

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN JOSE REPEALING SECTION 14.30.035 OF CHAPTER 14.30 OF TITLE 14 OF THE SAN JOSE MUNICIPAL CODE TO ACKNOWLEDGE THE APPLICATION OF THE US-101/OAKLAND/MABURY TRAFFIC IMPACT FEE TO THE FLEA MARKET SOUTH DEVELOPMENT

WHEREAS, the property commonly known as “the Flea Market Site” is situated on approximately 120 gross acres comprising property located on the north side (“Flea Market North”) and south side (“Flea Market South”) of Berryessa Road, between the Union Pacific Railroad Right-of-Way to the East and Coyote Creek to the West, North of Mabury Road (1590 Berryessa Road) (collectively, “Flea Market Site”); and

WHEREAS, on August 14, 2007, the City Council certified the Final Environmental Impact Report for the General Plan Amendment, rezoning, and development of the Flea Market Site in Resolution No. 73956 under File No. PDC03-108 (“Flea Market EIR”), and adopted a General Plan Amendment and Planned Development Rezoning to allow up to 2,818 residential units, 365,622 square feet of retail commercial, office, or industrial use (“Flea Market Site Approvals”); and

WHEREAS, the Flea Market Site Approvals included, among other required improvements, the developer’s obligation to construct specified improvements to the US-101/Oakland Road interchange at its sole cost (“Traffic Mitigation Improvements”); and

WHEREAS, in December 2007, the City Council took a series of actions that established the US-101/Oakland/Mabury Traffic Impact Fee (“TIF”): (1) adopted the US-101/Oakland/Mabury Transportation Development Policy through Resolution No. 74195 (“Policy”); (2) certified the Final Environmental Impact Report for the King & Dobbin Transit Village and the Policy in Resolution No. 74195.1; and (3) adopted San José

Municipal Code Chapter 14.30 to impose the TIF for new industrial, commercial and residential development within the proximity of the US-101/Oakland Road and US-101/Mabury Road interchanges; and

WHEREAS, the Flea Market Site Approvals pre-dated and therefore were not included in the July 7, 2007 US-101/Oakland/Mabury Road Interchanges Traffic Impact Fee Analysis that provides the basis for imposing the TIF; and

WHEREAS, on October 20, 2009, the City Council approved an addendum to the Flea Market EIR and adopted a Planned Development Zoning to allow 1,913-2,818 residential units at a specified minimum density, 100,000-365,622 square feet of commercial/industrial, public park/open space and schools on the Flea Market Site through Ordinance No. 28657; and

WHEREAS, on October 20, 2009, the City Council also adopted an amendment to the Policy to include the Flea Market Site traffic mitigation measures in the Policy whereby the Flea Market developer, instead of constructing the Traffic Mitigation Improvements, would make incremental payments to the City in an amount equal to the estimated future construction cost of the improvements (“Traffic Mitigation Payments”); and

WHEREAS, on June 16, 2015, the City Council adopted Ordinance No. 29579 amending Chapter 14.30 of the San José Municipal Code to, among other things, add Section 14.30.035 clarifying that the Flea Market Site as approved in the Flea Market Approvals was required to pay the Traffic Mitigation Payments but was not subject to the TIF; and

WHEREAS, pursuant to the Policy, the developer has paid approximately \$11.4 million (in 2008 dollars) of the \$16 million (in 2008 dollars) required Traffic Mitigation

Payments, which payments satisfy the Flea Market Site's Traffic Mitigation Payment obligation for Flea Market North; and

WHEREAS, on January 18, 2018, the Flea Market developer filed an application with the City for the rezoning of the Flea Market South site requesting approval for up to 3,450 residential units and up to 3.4 million square feet for commercial uses; and

WHEREAS, on April 27, 2021, City Council certified the Final Environmental Impact Report for the General Plan Amendment, rezoning, and development of the Flea Market South site in Resolution No. _____ under File No. PDC17-051 ("Flea Market South EIR"), and adopted a General Plan Amendment and Planned Development Rezoning to allow up to 3,450 residential units, 3,400,000 square feet of commercial use, and approximately 13.1 acres of public park/open space on the 61.5 acre Flea Market South site ("Flea Market South Approvals"); and

WHEREAS, the Flea Market South Approvals supersede the Flea Market Approvals with respect to the Flea Market South site, including the Traffic Mitigation Improvements and Traffic Mitigation Payments, and instead require the Flea Market South developer to pay the TIF as mitigation for the Flea Market South project's traffic impacts; and

WHEREAS, the Flea Market South project is new residential and commercial development and, consistent with the Flea Market South Approvals, requires payment of the TIF in accordance with the Policy and Chapter 14.30 of the San José Municipal Code;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

Section 14.30.035 of Chapter 14.30 of Title 14 of the San José Municipal Code is hereby repealed.

14.30.035 Flea Market Site

~~The site commonly referred to as the "Flea Market Site" is situated on approximately 120 gross acres on both sides of Berryessa Road, between the Union Pacific Railroad Right-of-Way to the East and Coyote Creek to the West, North of Mabury Road (1590 Berryessa Road), as more specifically depicted in the US-101/Oakland/Mabury Transportation Development Policy. Because the Flea Market Site was not included in the US-101/Oakland/Mabury Impact Fee Analysis, the Flea Market Site is not subject to the Traffic Impact Fee established in this Chapter. Rather, the developer of the Flea Market Site shall mitigate the traffic impacts of its development in accordance with the US-101/Oakland/Mabury Transportation Development Policy and the Flea Market Final Environmental Impact Report certified in Resolution No. 73956 under File No. PDC03-108 ("Flea Market EIR") and addenda thereto, and the approved General Plan Amendment and Planned Development Rezoning for the Flea Market Site, and amendments thereto.~~

PASSED FOR PUBLICATION of title this _____ day of _____, 2021, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk