

RECORDING REQUESTED BY:

City of Merced, A California charter
municipal corporation

WHEN RECORDED MAIL TO:

City of Merced
City Clerk
678 West 18th Street
Merced, California 95340

(Above for Recorder's Use Only)

1st AMENDED AND RESTATED LEGISLATIVE ACTION AGREEMENT

THIS 1st AMENDED AND RESTATED LEGISLATIVE ACTION AGREEMENT is made and entered into as of this ____ day of ____ 2022 by and between the City of Merced, a California Charter Law Municipal Corporation ("City") and MCP, LLC, a California Limited Liability Company ("Owner").

WITNESSETH

WHEREAS, Owner has applied to the City for General Plan Amendment and Zone Change (the "Entitlements") for the property generally located at the west side of Q Street, directly south of West 6th Street, and as legally described on Exhibit "A" and shown on the map at Exhibit "B," attached hereto and incorporated herein by this reference (the "Property"); and

WHEREAS, on July 19, 2021, the City approved General Plan Amendment #21-01, and Zone Change #427 and a Legislative Action Agreement dated July 19, 2021 ("Legislative Action Agreement");

WHEREAS, Owner applied for Zone Change #428 to replace Zone Change #427, but retain General Plan Amendment #21-01;

WHEREAS, Zone Change #428 would change the subject site's Zoning Designation from Low-Density Residential (R-1-6) to Medium-Density Residential with an Urban Residential Overlay (R-3-2/UR);

WHEREAS, on December 8, 2021, the Planning Commission approved Resolution #4077, recommending the City Council approve Zone Change #428;

NOW, THEREFORE, in consideration of the mutual covenants, promises, and representations contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and agreed, the parties hereto agree as follows:

1. The Owner, for themselves and all successors thereto, agree to pay all City and school district fees, taxes, and/or assessments applicable to the Property and the Project in effect on the date of subdivision and/or permit approval, any increase in those fees, taxes, and/or assessments, and any new fees, taxes, and/or assessments which are in effect at the time building permits are issued, which may include public facility impact fees, other impact fees as applicable, and any Mello-Roos taxes-whether for infrastructure, services, or any other activity or project authorized by the Mello-Roos law, etc., and to comply with the additional conditions set forth in Planning Commission Resolution #4063, Exhibit "C" and Planning Commission Resolution #4077, Exhibit "D", attached hereto and incorporated herein by this reference. Payment shall be made at the time of building permit issuance unless an Ordinance or other requirement of the City mandates or permits payment of such fees, taxes, and/or assessments at an earlier or subsequent time. The foregoing obligation shall apply to each Owner with respect to the portion of the Property owned by that Owner at the time payment or performance is due.

2. The Owner desires to comply with the conditions of approval set forth on Exhibit "C", Exhibit "D", and within this Agreement with respect to development of the Project and acknowledges that the conditions are necessary to mitigate the environmental impact caused by the Owner's development of the Project on the Property or are necessary to offset the costs to the City generated by the Owner's development of the Project including sewer connection costs pursuant to Chapter 15.16 of the Merced Municipal Code. The foregoing obligation shall apply to each

Owner with respect to the portion of the Property owned by that Owner at the time compliance is required.

3. The Owner agrees to pay all sewer connection costs imposed by the City as delineated in Section 15.16.070 of the Merced Municipal Code and to pay all other costs required by Chapter 15.16 of the Merced Municipal Code.

4. The Owner shall indemnify, protect, defend (with counsel selected by the City), and hold harmless the City, and any agency or instrumentality thereof, and its/their officers, officials, employees, or agents thereof, from any and all claims, actions, suits, proceedings, or judgments (hereinafter "Claims") against the City, or any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof to attack, set aside, void, or annul the approval of the Entitlements by the City, or any agency or instrumentality thereof, advisory agency, appeal board, or legislative body, including actions approved by the voters of the City, concerning the Entitlements. Furthermore, the Owner shall indemnify, protect, defend (with counsel selected by the City), and hold harmless the City, or any agency or instrumentality thereof, against any and all claims, actions, suits, proceedings, or judgments against another governmental entity in which the Owner's Project is subject to that other governmental entity's approval and a condition of such approval is that the City indemnify and defend such governmental entity. City shall promptly notify the Owner of any claim, action, or proceeding. City shall further cooperate fully in the defense of the action. Should the City fail to either promptly notify or cooperate fully, the Owner shall not thereafter be responsible to indemnify, defend, protect, or hold harmless the City, any agency or instrumentality thereof, or any of its officers, officials, employees, or agents.

5. City, on its part, agrees to approve the Entitlements in accordance with Exhibits "E" and "F".

6. No building permit or other permit shall be issued for the Project that is not in compliance with this Agreement.

7. It is expressly agreed that this Agreement is not intended to limit the power of the City to impose other requirements, limitations, or fees, etc., as a condition of development, and does not relieve the Owner from complying with all other requirements that may be imposed as a condition of development, whether now in existence or hereinafter imposed by the City whether by zone change, subdivision map approval, ordinance, resolution, use permit, or otherwise. The parties agree that this Paragraph does not apply to the approval of the final map and issuance of building permits for project(s) subject to this Agreement on the property described in Exhibit "A" and shown on Exhibit "B."

8. To the extent allowed by law, the conditions of this Agreement constitute covenants running with the land, and shall be enforceable by the City or by any present or future owner of any of the land described in Exhibit "A" and shown on Exhibit "B."

9. The Owner agrees to comply with and abide by all conditions set forth by the City relating to the development of the property subject to this Agreement.

10. In the event of default by the Owner, and in addition to any other remedy available to the City, the City shall have the right to rezone the land back to its original designation.

11. In the event that either City or the Owner shall at any time or times waive any breach of this Agreement by the other, such waiver shall not constitute a waiver of any other or succeeding breach of this Agreement, whether of the same or any other covenant, condition or obligation. Waiver shall not be deemed effective until and unless signed by the waiving party.

12. This Agreement and all matters relating to it shall be governed by the laws of the State of California and any action brought relating to this agreement shall be held exclusively in a state court in the County of Merced.

13. This Agreement shall not be amended, modified, or otherwise changed unless in writing and signed by both parties hereto.

14. This Agreement constitutes the entire understanding and agreement of the parties and supersedes all previous and/or contemporaneous understanding or agreement between the parties with respect to all or any part of the subject matter hereof.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date first above written.

CITY OF MERCED
A California Charter Municipal Corporation

BY: _____
City Manager

ATTEST:
STEPHANIE R. DIETZ, CITY CLERK

Assistant/Deputy City Clerk

(SEAL)

APPROVED AS TO FORM:

Kimberly Cruz 1/13/22
City Attorney Date

ACCOUNT DATA:

Verified by Finance Officer

OWNER
MCP, LLC,
A California Limited Liability Company

Moe Jawad

TAXPAYER ID: . _____

ADDRESS: 3319 M Street
Merced, CA 95348

TELEPHONE: 209-201-5739

FAX:

EMAIL: mjawad@kw.com

{SIGNATURES MUST BE NOTARIZED

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Merced

On _____, 2022, before me, _____,

a Notary Public, Personally appeared _____

_____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

Notary Public

(seal)

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Merced

On _____, 2022, before me, _____,

a Notary Public, Personally appeared _____

_____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

Notary Public

(seal)

Starting with Northern-most lot, legal description on deed describes two lots at a time.

APN 032-183-039
Legal Description

All that portion of Lot 2, in Block 525, according to "MAP OF THE CITY OF MERCED AND SUBDIVISIONS OF ADJOINING ACRES PROPERTY, MERCED COUNTY, CALIFORNIA" recorded May 16, 1901, in Book 2 of Maps, page 59, Merced County records, described as follows:

APN 032-183-040
Legal Description

Beginning at a point on the northeasterly line of said Lot 2, that is South 65° 20' East, 200 feet from the northwest corner of said Lot 2; thence South 65° 20' East, along the northeasterly line of said Lot 2, 200 feet, to a point on the northwesterly line of Q' Street in the City of Merced; thence South 24° 40' West, along said line of Q' Street, 94.7 feet; thence North 65° 20' West, 200 feet; thence North 24° 40' East, 94.7 feet, to the point of beginning.

APN 032-183-041
Legal Description

Also known as Parcels 1 and 2 of Parcel Map filed in the Office of the County Recorder of Merced County, on August 08, 2006, in Book 103 of Parcel Maps Page 42 and 43.

APN 032-183-042
Legal Description

All that portion of Lot 2, in Block 525, according to "MAP OF THE CITY OF MERCED AND SUBDIVISIONS OF ADJOINING ACRES PROPERTY, MERCED COUNTY, CALIFORNIA" recorded May 16, 1901, in Book 2 of Maps, page 59, Merced County records, described as follows:

COMMENCING at a point located South 24° 40' West, 94.7 feet and South 65° 20' East, 200 feet from the Northwest corner of said Lot 2; thence South 24° 40' West, 94.7 feet; thence South 65° 20' East, 200.0 feet; parallel to the Northerly line of said Lot 2 to the Easterly line of said Lot 2; thence North 24° 40' East, 94.7 feet along the Easterly line of said Lot 2; thence North 65° 20' West, 200.0 feet and parallel to the Northerly line of said Lot 2, to the place of beginning.

EXCEPTING THEREFROM, the interest of the City of Merced in and to the Easterly 60 feet, as acquired for a public highway, etc., by Deed recorded September 18, 1942, in Book #30 of Official Records, page 447, Merced County Records.

Also known as Parcels 3 and 4 of Parcel Map filed in the Office of the County Recorder of Merced County, on August 08, 2006, in Book 103 of Parcel Maps Page 42 and 43.



EXHIBIT B

**CITY OF MERCED
Planning Commission**

Resolution #4063

WHEREAS, the Merced City Planning Commission at its regular meeting (held via teleconference) of May 5, 2021, held a public hearing and considered **General Plan Amendment #21-01 and Zone Change #427**, initiated by MCP, LLC, property owner. The application involves a change from the current General Plan land use designation of Low Density Residential (LD) to High-Medium Density Residential (HMD), and a Zone Change from Low Density Residential (R-1-6) to Medium Density Residential (R-3-2) for four 0.22-acre parcels located at 565, 575, 601, and 609 Q Street. The applicant would like to develop a 4-plex on 4 separate parcels, for a total of 16 units. The current zoning designation allows for 3 units on 4 separate parcels, for a total of 12 units. The 0.88-acre subject sites are generally located at the west side of Q Street, directly south of West 6th Street. The subject sites are more particularly described as Parcels 1, 2, 3, and 4 as shown on the map entitled "Parcel Map for Samuel E. and Kathie K. Bartholomew" recorded in Volume 103, Page 45, in Merced County Records; also known as a portion of Assessor's Parcel Number (APN) 032-183-039, 032-183-040, 032-183-041, and 032-183-042; and,

WHEREAS, the Merced City Planning Commission concurs with Findings/Considerations A through J (Exhibit B) of Staff Report #21-263; and,

NOW THEREFORE, after reviewing the City's Initial Study and Draft Environmental Determination, and discussing all the issues, the Merced City Planning Commission does resolve to hereby recommend to City Council adoption of a Negative Declaration regarding Environmental Review #21-04, and recommend approval of General Plan Amendment #21-01 and Zone Change #427, subject to the Conditions set forth in Exhibit A, and the Findings set forth in Exhibit B, attached hereto and incorporated herein by this reference.

Upon motion by Commissioner Delgadillo, seconded by Commissioner White, and carried by the following vote:

AYES: Commissioner Camper, Butticci, Delgadillo, White, and Chairperson Harris
NOES: None
ABSENT: None (one vacancy)
ABSTAIN: Commissioner Dylina

EXHIBIT C

PLANNING COMMISSION RESOLUTION #4063

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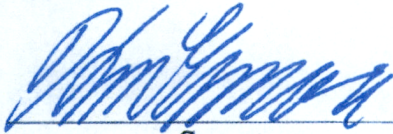
May 5, 2021

Adopted this 5th day of May 2021

Michael Harris

Chairperson, Planning Commission of
the City of Merced, California

ATTEST:



Secretary

Attachments:

Exhibit A - Conditions of Approval

Exhibit B - Findings

Conditions of Approval
Planning Commission Resolution #4063
General Plan Amendment #21-01, and Zone Change #427

1. The proposed project shall be constructed/designed generally as shown on Exhibit 1 (site plan), Exhibit 2 (floor plans), Exhibit 3 (floor plans) - Attachments C, D, and E of Planning Commission Staff Report #21-263, except as modified by the conditions.
2. The proposed project shall comply with all standard Municipal Code and Subdivision Map Act requirements as applied by the City Engineering Department.
3. All other applicable codes, ordinances, policies, etc., adopted by the City of Merced shall apply.
4. The developer/applicant shall indemnify, protect, defend (with counsel selected by the City), and hold harmless the City, and any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof, from any and all claims, actions, suits, proceedings, or judgments against the City, or any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof to attack, set aside, void, or annul, an approval of the City, or any agency or instrumentality thereof, advisory agency, appeal board, or legislative body, including actions approved by the voters of the City, concerning the project and the approvals granted herein. Furthermore, developer/applicant shall indemnify, protect, defend, and hold harmless the City, or any agency or instrumentality thereof, against any and all claims, actions, suits, proceedings, or judgments against any governmental entity in which developer/applicant's project is subject to that other governmental entity's approval and a condition of such approval is that the City indemnify and defend (with counsel selected by the City) such governmental entity. City shall promptly notify the developer/applicant of any claim, action, suits, or proceeding. Developer/applicant shall be responsible to immediately prefund the litigation cost of the City including, but not limited to, City's attorney's fees and costs. If any claim, action, suits, or proceeding is filed challenging this approval, the developer/applicant shall be required to execute a separate and formal defense, indemnification, and deposit agreement that meets the approval of the City Attorney and to provide all required deposits to fully fund the City's defense immediately but in no event later than five (5) days from

EXHIBIT A
OF PLANNING COMMISSION RESOLUTION #4063

that date of a demand to do so from City. In addition, the developer/applicant shall be required to satisfy any monetary obligations imposed on City by any order or judgment.

5. The developer/applicant shall construct and operate the project in strict compliance with the approvals granted herein, City standards, laws, and ordinances, and in compliance with all State and Federal laws, regulations, and standards. In the event of a conflict between City laws and standards and a State or Federal law, regulation, or standard, the stricter or higher standard shall control.
6. Appropriate turning radii shall be provided within the parking areas to allow for Fire Department and refuse truck access. This shall be a minimum access road of 22 feet in width. The architect shall demonstrate that the turning radius to get into the parking lot is acceptable for fire apparatus (radius 33 feet inside, and 47 feet outside).
7. The fire access road shall extend to within 150 feet of all portions of the facility and all portions of exterior walls of the first story of the building, or as otherwise approved by the Fire Chief. This may require widening the parking lot driving aisles to 22 feet.
8. If building height is increased during the Building Permit stage, the applicant shall consult with the Fire Chief so they may determine if aerial access would be required.
9. All projects on this site shall comply with Post Construction Standards in accordance with the requirement for the City's Phase II MS-4 Permit (Municipal Separate Storm Sewer System).
10. Bicycle parking for all projects on the site shall meet the minimum requirements of the California Green Building Code and Merced Municipal Code Section 20.38.080.
11. All landscaping on the site shall be in compliance with the City's Water Efficient Landscaping and Irrigation Ordinance (Merced Municipal Code Section 17.60) and all state-mandated conservation and drought restrictions as well as the City's Zoning Ordinance Section 20.36 – Landscaping.
12. Irrigation for all onsite landscaping shall be provided by a low-volume system in accordance with the State's Emergency Regulation for Statewide Urban Water Conservation or any other State or City-mandated water regulations dealing with drought conditions.

13. All landscaping in the public right-of-way shall comply with the most recently adopted water regulations by the State and City addressing water conservation measures. If turf is proposed to be installed in medians or park strips, high quality artificial turf (approved by the City Engineer and Development Services Director) shall be installed.
14. The developer shall use proper dust control procedures during site development in accordance with San Joaquin Valley Air Pollution Control District rules.
15. All parking lot and other exterior lighting shall be oriented in such a way so that it does not spill over onto adjacent properties. The parking lot shall include ample lighting for residents walking between the parking lot and their respective residential units.
16. Containers for refuse and recycled goods shall be stored in enclosures that are designed with colors compatible with the buildings and shall be constructed to meet City Standards. At the Building Permit stage, the developer shall work with the City Refuse Department to determine the best location for these enclosures to ensure proper access is provided for City Refuse Trucks as well as the number of containers needed to adequately serve the site. This may also allow for independent trash receptacles for each residential unit. Use of a trash compactor should be considered to reduce the number of pick-ups per week.
17. All mechanical equipment shall be screened from public view (details to be worked out with staff during the building permit stage).
18. The applicant shall record cross-access agreements and parking agreements between the subject sites (4 parcels) during the building permit stage.
19. Each parcel shall have its own water domestic, and fire service lines. Each service line shall extend from the City's main water line to the property line, with all water services separated by 10 feet or more from the sewer lateral connection.
20. The applicant shall work with the City's Public Works department to determine the appropriate location for water meters and backflow placement.

21. The proposal shall comply with Merced Municipal Code Section 20.46.030 – General Design Standards for Multi-Family Dwellings, required for multi-family residential developments of 3 units or more in any Zoning district within the City.
22. If the perimeter of the site is to be fenced, the applicant shall provide gate access to both Fire and Refuse Departments. This may include installing a Click-to-Enter system, or a Knox-box.
23. The design of a future fence shall match or compliment the design, color, and materials used for the exterior of the building.
24. The proposed driveway along Q Street shall be designed to meet City Engineering Standards. The work performed on the driveway shall be done by a licensed contractor under an Encroachment Permit issued by the Engineering Department.
25. Minor modifications to the design or layout of this proposal may be approved by the Director of Development Services or be referred to the Planning Commission if deemed appropriate by the Director of Development Services.
26. The Engineering Department may require the applicant to make additional public improvements during the building permit stage (such as repairing damaged sidewalk), per Merced Municipal Code 17.04.050 and 17.04.060 for projects exceeding valuation of \$100,000.00.

Findings and Considerations
Planning Commission Resolution #4063
General Plan Amendment #21-01 and Zone Change #427

FINDINGS/CONSIDERATIONS:

General Plan Compliance and Policies Related to This Application

- A) With the proposed General Plan Amendment and Zone Change, the proposed project will conform with the General Plan designation of High-Medium Density Residential (HMD) and zoning of Medium Density Residential (R-3-2). At 16 units on 0.88 acres the density shall be 18 dwelling units/acre, which conforms to the HMD designation, which allows densities of 12 to 24 dwelling units/acre.

The Housing Element of the *Merced Vision 2030 General Plan* includes policies supporting higher densities.

Policy H-1.1 Support Increased in Residential Zoning Districts

This proposal offers an opportunity for a higher density project to provide needed housing within the City.

Policy 1.1.e Encourage Alternate Housing Types

The proposed project would include three-bedroom apartments within four separate 4-plexes. This provides a different housing type to meet the growing need of housing within the community and supports this policy of providing alternate housing types.

Policy 1.8b Prioritize City efforts to encourage residential development by focusing on in-fill development and densification within the existing City Limits.

The proposed project is on an in-fill site and meets the density requirements of the City's high-medium density classification.

The following are Land Use Policies and Implementing Actions of the General Plan that could be met with the proposed project.

Policy L-1.7 Encourage the Location of Multi-Family Developments on Sites With Good Access to Transportation, Shopping, Employment Centers, and Services.

The proposed project is in close proximity to several employment, educational, and recreation locations, such as Tenaya Middle School, Margaret Sheehy Elementary, McNamara Park, and Golden Valley Health Centers.

Mandatory Findings

- B) Chapter 20.80 (Zoning Ordinance Amendments) and 20.82 (General Plan Amendments) of the Merced Municipal Code outline procedures for considering Zone Changes and General Plan Amendments. However, unlike other Planning permits, there are no specific findings spelled out in the Code that must be made in order to approve said amendments. However, good Planning practice would be to provide objective reasons for approval or denial, but these can take whatever form deemed appropriate by the Planning Commission and City Council. However, based on State law and case law, the following findings are recommended:

EXHIBIT B
OF PLANNING COMMISSION RESOLUTION #4063

1. *The proposed amendment is deemed to be in the public interest.*

The proposed amendment is deemed to be in the public interest because it will provide needed housing for Merced residents and will provide investment opportunities for small investors who can enter the rental market with a small number of units. It will also fit into this particular neighborhood, which already contains a mixture of housing densities.

2. *The proposed amendment is consistent and compatible with the rest of the General Plan and any implementation programs that may be affected.*

This General Plan Amendment does not include any text changes to the General Plan, but rather amends the land use designation for a specific area (on the 2030 General Plan Map - Figure 2.3 Land Use Diagram) to allow an increase in residential density. The proposed amendment is consistent and compatible with the rest of the General Plan and any implementation programs that may be affected.

3. *The potential impacts of the proposed amendment have been assessed and have been determined not to be detrimental to the public health, safety, or welfare.*

The proposed project does not include any uses that would be detrimental to the public health, safety, and welfare of the City. Implementation of the conditions of approval and adherence to all applicable Building and Fire Codes and City Standards would prevent the project from having any detrimental effect on the health, safety, and welfare of the City.

4. *The proposed amendment has been processed in accordance with the applicable provisions of the California Government Code and the California Environmental Quality Act (CEQA).*

The Planning staff has conducted an environmental review (Initial Study #21-04) of the project in accordance with the requirements of the California Environmental Quality Act (CEQA), and a Negative Declaration (i.e., no significant effects in this) is being recommended (see Attachment F of Planning Commission Staff Report #21-263).

Traffic/Circulation

- C) The project site is in southcentral Merced, approximately 1.5 miles from downtown, 0.75-miles from State Route 59, and 1 mile south of State Route 99. The project site is bounded by local roads, with the nearest north-south bound road being Q Street, and the nearest east-west bound road being 8th Street. 8th Street connects with R Street, which is considered a Major Arterial Road and designed to carry large volumes of traffic traveling throughout the community. R Street also provides access to both Highway 59 and Highway 99, that connect Merced with other regional communities throughout the State.

The subject site is currently entitled for 12 units (up to 3 units per parcel can be allowed under current accessory dwelling unit laws), the proposed 16 units would generate a relatively minimal increase in vehicle traffic. According to Trip Generation (ITE Report) the average daily trips per unit is 6.59. At 12 units, that would total 79 trips per day, and at 16 units it would total 105 trips per day which would equate to a 25% increase in trips correlating to the 25% increase in number of residential units. The Engineering Department believes that the existing street network could adequately serve this proposal.

The increase in density would result in less vehicle miles traveled to surrounding uses such as Tenaya Middle School, Margaret Sheehy Elementary, McNamara Park, and Golden Valley Health Centers.

Per CEQA Guidelines Section 15064.3, alternative modes of transportation are being assessed and are available within a 1.5 mile distance of the site. The Merced County Bus provides services with several stops nearby (within a ¼ mile) along R Street linking the residents to the M1 Route. The Amtrak (passenger train service) is located within 1.5 miles providing services to the greater California area and connections to travel across the county. The closest airport is Merced Regional Airport, located approximately 1 mile to the east.

Parking

- D) The Zoning Ordinance requires 1.75 spaces of parking for each multi-family unit up to 30 units, plus an additional 1.5 spaces for each unit over 30. There is also an increase in the number of spaces required based on the number of bedrooms and bathrooms in a unit (0.5 spaces for each bedroom over 2). The applicant is proposing 3 bedroom & 2-bathroom units (16 total). Based on this calculation, this project would require 36 parking spaces. The applicant is providing 31 parking spaces and is seeking approval for a parking reduction from the Director of Development Services. Per MMC 20.38-050 (D) – Parking Reductions, parking reductions may be approved up to 20 percent through a Transportation Demand Management Plan approved by the Director of the Development Services. The site is located close to several alternative modes of transportation such as bike lanes, and bus stops that link with rail service (Amtrak) and the Merced Regional Airport. Bicycle parking would be provided as required by the California Green Code, and reviewed during the Building Permit stage. With a 10% parking reduction, the applicant would exceed parking requirements by providing 31 parking spaces when 29 parking spaces are required. Planning staff believes this request is reasonable and is likely to be approved prior to construction.

Public Improvements/City Services

- E) Water

There is a water line in Q Street along the frontage of the subject sites. The City's water supply would be sufficient to serve the proposed project. Each lot shall have water lateral connections from Q Street (Condition #19 of Staff Report #21-263).

Sewer

EXHIBIT B OF PLANNING COMMISSION RESOLUTION #4063

The Merced Wastewater Treatment Plant (WWTP) recently finished two major upgrades (Phase IV and Phase V) to improve the quality of the treated water, referred to as plant effluent, and to improve the quality of biosolids and methods of treatment. The Merced Wastewater Treatment Plant is now one of the most advanced facilities in the state. It is capable of treating up to 12 million gallons of influent a day. The proposed project is estimated to generate approximately 1,280 – 1,600 gallons of wastewater per day (based on 80-100 gallons/day per residential unit). The additional wastewater generated by the project would be approximately 0.0133% of the overall capacity of the WWTP.

There is sufficient capacity at the WWTP, and the existing lines along the back portion of the properties (western portion) have enough capacity to accommodate the additional wastewater and transmit it to the WWTP for processing. Each lot shall have sewer lateral connections from the western portion of the property (Condition #19 of Staff Report #21-263).

Public Improvements

The Engineering Department may require the applicant to make additional public improvements during the building permit stage (such as repairing damaged sidewalk), per Merced Municipal Code 17.04.050 and 17.04.060 for projects exceeding valuation of \$100,000.00 (Condition #26 of Staff Report #21-263).

Building Design

- F) There would be one 4-plex on each lot, for a total of 16 units within the subject sites (Attachment C of Staff Report #21-263). Each unit within each 4-plex would consist of the same program containing 3 bedrooms, 2 bathrooms, a utility room, a living room, and a kitchen for a total of 1,172 square feet. The proposal shall comply with Merced Municipal Code Section 20.46.030 – General Design Standards for Multi-Family Dwellings, required for multi-family residential developments of 3 units or more in any Zoning district within the City. The applicant currently has no plans to add any accessory dwelling units (ADU's) in addition to the 16 units, however, ADU's are allowed in multi-family developments per current codes.

All of these buildings would generally have a similar design with a simple rectangular form and angled roof. The exterior of the buildings would be finished with siding, stucco, and stone veneers giving each units its own unique façade (Attachment E of Staff Report #21-263). The building heights would be 29 feet, which is below the maximum height allowed within the surrounding R-1-6 Zone (allows a maximum building height of 35 feet). Given the proposed design, materials, massing, and scale, staff believes that proposal is of high-quality and that will be compatible with the surrounding properties throughout the neighborhood.

Site Design

- G) The project site consists of 4 identical rectangular parcels (0.22-acres each) aligned consecutively along Q Street. Each parcel will contain a 4-plex within a 2-story building. Each unit would have 3 bedrooms and 2 bathrooms. Each unit would have

a unique façade consisting of siding, stucco, and or stone veneer. Each parcel would have a similar layout with the buildings mirroring each other (Attachment D of Staff Report #21-263).

Even though the parcels would remain independent, there would be a lot of common space and cross-access agreements between the parcels. The apartments would be located on the western portion of the subject sites, and the parking and access would be located along the eastern portions of the subject sites – closer to Q Street. There would be one 26-foot-wide driveway located along Q Street. The parking area is located immediately behind the driveway and consists of 31 parking stalls and two sets of trash enclosures along eastern and western portions of the parking lot. Two walkways would create a pedestrian path between the parking lot and entrances to each residential unit.

Landscaping

- H) Landscaping and irrigation shall be required to meet the City's Water Efficient Landscape Ordinance (Conditions #11, #12, and #13 of Staff Report #21-263).

Neighborhood Impact/Interface

- I) The subject site is located within an older portion of the City that was generally developed between the 1900's and the 1950's. As such, there are a variety property that were developed prior to adoption of development standards or unified local codes. This has resulted in neighborhood containing a variety of parcel shapes/sizes, and buildings that are unique in their development with many properties having secondary or multiple dwelling units on one parcel. Even though the majority of these parcels are zoned for single-family homes, there are several parcels within a 1,000-foot-radius that have two, three, or more units that are considered legal non-conforming. In addition, 190 feet north of the subject sites, there is a small area zoned Medium Density Residential with a similar concept to what is being proposed by the applicant (multiple independent lots with cross-access and parking agreements). Given the context of the surrounding multifamily units within legal non-conforming lots, and nearby Medium Density Residential Zone, staff is of the opinion that the proposed multifamily project is compatible with the character of the neighborhood.

Public hearing notices were sent to all property owners within 300 feet of the subject sites three weeks prior to the public hearing. As of the date this report was prepared, staff has not had any comments from the public regarding the project.

Environmental Clearance

- J) The Planning staff has conducted an environmental review (Initial Study #21-04) of the project in accordance with the requirements of the California Environmental Quality Act (CEQA), and a Negative Declaration (i.e., no significant effects in this) is being recommended (see Attachment F of Planning Commission Staff Report #21-263).

EXHIBIT B OF PLANNING COMMISSION RESOLUTION #4063

CITY OF MERCED
Planning Commission

Resolution #4077

WHEREAS, the Merced City Planning Commission at its regular meeting of December 8, 2021, held a public hearing and considered **Zone Change #428**, initiated by MCP, LLC, property owner. This application involves a request for a Zone Change from a Low-Density Residential (R-1-6) Zone to a Medium-Density Residential (R-3-2) Zone with an Urban Residential Overlay (R-3-2/UR) at 565, 575, 601, and 609 Q Street. The 0.88-acre subject site is generally located on the west side of Q Street, directly south of West 6th Street. General Plan Amendment #21-01 from Low Density Residential (LD) to High-Medium Density Residential (HMD) was approved for this site on July 19, 2021. The subject sites are more particularly described as Parcels 1, 2, 3, and 4 as shown on the map entitled "Parcel Map for Samuel E. and Kathie K. Bartholomew" recorded in Volume 103, Page 45, in Merced County Records; also known as a portion of Assessor's Parcel Number (APN) 032-183-039, 032-183-040, 032-183-041, and 032-183-042; and,

WHEREAS, the Merced City Planning Commission concurs with Findings/Considerations A through J (Exhibit B) of Staff Report #21-918; and,

NOW THEREFORE, after reviewing the City's Draft Environmental Determination, and discussing all the issues, the Merced City Planning Commission does resolve to hereby recommend to City Council adoption of a California Environmental Quality Act Section 15162 Findings regarding Environmental Review #21-39, and recommend approval of Zone Change #428 subject to the Conditions set forth in Exhibit A, and the Findings set forth in Exhibit B, attached hereto and incorporated herein by this reference.

Upon motion by Commissioner CAMPER, seconded by Commissioner DELGADILLO, and carried by the following vote:

AYES: Commissioners Camper, DeAnda, Delgadillo, Greggains, White, and Chairperson Harris
NOES: None
ABSENT: None
ABSTAIN: Commissioner Dylina

EXHIBIT D

PLANNING COMMISSION RESOLUTION #4077

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December 8, 2021

Adopted this 8th day of December 2021

Michael Harris

Chairperson, Planning Commission of
the City of Merced, California

ATTEST:



'Secretary

Attachments:

Exhibit A - Conditions of Approval

Exhibit B - Findings

Conditions of Approval
Planning Commission Resolution #4077
Zone Change #428

1. The proposed project shall be constructed/designed generally as shown on Exhibit 1 (parcel map/site plan - Attachment D of Planning Commission Staff Report #21-918, except as modified by the conditions.
2. All other applicable codes, ordinances, policies, etc., adopted by the City of Merced shall apply.
3. The developer/applicant shall indemnify, protect, defend (with counsel selected by the City), and hold harmless the City, and any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof, from any and all claims, actions, suits, proceedings, or judgments against the City, or any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof to attack, set aside, void, or annul, an approval of the City, or any agency or instrumentality thereof, advisory agency, appeal board, or legislative body, including actions approved by the voters of the City, concerning the project and the approvals granted herein. Furthermore, developer/applicant shall indemnify, protect, defend, and hold harmless the City, or any agency or instrumentality thereof, against any and all claims, actions, suits, proceedings, or judgments against any governmental entity in which developer/applicant's project is subject to that other governmental entity's approval and a condition of such approval is that the City indemnify and defend (with counsel selected by the City) such governmental entity. City shall promptly notify the developer/applicant of any claim, action, suits, or proceeding. Developer/applicant shall be responsible to immediately prefund the litigation cost of the City including, but not limited to, City's attorney's fees and costs. If any claim, action, suits, or proceeding is filed challenging this approval, the developer/applicant shall be required to execute a separate and formal defense, indemnification, and deposit agreement that meets the approval of the City Attorney and to provide all required deposits to fully fund the City's defense immediately but in no event later than five (5) days from that date of a demand to do so from City. In addition, the developer/applicant shall be required to satisfy any monetary obligations imposed on City by any order or judgment.
4. The developer/applicant shall construct and operate the project in strict

compliance with the approvals granted herein, City standards, laws, and ordinances, and in compliance with all State and Federal laws, regulations, and standards. In the event of a conflict between City laws and standards and a State or Federal law, regulation, or standard, the stricter or higher standard shall control.

5. All projects on this site shall comply with Post Construction Standards in accordance with the requirement for the City's Phase II MS-4 Permit (Municipal Separate Storm Sewer System).
6. All landscaping on the site shall be in compliance with the City's Water Efficient Landscaping and Irrigation Ordinance (Merced Municipal Code Section 17.60) and all state-mandated conservation and drought restrictions as well as the City's Zoning Ordinance Section 20.36 - Landscaping.
7. Irrigation for all onsite landscaping shall be provided by a low-volume system in accordance with the State's Emergency Regulation for Statewide Urban Water Conservation or any other State or City-mandated water regulations dealing with drought conditions.
8. All landscaping in the public right-of-way shall comply with the most recently adopted water regulations by the State and City addressing water conservation measures. If turf is proposed to be installed in medians or park strips, high quality artificial turf (approved by the City Engineer and Development Services Director) shall be installed.
9. The developer shall use proper dust control procedures during site development in accordance with San Joaquin Valley Air Pollution Control District rules.
10. All mechanical equipment shall be screened from public view (details to be worked out with staff during the building permit stage).
11. The proposal shall comply with Merced Municipal Code Section 20.46.020 - General Design Standards for Single-Family Dwellings, required for single-family homes in any Zoning district within the City.
12. The Engineering Department may require the applicant to make additional public improvements during the building permit stage (such as repairing damaged sidewalk for projects exceeding valuation of \$100,000.00).

Findings and Considerations
Planning Commission Resolution #4077
Zone Change #428

FINDINGS/CONSIDERATIONS:

General Plan Compliance and Policies Related to This Application

- A) With the proposed Zone Change with Urban Overlay, the proposed project would conform with the General Plan designation of High-Medium Density Residential (HMD) and proposed zoning of Medium-Density Residential (R-3-2) with an Urban Residential Overlay. At 16 units on 0.88 acres, the density shall be 18 dwelling units/acre, which conforms to the HMD designation, which allows densities of 12 to 24 dwelling units/acre.

The Housing Element of the *Merced Vision 2030 General Plan* includes policies supporting higher densities.

Policy H-1.1 Support Increased in Residential Zoning Districts

This proposal offers an opportunity for a higher density project to provide needed housing within the City.

Policy I.1.e Encourage Alternate Housing Types

The proposed project would include 16 single-family homes on independent lots. This provides a different housing type to meet the growing need of housing within the community and supports this policy of providing alternate housing types.

Policy I.8b Prioritize City efforts to encourage residential development by focusing on in-fill development and densification within the existing City Limits.

The proposed project is on an in-fill site and meets the density requirements of the City's High-Medium Density Residential classification.

The following are Land Use Policies and Implementing Actions of the General Plan that could be met with the proposed project.

Findings - Zone Change/ Urban Overlay

- B) Chapter 20.80 (Zoning Ordinance Amendments) outlines procedures for considering Zone Changes, but does not mention adopting Overlay Zones. Merced Municipal Code Section 20.22.040 - Urban Residential (/UR) Overlay Zones, discusses the intent of the UR Zone with development standards, but does not require any specific findings to be made for approval. However, Planning practice would be to provide objective reasons for approval or denial, but these can take whatever form deemed appropriate by the Planning Commission and City Council. Based on State law and case law, the following findings are recommended:

1. *The proposed amendment is deemed to be in the public interest.*

The proposed amendment is deemed to be in the public interest because it will provide needed housing for residential projects.

- 2 *The proposed amendment is consistent and compatible with the rest of the General Plan and any implementation programs that may be affected.*

The proposed amendment is consistent and compatible with the rest of the General Plan and any implementation programs that may be affected.

- 3 *The potential impacts of the proposed amendment have been assessed and have been determined not to be detrimental to the public health, safety, or welfare.*

The proposed project does not include any uses that would be detrimental to the public health, safety, and welfare of the City. Implementation of the conditions of approval and adherence to all applicable Building and Fire Codes and City Standards would prevent the project from having any detrimental effect on the health, safety, and welfare of the City.

- 4 *The proposed amendment has been processed in accordance with the applicable provisions of the California Government Code and the California Environmental Quality Act (CEQA).*

Planning staff has conducted an environmental review (#21-39) of the project in accordance with the requirements of the California Environmental Quality Act (CEQA), and a CEQA Section 15162 Findings are being recommended (see Attachment J of Planning Commission Staff Report #21-918).

Traffic/Circulation

- C) The project site is in southcentral Merced, approximately 1.5 miles from Downtown, 0.75-miles from State Route 59, and 1 mile south of State Route 99. The project site is bounded by local roads, with the nearest north-south bound road being Q Street, and the nearest east-west bound road being 8th Street. 8th Street connects with R Street, which is considered a Major Arterial Road and designed to carry large volumes of traffic traveling throughout the community. R Street also provides access to both Highway 59 and Highway 99, that connect Merced with other regional communities throughout the State.

The subject site is currently entitled for 12 units (up to 3 units per parcel can be allowed under current accessory dwelling unit laws), the proposed 16 units would generate a relatively minimal increase in vehicle traffic. According to Trip Generation (ITE Report) the average daily trips per unit is 6.59. At 12 units, that would total 79 trips per day, and at 16 units it would total 105 trips per day which would equate to a 25% increase in trips correlating to the 25% increase in number of residential units. The Engineering Department believes that the existing street network could adequately serve this proposal.

The increase in density would result in less vehicle miles traveled to surrounding uses such as Tenaya Middle School, Margaret Sheehy Elementary, McNamara Park, and Golden Valley Health Centers.

Per CEQA Guidelines Section 15064.3, alternative modes of transportation were assessed with the previous Initial Study (Environmental Review #21-04) and are available within a 1.5 mile distance of the site. The Merced County Bus provides services with several stops nearby (within a ¼ mile) along R Street linking the residents to the M1 Route. The Amtrak (passenger train service) is located within 1.5 miles providing services to the greater California area and connections to travel across the county. The closest airport is Merced Regional Airport, located approximately 1 mile to the east.

Parking

- D) The Zoning Ordinance requires 1 space of parking for each single-family home which requires 16 parking spaces for this site. The applicant is providing 31 parking spaces, which exceeds the parking required for this project.

In addition, the site is located close to several alternative modes of transportation such as bike lanes, and bus stops that link with rail service (Amtrak) and the Merced Regional Airport. Bicycle parking would be provided as required by the California Green Code, and reviewed during the Building Permit stage.

Public Improvements/City Services

- E) Water

There is a water line in Q Street along the frontage of the subject sites. The City's water supply would be sufficient to serve the proposed project. Each lot shall have water lateral connections from Q Street.

Sewer

The Merced Waste Water Treatment Plant (WWTP) recently finished two major upgrades (Phase IV and Phase V) to improve the quality of the treated water, referred to as plant effluent, and to improve the quality of biosolids and methods of treatment. The Merced Wastewater Treatment Plant is now one of the most advanced facilities in the state. It is capable of treating up to 12 million gallons of influent a day. The proposed project is estimated to generate approximately 1,280 - 1,600 gallons of wastewater per day (based on 80-100 gallons/day per residential unit). The additional wastewater generated by the project would be approximately 0.0133% of the overall capacity of the WWTP.

There is sufficient capacity at the WWTP, and the existing lines along the back portion of the properties (western portion) have enough capacity to accommodate the additional wastewater and transmit it to the WWTP for processing. Each lot shall have sewer lateral connections from the western portion of the property.

Public Improvements

The Engineering Department may require the applicant to make additional public improvements during the building permit stage (such as repairing damaged sidewalks), per for projects exceeding valuation of \$100,000.00.

Building Design

- F) There would be a single-family home on each lot, for a total of 16 units within the subject sites (Attachment D of Planning Commission Staff Report #21-918). The specific details of the homes, such as floor plans and elevations are shown at Attachments E and F of Planning Commission Staff Report #21-918. However, the proposal shall comply with Merced Municipal Code Section 20.46.020 - General Design Standards for Single-Family Dwellings, required for single-family residential homes in any Zoning district within the City. The applicant currently has no plans to add any accessory dwelling units (ADU's) in addition to the 16 units, however, ADU's are allowed in single-family developments per current codes.

Site Design

- G) The project site consists of 4 rows (each row having 4 homes) aligned perpendicular along Q Street. Each row of homes would be separated in the middle by a 6-foot-gap. Even though the parcels would remain independent, there would be some common space between the parcels. The homes would be located on the western portion of the subject site, and the parking and access would be located along the eastern portions of the subject sites - closer to Q Street. There would be one 26-foot-wide driveway located along Q Street. The parking area is located immediately behind the driveway and consists of 31 parking stalls and two sets of trash enclosures along eastern and western portions of the parking lot. Two walkways would create a pedestrian path between the parking lot and entrances to each residential unit. Each parcel would have a back yard that is at least 10 feet deep.

Landscaping

- H) Landscaping and irrigation shall be required to meet the City's Water Efficient Landscape Ordinance.

Neighborhood Impact/Interface

- I) The subject site is located within an older portion of the City that was generally developed between the 1900's and the 1950's. As such, there are a variety of properties that were developed prior to adoption of development standards or unified local codes. This has resulted in a neighborhood containing a variety of parcel shapes/sizes, and buildings that are unique in their development with many properties having secondary or multiple dwelling units on one parcel. Even though the majority of these parcels are zoned for single-family homes, there are several parcels within a 1,000-foot-radius that have two, three, or more units that are considered legal non-conforming. In addition, 190 feet north of the subject sites, there is a small area zoned Medium Density Residential with a similar concept to what is being proposed by the applicant (multiple independent lots with cross-access and parking agreements). Given the context of the surrounding multifamily units within legal non-conforming lots, and nearby Medium Density Residential Zone, staff is of the opinion that the proposed multifamily project is compatible with the character of the neighborhood.

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Environmental Clearance

- J) The Planning staff has conducted an environmental review (#21-39) of the project in accordance with the requirements of the California Environmental Quality Act (CEQA), and a CEQA Section 15162 Findings is being recommended (see Attachment J of Planning Commission Staff Report #21-918).



Subject Site from Current Low-Density Residential (R-1-6) to Medium-Density Residential (R-3-1.5) with Urban Overlay (UR)

General Plan Amendment from Low Density Residential (LD)
to High-Medium Density Residential (HMD)

