

ORDINANCE NO. 3377-C.S.

AN ORDINANCE AMENDING SECTIONS 5-6.301 AND 5-6.303 OF ARTICLE 3 OF CHAPTER 6 OF TITLE 5 OF THE MODESTO MUNICIPAL CODE RELATING TO CONNECTION TO SEWAGE SYSTEM.

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

SECTION 1. AMENDMENT OF CODE. Sections 5-6.301 and 5-6.303 of Article 3 of Chapter 6 of Title 5 of the Modesto Municipal Code are hereby amended to read as follows:

5-6.301. CONNECTION TO SEWAGE SYSTEM REQUIRED.

Every building or structure in the Sewer District in which plumbing fixtures are installed shall be connected to the sewerage system where a sewer lateral is available within the time period provided for in Section 5-6.302. This requirement shall apply to any building or structure existing on July 1, 1967, as well as any building or structure thereafter constructed.

A sewer lateral is immediately available for the purpose of this section when such a sewer lateral is located within one hundred (100) feet from the property line of any lot which can be served by such sewer lateral. A sewer lateral is available to new development when such a sewer lateral is located within one hundred (100) feet of the property line of any lot connecting to the sewage system.

5-6.303. CONNECTION TO SEWAGE SYSTEM—UPON ANNEXATION—WHEN REQUIRED.

- (a) Buildings or structures connected to septic tanks in territory annexed to the Sewer District after July 1, 1967, for which sewer service is immediately available, as defined in Section 5-6.301, shall pay appropriate sewer service charges commencing five (5) years after such annexation, unless the buildings or structures are earlier connected to a sewer lateral. In the latter event, sewer charges shall commence upon connection.
- (b) Buildings or structures must be connected to a sewer lateral when they are sold or ownership is otherwise transferred at any time after annexation to the Sewer District.

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 25th day of January, 2005, by Councilmember Jackman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Keating, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Dunbar, Hawn, Jackman, Keating, Marsh, O'Bryant, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: _____



JIM RIDENOUR, Mayor

ATTEST:

By Jean Zahr
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By Michael D. Milich
MICHAEL D. MILICH, City Attorney

Ord. No. 3377-C.S.

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 1st day of February, 2005, Councilmember Jackman, moved its final adoption, which motion being duly seconded by Councilmember Keating, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Dunbar, Hawn, Jackman, Keating, Marsh, O'Bryant,
Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: 
MAYOR JIM RIDENOUR

ATTEST: 
JEAN ZAHR, City Clerk

Effective Date: March 3, 2005

**CITY OF MODESTO
ORDINANCE NO. 3378-C.S.**

**AN ORDINANCE AMENDING SECTIONS 3-1.106, 3-1.125 AND 3-1.126
OF ARTICLE 1 OF CHAPTER 1 OF TITLE 3 OF THE MODESTO
MUNICIPAL CODE RELATING TO THE FIRE CODE AND ADDING
SECTION 3-1.128.1 TO ARTICLE 1 OF CHAPTER 1 OF TITLE 3 OF
THE MODESTO MUNICIPAL CODE RELATING TO POSSESSION,
SALE, USE OR DISCHARGE OF DANGEROUS FIREWORKS.**

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

SECTION 1. AMENDMENT OF CODE. Sections 3-1.106, 3-1.125 and 3-1.126 of Article 1 of Chapter 1 of Title 3 of the Modesto Municipal Code are hereby amended to read as follows:

3-1.106. ADMINISTRATIVE PENALTIES.

In addition to any other remedies set forth in this chapter, administrative penalties may be imposed against any person, as defined in Section 1-6.207 of this Code, for violating any of the requirements set forth in this chapter. Any administrative penalties assessed shall be as follows:

- (a) For violations of Section 3-1.128.1, possession, sale, use or discharge of dangerous fireworks, the administrative penalty shall be five hundred dollars (\$500) for each specific act found to be in violation of that section.
- (b) For all violations of this chapter, other than Section 3-1.128.1, possession, sale, use or discharge of dangerous fireworks, the amount of the administrative penalty shall be one hundred dollars (\$100.00) for the first violation, two hundred dollars (\$200.00) for a second violation within any twelve (12) month period, and five hundred dollars (\$500.00) for any subsequent violations within any twelve (12) month period.

3-1.125. SALES OF FIREWORKS.

Subsection 3 is added to Section 7801.3 of the 2000 Uniform Fire Code:

- 3. Sales. It shall be unlawful to engage in the sale of "Safe and Sane" fireworks in the City of Modesto without first having secured a permit to do so.
 - (1) Effective with 2005, the total number of sales permits issued in any given year shall be limited to seventy (70). If the number of permits exceed seventy (70) at the time of this ordinance the reduction will be accomplished through

attrition. Therefore, any permit in excess of seventy (70) that is not renewed or lost for cause, or for any other reason shall not be reissued.

- (2) Sales permits for the sale of "Safe and Sane" fireworks in the City of Modesto shall be issued only to local nonprofit organizations and existing local for-profit organizations as defined herein.
 - (A) A "nonprofit organization" shall mean any nonprofit association, club, or corporation organized for veteran, patriotic, welfare, religious, civic betterment, youth or charitable purposes, as defined by Section 501(c) of the Internal Revenue Code of the United States, or affiliated with a public school located within the city limits of Modesto. Each new organization shall provide the City with a copy of their "Letters of Incorporation" as proof of their nonprofit status. Existing organizations shall submit verification of current corporation status from the State of California Secretary of State's Office. Those organizations that are an integral part of a recognized national organization having tax exempt status must provide IRS written verification of such status. All applications will be subject to additional verification with the State of California and IRS if nonprofit status comes into question.
 - (B) Public school organizations shall provide current written verification of affiliation from the school each year.
 - (C) A "local nonprofit organization" must have its principal and permanent meeting place in the City of Modesto. The organization must have obtained nonprofit status and have been organized and established in the City of Modesto for a minimum of one (1) continuous year preceding the filing of the application for permit. The organization must also have a bona fide membership of at least ten (10) members who reside in the City of Modesto, which will be verified each year. Applications shall be signed by two (2) bona fide officers of the eligible organization, wherein the officer, on behalf of the organization and its agents, agrees to abide by State laws, administrative regulations, and all stipulations of this Code and the permit if

permission to operate a fireworks stand is granted to the organization.

- (D) An "existing local for-profit organization" must have a permitted fixed business location in the City of Modesto, have been issued a fireworks sales permit the previous year, have remained under the same management and/or ownership continuously since 1999, and have paid all business license and mill tax fees due the City of Modesto by the close of the application period. In the event mill taxes and business license fees are not current the organization's application will be denied.
 - (E) If any of the above items fail to be met at the time of application, the organization's application shall be denied.
- (3) Sales permits for retail sales of "Safe and Sane" fireworks in the City of Modesto issued pursuant to provision of this Code are not transferable by the holder of the permit. The sales permits may be used only by the organization to which they are issued. Violations will result in the immediate loss of the organization's sales permit.
 - (4) All applications for sales permits shall be in writing to the Fire Chief on forms supplied by the City. Applications may only be filed during normal business hours from April 1st of each year up to and including April 30th of the same year, at which time the filing period for that year will close. A separate sales permit shall be required for each proposed location of a fireworks stand.

Each organization may file an application for one (1) sales permit for which there is only one tax ID number.

- (5) Applications shall set forth the proposed location of the fireworks stand including the nine (9) digit parcel number (APN) of the Stanislaus County Assessor, a site map, and other information as may be required by the Fire Chief.
- (6) Applicants for sales permits shall be notified by June 15th of each year by the Fire Chief of approval or disapproval of such application. Sales permits will be issued after final inspection of the stand reveals compliance with all state and local regulations. Organizations shall not open for sales prior to the final inspection of their stand. If an

organization's stand fails to pass inspection there will be a re-inspection fee charged for the third (3rd) inspection, and each inspection thereafter until final inspection is approved, as established by Resolution No. 03-446.

- (7) Every application shall be accompanied by proof of insurance as specified in Section 3-1.128. Other items required at the time of application will be the organization's verification of eligibility as stated in 2(A) above, list of bona fide members, and current written permission signed by the property owner of record (with respect to lessee permission, approval shall be in the sole discretion of the Fire Chief) to sell fireworks at that location. Organizations representing public schools, as stated in 2(B) above, require written verification from the school of their affiliation.
- (8) Every application shall be accompanied by a nonrefundable application fee as established by resolution of the City Council from time to time. This application fee shall be in addition to any fees or taxes imposed by Title 6 of this Code.
- (9) Any local nonprofit organization as defined herein may make application for a sale permit but pre-approved (continuously permitted since 1999) organizations will have first option for a permit.
 - (A) When additional sales permits are authorized and all current pre-approved organizations have applied for such permits, a lottery will be held to fill any vacancies.
 - (B) This lottery will be held fourteen (14) days after the last day of the filing period specified in paragraph 4 and will include the names of all new local nonprofit organizations that have filed a complete application within the said filing period. If the fourteenth (14th) day falls on a weekend the lottery will be held on the next business day.
 - (C) One organization will be drawn for each available vacancy. If the organization whose name is drawn declines the permit, another name will be drawn until each vacancy is filled.

- (D) Any organization having an approved application that fails to open their stand for that sales year will automatically forfeit their permit and a new organization will be chosen the following year provided a permit is available.
- (10) A nonprofit organization may apply for a sales permit with regard to a stand located in an area annexed by the City of Modesto under the following conditions:
- (A) Two (2) consecutive years prior to annexation, the applicant was issued a sales permit, by the City or County in which the property was formerly located, and applicant presents proof of the issuance of said permits;
 - (1) The applicant has received a valid City of Modesto business license; and
 - (2) The organization must either
 - a) Meet the criteria of set forth in Section 3-1.125(2)(A) or
 - b) Present documentary evidence establishing its primary meeting for a minimum of two (2) years preceding application to City of Modesto was at the location for which the sales permit is currently sought.
 - (B) Annexed property that was previously used for a temporary booth by an organization whose current primary meeting place is outside the City limits of Modesto is not eligible to make application for a sales permit.

Permits issued to these organizations will be issued without the necessity of being selected by lottery, even though such issuance may increase the number of permits to more than allowed herein. The addition of these organizations does not change the original intent to issue a total of seventy (70) sales permits per year.

3-1.126. SALES, STORAGE, USE, AND HANDLING OF FIREWORKS.

Section 7802.1 of the 2000 Uniform Fire Code is hereby amended to read as follows:

General. Sales, storage, use, and handling of fireworks shall be in accordance with this division.

1. **Sales.** Retail sale or display with the intent to sell fireworks is limited to State of California Fire Marshal approved and labeled "Safe and Sane" fireworks within the City of Modesto by State of California licensed retailers, provided a permit to sell those fireworks has been approved and obtained from the Chief. Fireworks may be sold or offered for sale from 12:00 noon to 10:00 p.m. on June 28, 9:00 a.m. to 10:00 p.m. on June 29 through July 5, and 9:00 a.m. to 12:00 noon on July 6.

The storage of fireworks within the City of Modesto is limited to State of California Fire Marshal-approved and labeled "Safe and Sane" fireworks by State of California licensed wholesalers and retailers.

- (1) **Wholesale Storage.** Wholesalers may store "Safe and Sane" fireworks within the City of Modesto solely during the period of June 1 through July 31 of each year. Storage facilities shall comply with H1 occupancy classification requirements as defined by the Uniform Building Code.
- (2) **Retailers Storage.** Retailers may store "Safe and Sane" fireworks within the City of Modesto solely during the period of June 22 through July 15 of each year. "Safe and Sane" fireworks that are not being sold or displayed with the intent to sell, shall be stored solely in the following manner:
 - (A) Within the permitted fireworks stand with a responsible adult on the premises at all times.
 - (B) In a completely enclosed and locked utility type trailer constructed of one-fourth (1/4) inch plywood or other approved noncombustible material.
 - (C) In a completely detached garage on residential property with a minimum ten (10) feet clearance from other structures or property lines. There shall be no open-flame or spark producing equipment, or Class 1 flammable liquids stored or used within in the garage.

(D) Fireworks shall not be stored within forty (40) feet of any building classified or used as a public or private school, day care facility, residential care facility, hospital, place of detention, public oil/gas station, or public garage, or any place of public assembly that can accommodate fifty (50) or more persons.

(E) In an approved and permitted fireworks warehouse.

3. **Operator Safety.** Each year, one (1) or more representatives from each organization, that is granted a permit to sell fireworks, shall attend a stand operator safety seminar conducted by the Fire Department and the fireworks industry. Failure to attend the seminar shall result in the revocation of the organization's permit to sell fireworks for that calendar year.

4. **Temporary Fireworks Stands.**

(1) All retail sales of "Safe and Sane" fireworks shall be permitted only from within a temporary fireworks stand and sales from any other building or structure is hereby prohibited.

(2) City Business License, Fire Department Permit and State License shall be displayed in the fireworks stand during hours of operation.

(3) Temporary fireworks stand shall not be set up before application for permit has been approved nor earlier than June 14.

(4) The fireworks stands shall be located at least twenty (20) feet from other structures.

(5) Zoning of property, in which the fireworks stand will be located, shall be in accordance with Section 10-2.2330.

(6) Fireworks shall not be stored, sold, offered for sale, or discharged within one hundred (100) feet of a location where gasoline, LPG, other class 1 flammable liquids or flammable gasses are stored or dispensed.

(7) All unsold stock and accompanying litter shall be removed from the location by 5:00 p.m. on the 6th day of July.

- (8) The fireworks stand shall be removed from the temporary location by 12:00 noon on the 12th day of July, and all accompanying litter shall be cleared from said location by said time and date.
- (9) A penalty of one hundred dollars (\$100.00) per day will be assessed to the permittee of any fireworks stand not removed by 12:00 noon on the 12th day of July.

5. **Safety Precautions.**

- (1) No person under the age of eighteen (18) shall sell, or handle for sale, any classification of fireworks.
- (2) No person under the age of eighteen (18) shall purchase or be allowed to purchase any classification of fireworks.
- (3) Smoking, open-flame, and spark-producing equipment shall be prohibited for a distance of twenty (20) feet around any fireworks stand.
- (4) Dry grass, weeds, trash, and other combustible material shall be removed for a distance of twenty (20) feet around any fireworks stand.
- (5) Fireworks shall not be discharged within fifty (50) feet of a fireworks stand.

6. **Stand Construction.**

- (1) Merchandise may be displayed in approved glass enclosed counters or showcases, or
- (2) Merchandise may be displayed in stands constructed in the following manner:
 - (A) Walls and roof shall be of plywood at least one-fourth (1/4) inches thick or of an approved noncombustible material.
 - (B) The stand shall be provided with a roof.
 - (C) Walls shall extend to a minimum height of six (6) feet eight (8) inches, on at least three (3) sides. These three (3) sides shall be without openings, except for an exit door.

- (D) An exit door with a minimum size of twenty-four (24) inches in width and six (6) feet in height, shall be provided in each stand. Exits shall be maintained clear and unobstructed at all times.
- (E) The front wall of the stand shall provide a physical barrier not less than eighteen (18) inches in height between the public and the merchandise on display.
- (F) Approved "NO SMOKING" signs shall be prominently displayed in and on the stand.
- (G) Approved "NO SALES TO PERSONS UNDER THE AGE OF 18" signs shall be prominently displayed in the stand.
- (H) An approved fire extinguisher having a minimum U.L. classification of 2A shall be located in the stand, near the exit and readily accessible.
- (I) Sellers of fireworks shall comply with all rules and regulations of Title 19 of the California Code of Regulations and with the rules and regulations of the Chief.
- (J) Stands will be limited to twenty-four (24) feet by eight (8) feet or one hundred ninety-two (192) square feet in size. Pre-existing stands as identified by the fireworks suppliers shall retain the right to operate their oversized stands, without change, until said stand or organization forfeits or loses their operating permit. A copy of said list shall remain on file with the Fire Chief.

7. Operation of Fireworks Stand Only by Permittee.

- (1) It is unlawful for the permittee organization to allow any person or entity other than the permittee organization to operate the fireworks stand for which the permit is issued, whether by agreement, assignment or otherwise, or to otherwise participate in the profits of the operation of such fireworks stand. Violations will result in the immediate loss of the organization's permit

- (2) It is unlawful for a non-profit organization to allow any person other than the individuals who are members of the permittee organization, their spouses or adult children, or volunteers to whom no compensation is paid, to sell or otherwise participate in the sale of fireworks at such fireworks stand.
- (3) It is unlawful for a non-profit organization to pay any consideration to any person for selling or otherwise participating in the sale of fireworks at such fireworks stand, except the hiring of a night watchman or security officer.

SECTION 2. AMENDMENT OF CODE. Section 3-1.128.1 is hereby added to Article 1 of Chapter 1 of Title 3 of the Modesto Municipal Code to read as follows:

3-1.128.1. POSSESSION, SALE, USE OR DISCHARGE OF DANGEROUS FIREWORKS.

- (a) For purposes of this section, dangerous fireworks are those fireworks specified as such in the State Fireworks Law, Section 12505 of the California Health and Safety Code, and such other fireworks as may be determined to be dangerous by the State Fire Marshal.
- (b) It shall be unlawful for any person to possess, sale use or discharge dangerous fireworks, or a dangerous firework kit, unless a permit authorizing such possession, sale, use or discharge has been issued by the Modesto Fire Chief to the person, as is defined in Section 1-6.207 of this Code, using, selling, discharging or found in possession of said fireworks or kits, and unless such person is in possession of a valid pyrotechnic operator's license issued by the Office of the State Fire Marshal. The Fire Chief may establish reasonable rules and regulations for governing issuance of a firework permit and may issue the same subject to payment of a fee as established by the City Council from time to time.
- (c) The Fire Chief, or designee, shall seize, take, remove or cause to be removed, at the expense of the owner, all stocks of dangerous fireworks offered or exposed for sale, stored, or held in violation of this chapter.

SECTION 3. 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 4. 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 8th day of March, 2005, by Councilmember Hawn, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Dunbar, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Dunbar, Hawn, Jackman, Keating, Marsh, O'Bryant

NOES: Councilmembers: None

ABSENT: Councilmembers: Mayor Ridenour

APPROVED: 

JIM RIDENOUR, Mayor

ATTEST:

By 
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By 
MICHAEL D. MILICH, City Attorney

Ord. No. 3378-C.S.

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 22nd day of March, 2005, Councilmember Dunbar, moved its final adoption, which motion being duly seconded by Councilmember Hawn, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Dunbar, Hawn, Jackman, Keating, O'Bryant

NOES: Councilmembers: None

ABSENT: Councilmembers: Marsh, Mayor Ridenour

APPROVED:



MAYOR JIM RIDENOUR

ATTEST:



JEAN ZAHR City Clerk

Effective Date: April 21, 2005

**CITY OF MODESTO
ORDINANCE NO. 3379-C.S.**

**AN ORDINANCE AMENDING SECTION 31-3-9 OF THE ZONING MAP TO
REZONE FROM LOW DENSITY RESIDENTIAL ZONE, R-1, TO PLANNED
DEVELOPMENT ZONE, P-D(571), PROPERTY LOCATED ON THE SOUTH
SIDE OF MAZE BOULEVARD EAST OF CARPENTER ROAD. (ST.
STANISLAUS CATHOLIC CHURCH)**

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

SECTION 1. ZONING CHANGE. Section 31-3-9 of the Zoning Map is hereby amended to reclassify the following described property from Low Density Residential Zone, R-1, to Planned Development Zone, P-D(571):

R-1 to P-D(571)

All that certain parcel of land being a part of Lots 26 and 27 of the Maze Ranch Subdivision, as shown on the map thereof filed March 19, 1909 in Volume 4 of Maps, at Page 18, Stanislaus County Records, located in the Northwest quarter of Section 31, Township 3 South, Range 8 East, Mount Diablo Base and Meridian, County of Stanislaus, State of California, being more particularly described as follows:

COMMENCING at a brass plate set in concrete that monuments the Northwest corner of said section 31; thence South 89°46'38" East along the section line between sections 30 and 31, said section line being the center line of Maze Boulevard, a distance of 1020.62 feet to THE POINT OF BEGINNING; thence continue along said section line South 89°46'38" East 1039.16 feet; thence leaving the said section line and center line of Maze Boulevard South 0°50'50" East a distance of 699.26 feet to a point on the north line of Lot 8 of Block 4131 of Willow Estate Unit No. 1 filed for record in Book 20 of Maps, at Page 13, Stanislaus County Records; thence along said north line of said Lot 8 South 88°06'08" West a distance of 20.23 feet to the northwest corner of said Lot 8; thence along the west line of said Lot 8 South 02°35'48" East a distance of 100.00 feet to the southwest corner of said Lot 8 and a point on none tangent curve having a central bearing of North 02°35'47" West and a radius of 975.00 feet and being a point on the north right of way line of Sandburg Avenue as shown on said map of Willow Estate Unit No. 1; thence along said north right of way and curve concave to the northwest having a central angle of 0°37'28" an arc distance of 10.63 feet to the northwest terminus of said Sandburg Avenue and having a central bearing of North 01°58'20" West; thence South 88°30'54" West a distance of

1001.21 feet; thence North 01°51'00" West a distance of 830.59 feet to THE POINT OF BEGINNING.

Containing a gross area of 19.38 acres, more or less.

SECTION 2. USES. The following uses shall be permitted in said P-D(571) Zone, if the plan for construction conforms in principle to the approved plan, or if changes are approved by the Secretary of the Planning Commission as required by Section 10-2.1709(c) of the Modesto Municipal Code, or by the Planning Commission if any changes not conforming in principle to the approved plan are proposed, as required by Section 10-2.1709(a) or (b) of the Modesto Municipal Code:

1. Church and ministries functions and related uses, including social, music, youth and staff functions.

SECTION 3. ZONING MAP. Section Map 31-3-9 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 8th day of March, 2005, by Councilmember Marsh, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Hawn, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Dunbar, Hawn, Jackman, Keating, Marsh, O'Bryant

NOES: Councilmembers: None

ABSENT: Councilmembers: Mayor Ridenour

APPROVED: 
JIM RIDENOUR, Mayor

ATTEST:

By 
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By 
MICHAEL D. MILICH, City Attorney

APPROVED AS TO DESCRIPTION:

By _____
Community & Economic Development
Department, Planning Division

Ord. No. 3379-C.S.

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 22nd day of March, 2005, Councilmember Dunbar, moved its final adoption, which motion being duly seconded by Councilmember Hawn, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Dunbar, Hawn, Jackman, Keating, O'Bryant

NOES: Councilmembers: None

ABSENT: Councilmembers: Marsh, Mayor Ridenour

APPROVED: 

MAYOR JIM RIDENOUR

ATTEST:


JEAN ZAHR, City Clerk

Effective Date: April 21, 2005

**CITY OF MODESTO
ORDINANCE NO. 3380-C.S.**

**AN ORDINANCE APPROVING THE DEVELOPMENT AGREEMENT
BETWEEN THE CITY OF MODESTO AND SHELTER COVE
COMMUNITY CHURCH IN CONJUNCTION WITH DEVELOPMENT
OF THE NORTHEAST CORNER OF COFFEE ROAD AND CLARATINA
AVENUE FOR A 106,415-SQUARE-FOOT CHURCH, SAID
DEVELOPMENT AGREEMENT CONTAINING PROVISIONS
RELATING TO THE OBLIGATION OF THE CHURCH TO
PARTICIPATE IN THE CFD TO BE FORMED FOR THE FUTURE
HETCH HETCHY COMPREHENSIVE PLANNING DISTRICT AND
OTHER PROVISIONS RELATED TO THE PROVISION FOR FUTURE
INFRASTRUCTURE TO THE AREA.**

WHEREAS, Government Code Section 65864, et seq., authorizes the City to enter into binding development agreements with any person or persons having a legal or equitable interest in real property for the development of such property and authorizes the City to establish procedures for the application and consideration of such agreements, and

WHEREAS, by City Council Resolution No. 91-185, adopted on March 26, 1991, the City Council established procedures and requirements for the consideration of development agreements, and by City Council Resolution No. 97-492, adopted on August 26, 1997, the City Council revised said procedures and requirements and superseded Resolution No. 91-185, and

WHEREAS, Shelter Cove Community Church has applied for a Development Agreement in conjunction with the development of the northeast corner of Coffee Road and Claratina Avenue for a 106,415-square-foot church, said Development Agreement containing provisions relating to the obligation of the church to participate in the CFD to be formed for the future Hetch Hetchy Comprehensive Planning District and other provisions related to the provision of future infrastructure to the area, and

WHEREAS, a duly noticed public hearing was held by the Planning Commission of the City of Modesto on January 24, 2005, in the Tenth Street Place Chambers, located at 1010

10th Street, Modesto, California, for the purpose of making a recommendation to the City Council concerning the proposed Development Agreement, at which hearing evidence both oral and documentary was received and considered, and

WHEREAS, after said public hearing, the Modesto City Planning Commission, by Resolution No. 2005-06, adopted on January 24, 2005, recommended to the City Council approval of the proposed Development Agreement between the City of Modesto and Shelter Cove Community Church, and

WHEREAS, said matter was set for a public hearing of the City Council to be held at 5:30 p.m., on March 8, 2005, in the Tenth Street Place Chambers, located at 1010 10th Street, Modesto, California, at which date and time said duly noticed public hearing of the Council was held for the purpose of considering a proposed Development Agreement between the City of Modesto and Shelter Cove Community Church in conjunction with the development of the northeast corner of Coffee Road and Claratina Avenue for a 106,415-square-foot church, said Development Agreement containing provisions relating to the obligation of the church to participate in the CFD to be formed for the future Hetch Hetchy Comprehensive Planning District and other provisions related to the provision of future infrastructure to the area, and

WHEREAS, Section 65867.5 of the Government Code provides that a development agreement is a legislative act which shall be approved by ordinance and is subject to referendum, and

WHEREAS, said Government Code section further provides that a development agreement or any amendment thereto, shall not be approved unless the legislative body finds that the provisions of the agreement are consistent with the general plan and any applicable specific plan,

NOW, THEREFORE, BE IT RESOLVED the Council of the City of Modesto

does ordain as follows:

SECTION 1. FINDINGS. The Council of the City of Modesto hereby finds and determines as follows:

1. The proposed Development Agreement is consistent with the General Plan and the North Beyer Specific Plan of the City of Modesto because a Development Agreement with the provisions contained in the proposed Development Agreement is a requirement of the Specific Plan for this parcel.
2. The proposed Development Agreement is consistent with the specific content and other requirements of City Council Resolution No. 97-492, which established procedures and requirements for the consideration of development agreements, the City's subdivision and zoning provisions of the Modesto Municipal Code, and Government Code Section 65854, et seq.
3. The Project is within the scope of the Mitigated Negative Declaration for the General Plan Amendment, Specific Plan Amendment and Annexation for the Claratina Golf Course and Driving Range Site.
4. No substantial changes are proposed in the project which will require major revisions to the Mitigated Negative Declaration for the General Plan Amendment, Specific Plan Amendment and Annexation for the Claratina Golf Course and Driving Range Site (SCH No. 2002122117).
5. No substantial changes have occurred with respect to the circumstances under which the project is undertaken which will require major revisions of the Mitigated Negative Declaration for the General Plan Amendment, Specific Plan Amendment and Annexation for the Claratina Golf Course and Driving Range Site was adopted, has become available.
6. No new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the Mitigated Negative Declaration for the General Plan Amendment, Specific Plan Amendment and Annexation for the Claratina Golf Course and Driving Range Site was adopted, has become available.
7. The Initial Study, Environmental Assessment No. EA/C&ED 2005-02, provides the substantial evidence to support findings 3-6, noted above.

SECTION 2. APPROVAL OF DEVELOPMENT AGREEMENT. The

Development Agreement between the City of Modesto and Shelter Cove Community Church

3380-C.S.
Effective-April 21, 2005

related to the development of the Shelter Cove Community Church, located in the North Beyer Specific Plan area, is hereby approved. A copy of the Development Agreement is on file in the Office of the City Clerk.

SECTION 3. EXECUTION BY CITY. The Acting City Manager or his authorized designee is hereby authorized to execute said Development Agreement on behalf of the City of Modesto.

SECTION 4. RECORDING OF AGREEMENT. Pursuant to Government Code Section 65868.5, no later than ten (10) days after the City approves said Development Agreement, the City Clerk is hereby directed to record with the County Recorder a copy of the Development Agreement which shall describe the land subject thereto.

SECTION 5. 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 6. 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.

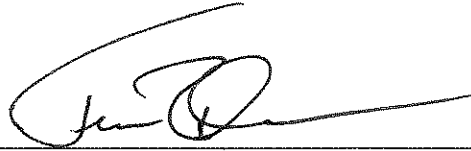
The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 8th day of March, 2005, by Councilmember Hawn, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Marsh, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Dunbar, Hawn, Jackman, Keating, Marsh, O'Bryant

NOES: Councilmembers: None

ABSENT: Councilmembers: Mayor Ridenour

APPROVED: _____



JIM RIDENOUR, Mayor

ATTEST:

By Jean Zahr
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By Mike Milich
MICHAEL D. MILICH, City Attorney

Ord. No. 3380-C.S.

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 22nd day of March, 2005, Councilmember Dunbar, moved its final adoption, which motion being duly seconded by Councilmember Hawn, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Dunbar, Hawn, Jackman, Keating, O'Bryant

NOES: Councilmembers: None

ABSENT: Councilmembers: Marsh, Mayor Ridenour

APPROVED:



MAYOR JIM RIDENOUR

ATTEST:


JEAN ZAHR, City Clerk

Effective Date: April 21, 2005

**CITY OF MODESTO
ORDINANCE NO. 3381-C.S.**

**AN ORDINANCE ADOPTING A PRECISE PLAN FOR AREA NO. 1 OF
THE VILLAGE ONE SPECIFIC PLAN, RELATING TO PROPERTY
LOCATED AT THE NORTHEAST CORNER OF SYLVAN AVENUE
AND ROSELLE AVENUE. (SYLVAN VETERINARY HOSPITAL)**

WHEREAS, the City Council on October 16, 1990, adopted the Specific Plan for Village One, a 1780-acre area of land adjoining the northeast portion of the City of Modesto, within its Sphere of Influence, and

WHEREAS, the Village One Specific Plan is divided into 35 Precise Plan Areas and requires that a Precise Plan be approved prior to development in each Area, and

WHEREAS, an application has been filed by Sylvan Veterinary Hospital for adoption of a Precise Plan for Area No. 1 of the Village One Specific Plan, property located at the northeast corner of Sylvan Avenue and Roselle Avenue, and

WHEREAS, a public hearing was held by the Planning Commission of the City of Modesto on January 24, 2005, in the Tenth Street Place Chambers located at 1010 10th Street, Modesto, California, at which hearing evidence both oral and documentary was received and considered, and

WHEREAS, after reviewing and considering the oral and documentary evidence, the Planning Commission, by Resolution No. 2005-07, recommended to the City Council adoption of a Precise Plan for Area No. 1 of the Village One Specific Plan, and

WHEREAS, said matter was considered by the City Council at a duly noticed public hearing on March 8, 2005, at 5:30 p.m., in the Tenth Street Place Chambers located at 1010 10th Street, Modesto, California, at which hearing evidence both oral and documentary was received and considered, and

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

SECTION 1. That the proposed Precise Plan for Area No. 1 of the Village One Specific Plan is required by public necessity, convenience, and general welfare for the following reasons:

1. The proposed Precise Plan for Area No. 1 is consistent with the Modesto Urban Area General Plan and the Village One Specific Plan, as amended, because the site is of an appropriate size for office development, office use is compatible with the neighboring high school, and office use is appropriate on minor arterial streets.

SECTION 2. APPROVAL OF PRECISE PLAN. That the City Council has reviewed and considered the Precise Plan for Area No. 1 of the Village One Specific Plan as recommended by the Planning Commission, and the Council does hereby approve said Precise Plan, a copy of which is on file in the City Clerk's Office.

SECTION 3. 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 4. 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 8th day of March, 2005, by Councilmember Hawn, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Marsh, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Dunbar, Hawn, Jackman, Keating, Marsh, O'Bryant

NOES: Councilmembers: None

ABSENT: Councilmembers: Mayor Ridenour

APPROVED: 
JIM RIDENOUR, Mayor

ATTEST:

By 
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By 
MICHAEL D. MILICH, City Attorney

Ord. No. 3381-C.S.

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 22nd day of March, 2005, Councilmember Dunbar, moved its final adoption, which motion being duly seconded by Councilmember Hawn, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Dunbar, Hawn, Jackman, Keating, O'Bryant

NOES: Councilmembers: None

ABSENT: Councilmembers: Marsh, Mayor Ridenour

APPROVED:


MAYOR JIM RIDENOUR

ATTEST:


JEAN ZAHR, City Clerk

Effective Date: April 21, 2005

**CITY OF MODESTO
ORDINANCE NO. 3382-C.S.**

**AN ORDINANCE REZONING VILLAGE ONE PROPERTY FROM
SPECIFIC PLAN-HOLDING ZONE, SP-H, TO SPECIFIC PLAN-
OVERLAY ZONE, SP-O, FOR PROPERTY LOCATED AT THE
NORTHEAST CORNER OF SYLVAN AVENUE AND ROSELLE
AVENUE . (SYLVAN VETERINARY HOSPITAL)**

WHEREAS, the City Council on October 16, 1990, adopted the Specific Plan for Village One, a 1780-acre area of land adjoining the northeast portion of the City of Modesto, within its Sphere of Influence, and

WHEREAS, the Village One Specific Plan requires that concurrent with the review and approval of a Precise Plan, all properties included in the Precise Plan shall be rezoned to Specific Plan-Overlay Zone, SP-O, as set forth in Title 10 of the Modesto Municipal Code, and

WHEREAS, an application has been filed by Sylvan Veterinary Hospital for a Precise Plan Area No. 1, property located at the northeast corner of Sylvan Avenue and Roselle Avenue, and

WHEREAS, the application package also seeks rezoning from Specific Plan-Holding Zone, SP-H, to Specific Plan-Overlay Zone, SP-O, and

WHEREAS, a public hearing was held by the Planning Commission of the City of Modesto on January 24, 2005, in the Tenth Street Place Chambers located at 1010 10th Street, Modesto, California, at which hearing evidence both oral and documentary was received and considered, and

WHEREAS, after the public hearing, it was found and determined by the Planning Commission that rezoning of the property as requested is required by public necessity, convenience and general welfare, because the site is an appropriate size for office development, office use is compatible with the neighboring high school, and office use is appropriate on minor arterial streets, and

WHEREAS, by Resolution No. 2005-07, adopted January 24, 2005, the Planning Commission recommended that the application of Sylvan Veterinary Hospital to rezone Village One property from Specific Plan-Holding Zone, SP-H, to Specific Plan-Overlay Zone, SP-O, for property located at the northeast corner of Sylvan Avenue and Roselle Avenue be approved, and

WHEREAS, said matter was set for a public hearing of the City Council to be held on March 8, 2005, at 5:30 p.m., in the Tenth Street Place Chambers located at 1010 10th Street, Modesto, California, at which date and time said duly noticed public hearing of the Council was held and evidence both oral and documentary was received and considered,

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

SECTION 1. After a public hearing held on March 8, 2005, in the Tenth Street Place Chambers located at 1010 10th Street, Modesto, California, this Council finds and determines that the requested rezoning is in accordance with the General Plan and the Village One Specific Plan and will serve the public health, safety and general welfare and provide the economic and social advantages resulting from orderly, planned use of land resource for the following reason:

The rezoning to Specific Plan-Overlay Zone is required by the Village One Specific Plan concurrent with adoption of a precise plan and prior to development in the Specific Plan area. The proposed office use is consistent with the land use plan because the site is of an appropriate size for office development, office use is compatible with the neighboring high school, and office use is appropriate on minor arterial streets.

SECTION 2. ZONING CHANGE. Section 13-3-9 of the Zoning Map of the City of Modesto is hereby amended to rezone the following described property from Specific Plan-Holding Zone, SP-H, to Specific Plan-Overlay Zone, SP-O:

SP-H to SP-O, PPA 1

All that certain, real property situate in a portion of the northeast quarter of Section 13, Township 3 South, Range 9 East, Mount Diablo Base and Meridian, located in the City of Modesto, County of Stanislaus, State of California; described as follows:

Beginning at the southwest corner of said north half; thence North 0°20'00" West along the north line of said Section 12, a distance of 1992.46 feet; thence North 89°49'41" East, a distance of 2821.92 feet to the centerline of a 40.00 foot wide road known as Litt Road; thence South 00°18'30" East along said center-line, a distance of 1993.45 feet to the south line of the north half of said Section 12 and the centerline of Sylvan Avenue; thence South 89°50'52" West along said south line and centerline, a distance of 2891.05 feet to the point of beginning.

Containing 132.29 acres more or less.

SECTION 3. ZONING MAP. Section 13-3-9 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 8th day of March, 2005, by Councilmember Marsh, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Hawn, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Dunbar, Hawn, Jackman, Keating, Marsh, O'Bryant

NOES: Councilmembers: None

ABSENT: Councilmembers: Mayor Ridenour

APPROVED:



JIM RIDENOUR, Mayor

ATTEST:

By Jean Zahr
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By Michael D. Milich
MICHAEL D. MILICH, City Attorney

Ord. No. 3382-C.S.

FINAL ADOPTION CLAUSE

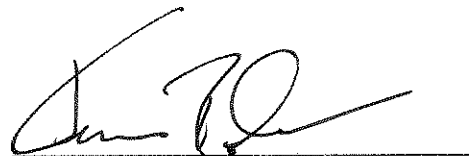
The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 22nd day of March, 2005, Councilmember Dunbar, moved its final adoption, which motion being duly seconded by Councilmember Hawn, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Dunbar, Hawn, Jackman, Keating, O'Bryant

NOES: Councilmembers: None

ABSENT: Councilmembers: Marsh, Mayor Ridenour

APPROVED:


MAYOR JIM RIDENOUR

ATTEST:


JEAN ZAHR, City Clerk

Effective Date: April 21, 2005

**CITY OF MODESTO
ORDINANCE NO. 3383 -C.S.**

**AN EMERGENCY INTERIM ORDINANCE OF THE CITY OF
MODESTO ADOPTED PURSUANT TO GOVERNMENT CODE
SECTION 65858 AND SECTIONS 716 AND 722 OF THE MODESTO
CITY CHARTER PROHIBITING THE ESTABLISHMENT OF MEDICAL
MARIJUANA DISPENSARIES IN THE CITY OF MODESTO FOR A
PERIOD OF FORTY-FIVE DAYS.**

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

SECTION 1. DECLARATION OF EMERGENCY. The Council of the City of Modesto hereby finds and declares that this Ordinance is necessary as an interim emergency measure because there is a direct and immediate threat to the public health, safety, and welfare of the citizens of Modesto for the following reasons:

In 1996, the voters of the State of California approved Proposition 215, codified as California Health & Safety Code Section 11362.5, et seq. Effective January 1, 2004, the State legislature enacted SB 420 to clarify the scope of Proposition 215 and to allow cities to adopt and enforce rules and regulations consistent with SB 420.

Over the past few months, the City of Modesto has received several inquiries from individuals seeking to establish medical marijuana dispensaries in the City of Modesto. Recently, two such businesses received City business licenses under the auspices of operating medical supply businesses in the City's C-2 zone. After additional investigation, it was discovered that the businesses intend to operate medical marijuana dispensaries. In one case, the proposed location for the business is approximately 200 yards from an elementary school.

Existing City codes, including the zoning code, do not adequately address or regulate the location or operation of medical marijuana dispensaries and such uses may be allowed as a permitted use in any zone that allows commercial uses, pharmacies or other medical uses, and potentially in other zones if the business is not conducted on a commercial basis. Experiences in other cities such as Oakland, Hayward, Fairfax, and Roseville, and a study conducted by the City of Rocklin, have demonstrated that medical marijuana dispensaries in general create negative secondary effects in the community, such as increased illegal drug activity and other crimes, blight, and a concentration of marijuana use in public places, and contribute to the deterioration of the neighborhoods in which they are located. Because the establishment of medical marijuana dispensaries is imminent, there is an urgent need to consider the adoption of zoning and/or other types of regulatory ordinances pertaining to the establishment and operation of medical marijuana dispensaries within the City of Modesto, in order to eliminate such negative secondary effects.

The City Council has directed City staff to prepare appropriate amendments to the City's zoning code and/or other ordinances to regulate the establishment and operation of medical marijuana dispensaries in the City of Modesto. Because the City Council has not reviewed the nature and scope of applicable regulatory standards for such uses, the City is unable to make an informed decision regarding such uses and appropriate zoning provisions. Changing community standards and evolving legal standards for the regulation of such uses dictate that the City Council address the regulation of such uses in order to properly analyze the compatibility of adjacent land uses, minimize future incompatibility, and minimize cumulative impacts including the impact to law enforcement resources. Without a temporary prohibition on the approval or establishment of medical marijuana dispensaries, there is a current and immediate threat of proliferation of medical marijuana dispensaries in the City in a manner which would be detrimental to the public health, safety and welfare, and which could conflict with and defeat the purpose of, studying and considering proposed amendments to the City's zoning code and/or other ordinances regarding medical marijuana dispensaries.

Based on the foregoing, the City Council does hereby declare this interim emergency Ordinance is necessary to protect the public health, safety and welfare while considering revisions to the City's zoning code and/or other regulations related to medical marijuana dispensaries.

SECTION 2. PROHIBITION. No land use approval, permit, license or other entitlement shall be granted or approved for the purpose of establishing a medical marijuana dispensary during the term of this Ordinance.

In addition, during the term of this Ordinance, no person or entity shall establish a medical marijuana dispensary within the City of Modesto. For purposes of this Ordinance, the term "establish a medical marijuana dispensary" means and includes any of the following:

- (a) The opening or commencement of any such business as a new business.
- (b) The conversion of an existing business to any business defined as a medical marijuana dispensary in this Ordinance.
- (c) The addition of any form of business defined as a medical marijuana dispensary in this Ordinance to any other existing business.

SECTION 3. DEFINITION. "Medical marijuana dispensary" or "dispensary" means any facility or location where medical marijuana is made available to and/or distributed by or to three or more of the following: a primary caregiver, a qualified patient, or a person with an

identification card, in strict accordance with California Health and Safety Code Section 11362.5, et seq. A “medical marijuana dispensary” shall not include the following uses, as long as the location of such uses are otherwise regulated by this code or applicable law: a clinic licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code, a health care facility licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code, a residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 of Division 2 of the Health and Safety Code, a residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code, a residential hospice or a home health agency licensed pursuant to Chapter 8 of Division 2 of the Health and Safety code, as long as any such use complies strictly with applicable law including, but not limited to, Health and Safety Code Section 11362.5, et seq. and the City of Modesto Municipal Code, including but not limited to the City’s zoning code.

SECTION 4. REPORT ON INTERIM EMERGENCY ORDINANCE. Pursuant to Government Code Section 65858, the Chief of Police, Community and Economic Development Director, and the City Attorney’s Office shall prepare for consideration and issuance by the City Council a written report describing the measures taken to alleviate the conditions which led to the adoption of this Ordinance. The report shall be provided to the City Council so that it may be considered and issued by the City Council no later than ten days prior to the expiration date of this Ordinance.

SECTION 5. SEVERABILITY. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance for any reason is held to be invalid by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

SECTION 6. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

FINDING. The City Council finds that this interim emergency Ordinance is enacted in order to temporarily prohibit a use otherwise permitted under the applicable zoning ordinances.

Therefore, this Ordinance falls with the specific exemption from the California Environmental Quality Act (CEQA) found in Public Resources Code Section 21080(b)(4) and Section 21080(b)(5) and applicable guidelines, and no environmental review of this action is required. In addition, it can be seen with certainty that there is no possibility this interim emergency Ordinance may have a significant affect on the environment, and this Ordinance is exempt from CEQA requirements pursuant to Section 15061(b)(3) of the CEQA guidelines.

SECTION 7. EFFECTIVE DATE AND TERM. Pursuant to Sections 716 and 722 of the Charter of the City of Modesto and Section 65858(a) of the California Government Code, this Ordinance shall go into effect and be in full force and operation as of the date of its adoption. This Ordinance shall remain in full force and effect for a period of forty-five (45) days following the date of its adoption, unless extended in accordance with the provisions of California Government Code Section 65858.

SECTION 8. PUBLICATION. 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 adoption, and the places where this Ordinance is posted.

The foregoing ordinance was introduced and adopted at a regular meeting of the Council of the City of Modesto held on the 8th day of March, 2005, by Councilmember Hawn, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Marsh, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Dunbar, Hawn, Jackman, Keating, Marsh, O'Bryant

NOES: Councilmembers: None

ABSENT: Councilmembers: Mayor Ridenour

APPROVED: 
JIM RIDENOUR, Mayor

ATTEST:

By 
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By 
MICHAEL D. MILICH, City Attorney

ORDINANCE NO. 3384-C.S.

**EMERGENCY INTERIM ORDINANCE OF THE CITY OF MODESTO
ADOPTED PURSUANT TO GOVERNMENT CODE SECTION 65858 AND
SECTIONS 716 AND 722 OF THE MODESTO CITY CHARTER
PROHIBITING THE ESTABLISHMENT OF MEDICAL MARIJUANA
DISPENSARIES IN THE CITY OF MODESTO FOR A PERIOD OF TEN
(10) MONTHS AND FIFTEEN (15) DAYS.**

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

SECTION 1. DECLARATION OF EMERGENCY. On March 8, 2005, the Council of the City of Modesto adopted an emergency interim ordinance prohibiting the establishment of medical marijuana dispensaries in the City of Modesto (Ordinance No. 3383). The Council of the City of Modesto hereby finds and declares that the extension of Ordinance No. 3383 is necessary as an emergency measure because there is still a current and immediate threat to the public health, safety and welfare for the following reasons:

In 1996, the voters of the State of California approved Proposition 215, codified as California Health & Safety Code Section 11362.5, et seq. Effective January 1, 2004, the State legislature enacted SB 420, codified as California Health and Safety Code Section 11362.7, et seq., to clarify the scope of Proposition 215 and to allow cities to adopt and enforce rules and regulations consistent with SB 420.

Over the past few months, the City of Modesto has received several inquiries from individuals seeking to establish medical marijuana dispensaries in the City of Modesto. Recently, two such businesses received City business licenses under the auspices of operating medical supply businesses in the City's C-2 zone. After additional investigation, it was

discovered that the businesses intend to operate medical marijuana dispensaries. In one case, the proposed location for the business is approximately 200 yards from an elementary school.

Existing City codes, including the zoning code, do not adequately address or regulate the location or operation of medical marijuana dispensaries and such uses may be allowed as a permitted use in any zone that allows commercial uses, pharmacies or other medical uses, and potentially in other zones if the business is not conducted on a commercial basis. Experiences in other cities such as Oakland, Hayward, Fairfax, and Roseville, and a study conducted by the City of Rocklin, have demonstrated that medical marijuana dispensaries in general create negative secondary effects in the community, such as increased illegal drug activity and other crimes, blight, and a concentration of marijuana use in public places, and contribute to the deterioration of the neighborhoods in which they are located. Because the establishment of medical marijuana dispensaries is imminent, there is an urgent need to consider the adoption of zoning and/or other types of regulatory ordinances pertaining to the establishment and operation of medical marijuana dispensaries within the City of Modesto, in order to eliminate such negative secondary effects.

The City Council has directed City staff to prepare appropriate amendments to the City's zoning code and/or other ordinances to regulate the establishment and operation of medical marijuana dispensaries in the City of Modesto. Because the City Council has not reviewed the nature and scope of applicable regulatory standards and conditions for such uses, the City is unable to make an informed decision regarding such uses and appropriate zoning provisions. Changing community standards and evolving legal standards for the regulation of such uses dictate that the City Council address the regulation of such uses in order to properly

analyze the compatibility of adjacent land uses, minimize future incompatibility, and minimize cumulative impacts including the impact to law enforcement resources. Therefore, there is also an urgent need to prohibit medical marijuana dispensaries to prevent such uses from being established in a manner or in locations which may be in conflict or inconsistent with any such proposed amendments to the zoning code and/or other ordinances. Without such a prohibition, there is an immediate danger of proliferation of medical marijuana dispensaries in the City in a manner which would be inconsistent, detrimental to the public health, safety and welfare. If such uses were allowed to proceed as allowed under the current zoning, such uses could conflict with and defeat the purpose of, studying and considering proposed zoning to amend the City's zoning code regarding medical marijuana dispensaries.

Based on the foregoing, the City Council does hereby declare this interim emergency Ordinance is necessary to protect the public health, safety and welfare while considering revisions to the City's zoning code and/or other regulations related to medical marijuana dispensaries.

SECTION 2. PROHIBITION. No land use approval, permit, license or other entitlement shall be granted or approved for the purpose of establishing a medical marijuana dispensary during the term of this ordinance.

In addition, during the term of this Ordinance, no person or entity shall establish a medical marijuana dispensary within the City of Modesto. For purposes of this Ordinance, the term "establish a medical marijuana dispensary" means and includes any of the following:

- (a) The opening or commencement of any such business as a new business.

- (b) The conversion of an existing business to any business defined as a medical marijuana dispensary in this Ordinance.
- (c) The addition of any form of business defined as a medical marijuana dispensary in this Ordinance to any other existing business.

SECTION 3. DEFINITION. "Medical marijuana dispensary" or "dispensary" means any facility or location where medical marijuana is made available to and/or distributed by or to three or more of the following: a primary caregiver, a qualified patient, or a person with an identification card, in strict accordance with California Health and Safety Code Section 11362.5, et seq. A "medical marijuana dispensary" shall not include the following uses, as long as the location of such uses are otherwise regulated by this code or applicable law: a clinic licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code, a health care facility licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code, a residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 of Division 2 of the Health and Safety Code, a residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code, a residential hospice or a home health agency licensed pursuant to Chapter 8 of Division 2 of the Health and Safety code, as long as any such use complies strictly with applicable law including, but not limited to, Health and Safety Code Section 11362.5, et seq. and the City of Modesto Municipal Code, including but not limited to the City's zoning code.

SECTION 4. REPORT ON INTERIM EMERGENCY ORDINANCE. Pursuant to Government Code Section 65858, the City Attorney's Office shall prepare for consideration and issuance by the City Council a written report describing the measures taken to alleviate the

conditions which led to the adoption of this Ordinance. The report shall be provided to the City Council so that it may be considered and issued by the City Council no later than ten days prior to the expiration date of this Ordinance.

SECTION 5. SEVERABILITY. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance for any reason is held to be invalid by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

SECTION 6. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) FINDING. The City Council finds that this interim emergency Ordinance is enacted in order to temporarily prohibit a use otherwise permitted under the applicable zoning ordinances. Therefore, this Ordinance falls with the specific exemption from the California Environmental Quality Act (CEQA) found in Public Resources Code Section 21080(b)(4) and Section 21080(b)(5) and applicable guidelines, and no environmental review of this action is required. In addition, it can be seen with certainty that there is no possibility this interim emergency Ordinance may have a significant affect on the environment, and this Ordinance is exempt from CEQA requirements pursuant to Section 15061(b)(3) of the CEQA guidelines.

SECTION 7. EFFECTIVE DATE AND TERM. Pursuant to Sections 716 and 722 of the Charter of the City of Modesto and Section 65858(a) of the California Government Code, this Ordinance shall go into effect and be in full force and operation as of the date of its adoption. This Ordinance shall remain in full force and effect for a period of ten (10) months and fifteen (15) days following the date of its adoption, unless extended in accordance with the provisions of California Government Code Section 65858.

SECTION 8. PUBLICATION. 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 adoption, and the places where this Ordinance is posted.

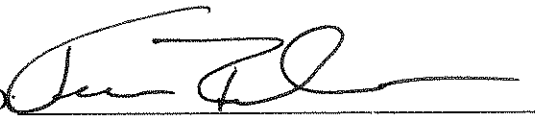
The foregoing ordinance was introduced and adopted at a regular meeting of the Council of the City of Modesto held on the 5th day of April, 2005, by Councilmember Marsh, who moved its introduction and adoption, and passage to print, which motion being duly seconded by Councilmember Jackman, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Dunbar, Hawn, Jackman, Keating, Marsh, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: O'Bryant

APPROVED



JIM RIDENOUR, Mayor

ATTEST:

By Jean Zahr
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By Michael D. Milich
MICHAEL D. MILICH, City Attorney

ORDINANCE NO. 3385-C.S.

**AN ORDINANCE RESCINDING ORDINANCE NO. 3318-C.S. ENTITLED
“AN ORDINANCE APPROVING THE DEVELOPMENT AGREEMENT
BETWEEN THE CITY OF MODESTO AND BERBERIAN PROPERTIES,
LLC FOR THE DEVELOPMENT OF THE VILLAGE ONE
COMMERCIAL CENTER LOCATED IN THE VILLAGE ONE SPECIFIC
PLAN, TO LOCK IN THE CAPITAL FACILITIES FEES AND PUBLIC
FACILITIES FEES AND VEST THE RIGHT TO DEVELOP IN
ACCORDANCE WITH CURRENT FEES AND STANDARDS.”**

WHEREAS, Government Code Section 65864, et seq., authorizes the City to enter into binding development agreements with any person or persons having a legal or equitable interest in real property for the development of such property and authorizes the City to establish procedures for the application and consideration of such agreements, and

WHEREAS, by City Council Resolution No. 91-185, adopted on March 26, 1991, the City Council established procedures and requirements for the consideration of development agreements, and by City Council Resolution No. 97-492, adopted on August 26, 1997, the City Council revised said procedures and requirements and superseded Resolution No. 91-185, and

WHEREAS, Berberian Properties, LLC has applied for a Development Agreement for the Village One Commercial Center located in the Village One Specific Plan, to lock in the Capital Facilities Fees and Public Facilities Fees and vest the right to develop in accordance with current fees and standards, and

WHEREAS, a duly noticed public hearing was held by the Planning Commission of the City of Modesto on July 21, 2003, in the Tenth Street Place Chambers, located at 1010 10th Street, Modesto, California, for the purpose of making a recommendation to the City Council concerning the proposed Development Agreement, at which hearing evidence both oral and documentary was received and considered, and

Ord 3385-C.S.
Effective June 2, 2005

WHEREAS, after said public hearing, the Modesto City Planning Commission, by Resolution No. 2003-43, adopted on July 21, 2003, recommended to the City Council approval of the proposed Development Agreement between the City of Modesto and Berberian Properties, LLC in accordance with the version requested by Applicant, and

WHEREAS, said matter was set for a public hearing of the City Council to be held at 5:30 p.m., on August 12, 2003, in the Tenth Street Place Chambers, located at 1010 10th Street, Modesto, California, at which date and time said duly noticed public hearing of the Council was held for the purpose of considering a proposed Development Agreement between the City of Modesto and Berberian Properties, LLC for the Village One Commercial Center located in the Village One Specific Plan, to lock the Capital Facilities Fees and Public Facilities Fees and vest the right to develop in accordance with current fees and standards, and

WHEREAS, thereafter by Ordinance No. 3318-C.S. the City Council approved the proposed Development Agreement between the City of Modesto and Berberian Properties, LLC for the development of the Village One Commercial Center located in the Village One Specific Plan, to lock in the Capital Facilities Fees and Public Facilities Fees for the property and vest the right to develop in accordance with then current fees and standards, and

WHEREAS, the Development Agreement was never signed or executed by either party and Berberian Trust has sold the Village One Commercial Center site to Best Properties who recently filed an application to amend Precise Plan No. 20 to allow for a new site design layout for the Village One Commercial Center site, and

WHEREAS, since Berberian Trust no longer owns the property the Development Agreement cannot be executed, and

Ord 3385-C.S.
Effective June 2, 2005

WHEREAS, City staff recommends to the City Council that the Development Agreement between the City of Modesto and Berberian Properties, LLC, be revoked and Ordinance No. 3318-C.S. approving said Development Agreement be rescinded, and

WHEREAS, Section 65867.5 of the Government Code provides that a development agreement is a legislative act which shall be approved by ordinance and is subject to referendum,

NOW, THEREFORE, BE IT RESOLVED that the Council of the City of Modesto does ordain as follows:

SECTION 1. RESCIND. That Ordinance No. 3318-C.S. entitled “An Ordinance Approving the Development Agreement Between the City of Modesto and Berberian Properties, LLC for the Development of the Village One Commercial Center Located in the Village One Specific Plan, to Lock in the Capital Facilities Fees and Public Facilities Fees and Vest the Right to Develop in Accordance with Current Fees and Standards” is hereby rescinded.

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.

Ord 3385-C.S.
Effective June 2, 2005

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 26th day of April, 2005, by Councilmember Keating, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Marsh, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Dunbar, Hawn, Jackman, Keating, Marsh, O'Bryant, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: _____



JIM RIDENOUR, Mayor

ATTEST:

By: Jean Zahr
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: Michael D. Milich
MICHAEL D. MILICH, 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 3rd day of May, 2005, Councilmember Jackman, moved its final adoption, which motion being duly seconded by Councilmember Hawn, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Dunbar, Hawn, Jackman, Keating, Marsh, O'Bryant,
Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:


MAYOR JIM RIDENOUR

ATTEST:


JEAN ZAHR, City Clerk

Effective Date: June 2, 2005

Ord 3385-C.S.
Effective June 2, 2005

ORDINANCE NO. 3386-C.S.

AN ORDINANCE ADOPTING A PRECISE PLAN FOR AREA NO. 19 OF THE VILLAGE ONE SPECIFIC PLAN, RELATING TO PROPERTY LOCATED ON THE NORTH SIDE OF FLOYD AVENUE BETWEEN TEMESCAL DRIVE AND LINCOLN OAK DRIVE. (NARAGHI)

WHEREAS, the City Council on October 16, 1990, adopted the Specific Plan for Village One, a 1780-acre area of land adjoining the northeast portion of the City of Modesto, within its Sphere of Influence, and

WHEREAS, the Village One Specific Plan is divided into 35 Precise Plan Areas and requires that a Precise Plan be approved prior to development in each Area, and

WHEREAS, an application has been filed by Naraghi Trust for adoption of a Precise Plan for Area No. 19 of the Village One Specific Plan, property located on the north side of Floyd Avenue between Temescal Drive and Lincoln Oak Drive, and

WHEREAS, a public hearing was held by the Planning Commission of the City of Modesto on March 21, 2005, in the Tenth Street Place Chambers located at 1010 10th Street, Modesto, California, at which hearing evidence both oral and documentary was received and considered, and

WHEREAS, after reviewing and considering the oral and documentary evidence, the Planning Commission, by Resolution No. 2005-12, recommended to the City Council adoption of a Precise Plan for Area No. 19 of the Village One Specific Plan, and

WHEREAS, said matter was considered by the City Council at a duly noticed public hearing on April 26, 2005, at 5:30 p.m., in the Tenth Street Place Chambers located at 1010 10th Street, Modesto, California, at which hearing evidence both oral and documentary was received and considered,

Ord 3386-C.S.
Effective June 2, 2005

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

SECTION 1. That the proposed Precise Plan for Area No. 19 of the Village One Specific Plan is required by public necessity, convenience, and general welfare for the following reasons:

1. The Precise Plan and rezoning is consistent with the Village One Specific Plan and Modesto Urban Area General Plan.
2. The project provides a circulation and lot design that is consistent with City standards.

SECTION 2. APPROVAL OF PRECISE PLAN. That the City Council has reviewed and considered the Precise Plan for Area No. 19 of the Village One Specific Plan as recommended by the Planning Commission, and the Council does hereby approve said Precise Plan, a copy of which is on file in the City Clerk's Office.

SECTION 3. 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 4. 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 April, 2005, by Councilmember Dunbar, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Jackman, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Dunbar, Hawn, Jackman, Keating, Marsh, O'Bryant, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: _____



JIM RIDENOUR, Mayor

ATTEST:

By Jean Zahr
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By Michael D. Milich
MICHAEL D. MILICH, 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 3rd day of May, 2005, Councilmember Jackman, moved its final adoption, which motion being duly seconded by Councilmember Hawn, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Dunbar, Hawn, Jackman, Keating, Marsh, O'Bryant,
Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: _____



MAYOR JIM RIDENOUR

ATTEST: _____


JEAN ZAHR, City Clerk

Effective Date: June 2, 2005

ORDINANCE NO.3387-C.S.

AN ORDINANCE REZONING VILLAGE ONE PROPERTY FROM SPECIFIC PLAN-HOLDING ZONE, SP-H, TO SPECIFIC PLAN-OVERLAY ZONE, SP-O, FOR PROPERTY LOCATED ON THE NORTH SIDE OF FLOYD AVENUE BETWEEN TEMESCAL DRIVE AND LINCOLN OAK DRIVE. (NARAGHI)

WHEREAS, the City Council on October 16, 1990, adopted the Specific Plan for Village One, a 1780-acre area of land adjoining the northeast portion of the City of Modesto, within its Sphere of Influence, and

WHEREAS, the Village One Specific Plan requires that concurrent with the review and approval of a Precise Plan, all properties included in the Precise Plan shall be rezoned to Specific Plan-Overlay Zone, SP-O, as set forth in Title 10 of the Modesto Municipal Code, and

WHEREAS, an application has been filed by Naraghi Trust for a Precise Plan for Area No. 19, property located on the north side of Floyd Avenue between Temescal Drive and Lincoln Oak Drive, and

WHEREAS, the application package also seeks rezoning from Specific Plan-Holding Zone, SP-H, to Specific Plan-Overlay Zone, SP-O, and

WHEREAS, a public hearing was held by the Planning Commission of the City of Modesto on March 21, 2005, in the Tenth Street Place Chambers located at 1010 10th Street, Modesto, California, at which hearing evidence both oral and documentary was received and considered, and

WHEREAS, after the public hearing, it was found and determined by the Planning Commission that rezoning of the property as requested is required by public necessity, convenience and general welfare, and

WHEREAS, by Resolution No. 2005-12, adopted March 21, 2005, the Planning Commission recommended that the application of Naraghi Trust to rezone Village One property from Specific Plan-Holding Zone, SP-H, to Specific Plan-Overlay Zone, SP-O, for property located on the north side of Floyd Avenue between Temescal Drive and Lincoln Oak Drive be approved, and

WHEREAS, said matter was set for a public hearing of the City Council to be held on April 26, 2005, at 5:30 p.m., in the Tenth Street Place Chambers located at 1010 10th Street, Modesto, California, at which date and time said duly noticed public hearing of the Council was held and evidence both oral and documentary was received and considered,

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

SECTION 1. After a public hearing held on April 26, 2005, in the Tenth Street Place Chambers located at 1010 10th Street, Modesto, California, this Council finds and determines that the requested rezoning is in accordance with the General Plan and the Village One Specific Plan and will serve the public health, safety and general welfare and provide the economic and social advantages resulting from orderly, planned use of land resource for the following reasons:

1. The Precise Plan and rezoning is consistent with the Village One Specific Plan and Modesto Urban Area General Plan.
2. The project provides a circulation and lot design that is consistent with City standards.

SECTION 2. ZONING CHANGE. Section 14-3-9 of the Zoning Map of the City of Modesto is hereby amended to rezone the following described property from Specific Plan-Holding Zone, SP-H, to Specific Plan-Overlay Zone, SP-O:

SP-H to SP-O, PPA 19

Commencing at the southeast corner of Lot 3 of the Oregon Colony, according to the Official Map thereof, filed in the Office of the Recorder of Stanislaus County, on February 19, 1910 in Volume 4 of Maps, at Page 48, being on the centerline of Floyd Avenue and the centerline of Temescal Drive; thence along the east line of said Lot 3, North 0°33'06" West a distance of 1,322.73 feet to the north line of said Lot 3 and the north line of Section 14, Township 3 South, Range 9 East, Mount Diablo Base and Meridian; thence along said north line of Lot 3 and said north line of Section 14, North 89°41'23" West a distance of 1,085.13 feet to the northwest corner of Parcel A of Lot Line Adjustment No. 04-07, recorded April 14, 2004, as Document no. 2004-0054662-00, Stanislaus County Records; thence along the west line of said Parcel A, South 0°19'04" West a distance of 1,322.43 feet to the centerline of Floyd Avenue; thence along said centerline of Floyd Avenue, South 89°40'56" East a distance of 1,105.21 feet to the point of beginning.

Containing 33.3 Acres

SECTION 3. ZONING MAP. Section 14-3-9 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 April, 2005, by Councilmember Dunbar, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Jackman, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Dunbar, Hawn, Jackman, Keating, Marsh, O'Bryant,
Mayor Ridenour

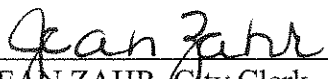
NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: 

JIM RIDENOUR, Mayor

ATTEST:

By 

JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By 

MICHAEL D. MILICH, City Attorney

APPROVED AS TO DESCRIPTION:

By _____
Community 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 3rd day of May, 2005, Councilmember Jackman, moved its final adoption, which motion being duly seconded by Councilmember Hawn, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Dunbar, Hawn, Jackman, Keating, Marsh, O'Bryant,
Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: 

MAYOR JIM RIDENOUR

ATTEST:


JEAN ZAHR, City Clerk

Effective Date: June 2, 2005

ORDINANCE NO. 3388-C.S.

AN ORDINANCE AMENDING SECTION 2 OF ORDINANCE NO. 2327-C.S. ENTITLED "AN ORDINANCE AMENDING SECTION MAP 18-3-9 OF THE ZONING MAP TO REZONE FROM PLANNED DEVELOPMENT ZONE , P-D(159), TO PLANNED DEVELOPMENT ZONE, P-D(371), PROPERTY LOCATED ON THE SOUTH SIDE OF BRIGGSMORE AVENUE EAST OF PRESCOTT ROAD. (ROBERT L. ERICKSON)" (BOB ERICKSON).

SECTION 1. AMENDMENT OF ORDINANCE NO. 2372-C.S. Section 2 of

Ordinance No. 2372-C.S. is hereby amended to read as follows:

"SECTION 2. USES. The following uses shall be permitted in said P-D(371) Zone if the plan for construction conforms in principle to the approved plan, or if changes are approved by the Secretary of the Planning Commission as required by Section 10-2.1709(c) of the Modesto Municipal Code, or by the Planning Commission if any changes not conforming in principle to the approved plan are proposed, as required by Section 10-2.1709(a) or (b) of the Modesto Municipal Code:

1. A recreation complex including the following:
 - a. Roller skating rink, and
 - b. Family amusement machine center.
2. Mini-storage facility.
3. Off-street parking area as shown on the approved plans.
4. All General Commercial Zone, C-2, uses."

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.

Ord 3388-C.S.
Effective 3388-C.S.

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 April, 2005, by Councilmember Marsh, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Dunbar, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Dunbar, Hawn, Jackman, Keating, Marsh, O'Bryant, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: _____



JIM RIDENOUR, Mayor

ATTEST:

By Jean Zahr
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By Michael D. Milich
MICHAEL D. MILICH, City Attorney

Ord 3388-C.S.
Effective 3388-C.S.

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 3rd day of May, 2005, Councilmember Jackman, moved its final adoption, which motion being duly seconded by Councilmember Hawn, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Dunbar, Hawn, Jackman, Keating, Marsh, O'Bryant,
Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: 

MAYOR JIM RIDENOUR

ATTEST:


JEAN ZAHR, City Clerk

Effective Date: June 2, 2005

Ord 3388-C.S.
Effective 3388-C.S.

ORDINANCE NO. 3389-C.S.

**AN ORDINANCE AMENDING SECTION 8-3.206 OF ARTICLE 2 OF
CHAPTER 3 OF TITLE 8 OF THE MODESTO MUNICIPAL CODE
RELATING TO CENTRAL PURCHASING – PREFERENCE TO LOCAL
MERCHANTS.**

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

SECTION 1. AMENDMENT OF CODE. Section 8-3.206 of Article 2 of Chapter 3 of Title 8 of the Modesto Municipal Code is hereby amended to read as follows:

8-3.206. PREFERENCE TO LOCAL MERCHANTS.

- (a) Preference shall be given to the purchase of supplies, materials, equipment and contractual services from local merchants, quality and price being equal. Local merchants who have a business location within the City and a current City business license shall be granted a two (2) percent bid preference. The two (2) percent bid preference shall be based on the amount of that portion of the bid which is subject to sales tax. This is intended to provide a minimal preference in the award of certain City contracts in order to encourage businesses to move into the City.
- (b) Exceptions to the preference shall include those contracts which federal, state or City Charter law forbid from granting preferences, such as public works agreements and Federal Transit Administration expenditures.

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 7th day of June 2005, by Councilmember Jackman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Hawn, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Dunbar, Hawn, Jackman, Keating, Marsh, O'Bryant, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: _____



JIM RIDENOUR, Mayor

ATTEST:

By: Jean Zahr
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: Michael D. Milich
MICHAEL D. MILICH, City Attorney

Ord. No. 3389-C.S.

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 28th day of June, 2005, Councilmember Jackman moved its final adoption, which motion being duly seconded by Councilmember Hawn, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Dunbar, Hawn, Jackman, Keating, O'Bryant, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: Marsh

APPROVED: _____


MAYOR JIM RIDENOUR

ATTEST: _____


JEAN ZAHR, City Clerk

Effective Date: July 28, 2005

Ordinance 3389-C.S.
Effective July 28, 2005

ORDINANCE NO. 3390-C.S.

AN ORDINANCE ADOPTING THE 2005-06 OPERATING BUDGET AND THE INTERIM CAPITAL IMPROVEMENT PROGRAM FOR 2005-06 FOR THE CITY OF MODESTO, AND PROVIDING FOR CERTAIN TRANSFERS OF FUNDS

WHEREAS, pursuant to the Charter of the City of Modesto, the City Manager has presented a Proposed Operating Budget and Interim Capital Improvement Program for the 2005-06 Fiscal Year to the Finance Committee on May 6, 2005, and

WHEREAS, the Finance Committee has reviewed the Proposed Budget and Interim Capital Improvement Program in a series of televised public workshops on May 16, 17, 18, and 19, as well as at the regular Finance Committee meeting on May 23, 2005, and

WHEREAS, the Finance Committee has recommended modifications to the Proposed Budget and Interim Capital Improvement Program and has forwarded its recommended budget to the full City Council, and

WHEREAS, the City Council has considered the recommendations of the Finance Committee, and

WHEREAS, in accordance with the City Charter, a duly noticed public hearing was held on May 24, 2005, relating to the adoption of the proposed Budget, and

WHEREAS, the City Council has reviewed the position control report prepared by staff, and

WHEREAS, the ultimate effect of the State of California's budget on the City of Modesto remains unclear, possibly requiring the City to revisit its budget at a point after the State's budget is finally adopted, and

WHEREAS, prior to any discussion of the budget and prior to the final adoption, the City Council by separate motion considered each CIP project that could be the source of a potential conflict of interest to one or more members of the City Council without the participation of those members, and

WHEREAS, copies of the proposed Budget have been and are available for inspection by the public at the office of the City Clerk,

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

SECTION 1. ADOPTION OF BUDGET. That the operating budget, a copy of which is on file in the City Clerk's Office, is hereby adopted as the FY2005-06 Budget for the City of Modesto, and that the appropriation amounts for expenditures and revenues in each specified fund as shown on Exhibit A are hereby adopted.

SECTION 2. ADOPTION OF BUDGET CONTROLS. That the budgetary control and authority policies defined in Exhibit B of this ordinance and incorporated here by reference is hereby adopted for the fiscal year 2005-06.

SECTION 3. ADOPTION OF INTERIM CIP. That the Interim Capital Improvement Program defined in the Capital Improvement Program section of the fiscal year 05-06 budget and incorporated here by reference is hereby adopted as the Capital Improvement Program for the City of Modesto, and that funds identified in Exhibit C as Additional Funding or New Projects are hereby appropriated for the corresponding projects and shall be part of the Budget for the fiscal year 2005-06 adopted hereby.

SECTION 4. ENCUMBRANCES. That the funds of the City of Modesto encumbered on June 30, 2005 are hereby appropriated for the purposes for which they are encumbered and shall be rolled over for the fiscal year 2005-06.

SECTION 5. MULTI-YEAR OPERATING PROGRAMS. That unexpended funds appropriated to Multi-year Programs on June 30, 2005 are hereby re-appropriated for the projects for which they were appropriated, as identified in Exhibit D, and shall be part of the Budget for the fiscal year 2005-06 adopted hereby.

SECTION 6. COUNCIL POLICIES. That the Policy Issues outlined in the Policies & Issues section of the fiscal year 2005-06 proposed budget have been reviewed and are hereby approved.

SECTION 7. EFFECTIVE DATE. Pursuant to Section 722 of the Charter of the City of Modesto, this ordinance shall go in effect and be in full force and operation immediately upon adoption.

SECTION 8. PUBLICATION. 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 7th day of June, 2005, by Councilmember Hawn, who moved its adoption, and passage to print, which motion being duly seconded by Councilmember Jackman, was upon roll call carried and the resolution adopted by the following votes:

AYES: Councilmembers: Dunbar, Hawn, Jackman, Keating, Marsh, O'Bryant,
Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: Jean Zahr
JEAN ZAHR, City Clerk

(seal)

APPROVED AS TO FORM:

By: Mike Milich
MIKE MILICH, City Attorney

ORDINANCE NO. 3391-C.S.

AN ORDINANCE AMENDING SECTION 2-8.01 OF CHAPTER 8 OF TITLE 2 OF THE MODESTO MUNICIPAL CODE AND REPEALING SECTION 2-8.03 THEREOF RELATING TO CAMPAIGN REFORM.

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

SECTION 1. AMENDMENT OF CODE. Section 2-8.01 of Chapter 8 of Title 2 of the Modesto Municipal Code is hereby amended to read as follows:

2-8.01. DECISION-MAKING PROHIBITION.

- (a) No member of the Council of the City of Modesto, shall make, participate in making or in any way attempt to use his/her official position to influence a governmental decision in which he/she knows or has reason to know he/she has a financial interest. Whenever used in this chapter, the words "member of the Council" shall include the Mayor.
- (b) A member of the Council has a financial interest in a decision within the meaning of subsection (a) if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effects on the public generally, on a major campaign contributor to that member.
- (c) A major campaign contributor to a member of the Council, within the meaning of subsection (b), is a person or entity that has contributed three thousand dollars (\$3,000) or more in the aggregate over the past forty-eight (48) months to that member of the council or to a spouse, immediate family member and/or to a campaign committee controlled by that member. Contributions include moneys, loans, debts incurred, property-in-kind, or things having a monetary value incurred or received by a candidate or his/her agent or other person on behalf of the candidate for use in advocating the election of the candidate but does not include contributions received by a Councilmember in connection with the Councilmember's candidacy for any elective office other than Councilmember or Mayor.
- (d) In the case of contributions of three thousand dollars (\$3,000) or more that are made to a committee not controlled by a candidate for the City Council but which committee expends money in support of a candidate for the City Council, a portion of such contribution shall be deemed to have been made to the member or candidate in support of whom the committee expended money. The amount of such deemed contribution shall be determined by multiplying the contribution to the committee by that fraction obtained by dividing the total expenditures of the committee by the amount expended by the committee in support of the candidate. Whenever used in this chapter the words "candidate" or "candidate for Council" shall include any candidate for Mayor.

Ordinance 3391-C.S.
Effective July 28, 2005

SECTION 2. AMENDMENT OF CODE. Section 2-8.03 of Chapter 8 of Title 2 of the Modesto Municipal Code is hereby repealed.

SECTION 3. 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 4. 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 14th day of June, 2005, by Councilmember Keating, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Hawn, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Hawn, Keating, O'Bryant, Mayor Ridenour

NOES: Councilmembers: Jackman, Marsh

ABSENT: Councilmembers: Dunbar

APPROVED: _____


JIM RIDENOUR, Mayor

ATTEST:

By 
JEAN ZAHR, City Clerk

APPROVED AS TO FORM:

By 
MICHAEL D. MILICH, City Attorney

(SEAL)

Ord. No. 3391-C.S.

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 28th day of June, 2004, Councilmember Keating moved its final adoption, which motion being duly seconded by Councilmember O'Bryant, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Hawn, Keating, O'Bryant, Mayor Ridenour

NOES: Councilmembers: Dunbar, Jackman

ABSENT: Councilmembers: Marsh

APPROVED: _____


MAYOR JIM RIDENOUR

ATTEST: _____


JEAN ZAHR, City Clerk

Effective Date: July 28, 2005

Ordinance 3391-C.S.
Effective July 28, 2005

ORDINANCE NO. 3392-C.S.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MODESTO AMENDING ORDINANCE NO. 3345-C.S. ENTITLED "AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MODESTO AUTHORIZING THE LEVY OF SPECIAL TAXES WITHIN CITY OF MODESTO COMMUNITY FACILITIES DISTRICT NO. 2004-1 (VILLAGE ONE #2)"

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

WHEREAS, this Council has, pursuant to its Resolution No. 2004-127, "A Resolution of the City Council of the City of Modesto of Intention to Establish City of Modesto Community Facilities District No. 2004-1 (Village One #2) and Authorize the Levy of Special Taxes Therein," adopted on March 2, 2004, conducted proceedings for the formation of the City's Community Facilities District No. 2004-1 (Village One #2) (the "District") pursuant to Chapter 2.5 of Division 2 of Title 5 (commencing with Section 53311) of the California Government Code, commonly known as the "Mello-Roos Community Facilities Act of 1982" (the "Act"); and

WHEREAS, as a part of the proceedings this Council did, on April 27, 2004, adopt its Ordinance No. 3345-C.S. authorizing the levy of special taxes, as more particularly set forth in Exhibit A thereto, within the District; and

WHEREAS, this Council has, following formation of the District, ordered annexations thereto; and

WHEREAS, this Council has, by its Resolution No. 2004-683, adopted on December 14, 2004, created a Tax Zone #2 within the District and ordered an increase in one component of the special taxes related to Tax Zone #2, and also ordered updates to information in the special taxes to reflect the annexations to the District; and

WHEREAS, the proceedings contemplate, and it is in the public interest that the special taxes previously authorized to be levied in the District by Ordinance No. 3345-C.S. also be authorized to be levied in areas heretofore or hereafter annexed to the District, and that the levy of the special taxes incorporate the updates thereto and the revision related to Tax Zone #2 ordered by Resolution No. 2004-683 as well as any subsequent update or revision thereto;

NOW, THEREFORE, the City Council of the City of Modesto DOES ORDAIN as follows:

SECTION 1. The above recitals are true and correct and this Council so finds and determines.

SECTION 2. Ordinance No. 3345-C.S., adopted by this Council on April 27, 2004, is amended as follows:

A. Exhibit A to Ordinance No. 3345-C.S. is superseded by Exhibit A hereto in order to incorporate the updates thereto and the revision related to Tax Zone #2 ordered by Resolution No. 2004-683. Exhibit A shall be deemed to include any update or revision thereto subsequently ordered by the Council.

B. The special tax is authorized and levied in the District, including areas heretofore or hereafter annexed thereto, at the rate and in accordance with the method of apportionment set forth in Exhibit A hereto, including any subsequent update or revision thereto.

SECTION 3. Subject to the foregoing amendments, Ordinance No. 3345-C.S. shall remain in full force and effect

SECTION 4. If, for any reason, any portion of this Ordinance is found to be invalid or any component of the special taxes is found to be inapplicable to any particular parcel within the District, by a court of competent jurisdiction, the balance of this Ordinance and the application of the other components of the special taxes to that parcel, and the application of the special taxes to the remaining parcels within the District, shall not be affected.

SECTION 5. Pursuant to Section 722 of the Charter of the City of Modesto, this Ordinance shall go into effect and be in full force and operation as of the date of its adoption.

* * * * *

The foregoing Ordinance was introduced and adopted at a regular meeting of the Council of the City of Modesto held on the 12th day of July, 2005, by Councilmember Marsh, who moved its introduction and adoption, which motion being duly seconded by Councilmember Keating, was upon roll call carried by the following vote:

AYES: Councilmembers: Dunbar, Hawn, Jackman, Keating, Marsh, O'Bryant

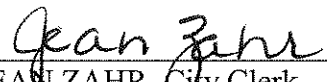
NOES: Councilmembers: None

ABSENT: Councilmembers: Mayor Ridenour

APPROVED: 

JIM RIDENOUR, Mayor

ATTEST:

By: 
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: 
MICHAEL D. MILICH, City Attorney

EXHIBIT A

CITY OF MODESTO COMMUNITY FACILITIES DISTRICT NO. 2004-1 (VILLAGE ONE #2)

UPDATED RATE AND METHOD OF APPORTIONMENT OF SPECIAL TAXES ADDING TAX ZONE #2

Special Taxes applicable to each Assessor's Parcel in Community Facilities District No. 2004-1 (Village One #2) [herein "CFD No. 2004-1" or "the CFD"] shall be levied and collected according to the tax liability determined by the City Council of the City of Modesto, through the application of the appropriate amount or rate for Taxable Property, as described below. All of the property in CFD No. 2004-1, unless exempted by law or by the provisions of Section G below, shall be taxed for the purposes, to the extent, and in the manner herein provided, including property subsequently annexed to CFD No. 2004-1 unless a separate Rate and Method of Apportionment is adopted for the annexation area.

A. DEFINITIONS

The terms hereinafter set forth have the following meanings:

"Acre" or "Acreage" means the land area of an Assessor's Parcel as shown on an Assessor's Parcel Map, or if the land area is not shown on an Assessor's Parcel Map, the land area shown on the applicable Final Map or other Development Plan.

"Act" means the Mello-Roos Community Facilities Act of 1982, as amended, being Chapter 2.5, (commencing with Section 53311), Division 2 of Title 5 of the California Government Code.

"Administrative Expenses" means any or all of the following: the fees and expenses of any fiscal agent or trustee (including any fees or expenses of its counsel) employed in connection with any Bonds, and the expenses of the City carrying out its duties with respect to CFD No. 2004-1 and the Bonds, including, but not limited to, levying and collecting the Special Taxes, the fees and expenses of legal counsel, charges levied by the County Auditor's Office, Tax Collector's Office, and/or Treasurer's Office, costs related to annexing property into the CFD, costs related to property owner inquiries regarding the Special Taxes, costs associated with complying with any continuing disclosure requirements for the Bonds and the Special Taxes, and all other costs and expenses of the City in any way related to the establishment or administration of the CFD.

"Administrator" means the person or firm designated by the City to administer the Special Taxes according to this Rate and Method of Apportionment of Special Taxes.

“Annual Facilities Special Tax” means a special tax levied in any Fiscal Year to pay the Annual Facilities Special Tax Requirement, as defined below.

“Annual Facilities Special Tax Requirement” means the amount necessary in any Fiscal Year (i) to pay principal and interest, including scheduled sinking fund payments, on Bonds, (ii) pay administrative expenses of CFD No. 2004-1 that have not been included in the Annual Maintenance Special Tax Requirement for the Fiscal Year, (iii) to create or replenish reserve funds, (iv) to cure any delinquencies in the payment of principal or interest on indebtedness of CFD No. 2004-1 which have occurred in the prior Fiscal Year or (based on delinquencies in the payment of the Annual Facilities Special Taxes which have already taken place) are expected to occur in the Fiscal Year in which the tax will be collected, and (v) to construct or acquire Authorized Facilities. The amounts referred to in clauses (i) and (iii) of the preceding sentence may be reduced in any Fiscal Year by: (i) interest earnings on or surplus balances in funds and accounts for the Bonds to the extent that such earnings or balances are available to apply against debt service pursuant to a Bond indenture, Bond resolution, or other legal document that sets forth these terms; (ii) proceeds received by CFD No. 2004-1 from the collection of penalties associated with delinquent Annual Facilities Special Taxes; and (iii) any other revenues available to pay debt service on the Bonds as determined by the Administrator.

“Annual Maintenance Special Tax” means a special tax levied in any Fiscal Year to pay the Maintenance Special Tax Requirement, as defined below.

“Annual Maintenance Special Tax Requirement” means that amount necessary in any Fiscal Year to (i) pay for Authorized Services, (ii) pay administrative expenses of CFD No. 2004-1 that have not been included in the Annual Facilities Special Tax Requirement for the Fiscal Year, and (iii) cure any delinquencies in the payment of Annual Maintenance Special Taxes levied in prior Fiscal Years or (based on delinquencies in the payment of Annual Maintenance Special Taxes which have already taken place) are expected to occur in the current Fiscal Year.

“Assessor’s Parcel” or **“Parcel”** means a lot or parcel shown on an Assessor’s Parcel Map with an assigned Assessor’s Parcel number.

“Assessor’s Parcel Map” means an official map of the County Assessor designating parcels by Assessor’s Parcel number.

“Authorized Facilities” means those facilities that are authorized to be funded by CFD No. 2004-1.

“Authorized Services” means those services that are authorized to be funded by CFD No. 2004-1.

“Bonds” means bonds or other debt (as defined in the Act), whether in one or more series, issued, insured or assumed by CFD No. 2004-1 related to Authorized Facilities.

“Capitalized Interest” means funds in any capitalized interest account available to pay debt service on Bonds.

“**CFD Formation**” means the date on which the Resolution of Formation to form CFD No. 2004-1 was adopted by the City Council.

“**City**” means the City of Modesto.

“**City Council**” means the City Council of the City of Modesto, acting as the legislative body of CFD No. 2004-1.

“**Commercial Property**” means all Parcels in CFD No. 2004-1 for which building permits have been or may be issued for construction of a commercial building based on reference to the Village One Specific Plan and/or the Parcel’s zoning designation.

“**County**” means the County of Stanislaus.

“**Developed Property**” means, in any Fiscal Year, the following:

For purposes of levying the Annual Maintenance Special Tax, “Developed Property” means:

- *for Low Density Residential Property and Village Residential Property, all Parcels for which a Final Map was recorded prior to June 30 of the preceding Fiscal Year but not prior to June 30, 2002,*
- *for Multi-Family Property, all Parcels for which a building permit for new construction of a residential structure was issued prior to June 30 of the preceding Fiscal Year, and*
- *for Commercial Property and Industrial Property, all Parcels for which a building permit for construction, reconstruction or expansion of a building structure was issued prior to June 30 of the preceding Fiscal Year. Notwithstanding the foregoing, Parcels of Commercial Property or Industrial Property on which a vacant building is located that cannot be occupied without demolition or reconstruction of the building shall not be categorized as Developed Property until a permit is issued for construction of a new building or reconstruction of the existing building.*

For purposes of levying the Annual Facilities Special Tax, “Developed Property” means:

- *for Low Density Residential Property and Village Residential Property, all Parcels for which a building permit for construction, or reconstruction of a unit was issued prior to June 30 of the preceding Fiscal Year but not prior to June 30, 2002,*
- *for Multi-Family Attached Property, all Parcels for which a building permit for new construction of a residential structure was issued prior to June 30 of the preceding Fiscal Year, and*

- for Commercial Property and Industrial Property, all Parcels for which a building permit for construction, reconstruction or expansion of a building structure was issued prior to June 30 of the preceding Fiscal Year. Notwithstanding the foregoing, Parcels of Commercial Property or Industrial Property on which a vacant building is located that cannot be occupied without demolition or reconstruction of the building shall not be categorized as Developed Property until a permit is issued for construction of a new building or reconstruction of the existing building.

“Expected Land Uses” means the Net Taxable Acreage of each Land Use Class expected on an Original Parcel in CFD No. 2004-1 based on reference to the Expected Land Use Map. The Expected Land Uses for each Original Parcel in the CFD at the time of CFD Formation, and the corresponding Maximum Special Tax for each Parcel, are reflected in Attachment 2, which will be updated with each annexation of property into CFD No. 2004-1.

“Expected Land Use Map” means the map entitled **“Village One Zoning of Unvested Properties”** and dated February 21, 2003, which is on file with the CFD Administrator at the City and the City Clerk and which identifies the Expected Land Uses on all Parcels within the Village One Specific Plan that either (i) are in CFD No. 2004-1 at CFD Formation, or (ii) may be annexed into the CFD in future Fiscal Years. The Expected Land Use Map may be updated in future years to add property within the Village One Specific Plan that was vested to develop when the map was prepared and, therefore, was not included in the map but subsequently has its vesting expire or for any other reason becomes subject to a condition of development that requires formation of, or annexation into, a CFD.

“Final Map” means a final map, or portion thereof, approved by the City pursuant to the Subdivision Map Act (California Government Code Section 66410 *et seq.*) that creates lots which do not need to be further subdivided prior to issuance of a building permit for a residential or non-residential structure. The term **“Final Map”** shall not include any Assessor’s Parcel Map or subdivision map or portion thereof, that does not create lots that are in their final configuration, including Assessor’s Parcels that are designated as remainder parcels.

“Fiscal Year” means the period starting July 1 and ending on the following June 30.

“Improvement Area” means a geographic area that, upon annexation into CFD No. 2004-1, is identified as an improvement area as defined in the Act instead of a Tax Zone, as defined below. Special Taxes collected within an Improvement Area will be the sole security for Bonds issued for that Improvement Area.

“Industrial Property” means all Parcels in CFD No. 2004-1 for which building permits have been or may be issued for construction of an industrial building based on reference to the Village One Specific Plan and/or the Parcel’s zoning designation.

“Land Use Class” means one of the five mutually-exclusive land use classes identified in Table 1 in Section C below and defined in this Section A. The City shall, in its sole discretion, determine the appropriate Land Use Class for Parcels on which a structure was built prior to CFD Formation.

“Low Density Residential Property” means all Parcels in CFD No. 2004-1 for which a building permit has been or may be issued for construction of a residential unit on a Parcel with a maximum density of two or less dwelling units per gross acre based on reference to the Village One Specific Plan and/or the Parcel’s zoning designation.

“Maximum Annual Facilities Special Tax” means the greatest amount of Annual Facilities Special Tax that can be levied on an Assessor’s Parcel in any Fiscal Year determined in accordance with Sections C and D below.

“Maximum Annual Maintenance Special Tax” means the greatest amount of Annual Maintenance Special Tax that can be levied on an Assessor’s Parcel in any Fiscal Year determined in accordance with Sections C and D below.

“Maximum One-Time Facilities Special Tax” means the greatest amount of One-Time Facilities Special Tax that can be levied on an Assessor’s Parcel in any Fiscal Year determined in accordance with Sections C and D below.

“Maximum Special Taxes” means, collectively, the Maximum One-Time Facilities Special Tax, Maximum Annual Facilities Special Tax, and Maximum Annual Maintenance Special Tax.

“Multi-Family Property” means all Parcels in CFD No. 2004-1 for which building permits have been or may be issued for construction of a residential structure consisting of two or more residential units that share common walls, including but not limited to, townhomes, condominiums, duplexes, triplexes, fourplexes, and apartment units. If a building permit has not yet been issued on the Parcel, the Administrator shall reference the Village One Specific Plan and/or the Parcel’s zoning designation to determine whether the Parcel is Multi-Family Property.

“Net Taxable Acreage” or **“Net Taxable Acre”** means the total acreage within a Final Map or Parcel less arterial road right-of-ways and property that is defined in the Final Map for use as a park site, school site, or City-owned or CFD-owned storm drainage basin. If a Subdivision Map is recorded which is not a Final Map for some or all Parcels created by the subdivision, the Administrator shall calculate the Net Taxable Acreage of such unsubdivided Parcels by identifying the Acreage of the Parcel and (i) adding a portion of the acreage of any non-arterial right-of-way that fronts the Parcel determined by drawing lines at right angles to the right-of-way, and (ii) subtracting a portion of the acreage of any arterial right-of-way that fronts the Parcel determined by drawing lines at right angles to the right-of-way. The Net Taxable Acreage of a Parcel or Final Map shall be determined in the sole discretion of the City.

“One-Time Facilities Special Tax” means a Special Tax, levied and collected in full by the City prior to a structural building permit being issued for new construction on Taxable Property.

“Original Parcel” means an Assessor’s Parcel in CFD No. 2004-1 at the time of CFD Formation or added to the CFD upon annexation, as identified in Attachment 2 (which shall be updated after each annexation). A Successor Parcel that is being further subdivided shall also be considered an Original Parcel for purposes of determining the Maximum Special Taxes pursuant to Section C below.

“Per-Acre Special Taxes” means the per-acre Special Taxes identified in Table 1 in Section C below.

“Proportionately” means, for Developed Property, that the ratio of the actual Annual Facilities Special Tax and Annual Maintenance Special Tax levied in any Fiscal Year to the Maximum Annual Facilities Special Tax and Maximum Annual Maintenance Special Tax authorized to be levied in that Fiscal Year is equal for all Assessor’s Parcels of Developed Property, respectively. In addition, for Undeveloped Property, “Proportionately” means that the ratio of the actual Annual Facilities Special Tax and actual Annual Maintenance Facilities Special Tax to the Maximum Annual Facilities Special Tax and Maximum Annual Maintenance Special Tax is equal for all Assessor’s Parcels of Undeveloped Property, respectively.

“Public Property” means any property within the boundaries of CFD No. 2004-1 that is owned by the federal government, State of California, County, City, or other public agency.

“Single Family Detached Lot” means an individual numbered lot, which is in its final configuration and for which a building permit may be issued for a single family detached unit.

“Special Taxes” means, collectively, the One-Time Facilities Special Tax, the Annual Facilities Special Tax, and the Annual Maintenance Special Tax.

“Special Tax Category” means, individually, the One-Time Facilities Special Tax, the Annual Facilities Special Tax, and the Annual Maintenance Special Tax.

“Subdivision Map” means a Final Map, large lot subdivision map, or other map recorded with the County that results in the subdivision of an Original Parcel into two or more Successor Parcels.

“Successor Parcel” means an Assessor’s Parcel of Taxable Property created by the subdivision or reconfiguration of an Original Parcel on which construction of a residential or non-residential structure is permitted.

“Taxable Property” means all of the Assessor’s Parcels within the boundaries of CFD No. 2004-1 which are not exempt from the Special Tax pursuant to law or Section G below.

“Taxable Public Property” means, in any Fiscal Year, all Parcels of Public Property within CFD No. 2004-1 that, (i) based on the Village One Specific Plan, were expected to be Taxable Property and, (ii) based on this expectation, Maximum Special Taxes were assigned to the Parcels in a prior Fiscal Year.

“Tax Zone” means a mutually exclusive geographic area within which particular Special Tax rates may be levied pursuant to this Rate and Method of Apportionment of Special Taxes. Attachment 1 identifies the boundaries of Tax Zone #1 and Tax Zone #2 as of the date of adoption of this updated Rate and Method of Apportionment of Special Tax; additional Tax Zones may be created when property is annexed into the CFD. Alternatively, additional Original

Parcels may be added to a Tax Zone with assigned Maximum Special Taxes based on the Expected Land Uses on each Original Parcel.

“Tax Zone #1” means the geographic area that is designated in Attachment 1 of this Rate and Method of Apportionment of Special Tax as Tax Zone #1. Tax Zone #1 may be expanded to include additional Original Parcels that annex to CFD No. 2004-1; Attachments 1 and 2 will be updated each time such an annexation takes place.

“Tax Zone #2” means the geographic area that is designated in Attachment 1 of this Rate and Method of Apportionment of Special Tax as Tax Zone #2. Tax Zone #2 may be expanded to include additional Original Parcels that annex to CFD No. 2004-1; Attachments 1 and 2 will be updated each time such an annexation takes place.

“Undeveloped Property” means, in any Fiscal Year, all Parcels of Taxable Property within CFD No. 2004-1 that are not Developed Property.

“Village One Specific Plan” means the specific plan for development within the Village One project in the City of Modesto adopted by the City Council on April 1, 2003, as amended from time to time.

“Village Residential Property” means, in any Fiscal Year, all Parcels in CFD No. 2004-1 for which a building permit has been or may be issued for construction of a residential unit on a Parcel with a maximum density greater than two dwelling units per gross acre based on reference to the Village One Specific Plan and/or the Parcel’s zoning designation.

B. DATA FOR ANNUAL ADMINISTRATION

On or about July 1 of each Fiscal Year, the Administrator shall identify the current Assessor’s Parcel numbers for all Parcels of Taxable Property in CFD No. 2004-1. The Administrator shall also determine: (i) the Tax Zone within which each Parcel of Taxable Property is located, (ii) whether each Assessor’s Parcel of Taxable Property is Developed Property or Undeveloped Property, (iii) which Parcels are Commercial Property, Industrial Property, Multi-Family Property, Low Density Residential Property, and Village Residential Property (the City shall, in its sole discretion, determine the appropriate Land Use Class for Parcels on which a structure was built prior to CFD Formation), (iv) the Net Taxable Acreage of each Parcel, and (v) the Annual Facilities Special Tax Requirement and the Annual Maintenance Special Tax Requirement.

In any Fiscal Year, if it is determined that (i) a parcel map for a portion of property in CFD No. 2004-1 was recorded after January 1 of the prior Fiscal Year (or any other date after which the Assessor will not incorporate the newly-created Parcels into the then current tax roll), (ii) because of the date the parcel map was recorded, the Assessor does not yet recognize the new Parcels created by the parcel map, and (iii) one or more of the newly-created Parcels meets the definition of Developed Property, the Administrator shall calculate the Special Tax for the property affected by recordation of the parcel map by determining the Special Tax that applies

separately to each newly-created Parcel, then applying the sum of the individual Special Taxes to the Original Parcel or Successor Parcel that was subdivided by recordation of the parcel map.

C. CALCULATING MAXIMUM SPECIAL TAXES

The Administrator shall use the procedures set forth below to calculate the Maximum Special Taxes for each Parcel in CFD No. 2004-1 in each Fiscal Year, including the Maximum One-Time Facilities Special Tax, Maximum Annual Facilities Special Tax, and Maximum Annual Maintenance Special Tax. A separate method of calculating the Maximum Special Taxes may be identified for Tax Zones or Improvement Areas added to CFD No. 2004-1 as a result of future annexations. The Per-Acre Special Taxes set forth in Table 1 below shall be used for purposes of Sections C.1 and C.2 below:

**Table 1
Per-Acre Special Taxes
Fiscal Year 2004-05 ***

Land Use Class	Per-Acre Special Tax: One-Time Facilities Special Tax TAX ZONE #1	Per-Acre Special Tax: One-Time Facilities Special Tax TAX ZONE #2	Per-Acre Special Tax: Annual Facilities Special Tax	Per-Acre Special Tax: Annual Maintenance Special Tax
Low Density Residential Property	\$13,342 per Net Taxable Acre	\$19,576 per Net Taxable Acre	\$3,517 per Net Taxable Acre	\$525 per Net Taxable Acre
Village Residential Property	\$30,281 per Net Taxable Acre	\$44,429 per Net Taxable Acre	\$6,405 per Net Taxable Acre	\$1,233 per Net Taxable Acre
Multi-Family Property	\$101,437 per Net Taxable Acre	\$148,832 per Net Taxable Acre	\$7,222 per Net Taxable Acre	\$4,020 per Net Taxable Acre
Commercial Property	\$52,102 per Net Taxable Acre	\$76,446 per Net Taxable Acre	\$3,570 per Net Taxable Acre	\$920 per Net Taxable Acre
Industrial Property	\$13,103 per Net Taxable Acre	\$19,225 per Net Taxable Acre	\$2,550 per Net Taxable Acre	\$920 per Net Taxable Acre

** All Per-Acre Special Taxes shown in Table 1 are subject to the annual adjustments described in Section D below.*

1. Original Parcels

The Maximum Special Taxes for each Land Use Class in the Original Parcels in CFD No. 2004-1 as of the date of approval of this updated Rate and Method of Apportionment of Special Tax are identified in Attachment 2. Attachment 2 will be updated by the Administrator as needed to reflect Original Parcels added to the CFD due to additional annexations. Until an Original Parcel is subdivided, the Maximum Special Taxes shown in Attachment 2 (escalated as set forth herein) shall be the Maximum Special Taxes for the Parcel unless the zoning on the Original Parcel changes to a Land Use Class that has

higher Per-Acre Special Taxes, as shown in Table 1 above. Upon approval of such change in zoning by the City Council, the Administrator shall multiply the applicable Per-Acre Special Taxes by the Net Taxable Acreage of each Land Use Class that is expected on the Parcel based on the rezone. The Administrator shall then update Attachment 2 to reflect the higher Maximum Special Taxes for the Parcel. If a rezone results in a Land Use Class that has a lower Per-Acre Special Tax than the previous Expected Land Uses, there shall be no corresponding reduction in the Maximum Special Taxes for the Parcel. The potential reduction in Maximum Special Tax revenues must be considered separately for each Special Tax Category. If the rezone would cause a reduction in the Maximum Special Tax revenues in any Special Tax Category, the Maximum Special Tax identified for that Special Tax Category shall remain the same as originally assigned to the Original Parcel.

2. Successor Parcels

a. *All Successor Parcels are Single Family Detached Lots*

If the Parcels created by a recorded Subdivision Map are all Single Family Detached Lots, the Administrator shall apply the following steps to allocate the Maximum Special Taxes for the Original Parcel to each of the Successor Parcels created by the subdivision:

Step 1: Determine the greater of (i) the Maximum Special Taxes assigned to each Expected Land Use for the Original Parcel, or (ii) the Net Taxable Acreage of Low Density Residential Property and/or Village Residential Property within the Subdivision Map multiplied by the Per-Acre Special Taxes for such Land Use Classes from Table 1 above. If the Subdivision Map includes both Low Density Residential Property and Village Residential Property, separately calculate the amount that applies to each Land Use Class.

Step 2: Separately for any Low Density Residential Property and Village Residential Property created by the Subdivision Map, divide the Maximum Special Taxes from Step 1 by the number of Successor Parcels to determine the Maximum Special Taxes for each Single Family Detached Lot.

b. *No Successor Parcels are Single Family Detached Lots*

If none of the Successor Parcels created by recordation of a Subdivision Map are Single Family Detached Lots, the Administrator shall apply the following steps to allocate the Maximum Special Taxes assigned to the Original Parcel to each of the Successor Parcels:

Step 1: Identify the Expected Land Uses for the Original Parcel.

Step 2: Determine the Net Taxable Acreage within each Land Use Class created by the Subdivision Map.

Step 3: If the Net Taxable Acreage of each Land Use Class from Step 2 is the same as the Expected Land Uses, the Maximum Special Taxes assigned to each of the Expected Land Uses on the Original Parcel shall be allocated to the Successor Parcels based on the Acreage of each Land Use Class that occurs on each Successor Parcel.

Step 4: If the Net Taxable Acreage within each Land Use Class from Step 2 is different than the Expected Land Uses for the Original Parcel, the Administrator shall apply the following steps separately for each Special Tax Category:

Step 4a. Multiply the applicable Per-Acre Special Tax by the Net Taxable Acreage of each Land Use Class created by the Subdivision Map.

Step 4b. If the amount calculated in Step 4a is *greater than* the Maximum Special Tax assigned to the Original Parcel, multiply the Net Taxable Acreage of each Land Use Class on each Successor Parcel by the applicable Per-Acre Special Tax from Table 1 above to determine the Maximum Special Tax for each Successor Parcel.

Step 4c. If the amount calculated in Step 4a is *less than* the Maximum Special Tax assigned to the Original Parcel: (i) identify the Maximum Special Tax that was assigned to each of the Expected Land Uses on the Parcel, (ii) divide the Maximum Special Tax for each Land Use Class by the Net Taxable Acreage of each Land Use Class actually created by the Subdivision Map, and (iii) multiply the per-acre Maximum Special Tax calculated in (ii) by the Net Taxable Acreage of each Land Use Class on each Successor Parcel to determine the Maximum Special Tax for each Parcel.

If the Land Use Classes on a Successor Parcel or Parcels are different than the Expected Land Uses for that Parcel(s) and such difference would result in a reduction in the Maximum Special Tax assigned to the Original Parcel for any Special Tax Category, the Maximum Special Tax assigned to the Original Parcel shall either be distributed equally on a per-acre basis to the Successor Parcels or, if multiple Land Use Classes are created by the Subdivision Map, the Maximum Special Tax from the Original Parcel shall be distributed to each Land Use Class so that the per-

acre tax for each Land Use Class has the same proportional relationship as the Per-Acre Special Taxes in Table 1 above.

If, after subdivision of an Original Parcel, a Successor Parcel is further subdivided, the Successor Parcel shall be treated as an Original Parcel for purposes of allocating Maximum Special Taxes pursuant to Section C.2a, C.2b, or C.2c, as appropriate.

c. *Some, But Not All, Successor Parcels are Single Family Detached Lots*

If a Subdivision Map divides an Original Parcel into Successor Parcels, of which some are Single Family Detached Lots and some are not, the Administrator shall (i) break out the Net Taxable Acreage of Low Density Residential Property and/or Village Residential Property separately from the Net Taxable Acreage of other Land Use Classes, (ii) for the Low Density Residential Property and/or Village Residential Property created by the Subdivision Map, apply the steps in Section C.2a to determine the Maximum Special Taxes for each Single Family Detached Lot, and (iii) apply the steps in Section C.2b above to determine the Maximum Special Taxes for Land Use Classes other than Low Density Residential Property and Village Residential Property.

If, after subdivision of an Original Parcel, a Successor Parcel is further subdivided, the Successor Parcel shall be treated as an Original Parcel for purposes of allocating Maximum Special Taxes pursuant to Section C.2a, C.2b, or C.2c, as appropriate.

After each reallocation of the Maximum Special Taxes upon subdivision or reconfiguration of Original Parcels, the sum of the Maximum Special Taxes assigned to Successor Parcels shall never be less, but may be more, than the Maximum Special Taxes assigned to the Original Parcels prior to such reallocation.

D. ESCALATION OF MAXIMUM SPECIAL TAXES

1. One-Time Facilities Special Tax

Beginning in January 2005 and each January thereafter, the Maximum One-Time Facilities Special Tax assigned to each Parcel and the Per-Acre Special Tax shown in Table 1 above shall be adjusted annually by the greater of (i) the percentage increase, if any, in the construction cost index for the San Francisco region for the prior twelve (12) month period as published in the Engineering News Record or other comparable source if the Engineering News Record is discontinued or otherwise not available, or (ii) four percent (4.0%). Each annual adjustment of the One-Time Facilities Special Tax shall become effective on the subsequent July 1.

2. Annual Facilities Special Tax

Beginning in Fiscal Year 2005-06, and each Fiscal Year thereafter, the Maximum Annual Facilities Special Tax assigned to each Parcel and the Per-Acre Special Tax shown in Table 1 above shall be increased by two percent (2%) of the amount in effect in the prior Fiscal Year.

3. Annual Maintenance Special Tax

Beginning in January 2005 and each January thereafter, the Maximum Annual Maintenance Special Tax assigned to each Parcel and the Per-Acre Special Tax shown in Table 1 above shall be adjusted annually by the greater of (i) the percentage increase, if any, in the construction cost index for the San Francisco region for the prior twelve (12) month period as published in the Engineering News Record or other comparable source if the Engineering News Record is discontinued or otherwise not available, or (ii) four percent (4.0%). Each annual adjustment of the Maximum Annual Maintenance Special Tax shall become effective on the subsequent July 1.

E. METHOD OF LEVY OF THE SPECIAL TAX

1. One-Time Facilities Special Tax

The Maximum One-Time Facilities Special Tax determined pursuant to Sections C and D above shall be levied on all Taxable Property in CFD No. 2004-1 and shall be collected as set forth in Section F below.

2. Annual Facilities Special Tax

Commencing with Fiscal Year 2004-05 and for each following Fiscal Year, the Administrator shall determine the Annual Facilities Special Tax Requirement for the Fiscal Year. The Annual Facilities Special Tax shall then be levied on all Parcels of Taxable Property in CFD No. 2004-1 as follows:

Step 1: The Annual Facilities Special Tax shall be levied Proportionately on each Parcel of Developed Property within the CFD up to 100% of the Maximum Annual Facilities Special Tax for each Parcel for such Fiscal Year until the amount levied on Developed Property is equal to the Special Tax Requirement prior to applying any Capitalized Interest that is available in the CFD accounts;

Step 2: If additional revenue is needed after Step 1, and after applying Capitalized Interest to the Annual Facilities Special Tax Requirement, the Annual Facilities Special Tax shall be levied Proportionately on each Assessor's Parcel of Undeveloped Property within the CFD, up to 100% of the Maximum Annual Facilities Special Tax for each Parcel of Undeveloped Property for such Fiscal Year;

Step 3: If additional revenue is needed after applying the first two steps, the Annual Facilities Special Tax shall be levied Proportionately on each Assessor's Parcel of Taxable Public Property, up to 100% of the Maximum Annual Facilities Special Tax assigned to each Parcel of Taxable Public Property.

3. Annual Maintenance Special Tax

Commencing with Fiscal Year 2004-05 and for each following Fiscal Year, the Administrator shall determine the Maintenance Special Tax Requirement for the Fiscal Year. The Annual Maintenance Special Tax shall then be levied on all Parcels of Taxable Property as follows:

Step 1: The Annual Maintenance Special Tax shall be levied Proportionately on each Parcel of Developed Property within the CFD up to 100% of the Maximum Annual Maintenance Special Tax for each Parcel for such Fiscal Year;

Step 2: If additional revenue is needed after Step 1, the Annual Maintenance Special Tax shall be levied Proportionately on each Assessor's Parcel of Undeveloped Property within the CFD, up to 100% of the Maximum Annual Maintenance Special Tax for each Parcel of Undeveloped Property for such Fiscal Year;

Step 3: If additional revenue is needed after applying the first two steps, the Annual Maintenance Special Tax shall be levied Proportionately on each Assessor's Parcel of Taxable Public Property, up to 100% of the Maximum Annual Maintenance Special Tax assigned to each Parcel of Taxable Public Property.

F. COLLECTION OF SPECIAL TAX

The Maximum One-Time Facilities Special Tax shall be collected prior to a building permit being issued for new construction of any residential or non-residential structure on Taxable Property within CFD No. 2004-1, and shall be immediately delinquent if not so paid.

The Annual Facilities Special Tax and Annual Maintenance Special Tax for CFD No. 2004-1 shall be collected in the same manner and at the same time as ordinary ad valorem property taxes, provided, however, that prepayments are permitted as set forth in Section H below and provided further that the City may directly bill, collect at a different time or in a different manner, and/or collect delinquent Annual Facilities Special Taxes and Annual Maintenance Special Taxes through foreclosure or other available methods.

The Annual Facilities Special Tax shall be levied and collected until principal and interest on Bonds have been repaid, costs of constructing or acquiring Authorized Facilities from Annual Facilities Special Tax proceeds have been paid, and all Administrative Expenses have been reimbursed. However, in no event shall an Annual Facilities Special Tax be levied after Fiscal Year 2060-61. The Annual Maintenance Special Tax will continue to be levied and collected unless and until the City determines that the Annual Maintenance Special Tax no longer needs to be levied to pay Authorized Services of the CFD and all Administrative Expenses have been reimbursed. Under no circumstances may the Annual Facilities Special Tax on one Parcel in the CFD be increased by more than ten percent (10%) as a consequence of delinquency or default in payment of the Annual Facilities Special Tax levied on another Parcel or Parcels in the CFD.

G. EXEMPTIONS

Notwithstanding any other provision of this Rate and Method of Apportionment of Special Taxes, no Special Taxes shall be levied on Public Property, except Taxable Public Property, as defined herein.

H. PREPAYMENT OF SPECIAL TAX

The following definitions apply to this Section H:

“Outstanding Bonds” means all Previously Issued Bonds which remain outstanding, with the following exception: if an Annual Facilities Special Tax has been levied against, or already paid by, an Assessor’s Parcel making a prepayment, and a portion of the Annual Facilities Special Tax will be used to pay a portion of the next principal payment on the Bonds that remain outstanding (as determined by the Administrator), that next principal payment shall be subtracted from the total Bond principal that remains outstanding, and the difference shall be used as the amount of Outstanding Bonds for purposes of this prepayment formula.

“Previously Issued Bonds” means all Bonds that have been issued on behalf of the CFD prior to the date of prepayment.

“Public Facilities Requirements” means either \$14,100,000 in 2004 dollars, which shall increase on January 1, 2005, and on each January 1 thereafter by the percentage increase, if any, in the construction cost index for the San Francisco region for the prior twelve (12) month period as published in the Engineering News Record or other comparable source if the Engineering News Record is discontinued or otherwise not available, or such other number as shall be determined by the City as sufficient to fund Authorized Facilities. The Public Facilities Requirements shown above shall be adjusted or a separate Public Facilities Requirements identified each time property annexes into CFD No. 2004-1; at no time shall the added Public Facilities Requirement for the annexation area exceed the amount of public improvement costs that are expected to be supportable by the Maximum Annual Facilities Special Tax generated within that annexation area.

“Remaining Facilities Costs” means the Public Facilities Requirements (as defined above), minus costs of Authorized Facilities funded by Outstanding Bonds (as defined above), developer equity, and/or any other source of funding.

The Annual Facilities Special Tax obligation applicable to an Assessor’s Parcel in the CFD may be prepaid and the obligation of the Assessor’s Parcel to pay the Annual Facilities Special Tax permanently satisfied as described herein, provided that a prepayment may be made only if there are no delinquent Annual Facilities Special Taxes with respect to such Assessor’s Parcel at the time of prepayment. The Annual Maintenance Special Tax may not be prepaid. An owner of an Assessor’s Parcel intending to prepay the Annual Facilities Special Tax obligation shall provide the City with written notice of intent to prepay. Within 30 days of receipt of such written notice, the City or its designee shall notify such owner of the prepayment amount for such Assessor’s Parcel. Prepayment must be made not less than 75 days prior to any redemption date for Bonds to be redeemed with the proceeds of such prepaid Annual Facilities Special Taxes. The Prepayment Amount shall be calculated as follows: (capitalized terms as defined below):

	Bond Redemption Amount
plus	Remaining Facilities Amount
plus	Redemption Premium
plus	Defeasance Requirement
plus	Administrative Fees and Expenses
<u>less</u>	<u>Reserve Fund Credit</u>
equals	Prepayment Amount

As of the proposed date of prepayment, the Prepayment Amount shall be determined by application of the following steps:

- Step 1.** Compute the total Maximum Annual Facilities Special Tax that could be collected from the Assessor’s Parcel prepaying the Annual Facilities Special Tax in the Fiscal Year in which prepayment would be received by the City.
- Step 2.** Divide the Maximum Annual Facilities Special Tax from Step 1 by the total amount that could be collected if the Maximum Annual Facilities Special Tax was levied on all Parcels of Taxable Property in the CFD.
- Step 3.** Multiply the quotient computed pursuant to Step 2 by the Outstanding Bonds to compute the amount of Outstanding Bonds to be retired and prepaid (*the “Bond Redemption Amount”*).
- Step 4.** Compute the current Remaining Facilities Costs (if any).
- Step 5.** Multiply the quotient computed pursuant to Step 2 by the amount determined pursuant to Step 4 to compute the amount of Remaining Facilities Costs to be prepaid (*the “Remaining Facilities Amount”*).

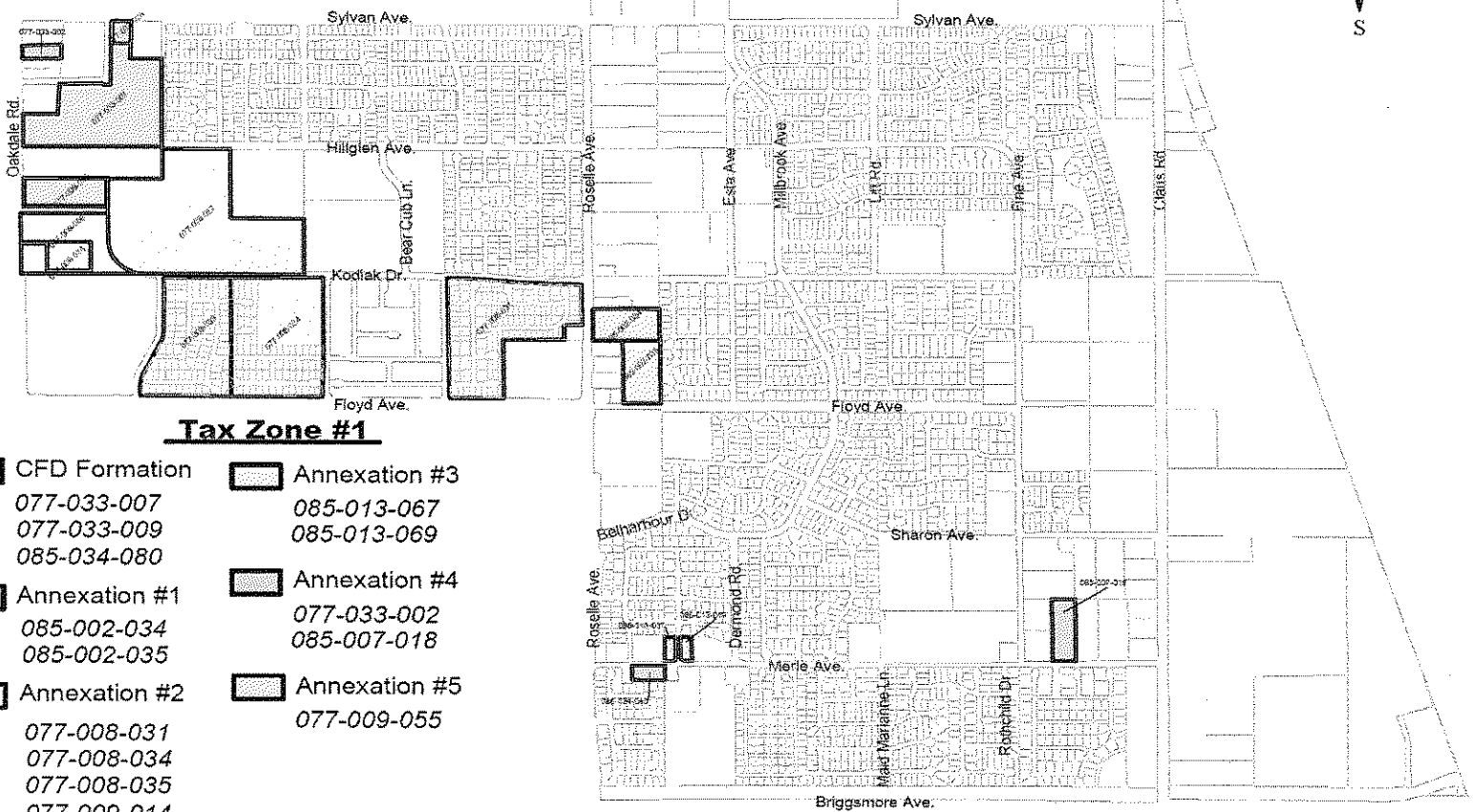
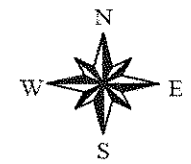
- Step 6.** Multiply the Bond Redemption Amount computed pursuant to Step 3 by the applicable redemption premium, if any, on the Outstanding Bonds to be redeemed (*the "Redemption Premium"*).
- Step 7.** Compute the amount needed to pay interest on the Bond Redemption Amount starting with the first Bond interest payment date after which the prepayment has been received until the earliest redemption date for the Outstanding Bonds, which, depending on the Bond offering document, may be as early as the next interest payment date.
- Step 8:** Compute the amount of interest the City reasonably expects to derive from reinvestment of the Bond Redemption Amount plus the Redemption Premium from the first Bond interest payment date after which the prepayment has been received until the redemption date for the Outstanding Bonds.
- Step 9:** Take the amount computed pursuant to Step 7 and subtract the amount computed pursuant to Step 8 (*the "Defeasance Requirement"*).
- Step 10.** Determine the costs of computing the prepayment amount, the costs of redeeming Bonds, and the costs of recording any notices to evidence the prepayment and the redemption (*the "Administrative Fees and Expenses"*).
- Step 11.** If and to the extent so provided in the indenture pursuant to which the Outstanding Bonds to be redeemed were issued, a reserve fund credit shall be calculated as a reduction in the applicable reserve fund for the Outstanding Bonds to be redeemed pursuant to the prepayment (*the "Reserve Fund Credit"*).
- Step 12.** The Annual Facilities Special Tax prepayment is equal to the sum of the amounts computed pursuant to Steps 3, 5, 6, 9, and 10, less the amount computed pursuant to Step 11 (*the "Prepayment Amount"*).

If an owner that has prepaid the Annual Facilities Special Tax obligation assigned to a Parcel subsequently rezones the Parcel to a Land Use Class that has a higher Per-Acre Annual Facilities Special Tax, the City may in its sole discretion and as a condition of approval of the rezoning, collect the additional Annual Facilities Special Tax prepayment that would have applied had the Parcel been rezoned at the time of the original prepayment for the Parcel.

I. INTERPRETATION OF SPECIAL TAX FORMULA

The City reserves the right to make minor administrative and technical changes to this document that does not materially affect the Rate and Method of Apportionment of Special Taxes. In addition, the interpretation and application of any section of this document shall be left to the City's discretion. Interpretations may be made by the City by ordinance or resolution for purposes of clarifying any vagueness or ambiguity in this Rate and Method of Apportionment of Special Taxes.

ATTACHMENT 1
 City of Modesto
 Community Facilities District No. 2004-1
 (Village One #2)
 IDENTIFICATION OF TAX ZONES



Tax Zone #1

- | | | | |
|--|---|--|---|
| | CFD Formation
077-033-007
077-033-009
085-034-080 | | Annexation #3
085-013-067
085-013-069 |
| | Annexation #1
085-002-034
085-002-035 | | Annexation #4
077-033-002
085-007-018 |
| | Annexation #2
077-008-031
077-008-034
077-008-035
077-009-014
077-009-056
077-009-057 | | Annexation #5
077-009-055 |

Updated by VMD 11/4/04

ATTACHMENT 2

Last Updated: 11/4/04

**City of Modesto
Community Facilities District No. 2004-1
(Village One #2)**

**Maximum Special Taxes Assigned to Expected Land Uses
Within Each Original Parcel in Each Tax Zone**

Annexation	Tax Zone	Assessor's Parcel Number	Expected Land Uses	Expected Net Taxable Acreage	Fiscal Year 2004-05 Maximum One-Time Facilities Special Tax/1	Fiscal Year 2004-05 Maximum Annual Facilities Special Tax/2	Fiscal Year 2004-05 Maximum Annual Maintenance Special Tax/3
F	1	077-033-007	Village Residential	16.23	\$491,461	\$103,953	\$20,012
			Commercial	3.24	\$168,810	\$11,567	\$2,981
F	1	077-033-009	Commercial	0.93	\$48,455	\$3,320	\$856
F	1	085-034-080	Village Residential	1.00	\$30,281	\$6,405	\$1,233
1	1	085-002-034	Multi Family	4.62	\$468,639	\$33,366	\$18,573
1	1	085-002-035	Multi Family	4.88	\$495,013	\$35,244	\$19,618
2	1	077-008-031	Village Residential	25.13	\$760,962	\$160,958	\$30,986
2	1	077-008-034	Village Residential	14.82	\$448,765	\$94,923	\$18,274
			Multi Family	10.60	\$1,075,233	\$76,554	\$42,612
2	1	077-008-035	Village Residential	21.03	\$636,810	\$134,698	\$25,930
2	1	077-009-014	Village Residential	2.83	\$85,696	\$18,127	\$3,490
2	1	077-009-056	Village Residential	9.85	\$298,268	\$63,090	\$12,146
2	1	077-009-057	Village Residential	38.97	\$1,180,051	\$249,603	\$48,051
3	1	085-013-067	Multi Family	0.57	\$57,819	\$4,117	\$2,291
3	1	085-013-069	Multi Family	0.57	\$57,819	\$4,117	\$2,291
4	1	077-033-002	Commercial	1.12	\$58,354	\$3,998	\$1,030
4	1	085-007-018	Village Residential	3.06	\$92,660	\$19,599	\$3,773
5	1	077-009-055	Village Residential	5.79	\$175,327	\$37,085	\$7,139

1. Beginning in January 2005 and each January thereafter, the Maximum One-Time Facilities Special Tax shall be adjusted by the greater of (i) the percentage increase, if any, in the construction cost index for the San Francisco region for the prior twelve (12) month period as published in the Engineering News Record or other comparable source if the Engineering News Record is discontinued or otherwise not available, or (ii) four percent (4.0%). Each annual adjustment of the Maximum One-Time Facilities Special Tax shall become effective on the subsequent July 1.

2. Beginning in Fiscal Year 2005-06 and each Fiscal Year thereafter, the Maximum Annual Facilities Special Tax shall escalate by 2.0% of the amount in effect in the prior Fiscal Year.

3. Beginning in January 2005 and each January thereafter, the Maximum Annual Maintenance Special Tax shall be adjusted by the greater of (i) the percentage increase, if any, in the construction cost index for the San Francisco region for the prior twelve (12) month period as published in the Engineering News Record or other comparable source if the Engineering News Record is discontinued or otherwise not available, or (ii) four percent (4.0%). Each annual adjustment of the Maximum Annual Maintenance Special Tax shall become effective on the subsequent July 1.

ORDINANCE NO. 3393-C.S.

**AN ORDINANCE AMENDING SECTION 2 OF
ORDINANCE NO. 3337-C.S. ENTITLED "AN ORDINANCE
AMENDING SECTION MAP 28-3-9 OF THE ZONING MAP
TO REZONE FROM PLANNED DEVELOPMENT ZONE, P-
D(480), TO PLANNED DEVELOPMENT ZONE, P-D(563),
PROPERTY LOCATED ON THE EAST CORNER OF 16TH
STREET AND G STREET. (PRATT)" (SIMVOLUKAS)**

SECTION 1. AMENDMENT OF ORDINANCE NO. 3337-C.S. Section 2 of

Ordinance No. 3337-C.S., is hereby amended to read as follows:

"SECTION 2. USES. The following uses shall be permitted in said P-D(563) Zone if the plan for construction conforms in principle to the approved plan, or if changes are approved by the Secretary of the Planning Commission as required by Section 10-2.1709(c) of the Modesto Municipal Code, or by the Planning Commission if any changes not conforming in principle to the approved plan are proposed, as required by Section 10-2.1709(a) or (b) of the Modesto Municipal Code:

1. Office condominium.
2. Uses allowed in the Professional Office, P-O Zone."

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 9th day of August, 2005, by Councilmember Jackman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Marsh, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Jackman, Keating, Marsh, O'Bryant, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: Dunbar, Hawn

APPROVED: _____



JIM RIDENOUR, Mayor

ATTEST:

By Jean Zahr
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By Michael D. Milich
MICHAEL D. MILICH, City Attorney

Ord. No. 3393-C.S.

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 6th day of September, 2005, Councilmember Jackman moved its final adoption, which motion being duly seconded by Councilmember Marsh, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Jackman, Keating, Marsh, O'Bryant, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: Dunbar, Hawn

APPROVED:



MAYOR JIM RIDENOUR

ATTEST:


JEAN ZAHR, City Clerk

Effective Date: October 6, 2005

ORDINANCE NO. 3394-C.S.

AN ORDINANCE AMENDING SECTION 16-3-9 OF THE ZONING MAP TO REZONE FROM MEDIUM-HIGH DENSITY RESIDENTIAL ZONE, R-3, TO PLANNED DEVELOPMENT ZONE, P-D(574), PROPERTY LOCATED ON THE WEST SIDE OF COFFEE ROAD SOUTH OF ATHENS AVENUE (YOSHINO)

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

SECTION 1. ZONING CHANGE. Section 16-3-9 of the Zoning Map is hereby amended to reclassify the following described property from Medium-High Density Residential Zone, R-3, to Planned Development Zone, P-D(574):

R-3 to P-D(574)

A portion of the North Half of Southeast quarter of Section 16, Township 3 South, Range 9 East, Mount Diablo Base and Meridian, described as follows:

Commencing at the Northeast corner of the Southeast quarter of said Section 16, said point being on the centerline of a 50 foot County Road known as Coffee Road, thence along the Northerly line of said Southeast quarter, North 88° 37' West 25.01 feet to a point on the Westerly line of said Coffee Road; thence South along the Westerly line of said Coffee Road parallel with and 25.00 feet distant from the Easterly line of said Section 16, a distance of 426.99 feet to the Southeast corner of Lot 10 in Block 12910 of Brookdale Park No. 3, as per map filed February 25, 1963 in Volume 20 of Maps, as Page 61, and THE TRUE POINT OF BEGINNING; thence at right angles West along the South line of said Lot 10 a distance of 136.39 feet to a point on the East line of a 20 foot alley shown in said Block 12910 Map of Brookdale Park No. 3; thence South 0° 29' West along the east line of said 20 foot alley a distance of 111.53 feet to the North-west corner of Lot 11 in said Block 12910; thence North 89° 07' East along the North line of said Lot 11 a distance of 139.05 feet to the Northeast corner of said Lot 11 also being a point on the West line of 50 foot wide Coffee Road; thence North 0° 53' West along said West line of said Coffee road a distance of 111.50 feet, more or less, to THE POINT OF BEGINNING;

Including also all of the 20 foot alley immediately adjacent to the above described property.

SECTION 2. USES. The following uses shall be permitted in said P-D(574) Zone if the plan for construction conforms in principle to the approved plan, or if changes

are approved by the Secretary of the Planning Commission as required by Section 10-2.1709(c) of the Modesto Municipal Code, or by the Planning Commission if any changes not conforming in principle to the approved plan are proposed, as required by Section 10-2.1709(a) or (b) of the Modesto Municipal Code:

1. Conversion of an existing residence to a medical office.

SECTION 3. ZONING MAP. Section Map 16-3-9 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.

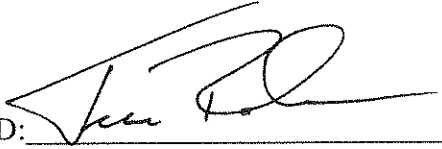
SECTION 5. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in *The Modesto Bee*, the official newspaper of the City of Modesto, setting forth 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 13th day of September, 2005, by Councilmember Dunbar, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Keating, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Dunbar, Jackman, Keating, Marsh, Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: Hawn, O'Bryant

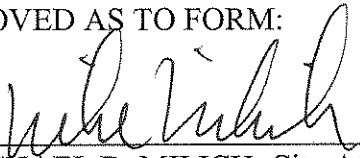
APPROVED: 
JIM RIDENOUR, Mayor

ATTEST:

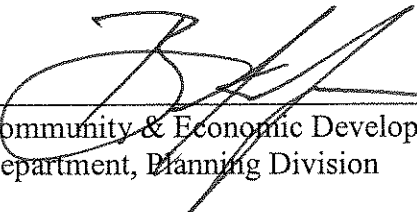
By 
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By 
MICHAEL D. MILICH, City Attorney

APPROVED AS TO DESCRIPTION:

By 
Community & Economic Development
Department, Planning Division

Ord. No. 3394-C.S.

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 27th day of September, 2005, Councilmember Jackman, moved its final adoption, which motion being duly seconded by Councilmember Marsh, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Jackman, Keating, Marsh, O'Bryant, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: Dunbar, Hawn

APPROVED: 

MAYOR JIM RIDENOUR

ATTEST:


JEAN ZAHR, City Clerk

Effective Date: October 27, 2005

Ordinance 3394-C.S.
Effective: October 27, 2005

ORDINANCE NO. 3395-C.S.

AN ORDINANCE AMENDING SECTION 9-3-9 OF THE ZONING MAP TO RECLASSIFY FROM LOW DENSITY RESIDENTIAL ZONE, (R-1), TO PLANNED DEVELOPMENT ZONE, P-D(573), PROPERTY LOCATED ON THE WEST SIDE OF COFFEE ROAD NORTH OF RUMBLE ROAD.

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

SECTION 1. ZONING CHANGE. Section 9-3-9 of the Zoning Map is hereby amended to reclassify the following described property from Low Density Residential Zone, R-1, to Planned Development Zone, P-D(573):

R-1 to P-D(573)

All that portion of the East half of the Southeast quarter of Section 9, Township 3 South, Range 9 East, M.D.B. & M., particularly described as follows:

Commencing at the Southeast corner of said Section 9, thence North 89 degrees 37' West along the Section Line 20.00 feet; thence North 0 degrees 50' 30" West along the West line of a 40-foot county road, 499.00 feet to the True Point of Beginning of this description; thence continuing North 0 degrees 50' 30" West along the West Line of said 40-foot county road, 158.00 feet; thence South 89 degrees 37' West, 278.00 feet; thence South 0 degrees 50' 30" East 158.00 feet; thence South 89 degrees 37' 00" East, 278.00 feet to the True Point of Beginning of this description. Excepting there from that 20-foot strip of land granted to the City of Modesto, a municipal Corporation, by instrument recorded August 16, 1990, as Document No. 70854, Stanislaus County Records.

Also including the west one-half of Coffee Road immediately adjacent to the above described property.

SECTION 2. USES. The following uses shall be permitted in said P-D(573) Zone if the plan for construction conforms in principle to the approved plan, or if changes are approved by the Secretary of the Planning Commission as required by Section 10-2.1709(c) of the Modesto Municipal Code, or by the Planning Commission if any changes not conforming in principle to the approved plan are proposed, as required by Section 10-2.1709(a) or (b) of the Modesto Municipal Code:

1. Professional/medical offices as allowed in the P-O Zone.
2. Off-street parking as shown on the approved plans.

SECTION 3. ZONING MAP. Section Map 9-3-9 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.

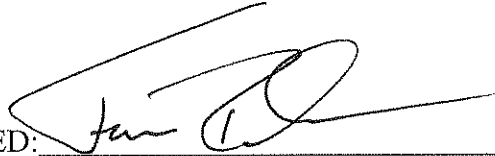
The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 13th day of September, 2005, by Councilmember Marsh, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Jackman, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Dunbar, Hawn, Jackman, Keating, Marsh, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: O'Bryant

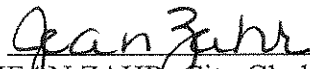
APPROVED:



JIM RIDENOUR, Mayor

ATTEST:

By

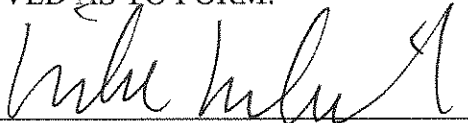


JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:-

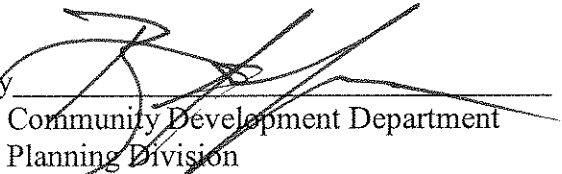
By



MICHAEL D. MILICH, City Attorney

APPROVED AS TO DESCRIPTION:

By



Community Development Department
Planning Division

Ord. No. 3395-C.S.

FINAL ADOPTION CLAUSE

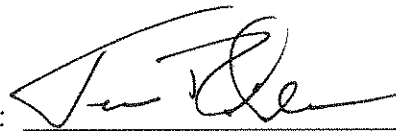
The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 27th day of September, 2005, Councilmember Jackman, moved its final adoption, which motion being duly seconded by Councilmember Marsh, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Hawn, Jackman, Keating, Marsh, O'Bryant, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: Dunbar

APPROVED:



MAYOR JIM RIDENOUR

ATTEST:


JEAN ZAHR, City Clerk

Effective Date: October 27, 2005

ORDINANCE NO. 3396-C.S.

AN ORDINANCE AMENDING SECTIONS 5-5.03, 5-5.05, 5-5.09, 5-5.10, 5-5.11, 5-5.15, 5-5.16, 5-5.18, 5-5.33, 5-5.38, AND 5-5.41 OF CHAPTER 5 OF TITLE 5 OF THE MODESTO MUNICIPAL CODE RELATING TO SOLID WASTE.

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

SECTION 1. AMENDMENT OF CODE. Sections 5-5.03, 5-5.05, 5-5.09, 5-5.10, 5-5.11, 5-5.15, 5-5.16, 5-5.18, 5-5.33, 5-5.38, and 5-5.41 of Chapter 5 of Title 5 of the Modesto Municipal Code are hereby amended to read as follows:

5-5.03. DEFINITIONS.

The following words and phrases, whenever used in this chapter, shall be construed as defined in this section:

- (a) **"Annexation"** means the legal process of including new territory within the incorporated boundaries of the City.
- (b) **"Automated collection container"** means a standard container designed for automated collection.
- (c) **"Cannery or food processing waste"** means the solid residues resulting from canning/food processing operations, which is segregated by the generator and which is collected for reuse.
- (d) **"Collection"** means the collection and transport of solid waste.
- (e) **"Collection routes"** means streets or areas designated for collection on a particular day/schedule.
- (f) **"Collection vehicle"** means any vehicle used by the collector for the collection of solid waste.
- (g) **"Collector"** means a person or firm authorized by a valid service agreement with the City of Modesto to collect solid waste within the City limits.
- (h) **"Commercial"** means occurring in a business zone.
- (i) **"Construction and demolition sites"** means sites where construction or demolition activities are taking place.

- (j) **"Containerized yard waste"** means yard waste set out for collection in a standard container.
- (k) **"Customer"** shall mean any person, firm or corporation receiving service under the provisions of this chapter.
- (l) **"Designated recycling collection location"** means the location where an authorized recycling collector has agreed with a customer to pick up segregated recyclable materials as approved by the Public Works-Parks, Recreation and Neighborhoods Director.
- (m) **"Detachable container"** means a container, watertight and with a cover, designed for direct dumping into a collection vehicle, and constructed in standard sizes with a minimum of one (1) cubic yard in capacity, as approved by the Public Works-Parks, Recreation and Neighborhoods Director, and furnished by a collector.
- (n) **"Disposal"** means the final disposition of solid waste at a solid waste facility.
- (o) **"Drop box container"** means a metal box designed for loading upon a vehicle for transportation to a solid waste facility, with a minimum of twenty (20) cubic yards' capacity, of a design approved by the Public Works-Parks, Recreation and Neighborhoods Director, and furnished by a collector.
- (p) **"Finance Director"** means the Finance Director of the City of Modesto or his/her duly authorized agent.
- (q) **"Garbage"** means putrescible kitchen and table food waste and animal, fish, food, fowl, fruit or vegetable matter, or any portion thereof, resulting from the storage, preparation, cooking, or handling of food stuffs, or any other material contaminated by or rendered useless because of contact with any putrescible matter, except that garbage shall not include cannery or food processing wastes as defined in Section 5-5.03(c), industrial garbage as defined in Section 5-5.03(w), or swill as defined in Section 5-5.03(ap).
- (r) **"Garbage/Recyclables"** means garbage and recyclables commingled in the same container. Garbage/recyclables shall also include rubbish when said rubbish is included in the same container.
- (s) **"Hazardous substance or hazardous wastes"** means all substances defined as hazardous waste, acutely hazardous waste, or extremely

hazardous waste by the State of California in the Health and Safety Codes or in future amendments to or recodifications of such statutes, or identified and listed as hazardous waste by the U.S. Environmental Protection Agency pursuant to the Federal Resource Conservation and Recovery Act and all future amendments thereto.

- (t) **"Household hazardous waste"** means hazardous waste generated at a residential location within the City.
- (u) **"Health Officer"** means the Stanislaus County Department of Environmental Resources.
- (v) **"Industrial areas"** means areas which are zoned industrial by the City's Zoning Code.
- (w) **"Industrial garbage"** means garbage produced by any person, firm or corporation engaged in the business of processing or manufacturing agricultural products, animals, poultry, goods, wares or other products or materials, who processes or manufactures the same for the purpose of wholesale in processed or manufactured form, and shall include cannery/food processing waste. Industrial garbage also means garbage produced by any person, firm or corporation engaged in the business of building construction and/or building demolition.
- (x) **"Industrial garbage collector"** means an agent or employee of the City, or any person, or the employees thereof, with whom an agreement shall have been entered under the terms of this chapter for the collection of industrial garbage.
- (y) **"Initial term and any extensions"** means the term of a service agreement and any extensions beyond that time period as established by the City Council.
- (z) **"Place"** or **"Premises"** means every dwelling house, dwelling unit, apartment house or multiple-dwelling building, trailer or mobile home park, store, restaurant, rooming house, hotel, motel, hospital, office building, department store; manufacturing, processing or assembling shop or plant; warehouse; and every other property or building where any person resides or any business or activity is carried on or conducted within the City of Modesto.

- (aa) **"Property value"** means a worth to the extent that a person will collect the materials involved with compensation to the owner or producer, or at no cost to the owner or producer.
- (ab) **"Pruned refuse"** means tree trimmings and similar material not to exceed six (6) feet in length and six (6) inches in diameter, and no single piece shall weigh more than fifty (50) pounds.
- (ac) **"~~Public Works Parks, Recreation and Neighborhoods Director~~"** means the Public Works Parks, Recreation and Neighborhoods Director of the City of Modesto and his/her duly authorized agent.
- (ad) **"Recyclable materials"** means domestic, commercial or industrial by-products which may have an economic value if recycled, which may be source separated, set aside, handled, packaged or offered for collection by the residence/business. Recyclables include, but are not limited to, glass, newspaper, plastics, metal, bi-metal, aluminum, and other materials.
- (ae) **"Recyclables"** means recyclable materials.
- (af) **"Recycling"** means the process of collecting, sorting, cleansing, treating, reconstituting, and/or marketing recyclable materials which would otherwise be disposed of in a landfill. The collection, transport or disposal of solid waste which is not intended for, or capable of being, reused, shall not be construed to be recycling.
- (ag) **"Recycling collector"** means a person, firm, organization or company which the City has authorized to provide recycling service in the City.
- (ah) **"Recycling container"** means any container provided by an authorized recycling collector to a customer for the purpose of segregating recyclable materials for collection by collector. Recycling containers shall be clearly marked to indicate purpose and to warn that theft of the container, theft of its contents, or diversion for uses other than by the collector are punishable under this Code.
- (ai) **"Removal"** means transportation and disposal of solid waste by noncustomers in accordance with the provisions of this chapter.
- (aj) **"Residential premises"** means any dwelling unit the occupant of which places his/her solid waste in a standard container.

- (ak) "**Rubbish**" means nonputrescible, useless, unused, unwanted or discarded material or debris, either combustible or noncombustible, which by their presence may injuriously affect the health, safety and comfort of persons and property in the vicinity thereof.
- (al) "**Salvageable waste**" means matter and material which will be reused and which has a property value.
- (am) "**Service area**" means the area of the City to be served by a collector as described in the service agreement between City and collector.
- (an) "**Solid waste**" means all putrescible and nonputrescible solid, semi-solid and liquid waste accumulated or delivered for collection and disposal within the City and includes, but is not limited to, construction debris, demolition debris, bulky waste, and yard waste. Solid waste does not include hazardous waste or household hazardous waste, designated waste, infectious waste, recyclable materials when recycled, sewage, or abandoned automobiles.
- (ao) "**Standard container**" means a plastic container, watertight and with a close-fitting cover, of not less than sixty (60) nor more than ninety (90) gallons' net capacity of a design satisfactory to the Public Works-Parks, Recreation and Neighborhoods Director or such other disposal unit approved by the Public Works-Parks, Recreation and Neighborhoods Director, and supplied by the solid waste collector to its residential customers. The Public Works-Parks, Recreation and Neighborhoods Director shall make the determination whether a residential customer receives a sixty- or a ninety-gallon container.
- (ap) "**Swill**" means all classes of putrescible, animal, fish, fowl, fruit or vegetable matter, and shall include matter or substances used in the preparation, cooking, dealing in or storage of meats, fowl, fish, fruits and vegetables that are subject to immediate decay and the attraction of flies or rodents, and having a property value.
- (aq) "**Swill collector**" means an agent or employee of the City, or any person, or the agents, assignees, or employees thereof, with whom an agreement shall have been entered under the terms of this chapter for the collection of swill.
- (ar) "**Term**" means the length of an agreement entered under the terms of this chapter.

- (as) **"Yard waste"** means leaves, weeds, grass cuttings, vines, shrubbery, similar soft vegetative materials, and woody prunings from trees which are cut up into two (2) foot lengths no larger than six (6) inches in diameter for placement in a yard waste recycling container, except that yard waste shall not include pruned refuse or source separated leaves set out for collection between November 1 and December 31 of each year pursuant to Article 11 of Chapter 7 of Title 4 of this Code.
- (at) **"Yard waste recycling container"** means a dark green standard container to be used for the separate collection and recycling of yard waste. Yard waste recycling container shall also mean a detachable or other container as approved by the Public Works-Parks, Recreation and Neighborhoods Director, used for the collection and recycling of yard waste from commercial or other customer classes.

5-5.05. DEPOSITING OR BURYING SOLID WASTE.

No person shall throw, drop, leave, dump, bury, place, or otherwise dispose of any solid waste upon any property within the City limits of the City, either with or without intent to remove the same from such property; or upon any street, way, sidewalk, gutter, stream or creek or the banks thereof, or any public place or public property within the City limits of the City, except as otherwise approved by the Public Works-Parks, Recreation and Neighborhoods Director, or at a permitted solid waste facility approved for such use.

5-5.09. NUMBER OF CONTAINERS REQUIRED.

All places or premises within the City shall have sufficient containers of the approved type to hold all garbage, garbage/recyclables, and yard waste generated, produced or accumulated on the place or premises during a one (1) week period, unless a more frequent collection schedule has been approved or directed pursuant to this chapter. In determining the sufficiency of the number of containers required, the following minimum standards shall apply.

- (a) One (1) family and two (2) family dwellings: Effective January 1, 1997, one (1) black standard container for garbage and garbage/recyclables, and one (1) dark green standard container for yard waste recycling per dwelling unit.
- (b) Three (3) family dwellings, apartment houses, and multiple-dwelling buildings: Effective January 1, 1998, one (1) standard container per dwelling unit for garbage and garbage/recyclables, unless a lesser number is authorized by the Public Works-Parks, Recreation and Neighborhoods

Director, and sufficient yard waste collection containers of a type approved by the ~~Public Works-Parks, Recreation and Neighborhoods~~ Director.

- (c) Motel, hotel, trailer park, or mobile home park: One (1) standard container for garbage and garbage/recyclables per unit or space, unless a lesser number is authorized by the ~~Public Works-Parks, Recreation and Neighborhoods~~ Director, and sufficient yard waste collection containers of a type approved by the ~~Public Works-Parks, Recreation and Neighborhoods~~ Director.
- (d) Commercial place or premises: Effective January 1, 1998, not less than one (1) standard container for garbage or garbage/recyclables, and sufficient yard waste collection containers of a type approved by the ~~Public Works-Parks, Recreation and Neighborhoods~~ Director.

Customers responsible for solid waste removal or collection services for apartment houses, multiple-dwelling buildings, commercial and industrial places or premises may arrange for the use of detachable containers and/or drop box containers instead of standard containers. These arrangements shall be made with the collector on the basis of charges established for this purpose.

Nothing herein shall be construed to prohibit the joint use of a detachable container or drop box container by two (2) or more customers upon approval of the ~~Public Works-Parks, Recreation and Neighborhoods~~ Director.

5-5.10. PROHIBITED LOCATION OF CONTAINERS.

Solid waste, rubbish, swill, and industrial garbage containers shall not be placed or allowed to remain in or on any street right-of-way, except on solid waste pickup day or as otherwise authorized by the ~~Public Works-Parks, Recreation and Neighborhoods~~ Director.

5-5.11. CONTAINER LOCATIONS.

- (a) On single-family and two (2) family premises, standard solid waste containers shall be placed by the customer on the premises and when subject to collection may be collected by the collector as follows:
 - (1) Where alleys exist, immediately adjacent to and accessible from the alley without the necessity of entering the premises.
 - (2) Where alleys do not exist, on the asphaltic portion of the street next to the curb, or the edge of the driveway apron, or such other

location as approved by the Public Works Parks, Recreation and Neighborhoods Director.

- (3) All containers shall be placed no more than four (4) feet from an area where the collection vehicle can reasonably park. All residential containers set out for collection shall have the necessary clearance from obstructions on either side of the container as well as overhead clearance needed for the collection vehicle to empty contents of the container without causing damage to public or private property. In case of dispute, an acceptable residential container location shall be as determined by the Public Works Parks, Recreation and Neighborhoods Director.
 - (4) All containers shall be screened from public view, except on pickup day, in a manner approved by the Public Works Parks, Recreation and Neighborhoods Director.
- (b) Standard and detachable containers for solid waste service to multiple-dwelling buildings, apartments, commercial and industrial premises shall be placed in a location no greater than fifty (50) feet from the nearest point where the collector's vehicle can reasonably be parked. Drop box containers shall be located as agreed upon between the customer and the collector. In case of dispute, the location shall be as determined by the Public Works Parks, Recreation and Neighborhoods Director.
 - (c) Containers for solid waste may be placed on premises at locations other than described in this section if the customer is handicapped or disabled and the location is approved by the Public Works Parks, Recreation and Neighborhoods Director.

5-5.15. HOURS OF COLLECTION.

- (a) No collections shall be made in residential districts, as shown on the Zoning Map of the City of Modesto, or at schools, churches, hospitals, offices or commercial establishments in or adjacent to said residential district except between the hours of 6:00 a.m. and 6:00 p.m. year-round.
- (b) No collections shall be made in commercial areas when in or adjacent to residential areas except between the hours of 6:00 a.m. and 9:00 p.m. Monday through Sunday.
- (c) No collection shall be made from premises in residential or commercial areas other than described in subsections (a) and (b) above except when

prior approval has been given by the ~~Public Works~~ Parks, Recreation and Neighborhoods Director.

5-5.16. COLLECTION EQUIPMENT.

All collections shall be made with vehicles of a design approved by the ~~Public Works~~ Parks, Recreation and Neighborhoods Director. All collections shall be made as quietly as possible, and use of any unnecessarily noisy trucks or equipment is prohibited.

5-5.18. REMOVAL OF SOLID WASTE BY PRODUCERS.

Notwithstanding the provisions of Section 5-5.17:

- (a) Any person may remove or may cause to be removed from premises occupied by that person or under their control, such solid waste as is created or produced on such premises in excess of the regular solid waste collection made by City's collector if the following conditions have been or will be complied with: Subsections (b)(1) and (b)(2) of this section.
- (b) Any person may remove or may cause to be removed from premises occupied by that person or under their control, all solid waste created or produced on such premises if all of the following conditions have been met or will be complied with:
 - (1) Such removal shall be made only by the owner or occupant personally, or by employees of such owner or occupant.
 - (2) All vehicles used in carrying out such removal shall be owned by or under the exclusive control of the owner or occupant, and such vehicles and activities shall meet all the requirements of this chapter and all other laws and ordinances of the State of California and the City relating to solid waste disposal.
 - (3) Persons removing solid waste in excess of normal annual residential volume (defined herein as three thousand (3,000) pounds per year) shall comply with the following additional requirements:
 - (i) No waste shall be permitted to leak, blow, litter or fall from any vehicle engaged in such removal.

- (ii) All removal shall be done safely and quietly with due regard to the property of others.
- (iii) No person shall remove solid waste from any location within two hundred (200) feet of a public or private elementary, junior high, or high school, where such school is shown on an official map of the City, as designated by the ~~Public Works Parks, Recreation and Neighborhoods~~ Director, as said map shall be periodically updated, during the forty-five (45) minutes before the commencement of the regular school day and forty-five (45) minutes following the conclusion of the regular school day, where such locations are accessible to and used by children as routes to or from school.
- (iv) Persons engaged in solid waste removal pursuant to these requirements shall be responsible for any damage in excess of normal wear and tear to the City's driving surfaces, whether or not paved, resulting from the illegal weight of, or any leakage or spillage of oils, fluids or solids by vehicles used in such solid waste removal.
- (v) Vehicles used shall comply with CHP and D.O.T. regulations, and shall be thoroughly washed and disinfected inside the collection body following each use.
- (vi) No driver shall operate a vehicle as in subsection (b)(3)(v) of this section, without a valid and appropriate driver's license.
- (vii) All vehicles as in subsection (b)(3)(v) of this section shall be clearly identified with the name and local telephone number of its operator affixed thereto.
- (viii) Garbage shall be disposed of at a permitted transfer facility or at the Fink Road Sanitary Landfill. If disposed of outside of Stanislaus County, the county where disposal occurs shall have an export agreement with the City of Modesto.
- (ix) Yard waste shall be separated from garbage/recyclables and taken to a permitted composting facility or such other

locations as directed by the Public Works Parks, Recreation and Neighborhoods Director.

- (x) Materials placed in blue, see-through recycling bags for the purpose of separating recyclables from other solid waste shall be recycled at a permitted recycling facility.
 - (xi) Insurance requirements as specified from time to time by the City's Risk Manager shall be complied with.
- (4) A cash security deposit shall be deposited with the City in an amount set from time to time by Council resolution, to ensure prompt removal of solid waste in the event it is not removed from the premises on a regular weekly basis by a noncustomer owner or person in control of the premises. The security deposit shall be made for each separate residential property or business location owned or controlled by a noncustomer, based on the frequency and volume of past collection. Events requiring City to use a noncustomer's deposit for solid waste removal shall be treated as a public nuisance subject to immediate abatement and charged to such noncustomer. Conduct requiring City to expend noncustomer deposit monies shall constitute a misdemeanor.
- (5) Persons engaged in solid waste removal shall procure and retain a receipt from a permitted solid waste facility for each week they remain a noncustomer of a collector and display all such receipts for the preceding one-quarter calendar year upon reasonable request by appropriate City authority. Failure to show proof of solid waste disposal for each week that a person is a noncustomer shall constitute a public health and safety risk sufficient to permit City to administratively require such person to become a customer.
- (c) Any producer of industrial garbage or swill, or their employees, may transport the same upon or through any street or public place of the City for disposal at a permitted disposal facility or site.
 - (d) It shall be unlawful for any person acting as an employee of a producer of industrial garbage or swill to collect or transport such industrial garbage or swill from more than one (1) industrial producer thereof.
 - (e) Any person engaged in the business of gardening or tree trimming, or building demolition, or construction cleanup work, including both yards

and building interiors, is authorized to remove and dispose of yard waste, rubbish or salvageable waste produced as an incident to such business.

5-5.33. TERMINATION OF AGREEMENTS.

Any agreement entered by the Council pursuant to the provisions of this chapter may be terminated by the Council, if after conducting a public hearing on said termination, the Council finds and determines that the person doing business by virtue of such agreement has failed to comply with any of its material terms, or this chapter, has failed to render satisfactory collection services, or without cause in accordance with the provisions of the agreement.

- (a) **Termination for Cause.** The City further reserves the right to terminate the service agreement or impose liquidated damages in the event of any of the following:
- (1) If collector practices, or attempts to practice, any fraud or deceit upon the City.
 - (2) If collector becomes insolvent, unable, or unwilling to pay its debts, or upon listing of an order for relief in favor of collector in a bankruptcy proceeding.
 - (3) If collector fails to provide or maintain in full and in effect, any or all of the bonds and/or coverages required by its service agreement with the City.
 - (4) If collector willfully and materially violates any orders or rulings of any regulatory body having jurisdiction over collector relative to its service agreement with the City, provided that the collector may contest any such orders or rulings by appropriate proceedings conducted in good faith, in which case no breach of the service agreement shall be deemed to have occurred.
 - (5) If collector ceases to provide collection services as required by the service agreement over all or a substantial portion of its service area for a period of seven (7) days or more, for any reason within the control of the collector.
 - (6) If the collector willfully fails and/or refuses to provide City with required information, reports, and/or test results related to vehicle incidents or other incidents where such tests are conducted as part

of an investigation of an incident, in a timely manner as provided in its service agreement.

- (7) Any other act or omission by the collector, which materially violates the terms, conditions, or requirements of its service agreement.

(b) **Process for Imposing Damages for Termination.** The Solid Waste Program Manager, may file a complaint with the ~~Public Works Parks, Recreation and Neighborhoods~~ Director charging a failure of collector to comply with the provisions of this chapter or the service agreement.

- (1) Upon issuance of the Solid Waste Program Manager's complaint, the Director shall conduct a factual investigation thereof and render a decision relative to the justification for complaint, in writing, within ten (10) days following the decision.
- (2) If the Director determines that the collector's performance pursuant to its service agreement with the City has not been in conformity with the provisions of either the service agreement, the requirements of this chapter, or the requirements of the California Integrated Waste Management Board, including, but not limited to, the laws governing transfer, storage, or disposal of special wastes, the Director may advise collector in writing of such deficiencies. The Director may set a reasonable time within which correction of all such deficiencies is to be made. Unless otherwise specified, a reasonable time for correction shall be thirty (30) days from the receipt by the collector of such written notice. The Director shall review the collector's response and notify the collector of his/her decision, in writing.
- (3) A decision or order of the Director shall be final and binding on collector if the collector fails to file a "Notice of Appeal" with the City Manager within thirty (30) days of receipt of the Director's decision. Within ten (10) working days of receipt of a Notice of Appeal, the City Manager shall either refer the appeal to the City Council for proceedings in accordance with subsection b(4) of this section, or refer the matter to a hearing officer.
- (4) The City Council shall set the appeal on the matter referred by the City Manager for hearing within sixty (60) days from receipt by the City Manager of the appeal or referral. At the hearing, the City Council shall consider the report of the ~~Public Works Parks,~~

Recreation and Neighborhoods Director indicating the deficiencies, and shall give the collector, or its representatives and any other interested person, a reasonable opportunity to be heard.

- (5) Based on the evidence presented at the public hearing, the Council shall determine whether the service agreement should be terminated, liquidated damages imposed, or both. The City Council may also find in favor of collector. The decision of the City Council shall be final and binding. Collector's performance under the service agreement is not excused during the period of time prior to the City Council's final determination as to whether such performance is deficient.
- (c) **Remedies: Liquidated Damages.** The City Council may, at its discretion, assess liquidated damages not to exceed the sum of five thousand dollars (\$5,000.00) per day, for each calendar day that service is not provided by collector in accordance with the service agreement for a period not to exceed forty-five (45) days.
- (d) **Additional Remedies.** In addition to liquidated damages, above, the City shall have the following rights:
 - (1) **To rent or lease equipment from collector.** The City may rent or lease equipment from collector for the purpose of collecting, transporting, and disposing of solid waste which collector is obligated to collect, transport, and dispose of pursuant to its service agreement, for a period not to exceed six (6) months.
 - (2) **To contract with others to perform the services.** The City may contract others to perform the services otherwise to be performed by collector hereunder, or perform such services itself.
 - (3) **To obtain injunctive relief.** In the event of a breach under the terms of the service agreement by collector, City may suffer irreparable injury and incalculable damages sufficient to support injunctive relief, to enforce the provisions of the service agreement and to enjoin the breach thereof.
 - (4) **To reduce the service area.** If at the time of the annual review the total number of unresolved complaints exceeds two and one-half tenths (0.25) of one (1) percent of the total annual stops for the prior year, the City Council may determine whether it is appropriate to decrease the service area of collector because of

poor performance and authorize another collector to provide services. The maximum reduction in service area for poor performance under this provision shall be ten (10) percent for each occurrence.

- (5) **To invoke eminent domain.** Nothing set forth in a service agreement entered into between City and collector shall be deemed or construed to impair or affect, in any way, to any extent, the right of the City to acquire the property of the collector, either by purchase or through the exercise of the right of eminent domain, at fair market value, or be construed to contract away or to modify or abridge, whether for a term or in perpetuity, the City's right of eminent domain.
- (6) **To collect and bill collector.** Should collector fail to provide collection services as stipulated in its service agreement, within twenty-four (24) hours of a request being communicated by the City to collector to do so, the City may collect and dispose of same and collector shall be liable for all expenses incurred including, but not limited to, disposal, operating, administration, and legal costs. Reimbursement to City for such expenses will be paid by collector within thirty (30) days after date of invoice.
- (7) **To conduct inspections.** At all reasonable times during any normal business hours, the collector shall permit the City's authorized representatives to examine all property of the collector, and to examine and copy any and all records kept or maintained by the collector under its control which pertain to the service agreement.
- (e) **Force Majeure.** Collector shall not be in default under its service agreement in the event that any of the services provided by the collector under the terms of the agreement are temporarily interrupted or discontinued for any of the following reasons: riots, wars, sabotage, civil disturbances, insurrections, explosion, natural disasters such as floods, earthquakes, landslides, fires, strikes, lockouts, other labor disturbances or other catastrophic events which are beyond the reasonable control of collector. Other catastrophic events do not include the financial inability of the collector to perform or failure of the collector to obtain any necessary permits or licenses from other governmental agencies or the right to use the omissions of the collector. In the event a labor disturbance interrupts collection services as required by a service agreement, City may elect to exercise its rights under the service agreement.

5-5.38. INSPECTION AND ENFORCEMENT.

The Health Officer and the ~~Public Works~~ Parks, Recreation and Neighborhoods Director may, from time to time, inspect all premises within the City to determine compliance with and to enforce the provisions of this chapter.

5-5.41. UNATTENDED NEWSPAPER RECYCLING RECEPTACLES PROHIBITED WITHOUT THE ISSUANCE OF A TEMPORARY PERMIT.

- (a) It shall be unlawful for any person, other than a collector authorized by a service agreement with City and as expressly permitted by the ~~Public Works~~ Parks, Recreation and Neighborhoods Director, to place, locate, establish, maintain, erect, leave, or otherwise make available any unattended newspaper recycling receptacle which is in public view, in the City of Modesto, for the purpose of collecting discarded newspaper as hereinafter defined; provided, however, that in the case of undertakings sponsored by and located on a site owned by a bona fide nonprofit organization, or religious organization, or public agency, the City Manager or his/her delagee shall be authorized to issue temporary permits for the location and use of newspaper recycling receptacles.
- (b) The City Manager shall promulgate, and from time to time amend rules and regulations for the issuance of temporary permits; and such rules and regulations as adopted or amended are hereby incorporated herein by reference as if fully set forth herein.
- (c) For the purposes of this section, the following words and phrases shall have the meanings set forth herein:
 - (1) **"Newspaper"** shall mean newspapers, magazines, or print material of like purpose.
 - (2) **"Newspaper recycling receptacle"** shall mean any unattended bin, box, container, structure or device, the purpose of which is to serve as a container for the collection of discarded newspaper as herein defined.
 - (3) **"Person"** shall mean any natural person, partnership, corporation, association, firm, company or entity, and shall include both male and female gender.

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 11th day of October 2005, by Councilmember Jackman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Dunbar, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Dunbar, Hawn, Jackman, Keating, Marsh, O'Bryant, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: 

JIM RIDENOUR, Mayor

ATTEST:

By 
JEAN ZAHR, City Clerk

APPROVED AS TO FORM:

By 
MICHAEL D. MILICH, City Attorney

Ord. No. 3396-C.S.

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 25th day of October 2005, Councilmember Jackman, moved its final adoption, which motion being duly seconded by Councilmember Marsh, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Dunbar, Jackman, Keating, Marsh, O'Bryant, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: Hawn

APPROVED: 

MAYOR JIM RIDENOUR

ATTEST: 

JEAN ZAHR, City Clerk

Effective Date: November 25, 2005

**CITY OF MODESTO
ORDINANCE NO. 3397-C.S.**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MODESTO
AUTHORIZING THE LEVY OF SPECIAL TAXES WITHIN THE CITY OF MODESTO
COMMUNITY FACILITIES DISTRICT NO. 2005-1 (HETCH HETCHY)**

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

WHEREAS, on September 6, 2005, this City Council adopted Resolution No. 2005-421 entitled "A Resolution Declaring the City Council's Intention to Establish City of Modesto Community Facilities District No. 2005-1 (Hetch Hetchy) 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. 2005-1 (Hetch Hetchy) (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 facilities 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 Nos. 2005-518, 2005-519, 2005-520, 2005-521 entitled "A Resolution Establishing City of Modesto Community Facilities District No. 2005-1 (Hetch Hetchy), Authorizing the Levy of Special Taxes Therein and Establishing an Annual Appropriations Limit" (the "Resolution of Formation"), "A Resolution Determining it Necessary to Incur Bonded Indebtedness Within the City of Modesto Community Facilities District No. 2005-1 (Hetch Hetchy)," and "A Resolution

Calling a Special Election for the City of Modesto Community Facilities District No. 2005-1 (Hetch Hetchy),” which resolutions established the Community Facilities District, authorized the levy of special taxes therein and called an election within the Community Facilities District on the propositions of levying special taxes, authorizing the issuance of bonds 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, issuing bonds 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. 2005-1 (Hetch Hetchy), 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 Finance Director 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 Finance Director 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 Finance Director 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 and/or the Annual Facilities Special Tax (each 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 One-Time Special Facilities Tax (as defined in the Rate and Method) shall be collected prior to the issuance of a building permit for new construction of any structure on Taxable Property within the Community Facilities District. The Annual Maintenance Special Tax and the Annual Facilities 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 Finance Director 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 Finance Director, 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 go into effect and be in full force and operation from and after thirty (30) days from its final after its 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 11th day of October 2005, by Councilmember Dunbar, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Hawn, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Dunbar, Hawn, Jackman, Keating, Marsh, O'Bryant, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: 
JIM RIDENOUR, Mayor

ATTEST:

By 
JEAN ZAHR, City Clerk

APPROVED AS TO FORM:

By 
MICHAEL D. MILICH, City Attorney

Ord. No. 3397-C.S.

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 25th day of October 2005, Councilmember Jackman, moved its final adoption, which motion being duly seconded by Councilmember Marsh, was upon roll call carried and the ordinance adopted by the following vote:

AYES:	Councilmembers:	Dunbar, Jackman, Keating, Marsh, O'Bryant, Mayor Ridenour
NOES:	Councilmembers:	None
ABSENT:	Councilmembers:	Hawn

APPROVED: 
JIM RIDENOUR, Mayor

ATTEST:

By 
JEAN ZAHR, City Clerk

Effective Date: November 25, 2005

ATTACHMENT A
CITY OF MODESTO
COMMUNITY FACILITIES DISTRICT NO. 2005-1
(HETCH HETCHY)

RATE AND METHOD OF APPORTIONMENT OF SPECIAL TAX

Special Taxes applicable to each Assessor's Parcel in Community Facilities District No. 2005-1 (Hetch Hetchy) [herein "CFD No. 2005-1" or "the CFD"] shall be levied and collected according to the tax liability determined by the City Council of the City of Modesto, through the application of the appropriate amount or rate for Taxable Property, as described below. All of the property in CFD No. 2005-1, unless exempted by law or by the provisions of Section G below, shall be taxed for the purposes, to the extent, and in the manner herein provided, including property subsequently annexed to CFD No. 2005-1 unless a separate Rate and Method of Apportionment is adopted for the annexation area.

A. DEFINITIONS

The terms hereinafter set forth have the following meanings:

"Acre" or "Acreage" means the land area of an Assessor's Parcel as shown on an Assessor's Parcel Map, or if the land area is not shown on an Assessor's Parcel Map, the land area shown on the applicable Final Map or other Development Plan.

"Act" means the Mello-Roos Community Facilities Act of 1982, as amended, being Chapter 2.5, (commencing with Section 53311), Division 2 of Title 5 of the California Government Code.

"Administrative Expenses" means any or all of the following: the fees and expenses of any fiscal agent or trustee (including any fees or expenses of its counsel) employed in connection with any Bonds, and the expenses of the City carrying out its duties with respect to CFD No. 2005-1 and the Bonds, including, but not limited to, levying and collecting the Special Taxes, the fees and expenses of legal counsel, charges levied by the County Auditor's Office, Tax Collector's Office, and/or Treasurer's Office, costs related to annexing property into the CFD, costs related to property owner inquiries regarding the Special Taxes, costs associated with complying with any continuing disclosure requirements for the Bonds and the Special Taxes, and all other costs and expenses of the City in any way related to the establishment or administration of the CFD.

"Administrator" means the person or firm designated by the City to administer the Special Taxes according to this Rate and Method of Apportionment of Special Tax.

"Annual Facilities Special Tax" means a special tax levied in any Fiscal Year to pay the Annual Facilities Special Tax Requirement, as defined below.

“Annual Facilities Special Tax Requirement” means the amount necessary in any Fiscal Year to (i) pay principal and interest on Bonds, (ii) pay Administrative Expenses that have not been included in the Annual Maintenance Special Tax Requirement for the Fiscal Year, (iii) create or replenish reserve funds, (iv) cure any delinquencies in the payment of principal or interest on indebtedness of CFD No. 2005-1 which have occurred in the prior Fiscal Year or (based on delinquencies in the payment of the Annual Facilities Special Taxes which have already taken place) are expected to occur in the Fiscal Year in which the tax will be collected, and (v) construct or acquire Authorized Facilities. The amounts referred to in clauses (i) and (ii) of the preceding sentence may be reduced in any Fiscal Year by: (i) interest earnings on or surplus balances in funds and accounts for the Bonds to the extent that such earnings or balances are available to apply against debt service pursuant to a Bond indenture, Bond resolution, or other legal document that sets forth these terms; (ii) proceeds received by CFD No. 2005-1 from the collection of penalties associated with delinquent Annual Facilities Special Taxes; and (iii) any other revenues available to pay debt service on the Bonds as determined by the Administrator.

“Annual Maintenance Special Tax” means a special tax levied in any Fiscal Year to pay the Annual Maintenance Special Tax Requirement, as defined below.

“Annual Maintenance Special Tax Requirement” means that amount necessary in any Fiscal Year to (i) pay for Authorized Services, (ii) pay Administrative Expenses that have not been included in the Annual Facilities Special Tax Requirement for the Fiscal Year, (iii) cure any delinquencies in the payment of Annual Maintenance Special Taxes levied in prior Fiscal Years or (based on delinquencies in the payment of Annual Maintenance Special Taxes which have already taken place) are expected to occur in the current Fiscal Year, and (iv) pay debt service on Bonds to the extent permitted in the Bond documents.

“Assessor’s Parcel” or “Parcel” means a lot or parcel shown on an Assessor’s Parcel Map with an assigned Assessor’s Parcel number.

“Assessor’s Parcel Map” means an official map of the County Assessor designating parcels by Assessor’s Parcel number.

“Association Property” means any property within CFD No. 2005-1 that is owned by a homeowner association or property owner association, including any master or sub-association. Notwithstanding the foregoing, if a homeowner association owns the land area under the pad of a residential structure, the Administrator shall determine the Acreage under the pad of the building and such Acreage shall be categorized as Single Family Attached Property or Single Family Detached Property, as appropriate, and shall not be designated as Association Property.

“Authorized Facilities” means those facilities that are authorized to be funded by CFD No. 2005-1.

“Authorized Services” means those services that are authorized to be funded by CFD No. 2005-1.

“Bonds” means bonds or other debt (as defined in the Act), whether in one or more series, issued, insured or assumed by CFD No. 2005-1 related to Authorized Facilities.

“Capitalized Interest” means funds in any capitalized interest account available to pay debt service on Bonds.

“CFD Formation” means the date on which the Resolution of Formation to form CFD No. 2005-1 was adopted by the City Council.

“City” means the City of Modesto.

“City Council” means the City Council of the City of Modesto, acting as the legislative body of CFD No. 2005-1.

“County” means the County of Stanislaus.

“Developed Property” means, in any Fiscal Year, the following:

For purposes of levying the Annual Maintenance Special Tax, “Developed Property” means:

- for Single Family Detached Property, all Parcels for which a Final Map was recorded prior to June 30 of the preceding Fiscal Year,
- for Single Family Attached Property, all Parcels for which a building permit for new construction of a residential structure was issued prior to June 30 of the preceding Fiscal Year, and
- for Other Property, all Parcels for which a building permit for new construction of a building structure was issued prior to June 30 of the preceding Fiscal Year. However, if a building permit is not required for the proposed use on a Parcel of Other Property, then such Parcel shall be considered Developed Property if a grading permit was issued prior to June 30 of the preceding Fiscal Year.

For purposes of levying the Annual Facilities Special Tax, “Developed Property” means:

- for Single Family Detached Property, all Parcels for which a building permit for new construction of a Unit was issued prior to June 30 of the preceding Fiscal Year,
- for Single Family Attached Property, all Parcels for which a building permit for new construction of a residential structure was issued prior to June 30 of the preceding Fiscal Year, and
- for Other Property, all Parcels for which a building permit for new construction of a building structure was issued prior to June 30 of the preceding Fiscal Year. However, if a building permit is not required for the proposed use on a Parcel of

Other Property, then such Parcel shall be considered Developed Property if a grading permit was issued prior to June 30 of the preceding Fiscal Year.

“Development Plan” means a condominium plan, apartment plan, site plan or other development plan that identifies such information as the type of structure, the acreage, the square footage, and/or the number of Units that will be developed on Single Family Attached Property or Other Property.

“Final Map” means a final map, parcel map, or portion thereof, approved by the City pursuant to the Subdivision Map Act (California Government Code Section 66410 et seq.) that creates lots which do not need to be further subdivided prior to issuance of a building permit for a residential or non-residential structure.

“Fiscal Year” means the period starting July 1 and ending on the following June 30.

“Improvement Area” means a geographic area that, upon annexation into CFD No. 2005-1, is identified as an improvement area as defined in the Act instead of a Tax Zone, as defined below. Special Taxes collected within an Improvement Area will be the sole security for Bonds issued for that Improvement Area.

“Maximum Annual Facilities Special Tax” means the greatest amount of Annual Facilities Special Tax that can be levied on an Assessor’s Parcel in any Fiscal Year determined in accordance with Sections C and D below.

“Maximum Annual Maintenance Special Tax” means the greatest amount of Annual Maintenance Special Tax that can be levied on an Assessor’s Parcel in any Fiscal Year determined in accordance with Sections C and D below.

“Maximum One-Time Facilities Special Tax” means the greatest amount of One-Time Facilities Special Tax that can be levied on an Assessor’s Parcel in any Fiscal Year determined in accordance with Sections C and D below.

“Maximum Special Taxes” means, collectively, the Maximum One-Time Facilities Special Tax, Maximum Annual Facilities Special Tax, and Maximum Annual Maintenance Special Tax.

“One-Time Facilities Special Tax” means a Special Tax, levied and collected in full by the City prior to a structural building permit being issued for new construction on Taxable Property or, for Other Property for which a building permit is not required, prior to a grading permit being issued.

“One-Time Facilities Special Tax Requirement” means the amount determined by the City and identified in Attachment 2 of this Rate and Method of Apportionment that is needed to pay facility costs authorized to be funded by CFD No. 2005-1, which will not be paid by the Bonds or Annual Facilities Special Tax.

“Original Parcel” means (i) an Assessor’s Parcel in CFD No. 2005-1 at the time of CFD Formation or added to the CFD upon annexation, as identified in Attachment 2 (which shall be updated after each annexation), (ii) a Successor Parcel that is being further subdivided for purposes of determining the Maximum Special Taxes pursuant to Section C below, or (iii) more than one Assessor’s Parcel proposed to be annexed into the CFD as part of a single annexation, the Maximum Special Taxes assigned to which will be aggregated and redistributed to land uses within such Assessor’s Parcels if such aggregation is requested by the developer processing the annexation and/or preferred at the sole discretion of the City.

“Other Property” means all Taxable Property that is Developed Property but is not Single Family Attached Property or Single Family Detached Property.

“Proportionately” means, for Developed Property, that the ratio of the actual Annual Facilities Special Tax and Annual Maintenance Special Tax levied in any Fiscal Year to the Maximum Annual Facilities Special Tax and Maximum Annual Maintenance Special Tax authorized to be levied in that Fiscal Year is equal for all Assessor’s Parcels of Developed Property, respectively. In addition, for Undeveloped Property, “Proportionately” means that the ratio of the actual Annual Facilities Special Tax and actual Annual Maintenance Facilities Special Tax to the Maximum Annual Facilities Special Tax and Maximum Annual Maintenance Special Tax is equal for all Assessor’s Parcels of Undeveloped Property, respectively.

“Public Property” means any property within the boundaries of CFD No. 2005-1 that is owned by the federal government, State of California, County, City, or other public agency.

“Shelter Cove Community Church Property” means that Parcel identified in Fiscal Year 2004-05 by Assessor’s Parcel number 082-005-003, owned by Shelter Cove Community Church, a California non-profit corporation, and designated in Attachment 1 of this Rate and Method of Apportionment of Special Tax as Shelter Cove Community Church Property.

“Single Family Attached Property” means, in any Fiscal Year, all Parcels of Developed Property for which a building permit was issued for construction of a residential structure consisting of two or more Units that share common walls, including such residential structures that meet the statutory definition of a condominium contained in Civil Code Section 1351.

“Single Family Detached Lot” means an individual numbered lot, which is in its final configuration and for which a building permit may be issued for a single family detached Unit.

“Single Family Detached Property” means, in any Fiscal Year, all Parcels of Developed Property for which a building permit was issued or will be issued for construction of a Unit that does not share a common wall with another Unit.

“Special Taxes” means, collectively, the One-Time Facilities Special Tax, the Annual Facilities Special Tax, and the Annual Maintenance Special Tax.

“Subdivision Map” means a Final Map, large lot subdivision map, or other map recorded with the County that results in the subdivision of an Original Parcel into two or more Successor Parcels.

“Successor Parcel” means an Assessor’s Parcel of Taxable Property created by the subdivision or reconfiguration of an Original Parcel on which construction of a residential or non-residential structure is permitted.

“Taxable Property” means all of the Assessor’s Parcels within the boundaries of CFD No. 2005-1 which are not exempt from the Special Tax pursuant to law or Section G below.

“Taxable Public Property” means, in any Fiscal Year, all Parcels of Public Property within CFD No. 2005-1 that, (i) based on a tentative map or other Development Plan, were expected to be Taxable Property and, (ii) based on this expectation, Maximum Special Taxes were assigned to the Parcels in a prior Fiscal Year. However, if Parcels designated as Public Property based on a tentative map or other Development Plan are relocated, the new Public Property will again become exempt. If such relocation occurs, the Acreage previously designated as Public Property will become Taxable Property and the Acreage that becomes Public Property will not be taxed. This trading of Acres of Public Property will be permitted to the extent that there is no net loss in Maximum Special Tax revenues. When such a trade occurs, the Administrator will recalculate the Maximum Special Taxes and revise Attachment 2.

“Tax Zone” means a mutually exclusive geographic area, within which particular Special Tax rates may be levied pursuant to this Rate and Method of Apportionment of Special Tax. Attachment 1 identifies the Tax Zone in CFD No. 2005-1 at CFD Formation; additional Tax Zones may be created when property is annexed into the CFD. Alternatively, additional Original Parcels may be added to a Tax Zone with assigned Maximum Special Taxes for each Original Parcel.

“Tax Zone #1” means the geographic area that was identified in Fiscal Year 2004-05 by Assessor’s Parcel number 082-005-003 and is designated in Attachment 1 of this Rate and Method of Apportionment of Special Tax as Tax Zone #1. Tax Zone #1 may be expanded to include additional Original Parcels that annex to CFD No. 2005-1; Attachments 1 and 2 will be updated each time such an annexation takes place.

“Undeveloped Property” means, in any Fiscal Year, all Parcels of Taxable Property within CFD No. 2005-1 that are not Developed Property.

“Unit” means (i) for Single Family Detached Property, an individual single-family detached unit, and (ii) for Single Family Attached Property, an individual residential unit within a duplex, triplex, fourplex, townhome, or condominium structure.

B. DATA FOR ANNUAL ADMINISTRATION

On or about July 1 of each Fiscal Year, the Administrator shall identify the current Assessor’s Parcel numbers for all Parcels of Taxable Property. The Administrator shall also determine: (i)

the Tax Zone within which each Parcel of Taxable Property is located, (ii) whether each Assessor's Parcel of Taxable Property is Developed Property or Undeveloped Property, (iii) for Developed Property, which Parcels are Single Family Detached Property, Single Family Attached Property, and Other Property, (iv) for Parcels of Single Family Attached Property, the number of Units on each Parcel, (v) for Other Property, the Acreage of each Parcel, and (vi) the One-Time Facilities Special Tax Requirement, the Annual Facilities Special Tax Requirement, and the Maintenance Special Tax Requirement.

For Single Family Attached Property, the number of Units shall be determined by referencing the relevant Development Plan. In any Fiscal Year, if it is determined that (i) a Final Map for a portion of property in CFD No. 2005-1 was recorded after January 1 of the prior Fiscal Year (or any other date after which the Assessor will not incorporate the newly-created Parcels into the then current tax roll), (ii) because of the date the Final Map was recorded, the Assessor does not yet recognize the new Parcels created by the Final Map, and (iii) one or more of the newly-created Parcels meets the definition of Developed Property, the Administrator shall calculate the Special Tax for the property affected by recordation of the Final Map by determining the Special Tax that applies separately to each newly-created Parcel, then applying the sum of the individual Special Taxes to the Original Parcel or Successor Parcel that was subdivided by recordation of the Final Map.

C. CALCULATING MAXIMUM SPECIAL TAXES

The Administrator shall use the procedures set forth below to calculate the Maximum Special Taxes for each Parcel in CFD No. 2005-1 in each Fiscal Year, including the Maximum One-Time Facilities Special Tax, Maximum Annual Facilities Special Tax, and Maximum Annual Maintenance Special Tax. A separate method of calculating the Maximum Special Taxes may be identified for Tax Zones or Improvement Areas added to CFD No. 2005-1 as a result of future annexations.

1. Original Parcels

The Maximum Special Taxes for each Original Parcel in CFD No. 2005-1 as of CFD Formation are identified in Attachment 2. Attachment 2 will be updated by the Administrator as needed to reflect Original Parcels added to the CFD due to annexations.

2. Successor Parcels

a. All Successor Parcels are Single Family Detached Lots

If the Parcels created by a recorded Subdivision Map are all Single Family Detached Lots, the Administrator shall apply the following steps to allocate the Maximum Special Taxes assigned to the Original Parcel to each of the Successor Parcels created by the subdivision:

Step 1: Identify the Maximum Special Taxes assigned to the Original Parcel;

Step 2: Divide the Maximum Special Taxes from Step 1 by the number of Single Family Detached Lots created by the Subdivision Map to determine the Maximum Special Taxes for each Single Family Detached Lot.

b. No Successor Parcels are Single Family Detached Lots

If none of the Successor Parcels created by recordation of a Subdivision Map are Single Family Detached Lots, the Administrator shall apply the following steps to allocate the Maximum Special Taxes assigned to the Original Parcel to each of the Successor Parcels:

Step 1: Identify the Maximum Special Taxes assigned to the Original Parcel;

Step 2: Determine the total Acreage of Taxable Property created by subdivision of the Original Parcel;

Step 3: Divide the Maximum Special Taxes from Step 1 by the Acreage from Step 2 to calculate Maximum Special Taxes per acre;

Step 4: Multiply the per-acre Maximum Special Taxes from Step 3 by the Acreage in each Successor Parcel to calculate the Maximum Special Taxes for each Successor Parcel.

c. Some, But Not All, Successor Parcels are Single Family Detached Lots

If a Subdivision Map divides an Original Parcel into Successor Parcels, of which some are Single Family Detached Lots and some are not, the Administrator shall apply the following steps to allocate the Maximum Special Taxes assigned to the Original Parcel to each of the Successor Parcels:

Step 1: Identify the Maximum Special Taxes assigned to the Original Parcel;

Step 2: Determine the total Acreage of Taxable Property created by subdivision of the Original Parcel;

Step 3: Determine the total Acreage of Single Family Detached Property created by the subdivision by taking the sum of the Acreage in the individual Single Family Detached Lots;

Step 4: Divide the Maximum Special Taxes from Step 1 by the Acreage calculated in Step 2 to calculate Maximum Special Taxes per acre;

Step 5: Multiply the per-acre Maximum Special Taxes calculated in Step 4 by the Acreage of Single Family Detached Property calculated in Step 3 to determine the total Maximum Special Taxes to be assigned to the Single Family Detached Property created by the subdivision;

Step 6: Divide the amount calculated in Step 5 by the number of Single Family Detached Lots created by the subdivision to determine the Maximum Special Taxes for each Single Family Detached Lot;

Step 7: Multiply the per-acre Maximum Special Taxes calculated in Step 4 by the Acreage of each Successor Parcel that is not Single Family Detached Property to calculate the Maximum Special Taxes for such Parcels.

If, after subdivision of an Original Parcel, a Successor Parcel is further subdivided, the Successor Parcel shall be treated as an Original Parcel for purposes of allocating Maximum Special Taxes pursuant to Section C.2a, C.2b, or C.2c, as appropriate.

After each reallocation of the Maximum Special Taxes upon subdivision or reconfiguration of Original Parcels, the sum of the Maximum Special Taxes assigned to Successor Parcels shall never be less, but may be more, than the Maximum Special Taxes assigned to the Original Parcels prior to such reallocation.

D. ESCALATION OF MAXIMUM SPECIAL TAXES

1. One-Time Facilities Special Tax

Beginning in January 2007 and each January thereafter, the Maximum One-Time Facilities Special Tax assigned to each Parcel shall be adjusted annually by the greater of (i) the percentage increase, if any, in the construction cost index for the San Francisco region for the prior twelve (12) month period as published in the Engineering News Record or other comparable source if the Engineering News Record is discontinued or otherwise not available, or (ii) four percent (4.0%). Each annual adjustment of the Maximum One-Time Facilities Special Tax shall become effective on the subsequent July 1.

2. Annual Facilities Special Tax

Beginning with Fiscal Year 2007-08, and each Fiscal Year thereafter, the Maximum Annual Facilities Special Tax assigned to each Parcel shall be increased by two percent (2%) of the amount in effect in the prior Fiscal Year.

3. Annual Maintenance Special Tax

Beginning in January 2007 and each January thereafter, the Maximum Annual Maintenance Special Tax shall be adjusted annually by the greater of (i) the percentage increase, if any, in the construction cost index for the San Francisco region for the prior twelve (12) month period as published in the Engineering News Record or other comparable source if the Engineering News Record is discontinued or otherwise not available, or (ii) four percent (4.0%). Each annual adjustment of the Maximum Annual Maintenance Special Tax shall become effective on the subsequent July 1.

E. METHOD OF LEVY OF THE SPECIAL TAX

1. One-Time Facilities Special Tax

The Maximum One-Time Facilities Special Tax determined pursuant to Sections C and D above shall be levied on all Taxable Property in CFD No. 2005-1 and shall be collected as set forth in Section F below.

2. Annual Facilities Special Tax

Commencing with Fiscal Year 2006-07 and for each following Fiscal Year, the Administrator shall determine the Annual Facilities Special Tax Requirement for that Fiscal Year. The Annual Facilities Special Tax shall then be levied on all Parcels of Taxable Property in CFD No. 2005-1 as follows:

Step 1: The Annual Facilities Special Tax shall be levied Proportionately on each Parcel of Developed Property within the CFD up to 100% of the Maximum Annual Facilities Special Tax for each Parcel for such Fiscal Year until the amount levied on Developed Property is equal to the Special Tax Requirement prior to applying any Capitalized Interest that is available in the CFD accounts;

Step 2: If additional revenue is needed after Step 1, and after applying Capitalized Interest to the Annual Facilities Special Tax Requirement, the Annual Facilities Special Tax shall be levied Proportionately on each Assessor's Parcel of Undeveloped Property within the CFD, up to 100% of the Maximum Annual Facilities Special Tax for each Parcel of Undeveloped Property for such Fiscal Year;

Step 3: If additional revenue is needed after applying the first two steps, the Annual Facilities Special Tax shall be levied Proportionately on each Assessor's Parcel of Taxable Public Property, up to 100% of the Maximum Annual Facilities Special Tax assigned to each Parcel of Taxable Public Property.

3. Annual Maintenance Special Tax

Commencing with Fiscal Year 2006-07 and for each following Fiscal Year, the Administrator shall determine the Annual Maintenance Special Tax Requirement for that Fiscal Year. The Annual Maintenance Special Tax shall then be levied on all Parcels of Taxable Property as follows:

Step 1: The Annual Maintenance Special Tax shall be levied Proportionately on each Parcel of Developed Property within the CFD up to 100% of the Maximum Annual Maintenance Special Tax for each Parcel for such Fiscal Year;

Step 2: If additional revenue is needed after Step 1, the Annual Maintenance Special Tax shall be levied Proportionately on each Assessor's Parcel of Undeveloped

Property within the CFD, up to 100% of the Maximum Annual Maintenance Special Tax for each Parcel of Undeveloped Property for such Fiscal Year;

Step 3: If additional revenue is needed after applying the first two steps, the Annual Maintenance Special Tax shall be levied Proportionately on each Assessor's Parcel of Taxable Public Property, up to 100% of the Maximum Annual Maintenance Special Tax assigned to each Parcel of Taxable Public Property.

F. COLLECTION OF SPECIAL TAX

The Maximum One-Time Facilities Special Tax shall be collected prior to a building permit being issued for new construction of any residential or non-residential structure on Taxable Property within CFD No. 2005-1 (or, for Other Property for which a building permit is not required, prior to a grading permit being issued), and shall be immediately delinquent if not so paid. In the case of Shelter Cove Community Church Property, the One-Time Facilities Special Tax shall be paid at the time additional property is annexed into the CFD or when a building permit is issued for new construction of a structure on Shelter Cove Community Church Property, whichever occurs later.

The Annual Facilities Special Tax and Annual Maintenance Special Tax for CFD No. 2005-1 shall be collected in the same manner and at the same time as ordinary ad valorem property taxes, provided, however, that prepayments are permitted as set forth in Section H below and provided further that the City may directly bill, collect at a different time or in a different manner, and/or collect delinquent Annual Facilities Special Taxes and Annual Maintenance Special Taxes through foreclosure or other available methods.

The Annual Facilities Special Tax shall be levied and collected until principal and interest on Bonds have been repaid, costs of constructing or acquiring authorized facilities from Annual Facilities Special Tax proceeds have been paid, and all administrative expenses have been reimbursed. However, in no event shall an Annual Facilities Special Tax be levied after Fiscal Year 2060-2061. The Annual Maintenance Special Tax will continue to be levied and collected unless and until the City determines that the Annual Maintenance Special Tax no longer needs to be levied to pay Authorized Services of the CFD and all Administrative Expenses have been reimbursed. Under no circumstances may the Annual Facilities Special Tax on one Parcel in the CFD be increased by more than ten percent (10%) as a consequence of delinquency or default in payment of the Annual Facilities Special Tax levied on another Parcel or Parcels in the CFD.

G. EXEMPTIONS

Notwithstanding any other provision of this Rate and Method of Apportionment of Special Tax, no Special Taxes shall be levied on Association Property or Public Property, except Taxable Public Property, as defined herein. Special Taxes shall not be levied on Parcels that are owned by a public utility for an unmanned facility or on Parcels that are subject to an easement that precludes any other use on the Parcels. In addition, no Special Tax may be levied on Shelter Cove Community Church Property unless and until additional property is annexed into the CFD.

H. PREPAYMENT OF SPECIAL TAX

The following definitions apply to this Section H:

“Outstanding Bonds” means all Previously Issued Bonds which remain outstanding, with the following exception: if an Annual Facilities Special Tax has been levied against, or already paid by, an Assessor’s Parcel making a prepayment, and a portion of the Annual Facilities Special Tax will be used to pay a portion of the next principal payment on the Bonds that remain outstanding (as determined by the Administrator), that next principal payment shall be subtracted from the total Bond principal that remains outstanding, and the difference shall be used as the amount of Outstanding Bonds for purposes of this prepayment formula.

“Previously Issued Bonds” means all Bonds that have been issued on behalf of the CFD prior to the date of prepayment.

“Public Facilities Requirements” means either \$1,740,000 in 2005 dollars, which shall increase on January 1, 2006, and on each January 1 thereafter by the percentage increase, if any, in the construction cost index for the San Francisco region for the prior twelve (12) month period as published in the Engineering News Record or other comparable source if the Engineering News Record is discontinued or otherwise not available, or such lower number as shall be determined by the City as sufficient to fund Authorized Facilities. The Public Facilities Requirements shown above may be adjusted or a separate Public Facilities Requirements identified each time property annexes into CFD No. 2005-1; at no time shall the added Public Facilities Requirement for that annexation area exceed the amount of public improvement costs that are expected to be supportable by the Maximum Annual Facilities Special Tax revenues generated within that annexation area.

“Remaining Facilities Costs” means the Public Facilities Requirements (as defined above), minus costs of Authorized Facilities funded by Outstanding Bonds (as defined above), developer equity, and/or any other source of funding.

The Annual Facilities Special Tax obligation applicable to an Assessor’s Parcel in the CFD may be prepaid and the obligation of the Assessor’s Parcel to pay the Annual Facilities Special Tax permanently satisfied as described herein, provided that a prepayment may be made only if there are no delinquent Annual Facilities Special Taxes with respect to such Assessor’s Parcel at the time of prepayment. The Annual Maintenance Special Tax may not be prepaid. An owner of an Assessor’s Parcel intending to prepay the Annual Facilities Special Tax obligation shall provide the City with written notice of intent to prepay. Within 30 days of receipt of such written notice, the City or its designee shall notify such owner of the prepayment amount for such Assessor’s Parcel. Prepayment must be made not less than 75 days prior to any redemption date for Bonds to be redeemed with the proceeds of such prepaid Annual Facilities Special Taxes. The Prepayment Amount shall be calculated as follows: (capitalized terms as defined below):

	Bond Redemption Amount
plus	Remaining Facilities Amount
plus	Redemption Premium
plus	Defeasance Requirement
plus	Administrative Fees and Expenses
less	<u>Reserve Fund Credit</u>
equals	Prepayment Amount

As of the proposed date of prepayment, the Prepayment Amount shall be determined by application of the following steps:

- Step 1.** Compute the total Maximum Annual Facilities Special Tax that could be collected from the Assessor's Parcel prepaying the Annual Facilities Special Tax in the Fiscal Year in which prepayment would be received by the City.
- Step 2.** Divide the Maximum Annual Facilities Special Tax from Step 1 by the total amount that could be collected if the Maximum Annual Facilities Special Tax was levied on all Parcels of Taxable Property in the CFD.
- Step 3.** Multiply the quotient computed pursuant to Step 2 by the Outstanding Bonds to compute the amount of Outstanding Bonds to be retired and prepaid (the "***Bond Redemption Amount***").
- Step 4.** Compute the current Remaining Facilities Costs (if any).
- Step 5.** Multiply the quotient computed pursuant to Step 2 by the amount determined pursuant to Step 4 to compute the amount of Remaining Facilities Costs to be prepaid (the "***Remaining Facilities Amount***").
- Step 6.** Multiply the Bond Redemption Amount computed pursuant to Step 3 by the applicable redemption premium, if any, on the Outstanding Bonds to be redeemed (the "***Redemption Premium***").
- Step 7.** Compute the amount needed to pay interest on the Bond Redemption Amount starting with the first Bond interest payment date after which the prepayment has been received until the earliest redemption date for the Outstanding Bonds, which, depending on the Bond offering document, may be as early as the next interest payment date.
- Step 8:** Compute the amount of interest the City reasonably expects to derive from reinvestment of the Bond Redemption Amount plus the Redemption Premium from the first Bond interest payment date after which the prepayment has been received until the redemption date for the Outstanding Bonds.
- Step 9:** Take the amount computed pursuant to Step 7 and subtract the amount computed pursuant to Step 8 (the "***Defeasance Requirement***").

Step 10. Determine the costs of computing the prepayment amount, the costs of redeeming Bonds, and the costs of recording any notices to evidence the prepayment and the redemption (the “*Administrative Fees and Expenses*”).

Step 11. If and to the extent so provided in the indenture pursuant to which the Outstanding Bonds to be redeemed were issued, a reserve fund credit shall be calculated as a reduction in the applicable reserve fund for the Outstanding Bonds to be redeemed pursuant to the prepayment (the “*Reserve Fund Credit*”).

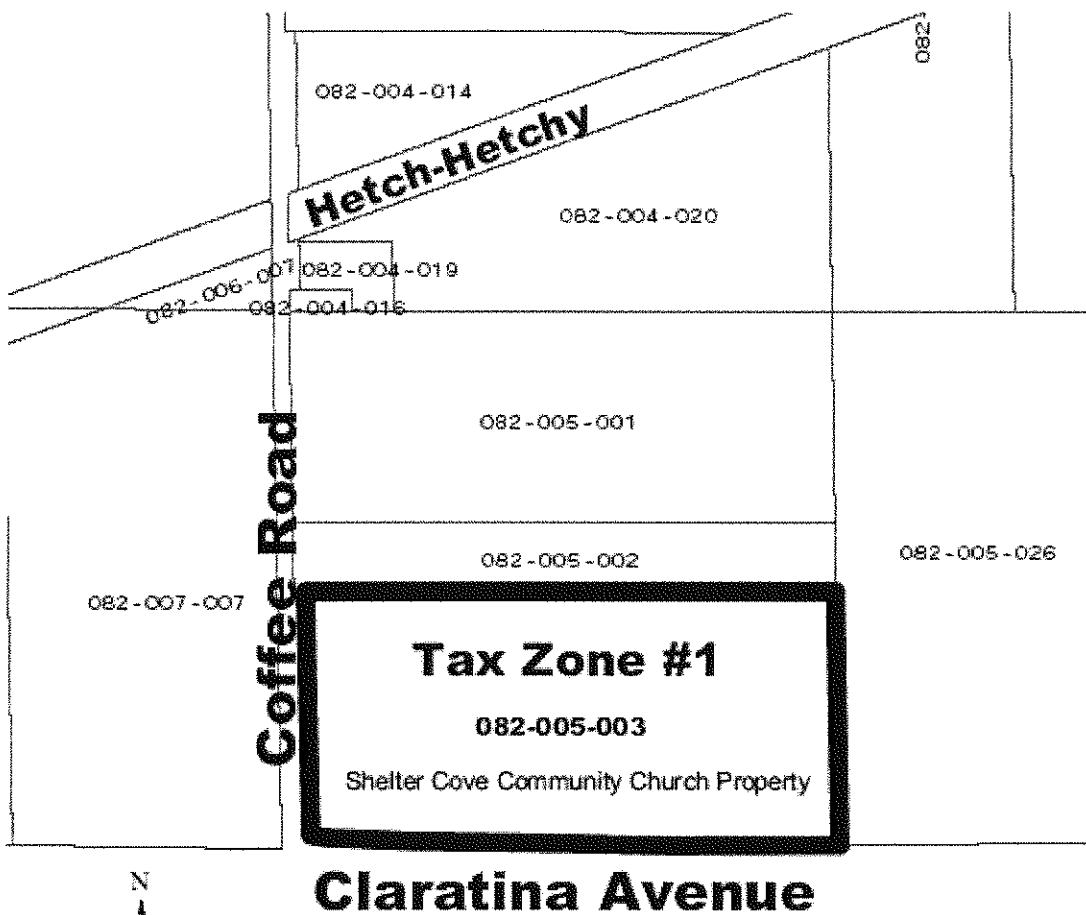
Step 12. The Annual Facilities Special Tax prepayment is equal to the sum of the amounts computed pursuant to Steps 3, 5, 6, 9, and 10, less the amount computed pursuant to Step 11 (the “*Prepayment Amount*”).

I. INTERPRETATION OF SPECIAL TAX FORMULA

The City reserves the right to make minor administrative and technical changes to this document that do not materially affect the rate and method of apportioning the Special Taxes. In addition, the interpretation and application of any section of this document shall be left to the City’s discretion. Interpretations may be made by the City by ordinance or resolution for purposes of clarifying any vagueness or ambiguity in this Rate and Method of Apportionment of Special Tax.

ATTACHMENT 1

CITY OF MODESTO
COMMUNITY FACILITIES DISTRICT NO. 2005-1
(HETCH-HETCHY)
IDENTIFICATION OF TAX ZONES



ATTACHMENT 2

**CITY OF MODESTO
COMMUNITY FACILITIES DISTRICT NO. 2005-1
(HETCH HETCHY)**

**MAXIMUM SPECIAL TAXES ASSIGNED TO EACH
ORIGINAL PARCEL WITHIN EACH TAX ZONE**

Tax Zone	APN	Fiscal Year 2006-07 Maximum One- Time Facilities Special Tax [1]	Fiscal Year 2006-07 Maximum Annual Facilities Special Tax [2]	Fiscal Year 2006-07 Maximum Annual Maintenance Special Tax [3]
1	082-005-003	\$1,739,130	\$179,046	\$100,572

1. Beginning in January 2007 and each January thereafter, the Maximum One-Time Facilities Special Tax shall be adjusted by the greater of (i) the percentage increase, if any, in the construction cost index for the San Francisco region for the prior twelve (12) month period as published in the Engineering News Record or other comparable source if the Engineering News Record is discontinued or otherwise not available, or (ii) four percent (4.0%). Each annual adjustment of the Maximum One-Time Facilities Special Tax shall become effective on the subsequent July 1.

2. Beginning in Fiscal Year 2007-08 and each Fiscal Year thereafter, the Maximum Annual Facilities Special Tax shall escalate by 2.0% of the amount in effect in the prior Fiscal Year.

3. Beginning in January 2007 and each January thereafter, the Maximum Annual Maintenance Special Tax shall be adjusted annually by the greater of (i) the percentage increase, if any, in the construction cost index for the San Francisco region for the prior twelve (12) month period as published in the Engineering News Record or other comparable source if the Engineering News Record is discontinued or otherwise not available, or (ii) four percent (4.0%). Each annual adjustment of the Maximum Annual Maintenance Special Tax shall become effective on the subsequent July 1.

ORDINANCE NO. 3398-C.S.

AN ORDINANCE ADDING ARTICLE 5 TO CHAPTER 4 OF TITLE 5 OF THE MODESTO MUNICIPAL CODE RELATING TO PET OVERPOPULATION.

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

SECTION 1. AMENDMENT OF CODE. Article 5 is hereby added to Chapter 4 of Title 5 of the Modesto Municipal Code to read as follows:

ARTICLE 5. PET OVERPOPULATION

5-4.501. PURPOSE AND INTENT.

The City Council finds and declares that there exists a pet overpopulation problem in the City of Modesto that has resulted in a threat to public safety and health, inhumane treatment of animals, mass euthanasia of dogs and cats at the local animal shelters and escalating costs for animal care and control. The City Council finds that uncontrolled breeding is a contributing cause to these problems. The City Council finds that part of the solution is for all dogs four (4) months or older to be licensed and spayed or neutered, unless the owners purchase the appropriate licenses/permits for the privilege of maintaining the animal intact and allowing it to breed. The City Council also finds that an increase in the license fee for unaltered dogs will encourage dog owners to spay/neuter their dog(s) in order to qualify for the lower altered dog license fee. Further, the City Council finds that regulating the breeding and transfer of dogs and cats will help alleviate the City's pet overpopulation problem.

5-4.502. ANIMAL OWNERSHIP.

- (a) **Animal Owner.** For purpose of this article, shall mean any person harboring, keeping or providing care or sustenance to a domestic animal for fourteen (14) days on property within the jurisdiction of the City of Modesto. Such a person shall be subject to the requirements of this chapter. This definition does not apply to government agencies, animal rescue organizations which have demonstrated to the Director of the Stanislaus County Department of Animal Services that they have implemented an ongoing spay/neuter program as well as an adoption program, or humane societies or societies for the prevention of cruelty to animals if such societies are incorporated under the provisions of California Corporations Code Section 10400 and the Nonprofit Public

Ordinance 3398-C.S.

Effective: December 1, 2005

Benefit Corporation Law in Part 2 of the California Corporations Code, beginning at Section 5110 and successor sections, or persons who provide licensed boarding, kennel, training, or veterinarian services for the owners of dogs and cats.

- (b) Subsection (a) above shall not be interpreted to apply to a person caring for barn cats or a colony of feral cats if such person:
 - (1) Registers with the Stanislaus County Department of Animal Services as a caretaker for barn cats or feral cats;
 - (2) Regularly feeds or arranges for the feeding of the cats, including on weekends and holidays;
 - (3) Traps or makes a reasonable effort to trap all barn or feral cats over the age of seven (7) weeks in his/her care, and has them spayed or neutered;
 - (4) Makes a reasonable effort to test all trapped cats for feline leukemia and FIV and has those who test positive humanely euthanized or isolated indoors;
 - (5) Identifies barn or feral cats that have been spayed or neutered by means of ear notching, ear tipping, or ear tagging; and
 - (6) Has all trapped cats vaccinated according to state and local laws.

5-4.503. LITTER PERMIT.

- (a) No person shall cause or allow any dog or cat owned, harbored or kept within the City of Modesto to breed without first obtaining a litter permit. The term litter permit means a written authorization, issued annually by the Director of the Stanislaus County Department of Animal Services or his or her designee, giving its lawful holder permission to breed a dog or a cat.
- (b) Each litter permit shall be valid for one (1) year from the date of issuance, and may be renewed annually before its expiration date. Each applicant for a litter permit shall pay an annual fee as prescribed by the City Council and set forth in the fee section of this ordinance.
- (c) The Stanislaus County Department of Animal Services shall administer an animal litter permit program to allow the breeding of unaltered dogs and

cats consistent with criteria and according to procedures established by the Director of the Stanislaus County Department of Animal Services. Under no circumstances shall such a litter permit be issued to a person who has been convicted of animal cruelty or neglect.

- (d) In addition to the criteria and procedures established by the Directors of the Stanislaus County Department of Animal Services, litter permits shall contain the following terms and conditions:
- (1) The owner of an unaltered female dog or cat shall not allow the whelping of more than one (1) litter per animal in any household within the permit year. Notwithstanding this provision, the Director of the Stanislaus County Department of Animal Services or his or her designee is hereby authorized, upon application of a permittee, to allow on a one-time basis the whelping of up to two (2) dog or cat litters per breeding animal within any domestic household within a permit year, if the permittee established, according to regulations promulgated by the Stanislaus County Department of Animal Services, including a veterinarian verification of health status that such breeding is required due to the health of the animal. In the event that a permittee is forced to euthanize a litter of dogs or cats, the Director of the Stanislaus County Department of Animal Services or his or her designee may authorize the whelping of one (1) additional litter of dogs or cats within the same permit year by the permittee.
 - (2) No offspring may be sold, adopted, bartered, or otherwise transferred, whether for compensation or otherwise, until it has reached the age of at least seven (7) weeks and the offspring have received its first immunization against common diseases.
 - (3) Any holder of a litter permit who advertises to the public the availability of any dog or cat for sale, adoption or transfer, whether for compensation or otherwise, must prominently display the litter permit number in any such advertisement. Further, the litter permit holder must provide the permit number to any person who purchases, adopts or receives any animal from the permit holder and include the permit number on any receipt of sale or transfer document;
 - (4) Commercial establishments selling locally bred dogs or cats shall prominently display the litter permit number(s) of the breeder(s) whose dogs and cats are sold in said establishments and any other

pertinent information required by the Director of the Stanislaus County Department of Animal Services or his or her designee; commercial establishments selling dogs and cats which were not bred within the City of Modesto shall prominently display the name and address of the breeder(s) of such dogs and cats and any other pertinent information required by the Director of the Stanislaus County Department of Animal Services.

- (5) Any litter permit holder selling or otherwise transferring a dog or cat, whether for compensation or otherwise, shall maintain records for a period of three (3) years containing the name, address, and telephone number of the animal's new owner on a Stanislaus County Department of Animal Services' approved form;
 - (6) Any litter permit holder or commercial establishment which sells or otherwise transfers a dog or cat, whether for compensation or otherwise, shall provide to the new animal owner written information regarding the license and permit requirements of the City of Modesto applicable to such animal; and
 - (7) Any litter permit holder shall have his/her dog or cat microchipped or have some other form of identification acceptable to the Stanislaus County Department of Animal Services and shall register the dog or cat with the Stanislaus County Department of Animal Services.
- (e) The following animals are exempt from the litter permit requirements:
- (1) Dogs documented as having been appropriately trained and actively used by law enforcement agencies for law enforcement and rescue activities.
 - (2) Dogs documented as guide, signal, or service dogs pursuant to California Penal Code Section 365.5(d), (e) and (f) and successor sections;
 - (3) Dogs and cats under the care of governmental animal control agencies; animal rescue organizations which have demonstrated to the Stanislaus County Department of Animal Services that they have implemented an ongoing spay/neuter plan, as well as an adoption plan; or humane societies or societies for the prevention of cruelty to animals, if such societies are incorporated under the provisions of California Corporations Code Section 10400 and the

Nonprofit Public Benefit Corporation Law in Part 2 of the California Corporations Code, beginning at Section 5110, and successor sections; and

- (4) Dogs documented as enrolled in a guide, signal or service dog breeding program administered by a person licensed under Chapter 9.5 (commencing with Section 7200) Division 3 of the California Business and Professions Code.

5-4.504. PENALTIES.

- (a) Any cat or dog owner found by the Stanislaus County Department of Animal Services or City of Modesto Animal Control to be in violation of the litter permit provisions of this section may correct the violations by obtaining the necessary permit(s) mentioned in this section, no later than thirty (30) days from the date when the Stanislaus County Department of Animal Services or the City of Modesto had first notified the owner of the violation. Should the owner fail to correct the violations in the manner described above, the Stanislaus County Department of Animal Services shall impose a five hundred dollar (\$500.00) penalty on the dog or cat owner. Notice of this penalty shall be served by the Stanislaus County Department of Animal Services on the dog or cat owner by mail. The penalty shall not be waived by the Stanislaus County Department of Animal Services upon the transfer or abandonment of the dog or cat by the non-compliant owner. This penalty shall be imposed in addition to any other applicable civil or criminal penalties.

If the penalty mentioned above in section (a) is not paid and the owner does not microchip or has some other form of identification acceptable to the Stanislaus County Department of Animal Services, spay or neuter his/her dog(s) or cat(s), or obtain the litter permit(s) within fifteen (15) days from the date when Stanislaus County Department of Animal Services or the City of Modesto first notified the owner of the imposition of a penalty, the continuing violation of the litter permit requirement of this section becomes an additional infraction and may be prosecuted as such.

- (b) Any litter permit issued pursuant to Section 5-4.503 may be revoked if the Director of the Stanislaus County Department of Animal Services or his or her designee has reasonable causes to believe any of the following to be true:

- (1) The permittee has violated any City or County ordinances relating to the keeping, care or use of any animal;
 - (2) The permittee is in violation of any State health or safety law or regulation regarding animal care or control;
 - (3) The permittee has failed to comply with any condition or requirement of the permit or has failed to pay any fee imposed under this code;
 - (4) The permittee refused to allow inspection, upon forty-eight (48) hours written notice, of any animal covered by the permit or the premises on which the animal is kept; or
 - (5) The permittee has transferred, sold or otherwise disposed of the animal for which the permit was originally issued.
- (c) If, after inspection, the Director of the Stanislaus County Department of Animal Services or his or her designee concludes that it is probable that one (1) or more of the above grounds for revocation has occurred, it shall cause written notice thereof to be transmitted by mail to the address of the litter permittee. Said notice shall specify the grounds of possible revocation of the litter permit and shall specify a date and time for an informal hearing to be held before the Director of the Stanislaus County Department of Animal Services or his or her designee. Said date shall be not less than five (5) days subsequent to the date the notice is mailed. After the informal hearing, the Director of the Stanislaus County Department of Animal Services may modify the terms of the litter permit or revoke the litter permit.
- (d) The litter permittee may appeal the decision of the Director of the Stanislaus County Department of Animal Services or his or her designee to the Animal Court if the permittee gives written notice of such appeal within five (5) working days of the decision.
- (e) Failure to comply with any of the requirements mentioned in Section 5-4.503 of this Code is an infraction punishable by a one hundred dollar (\$100.00) fine for the first occurrence, two hundred dollars (\$200.00) for the second occurrence and three hundred dollars (\$300.00) for each subsequent occurrence except as set forth in Section 5-4.504(a).

5-4.505. SALE, ADOPTION AND OTHER TRANSFERS OF DOGS AND CATS.

- (a) Any person who offers or provides, whether for compensation or otherwise, any dog or cat for sale or other type of transfer, shall disclose the transferee information regarding the dog license and permit requirements of the City of Modesto applicable to the transferred animal.
- (b) No person shall present any unaltered dog or cat under six (6) months of age for sale, barter, exchange, or adoption, whether for compensation or otherwise, in any public place, without first obtaining a litter permit pursuant to City of Modesto Municipal Code Section 5-4.503. The term public place shall include, but not be limited to, streets, highways, sidewalks, parks, carnivals, shopping malls, flea markets, boardwalks, and areas in front of commercial establishments. This prohibition shall not apply to:
 - (1) Government agencies, non-profit animal rescue organizations exempt from taxation under Internal Revenue Code Section 501(c)(3); or humane societies or societies for the prevention of cruelty to animals if such societies are incorporated under the provisions of California Corporations Code Section 10400 and the Nonprofit Public Benefit Corporation Law in Part 2 of the California Corporations code, beginning at Section 5110;
 - (2) Show dogs or show cats; or
 - (3) Permitted pet stores which sell or otherwise transfer dogs or cats, whether for compensation or otherwise, within the store.
- (c) No person shall give away any dog or cat as a prize or as an inducement to enter into any contest, lottery, drawing, game or competition.
- (d) No person shall give away any dog or cat as an inducement to enter a place of business, or to enter into a business arrangement.
- (e) No person shall sell, barter, exchange or offer for adoption, whether for compensation or otherwise, any dog or cat to any minor under the age of eighteen (18) years without the written permission of one (1) of the minor's parents or legal guardians.
- (f) Commercial establishments selling dogs and cats which were not bred within the County of Stanislaus shall prominently display the name and address of the breeder(s) of such dogs and cats and any other pertinent information required by the Director of the Stanislaus County Department of Animal Services or his or her designee.

- (g) Failure to display the litter permit number or include it in any advertisement for sale, adoption or other transfer of dogs and cats is an infraction punishable by a one hundred dollar (\$100.00) fine for the first occurrence, two hundred dollars (\$200.00) for the second occurrence and three hundred dollars (\$300.00) for each subsequent occurrence. Each day a violation occurs is a separate violation.

5-4.506. LICENSING.

- (a) Any person owning or having custody of any dog four (4) months or older shall pay an annual license fee. The license fee for dogs shall be established by the City Council. The increased fees collected by the Stanislaus County Department of Animal Services for unaltered dogs, less administrative costs, shall be used to pay for vouchers to support spay/neuter programs.
- (b) Any person owning or having custody of any unaltered dog which meets any of the following criteria shall pay a reduced unaltered annual license fee as listed in the fee section of this Title.
 - (1) An owner who owns or operates an actual livestock working ranch or livestock farming operation of more than two (2) acres.
 - (2) An owners who either:
 - (I) Registers and participates in an American Kennel Club (AKC), United Kennel Club (UKC), or other state or nationally recognized organization and is a member of a parent club or organization for the purposes of showing, training, agility trials, or hunting and provides documentation to the Stanislaus County Department of Animal Services of such membership and participation in the above animal activities.
- (c) If the owner fails to obtain the dog license required in this section, upon the expiration of the thirty (30) days, the Stanislaus County Department of Animal Services shall impose a twenty-five dollar (\$25.00) late penalty on the owner of the dog. This late fee shall not be waived by the Stanislaus County Department of Animal Services upon the transfer or abandonment of the dog by the non-compliant owner. This late penalty shall be imposed in addition to any other applicable civil or criminal penalties and all penalties shall be placed in the Stanislaus County Alternative to

Euthanasia (SCATE) Program to be used for spaying or neutering of cats and dogs.

- (d) If the penalty mentioned in subsection (c) above is not paid, and the owner fails to obtain the license required under subsection (a) of this section within fifteen (15) days from the date when the Stanislaus County Department of Animal Services first notified the dog owner of the imposition of the penalty mentioned in section (c) above, the continuing violation of the license requirement of this section becomes an additional infraction and may be prosecuted as such.
- (e) The Stanislaus County Department of Animal Services shall be responsible for the enforcement and administration of this ordinance and all costs associated thereto.
- (f) A cat owner may voluntarily obtain a license for their cat. If the cat owner voluntarily purchases a cat license, then the cat owner shall be eligible to receive a voucher for the spay/neuter identification program operated by the Stanislaus County Department of Animal Services.

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 25th day of October, 2005, by Councilmember Keating, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Dunbar, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Dunbar, Jackman, Keating, Marsh, O'Bryant,
Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: Hawn

APPROVED: 

JIM RIDENOUR, Mayor

ATTEST:

By  _____
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By  _____
MICHAEL D. MILICH, City Attorney

Effective: December 1, 2005

Ord. No. 3398-C.S.

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 1st day of November, 2005, Councilmember Jackman, moved its final adoption, which motion being duly seconded by Councilmember Dunbar, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Dunbar, Jackman, Keating, Marsh, O'Bryant,
Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: Hawn

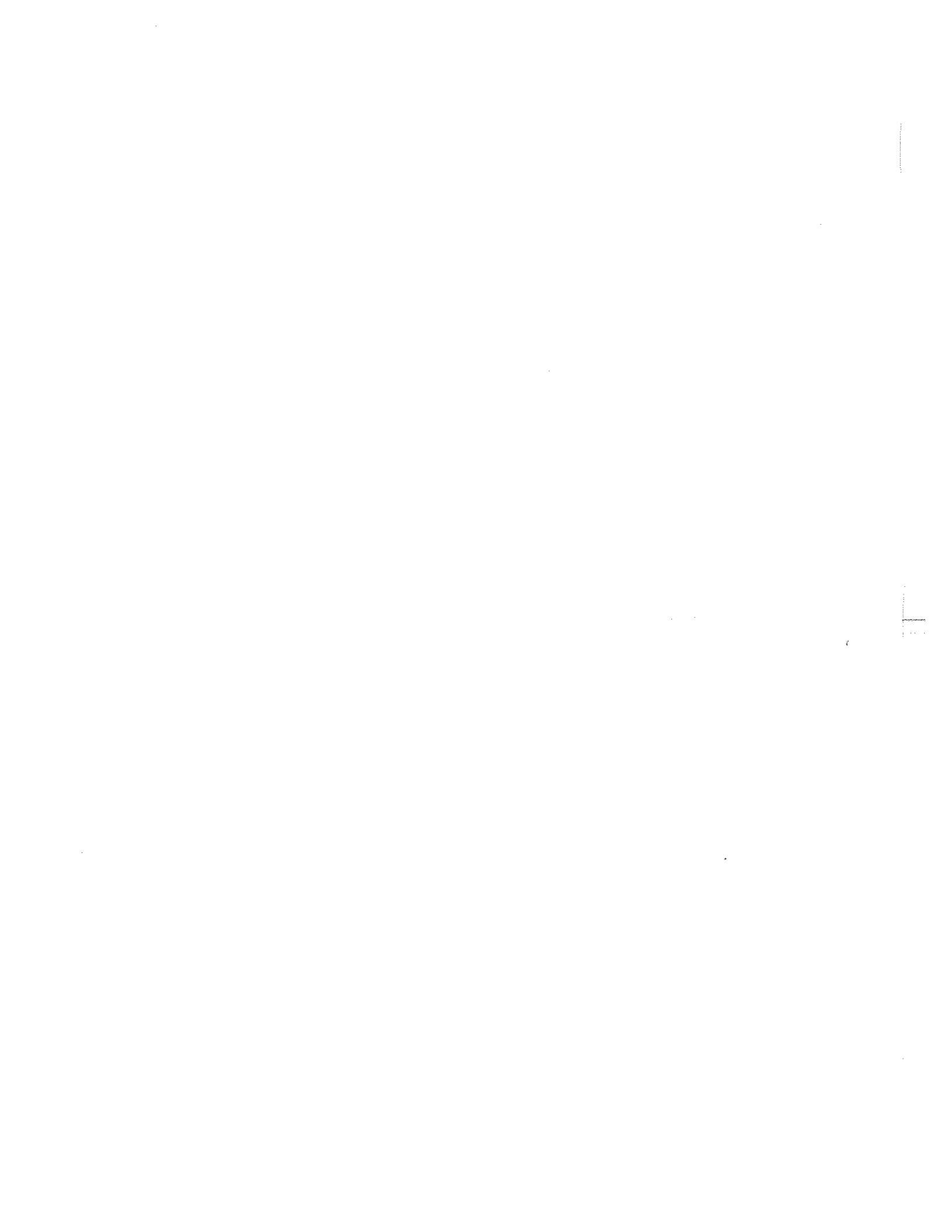
APPROVED:


MAYOR JIM RIDENOUR

ATTEST:


JEAN ZAHR, City Clerk

Effective Date: December 1, 2005



ORDINANCE NO. 3399-C.S.

AN ORDINANCE AMENDING THE PRECISE PLAN FOR THE SOUTHEAST QUADRANT OF AREA NO. 20 OF THE VILLAGE ONE SPECIFIC PLAN, TO ALLOW FOR A REVISED LAYOUT FOR THE VILLAGE CENTER RETAIL CENTER, PROPERTY LOCATED AT THE SOUTHEAST CORNER OF FLOYD AVENUE AND ROSELLE AVENUE. (BEST PROPERTIES)

WHEREAS, the City Council, on October 16, 1990, adopted the Specific Plan for Village One, a 1780-acre area of land adjoining the northeast portion of the City of Modesto, within its Sphere of Influence, and

WHEREAS, the Village One Specific Plan requires that precise plans be adopted prior to any development in the Village One 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, Ordinance No. 3155-C.S., which became effective on October 7, 1999, adopted a Precise Plan for Area No. 20, Sub Area C of the Village One Specific Plan, and

WHEREAS, Ordinance No. 3156-C.S. which became effective October 7, 1999, rezoned the property from Specific Plan-Holding Zone, SP-H, to Specific Plan-Overlay Zone, SP-O, and

WHEREAS, an application has been filed by Best Properties for an amendment to the Precise Plan for the southeast quadrant of Area No. 20 to allow for a revised layout for the Village Center retail center, property located at the southeast corner of Floyd Avenue and Roselle Avenue, and

WHEREAS, a public hearing was held by the Planning Commission of the City of Modesto on October 17, 2005, in the Tenth Street Place Chambers located at 1010 10th Street, Modesto, California, at which hearing evidence both oral and documentary was received and considered, and

WHEREAS, after reviewing and considering the oral and documentary evidence, the Planning Commission, by Resolution No. 2005-40, recommended to the City Council adoption of an amendment to the Precise Plan for the southeast quadrant of Area No. 20 to allow for a revised layout for the Village Center retail center, property located at the southeast corner of Floyd Avenue and Roselle Avenue, and

WHEREAS, the project applicant shall indemnify, defend, and hold harmless the City of Modesto, its agents, officers, and employees from any and all claims, actions, or proceedings against the City of Modesto, its agents, officers, and employees to attack, set aside, void, or annul, any approval by the City of Modesto and its advisory agency, appeal board, or a legislative body concerning this Precise Plan Amendment (File No. PPA-05-001). The City of Modesto shall promptly notify the applicant of any claim, action, or proceeding and shall cooperate fully in the defense. If the City fails to do so, the applicant shall not thereafter be responsible to defend, indemnify, or hold City harmless, and

WHEREAS, said matter was considered by the City Council at a duly noticed public hearing on November 1, 2005, at 5:30 p.m., in the Tenth Street Place Chambers located at 1010 10th Street, Modesto, California, and evidence both oral and documentary was received and considered,

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

SECTION 1. That said amendment to the Precise Plan for the southeast quadrant of Area No. 20 is required by public necessity, convenience, and general welfare for the following reasons:

1. The proposed amendment to the Precise Plan for Area No. 20 is consistent with the Village One Specific Plan as amended.
2. The revised layout will facilitate the development of the Village Center retail center, which is needed to serve the Village One neighborhood.

SECTION 2. ADOPTION OF AMENDMENT TO PRECISE PLAN FOR THE SOUTHEAST QUADRANT OF AREA NO. 20. The City Council has reviewed and considered the amendment to the Precise Plan for the southeast quadrant of Area No. 20 of the Village One Specific Plan to allow for a revised layout for the Village Center retail center, property located at the southeast corner of Floyd Avenue and Roselle Avenue as recommended by the Planning Commission, and the Council does hereby approve said amendment to the Precise Plan for the southeast quadrant of Area No. 20. A copy of said amendment is attached hereto.

SECTION 3. 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.

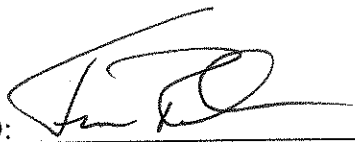
SECTION 4. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in *The Modesto Bee*, the official newspaper of the City of Modesto, setting forth 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 1st day of November, 2005, by Councilmember Marsh, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Jackman , was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Jackman, Keating, Marsh, O'Bryant, Mayor Ridenour

NOES: Councilmembers: Dunbar

ABSENT: Councilmembers: Hawn

APPROVED: 
JIM RIDENOUR, Mayor

ATTEST:

By 
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By 
MICHAEL D. MILICH, City Attorney

Effective Date: December 9, 2005

Ord. No. 3399-C.S.

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 November, 2005, Councilmember Keating, moved its final adoption, which motion being duly seconded by Councilmember O'Bryant, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Jackman, Keating, Marsh, O'Bryant, Mayor Ridenour

NOES: Councilmembers: Dunbar

ABSENT: Councilmembers: Hawn, Mayor Ridenour

APPROVED: 
MAYOR JIM RIDENOUR

ATTEST: 
JEAN ZAHR, City Clerk

Effective Date: December 9, 2005

ORDINANCE NO. 3400-C.S.

**AN ORDINANCE AMENDING SECTION 8-3.102 OF
ARTICLE 1 OF CHAPTER 3 OF TITLE 8 OF THE
MODESTO MUNICIPAL CODE RELATING TO CITY
CONTRACTS - CONTRACTING AUTHORITY.**

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

SECTION 1. AMENDMENT OF CODE. Section 8-3.102 of Article 1 of

Chapter 3 of Title 8 of the Modesto Municipal Code is hereby amended to read as follows:

8-3.102. CONTRACTING AUTHORITY.

The City Manager may approve and authorize all contracts and purchase orders involving an expenditure of City funds in the total amount of fifty thousand dollars (\$50,000.00) or less. Except as noted below, no contract involving an expenditure in excess of fifty thousand dollars (\$50,000.00) may be authorized, approved or executed without City Council approval. The fifty thousand dollars (\$50,000.00) limit set forth in the preceding sentences does not apply to the following:

- (a) Contracts for public works projects consisting of the improvement or modification of traffic signals or signal systems including those street improvements which are incidental to or related to the improvement or modification of the traffic signal. The City Manager may approve and authorize all contracts for such projects involving an expenditure of City funds in the amount of two hundred fifty thousand dollars (\$250,000.00) or less.
- (b) Contracts for public works projects consisting of the construction, improvement, repair, expansion, renovation or modification of any facilities funded by a Mello-Roos Community Facilities District and involving an expenditure of District Facility Taxes in the amount of three million dollars (\$3,000,000.00) or less. The District Administrator may approve and authorize all contracts for such projects.
- (c) Contracts for public works projects consisting of the maintenance, repair, replacement, and improvement of existing water lines. The City Manager may approve and authorize all contracts for such projects involving an expenditure of City funds in the amount of three hundred thousand dollars (\$300,000.00) or less.

- (d) Contracts for public works projects consisting of the installation and establishment of water service connections associated with new development. The City Manager may approve and authorize all contracts for such projects involving an expenditure of City funds in the amount of seventy-five thousand dollars (\$75,000.00) or less.
- (e) Contracts for public works projects consisting of repairs determined by the City Manager to be of urgent necessity for the preservation of life, health, or property. The City Manager may approve and authorize all contracts for such projects in the amount of two hundred thousand dollars (\$200,000.00) or less. Within ten (10) days of the authorization for any such work, the City Manager shall report to the City Council the circumstances of the emergency.
- (f) Contracts for public works projects consisting of the construction, improvement, repair, expansion, renovation, or modification of any facilities associated with development and installed by the developer provided:
 - (1) That an agreement is approved by the City Council prior to commencement of construction of the works.
 - (2) The agreement clearly defines the work to be done and the basis for reimbursement.
 - (3) That total reimbursement required by the agreement is less than three hundred thousand dollars (\$300,000.00) in City funds.
- (g) Contracts for public works projects consisting of the installation, construction, and improvement, of the Coffee-Claratina Dual Use Neighborhood Park/Storm Basin in the City of Modesto. The City Manager may approve and authorize all contracts for such projects involving an expenditure of City funds in the amount of one million five hundred thousand dollars (\$1,500,000.00) or less.
- (h) Contracts for public works projects consisting of the installation and construction of any upgrade and/or rebuild of the City's Institutional Network (INET). The City Manager may approve and authorize all contracts for such projects involving an expenditure of City funds in the amount of four million two hundred thousand dollars (\$4,200,000.00) or less.

- (i) Contracts for public works projects consisting of those improvements to the South Modesto water system identified in that certain technical memorandum prepared by West Yost and Associates dated October 17, 2005, as amended on November 7, 2005, for the benefit of the Galas Brothers Unit II Project bounded by Hatch Road, Estrella Way, Ironside Drive, Salazar Circle and Monticello Lane in the City of Modesto and any incidental work thereto. The City Manager may approve and authorize all contracts for this project involving a total expenditure of City funds not to exceed two million dollars (\$2,000,000) or less.

Any contract for a public works project which may be approved as set forth in subsections (a), (b), (c), (d), (e), (f), (g), (h) and (i) above of this section and authorized by the City Manager, District Administrator, or other authorized person, is not subject to the public bidding requirements of article 3 of this chapter or of Section 1307 of the Modesto City Charter. This section is adopted pursuant to Sections 801(1c) and 1307 of the Modesto City Charter. The City Manager may delegate his or her authority in a manner consistent with the procedures established by this chapter. As set forth in Section 2-2.03 of this Code, all contract documents that require City Council approval shall be approved as to form by the City Attorney or the City Attorney's authorized representative before presentation to the City Council.

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 9th day of November, 2005, by Councilmember Marsh, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Dunbar, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Dunbar, Jackman, Keating, Marsh, O'Bryant

NOES: Councilmembers: None

ABSENT: Councilmembers: Hawn, Ridenour

APPROVED: 
JIM RIDENOUR, Mayor

ATTEST:

By 
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By 
MICHAEL D. MILICH, City Attorney

Effective: December 22, 2005

Ord. No. 3400-C.S.

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 22nd day of November, 2005, Councilmember Jackman, moved its final adoption, which motion being duly seconded by Councilmember Marsh, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Dunbar, Hawn, Jackman, Keating, Marsh, O'Bryant,
Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:


MAYOR JIM RIDENOUR

ATTEST:


JEAN ZAHR, City Clerk

Effective Date: December 22, 2005

