et. seq., to implement the Modesto Urban Area General Plan in this area, and

WHEREAS, the Village One Specific Plan is divided into 35 precise plan areas, and a precise plan is required prior to development in each area, and

WHEREAS, a Precise Plan for Area No. 30 was approved by the City Council by Ordinance No. 3409-C.S. on May 9, 2006, and

WHEREAS, an application has been filed by NRB Investments LLC for an Amendment to Precise Plan of Area No. 30 to amend the circulation and utility plans of the Precise Plan, property located between Fine Avenue and Claus Road, south of Sharon Avenue and north of Merle Avenue, and

WHEREAS, a public hearing was held by the Planning Commission on December 7, 2020, in Chambers, Tenth Street Place, 1010 Tenth Street, Modesto, California, at which hearing evidence both oral and documentary was received and considered, and

WEHERAS, after considering public comments, the Planning Commission, by Resolution No. 2020-20, recommended to the City Council approval of amendments to Precise Plan Area No. 30, and

WHEREAS, said matter was set for a public hearing of the City Council of the City of Modesto to be held on January 26, 2021 at 5:30 p.m., in the Tenth Street Place Chambers located at 1010 Tenth Street, Modesto, California, and

WHEREAS, a duly noticed public hearing to consider said recommendations of the Planning Commission was held at the time and time above mentioned, and

WHEREAS, the Council declared that said amendments to the Precise Plan for Area No. 30 of the Village One Specific Plan is required by public necessity convenience, and general welfare for the following reasons:

1. The amendment to the Circulation, Water, Sanitary Sewer and Storm Water plans would allow for the development of single-family residential uses that is consistent with the Village One Specific Plan.
2. The amendment would provide for a more efficient layout of residential lots throughout the Precise Plan area.
3. The amendment would provide for utility connections for the northerly portion of the Precise Plan to the existing facilities in Sharon Avenue, thereby facilitating the development of 3.75 acres on Sharon Avenue with 24 new residential lots.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby finds and determines as follows:

SECTION 1. APPROVAL OF AMENDMENT TO THE PRECISE PLAN.

That the City Council has reviewed and considered the amendments to the Precise Plan for Area No. 30 of the Village One Specific Plan to amend the circulation and utility plans of the Precise Plan as recommended by the Planning Commission, and the Council does hereby approve said amendments to the Precise Plan for Area No. 30 of the Village One Specific Plan. A copy of the amendments are attached hereto and incorporated by this reference.

SECTION 2. EFFECTIVE DATE. This ordinance shall go into effect and be in full force and operation from and after thirty (30) days after its final passage and adoption.

SECTION 3. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in The Modesto Bee, the official newspaper of the City of Modesto, setting forth the title of this ordinance, the date of its introduction and the places where this ordinance is posted.

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 26th day of January, 2021, and continued to the 2nd day of February, 2021, by Councilmember Zoslocki, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Ricci, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Escutia-Braaton, Kenoyer, Madrigal, Ricci, Wright, Zoslocki, Mayor Brandvold

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: 

TED BRANDVOLD, Mayor

ATTEST:

By: 

STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: 

JOSE M. SANCHEZ, City Attorney

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 9th Day of February, 2021, Councilmember Kenoyer moved its final adoption, which motion being duly seconded by Councilmember Zoslocki, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Escutia-Braaton, Kenoyer, Madrigal, Ricci, Wright, Zoslocki,
Mayor Brandvold

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: 

MAYOR, TED BRANDVOLD

ATTEST: 

STEPHANIE LOPEZ, City Clerk

Effective Date: March 11, 2021

ORDINANCE NO. 3729-C.S.

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MODESTO ESTABLISHING A TEMPORARY LIMIT OF FIFTEEN PERCENT (15%) ON FEES BY THIRD-PARTY FOOD DELIVERY SERVICES TO RESTAURANTS IN MODESTO DURING THE COVID-19 PANDEMIC

WHEREAS, international, national, state, and local health and governmental authorities are responding to an outbreak of respiratory disease named “coronavirus disease 2019,” abbreviated COVID-19 (“COVID-19”), and

WHEREAS, on March 4, 2020, the Governor of the State of California declared a state of emergency regarding COVID-19, and

WHEREAS, on March 11, 2020, the Stanislaus County Public Health Officer declared a local health emergency, and on March 13, 2020, the County of Stanislaus Director of Emergency Services proclaimed a Local Emergency due to the threat of COVID-19 in the County, and

WHEREAS, on March 13, 2020, the President of the United States of America declared a national emergency regarding COVID-19, and

WHEREAS, on March 13, 2020, the City Manager, in his capacity as Director of Emergency Services, proclaimed the existence of a local emergency in the City of Modesto in response to COVID-19 pursuant to Government Code section 8630 and Modesto Municipal Code section 3-4.06, and

WHEREAS, on March 19, 2020, the City Council adopted Resolution 2020-140 ratifying the proclamation of a local emergency, and

WHEREAS, on March 19, 2020, the Governor of California issued Executive Order N-33-20 ordering all individuals within the State of California to stay home or at their place of residence, except as needed to maintain continuity of operation of the federal critical infrastructure sectors, critical government services, schools, childcare, and construction, and

WHEREAS, the shelter in place orders have been repeatedly modified over time, but remain in place and large segments of the economy, particularly related to indoor activities such as dining, remain closed or severely limited, and

WHEREAS, continuity of operations among the City's restaurants is critical for the delivery of essential food services to the residents of Modesto and to sustain these sources of employment and neighborhood vitality within the City, and

WHEREAS, many consumers use third-party applications and websites to place orders with restaurants for delivery and takeout, and these third-party platforms charge restaurants fees; service agreements between some restaurants and third-party platforms provide that the platform charges the restaurant more than twenty-five percent (25%) of the purchase price per order, and

WHEREAS, restaurants, eating and drinking establishments, and particularly those that are small businesses, have limited bargaining power to negotiate lower fees with third-party platforms given the financial straits restaurants are facing during this period of emergency, and

WHEREAS, given that only a few companies in the marketplace provide such delivery services, restaurants that do not operate their own delivery service resort to contracting with third-party delivery service providers as a means to compete in the marketplace, and

WHEREAS, capping delivery service per-order fees at fifteen percent (15%) will achieve the public purpose of ensuring the continued operation of local restaurants and third-party platforms during the period of emergency, and

WHEREAS, the fifteen percent (15%) limit on fees charged to restaurants is based on the findings and experience of other California cities and cities nationwide that have already adopted 15% fee ceilings or similar caps as reasonable emergency regulations in collaboration with food delivery companies, and

WHEREAS, California Constitution, Article XI, Section 7, provides cities with the authority to enact ordinances to protect the public health, safety, and general welfare, of their citizens, and

WHEREAS, COVID-19 restrictions have placed a sudden and severe financial strain on restaurants, and many restaurant and food establishments within the City have been relying on delivery and pick up to generate both revenue and serve customers, and

WHEREAS, it is in the public interest to take action to ensure the delivery of essential food services to residents of Modesto and to maximize restaurant revenue from the takeout and delivery orders that, with the exception of limited dining operations, are currently one of the primary sources of revenue for these businesses to enable restaurants to survive this crisis and remain as sources of employment and neighborhood vitality in the City, and

WHEREAS, it is critical that restaurants operate in a safe manner where social distancing can be maintained in accordance with guidance from the State of California and local health officials, and delivery services are critical for achieving that purpose, and

WHEREAS, if restaurants permanently close, then essential workers will be displaced, storefronts will be vacant, and residents will lose access to contactless delivery of locally prepared meals, and

WHEREAS, Governor Newsom recently lifted the Regional Stay at Home Order that prohibited restaurants from offering outdoor dining, but Stanislaus County remains in the purple tier “widespread” status, which prohibits indoor dining and further places a strain on Modesto’s local restaurants, and

WHEREAS, as restaurants return to modified, lower capacity restaurant service, it is also unclear how quickly restaurant patrons will return to restaurant dining and restaurants may continue to see a significant loss of revenue for an ongoing period of time, and

WHEREAS, this Ordinance is temporary in nature and only intended to promote stability and safe and healthy operations within restaurants in the City during the COVID-19 pandemic outbreak, to assist

local businesses in transitional and uncertain times, and to prevent avoidable business closures thereby serving the public peace, health, safety, and public welfare and ensuring jobs and economic vitality within the City, while also preventing further spread of the virus, and

WHEREAS, an urgency ordinance is necessary to avoid the continuing and immediate threat to public peace, health, and safety as failure to adopt this urgency ordinance would result in the avoidable displacement or exposure to COVID-19 of the City's restaurant and foodservice industry and to the amplification of the factors that lead to the spread of the virus, as described in these Recitals, and

WHEREAS, the City Council hereby finds the approval of this Ordinance is exempt from the California Environmental Quality Act (Public Resources Code §§ 21000 *et seq.*, "CEQA," and 14 Cal. Code Reg. §§ 15000 *et seq.*, "CEQA Guidelines") under Section 15061(b)(3) of the CEQA Guidelines. This is an emergency response measure aimed at capping delivery services fees on existing restaurants. No new development will result from the proposed action and the regulation is temporary. No impact to the physical environment will result.

NOW, THEREFORE, the City Council of the City of Modesto does ordain as follows:

SECTION 1. FINDINGS.

The City Council of the City of Modesto finds that all of the above Recitals are true and correct and incorporated herein by reference. The local emergency declared by Resolution No. 2020-140 due to the COVID-19 Pandemic continues to exist within the City of Modesto and shall remain in effect until such time that the Council determines that the emergency conditions have been abated.

SECTION 2. URGENCY FINDINGS

The City Council of the City of Modesto hereby finds that there is a current and immediate threat to the public health, safety and/or welfare and a need for immediate preservation of the public peace, health, or safety that warrants this urgency ordinance, which finding is based upon the facts stated in the Recitals

above, and in the Staff Report dated January 28, 2021, and considered during the February 2, 2021 City Council meeting as well as any oral and written testimony at the February 2, 2021 City Council meeting. The adoption and implementation of this Ordinance is an urgency measure necessary for the immediate preservation and protection of the public peace, health and safety as detailed above and as this Ordinance is an emergency response measure aimed at ensuring the recovery and vitality of the restaurant industry after closure and limited operations. The facts constituting such urgency are all of those certain facts set forth and referenced in this Ordinance and the entirety of the record before the City Council.

SECTION 3. THIRD-PARTY FOOD DELIVERY FEE LIMIT ORDINANCE

The City Council hereby makes the findings contained herein and hereby adopts the uncodified Ordinance to read as follows.

A Temporary Limit on Charges by Third-Party Food Delivery Services

Section 1. Definitions. For purposes of this Ordinance, the following definitions apply:

- A. “Covered Establishment” means a restaurant that offers, in a single commercial transaction over the internet, such as Online Order, or over the telephone, such as a Telephone Order, whether directly or through a third-party food delivery service, the sale and same-day delivery of food to customers from one or more retail locations within the City.
- B. “Third-party Food Delivery Service” means any website, mobile application, or other internet service that offers or arranges for the sale of food and beverages prepared by, and the same-day delivery or same-day pickup of food and beverages from a Covered Establishment.
- C. “Online Order” means an order placed by a customer through a platform provided by a Third-party Food Delivery Service for delivery or pickup within the City.

- D. "Telephone Order" means an order placed by a customer to a foodservice establishment through a telephone call or the use of the third-party food delivery service providers' platform and/or on-line phone system, or via text for delivery or pickup within the City.
- E. "Purchase Price" means the menu price of an online order. Such term, therefore, excludes taxes, gratuities, and any other fees that may make up the total cost to the customer of an order.

Section 2. Temporary Limit on Third-Party Food Delivery Service Charges.

- A. It shall be unlawful for a Third-Party Food Delivery Service to charge a Covered Establishment a fee that totals more than fifteen percent (15%) of the Purchase Price of an Online or Telephone Order for the use of its services.
- B. It shall be unlawful for a Third-Party Food Delivery Service to charge a customer any Purchase Price for a food or beverage item that is higher than the price set by the Covered Establishment on the Third-Party Food Delivery Service or, if no price is set by the Covered Establishment on the Third-Party Food Delivery Service, the price listed on the Covered Establishment's own menu.

Section 3. Enforcement.

- A. A Third-Party Food Delivery Service shall not be found in violation of this Ordinance if, between the Effective Date of this Ordinance and February 8, 2021 it imposes a fee per Online or Telephone Order for the use of its services that totals more than fifteen percent (15%) percent of the Purchase Price of such order, provided it refunds the portion of the fee that exceeds the fee percentage set forth in this Ordinance to Covered Establishment no later than fifteen (15) days after the purchase.
- B. If a Third-Party Food Delivery Service charges a Covered Establishment fees that violate this Ordinance, the Covered Establishment shall, within seven (7) calendar days, provide written

notice to the Third-Party Food Delivery Service requesting a refund; the refund shall be paid within seven (7) calendar days. If the Third-Party Food Delivery Service does not provide the refund requested after seven (7) days or the Third-Party Food Delivery Service continues to charge fees in violation of this Ordinance after the initial notice, a Covered Establishment may enforce this Ordinance by means of a civil action seeking damages and injunctive relief. The prevailing party in any such action shall be entitled to an award of reasonable attorney fees.

C. Violations of this Ordinance are subject to administrative penalties pursuant to Chapter 1-6 of the Modesto Municipal Code.

Section 4. Guidance and Rules.

The City Manager, or designee, is authorized to implement this Ordinance and issue any guidance or rules necessary to implement this Ordinance.

Section 5. Duration.

This Ordinance shall become effective immediately upon its adoption and remain in effect until such time as the Modesto City Council terminates the declared local emergency established by Resolution 2020-140.

SECTION 4. SEVERABILITY

If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance, including the application of such part or provision to other persons or circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this Ordinance are severable. The City Council of the City of Modesto hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be held unconstitutional, invalid, or unenforceable.

SECTION 5. EFFECTIVE DATE

Following adoption by at least a five-sevenths (5/7) vote of the City Council, this Ordinance shall be effective immediately upon adoption pursuant to Modesto Municipal Code Section 2-2.04 and Section 716 of the Modesto Charter. The City Clerk shall certify as to the adoption of this Urgency Ordinance and shall cause it to be published within fifteen (15) days of the adoption and shall post a certified copy of this Urgency Ordinance, including the vote for and against the same, in the Office of the City Clerk, in accordance with California Government Code Section 36933.

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 2nd day of February, 2021, by Councilmember(s) Ricci and Escutia-Braaton, was upon roll call carried and ordered printed and published by the following votes:

AYES: Councilmembers: Escutia-Braaton, Kenoyer, Madrigal, Ricci, Zoslocki, Mayor Brandvold

NAYS: Councilmembers: Wright

ABSENT: Councilmembers: None

APPROVED: 

TED BRANDVOLD, Mayor

ATTEST:

BY: 

STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

BY: 

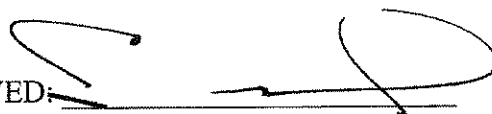
JOSE M. SANCHEZ, City Attorney

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 2nd day of February, 2021, Councilmember(s) Ricci and Escutia-Braaton, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Escutia-Braaton, Kenoyer, Madrigal, Ricci, Zoslocki,
Mayor Brandvold
NOES: Councilmembers: Wright
ABSENT: Councilmembers: None

APPROVED:



TED BRANDVOLD, Mayor

ATTEST:

BY:


STEPHANIE LOPEZ, City Clerk

(SEAL)

Effective Date: February 2, 2021

3684542.1

ORDINANCE NO. 3730-C.S.

AN ORDINANCE AMENDING SECTIONS 9-4.201(b), 9-4.201(m), 9-4.201(w), 9-4.201(am), 9-4.302, 9-4.402(a)(6), 9-4.02(d)(2)(ii), 9-4.501(c)(1), 9-4.501(c)(5)(ii)(A), AND 9-4.603(f), AND ADDING 9-4.307 TO CHAPTER 4, FLOODPLAIN MANGEMENT, OF TITLE 9, BUILDING REGULATIONS OF THE MODESTO MUNICIPAL CODE TO ADOPT FLOOD HAZARD MAPS; TO DESIGNATE A FLOODPLAIN ADMINISTRATOR; AND FOR OTHER PURPOSES; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE

WHEREAS, the Legislature of the State of California has, in Government Code Sections 65302, 65560, and 65800, conferred upon local governments the authority to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry; and

WHEREAS, the Federal Emergency Management Agency has identified special flood hazard areas within the boundaries of the City of Modesto and such areas may be subject to periodic inundation which may result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare; and

WHEREAS, the City of Modesto was accepted for participation in the National Flood Insurance Program on August 15, 1980 and the City Council desires to continue to meet the requirements of Title 44 Code of Federal Regulations, Sections 59 and 60, necessary for such participation; and

WHEREAS, pursuant to the California Health and Safety Code, Division 13, Part 1.5 and Part 2.5, the City of Modesto is required to administer and enforce the *California Building Standards Code*, and such building codes contain certain provisions that apply to the design and construction of buildings and structures in flood hazard areas; and

WHEREAS, the City Council has determined that it is in the public interest to adopt the proposed floodplain management regulations that are coordinated with the *California Building Standards Code*.

NOW, THEREFORE, the City Council of the City of Modesto does hereby ordain as follows:

SECTION 1. The foregoing recitals are incorporated herein by reference and made a part hereof.

SECTION 2. AMENDMENTS: Sections 9-4.201(b), 9-4.201(m), 9-4.201(w), 9-4.201(am), 9-4.302, 9-4.402(a)(6), 9-4.02(d)(2)(ii), 9-4.501(b), 9-4.501(c)(1), 9-4.501(c)(5)(ii)(A), and 9-4.603(f), of Chapter 4 “Floodplain Management,” of Title 9 “Building Regulations” of the Modesto Municipal Code are hereby amended to read as follows:

9-4.201 - Definitions.

Unless specifically defined below, words or phrases used in this chapter shall be interpreted so as to give them the meaning they have in common usage and to give this chapter its most reasonable application.

- (b) "Accessory structure, low-cost and small" means a structure that is:
 - (1) Solely for the parking of no more than two (2) cars, or limited storage (small, low-cost sheds); and
 - (2) Less than one hundred fifty (150) square feet in size and has a market value of less than one thousand five hundred dollars (\$1,500.00); and
 - (3) On the same parcel of property as a principal structure and the use of which is incidental to the use of the principal structure
- (m) "Existing manufactured home park or subdivision" means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the latter of August 15, 1980, or annexation to the City.
- (w) "Floodproofing" means any combination of structural and nonstructural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures, and their contents. For guidelines on dry and wet floodproofing, see FEMA Technical Bulletins TB 1, TB 3, and TB 7.
- (am) "New construction," for floodplain management purposes, means structures for which the "start of construction" commenced on or after the effective date of the initial FIRM, dated August 15, 1980, or annexation to the City, and includes any subsequent improvements to such structures.

9-4.302 - Basis for Establishing Special Flood Hazard Areas.

The special flood hazard areas identified by the Federal Emergency Management Agency (FEMA) in the "Flood Insurance Study (FIS) for City of Modesto, California, Stanislaus County" dated August 15, 1980, with accompanying Flood Insurance Rate Maps (FIRM's) and Flood Boundary and Floodway Maps (FBFM's), dated August 15, 1980, and all subsequent amendments and/or revisions, are hereby adopted by reference and declared to be a part of these floodplain management regulations. This FIS and attendant mapping is the minimum area of applicability of this chapter and may be supplemented by studies for other areas which allow implementation of this chapter and which are recommended to the City Council by the Floodplain Administrator. The study, FIRM's and FBFM's are on file at 1010 10th Street, Suite 4100, Modesto, California 95353.

9-4.402 - Duties and Responsibilities of the Floodplain Administrator.

The duties and responsibilities of the Floodplain Administrator shall include, but not be limited to the following:

- (a) Permit Review. Review all development permits to determine:
 - (6) All Letters of Map Revision (LOMR's) for projects within special flood hazard areas are approved prior to the issuance of building permits or "start of construction." Grading permits shall be issued based upon and consistent with Conditional Letters of Map Revision (CLOMR's). Prior to issuance of a building permit or "start of construction," "as-builts" showing final grades and elevations for the approved grading plan shall be submitted to the Floodplain Administrator for review and approval.
- (d) Notification of Other Agencies.
 - (2) Base flood elevation changes due to physical alterations:
 - (ii) All LOMR's are approved prior to the issuance of building permits. Building permits must not be issued based on Conditional Letters of Map Revision (CLOMR's). An approved CLOMR's allows for construction activities and land preparation up to, but not after the "start of construction" as defined in Section 9-4.201(ay).

Such submissions are necessary so that upon confirmation of those physical changes affecting flooding conditions, risk premium rates and floodplain management requirements will be based on current data.

9-4.501 - Standards of Construction.

In all special flood hazard areas, the following standards are required:

- (b) Construction Materials and Methods. All new construction and substantial improvements of structures, including manufactured homes, shall be constructed:
 - (1) With flood-resistant materials, and utility equipment resistant to flood damage for areas below the base flood elevation;

- (2) Using methods and practices that minimize flood damage;
 - (3) With electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
- (c) Elevation and Floodproofing.
- (1) Residential Construction. All new construction or substantial improvements of residential structures shall have the lowest floor, including basement:
 - (i) In AE, AH, A1-30 zones, elevated to or above the base flood elevation;
 - (ii) In an A zone, without BFE's specified on the FIRM (unnumbered A zone), elevated to or above the base flood elevation, as determined under Section 9-4.402(c).

Upon the completion of the structure, the elevation of the lowest floor, including basement, shall be certified by a registered civil engineer or licensed land surveyor, and verified by the community building inspector to be properly elevated. Such certification and verification shall be provided to the Floodplain Administrator.

- (5) Garages and Low-Cost Accessory Structures.
 - (ii) Detached Garages and Accessory Structures.
 - (A) Accessory structures used solely for parking (two (2) car detached garages or smaller) or limited storage (small, low-cost sheds), as defined in Article 2 of this chapter, may be constructed such that its floor is below the base flood elevation, provided the structure is designed and constructed in accordance with the following requirements:
 - 1) Use of the accessory structure must be limited to parking or limited storage;
 - 2) The portions of the accessory structure located below the BFE must be built using flood-resistant materials;
 - 3) The accessory structure must be adequately anchored to prevent flotation, collapse and lateral movement;
 - 4) Any mechanical and utility equipment in the accessory structure must be elevated or floodproofed to or above the BFE;
 - 5) The accessory structure must comply with floodplain encroachment provisions in Section 9-4.506; and
 - 6) The accessory structure must be designed to allow for the automatic entry of floodwaters in accordance with subsection (c)(3) of this section.
 - 7) The accessory structure is one story and not larger than 600 square feet in area when located in special flood hazard areas other than coastal high hazard areas.

9-4.603 - Conditions for Variances.

- (f) The Floodplain Administrator will maintain a record of all variance actions, including justification for their issuance, and report such variances issued to the Federal Emergency Management Agency.

SECTION 3. ADDITIONS: Section 9-4.307 of Chapter 4 “Floodplain Management,” of Title 9 “Building Regulations” of the Modesto Municipal Code is hereby added to read as follows:

9-4.307- Abrogation and Greater Restrictions.

These regulations supersede any ordinance in effect in flood hazard areas. However, these regulations are not intended to repeal, abrogate or impair any existing ordinances including land development regulations, subdivision regulations, zoning ordinances, stormwater management regulations, or building codes, nor any existing easements, covenants, or deed restrictions. In the event of an overlap or conflict between these regulations and any other ordinance, code, regulation, easement, covenant, or deed restriction, the more restrictive shall govern.

SECTION 4. EFFECTIVE DATE. This ordinance shall go into effect and be in full force and operation from and after thirty (30) days after its final passage and adoption.

SECTION 5. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in *The Modesto Bee*, the official newspaper of the City of Modesto, setting forth the title of this ordinance, the date of its introduction and the places where this ordinance is posted.

SECTION 6. CALIFORNIA ENVIRONMENTAL QUALITY ACT. The City Council finds that adoption of this ordinance is exempt from the California Environmental Quality Act (Public Resources Code §§ 21000 et seq., “CEQA,” and 14 Cal. Code Reg. §§ 15000 et seq., “CEQA Guidelines”) under the general rule that CEQA applies only to projects that have the

potential for causing a significant effect on the environment, and in this case it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment (CEQA Guidelines § 15061(b)(3)).

SECTION 7. SEVERABILITY CLAUSE. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of the ordinance. The Council hereby declares that it would have adopted the ordinance, and each section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that one or more sections, subsections, sentences, clauses or phrases be declared invalid.


The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 6th day of July, 2021, by Councilmember Wright who moved its introduction and passage to print, which motion being duly seconded by Councilmember Madrigal, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Escutia-Braaton, Kenoyer, Madrigal, Ricci, Wright, Zoslocki, Mayor Zwahlen

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:


SUE ZWHALEN, Mayor

ATTEST:

By:


STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By:


JOSE M. SANCHEZ, City Attorney

FINAL ADOPTION CLAUSE

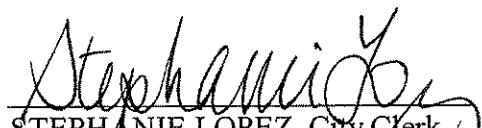
The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 13th day of July, 2021, Councilmember Escutia-Braaton moved its final adoption, which motion being duly seconded by Councilmember Wright was upon roll carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Escutia-Braaton, Kenoyer, Madrigal, Ricci, Wright,
Zoslocki, Mayor Zwahlen

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: 
SUE ZWAHLEN, Mayor

ATTEST: 
STEPHANIE LOPEZ, City Clerk

Effective Date: August 12, 2021

ORDINANCE NO. 3731-C.S.

**AN ORDINANCE AUTHORIZING THE LEVY OF SPECIAL TAXES
WITHIN THE CITY OF MODESTO COMMUNITY FACILITIES
DISTRICT NO. 2021-1 (WOODGLEN)**

The Council of the City of Modesto does ordain as follows:

WHEREAS, on June 1, 2021, this City Council, by Resolution No. 2021-196, adopted a resolution entitled “A Resolution Declaring the City Council’s Intention to Establish City of Modesto Community Facilities District No. 2021-1 (Woodglen) and to Authorize the Levy of a Special Tax Within Said Community Facilities District” stating its intention to form City of Modesto Community Facilities District No. 2021-1 (Woodglen) (the “Community Facilities District”) pursuant to the Mello-Roos Community Facilities Act of 1982, as amended (the “Act”) in order to finance certain services and incidental expenses to be incurred in connection with financing the foregoing, and

WHEREAS, the City Council has held a noticed public hearing concerning the establishment of the Community Facilities District, as required by the Act, and

WHEREAS, subsequent to said hearing, the City Council adopted resolutions entitled “A Resolution Declaring the Formation of City of Modesto Community Facilities District No. 2021-1 (Woodglen), Conditionally Authorizing the Levy of Special Taxes Therein and Conditionally Establishing an Annual Appropriations Limit” (the “Resolution of Formation”), and “A Resolution Calling a Special Election for the City of Modesto Community Facilities District No. 2021-1 (Woodglen),” which resolutions established the Community Facilities District, authorized levy of special taxes therein and called an election within the Community Facilities District on the propositions of levying special taxes and establishing an appropriations limit, and

WHEREAS, an election was held within the Community Facilities District at which the qualified electors approved by more than a two-thirds vote the proposition of levying special taxes and establishing an appropriations limit,

NOW, THEREFORE, the Council of the City of Modesto, acting as the legislative body of City of Modesto Community Facilities District No. 2021-1 (Woodglen), DOES ORDAIN as follows:

SECTION 1. The above recitals are all true and correct.

SECTION 2. By the passage of this Ordinance, the City Council authorizes and levies special taxes within the Community Facilities District at the rates and in accordance with the methods of apportionment set forth in Attachment A to the Resolution of Formation and which, for reference purposes, is attached hereto as Attachment A and incorporated by this reference (the “Rate and Method”).

SECTION 3. The City’s Community Development Manager shall be responsible for annually preparing, or causing the preparation of, the current roll of special tax levy obligations by assessor’s parcel number on non-exempt property within the Community Facilities District. The City Council or, to the maximum extent permitted by law, the City’s Community Development Manager is authorized to determine the specific special taxes to be levied on each parcel of land in the Community Facilities District, in the manner and as provided in the Rate and Method. In connection with the foregoing, the Administrator of the Infrastructure Financing Program of the City shall take any and all steps necessary in order to deliver to the Stanislaus County Tax Collector, on or before the date specified in Section 53340, a certified list of all parcels subject to the Annual Maintenance Special Tax (as defined in the Rate and Method) levies, including the amount of each such

tax to be levied on each parcel for the applicable tax year. The special taxes to be levied shall not exceed the maximum rates set forth in the Rate and Method, but the special taxes may be levied at lower rates.

SECTION 4. Properties of entities of the state, federal or other local governments shall be exempt from the above-referenced special taxes only to the extent set forth in the Rate and Method, and otherwise shall be subject to tax consistent with the provisions of Section 53317.3 of the Act in effect as of the date of adoption of this Ordinance.

SECTION 5. All of the collections of the special taxes shall be used only as provided for in the Act and the Resolution of Formation. The special taxes shall be levied only so long as needed to accomplish the purposes described in the Resolution of Formation and the Rate and Method.

SECTION 6. The Annual Maintenance Special Tax shall be collected in the same manner as ordinary *ad valorem* taxes are collected and shall be subject to the same penalties and the same procedure and sale in cases of delinquency as provided for *ad valorem* taxes as such collection procedure may be modified by law or this City Council from time to time. Notwithstanding the foregoing, the City's Community Development Manager may collect, or cause to be collected, one or more installments of such special taxes by means of direct billing of the property owners within the Community Facilities District if, in the judgment of the City's Community Development Manager, such means of collection will reduce the burden of administering the Community Facilities District or is otherwise appropriate in the circumstances. In such event, such special taxes shall become delinquent if not paid when due as set forth in any such respective billing to the property owners.

SECTION 7. This Ordinance shall be effective after thirty (30) days from its final passage and adoption.

SECTION 8. At least two (2) days prior to its final adoption, copies of this Ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in The Modesto Bee, the official newspaper of the City of Modesto, setting forth the title of this Ordinance, the date of its introduction and the places where this Ordinance is posted.

The foregoing Ordinance was introduced at a regular meeting of the City Council of the City of Modesto, California, held on the 6th of July, 2021, by Councilmember Wright who moved its introduction and passage to print, which motion being duly seconded by Councilmember Escutia-Braaton, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Escutia-Braaton, Kenoyer, Madrigal, Ricci, Wright, Zoslocki, Mayor Zwahlen

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: 
SUE ZWAHLEN, Mayor

ATTEST:

By: 
STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: 
JOSE M. SANCHEZ, City Attorney

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 13th day of July, 2021, Councilmember Kenoyer moved its final adoption, which motion being duly seconded by Councilmember Zoslocki, was upon roll carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Escutia-Braaton, Kenoyer, Madrigal, Ricci, Wright, Zoslocki, Mayor Zwahlen

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: 
SUE ZWAHLEN, Mayor

ATTEST: 
STEPHANIE LOPEZ, City Clerk

Effective Date: August 12, 2021