

ORDINANCE NO. 2023-_____

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MENIFEE,
CALIFORNIA, FINDING THAT PROPOSED DEVELOPMENT CODE
AMENDMENT NO. LR 22-0130 IS EXEMPT FROM ENVIRONMENTAL
REVIEW AND ADOPTING PROPOSED DEVELOPMENT CODE
AMENDMENT NO. LR 22-0130 TO AMEND THE MENIFEE MUNICIPAL
CODE AND MENIFEE NORTH SPECIFIC PLAN NO. 260 ZONING
ORDINANCE RELATING TO BATTERY ENERGY STORAGE SYSTEM**

WHEREAS, prior to adoption of Development Code Amendment No. LR 22-0130, provisions of the City of Menifee Municipal Code did not address battery energy storage facilities; and

WHEREAS, on October 6, 2021, the City Council of the City of Menifee adopted an urgency Ordinance imposing a 45-day moratorium on utility-scale battery storage uses with later options to extend the moratorium for a total period of up to two years; and

WHEREAS, on November 17, 2021, the City Council of the City of Menifee adopted an Ordinance extending the moratorium on utility-scale battery storage for a period of 10 months and 15 days; and

WHEREAS, City staff met the Southern California Edison and stakeholders to obtain feedback regarding development standards; and

WHEREAS, on June 2, 2022, the Riverside County Airport Land Use Commission (ALUC) found Development Code Amendment No. LR 22-0130 (Development Code Amendment, attached hereto as Exhibit "A") consistent with the 2014 March Air Reserve Base/Inland Port Airport Land Use Compatibility Plan and the 2010/2011 Perris Valley Airport Land Use Compatibility Plan; and

WHEREAS, Development Code Amendment LR 22-0130, as adopted by City of Menifee City Council on October 5, 2022, consisted of four main code amendments to the Menifee Municipal Code: update to Title 9, Article 3 ("Zones"), Section 9.135.030 ("Allowed Uses and Approval Requirements"), Article 5 ("Special Use Standards"), Chapter 9.300 ("Energy Storage Facilities"), and Article 6 ("Definitions"), and an amendment to zoning text of the Menifee North Specific Plan No. 260 to include Battery Energy Storage as an allowable use subject to the above-referenced Chapter 9.300; and

WHEREAS, Development Code Amendment LR 22-0130, as adopted by City of Menifee City Council on October 5, 2022, amended zoning text of the Menifee North Specific Plan No. 260, Amendment No. 3 by modifying the allowable uses within Planning Areas 2 and 3 to allow for Battery Energy Storage Systems, subject to the above-referenced Chapter 9.300; and

WHEREAS, on June 8, 2022, the Planning Commission held a duly noticed public hearing on the Development Code Amendment, considered all public testimony as well as all materials in the staff report and accompanying documents for the Development Code Amendment, which hearing was publicly noticed by a publication in the newspaper of general circulation, and an agenda posting; and

WHEREAS, at the June 8, 2022 Planning Commission public hearing, based upon all materials and testimony considered, the Planning Commission voted 3-0-2 to adopt Resolution No. PC 22-562 recommending that the City Council find the Ordinance exempt from environmental review under the California Environmental Quality Act and adopt the Ordinance; and

WHEREAS, the City Council considered the requirements of the California Environmental Quality Act (CEQA) (Public Resources Code Section 21000 et. seq.) regarding the possible impacts that the Development Code Amendment may have upon the environment; and

WHEREAS, on July 20, 2022, the City Council continued the public hearing for LR 22-0130 to August 17, 2022; and

WHEREAS, on August 17, 2022, the City Council continued the public hearing for LR 22-0130 to September 21, 2022; and

WHEREAS, on September 21, 2022, the City Council held a duly noticed public hearing concerning the Ordinance to approve the Development Code Amendment, and voted 4-0-1 to introduce and conduct a first reading of the Ordinance, and considered testimony and evidence at the Public Hearing held with respect thereto; and

WHEREAS, on October 5, 2022, the City Council conducted a second reading and approved and adopted Ordinance No. 2022-356; and

WHEREAS, the Chapter numbering listed within the Ordinance adopted on October 5, 2022 was previously occupied by an existing Chapter of the City of Menifee Development Code (i.e., Chapter 9.300, "Universal Definitions"); and

WHEREAS, on March 15, 2023, the City Council held a duly noticed public hearing concerning the Ordinance to approve the Development Code Amendment to rectify the numbering conflict and to assign a new Chapter number to the previously approved Development Code Amendment No. LR 22-0130.

WHEREAS, on April 5, 2023, the City Council conducted a second reading of the Ordinance to approve the Development Code Amendment.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MENIFEE DOES ORDAIN AS FOLLOWS:

Section 1: *The proposed zone or amendments to this Title is consistent with the intent of the goals and policies of the General Plan.*

Consistency with General Plan

The proposed modification to Development Code Amendment No. LR 22-0130 includes only an editorial change which would rectify the above-described numbering conflict and would assign Chapter 9.297 in all cases where it had previously listed Chapter 9.300. Therefore, this modification would not conflict with the goals or policies of the General Plan.

Section 2: *The proposed zone or amendments to this Title (the Zoning and Development Code) prescribes reasonable controls and standards to ensure compatibility with other established uses.*

Development Code Amendment LR 22-0130 will help provide more cohesive design standards for the existing built environment. These standards will ensure that there will be a smooth and buffered transition between existing and future land uses. The development standards will continue to promote the strategic and controlled growth.

Section 3: *The proposed zone or amendments to this Title provides reasonable property development rights while protecting environmentally sensitive land uses and species.*

The currently proposed modifications to Development Code Amendment LR 22-0130 will make only editorial modifications to the existing Development Code. The reasonable property development rights of landowners will not be impacted. Development Code Amendment LR 22-0130 is intended to preserve the character of the city while creating a framework for thoughtful and compatible growth.

Section 4: *The proposed zone or amendments to this Title ensures protection of the general health, safety and welfare of the community.*

Development Code Amendment LR 22-0130 will not result in conditions detrimental to the public health, safety, or general welfare as designed and conditioned. The proposed approval is not a project and will not construct a development. The Development Code Amendment has been reviewed by a variety of Departments to ensure compliance with applicable regulations, including City of Menifee Building and Safety and Riverside County Fire Department, as well as Southern California Edison and stakeholder, including potential developers of battery energy storage system projects.

Therefore, the modification would not create conditions materially detrimental to the public health, safety and general welfare or injurious to or incompatible with other properties or land uses in the impacted vicinity.

Section 5: *Compliance with California Environmental Quality Act (CEQA). Processing and approval of the Development Code Amendment is in compliance with the requirements of CEQA.*

The adoption of the Development Code Amendment does not fall within the definition of a “project” under CEQA because, as an editorial change to the Municipal Code, it does not have the potential to result in a direct or indirect physical change in the environment (CEQA Guidelines 15378(a)) and is an administrative activity of the City that will not result in direct or indirect physical changes in the environment (CEQA Guidelines 15378(b)(5)). In addition, the adoption of the Development Code Amendment is exempt from CEQA, because there is no possibility that the proposed ordinance, as a textural change to the Municipal Code, may have a significant impact on the physical environment (CEQA Guidelines 15061) and because, per Section 15061(b)(3), it can be seen with

certainty to have no possibility of a significant effect upon the environment.

Section 6: Adoption. The Development Code Amendment, as set forth on Exhibit “A” hereto, is hereby approved and adopted. Exhibit “A” shows the changes to existing Development Code with red text indicate the additions.

Section 7: Notice of Adoption. The City Clerk shall certify to the passage and adoption of this Ordinance, and shall cause the same to be published within fifteen (15) days after passage in accordance with law, and shall cause this Ordinance and its certification, together with proof of publication, to be entered in the Book of Ordinances of the City of Menifee.

Section 7: Effective Date. This Ordinance shall take effect and be in full force and operation thirty (30) days after its adoption.

Section 8: Severability. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance is (including without limitation the provisions of the Development Code Amendment set forth in Exhibit “A”), for any reason, held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance, and each section, subsection subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

THIS ORDINANCE WAS INTRODUCED AND READ ON THE 15TH DAY OF MARCH, 2023 AND APPROVED AND ADOPTED THIS 5TH DAY OF APRIL, 2023.

Bill Zimmerman, Mayor

Attest:

Kay Vinson, Acting City Clerk

Approved as to form:

Jeffrey T. Melching, City Attorney