

**ORDINANCE NO. 3278-C.S.**

**AN ORDINANCE AMENDING SECTION 6-3-9 OF THE ZONING MAP TO REZONE FROM SPECIFIC PLAN OVERLAY ZONE, SP-O, TO PLANNED DEVELOPMENT ZONE, P-D(557), PROPERTY LOCATED ON THE NORTHWEST CORNER OF TULLY ROAD AND SNYDER AVENUE. (REDEV, INC.)**

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

SECTION 1. ZONING CHANGE. Section 6-3-9 of the Zoning Map is hereby amended to reclassify the following described property from Specific Plan Overlay Zone, SP-O, to Planned Development Zone, P-D(557):

SP-O to P-D(557)

**All that certain real property situated in a portion of the Southeast quarter of Section 6, Township 3 South, Range 9 East, Mount Diablo Base and Meridian and lying within the City of Modesto, County of Stanislaus, State of California, more particularly described as follows:**

**Parcel B as shown and designated on that certain Parcel Map filed in the Office of the County Recorder of Stanislaus County, California, on May 14, 1999 in Book 49 of Parcel Maps, at Page 49;**

**Including the Westerly portion of Tully Road West of the centerline of original 40-foot Tully Road and the North half of Snyder Avenue, all immediately adjacent to the above-described property.**



SECTION 2. USES. The following uses shall be permitted in said P-D(557) 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 Uses.

SECTION 3. ZONING MAP. Section Map 6-3-9 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 7<sup>th</sup> day of January, 2003, by Councilmember Keating, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Conrad, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Conrad, Fisher, Frohman, Jackman, Keating, O'Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: *Carmen Sabatino*  
CARMEN SABATINO, Mayor

ATTEST:

By *Jean Zahr*  
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

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

APPROVED AS TO DESCRIPTION:

By *[Signature]*  
Community & Economic Development  
Department - Planning Division



Ord. No. 3278-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 14<sup>th</sup> day of January, 2003, Councilmember Fisher moved its final adoption, which motion being duly seconded by Councilmember Conrad, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Conrad, Fisher, Frohman, Jackman, Keating, O'Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:   
MAYOR CARMEN SABATINO

ATTEST:   
JEAN ZAHR, City Clerk

Effective Date: February 13 2003



ORDINANCE NO. 3279-C.S.

AN ORDINANCE AMENDING SECTION 27-3-9 OF THE ZONING MAP TO REZONE FROM NEIGHBORHOOD COMMERCIAL ZONE, C-1, TO PLANNED DEVELOPMENT ZONE, P-D(558), PROPERTY LOCATED AT THE SOUTHWEST CORNER OF NORTH SANTA CRUZ AND LA LOMA AVENUES (DAVID A. CERUTTI)

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

SECTION 1. ZONING CHANGE. Section 27-3-9 of the Zoning Map is hereby amended to reclassify the following described property from Neighborhood Commercial Zone, C-1, to Planned Development Zone, P-D(558):

C-1 to P-D(558)

Beginning at the Northwestern corner of Lot 1, Block 2088 of Coey Tract, as per map thereof, filed April 8, 1946 in Volume 14 of Maps, at Page 48, Stanislaus County Records; thence North 44 degrees 48' 30" East, 14.05 feet, to a line which is parallel with and 10.00 feet, measured at right angles, Northerly from the Northern line of said Lot 1; thence along said parallel line, South 89 degrees 50' East, 109.10 feet to the Northeasterly line of the Coey Tract; thence along said Northeastern line, South 42 degrees 38' 15", 31.17 feet to the Eastern lot of said Lot 1; thence along said Eastern line South 0 degrees 33' E 137.09' to the Southeastern corner of Lot 3 of the Coey Tract; thence along the Southern line of said Lot 3 North 89 degrees 50' West 140.00 feet to the Southwestern corner of said Lot 3; thence North 0 degrees 33' West, 149.96 feet to the point of beginning.

APN: 108-16-12; 108-16-13

SECTION 2. USES. The following uses shall be permitted in said P-D(558) 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. Convenience Store.
2. Service Station.
3. Car Wash.
4. Associated Off-Street Parking as allowed in the C-2 Zone.

SECTION 3. ZONING MAP. Section Map 27-3-9 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 28<sup>th</sup> day of January, 2003, by Councilmember O'Bryant, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Conrad, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Conrad, Frohman, Jackman, Keating, O'Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: Fisher


APPROVED:   
CARMEN SABATINO, Mayor

ATTEST:

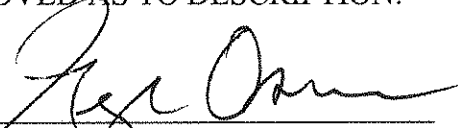
By   
JUAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

APPROVED AS TO DESCRIPTION:

By   
Community & Economic Development  
Department B Planning Division



Ord. No. 3279-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 4<sup>th</sup> day of February, 2003, Councilmember Frohman 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: Frohman, Jackman, Keating, O'Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: Conrad, Fisher

APPROVED:   
MAYOR CARMEN SABATINO

ATTEST:   
JEAN ZAHR, City Clerk

Effective Date: March 6 2003



ORDINANCE NO. 3280-C.S.

AN ORDINANCE AMENDING SECTION 11-1.14 OF  
CHAPTER 1 OF TITLE 11 OF THE MODESTO MUNICIPAL  
CODE RELATING TO WATER RATES AND REGULATIONS  
B RULES AND REGULATIONS.

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

SECTION 1. AMENDMENT OF CODE. Section 11-1.14 of Chapter 1 of Title  
11 of the Modesto Municipal Code is hereby amended to read as follows:

**11-1.14. RULES AND REGULATIONS.**

In addition to all other provisions and requirements of this chapter, the Council may, from time to time by resolution, establish additional rules and regulations concerning the operation of the municipal water system, the use of water, and water conservation. These provisions shall apply to all persons using water in the City regardless of whether any person using water shall have a contract for water service with the City. Failure to comply with any provision, requirement, rule, or regulation under this Chapter shall be unlawful and may be punishable as an infraction.

- (a) Should the Operations and Maintenance Director, or his/her designee, determine that any water user has committed acts which violate the regulations of the Drought Contingency Plan, as provided by resolution, the water user and property owner shall be notified in the following manner:
  - (1) Shall be served with a Notice of Violation either personally, by mail, or by posting such notice at the person's business or place of residence. Such notice shall:
    - (aa) Identify the date, time, and circumstances of violation.
    - (ab) Notify that further violations may result in penalty fees being assessed.
  - (2) Should a water user violate the regulations of the Drought Contingency Plan after being served with a Notice of Violation, that water user and property owner shall be served with a Notice of Intention to Impose a Penalty. Said notice shall:



- (aa) Identify the date, time, and circumstances of violation.
- (ab) State the amount of penalty to be imposed.
- (ac) Advise the water user or property owner of his or her appeal rights as provided herein.

The Notice of Intention to Impose a Penalty shall be served in the same manner as the Notice of Violation.

- (3) After a Notice of Intention to Impose a Penalty is served, a penalty shall be assessed to the utility account of the water user in an amount as set by Council resolution from time to time. Penalties will be assessed for violations occurring within a one (1) year time period and will be progressive in nature. The penalty may be collected in the same manner as any unpaid water service charges.
- (4) A water user or property owner shall have the right to appeal either the Notice of Violation or the imposition of the penalty assessed to his/her utility account. The water user or property owner must request an appeal hearing in writing within fifteen (15) days from the date of service of the Notice of Violation; or within fifteen (15) days of the service of the Notice of Intention to Impose a Penalty. The request for hearing shall be addressed to the Operations and Maintenance Director and shall be deemed served only when received by the City. Failure to properly serve the request for hearing within the fifteen (15) day period shall be deemed a waiver of the right to appeal the matter, and the penalty will be assessed against the customer's account.
- (5) The appeal hearing shall be held before the Operations and Maintenance Director, or his/her designee, who shall make a factual finding on the existence of a violation in this matter. The water user or property owner shall be allowed to present such witnesses and evidence as he or she may desire and may be represented by an attorney or other representative of his or her choosing. The hearing officer shall give written notice by mail to the water user of the date and time of the appeal hearing. Said hearing shall not be held sooner than ten (10) days from receipt of the request for hearing and not longer than thirty (30) days. The decision of the hearing officer shall be final. If a violation is found the penalty shall be assessed to the customer's account.



- (6) The City Council hereby designates the Water Division personnel as the persons authorized to investigate violations and to serve any notices required by the provisions of this subsection.
- (b) All water services installed shall have a wheel valve where the service pipe enters the house and/or structure.
- (c) No person shall supply water in any way for use outside of the premises to which the service is assigned or appurtenant except by permission from the Operations and Maintenance Director.
- (d) Access to service connections and water meters must be provided at all times.
- (e) All persons must keep the service pipes in good order at their own expense and may be held liable for damages which may result from their failure to do so. When leaky faucets or fixtures are discovered and not immediately repaired, the water service may be disconnected. Authorized employees of the City of Modesto shall be admitted at all reasonable hours to all parts of any premises supplied with water, except the interior of dwellings, but including the meter box, to see that the regulations contained in this chapter are observed and complied with.
- (f) It shall be unlawful for any person to interfere with the City service lines, valves or meters or to construct a bypass around a meter or service.
- (g) In making plumbing connections, the water user shall comply with the regulations of the State and County Department of Public Health. Such regulations prohibit (1) unprotected cross-connections between a public supply and any unapproved source of water and (2) water service to premises where there is a possibility of contaminated water backflowing into the public water system. In addition, approved backflow assembly devices shall be installed on water services when (1) another source of water, whether cross-connected or not, is in use or is available for use; or (2) contaminating liquid substances of any kind are used, produced or processed. The Cross Connection Specialist shall determine the type, design and layout of backflow prevention devices required at each premises; and the devices shall be installed at the expense of the consumer. The control devices shall be inspected, tested and approved by the Cross Connection Specialist as a condition of service to the premises.
- (h) Regulations of the California State Department of Public Health require the owner of any premises on or for which backflow prevention devices are installed to inspect these devices for water tightness and tested for



reliability at least once per year or more often depending on conditions. Approved backflows and other protective devices may, in addition, be inspected and tested for water tightness by the City at any time. If the inspection cannot be made without undue difficulty because of an obstruction or other interference, the consumer will be notified and requested either to correct the condition or have the inspection made at his/her own expense and witnessed by the City. Inspections and testing shall be done by persons certified with the State of California as a Backflow Prevention Assembly Tester.

- (1) The City shall notify the water user of the inspection findings, listing the corrective actions to be taken if any are required. A period of thirty (30) days will be given to complete all corrective actions required, including the installation of backflow assembly devices.
  - (2) A second notice will be sent to each water user who does not take the corrective actions prescribed in the first notice within the thirty (30) days allowed. The second notice will give the water user an additional thirty (30) day period to take the required action. If no action is taken within the thirty (30) days, the City may terminate water service to the affected water user until the corrective action is taken. The City shall reserve the right to complete the corrective actions at the water user's expense.
- (i) When the City finds water uses that represent a clear and immediate hazard to the potable water supply that cannot be immediately abated, the City shall institute the procedure for discontinuing water service. Conditions or water uses that create a basis for water service termination shall include, but are not limited to, the following items:
- (1) Refusal to install a required backflow assembly device,
  - (2) Refusal to test a backflow assembly device,
  - (3) Refusal to repair a faulty backflow assembly device,
  - (4) Refusal to replace a faulty backflow assembly device,
  - (5) Direct or indirect connection between the public water system and a sewer line,
  - (6) Unprotected direct or indirect connection between the public water system and a system or equipment containing contaminants,



- (7) Unprotected direct or indirect connection between the public water system and an auxiliary water system,
- (8) A situation which presents an immediate health hazard to the public water system.

For conditions 1-4, the City will terminate service to the customer's premise after two (2) written notices have been sent specifying the corrective action needed and the time period in which it must be done. If no action is taken within the allowed time period, water service may be terminated.

For conditions 5-8, the City will take the following steps: (1) Make reasonable effort to advise water user of intent to terminate water service; and (2) Terminate water supply and lock service valve. The water service will remain inactive until correction of violations has been approved by the City's Cross Connection Specialist.

- (j) Independent fire sprinkler systems and private fire hydrant systems shall have a "double-check backflow assembly" installed in the service. If the Cross Connection Specialist determines that an independent fire sprinkler system or private fire hydrant system is being used for other than fire prevention and suppression purposes, he/she may install an appropriate backflow assembly. The cost of such installation shall be paid by the consumer.
- (k) When a water connection fee is paid for a particular parcel, it shall be credited to subsequent owners of that parcel. Refunds shall be made for duplicate payments. Additional fees will be required where there are zoning, use or density changes that will increase the fees.

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 4<sup>th</sup> day of February, 2003, by Councilmember Fisher, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Frohman, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Fisher, Frohman, Jackman, Keating, O'Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: Conrad

APPROVED:   
CARMEN SABATINO, Mayor

ATTEST:

By   
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney



Ord. No. 3280-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 11<sup>th</sup> day of February, 2003, Councilmember Frohman moved its final adoption, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Conrad, Fisher, Frohman, Jackman, Keating, O'Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: *Carmen Sabatino*  
MAYOR CARMEN SABATINO

ATTEST: *Jean Zahr*  
JEAN ZAHR City Clerk

Effective Date: March 13 2003



ORDINANCE NO. 3281-C.S.

AN ORDINANCE AMENDING SECTION 8-1.904 OF ARTICLE  
9 OF CHAPTER 1 OF TITLE 8 OF THE MODESTO  
MUNICIPAL CODE RELATING TO CAPITAL FACILITIES  
FEES - ESTABLISHMENT OF FEES.

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

SECTION 1. AMENDMENT OF CODE. Section 8-1.904 of Article 9 of

Chapter 1 of Title 8 of the Modesto Municipal Code is hereby amended to read as follows:

**8-1.904. ESTABLISHMENT OF FEES.**

A Capital Facilities Fee, as established from time to time by the City Council by resolution, shall be due and payable at the time a building permit is issued, unless otherwise approved by Council resolution. The decision of the Chief Building Official as to the type of use for fee assessment purposes shall be final.

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 11<sup>th</sup> day of February, 2003, 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: Fisher, Frohman, Jackman, Keating, O'Bryant, Mayor Sabatino

NOES: Councilmembers: Conrad

ABSENT: Councilmembers: None

APPROVED:   
CARMEN SABATINO, Mayor

ATTEST:

By   
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney



Ord. No. 3281-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 25<sup>th</sup> day of February, 2003, Councilmember Frohman moved its final adoption, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Conrad, Fisher, Frohman, Jackman, Keating, O'Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:   
MAYOR CARMEN SABATINO

ATTEST:   
JEAN ZAHR, City Clerk

Effective Date: March 31, 2003



ORDINANCE NO. 3282-C.S.

AN ORDINANCE AMENDING ORDINANCE NO. 3005-C.S ENTITLED "AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MODESTO AUTHORIZING THE LEVY OF A SPECIAL TAX WITHIN COMMUNITY FACILITIES DISTRICT NO. 1996-1" AS PREVIOUSLY AMENDED BY ORDINANCE NOS. 3047-C.S., 3060-C.S., 3115-C.S. AND 3160-C.S. TO CLARIFY THAT COLLECTION OF THE ONE-TIME SPECIAL FACILITIES TAX SHALL OCCUR AT THE TIME A BUILDING PERMIT IS ISSUED (VILLAGE ONE CFD NO. 1996-1)

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

WHEREAS, on September 3, 1996, the City Council of the City of Modesto, State of California (the "Council"), adopted its Resolution No. 96-501 (the "Resolution of Intention to Establish the District") stating its intention to form Community Facilities District No. 1996-1 of the City of Modesto (the "District") for the purpose of financing the costs of certain public facilities (the "Facilities") and services (the "Services") specified in the Resolution of Intention pursuant to Chapter 2.5 of Part 1 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, a notice was published as required by law relative to the intention of this Council to form the proposed District and to establish an appropriations limit for the District in the amount of \$10,000,000.00 per fiscal year in connection with the proposed Facilities and Services, and

WHEREAS, this Council held the noticed public hearing as required by law to determine whether it should proceed with the formation of the District and authorize the rate, method of apportionment, and manner of collection of a special tax to be levied within the District sufficient to pay all costs necessary to finance certain public facilities (the "Facilities) and services (the "Services") specified in the Resolution of Intention to Establish the District, and

WHEREAS, at the hearing all persons desiring to be heard on all matters pertaining to the formation of the District, the levy of the special tax, all other matters set forth in the Resolution of Intention to Establish the District were heard and considered and full and fair hearings were held thereon, and



WHEREAS, this Council, upon the conclusion of the hearing, did, on October 8, 1996, adopt its Resolution No. 96-544 (the "Resolution of Formation") which established the District, determined the validity of prior proceedings relative to the formation of the District, authorized the levy of a special tax within the District, and called an election for October 15, 1996, on the propositions of levying a special tax limit and establishing an appropriations limit within the District, and

WHEREAS, on October 15, 1996, in accordance with the Resolution of Formation a consolidated election was held within the District in which the qualified electors approved by more than a two-thirds vote the proposition of levying the special tax and establishing an appropriations limit within the District, and

WHEREAS, on October 8, 1996, the City Council approved Ordinance No. 3005-C.S., effective November 14, 1996, levying a special tax commencing in fiscal year 1996-1997 and establishing the rate, method of apportionment and manner of collection for collection of taxes in ensuing years, and

WHEREAS, on July 6, 1997, the City Council approved Ordinance No. 3047, effective August 5, 1997, which amended Ordinance No. 3005-C.S., to conform it more precisely with the City's tax credit policy with respect to acquisition of facilities, land and services for the District, and

WHEREAS, on June 10, 1997, the City Council of the City of Modesto, State of California, (the "Council"), adopted its Resolution No. 97-329 (the "Resolution of Intention to Annex #1") stating its intention to annex certain parcels of land (the "Annexed Territory #1") to Community Facilities District No. 1996-1 of the City of Modesto (the "District"), within the Village One Area, and to levy a special tax (the "Special Tax") within the Annexed Territory for the purpose of financing the costs of certain public facilities (the "Facilities") and services (the "Services"), pursuant to Chapter 2.5 of Part 1 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, a notice was published as required by law relative to the intention of this Council to accomplish the annexation and to levy the Special Tax within the Annexed Territory #1, and



WHEREAS, this Council held the noticed public hearing as required by law to determine whether it should proceed with the annexation to the District and authorize the rate, method of apportionment, and manner of collection of the Special Tax to be levied within the Annexed Territory #1 sufficient to pay all costs necessary to finance the proposed Facilities and Services, and

WHEREAS, at the hearing all persons desiring to be heard on all matters pertaining to the annexation, the levy of the Special Tax within the Annexed Territory #1, and all other matters set forth in the Resolution of Intention to Annex #1, were heard and considered and full and fair hearing was held thereon, and

WHEREAS, this Council, upon the conclusion of the hearing, did, on July 15, 1997, adopt its Resolution No. 97-414 (the "Resolution Calling the Election #1") which called an election for August 19, 1997, on the proposition of levying the Special Tax within the Annexed Territory #1, and

WHEREAS, on August 19, 1997, in accordance with the Resolution Calling the Election #1, a consolidated election was held in which the qualified voters of the Annexed Territory #1 approved by more than a two-thirds vote the proposition to levy the Special Tax within the Annexed Territory #1, and

WHEREAS, on September 9, 1997, the Council adopted its Resolution No. 97-520 (the "Resolution Ordering the Annexation #1") in which the Council determined that the area proposed to be annexed to the District was thereby added to and a part of the District with full legal effect, and that the Council could thereby levy the Special Tax within the Annexed Territory #1 for the purpose of financing the costs of the Facilities and the Services set forth in Exhibits B and C, respectively, to the Resolution Ordering the Annexation #1, and

WHEREAS, on September 9, 1997, the City Council approved Ordinance No. 3060-C.S., effective October 23, 1997, ordering the annexation of Annexed Territory #1, levying a special tax against Annexed Territory #1 and establishing the rate, method of apportionment and manner of collection of taxes in ensuing years, and

WHEREAS, on November 10, 1998, the City Council of the City of Modesto, State of California (the "Council"), adopted its Resolution No. 98-591 (the "Resolution of Intention to Annex #2") stating its intention to annex certain parcels of land (the



“Annexed Territory #2”) to Community Facilities District No. 1996-1 of the City of Modesto (the “District”), within the Village One Area, and to levy a special tax (the “Special Tax”) within the Annexed Territory #2 for the purpose of financing the costs of certain public facilities (the “Facilities”) and services (the “Services”) pursuant to Chapter 2.5 of Part 1 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, a notice was published as required by law relative to the intention of this Council to accomplish the annexation and to levy the Special Tax within the Annexed Territory #2, and

WHEREAS, this Council held the noticed public hearing as required by law to determine whether it should proceed with the annexation to the District and authorize the rate, method of apportionment, and manner of collection of the Special Tax to be levied within the Annexed Territory #2 sufficient to pay all costs necessary to finance the proposed Facilities and Services, and

WHEREAS, at the hearing all persons desiring to be heard on all matters pertaining to the annexation, the levy of the Special Tax within the Annexed Territory #2, and all other matters set forth in the Resolution of Intention to Annex #2, were heard and considered and full and fair hearing was held thereon, and

WHEREAS, this Council, upon the conclusion of the hearing, did, on December 15, 1998, adopt its Resolution No. 98-678 (the “Resolution Calling the Election #2”) which called an election for December 22, 1998, on the proposition of levying the Special Tax within the Annexed Territory #2, and

WHEREAS, on December 22, 1998, in accordance with the Resolution Calling the Election, an election was held in which the qualified voters of the Annexed Territory #2 approved by more than a two-thirds vote the proposition to levy the Special Tax within the Annexed Territory #2, and

WHEREAS, on January 5, 1999, the Council adopted its Resolution No. 99-13 (the “Resolution Ordering the Annexation #2”) in which the Council determined that the area proposed to be annexed to the District was thereby added to and a part of the District with full legal effect, and that the Council could thereby levy the Special Tax within the



Annexed Territory #2 for the purpose of financing the costs of the Facilities and the Services set forth in Exhibit "A" to the Resolution Ordering the Annexation, and

WHEREAS, on January 12, 1999, the City Council approved Ordinance No. 3115-C.S., effective February 11, 1999, to further amend Ordinance No. 3005-C.S., ordering the annexation of Annexed Territory #2, levying a special tax against Annexed Territory #2 and establishing the rate, method of apportionment and manner of collection of taxes in ensuing years, and

WHEREAS, on October 5, 1999, the City Council approved Ordinance No. 3160-C.S., effective November 11, 1999, to further amend Ordinance No. 3005-C.S., and to modify the Community Facilities Districts tax credit procedure, and

WHEREAS, the City Council wishes to amend Ordinance No. 3005-C.S., as previously amended, to clarify the point at which the Facilities Special Tax shall be collected, and

WHEREAS, the clarification regarding the point at which the Facilities Special Tax shall be collected shall not apply to those parcel that are "vested" or have already annexed to an existing Community Facilities District, and

WHEREAS, Ordinance No. 3005-C.S., as amended, is reaffirmed in every other respect and repeated in its entirety herein for the sake of administrative convenience, and

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

SECTION 1. This Council finds and determines that the above recitals are all true and correct.

SECTION 2. This Council desires to amend Ordinance Nos. 3005-C.S, as previously amended.

SECTION 3. By the passage of this Ordinance, a special tax is hereby levied within the District, Annexed Territory #1 and Annexed Territory #2 and, unless otherwise provided, in any territory that may be subsequently be annexed to the District by this Council, at the rate, manner and method of apportionment set forth in Exhibit A attached



hereto, as Exhibit A may from time to time be amended, being the rate, manner and method of apportionment specified in the Resolution Ordering the Annexation #1. The special taxes are hereby levied commencing in fiscal year 1996-1997 and in each fiscal year thereafter, unless reduced by subsequent resolution of this Council, at the Maximum Special Tax rate described in Exhibit A hereto.

SECTION 4. The District Administrator of the City of Modesto is hereby authorized each year to determine the special tax rate and amount to be levied for the next ensuing fiscal year, except that the special tax rate to be levied shall not exceed that set forth in Exhibit A hereto, as Exhibit A may from time to time be amended.

SECTION 5. No properties or entities are exempt from the special tax unless the properties or entities are expressly exempted in the Resolution Ordering the Annexation #1 (and Exhibit A hereto), or in any subsequent resolution of consideration to levy a new special tax or special taxes or to alter the rate or method of apportionment or an existing special tax as provided in Section 53334 of the Act.

SECTION 6. All of the collections of the special tax shall be used as provided for in the Act and the Resolution Ordering the Annexation #1. The special tax shall be levied only so long as needed for its purpose as described in the Resolution of Intention to Annex #1 the District and the Resolution Ordering the Annexation #1.

SECTION 7. The annual maintenance special tax, as defined in Exhibit A, shall be collected in the same manner as ordinary ad valorem property taxes are collected and shall be subject to the same penalties and the same procedure, sale, and lien priority in case of delinquency as is provided for ad valorem taxes, as such procedure may be modified by law from time to time.

The facilities special tax, as defined in Exhibit A, shall be collected by direct billing by the City.

#### SECTION 8. DEFINITIONS:

1. Certificate of Completion: A written document provided to a facility provider by the District Engineer stating that the facility is complete and in good working order, and that the requirements of the facility acquisition agreement have been met.



2. CFD: A Community Facilities District created for the purpose of financing the costs of certain public facilities and services pursuant to the provisions of Chapter 2.5 of Part 1 of Division 2 of Title 5 (commencing with Section 53311) of the California Government Code.
3. Credit: An offset against tax owed, or cash reimbursement for tax paid, as appropriate, calculated by subtracting from the Facility Cost Estimate any non-prepaid costs or incidental costs as defined in the Mello Roos Act, Section 53317(c) and (e), by means of a cash administrative cost offset. The administrative offset may be specified in the public report.
4. District Engineer: A California registered professional engineer employed by the City of Modesto, or a City of Modesto CFD, who is responsible for making final engineering determinations on behalf of that CFD.
5. Facility: Any public works-type infrastructure for which tax is to be collected pursuant to the public report, which could be eligible for tax credit and is located within a CFD.
6. Facility Cost Estimate: The facility (or facility segment) cost estimate, including contingency cost estimates relating to that facility (or segment) which are included in the tax stated directly, or by reference, in the public report, as that report may be amended or adjusted for inflation from time to time.
7. Facility Provider: Any person or entity constructing a facility.
8. Oversubscription: Oversubscription is the furnishing of land or facilities whose total value as set forth in the public report exceeds the total taxes attributable to a facility provider's entire development within a CFD.
9. Public Report: All exhibits and attachments to the resolution of formation of a CFD, and documents included therein by reference.
10. Tax: Any facilities special tax specified in the public report for the CFD.

- A. Facility providers may be permitted credits against taxes owed, or cash credits, as appropriate, and as set forth herein.



- B. In the case of oversubscription, cash up to the amount of the oversubscription may be paid to a facility provider as cash becomes available to the CFD through tax collection.
- C. Taxes shall be payable at the time specified in the public report. Until January 1, 2000, the tax payable shall at least equal the administrative offset specified in the public report or otherwise.
- D. The district shall also be compensated from available tax monies for money and services advanced by it for the acquisition, construction, improvement or control of any or all of the facilities set forth in the public report, all in accordance with and subject to the Mello Roos Act (including, without limitation, Section 53314.9 of the Act), the resolution of formation of the CFD, the policies and procedures for administration of the CFD, the public report and other applicable law.
- E. In no event shall cash advances, dedications, or construction of facilities become either a debt of the City, or a debt in excess of actual tax receipts, of the CFD.
- F. All tax credits shall be made by the District Administrator pursuant to a valid, executed facility acquisition agreement in a form approved by the District Administrator.
- G. Prior to January 1, 2000, with the approval of the District Administrator, credits may be furnished to a facility provider to offset taxes otherwise due if the facility provider has furnished or is furnishing facilities which have not yet received a notice of completion. Notwithstanding the foregoing, such discretionary credit shall be fully reimbursable to the CFD in cash by the facility provider in the event that a facility acquisition agreement is not executed by the facility provider, or if that facility provider does not receive a notice of completion from the District Engineer.
- H. On and after January 1, 2000:
  - (1) The District Administrator shall ensure that the full tax is collected as it becomes due from each provider of facilities or facility segments to the CFD until (a) a valid facility



acquisition agreement exists between the CFD and the facility provider and, (b) the facility has been completed, and (c) a certificate of completion has been issued to the facility provider. The District Administrator shall then provide facility special tax credits or cash reimbursement, as appropriate, to that facility provider.

- (2) All facility providers shall be denied tax credit for any portion of an otherwise credit-eligible facility constructed prior to execution by that provider of a facility acquisition agreement suitable to the District Administrator. Credit shall not be denied for planning or engineering costs included in a Facility Cost Estimate incurred prior to execution of that agreement.
- (3) Credits shall be expended by the District Administrator in date order of the certificate of completion of the facility for which credits are requested, and each such facility shall be completely credited before the district administrator shall grant credits to a facility receiving a certificate of completion later in time.

- I. Where apportionment is required, as with respect to a total facilities cost stated in the public report including two or more sub-facilities, or where more than one person or entity participates in the construction or furnishing of a facility, the determination of such apportionment and credit by the District Administrator or their designee shall be conclusive evidence of the amount of the credit derived thereby.”

SECTION 9. ONE-TIME TAX COLLECTION. The language set forth on page 14 of the Public Report provides that “[t]he Facilities Special Tax represents a lien on each Parcel which is anticipated to be released upon payment of the Facilities special Tax, which is expected to occur no later than final building permit inspection or issuance of a certificate of occupancy, whichever first occurs.” [emphasis added] To clarify the time of collection, the City Council hereby ordains that the collection of the Facilities



special Tax shall occur at issuance of a building permit. This clarification shall not apply to "vested" properties or properties that have annexed to an existing Community Facilities District as of February 11, 2003.

SECTION 10. EFFECTIVE DATE. This Ordinance shall be effective thirty (30) days after its final passage and adoption.

SECTION 11. 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 11<sup>th</sup> day of February, 2003, 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: Fisher, Frohman, Jackman, Keating, O'Bryant, Mayor Sabatino

NOES: Councilmembers: Conrad

ABSENT: Councilmembers: None

ATTEST: Jean Zahr  
JEAN ZAHR, City Clerk

APPROVED AS TO FORM:

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



Ord. No. 3282-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 25<sup>th</sup> day of February, 2003, Councilmember Frohman moved its final adoption, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Conrad, Fisher, Frohman, Jackman, Keating, O'Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:

  
MAYOR CARMEN SABATINO

ATTEST:

  
JEAN ZAHR, City Clerk

Effective Date: March 31, 2003



COMMUNITY FACILITIES DISTRICT  
NO. 1996-1 (VILLAGE ONE)

CITY OF MODESTO  
STANISLAUS COUNTY, CALIFORNIA

PUBLIC REPORT  
MELLO-ROOS COMMUNITY FACILITIES ACT OF 1982

AMENDED APRIL 1997  
FOR  
ANNEXATION NO. 1

Prepared by:

VAIL ENGINEERING CORPORATION  
2033 Howe Ave., Ste. 220  
Sacramento, CA 95825  
(916) 929-3323  
(916) 929-1772 FAX

**COMMUNITY FACILITIES DISTRICT NO. 1996-1 (VILLAGE ONE)  
PUBLIC REPORT - MELLO-RODS COMMUNITY FACILITIES ACT OF 1982**

**TABLE OF CONTENTS**

INTRODUCTION .....	1
I. DESCRIPTION OF FACILITIES FOR ANNEXATION NO. 1 .....	2
A. ARTERIAL ROADS .....	2
B. STORM DRAINAGE SYSTEM .....	3
1. West Basin (9.56 acres): .....	3
2. Central Basin (15.59): .....	3
3. Industrial Basin (8 acres): .....	3
C. UTILITY RELOCATION .....	3
D. PARKS .....	3
E. PUBLIC FACILITIES .....	4
F. OTHER .....	4
G. OPERATIONS AND MAINTENANCE OF PARKS, TRAILS, AND STREET PARKWAYS .....	4
II. BOUNDARIES OF COMMUNITY FACILITIES DISTRICT ANNEXATION NO. 1 .....	5
III. COST ESTIMATES .....	6
A. CAPITAL COSTS FOR FACILITIES SPECIAL TAX .....	6
B. OPERATIONS AND MAINTENANCE COSTS FOR MAINTENANCE SPECIAL TAX .....	7
IV. RATE AND METHOD .....	8
A. DEFINITIONS .....	8
B. ASSIGNMENT TO LAND USE CLASS .....	11
C. MAXIMUM SPECIAL TAX .....	12
1. Facilities Special Tax .....	12
2. Maintenance Special Tax .....	14
D. METHOD OF LEVY AND COLLECTION OF THE SPECIAL TAX .....	16
1. Facilities Special Tax .....	16
2. Maintenance Special Tax .....	17
E. LIMITATIONS .....	18
F. ENFORCEMENT .....	18
V. GENERAL TERMS AND CONDITIONS .....	19
A. SUBSTITUTION FACILITIES .....	19
B. APPEALS AND INTERPRETATION PROCEDURE .....	19
C. ADMINISTRATION OF FUNDS .....	19
1. Facilities Fund .....	19
2. Maintenance Fund .....	20
VI. CERTIFICATION .....	21

**COMMUNITY FACILITIES DISTRICT NO. 1996-1 (VILLAGE ONE)**  
*CITY OF MODESTO, STANISLAUS COUNTY, CALIFORNIA*

**PUBLIC REPORT**  
*MELLO-ROOS COMMUNITY FACILITIES ACT OF 1982*

**INTRODUCTION**

WHEREAS, City Council of the City of Modesto did, pursuant to the provisions of the "Mello-Roos Community Facilities Act of 1982", being Chapter 2.5, Part 1, Division 2, Title 5 of the Government Code of the State of California, and specifically Section 53321.5 thereof, expressly order the filing of a written "Report" with the City for a proposed Community Facilities District. This Community Facilities District shall hereinafter be referred to as:

Community Facilities District No. 1996-1 (Village One).

(hereinafter referred to as the "District") and

WHEREAS, the Resolution ordering said "Report" did direct that said "Report" generally contain the following:

- (1) A description of the public capital facilities and services proposed for the District;
- (2) A general description of the area to be served by said facilities; said areas being the boundaries of the District;
- (3) A cost estimate, setting forth the costs and expenses for providing the public facilities and services to the properties within the boundaries of the District and the costs of any incidental expenses to be paid by the District;
- (4) The rate and method of apportionment of the special tax in sufficient detail to allow each landowner or resident within the proposed District to estimate the annual amount of payment;
- (5) General Terms and conditions relating to the proceedings.

For particulars, references is made to the Resolution of Intention ordering the report, as previously approved and adopted.

NOW, THEREFORE, I, Jerry L. Slinkard, P.E., authorized representative for Vail Engineering Corporation, the appointed responsible officer or person directed to prepare the Report, pursuant to the provisions of the "Mello-Roos Community Facilities Act of 1982", being Chapter 2.5, Part 1, Division 2, Title 5 of the Government Code of the State of California, do hereby submit the following data:

COMMUNITY FACILITIES DISTRICT NO. 1996-1 (VILLAGE ONE)  
CITY OF MODESTO, STANISLAUS COUNTY, CALIFORNIA

PUBLIC REPORT  
MELLO-ROOS COMMUNITY FACILITIES ACT OF 1982

I. DESCRIPTION OF FACILITIES

All facilities described herein are as presented in the *Village One Facilities Master Plan* adopted June 1996. Said master plan is incorporated herein by reference. The following descriptions summarize the facilities to be funded within the CFD 1996-1.

A. ARTERIAL ROADS

The circulation plan for Village One consists of six major streets (four arterials and two expressways). For the purpose of this document, all six roadways are referred to as arterial roads. Urban interchanges are not included in the *Village One Finance Plan*. It is anticipated that subsequent updates to the Capital Facilities Fee Program will include urban interchanges. Refer to the Facilities Master Plan for right-of-way widths along arterial roads. The arterial roads are:

- Claus Road (Expressway): Briggsmore to AT and SF railroad, widen to six-lane expressway.
- Briggsmore (Expressway): Oakdale Road to Claus Road, widen to six-lane expressway.
- Sylvan Avenue: Oakdale Road to Roselle Avenue, widen to six lanes; Roselle Avenue to Claus Road, widen to four lanes plus bike lanes.
- Floyd Avenue: Oakdale Road to Claus Road, widen to four lanes plus bike lanes and parking.
- Oakdale Road: Briggsmore to Sylvan, widen to six lanes.
- Roselle Avenue: Briggsmore to Sylvan, widen to four lanes plus bike lanes.

**B. STORM DRAINAGE SYSTEM**

The storm drainage system for Village One consists of three basins for detention and retention:

1. West Basin (9.56 acres): Retention with pump out facilities to Central Basin.
2. Central Basin (15.59): Percolation with pump out facilities to Claus Road Storm Drain with ultimate discharge to Dry Creek.
3. Industrial Basin (8 acres): Percolation with pump out facilities to Claus Road Storm Drain with ultimate discharge to Dry Creek.

The facilities to be funded in CFD 1996-1 include: basins, land for basins, trunk gravity, drainage pipes in sizes ranging from 24 inches in diameter to 72 inches in diameter, and force mains. A detailed description and location of facilities is contained in "Village One Facilities Master Plan" adopted June 1996, and incorporated herein by reference.

**C. UTILITY RELOCATION**

The cost of a PG&E high pressure gas main within Claus Road between Briggsmore Avenue and Sylvan Avenue is identified for relocation.

**D. PARKS**

Three neighborhood parks and one community park will be developed within CFD 1996-1. The development of the parks will include the acquisition of land, park improvements, and street frontage improvements for:

Community Park	39 acres
Roselle Neighborhood Park	7 acres
Claus Neighborhood Park	7 acres
Merle Neighborhood Park	8 acres

In addition, 21.3 acres of buffer land for the community park is to be acquired, a bike trail is to be developed along M.I.D. Lateral No. 3, and a trail is to be developed along Claus Road.

E. PUBLIC FACILITIES

An area office for police is proposed within Village One. Funds are provided within CFD 1996-1 for tenant improvements necessary to set up an area office.

F. OTHER

Other costs associated with Village One include reimbursement to the City of Modesto for engineering of the Facilities Master Plan and planning related to the *Village One Specific Plan*, future annual administration costs for the CFD, and community signage for Village One.

G. OPERATIONS AND MAINTENANCE OF PARKS, TRAILS, AND STREET PARKWAYS\*

The City will maintain the community park, Roselle Park, Claus Park, Merle Park, and arterial road parkways landscaping in a "good standard of maintenance" as defined by the Parks Department. M.I.D. Trail and Claus Trail will be maintained as Class I trails.

\*Street parkways includes median and roadside landscape and hardscape.

II. BOUNDARIES OF COMMUNITY FACILITIES DISTRICT ANNEXATION NO. 1

The maps located at the end of the report includes land within Village One that will be annexed to and contained within Community Facilities District 1996-1 (Village One) Annexation No. 1.

### III. COST ESTIMATES

#### A. CAPITAL COSTS FOR FACILITIES SPECIAL TAX

The capital costs for CFD 1996-1 (Village One) Annexation No. 1 amended April, 1997, as estimated in the *Village One Facilities Master Plan* adopted June 1996, and as shown on page 28 of the *Village One Finance Plan*, is \$48,457,856. This figure is based upon 1996 costs as set forth in the adopted *Facilities Master Plan* for Village One. These costs are subject to an annual inflation adjustment based upon the Engineering News Record Cost Index for the San Francisco region. A breakdown of these costs are as follows:

Arterial Roads	\$20,509,278
Storm Drainage	\$13,240,470
Utility Relocation	\$1,120,458
Parks	\$10,863,967
Public Facilities	\$25,000
Other	<u>\$2,698,683</u>
Subtotal:	\$48,457,856
Annual CFD Administration (1%)	\$484,579

In addition to the capital costs, an annual cost to administer the CFD is estimated at 1% of the capital costs, or \$484,579 over the life of the district.

Total district with administration is: \$48,942,435

B. OPERATIONS AND MAINTENANCE COSTS FOR MAINTENANCE SPECIAL TAX

Estimated annual cost to the CFD at full buildout of Village One in 1996 dollars to provide operations and maintenance (O&M) of parks, street/parkway, and pathways (including landscaping) is \$850,000. A breakdown of these annual O&M costs are:

\* Annual maintenance cost at buildout in 1996 dollars:

Community Park and three (3) neighborhood parks .....	\$149,073
Street/Parkways: 1,500,000 sq. ft. x \$0.417 / sq. ft. ....	\$625,500
Pathway Landscaping: Subtotal Paths .....	\$44,965
Class I: 17,889 / 5,280 x \$4,020 =	\$13,560
Class II: 82,388 / 5,280 x \$1,500 =	\$23,405
Class III: 84,480 / 5,280 x \$500 =	<u>\$8,000</u>
	\$44,965
Weed and Litter Abatement .....	\$4,251
Misc. Annual Admin/Cont. (3%) .....	<u>\$26,211</u>
	Total Annual Cost: \$850,000

\* Total annual costs at "good" standard for all neighborhood and community parks in 1996 dollars is \$708,676. The amount attributed to the Village One CFD is \$149,073.

#### IV. RATE AND METHOD *(By David Taussig and Associates)*

A special tax applicable to each Assessor's Parcel in Community Facilities District No. 1996-1 (herein "CFD No. 1996-1") 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. 1996-1, unless exempted by law or by the provisions of Section E below, shall be taxed for the purposes, to the extent, and in the manner herein provided, including property subsequently annexed to CFD No. 1996-1 unless a separate Rate and Method of Apportionment of Special Tax 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 Subdivision Map, parcel map, or other recorded County parcel map.

"Annual Maintenance Special Tax" means a Special Tax levied in any Fiscal Year to pay for the operations and maintenance of parks, street landscaping pathways, weed and litter abatement, and miscellaneous annual administrative and contractual costs.

"Assessor's Parcel" means a lot or parcel shown in an Assessor's Parcel Map with an assigned Assessor's Parcel number.

"Assessor's Parcel Map" means an official map of the County Assessor of the County of Stanislaus designating parcels by Assessor's Parcel Number.

"City" means the City of Modesto.

"City Manager" means the City Manager of the City of Modesto.

"Commercial Property" means all Parcels of Developed Property for which a building permit has been issued for a commercial establishment which sells general merchandise, hard goods, personal and professional services, and other items directly to consumers, including but not limited to travel agencies, hardware stores, food stores, automotive dealers, service stations, home furnishing stores,

restaurants, banks, repair shops, movie theaters, day care centers, and art galleries. In addition, all professional office space, including company headquarters, medical office buildings, and other such buildings, will be defined as Commercial Property.

"Council" means the City Council of the City of Modesto, acting as the legislative body of CFD No. 1996-1.

"Developed Property" means, in any Fiscal Year, all Taxable Property for which a building permit for new construction was issued prior to March 1 of the preceding Fiscal Year or for which a Final Subdivision Map was recorded prior to March 1 of the preceding Fiscal Year creating individual lots for which a building permit may be issued without further subdivision.

"Facilities Special Tax" means a Special Tax levied in any Fiscal Year to pay for public facilities authorized to be funded by CFD No. 1996-1, including appurtenant expenses such as planning, design, engineering, inspection and financing costs.

"Final Subdivision Map" means a final subdivision map, or portion thereof, approved by the City pursuant to the Subdivision Map Act (California Government Code Section 66410 et seq.) that creates individual lots for which building permits may be issued. The term "Final Subdivision Map" shall not include any Assessor's Parcel Map or subdivision map or portion thereof, that does not create individual lots for which a building permit may be issued, including Assessor's Parcels that are designated as a remainder parcel.

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

"Gross Acreage" means, for Developed Property, the total acreage within the Final Subdivision Map or Parcel map less arterial road right-of-ways (as defined and identified in the *Village One Specific Plan #8*, the *Village One Financing Plan* and *CFD Public Report*) and property that is identified in the Final Subdivision Map for use as a park site, school site, or storm drainage basin. For Undeveloped Property, Gross Acreage means the acreage identified on the Assessor's Map.

"Industrial Property" means all Parcels of Developed Property for which a building permit has been issued for a non-residential structure that is not Commercial Property.

"Land Use Class" means any of the five classes listed in Table 1 and Table 2 below.

"Maintenance Special Tax Requirement" means the amount necessary in any Fiscal Year (i) to pay for authorized maintenance expenses, (ii) to pay administrative expenses of CFD No. 1996-1, and (iii) to cure any delinquencies in the payment of Annual Maintenance Special Taxes levied in prior Fiscal Years or (based on delinquencies in the payment of Special Taxes which have already taken place) are expected to occur in the Fiscal Year in which the tax will be collected.

"Maximum Special Tax" means the maximum Special Tax, determined in accordance with Section C below, that can be levied by the City in any Fiscal Year on Taxable Property.

"Multi-Family Residential" means any residential structure consisting of two or more residential units that share common walls including, but not limited to, townhomes, condominiums, duplexes, triplexes, fourplexes, apartment units, including senior housing that fits within the aforementioned description.

"Other Property" means any Parcel of Developed Property for which a building permit has been issued for a use other than Very Low Density Residential, Village Residential, Multi-Family Residential, Commercial or Industrial Property.

"Other Undeveloped Property" means all Taxable Property that is not classified as Developed Property, Undeveloped Commercial Property, Undeveloped Industrial Property or Undeveloped Residential Property.

"Public Agency" means the federal government, State of California or other local governments or public agencies.

"Subdivided Property" means all Parcels which, after recordation of a Final Subdivision Map, are in their final configuration and for which building permits may be issued. Subdivided Property shall not include any Assessor's Parcels that are not individual lots for which a building permit may be issued, including Assessor's Parcels that are designated as a remainder parcel.

"Undeveloped Commercial Property" means any Parcel that is not Developed Property that is anticipated to be developed as Commercial Property, as determined first by reference to the *Village One Specific Plan* and, second, by reference to the Parcel's zoning designation.

"Undeveloped Industrial Property" means any Parcel that is not Developed Property that is anticipated to be developed as Industrial Property, as determined first by

reference to the *Village One Specific Plan* and, second, by reference to the Parcel's zoning designation.

"Undeveloped Residential Property" means any Parcel that is not Developed Property that is anticipated to be further subdivided and developed as Very Low Density Residential, Village Residential or Multi-Family Residential Property, as determined first by reference to the *Village One Specific Plan* and, second, by reference to the Parcel's zoning designation.

"Very Low Density Residential" means a residential structure consisting of only one residential unit on a Parcel with a maximum density of two or less dwelling units per gross acre.

"Village One Facilities Master Plan" means the facilities master plan for development Village One adopted in June 1996, and as may be amended in the future.

"Village One Specific Plan" means the Specific Plan for development in Village One of the City of Modesto, as adopted by the City Council and as amended in future years.

"Village Residential" means a residential structure consisting of only one residential unit on a Parcel with a maximum density greater than two dwelling units per gross acre.

#### B. ASSIGNMENT TO LAND USE CLASS

After issuance of a building permit and prior to final building permit inspection or issuance of a certificate of occupancy for a Parcel in CFD No. 1996-1, the Parcel shall be assigned to the appropriate Land Use Class based upon the land use and density proposed for the Parcel. For Multi-Family Residential Property, the number of residential units shall be determined by referencing the condominium plan, apartment plan, site plan or other development plan. If the Parcel is designated as Other Property, the City or its designee shall identify the appropriate Land Use Class for purposes of calculating the Maximum Special Tax by determining the land use that was anticipated for the Parcel based on reference to the current *Village One Specific Plan*. Determination of the appropriate Land Use Class shall be at the sole discretion of the City.

C. MAXIMUM SPECIAL TAX

1. Facilities Special Tax

a) Very Low Density Residential Property and Village Residential Property

Prior to recordation of each Final Map for property in CFD No. 1996-1, the City or its designee shall determine the Gross Acreage included within the Final Map and, for Very Low Density Residential Property and Village Residential Property, shall apply the following steps to determine the actual Maximum Special Tax that will apply to each unit within the Final Map:

**Step 1:** Determine if there is a portion of the Final Subdivision Map acreage that is not Subdivided Property, as defined in Section A above. Calculate the Gross Acreage associated with such unsubdivided Parcels by identifying the acreage of the Parcel and (i) adding all or 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 to either: 1) the centerline, if acreage within the final map fronts on both sides of the non-arterial road or, 2) the opposite right-of-way line if there is no fronting acreage within the final map or on the opposite side of the non-arterial road, and (ii) subtracting of the acreage of any arterial right-of-way included in the final map.

**Step 2:** Identify the Land Use Class that applies to all Parcels of Subdivided Property within the Final Subdivision Map.

**Step 3:** Determine the Gross Acreage of all Subdivided Property included within the Final Subdivision Map. If more than one Land Use Class is represented within the Final Subdivision Map, distribute the Gross Acreage of all Subdivided Property to each Land Use Class.

- Step 4:** Multiply the Gross Acreage for each Land Use Class determined in Step 3 by the Facilities Special Tax identified for each Land Use Class in Table 1 below.
- Step 5:** Separately for each Land Use Class identified in the Final Subdivision Map, divide the product determined in Step 4 by the number of residential units within that Land Use Class as reflected in the Final Subdivision Map.
- Step 6:** Multiply the quotient(s) determined in Step 5 by 1.01 to calculate the Facilities Special Tax per residential unit that shall be collected prior to final building permit inspection or issuance of a certificate of occupancy, whichever occurs first.

b) Multi-Family Residential Property, Commercial Property, and Industrial Property

The Maximum Facilities Special Tax for Multi-Family Residential, Commercial and Industrial Property shall be determined as follows:

- Step 1:** Determine the Gross Acreage of the Multi-Family Residential, Commercial, or Industrial Property within the Final Subdivision Map. Such determination shall include netting out any property within the Final Subdivision Map that is not Subdivided Property, as set forth in Step 1 of Section C.1.a. above.
- Step 2:** Multiply the Gross Acreage determined in Step 1 by the Maximum Facilities Special Tax applicable to each Land Use Class as shown in Table 1 below.
- Step 3:** Multiply the product determined in Step 2 above by 1.01 to calculate the total Facilities Special Tax that shall be collected from Multi-Family Residential, Commercial or Industrial Property prior to final building permit inspection or issuance of a certificate of occupancy, whichever occurs first.

*CFD NO. 1996-1 (VILLAGE ONE)  
Public Report - Mello Roos Community Facilities Act of 1982*

**Table 1**  
**Per-Acre Special Tax to be Used in**  
**Calculation of Maximum Facilities Special Tax**  
**For Annexation Area No. 1**  
**(Fiscal Year 1996-97)**

Land Use Class	Description	Per-Acre Special Tax
1	Very Low Density Residential	\$19,715 per Gross Acre
2	Village Residential	\$29,479 per Gross Acre
3	Multi-Family Residential	\$76,394 per Gross Acre
4	Commercial	\$86,610 per Gross Acre
5	Industrial	\$40,564 per Gross Acre

Beginning in January 1997, the Facilities Special Tax shall be adjusted annually by applying the greater of (i) 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 Facilities Special Tax shall become effective on the subsequent July 1, and shall apply to all Parcels which have not paid the Facilities Special Tax prior to July 1.

The Facilities Special Tax represents a lien on each Parcel which is anticipated to be released upon payment of the Facilities Special Tax, which is expected to occur no later than final building permit inspection or issuance of a certificate of occupancy, whichever occurs first.

**2. Maintenance Special Tax**

All Taxable Property within this CFD Annexation No. 1 shall be subject to a Maintenance Special Tax that shall be levied each Fiscal Year to meet the Maintenance Special Tax Requirement. The Annual Maintenance Special Tax shall be reflected as an annual lien on each Parcel in CFD No. 1996-1 and is anticipated to stay with the property and be paid each year by the current homeowner or property owner.

a) Developed Property

The following maximum rates apply to all Parcels of Developed Property within CFD No. 1996-1 for each Fiscal Year in which the Maintenance Special Tax will be levied:

Table 2  
Maximum Annual Maintenance Special Tax  
(Fiscal Year 1996-97)

Land Use Class	Description	Maximum Annual Maintenance Special Tax
1	Very Low Density Residential	\$112.43 per lot
2	Village Residential	\$112.43 per lot
3	Multi-Family Residential	\$ 72.99 per unit
4	Commercial	\$394.30 per Gross Acre
5	Industrial	\$394.30 per Gross Acre

Beginning in January 1997, the maximum Annual Maintenance Special Tax shall be adjusted annually by applying the greater of (i) 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.

b) Undeveloped Property

Undeveloped Residential Property:

The maximum Annual Maintenance Special Tax for each Parcel of Residential Undeveloped Property shall be determined as follows:

Step 1: Determine whether the Parcel will be developed as Very Low Density Residential, Village Residential or Multi-Family Residential Property determined by reference to the *Village One Specific Plan*.

**Step 2:** Multiply the average density for the Parcel's Land Use Class as determined in Step 1 by the Gross Acreage of the Parcel to determine the average number of units that could be built on the Parcel. The average density for each Land Use Class shall be determined based on reference to the *Village One Specific Plan*.

**Step 3:** Multiply the average number of units for the Parcel as determined in Step 2 by the maximum Annual Maintenance Special Tax for the appropriate Land Use Class, as determined by reference to Table 2.

**Step 4:** Multiply the figure calculated in Step 3 by 0.50 to determine the total Maintenance Special Tax to be levied on the Parcel.

Undeveloped Commercial and Undeveloped Industrial Property:

The maximum annual Maintenance Special Tax that can be levied on Undeveloped Commercial and Undeveloped Industrial Property is the same as those rates identified in Table 2 above for Developed Commercial or Industrial Property.

**D. METHOD OF LEVY AND COLLECTION OF THE SPECIAL TAX**

**1. Facilities Special Tax**

The Facilities Special Tax shall be collected prior to a final building permit inspection being completed or a certificate of occupancy being issued for new construction for any residential or non-residential structure within CFD No. 1996-1 and shall be immediately delinquent if not so paid.

2. Maintenance Special Tax

Commencing with Fiscal Year 1997-98 and for each following Fiscal Year, the City or its designee shall determine the Maintenance Special Tax Requirement to be collected from Taxable Property in CFD No. 1996-1 in the Fiscal Year. The Maintenance Special Tax shall then be levied as follows:

**Step 1:** Calculate the total Maintenance Special Tax revenues that could be collected from Developed and Undeveloped Property within the CFD based on application of the maximum Annual Maintenance Special Tax rates determined pursuant to Section C above.

**Step 2:** Divide the Maintenance Special Tax Requirement by the maximum revenues that could be collected as determined in Step 1.

**Step 3:** If the ratio determined in Step 2 is greater than or equal to 1, levy the Maximum Maintenance Special Tax determined pursuant to Section C on all Developed and Undeveloped Property in the CFD. If the ratio determined in Step 2 is less than 1, continue to Step 4.

**Step 4:** Levy the maximum Annual Maintenance Special Tax against all Parcels of Developed Property. Subtract the amount generated from Developed Property from the Maintenance Special Tax Requirement, and levy a Maintenance Special Tax on all Parcels of Undeveloped Residential, Undeveloped Commercial and Undeveloped Industrial Property in equal percentages up to 100% of the maximum Annual Maintenance Special Tax for Undeveloped Property determined pursuant to Section C.2.b. above.

The Annual Maintenance Special Tax for CFD No. 1996-1 shall be collected in the same manner and at the same time as ordinary ad valorem property taxes, provided, however, that CFD No. 1996-1 may (under the authority of Government Code Section 53340), in any particular case, bill the taxes directly to the property owner, off the County tax roll, and the Special Taxes will be equally subject to foreclosure if delinquent as annual Special Taxes.

**E. LIMITATIONS**

Notwithstanding any other provision of this Rate and Method of Apportionment of Special Tax, no Special Taxes shall be levied on structures built on land that has been conveyed to a Public Agency, except as otherwise provided in Sections 53317.3 and 53317.5 of the Mello-Roos Community Facilities Act of 1982.

**F. ENFORCEMENT**

All delinquent Facility Special Taxes, or delinquent Maintenance Special Taxes billed off the County tax roll, shall be subject to an immediate 10% penalty plus interest charges of 1 1/2% as of the first day of the month after the delinquency date and on the first day of each month thereafter. Any such delinquent Special Taxes shall, at the City's discretion, be placed on the next secured property tax roll. The amount placed on the roll shall include the 10% penalty and the interest charges through the following December 1. This shall not prevent the City from simultaneously pursuing the delinquency by an action on a contract or guarantee against a third party who promised to pay the taxes, or from assigning such right of action to the property owner or other appropriate party.

## V. GENERAL TERMS AND CONDITIONS

### A. SUBSTITUTION FACILITIES

The description of the general capital facilities, as set forth herein and as shown in the Facilities Master Plan, are conceptual in their nature. The final nature and location of improvements and facilities will be determined upon the preparation of final plans and specifications. The final plans may show substitutes, in lieu or modifications to the proposed work in order to accomplish the work of improvement, and any such substitution shall not be a change or modification in the proceedings as long as the facilities provide a service substantially similar to that as set forth in this report.

### B. APPEALS AND INTERPRETATION PROCEDURE

Any landowner or resident who feels that the amount of formula of the special tax is in error may file a notice with the legislative body appealing the levy of the special tax. An appeals panel of three members, as appointed by the legislative body, will then meet and promptly review the appeal, and if necessary, meet with the applicant. If the findings of the Appeals Board verify that the tax should be modified or changed, a recommendation at that time will be made to the legislative body, as appropriate, the special tax levy shall be corrected, and if applicable, in any case, a refund shall be granted.

Interpretations may be made by the legislative body by Resolution for purposes of clarifying any vagueness or ambiguity as it relates to any category, zone, rate or definition applicable to these proceedings.

### C. ADMINISTRATION OF FUNDS

#### 1. Facilities Fund

All funds received from the payment of the one-time facilities special tax shall be maintained in a single facilities fund account. This account shall apportion the funds into the facilities categories as shown on page 43 of the "City of Modesto Village One Finance Plan" as adopted by the City Council in Resolution No. 96-463 dated August 13, 1996, or as said ordinance may be amended. The City has full discretion in the use of the funds for all authorized facilities within this pooled account. Accounting of the fund shall

track the use of funds to insure the ultimate distribution of funds at buildout are as proportioned in said Ordinance 96-463.

2. **Maintenance Fund**

All annual maintenance special taxes shall be maintained in a single account. Funds shall be utilized at the discretion of the City to fund authorized maintenance and administration services.

VI. CERTIFICATION

It is my opinion that the special tax rate and method of apportionment, as set forth, is fair and equitable, uniformly applied, and not discriminatory or arbitrary.

---

Jerry L. Slinkard  
Vail Engineering Corporation

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Date



ORDINANCE NO. 3283-C.S.

AN ORDINANCE AMENDING ORDINANCE NO. 3047-C.S. ENTITLED "AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MODESTO AUTHORIZING THE LEVY OF A SPECIAL TAX WITHIN COMMUNITY FACILITIES DISTRICT NO. 1997-1" TO CLARIFY THAT COLLECTION OF THE ONE-TIME SPECIAL FACILITIES TAX SHALL OCCUR AT THE TIME A BUILDING PERMIT IS ISSUED (NORTH BEYER PARK CFD NO. 1997-1)

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

WHEREAS, on May 13, 1997, the City Council of the City of Modesto, State of California (the "Council"), adopted its Resolution No. 97-252 (the "Resolution of Intention to Establish the District") stating its intention to form Community Facilities District No. 1997-1 of the City of Modesto (the "District") for the purpose of financing the costs of certain public facilities (the "Facilities") and services (the "Services") specified in the Resolution of Intention to Establish the District pursuant to Chapter 2.5 of Part 1 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, a notice was published as required by law relative to the intention of this Council to form the proposed District and to establish an appropriations limit for the District in the amount of \$200,000.00 per fiscal year in connection with the proposed Facilities and Services; and

WHEREAS, this Council held the noticed public hearing as required by law to determine whether it should proceed with the formation of the District and authorize the rate, method of apportionment, and manner of collection of a special tax to be levied within the District sufficient to pay all costs necessary to finance the proposed Facilities and Services; and

WHEREAS, at the hearing all persons desiring to be heard on all matters pertaining to the formation of the District, the levy of the special tax, and all other matters set



forth in the Resolution of Intention to Establish the District, were heard and considered and full and fair hearings were held thereon; and

WHEREAS, this Council, upon the conclusion of the hearing, did, on June 24, 1997, adopt its Resolution No. 97-355 (the "Resolution of Formation") which established the District, determined the validity of prior proceedings relative to the formation of the District, authorized the levy of a special tax within the District, and called an election for July 22, 1997, on the proposition of levying a special tax and establishing an appropriations limit within the District; and

WHEREAS, on July 22, 1997, or sooner in accordance with law, in accordance with the Resolution of Formation a consolidated election was held within the District in which the qualified voters approved by more than a two-thirds vote the proposition to levy the special tax and establish an appropriations limit within the District, and

WHEREAS, on June 24, 1997 the Council approved Ordinance No. 3047, effective July 24, 1997, and

WHEREAS, the City Council wishes to amend Ordinance No. 3047-C.S, to clarify the point at which the Facilities Special Tax shall be collected, and

WHEREAS, the clarification regarding the point at which the Facilities Special Tax shall be collected shall not apply to those parcel that are "vested" or have already annexed to an existing Community Facilities District, and

WHEREAS, Ordinance No. 3047-C.S. is reaffirmed in every other respect and repeated in its entirety herein for the sake of administrative convenience, and

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



SECTION 1. This Council finds and determines that the above recitals are all true and correct.

SECTION 2. That Ordinance No. 3047-C.S. is hereby amended.

SECTION 3. By the passage of this Ordinance, a special tax is hereby levied by this Council at the rate, manner and method of apportionment set forth in Exhibit "A" attached hereto and incorporated by reference herein, being the rate, manner and method of apportionment specified in the Resolution of Formation. The special taxes are hereby levied commencing in fiscal year 1997-98 and in each fiscal year thereafter, unless reduced by subsequent resolution of this Council, at the Maximum Special Tax rate described in Exhibit "A" hereto.

SECTION 4. The District Administrator of the City of Modesto is hereby authorized each year to determine the special tax rate and amount to be levied for the next ensuing fiscal year, except that the special tax rate to be levied shall not exceed that set forth in Exhibit "A" hereto.

SECTION 5. No properties or entities are exempt from the special tax unless the properties or entities are expressly exempted in the Resolution of Formation (and Exhibit "A" hereto), or in any subsequent resolution of consideration to levy a new special tax or special taxes or to alter the rate or method of apportionment or an existing special tax as provided in Section 53334 of the Act.

SECTION 6. All of the collections of the special tax shall be used as provided for in the Act and the Resolution of Formation. The special tax shall be levied only so long as needed for its purpose as described in the Resolution of Intention to Establish the District and the Resolution of Formation.

SECTION 7. The special tax shall be collected in the same manner as ordinary ad valorem property taxes are collected and shall be subject to the same penalties and the same



procedure, sale, and lien priority in case of delinquency as is provided for ad valorem taxes, as such procedure may be modified by law from time to time.

SECTION 8. ONE-TIME TAX COLLECTION. The language set forth on page 4 of Appendix A of the Public Report provides that “[t]he Facilities Special Tax shall be collected *prior to* a final building permit inspection being completed or a certificate of occupancy being issued for new construction for any residential or non-residential structure within CFD No. 1997-1 and shall be immediately delinquent if not so paid.” [emphasis added] To clarify the time of collection, the City Council hereby ordains that the collection of the Facilities Special Tax shall occur at issuance of a building permit. This clarification shall not apply to “vested” properties or properties that have annexed to an existing Community Facilities District as of February 11, 2003.

SECTION 9. EFFECTIVE DATE. This Ordinance shall be effective thirty (30) days after its final passage and adoption.

SECTION 10. 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 11<sup>th</sup> day of February, 2003, 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: Fisher, Frohman, Jackman, Keating, O'Bryant, Mayor Sabatino

NOES: Councilmembers: Conrad

ABSENT: Councilmembers: None

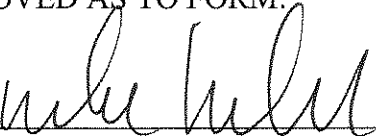
APPROVED:   
CARMEN SABATINO, Mayor

ATTEST:

By   
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney



**EXHIBIT A**

**RATE AND METHOD OF APPORTIONMENT OF SPECIAL TAX**



**CITY OF MODESTO  
COMMUNITY FACILITIES DISTRICT No. 1997-1  
(NORTH BEYER PARK SPECIFIC PLAN)**

**CFD REPORT**

**June 17, 1997**

Prepared For:

**CITY OF MODESTO**

Prepared By:

**DAVID TAUSSIG AND ASSOCIATES, INC.  
425 University Avenue, Suite 110  
Sacramento, California 95825  
(916) 920-1109**

## Table of Contents

<u>Section</u>	<u>Page</u>
I. Introduction .....	1
II. Structure of Community Facilities District No. 1997-1 .....	1
A. Introduction .....	1
B. Boundaries of North Beyer CFD .....	1
C. CFD Special Tax Structure .....	1
III. Description of Facilities to be Funded by CFD No. 1997-1 .....	2

### APPENDICES:

Appendix A: Rate and Method of Apportionment of Special Tax

## **I. INTRODUCTION**

On November 26, 1996, the City Council of the City of Modesto approved the North Beyer Specific Plan, allowing up to 1,200 dwelling units to be developed on 160 acres. At the same time, a residential subdivision was approved which proposed 263 dwelling units to be built on 55 acres within the Specific Plan. One condition on the tentative map of the subdivision required the development to form, or annex into a Mello-Roos Community Facilities District (CFD) to fund the maintenance of various parkways and open space within the development.

## **II. STRUCTURE OF COMMUNITY FACILITIES DISTRICT NO. 1997-1**

### **A. Introduction**

A Mello-Roos CFD may provide for the purchase, construction, expansion or rehabilitation of any real or tangible property, including public facilities and infrastructure improvements, with an estimated useful life of five (5) years or longer, which is necessary to meet increased demands placed upon local agencies as a result of development or rehabilitation occurring within the CFD. In addition, a CFD may pay for various public services and maintenance of public improvements, including parkways and open space.

The Resolution of Intention to Establish CFD No. 1997-1 (Resolution No. 97-252) was adopted by the City Council on May 13, 1997. After a public hearing and a successful election by the landowners within the CFD, the CFD will be formed and the levy of a special tax will be authorized.

### **B. Boundaries of North Beyer CFD**

The initial boundaries of the CFD include the "Florsheim Development", which will ultimately be developed into approximately 436 single family residential units, 22 acres of commercial property and 4.6 acres of office uses. Additional property is expected to annex into the CFD in future years as development in the area expands. It is anticipated that property subsequently annexed into the CFD will be subject to the same special tax levy as property in the CFD from the start.

The boundaries of the CFD are shown on a boundary map that was approved by the City Council and recorded in Book 2, page 80 of the Book of Assessment District Maps in the Stanislaus County Recorder's Office.

### **C. CFD Special Tax Structure**

Each year a special tax will be levied and collected from parcels within the CFD to pay costs associated with the landscape and hardscape of streets, parkways and open space within the

North Beyer Park Specific Plan, as well as maintenance of these improvements (authorized facilities and maintenance costs are identified in detail below). The Rate and Method of Apportionment of Special Tax ("RMA"), which describes in detail how the tax will be allocated among properties in the CFD, is included as Appendix A of this report.

As explained in Sections C and D of the RMA, two different special taxes will be levied within the CFD. First, a "Facilities Special Tax" will be levied to pay for capital improvements and appurtenant expenses, such as design, planning, engineering and inspection. The Facilities Special Tax will be paid only once and will be collected prior to a final building permit inspection being completed or a certificate of occupancy being issued for new construction on a parcel within the CFD. The maximum Facilities Special Tax that can be levied in fiscal year 1997-98 is \$84 for each single family unit, \$54 for each multi-family unit, and \$4,263 for each non-residential acre. These maximum taxes are subject to increase each year based on the increase, if any, in the construction cost index published in the Engineering News Record.

The second special tax that can be levied in the CFD is the "Maintenance Special Tax", which will be collected to pay costs associated with maintaining parkways and open space in the North Beyer Park Specific Plan. The Maintenance Special Tax will be collected each fiscal year on the property tax bills of all parcels in the CFD that have had a final building permit inspection conducted or a certificate of occupancy issued prior to June 1 of the preceding fiscal year. The maximum Maintenance Special Tax that can be levied in fiscal year 1997-98 is \$80 per single family residential unit, \$52 per multi-family unit and \$396 per non-residential acre. Once again, these maximum tax rates are subject to increase each year based on the increase, if any, in the construction cost index published in the Engineering News Record.

### **III. DESCRIPTION OF FACILITIES TO BE FUNDED BY CFD No. 1997-1**

The facilities and services described below are all facilities which the City of Modesto is authorized to finance and which are required to adequately meet the needs of CFD No. 1997-1. The special taxes required to pay for these facilities and services will be apportioned according to the "Rate and Method of Apportionment of Special Tax", a copy of which is provided in Appendix A.

#### **A. Authorized Capital Improvements**

##### **1. Oakdale Road (Principle Arterial)**

According to the Land Use Diagram, the plan is for 505 lineal feet of residential frontage, and 740 lineal feet of mixed-use/neighborhood shopping. This street parkway includes a 16-foot-wide landscape median.

510 lineal feet x 10 ft wide planter x 3.50/sq. ft. = \$17,850

16 ft wide median x 720 lineal feet	=	\$42,499
500-foot 4-foot transition planter @ \$4.50/sq. ft	=	<u>\$9,000</u>
Subtotal for Oakdale Road	=	\$69,349
Eng., Inspection, Admin., Contingency (25%)	=	<u>\$17,350</u>
<b>Total for Oakdale Road</b>	=	<b>\$86,686</b>

2. Coffee Road (Minor Arterial)

The Land Use Diagram calls for 1,250 lineal feet of mixed use/neighborhood shopping/professional office frontage. The street parkway includes the landscaped median only as in Oakdale Road.

16 ft wide median x 720 lineal feet	=	\$42,499
500-foot 4-foot transition planter @ \$4.50/sq. ft	=	<u>\$9,000</u>
Subtotal for Coffee Road	=	\$51,499
Eng., Inspection, Admin., Contingency (25%)	=	<u>\$12,900</u>
<b>Total for Coffee Road</b>	=	<b>\$64,399</b>

*Total capital costs for street parkways and open space* = **\$151,100**

B. Authorized Maintenance Costs

1. Pelandale Expressway (Class B Expressway Standards)

Landscaped Median:		
35,165 sq. ft. @ \$.42/sq. ft.	=	\$14,769
Landscape Planter:		
44,200 sq. ft. @ \$.42/sq. ft.	=	<u>\$18,564</u>
<b>Total for Pelandale Expressway</b>	=	<b>\$33,333</b>

2. Oakdale Road (Principal Arterial)

Landscaped Median:		
11,500 sq. ft. @ \$.42/sq. ft.	=	\$4,830
Landscape Planter:		
5,100 sq. ft. @ \$.42/sq. ft.	=	<u>\$2,142</u>
<b>Total for Oakdale Road</b>	=	<b>\$6,972</b>

3. Coffee Road (Minor Arterial)

Landscaped Median:		
11,500 sq. ft. @ \$.42/sq. ft.	=	<u>\$4,830</u>

*Total for operation and maintenance of street parkways and open space* = **\$45,135**

APPENDIX A

CITY OF MODESTO  
COMMUNITY FACILITIES DISTRICT No. 1997-1

RATE AND METHOD OF APPORTIONMENT OF SPECIAL TAX

**CITY OF MODESTO**  
**COMMUNITY FACILITIES DISTRICT NO. 1997-1**  
**(North Beyer Park Specific Plan)**

**RATE AND METHOD OF APPORTIONMENT OF SPECIAL TAX**

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A special tax applicable to each Assessor's Parcel in Community Facilities District No. 1997-1 (herein "CFD No. 1997-1") 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. 1997-1, unless exempted by law or by the provisions of Section E below, shall be taxed for the purposes, to the extent, and in the manner herein provided, including property subsequently annexed to CFD No. 1997-1 unless a separate Rate and Method of Apportionment of Special Tax 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 Subdivision Map, parcel map, or other recorded County parcel map.

"Annual Maintenance Special Tax" means a Special Tax levied in any Fiscal Year to pay for the maintenance and landscaping of parks, parkways and/or open space.

"Assessor's Parcel" means a lot or parcel shown in an Assessor's Parcel Map with an assigned Assessor's Parcel number.

"Assessor's Parcel Map" means an official map of the County Assessor of the County of Stanislaus designating parcels by Assessor's Parcel Number.

"City" means the City of Modesto.

"City Manager" means the City Manager of the City of Modesto.

"Council" means the City Council of the City of Modesto, acting as the legislative body of CFD No. 1997-1.

"Developed Property" means, in any Fiscal Year, all Taxable Property for which a final building permit inspection was conducted or a certificate of occupancy issued prior to June 1 of the preceding Fiscal Year.

**"Facilities Special Tax"** means a Special Tax levied in any Fiscal Year to pay for public facilities authorized to be funded by CFD No. 1997-1, including appurtenant expenses such as planning, design, engineering and inspection.

**"Fiscal Year"** means the period starting July 1 and ending on the following June 30.

**"Initial Church Property"** means all Parcels that, at the time of formation of CFD No. 1997-1, had existing structures that were used as places of worship and which were exempt from ad valorem property taxes because they were owned by a religious organization. If Initial Church Property is developed for other land uses that make it Taxable Property in future Fiscal Years, the exemption for such property set forth in Section E below shall no longer apply, and the property shall be treated as Taxable Property after such changes in land use takes place.

**"Future Church Property"** means any Parcel within the CFD that meets all of the following criteria: (1) a structure has been built that is used as a place of worship, rectory, convent or private school, (2) the Parcel is exempt from ad valorem proeprty taxes because it is owned by a religions organization, and (3) the Parcel is not Initial Church Property.

**"Land Use Class"** means any of the three classes listed in Table 1 and Table 2 below.

**"Maintenance Special Tax Requirement"** means the amount necessary in any Fiscal Year to (i) pay for authorized maintenance expenses, (ii) pay administrative expenses of CFD No. 1997-1, 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 Special Taxes which have already taken place) are expected to occur in the Fiscal Year in which the tax will be collected.

**"Maximum Special Tax"** means the maximum Special Tax, determined in accordance with Section C below, that can be levied by the City in any Fiscal Year on Taxable Property.

**"Multi-Family Residential Property"** means, in any Fiscal Year, all Parcels for which a building permit has been issued for 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.

**"Non-Residential Property"** means, in any Fiscal Year, all Parcels for which a building permit has been issued for a commercial, office or industrial establishment or any other use which is not Single Family Residential or Multi-Family Residential Property and which is not exempt from Special Taxes pursuant to Section E below.

**"Public Agency"** means the federal government, State of California or other local governments or public agencies.

**"Residential Unit"** means a single residential dwelling unit and shall include single family homes and individual condominium, townhome, duplex, triplex and fourplex units, as well as individual apartment units in a multi-family building.

“Single Family Detached Residential Property” means, in any Fiscal Year, all Parcels for which a building permit has been issued for a residential structure consisting of only one Residential Unit.

“Taxable Property” means, in any Fiscal Year, all Parcels of Single Family Detached Residential Property, Multi-Family Residential Property and Non-Residential Property within CFD No. 1997-1.

**B. ASSIGNMENT TO LAND USE CLASS**

After issuance of a building permit and prior to final building permit inspection or issuance of a certificate of occupancy for a Parcel, the Parcel shall be assigned to the appropriate Land Use Class based upon the land use proposed for the Parcel. For Multi-Family Residential Property, the number of Residential Units shall be determined by referencing the condominium plan, apartment plan, site plan or other development plan. Determination of the appropriate Land Use Class shall be at the sole discretion of the City.

**C. MAXIMUM SPECIAL TAX**

*1. Facilities Special Tax*

The following maximum rates apply to all Parcels of Taxable Property within CFD No. 1997-1 for each Fiscal Year in which the Facilities Special Tax is collected:

<b>TABLE 1 MAXIMUM FACILITIES SPECIAL TAX (Fiscal Year 1997-98)</b>		
Land Use Class	Description	Maximum Facilities Special Tax
1	Single Family Detached Residential Property	\$84 per Residential Unit
2	Multi-Family Residential Property	\$54 per Residential Unit
3	Non-Residential Property	\$4,263 per Acre

Beginning in January 1998, the Facilities Special Tax shall be adjusted annually by applying the 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. Each annual adjustment of the Facilities Special Tax shall become effective on the subsequent July 1, and shall apply to all Parcels which have not paid the Facilities Special Tax prior to July 1.

2. *Annual Maintenance Special Tax*

All Taxable Property within the CFD shall be subject to an Annual Maintenance Special Tax that shall be levied each Fiscal Year to meet the Maintenance Special Tax Requirement. The Annual Maintenance Special Tax shall be reflected as an annual lien on each Parcel in CFD No. 1997-1 and is anticipated to stay with the property and be paid each year by the current homeowner or property owner.

The following maximum rates apply to all Parcels of Taxable Property within CFD No. 1997-1 for each Fiscal Year in which the Maintenance Special Tax will be levied:

<b>TABLE 2</b> <b>MAXIMUM ANNUAL MAINTENANCE SPECIAL TAX</b> <b>(Fiscal Year 1997-98)</b>		
<b>Land Use Class</b>	<b>Description</b>	<b>Maximum Annual Maintenance Special Tax</b>
1	Single Family Detached Residential Property	\$80 per Residential Unit
2	Multi-Family Residential Property	\$52 per Residential Unit
3	Non-Residential Property	\$396 per Acre

Beginning in January 1998, the maximum Annual Maintenance Special Tax shall be adjusted annually by applying the 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. Each annual adjustment of the maximum Annual Maintenance Special Tax shall become effective on the subsequent July 1.

**D. METHOD OF LEVY AND COLLECTION OF THE SPECIAL TAX**

1. **Facilities Special Tax**

The Facilities Special Tax shall be collected prior to a final building permit inspection being completed or a certificate of occupancy being issued for new construction for any residential or non-residential structure within CFD No. 1997-1 and shall be immediately delinquent if not so paid.

2. **Maintenance Special Tax**

Commencing with Fiscal Year 1997-98 and for each following Fiscal Year, the City or its designee shall determine the Maintenance Special Tax Requirement for that Fiscal Year.

The Maintenance Special Tax shall then be levied on all Parcels of Developed Property as follows:

- Step 1:* Calculate the total Maintenance Special Tax revenues that could be collected from Developed Property within the CFD based on application of the maximum Annual Maintenance Special Tax rates determined pursuant to Section C above.
- Step 2:* Divide the Maintenance Special Tax Requirement by the maximum revenues that could be collected as determined in Step 1.
- Step 3:* If the ratio determined in Step 2 is greater than or equal to 1, levy the Maximum Maintenance Special Tax determined pursuant to Section C on all Developed Property in the CFD. If the ratio determined in Step 2 is less than 1, continue to Step 4.
- Step 4:* Levy the maximum Annual Maintenance Special Tax against all Parcels of Developed Property in equal percentages up to 100% of the maximum Annual Maintenance Special Tax determined pursuant to Section C.2 above.

The Annual Maintenance Special Tax for CFD No. 1997-1 shall be collected in the same manner and at the same time as ordinary ad valorem property taxes, provided, however, that CFD No. 1997-1 may (under the authority of Government Code Section 53340), in any particular case, bill the taxes directly to the property owner, off the County tax roll, and the Special Taxes will be equally subject to foreclosure if delinquent as annual Special Taxes.

#### **E. LIMITATIONS**

Notwithstanding any other provision of this Rate and Method of Apportionment of Special Tax, no Special Tax shall be levied on structures built on land that has been conveyed to a Public Agency, except as otherwise provided in Sections 53317.3 and 53317.5 of the Mello-Roos Community Facilities Act of 1982. In addition, no Special Tax shall be levied in any Fiscal Year on Initial Church Property. The City may choose to levy a Special Tax on Future Church Property in any Fiscal Year if revenues from such levy are needed to meet the Maintenance Special Tax Requirement. If the City determines that Special Tax revenues generated from levying a Special Tax on Future Church Property are not needed to meet the Maintenance Special Tax Requirement in any Fiscal Year, the City may choose not to levy a Special Tax on Future Church Property in that Fiscal Year.

#### **F. ENFORCEMENT**

All delinquent Facility Special Taxes, or delinquent Annual Maintenance Special Taxes billed off the County tax roll, shall be subject to an immediate 10% penalty plus interest charges of 1 1/2% as

of the first day of the month after the delinquency date and on the first day of each month thereafter. Any such delinquent Special Taxes shall, at the City's discretion, be placed on the next secured property tax roll. The amount placed on the roll shall include the 10% penalty and the interest charges through the following December 1. This shall not prevent the City from simultaneously pursuing the delinquency by an action on a contract or guarantee against a third party who promised to pay the taxes, or from assigning such right of action to the property owner or other appropriate party.

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Ord. No. 3283-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 25<sup>th</sup> day of February, 2003, Councilmember Frohman moved its final adoption, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Fisher, Frohman, Jackman, Keating, O'Bryant, Mayor Sabatino

NOES: Councilmembers: Conrad

ABSENT: Councilmembers: None

APPROVED:   
MAYOR CARMEN SABATINO

ATTEST:   
JEAN ZAHR, City Clerk

Effective Date: March 31, 2003



ORDINANCE NO. 3284-C.S.

AN ORDINANCE AMENDING ORDINANCE NO. 3111-C.S. ENTITLED "AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MODESTO AUTHORIZING THE LEVY OF A SPECIAL TAX WITHIN COMMUNITY FACILITIES DISTRICT NO. 1998-2" AS PREVIOUSLY AMENDED BY ORDINANCE NOS. 3142-C.S. AND 3160-C.S. TO CLARIFY THAT COLLECTION OF THE ONE-TIME SPECIAL FACILITIES TAX SHALL OCCUR AT THE TIME A BUILDING PERMIT IS ISSUED (CARVER-BANGS/PELANDALE-SNYDER CFD NO. 1998-2)

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

WHEREAS, on November 3, 1998, the City Council of the City of Modesto ("City"), State of California (the "Council"), adopted its Resolution No. 98-582 (the "Resolution of Intention to Establish the District") stating its intention to form Community Facilities District No. 1998-2 of the City of Modesto (the "District") for the purpose of financing the costs of certain public facilities (the "Facilities") and services (the "Services") specified in the Resolution of Intention to Establish the District pursuant to Chapter 2.5 of Part 1 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, a notice was published as required by law relative to the intention of this Council to form the proposed District and to establish an appropriations limit for the District in the amount of \$1,000,000.00 per fiscal year in connection with the proposed Facilities and Services; and

WHEREAS, this Council held the noticed public hearing as required by law to determine whether it should proceed with the formation of the District and authorize the rate, method of



apportionment, and manner of collection of a special tax to be levied within the District sufficient to pay all costs necessary to finance the proposed Facilities and Services; and

WHEREAS, at the hearing all persons desiring to be heard on all matters pertaining to the formation of the District, the levy of the special tax, and all other matters set forth in the Resolution of Intention to Establish the District, were heard and considered and full and fair hearings were held thereon; and

WHEREAS, this Council, upon the conclusion of the hearing, did, on December 8, 1998, adopt its Resolution No. 98-653 (the "Resolution of Formation") which established the District, determined the validity of prior proceedings relative to the formation of the District, authorized the levy of a special tax within the District, and called an election for December 15, 1998, on the proposition of levying a special tax and establishing an appropriations limit within the District; and

WHEREAS, on December 15, 1998, or sooner in accordance with law, and in accordance with the Resolution of Formation a consolidated election was held within the District in which the qualified voters approved by more than a two-thirds vote the proposition to levy the special tax and establish an appropriations limit within the District; and

WHEREAS, on December 15, 1998, the City Council approved Ordinance No. 3111-C.S., effective January 14, 1999, levying a special tax commencing in fiscal year 1999-2000 and establishing the rate, method of apportionment and manner of collection of taxes in ensuing years; and



WHEREAS, on April 6, 1999 the City Council adopted a Resolution of Consideration directing City staff to process an amendment to the Carver-Bangs/Pelandale-Snyder CFD No. 1998-2, adding taxes for the completion of Snyder Avenue improvements; and

WHEREAS, on May 25, 1999 the City Council declared its intention, by its Resolution of Intention to Make Changes in Special Taxes Within Tax Area B (Pelandale-Snyder) No. 99-263, to increase the one-time special facilities tax in Tax Area B so that Snyder Avenue could be completed; and

WHEREAS, on June 3, 1999 the electors of Tax Area B did approve, by a greater than 2/3 majority vote, the increase in the special taxes so described; and

WHEREAS, on July 6, 1999, the City Council approved Ordinance No. 3142-C.S., effective August 5, 1999, which amended Ordinance No. 3111-C.S, by adding taxes for the completion of Snyder Avenue improvements; and

WHEREAS, on October 12, 1999, the City Council approved Ordinance No. 3160-C.S, effective November 11, 1999, which further amended Ordinance No. 3111-C.S., to modify the Community Facilities Districts tax credit procedure; and

WHEREAS, the City Council wishes to amend Ordinance No. 3111-C.S., as previously amended, to clarify the point at which the Facilities Special Tax shall be collected, and

WHEREAS, the clarification regarding the point at which the Facilities Special Tax shall be collected shall not apply to those parcel that are “vested” or have already annexed to an existing Community Facilities District; and

WHEREAS, Ordinance No. 3111-C.S., as amended, is reaffirmed in every other respect and repeated in its entirety herein for the sake of administrative convenience; and



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

SECTION 1. This Council finds and determines that the above recitals are all true and correct.

SECTION 2. That Ordinance No. 3111-C.S., as amended, is hereby further amended.

SECTION 3. By the passage of this Ordinance, a special tax is hereby levied by this Council at the rate, manner and method of apportionment set forth in Exhibit "A" attached hereto and incorporated by reference herein, being the rate, manner and method of apportionment specified in the Resolution of Formation. The special taxes are hereby levied commencing in fiscal year 1998-1999 and in each fiscal year thereafter, unless reduced by subsequent resolution of this Council, at the Maximum Special Tax rate described in Exhibit "A" hereto.

SECTION 4. The District Administrator of the City of Modesto is hereby authorized each year to determine the special tax rate and amount to be levied for the next ensuing fiscal year, except that the special tax rate to be levied shall not exceed that set forth in Exhibit "A" hereto.

SECTION 5. No properties or entities are exempt from the special tax unless the properties or entities are expressly exempted in the Resolution of Formation (including the Public Report included therein by reference and attached hereto as Exhibit "A"), or in any subsequent resolution of consideration to levy a new special tax or special taxes or to alter the rate or method of apportionment or an existing special tax as provided in Section 53334 of the Act.



SECTION 6. All of the collections of the special tax shall be used as provided for in the Act and the Resolution of Formation. The special tax shall be levied only so long as needed for its purpose as described in the Resolution of Intention to Establish the District and the Resolution of Formation.

SECTION 7. The special tax shall be collected in the same manner as ordinary ad valorem property taxes are collected and shall be subject to the same penalties and the same procedure, sale, and lien priority in case of delinquency as is provided for ad valorem taxes, as such procedure may be modified by law from time to time.

SECTION 8. DEFINITIONS:

1. Certificate of Completion: A written document provided to a facility provider by the District Engineer stating that the facility is complete and in good working order, and that the requirements of the facility acquisition agreement have been met.
2. CFD: A Community Facilities District created for the purpose of financing the costs of certain public facilities and services pursuant to the provisions of Chapter 2.5 of Part 1 of Division 2 of Title 5 (commencing with Section 53311) of the California Government Code.
3. Credit: An offset against tax owed, or cash reimbursement for tax paid, as appropriate, calculated by subtracting from the Facility Cost Estimate any non-prepaid costs or incidental costs as defined in the Mello Roos Act, Section 53317(c) and (e), by means of a cash administrative cost offset. The administrative offset may be specified in the public report.
4. District Engineer: A California registered professional engineer employed by the City of Modesto, or a City of Modesto CFD, who is responsible for making final engineering determinations on behalf of that CFD.
5. Facility: Any public works-type infrastructure for which tax is to be collected pursuant to the public report, which could be eligible for tax credit and is located within a CFD.
6. Facility Cost Estimate: The facility (or facility segment) cost estimate,



including contingency cost estimates relating to that facility (or segment) which are included in the tax stated directly, or by reference, in the public report, as that report may be amended or adjusted for inflation from time to time.

7. Facility Provider: Any person or entity constructing a facility.
8. Oversubscription: Oversubscription is the furnishing of land or facilities whose total value as set forth in the public report exceeds the total taxes attributable to a facility provider's entire development within a CFD.
9. Public Report: All exhibits and attachments to the resolution of formation of a CFD, and documents included therein by reference.
10. Tax: Any facilities special tax specified in the public report for the CFD.
  - A. Facility providers may be permitted credits against taxes owed, or cash credits, as appropriate, and as set forth herein.
  - B. In the case of oversubscription, cash up to the amount of the oversubscription may be paid to a facility provider as cash becomes available to the CFD through tax collection.
  - C. Taxes shall be payable at the time specified in the public report. Until January 1, 2000, the tax payable shall at least equal the administrative offset specified in the public report or otherwise.
  - D. The district shall also be compensated from available tax monies for money and services advanced by it for the acquisition, construction, improvement or control of any or all of the facilities set forth in the public report, all in accordance with and subject to the Mello Roos Act (including, without limitation, Section 53314.9 of the Act), the resolution of formation of the CFD, the policies and procedures for administration of the CFD, the public report and other applicable law.
  - E. In no event shall cash advances, dedications, or construction of facilities become either a debt of the City, or a debt in excess of actual tax receipts, of the CFD.
  - F. All tax credits shall be made by the District Administrator pursuant to a valid, executed facility acquisition agreement in a form approved by the District



Administrator.

- G. Prior to January 1, 2000, with the approval of the District Administrator, credits may be furnished to a facility provider to offset taxes otherwise due if the facility provider has furnished or is furnishing facilities which have not yet received a notice of completion. Notwithstanding the foregoing, such discretionary credit shall be fully reimbursable to the CFD in cash by the facility provider in the event that a facility acquisition agreement is not executed by the facility provider, or if that facility provider does not receive a notice of completion from the District Engineer.
- H. On and after January 1, 2000:
- (1) The District Administrator shall ensure that the full tax is collected as it becomes due from each provider of facilities or facility segments to the CFD until (a) a valid facility acquisition agreement exists between the CFD and the facility provider and, (b) the facility has been completed, and (c) a certificate of completion has been issued to the facility provider. The District Administrator shall then provide facility special tax credits or cash reimbursement, as appropriate, to that facility provider.
  - (2) All facility providers shall be denied tax credit for any portion of an otherwise credit-eligible facility constructed prior to execution by that provider of a facility acquisition agreement suitable to the District Administrator. Credit shall not be denied for planning or engineering costs included in a Facility Cost Estimate incurred prior to execution of that agreement.
  - (3) Credits shall be expended by the District Administrator in date order of the certificate of completion of the facility for which credits are requested, and each such facility shall be completely credited before the district administrator shall grant credits to a facility receiving a certificate of completion later in time.



- I. Where apportionment is required, as with respect to a total facilities cost stated in the public report including two or more sub-facilities, or where more than one person or entity participates in the construction or furnishing of a facility, the determination of such apportionment and credit by the District Administrator or their designee shall be conclusive evidence of the amount of the credit derived thereby.”

SECTION 9. ONE-TIME TAX COLLECTION. The language set forth on page 10 of the Appendix of the Public Report provides that “[t]he maximum Facilities Special Tax determined pursuant to Section C above shall be collected prior to a final building permit inspection being completed or a certificate of occupancy being issued for new construction (*whichever occurs first*) for any residential or non-residential structure within CFD NO. 1998-2 and shall be immediately delinquent if not so paid.” [emphasis added] To clarify the time of collection, the City Council hereby ordains that the collection of the Facilities special Tax shall occur at issuance of a building permit This clarification shall not apply to “vested” properties or properties that have annexed to an existing Community Facilities District as of February 11, 2003.

SECTION 10. EFFECTIVE DATE. This Ordinance shall be effective thirty (30) days after its final passage and adoption.

SECTION 11. 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 11<sup>th</sup> day of February, 2003, 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: Fisher, Frohman, Jackman, Keating, O'Bryant, Mayor Sabatino

NOES: Councilmembers: Conrad

ABSENT: Councilmembers: None

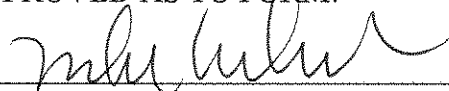
APPROVED:   
CARMEN SABATINO, Mayor

ATTEST:

By:   
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By:   
MICHAEL D. MILICH, City Attorney



**EXHIBIT A**

**RATE AND METHOD OF APPORTIONMENT OF SPECIAL TAX**



CITY OF MODESTO  
COMMUNITY FACILITIES DISTRICT No. 1998-2  
(CARVER-BANGS/PELANDALE-SNYDER)  
  
CFD PUBLIC REPORT

March 25, 1999

Prepared For:

CITY OF MODESTO

Prepared By:

DAVID TAUSSIG AND ASSOCIATES, INC.  
425 University Avenue, Suite 110  
Sacramento, California 95825  
(916) 920-1109

## Table of Contents

<u>Section</u>	<u>Page</u>
I. Background .....	1
II. Structure of Community Facilities District No. 1998-2 .....	2
A. Introduction .....	2
B. Boundaries of CFD No. 1998-2 .....	2
C. CFD Special Tax Structure .....	2
III. Description of Facilities and Services to be Funded by CFD No. 1998-2 .....	4

### APPENDICES:

Appendix A: CFD Boundary Map

Appendix B: Rate and Method of Apportionment of Special Tax and Reimbursements

Appendix C: Detailed Facility Cost Estimates

## *I. BACKGROUND*

Community Facilities District (CFD) No. 1998-2 is being formed to provide a funding and reimbursement mechanism for public facilities and services required to serve the Carver-Bangs and Pelandale-Snyder Specific Plans in the City of Modesto. Portions of both Specific Plan areas are included within the initial boundaries of the CFD, and the remainder of the property within both Plan areas is expected to annex into the CFD at a later date.

As a condition of development of the Specific Plan areas, the developers are required to install various public improvements which will serve the increased population generated from the projects. Many of these improvements must be provided in the early stages of development and, therefore, the first developers to build within the projects must install the improvements and receive fee credits or reimbursements in exchange for the facilities. CFD No. 1998-2 is the vehicle that will be used to ensure that all landowners in the Specific Plans pay their fair share of the public improvements. In addition, the CFD will generate funding for ongoing maintenance of landscaping and open space within the project areas.

Following is a brief description of both projects:

### *A. Carver-Bangs Specific Plan*

On April 1, 1997, the City Council of the City of Modesto approved Resolution No. 97-161, thereby adopting the Carver-Bangs Specific Plan. The Specific Plan was subsequently amended by City Council Resolution 97-633. Carver-Bangs is a proposed 160-acre project bounded on the east by Carver Road, on the North by Bangs Avenue, on the south by the Pelandale-Snyder Specific Plan (discussed further below), and on the west by the Kiernan Business Park area. The Carver-Bangs Specific Plan will be developed under the City's Village Residential guidelines, which will yield approximately 800 single family residential units.

### *B. Pelandale-Snyder Specific Plan*

The Pelandale-Snyder Specific Plan was approved by the City Council on January 16, 1996 by the adoption of Resolution No. 95-16, and was subsequently amended by City Council Resolutions 97-136 and 97-139. The Specific Plan area is bounded by Dale Road on the west, the extension of Pelandale Road on the north, Union Pacific Railroad on the east, and the Modesto Irrigation District canal and Snyder Avenue on the South. Approximately 227 acres of the project are designated Single Family Residential (SFR), and 57 acres are designated Multi-Family Residential; in total, 2,613 residential dwelling units are expected at buildout of the Specific Plan. In addition, 36 acres of the Specific Plan area will be used for an elementary school site, a City park, and a church.

## II. STRUCTURE OF COMMUNITY FACILITIES DISTRICT No. 1998-2

### A. Introduction

A Mello-Roos CFD may provide for the purchase, construction, expansion or rehabilitation of any real or tangible property, including public facilities and infrastructure improvements, with an estimated useful life of five (5) years or longer, which is necessary to meet increased demands placed upon local agencies as a result of development or rehabilitation occurring within the CFD. In addition, a CFD may pay for various public services and maintenance of public improvements, including parkways and open space.

The Resolution of Intention to Establish CFD No. 1998-2 (Resolution No. 98-582) was adopted by the City Council on November 3, 1998. After a public hearing and a successful election by landowners within the CFD, the CFD will be formed and the levy of a special tax will be authorized.

### B. Boundaries of CFD 1998-2

As mentioned above, the initial boundaries of the CFD include portions of both the Carver-Bangs and Pelandale-Snyder Specific Plans. Additional property is expected to annex into the CFD in future years as development in the area expands. It is anticipated that property subsequently annexed into the CFD will be subject to the same special tax formula as property in the CFD from the start, with a maximum Facilities Special Tax (discussed further below) assigned to the property when it is annexed. Property in the Carver-Bangs Specific Plan is included within Tax Area A of the CFD, and parcels in Pelandale-Snyder make up Tax Area B of the CFD. A separate maximum tax has been calculated for each tax area, as discussed further in Section C below.

The boundaries of the CFD are shown on a boundary map that was approved by the City Council and recorded in Volume 3, page 5 of the Book of Maps of Assessment Districts and Community Facilities Districts in the Stanislaus County Recorder's Office. A copy of the CFD boundary map is provided as Appendix A of this CFD Public Report.

### C. CFD Special Tax Structure

#### *1. Facilities Special Tax*

Each year, special taxes will be levied and collected from parcels within the CFD to pay costs associated with storm drainage and road improvements, as well as maintenance of these improvements (authorized facilities and maintenance costs are discussed in more detail below). The Rate and Method of Apportionment of Special Tax and Reimbursements ("RMA"), which describes in detail how the tax will be allocated among properties in the CFD, is included as Appendix B of this report.

As explained in Sections D and E of the RMA, two different special taxes will be levied within the CFD. First, a "Facilities Special Tax" will be levied to pay for capital improvements and appurtenant expenses, such as design, planning, engineering and inspection. The entire Facilities Special Tax will be collected prior to a final building permit inspection being completed or a certificate of occupancy being issued for new construction on a parcel within the CFD. Because each Specific Plan area is responsible for only the facilities required to serve that area, separate "tax areas" were established within the CFD to avoid any crossover of responsibility for the funding of required infrastructure. A separate Facilities Special Tax has been determined for each assessor's parcel that was included within each tax area at the time CFD No. 1998-2 was formed; Attachment 2 of Appendix B identifies the maximum Facilities Special Tax assigned to each parcel.

Section C.1 of the RMA (Appendix B) explains how the Facilities Special Tax obligation assigned to each original assessor's parcel will be reallocated when subdivision occurs. Regardless of changes in land use in future years, the maximum Facilities Special Tax revenues that can be collected from property in the CFD will never be reduced. In January 2002 and each January thereafter, the maximum Facilities Special Tax assigned to each assessor's parcel will be increased by four percent of the amount in effect in the prior year.

Section D of Appendix B sets forth a credit/reimbursement program which allows developers who have constructed and dedicated public improvements to take credits against the Facilities Special Taxes that would otherwise be paid until such credits equal the cost set forth in Appendix C of this CFD Public Report for the public improvements provided by the developer. Regardless of the actual cost incurred by the developer for construction of the public improvement(s), credits against the Facilities Special Tax can be taken until the amount credited is equal to the facility cost shown in Appendix C for that improvement(s). If the developer's project is built out and a balance remains to be credited, the developer will instead receive a cash reimbursement from Facilities Special Taxes collected from other property owners in the CFD until the combined amount of fee credits and cash reimbursements is equal to the cost of the public improvement(s) as shown in Appendix C of this report. All costs and reimbursements are subject to a four percent increase in January 2002 and each January thereafter.

Facility Special Tax credits and reimbursements will be applied based on a specified order of priority, which is identified in Attachment 1 of Appendix B. Until all facilities of a higher priority have been fully funded, a developer who builds an improvement that is of a lower priority will not receive fee credits or reimbursements. The order of priority is specific to each tax area, which means facilities of a lower priority may be funded in one tax area even if the higher priority facilities in the other tax area have not yet been fully funded. Appendix B provides a more detailed description of the credit/reimbursement program.

## 2. Maintenance Special Tax

The second special tax that can be levied in the CFD is the "Maintenance Special Tax", which will be collected to pay costs associated with maintaining parkways and open space in both Specific Plan areas. Again, a separate maximum Maintenance Special Tax has been determined for Tax Area A and Tax Area B, as shown in the following table:

CITY OF MODESTO COMMUNITY FACILITIES DISTRICT NO. 1998-2 (CARVER-BANGS/PELANDALE-SNYDER) FISCAL YEAR 1998-99 MAXIMUM ANNUAL MAINTENANCE SPECIAL TAX*		
<i>Land Use Type</i>	<i>Tax Area A (Carver-Bangs)</i>	<i>Tax Area B (Pelendale-Snyder)</i>
Single Family	\$118 per unit	\$92 per unit
Multi-Family	\$945 per Acre	\$733 per Acre
Non-Residential	\$945 per Acre	\$733 per Acre

\* Beginning in January 1999 and each January thereafter, the maximum Annual Maintenance Special Tax shall be increased by 4% of the amount in effect in the prior year. Each annual adjustment of the maximum Annual Maintenance Special Tax shall become effective on the subsequent July 1.

The Maintenance Special Tax will be collected each fiscal year on the property tax bills of all parcels in the CFD that have had a final building permit inspection conducted or a certificate of occupancy issued prior to June 1 of the preceding fiscal year.

### III. FACILITIES AND SERVICES TO BE FUNDED BY CFD NO. 1998-2

The facilities and services described below are all facilities which the City of Modesto is authorized to finance and which are required to adequately meet the needs of CFD No. 1998-2. The special taxes required to pay for these facilities and services will be apportioned according to the "Rate and Method of Apportionment of Special Tax" included as Appendix B of this report.

#### Capital Improvements

##### A. *Carver-Bangs (Tax Area A)*

Following is a summary of the capital improvements to be funded through CFD No. 1998-2 to serve the Carver-Bangs Specific Plan. A detailed breakdown of facility components and the corresponding cost estimates is provided in Appendix C of this report.

Storm Drainage Improvements	\$1,494,750
Prescott Road	145,422
American Avenue	24,033
Bangs Avenue	254,305
Carver Road	57,270
American Avenue Canal Overcrossing	295,066
Class I Bike Trail	142,500
CFD Formation Costs	<u>67,500</u>
<b>Total Capital Improvement Costs</b>	<b>\$2,480,847</b>

*B. Pelandale-Snyder (Tax Area B)*

Storm Drainage Improvements	\$4,389,042
Dale Road	531,075
Prescott Road	628,297
Tully Road	1,011,016
Snyder Avenue	504,283
Class I Bike Trail	752,675
CFD Formation Costs	<u>67,500</u>
<b>Total Capital Improvement Costs</b>	<b>\$7,883,888</b>

**Annual Maintenance Costs**

*A. Carver-Bangs*

<u>Item</u>	<u>Quantity</u>	<u>Unit</u>	<u>Cost</u>	<u>Total Cost</u>
Bangs Avenue (South Side)				
8' Landscape Strip (4,680 LF x 8' = 37,400 SF)	37,400	SF	\$0.72	\$26,957
American Avenue (East Side)				
8' Landscape Strip (1,200 LF x 8' =9,600 SF)	9,600	SF	\$0.72	\$6,912
Prescott Road 16' Center Median	10,500	SF	\$0.72	\$7,740
Prescott Road Treewell and Vine Blockouts with 10' Sidewalk and Masonry Wall (56 Each 5' x 5' Treewalls + 56 each 3' x 10' vine blockouts)	3,080	SF	\$0.72	\$2,218
Class I Bike Trail	1,308	SF	\$0.72	\$942
Pelandale Avenue (North Side) Landscape Strip	1,996	SF	\$0.72	\$1,437
Carver Road (West Side) (1, 194 L.F. x 8' = 9,552 S.F.)	9,552	SF	\$0.72	\$6,877
<b>Total Annual Maintenance Costs</b>				<u>\$53,083</u>

B. *Pelandale-Snyder*

<u>Item</u>	<u>Quantity</u>	<u>Unit</u>	<u>Total</u>	<u>Cost</u>
Dale Road (East Side), 12' Wide Landscape Strip (1,255 LF x 12' = 14,700 SF)	14,700	SF	\$0.72	\$10,584
Prescott Road (East Side), 12' Wide Landscape Strip (1,225 LF x 12' = 14,700 SF)	14,700	SF	\$0.72	\$10,584
Prescott Road 16' Center Median	10,750	SF	\$0.72	\$7,740
Tully Road (Both Sides), 12' Wide Landscape Strip (2,650 LF x 12' = 21,800 SF)	31,800	SF	\$0.72	\$22,896
Tully Road 16' Center Median	10,750	SF	\$0.72	\$7,740
Class I Bike Trail	8,820	SF	\$0.72	\$6,350
Pelandale Avenue (South Side)	10,400	SF	\$0.72	\$7,488
Carver West Side Back-up Lots South of Pelandale Avenue (515 L.F. x 5' = 2,575)	2,575	SF	\$0.72	\$1,854
Landscaping Surrounding Storm Drain Basins	35,000	SF	\$0.72	\$25,200
<b>Total Annual Maintenance Costs</b>				<b>\$100,436</b>

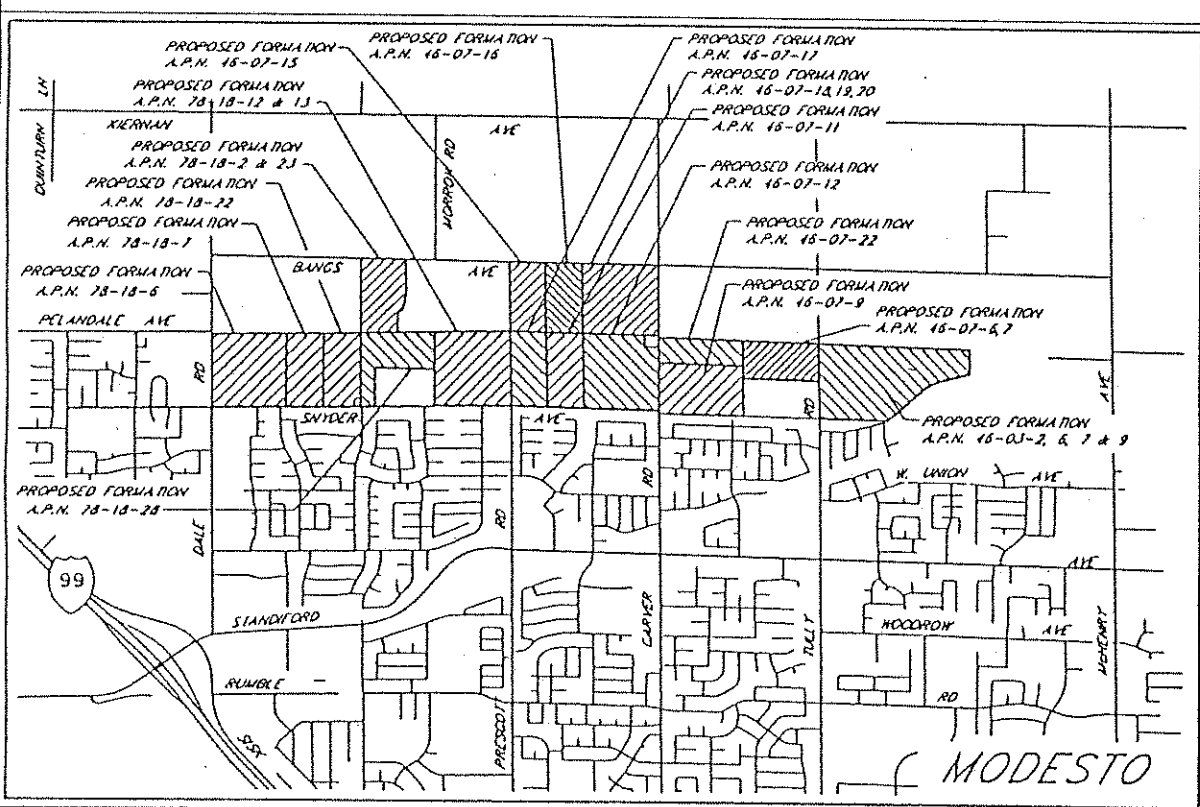
The description of facilities and services, as set forth herein, is general in nature. The final nature and location of improvements will be determined upon the preparation of final plans and specifications.

APPENDIX A

CITY OF MODESTO  
COMMUNITY FACILITIES DISTRICT NO. 1998-2

BOUNDARY MAP

# PROPOSED BOUNDARIES OF COMMUNITY FACILITIES DISTRICT NO. 1998-2 (CARVER-BANGS/PELANDALE-SNYDER) COUNTY OF STANISLAUS, STATE OF CALIFORNIA



**CFD 1998-2 FORMATION MAP**

NO SCALE



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**BASIS OF BEARINGS:**  
THE BEARING OF SOUTH 89°15' WEST ALONG THE LINE BETWEEN GPS MONUMENTS 2722 AND 2721 AS SHOWN IN BOOK 22 OF SURVEYS AT PAGE 31, STANISLAUS COUNTY RECORDS, WAS USED AS THE BASIS FOR ALL BEARINGS SHOWN HEREON.

**NOTE:**  
THE DISTANCES SHOWN HEREON ARE GROUND DISTANCES. MULTIPLY GROUND DISTANCES BY THE GRID FACTOR (.999930334) TO OBTAIN GRID DISTANCES.

**SURVEYOR'S STATEMENT:**

THIS MAP WAS PREPARED BY ME OR UNDER MY DIRECTION AND WAS BASED ON INFORMATION OF RECORD AS NOTED ON THE MAP. I HEREBY STATE THAT THE MAP SUBSTANTIALLY CONFORMS TO THE REQUIREMENTS FOR A COMMUNITY FACILITIES DISTRICT MAP AS PRESCRIBED IN DIVISION 4.5 OF THE STREETS AND HIGHWAYS CODE.

DATED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 1998

ROY A. GALLI, R.C.E. 16024

FILED IN THE OFFICE OF THE CITY CLERK OF THE CITY OF MODESTO THIS \_\_\_\_ DAY OF \_\_\_\_\_, 1998.

JEAN ZAHR, CITY CLERK

I HEREBY CERTIFY THAT THE WITHIN MAP SHOWING PROPOSED BOUNDARIES OF CITY OF MODESTO COMMUNITY FACILITIES DISTRICT NO. 1998-2, (CARVER-BANGS/PELANDALE-SNYDER), CITY OF MODESTO, COUNTY OF STANISLAUS, STATE OF CALIFORNIA, WAS APPROVED BY THE CITY COUNCIL OF THE CITY OF MODESTO, AT A MEETING THEREOF, HELD ON THE \_\_\_\_ DAY OF \_\_\_\_\_, 1998, BY ITS RESOLUTION NO. \_\_\_\_\_

JEAN ZAHR, CITY CLERK

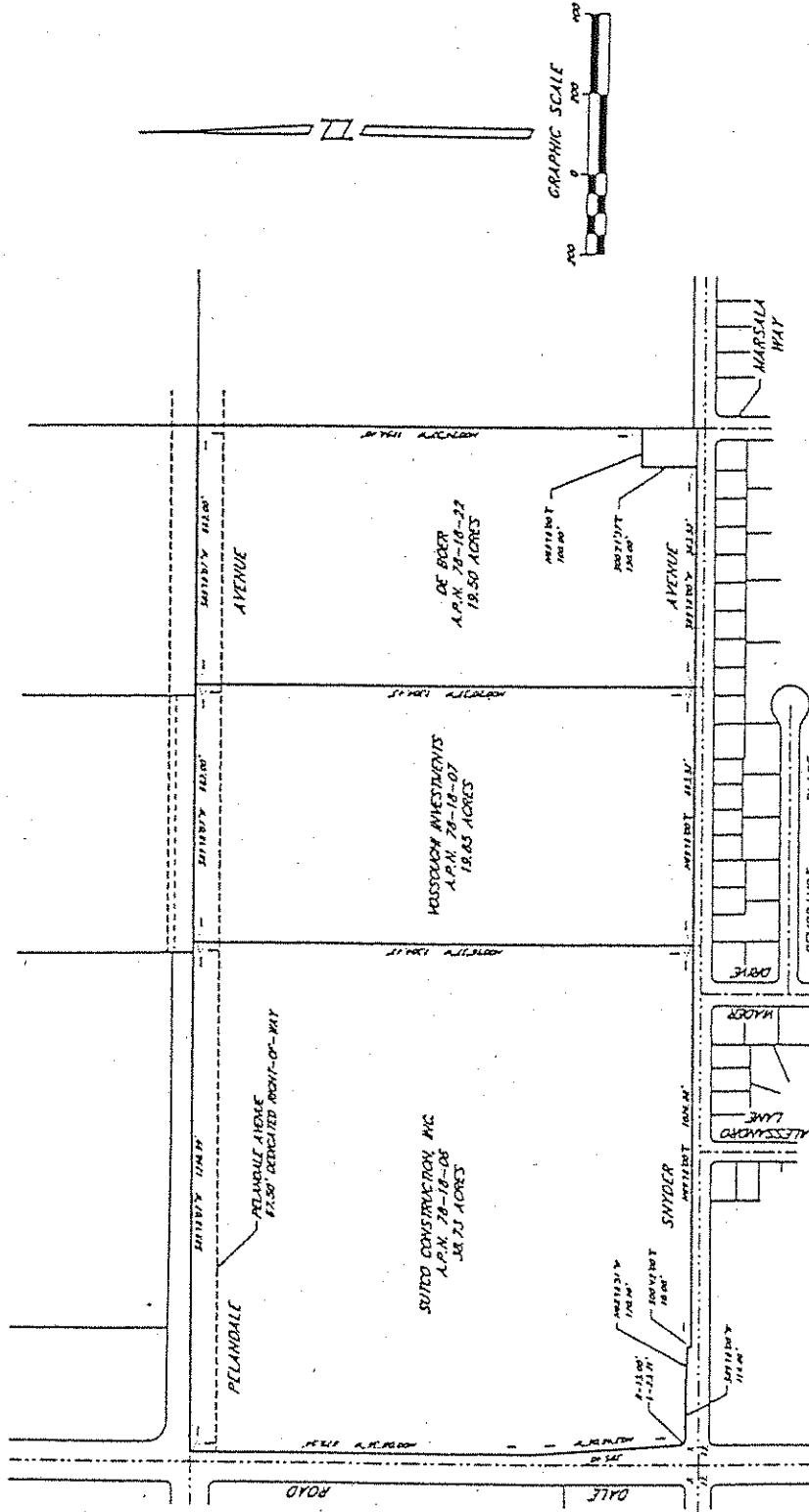
**RECORDER'S STATEMENT:**

FIXED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 1998, AT THE HOUR OF \_\_\_\_ O'CLOCK \_\_\_\_ M., UNDER RECORDER'S INSTRUMENT NO. \_\_\_\_\_, IN BOOK \_\_\_\_\_ OF MAPS OF ASSESSMENT AND COMMUNITY FACILITIES DISTRICTS, AT PAGE \_\_\_\_\_, IN THE OFFICE OF THE COUNTY RECORDER OF THE COUNTY OF STANISLAUS, STATE OF CALIFORNIA.

KAREN MATHEWS, COUNTY RECORDER OF THE COUNTY OF STANISLAUS, STATE OF CALIFORNIA

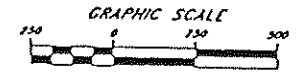
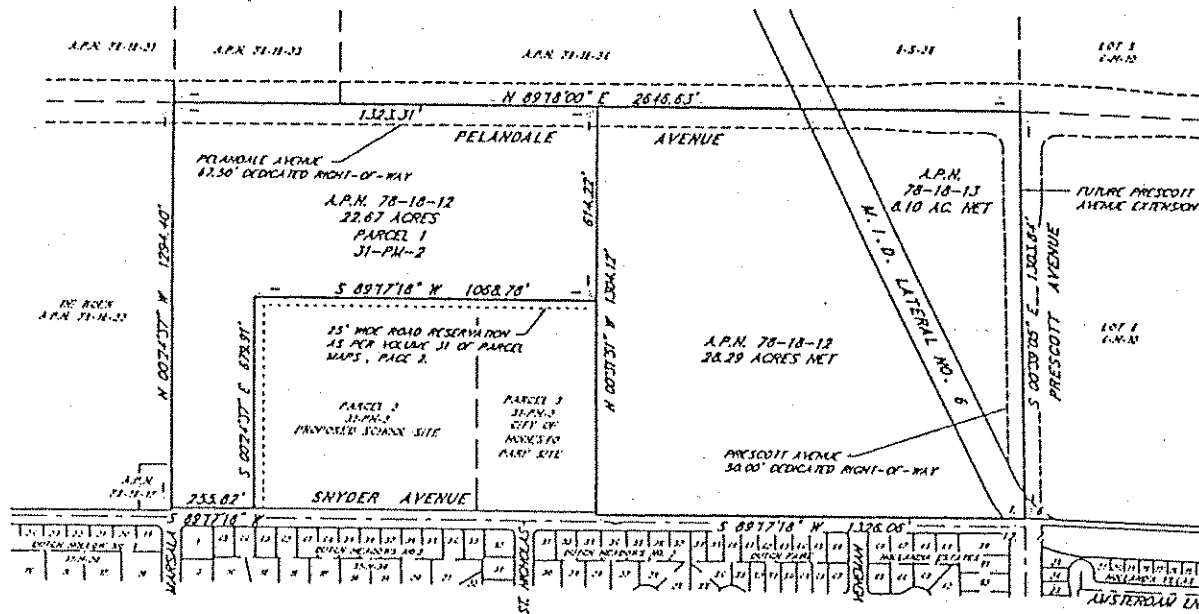
BY: \_\_\_\_\_ DEPUTY

PROPOSED BOUNDARIES OF  
 COMMUNITY FACILITIES DISTRICT NO. 1998-2  
 (CARVER-BANGS/PELANDALE-SNYDER)  
 COUNTY OF STANISLAUS, STATE OF CALIFORNIA



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PROPOSED BOUNDARIES OF  
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APPENDIX B

CITY OF MODESTO  
COMMUNITY FACILITIES DISTRICT No. 1998-2

RATE AND METHOD OF APPORTIONMENT OF  
SPECIAL TAX AND REIMBURSEMENTS

## EXHIBIT B

### CITY OF MODESTO COMMUNITY FACILITIES DISTRICT No. 1998-2 (CARVER-BANGS/PELANDALE-SNYDER)

#### RATE AND METHOD OF APPORTIONMENT OF SPECIAL TAX AND REIMBURSEMENTS

A special tax applicable to each Assessor's Parcel in Community Facilities District No. 1998-2 (herein "CFD No. 1998-2") 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. 1998-2, unless exempted by law or by the provisions of Section F below, shall be taxed for the purposes, to the extent, and in the manner herein provided, including property subsequently annexed to CFD No. 1998-2 unless a separate Rate and Method of Apportionment of Special Tax and Reimbursements 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, parcel map, or other recorded County parcel map.

"Administration Component" means that portion of the Facilities Special Tax which must be paid (i.e., is not subject to fee credits) prior to a final building permit inspection being completed or a certificate of occupancy being issued for new construction (whichever occurs first) for any residential or non-residential structure. The revenue collected from the Administration Component will be used by the City to pay annual expenses, consultants' fees, and staff time associated with administering the CFD, monitoring the Authorized Facilities and effecting reimbursements, including but not limited to the following: (i) tracking development in the CFD, (ii) preparing the tax roll for the Annual Maintenance Special Tax, (iii) calculating and collecting the Facilities Special Tax, (iv) engineering, (v) planning, (vi) legal services, and (vii) acquisition and construction of land and improvements associated with the Authorized Facilities.

"Administrator" shall mean the person(s) or firm(s) designated by the City to administer the Special Tax according to this Rate and Method of Apportionment of Special Tax and Reimbursements.

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

**"Assessor's Parcel"** means a lot or parcel shown in an Assessor's Parcel Map with an assigned Assessor's Parcel number.

**"Assessor's Parcel Map"** means an official map of the County Assessor of the County of Stanislaus designating parcels by Assessor's Parcel number.

**"Authorized Facilities"** or **"Authorized Facility"** means those public improvements (including portions of such public improvements) to be funded by CFD No. 1998-2 as identified in Attachment 1 of this Rate and Method of Apportionment of Special Tax and Reimbursements, including appurtenant expenses such as planning, design, engineering and inspection.

**"Buildable Lot"** means an individual numbered lot which is in its final configuration and for which a building permit may be issued.

**"CFD Costs"** means the total amount shown in the CFD Public Report to cover costs associated with CFD formation, CFD administration, and engineering, legal services, planning and geotechnical studies related to the Authorized Facilities.

**"CFD Public Report"** means the report filed with the City Clerk on behalf of CFD No. 1998-2 pursuant to Section 53321.5 of the Mello-Roos Community Facilities Act of 1982.

**"Church Property"** means any Parcel within the CFD that is exempt from ad valorem property taxes because it is owned by a religious organization.

**"City"** means the City of Modesto.

**"Council"** means the City Council of the City of Modesto, acting as the legislative body of CFD No. 1998-2.

**"Credit/Reimbursement Amount"** means the sum of the portion of the CFD Costs and the costs of Authorized Facilities that have been paid in advance by a builder/developer and have not yet been reimbursed to that builder/developer through one of the following: (i) the application of Special Tax Credits (as defined below) or (ii) payments to the builder/developer from Facilities Special Taxes collected from other builders/developers in the CFD. The Credit/Reimbursement Amount outstanding at any point in time will be determined pursuant to Section D below.

**"Facilities Special Tax"** means a Special Tax collected by the City to pay for one or more of the following: (i) the costs of Authorized Facilities and CFD Costs, (ii) to reimburse a builder/developer who has an outstanding Credit/Reimbursement Amount, and (iii) if all Authorized Facilities have been completed, to pay for maintenance authorized to be funded by the 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.*).

**"Fiscal Year"** means the period starting July 1 and ending on the following June 30.

**"Maintenance Special Tax Requirement"** means the amount necessary in any Fiscal Year to (i) pay for authorized maintenance expenses, (ii) pay administrative expenses of CFD No. 1998-2, 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 Special Taxes which have already taken place) are expected to occur in the Fiscal Year in which the tax will be collected.

**"Maximum Special Tax"** means the maximum Special Tax, determined in accordance with Section C below, that can be levied by the City in any Fiscal Year on Taxable Property.

**"Non-Residential Property"** means, in any Fiscal Year, all Parcels for which a building permit has been issued for a commercial, office or industrial establishment or any other use which is not single family or multi-family residential property and which is not exempt from Special Taxes pursuant to Section F below.

**"Order of Priority"** means the order in which the Authorized Facilities and CFD Costs must be fully credited or reimbursed before Special Tax Credits can be made against the Facilities Special Tax or reimbursements paid to a builder/developer for other CFD facilities that are of lower priority. The Order of Priority is identified in Attachment 1 of this Rate and Method of Apportionment of Special Tax and Reimbursements.

**"Original Parcel"** means an Assessor's Parcel that will be further subdivided upon recordation of a Final Map. The Original Parcels in CFD No. 1998-2 at the time the Resolution of Formation of CFD No. 1998-2 was approved by the Council are listed in Attachment 2.

**"Public Agency"** means the federal government, State of California or other local governments or public agencies.

**"Reimbursable Cost"** means, for any of the Authorized Facilities, the amount shown in 1998 dollars in the CFD Public Report, which amount shall, beginning in January 2002 and each January thereafter, be increased by four percent (4%) of the amount in effect in the prior year.

**"Special Tax Credit"** means a waiver of the creditable portion of the Facilities Special Tax that would otherwise be due from a Parcel in the CFD if the builder/developer of that Parcel did not have an outstanding Credit/Reimbursement Amount.

**"Subdivided Property"** means, in any Fiscal Year, all Buildable Lots for which a final building permit inspection has taken place or a certificate of occupancy has been issued prior to June 1 of the preceding Fiscal Year.

**"Successor Parcel"** means an Assessor's Parcel of Taxable Property created by the subdivision or reconfiguration of an Original Parcel within the CFD.

“Taxable Property” means, in any Fiscal Year, all Parcels in CFD No. 1998-2 that have not been exempted from the Special Tax pursuant to Section F below.

“Tax Area A” means parcels within the Carver-Bangs Specific Plan Area, which Area is shown in Attachment 3A of this Rate and Method of Apportionment of Special Tax and Reimbursements.

“Tax Area B” means parcels within the Pelandale-Snyder Specific Plan Area, which Area is shown in Attachment 3B of this Rate and Method of Apportionment of Special Tax and Reimbursements.

## B. ANNUAL MONITORING

The Administrator shall keep an ongoing record of the Acreage and current Assessor’s Parcel numbers within Tax Area A and Tax Area B and, after July 1 of each Fiscal Year, shall identify the Assessor’s Parcels which have become Subdivided Property and, therefore, will be subject to the levy of the Maintenance Special Tax in that Fiscal Year. The Administrator shall also continually monitor Subdivided Property to ensure the Facilities Special Tax is collected prior to final building permit inspection or issuance of a certificate of occupancy (whichever occurs first), unless the Parcel qualifies for a Special Tax Credit, as discussed further in Section D below.

## C. MAXIMUM SPECIAL TAX

### 1. *Facilities Special Tax*

The maximum 1998 Facilities Special Tax for Original Parcels in CFD No. 1998-2 when the CFD was formed is shown in Attachment 2. Each time a Final Map is approved within the CFD or when Parcels in the CFD are otherwise subdivided or reconfigured, the Administrator shall reallocate the maximum Facilities Special Tax assigned to each Original Parcel to the Subsequent Parcels created by approval of the Final Map as follows:

- Step 1a. Identify the maximum Facilities Special Tax applicable to the Original Parcel being subdivided (the maximum Facilities Special Tax for Original Parcels in the CFD when the CFD was formed are shown in Attachment 2);
- Step 1b. Determine the Acreage of Taxable Property within the approved Final Map;
- Step 1c. Determine the total Acreage of Taxable Property within the Original Parcel being subdivided, including the Taxable Property within the Final Map;

- Step 1d. Divide the Acreage determined in Step 1b by the total Acreage of the Original Parcel determined in Step 1c to calculate a percentage;
- Step 1e. Multiply the percentage determined in Step 1d by the amount identified in Step 1a to calculate the maximum Facilities Special Tax to be allocated to the Final Map area. If a Final Map is approved for a portion of an Original Parcel, the maximum Facilities Special Tax that has not been allocated to the Final Map area will stay assigned to the remainder of the Taxable Property within the Original Parcel until it is further subdivided;
- Step 1f. Spread the maximum Facilities Special Tax calculated in Step 1e to each of the Successor Parcels within the Final Map area based on each Successor Parcel's share of the Acreage of Taxable Property within the Final Map.

After each reallocation of the maximum Facilities Special Tax upon subdivision or reconfiguration of Original Parcels, the sum of the maximum Facilities Special Tax assigned to Subsequent Parcels shall never be less than the maximum Facilities Special Tax assigned to the Original Parcel(s) prior to such reallocation. Beginning in January 2002 and each January thereafter, the maximum Facilities Special Tax assigned to each Parcel shall be increased by four percent (4%) of the amount in effect in the prior year.

## *2. Annual Maintenance Special Tax*

All Subdivided Property within the CFD shall be subject to an Annual Maintenance Special Tax that shall be levied each Fiscal Year to meet the Maintenance Special Tax Requirement. The Annual Maintenance Special Tax shall be reflected as an annual lien on each Parcel in CFD No. 1998-2 and is anticipated to stay with the property and be paid each year by the current homeowner or property owner. The following maximum rates apply to all Parcels of Taxable Property within CFD No. 1998-2 for Fiscal Year 1998-99:

CITY OF MODESTO COMMUNITY FACILITIES DISTRICT NO. 1998-2 (CARVER-BANGS/PELANDALE-SNYDER) FISCAL YEAR 1998-99 MAXIMUM ANNUAL MAINTENANCE SPECIAL TAX*		
<i>Land Use Type</i>	<i>Tax Area A (Carver-Bangs)</i>	<i>Tax Area B (Pelandale-Snyder)</i>
Single Family	\$118 per unit	\$92 per unit
Multi-Family	\$945 per Acre	\$733 per Acre
Non-Residential	\$945 per Acre	\$733 per Acre
* Beginning in January 1999 and each January thereafter, the maximum Annual Maintenance Special Tax shall be increased by 4% of the amount in effect in the prior year. Each annual adjustment of the maximum Annual Maintenance Special Tax shall become effective on the subsequent July 1.		

**D. IMPLEMENTATION OF CREDIT/REIMBURSEMENT PROGRAM**

Certain builders/developers may be required to pay CFD Costs and fund and construct Authorized Facilities that are ultimately intended to be funded from Facilities Special Tax revenues. The City shall implement a Special Tax Credit and reimbursement program, which will ensure that builders/developers that pay more than their fair share of the CFD Costs and/or Authorized Facilities costs will be reimbursed for the overage.

*At the request of the landowners and developers at the time this Rate and Method of Apportionment was prepared and CFD No. 1998-2 was formed, all credits and reimbursements to builder/developers who provide Authorized Facilities shall be in amounts equal to the costs set forth for those Authorized Facilities in the CFD Public Report (except as adjusted as described below). Pursuant to this request, whether the actual cost to build an Authorized Facility is higher or lower than the amount shown in the CFD Public Report for that Authorized Facility, a builder/developer shall be credited and/or reimbursed for the dollar amount included in the CFD Public Report for that Authorized Facility. If there is a cost savings for one Authorized Facility and a cost overrun for another, there is no opportunity pursuant to this Rate and Method of Apportionment for the cost savings to offset the cost overrun.*

The following steps shall be applied to implement the credit/reimbursement program:

On an Ongoing Basis

- In January 2002 and each January thereafter, the Administrator shall escalate the following items by four percent (4%): (i) the Facilities Special Tax assigned to each Parcel, (ii) the Credit/Reimbursement Amount outstanding for any builder/developer, and (iii) the costs of Authorized Facilities that have not yet been constructed. An updated list of these three items shall be available each year by February 15.

- The Administrator will keep a current list of the adjustments that have been applied in each year to the items listed above.
- The Administrator will keep track of which Authorized Facilities shown in Attachment 1 have been fully credited or reimbursed to establish the next Authorized Facility to be funded according to the Order of Priority.
- For builder/developers who pay more than their pro-rata share of the cost of particular Authorized Facilities and/or CFD Costs and are due a reimbursement after applying Special Tax Credits, the Administrator shall keep track of the date on the "Notice of Completion of Public Facilities to be Acquired by CFD No. 1998-2" (or other such certificate issued by the City) to ensure that reimbursements of costs that fall within the same Order of Priority will be made on a first incurred/first paid basis.

When a Final Map is Approved by the City Council:

- Step 1.* The Administrator shall determine which Authorized Facilities the builder/developer subdividing the property has funded;
- Step 2.* The Administrator shall determine the Order of Priority for the Authorized Facilities funded by the builder/developer. If the improvements are not first in the Order of Priority, the Administrator shall determine whether facilities that are of a higher priority have yet been fully reimbursed or credited;
- Step 3.* By reference to the detailed cost estimates set forth in the CFD Public Report, the Administrator shall determine the estimated 1998 cost that had been included in the maximum Facilities Special Tax for the Authorized Facilities provided by the builder/developer;
- Step 4.* Using 2002 as the first year of escalation, the Administrator shall escalate the cost of the Authorized Facilities (as shown in the CFD Public Report) provided by the builder/developer to the year in which the Credit/Reimbursement Amount is being calculated. This escalation shall apply on an annual basis (i.e., subtract 2001 from the then current year to determine how many years worth of escalation to apply) and shall be compounded in the same manner as the Facilities Special Tax has been escalated. This escalated cost represents the total Credit/Reimbursement Amount due to the builder/developer, the balance of which, as of the year 2002 and each year following, shall be escalated by four percent (4%) each year until fully reimbursed or credited against Facilities Special Taxes paid by the builder/developer.

Prior to final building permit inspection or issuance of a certificate of occupancy  
(whichever occurs first)

**Note: the following steps may be applied to a single Parcel or a group of Parcels (i.e., all residential lots within a particular Final Map)**

The Administrator shall determine if the builder/developer has an outstanding Credit/Reimbursement Amount and apply one of the following:

**Step 1.** If there is an outstanding Credit/Reimbursement Amount for the builder/developer, the Administrator shall apply the following steps to determine if a Facilities Special Tax is due from the subject Parcel(s):

**Step 1a.** Identify the Facilities Special Tax that would have been paid by the Parcel(s) if no Credit/Reimbursement Amount were outstanding;

**Step 1b.** Multiply the amount determined in Step 1a by .07 to calculate the Administration Component, which shall be due and payable to the City prior to final building permit inspection or issuance of a certificate of occupancy (whichever comes first);

**Step 1c.** Subtract the Administration Component calculated in Step 1b from the Facilities Special Tax identified in Step 1a to calculate the net amount that could be collected for facility costs, and apply one of the following:

- *If the net amount determined in Step 1c is less than the outstanding Credit/Reimbursement Amount for the builder/developer, the Administration Component calculated in Step 1b shall be collected and the builder/developer shall be given a Special Tax Credit against the remainder of the Facilities Special Tax for that Parcel(s). After the Special Tax Credit has been calculated, the Administrator shall subtract that amount from the outstanding Credit/Reimbursement Amount for that builder/developer.*
- *If the net amount determined in Step 1c is greater than the outstanding Credit/Reimbursement Amount for the builder/developer, subtract the outstanding Credit/Reimbursement Amount from the net amount of Facilities Special Tax calculated in Step 1c to determine the amount that must be paid by the builder/developer. If the calculation is being prepared*

for multiple Parcels at one time, the builder/developer may use up the remaining Credit/Reimbursement Amount by taking Special Tax Credits against the first lots to develop and pay the remaining balance when the subsequent lots develop. The Administrator shall update the CFD records to reflect a zero Credit/Reimbursement Amount for that builder/developer.

**Step 2.** If there is not an outstanding Credit/Reimbursement Amount for the builder/developer, the Administrator shall apply the following steps:

**Step 2a.** Identify the Facilities Special Tax assigned to the Parcel(s), which shall be due and payable to the City prior to final building permit inspection or issuance of a certificate of occupancy (whichever comes first);

**Step 2b.** Multiply the amount determined in Step 2a by .07 to calculate the Administration Component, which shall remain on deposit with the City;

**Step 2c.** Subtract the Administration Component calculated in Step 2b from the Facilities Special Tax identified in Step 2a to calculate the net amount that shall be collected to provide reimbursements to builder/developers with outstanding Credit/Reimbursement Amounts;

**Step 2d.** Determine whether there is an outstanding Credit/Reimbursement Amount due other builder/developers in the CFD and apply one of the following:

- *If there are outstanding Credit/Reimbursement Amounts, look at the Order of Priority of the Authorized Facilities for which a Credit/Reimbursement Amount is due. In addition, identify the dates on the "Notice of Completion of Public Facilities to be Acquired by CFD No. 1998-2" (or other such certificate issued by the City) which were provided to each builder/developer for which a Credit/Reimbursement Amount is outstanding. Reimbursements shall be paid based on the Order of Priority and, if there are multiple Credit/Reimbursement Amounts due within the same priority level, based on the date on which a "Notice of Completion of Public Facilities to be Acquired by CFD No. 1998-2" was issued to each*

builder/developer. After the reimbursements are made, the Administrator shall reduce the Credit/Reimbursement Amount for the builder/developer(s) who received reimbursement by the amount of such reimbursement.

- *If there are no outstanding Credit/Reimbursement Amounts due any builder/developer, the City shall deposit the Facilities Special Tax into an account which will be designated for funding the Authorized Facilities. The balance in this fund will be used either to pay directly for the construction of Authorized Facilities or to reimburse a builder/developer who constructs Authorized Facilities in future years. The interest earned on funds in this account shall accrue to the account for the same purposes.*

## E. METHOD OF LEVY AND COLLECTION OF THE SPECIAL TAX

### 1. Facilities Special Tax

The maximum Facilities Special Tax determined pursuant to Section C above shall be collected prior to a final building permit inspection being completed or a certificate of occupancy being issued for new construction (whichever occurs first) for any residential or non-residential structure within CFD No. 1998-2 and shall be immediately delinquent if not so paid.

### 2. Annual Maintenance Special Tax

Commencing with Fiscal Year 1999-00 and for each following Fiscal Year, the Administrator shall determine the Maintenance Special Tax Requirement for that Fiscal Year. The Annual Maintenance Special Tax shall then be levied on all Parcels of Subdivided Property as follows:

*Step 1:* Calculate the total Maintenance Special Tax revenues that could be collected from Subdivided Property within the CFD based on application of the maximum Annual Maintenance Special Tax rates determined pursuant to Section C.2 above;

*Step 2:* Divide the Maintenance Special Tax Requirement by the maximum revenues that could be collected as determined in Step 1;

*Step 3:* If the ratio determined in Step 2 is greater than or equal to 1, levy the maximum Annual Maintenance Special Tax determined pursuant to Section C.2 on all Subdivided Property in the CFD. If the ratio determined in Step 2 is less than 1, continue to Step 4.

*Step 4:* If the ratio determined in Step 2 is less than 1, levy the maximum Annual Maintenance Special Tax against all Parcels of Subdivided Property in equal percentages up to 100% of the maximum Annual Maintenance Special Tax determined pursuant to Section C.2 above until the amount so levied equals the Maintenance Special Tax Requirement for the Fiscal Year.

The Annual Maintenance Special Tax for CFD No. 1998-2 shall be collected in the same manner and at the same time as ordinary ad valorem property taxes, provided, however, that CFD No. 1998-2 may (under the authority of Government Code Section 53340), in any particular case, bill the taxes directly to the property owner, off the County tax roll, and the Special Taxes will be equally subject to foreclosure if delinquent as annual Special Taxes levied on the County tax roll.

*In no event shall the Maintenance Special Tax levied and collected in one Tax Area be increased due to delinquencies in the other Tax Area.*

#### F. LIMITATIONS

Notwithstanding any other provision of this Rate and Method of Apportionment of Special Tax and Reimbursements, no Special Tax shall be levied on structures built on land that has been conveyed to a Public Agency, except as otherwise provided in Sections 53317.3 and 53317.5 of the Mello-Roos Community Facilities Act of 1982. No Annual Maintenance Special Tax shall be levied on Church Property unless such Church Property is built on a Parcel or Parcels that had previously been developed with residential or non-residential land uses which had paid the Annual Maintenance Special Tax. The maximum Annual Maintenance Special Tax assigned to such Church Property would be equal to the maximum Annual Maintenance Special Tax that had previously been assigned to the residential or non-residential land uses on the property.

The Maintenance Special Tax will continue to be levied and collected unless and until the City determines that Maintenance Special Tax revenues are no longer needed to pay authorized services of the CFD.

#### G. ENFORCEMENT

All delinquent Facility Special Taxes, or delinquent Annual Maintenance Special Taxes billed off the County tax roll, shall be subject to an immediate 10% penalty plus simple interest charges of

1.5% as of the first day of the month after the delinquency date and on the first day of each month thereafter. Any such delinquent Special Taxes shall, at the City's discretion, be placed on the next secured property tax roll. The amount placed on the roll shall include the 10% penalty and the interest charges through the following January 1. This shall not prevent the City from simultaneously pursuing the delinquency by an action on a contract or guarantee against a third party who promised to pay the taxes, or from assigning such right of action to the property owner or other appropriate party.

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## ATTACHMENT 1

### COMMUNITY FACILITIES DISTRICT NO. 1998-2 (CARVER BANGS/PELANDALE-SNYDER) ORDER OF PRIORITY OF AUTHORIZED FACILITIES

#### First Priority

- Storm drain basin construction (including but not limited to basins, inlet structures, pipelines, and fencing)
- Storm drain trunkline in Snyder Avenue adjacent to school and park sites
- CFD Costs (as identified in the CFD Public Report)
- Engineering design costs for storm drain related improvements (including geotechnical)

#### Second Priority

- Storm drain basin land purchase for both basins (Van Konynenburg properties), east and west of Modest Irrigation District lateral No. 6

#### Third Priority

- Storm drain trunk lines (other than trunkline in Snyder Avenue adjacent to school and park sites)

*[Note that storm drain trunk lines are specific to each tax area and will remain a third priority within a tax area until all trunk lines within that tax area are credited or reimbursed.]*

#### Fourth Priority

- Storm drain pump station, piping and landscaping around storm drainage basin

#### Fifth Priority, Tax Area A (Carver Bangs)

- Bike trail
- American Avenue
- Prescott Road
- Bangs Avenue
- Carver Road
- American Avenue crossing of Modest Irrigation District lateral No. 6
- Pedestrian bridge crossing of Modesto Irrigation District lateral No. 6

#### Fifth Priority, Tax Area B (Pelandale-Snyder)

- Bike trail
- Dale Road
- Prescott Road
- Tully Road
- Snyder Avenue (opposite)
- Tully/Snyder traffic signal

**ATTACHMENT 2**  
**CITY OF MODESTO COMMUNITY FACILITIES DISTRICT NO. 1998-2**  
**(CARVER-BANGS/PELANDALE-SNYDER)**  
**MAXIMUM FACILITIES SPECIAL TAX**

	<u>Carver- Bangs</u>	<u>Pelandale- Snyder</u>
Infrastructure Costs, other than Storm Drainage	\$986,097	\$3,494,846
Plus: Administration 7.00%	<u>\$69,027</u>	<u>\$244,639</u>
Subtotal, Costs other than Storm Drainage	\$1,055,124	\$3,739,485
Storm Drainage Costs	\$1,494,750	\$4,389,042
Plus: Administration 7.00%	<u>\$104,633</u>	<u>\$307,233</u>
Subtotal, Storm Drainage Costs	\$1,599,383	\$4,696,275
<b>Total Costs Assigned to Tax Area</b>	<b><u>\$2,654,506</u></b>	<b><u>\$8,435,760</u></b>
Total Net Acreage Contributing to Non-Drainage Facilities	137.44	298.40
One-Time Special Tax per Net Acre for non-Drainage	\$7,677	\$12,532
Total Net Acreage Contributing to Storm Drainage	137.44	317.73
One-Time Special Tax per Net Acre for Storm Drainage	\$11,637	\$14,781

<u>Assessor Parcel No.</u>	<u>Property Owner</u>	<u>Net Acreage</u>	<u>1998 Maximum Facilities Special Tax/1</u>
<u>Tax Area A, Carver-Bangs</u>			
78 12 02	Calvary Chapel	0.89	\$17,189
78 18 23	Calvary Chapel	14.19	\$274,065
78 18 24	William Han	28.90	\$558,173
78 18 14	Lowry, Luscher, Donovan	22.60	\$436,495
46 07 15	Kaufman & Broad	16.39	\$316,555
46 07 16	Elaine Fowler	18.11	\$349,775
46 07 18	Ronald Malik	8.75	\$168,997
46 07 19	Ronald Malik	19.30	\$372,759
46 07 20	Ronald Malik	<u>8.31</u>	<u>\$160,499</u>
<b>Total, Carver-Bangs</b>		<b>137.44</b>	<b><u>\$2,654,506</u></b>
<u>Tax Area B, Pelandale-Snyder</u>			
78 18 06	TRS Enterprises	35.45	\$968,228
78 18 7	Vossoughi Investments	18.67	\$509,924
78 18 22	Rodney K. Lowe, Inc.	18.35	\$501,184
78 18 28	Corn-Harris Development	20.62	\$563,184
78 18 12	Resource Development	24.08	\$657,685
46 07 17	Marlene Johnston, et. al.	16.22	\$443,009
46 07 11	Verna Mae Johnson Trust	17.95	\$490,259
46 07 12	William P. Couture	35.65	\$973,691
46 07 22	Red Rock Ranch	13.05	\$356,428
46 07 09	Walker Family Partnership	26.90	\$734,706
46 07 07	Resource Development	13.89	\$379,371
46 07 06	Resource Development	4.58	\$125,091
46 07 08	Brent & Diana Holtz	18.62	\$508,559
46 03 02	Big Valley Grace Comm. Church	7.20	\$196,650
46 03 06	Big Valley Grace Comm. Church	9.07	\$247,724
46 03 07	Big Valley Grace Comm. Church	18.10	\$494,356
46 03 09	Big Valley Grace Comm. Church	<u>19.33</u>	<u>\$285,711</u>
<b>Total, Pelandale-Snyder</b>		<b>317.73</b>	<b><u>\$8,435,760</u></b>

/1 Maximum taxes shall be increased each year by four percent of the amount in effect in the prior year.

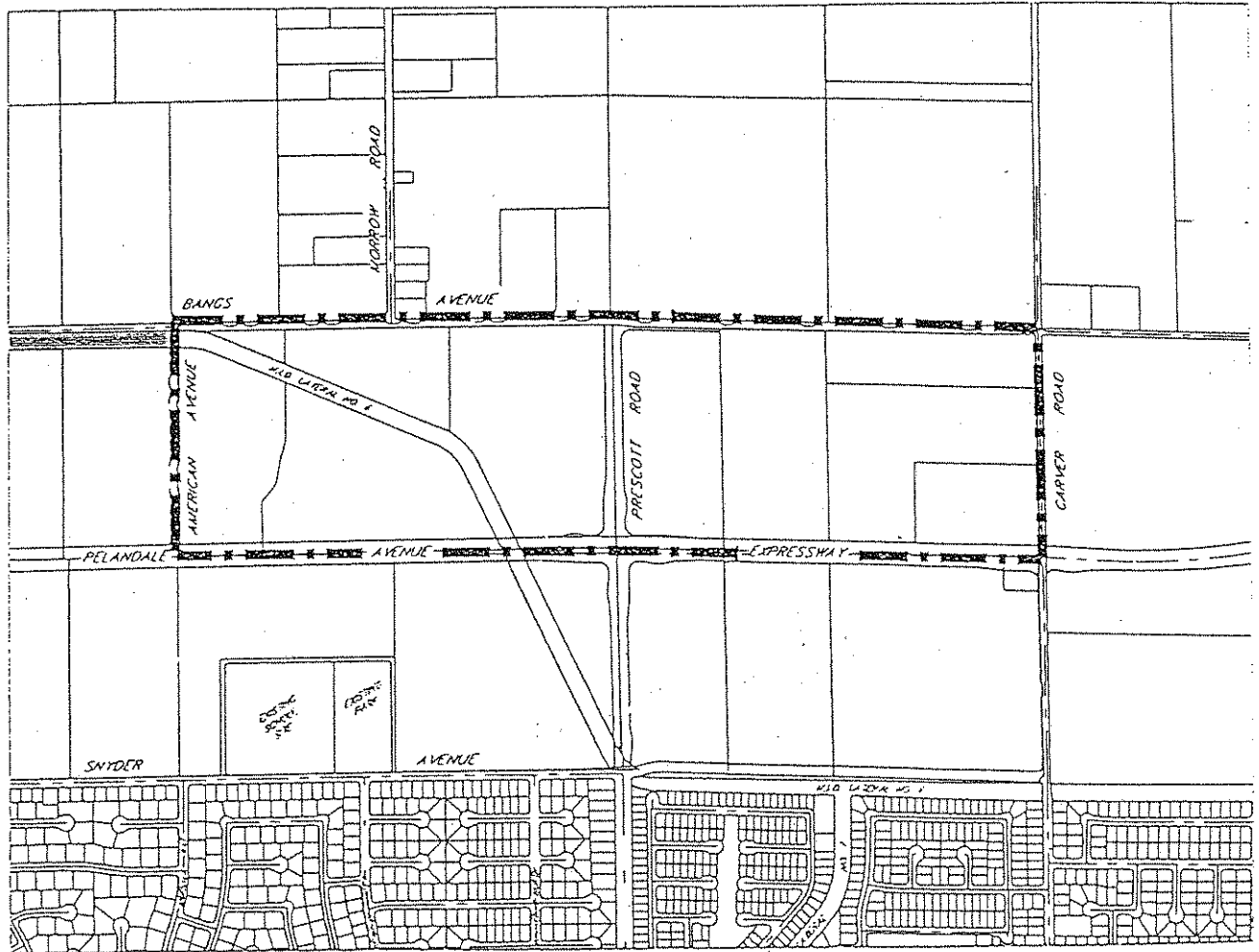
ATTACHMENT 3

COMMUNITY FACILITIES DISTRICT NO. 1998-2  
(CARVER BANGS/PELANDALE-SNYDER)

IDENTIFICATION OF TAX AREA A AND TAX AREA B

*COMMUNITY FACILITIES DISTRICT NO. 1998-2*

*TAX AREA "A"*



Drawn by	J.R.M.
Date	10-14-98
Scale	

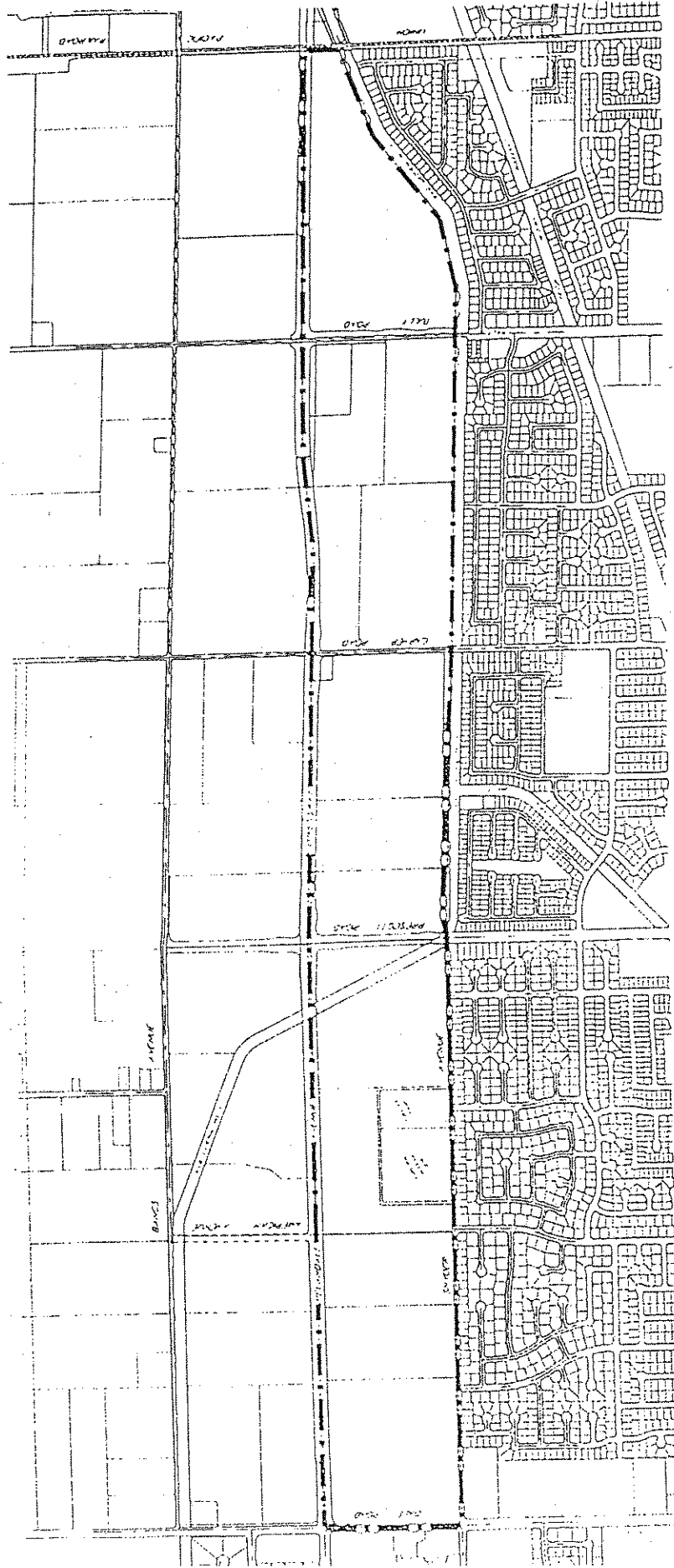
*C.F.D. 1998-2  
(CARVER-BANGS/  
PELANDALE-SNYDER)*



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526-0803  
SHEET  
1

COMMUNITY FACILITIES DISTRICT NO. 1998-2

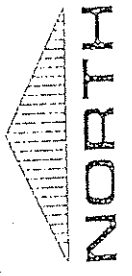
TAX AREA "B"



Drawn	JRM
Date	10-14-98
Scale	
Job No.	1998-2
Sheet	3B

C.F.D. 1998-2  
(CARVER-BANGS/  
PELANDALE-SNYDER)  
ATTACHMENT 3B

**Mid Valley Engineering**  
900 H ST STE C, MODESTO, CALIFORNIA 95354  
(209) 526-4214



APPENDIX C

CITY OF MODESTO  
COMMUNITY FACILITIES DISTRICT No. 1998-2

DETAILED FACILITY COST ESTIMATES

**CARVER-BANGS  
(TAX AREA A)**

**DETAILED FACILITY COST ESTIMATES**

**CARVER / BANGS (TAX AREA A)  
SPECIFIC PLAN AREA  
COMMUNITY FACILITIES DISTRICT (CFD) 1998-2  
SUMMARY**

**I. CARVER / BANGS SPECIFIC PLAN AREA**

TOTAL ESTIMATED CFD COSTS

\$ 2,480,847  
\$2,424,418

**A. C.F.D. FEE PER NET ACRE**

\$2,424,418 / 137.44 NET ACRES = COST PER NET ACRE =====>

\$17,640

**B. ANNUAL LANDSCAPE MAINTENANCE COSTS PER NET ACRE**

COST PER NET ACRE =====>

\$715

CARVER / BANGS (TAX AREA A)  
SPECIFIC PLAN AREA  
CFD REIMBURSEMENT PRIORITY

**I. ORDER OF REIMBURSEMENT AND/OR CREDIT**

**A. FIRST PRIORITY**

1. STORM DRAIN BASIN CONSTRUCTION (INCLUDING BUT NOT LIMITED TO BASINS, INLET STRUCTURES, PIPELINES, AND FENCING)
2. STORM DRAIN TRUNKLINE IN SNYDER AVENUE ADJACENT TO SCHOOL AND PARK SITES.
3. ALL CFD RELATED FORMATION COSTS (I.E., CITY OF MODESTO, DAVID TAUSSIG AND ASSOCIATES, KAUFMAN & BROAD, RON MALIK, MID-VALLEY ENGINEERING, J.B. ANDERSON LAND PLANNING, RUSSELL A. HARRISON, CONSULTING CIVIL ENGINEER, INC., AND HERUM, CRABTREE, DYER, ZOLEZZI AND TERPSTRA).
4. ALL ENGINEERING DESIGN COSTS FOR STORM DRAIN RELATED IMPROVEMENTS (INCLUDING GEOTECHNICAL).

**B. SECOND PRIORITY**

1. STORM DRAIN BASIN LAND PURCHASE FOR BOTH BASINS (VAN KONYNENBURG PROPERTIES), EAST AND WEST OF MODESTO IRRIGATION DISTRICT LATERAL NO. 6.

**C. THIRD PRIORITY**

1. STORM DRAIN TRUNK LINES.

**D. FOURTH PRIORITY**

1. STORM DRAIN PUMP STATION, PIPING AND LANDSCAPING AROUND THE STORM DRAIN BASIN.

**E. FIFTH PRIORITY**

1. BIKE TRAIL.
2. AMERICAN AVENUE.
3. PRESCOTT ROAD.
4. BANGS AVENUE.
5. CARVER ROAD.
6. AMERICAN AVENUE CROSSING OF MODESTO IRRIGATION DISTRICT LATERAL NO. 6.
7. PEDESTRIAN BRIDGE CROSSING OF MODESTO IRRIGATION DISTRICT LATERAL NO. 6.

**CARVER BANGS SPECIFIC PLAN AREA (TAX AREA A)  
COMMUNITY FACILITIES  
DISTRICT FORMATION  
COST SUMMARY**

A.	STORM DRAINAGE	\$1,494,750
B.	PRESCOTT ROAD	\$145,422
C.	AMERICAN AVENUE	\$24,033
D.	BANGS AVENUE	\$254,305
E.	CARVER ROAD	\$57,270
F.	AMERICAN AVENUE CANAL CROSSING	\$295,066
G.	CLASS I BIKE TRAIL	\$142,500
H.	FORMATION COSTS	\$67,500
<b>TOTAL CFD COSTS ==</b>		<b>\$2,480,847</b>

**NOTE:**

1. THE ABOVE TOTAL COSTS DO NOT INCLUDE THE ANNUAL LANDSCAPE MAINTENANCE COSTS FOR PLAN AREA. THE ANNUAL LANDSCAPE MAINTENANCE COSTS IS ESTIMATED AT \$751 PER ACRE.
2. FINAL BID QUANTITIES MAY INCLUDE MORE DETAILED LINE ITEMS WHICH SHALL BE ALL INCLUSIV WITHIN LUMP SUM AMOUNTS OR QUANTITIES SHOWN IN THIS DOCUMENT.

CARVER-BANGS SPECIFIC PLAN AREA  
COMMUNITY FACILITIES DISTRICT  
PRELIMINARY ENGINEER'S ESTIMATE  
FOR  
STORM DRAIN TRUNK LINES  
AND  
PROPORTIONATE SHARE OF PELANDALE-SNYDER  
STORM DRAIN BASIN AND APPURTENANCES  
(REFERENCE FIGURE 1)

ITEM	DESCRIPTION	QUAN.	UNIT	UNIT COST	AMOUNT
<b><u>I. STORM DRAIN TRUNK LINES</u></b>					
<b>A. CONSTRUCTION</b>					
1.	30" STORM	2,549	LF	\$100.00	\$254,900
2.	36" STORM	1,279	LF	\$121.00	\$154,759
3.	48" STORM	597	LF	\$161.00	\$96,117
4.	SHARE OF 54" STORM DRAIN TO BASIN	46	LF	\$182.00	\$8,372
5.	MANHOLES	14	EA	\$5,750.00	\$80,500
SUB-TOTAL STORM DRAIN TRUNK LINES =====>					\$594,648
10% CONTINGENCY =====>					\$59,465
TOTAL CONSTRUCTION - STORM DRAIN TRUNK LINES =====>					\$654,113
<b><u>II. STORM DRAINAGE BASIN FACILITIES</u></b>					
<b>A. CONSTRUCTION</b>					
1.	STORM DRAIN BASIN EXCAVATION	42,628	CY	\$6.00	\$255,768
2.	STORM DRAIN PUMP STATION	LUMP SUM	LS	\$165,445.00	\$165,445
3.	STORM DRAIN PIPING (PLUS JACK & BORE)	LUMP SUM	LS	\$8,943.00	\$8,943
4.	FENCING	1,227	LF	\$16.00	\$19,632
5.	LANDSCAPING	10,433	SF	\$2.80	\$29,212
6.	INLETS	LUMP SUM	LS	\$2,981.00	\$2,981
7.	STRIPPING / CLEARING / DISCING	LUMP SUM	LS	\$2,981.00	\$2,981
SUB-TOTAL STORM DRAIN BASIN FACILITIES =====>					\$484,962
10% CONTINGENCY =====>					\$48,496
TOTAL STORM DRAIN BASIN FACILITIES =====>					\$533,459
<b>B. FEES</b>					
1.	ENGINEERING	1	EST	\$29,808.00	\$29,808
2.	STAKING	1	EST	\$14,755.00	\$14,755
3.	CONSTRUCTION MANAGEMENT	1	EST	\$19,873.00	\$19,873
4.	GEOTECHNICAL	1	EST	\$5,365.00	\$5,365
TOTAL FEES =====>					\$64,436

Carver-Bangs Specific Plan Area  
 Community Facilities District  
 Preliminary Engineer's Estimate  
 October 23, 1998

ITEM	DESCRIPTION	QUAN.	UNIT	COST	AMOUNT
<b>C. LAND ACQUISITION</b>					
1.	LAND PURCHASE	29.61% OF TOTAL COST OF \$1,030,239 =			\$305,054
2.	ADMINISTRATION	LUMP SUM LS			\$2,125,00
TOTAL LAND ACQUISITION ==>					\$307,179
GRAND TOTAL ==>					\$1,494,750

**NOTES:**

1. THE CARVER-BANGS PROPORTIONATE SHARE OF THE STORM DRAIN BASIN AND APPURTENANCE WAS DERIVED FROM A PER GROSS ACRE SHARE. THE FOLLOWING REPRESENTS THE FORMULA USED FOR CONSTRUCTION AND FEES:

**A. GROSS ACREAGE SUMMARY**

PELANDALE / SNYDER	357.46
CARVER / BANGS	151.80
TOTAL GROSS ACRES ==>	
	509.26

**B. CARVER / BANGS PROPORTIONATE SHARE**

151.80 / 509.26 =	29.81%
-------------------	--------

2. STORM DRAIN TRUNK LINE AND BASIN SIZING WERE TAKEN FROM THE PELANDALE-SNYDER AND CARVER-BANGS STORM DRAINAGE SYSTEM PLANS DATED AUGUST 5, 1998 PREPARED BY MID-VALLEY ENGINEERING, INC.

3. STORM DRAIN BASIN EXCAVATION INCLUDES BUT IS NOT LIMITED TO THE FOLLOWING: PIPE DOW DRAINS, SPLASH PADS, LOW FLOW CHANNEL AND ROCK TRENCH, A.C. PAVING, DISPOSAL AREA GROUND PREPARATION, 6" A.C. BERMS, AND REMOVAL OF EXISTING IRRIGATION LINES.

# STORM DRAIN SYSTEM



Drawn - J. FREITAS  
 Date 4-29-98  
 Scale

**FIGURE 1**  
**CARVER BANGS**



FAX (209) 526-0803  
 SHEET 1

CARVER-BANGS SPECIFIC PLAN AREA  
COMMUNITY FACILITIES DISTRICT  
PRELIMINARY ENGINEER'S ESTIMATE  
FOR  
PRESCOTT ROAD (20' CFD PORTION)  
FROM  
PELANDALE AVENUE TO BANGS AVENUE (1,323' C.L. TO C.L.)  
(REFERENCE FIGURE 2)

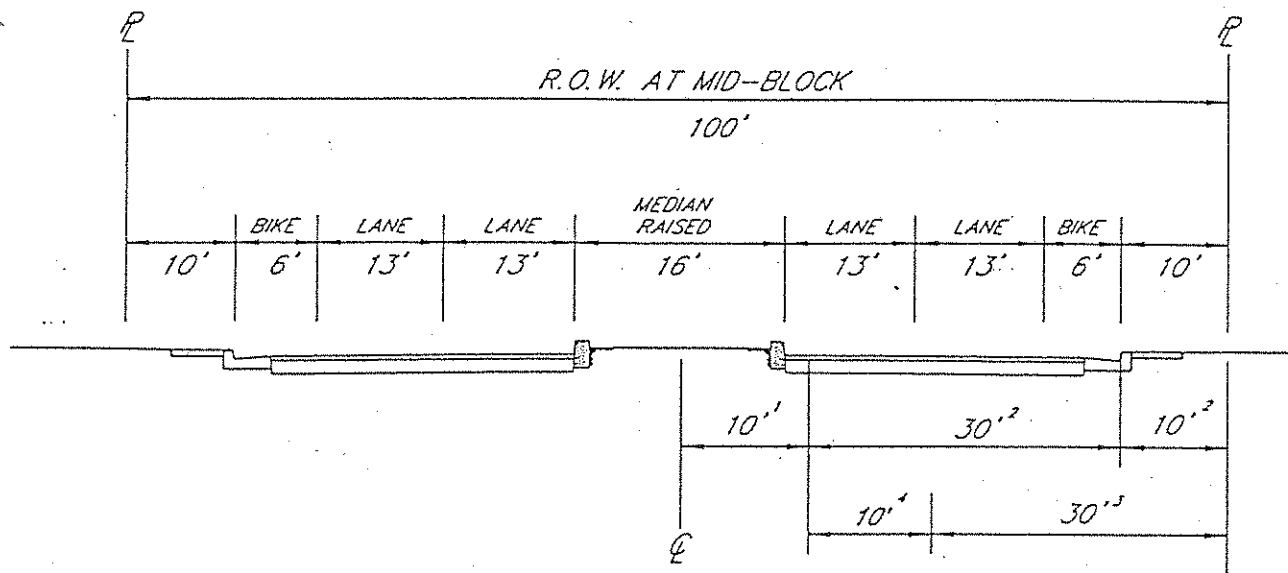
ITEM	DESCRIPTION	QUAN.	UNIT	UNIT COST	AMOUNT
<b>A. CONSTRUCTION (20' CFD PORTION)</b>					
1.	CLEARING AND GRADING	24,675	SF	\$0.60	\$14,805
2.	PAVEMENT (0.50' A.C. OVER 0.65' A.B., T.I. = 10 R.V. = 50)	24,675	SF	\$2.00	\$49,350
3.	STORM DRAINAGE				
a.	CATCH BASINS	4	EA	\$1,000.00	\$4,000
b.	12" CATCH BASIN RUNS (50 L.F. PER C.B.)	200	LF	\$30.00	\$6,000
c.	MANHOLES	2	EA	\$2,000.00	\$4,000
4.	PRIME COAT	24,675	SF	\$0.02	\$494
5.	STRIPING / SIGNAGE (5% OF GRADING AND PAVEMENT COST)	1	EST	\$3,207.75	\$3,208
CONSTRUCTION TOTAL =====>					\$81,856
15% CONTINGENCY =====>					\$12,276
TOTAL PRESCOTT ROAD CONSTRUCTION =====>					\$94,135
<b>B. FEES</b>					
1.	ENGINEERING (6% OF CONSTRUCTION TOTAL)	1	EST	\$5,648.08	\$5,648
2.	STAKING (3% OF CONSTRUCTION TOTAL)	1	EST	\$2,824.04	\$2,824
3.	CONSTRUCTION MANAGEMENT (4% OF CONSTRUCTION TOTAL)	1	EST	\$3,765.39	\$3,765
TOTAL FEES =====>					\$12,238
<b>C. LAND ACQUISITION</b>					
1.	RIGHT-OF-WAY DEDICATION	0.57	AC	\$65,000.00	\$37,050
2.	RIGHT-OF-WAY ADMINISTRATION	LUMP SUM	LS	\$2,000.00	\$2,000
TOTAL LAND ACQUISITION =====>					\$39,050
GRAND TOTAL =====>					\$145,422

NOTES:

1. THE ABOVE ESTIMATE IS FOR THE PORTION OF PRESCOTT ROAD IMPROVEMENTS WHICH IS ABOVE AND BEYOND A NORMAL CITY STANDARD COLLECTOR STREET (60' WIDE) AND WHICH IS NOT FUNDED THROUGH THE CITY'S CFF PROGRAM. (SEE FIGURE 2).
2. THE ABOVE ESTIMATE ONLY INCLUDES THE STORM DRAIN COSTS FOR THE CATCH BASINS, STORM DRAIN CATCH BASIN LATERALS AND STORM MANHOLES WHICH IS ASSUMED TO BE A PROPORTIONATE SHARE OF THE STORM IMPROVEMENTS. THE "MAINLINE" STORM DRAIN IMPROVEMENTS ARE TO BE INSTALLED BY ADJACENT DEVELOPMENT.
3. THE R-VALUE ASSUMPTIONS WERE DERIVED FROM SOILS REPORTS PREPARED BY KLEINFELDER, INC. FOR THE FOLLOWING SUBDIVISIONS: KENSINGTON PARK, TUSCANY, FASTPORT AND ALMOND VALLEY.

# PRESCOTT ROAD SECTION

## (MID-BLOCK)



**NOTES:**

1. BASED ON CITY POLICY, THE PORTION OF THE ROADWAY IMPROVEMENTS ABOVE AND BEYOND THE ADJACENT DEVELOPERS RESPONSIBILITY IS INCLUDED IN THE CFF PROGRAM. THE CFF PORTION GETS WIDER AS THE ROAD SECTION FLARES AT THE PRESCOTT/BANGS AND PRESCOTT/PELANDALE INTERSECTIONS.
2. BASED ON CITY POLICY, 40' OF IMPROVEMENTS ARE CONSTRUCTED BY THE ADJOINING DEVELOPMENT. THE 40' SECTION IS CONSTANT AT THE FLARED INTERSECTIONS.
3. THE STANDARD CITY CROSS SECTION FOR A MINOR COLLECTOR STREET IS 60' TOTAL. COLLECTOR STREETS ARE ENTIRELY CONSTRUCTED BY THE ADJOINING DEVELOPMENT.
4. THE REMAINING PORTION THAT IS NOT FUNDED BY THE CITY'S CFF PROGRAM AND IS NOT WITHIN THE STANDARD 60' MINOR COLLECTOR SECTION IS INCLUDED WITHIN THE CFD.

Drawn	J.FREITAS
Date	4-29-98
Scale	
Job No.	71-150 16

FIGURE 2  
CARVER BANGS



FAX (209)  
526-0803

SHEET  
1

CARVER-BANGS SPECIFIC PLAN AREA  
COMMUNITY FACILITIES DISTRICT  
PRELIMINARY ENGINEER'S ESTIMATE  
FOR  
AMERICAN AVENUE (2' CFD PORTION HALF SECTION ONLY)  
FROM  
PELANDALE AVENUE TO BANGS AVENUE (1,350' C.L. TO C.L.)  
(REFERENCE FIGURE 3)

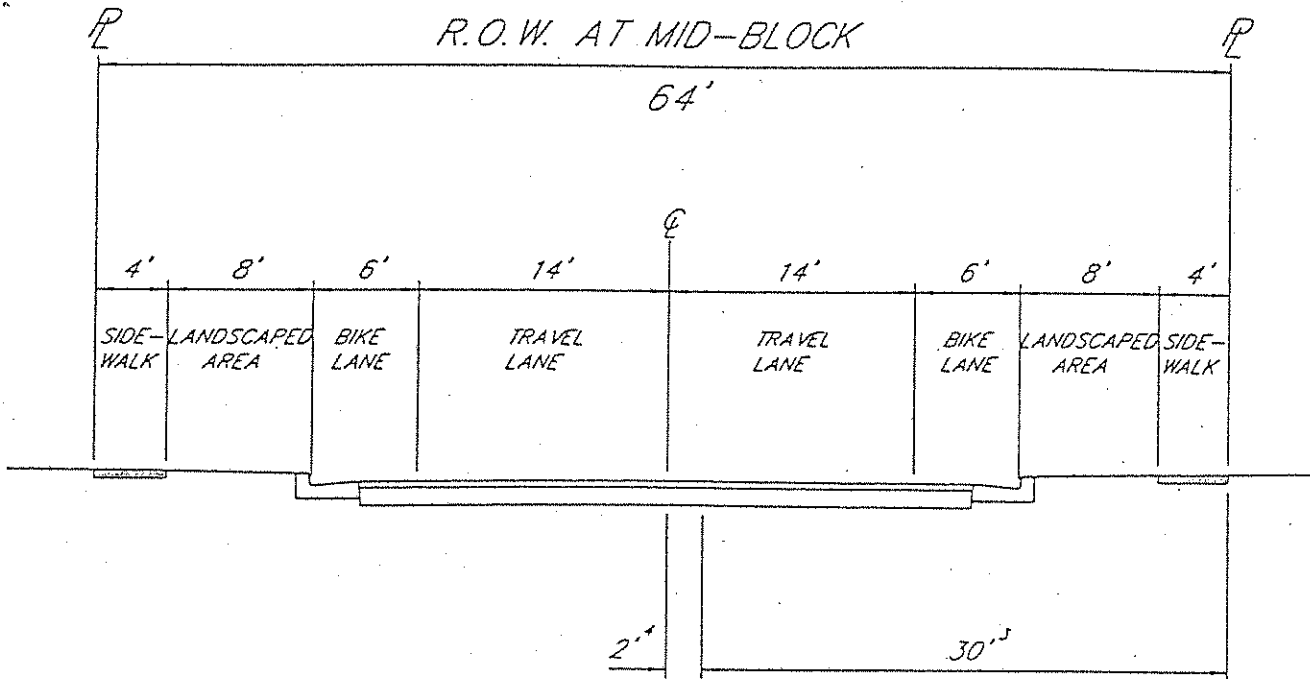
ITEM	DESCRIPTION	QUAN.	UNIT	UNIT COST	AMOUNT
<b>A. CONSTRUCTION (CFD PORTION)</b>					
1.	CLEARING AND GRADING	2,535	SF	\$0.35	\$887
2.	PAVEMENT (0.40' A.C. OVER 0.45' A.B., T.I. = 8 R.V. = 50)	2,535	SF	\$1.75	\$4,436
3.	STORM DRAINAGE				
a.	CATCH BASINS	2	EA	\$1,000.00	\$2,000
b.	12" CATCH BASIN RUNS (50 L.F. PER C.B.)	100	LF	\$30.00	\$3,000
c.	MANHOLES	2	EA	\$2,000.00	\$4,000
4.	PRIME COAT	LUMP SUM	LS	\$100.00	\$100
5.	STRIPING / SIGNAGE (5% OF GRADING AND PAVEMENT COSTS)	LUMP SUM	LS	\$300.00	\$300
CONSTRUCTION TOTAL =====>					\$14,724
15% CONTINGENCY =====>					\$2,209
TOTAL PRESCOTT ROAD CONSTRUCTION =====>					\$16,932
<b>B. FEES</b>					
1.	ENGINEERING (6% OF CONSTRUCTION TOTAL)	1	EST	\$1,015.92	\$1,016
2.	STAKING (3% OF CONSTRUCTION TOTAL)	1	EST	\$507.96	\$508
3.	CONSTRUCTION MANAGEMENT (4% OF CONSTRUCTION TOTAL)	1	EST	\$677.28	\$677
TOTAL FEES =====>					\$2,201
<b>C. LAND ACQUISITION</b>					
1.	RIGHT-OF-WAY DEDICATION	0.06	AC	\$65,000.00	\$3,900
2.	RIGHT-OF-WAY ADMINISTRATION	LUMP SUM	LS	\$1,000.00	\$1,000
TOTAL LAND ACQUISITION =====>					\$4,900
GRAND TOTAL =====>					\$24,033

**NOTES:**

- THE ABOVE ESTIMATE IS FOR THE PORTION OF AMERICAN AVENUE IMPROVEMENTS WHICH IS ABOVE AND BEYOND A NORMAL CITY STANDARD COLLECTOR STREET (60' WIDE) AND WHICH IS NOT FUNDED THROUGH THE CITY'S CFF PROGRAM. (SEE FIGURE 3).
- THE ABOVE ESTIMATE ONLY INCLUDES THE STORM DRAIN COSTS FOR THE CATCH BASINS, STORM DRAIN CATCH BASIN LATERALS AND STORM MANHOLES WHICH IS ASSUMED TO BE A PROPORTIONATE SHARE OF THE STORM IMPROVEMENTS. THE "MAINLINE" STORM DRAIN IMPROVEMENTS ARE TO BE INSTALLED BY ADJACENT DEVELOPMENT.
- THE R-VALUE ASSUMPTIONS WERE DERIVED FROM SOILS REPORTS PREPARED BY KLEINFELDER, INC.

# AMERICAN AVENUE SECTION

(MID-BLOCK-LOOKING NORTH)



**NOTES:**

1. BASED ON CITY POLICY, THE PORTION OF THE ROADWAY IMPROVEMENTS ABOVE AND BEYOND THE ADJACENT DEVELOPERS RESPONSIBILITY IS INCLUDED IN THE CFF PROGRAM. THE CFF PORTION GETS WIDER AS THE ROAD SECTION FLARES AT THE PRESCOTT/BANGS AND PRESCOTT/PELANDALE INTERSECTIONS.
2. BASED ON CITY POLICY, 40' OF IMPROVEMENTS ARE CONSTRUCTED BY THE ADJOINING DEVELOPMENT. THE 40' SECTION IS CONSTANT AT THE FLARED INTERSECTIONS.
3. THE STANDARD CITY CROSS SECTION FOR A MINOR COLLECTOR STREET IS 60' TOTAL. COLLECTOR STREETS ARE ENTIRELY CONSTRUCTED BY THE ADJOINING DEVELOPMENT.
4. THE REMAINING PORTION THAT IS NOT FUNDED BY THE CITY'S CFF PROGRAM AND IS NOT WITHIN THE STANDARD 60' MINOR COLLECTOR SECTION IS INCLUDED WITHIN THE CFD.

Drawn J.R.M.  
 Date 7-28-98  
 Scale

FIGURE 3  
 CARVER BANGS



FAX (209) 526-0803  
 SHEET 1

CARVER-BANGS SPECIFIC PLAN AREA  
COMMUNITY FACILITIES DISTRICT  
PRELIMINARY ENGINEER'S ESTIMATE  
FOR  
BANGS AVENUE (9' CFD PORTION, HALF SECTION ONLY)  
FROM  
AMERICAN AVENUE TO CARVER ROAD (5,350' C.L. TO C.L.)  
(REFERENCE FIGURE 4)

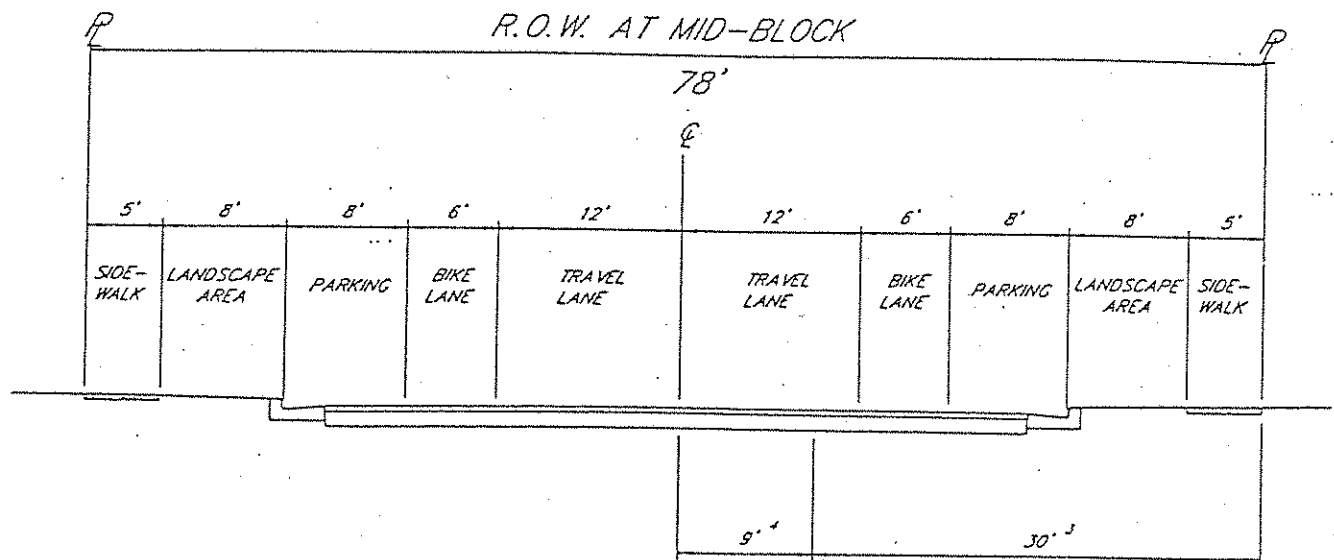
ITEM	DESCRIPTION	QUAN.	UNIT	UNIT COST	AMOUNT
<b>A. CONSTRUCTION (CFD PORTION)</b>					
1.	CLEARING AND GRADING	48,150	SF	\$0.35	\$16,853
2.	PAVEMENT (0.40' A.C. OVER 0.45' A.B., T.I. = 8 R.V. = 50)	48,150	SF	\$1.75	\$84,263
3.	STORM DRAINAGE				
a.	CATCH BASINS	7	EA	\$1,000.00	\$7,000
b.	12" CATCH BASIN RUNS (50 L.F. PER C.B.)	350	LF	\$30.00	\$10,500
c.	MANHOLES	7	EA	\$2,000.00	\$14,000
4.	PRIME COAT	48,150	SF	\$0.02	\$963
5.	STRIPING / SIGNAGE (5% OF GRADING AND PAVEMENT COSTS)	1	EST	\$5,055.75	\$5,056
CONSTRUCTION TOTAL =====>					\$138,637
15% CONTINGENCY =====>					\$20,795
TOTAL PRESCOTT ROAD CONSTRUCTION =====>					\$159,429
<b>B. FEES</b>					
1.	ENGINEERING (6% OF CONSTRUCTION TOTAL)	1	EST	\$9,565.73	\$9,566
2.	STAKING (3% OF CONSTRUCTION TOTAL)	1	EST	\$4,782.86	\$4,783
3.	CONSTRUCTION MANAGEMENT (4% OF CONSTRUCTION TOTAL)	1	EST	\$6,377.15	\$6,377
TOTAL FEES =====>					\$20,726
<b>C. LAND ACQUISITION</b>					
1.	RIGHT-OF-WAY DEDICATION	1.11	AC	\$65,000.00	\$72,150
2.	RIGHT-OF-WAY ADMINISTRATION	LUMP SUM	LS	\$2,000.00	\$2,000
TOTAL LAND ACQUISITION =====>					\$74,150
GRAND TOTAL =====>					\$254,305

**NOTES:**

1. THE ABOVE ESTIMATE IS FOR THE PORTION OF BANGS AVENUE IMPROVEMENTS WHICH IS ABOVE AND BEYOND A NORMAL CITY STANDARD COLLECTOR STREET (60' WIDE) AND WHICH IS NOT FUNDED THROUGH THE CITY'S CFF PROGRAM. (SEE FIGURE 4).
2. THE ABOVE ESTIMATE ONLY INCLUDES THE STORM DRAIN COSTS FOR THE CATCH BASINS, STORM DRAIN CATCH BASIN LATERALS AND STORM MANHOLES WHICH IS ASSUMED TO BE A PROPORTIONATE SHARE OF THE STORM IMPROVEMENTS. THE "MAINLINE" STORM DRAIN IMPROVEMENTS ARE TO BE INSTALLED BY ADJACENT DEVELOPMENT.
3. THE R-VALUE ASSUMPTIONS WERE DERIVED FROM SOILS REPORTS PREPARED BY KLEINFELDER, INC.

# BANGS AVENUE SECTION

(MID-BLOCK LOOKING EAST)



**NOTES:**

1. BASED ON CITY POLICY, THE PORTION OF THE ROADWAY IMPROVEMENTS ABOVE AND BEYOND THE ADJACENT DEVELOPERS RESPONSIBILITY IS INCLUDED IN THE CFF PROGRAM. THE CFF PORTION GETS WIDER AS THE ROAD SECTION FLARES AT THE PRESCOTT/BANGS AND PRESCOTT/PELANDALE INTERSECTIONS.

2. BASED ON CITY POLICY, 40' OF IMPROVEMENTS ARE CONSTRUCTED BY THE ADJOINING DEVELOPMENT. THE 40' SECTION IS CONSTANT AT THE FLARED INTERSECTIONS.

3. THE STANDARD CITY CROSS SECTION FOR A MINOR COLLECTOR STREET IS 60' TOTAL. COLLECTOR STREETS ARE ENTIRELY CONSTRUCTED BY THE ADJOINING DEVELOPMENT.

4. THE REMAINING PORTION THAT IS NOT FUNDED BY THE CITY'S CFF PROGRAM AND IS NOT WITHIN THE STANDARD 60' MINOR COLLECTOR SECTION IS INCLUDED WITHIN THE CFD.

Drawn	J.R.M.
Date	7-28-98
Scale	
Job No.	71-1501K

FIGURE 4  
CARVER BANGS



FAX (209) 526-0803  
SHEET 1

CARVER-BANGS SPECIFIC PLAN AREA  
COMMUNITY FACILITIES DISTRICT  
PRELIMINARY ENGINEER'S ESTIMATE  
FOR  
CARVER ROAD (9' CFD PORTION, HALF SECTION ONLY)  
FROM  
PELANDALE AVENUE TO BANGS AVENUE  
(REFERENCE FIGURE 5)

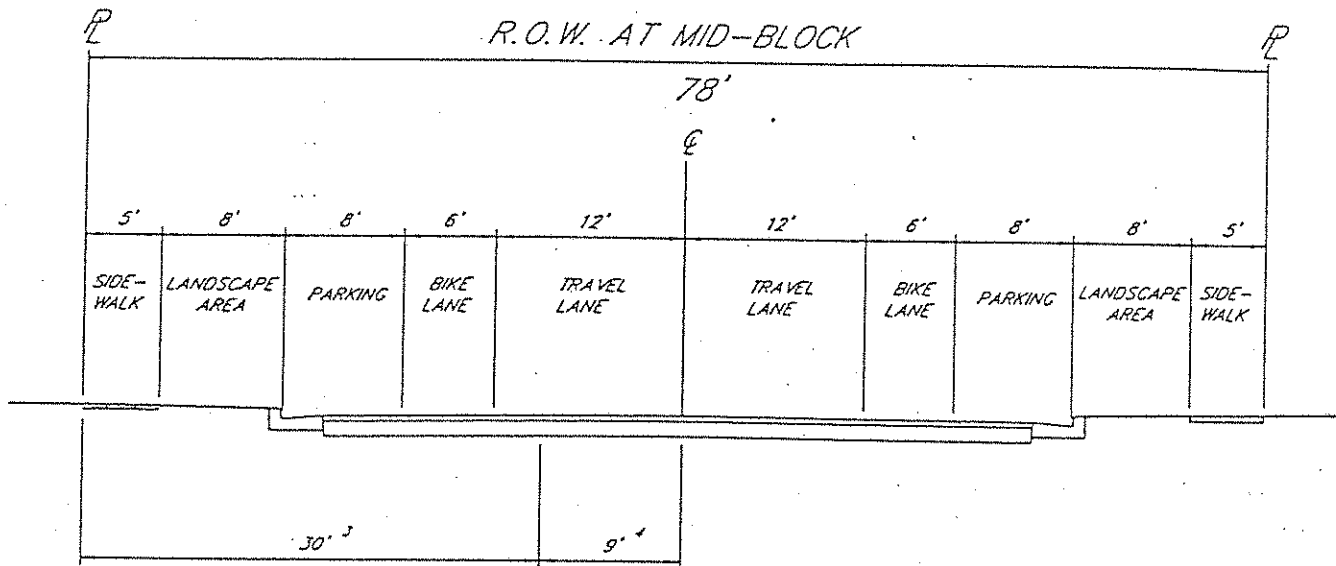
ITEM	DESCRIPTION	QUAN.	UNIT	UNIT COST	AMOUNT
<b>A. CONSTRUCTION (6' CFD PORTION)</b>					
1.	CLEARING AND GRADING	9,900	SF	\$0.35	\$3,465
2.	PAVEMENT (0.40' A.C. OVER 0.45' A.B., T.I. = 8 R.V. = 50)	9,900	SF	\$1.75	\$17,325
3.	STORM DRAINAGE				
a.	CATCH BASINS	2	EA	\$1,000.00	\$2,000
b.	12" CATCH BASIN RUNS (50 L.F. PER C.B.)	100	LF	\$30.00	\$3,000
c.	MANHOLES	2	EA	\$2,000.00	\$4,000
4.	PRIME COAT	9,900	SF	\$0.02	\$198
5.	STRIPING / SIGNAGE (5% OF GRADING AND PAVEMENT COSTS)	1	EST	\$1,039.50	\$1,040
CONSTRUCTION TOTAL =====>					\$31,028
15% CONTINGENCY =====>					\$4,651
TOTAL PRESCOTT ROAD CONSTRUCTION =====>					\$35,682
<b>B. FEES</b>					
1.	ENGINEERING (6% OF CONSTRUCTION TOTAL)	1	EST	\$2,140.90	\$2,141
2.	STAKING (3% OF CONSTRUCTION TOTAL)	1	EST	\$1,070.45	\$1,070
3.	CONSTRUCTION MANAGEMENT (4% OF CONSTRUCTION TOTAL)	1	EST	\$1,427.27	\$1,427
TOTAL FEES =====>					\$4,639
<b>C. LAND ACQUISITION</b>					
1.	RIGHT-OF-WAY DEDICATION	0.23	AC	\$65,000.00	\$14,950
2.	RIGHT-OF-WAY ADMINISTRATION	LUMP SUM	LS	\$2,000.00	\$2,000
TOTAL LAND ACQUISITION =====>					\$16,950
GRAND TOTAL =====>					\$57,270

**NOTES:**

1. THE ABOVE ESTIMATE IS FOR THE PORTION OF CARVER ROAD IMPROVEMENTS WHICH IS ABOVE AND BEYOND A NORMAL CITY STANDARD COLLECTOR STREET (60' WIDE) AND WHICH IS NOT FUNDED THROUGH THE CITY'S CFF PROGRAM. (SEE FIGURE 5).
2. THE ABOVE ESTIMATE ONLY INCLUDES THE STORM DRAIN COSTS FOR THE CATCH BASINS, STORM DRAIN CATCH BASIN LATERALS AND STORM MANHOLES WHICH IS ASSUMED TO BE A PROPORTIONATE SHARE OF THE STORM IMPROVEMENTS. THE "MAINLINE" STORM DRAIN IMPROVEMENTS ARE TO BE INSTALLED BY ADJACENT DEVELOPMENT.
3. THE R-VALUE ASSUMPTIONS WERE DERIVED FROM SOILS REPORTS PREPARED BY KLEINFELDER, INC. FOR THE FOLLOWING SUBDIVISIONS: KENSINGTON PARK, TUSCANY, EASTPORT AND ALMOND VALLEY.

# CARVER ROAD SECTION

(MID-BLOCK LOOKING NORTH)



**NOTES:**

1. BASED ON CITY POLICY, THE PORTION OF THE ROADWAY IMPROVEMENTS ABOVE AND BEYOND THE ADJACENT DEVELOPERS RESPONSIBILITY IS INCLUDED IN THE CFF PROGRAM. THE CFF PORTION GETS WIDER AS THE ROAD SECTION FLARES AT THE PRESCOTT/BANGS AND PRESCOTT/PELANDALE INTERSECTIONS.
2. BASED ON CITY POLICY, 40' OF IMPROVEMENTS ARE CONSTRUCTED BY THE ADJOINING DEVELOPMENT. THE 40' SECTION IS CONSTANT AT THE FLARED INTERSECTIONS.
3. THE STANDARD CITY CROSS SECTION FOR A MINOR COLLECTOR STREET IS 60' TOTAL. COLLECTOR STREETS ARE ENTIRELY CONSTRUCTED BY THE ADJOINING DEVELOPMENT.
4. THE REMAINING PORTION THAT IS NOT FUNDED BY THE CITY'S CFF PROGRAM AND IS NOT WITHIN THE STANDARD 60' MINOR COLLECTOR SECTION IS INCLUDED WITHIN THE CFD.

Drawn	J.R.M.
Date	7-28-98
Scale	
Job No.	71-150 16

**FIGURE 5**  
**CARVER BANGS**



FAX (209)  
526-0803

SHEET  
1

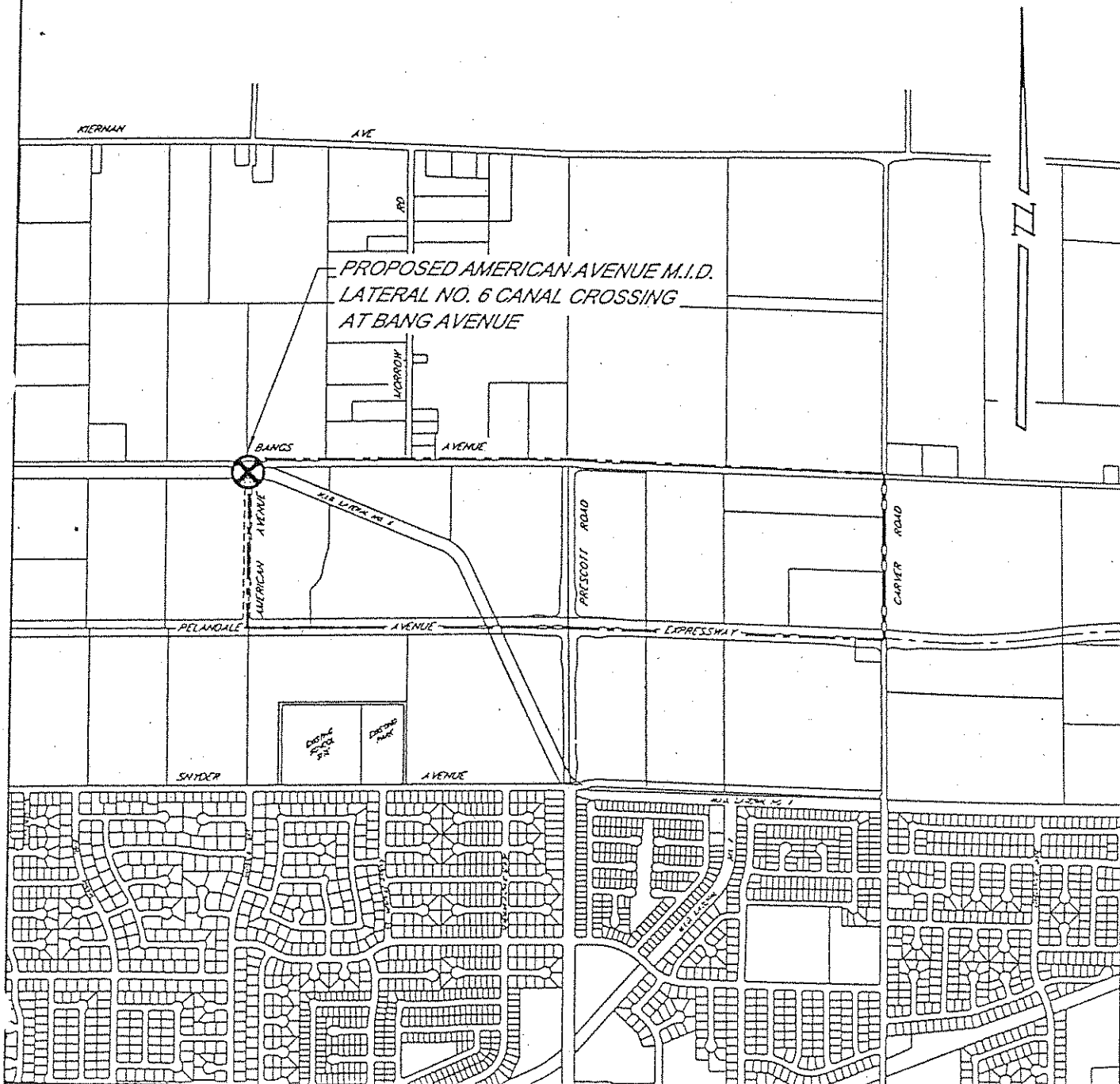
CARVER-BANGS SPECIFIC PLAN AREA  
COMMUNITY FACILITIES DISTRICT  
PRELIMINARY ENGINEER'S ESTIMATE  
FOR  
AMERICAN AVENUE  
MODESTO IRRIGATION DISTRICT LATERAL NO. 6  
CULVERT CROSSING AT BANGS AVENUE  
(REFERENCE FIGURE 6)

ITEM	DESCRIPTION	QUAN.	UNIT	UNIT COST	AMOUNT
<b>A. CONSTRUCTION</b>					
1.	CLEARING AND GRADING	LUMP SUM	LS	\$15,000.00	\$15,000
2.	EARTHWORK	LUMP SUM	LS	\$23,750.00	\$23,750
3.	CAST-IN-PLACE REINFORCED CONCRETE 4.5' x 12' DOUBLE BOX CULVERT	LUMP SUM	LS	\$125,000.00	\$125,000
4.	INLET STRUCTURE	1	EA	\$21,200.00	\$21,200
5.	OUTLET STRUCTURE	1	EA	\$21,200.00	\$21,200
6.	FENCING	LUMP SUM	LS	\$4,370.00	\$4,370
7.	UTILITY RELOCATION	1	EST	\$10,000.00	\$10,000
CONSTRUCTION TOTAL =====>					\$220,520
15% CONTINGENCY =====>					\$33,078
TOTAL CONSTRUCTION FOR AMERICAN AVENUE CULVERT CROSSING =====>					\$253,598
<b>B. FEES</b>					
1.	ENGINEERING (6% OF CONSTRUCTION TOTAL)	1	EST	\$15,215.88	\$15,216
2.	STAKING (3% OF CONSTRUCTION TOTAL)	1	EST	\$7,607.94	\$7,608
3.	CONSTRUCTION MANAGEMENT (4% OF CONSTRUCTION TOTAL)	1	EST	\$10,143.92	\$10,144
4.	GEOTECHNICAL	1	EST	\$5,000.00	\$5,000
5.	MID PERMITTING	1	EST	\$3,500.00	\$3,500
TOTAL FEES =====>					\$41,468
GRAND TOTAL =====>					\$295,066

NOTES:

1. THE ABOVE ESTIMATE INCLUDES THE COST TO INSTALL AN ULTIMATE CROSSING TO ACCOMMODATE THE 64' ULTIMATE AMERICAN AVENUE CROSS SECTION AS SHOWN ON EXHIBIT 4-5 OF THE ADOPTED CARVER BANGS SPECIFIC PLAN.

# M.I.D. LATERAL NO. 6 AMERICAN AVENUE CANAL CROSSING



Drawn J.FREITAS

Date 4-29-98

Scale

Job No. 71-15016

FIGURE 6  
CARVER BANGS



FAX (209)  
526-0803

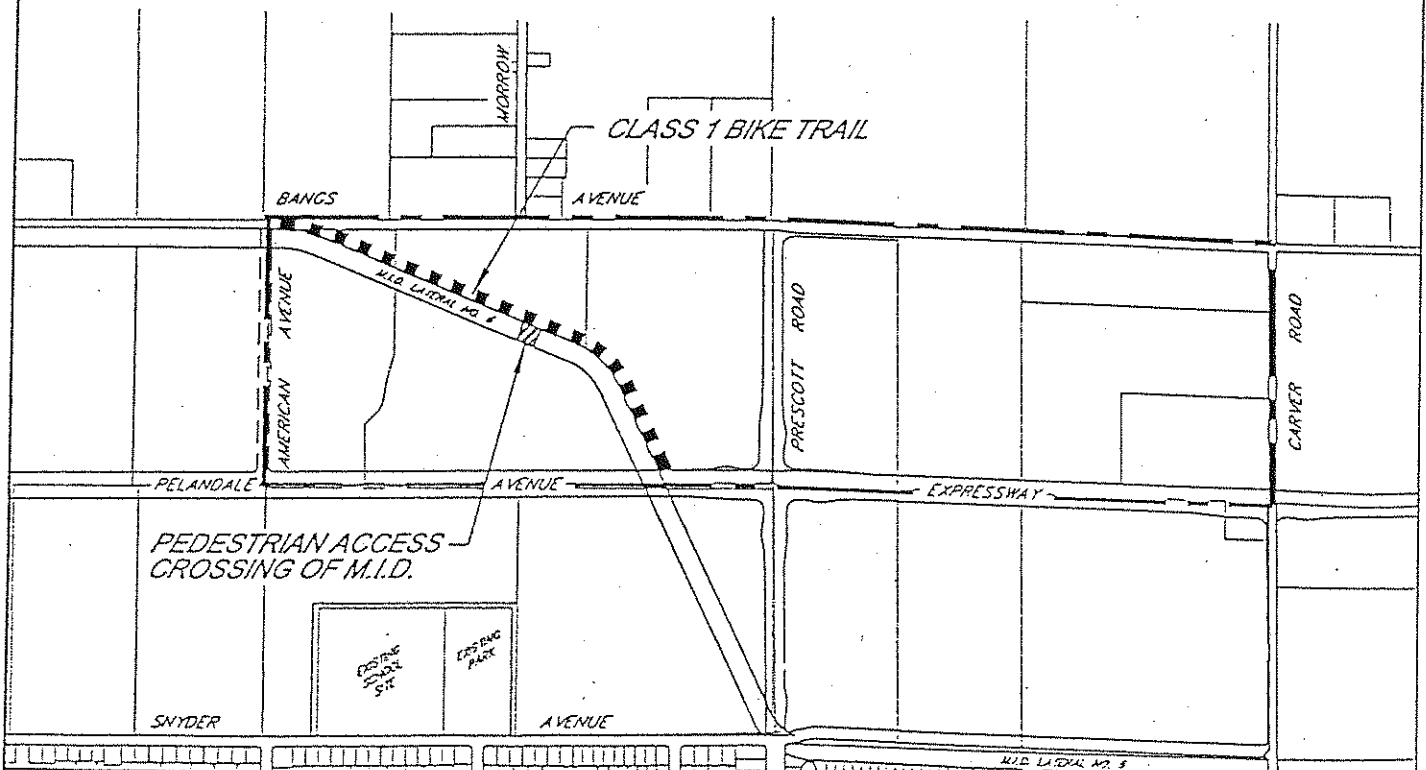
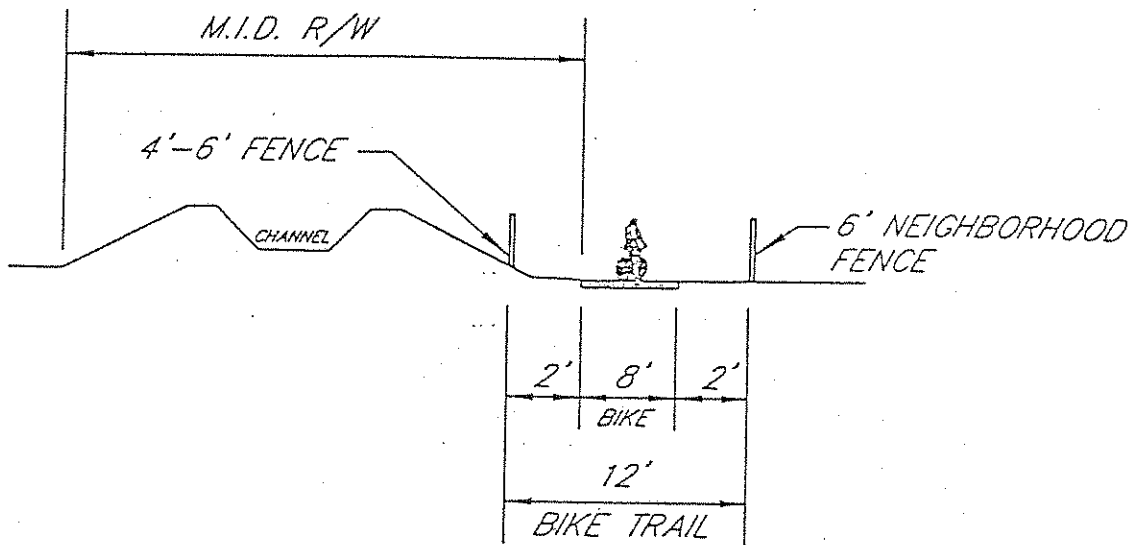
SHEET

1

CARVER-BANGS SPECIFIC PLAN AREA  
COMMUNITY FACILITIES DISTRICT  
PRELIMINARY ENGINEER'S ESTIMATE  
FOR  
CLASS I BIKE TRAIL  
AND  
PEDESTRIAN ACCESS CROSSING OF  
MODESTO IRRIGATION DISTRICT LATERAL NO. 6  
(REFERENCE FIGURE 7)

ITEM	DESCRIPTION	QUAN.	UNIT	UNIT COST	AMOUNT
<b>I. DESIGN PARAMETERS</b>					
1.	INSTALL 12' BIKE TRAIL SYSTEM (8' PATH WITH TWO-2' SHOULDER AREAS) IN ACCORDANCE WITH EXHIBIT 4-7 OF THE ADOPTED CARVER BANGS SPECIFIC PLAN				
2.	TOTAL LENGTH 2180 L.F. OR 0.413 MILES				
3.	THE CITY'S CFF PROGRAM HAS THE FOLLOWING CLASS I BIKE TRAIL COSTS INCLUDED:				
	Existing CFF Portion				
	0.413 Miles x \$105,600 =				\$43,613
<b>II. CLASS I BIKE TRAIL</b>					
<b>A. CONSTRUCTION</b>					
1.	8' BIKE PATH	17,440	SF	\$2.00	\$34,880
2.	2' GRAVEL SHOULDER EACH SIDE (2" DECOMPOSED GRANITE)	8,720	SF	\$0.30	\$2,616
3.	4-6' FENCE	2,180	LF	\$16.00	\$34,880
4.	PEDESTRIAN ACCESS CROSSING	LUMP SUM	LS	\$50,000.00	\$50,000
					CONSTRUCTION TOTAL =====>
					\$122,376
					10% CONTINGENCY =====>
					\$12,238
					TOTAL BIKE PATH =====>
					\$134,614
<b>B. FEES</b>					
1.	ENGINEERING (6% OF CONSTRUCTION TOTAL)	1	EST	\$8,076.82	\$8,077
2.	STAKING (3% OF CONSTRUCTION TOTAL)	1	EST	\$4,038.41	\$4,038
3.	CONSTRUCTION MANAGEMENT (4% OF CONSTRUCTION TOTAL)	1	EST	\$5,384.54	\$5,385
					TOTAL FEES =====>
					\$17,500
<b>C. LAND ACQUISITION</b>					
1.	RIGHT-OF-WAY DEDICATION (10' WIDE; ASSUME 2' JOINT USE OF EXISTING MID RIGHT-OF-WAY)	0.50	AC	\$65,000.00	\$32,500
2.	RIGHT-OF-WAY ADMINISTRATION	LUMP SUM	LS	\$1,500.00	\$1,500
					TOTAL LAND ACQUISITION =====>
					\$34,000
					GRAND TOTAL =====>
					\$186,113
					CFF PORTION =====>
					\$43,613
					TOTAL CARVER BANGS CFD PORTION =====>
					\$142,500

# CLASS 1 BIKE PATH / PEDESTRIAN ACCESS CROSSING OF M.I.D. NO.6



Drawn J.R.M.  
 Date 7-28-98  
 Scale

FIGURE 7  
 CARVER BANGS



FAX (209) 526-0803  
 SHEET 1

**PELANDALE-SNYDER  
(TAX AREA B)**

**DETAILED FACILITY COST ESTIMATES**

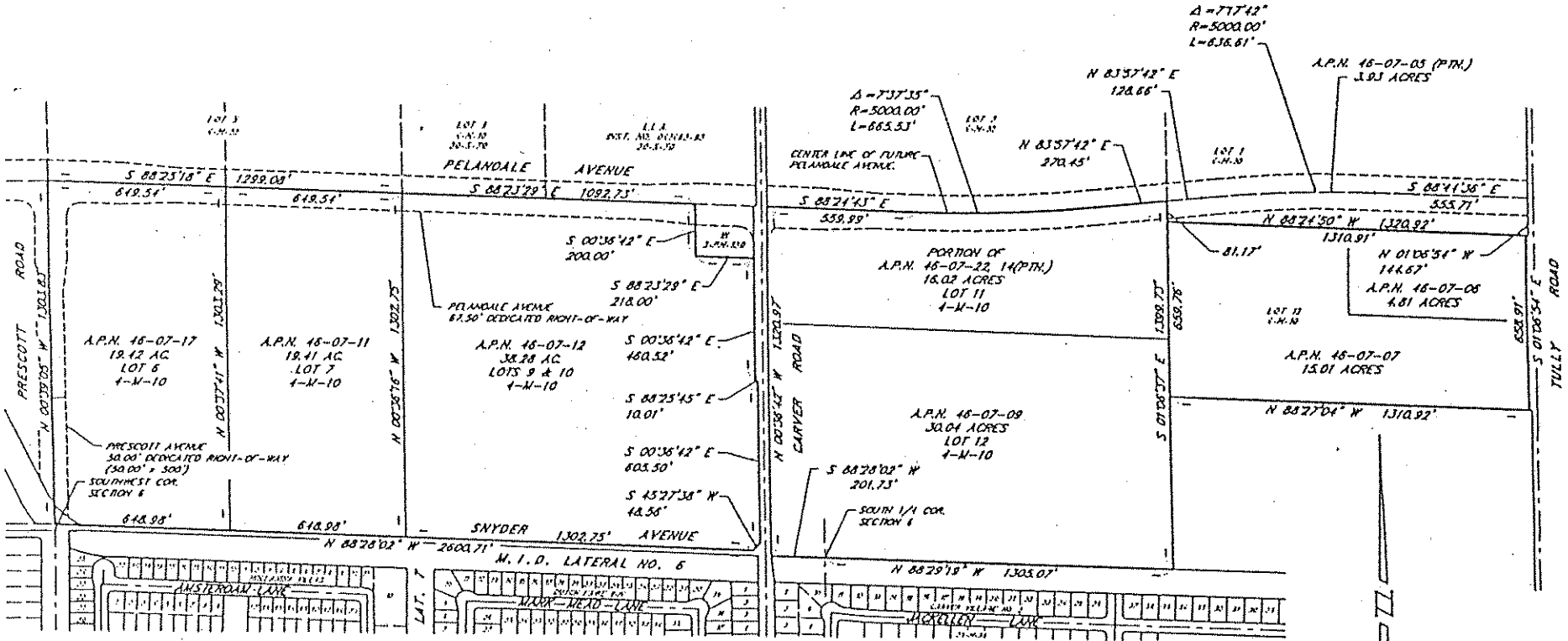
PELANDALE / SNYDER SPECIFIC PLAN AREA (TAX AREA B)  
COMMUNITY FACILITIES  
DISTRICT FORMATION  
COST SUMMARY

A. STORM DRAINAGE	<del>\$4,389,042</del> <del>\$4,000,232</del>
B. DALE ROAD	\$531,075
C. PRESCOTT ROAD	\$628,297
D. TULLY ROAD	\$1,011,016
E. SNYDER AVENUE	<del>\$504,283</del> <del>\$52,743</del>
F. CLASS I BIKE TRAIL	\$752,675
G. FORMATION COSTS	\$67,500
	-----
TOTAL CFD COSTS =====>	<del>\$7,043,538</del> \$7,883,888

NOTE:

1. THE ABOVE TOTAL COSTS DO NOT INCLUDE THE ANNUAL LANDSCAPE MAINTENANCE COSTS FOR THE PLAN AREA. THE ANNUAL LANDSCAPE MAINTENANCE AND ADMINISTRATION COSTS ARE ESTIMATED AT \$852 PER NET ACRE.
2. FINAL BID QUANTITIES MAY INCLUDE MORE DETAILED LINE ITEMS WHICH SHALL BE ALL INCLUSIVE WITHIN LUMP SUM AMOUNTS OR QUANTITIES SHOWN IN THIS DOCUMENT.

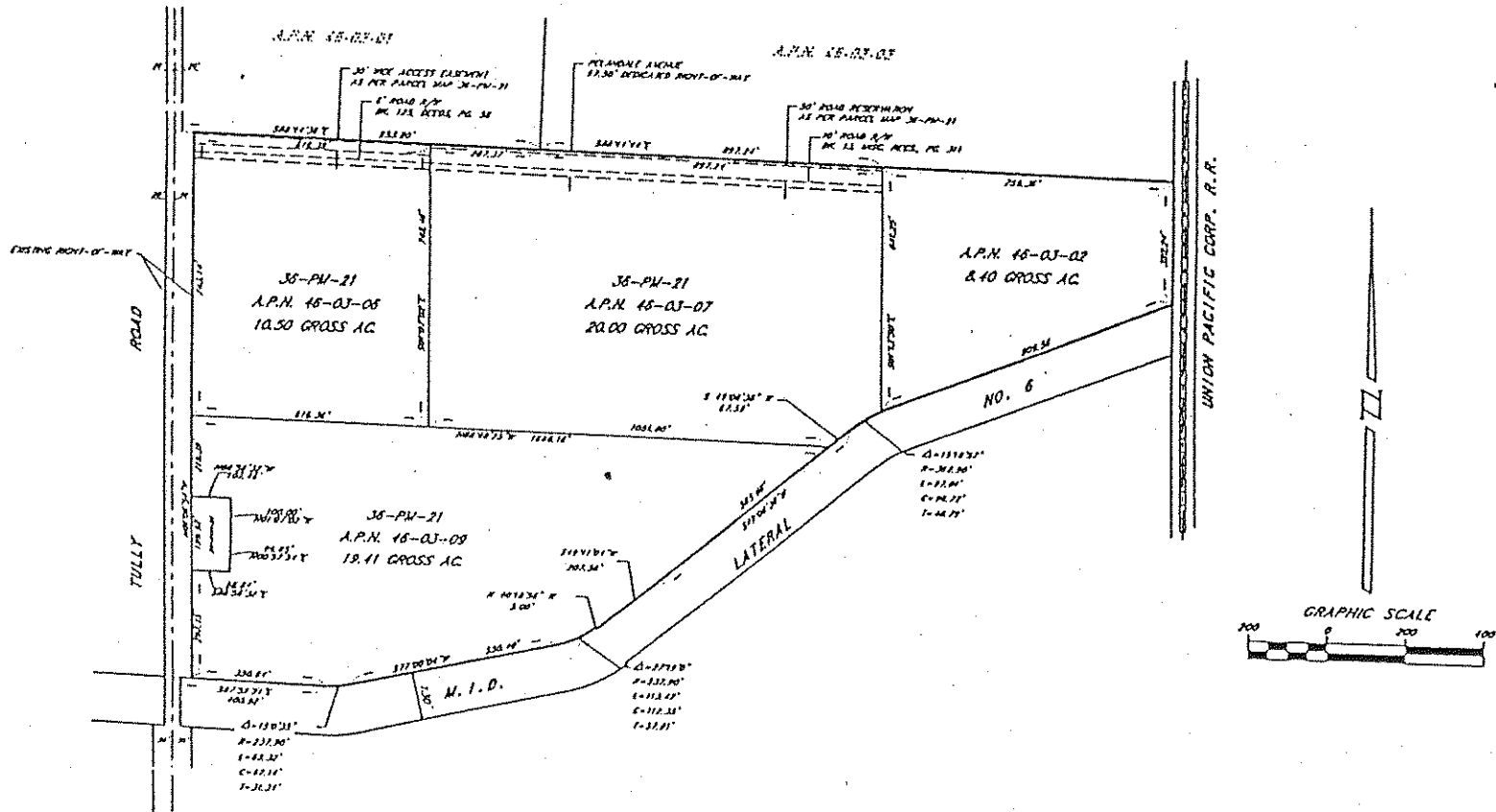
PROPOSED BOUNDARIES OF  
 COMMUNITY FACILITIES DISTRICT NO. 1998-2  
 (CARVER-BANGS/PELANDALE-SNYDER)  
 COUNTY OF STANISLAUS, STATE OF CALIFORNIA



LAND PLANNING • ENGINEERING • SURVEYING

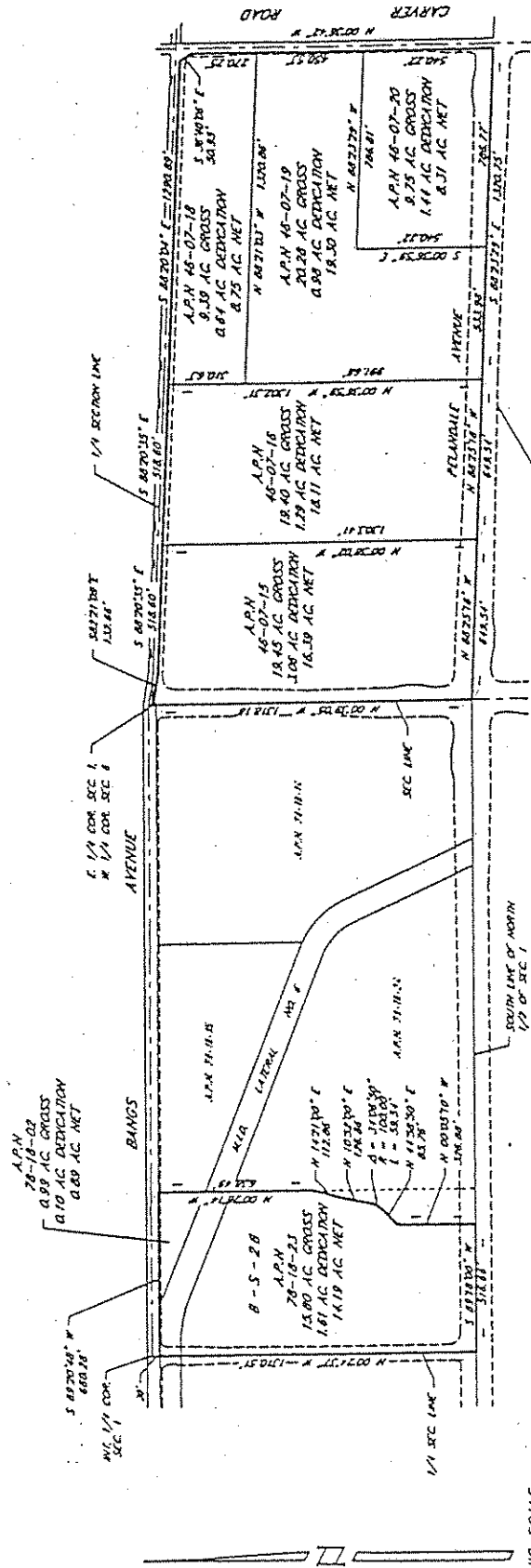
100 N STREET, SUITE 4 • STOCKTON, CA 95210 • TEL (209) 321-1111 • FAX (209) 321-1111

PROPOSED BOUNDARIES OF  
 COMMUNITY FACILITIES DISTRICT NO. 1998-2  
 (CARVER-BANGS/PELANDALE-SNYDER)  
 COUNTY OF STANISLAUS, STATE OF CALIFORNIA



LAND PLANNING • ENGINEERING • SURVEYING  
 200 N. STREET, SUITE 8 • AMERSTA, CA 95221 • PH (916) 331-2312 • FAX (916) 331-2222

PROPOSED BOUNDARIES OF  
 COMMUNITY FACILITIES DISTRICT NO. 1998-2  
 (CARVER-BANGS/PELANDALE-SNYDER)  
 COUNTY OF STANISLAUS, STATE OF CALIFORNIA



LAND PLANNING • ENGINEERING • SURVEYING  
 1000 N. F STREET, SUITE 100 • COLTON CA 95310 • PH: (209) 311-2111 • FAX: (209) 311-2100

PELANDALE-SNYDER SPECIFIC PLAN AREA  
COMMUNITY FACILITIES DISTRICT  
PRELIMINARY ENGINEER'S ESTIMATE  
FOR  
STORM DRAIN TRUNK LINES  
AND  
PROPORTIONATE SHARE OF  
STORM DRAIN BASIN AND APPURTENANCES  
(REFERENCE FIGURE 1)

ITEM	DESCRIPTION	QUAN.	UNIT	UNIT COST	AMOUNT
<b><u>I. STORM DRAIN TRUNK LINES</u></b>					
<b>A. CONSTRUCTION</b>					
1.	36" STORM	400	LF	\$121.00	\$48,400
2.	42" STORM	1,874	LF	\$155.00	\$290,470
3.	48" STORM	3,661	LF	\$161.00	\$589,421
4.	54" STORM	5,242	LF	\$182.00	\$954,044
5.	PROPORTIONATE SHARE 54" TO BASIN	108	LF	\$182.00	\$19,656
6.	MANHOLES	29	EA	\$5,750.00	\$166,750
SUB-TOTAL STORM DRAIN TRUNK LINES =====>					\$2,068,741
10% CONTINGENCY =====>					\$206,874
TOTAL CONSTRUCTION - STORM DRAIN TRUNK LINES =====>					\$2,275,615
<b><u>II. STORM DRAINAGE BASIN FACILITIES</u></b>					
<b>B. CONSTRUCTION</b>					
1.	STORM DRAIN BASIN EXCAVATION	100,372	CY	\$6.00	\$602,232
2.	STORM DRAIN PUMP STATION	LUMP SUM	LS	\$389,555.00	\$389,555
3.	STORM DRAIN PIPING (PLUS JACK & BORE)	LUMP SUM	LS	\$21,057.00	\$21,057
4.	FENCING	2,890	LF	\$16.00	\$46,240
5.	LANDSCAPING	13,170	SF	\$2.80	\$36,876
6.	INLETS	LUMP SUM	LS	\$7,019.00	\$7,019
6.	CLEARING / DISCING / STRIPPING	LUMP SUM	LS	\$7,019.00	\$7,019
SUB-TOTAL					\$1,109,998
10% CONTINGENCY =====>					\$111,000

Pelandale-Snyder Specific Plan Area  
 Community Facilities District  
 Preliminary Engineer's Estimate  
 October 23, 1998

ITEM	DESCRIPTION	QUAN.	UNIT	UNIT COST	AMOUNT
<b>C. FEES</b>					
1.	ENGINEERING	1	EST	\$70,192.00	\$70,192
2.	STAKING	1	EST	\$34,746.00	\$34,746
3.	CONSTRUCTION MANAGEMENT	1	EST	\$46,796.00	\$46,796
4.	GEOTECHNICAL	1	EST	\$12,635.00	\$12,635
TOTAL FEES ==>					\$164,369
<b>D. LAND ACQUISITION</b>					
1.	LAND PURCHASE	70.39% OF TOTAL COST OF \$1,030,239 =			\$725,185
2.	ADMINISTRATION	LUMP SUM LS			\$2,875.00
TOTAL LAND ACQUISITION ==>					\$728,060
PELANDALE - SNYDER STORM DRAIN FACILITIES TOTAL ==>					\$4,389,042

NOTES:

1. THE PELANDALE-SNYDER PROPORTIONATE SHARE OF THE STORM DRAIN BASIN AND APPURTENANCES WAS DERIVED FROM A PER GROSS ACRE SHARE. THE FOLLOWING REPRESENT THE FORMULA USED FOR CONSTRUCTION AND FEES:

A. GROSS ACREAGE SUMMARY

PELANDALE / SNYDER	357.46
CARVER / BANGS	151.80
TOTAL GROSS ACRES ==>	509.26

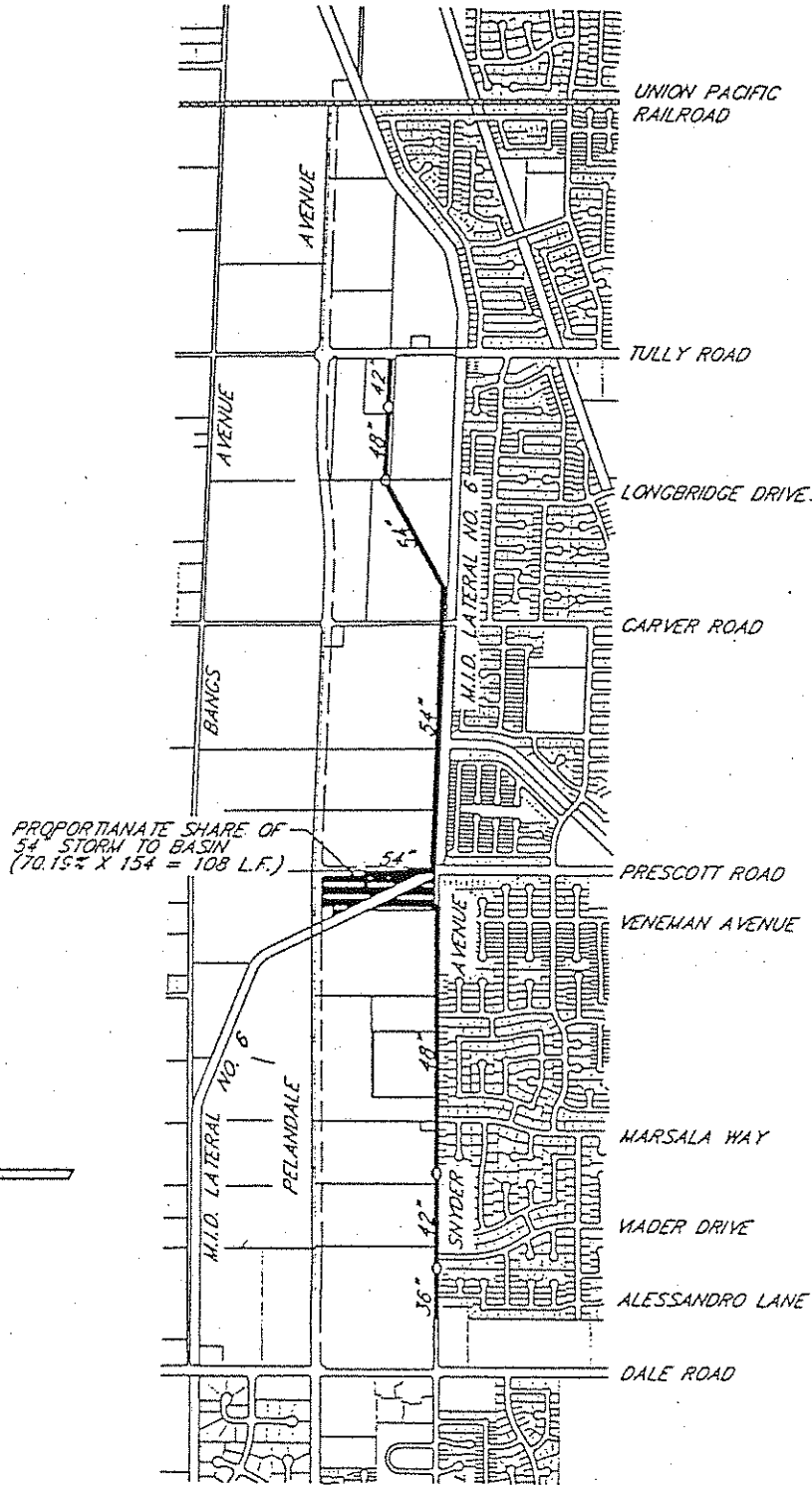
B. PELANDALE / SNYDER PROPORTIONATE SHARE

357.46 / 509.26 = 70.19%

2. STORM DRAIN TRUNK LINE AND BASIN SIZING WERE TAKEN FROM THE PELANDALE-SNYDER A CARVER-BANGS STORM DRAINAGE SYSTEM PLANS DATED AUGUST 5, 1998 PREPARED BY MID VALLEY ENGINEERING, INC.

3. STORM DRAIN BASIN EXCAVATION INCLUDES BUT IS NOT LIMITED TO THE FOLLOWING: PIPE D DRAINS, SPLASH PADS, LOW FLOW CHANNEL AND ROCK TRENCH, A.C. PAVING, DISPOSAL AREA GROUND PREPARATION, 6" A.C. BERMS, AND REMOVAL OF EXISTING IRRIGATION LINES.

# BACKBONE STORM DRAIN SYSTEM



Drawn J.R.M.  
 Date 8-13-98  
 Scale  
 Job No. 70-332

**FIGURE 1**  
**PELANDALE SNYDER**  
 COLLECTION



FAX (209) 526-0803  
 SHEET 1

PELANDALE-SNYDER SPECIFIC PLAN AREA  
COMMUNITY FACILITIES DISTRICT  
PRELIMINARY ENGINEER'S ESTIMATE  
FOR  
DALE ROAD (CENTER 20' C.L. TO C.L.)  
AND EAST SIDE DALE ROAD FRONTAGE IMPROVEMENTS  
SNYDER AVENUE TO PELANDALE AVENUE (1,350' C.L. TO C.L.)  
(REFERENCE FIGURE 2)

ITEM	DESCRIPTION	QUAN.	UNIT	UNIT COST	AMOUNT
<b><u>I. DALE ROAD CENTER 20 FEET</u></b>					
<b>A. CONSTRUCTION</b>					
1.	SAWCUT AND REMOVE EXISTING PAVEMENT	26,400	SF	\$1.50	\$39,600
2.	MEDIAN CURB	2,690	LF	\$15.00	\$40,350
3.	MEDIAN COVER	17,520	SF	\$3.50	\$61,320
4.	PAVEMENT (0.50' A.C. OVER 0.65' A.B., T.I. = 10; R.V. = 50)	5,280	SF	\$2.00	\$10,560
5.	STRIPING	LUMP SUM	LS	\$5,000.00	\$5,000
CONSTRUCTION TOTAL =====>					\$156,830
10% CONTINGENCY =====>					\$15,683
TOTAL DALE ROAD CONSTRUCTION =====>					\$172,513
<b>B. FEES</b>					
1.	ENGINEERING (6% OF CONSTRUCTION TOTAL)	1	EST	\$10,350.78	\$10,351
2.	STAKING (3% OF CONSTRUCTION TOTAL)	1	EST	\$5,175.39	\$5,175
3.	CONSTRUCTION MANAGEMENT (4% OF CONSTRUCTION TOTAL)	1	EST	\$6,900.52	\$6,901
TOTAL FEES =====>					\$22,427
DALE ROAD CENTER 20 FEET GRAND TOTAL =====>					\$194,940

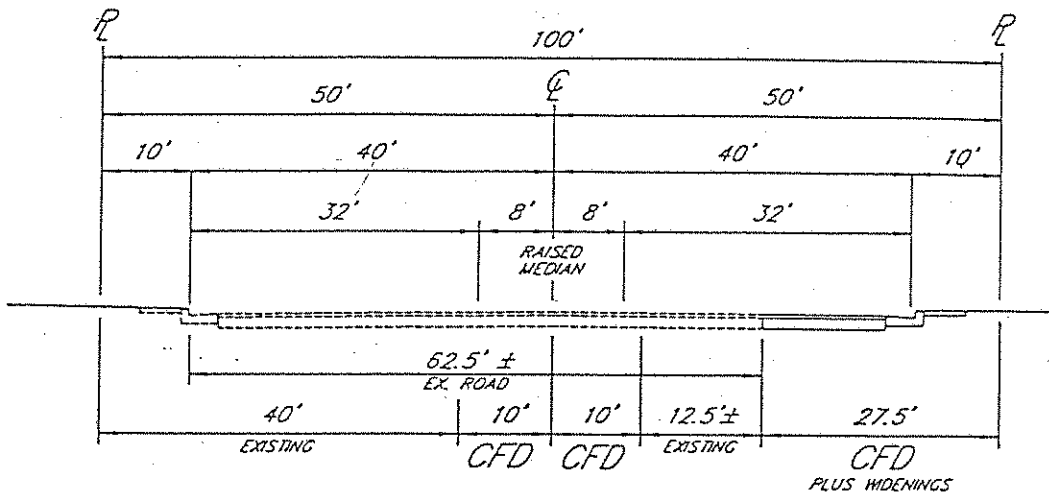
Pelandale-Snyder Specific Plan Area  
 Community Facilities District  
 Preliminary Engineer's Estimate  
 October 23, 1998

ITEM	DESCRIPTION	QUAN.	UNIT	UNIT COST	AMOUNT
<b>II. EAST SIDE DALE ROAD FRONTAGE IMPROVEMENTS</b>					
<b>A. CONSTRUCTION</b>					
1.	CLEARING AND GRADING	30,492	SF	\$0.60	\$18,295
2.	PAVEMENT (0.50' A.C. OVER 0.65' A.B., T.I. = 10, R.V. = 50)	22,104	SF	\$2.00	\$44,208
3.	STORM DRAINAGE				
a.	12" STORM DRAIN	800	LF	\$30.00	\$24,000
b.	15" STORM DRAIN	420	LF	\$37.00	\$15,540
c.	CATCH BASINS	2	EA	\$1,000.00	\$2,000
d.	12" CATCH BASIN RUNS	100	LF	\$30.00	\$3,000
e.	MANHOLES	2	EA	\$2,000.00	\$4,000
4.	10' SIDEWALK WITH TREEWELL AND VINE BLOCKOUTS	12,300	SF	\$3.00	\$36,900
5.	6" VERTICAL CURB AND GUTTER	1,230	LF	\$9.00	\$11,070
6.	RETURN AT PELANDALE AVENUE	1	EA	\$1,000.00	\$1,000
7.	ELECTROLIERS	3	EA	\$3,500.00	\$10,500
8.	LANDSCAPING (12' WIDE STRIP)	14,760	SF	\$2.80	\$41,328
9.	SIGNAGE AND STRIPING (5% OF GRADING AND PAVEMENT COSTS)	1	EST	\$3,125.16	\$3,125
10.	TRAFFIC CONTROL	LUMP SUM	LS	\$4,500.00	\$4,500
11.	TRAFFIC SIGNAL INTERCONNECT	1,230	LF	\$10.00	\$12,300
12.	PRIMECOAT	22,104	SF	\$0.02	\$442
CONSTRUCTION TOTAL =====>					\$232,208
10% CONTINGENCY =====>					\$23,221
TOTAL DALE ROAD CONSTRUCTION =====>					\$255,429
<b>B. FEES</b>					
1.	ENGINEERING (6% OF CONSTRUCTION TOTAL)	1	EST	\$15,325.76	\$15,326
2.	STAKING (3% OF CONSTRUCTION TOTAL)	1	EST	\$7,662.88	\$7,663
3.	CONSTRUCTION MANAGEMENT (4% OF CONSTRUCTION TOTAL)	1	EST	\$10,217.17	\$10,217
TOTAL FEES =====>					\$33,206
<b>C. LAND ACQUISITION</b>					
1.	RIGHT-OF-WAY DEDICATION	0.70	AC	\$65,000.00	\$45,500
2.	RIGHT-OF-WAY ADMINISTRATION	LUMP SUM	LS	\$2,000.00	\$2,000
TOTAL LAND ACQUISITION =====>					\$47,500
DALE ROAD FRONTAGE GRAND TOTAL =====>					\$336,135
DALE ROAD GRAND TOTAL =====>					\$531,075

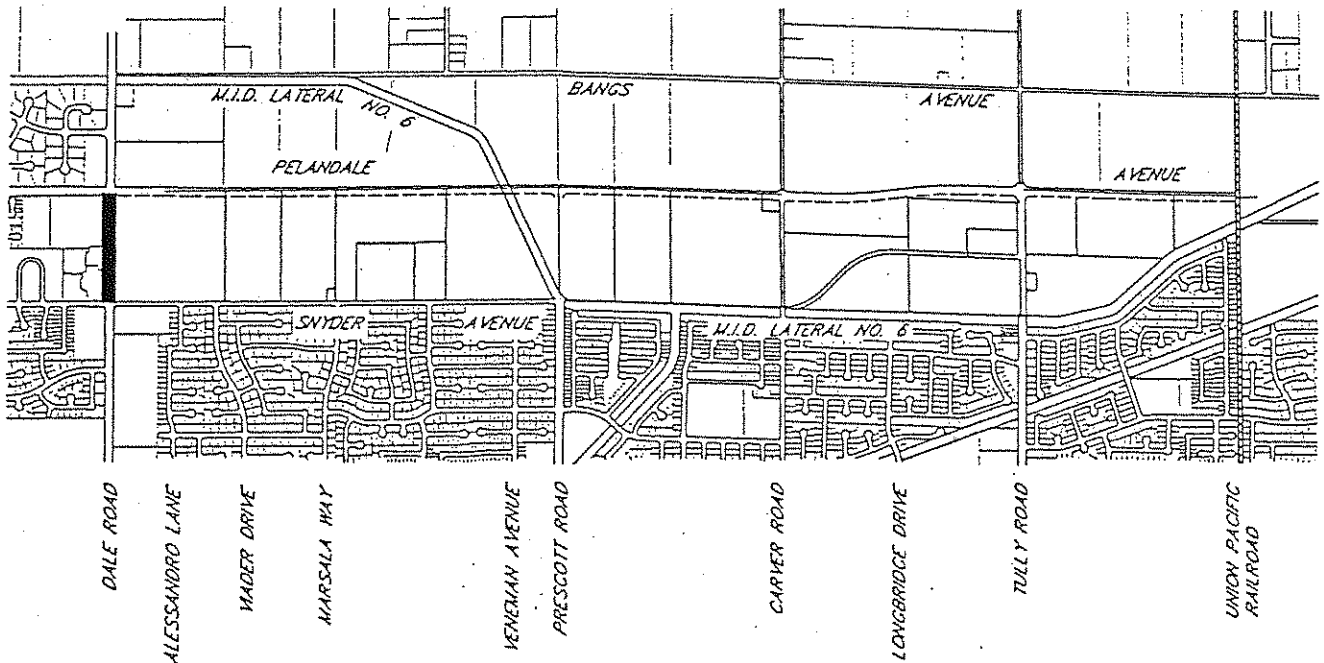
NOTE:

1. THE R-VALUE ASSUMPTIONS WERE DERIVED FROM SOILS REPORTS PREPARED BY KLEINFELDER, INC. FOR THE FOLLOWING SUBDIVISIONS: KENSINGTON PARK, TUCUANY, EASTPORT AND ALMOND VALLEY

# DALE ROAD



NOTE: MATCH EXISTING PAVEMENT PER CITY STANDARDS  
SNYDER AVENUE TO PELANDALE AVENUE



Drawn J.R.M.

Date 8-13-98

Scale

Job No. 70-332

## FIGURE 2

PELANDALE SNYDER  
CFD FORMATION



FAX (209)  
526-0803

SHEET

1

PELANDALE-SNYDER SPECIFIC PLAN AREA  
COMMUNITY FACILITIES DISTRICT  
PRELIMINARY ENGINEER'S ESTIMATE  
FOR  
PRESCOTT ROAD  
WEST SIDE FRONTAGE IMPROVEMENTS ADJACENT  
TO STORM DRAIN BASIN  
AND EAST SIDE FRONTAGE IMPROVEMENTS  
PELANDALE AVENUE TO SNYDER AVENUE (1,316' C.L. TO C.L.)  
(REFERENCE FIGURE 3)

ITEM	DESCRIPTION	QUAN.	UNIT	UNIT COST	AMOUNT
<b>I. PRESCOTT ROAD WEST SIDE FRONTAGE IMPROVEMENTS (ADJACENT TO STORM DRAIN BASINS)</b>					
<b>A. CONSTRUCTION</b>					
1.	CLEARING AND GRADING	37,530	SF	\$0.60	\$22,518
2.	PAVEMENT (0.50' A.C. OVER 0.65' A.B., T.I. = 10 R.V. = 50)	18,525	SF	\$2.00	\$37,050
3.	2" A.C. OVERLAY (EXISTING INTERIM PRESCOTT)	17,100	SF	\$0.60	\$10,260
4.	STORM DRAINAGE				
a.	CATCH BASINS	2	EA	\$1,000.00	\$2,000
b.	12" CATCH BASIN RUNS (50 L.F. PER C.B.)	100	LF	\$30.00	\$3,000
c.	MANHOLES	1	EA	\$2,000.00	\$2,000
5.	6" VERTICAL CURB AND GUTTER	1,200	LF	\$9.00	\$10,800
6.	10' SIDEWALK	12,000	SF	\$3.00	\$36,000
7.	RETURNS	2	EA	\$1,000.00	\$2,000
8.	ELECTROLIERS	4	EA	\$3,500.00	\$14,000
9.	PRIMECOAT	18,525	SF	\$0.02	\$371
CONSTRUCTION TOTAL =====>					\$139,999
10% CONTINGENCY =====>					\$14,000
TOTAL PRESCOTT ROAD CONSTRUCTION =====>					\$153,998
<b>B. FEES</b>					
1.	ENGINEERING (6% OF CONSTRUCTION TOTAL)	1	EST	\$9,239.90	\$9,240
2.	STAKING (3% OF CONSTRUCTION TOTAL)	1	EST	\$4,619.95	\$4,620
3.	CONSTRUCTION MANAGEMENT (4% OF CONSTRUCTION TOTAL)	1	EST	\$6,159.93	\$6,160
TOTAL FEES =====>					\$20,020
<b>C. LAND ACQUISITION</b>					
1.	RIGHT-OF-WAY DEDICATION	1.20	AC	\$65,000.00	\$78,000
2.	RIGHT-OF-WAY ADMINISTRATION	LUMP SUM	LS	\$2,000.00	\$2,000
TOTAL LAND ACQUISITION =====>					\$80,000
PRESCOTT ROAD WEST SIDE FRONTAGE TOTAL =====>					\$254,018

Pelandale-Snyder Specific Plan Area  
 Community Facilities District  
 Preliminary Engineer's Estimate  
 October 23, 1998

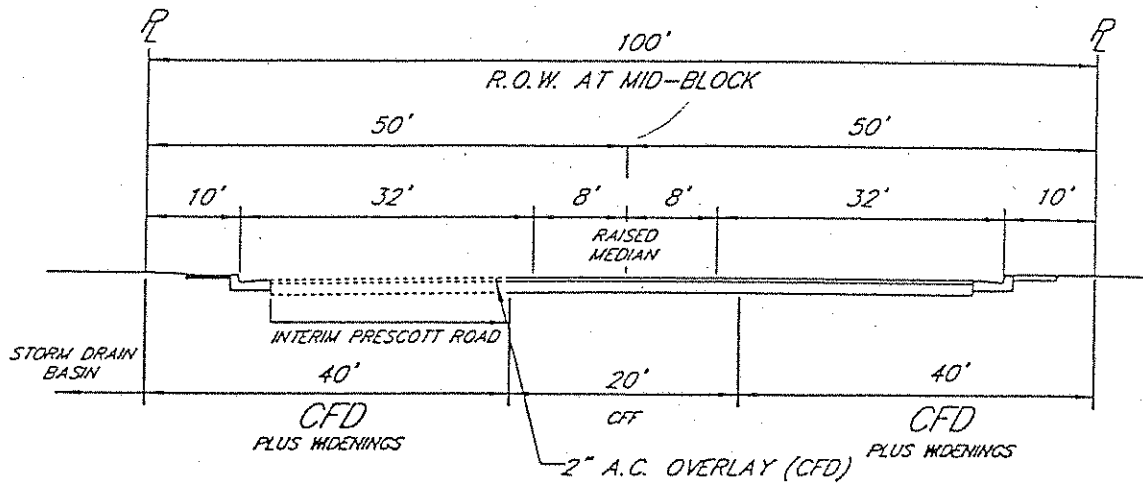
ITEM	DESCRIPTION	QUAN.	UNIT	UNIT COST	AMOUNT
<b>II. PRESCOTT ROAD EAST SIDE FRONTAGE IMPROVEMENTS</b>					
<b>A. CONSTRUCTION</b>					
1.	CLEARING AND GRADING	37,530	SF	\$0.60	\$22,518
2.	PAVEMENT (0.50' A.C. OVER 0.65' A.B., T.I. = 10 R.V. = 50)	41,400	SF	\$2.00	\$82,800
3.	STORM DRAINAGE				
a.	CATCH BASINS	2	EA	\$1,000.00	\$2,000
b.	12" CATCH BASIN RUNS	100	LF	\$30.00	\$3,000
c.	MANHOLES	1	EA	\$2,000.00	\$2,000
4.	6" VERTICAL CURB AND GUTTER	1,200	LF	\$9.00	\$10,800
5.	10' SIDEWALK WITH TREEWELL AND VINE BLOCKOUTS	12,000	SF	\$3.00	\$36,000
6.	RETURNS	4	EA	\$800.00	\$3,200
7.	ELECTROLIERS	3	EA	\$3,500.00	\$10,500
8.	LANDSCAPING (12' WIDE STRIP)	14,400	SF	\$2.80	\$40,320
9.	SIGNAGE AND STRIPING (5% OF GRADING AND PAVEMENT COST)	1	EST	\$5,265.90	\$5,266
10.	TRAFFIC CONTROL	LUMP SUM	LS	\$2,500.00	\$2,500
11.	TRAFFIC SIGNAL INTERCONNECT	1,200	LF	\$10.00	\$12,000
12.	PRIMECOAT	41,400	SF	\$0.02	\$828
CONSTRUCTION TOTAL =====>					\$233,732
10% CONTINGENCY =====>					\$23,373
TOTAL PRESCOTT ROAD CONSTRUCTION =====>					\$257,105
<b>B. FEES</b>					
1.	ENGINEERING (6% OF CONSTRUCTION TOTAL)	1	EST	\$15,426.31	\$15,426
2.	STAKING (3% OF CONSTRUCTION TOTAL)	1	EST	\$7,713.15	\$7,713
3.	CONSTRUCTION MANAGEMENT (4% OF CONSTRUCTION TOTAL)	1	EST	\$10,284.20	\$10,284
TOTAL FEES =====>					\$33,424
<b>C. LAND ACQUISITION</b>					
1.	RIGHT-OF-WAY DEDICATION	1.25	AC	\$65,000.00	\$81,250
2.	RIGHT-OF-WAY ADMINISTRATION	LUMP SUM	LS	\$2,500.00	\$2,500
TOTAL LAND ACQUISITION =====>					\$83,750
PRESCOTT ROAD EAST SIDE FRONTAGE TOTAL =====>					\$374,279
PRESCOTT ROAD GRAND TOTAL =====>					\$628,297

Pelandale-Snyder Specific Plan Area  
Community Facilities District  
Preliminary Engineer's Estimate  
October 23, 1998

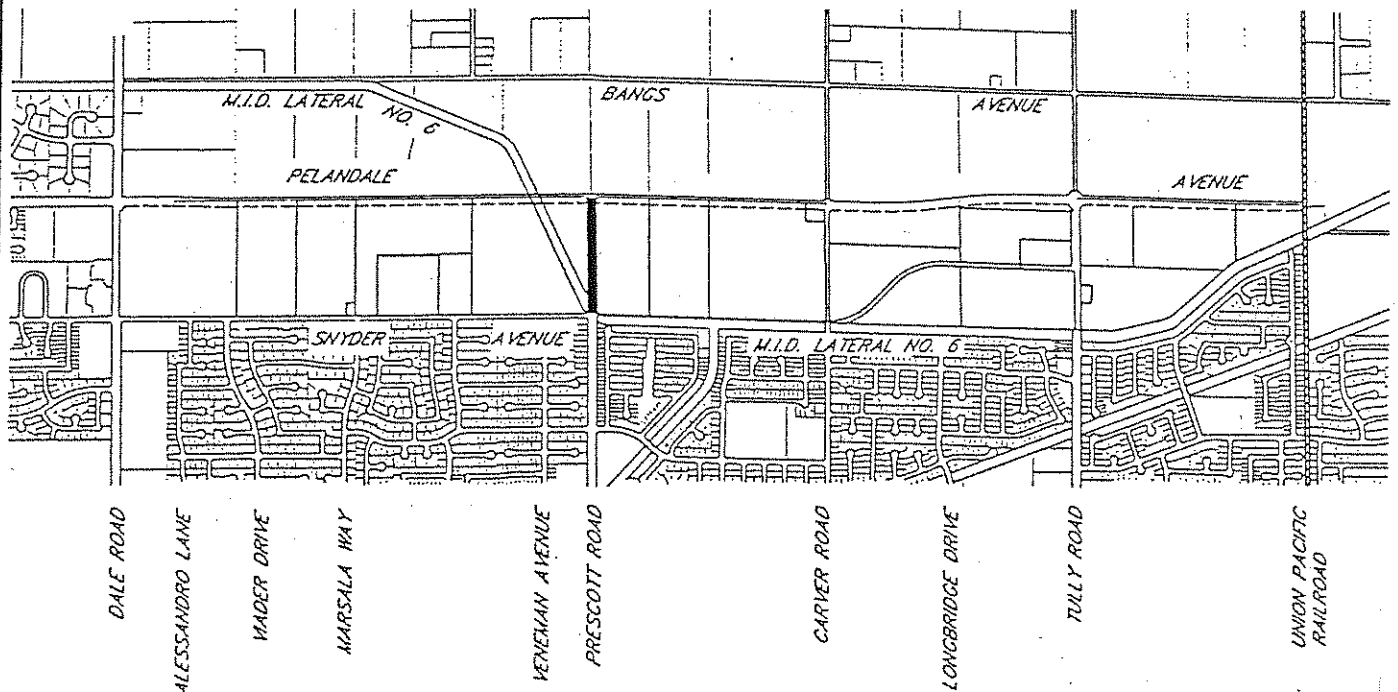
NOTES:

1. THE ABOVE ESTIMATE ASSUMES THE PHASE 1A INTERIM PELANDALE AVENUE WILL BE CONSTRUCTED ON THE WEST SIDE OF PRESCOTT AND A PORTION OF THE IMPROVEMENTS (APPROXIMATELY 650 L.F. FROM THE SNYDER INTERSECTION) WILL BE REMOVED FOR THE ULTIMATE IMPROVEMENTS. THE REMAINING INTERIM SECTION IS ASSUMED TO REMAIN AND BE OVERLAYED WITH 2" A.C.
2. THE ABOVE ESTIMATE DOES NOT INCLUDE THE CENTER 20' PORTION OF PRESCOTT ROAD SINCE IT IS INCLUDED IN THE CFF PROGRAM.
3. THE ABOVE ESTIMATE DOES NOT INCLUDE THE MAINLINE STORM DRAIN IMPROVEMENTS SINCE THOSE COSTS ARE INCLUDED WITH THE STORM DRAIN COMPONENT OF THE CFD.
4. THE ABOVE ESTIMATE INCLUDES ALL NECESSARY CATCH BASINS. THIS CATCH BASIN ESTIMATE WAS TAKEN DIRECTLY FROM THE APPROVED "ALMOND VALLEY SUBDIVISION" IMPROVEMENT PLANS.
5. THE R-VALUE ASSUMPTIONS WERE DERIVED FROM SOILS REPORTS PREPARED BY KLEINFELDER, INC. FOR THE FOLLOWING SUBDIVISIONS: KENSINGTON PARK, TUSCANY, EASTPORT AND ALMOND VALLEY.

# PRESCOTT ROAD

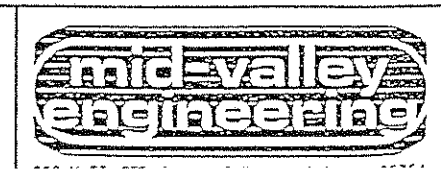


SNYDER AVENUE TO PELANDE AVE



Drawn J.R.M.  
 Date 8-13-98  
 Scale  
 Job No. 70-332

**FIGURE 3**  
 PELANDE SNEYDER  
 CFD FORMATION



FAX (209) 526-0803  
 SHEET 1

PELANDALE-SNYDER SPECIFIC PLAN AREA  
COMMUNITY FACILITIES DISTRICT  
PRELIMINARY ENGINEER'S ESTIMATE  
FOR  
TULLY ROAD FRONTAGE IMPROVEMENTS (BOTH SIDES)  
FROM EXISTING  
MODESTO IRRIGATION DISTRICT LATERAL NO. 6  
TO PELANDALE AVENUE (1,450' C.L. TO C.L.)  
TULLY ROAD (CENTER 34 FEET) NOT FUNDED BY CFF  
AND  
TULLY / SNYDER TRAFFIC SIGNAL  
(REFERENCE FIGURE 4)

ITEM	DESCRIPTION	QUAN.	UNIT	UNIT COST	AMOUNT
<b>I. TULLY ROAD FRONTAGE IMPROVEMENTS (BOTH SIDES, 114 FOOT RIGHT-OF-WAY)</b>					
<b>A. CONSTRUCTION</b>					
1.	CLEARING AND GRADING	87,245	SF	\$0.60	\$52,347
2.	PAVEMENT (0.50' A.C. OVER 0.65' A.B., T.I. = 10, R.V. = 50)	81,410	SF	\$2.00	\$162,820
3.	STORM DRAINAGE				
a.	CATCH BASINS	4	EA	\$1,000.00	\$4,000
b.	12" STORM DRAIN	600	LF	\$30.00	\$18,000
c.	12" CATCH BASIN RUNS	200	LF	\$30.00	\$6,000
d.	MANHOLES	3	EA	\$2,000.00	\$6,000
4.	6" VERTICAL CURB AND GUTTER	2,432	LF	\$9.00	\$21,888
5.	10' SIDEWALK	24,320	SF	\$3.00	\$72,960
6.	REMOVE EXISTING CURB, GUTTER AND SIDEWALK ALONG EXISTING IMPROVEMENTS EAST SIDE OF TULLY ROAD	717	LF	\$20.00	\$14,340
7.	CLEARING, GRADING AND DEMOLITION ALONG EXISTING IMPROVEMENTS EAST SIDE OF TULLY ROAD (LANDSCAPING, IRRIGATION, ETC.)	LUMP SUM	LS	\$20,000.00	\$20,000
8.	ELECTROLIERS	9	EA	\$3,500.00	\$31,500
9.	SIGNAGE AND STRIPING (5% OF GRADING AND PAVEMENT COST)	1	EST	\$10,758.35	\$10,758
10.	TRAFFIC CONTROL	LUMP SUM	LS	\$7,000.00	\$7,000
11.	TRAFFIC SIGNAL INTERCONNECT (ONE SIDE ONLY)	1,400	LF	\$10.00	\$14,000
12.	RELOCATE OVERHEAD POWER LINES	4	EA	\$7,000.00	\$28,000
13.	LANDSCAPING (12' WIDE STRIP BOTH SIDES)	36,996	SF	\$2.80	\$103,589
14.	PRIMECOAT	81,410	SF	\$0.02	\$1,628
					CONSTRUCTION TOTAL =====>
					\$574,830
					15% CONTINGENCY =====>
					\$86,225
					TOTAL CONSTRUCTION FOR TULLY ROAD FRONTAGE =====>
					\$661,055

Pelandale-Snyder Specific Plan Area  
 Community Facilities District  
 Preliminary Engineer's Estimate  
 October 23, 1998

ITEM	DESCRIPTION	QUAN.	UNIT	UNIT COST	AMOUNT
<b>B. FEES</b>					
1.	ENGINEERING (6% OF CONSTRUCTION TOTAL)	1	EST	\$39,663.29	\$39,663
2.	STAKING (3% OF CONSTRUCTION TOTAL)	1	EST	\$19,831.65	\$19,832
3.	CONSTRUCTION MANAGEMENT (4% OF CONSTRUCTION TOTAL)	1	EST	\$26,442.20	\$26,442
TOTAL FEES =====>					\$85,937
<b>C. LAND ACQUISITION</b>					
1.	RIGHT-OF-WAY DEDICATION	0.776	AC	\$65,000.00	\$50,440
2.	RIGHT-OF-WAY ADMINISTRATION	LUMP SUM	LS	\$2,000.00	\$2,000
TOTAL LAND ACQUISITION =====>					\$52,440
TOTAL TULLY ROAD FRONTAGE =====>					\$799,432
<b>II. TULLY ROAD (CENTER 34 FEET) NOT FUNDED BY CFF</b>					
<b>A. CONSTRUCTION</b>					
1.	SAWCUT AND REMOVE EXISTING PAVEMENT	27,360	SF	\$1.50	\$41,040
2.	MEDIAN CURB	3,090	LF	\$15.00	\$46,350
3.	MEDIAN LANDSCAPING	23,120	SF	\$3.50	\$80,920
4.	PAVEMENT (0.50' A.C. OVER 0.65' A.B.; T.I. = 10, R.V. = 50)	27,360	SF	\$2.00	\$54,720
5.	STRIPING	LUMP SUM	LS	\$6,000.00	\$6,000
CONSTRUCTION TOTAL =====>					\$229,030
10% CONTINGENCY =====>					\$22,903
TOTAL CONSTRUCTION FOR TULLY ROAD CENTER 34' FEET =====>					\$251,933
<b>B. FEES</b>					
1.	ENGINEERING (6% OF CONSTRUCTION TOTAL)	1	EST	\$15,115.98	\$15,116
2.	STAKING (3% OF CONSTRUCTION TOTAL)	1	EST	\$7,557.99	\$7,558
3.	CONSTRUCTION MANAGEMENT (4% OF CONSTRUCTION TOTAL)	1	EST	\$10,077.32	\$10,077
TOTAL FEES =====>					\$32,751
TOTAL TULLY ROAD CENTER 34 FEET =====>					\$284,684
TOTAL AMOUNT FUNDED BY CFF =====>					\$220,000
TOTAL TULLY ROAD (CENTER 34 FEET) FUNDED BY PELANDALE-SNYDER CFD =====>					\$64,684
<b>III. TRAFFIC SIGNAL AT TULLY ROAD AND SNYDER AVENUE</b>					
<b>A. CONSTRUCTION</b>					
1.	TRAFFIC SIGNAL	LUMP SUM	LS	\$130,000.00	\$130,000

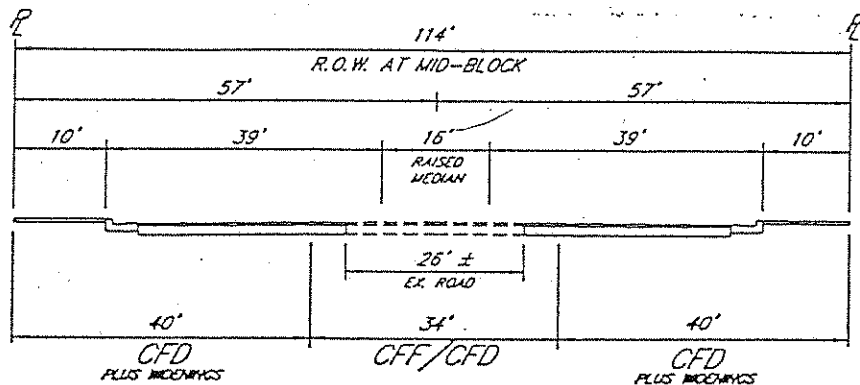
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 Community Facilities District  
 Preliminary Engineer's Estimate  
 October 23, 1998

ITEM	DESCRIPTION	QUAN.	UNIT	UNIT COST	AMOUNT
<b>B. FEES</b>					
1.	ENGINEERING (6% OF CONSTRUCTION TOTAL)	1	EST	\$7,800.00	\$7,800
2.	STAKING (3% OF CONSTRUCTION TOTAL)	1	EST	\$3,900.00	\$3,900
3.	CONSTRUCTION MANAGEMENT (4% OF CONSTRUCTION TOTAL)	1	EST	\$5,200.00	\$5,200
TOTAL FEES =====>					\$16,900
TOTAL TRAFFIC SIGNAL TULLY AND SNYDER =====>					\$146,900
TULLY ROAD GRAND TOTAL =====>					\$1,011,016

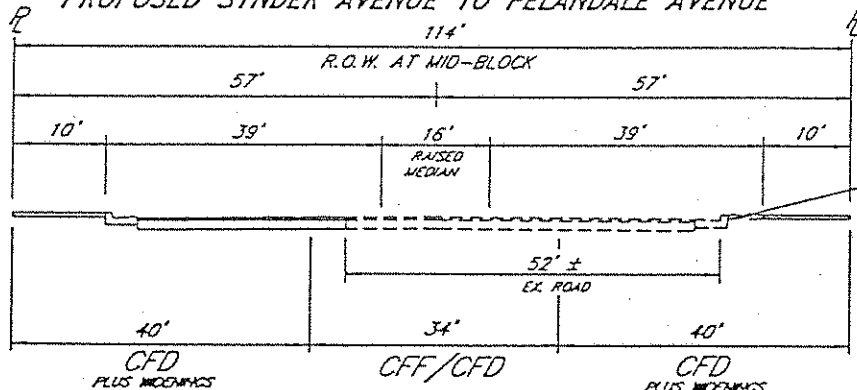
NOTES:

1. THIS ESTIMATE ITEM II IS FOR THE ENTIRE COST OF THE CENTER 34 FEET OF TULLY ROAD IMPROVEMENTS. THE CENTER 34 FEET OF IMPROVEMENTS ON TULLY ROAD ARE FUNDED BY THE CFF PROGRAM, HOWEVER, THE FUNDS ARE NOT AVAILABLE FOR THE ENTIRE PROJECT SO A PORTION OF THE PROJECT NOT FUNDED BY CFF WILL BE FUNDED BY THE PELANDALE-SNYDER CFD.
2. THIS ESTIMATE IS BASED ON THE ASSUMPTION THAT THE CENTER 26+/- FEET OF EXISTING PAVEMENT WILL REMAIN AND ADJACENT DEVELOPMENT WILL BE REQUIRED TO MATCH EXISTING PAVEMENT.
3. THE ABOVE COST ESTIMATE INCLUDES THE COST FOR IMPROVEMENTS FROM THE NORTH SIDE OF THE MODESTO IRRIGATION DISTRICT LATERAL TO PELANDALE AVENUE.
4. THE TULLY ROAD IMPROVEMENTS INCLUDE A COST TO REMOVE AND REPLACE THE EXISTING IMPROVEMENTS ALONG THE BIG VALLEY GRACE COMMUNITY CHURCH FRONTAGE (50' EXISTING TO 57' CITY STANDARD) TO BRING THE CROSS SECTION TO CITY STANDARD. HOWEVER, SPECIFIC DECELERATION OR ACCELERATION LANES WHICH ARE SITE SPECIFIC IMPROVEMENTS ARE NOT INCLUDED IN THE ESTIMATE.
5. THE RIGHT-OF-WAY COSTS ARE THE REQUIRED DEDICATIONS FOR RIGHT-OF-WAY BEYOND THE ALREADY EXISTING DEDICATIONS.
6. THE R-VALUE ASSUMPTIONS WERE DERIVED FROM SOILS REPORTS PREPARED BY KLEINFELDER, INC. FOR THE FOLLOWING SUBDIVISIONS: KENSINGTON PARK, TUSCANY, EASTPORT AND ALMOND VALLEY.

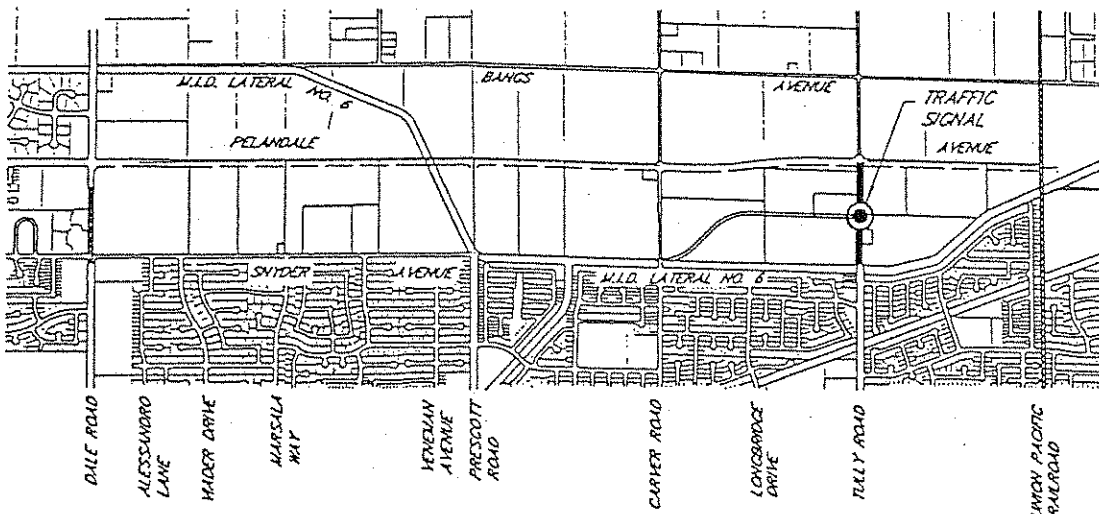
# TULLY ROAD



NOTE: MATCH EXISTING PAVEMENT PER CITY STANDARDS  
 PROPOSED SNYDER AVENUE TO PELANDALE AVENUE



NOTE: MATCH EXISTING PAVEMENT PER CITY STANDARDS  
 M.I.D. LATERAL NO. 6 TO PROPOSED SNYDER AVENUE



Drawn J.R.M.  
 Date 8-13-98  
 Scale  
 Job No. 70-332

FIGURE 4  
 PELANDALE SNYDER  
 CFD FORMATION



900 H ST STE C WOODSTOCK CALIFORNIA 95354

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OF

PELANDALE-SNYDER SPECIFIC PLAN AREA  
COMMUNITY FACILITIES DISTRICT  
PRELIMINARY ENGINEER'S ESTIMATE  
FOR  
SNYDER AVENUE  
NORTH SIDE ADJACENT TO STORM DRAIN BASIN,  
WEST OF PRESCOTT ROAD (352'), SOUTH SIDE  
ADJACENT TO BIKE TRAIL FROM  
PRESCOTT ROAD TO CARVER ROAD (2,639' C.L. TO C.L.)  
(REFERENCE FIGURES-5, 5A, 5B, AND 5C)

ITEM	DESCRIPTION	QUAN.	UNIT	UNIT COST	AMOUNT
<b>I. SNYDER AVENUE ADJACENT TO STORM DRAIN BASIN</b>					
<b>A. CONSTRUCTION</b>					
1.	CLEARING AND GRADING	4,960	SF	\$0.35	\$1,736
2.	PAVEMENT (0.40' A.C. OVER 0.55' A.B., T.I. = 8 R.V. = 46)	4,085	SF	\$2.00	\$8,170
3.	6" VERTICAL CURB AND GUTTER	352	LF	\$9.00	\$3,168
4.	5' SIDEWALK	1,760	SF	\$3.00	\$5,280
5.	STORM DRAINAGE				
a.	12" STORM DRAIN	265	LF	\$30.00	\$7,950
b.	CATCH BASIN	1	EA	\$1,000.00	\$1,000
c.	STORM MANHOLE	1	EA	\$2,500.00	\$2,500
6.	SIGNING / STRIPING (5% OF GRADING AND PAVEMENT COST)	1	EST	\$495.30	\$495
7.	TRAFFIC CONTROL	LUMP SUM	LS	\$1,000.00	\$1,000
8.	IRRIGATION REMOVAL	316	LF	\$10.00	\$3,160
CONSTRUCTION TOTAL =====>					\$34,459
10% CONTINGENCY =====>					\$3,446
TOTAL SNYDER AVENUE ADJACENT TO STORM DRAIN BASIN CONSTRUCTION =====>					\$37,905
<b>B. FEES</b>					
1.	ENGINEERING (6% OF CONSTRUCTION TOTAL)	1	EST	\$2,274.31	\$2,274
2.	STAKING (3% OF CONSTRUCTION TOTAL)	1	EST	\$1,137.16	\$1,137
3.	CONSTRUCTION MANAGEMENT (4% OF CONSTRUCTION TOTAL)	1	EST	\$1,516.21	\$1,516
TOTAL FEES =====>					\$4,928
<b>C. LAND ACQUISITION</b>					
1.	RIGHT-OF-WAY DEDICATION	0.11	AC	\$65,000.00	\$7,410
2.	RIGHT-OF-WAY ADMINISTRATION	LUMP SUM	LS	\$2,500.00	\$2,500
TOTAL LAND ACQUISITION =====>					\$9,910
SNYDER AVENUE ADJACENT TO THE STORM DRAIN BASIN TOTAL =====>					\$52,743

Pelandale-Snyder Specific Plan Area  
 Community Facilities District  
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 October 23, 1998

ITEM	DESCRIPTION	QUAN.	UNIT	UNIT COST	AMOUNT
<b>II. SNYDER AVENUE SOUTH SIDE ADJACENT TO BIKE TRAIL</b>					
<b>A. CONSTRUCTION</b>					
1.	CLEARING AND GRADING	51,575	SF	\$0.35	\$18,051
2.	PAVEMENT (0.40' A.C. OVER 0.55' A.B.; T.I. = 8, R.V. = 48)	47,020	SF	\$2.00	\$94,040
3.	PAVEMENT REMOVAL	59,730	SF	\$1.50	\$89,595
4.	6" VERTICAL CURB AND GUTTER	2,538	LF	\$9.00	\$22,842
5.	STORM DRAINAGE				
a.	12" CATCH BASIN RUNS (50 L.F. PER C.B.)	250	LF	\$30.00	\$7,500
b.	CATCH BASINS	5	EA	\$1,000.00	\$5,000
c.	STORM MANHOLE	5	EA	\$2,500.00	\$12,500
6.	ELECTROLIERS (660' INTERVALS)	4	EA	\$3,500.00	\$14,000
7.	SIGNING / STRIPING (5% OF GRADING AND PAVEMENT COST)	1	EST	\$5,604.56	\$5,605
8.	TRAFFIC CONTROL	LUMP SUM	LS	\$5,000.00	\$5,000
9.	ABANDON EXISTING PUMP STATION NO. 47	LUMP SUM	LS	\$4,500.00	\$4,500
CONSTRUCTION TOTAL =====>					\$278,633
10% CONTINGENCY =====>					\$27,863
TOTAL SNYDER AVENUE ADJACENT TO BIKE TRAIL CONSTRUCTION =====>					\$306,496
<b>B. FEES</b>					
1.	ENGINEERING (6% OF CONSTRUCTION TOTAL)	1	EST	\$18,389.77	\$18,390
2.	STAKING (3% OF CONSTRUCTION TOTAL)	1	EST	\$9,194.88	\$9,195
3.	CONSTRUCTION MANAGEMENT (4% OF CONSTRUCTION TOTAL)	1	EST	\$12,259.84	\$12,260
TOTAL FEES =====>					\$39,844
<b>C. LAND ACQUISITION</b>					
1.	RIGHT-OF-WAY DEDICATION	1.58	AC	\$65,000.00	\$102,700
2.	RIGHT-OF-WAY ADMINISTRATION	LUMP SUM	LS	\$2,500.00	\$2,500
TOTAL LAND ACQUISITION =====>					\$105,200
SNYDER AVENUE ADJACENT TO THE BIKE TRAIL TOTAL =====>					\$451,541
SNYDER AVENUE GRAND TOTAL =====>					\$504,283

NOTES:

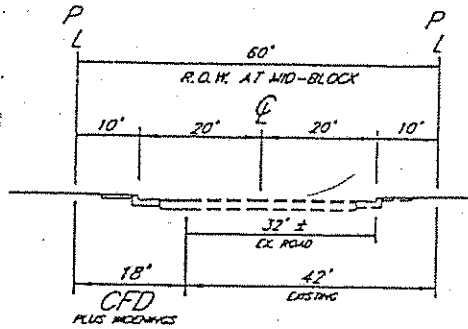
A. SNYDER AVENUE ADJACENT TO STORM DRAIN BASIN

1. THE SNYDER AVENUE IMPROVEMENTS ADJACENT TO THE STORM DRAINAGE BASIN, INCLUDE THE COST FOR IMPROVEMENT FROM THE WEST SIDE OF THE PROPOSED BASIN PROPERTY TO THE RETURN AT PRESCOTT ROAD.
2. THE RIGHT-OF-WAY COSTS IS THE AREA OF DEDICATION REQUIRED ASSUMING AN EXISTING 20 FOOT DEDICATION ON THE NORTH SIDE OF SNYDER AVENUE.

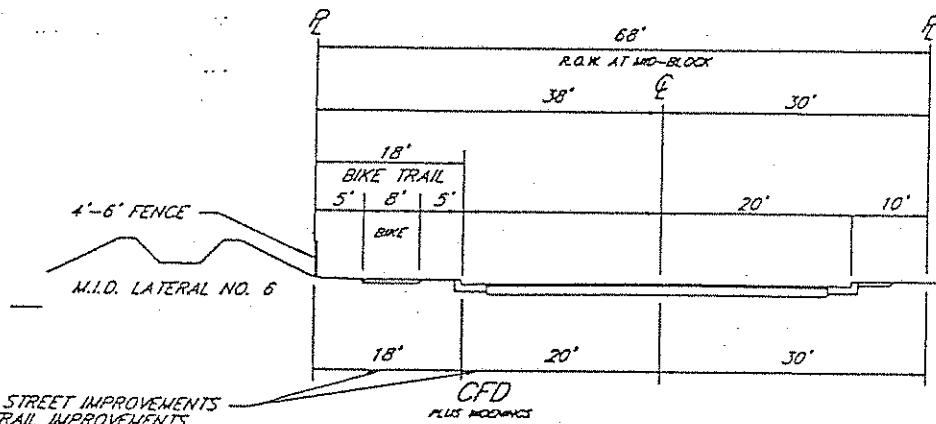
B. SNYDER AVENUE SOUTH SIDE ADJACENT TO BIKE TRAIL

1. THE SNYDER AVENUE IMPROVEMENTS INCLUDE THE COSTS FOR ROADWAY IMPROVEMENTS (EXCLUDING BIKE TRAIL) SOUTH OF THE CENTERLINE (20') FROM PRESCOTT ROAD TO CARVER ROAD.
2. THE RIGHT-OF-WAY AREA TO BE INCLUDED WITHIN THIS CFD ALONG SNYDER AVENUE BETWEEN PRESCOTT ROAD AND CARVER ROAD IS AS FOLLOWS:
  - A. VARYING RIGHT-OF-WAY WIDTH FROM 1.8+/- FEET TO 12.5+/- FEET FROM THE PROPOSED NEW SNYDER AVENUE CENTERLINE TO THE EXISTING SNYDER AVENUE DEDICATION.
  - B. 20' WIDTH RIGHT-OF-WAY FROM PROPOSED NEW SNYDER CENTERLINE NORTH. ADJACENT DEVELOPMENT WOULD BE RESPONSIBLE FOR A 10 FOOT WIDTH RIGHT-OF-WAY DEDICATION ALONG THE NORTH SIDE OF SNYDER AVENUE.
3. NO "MAINLINE" STORM DRAIN IMPROVEMENTS ARE INCLUDED SINCE THOSE COSTS ARE INCLUDED WITHIN THE STORM DRAIN COMPONENT OF THE C.F.D.
4. NO COSTS ARE INCLUDED IN THIS ESTIMATE FOR THE CLASS I BIKE TRAIL ADJACENT TO SNYDER AVENUE.
5. THE PAVEMENT REMOVAL QUANTITIES INCLUDES THE COST TO REMOVE THE ENTIRE EXISTING PAVEMENT SECTION FROM PRESCOTT ROAD TO CARVER ROAD.
6. THIS ESTIMATE INCLUDES A COST TO ABANDON EXISTING STORM DRAIN PUMP STATION NO. 47 ASSUMING CONNECTION TO THE POSITIVE STORM DRAIN SYSTEM.
7. NO COST FOR EXISTING POWER POLE RELOCATION IS INCLUDED IN COSTS.
8. THE R-VALUE ASSUMPTIONS WERE DERIVED FROM SOILS REPORTS PREPARED BY KLEINFELDER, INC. FOR THE FOLLOWING SUBDIVISIONS: KENSINGTON PARK, TUSCANY, EASTPORT AND ALMOND VALLEY.

# SNYDER AVENUE



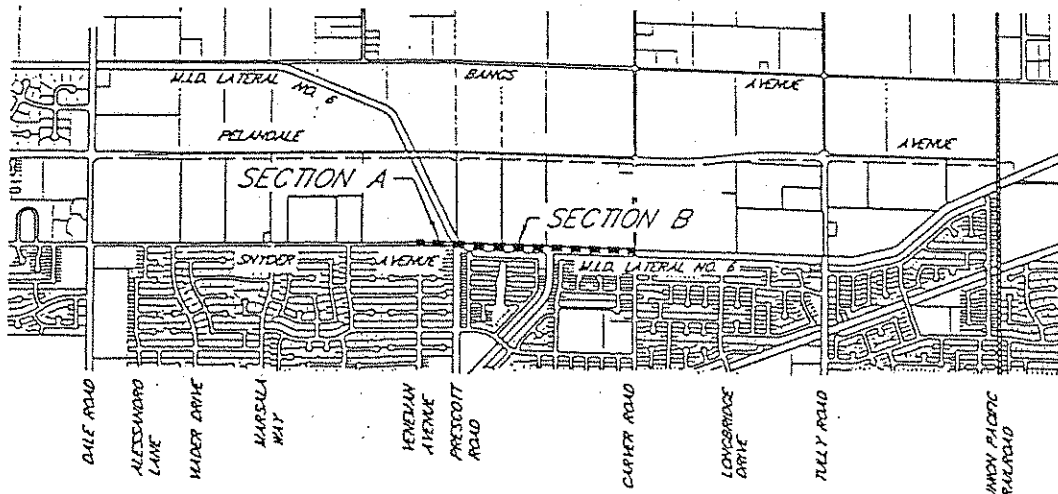
**SNYDER AVENUE ADJACENT TO STORM DRAIN BASIN (SEC. A)**  
 NOTES: 1) MATCH EXISTING PAVEMENT PER CITY STANDARDS



PROPOSED STREET IMPROVEMENTS AND BIKE TRAIL IMPROVEMENTS INCLUDED WITHIN CFD (REFER TO BIKE TRAIL SECTION FOR BIKE TRAIL COSTS AND IMPROVEMENTS)

**CARVER ROAD TO PRESCOTT ROAD (SEC. B)**

- NOTES:
1. REFER TO FIGURE 5A FOR A DETAILED CROSS SECTION OF THE PROPOSED NEW SNYDER ALIGNMENT
  2. REFER TO FIGURE 5B FOR RIGHT-OF-WAY TAKE SUMMARY
  3. REFER TO FIGURE 5C FOR PRESCOTT SNYDER INTERSECTION DETAIL

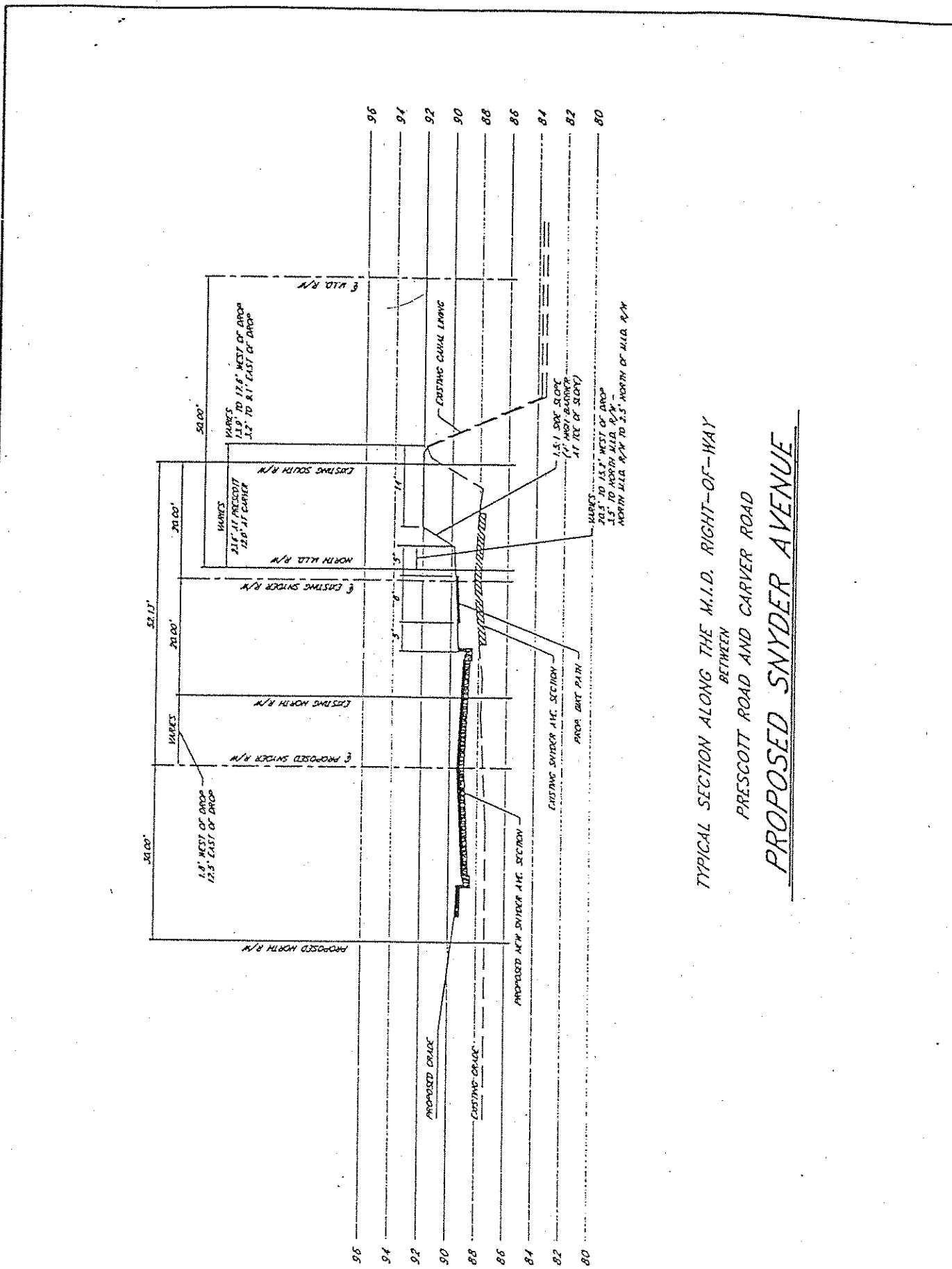


Drawn	J.R.M.
Date	8-13-98
Scale	
Job No.	70-332

**FIGURE 5**  
**PELANDALE SNYDER**  
 CFD INFORMATION

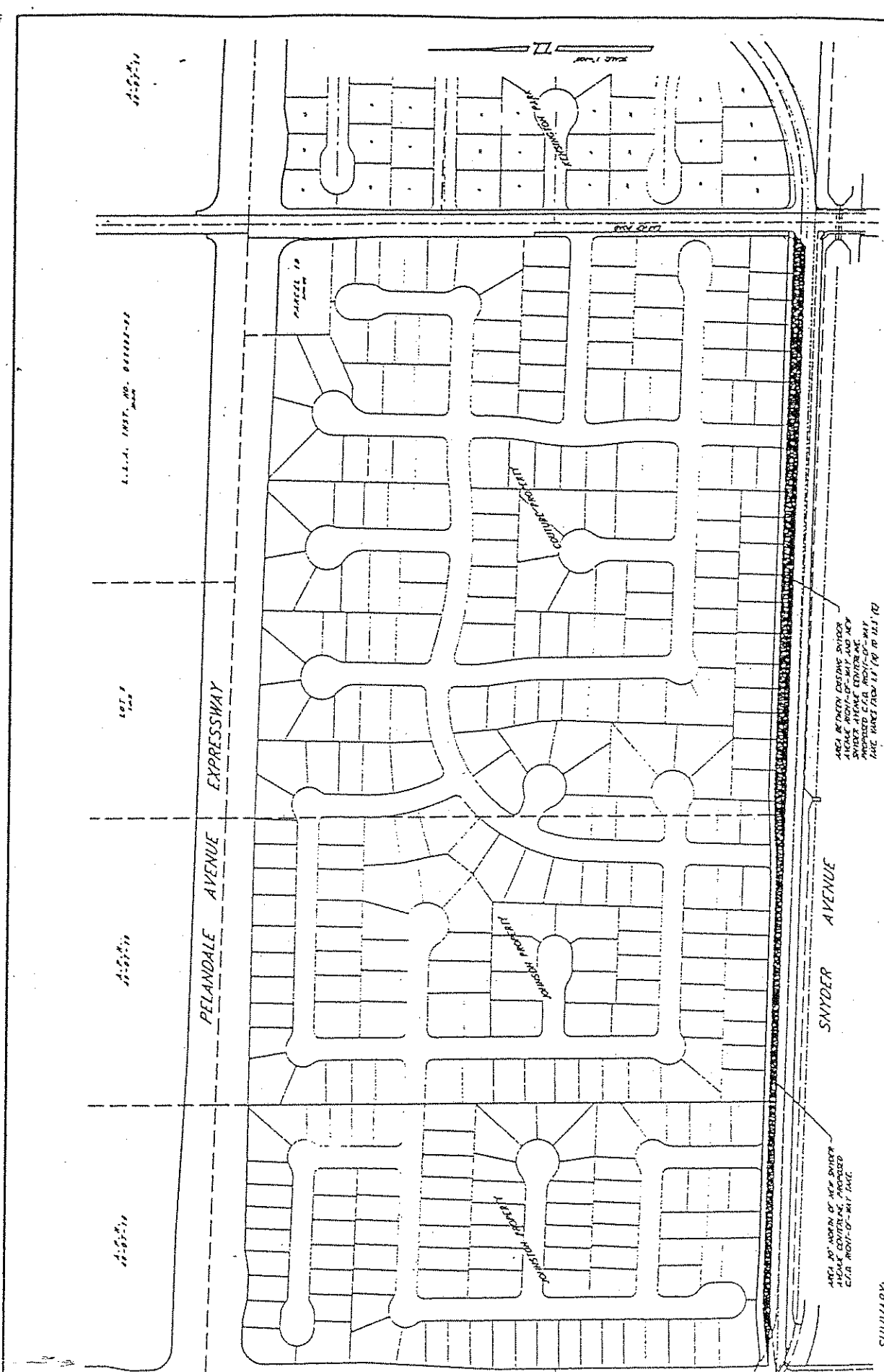


FAX (209)	526-0803
SHEET	1



TYPICAL SECTION ALONG THE M.I.D. RIGHT-OF-WAY  
 BETWEEN  
 PRESCOTT ROAD AND CARVER ROAD  
PROPOSED SNYDER AVENUE

FIGURE 5A



L.S.A. INT. NO. 01111-11

LOT 7

AS-10

AS-10

PELANDALE AVENUE EXPRESSWAY

SNYDER AVENUE

PARCEL 10

1.16-07-11-12

1.16-07-11-12

1.16-07-11-12

1.16-07-11-12

AREA BOUNDING DESIGN SNYDER AVENUE RIGHT-OF-WAY AND NEW SNYDER AVENUE CENTER LINE. SEE SHEET 1.16-07-11-12 FOR MORE DETAILS.

AREA OF WORK OF THE DESIGNER. SNYDER AVENUE CENTER LINE, PROPOSED C.D.A. RIGHT-OF-WAY LINE.

- SUMMARY:**
- TOTAL AREA OF C.D.A. RIGHT-OF-WAY TAKE: 60857 S.F.
  - JOHNSON PROPERTY (A.P.N. 16-07-17) RIGHT-OF-WAY TAKE: 11916 S.F.
  - JOHNSON PROPERTY (A.P.N. 16-07-11) RIGHT-OF-WAY TAKE: 14825 S.F.
  - COVURE PROPERTY (A.P.N. 16-07-12) RIGHT-OF-WAY TAKE: 42388 S.F.

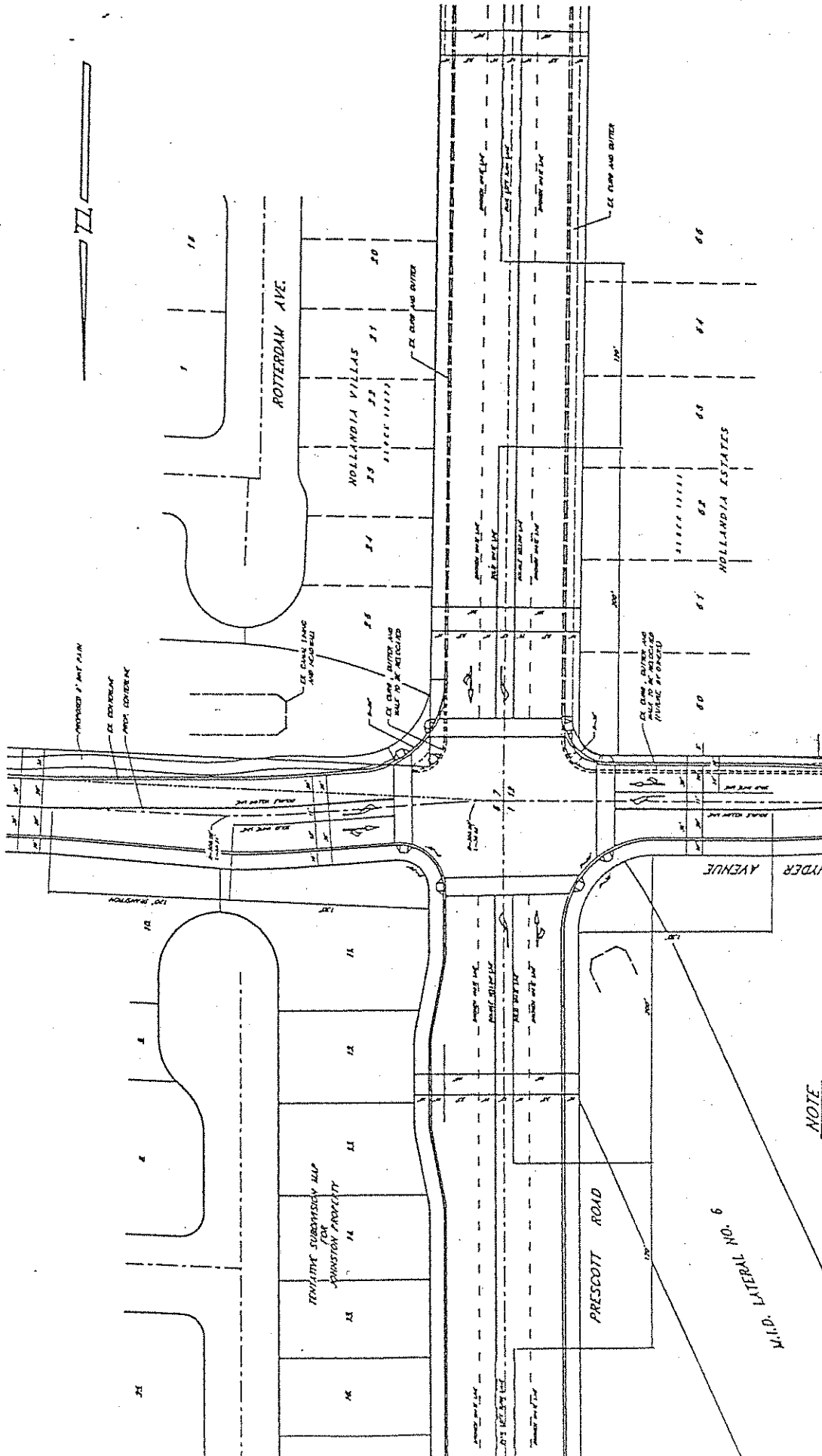


1001 12th Street, Suite 8  
 Modesto, California, 95201  
 (209) 524-1511  
 FAX: (209) 524-1511

C.F.D. RIGHT-OF-WAY TAKE  
 SNYDER AVENUE  
 ADDRESS: 1608370  
 CALIFORNIA

DATE	11/11/10
BY	J. J. [Signature]
CHECKED BY	[Signature]
SCALE	AS SHOWN
PROJECT NO.	1.16-07-11-12
SHEET NO.	1
TOTAL SHEETS	1

# PRELIMINARY SNYDER / PRESCOTT INTERSECTION LAYOUT



**NOTE**  
 INTERSECTION DESIGN AS PER THE CITY OF LOS ANGELES STANDARDS, DETAIL NO. J01

<p>400 N STREET, SUITE 8          LOS ANGELES, CALIFORNIA, 90014</p>		<p>LAND PLANNING          ENGINEERING          SURVEYING</p> <p>(213) 638-1711          FAX: (213) 638-0003</p>	
<p>ADDRESS: <b>LOS ANGELES, CALIFORNIA</b></p>		<p>PROJECT: <b>PRELIMINARY SNYDER / PRESCOTT INTERSECTION LAYOUT</b></p>	
<p>CLIENT: <b>PELANDALE SNYDER</b></p>		<p>DATE: <b>11/11/01</b></p>	
<p>DESIGNER: <b>CFD FORMATION</b></p>		<p>SCALE: <b>AS SHOWN</b></p>	
<p>DATE: <b>11/11/01</b></p>		<p>BY: <b>[Signature]</b></p>	
<p>PROJECT NO. <b>11-0111</b></p>		<p>DATE: <b>11/11/01</b></p>	

PELANDALE-SNYDER SPECIFIC PLAN AREA  
COMMUNITY FACILITIES DISTRICT  
PRELIMINARY ENGINEER'S ESTIMATE  
FOR  
BIKE TRAIL SYSTEM  
(REFERENCE FIGURE 6)

ITEM	DESCRIPTION	QUAN.	UNIT	UNIT COST	AMOUNT
<b>I. DESIGN PARAMETERS</b>					
1.	INSTALL 18' BIKE TRAIL SYSTEM (8' PATH, 10' LANDSCAPING, AND 4-6' FENCE) ALONG SNYDER AVENUE FROM PRESCOTT ROAD TO CARVER ROAD.				
2.	INSTALL 25' BIKE TRAIL SYSTEM (8' PATH, 17' LANDSCAPING, AND 4-6' FENCE) ALONG MODESTO IRRIGATION DISTRICT LATERAL NO. 6 FROM CARVER ROAD TO THE UNION PACIFIC RAILROAD.				
3.	TOTAL LENGTH 8276 L.F. OR 1.567 MILES				
	EXISTING CFF PORTION	1.567	MILES	\$105,600.00	\$165,475
<b>II. CLASS I BIKE TRAIL</b>					
<b>A. CONSTRUCTION</b>					
1.	8' BIKE PATH WITH 2' GRAVEL SHOULDER (8,276 L.F. x 8')	66,208	SF	\$2.00	\$132,416
2.	4-6' FENCE	8,276	LF	\$16.00	\$132,416
3.	LANDSCAPING (6' AREA FROM PRESCOTT TO CARVER (2,770 L.F.); 13' AREA FROM CARVER TO UNION PACIFIC RAILROAD (5,506 L.F.))	88,198	SF	\$2.80	\$246,954
	CONSTRUCTION TOTAL =====>				\$511,786
	10% CONTINGENCY =====>				\$51,179
	TOTAL BIKE PATH =====>				\$562,965
<b>B. FEES</b>					
1.	ENGINEERING (6% OF CONSTRUCTION TOTAL)	1	EST	\$33,777.90	\$33,778
2.	STAKING (3% OF CONSTRUCTION TOTAL)	1	EST	\$16,888.95	\$16,889
3.	CONSTRUCTION MANAGEMENT (4% OF CONSTRUCTION TOTAL)	1	EST	\$22,518.60	\$22,519
	TOTAL FEES =====>				\$73,185

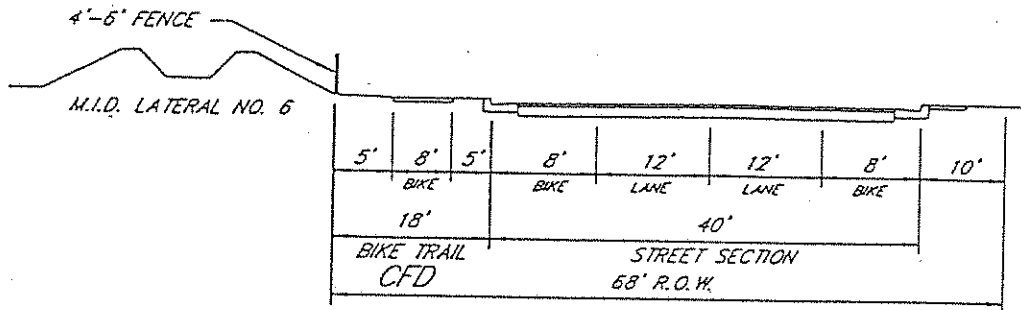
Pelandale-Snyder Specific Plan Area  
 Community Facilities District  
 Preliminary Engineer's Estimate  
 October 23, 1998

ITEM	DESCRIPTION	QUAN.	UNIT	UNIT COST	AMOUNT
<b>C. LAND ACQUISITION</b>					
1.	RIGHT-OF-WAY DEDICATION	4.30	AC	\$65,000.00	\$279,500
2.	RIGHT-OF-WAY ADMINISTRATION	LUMP SUM	LS	\$2,500.00	\$2,500
TOTAL LAND ACQUISITION =====>					\$282,000
BIKE PATH GRAND TOTAL =====>					\$918,150
CFF PORTION TOTAL =====>					\$165,475
TOTAL PELANDALE-SNYDER CFD PORTION =====>					\$752,675

NOTES:

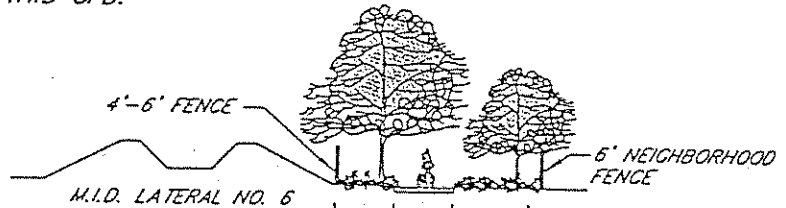
1. THE RIGHT-OF-WAY AREA TO BE INCLUDED WITHIN THIS CFD ALONG SNYDER AVENUE BETWEEN PRESCOTT ROAD AND CARVER ROAD IS AS FOLLOWS:
  - A. VARYING RIGHT-OF-WAY WIDTH FROM 1.8+/- FEET TO 12.5+/- FEET FROM THE PROPOSED NEW SNYDER AVENUE CENTERLINE TO THE EXISTING SNYDER AVENUE DEDICATION.
  - B. 20' WIDTH RIGHT-OF-WAY FROM PROPOSED NEW SNYDER CENTERLINE NORTH. ADJACENT DEVELOPMENT WOULD BE RESPONSIBLE FOR A 10 FOOT WIDTH RIGHT-OF-WAY DEDICATION ALONG THE NORTH SIDE OF SNYDER AVENUE.
2. THIS ESTIMATE DOES NOT INCLUDE ANY COSTS ASSOCIATED WITH THE SNYDER AVENUE ROAD IMPROVEMENTS.

# BIKE TRAIL



## BIKE TRAIL ALONG SNYDER AVENUE

NOTE: SEE SNYDER AVENUE CROSS-SECTIONS FIGURE 5A FOR RIGHT-OF-WAY AND STREET IMPROVEMENTS INCLUDED WITHIN THIS CFD.

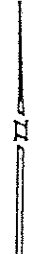
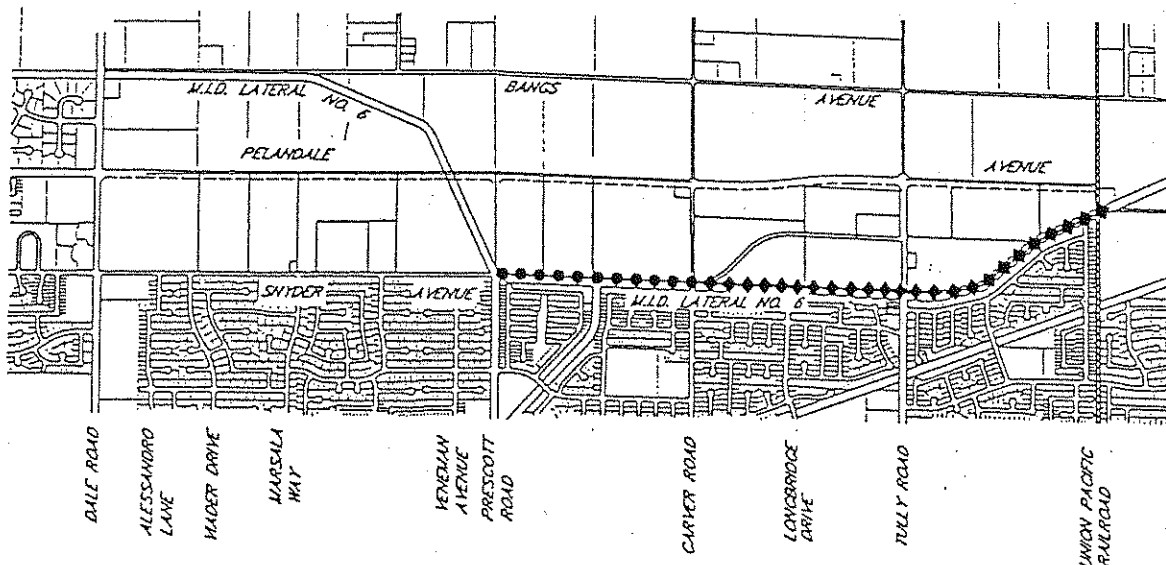


## LEGEND

### IMPROVEMENTS:

- = BIKE TRAIL ALONG SNYDER AVENUE
- ◆◆◆◆◆◆ = BIKE TRAIL ALONG M.I.D. LATERAL

## BIKE TRAIL ALONG M.I.D. LATERAL



Drawn J.R.M.  
 Date 8-13-98  
 Scale  
 Job No 70-112

**FIGURE 6**  
**PELANDALE SNYDER**



FAX (209) 526-0803  
 SHEET 1

Ord. No. 3284-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 25<sup>th</sup> day of February, 2003, Councilmember Frohman moved its final adoption, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Conrad, Fisher, Frohman, Jackman, Keating, O'Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:   
MAYOR CARMEN SABATINO

ATTEST:   
JEAN ZAHR, City Clerk

Effective Date: March 31, 2003



ORDINANCE NO. 3285-C.S.

AN ORDINANCE AMENDING SECTION 3-3-9 OF THE  
ZONING MAP OF THE CITY OF MODESTO PREZONING  
CERTAIN PROPERTY LOCATED THEREON. (SHELTER  
COVE CHURCH)

WHEREAS, pursuant to Modesto Municipal Code Section 10-2.2604, the City of Modesto proposes to initiate a prezoning to Specific Plan-Overlay Zone, (SP-O), 17.4 acres of property located on the northeast corner of Coffee Road and Claratina Avenue, within the North Beyer Specific Plan for the purpose of determining the zoning that will apply to the property upon annexation, and

WHEREAS, Government Code Section 56375 requires that the City prezone any area which it proposes to annex, and

WHEREAS, any prezoning designation shall remain in effect until at least two years after completion of the annexation unless the City Council, after a public hearing, determines that a substantial change in circumstances has occurred that necessitates a departure from the prezoning, and

WHEREAS, after a public hearing held on January 27, 2003, in the Tenth Street Place Chambers located at 1010 10<sup>th</sup> Street, Modesto, California, it was found and determined by the Planning Commission that prezoning to Specific Plan-Overlay Zone, (SP-O), 17.4-acres of property located on the northeast corner of Coffee Road and Claratina Avenue, within the North Beyer Specific Plan as requested is in accordance with Government Code Section 65855 for the following reasons:

1. The proposed prezoning is required by public convenience or necessity because the proposed North Beyer Specific Plan will provide guidance for



future development and will provide needed services and facilities for the site.

2. The proposed rezoning will result in an orderly planning and use of land resources because the site is contiguous to the City limits with sewer, and water facilities available to serve the project. Storm drainage will be accomplished by an on-site basin, with an outfall connection to be connected at such time as the master storm drainage facilities become available for use.
3. The proposed rezoning will further the City's economic development goals because it provides a needed community service and extends the development of the North Beyer Specific Plan.
4. The proposed rezoning is in accordance with the community's objectives as set forth in the General Plan based on the following reasons:
  - a. The project is compatible with the surrounding existing and planned land uses.
  - b. The proposed Specific Plan land use designation for the project site, Church (CH), is consistent with the Village Residential (VR) General Plan land use designation.
  - c. The street improvements and traffic control measures that will be implemented with this project will ensure that there will be no significant increase in traffic impacts to the surrounding area resulting from this project.
  - d. A sewer capacity analysis prepared by Northstar Engineering Group dated December 9, 2002, determined that the existing sewer line in Coffee Road provides adequate capacity to serve the project site and the remaining undeveloped portions of the North Beyer and Coffee-Claratina plan areas. The Northstar report determined that no new trunk, subtrunk lines would need to be extended to serve the project, and no sewer facilities downstream of the project site would need to be upgraded. The City Engineering & Transportation Department reviewed the Northstar report, and concurs with the conclusions contained therein.
  - e. An analysis of water needs for the project prepared by Northstar Engineering dated December 9, 2002, determined that future development of the project site can connect to existing City



facilities for the provision of water that would not require additional water supplies beyond those identified in the Increased Demand for Water Supplies section of the General Plan Master Environmental Impact Report. The City Engineering & Transportation Department reviewed the Northstar report, and concurs with the conclusions contained therein.

- f. Flood control measures that will be implemented with this project will ensure that there will be no significant impact to planned stormwater drainage systems.
- g. The proposed project would develop at intensities equal to or less than those set forth in the General Plan, and as such, would result in no new or additional significant effect related to the degradation of air quality, not analyzed by the General Plan Master Environmental Impact Report.
- h. The proposed project will not affect any land designated open space in the General Plan.

WHEREAS, by Resolution No. 2003-05, adopted on January 27, 2003, the Planning Commission recommended to the City Council an amendment to Section 3-3-9 of the Zoning Map to prezone the hereafter described property to Specific Plan-Overlay Zone, (SP-0), and

WHEREAS, said matter was set for a public hearing of the City Council to be held on February 25, 2003, at 5:30 p.m., in the Tenth Street Place Chambers located at 1010 10<sup>th</sup> 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, the Council of the City of Modesto does ordain as follows:

SECTION 1. COUNCIL FINDINGS. After a public hearing held on February 25, 2003, this Council finds and determines that the requested prezoning is in accordance with the General Plan and the Empire North Unit 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 reasons set forth in Planning Commission Resolution No. 3002-05 and quoted above.

SECTION 2. ZONING CHANGE. Section 3-3-9 of the Zoning Map is hereby amended to prezone the following described property to Specific Plan-Overlay Zone, (SP-O):

The South one-half of the Northwest one-quarter of the Southwest one-quarter of Section 3, Township 3 South, Range 9 East, Mount Diablo Base and Meridian.  
EXCEPTING THEREFROM the South 15 feet thereof.

SECTION 3. ZONING MAP. Section 3-3-9 of the Zoning Map of the City of Modesto is hereby amended to appear as set forth on the map attached hereto and 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 25<sup>th</sup> day of February, 2003, by Councilmember Fisher, who moved its introduction and passage to print, which motion being duly seconded by Councilmember O'Bryant, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Conrad, Fisher, Frohman, Jackman, Keating, O'Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:   
CARMEN SABATINO, Mayor

ATTEST:

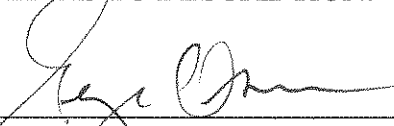
By   
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

APPROVED AS TO DESCRIPTION:

By   
Community Development Department  
Planning Division



Ord. No. 3285-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 4<sup>th</sup> day of March, 2003, Councilmember Fisher moved its final adoption, which motion being duly seconded by Councilmember Jackman, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Conrad, Fisher, Jackman, Keating, O'Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: Frohman

APPROVED:   
MAYOR CARMEN SABATINO

ATTEST:   
JEAN ZAHR, City Clerk

Effective Date: April 3, 2003



ORDINANCE NO. 3286-C.S.

AN ORDINANCE AMENDING SECTION 5-4.201 OF ARTICLE 2 OF CHAPTER 4 OF TITLE 5 OF THE MODESTO MUNICIPAL CODE RELATING TO LICENSING, TAGS, IMMUNIZATION AND FEES - DOGS.

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

SECTION 1. AMENDMENT OF CODE. Section 5-4.201 of Article 2 of

Chapter 4 of Title 5 of the Modesto Municipal Code is hereby amended to read as follows:

**5-4.201. LICENSING, TAGS, IMMUNIZATION AND FEES.**

- (a) **License Required.** Every person who owns, controls, harbors, possesses or keeps in the City any dog over the age of four (4) months shall first procure a license from the County of Stanislaus for said dog.
- (b) **License Tag Required To Be Attached To Dog.** Upon proper application and payment therefor, by any person owning, controlling, harboring, or keeping any dog, the County of Stanislaus shall issue a serially numbered license tag. The applicant for said license shall state the age, sex, color and breed of the dog for which the license is desired, and the address of the owner of said dog. The County of Stanislaus, upon the issuance of said license, shall endorse upon the application the number of the license tag issued; and all applications so endorsed shall be kept on file in the office of the Stanislaus County Animal Control and shall be open to public inspection. The person to whom said license is issued shall affix or cause to be affixed the license tag hereinabove mentioned to said dog for whom said license is issued; and said dog shall thereafter, at any and all times, have attached to it said license tag aforesaid.
- (c) **Immunization Required.** It shall be unlawful for any person to keep, own, or harbor any dog or dogs in the City over the age of four (4) months unless such dog or dogs have been vaccinated with an approved canine antirabies vaccine by a veterinarian authorized to practice veterinary medicine or surgery in this State.
- (d) **Fees.** Fees for the above-described requirements will be changed in accordance with Section 5-4.202 of this code.



- (e) **Exemptions.** The provisions of this article shall not apply to any dog owned by or in the charge of any person not a resident of the City of Modesto who is traveling through the City or temporarily sojourning therein for a period not longer than thirty (30) days; nor to any dog brought into the City and kept therein for less than thirty (30) days for the exclusive purpose of entering said dog in any bench show, dog exhibition, field trial or competition; nor to any dog brought to or sent into the City from any point outside thereof for the exclusive purpose of receiving care from a licensed veterinary.
  
- (f) **Authority to License Dogs.** The City of Modesto hereby grants to the County of Stanislaus the authority to license dogs according to the provisions of this chapter in the City of Modesto.

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 25<sup>th</sup> day of February, 2003, by Councilmember Frohman, 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: Conrad, Fisher, Frohman, Jackman, Keating, O'Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:   
CARMEN SABATINO, Mayor

ATTEST:

By   
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney



Ord. No. 3286-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 4<sup>th</sup> day of March, 2003, Councilmember Fisher moved its final adoption, which motion being duly seconded by Councilmember Jackman, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Conrad, Fisher, Jackman, Keating, O'Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: Frohman

APPROVED:   
MAYOR CARMEN SABATINO

ATTEST:   
JEAN ZAHR, City Clerk

Effective Date: April 3, 2003



ORDINANCE NO. 3287-C.S.

AN ORDINANCE AMENDING SECTIONS 9-1.01 AND 9-1.15  
OF CHAPTER 1 OF TITLE 9 OF THE MODESTO MUNICIPAL  
CODE RELATING TO THE BUILDING CODE.

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

SECTION 1. AMENDMENT OF CODE. Sections 9-1.01 and 9-1.15 of Chapter  
1 of Title 9 of the Modesto Municipal Code are hereby amended to read as follows:

**9-1.01. ADOPTION BY REFERENCE OF "UNIFORM BUILDING  
CODE."**

That certain document, three (3) copies of which are on file in the office of the City Clerk, being marked and designated as "Uniform Building Code, 1997 Edition," Volume 1, Volume 2 and Volume 3, published by the International Conference of Building Officials, together with Volume 1 Appendix Chapters 4 Division II, 12, 15, 31, and 33 referred to therein, which said Code provides for proper regulations for erecting, constructing, enlarging, altering, repairing, removing, conversions, demolition, occupancy, equipment, use, height, and maintenance of buildings or structures in the City and providing for the issuance of permits and collection of fees therefor, and providing penalties for the violation thereof, as hereinafter amended, deleted and added to, be and the same is hereby adopted by reference as the Building Code of the City of Modesto.

**9-1.15. SECTIONS TO BE DELETED FROM BUILDING CODE.**

That Chapters 11, 13, 30, and Sections 413, 414, 415, 416 and 417 of said Building Code are hereby deleted.

SECTION 2. FINDING AND DECLARATION. As required by the Health and Safety Code of the State of California, the Council of the City of Modesto finds and declares that the foregoing additions, modifications and changes to the regulations adopted pursuant to said Health and Safety Code are reasonably necessary because of local conditions in that they adopt the 1997 Edition of the Uniform Building Code, prescribe local procedures to be used in the administration and enforcement of said Code, provide for local interpretations of said Code,



make other changes in said Code consistent with local custom and practice as reflected in the prior local Building Code, and other changes due to local climatic and geographic conditions.

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. SAVINGS. The provisions of this ordinance shall not affect any proceedings, suit or prosecution heretofore or hereafter commenced under the provisions of the Municipal Code as they existed prior to the effective date of this ordinance. No offense committed and no liability, penalty or forfeiture, either civilly or criminally incurred under the provisions of the Municipal Code as they existed prior to the effective date of this ordinance shall be discharged or affected by the adoption of this ordinance; but prosecutions and suits for such offenses, liabilities, penalties or forfeitures shall be instituted or proceeded with in all respects as if this ordinance had not been adopted.

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 4<sup>th</sup> day of March, 2003, by Councilmember Fisher, 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: Conrad, Fisher, Jackman, Keating, O'Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: Frohman

APPROVED:   
CARMEN SABATINO, Mayor

ATTEST:

By   
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney



Ord. No. 3287-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 11<sup>th</sup> day of March, 2003, Councilmember Fisher 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: Conrad, Fisher, Frohman, Keating, O'Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: Jackman

APPROVED:   
MAYOR CARMEN SABATINO

ATTEST:   
JEAN ZAHR, City Clerk

Effective Date: April 10 2003



ORDINANCE NO. 3288-C.S.

AN ORDINANCE AMENDING SECTION 9-3.101 OF ARTICLE  
1 OF CHAPTER 3 OF TITLE 9 OF THE MODESTO  
MUNICIPAL CODE RELATING TO THE ELECTRICAL CODE.

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

SECTION 1. AMENDMENT OF CODE. Section 9-3.101 of Article 1 of  
Chapter 3 of Title 9 of the Modesto Municipal Code is hereby amended to read as follows:

**SEC. 9-3.101. ADOPTION BY REFERENCE OF "NATIONAL  
ELECTRICAL CODE".**

That certain document, three (3) copies of which are on file in the office of the City Clerk, being marked and designated as "National Electrical Code 1999 Edition", published by the National Fire Protection Association, which said Code provides for the protection of the public health and safety, provides for the design, construction, installation, alteration, and repair of electrical work, as hereinafter amended, deleted and added to, be and the same is hereby adopted by reference as the Electrical Code of the City of Modesto.

SECTION 2. FINDING AND DECLARATION. As required by the Health and Safety Code of the State of California, the Council of the City of Modesto finds and declares that the foregoing additions, modifications and changes to the regulations adopted pursuant to said Health and Safety Code are reasonably necessary because of local conditions in that they adopt the 1999 Edition of the National Electrical Code in lieu of the 1996 Edition, prescribe local procedures to be used in the administration and enforcement of said Code, provide for local interpretations of said Code, make other changes in said Code consistent with local custom and practice as reflected in the prior local electrical code, and other changes due to local climatic and geographic conditions.

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. SAVINGS. The provisions of this ordinance shall not affect any proceedings, suit or prosecution heretofore or hereafter commenced under the provisions of the Municipal Code as they existed prior to the effective date of this ordinance. No offense committed and no liability, penalty or forfeiture, either civilly or criminally incurred under the provisions of the Municipal Code as they existed prior to the effective date of this ordinance shall be discharged or affected by the adoption of this ordinance; but prosecutions and suits for such offenses, liabilities, penalties or forfeitures shall be instituted or proceeded with in all respects as if this ordinance had not been adopted.

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 4<sup>th</sup> day of March, 2003, by Councilmember Fisher, 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: Conrad, Fisher, Jackman, Keating, O'Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: Frohman

APPROVED:   
CARMEN SABATINO, Mayor

ATTEST:

By   
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney



Ord. No. 3288-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 11<sup>th</sup> day of March, 2003, Councilmember Fisher 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: Conrad, Fisher, Frohman, Keating, O'Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: Jackman

APPROVED:   
MAYOR CARMEN SABATINO

ATTEST:   
JEAN ZAHR City Clerk

Effective Date: April 10 2003



ORDINANCE NO. 3289-C.S.

AN ORDINANCE AMENDING SECTION 9-7.01 OF CHAPTER  
7 OF TITLE 9 OF THE MODESTO MUNICIPAL CODE  
RELATING TO THE MECHANICAL CODE.

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

SECTION 1. AMENDMENT OF CODE. Section 9-7.01 of Chapter 7 of Title 9

of the Modesto Municipal Code is hereby amended to read as follows:

**9-7.01. ADOPTION BY REFERENCE OF "UNIFORM MECHANICAL  
CODE".**

That certain document, three (3) copies of which are on file in the office of the City Clerk, being marked and designated as "Uniform Mechanical Code, 2000 Edition", published by the International Association of Plumbing and Mechanical Officials, together with Appendices A, and C thereto, which said Code provides for proper regulations for erecting, installing, altering, repairing, relocating, replacing, adding to, using and maintenance of, any heating, ventilating, comfort cooling or refrigeration systems and incinerators and other miscellaneous heat-producing appliances in the City and providing for the issuance of permits and collection of fees therefor, and providing penalties for the violation thereof, as hereinafter amended, deleted and added to, be and the same is hereby adopted by reference as the Mechanical Code of the City of Modesto.

SECTION 2. FINDING AND DECLARATION. As required by the Health and Safety Code of the State of California, the Council of the City of Modesto finds and declares that the foregoing additions, modifications and changes to the regulations adopted pursuant to said Health and Safety Code are reasonably necessary because of local conditions in that they adopt the 1997 Edition of the Uniform Mechanical Code published by the International Association of Plumbing and Mechanical Officials in lieu of the 1997 Edition published by the International Conference of Building Officials, prescribe local procedures to be used in the administration and enforcement of said Code, provide for local interpretations of said Code, make other changes in



said Code consistent with local custom and practice as reflected in the prior local Mechanical Code, and other changes due to local climatic and geographic conditions.

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. SAVINGS. The provisions of this ordinance shall not affect any proceedings, suit or prosecution heretofore or hereafter commenced under the provisions of the Municipal Code as they existed prior to the effective date of this ordinance. No offense committed and no liability, penalty or forfeiture, either civilly or criminally incurred under the provisions of the Municipal Code as they existed prior to the effective date of this ordinance shall be discharged or affected by the adoption of this ordinance; but prosecutions and suits for such offenses, liabilities, penalties or forfeitures shall be instituted or proceeded with in all respects as if this ordinance had not been adopted.

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 4<sup>th</sup> day of March, 2003, by Councilmember Fisher, 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: Conrad, Fisher, Jackman, Keating, O'Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: Frohman

APPROVED:   
CARMEN SABATINO, Mayor

ATTEST:

By   
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney



Ord. No. 3289-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 11<sup>th</sup> day of March, 2003, Councilmember Fisher 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: Conrad, Fisher, Frohman, Keating, O'Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: Jackman

APPROVED:   
MAYOR CARMEN SABATINO

ATTEST:   
JEAN ZAHR City Clerk

Effective Date: April 10 2003



ORDINANCE NO. 3290-C.S.

AN ORDINANCE AMENDING SECTION 9-2.01 OF CHAPTER  
2 OF TITLE 9 OF THE MODESTO MUNICIPAL CODE  
RELATING TO THE PLUMBING CODE.

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

SECTION 1. AMENDMENT OF CODE. Section 9-2.01 of Chapter 2 of Title 9  
of the Modesto Municipal Code is hereby amended to read as follows:

**9-2.01. ADOPTION OF "UNIFORM PLUMBING CODE."**

That certain document three (3) copies of which are on file in the office of the City Clerk being marked and designated as the "Uniform Plumbing Code, 2000 Edition," published by the International Association of Plumbing and Mechanical Officials, together with Appendices A, B, C, D, H, and I thereto, which said Code provides for the protection of the public health and safety, requires a permit for the installation or alteration of plumbing and drainage systems, defines certain terms, establishes minimum regulations for the installation, alteration or repair of plumbing and drainage systems and the inspection thereof, and provides penalties for the violation thereof, as amended, deleted and added to, be and the same is hereby adopted by reference as the Plumbing Code of the City of Modesto.

SECTION 2. FINDING AND DECLARATION. As required by the Health and Safety Code of the State of California, the Council of the City of Modesto finds and declares that the foregoing additions, modifications and changes to the regulations adopted pursuant to said Health and Safety Code are reasonably necessary because of local conditions in that they adopt the 2000 Edition of the Uniform Plumbing Code in lieu of the 1997 Edition, prescribe local procedures to be used in the administration and enforcement of said Code, provide for local interpretations of said Code, make other changes in said Code consistent with local custom and practice as reflected in the prior local Plumbing Code, and other changes due to local climatic and geographic conditions.

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. SAVINGS. The provisions of this ordinance shall not affect any proceedings, suit or prosecution heretofore or hereafter commenced under the provisions of the Municipal Code as they existed prior to the effective date of this ordinance. No offense committed and no liability, penalty or forfeiture, either civilly or criminally incurred under the provisions of the Municipal Code as they existed prior to the effective date of this ordinance shall be discharged or affected by the adoption of this ordinance; but prosecutions and suits for such offenses, liabilities, penalties or forfeitures shall be instituted or proceeded with in all respects as if this ordinance had not been adopted.

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 4<sup>th</sup> day of March, 2003, by Councilmember Fisher, 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: Conrad, Fisher, Jackman, Keating, O'Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: Frohman

APPROVED:   
CARMEN SABATINO, Mayor

ATTEST:

By   
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

Ord. No. 3290-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 11<sup>th</sup> day of March, 2003, Councilmember Fisher 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: Conrad, Fisher, Frohman, Keating, O'Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: Jackman

APPROVED:   
MAYOR CARMEN SABATINO

ATTEST:   
JEAN ZAHR City Clerk

Effective Date: April 10 2003

ORDINANCE NO. 3291-C.S.

AN ORDINANCE AMENDING CHAPTER 9 OF TITLE 9 OF  
THE MODESTO MUNICIPAL CODE RELATING TO THE  
HOUSING CODE.

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

SECTION 1. AMENDMENT OF CODE. Chapter 9 of Title 9 of the Modesto  
Municipal Code is hereby amended to read as follows:

**CHAPTER 9 - HOUSING CODE**

**ARTICLE 1. DESIGNATION, TITLE AND SCOPE**

**9-9.101. DESIGNATION.**

Chapter 9 of Title 9 of this Code, together with the specified provisions of the State Housing Law, California Code of Regulations and Uniform Housing Code as adopted shall be known as the Housing Code for the City of Modesto.

**9-9.102. TITLE.**

This chapter shall be known as the "Housing Code," may be cited as such, and will be referred to herein as "this chapter".

**9-9.103. PURPOSE.**

The purpose of this chapter is to provide minimum requirements for the protection of life, limb, health, property, safety and welfare of the general public and the owners and occupants of residential buildings and structures within the City of Modesto.

**9-9.104. APPLICABILITY.**

- (a) **Application.** The provisions of this chapter shall apply to all buildings or portions thereof used, or designed or intended to be used, for human habitation. The provisions of this chapter shall also apply to any accessory building of a substandard building when such accessory building would constitute a dangerous building under the provisions of Chapter 8 of Title 9 of the Modesto Municipal Code.

- (b) **Alteration.** Existing buildings which were altered or enlarged shall be made to conform to this Code insofar as the new work is concerned and in accordance with the Modesto Building Code.
- (c) **Relocation.** Buildings or structures moved into or within the city shall comply with all the requirements of this Code and with all the requirements of the Modesto Building Code for new buildings.

#### **9-9.105. REMEDIES.**

Unless otherwise expressly provided, the remedies, procedures and penalties provided by this chapter, are cumulative to each other and to any others available under State law or the Modesto Municipal Code.

### **ARTICLE 2. ENFORCEMENT**

#### **9-9.201. AUTHORITY.**

The Building Official is authorized and directed to administer and enforce all provisions of this chapter. As used herein, the term "Building Official" shall include his or her authorized representatives, except as specifically provided otherwise. For such purposes, the Building Official shall have the powers of a law enforcement officer.

The Building Official shall have the power to render interpretations of this Code and to adopt and enforce rules and supplemental regulations in order to clarify the application of its provisions. Such interpretations, rules and regulations shall be in conformity with the intent and purpose of this Code.

The Building Official is authorized to enforce, implement and foster compliance with the following specified provisions of State law, as well as other provisions of Federal, State and local law which further the protection of life, limb, health, property, safety and welfare of the general public and the owners and occupants of residential buildings: California Revenue and Taxation Code Sections 17274 and 24436.5; California Civil Code Sections 1929, 1941 and 9142; California Health and Safety Code Sections 17961 and 17980 through 17995.

#### **9-9.202. RIGHT OF ENTRY.**

When it is necessary to make an inspection to enforce the provisions of this chapter, or when the Building Official has reasonable cause to believe that there exists in a building or upon a premises a condition which is contrary to, or in violation of this chapter, which makes the building or premises unsafe, dangerous or hazardous, the Building Official may enter the building or premises at

reasonable times to inspect or to perform the duties imposed by this chapter, provided that if such building or premises be occupied that credentials be presented to the occupant and entry requested. If such building or premises be unoccupied, the Building Official shall first make a reasonable effort to locate the owner or other person having charge or control of the building or premises and request entry. If entry is refused, the Building Official shall have recourse to the remedies provided by law to secure entry.

If the enforcement officer has obtained a proper inspection warrant or other remedy provided by law to secure entry, then no owner or occupant or any person having charge, care or control of any building or premises shall fail or neglect, after proper demand is made as provided in this chapter, promptly to permit entry therein by the enforcement officer for the purpose of inspection and examination pursuant to this Code. A violation of this section is a misdemeanor.

### **9-9.203. RESPONSIBILITIES OF OWNERS AND OCCUPANTS.**

Every owner remains liable for violations of duties imposed upon him or her by this chapter even though an obligation is also imposed on the occupants of this building, and even though the owner has, by agreement, imposed on the occupant the duty of furnishing required equipment or of complying with this chapter.

Buildings and structures and parts thereof shall be maintained in a safe and sanitary condition. The owner or the owner's designated agent shall be responsible for such maintenance. To determine compliance with this subsection, the building may be reinspected.

Every owner, or his or her agent, in addition to being responsible for maintaining his or her building in a sound structural condition, shall be responsible for keeping that part of the building or premises which he or she occupies or controls in a clean, sanitary, and safe condition including the shared or public areas in a building containing two (2) or more dwelling units.

Every owner shall, when required by this chapter, other provisions of this Code, or the laws of the State of California, furnish and maintain approved devices, equipment, or facilities for the prevention of insect and rodent infestation, and where infestation has taken place, shall be responsible for the extermination of any insects, rodents, or other pests when such extermination is not specifically made the responsibility of the occupant by law or ruling.

Every occupant of a dwelling unit, in addition to being responsible for keeping in a clean, sanitary, and safe condition that part of the dwelling or dwelling unit or premises which he or she occupies and controls, shall dispose of all his or her

rubbish, garbage, and other organic waste in a manner required by the applicable provisions of this Code or State law.

Every occupant shall, where required by this chapter, furnish and maintain approved devices, equipment or facilities necessary to keep his or her premises safe and sanitary.

#### **9-9.204. SUBSTANDARD BUILDINGS DECLARED NUISANCES.**

All buildings or portions thereof which are determined to be substandard as defined in this chapter, are hereby declared to be public nuisances and shall be abated by repair, rehabilitation, demolition, board-up, fencing or removal in accordance with the procedures specified in Article 12 of this chapter.

#### **9-9.205. BOARD OF APPEALS.**

The Board of Building Appeals established by Section 105 of the Building Code of the City of Modesto shall hear appeals provided for hereunder and provide for interpretations of the provisions of this Code.

#### **9-9.206. BOARD RULES AND REGULATIONS.**

The board may adopt reasonable rules and regulations for conducting its business. The board shall render all decisions and findings in writing to the party appealing with a copy to the Building Official. Copies of all rules or regulations adopted by the board shall be delivered to the Building Official who shall make them freely accessible to the public.

#### **9-9.207. VIOLATIONS AND PENALTIES.**

- (a) **Criminal Actions.** No responsible person, firm or corporation, whether as owner, lessee, sublessee or occupant, shall erect, construct, enlarge, alter, repair, move, improve, remove, demolish, equip, use, occupy, or maintain any building or premises, or cause or permit the same to be done, contrary to or in violation of any of the provisions of this chapter or any order issued by the Building Official hereunder. Any responsible party violating the provisions of this chapter shall be guilty of a misdemeanor for each day such violation continues and upon conviction of any such violation such person shall be punishable by a fine of not more than five hundred dollars (\$500.00) or by imprisonment in the city jail for not more than one hundred eighty (180) days, or by both such fine and imprisonment.
- (b) **Civil Penalties.** Any responsible party violating the provisions of this chapter may also be liable for civil penalties assessed at a daily rate

determined by the Building Official. The maximum civil penalty shall be two thousand five hundred dollars (\$2,500.00) per violation per day with the maximum amount of civil penalties not exceeding one hundred thousand dollars (\$100,000.00) per parcel or structure for any related series of violations in a year. The City Attorney may bring a civil action to enforce any provisions of this chapter.

- (c) **Administrative Penalties.** In addition to criminal sanctions, civil penalties and other remedies set forth in this chapter, administrative penalties may be imposed against any responsible party, whether owner, lessee, sublessor or sublessee or occupant of any premise in violation of any of the provisions of this chapter. Imposition, enforcement, collection and administrative review of administrative penalties imposed shall be conducted pursuant to Title 1 Chapter 6 of this Code.
- (d) The increased civil penalties, imposition of administrative penalties, and modification of the crime classification from infraction to a misdemeanor shall apply to all violations where a notice and order or other official notice from the City of Modesto has not been sent to the person in violation prior to the effective date of this chapter. The civil penalties and crime classification as provided in this Code prior to the effective date of this chapter shall continue to apply to all violations where a notice and order or other official notice of violation was sent by the City of Modesto prior to the effective date of this chapter.

### **ARTICLE 3. PERMITS AND INSPECTIONS**

#### **9-9.301. PERMITS REQUIRED.**

No person, firm, or corporation shall erect, construct, enlarge, alter, repair, move, improve, remove, convert, or demolish any building or structure, or cause or permit the same to be done, without first obtaining a separate building permit for each building or structure from the Building Official in the manner and according to the applicable conditions prescribed in Section 106 of the Uniform Building Code as adopted by reference in Section 9-1.01 of this Code.

#### **9-9.302. FEES.**

Whenever a permit is required by Section 106 of the Uniform Building Code, appropriate fees shall be paid to the Building Official.

### 9-9.303. INSPECTION OF BUILDINGS.

All buildings or structures within the scope of this chapter and all construction or work for which a permit is required shall be subject to inspection by the Building Official in accordance with and in the manner provided by the Uniform Building Code.

## ARTICLE 4. DEFINITIONS

### 9-9.401. DEFINITIONS GENERALLY.

For the purposes of this chapter, certain abbreviations, terms, phrases, words, and their derivatives shall be construed as specified in Chapter 2 of the Uniform Building Code.

### 9-9.402. SPECIFIC DEFINITIONS.

As used in this chapter, the following words or terms have the following meaning:

- (a) **Building:** Any building or structure, or portion thereof, which is used, or designed or intended to be used for human habitation, for living, sleeping, cooking, or eating purposes or any combination thereof.
- (b) **Ceiling Height:** The clear vertical distance from the finished floor to the finished ceiling.
- (c) **Congregate Residence:** Any building or portion thereof which contains facilities for living, sleeping and sanitation, as required by this Code, and may include facilities for eating and cooking, for occupancy by other than a family. A congregate residence may be a shelter, convent, monastery, dormitory, fraternity or sorority house but does not include jails, hospitals, nursing homes, hotels or lodging houses.
- (d) **Court:** An open, unoccupied space extending not more than twenty-four (24) inches below finish grade and bounded on two (2) or more sides by walls of the building. An inner court is a court entirely within the exterior walls of a building. All other courts are outer courts.
- (e) **Efficiency living units:** Efficiency living unit is a dwelling unit containing only one (1) habitable room and having cooking facilities used for combined living, dining and sleeping purposes. The efficiency dwelling unit must meet the requirements of Section 9-9.505(b) of this Code.

- (f) **Electrical Code:** The National Electrical Code as adopted by the City of Modesto.
- (g) **Hot water:** Hot water shall be water at a temperature of not less than one hundred twenty (120) degrees Fahrenheit.
- (h) **Mechanical Code:** The Uniform Mechanical Code as adopted by the City of Modesto.
- (i) **Nuisances:** The following shall be defined as nuisances:
  - (1) Any public nuisance known at common law or in equity jurisprudence.
  - (2) Any attractive nuisance which may prove detrimental to children whether in a building, on the premises of a building, or on an unoccupied lot. This includes any abandoned wells, abandoned swilling pools or spas, shafts, basements or excavations; abandoned refrigerators and motor vehicles; structurally unsound fences or structures; lumber, trash, fences, debris, or vegetation which may prove a hazard for inquisitive minors.
  - (3) Conditions which are dangerous to the life, limb, health or safety of the public or building occupants.
  - (4) Overcrowding a room with occupants.
  - (5) Insufficient ventilation or illumination.
  - (6) Inadequate or unsanitary sewage or plumbing facilities.
  - (7) Uncleanliness.
  - (8) Whatever renders air, food, or drink unwholesome or detrimental to the health, safety or welfare of human beings.
  - (9) Any building or portion thereof which is determined to be substandard under this chapter.
  - (10) Any building or structure or condition existing on a property which is defined as a public nuisance under this Code.
- (j) **Plumbing Code:** The Uniform Plumbing Code, 2000 Edition or the most recent edition, published by the International Association of Plumbing and

Mechanical Officials, together with those appendices as adopted by the City of Modesto.

- (k) **Uniform Building Code:** The Uniform Building Code, 1997 Edition or the most recent edition, published by the International Conference of Building Officials, as adopted by the City of Modesto.

## **ARTICLE 5. SPACE AND OCCUPANCY STANDARDS.**

### **9-9.501. ACCESS TO PUBLIC PROPERTY.**

All buildings shall be located with respect to property lines and to other buildings on the same property as required by Section 503 of the Uniform Building Code as adopted by the City of Modesto. Each dwelling unit and each guest room in a dwelling or lodging house shall have access to a passageway, not less than three (3) feet in width, leading to a public street or alley. Each apartment house or hotel shall have access to a public street by means of a passageway not less than five (5) feet in width.

### **9-9.502. YARDS.**

Every yard shall be not less than three (3) feet in width for one-story and two-story buildings. For buildings more than two (2) stories in height, the minimum width of the yard shall be increased at the rate of one (1) foot for each additional story. Where yards completely surround the building, the required width may be reduced by one (1) foot. For buildings exceeding fourteen (14) stories in height, the required width of yard shall be computed on the basis of fourteen (14) stories.

**Scope.** This section shall apply to yards having required window openings therein.

### **9-9.503. COURTS.**

Every court shall not be less than three (3) feet in width. Courts having windows opening on opposite sides shall not be less than six (6) feet in width. Courts bounded on three (3) or more sides by the walls of the building shall not be less than ten (10) feet in length unless bounded on one (1) end by a public way or yard. For buildings more than two (2) stories in height, the court shall be increased one (1) foot in width and two (2) feet in length for each additional story. For buildings exceeding fourteen (14) stories in height, the required dimensions shall be computed on the basis of fourteen stories.

Adequate access shall be provided to the bottom for all courts for cleaning purposes. Every court more than two (2) stories in height should be provided with a horizontal air intake at the bottom not less than ten (10) square feet in area and leading to the exterior of the building unless abutting a yard or public way. The construction of the air intake shall be required for the court walls of the building, but in no case shall be less than one (1) hour fire-resistive.

**Scope.** This section shall apply to courts having required window openings therein.

#### **9-9.504. CEILING HEIGHTS.**

Habitable rooms, storage rooms and laundry rooms shall have a ceiling height of not less than seven (7) feet six (6) inches. Hallways, corridors, bathrooms and toilet rooms shall have a ceiling height of not less than seven (7) feet measured to the lowest projection from the ceiling. For exposed beam ceiling members are spaced at less than forty-eight (48) inches on center, ceiling height shall be measured to the bottom of these members. Where exposed beams ceiling members are spaced at forty-eight (48) inches or more on center, ceiling height shall be measured to the bottom of the deck supported by these members, provided that the bottom of the members is not less than seven (7) feet above the floor.

Any room in a building having a sloping ceiling, the prescribed ceiling height for the room is required in only one-half (2) the area thereof. No portion of the room measuring less than five (5) feet from the finished floor to the finished ceiling shall be included in the any computation of the minimal area thereof.

If any room has a furred ceiling, the prescribed ceiling height is required in two-thirds (2/3) the area thereof, but in no case shall the height of the furred ceiling be less than seven (7) feet.

#### **9-9.505. FLOOR AREA.**

- (a) Every dwelling unit and congregate residence shall have at least one (1) room which shall have not less than one hundred twenty (120) square feet of floor area. Other habitable rooms, except kitchens, shall have an area of not less than seventy (70) square feet.
- (b) **Exception.** Nothing in this section shall prohibit the use of an efficiency living unit within an apartment house meeting the following requirements:
  - (1) The unit shall have a living room of not less than two hundred twenty (220) square feet of superficial floor area. An additional

one hundred (100) square feet of superficial floor area shall be provided for each occupant of such unit in excess of two (2).

- (2) The unit shall be provided with a separate closet.
- (3) The unit shall be provided with a kitchen sink, cooking appliance and refrigeration facilities, each having a clear working space of not less than thirty (30) inches in front. Light and ventilation conforming to this Code shall be provided.
- (4) The unit shall be provided with a separate bathroom containing a water closet, lavatory, and bathtub or shower.

#### **9-9.506. WIDTH.**

No habitable room other than a kitchen shall be less than seven (7) feet in any dimension. No water closet shall be located in a space less than thirty (30) inches in width. A clear space in front of the water closet stool of not less than twenty-four (24) inches shall be provided.

### **ARTICLE 6. NATURAL LIGHT AND VENTILATION.**

#### **9-9.601. LIGHT.**

- (a) **General.** For the purpose of determining the light required by this section, any room may be considered as a portion of an adjoining room when one half (2) of the area of the common wall is open and unobstructed and provides an opening of not less than one tenth (1/10) of the floor area of the interior room or twenty-five (25) square feet, whichever is greater.
- (b) Guest rooms and habitable rooms within a dwelling unit shall be provided with natural light by means of windows or skylights with an area of not less than one-tenth (1/10) of the floor area of such rooms within a minimum of ten (10) square feet.

**Exception:** Kitchens in Group R occupancies may be provided with artificial light.

- (c) Required windows shall open directly onto a street or public alley or a yard or court located on the same lot as the building.

**Exception:**

1. Required windows may open into a roofed porch where the porch:

- 1.1 Abuts a street, yard, or court; and
- 1.2 Has a ceiling height of not less than seven (7) feet; and
- 1.3 Has the longer side at least sixty-five (65) percent open and unobstructed.

2. Skylights.

**9-9.602. VENTILATION.**

- (a) **General.** For the purpose of determining the ventilation required by this section, any room may be considered as a portion of an adjoining room when one half (2) of the area of the common wall is open and unobstructed and provides an opening of not less than one tenth (1/10) of the floor area of the interior room or twenty-five (25) square feet, whichever is greater.
- (b) Guest rooms and habitable rooms within a dwelling unit shall be provided with natural ventilation by means of openable exterior openings with an area of not less than one-twentieth (1/20) of the floor area of such rooms with a minimum of five (5) square feet.

In lieu of required exterior openings for natural ventilation, a mechanical ventilating system may be provided. Such systems shall be capable of providing two (2) air changes per hour in all guest rooms, dormitories, habitable rooms, and in public corridors with a minimum of fifteen (15) cubic feet per minute of outside air per occupant.

Bathrooms, water closet compartments, laundry rooms and similar rooms shall be provided with natural ventilation by means of openable exterior openings with an area not less than one-twentieth (1/20) of the floor area of such rooms with a minimum of one and one-half (1-1/2) square feet.

**Exception:** Laundry rooms in Group R, Division 3 occupancies.

In lieu of required exterior openings for natural ventilation in bathrooms containing a bathtub or shower or combination thereof, laundry rooms, and similar rooms, a mechanical ventilation system connected directly to the outside capable of providing five (5) air changes per hour shall be provided. Such systems shall be connected directly to the outside, and the point of discharge of exhaust air shall be at least three (3) feet from any opening that allows air entry into occupied portions of the building. Bathrooms which contain only a water closet or lavatory or combination

thereof, and similar rooms may be ventilated with an approved mechanical recirculating fan or similar device designed to remove odors from the air.

**9-9.603. HALLWAYS.**

All public hallways, stairs, and other exit ways shall be adequately lighted at all times in accordance with the Uniform Building Code as adopted by the City of Modesto.

**9-9.604. SANITATION.**

Every dwelling unit, lodging house and congregate residence shall be provided with a water closet, a lavatory and a bathtub or shower.

**9-9.605. HOTELS.**

Hotels or subdivisions thereof where both sexes are accommodated shall contain at least two (2) separate toilet facilities which are conspicuously identified for male or female use, each of which contains at least one (1) water closet. Hotel guestrooms may have one identified toilet facility. Additional water closets shall be provided on each floor for each sex at the rate of one (1) for every additional ten (10) guests, or fraction thereof, in excess of ten (10).

**9-9.606. KITCHEN.**

Each dwelling unit shall be provided with a kitchen. Every kitchen shall be provided with a kitchen sink. Wooden sinks or sinks of similarly absorbent material shall not be permitted.

**9-9.607. FIXTURES.**

All plumbing fixtures shall be connected to a sanitary sewer or to an approved private sewage disposal system. All plumbing fixtures shall be connected to an approved system of water supply and provided with hot and cold running water necessary for normal operation. All plumbing fixtures shall be of an approved earthenware type or of a similar nonabsorbent material.

**9-9.608. WATER CLOSET COMPARTMENTS.**

Walls and floors of water closet compartments except in dwellings shall be finished in accordance with Section 807 of the Uniform Building Code as adopted by the City of Modesto.

**9-9.609. ROOM SEPARATIONS.**

The water closet, bathtub or shower required by this chapter shall be installed in a room which will afford privacy to the occupant.

**9-9.610. INSTALLATION AND MAINTENANCE OF SANITARY FACILITIES.**

All sanitary facilities shall be installed and maintained in a safe and sanitary condition and in accordance with all applicable laws.

**9-9.611. CONFLICTS WITH ZONING REGULATIONS.**

In the event that the standards prescribed by Sections 9-9.601 to 9-9.610 of this chapter shall conflict in a given case with the minimum standards contained in the zoning regulations of the City, the latter shall prevail.

**ARTICLE 7. STRUCTURAL REQUIREMENTS**

**9-9.701. GENERAL REQUIREMENTS.**

Buildings or structures may be of any type of construction permitted by the Modesto Building Code. Roofs, floors, walls, foundations and all other structural components of buildings shall be capable of resisting any and all forces and loads to which they may be subjected. All structural elements shall be proportioned and joined in accordance with the stress limitations and design criteria as specified in the appropriate sections of the building code. Buildings of every permitted type of construction shall comply with the applicable requirements of the Modesto Building Code.

**9-9.702. SHELTER.**

Every building shall be weather protected so as to provide shelter for the occupants against the elements and to exclude dampness.

**9-9.703. PROTECTION OF MATERIALS.**

All wood shall be protected against termite damage and decay as provided in the Uniform Building Code.

## **ARTICLE 8. MECHANICAL REQUIREMENTS**

### **9-9.801. HEATING.**

Dwelling units, guest rooms and congregate residences shall be provided with heating facilities capable of maintaining a room temperature of seventy (70) degrees Fahrenheit at a point three (3) feet above the floor in all habitable rooms. Such facilities shall be installed and maintained in a safe condition and in accordance with the Uniform Building Code, the Uniform Mechanical Code, and California Code of Regulations, Title 25, Division 1, Chapter 1, Subchapter 1, Article 5, Section 34. Unvented fuel-burning heaters are not permitted. All heating devices or appliances shall be of an approved type.

### **9-9.802. ELECTRICAL EQUIPMENT.**

All electrical equipment, wiring and appliances shall be installed and maintained in a safe manner in accordance with all applicable laws. All electrical equipment shall be of an approved type.

Where there is an electrical power available within three hundred (300) feet of any building, such building shall be connected to such electrical power. Every habitable room shall contain at least two (2) electrical convenience outlets or one (1) convenience outlet and one (1) electric light fixture. Every water closet compartment, bathroom, laundry room, furnace room and public hallway shall contain at least one (1) electric light fixture.

### **9-9.803. VENTILATION.**

Ventilation for rooms and areas and for fuel-burning appliances shall be provided as required in the Uniform Mechanical Code as adopted by the City of Modesto and the Modesto Housing Code. Where mechanical ventilation is provided in lieu of the natural ventilation required by the Modesto Housing Code, such mechanical ventilating system shall be maintained in operation during the occupancy of any building or portion thereof.

## **ARTICLE 9. EXITS**

### **9-9.901. GENERALLY.**

Every dwelling unit or guest room shall have access directly to the outside or to a public corridor. All buildings or portions thereof shall be provided with exits, exit ways, and appurtenances as required by the Uniform Building Code as adopted by the City of Modesto.

Every sleeping room below the fourth (4th) floor shall have at least one (1) openable window or exterior door approved for emergency exit or rescue. The unit shall be operable for the inside to provide a full clear opening without the use of separate tools.

## **ARTICLE 10. FIRE PROTECTION**

### **9-9.1001. GENERAL REQUIREMENTS.**

All buildings or portions thereof shall be provided with a degree of fire-resistive construction as required by the Uniform Building Code for the appropriate occupancy, type of construction and location on property, and shall be provided with the appropriate fire-extinguishing systems or equipment required by the Uniform Building Code.

## **ARTICLE 11. SUBSTANDARD BUILDINGS**

### **9-9.1101. GENERAL DEFINITION.**

Any building or portion thereof including any dwelling unit, guest room or suite of rooms, or the premises on which the same is located, in which there exists any of the conditions hereinafter set forth in this chapter to an extent that endangers the life, limb, health, property, safety, or welfare of the public or the occupants thereof shall be deemed and hereby is declared to be a substandard building.

### **9-9.1102. INADEQUATE SANITATION.**

Inadequate sanitation shall include but not be limited to the following:

- (a) Lack of, or improper water closet, lavatory, bathtub or shower in a dwelling unit or lodging house.
- (b) Lack of improper water closets, lavatories, bathtubs or showers per number of guests in a hotel.
- (c) Lack of, or improper kitchen sink in a dwelling unit.
- (d) Lack of hot and cold running water to plumbing fixtures in a hotel.
- (e) Lack of hot and cold running water to plumbing fixtures in a dwelling unit or lodging house.
- (f) Lack of adequate heating facilities.

- (g) Lack of, or improper operation of required ventilating equipment.
- (h) Lack of minimum amounts of natural light and ventilation as required by this Code.
- (i) Room and space dimension less than required by this Code.
- (j) Lack of required electrical lighting.
- (k) Dampness of habitable rooms.
- (l) Infestation of insects, vermin, rodents.
- (m) General dilapidation or improper maintenance.
- (n) Lack of connection to required sewage disposal system.
- (o) Lack of adequate garbage and rubbish removal and removal facilities.

**9-9.1103. STRUCTURAL HAZARDS.**

Structural hazards shall include but not be limited to the following:

- (a) Deteriorated or inadequate foundations.
- (b) Defective or deteriorated flooring or floor supports.
- (c) Flooring or floor supports of insufficient size to carry imposed loads with safety.
- (d) Members of walls, partitions, or other vertical supports that split, lean, list, or buckle due to defective material or deterioration.
- (e) Members of walls, partitions, or other vertical supports that are of insufficient size to carry imposed loads with safety.
- (f) Members of ceilings, roofs, ceiling and roof supports, or other horizontal members which sag, split, or buckle due to defective material or deterioration.
- (g) Members of ceilings, roofs, ceiling and roof supports, or other horizontal members that are of insufficient size to carry imposed loads with safety.

- (h) Fireplaces or chimneys which list, bulge, or settle due to defective material or deterioration.
- (i) Fireplaces or chimneys which are of insufficient size or strength to carry imposed loads with safety.

**9-9.1104. NUISANCE.**

Buildings or portions thereof in which there exists any nuisance as defined in this Code are deemed substandard buildings. Such substandard building conditions shall be abated by the procedures set forth in California Administrative Code, Title 25, Division 1, Chapter 1, Subchapter 1, Article 6.

**9-9.1105. HAZARDOUS ELECTRICAL WIRING.**

Electrical wiring which was installed in violation of code requirements in effect at the time of installation or electrical wiring not installed in accordance with generally accepted construction practices in areas where no codes were in effect or which has not been maintained in good condition or which is not being used in a safe manner shall be considered substandard.

**9-9.1106. HAZARDOUS PLUMBING.**

Plumbing which was installed in violation of code requirements in effect at the time of installation of plumbing not installed in accordance with generally accepted construction practices in areas where no codes were in effect or which has not been maintained in good condition or which is not free of cross-connections or siphonage between fixtures shall be considered substandard.

**9-9.1107. HAZARDOUS MECHANICAL EQUIPMENT.**

Mechanical equipment which was installed in violation of code requirements in effect at the time of installation or mechanical equipment not installed in accordance with generally accepted construction practices in areas where no codes were in effect or which has not been maintained in good and safe condition shall be considered substandard.

**9-9.1108. FAULTY WEATHER PROTECTION.**

Buildings or portions thereof shall be considered substandard when they have faulty weather protection which shall include, but not be limited to, the following:

- (a) Deteriorated, crumbling or loose plaster.

- (b) Deteriorated or ineffective waterproofing of exterior walls, roofs, foundations or floors, including broken windows or doors.
- (c) Defective or lack of weather protection for exterior wall coverings, including lack of paint, or weathering due to lack of paint or other approved protective covering.
- (d) Broken, rotted, split or buckled exterior wall coverings or roof coverings.

**9-9.1109. FIRE HAZARD.**

Any building or portion thereof, device, apparatus, equipment, combustible waste or vegetation which, in the opinion of the Fire Chief, is in such a condition as to cause a fire or explosion or provide a ready fuel to augment the spread and intensity of fire or explosion arising from any cause shall be considered a substandard building.

**9-9.1110. FAULTY MATERIALS OF CONSTRUCTION.**

The use of materials of construction, except those which are specifically allowed or approved by this Code and the Modesto Building Code, and which have been adequately maintained in good and safe condition, shall cause a building to be substandard.

**9-9.1111. HAZARDOUS OR UNSANITARY PREMISES.**

The accumulation of weeds, vegetation, junk, dead organic matter, debris, garbage, offal, rat harborages, stagnant water, combustible materials and similar materials or conditions on a premises constitutes fire, health or safety hazards which shall be abated in accordance with the procedures set forth in Article 12 of this chapter.

**9-9.1112. INADEQUATE EXITS.**

Except for those buildings or portions thereof which have been provided with adequate exit facilities conforming to the provisions of this chapter, buildings or portions thereof whose exit facilities were installed in violation of code requirements in effect at the time of their construction or whose exit facilities have not been increased in number or width in relation to an increase in occupant load due to alterations, additions or change in use or occupancy subsequent to the time of construction shall be considered substandard.

Notwithstanding compliance with code requirements in effect at the time of their construction, buildings or portions thereof shall be considered substandard when

the Building Official finds that an unsafe condition exists through an improper location of exits, a lack of adequate number or width of exits, or when other conditions exist which are dangerous to human life.

**9-9.1113. INADEQUATE FIRE-PROTECTION OR FIREFIGHTING EQUIPMENT.**

Buildings or portions thereof shall be considered substandard when they are not provided with the fire-resistive construction or fire-extinguishing systems or equipment required by this chapter, except those buildings or portions thereof which conformed with all applicable laws at the time of their construction and whose fire-resistive integrity and fire-extinguishing systems or equipment have been adequately maintained and improved in relation to any increase in occupant load, alteration or addition, or any change in occupancy.

**9-9.1114. IMPROPER OCCUPANCY.**

Improper occupancy shall include all buildings or portions thereof occupied for living, sleeping, cooking, or dining purposes which were not designed or intended to be used for such occupancies and shall be considered substandard.

**ARTICLE 12. NOTICES AND ORDERS OF THE BUILDING OFFICIAL**

**9-9.1201. COMMENCEMENT OF PROCEEDINGS.**

Whenever the Building Official has inspected or caused to be inspected any building and has found and determined that such building is a substandard building, the Building Official shall commence proceedings to cause the repair, rehabilitation, vacation, or demolition of the building.

**9-9.1202. IMMEDIATELY DANGEROUS BUILDINGS.**

- (a) If the Building Official determines, in connection with the inspection of any building, that the building is unoccupied and concludes that occupation of the building by any person would be immediately dangerous to the life, limb, safety or health of such person, the Building Official may cause the building to be posted with a notice reading **ASUBSTANDARD BUILDING DO NOT OCCUPY@** as set forth with particularity in Section 9-9.1403 of this chapter. The Building Official may cause such utilities to be disconnected as may be necessary to eliminate the hazard and to prevent occupancy.
- (b) After posting the building as provided in this section, the Building Official shall immediately commence proceedings as provided in this chapter.

- (c) The notice posted on any building pursuant to this section may be removed by action of the Building Official, or by order of the board.

#### **9-9.1203. ISSUANCE OF NOTICE AND ORDER.**

The Building Official shall issue a notice and order directed to the record owner of the building. The notice and order shall contain the following:

- (a) The street address and a legal description sufficient for identification of the premises upon which the building is located.
- (b) A statement that the Building Official has found the building to be substandard with a brief and concise description of the conditions found to render the building substandard under the provisions of this chapter.
- (c) A statement of the action required to be taken as determined by the Building Official.
  - (1) If the Building Official has determined that the building or structure must be repaired, the order shall require that all required permits be secured therefor and the work physically commenced within such time (not to exceed sixty (60) days from the date of the order) and completed within such time as the Building Official shall determine is reasonable under all of the circumstances.
  - (2) If the Building Official has determined that the building or structure must be vacated, the order shall require that the building or structure shall be vacated within a certain time from the date of the order as determined by the Building Official to be reasonable.
  - (3) If the Building Official has determined that the building or structure must be demolished, the order shall require that the building be vacated within such time as the Building Official shall determine reasonable (not to exceed sixty (60) days from the date of the order), that all required permits be secured therefor within sixty (60) days from the date of the order and that the demolition be completed within such time as the Building Official shall determine is reasonable.
- (d) Statements advising that if any required repair or demolition work (without vacation also be required) is not commenced within the time specified, the Building Official (i) will order the building vacated and posted to prevent further occupancy until the work is completed, and (ii)

may proceed to cause the work to be done and charge the costs thereof against the property or its owner.

- (e) Statements advising (i) that any person having any record title or legal interest in the building may appeal from the notice and order of any action of the Building Official to the Board of Building Appeals, provided the appeal is made in writing provided in this Code, and filed with the Building Official within thirty (30) days from the date of service of such notice and order, and (ii) that failure to appeal will constitute a waiver of all right to an administrative hearing and determination of the matter.

#### **9-9.1204. FEE IMPOSED - NOTICE AND ORDER.**

A fee shall be imposed on the owner of any property for which a notice and order is issued pursuant to this section. The fee shall be calculated to recover the total cost of inspections and enforcement by the City of Modesto. This fee shall be set by resolution of the City Council. An additional fee which shall be set by resolution of the City Council shall be imposed on the owner of the property at the conclusion of any matter in which a notice and order has been issued. This closing fee shall be calculated to recover the cost of closing the file, removing or placing liens on the property, a title report, and other costs associated with the matter. Any fee imposed on the owner and not paid shall be collected pursuant to the procedures set forth in Article 16 of this chapter. (50.09)

#### **9-9.1205. SERVICE OF NOTICE AND ORDER.**

Any notice and order of the Building Official may be amended or supplemented by the Building Official. The notice and order, amended or supplemental notice and order, shall be served upon the record owner and posted on the property. One (1) copy of the notice and order shall be served on each of the following if known to the Building Official or disclosed from official public records: holder of any mortgage or deed of trust or other lien or incumbrance of records; the owner or holder of any lease of record; and the holder of any other estate or legal interest of record in or to the building or the land on which it is located. The failure of the Building Official to serve any person required herein to be served shall not invalidate any proceedings hereunder as to any other person duly served or relieve any such person from any duty or obligation imposed by the provisions of this chapter.

#### **9-9.1206. METHOD OF SERVICE.**

Service of the notice and order may be made upon all persons entitled thereto either by personal delivery or by certified mail, return receipt requested. Service may be upon the record owner at his/her/their address as it appears on the last

equalized assessment roll of Stanislaus County recorded documents, or as known to the Building Official. A copy of the notice and order and any amended or supplemental notice and order shall also be posted on the premises.

- (a) In lieu of personally serving the owner or service by certified mail, service of the notice and order and any amended or supplemental notice and order may be made as follows:
  - (1) In the event that the owner refuses to accept certified return receipt mail or cannot be personally served, service may be made by substituted service. Substituted service may be accomplished as follows:
    - (i) By leaving a copy during usual business hours in the recipients business with the person who is apparently in charge, and by thereafter mailing by first class mail a copy to the recipient where the copy was left;
    - (ii) By leaving a copy at the recipient's dwelling or usual place of abode, in the presence of a competent member of the household and thereafter mailing, by first class mail, a copy to the recipient at the address where the copy was left.
  - (2) In the event the owner refuses to accept certified return receipt mail or cannot be personally served and has a property manager or rental agency overseeing the premises, substituted service may be as set forth in (1) above upon the property manager or rental agency.
  - (3) If the owner lives out of state and will not accept certified return receipt mail, then service may be made by first class mail.
  - (4) If the owner of the property cannot be located, or service cannot be effected as set forth in this section, service may be made by publication in a Modesto newspaper of general circulation which is most likely to give actual notice and order to the owner. Service shall be deemed sufficient when it is accomplished pursuant to Government Code Section 6063.

The failure of any such person to receive such notice and order shall not affect the validity of any proceedings taken under this section. Service by certified mail in the manner herein provided shall be effective on the date of mailing.

**9-9.1207. PROOF OF SERVICE.**

Proof of service of the notice and order shall be certified to at the time of service by a written declaration under penalty of perjury executed by the person effecting service, declaring the time, date and manner in which service was made. The declaration, together with any receipt returned in acknowledgment of receipt by certified mail, shall be affixed to the copy of the notice and order retained by the Building Official.

**9-9.1208. RECORDATION OF NOTICE AND ORDER.**

If compliance is not had with the order within the time specified therein, and no appeal has been properly and timely filed, the Building Official may file in the office of the County Recorder a certificate describing the property and certifying (i) that the building is a substandard building, and (ii) that the owner has been so notified. Whenever the corrections ordered shall thereafter have been completed or the building demolished so that it no longer exists as a substandard building on the property described in the certificate, the Building Official shall file a new certificate with the County Recorder certifying that the building has been demolished or all required corrections have been made and fees paid that the building is no longer substandard, whichever is appropriate.

**9-9.1209. REPAIR, VACATION AND DEMOLITION.**

The following standards shall be followed by the Building Official (and by the Board of Building Appeals if an appeal is taken) in ordering the repair, vacation or demolition of any substandard building or structure:

- (a) Any building declared a substandard building under this Code shall be made to comply with one (1) of the following:
  - (1) The building shall be repaired in accordance with the current Building Code or other current code applicable to the type of substandard conditions requiring repair; or
  - (2) The building shall be demolished at the option of the building owner; or
  - (3) If the building does not constitute an immediate danger to the life, limb, property or safety of the public, it may be vacated, secured and maintained against entry.

- (b) If the building or structure is in such condition as to make it immediately dangerous to the life, limb, property or safety of the public or of the occupants, it shall be ordered to be vacated.

**9-9.1210. NOTICE TO VACATE.**

- (a) Every notice to vacate shall, in addition to being served as provided in Section 9-9.1206, be posted at or upon each exit of the building, and shall be in substantially the following form:

**DO NOT ENTER  
UNSAFE TO OCCUPY**

It is a misdemeanor to occupy this building,  
or to remove or deface this notice.

Building Official  
City of Modesto

- (b) Whenever such notice is posted, the Building Official shall include a notification thereof in the notice and order issued under Section 9-9.1203, reciting the emergency and specifying the conditions which necessitate the posting. No person shall remain in or enter any building which has been so posted, except that entry may be made to repair, demolish or remove such building under permit. No person shall remove or deface any such notice after it is posted until the required repairs, demolition or removal have been completed and a certificate of occupancy issued pursuant to the provisions of the Building Code. Any person violation this subsection shall be guilty of a misdemeanor.

**ARTICLE 13. APPEAL FROM NOTICE AND ORDER.**

**9-9.1301. FORM OF APPEAL.**

- (a) Any person having any record title or legal interest in the building may appeal from any notice and order or any action of the Building Official under this title by filing at the office of the Building Official within thirty (30) days from the date of service of the notice and order, a written appeal. However, if the building or structure is in such condition as to make it immediately dangerous to the life, limb, property or safety of the public or adjacent property and is ordered vacated and is posted in accordance with Section 9-9.1403 of this chapter, such appeal shall be filed within ten (10) days from the date of the service of the notice and order of the Building Official.

- (b) The written appeal must contain a brief statement setting forth the legal interest of each of the appellants in the building or the land involved in the notice and order. The written appeal must contain a brief statement in ordinary and concise language of the specific order or action under protest, together with any material facts that support the contentions of the appellant.
- (c) The written appeal must contain a brief statement in ordinary and concise language of the relief sought, and the reasons why it is claimed, why the protested order or action should be reversed, modified, or otherwise set aside.
- (d) The written appeal must contain signatures of all parties named as appellants and their official mailing addresses.
- (e) At least one (1) appellant must submit a declaration under penalty of perjury as to the truth of matters stated in the appeal. This declaration must be submitted with the written appeal itself.

#### **9-9.1302. PROCESSING OF APPEAL.**

- (a) Upon receipt of any appeal filed and payment of the appeal fee as required by this chapter, the Building Official shall forward the appeal to the secretary of the Board of Building Appeals. The secretary shall calendar the appeal for a hearing.
- (b) If the appeal is received by the Building Official not later than fifteen (15) days prior to the next regular meeting of the board, it shall be calendared for hearing at said meeting.
- (c) If the appeal is received by the Building Official on a date less than fifteen (15) days prior to the next regular meeting of the board, it shall be calendared for hearing at the next subsequent meeting of the board.

#### **9-9.1303. NOTICING THE APPEAL FOR HEARING.**

As soon as practicable after receiving a written appeal, the Building Official shall fix a date, time and place for the hearing of the appeal by the Board. Such date shall be not less than ten (10) days nor more than forty-five (45) days from the date the appeal was filed with the Building Official. Written notice of the time and place of the hearing shall be given at least ten (10) days prior to the date of the hearing to the appellant(s) by the Building Official either by causing a copy of such notice to be delivered to the appellant(s) personally or by mailing a copy

thereof, postage prepaid, addressed to the appellant(s) at the address(es) shown on the appeal.

**9-9.1304. FORM OF NOTICE OF HEARING.**

The notice to appellant shall be substantially in the following form, but may include other information:

You are hereby notified that a hearing will be held before the Board of Building Appeals at \_\_\_\_\_ on the day of \_\_\_\_\_, 20\_\_\_\_, at the hour \_\_\_\_\_ upon the notice and order served upon you. You may be present at the hearing. You may be, but need not be, represented by counsel. You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You may request the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by filing an affidavit therefor with the Board of Building Appeals.

**9-9.1305. APPEAL FEE.**

The Building Official may collect and require an appeal fee to be paid at the time the written appeal notice is filed. The appeal fee shall be set by resolution of the City Council. The fee shall be calculated to recover the total City costs incurred in the appeal including, but not limited to, staff time to process and handle the appeal, preparation and services of notices and staff appearance at the appeal hearing. No appeal shall proceed without payment of the fee at the time the appeal is filed. The Building Official may waive the appeal fee upon written request for good cause shown. Good cause may include severe economic hardship, significant attempts to comply with the notice and order, and other factors indicating good faith attempts to comply with the notice and order.

**9-9.1306. EFFECT OF FAILURE TO APPEAL.**

Failure of any person to file a timely appeal in accordance with the provisions of this chapter shall constitute an irrevocable waiver of the right to an administrative hearing and a final adjudication of the notice and order, or any portion thereof, subject only to review pursuant to the provisions of California Code of Civil Procedure Section 1094.5.

**9-9.1307. SCOPE OF HEARING ON APPEAL.**

Only those matters or issues specifically raised by the appellant in the appeal notice shall be considered in the hearing of the appeal.

**9-9.1308. STAY PENDING APPEAL.**

Except for vacation orders made pursuant to Section 9-9.1210, enforcement of any notice and order of the Building Official issued under this Code shall be stayed during the pendency of an appeal therefrom which is properly and timely filed.

**9-9.1309. APPEAL HEARING.**

- (a) **Hearing by Board of Building Appeals.** At the time designated in the notice of hearing, the board shall proceed to hear the testimony of the Building Official or the Building Official's authorized representatives, the testimony of the appellant and other competent persons, including members of the public, as to those matters or issues specifically listed by the appellant in the notice of appeal.
- (b) **Record.** A record of the entire proceedings shall be made by tape recording or by other means of permanent recording determined to be appropriate by the board.
- (c) **Reporting.** The proceedings at the hearing shall also be reported by a phonographic reporter if requested by any party thereto. A transcript of the proceedings shall be made available to all parties upon request and upon payment of the fee prescribed therefor. Such fees may be established by the board, but shall in no event be greater than the cost involved.
- (d) **Continuances.** The board may, upon request of the appellant or the Building Official, grant continuances from time to time for good cause shown, or upon its own motion.
- (c) **Oaths.** The board has the power to administer oaths and affirmations.

**9-9.1310. SUBPOENAS.**

- (a) The board or examiner may obtain the issuance and service of a subpoena for the attendance of witnesses or the production of other evidence at a hearing upon the request of a member of the board or upon the written demand of any party. The issuance and service of such subpoena shall be obtained upon the filing of an affidavit therefor which states the name and address of the proposed witness; specifies the exact things sought to be produced and the materiality thereof in detail to the issues involved; and states that the witness has the desired things in possession or under control. A subpoena need not be issued when the affidavit is defective in any particular.

- (b) In cases where a hearing is referred to an examiner, all subpoenas shall be obtained through the examiner.
- (c) Any person who refuses without lawful excuse to attend any hearing, or to produce material evidence which the person possesses or controls as required by any subpoena served upon such person as provided for herein shall be guilty of a misdemeanor.

#### 9-9.1311. CONDUCT OF HEARING.

- (a) **Rules.** Appeal hearings need not be conducted according to the technical rules relating to evidence and witnesses. Government Code Section 11513(a), (b) and (c) as currently written or as amended in the future, shall apply to all hearings under this chapter.
- (b) **Oral evidence.** Oral evidence shall be taken only upon oath or affirmation.
- (c) **Rights of parties.** Each party shall have the right to do the following:
  - (1) To call and examine witnesses on any matter relevant to the issues of the hearing;
  - (2) To introduce documentary and physical evidence;
  - (3) To cross-examine opposing witnesses on any matter relevant to the issues of the hearing;
  - (4) To impeach any witness regardless of which party first called the witness to testify;
  - (5) To rebut the evidence presented against the party;
  - (6) To represent himself/herself or to be represented by counsel.
- (d) **Official notice.** In reaching a decision, official notice may be taken, either before or after submission of the case for decision, of any fact which may be judicially noticed by the courts of this state. Official notice may be taken of the official records of the Board of Building Appeals or of departments and ordinances of the City of Modesto as well as the rules and regulations of the Board of Building Appeals.

### **9-9.1312. INSPECTION OF THE PREMISES.**

- (a) Board of Building Appeals may, with the owner's consent, inspect the building and premises involved in the hearing prior to, during, or after the hearing.
- (b) Board of Building Appeals, prior to an inspection of the building and premises involved in the hearing, must do the following:
  - (1) Give notice of the inspection to the parties before said inspection is made;
  - (2) Advise the parties that they have the opportunity to be present during the inspection; and
  - (3) State for the record during the hearing, or file a written statement after the hearing for inclusion in the hearing record, all material facts observed by the board and the conclusions drawn therefrom.
- (c) Each party then shall have a right to rebut or explain the matter so stated by the Board of Building Appeals either for the record during the hearing or by filing a written statement after the hearing for inclusion in the hearing record.
- (d) Neither an inspection warrant nor the owner's consent to inspect the building and surrounding properties is required if the inspection can be made from the areas in which the general public has access or if made with permission of other persons authorized to provide access to the property on which the building is located.

### **9-9.1313. DECISION**

- (a) If it is shown by a preponderance of the evidence that the owner has violated provisions of this chapter, the board shall order the owner to correct the substandard conditions or demolish the building within a reasonable time. If the owner fails, refuses or neglects to correct the substandard conditions or demolish the building within the time set forth in the board's order, the board shall order that the City of Modesto may repair or demolish the building or institute an action to compel compliance with its order. If the building is to be demolished, the decision of the board shall state that the evidence presented during the hearing supports the board's finding that it is not economically feasible to repair said building.

- (b) The decision of the board shall be a final decision and shall be in the form of an order and shall contain findings of fact, a determination of the issues presented, the requirements to be complied with by the appellant. A copy of the order shall be delivered to the appellant personally or sent to him/her by certified mail, postage prepaid, return receipt requested.
- (c) The order shall also inform the appellant that the decision of the board is a final decision. It shall state that the time for and the manner of judicial review is governed by California Code of Civil of Procedure Section 1094.5.

#### **ARTICLE 14. ENFORCEMENT OF NOTICE AND ORDER**

##### **9-9.1401. CRIMINAL PENALTIES.**

- (a) After any notice and order issued pursuant to this chapter has become final by failure to file a timely appeal or after a decision on appeal is rendered, no person to whom any such order is directed shall fail, neglect, or refuse to obey any such order. Any such person who fails to comply with a notice and order issued pursuant to this chapter with the decision on appeal is guilty of a misdemeanor.
- (b) The occupant or lessee in possession who fails to vacate said building in accordance with any order given as provided in this Code is guilty of a misdemeanor.
- (c) Any person who removes a notice or order posted as required in this Code is guilty of a misdemeanor.

##### **9-9.1402. REMEDIES: FAILURE TO OBEY NOTICE AND ORDER.**

After any order or decision made pursuant to this chapter has become final and the person to whom the order has been directed fails, neglects or refuses to obey such order, the Building Official may;

- (a) Cause such person to be prosecuted;
- (b) Institute any appropriate action to abate such building as a public nuisance pursuant to California Code of Regulations, Title 25, Division 1, Chapter 1, Subchapter 1, Article 6; or
- (c) Repair or demolish the building in accordance with the provisions of this chapter.

In any action brought by the City to enforce the provisions of this chapter, the City shall be entitled to recover its reasonable attorney fees and costs whether or not the matter proceeds to judgment.

**9-9.1403. FAILURE TO COMMENCE WORK.**

- (a) Whenever the required repair or demolition is not commenced, or whenever the required securing is not completed within the time specified in any order or decision of the appeals board the Building Official may cause the building, which is the subject of the notice and order, to be vacated by posting at each entrance and on the front door of each unit in violation, a notice reading:

**ASUBSTANDARD BUILDING DO NOT OCCUPY**

It is a misdemeanor pursuant to Modesto Municipal Code Section 9-9.1401 to occupy this building or to remove or deface this notice.

Building Official, City of Modesto

By \_\_\_\_\_@

- (b) No person shall occupy any building which has been posted as specified above. No person shall remove or deface any such notice so posted until the work ordered by the Building Official or by the appeals board has been completed and a certificate of occupancy issued pursuant to the provisions of the Modesto Building Code.
- (c) The Building Official may, in addition to any other remedy herein provided, cause the building to be repaired to the extent necessary to correct the conditions which render the building substandard as set forth in the notice and order. The Building Official may, in addition to any other remedy herein provided, cause the building to be secured as set forth in the notice and order or, to be demolished, and the materials, rubble and debris therefrom removed, the lot cleaned and leveled. Any such work shall be accomplished and the cost thereof paid and recovered in the manner provided in Article 16 of this chapter. Any surplus realized from the sale of such building, or from the demolition thereof, over and above the cost of demolition and of cleaning the lot shall be paid to the person or persons lawfully entitled thereto.

**9-9.1404. EXTENSION OF DATE FOR COMPLETION OF WORK.**

Upon receipt of a building permit application, to perform work required by the notice and order, the Building Official, in his discretion, may grant an extension of time, not to exceed an additional one hundred twenty (120) days, within which to complete such repair, rehabilitation, or demolition, if the Building Official determines that the extension of time will not create or perpetuate a situation eminently dangerous to life or property. The Building Official's authority to extend time is limited to the physical repair, rehabilitation, or demolition of the building and will in no way affect or extend the time to challenge a final notice and order of the appeals board as governed by California Code of Civil Procedure Section 1094.5.

**9-9.1405. INTERFERENCE WITH WORK PROHIBITED.**

No person shall obstruct, impede or interfere with any officer, employee, contractor or authorized representative of the City, or with any person who owns or holds any estate or interest in any building which has been ordered repaired, secured, vacated or demolished under the provisions of this chapter, whenever such officer, employee, contractor or authorized representative of the City, person having an interest or estate in such building or structure, or purchaser is engaged in the work of repairing, securing, vacating or demolishing any building pursuant to the provisions of this chapter or in performing any necessary act preliminary to or incidental to, such work authorized or directed pursuant to this chapter.

**9-9.1406. PARTIAL COMPLETION OF WORK.**

If an owner has commenced the repair work required by an order or has commenced demolition of the building, and such owner fails to complete any portion of such work within the time period specified in the order, or if no time period for completion is specified and the owner has failed, in the opinion of the Building Official, to make reasonable progress on such work or demolition, the Building Official may refer the case to the board for hearing. If the Building Official refers the case to the board for hearing, the Building Official shall give written notice to all persons who are entitled to notice under the provisions of Section 9-9.1205, by mail sent not later than ten (10) days prior to the board hearing.

**9-9.1407. REFERRAL HEARING.**

If the board determines that the owner failed to complete any portion of the work required by any order issued pursuant to this chapter within the time period specified by such order, or has failed to make reasonable satisfactory progress on such work, if no time period is specified in the order, it may:

- (a) Grant further extensions of time to the owner to complete such work or demolition;
- (b) Order the Building Official to complete the repair work forthwith;
- (c) Order the Building Official to demolish or complete demolition of such building forthwith; or
- (d) Take such other action as it deems appropriate in the case.

**9-9.1408. DEMOLITION OF ACCESSORY BUILDINGS.**

An accessory building is a building or portion thereof the use of which is appropriate, subordinate, and customarily incidental to that of the main building, or to the main use of the land. If a main building is demolished by the owner or Building Official pursuant to an order of the appeal board, the accessory building shall likewise be demolished at the same time unless the board shall otherwise direct.

**ARTICLE 15. PERFORMANCE OF WORK OF REPAIR OR DEMOLITION**

**9-9.1501. GENERAL.**

- (a) When any work or repair or demolition is to be done pursuant to Section 9-9.1403(c) of this chapter, the Building Official shall cause the work to be accomplished by City personnel or by private contract under the direction of the Building Official. Plans and specifications therefor may be prepared by the Building Official, or the Building Official may employ such architectural and engineering assistance on a contract basis as may be deemed reasonably necessary.
- (b) The costs of such work shall be paid from the repair and demolition fund, and may be made a special assessment against the property involved, or may be made a personal obligation of the property owner, whichever the legislative body of this jurisdiction shall determine is appropriate.

**ARTICLE 16. RECOVERY OF COST OF REPAIR OR DEMOLITION**

**9-9.1601. REPORT OF ACCOUNT OF EXPENSES.**

The Building Official shall keep an itemized account of the expenses incurred by the City in the notice and order, repair, demolition, or securing of any building or structure done pursuant to a notice and order or order of the Board of Building

Appeals. Upon completion of the work the Building Official shall prepare and file with the Board a report specifying the work done, the itemized and total cost of the work, a description of the real property upon which the building or structure is or was located, and the names and addresses of the persons entitled to notice pursuant to Section 9-9.1205 of this chapter.

**9-9.1602. NOTICE OF HEARING ON REPORT.**

Upon receipt of the report, the Board shall fix a time, date and place for hearing the report, and any protests or objections thereto. The Building Official shall cause notice of the hearing to be served by certified mail, postage prepaid, addressed to the persons entitled to notice pursuant to Section 9-9.1205 of this chapter as their names and addresses appear on the last equalized assessment roll of the county, if such so appears, or as known to the Building Official. Such notices shall be given at least ten (10) days prior to the date set for hearing and shall specify the day, hour, and place when the Board will hear and pass upon the Building Official's report, together with any objections or protests which may be filed as hereinafter provided by any person interested in or affected by the proposed charge. All costs associated with service of the notice shall be added to the total expenses to be reviewed by the Board.

**9-9.1603. MAKING OF PROTESTS AND OBJECTIONS.**

Any person interested in or affected by the proposed charge may file written protests or objections with the Building Official at any time prior to the time set for hearing on the report of the Building Official or may make an oral protest as the meeting. Each written protest or objection must contain a description of the property which the signer thereof is interested and the grounds of such protest or objection. The Building Official shall endorse on every such protest or objection the date it was received by him/her. The Building Official shall present such protests or objections to the Board at the time set for hearing, and no other protests or objections shall be considered.

**9-9.1604. HEARING OF PROTEST.**

Upon the day and hour fixed for the hearing, the Board shall hear and pass upon the report of the Building Official together with any such objections or protests. The Board may make such revision, correction or modification in the report or the charge as it may deem just, and when the Board is satisfied with the correctness of the charge, the report (as submitted or as revised, corrected or modified) together with the charge, shall be confirmed or rejected. The Board may adjourn said hearings from time to time and its decisions on the statement and on all protests and objections which may be made shall be final and conclusive.

**9-9.1605. PERSONAL OBLIGATION AND SPECIAL ASSESSMENT.**

- (a) **City Council Hearing.** After the Board's hearing provided in this article, the Building Official shall transmit the report to the City Council. The Building Official shall also send the results of the hearing by first class mail to the objecting owners who appeared before the Board and shall include the date and time of the public hearing to be held by the City Council no less than ten (10) days after mailing in accordance with this section. Upon receipt of the Board's report, the City Clerk shall schedule a public hearing at which the City Council shall confirm, reject or modify the report and determine whether the charges shall be made a personal obligation of the property owners and assessed against the properties involved. The public hearing shall be limited to the issue of whether the Board hearing provided for in this chapter was conducted in accordance with applicable City ordinances. Only those owners who both file an objection or protest and appear before the Board shall be permitted to protest at the City Council hearing.
- (b) **Personal Obligation.** If the City Council orders that the charge shall be a personal obligation of the property owner, it shall direct the City Attorney or the Finance Department to collect the same on behalf of the City by use of all appropriate legal remedies.
- (c) **Lien.** If the City Council orders that the charge be assessed against the property, it shall confirm the assessment and thereafter said assessment may be collected at the same time and in the same manner as property taxes are collected. All laws applicable to the levy, collection, and enforcement of ad valorem taxes shall be applicable to the proposed lien, except that if any real property to which the lien would attach has been transferred or conveyed to a bona fide purchaser for value, or if a lien of a bona fide encumbrancer for value has been created and attaches thereon prior to the date on which the first installment of taxes would become delinquent, then the lien that would otherwise be imposed by this section shall not attach to real property and the costs of enforcement relating to the property shall be transferred to the unsecured roll for collection.
- (d) **Assessments are Subordinate.** The assessments shall be subordinate to all existing special assessment liens previously imposed upon the same property and paramount to all other liens except for state, county, and municipal taxes with which it shall be upon parity. The lien shall continue until the assessment and all interest and penalties due and payable thereon have been paid. The validity of any assessment made under the provisions of this chapter shall not be contested in any action or proceeding unless the

same is commenced within thirty (30) days after the assessment is confirmed by the City Council.

**9-9.1606. EXCEPTIONS.**

- (a) Section 9-9.1605 does not apply to owner-occupied residential dwelling units.
- (b) Section 9-9.1605 does not apply to any enforcement, abatement, correction, or inspection activity regarding a violation in which the violation was evident on the plans that received a building permit.

**9-9.1607. REPAYMENT OF REPAIR AND DEMOLITION FUND.**

All money recovered by payment of the charge or assessment or from the sale of the property at foreclosure sale shall be paid to the City Treasurer, who shall credit the same to the general fund.

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 4<sup>th</sup> day of March, 2003, by Councilmember Fisher, 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: Conrad, Fisher, Jackman, Keating, O'Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: Frohman

APPROVED:   
CARMEN SABATINO, Mayor

ATTEST:

By   
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

Ord. No. 3291-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 11<sup>th</sup> day of March, 2003, Councilmember Fisher 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: Conrad, Fisher, Frohman, Keating, O'Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: Jackman

APPROVED:   
MAYOR CARMEN SABATINO

ATTEST:   
JEAN ZAHR City Clerk

Effective Date: April 10 2003

ORDINANCE NO. 3292-C.S.

AN ORDINANCE AMENDING SECTION 2-1.08 OF CHAPTER 1 OF TITLE 2 OF THE MODESTO MUNICIPAL CODE RELATING TO CITY COUNCIL ORGANIZATION AND PROCEDURE - ORDER OF BUSINESS.

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

SECTION 1. AMENDMENT OF CODE. Section 2-1.08 of Chapter 1 of Title 2

of the Modesto Municipal Code is hereby amended to read as follows:

**2-1.08. ORDER OF BUSINESS.**

Promptly at the hour set by law on the date of each regular meeting, the members of the Council, the City Clerk, City Attorney and City Manager shall take their regular stations in the Council Chambers, and the business of the Council shall be taken up for consideration and disposition in the following order, with the exception that the Mayor or other presiding officer may take any item out of order as the public necessity and convenience may require:

1. Roll call.
2. Pledge of allegiance to the flag.
3. Invocation.
4. City Clerk's announcements.
5. Declaration of conflicts of interest.
6. Acknowledgments and presentations.
7. Miscellaneous:
  - a. Legislation.
  - b. Appointments.
  - c. Other.
8. Oral communications.
9. Consent items.
10. Council comments and reports.
11. Written communications.
12. Unfinished business.
13. Hearings.
14. New business.
15. Matters too late for the agenda.
16. Adjournment.
17. Closed session items.

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 1<sup>st</sup> day of April, 2003, by Councilmember Jackman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Conrad, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Conrad, Fisher, Frohman, Jackman, Keating, O'Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED   
CARMEN SABATINO, Mayor

ATTEST:

By   
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

Ord. No. 3292-C.S.

FINAL ADOPTION CLAUSE

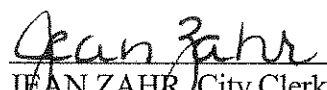
The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 8<sup>th</sup> day of April, 2003, Councilmember Conrad moved its final adoption, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Conrad, Fisher, Frohman, Jackman, Keating, O'Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:   
MAYOR CARMEN SABATINO

ATTEST:   
JEAN ZAHR, City Clerk

Effective Date: May 8, 2003

ORDINANCE NO. 3293-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.

Any contract for a public works project which may be approved as set forth in subsections (a), (b), (c), (d), (e), (f), (g) and (h) 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 1<sup>st</sup> day of April, 2003, by Councilmember Frohman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Fisher, Frohman, Jackman, O'Bryant, Mayor Sabatino

NOES: Councilmembers: Conrad and Keating

ABSENT: Councilmembers: None

APPROVED: *Carmen Sabatino*  
CARMEN SABATINO, 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. 3293-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 8<sup>th</sup> day of April, 2003, Councilmember Fisher moved its final adoption, which motion being duly seconded by Councilmember Frohman, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Fisher, Frohman, Jackman, O'Bryant, Mayor Sabatino

NOES: Councilmembers: Conrad, Keating

ABSENT: Councilmembers: None

APPROVED:   
MAYOR CARMEN SABATINO

ATTEST:   
JEAN ZAHR, City Clerk

Effective Date: May 8, 2003

ORDINANCE NO. 3294-C.S.

AN ORDINANCE AMENDING SECTION 2 OF ORDINANCE NO. 2768-C.S. ENTITLED "AN ORDINANCE AMENDING SECTIONS 1-3-8 AND 2-3-8 OF THE ZONING MAP OF THE CITY OF MODESTO, PREZONING CERTAIN PROPERTY LOCATED THEREON. (RULE DEVELOPMENT)" (RANDY BREKKE).

SECTION 1. AMENDMENT OF ORDINANCE NO. 2768-C.S. Section 2 of

Ordinance No. 2768-C.S. is hereby amended to read as follows:

"SECTION 2. USES. The following uses shall be permitted in said P-D(483) 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. Single-family homes.
2. Uses permitted in the C-1 Zone.
3. Office Condominiums."

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 1<sup>st</sup> day of April, 2003, 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: Conrad, Fisher, Frohman, Jackman, Keating, O'Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: *Carmen Sabatino*  
CARMEN SABATINO, 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. 3294-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 8<sup>th</sup> day of April, 2003, Councilmember Conrad moved its final adoption, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Conrad, Fisher, Frohman, Jackman, Keating, O'Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:   
MAYOR CARMEN SABATINO

ATTEST:   
JEAN ZAHR City Clerk

Effective Date: May 8, 2003

ORDINANCE NO. 3295-C.S.

AN ORDINANCE AMENDING CHAPTER 6 OF TITLE 4 OF  
THE MODESTO MUNICIPAL CODE RELATING TO  
TAXICABS.

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

SECTION 1. AMENDMENT OF CODE. Chapter 6 of Title 4 of the Modesto  
Municipal Code is hereby amended to read as follows:

**CHAPTER 6 - TAXICABS**

**ARTICLE 1. DEFINITIONS**

**4-6.101. DEFINITIONS.**

Unless otherwise expressly stated, whenever used in this chapter, the following terms shall respectively be deemed to mean:

- (a) **Street.** Any place commonly used for the purpose of public travel.
- (b) **Owner.** Every person having use or control of any taxicab, as herein defined, whether as owner, lessee or otherwise.
- (c) **Driver.** Every person in charge of operating any taxicab, as herein defined, either as agent, employee or otherwise, of owner, as owner, or under the direction of the owner, as herein defined.
- (d) **Taximeter.** Any mechanical instrument, appliance, device, or machine, by which the charge for hire of a taxicab is mechanically or electronically calculated either for distance traveled or time consumed, or both, and upon which instrument, appliance, device, or machine such charge is indicated by figures.
- (e) **Taxicab.** Every automobile or motor-propelled vehicle of a distinctive color or colors, such as is in common usage in this country for taxicabs, and/or operated at rates per mile, or for waiting time, or for both, and equipped with a taximeter, used for the transportation of passengers for hire over public streets of the City and not over a defined route and irrespective of whether the operations extend beyond the boundary limit of

the said City, and such vehicle is routed under the direction of such passenger.

- (f) **Taxistand.** Means a place on a public street designated by the Engineering and Transportation Director for the use, while awaiting employment, of any taxicab covered by this chapter.

## **ARTICLE 2. APPLICATION TO OPERATE IN THE CITY**

### **4-6.201. APPLICATION REQUIRED.**

No person shall engage in the business of operating any taxicab within the City without first having submitted a taxicab operation application, and having received approval to operate a taxicab company by the Engineering and Transportation Director.

### **4-6.202. APPLICATION TO OPERATE A TAXICAB BUSINESS.**

All persons applying to the City to operate a taxicab business for one or more taxicabs shall submit a written application to the Engineering and Transportation Director. Said application shall include the following information:

- (a) Name, business, residence and telephone number of all applicant(s) and owner(s) of the business. Also, include any felonies and drug convictions, if any.
- (b) The fictitious name, if any, under which said applicant does business and proposes to do business. Said fictitious name shall not duplicate, nor appear to duplicate the name of any other taxicab company doing business in the City. The Engineering and Transportation Director will be the City approval authority for taxicab company names.
- (c) The number of taxicabs the applicant proposes to operate in the City.
- (d) The type, age and condition of each taxicab proposed to be operated by the applicant, stating the make, year of manufacture and passenger carrying capacity.
- (e) The make and type of taximeter intended to be installed on each taxicab for which application is made.
- (f) A description of the proposed color scheme, and any other distinguishing characteristics of the proposed taxicab design. Color scheme and design

shall not duplicate nor appear to duplicate that of any other taxicab company authorized to do business in the City. The Engineering and Transportation Director will be the City approval authority for all taxicab color schemes.

- (g) The experience of the applicant in the taxicab business. A proposed business plan demonstrating the applicant's ability to initiate and stay in business is strongly encouraged.
- (h) Proposed efforts to provide services and vehicles to support persons with disabilities. Where possible, taxicab companies are encouraged to provide vehicles that can accommodate "common wheelchairs" as determined by the Americans with Disabilities Act (ADA).
- (i) Any other information the applicant believes pertinent to their operation of a taxicab company in the City.

#### **4-6.203. ISSUANCE OF PERMITS.**

- (a) Following approval by the Engineering and Transportation Director, and documentation that the applicant meets all other requirements listed in this chapter, individual vehicle permits shall be issued to operate a taxicab business in the City.
- (b) Permit(s) for vehicles not placed into service within one (1) year of the official City notice will be canceled. After cancellation, requests for new or additional permits must complete the application process described in Section 4-6.201.

#### **4-6.204. POSTING OF TAXICAB PERMITS.**

Each taxicab operator to whom individual taxicab permits have been issued shall cause an authenticated copy of the permit to be posted on the dash in a position clearly visible to the passenger in the taxicab, or in some other conspicuous area approved by the Engineering and Transportation Director.

#### **4-6.205. PRESENT OPERATORS.**

Nothing contained in this article shall be construed to invalidate any previously issued lawful certificate of public convenience and necessity heretofore granted to any person to operate a taxicab company within the City, nor to necessitate any holder of a certificate to make application for additional taxicab permits by reason

of the provisions of this article, provided, however, that said permit shall be subject to all provisions of this chapter heretofore or hereafter enacted.

#### **4-6.206. TRANSFER OF PERMITS.**

No taxicab permit may be sold, assigned, mortgaged or otherwise transferred without the consent of the Engineering and Transportation Director. The Engineering and Transportation Director may grant or deny, or impose such conditions with respect to the transfer of permits as he/she deems to be in the best interest of the public safety and general welfare.

#### **4-6.207. REPLACEMENT OF TAXICABS.**

Whenever an owner sells or transfers title to a taxicab for which a permit has been granted and purchases another taxicab, the Engineering and Transportation Director, as a matter of right, upon written request of the applicant, shall issue a new permit for the operation of such replacement taxicab, provided the owner has complied with all provisions of this chapter. No replacement taxicab shall be put into operation before a permit covering its operation has been obtained as required by this chapter.

#### **4-6.208. REVOCATION OF PERMITS.**

The permit to operate a taxicab company may be revoked by the Engineering and Transportation Director at any time after proper notice to and opportunity to respond is given to the owner thereof if:

- (a) The owner fails to operate the taxicab in accordance with the provisions of this chapter.
- (b) The owner attempts to return to business after a cessation of business greater than thirty (30) days without first having obtained permission from the Engineering and Transportation Director.
- (c) The taxicabs are operated at a rate of fare other than that approved by the City Council.
- (d) The owner fails to pay any of the fees required to be paid by him/her by the provisions of this chapter or any other chapter in this Code.
- (e) The owner attempts to operate taxicabs previously determined to be unsafe.

#### **4-6.209. SURRENDER OF PERMITS.**

A permit canceled or revoked by the Engineering and Transportation Director shall forthwith be surrendered, and the operations of any taxicab company covered by such a permit shall immediately cease further operations . Any owner who shall permanently retire any taxicab(s) from service and within ten (10) days thereof not replace said taxicab(s) or make arrangements satisfactory to the Engineering and Transportation Director for said replacement, shall immediately surrender any permit granted for the operation of such taxicab to the Engineering and Transportation Director. A taxicab company owner may not secure a new permit for the operation of any taxicab company for which a permit has been canceled, revoked or surrendered without having first made application therefor in a manner provided in this article.

#### **4-6.210. ADDITIONAL TAXICABS.**

Any owner authorized to operate a taxicab company in the City, desiring additional permits shall formally request in writing to and with the approval of the Engineering and Transportation Director.

### **ARTICLE 3. RATES OF FARE**

#### **4-6.301. TAXIMETER REQUIRED.**

It is unlawful for any taxicab company to operate in the City unless and until such taxicab is equipped with a taximeter of a design that has been approved by the Engineering and Transportation Director. No passenger shall be carried in any such taxicab within the City limits unless such taximeter is in operation.

#### **4-6.302. OPERATION OF TAXIMETER.**

The taximeter shall be placed in each taxicab so that the reading dial showing the amount to be charged is well lighted and readily discernable to a passenger riding in such taxicab. Every such taximeter shall register the charge to the nearest ten cents (\$0.10) and be equipped with a flag or other mechanical device, and said flag (or mechanical or electronic device) shall be so attached and connected to the mechanism of said taximeter as to cause said mechanism to operate when said flag (or mechanical or electronic device) is in a position other than upright (or engaged), and which said flag (or mechanical or electronic device) shall, when moved forward or downward (or engaged), start operation of said taximeter (or mechanical or electronic device) so that the same will operate in the manner defined in this article. However, such taximeter shall not be required to operate on any trip that goes outside the City limits unless the beginning point and the

ending point of such trip are inside the City limits. For any trip which begins or ends inside the City limits, but for which the taximeter is not required by this article to be in operation, the taxi driver shall inform the passenger before beginning the trip that it is a nonmetered trip and what the flat charge is.

#### **4-6.303. INSPECTION OF TAXIMETER.**

Every taximeter used in the operation of taxicabs shall be subject to inspection at anytime by the Engineering and Transportation Director or his/her representative. Upon discovery of any inaccuracy of such taximeter, the operator thereof shall remove, or cause to be removed from service any vehicle equipped with such taximeter until such taximeter has been repaired and accurately adjusted. Every taximeter shall be inspected, tested and affixed with a label for accuracy for the current year by "Stanislaus County Weights and Measures" at the carrier's expense. No such label shall be removed except at the time a subsequent inspection is made. Every operator shall provide a copy of the taximeter inspection report to be placed in the operator's file and a copy will be retained in the vehicle for inspection at any time. The date on which such inspection was made shall be stamped in a prominent place. Taximeters placed upon taxicabs to replace broken or faulty meters, shall not be placed into service until they have been approved by the Engineering and Transportation Director and the Stanislaus County Sealer of Weights and Measures.

#### **4-6.304. TAXIMETER "FLAG".**

It shall be unlawful for any operator of any taxicab, while carrying passengers, to display the "flag" or device attached to the taximeter in such a position as to denote that such service is not employed, or fail to throw the "flag" of the taximeter or engage a mechanical or electronic device to a position indicating such vehicle is not employed at the termination of each and every service. All charges for taxicab service shall be calculated and indicated by a taximeter, and at all times while the taxicab is engaged, the "flag" and/or mechanical or electronic device of the taximeter shall be thrown into a position to register charges for mileage, or in a position to register charges for waiting time. No taximeter shall be used whose mechanism will register a combined charge for mileage and waiting time in a single position, and no taximeter shall be so operated as to cause any charge to be registered thereon except during the time while a passenger, or passengers engage the cab. No such taxicab shall be equipped with a "dual speed" taximeter or any other device which is set to compute or register any charges for taxicab service other than the charges prescribed in this article.

#### **4-6.305. BASIS OF CHARGES.**

All charges for transportation of passengers in taxicabs operated in the City must be based on the charges indicated on said taximeter, and it shall be unlawful for any owner, driver or operator of any taxicab to charge any passenger any sum in excess of the sum indicated on said taximeter.

#### **4-6.306. POSTING OF FARES.**

Each taxicab operator shall cause to be displayed a card not less than two (2) inches by four (4) inches in size which shall have plainly printed thereon the name of the owner or the fictitious name under which owner operates, the business address, and telephone number of said owner, the rated capacity of the taxicab, and a correct schedule of the rates to be charged for conveyance in said vehicle. Said card shall be conspicuously posted on the rear side window of the taxicab or in some other area approved by the Engineering and Transportation Director.

#### **4-6.307. RATES.**

No owner or driver of a taxicab shall charge a greater sum for the use of a taxicab than in accordance with the following rates:

- (a) **Mileage Rates:** Three dollars and fifty cents (\$3.50) for the first one-eighth (1/8) mile or fraction thereof; twenty-five cents (\$0.25) for each additional one-eighth (1/8) mile or fraction thereof;
- (b) **Waiting Time:** Twenty-five dollars (\$25.00) for each hour of waiting time or fraction thereof;
- (c) **Baggage:** Fifty cents (\$0.50) for each piece of baggage in excess of fifty (50) pounds; and
- (d) **Extra Passengers:** No charge shall be made for extra passengers. This applies only to those passengers whose point of pickup and point of destination are the same.

### **ARTICLE 4. TAXICAB IDENTIFICATION**

#### **4-6.401. SIGNS.**

All taxicabs or other vehicles employed in the City for the purpose of transporting passengers for hire, except vehicles operating from a fixed terminal over regular routes, shall be equipped with and carry at a minimum signs with at least two (2)

inch letters, visible to the front, rear and sides of the vehicles identifying them as taxicabs.

**4-6.402. NUMBER.**

Each taxicab shall bear a number on the outside of the vehicle at such places and of the type prescribed by the Engineering and Transportation Director or his/her representative.

**ARTICLE 5. MAINTENANCE**

**4-6.501. INITIAL INSPECTION OF TAXICABS.**

Before a permit is issued to any owner, the taxicab for which such permit is requested shall be delivered to the Operations and Maintenance Director or his/her representative, who shall inspect such taxicab, its equipment and taximeter to ascertain whether such taxicab complies with the provisions of this chapter. Vehicle inspections will cover, but not be limited to the following items: seat belts, windows (glass), windshield wipers, horn, lights, brakes, emergency brake, belts and hoses, tires, bearings, lug nuts, steering, suspension, shock absorbers, frame, driveline, and conclude with an on-road test drive. Acceptance of each item will be on a pass/fail basis.

**4-6.502. TWICE YEARLY INSPECTION OF TAXICABS.**

Following the initial inspection of a taxicab, it shall be inspected twice yearly to ascertain whether such taxicab complies with the provisions of this chapter. It is the responsibility of the taxicab owner to insure that these inspections are accomplished in a timely manner. Any taxicab exceeding seven (7) months since the last City inspection may be immediately removed from operation by the Engineering and Transportation Director or his/her representative.

**4-6.503. RIGHT OF ENTRY.**

The Engineering and Transportation Director, the Operations and Maintenance Director, the Police Chief, or any member of the Engineering and Transportation Department, Operations and Maintenance Department, or the Police Department, shall have the right at any time after displaying proper identification, to enter into or upon any taxicab permitted to operate in the City for the purpose of ascertaining whether or not any of the provisions of this chapter are being violated.

**4-6.504. UNSAFE TAXICABS.**

Any taxicab which is found, after such an inspection, to be unsafe or in any way unsuitable for taxicab service shall be immediately ordered out of service by the Operations and Maintenance Director or his/her designated representative, and before again being placed in service shall be placed in safe condition and successfully complete the City-provided inspection.

**4-6.505. CLEANING.**

The interior of every taxicab shall be thoroughly cleaned at least once in every twenty-four (24) hours.

**ARTICLE 6. OPERATING REGULATIONS**

**4-6.601. DIRECT ROUTE TO BE USED.**

Any driver employed to transport passengers to a definite point shall take the most direct route possible that will carry the passenger to his/her destination safely and expeditiously.

**4-6.602. RECEIPT.**

Every driver shall, if requested, give a receipt upon payment of the correct fare.

**4-6.603. DISPUTES.**

The officer in charge of the Police Station shall determine all disputes as to fare.

**4-6.604. REFUSAL TO PAY FARE UNLAWFUL.**

It shall be unlawful for any person to refuse to pay the lawful fare as fixed herein of any of the vehicles regulated by this chapter after employing or hiring the same, and any person so doing shall be guilty of a misdemeanor.

**4-6.605. CRUISING PROHIBITED.**

Unoccupied taxicabs shall not be operated over public streets in search of, or soliciting prospective passengers for hire.

**4-6.606. CAPACITY.**

No driver of any taxicab shall accept, take into his/her vehicle or transport any larger number of passengers than the rated seated capacity of his/her vehicle.

**4-6.607. CONTROL OF TAXICABS.**

Whenever any taxicab is occupied by a passenger, the driver shall not permit any other person to occupy, or ride, in said taxicab, except with the consent of the original passenger.

**4-6.608. UNPAID FARES PROHIBITED.**

No driver of any taxicab shall accept into his/her vehicle or transport any person as an unpaid fare.

**4-6.609. TAXICAB TO BE ATTENDED.**

It shall be unlawful for the driver of any taxicab to allow said taxicab to remain standing or parked in any taxicab stand for that specific taxicab or taxicab company, unless said driver is inside or within five (5) feet of the taxicab, except when the driver is assisting passengers to load or unload, or when answering his/her telephone.

**ARTICLE 7. TAXICAB DRIVERS PERMITS**

**4-6.701. DRIVER'S PERMIT REQUIRED.**

It shall be unlawful for any person to drive any of the vehicles mentioned in Section 4-6.101 of this Code without first obtaining a permit in writing from the Police Chief. Permits will entitle the driver to work for only that owner whose name appears on the permit. A new permit is required for each subsequent employment. All permits issued pursuant to this chapter shall expire on the three hundred sixty-fifth (365th) day following the date of issuance, unless suspended or revoked as provided herein. At that time a new permit will be required to operate a taxicab in the City.

**4-6.702. APPLICATION FORM.**

Applicants for driver permits shall file applications with the Police Chief upon forms to be furnished by the City. Applicants for driver's permits shall pay to the Finance Department a fee for each application. Said application fee shall be in an

amount as established from time to time by resolution of the Council. A copy of the receipt for fees paid shall be filed with the Police Chief.

**4-6.703. INFORMATION REQUIRED.**

Said permit shall be in a form of a card which shall bear the signature, photograph and fingerprints of the applicant. Such card shall be issued in duplicate and one (1) copy with the fingerprints, photograph and signature of the applicant shall be placed on file with the Police Chief of the City and the other card shall be displayed in the taxicab in a conspicuous place visible to all passengers while the taxicab is being operated.

**4-6.704. POLICE INVESTIGATION OF APPLICANT'S TRAFFIC AND POLICE RECORD.**

The Police Department shall conduct an investigation of each applicant for a taxicab driver's permit. A report of such an investigation and a copy of the traffic and police record of the applicant, if any, shall be attached to the application for consideration of the Police Chief.

**4-6.705. CONSIDERATION OF APPLICANT.**

The Police Chief shall, upon consideration of the application and reports and permit required to be attached thereto, approve or reject the application. If the application is rejected, the applicant may request a personal appearance before the Police Chief and may offer evidence why his/her application should be reconsidered. If the Police Chief again rejects the application, the applicant may request a personal appearance before the City Manager to offer evidence why his/her application should be granted. The ruling of the City Manager shall be final.

**4-6.706. ELIGIBILITY FOR PERMIT.**

Except as hereinafter set forth, no permit shall be issued to any of the following persons:

- (a) Any person under the age of eighteen (18) years.
- (b) Any person who is currently required to register pursuant to Section 290 of the California Penal Code or is a Health and Safety Code Drug Registrant.
- (c) Any person who has been convicted of a crime involving moral turpitude, narcotic or dangerous drugs, unless a period of not less than seven (7)

years shall have elapsed since the drug conviction or the date of release from confinement for such offense, whichever is later.

- (d) Any person who has been convicted of driving a vehicle recklessly within the three (3) years immediately preceding application for a permit.
- (e) Any person who has been convicted of driving a vehicle while under the influence of intoxicating liquors within the seven (7) years immediately preceding application for a permit.
- (f) Any person not possessing a valid class 3 driver's license, issued by the State of California.
- (g) Any person who has been convicted of two (2) or more felonies.

The Police Chief, in his/her discretion, may waive the provisions of subparagraph (c) and issue a permit to a person who otherwise would be unqualified due to the provisions of subparagraph (c) provided he/she receives letters from that person's prospective employer and parole officer which attest to a good-faith belief that the applicant has reformed his/her moral character so as to pose no threat to members of the public.

#### **4-6.707. KNOWLEDGE OF REGULATIONS.**

Each applicant for a permit may be examined as to his/her knowledge of the provisions of this chapter and the traffic regulations by a person designated by the Police Chief. If the result of the examination is unsatisfactory, the applicant will be refused a permit.

#### **4-6.708. REVOCATION AND/OR RENEWAL OF DRIVER'S PERMITS.**

The Police Chief may revoke or refuse a driver's permit if the driver has since the granting of the permit:

- (a) Been convicted of any crime described in paragraphs (c), (d) or (e) of Section 4-6.706 or any crime for which registration is required pursuant to Section 290 of the California Penal Code or a Health and Safety Code Drug Registrant.
- (b) Had his/her class 3 driver's license revoked or suspended.
- (c) Had two (2) or more convictions of any of the offenses set forth in the Vehicle Code of the State of California and amendments thereto relating to

speeding violations, or any combination of any such offenses, occurring during any continuous period not exceeding twelve (12) months.

- (d) Violated any of the provisions of this chapter.
- (e) Any driver who has been cited two or more times for operating an unsafe taxicab and/or using an illegal taximeter.
- (f) When for any reason, including or other than the above, in the opinion of the Police Chief, the applicant is unfit to drive a taxicab.

All permits issued pursuant to this chapter shall expire on the three hundred and sixty-fifth (365th) day following the date of issuance, unless suspended or revoked as provided herein. At that time, before a driver can further operate a taxicab within the City, a new permit must be issued.

#### **4-6.709. TERMINATION OF EMPLOYMENT.**

It shall be the duty of the owner of each taxicab company to notify the Police Chief in writing within five (5) days whenever a driver has either voluntarily or involuntarily terminated employment.

Each taxicab driver shall return his/her taxicab driver's permit to the Police Chief within five (5) days after the termination of his/her employment as a taxicab driver.

### **ARTICLE 8. STANDS**

#### **4-6.801. DESIGNATION OF STANDS.**

The Engineering and Transportation Director is hereby authorized to locate and establish taxicab stands on City streets. Such regulations shall become effective when appropriate signs are placed giving notice of such regulations to the public. The right to use a taxicab stand heretofore or hereafter established for the use of a specific taxicab operator shall be nontransferable.

The number of taxicab stands to which each person operating taxicabs shall be entitled shall be determined by the Engineering and Transportation Director based on his/her finding as to the need for same in order to adequately serve the public.

The fee to be paid to the City for each taxicab stand heretofore or hereafter established for the use of a taxicab operator shall be as follows:

- (a) There shall be no charge for the first stand;
- (b) For each additional stand there shall be paid to the City a fee of fifteen dollars (\$15.00) per month, payable in advance at the beginning of each month.

**4-6.802. TAXICAB FEES, WHEN PAYABLE AND DELINQUENT.**

Taxicab stand rental fees due hereunder shall be paid in advance at the office of the Finance Director and shall be due and payable on the first (1st) of each month and delinquent at 5:00 p.m. on the tenth (10th) of the month.

**4-6.803. PARKING OF TAXICABS.**

It shall be unlawful for the driver of any taxicab to allow said taxicab to remain standing or parked in the area bounded by and including G Street, 6<sup>th</sup> Street, L Street, Needham Avenue and 17<sup>th</sup> Street while awaiting or soliciting employment, except in a taxicab stand established for that specific taxicab or taxicab company; provided, however, that:

- (a) A taxicab may be parked in any available legal on-street parking space, for not more than three (3) minutes, when the driver is actually engaged in loading or unloading passengers.
- (b) Except while awaiting or soliciting employment, a taxicab may be parked in any municipal off-street parking facility, provided that the driver of said taxicab shall pay the prescribed parking fee for using the off-street parking facility. The driver of a taxicab, however, may park, await, and solicit employment in any private off-street parking area after having obtained the property owner's permission.
- (c) Between the hours of 10:00 p.m. and 8:00 a.m. of the following day, the driver of a taxicab may stop, stand or park a taxicab in any place where the parking of vehicles is legally permitted, except in taxicab stands established for other taxicab companies.

**4.6-804. USE OF TAXICAB STANDS AT THE TRANSPORTATION CENTER, TRAIN DEPOT AND AIRPORT.**

- (a) **Loading or Unloading Passengers:** The driver of any authorized taxicab may use any vacant stand located in front of a bus or train depot for not more than three (3) minutes when engaged in loading or unloading

passengers. Taxicabs cannot be left unattended in front of the airport terminal.

- (b) **Awaiting Employment:** The taxicab stand in front of the Greyhound office at the City's Transportation Center may be used by any authorized taxicab while awaiting or soliciting employment. However, unless unloading, not more than one (1) taxicab operating under the same company name shall be on the aforementioned stand at the same time. Two (2) or more taxicabs operating under different company names but having common ownership may not be at said taxicab stand at the same time if two (2) or more taxicabs of different ownership are present. Taxicabs using said stand must pull forward when space is available.
- (c) Taxicab operators waiting to pick up riders at the Modesto City-County Airport must use a space in the regular parking lot.

#### **4-6.805. PARKING OF MOTOR VEHICLES PROHIBITED IN TAXICAB STANDS.**

It shall be unlawful for any person to stop, stand or park any motor vehicle other than a taxicab in a designated taxicab stand.

### **ARTICLE 9. PUBLIC LIABILITY INSURANCE**

#### **4-6.901. INSURANCE.**

It is unlawful for any owner or driver to operate a taxicab unless there is in full force and effect a policy of insurance whereby the owner and driver of each taxicab operated within the City are insured against liability for damage to property and for injury to or death of any person as a result of the ownership, operation or other use thereof.

The taxicab liability policy shall insure to the benefit of any person suffering loss or damage, either to person or property, as provided in this chapter, and the liability of the insurance carrier shall be in no manner abrogated or abated by the death of the tort feisor and/or the taxicab company owner. The taxicab liability insurance shall be a continuing liability up to the full amount thereof not withstanding any recovery thereon, and the policy shall so certify.

Each taxicab operator shall provide the City Clerk with evidence of insurance coverage in the amount and form as approved by the City's Risk Manager. Such amounts shall be set forth from time to time by resolution of the City Council.

Failure to maintain the minimum levels and standards of required insurance for any time is a violation of this chapter and shall be sufficient grounds for the immediate suspension, revocation, or nonrenewal of a permit by the Engineering and Transportation Director or his/her representative.

#### **4-6.902. CANCELLATION OF INSURANCE.**

Taxicab policy of insurance shall also contain an endorsement providing that the policy shall not be canceled or materially modified until notice in writing has been given to the City Clerk, at least thirty (30) days immediately prior to the time such cancellation or material modification becomes effective. Furthermore, such policy of insurance shall name the City, its mayor, officers, agents and employees as additional name insureds. Additionally, a taxicab owner and driver shall indemnify, defend and hold harmless the City, its mayor, its officers, agents and employees from claims arising from or alleged to arise from the operation of the taxicab owner or driver.

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 8<sup>th</sup> day of April, 2003, 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: Conrad, Fisher, Frohman, Jackman, Keating, O'Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

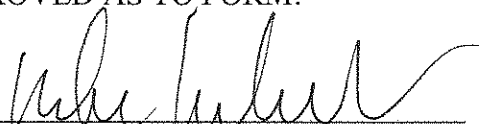
APPROVED:   
CARMEN SABATINO, Mayor

ATTEST:

By   
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

Ord. No. 3295-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 22<sup>nd</sup> day of April, 2003, Councilmember Jackman moved its final adoption, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Conrad, Fisher, Frohman, Jackman, O'Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: Keating

APPROVED:   
MAYOR CARMEN SABATINO

ATTEST:   
JEAN ZAHR, City Clerk

Effective Date: May 22, 2003

ORDINANCE NO. 3296-C.S.

AN ORDINANCE AMENDING CHAPTER 11 OF TITLE 3 OF  
THE MODESTO MUNICIPAL CODE RELATING TO  
SECURITY ALARMS.

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

SECTION 1. AMENDMENT OF CODE. Chapter 11 of Title 3 of the Modesto

Municipal Code is hereby amended to read as follows:

**CHAPTER 11 - SECURITY ALARMS**

**3-11.01. PURPOSE.**

The purpose of this chapter is to establish standards and controls for the various types of intrusion, hold-up and other emergency signals from alarm systems which may prompt police response or investigation, and for the businesses and persons installing and servicing said systems in order to protect the public health, welfare, and safety.

**3-11.02. DEFINITIONS.**

For the purpose of this chapter, the following definitions shall apply and are listed below alphabetically:

- (a) **“Alarm Agent”** shall mean a person employed by an alarm company operator whose duties include selling on premises, altering, installing, maintaining, moving, repairing, replacing, servicing, responding or monitoring an alarm system, or a person who manages or supervises a person employed by an alarm company to perform any of the duties described herein.
- (b) **“Alarm Company Operator”** shall mean any person who, for any consideration whatsoever, engages in business or accepts employment to install, maintain, alter, sell on premises, monitor, or service alarm systems or who responds to alarm systems except for any alarm agent. "Alarm Company Operator," however, does not include a business which merely sells from a fixed location or manufacturers alarms systems unless the business services, installs, sells on premises, monitors, or responds to alarm systems at the protected premises.

- (c) **“Alarm System”** shall mean any mechanical and/or electrical device designed for the detection of an unauthorized entry on premises, or for alerting others of the commission of an unlawful act or both; and when actuated, emits a sound or transmits a signal to indicate that an emergency situation exists, and which may prompt police to respond.

Alarm systems include, but are not limited to, silent alarms, audible alarms, proprietor alarms, and direct dial telephone devices. The following devices shall not constitute alarm systems within the meaning of this section:

- (1) Devices which are not installed, operated, or used for the purpose of reporting an emergency to the Police Department.
  - (2) Alarm devices affixed to motor vehicles, trailers or trailer coaches (as defined in California Vehicle Code Sections 415, 630 and 635), vessels, or aircraft.
  - (3) Alarm devices installed on a temporary basis by the Police Department.
- (d) **“Alarm User”** shall mean any person using an alarm system at his/her place of business or residence.
- (e) **“Audible Alarm”** shall mean a device designed for the detection of an unauthorized entry on, or an attempted entry into premises or a structure; or for alerting others of the commission of an unlawful act, or both, and which, when actuated, generates an audible alarm on the premises.
- (f) **“Automatic Calling/Dialing System”** shall mean an alarm system which automatically sends over telephone lines, by direct connect or otherwise, a recorded message indicating an emergency situation exists.
- (g) **“Central Monitoring Station”** shall mean any office, station, or telephone answering service where person(s) monitor and/or receive emergency signals from alarm systems, and thereafter, relay messages from such signals by live voice to the Modesto Police Department Telecommunications Center.
- (h) **“Direct Connect”** shall mean an alarm system which has the capability of transmitting system signals to, and receiving them at, an agency maintained by a local government entity such as the City of Modesto at its Stanislaus Regional 911 center.

- (i) **“False Alarm”** shall mean the activation of an alarm system through mechanical failure, malfunction, improper installation or maintenance, or the negligence of the owner, lessee, or of his/her employees or agents, which necessitates response by the police when an emergency condition does not exist; provided, however, alarms caused by acts of nature such as earthquakes, floods, tornadoes, or other violent, uncontrollable acts of nature shall not be considered false alarms.
- (j) **“Nonpriority”** shall mean that police response to the activation of an alarm shall not be given precedence over other calls and will be predicated upon availability of police units and other service needs.
- (k) **“Person”** shall mean any individual, partnership, corporation, or other entity.
- (l) **“Police Chief”** shall mean the Police Chief of the City of Modesto or his/her designated representative.
- (m) **“Proprietor Alarm”** shall mean an alarm system which does not anticipate a police response when activated. It is a device which is not designed or used to register an audible, visible, or perceptible signal outside or away from the protected premises.
- (n) **“Silent Alarm”** shall mean any mechanical and/or electrical device designed for the detection of unauthorized entry on premises or for alerting another of the commission of an unlawful act which transmits a signal to a monitored, remote location.
- (o) **“Standby Power Backup”** shall mean any auxiliary, secondary, or back-up power source capable of supplying adequate power to properly operate an alarm system should the primary power source be interrupted.

### **3-11.03. ALARM COMPANY OPERATOR REGISTRATION.**

It shall be unlawful for any person to own, manage, conduct, or carry on the business of selling, leasing, installing, servicing, maintaining, repairing, replacing, moving, removing, or monitoring of an alarm system in any building, place, or premises within the City of Modesto without first having registered with the Police Department; provided, however, such registration shall not be required for any business which only sells or leases said alarm systems from a fixed location unless such business services, installs, monitors, or responds to such alarm systems at the protected premises. Registration shall be accomplished by furnishing the full name of the business and a copy of the state-issued license for

the business. State-issued licenses are required by Sections 7590-7599 of the Business and Professions Code and Sections 680-689 of the Code of Regulations, commonly known as the "Alarm Company Act".

#### **3-11.04. ALARM AGENT REGISTRATION.**

It shall be unlawful for any person to engage directly in the selling, leasing, maintaining, servicing, repairing, altering, replacing, moving, or installing of an alarm system in or around any building, place, or premises within the City of Modesto without first having registered his/her full name and having filed with the Police Chief a copy of his/her state-issued identification card pursuant to Sections 7590-7599 of the Business and Professions Code, Sections 680-689 of the Code of Regulations, commonly known as the "Alarm Company Act" and Section 3-11.03 of this Code; provided, however, nothing herein shall require a person to be so registered in order to install, service, repair, alter, replace, or move an alarm system on the premises owned or occupied by that person, and, further provided, nothing herein shall require a person to so register when that person is merely a salesperson for any business which is not required to register as an alarm company operator, under the provisions of this chapter, if such salesperson does not engage in any other activity related to alarm systems apart from selling.

#### **3-11.05. NOTIFICATION OF CHANGES.**

Any alarm business registered with the Police Department shall, within thirty (30) days, report to the Police Chief or his/her designee any change of business name, address, or ownership.

#### **3-11.06. ALARM USER'S PERMIT.**

It shall be unlawful for any person to operate or install, cause to be installed, use, maintain, or possess an alarm system on the premises owned or in the possession or control of such person within the City of Modesto without first having obtained an Alarm User's Permit from the Police Chief of the City of Modesto, as herein specified.

Alarm systems which are not designed to summon public and/or Modesto Police Department attention, but which are privately monitored and responded to, are exempt from this requirement.

The Application for an Alarm User's Permit shall be submitted on a form prescribed by the Police Chief and shall include the address of the premises wherein the system is to be located and the name, address, and telephone number of the applicant and the person(s) who will respond to an alarm, provide access, or

render services or repairs to the alarm system on a twenty-four (24) hour a day basis, and any such additional information that the Police Chief shall deem necessary for the evaluation and proper processing of the permit application.

Any permittee who operates or maintains more than one alarm system upon any particular property may, at the permittee's option, apply for a single permit for that particular property or for separate permits for each alarm system operated or maintained; provided, however, that if such permittee chooses to secure separate permits for each alarm system, a separate application shall be submitted for each such system and a separate permit fee shall accompany each such application.

### **3-11.07. PERMIT APPLICATION FEE.**

An alarm user permit fee may be set on a fee schedule established by the City Council of Modesto. The permit shall expire according to the Schedule of Permits and Fees established by the City Council, at which time a renewal fee will be collected in accordance with the Schedule of Permits and Fees applicable at the time of renewal.

If required, permit fees shall be paid in full at the beginning of each calendar year according to the Schedule of Permits and Fees established by the City Council. Permit fees shall not be prorated.

Nothing in this alarm ordinance shall be construed to require any police response to alarm devices. The issuance of the Alarm User's Permit does not entitle the holder to any special level of police service to an alarm device. The fees will be used to offset the costs to maintain records of existing alarm systems in the City.

### **3-11.08. FEE EXEMPTIONS.**

The United States Government, the State of California, counties, municipal corporations, and departments thereof are exempt from the fees required in this chapter.

### **3-11.09. ISSUANCE OF PERMITS.**

Alarm use permits shall be issued by the Police Chief. The Police Chief may issue an alarm use permit only after the requirements of this chapter have been satisfied. Alarm use permits may be issued to the person(s) who is/are the owner of, or in possession of, the property which the alarm system is designed to protect.

### **3-11.10. REVOCATION AND REISSUANCE OF ALARM USE PERMITS.**

An alarm use permit may be revoked if good cause exists. Good cause for revocation shall include, but not be limited to:

- (a) Failure to take corrective measures to prevent false alarms.
- (b) Failure to pay service charges resulting from excessive false alarms as authorized by this chapter.

Notice of alarm use permit revocation shall be made by the Modesto Police Department to the permittee by certified or registered mail.

Use of an alarm system after permit revocation notification has been issued is unlawful and may result in an administrative fine of five hundred dollars (\$500.00) for each documented occurrence.

Revoked permits may be reissued by the Modesto Police Department if the former permittee can show that action has been taken to correct the cause or causes which resulted in the revocation of the original alarm use permit. Reissuance of an alarm use permit shall be accomplished by the same procedure as the issuance of a new permit.

### **3-11.11. EXPIRATION AND RENEWAL OF PERMITS.**

Permits for residences shall automatically expire upon change of ownership of the real property where the alarm is located unless the permit is revoked at an earlier time. The date of issuance of the permit is the date shown on the permit. If a permit is not renewed, or it is revoked, the alarm system may not be operated until a new permit is issued.

### **3-11.12. EXPIRATION AND RENEWAL OF PERMIT.**

**Length of Permit Period.** Each alarm use permit expires after a period established by City Council resolution in the schedule of permits and fees unless the permit is revoked at an earlier time. The date of issuance or renewal is the date shown on the permit. If a permit is not renewed, or if it is revoked, the alarm system may not be operated until a new permit is secured.

**Application for Renewal.** If an application for renewal is not forwarded to the Police Chief within thirty (30) days of the permit's expiration date, the permit will be canceled and the permittee will be guilty of an infraction each day of continued use of the alarm after the date of cancellation.

**Notice to Alarm Companies.** If an alarm permit is not renewed within thirty (30) days of the date of expiration, or is suspended or revoked, the Police Chief shall give notice of nonrenewal, suspension, or revocation to the servicing alarm company.

### **3-11.13. NOTICE OF NAME OF SERVICEPERSON OR OCCUPANT.**

Every person maintaining an alarm system shall either post or file with the Police Department a notice containing the names and telephone numbers of persons to be notified in case of emergency or alarm activation or to render service to the alarm system on a twenty-four (24) hour a day basis. The person's name shall include the occupant of the premises or the alarm business, or the agents responsible for the maintenance of the system. If posted, such notice shall be placed near the front door of the structure containing the alarm system or at the front gate if the structure is fenced; said notice shall be posted in such a position as to be clearly visible and legible from the ground level adjacent to the structure or fence. It shall be the duty of the alarm user to maintain such notice current, whether posted or filed, with the Police Department.

### **3-11.14. TRANSFERABILITY OF PERMIT.**

Any alarm user permit issued in accordance with the provisions of this chapter shall be valid only as to the permittee named on the permit. No alarm permit shall, in any manner be transferred to another without the prior written consent of the Police Chief. Any request to transfer a permit to another shall be in writing on the standard Modesto police department form. Transfer of a permit shall in no way affect the date of expiration of said permit. False alarms previously charged to the transferor shall not be charged to the transferee. However, the Police Chief may deny any request to transfer an alarm system permit where, after investigation, it appears that the transfer is requested for the purpose of allowing the transferor to evade responsibility for prior false alarms. Alarm permits may only be transferred from one person to another at the address shown on the permit or from one property to another under the name of person shown on the permit.

### **3-11.15. IMPERMISSIBLE SYSTEMS AND USES.**

- (a) No person shall use or operate, cause to be used or operated, arrange, adjust, program, or otherwise provide for, or install any device or combination of devices that, upon activation of an alarm system, either mechanically, electrically, or automatically, or by other means, will initiate the intrastate calling, dialing, or connection to any police number, line or instrument assigned to the Modesto Police Department.

- (b) No person shall operate or use any alarm system that emits a sound similar to that of an emergency vehicle, siren, or civil defense warning system.
- (c) No person shall use or operate any alarm system that emits an exterior audible sound which such emission does not automatically cease within fifteen (15) minutes.
- (d) No person shall operate or use an alarm system for any other purpose than detecting and reporting an unauthorized entry upon the property protected by that system.

### **3-11.16. FALSE ALARMS.**

A service fee will be charged by the City for false alarms or failure to respond to alarms by alarm owners or their designated representative.

Multiple false alarms occurring in any twenty-four-hour period may be charged as one (1) call, if shown that the owner was not notified and provided the opportunity to correct the defect.

The service charges will be based on an escalating scale determined by the frequency of false alarms, and shall be in the amount established from time to time by resolution of the City Council.

The Chief or his/her designee may suspend law enforcement response or revoke the alarm user permit if it is determined that the alarm user has five (5) false alarms in a twelve (12) month period excluding holdup or panic alarms.

The Chief or his/her designee may waive a service fee if the alarm owner/operator successfully completes a "False Alarm Reduction Class" presented by the Police Department.

### **3-11.17. STANDBY POWER BACK-UP SOURCE.**

No alarm system shall be installed or connected on or after the date this chapter becomes effective which does not have a standby back-up power supply which will automatically assume the operation of the alarm system should any interruption occur in power to the system. The transfer of power from the primary source to the back-up source and reverse must occur in a manner which does not activate the alarm. The back-up power supply shall be capable of powering the alarm system on a continuous basis for a minimum of two (2) hours.

On or after one (1) year from the effective date of this chapter, no owner of an alarm system within the City of Modesto shall have in operation any alarm system unless such alarm system is equipped with a standby power back-up source as required by this chapter.

### **3-11.18. RESPONSIBILITY FOR ALARM SERVICE B AUDIBLE OR SILENT.**

In case of either an audible or a silent alarm, the person or persons named in the posted notice or a person whose name is on file with the Police Department as a designated responding party as required under this section shall, upon proper notification, proceed immediately to the location of the activated alarm and provide access to the premises to allow the Police Department to properly secure such premises.

All alarm service companies which contract to provide alarm response services shall maintain service personnel on duty twenty-four (24) hours a day to provide for such responses. Should a responsible owner or his/her designated representative fail to respond to an alarm location within a reasonable amount of time (normally twenty (20) minutes) upon proper notification, or fail to respond to the alarm location at all, the responsible party will be subject to a service fee to be determined by the City Council. The service fee will be for the services rendered in determining the cause of the failure to respond to the alarm or the alarm service company. Failure to pay the required service fee will be a violation of this chapter, and, in addition, may result in termination of response by the Police Department to future alarms at the permitted alarm location.

### **3-11.19. MONITORING ALARM SERVICES.**

Every alarm business which monitors an alarm system located within the City of Modesto shall maintain on file a current listing of all such alarm systems, including the name, address, and telephone number of the individual or individuals from whom entry to the premises can be obtained. Said information shall be available to the Police Department upon request of any authorized representative thereof.

### **3-11.20. ALARM AGENTS B REGISTRATION IN POSSESSION.**

Every person engaged in installing, repairing, servicing, altering, replacing, moving, or removing an alarm system as defined herein on any premises within the City of Modesto, other than those owned or occupied by said person, shall carry on his/her person at all times, while so engaged, a valid State of California

Alarm Agent's Registration Card and shall display such card to any police officer or authorized City representative upon request.

### **3-11.21. AUTOMATIC CALLING DEVICES.**

No person shall use or operate, attempt to use or operate, or cause to be used or operated any device or combination of devices that is arranged, adjusted or programmed so that it will upon activation, either mechanically, electronically, or by other automatic means, initiate, call and deliver a recorded message to any telephone number assigned to the Stanislaus Regional 911 center without the prior written consent of the Police Chief, nor shall any person so arrange, adjust, or program such device without such permission.

### **3-11.22. INSTRUCTION ON OPERATION OF ALARM SYSTEMS.**

It shall be the responsibility of the company installing an alarm system to instruct and reinstruct his/her subscriber and/or the occupant of the premises wherein said system is installed in the proper use and operation of said device of alarm, whether silent or audible, specifically including all the necessary instruction in turning off said alarm and avoiding false alarms.

### **3-11.23. APPEALS.**

Any person who is denied an alarm use permit, or whose alarm use permit has been revoked, or who is denied an alarm use permit reissuance, or who has been assessed an administrative fine after revocation of an alarm permit or who has received an alarm service charge assessment, may appeal the action in writing to the Police Chief or his/her designee within fifteen(15) days of denial, revocation, denial of reissuance or assessment of a service charge or administrative fine.

Within ten (10) days of receipt of an appeal, the Police Chief or his/her designee shall render a written decision on the appeal. If the appeal is denied, such decision shall be effective immediately upon personal service to the applicant/permittee or shall be effective five (5) calendar days after being deposited in the course of transmission with the United States Postal Service.

### **3-11.24. LIABILITY LIMITATION.**

The City of Modesto shall be under no duty or obligation to holders of alarm use permits or to any other persons by reason of any provision of this chapter. This includes, but is not limited to, delays in transmission, and/or responses to an alarm call.

### **3-11.25. ADMINISTRATION, REGULATIONS.**

The provisions of this Plan shall be administered and enforced by the Police Chief or his/her representative. He is authorized to make inspections of the intrusion detection devices and the alarm systems, and of the premises whereon said devices or systems are located. He shall have the power and shall enforce such rules and regulations as may be adopted by the City Council.

### **3-11.26. VIOLATION OF CHAPTER.**

- (a) **Penalties:** Any person violating any of the provisions of this chapter shall be deemed guilty of an infraction.
- (b) **Enforcement:** The conviction or punishment of any person for violation of the provisions of this chapter or for failing to secure a permit as required by this chapter shall not relieve such person from paying the permit fee due and unpaid at the time of such conviction, nor shall payment of any permit fee prevent administrative or criminal prosecution for violation of any of the provisions of this chapter.

All remedies shall be cumulative, and the use of one or more remedies by the City shall not bar the use of any other remedy for the purpose of enforcing the provisions of this chapter. The amount of any permit fee shall be deemed a debt to the City. An action may be commenced in the name of the City in any court of competent jurisdiction for the amount of any delinquent permit fee. All permit fees shall be deemed delinquent thirty (30) days after they are due and payable.

### **3-11.27. APPLICABILITY TO EXISTING ALARM SYSTEMS.**

The provisions of this chapter shall apply to all alarm systems which were installed, connected, operated or maintained on or prior to the date on which this chapter becomes effective; provided, however, that the alarm permit user fee shall not apply to existing user permits that were issued prior to the enactment of this ordinance.

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 13<sup>th</sup> day of May, 2003, 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: Fisher, Frohman, Jackman, Keating, O'Bryant, Mayor Sabatino

NOES: Councilmembers: Conrad

ABSENT: Councilmembers: None

APPROVED:   
CARMEN SABATINO, Mayor

ATTEST:

By   
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

***Effective Date: July 10, 2003***

Ord. No. 3296-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 10<sup>th</sup> day of June, 2003, Councilmember Frohman moved its final adoption, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Fisher, Frohman, Jackman, Keating, O'Bryant, Mayor Sabatino

NOES: Councilmembers: Conrad

ABSENT: Councilmembers: None

APPROVED:   
MAYOR CARMEN SABATINO

ATTEST:   
JEAN ZAHR, City Clerk

Effective Date: July 10, 2003

ORDINANCE NO. 3297-C.S.

AN ORDINANCE AMENDING SECTION 22-3-9 OF THE ZONING MAP TO REZONE FROM LOW-DENSITY RESIDENTIAL ZONE, (R-1), AND PROFESSIONAL OFFICE ZONE, (P-O), TO PLANNED DEVELOPMENT ZONE, P-D(559), PROPERTY LOCATED AT THE SOUTHEAST CORNER OF BRIGGSMORE AVENUE AND COFFEE ROAD (DR. JAMES YIP)

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

SECTION 1. ZONING CHANGE. Section 22-3-9 of the Zoning Map is hereby amended to reclassify the following described property from Low-Density Residential Zone, R-1, and Professional Office Zone, P-O, to Planned Development Zone, P-D(559):

R-1 to P-D(559)

A portion of northwest quarter of Section 22, Township 3 South, Range 9 East, Mount Diablo Base and Meridian, situate in the City of Modesto, County of Stanislaus, State of California, more particularly described as follows:

Beginning at the northwest corner of said Section 22; thence North 89°52'00" East along the north line of said Section 22, a distance of 274.00 feet to the centerline of Water Street; thence South 00°27'00" East along said centerline, a distance of 342.05 feet to the easterly prolongation of the south line of the north half of Lot 5, Block 1212 of Garden Acres Tract recorded in Book 14 of Maps, Page 9, Stanislaus County Records; thence South 89°39'00" West, a distance of 274.00 feet to the west line of said Section 22; thence North 00°27'00" West along said west line, a distance of 95.25 feet to the westerly prolongation of the south line of Lot 3 of said Block 1212; thence North 89°39'00" East along said prolongation and the south line of said Lot 3, a distance of 249.00 feet to the southeast corner of said Lot 3; thence North 00°27'00" West along the east line of said Lot 3, a distance of 63.50 feet; thence South 89°39'00" West along the north line of said Lot 3 and its westerly prolongation, a distance of 249.00 feet to said west line for Section 22; thence North 00°27'00" West along said west line, a distance of 184.31 feet to the point of beginning.

Containing 78,051 square feet or 1.79 acres, more or less.

P-O to P-D(559)

A portion of northwest quarter of Section 22, Township 3 South, Range 9 East, Mount Diablo Base and Meridian, situate in the City of Modesto, County of Stanislaus, State of California, more particularly described as follows:

Beginning at the southeast corner of Lot 3, Block 1212 as shown on Garden Acres Tract recorded in Book 14 of Maps, Page 9, Stanislaus County Records; thence North 00°27'00" West along the east line of said Lot 3, a distance of 63.50 feet; thence South 89°39'00" West along the north line of said Lot 3 and its westerly prolongation, a distance of 249.00 feet to said west line of Section 22; thence South 00°27'00" East along said west line, a distance of 63.50 to the westerly prolongation of the south line of said Lot 3; thence North 89°39'00" East along said prolongation and the said south line of Lot 3, a distance of 249.00 feet to the point of beginning.

Containing 15,812 square feet or 0.36 acres, more or less.

SECTION 2. USES. The following uses shall be permitted in said P-D(559) 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 Office Development.
2. Off-Street Parking as allowed in the P-O Zone.

SECTION 3. ZONING MAP. Section Map 22-3-9 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 13<sup>th</sup> day of May, 2003, by Councilmember Fisher, 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: Conrad, Fisher, Jackman, Keating, O'Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: Frohman

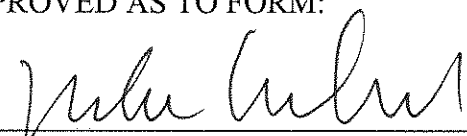
APPROVED:   
CARMEN SABATINO, Mayor

ATTEST:

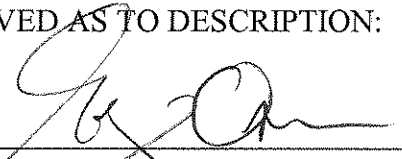
By   
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

APPROVED AS TO DESCRIPTION:

By   
Community & Economic Development  
Department B Planning Division

***Effective Date: July 10, 2003***

Ord. No. 3297-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 10<sup>th</sup> day of June, 2003, Councilmember Jackman moved its final adoption, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Conrad, Fisher, Jackman, Keating, O'Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: Frohman

APPROVED:   
MAYOR CARMEN SABATINO

ATTEST:   
JEAN ZAHR, City Clerk

Effective Date: July 10, 2003

ORDINANCE NO. 3298-C.S.

AN ORDINANCE AMENDING SECTION 23-3-9 OF THE ZONING MAP TO REZONE FROM LOW-DENSITY RESIDENTIAL ZONE, (R-1), TO PLANNED DEVELOPMENT ZONE, P-D(560), PROPERTY LOCATED BETWEEN BRIGGSMORE AVENUE AND ST. PAUL'S WAY, EAST OF OAKDALE ROAD

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

SECTION 1. ZONING CHANGE. Section 23-3-9 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(560):

R-1 to P-D(560)

All that certain real property situate in a portion of the Northwest quarter of Section 23, Township 3 South, Range 9 East, Mount Diablo Base and Meridian and lying within the City of Modesto, County of Stanislaus, State of California, more particularly described as follows:

“Parcel 2” as shown and designated on that certain Parcel Map filed in the Office of the County Recorder of Stanislaus County, California, on May 4, 1972, in Book 14 of Parcel Maps, at Page 20;

Also including the Southerly one-half of East Briggsmore Avenue and the Northerly 40 feet of St. Paul's Way; all being immediately adjacent to the above-described property.

SECTION 2. USES. The following uses shall be permitted in said P-D(560) 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.
2. Professional Offices as allowed in the P-O Zone.

SECTION 3. ZONING MAP. Section Map 23-3-9 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 13<sup>th</sup> day of May, 2003, by Councilmember Jackman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Conrad, Fisher, Frohman, Jackman, Keating, O'Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:   
CARMEN SABATINO, Mayor

ATTEST:

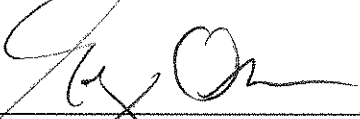
By   
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

APPROVED AS TO DESCRIPTION:

By   
Community & Economic Development  
Department B Planning Division

**Effective Date: July 10, 2003**

Ord. No. 3298-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 10<sup>th</sup> day of June, 2003, Councilmember Frohman moved its final adoption, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Conrad, Fisher, Frohman, Jackman, Keating, O'Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: *Carmen Sabatino*  
MAYOR CARMEN SABATINO

ATTEST: *Jean Zahr*  
JEAN ZAHR, City Clerk

Effective Date: July 10, 2003

ORDINANCE NO. 3299-C.S.

AN ORDINANCE AMENDING SECTION 3-2.1401.1 OF ARTICLE 14 OF CHAPTER 2 OF TITLE 3 OF THE MODESTO MUNICIPAL CODE RELATING TO SPEED LIMITS.

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

SECTION 1. AMENDMENT OF CODE. Section 3-2.1401.1 of Article 14 of Chapter 2 of Title 3 of the Modesto Municipal Code is hereby amended to read as follows:

**3-2.1401.1. CHANGE IN SPEED LIMITS SET BY STATE LAW: FOR PURPOSE OF ENFORCEMENT USING RADAR OR OTHER ELECTRONIC DEVICE.**

By authority of, and upon the basis of engineering and traffic surveys conducted pursuant to Vehicle Code and the Traffic Manual of the Department of Transportation, it is determined that the prima facie speed limits which follow would facilitate the orderly movement of vehicular traffic and would be reasonable and safe.

<u>NAME OF STREET OR PORTION AFFECTED</u>	<u>DECLARED PRIMA FACIE SPEED LIMIT</u>	<u>DATE SURVEYED</u>
BANGS AVENUE, between Dale Road and McHenry Avenue	45 miles per hour	September 4, 2000
BLUE GUM AVENUE, between Morse Road and Carpenter Road	35 miles per hour	March 19, 2003
BRIGGSMORE AVENUE, between Prescott Road and Tully Road	45 miles per hour	January 13, 1999
BRIGGSMORE AVENUE, between Tully Road and McHenry Avenue	45 miles per hour	September 4, 2000
BRIGGSMORE AVENUE, westbound between McHenry Avenue and Coffee Road	45 miles per hour	December 21, 1998

BRIGGSMORE AVENUE, eastbound between McHenry Avenue and Coffee Road	45 miles per hour	May 10, 2002
BRIGGSMORE AVENUE, between Coffee Road and Oakdale Road	50 miles per hour	January 13, 1999
BRIGGSMORE AVENUE, between Oakdale Road and Claus Road	50 miles her hour	February 26, 2003
BRIGGSMORE AVENUE, between Claus Road and Santa Fe Railroad Tracks	45 miles per hour	May 22, 2002
BRIGHTON AVENUE, between Coffee Road and Locke Road	30 miles per hour	May 10, 2002
CALIFORNIA AVENUE, between Carpenter Road and Martin Luther King Drive	30 miles per hour	July 11, 2002
CARPENTER ROAD, between Blue Gum Avenue and Woodland Avenue	40 miles per hour	February 21, 2003
CARPENTER ROAD, between Woodland Avenue and Maze Boulevard	40 miles per hour	September 4, 2000
CARPENTER ROAD, between Maze Boulevard and Paradise Road	50 miles per hour	June 15, 1999
CARVER ROAD, between Bangs Avenue and Pelandale Avenue	40 miles per hour	September 4, 2000
CARVER ROAD, between Pelandale Avenue and Brixton Lane	35 miles per hour	May 10, 2002
CARVER ROAD, between Brixton Lane and Briggsmore Avenue	35 miles per hour	May 10, 2002

CARVER ROAD, between Briggsmore Avenue and Orangeburg Avenue	35 miles per hour	May 10, 2002
CARVER ROAD, between Orangeburg Avenue and 9th Street	35 miles per hour	May 10, 2002
CELESTE DRIVE, between Coffee Road and Oakdale Road	30 miles per hour	May 17, 2002
CLAUS ROAD, between Sylvan Avenue and Briggsmore Avenue	50 miles per hour	May 23, 2002
CLAUS ROAD, between Briggsmore Avenue and Scenic Drive	45 miles per hour	May 23, 2002
CLAUS ROAD, between Scenic Drive and Yosemite Boulevard	50 miles per hour	September 4, 2000
COFFEE ROAD, between Claratina Avenue and Sylvan Avenue	40 miles per hour	April 4, 2000
COFFEE ROAD, between Sylvan Avenue and Floyd Avenue	40 miles per hour	February 26, 2003
COFFEE ROAD, between Floyd Avenue and Briggsmore Avenue	40 miles per hour	January 11, 1999
COFFEE ROAD, between Briggsmore Avenue and Scenic Drive	40 miles per hour	February 21, 2003
COLLEGE AVENUE, between Rumble Road and Bowen Avenue	30 miles per hour	February 21, 2003
COLLEGE AVENUE, between Bowen Avenue and Princeton Avenue	35 miles per hour	February 21, 2003
COLLEGE AVENUE, between Princeton Avenue and Needham Avenue	25 miles per hour	February 21, 2003

CREEKWOOD DRIVE, between Claus Road and Yosemite Boulevard	35 miles per hour	March 17, 1999
CROWS LANDING ROAD, between 7th Street and Hatch Road	35 miles per hour	August 24, 1999
CROWS LANDING ROAD, between Hatch Road and Whitmore Avenue	35 miles per hour	April 29, 1997
DALE ROAD, between Pelandale Avenue and Snyder Avenue	40 miles per hour	September 4, 2000
DALE ROAD, between Snyder Avenue and Veneman Avenue	40 miles per hour	May 16, 2002
DALE ROAD, between Veneman Avenue and Standiford Avenue	35 miles per hour	May 16, 2002
EASTRIDGE DRIVE, between Orangeburg Avenue and Scenic Drive	30 miles per hour	June 18, 2002
EL VISTA AVENUE, between Scenic Drive and Yosemite Boulevard	40 miles per hour	December 22, 1998
EMERALD AVENUE, between Maze Boulevard and California Avenue	30 miles per hour	May 28, 2002
EVERGREEN AVENUE, between Orangeburg Avenue and Carver Road	30 miles per hour	May 21, 2002
FLOYD AVENUE, between McHenry Avenue and Coffee Road	30 miles per hour	July 11, 2002
FLOYD AVENUE, between Coffee Road and Oakdale Road	30 miles per hour	July 10, 2002
FLOYD AVENUE, between Oakdale Road and Roselle Avenue	35 miles per hour	July 10, 2002

FLOYD AVENUE, between Roselle Avenue and Fine Avenue	35 miles per hour	July 10, 2002
GRANGER AVENUE, between Tully Road and McHenry Avenue	35 miles per hour	December 21, 1998
GRANGER AVENUE, between McHenry Avenue and Sunrise Avenue	35 miles per hour	December 21, 1998
H STREET, between Washington Street and 5th Street	30 miles per hour	July 3, 2002
HATCH ROAD, between Carpenter Road and Crows Landing Road	45 miles per hour	September 4, 2000
KANSAS AVENUE, between Morse Road and Rosemore Avenue	40 miles per hour	June 8, 1998
KANSAS AVENUE, between Rosemore Avenue and Carpenter Road	40 miles per hour	June 8, 1998
KANSAS AVENUE, between Carpenter Road and Emerald Avenue	35 miles per hour	January 13, 1999
KANSAS AVENUE, between Emerald Avenue and Ninth Street	35 miles per hour	January 13, 1999
LA LOMA AVENUE, between Burney Street and Yosemite Boulevard	30 miles per hour	September 4, 2000
LAKEWOOD AVENUE, between Briggsmore Avenue and Scenic Drive	35 miles per hour	February 26, 2003
LINCOLN AVENUE, between Dry Creek and Yosemite Boulevard	35 miles per hour	September 4, 2000
MABLE AVENUE, between Coffee Road and Oakdale Road	30 miles per hour	July 10, 2002

MARTIN LUTHER KING DRIVE, between Maze Boulevard and Paradise Road	30 miles per hour	June 13, 2002
MERLE AVENUE, between Oakdale Road and Roselle Avenue	30 miles per hour	February 26, 2003
MILLER AVENUE, between La Loma Avenue and El Vista Avenue	35 miles per hour	March 16, 1999
MITCHELL ROAD, between Finch Road and the southerly City limits	50 miles per hour	April 28, 1997
MORRIS AVENUE, between McHenry Avenue and Coffee Road	30 miles per hour	May 24, 2002
MORSE ROAD, between Blue Gum Avenue and Kansas Avenue	40 miles per hour	May 24, 2002
MT. VERNON DRIVE, between Prescott Road and College Avenue	30 miles per hour	June 23, 1999
NEECE DRIVE, between Tuolumne Boulevard and Rouse Avenue	35 miles per hour	June 13, 2002
NEEDHAM STREET, between 9th Street and L Street	35 miles per hour	June 17, 2002
NORWEGIAN AVENUE, between McHenry Avenue and Coffee Road	35 miles per hour	January 11, 1999
OAKDALE ROAD, between 1300 feet north of Mable Avenue and Sylvan Avenue	45 miles per hour	August 29, 2000
OAKDALE ROAD, between Sylvan Avenue and Floyd Avenue	45 miles per hour	August 29, 2000
OAKDALE ROAD, between Floyd Avenue and Briggsmore Avenue	40 miles per hour	December 22, 1998

OAKDALE ROAD, between Briggsmore Avenue and Scenic Drive	40 miles per hour	December 22, 1998
ORANGEBURG AVENUE, between Briggsmore Avenue and Martin Avenue	35 miles per hour	May 21, 2002
ORANGEBURG AVENUE, between Martin Avenue and McHenry Avenue	40 miles per hour	May 23, 2002
ORANGEBURG AVENUE, between McHenry Avenue and Coffee Road	40 miles per hour	May 22, 2002
ORANGEBURG AVENUE, between Coffee Road and Oakdale Road	35 miles per hour	May 22, 2002
ORANGEBURG AVENUE, between Oakdale Road and Lakewood Avenue	35 miles per hour	May 22, 2002
ORANGEBURG AVENUE, between Lakewood Avenue and Claus Road	35 miles per hour	May 22, 2002
PARADISE ROAD, between Carpenter Road and Martin Luther King Drive	35 miles per hour	May 28, 2002
PARADISE ROAD, between Martin Luther King Drive and Washington Street	30 miles per hour	July 3, 2002
PELANDALE AVENUE, between Sisk Road and Dale Road	45 miles per hour	May 16, 2002
PELANDALE AVENUE, between Dale Road and Prescott Road	50 miles per hour	August 29, 2000
PELANDALE AVENUE, between Prescott Road and McHenry Avenue	50 miles per hour	June 18, 2002

PRESCOTT ROAD, between Snyder Avenue and Standiford Avenue	40 miles per hour	May 17, 2002
PRESCOTT ROAD, between Standiford Avenue and Rumble Road	40 miles per hour	May 17, 2002
PRESCOTT ROAD, between Rumble Road and Briggsmore Avenue	35 miles per hour	May 17, 2002
RIVERSIDE DRIVE, between Edgebrook Drive and Yosemite Boulevard	30 miles per hour	August 30, 2000
ROSE AVENUE, between Floyd Avenue and Briggsmore Avenue	30 miles per hour	July 11, 2002
ROSE AVENUE, between Briggsmore Avenue and Scenic Drive	30 miles per hour	July 11, 2002
ROSEBURG AVENUE, between Carver Road and Tully Road	30 miles per hour	June 13, 2002
ROSEBURG AVENUE, between Tully Road and McHenry Avenue	30 miles per hour	May 24, 2002
ROSEBURG AVENUE, between McHenry Avenue and Sunrise Avenue	30 miles per hour	June 13, 2002
ROSELLE AVENUE, between Sylvan Avenue and Floyd Avenue	40 miles per hour	February 26, 2003
ROSELLE AVENUE, between Floyd Avenue and Briggsmore Avenue	45 miles per hour	November 4, 2000
ROSEMORE AVENUE, between Blue Gum Avenue and Kansas Avenue	35 miles per hour	August 30, 2000

ROUSE AVENUE, between Colorado Avenue and Neece Drive	30 miles per hour	June 13, 2002
RUMBLE ROAD, between Sisk Road and Conant Avenue	30 miles per hour	May 17, 2002
RUMBLE ROAD, between Conant Avenue and Tully Road	30 miles per hour	May 17, 2002
RUMBLE ROAD, between Tully Road and McHenry Avenue	30 miles per hour	May 17, 2002
RUMBLE ROAD, between McHenry Avenue and Coffee Road	30 miles per hour	May 17, 2002
SANTA CRUZ AVENUE, between Yosemite Boulevard and Legion Park Drive	30 miles per hour	November 4, 2000
SCENIC DRIVE, between Burney Street and Coffee Road	35 miles per hour	June 17, 2002
SCENIC DRIVE, between Coffee Road and Oakdale Road	40 miles per hour	June 17, 2002
SCENIC DRIVE, between Oakdale Road and Lakewood Avenue	40 miles per hour	June 17, 2002
SCENIC DRIVE, between Lakewood Avenue and Lillian Drive	40 miles per hour	June 17, 2002
SCENIC DRIVE, between Lillian Drive and Claus Road	40 miles per hour	June 17, 2002
SHARON AVENUE, between Fine Avenue and Claus Road	40 miles per hour	November 17, 2000
SIERRA DRIVE, between G Street and 7th Street	30 miles per hour	May 28, 2002

SISK ROAD, between Pelandale Avenue and Vintage Drive	45 miles per hour	June 14, 1999
SISK ROAD, between Vintage Drive and Standiford Avenue	45 miles per hour	June 14, 1999
SISK ROAD, between Standiford Avenue and Briggsmore Avenue	45 miles per hour	August 29, 2000
SNYDER AVENUE, between Dale Road and Prescott Road	30 miles per hour	May 16, 2002
SNYDER AVENUE, between Prescott Road and Tully Road	30 miles per hour	May 16, 2002
STANDIFORD AVENUE, between Sisk Road and Prescott Road	45 miles per hour	January 12, 1999
STANDIFORD AVENUE, between Prescott Road and Tully Road	40 miles per hour	August 29, 2000
STANDIFORD AVENUE, between Tully Road and McHenry Avenue	40 miles per hour	December 22, 1998
SUNRISE AVENUE, between Floyd Avenue and Lucern Avenue	30 miles per hour	May 24, 2002
SUTTER AVENUE, between Paradise Road and Robertson Road	30 miles per hour	February 9, 1999
SYCAMORE AVENUE, between Orangeburg Avenue and Griswold Avenue	30 miles per hour	November 14, 2000
SYLVAN AVENUE, between McHenry Avenue and Coffee Road	40 miles per hour	December 22, 1998
SYLVAN AVENUE, between Coffee Road and Oakdale Road	40 miles per hour	February 7, 2001
SYLVAN AVENUE, between Oakdale Road and Roselle Avenue	40 miles per hour	February 27, 2003

SYLVAN AVENUE, between Roselle Avenue and Claus Road	45 miles per hour	February 27, 2003
TENAYA DRIVE, between Empire Avenue and the easterly city limit on Tenaya Drive	30 miles per hour	June 18, 2002
TULLY ROAD, between Bangs Avenue and Standiford Avenue	45 miles per hour	May 21, 2002
TULLY ROAD, between Standiford Avenue and Briggsmore Avenue	35 miles per hour	May 21, 2002
TULLY ROAD, between Briggsmore Avenue and Coldwell Avenue	35 miles per hour	June 13, 2002
TUOLUMNE BOULEVARD, between Paradise Road and 7th Street	35 miles per hour	May 28, 2002
UNION AVENUE, between Tully Road and McHenry Avenue	30 miles per hour	August 29, 2000
VENEMAN AVENUE, between Dale Road and Regency Park Drive	30 miles per hour	July 10, 2002
VIRGINIA AVENUE, between Roseburg Avenue and Needham Street	30 miles per hour	May 24, 2002
WHITMORE AVENUE, between Ustick Road and Crows Landing Road	45 miles per hour	June 18, 2002
WHITMORE AVENUE, between Crows Landing Road and Morgan Road	40 miles per hour	June 18, 2002
WOODLAND AVENUE, between Morse Road and Carpenter Road	30 miles per hour	July 11, 2002
WOODLAND AVENUE, between Carpenter Road and 9th Street	30 miles per hour	June 13, 2002

WOODROW AVENUE, between Tully Road and McHenry Avenue	30 miles per hour	May 21, 2002
5TH STREET, between L Street and Sierra Drive	25 miles per hour	May 28, 2002
6TH STREET, between M Street and Sierra Drive	30 miles per hour	May 28, 2002
7TH STREET BRIDGE, between B Street and River Road	30 miles per hour	August 30, 2000
9TH STREET, between Carpenter Road and Tully Road	45 miles per hour	June 13, 2002
9TH STREET, between Tully Road and L Street	35 miles per hour	May 23, 2002
9TH STREET, between D Street and Morton Boulevard	30 miles per hour	November 4, 2000

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 27<sup>th</sup> day of May, 2003, by Councilmember Fisher, 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: Conrad, Fisher, Jackman, Keating, O'Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: Frohman

APPROVED:   
CARMEN SABATINO, Mayor

ATTEST:

By   
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

***Effective Date: July 10, 2003***

Ord. No. 3299-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 10<sup>th</sup> day of June, 2003, Councilmember Frohman moved its final adoption, which motion being duly seconded by Councilmember Jackman, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Conrad, Fisher, Frohman, Jackman, Keating, O'Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:   
MAYOR CARMEN SABATINO

ATTEST:   
JEAN ZAHR, City Clerk

Effective Date: July 10, 2003

ORDINANCE NO. 3300-C.S.

AN ORDINANCE AMENDING SECTION 4-2.33 OF CHAPTER 2 OF TITLE 4 OF THE MODESTO MUNICIPAL CODE AND ADDING SECTION 4-2.34 THERETO RELATING TO PROHIBITION OF SOLICITATION AT SPECIFIC LOCATIONS.

SECTION 1. AMENDMENT OF CODE. Section 4-2.33 of Chapter 2 of Title 4 of the Modesto Municipal Code is hereby amended to read as follows:

**4-2.33. PROHIBITION OF AGGRESSIVE BEGGING.**

- (a) **Findings.** The Modesto City Council finds that aggressive begging for money or anything of value directed at residents of and visitors to the City of Modesto threatens public safety, impairs commercial activity and harms public welfare. Aggressive begging interferes with the public's inherent right to use and enjoy public places without fear of intimidation caused by those persons who harass others by asking for money or goods. Such conduct can undermine economic vitality by inconveniencing patrons and thus reduces shopping activity within the City. Such conduct can discourage visitors and prospective customers from coming to the City of Modesto for business, shopping or recreation because it creates an atmosphere of discomfort and fear.
- (b) **Definitions.** For the purposes of this section, the following definitions apply to this section and to Section 4-2.34:
- (1) **“Aggressively beg”** means to beg with the intent to intimidate another person into giving money or goods.
  - (2) **“Automatic teller machine”** means any electronic information processing device which dispenses or accepts cash in connection with a credit deposit or convenience account.
  - (3) **“Bank”** means any bank, banking association, trust company, saving bank, check cashing business, credit union, or other banking institution.
  - (4) **“Beg”** means to ask for money or goods as a charity or gift, whether by words, bodily gestures, signs, or other means.

- (5) **“Harass or hound”** means to closely follow the person solicited, touch the person solicited, or direct profane or abusive language toward the person solicited after the person solicited either expressly or impliedly makes it known that he or she does not want to give money or anything of value to the solicitor.
  - (6) **“Intimidate”** means to engage in conduct which would make a reasonable person fearful or feel compelled.
  - (7) **“Outdoor dining area”** shall mean an outdoor or indoor dining area of a restaurant or other establishment serving food for immediate consumption.
  - (8) **“Public place”** means an area generally visible to public view and includes alleys, bridges, buildings, driveways, parking lots, parks, plazas, sidewalks and streets.
  - (9) **“Public transportation vehicles or facilities”** shall mean any vehicle including a trailer bus designed for carrying more than ten (10) persons and the designated or posted stop for the public transportation vehicle.
  - (10) **“Solicitation”** means any request made in person seeking an immediate donation of money or other item of value. This shall include passively displaying a sign or any other indication that the person is seeking donations. Solicitation includes begging.
- (c) **Prohibition.** It shall be unlawful for any person on the streets, sidewalks or in any public place within the City of Modesto, whether publicly or privately owned, to aggressively beg, intimidate, harass or hound another person for the purpose of inducing that person to give money or anything of value.
- (d) **Violation.**
- (1) The provisions of Title 1 Chapter 2.01 of this Code shall be applicable to all violations of this section.
  - (2) Violation of this section shall constitute a misdemeanor.

SECTION 2. AMENDMENT OF CODE. Section 4-2.34 is hereby added to Chapter 2 of Title 4 of the Modesto Municipal Code to read as follows:

#### 4-2.34. LOCATIONS WHERE SOLICITATION IS PROHIBITED.

- (a) **Findings.** The intent of the Modesto City Council in enacting this ordinance is to protect the public safety of the City of Modesto's residents and visitors against intrusive solicitation by imposing reasonable place restrictions while respecting the constitutional rights of free speech for all citizens. The Council finds that solicitation in certain locations throughout the City is extremely disturbing and dangerous to residents, visitors, and businesses and will contribute to the loss of access to public places due to fear and intimidation. Solicitation in specific locations near banks, automatic teller machines, and traffic intersections is especially threatening and dangerous to both persons and property. The Council further finds that solicitation from people in public places where they are a "captive audience" restricts residents' ability to decline or avoid solicitation. These public places include: public transportation vehicles and stops, public parking lots or structures, and indoor/outdoor dining areas. This law is timely and appropriate because current City laws and regulations do not address the aforementioned problems. The restrictions contained herein are narrowly tailored to serve a substantial government interest. The City of Modesto seeks to protect citizens from fear, intimidation and dangerous conditions that accompany certain kinds of solicitation that occurs in specific locations within the City.
- (b) **Prohibition.** Solicitation shall be prohibited when the person solicited is in any of the following locations:
- (1) Within twenty-five (25) feet of public transportation vehicles or facilities,
  - (2) Motor vehicles that are located within one hundred (100) feet of any intersection controlled by an official traffic signal as set forth in Vehicle Code Section 21450,
  - (3) Public parking lots or structures after sunset,
  - (4) Indoor/Outdoor dining areas of restaurants,
  - (5) Within twenty-five (25) feet of the entrance or exit of a bank during business hours or automatic teller machine during the time it is available for customer's use, and

- (6) Within twenty-five (25) feet of a group of five (5) or more persons waiting to gain admission to a place or vehicle, or waiting to purchase an admission ticket or item.

(c) **Violation.**

- (1) The provisions of Title 1 Chapter 2.01 of this Code shall be applicable to all violations of this section.
- (2) Violation of this section shall constitute a misdemeanor.

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 10<sup>th</sup> day of June, 2003, by Councilmember Frohman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Conrad, Fisher, Frohman, Jackman, Keating, O'Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: *Carmen Sabatino*  
CARMEN SABATINO, 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. 3300-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 24<sup>th</sup> day of June, 2003, Councilmember Frohman moved its final adoption, which motion being duly seconded by Councilmember Jackman, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Conrad, Fisher, Frohman, Jackman, Keating, O'Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:   
MAYOR CARMEN SABATINO

ATTEST:   
JEAN ZAHR, City Clerk

Effective Date: July 24, 2003

ORDINANCE NO. 3301-C.S.

AN ORDINANCE AMENDING SECTIONS 2-1.17 AND 2-1.18 OF CHAPTER 1 OF TITLE 2 OF THE MODESTO MUNICIPAL CODE RELATING TO THE APPOINTMENT OF SPECIAL COMMITTEES AND STANDING COMMITTEES OF THE MODESTO CITY COUNCIL.

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

SECTION 1. AMENDMENT OF CODE. Sections 2-1.17 and 2-1.18 of Chapter 1 of Title 2 of the Modesto Municipal Code are hereby amended to read as follows:

**2-1.17. SPECIAL COMMITTEES.**

- (a) All special committees shall be appointed by the City Council. This subsection shall be effective until the day following the date that the successful candidate in the 2003 mayoral election has taken the oath of office, and as of that date is repealed unless extended or amended by a later enacted ordinance.
- (b) All special committees shall be appointed by the Presiding Officer. This subsection (b) shall take effect and shall supersede subsection (a) on the day following the date that the successful candidate in the 2003 mayoral election has taken the oath of office.

**2-1.18. STANDING COMMITTEES.**

- (a) The standing committees of the Council shall be a Safety and Communities Committee, an Economic Development Committee, a Finance Committee, and an Audit Committee, each of which committees shall consist of three (3) members of the Council appointed by the Council. The responsibilities of the Audit Committee shall be established by resolution of the City Council. This subsection shall be effective until the day following the date that the successful candidate in the 2003 mayoral election has taken the oath of office, and as of that date is repealed unless extended or amended by a later enacted ordinance.
- (b) The standing committees of the Council shall be a Safety and Communities Committee, an Economic Development Committee, a Finance Committee, and an Audit Committee, each of which committees shall consist of three (3) members of the Council appointed by the Mayor. The responsibilities of the Audit Committee shall be established by

resolution of the City Council. This subsection (b) shall take effect and shall supersede subsection (a) on the day following the date that the successful candidate in the 2003 mayoral election has taken the oath of office.

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 10<sup>th</sup> day of June, 2003, by Councilmember O'Bryant, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Conrad, Fisher, Keating, O'Bryant

NOES: Councilmembers: Frohman & Jackman

ABSENT: Councilmembers: Mayor Sabatino

APPROVED:   
CARMEN SABATINO, Mayor

ATTEST:

By \_\_\_\_\_  
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

Ord. No. 3301-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 adjourned regular meeting of the Council of the City of Modesto held on the 26<sup>th</sup> day of June, 2003, Councilmember Jackman moved its final adoption, which motion being duly seconded by Councilmember Frohman, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Conrad, Fisher, Frohman, Jackman, Keating, Mayor Sabatino

NOES: Councilmembers: O'Bryant

ABSENT: Councilmembers: None

APPROVED:   
MAYOR CARMEN SABATINO

ATTEST: \_\_\_\_\_  
JEAN ZAHR, City Clerk

Effective Date: July 26, 2003

ORDINANCE NO. 3302-C.S.

AN ORDINANCE APPROVING THE SECOND AMENDMENT TO THE DEVELOPMENT AGREEMENT BETWEEN THE CITY OF MODESTO AND NORMAN GALAS, JUNE GALAS, STANLEY GALAS, BONNIE K. GALAS AND DEL VALLE CAPITAL CORPORATION, INC. RELATING TO EXTENDING THE LIFE OF THE TENTATIVE SUBDIVISION MAP TO DECEMBER 31, 2003.

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, on September 16, 1997, the City Council introduced Ordinance No. 3061-C.S. which approved a Development Agreement with Norman Galas, June Galas, Stanley Galas, Bonnie K. Galas and Del Valle Capital Corporation, Inc. to allow the City to extend sewer service to the property without holding an advisory vote as required by Measure M, and

WHEREAS, on November 26, 2002, the City Council introduced Ordinance No. 3275-C.S. which approved an amended Development Agreement with Norman Galas, June Galas, Stanley Galas, Bonnie K. Galas and Del Valle Capital Corporation, Inc. to extend the life of the Galas Brothers vesting tentative subdivision map to June 30, 2003, and containing

provisions related to the provision of affordable and accessible housing and infrastructure master planning, and

WHEREAS, Del Valle Capital Corporation, Inc. has applied for a Second Amendment to said Development Agreement to extend the life of the Galas Brothers vesting tentative subdivision map to December 31, 2003, and containing provisions related to the provision of affordable and accessible housing and infrastructure master planning, and

WHEREAS, a duly noticed public hearing was held by the Planning Commission of the City of Modesto on June 2, 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 requested second amendment to said 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. 2003-34, adopted on June 2, 2003, recommended to the City Council approval of the proposed second amendment to the Development Agreement between the City of Modesto and Norman Galas, June Galas, Stanley Galas, Bonnie K. Galas and Del Valle Capital Corporation, Inc., and

WHEREAS, said matter was set for a public hearing of the City Council to be held at 5:30 p.m., on June 10, 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 the requested Second Amendment to the Development Agreement between the City of Modesto and Norman Galas, June Galas, Stanley Galas, Bonnie K. Galas and Del Valle Capital Corporation, Inc., to extend the life of the Galas

Brothers vesting tentative subdivision map to December 31, 2003, and containing provisions related to the provision of affordable and accessible housing and infrastructure master planning, 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 Second Amendment to the Development Agreement is consistent with the General Plan and the Fairview Village Specific Plan of the City of Modesto because the resulting development would be consistent with the land uses of the Fairview Village Specific Plan and the proposed Second Amendment to the Development Agreement would ensure that adequate infrastructure planning is done prior to development, as required by the General Plan.
2. The proposed Development Agreement is consistent with the specific content and other requirements of City Council Resolution No. 91-185, which establishes procedures and requirements for the consideration of development agreements and amendments thereto, the City's subdivision and zoning provisions of the Modesto Municipal Code, and Government Code Section 65864 et seq.

3. As per Section 15182 of the California Environmental Quality Act (“CEQA”) Guidelines, the project is within the scope of the projects covered by the Fairview Village Focused EIR (SCH No. 95032006) and no new environmental document or findings are required by CEQA.
4. There are no substantial changes proposed in the project which will require major revisions of the Fairview Village Focused EIR.
5. There are no substantial changes occurring with respect to the circumstances under which the project is being undertaken which will require major revisions in the Fairview Village Focused EIR.
6. No new information, which was not known and could not have been known at the time the Fairview Village Focused EIR was certified as complete, has become available.

SECTION 2. APPROVAL OF DEVELOPMENT AGREEMENT. The Second Amendment to the Development Agreement between the City of Modesto and Norman Galas, June Galas, Stanley Galas, Bonnie K. Galas and Del Valle Capital Corporation, Inc., to extend the life of the vesting tentative subdivision map to December 31, 2003, and containing provisions related to the provision of affordable and accessible housing and infrastructure master planning is hereby approved. A copy of the Second Amendment to the Development Agreement is on file in the Office of the City Clerk.

SECTION 3. EXECUTION BY CITY. The City Manager or his authorized designee are hereby authorized to execute said Second Amendment to the 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 Second Amendment to the Development Agreement, the City Clerk is hereby directed to record with the County

Recorder a copy of the Second Amendment to 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 10<sup>th</sup> day of June, 2003, by Councilmember Fisher, 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: Conrad, Fisher, Jackman, Keating, O'Bryant, Mayor Sabatino

NOES: Councilmembers: Frohman

ABSENT: Councilmembers: None


APPROVED:   
CARMEN SABATINO, Mayor

ATTEST:

By   
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

Ord. No. 3302-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 adjourned regular meeting of the Council of the City of Modesto held on the 26<sup>th</sup> day of June, 2003, Councilmember Fisher moved its final adoption, which motion being duly seconded by Councilmember Jackman, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Conrad, Fisher, Jackman, Keating, O'Bryant, Mayor Sabatino

NOES: Councilmembers: Frohman

ABSENT: Councilmembers: None

APPROVED:   
MAYOR CARMEN SABATINO

ATTEST:   
JEAN ZAHR, City Clerk

Effective Date: July 26, 2003

ORDINANCE NO. 3303-C.S.

AN ORDINANCE ADOPTING THE 2003-2004 OPERATING BUDGET AND FIRST YEAR OF THE FISCAL YEAR 2003-2004 THROUGH 2012-2013 CAPITAL IMPROVEMENT PROGRAM FOR THE CITY OF MODESTO FOR THE FISCAL YEAR ENDING JUNE 30, 2004, AND PROVIDING FOR CERTAIN TRANSFERS OF FUNDS.

WHEREAS, pursuant to the Charter of the City of Modesto, a proposed Operating Budget and Capital Improvement Program (CIP) for the 2003-2004 fiscal year has been submitted to the City Council by the City Manager, and the City Council has made such revisions as it has deemed advisable as per Exhibit "A" attached hereto and incorporated herein by this reference, and

WHEREAS, in accordance with the City Charter, a duly noticed public hearing was held relating to the adoption of the proposed Budget, 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 "City of Modesto Proposed Annual Budget 2003-2004", presented by the City Manager to the City Council at its meeting held on June 24, 2003, and as thereafter amended by the City Council, a copy of which Budget, as amended, is on file in the office of the City Clerk, is hereby adopted, as the Budget for the City

of Modesto for the fiscal year ending June 30, 2004, and the several amounts stated therein as proposed expenditures.

SECTION 2. ENCUMBRANCES. That the funds of the City of Modesto encumbered on June 30, 2003, are hereby appropriated for the purposes for which they are encumbered and shall be a part of the Budget for the fiscal year 2003-2004, adopted hereby.

SECTION 3. CAPITAL PROJECTS. That Capital Projects carried over from fiscal year 2002-2003 are hereby re-appropriated as a part of the Budget for the fiscal year 2003-2004, adopted hereby.

SECTION 4. CITY COUNCIL APPROVAL REQUIRED. That the City Council is authorized by resolution to:

- a. Approve appropriation of reserves.
  - b. Approve transfers between funds.
  - c. Approve appropriation of any non-departmental revenues.
  - d. Approve inter-fund loans.
  - e. Approve the creation of new CIP projects and appropriation increases in existing CIP projects.
  - f. Approve the transfer and authorize the expenditure of funds from the Reserved Fund Balances for specific purposes.
- SECTION 5. CITY MANAGER AUTHORITY. That the City Manager is authorized to transfer funds between budgeted activities or departments within a fund and to appropriate unbudgeted departmental revenues, and the City Manager may delegate this authority to the Deputy City Manager. That the City Manager is authorized to implement a no layoff policy for full time staff for fiscal year 2003/04. Any full time staff affected by a reduction in force due to the 2003/04 budget's impact may be reassigned to a current open position or their position will be held until an opening becomes available.

SECTION 6. DEPARTMENT HEAD AUTHORITY. That City Department Heads are authorized to allocate departmental appropriation to line item level.

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 26<sup>th</sup> day of June, 2003, by Councilmember Frohman, who moved its adoption 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: Conrad, Fisher, Frohman, Jackman, Keating, O'Bryant, Mayor Sabatino

NOES: Councilmembers: None

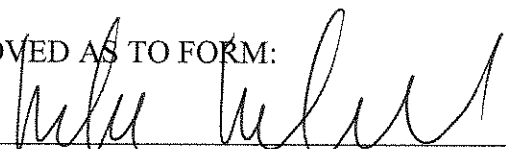
ABSENT: Councilmembers: None

APPROVED:   
CARMEN SABATINO, Mayor

ATTEST:

By:   
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:  
By:   
MICHAEL D. MILICH, City Attorney

***Effective Date: June 26, 2003***

ORDINANCE NO. 3304-C.S.

AN ORDINANCE AMENDING SECTIONS 2-1.17 AND 2-1.18 OF CHAPTER 1 OF TITLE 2 OF THE MODESTO MUNICIPAL CODE RELATING TO THE APPOINTMENT OF SPECIAL COMMITTEES AND STANDING COMMITTEES OF THE MODESTO CITY COUNCIL.

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

SECTION 1. AMENDMENT OF CODE. Sections 2-1.17 and 2-1.18 of Chapter 1 of Title 2 of the Modesto Municipal Code are hereby amended to read as follows:

**2-1.17. SPECIAL COMMITTEES.**

All special committees shall be appointed or removed by the Mayor subject to confirmation by resolution of the Council adopted by at least four (4) affirmative votes.

**2-1.18. STANDING COMMITTEES.**

The standing committees of the Council shall be a Safety and Communities Committee, an Economic Development Committee, a Finance Committee, and an Audit Committee, each of which committees shall consist of three (3) members of the Council appointed by the Mayor subject to confirmation by resolution of the Council adopted by at least four (4) affirmative votes. The responsibilities of the Audit Committee shall be established by resolution of 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 26th day of June, 2003, by Councilmember Conrad, 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: Conrad, Fisher, Jackman, Keating, O'Bryant, Mayor Sabatino

NOES: Councilmembers: Frohman, O'Bryant

ABSENT: Councilmembers: None

APPROVED:   
CARMEN SABATINO, Mayor

ATTEST:

By   
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

Ord. No. 3304-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 8<sup>th</sup> day of July, 2003, Councilmember Jackman moved its final adoption, which motion being duly seconded by Councilmember Conrad, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Conrad, Frohman, Fisher, Jackman, Keating, O'Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:   
MAYOR CARMEN SABATINO

ATTEST:   
JEAN ZAHR, City Clerk

Effective Date: August 7, 2003

ORDINANCE NO. 3305-C.S.

AN ORDINANCE ADDING SECTIONS 2-3.904, 2-3.905, 2-3.906 AND 2-3.907 TO ARTICLE 9 OF CHAPTER 3 OF TITLE 2 OF THE MODESTO MUNICIPAL CODE RELATING TO EXTENSION OF AUTHORITY FOR POLICE OFFICERS/ DEPUTY SHERIFFS/CITY AND COUNTY SECURITY OFFICERS/COUNTY CODE ENFORCEMENT OFFICERS TO ENFORCE THE PROVISIONS OF THE MODESTO MUNICIPAL CODE WITHIN THE MODESTO CITY LIMITS.

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

SECTION 1. AMENDMENT OF CODE. Sections 2-3.904, 2-3.905, 2-3.906, and 2-3.907 are hereby added to Article 9 of Chapter 3 of Title 2 of the Modesto Municipal Code to read as follows:

**2-3.904. ENFORCEMENT AUTHORITY - POLICE OFFICER.**

All ordinances, resolutions, policies, or other enactment made or approved by the City Council may be enforced by the Police Chief and his/her designated officers who are peace officers pursuant to Penal Code Section 830.1.

**2-3.905. ENFORCEMENT AUTHORITY B SHERIFF'S DEPUTY.**

Notwithstanding any other provision of this Code, a sheriff deputy employed by the County of Stanislaus or any peace officer employed by a police department within the County of Stanislaus may enforce the provisions of the Modesto Municipal Code when the deputy is within the Modesto City limits.

**2-3.906. ENFORCEMENT AUTHORITY B SECURITY OFFICER.**

Notwithstanding any other provision of this Code, a security officer employed by the City or a security officer employed by the County of Stanislaus may issue citations for infraction violations of the Modesto Municipal Code and the California Vehicle Code relating to parking regulations pursuant to Penal Code Section 831.4.

**2-3.907. ENFORCEMENT AUTHORITY B COUNTY CODE  
ENFORCEMENT OFFICER.**

Notwithstanding any other provision of this Code, a code enforcement officer employed by the County of Stanislaus may enforce the provisions of the Modesto Municipal Code in accordance with the authority and procedure set forth in Section 1-2.10 of this Code when the County Code Enforcement Officer is within the city limits.

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 1<sup>st</sup> day of July, 2003, by Councilmember Frohman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Conrad, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Conrad, Fisher, Frohman, Jackman, Keating, O'Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: *Carmen Sabatino*  
CARMEN SABATINO, 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. 3305-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 8<sup>th</sup> day of July, 2003, Councilmember Frohman moved its final adoption, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Fisher, Frohman, Jackman, Keating, O'Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: Conrad

APPROVED:   
MAYOR CARMEN SABATINO

ATTEST:   
JEAN ZAHR, City Clerk

Effective Date: August 7, 2003

ORDINANCE NO. 3306-C.S.

AN ORDINANCE ADOPTING A PRECISE PLAN FOR AREA NO. 20 (NORTHWEST QUADRANT) OF THE VILLAGE ONE SPECIFIC PLAN, RELATING TO PROPERTY LOCATED AT THE NORTHWEST CORNER OF FLOYD AND ROSELLE AVENUES. (NORA 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 Nora Naraghi for a Precise Plan for Area No. 20 (Northwest Quadrant) property located at the northwest corner of Floyd and Roselle Avenues, and

WHEREAS, a public hearing was held by the Planning Commission of the City of Modesto on June 16, 2003, in the Tenth Street Place Chambers located at 1010 10<sup>th</sup> Street, Modesto, California, and

WHEREAS, after considering public comments, the Planning Commission, by Resolution No. 2003-37, recommended to the City Council approval of a Precise Plan for Area No. 20 (Northwest Quadrant) of the Village One Specific Plan, and

WHEREAS, said matter was set for a public hearing of the City Council of the City of Modesto to be held on July 1, 2003, at 5:30 p.m., in the Tenth Street Place Chambers located at 1010 10<sup>th</sup> Street, Modesto, California, and

WHEREAS, the Council declared that said Precise Plan for Area No. 20 (Northwest Quadrant) of the Village One Specific Plan is required by public necessity, convenience, and general welfare for the following reasons:

1. The proposed Precise Plan is consistent with the Modesto Urban Area General Plan and Village One Specific Plan.
2. The design of the proposed Precise Plan is compatible with surrounding existing and future development.
3. Adequate infrastructure exists to serve the proposed development.

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

SECTION 1. APPROVAL OF PRECISE PLAN. That the City Council has reviewed and considered the Precise Plan for Area No. 20 (Northwest Quadrant) 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 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 1<sup>st</sup> day of July, 2003, by Councilmember Jackman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember O'Bryant, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Conrad, Frohman, Jackman, Keating, O'Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: Fisher

APPROVED:   
CARMEN SABATINO, Mayor

ATTEST:

By   
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

Ord. No. 3306-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 8<sup>th</sup> day of July, 2003, Councilmember Jackman moved its final adoption, which motion being duly seconded by Councilmember Conrad, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Conrad, Frohman, Jackman, Keating, O'Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: Fisher

APPROVED:   
MAYOR CARMEN SABATINO

ATTEST:   
JEAN ZAHR, City Clerk

Effective Date: August 7, 2003

ORDINANCE NO. 3307-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 NORTHWEST CORNER OF FLOYD AND ROSELLE AVENUES. (PRECISE PLAN FOR AREA NO. 20 (NORTHWEST QUADRANT) - NORA 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 Nora Naraghi for a Precise Plan for Area No. 20 (Northwest Quadrant), property located at the northwest corner of Floyd and Roselle Avenues, 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 June 16, 2003, in the Tenth Street Place Chambers located at 1010 10<sup>th</sup> Street, Modesto, California, and

WHEREAS, after a public hearing held on June 16, 2003, 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. 2003-37, adopted June 16, 2003, the Planning Commission recommended that the application of Nora Naraghi to rezone Village One property from Specific Plan-Holding Zone, SP-H, to Specific Plan-Overlay Zone, SP-O, for property located at the northwest corner of Floyd and Roselle Avenues be approved, and

WHEREAS, said matter was set for a public hearing of the City Council to be held on July 1, 2003, at 5:30 p.m., in the Tenth Street Place Chambers located at 1010 10<sup>th</sup> 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 July 1, 2003, in the Tenth Street Place Chambers located at 1010 10<sup>th</sup> Street, Modesto, California, this Council finds and determines that the requested rezoning is in accordance with the General 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.**

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 20 (Northwest Quadrant)

All that certain real property situate in a portion of Section 14, Township 3 South, Range 9 East, Mount Diablo Base and Meridian, in the City of Modesto, County of Stanislaus, State of California, described as follows:

Beginning at the Northeast corner of said Section 14; thence North 89 degrees 41' 13" West along the north line of said Section 14 a distance of 1316.53 feet; thence South 0 degrees 32' 48" East along the center line of proposed Temescal Drive 1322.91 feet to the center line of Floyd Avenue; thence South 89 degrees 40' 38" East along said center line of Floyd Avenue 1314.37 feet to the east line of said Section 14; thence North 0 degrees 32' 05" West along said east line of said Section 14 a distance of 1322.98 feet to the point of beginning.

Containing: 39.97 Acres Gross

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 1<sup>st</sup> day of July, 2003, by Councilmember Jackman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember O'Bryant, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Conrad, Frohman, Jackman, Keating, O'Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: Fisher

APPROVED:   
CARMEN SABATINO, 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. 3307-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 8<sup>th</sup> day of July, 2003, Councilmember Jackman moved its final adoption, which motion being duly seconded by Councilmember Conrad, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Conrad, Frohman, Jackman, Keating, O'Bryant, Mayor Sabatino

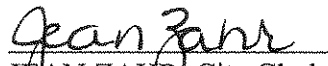
NOES: Councilmembers: None

ABSENT: Councilmembers: Fisher

APPROVED:

  
MAYOR CARMEN SABATINO

ATTEST:

  
JEAN ZAHR, City Clerk

Effective Date: August 7, 2003

ORDINANCE NO. 3308-C.S.

AN ORDINANCE ADOPTING A PRECISE PLAN FOR AREA NO. 18 OF THE VILLAGE ONE SPECIFIC PLAN, RELATING TO PROPERTY LOCATED AT THE NORTHWEST CORNER OF FLOYD AVENUE AND LINCOLN OAK DRIVE. (NORA 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 Nora Naraghi for a Precise Plan for Area No. 18 property located at the northwest corner of Floyd Avenue and Lincoln Oak Drive, and

WHEREAS, a public hearing was held by the Planning Commission of the City of Modesto on June 16, 2003, in the Tenth Street Place Chambers located at 1010 10<sup>th</sup> Street, Modesto, California, and

WHEREAS, after considering public comments, the Planning Commission, by Resolution No. 2003-38, recommended to the City Council approval of a Precise Plan for Area No. 18 of the Village One Specific Plan, and

WHEREAS, said matter was set for a public hearing of the City Council of the City of Modesto to be held on July 1, 2003, at 5:30 p.m., in the Tenth Street Place Chambers located at 1010 10<sup>th</sup> Street, Modesto, California, and

WHEREAS, the Council declared that said Precise Plan for Area No. 18 of the Village One Specific Plan is required by public necessity, convenience, and general welfare for the following reasons:

1. The proposed Precise Plan is consistent with the Modesto Urban Area General Plan and Village One Specific Plan.
2. The design of the proposed Precise Plan is compatible with surrounding existing and future development.
3. Adequate infrastructure exists to serve the proposed development.

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

SECTION 1. APPROVAL OF PRECISE PLAN. That the City Council has reviewed and considered the Precise Plan for Area No. 18 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 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 1<sup>st</sup> day of July, 2003, by Councilmember Jackman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember O'Bryant, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Conrad, Frohman, Jackman, Keating, O'Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: Fisher

APPROVED:   
CARMEN SABATINO, Mayor

ATTEST:

By   
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

Ord. No. 3308-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 8<sup>th</sup> day of July, 2003, Councilmember Jackman moved its final adoption, which motion being duly seconded by Councilmember Conrad, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Conrad, Frohman, Jackman, Keating, O'Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: Fisher

APPROVED: *Carmen Sabatino*  
MAYOR CARMEN SABATINO

ATTEST: *Jean Zahr*  
JEAN ZAHR, City Clerk

Effective Date: August 7, 2003

ORDINANCE NO. 3309-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 NORTHWEST CORNER OF FLOYD AVENUE AND LINCOLN OAK DRIVE. (PRECISE PLAN FOR AREA NO. 18 - NORA 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 Nora Naraghi for a Precise Plan for Area No. 18, property located at the northwest corner of Floyd Avenue 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 June 16, 2003, in the Tenth Street Place Chambers located at 1010 10<sup>th</sup> Street, Modesto, California, and

WHEREAS, after a public hearing held on June 16, 2003, 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. 2003-38, adopted June 16, 2003, the Planning Commission recommended that the application of Nora Naraghi to rezone Village One property from Specific Plan-Holding Zone, SP-H, to Specific Plan-Overlay Zone, SP-O, for property located at the northwest corner of Floyd Avenue and Lincoln Oak Drive be approved, and

WHEREAS, said matter was set for a public hearing of the City Council to be held on July 1, 2003, at 5:30 p.m., in the Tenth Street Place Chambers located at 1010 10<sup>th</sup> 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 July 1, 2003, in the Tenth Street Place Chambers located at 1010 10<sup>th</sup> Street, Modesto, California, this Council finds and determines that the requested rezoning is in accordance with the General 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.**

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 18

All that certain real property situate in a portion of Section 14, Township 3 South, Range 9 East, Mount Diablo Base and Meridian, in the City of Modesto, County of Stanislaus, State of California, described as follows:

Commencing at the Northeast corner of said Section 14; thence North 89 degrees 41' 13" West along the north line of said Section 14 a distance of 2401.91 feet to the centerline of Lincoln Oak Drive and the point of beginning; thence continue North 89 degrees 41' 13" West along said North line of Section 14 a distance of 1536.14 feet to the northerly extension of the centerline of proposed Orchard Park Way; thence along said centerline the following five courses:

1. South 0 degrees 18' 47" West 567.54 feet;
2. thence southerly 140.84 feet along a tangent curve having a radius of 300.00 and a central angle of 26 degrees 53' 54"
3. thence South 27 degrees 12' 41" West along a tangent line 318.83 feet;
4. thence Southerly 140.79 feet along a tangent curve having a radius of 300.00 feet and a central angle of 26 degrees 53' 19",
5. thence South 0 degrees 19' 22" West 199.00 feet to the centerline of Floyd Avenue; thence South 89 degrees 40' 38" East along said center line of Floyd Avenue 1745.10 feet to said centerline of Lincoln Oak Drive; thence North 0 degrees 19' 22" East along said centerline of Lincoln Oak Drive 1322.57 feet to the point of beginning.

Containing 48.86 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 1<sup>st</sup> day of July, 2003, by Councilmember Jackman, who moved its

introduction and passage to print, which motion being duly seconded by Councilmember

O'Bryant, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Conrad, Frohman, Jackman, Keating, O'Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: Fisher

APPROVED: *Carmen Sabatino*  
CARMEN SABATINO, Mayor

ATTEST:

By *Jean Zahr*  
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By *M. D. Milich*  
MICHAEL D. MILICH, City Attorney

APPROVED AS TO DESCRIPTION:

By *Steve Mitchell for GO*  
Community Development Department  
Planning Division

Ord. No. 3309-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 8<sup>th</sup> day of July, 2003, Councilmember Jackman moved its final adoption, which motion being duly seconded by Councilmember Conrad, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Conrad, Frohman, Jackman, Keating, O'Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: Fisher

APPROVED:   
MAYOR CARMEN SABATINO

ATTEST:   
JEAN ZAHR, City Clerk

Effective Date: August 7, 2003

ORDINANCE NO. 3310-C.S.

AN ORDINANCE AMENDING SECTIONS 12-4.201 AND 12-4.202 OF ARTICLE 2 OF CHAPTER 4 OF TITLE 12 OF THE MODESTO MUNICIPAL CODE RELATING TO USE OF PARK AND RECREATION AREAS AND FACILITIES.

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

SECTION 1. AMENDMENT OF CODE. Sections 12-4.201 and 12-4.202 of Article 2 of Chapter 4 of Title 12 of the Modesto Municipal Code are hereby amended to read as follows:

**12-4.201. DEFINITIONS.**

Unless otherwise expressly stated, whenever used in this article, the following words shall be defined as follows:

- (a) **“Alcoholic Beverages”** shall mean any liquid containing more than one-half (1/2) of one (1) percent of alcohol by volume.
- (b) **“City”** shall mean the City of Modesto.
- (c) **“City Council”** shall mean the legislative body of the City of Modesto.
- (d) **“Department”** shall mean the Parks, Recreation and Neighborhoods Department of the City of Modesto.
- (e) **“Director”** shall mean the Director of the Parks, Recreation and Neighborhoods Department of the City of Modesto and/or his or her designee.
- (f) **“Miscellaneous Parks”** shall mean Ashby, Brookway, Elk, Kewin, Lateral #2, Lucas Plaza, Mancini, McClatchy Square, Moose, Moran Estates, Pierre, Seventeenth and G, and Thousand Oaks.
- (g) **“Neighborhood Parks”** shall mean Aqueduct, Ashby, Bellenita, Brewer’s Rose, Brookway, Catherine Everett, Charles M. Sharp, Chrysler, Chrysler 99, City Gate, Coleman Brown, Creekwood, Eisenhut, Elk, Fairway, Garrison, JM Pike, James Marshall, John Muir, Kewin, Lakewood, Lateral #2, Mark Twain, McClatchy Square, McKinney Colony, Mildred Perkins, Moran Estates, Muncy, Orchard, Orville Wright, Pierre, Revard,

Riverside, Robertson Road, Roosevelt, Rose Avenue, Roselle, Seventeenth and G, Sherwood, Sipherd, Sonoma, Standiford, Stockard-Coffee, Sutter, Sylvan, TB Scott, Wesson Ranch, West Side, Whitmore, and Woodrow.

- (h) **“Park”** shall mean any areas set aside for recreational uses, areas conserved for their scenic interest, playgrounds, beaches, recreation centers, golf courses, model plane fields, and any other areas owned or operated by the City of Modesto and which are intended for active or passive recreational purposes. The word "park" shall also include any parking lot adjacent to any park, any buildings, equipment, plants or other facilities located in any park and any landscaped public area and/or right-of-way.

#### **12-4.202. GENERAL REGULATIONS GOVERNING USE OF PARKS.**

- (a) Except as otherwise authorized by law, it shall be unlawful and an infraction for any person, firm or corporation to do or cause or permit to be done any of the acts hereinafter specified within any park owned or operated by the City of Modesto.
  - (1) To enter or trespass in any area, building or facility which is fenced and locked or enclosed and locked or is posted with a “No Trespassing” sign.
  - (2) To ride or bring any horse or other similar animal or to propel a vehicle in or upon any area of a park, except those areas specifically provided and designated for such purposes, unless prior written permission is obtained from the Director.
  - (3) To ride a bicycle unless on trails or pathways designated for bicycle use.
  - (4) To drive or operate any motor vehicle in any park in excess of fifteen (15) miles per hour.
  - (5) To park any automobile or other vehicle in any park at any place other than designated parking areas. Places where parking is permitted shall be designated by appropriate signs.
  - (6) To drive or operate any automobile, gasoline-powered go-carts, model airplanes, boats or midget cars in any park except in designated areas or unless prior written permission is obtained from the Director.

- (7) To clean, wash, polish or make other than emergency repairs upon any automobile, motorcycle or self-driven vehicle in any park.
- (8) To carry, bring into or ignite, fire or otherwise set off any firearms, air guns, slingshots, firecrackers or fireworks in any park except those fireworks which are part of organized and permitted special events for which prior written permission to use fireworks has been obtained from the Director.
- (9) To make a fire in any park other than in stoves, pits or braziers provided by the City unless prior written permission is obtained from the Director and a permit is obtained from the Air Pollution Control District for burning in open pits.
- (10) To bring into any park any material which will, if spilled or spread, be injurious to the turf or plant growth.
- (11) To cut or remove any wood, turf, rock, tree, flower, shrub, sand or gravel from any park unless prior written permission is obtained from the Director.
- (12) To throw or dispose of in any park any bottles, tin cans, broken glass, paper, clothes, cast iron, rubbish, soil, tree trimmings, garbage, ashes or other debris of any kind except in approved containers provided by the City.
- (13) To remove, damage or destroy any athletic equipment provided by the City, normal wear and tear excepted.
- (14) To move or remove from one (1) location to another any part or parts of field equipment.
- (15) To move or remove from one (1) location to another any equipment used for park maintenance.
- (16) To open or close any valve pertaining to the water mains or sprinkler system or to expose or interfere with any gas pipe, hydrant, stopcock, sewer, catch basin, backflow preventer, or other similar device in any park.
- (17) To cut, break or deface in any way buildings, equipment, grounds or other facilities of any park.

- (18) To wound, kill or catch any bird or other wild animal in any park.
- (19) To indulge in indecent or riotous conduct or language or to otherwise make noises in such a manner as to disturb any picnic, meeting, concert or exhibition in any park.
- (20) To operate a public address system without prior written permission of the Director. This prohibition shall not include the use of small portable radios used to receive regularly broadcasted programs, as long as such radios are operated at such a volume as not to disturb other persons present in the park.
- (21) To disturb or interfere with any employee of the City of Modesto acting within the scope of his/her employment, or to disturb or interfere with any spectator or participant in any event or activity conducted in any park, or to enter any park for the purpose of committing any such disturbance or interference.
- (22) To camp or lodge in or upon any park unless prior written permission is obtained from the Director.
- (23) To sell refreshments, foodstuffs or novelties in any park or on any street immediately adjacent thereto without the prior written permission of the Director or the City Council.
- (24) To practice, carry on, conduct or solicit for any trade, occupation, business or profession in any park without the prior written permission of the City Council.
- (25) To play or engage in any game or contest in any park except in such places as are specially provided or designated for that purpose.
- (26) To play upon any tennis courts wearing shoes other than those having vulcanized soles and heels, commonly known as tennis shoes.
- (27) To refuse to open any tennis court being used for singles play to doubles play at the end of the set being played when other persons are waiting, unless prior written permission is obtained from the Director.

- (28) To refuse to relinquish any tennis court being used for doubles play at the end of the set being played when other persons are waiting unless prior written permission is obtained from the Director.
- (29) To use any tennis courts for tennis tournaments, team practices or other special events of any kind without the prior written permission of the Director or the City Council.
- (30) To play or engage in the hitting of golf balls in any park, except on driving ranges and golf courses.
- (31) To ride bicycles through any children's playground area.
- (32) To use tobacco products of any kind, including, but not limited to, chewing tobacco, cigars and cigarettes, within fifty (50) feet of children's play areas (playgrounds/tot lots, wading pools, skate parks) installed and/or built for public use by children and/or to discard lighted or unlighted cigars or cigarettes in said areas.
- (33) To wade or swim in any pool in any park except when supervised.
- (34) To use any park facility for which a charge is now or hereafter made without first having paid the fee requested and having received the required permit.
- (35) To enter any park facility for which a charge is made without first paying the full legal charge made for such entrance unless such entrance is by the consent or permission of the person or persons in charge.
- (36) To use any park facility or equipment which has been reserved or which is indicated by an authorized or official sign to have been reserved without first having received the written permission of the Director.
- (37) To remove any authorized or official sign indicating that any park facility or equipment is reserved.
- (38) For any male person to resort to any toilet set apart for women, and for any female person to resort to any toilet set apart for men, provided that this prohibition shall not apply to children accompanied by their father, mother or guardian.

- (39) It shall be unlawful to climb onto any building or structure in a park not designated for such activity.
  - (40) To possess any container made of glass in any park or to bring, carry or transport any container made of glass into any park except that the sponsor of an organized event may obtain permission from the Department to possess glass containers.
  - (41) It shall be unlawful for any person without authority to tear down, deface or destroy any sign posted pursuant to the above subsections.
  - (42) It shall be unlawful for any person to consume alcoholic beverages within fifteen (15) feet of an abutting edge of any public parking lot that directly abuts a City park, unless approved in advance in writing by the Director.
  - (43) It shall be unlawful for any person to consume alcoholic beverages without a permit in any city-owned or operated park which has been conspicuously posted with signs alerting the public to this prohibition.
- (b) Except as otherwise authorized by law, it shall be unlawful and a misdemeanor for any person, firm or corporation to do or cause or permit to be done any of the acts hereinafter specified within any park owned or operated by the City of Modesto.
- (1) No person shall remain in any park between the hours of 10:00 p.m. and 6:00 a.m. of the following day.
  - (2) The prohibitions contained in subsection (b)(1) of this section will not apply to:
    - (i) Special use facilities, as may be posted by the Department extending use hours;
    - (ii) Any person attending a meeting, entertainment event, recreation activity, dance or similar activity in such park, provided such activity is sponsored or co-sponsored by the Department or permit therefor, has been issued by the Department;

(iii) Any person exiting such park immediately after the conclusion of any activity set forth in subsection (b)(2)(ii) of this section;

(iv) Any peace officer or employee of the City while engaged in the performance of his/her duties.

(c) The City of Modesto hereby designates all of its public parks as drug-free zones pursuant to and within the meaning of Health & Safety Code Section 11380.5.

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. ONE YEAR REVIEW. The Police Chief and Parks, Recreation and Neighborhoods Director shall review this ordinance with the Council within one (1) year after its effective date.

SECTION 4. PERMIT PROCESS. The permit process shall be approved by the City Council after review by the Safety & Communities Committee of the Council.

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 1<sup>st</sup> day of July, 2003, by Councilmember Fisher, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Conrad, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Conrad, Fisher, Frohman, O'Bryant

NOES: Councilmembers: Jackman, Keating, Mayor Sabatino

ABSENT: Councilmembers: None

APPROVED:   
CARMEN SABATINO, Mayor

ATTEST:

By   
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

Ord. No. 3310-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 22<sup>nd</sup> day of July, 2003, Councilmember Fisher moved its final adoption, which motion being duly seconded by Councilmember Frohman, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Conrad, Fisher, Frohman, O'Bryant

NOES: Councilmembers: Jackman, Keating, Mayor Sabatino

ABSENT: Councilmembers: None

APPROVED:   
MAYOR CARMEN SABATINO

ATTEST:   
JEAN ZAHR, City Clerk

Effective Date: August 21, 2003

ORDINANCE NO. 3311-C.S.

AN ORDINANCE AMENDING SECTION 3-2.1401.1 OF ARTICLE 14 OF CHAPTER 2 OF TITLE 3 OF THE MODESTO MUNICIPAL CODE RELATING TO SPEED LIMITS.

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

SECTION 1. AMENDMENT OF CODE. Section 3-2.1401.1 of Article 14 of Chapter 2 of Title 3 of the Modesto Municipal Code is hereby amended to read as follows:

**3-2.1401.1. CHANGE IN SPEED LIMITS SET BY STATE LAW: FOR PURPOSE OF ENFORCEMENT USING RADAR OR OTHER ELECTRONIC DEVICE.**

By authority of, and upon the basis of engineering and traffic surveys conducted pursuant to Vehicle Code and the Traffic Manual of the Department of Transportation, it is determined that the prima facie speed limits which follow would facilitate the orderly movement of vehicular traffic and would be reasonable and safe.

<u>NAME OF STREET OR PORTION AFFECTED</u>	<u>DECLARED PRIMA FACIE SPEED LIMIT</u>	<u>DATE SURVEYED</u>
BANGS AVENUE, between Dale Road and McHenry Avenue	45 miles per hour	September 4, 2000
BLUE GUM AVENUE, between Morse Road and Carpenter Road	35 miles per hour	March 19, 2003
BRIGGSMORE AVENUE, between Prescott Road and Tully Road	45 miles per hour	May 6, 2003
BRIGGSMORE AVENUE, between Tully Road and McHenry Avenue	45 miles per hour	September 4, 2000
BRIGGSMORE AVENUE, westbound between McHenry Avenue and Coffee Road	45 miles per hour	May 6, 2003
BRIGGSMORE AVENUE, eastbound between McHenry Avenue and Coffee Road	45 miles per hour	May 10, 2002

BRIGGSMORE AVENUE, between Coffee Road and Oakdale Road	50 miles per hour	May 6, 2003
BRIGGSMORE AVENUE, between Oakdale Road and Claus Road	50 miles her hour	February 26, 2003
BRIGGSMORE AVENUE, between Claus Road and Santa Fe Railroad Tracks	45 miles per hour	May 22, 2002
BRIGHTON AVENUE, between Coffee Road and Locke Road	30 miles per hour	May 10, 2002
CALIFORNIA AVENUE, between Carpenter Road and Martin Luther King Drive	30 miles per hour	July 11, 2002
CARPENTER ROAD, between Blue Gum Avenue and Woodland Avenue	40 miles per hour	February 21, 2003
CARPENTER ROAD, between Woodland Avenue and Maze Boulevard	40 miles per hour	September 4, 2000
CARPENTER ROAD, between Maze Boulevard and Paradise Road	50 miles per hour	June 15, 1999
CARVER ROAD, between Bangs Avenue and Pelandale Avenue	40 miles per hour	September 4, 2000
CARVER ROAD, between Pelandale Avenue and Brixton Lane	35 miles per hour	May 10, 2002
CARVER ROAD, between Brixton Lane and Briggsmore Avenue	35 miles per hour	May 10, 2002
CARVER ROAD, between Briggsmore Avenue and Orangeburg Avenue	35 miles per hour	May 10, 2002

CARVER ROAD, between Orangeburg Avenue and 9th Street	35 miles per hour	May 10, 2002
CELESTE DRIVE, between Coffee Road and Oakdale Road	30 miles per hour	May 17, 2002
CLAUS ROAD, between Sylvan Avenue and Briggsmore Avenue	50 miles per hour	May 23, 2002
CLAUS ROAD, between Briggsmore Avenue and Scenic Drive	45 miles per hour	May 23, 2002
CLAUS ROAD, between Scenic Drive and Yosemite Boulevard	50 miles per hour	September 4, 2000
COFFEE ROAD, between Claratina Avenue and Sylvan Avenue	40 miles per hour	April 4, 2000
COFFEE ROAD, between Sylvan Avenue and Floyd Avenue	40 miles per hour	February 26, 2003
COFFEE ROAD, between Floyd Avenue and Briggsmore Avenue	40 miles per hour	May 7, 2003
COFFEE ROAD, between Briggsmore Avenue and Scenic Drive	40 miles per hour	February 21, 2003
COLLEGE AVENUE, between Rumble Road and Bowen Avenue	30 miles per hour	February 21, 2003
COLLEGE AVENUE, between Bowen Avenue and Princeton Avenue	35 miles per hour	February 21, 2003
COLLEGE AVENUE, between Princeton Avenue and Needham Avenue	25 miles per hour	February 21, 2003
CREEKWOOD DRIVE, between Claus Road and Yosemite Boulevard	35 miles per hour	May 7, 2003

CROWS LANDING ROAD, between 7th Street and Hatch Road	35 miles per hour	May 7, 2003
CROWS LANDING ROAD, between Hatch Road and Whitmore Avenue	35 miles per hour	May 7, 2003
DALE ROAD, between Pelandale Avenue and Snyder Avenue	40 miles per hour	September 4, 2000
DALE ROAD, between Snyder Avenue and Veneman Avenue	40 miles per hour	May 16, 2002
DALE ROAD, between Veneman Avenue and Standiford Avenue	35 miles per hour	May 16, 2002
EASTRIDGE DRIVE, between Orangeburg Avenue and Scenic Drive 30 miles per hour	June 18, 2002	
EL VISTA AVENUE, between Scenic Drive and Yosemite Boulevard	40 miles per hour	May 7, 2003
EMERALD AVENUE, between Maze Boulevard and California Avenue	30 miles per hour	May 28, 2002
EVERGREEN AVENUE, between Orangeburg Avenue and Carver Road	30 miles per hour	May 21, 2002
FLOYD AVENUE, between McHenry Avenue and Coffee Road	30 miles per hour	July 11, 2002
FLOYD AVENUE, between Coffee Road and Oakdale Road	30 miles per hour	July 10, 2002
FLOYD AVENUE, between Oakdale Road and Roselle Avenue	35 miles per hour	July 10, 2002
FLOYD AVENUE, between Roselle Avenue and Fine Avenue	35 miles per hour	July 10, 2002

GRANGER AVENUE, between Tully Road and McHenry Avenue	35 miles per hour	May 6, 2003
GRANGER AVENUE, between McHenry Avenue and Sunrise Avenue	35 miles per hour	May 6, 2003
H STREET, between Washington Street and 5th Street	30 miles per hour	July 3, 2002
HATCH ROAD, between Carpenter Road and Crows Landing Road	45 miles per hour	September 4, 2000
KANSAS AVENUE, between Morse Road and Rosemore Avenue	40 miles per hour	May 6, 2003
KANSAS AVENUE, between Rosemore Avenue and Carpenter Road	40 miles per hour	May 6, 2003
KANSAS AVENUE, between Carpenter Road and Emerald Avenue	35 miles per hour	May 6, 2003
KANSAS AVENUE, between Emerald Avenue and Ninth Street	35 miles per hour	May 6, 2003
LA LOMA AVENUE, between Burney Street and Yosemite Boulevard	30 miles per hour	September 4, 2000
LAKEWOOD AVENUE, between Briggsmore Avenue and Scenic Drive	35 miles per hour	February 26, 2003
LINCOLN AVENUE, between Dry Creek and Yosemite Boulevard	35 miles per hour	September 4, 2000
MABLE AVENUE, between Coffee Road and Oakdale Road	30 miles per hour	July 10, 2002
MARTIN LUTHER KING DRIVE, between Maze Boulevard and Paradise Road	30 miles per hour	June 13, 2002

MERLE AVENUE, between Oakdale Road and Roselle Avenue	30 miles per hour	February 26, 2003
MERLE AVENUE, between Roselle Avenue and Claus Road	35 miles per hour	May 13, 2003
MILLER AVENUE, between La Loma Avenue and El Vista Avenue	35 miles per hour	May 7, 2003
MITCHELL ROAD, between Finch Road and the southerly City limits	50 miles per hour	May 7, 2003
MORRIS AVENUE, between McHenry Avenue and Coffee Road	30 miles per hour	May 24, 2002
MORSE ROAD, between Blue Gum Avenue and Kansas Avenue	40 miles per hour	May 24, 2002
MT. VERNON DRIVE, between Prescott Road and College Avenue	30 miles per hour	June 23, 1999
NEECE DRIVE, between Tuolumne Boulevard and Rouse Avenue	35 miles per hour	June 13, 2002
NEEDHAM STREET, between 9th Street and L Street	35 miles per hour	June 17, 2002
NORWEGIAN AVENUE, between McHenry Avenue and Coffee Road	35 miles per hour	May 6, 2003
OAKDALE ROAD, between 1300 feet north of Mable Avenue and Sylvan Avenue	45 miles per hour	August 29, 2000
OAKDALE ROAD, between Sylvan Avenue and Floyd Avenue	45 miles per hour	August 29, 2000
OAKDALE ROAD, between Floyd Avenue and Briggsmore Avenue	40 miles per hour	May 7, 2003

OAKDALE ROAD, between Briggsmore Avenue and Scenic Drive	40 miles per hour	May 7, 2003
ORANGEBURG AVENUE, between Briggsmore Avenue and Martin Avenue	35 miles per hour	May 21, 2002
ORANGEBURG AVENUE, between Martin Avenue and McHenry Avenue	40 miles per hour	May 23, 2002
ORANGEBURG AVENUE, between McHenry Avenue and Coffee Road	40 miles per hour	May 22, 2002
ORANGEBURG AVENUE, between Coffee Road and Oakdale Road	35 miles per hour	May 22, 2002
ORANGEBURG AVENUE, between Oakdale Road and Lakewood Avenue	35 miles per hour	May 22, 2002
ORANGEBURG AVENUE, between Lakewood Avenue and Claus Road	35 miles per hour	May 22, 2002
PARADISE ROAD, between Carpenter Road and Martin Luther King Drive	35 miles per hour	May 28, 2002
PARADISE ROAD, between Martin Luther King Drive and Washington Street	30 miles per hour	July 3, 2002
PELANDALE AVENUE, between Sisk Road and Dale Road	45 miles per hour	May 16, 2002
PELANDALE AVENUE, between Dale Road and Prescott Road	50 miles per hour	August 29, 2000
PELANDALE AVENUE, between Prescott Road and McHenry Avenue	50 miles per hour	June 18, 2002

PRESCOTT ROAD, between Snyder Avenue and Standiford Avenue	40 miles per hour	May 17, 2002
PRESCOTT ROAD, between Standiford Avenue and Rumble Road	40 miles per hour	May 17, 2002
PRESCOTT ROAD, between Rumble Road and Briggsmore Avenue	35 miles per hour	May 17, 2002
RIVERSIDE DRIVE, between Edgebrook Drive and Yosemite Boulevard	30 miles per hour	August 30, 2000
ROSE AVENUE, between Floyd Avenue and Briggsmore Avenue	30 miles per hour	July 11, 2002
ROSE AVENUE, between Briggsmore Avenue and Scenic Drive	30 miles per hour	July 11, 2002
ROSEBURG AVENUE, between Carver Road and Tully Road	30 miles per hour	June 13, 2002
ROSEBURG AVENUE, between Tully Road and McHenry Avenue	30 miles per hour	May 24, 2002
ROSEBURG AVENUE, between McHenry Avenue and Sunrise Avenue	30 miles per hour	June 13, 2002
ROSELLE AVENUE, between Sylvan Avenue and Floyd Avenue	40 miles per hour	February 26, 2003
ROSELLE AVENUE, between Floyd Avenue and Briggsmore Avenue	45 miles per hour	November 4, 2000
ROSEMORE AVENUE, between Blue Gum Avenue and Kansas Avenue	35 miles per hour	August 30, 2000

ROUSE AVENUE, between Colorado Avenue and Neece Drive	30 miles per hour	June 13, 2002
RUMBLE ROAD, between Sisk Road and Conant Avenue	30 miles per hour	May 17, 2002
RUMBLE ROAD, between Conant Avenue and Tully Road	30 miles per hour	May 17, 2002
RUMBLE ROAD, between Tully Road and McHenry Avenue	30 miles per hour	May 17, 2002
RUMBLE ROAD, between McHenry Avenue and Coffee Road	30 miles per hour	May 17, 2002
SANTA CRUZ AVENUE, between Yosemite Boulevard and Legion Park Drive	30 miles per hour	November 4, 2000
SCENIC DRIVE, between Burney Street and Coffee Road	35 miles per hour	June 17, 2002
SCENIC DRIVE, between Coffee Road and Oakdale Road	40 miles per hour	June 17, 2002
SCENIC DRIVE, between Oakdale Road and Lakewood Avenue	40 miles per hour	June 17, 2002
SCENIC DRIVE, between Lakewood Avenue and Lillian Drive	40 miles per hour	June 17, 2002
SCENIC DRIVE, between Lillian Drive and Claus Road	40 miles per hour	June 17, 2002
SHARON AVENUE, between Fine Avenue and Claus Road	40 miles per hour	November 17, 2000
SIERRA DRIVE, between G Street and 7th Street	30 miles per hour	May 28, 2002

SISK ROAD, between Pelandale Avenue and Vintage Drive	45 miles per hour	June 14, 1999
SISK ROAD, between Vintage Drive and Standiford Avenue	45 miles per hour	June 14, 1999
SISK ROAD, between Standiford Avenue and Briggsmore Avenue	45 miles per hour	August 29, 2000
SNYDER AVENUE, between Dale Road and Prescott Road	30 miles per hour	May 16, 2002
SNYDER AVENUE, between Prescott Road and Tully Road	30 miles per hour	May 16, 2002
STANDIFORD AVENUE, between Sisk Road and Prescott Road	45 miles per hour	May 13, 2003
STANDIFORD AVENUE, between Prescott Road and Tully Road	40 miles per hour	August 29, 2000
STANDIFORD AVENUE, between Tully Road and McHenry Avenue	40 miles per hour	May 7, 2003
SUNRISE AVENUE, between Floyd Avenue and Lucern Avenue	30 miles per hour	May 24, 2002
SUTTER AVENUE, between Paradise Road and Robertson Road	30 miles per hour	May 7, 2003
SYCAMORE AVENUE, between Orangeburg Avenue and Griswold Avenue	30 miles per hour	November 14, 2000
SYLVAN AVENUE, between McHenry Avenue and Coffee Road	40 miles per hour	May 7, 2003
SYLVAN AVENUE, between Coffee Road and Oakdale Road	40 miles per hour	February 7, 2001
SYLVAN AVENUE, between Oakdale Road and Roselle Avenue	40 miles per hour	February 27, 2003

SYLVAN AVENUE, between Roselle Avenue and Claus Road	45 miles per hour	February 27, 2003
TENAYA DRIVE, between Empire Avenue and the easterly city limit on Tenaya Drive	30 miles per hour	June 18, 2002
TULLY ROAD, between Bangs Avenue and Standiford Avenue	45 miles per hour	May 21, 2002
TULLY ROAD, between Standiford Avenue and Briggsmore Avenue	35 miles per hour	May 21, 2002
TULLY ROAD, between Briggsmore Avenue and Coldwell Avenue	35 miles per hour	June 13, 2002
TUOLUMNE BOULEVARD, between Paradise Road and 7th Street	35 miles per hour	May 28, 2002
UNION AVENUE, between Tully Road and McHenry Avenue	30 miles per hour	August 29, 2000
VENEMAN AVENUE, between Dale Road and Regency Park Drive	30 miles per hour	July 10, 2002
VIRGINIA AVENUE, between Roseburg Avenue and Needham Street	30 miles per hour	May 24, 2002
WHITMORE AVENUE, between Ustick Road and Crows Landing Road	45 miles per hour	June 18, 2002
WHITMORE AVENUE, between Crows Landing Road and Morgan Road	40 miles per hour	June 18, 2002
WOODLAND AVENUE, between Morse Road and Carpenter Road	30 miles per hour	July 11, 2002

WOODLAND AVENUE, between Carpenter Road and 9th Street	30 miles per hour	June 13, 2002
WOODROW AVENUE, between Tully Road and McHenry Avenue	30 miles per hour	May 21, 2002
5TH STREET, between L Street and Sierra Drive	25 miles per hour	May 28, 2002
6TH STREET, between M Street and Sierra Drive	30 miles per hour	May 28, 2002
7TH STREET BRIDGE, between B Street and River Road	30 miles per hour	August 30, 2000
9TH STREET, between Carpenter Road and Tully Road	45 miles per hour	June 13, 2002
9TH STREET, between Tully Road and L Street	35 miles per hour	May 23, 2002
9TH STREET, between D Street and Morton Boulevard	30 miles per hour	November 4, 2000

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 8<sup>th</sup> day of July, 2003, by Councilmember Frohman, who moved its

introduction and passage to print, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Fisher, Frohman, Jackman, Keating, O'Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: Conrad

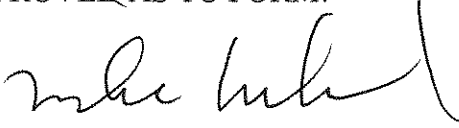
APPROVED:   
CARMEN SABATINO, Mayor

ATTEST:

By   
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

*Effective Date:*

Ord. No. 3311-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 22<sup>nd</sup> day of July, 2003, Councilmember Conrad moved its final adoption, which motion being duly seconded by Councilmember Frohman, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Conrad, Fisher, Frohman, Jackman, Keating, O'Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:   
MAYOR CARMEN SABATINO

ATTEST:   
JEAN ZAHR, City Clerk

Effective Date: August 21, 2003

ORDINANCE NO. 3312-C.S.

AN ORDINANCE AMENDING SECTION 10-2.2006 OF  
ARTICLE 20 OF CHAPTER 2 OF TITLE 10 OF THE  
MODESTO MUNICIPAL CODE RELATING TO  
LANDSCAPING.

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

SECTION 1. AMENDMENT OF CODE. Section 10-2.2006 of Article 20 of  
Chapter 2 of Title 10 of the Modesto Municipal Code is hereby amended to read as follows:

**10-2.2006. DESIGN FOR LANDSCAPING.**

All parking area landscaping shall be designed to the following standards:

- (a) Whenever a parking area abuts a street, a perimeter landscape strip shall be provided pursuant to the landscape setback provisions of the base zoning district in conformance with Chapter 1, Landscaping and Irrigation Standards (MMC Sections 12-1.01 - 12-1.09). There shall be a minimum of a four (4) foot by five (5) foot planting area for each tree planted in a landscaped planter. Dimensions are measured from the interior side of the curb or permanent border as approved by the Parks, Recreation and Neighborhoods Director. Planter landscaping shall provide a visual landscape screen to a minimum height of three (3) feet and a maximum height of four (4) feet. Visual screening may be accomplished solely by landscaping or in conjunction with a decorative masonry wall. All screening shall conform to the clear vision triangle regulations (Section 10-2.2314 of this Code).
- (b) In the interior of a parking area, areas shall be designated for tree planting. Each tree planting area shall contain a minimum of one (1) deciduous tree planted with a minimum of fifteen (15) gallon sized stock. The Street Tree Plan, Appendix E, "General Tree Species List," a copy of which is on file in the City Clerk's office, shall be used for recommendations. Trees selected shall be approved by the Operations and Maintenance Director and Parks, Recreation and Neighborhoods Director. There shall be (a minimum of) one (1) tree planted for every eight (8) parking spaces. Tree planting areas shall be distributed throughout the parking area to achieve a fifty (50) percent surface shading within ten (10) years of issuance of the Certificate of Occupancy. For parking areas with only one (1) aisle parking lot shade trees may be planted along the periphery. To qualify as a parking

lot shade tree, the tree must be located within seven and one-half (7.5) feet of a parking space.

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 8<sup>th</sup> day of July, 2003, by Councilmember Frohman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Fisher, Frohman, Jackman, Keating, O'Bryant, Mayor Sabatino  
NOES: Councilmembers: None  
ABSENT: Councilmembers: Conrad

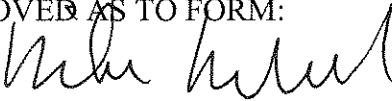
APPROVED:   
CARMEN SABATINO, Mayor

ATTEST:

By   
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

**Effective Date:**

July 9, 2003/City Clerk/mRomey

Ord. No. 3312-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 22<sup>nd</sup> day of July, 2003, Councilmember Conrad moved its final adoption, which motion being duly seconded by Councilmember Frohman, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Conrad, Fisher, Frohman, Jackman, Keating, O'Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:   
MAYOR CARMEN SABATINO

ATTEST:   
JEAN ZAHR, City Clerk

Effective Date: August 21, 2003

ORDINANCE NO. 3313-C.S.

AN ORDINANCE AMENDING SECTIONS 12-1.03, 12-1.04, 12-1.05, 12-1.06, AND 12-1.07 OF CHAPTER 1 OF TITLE 12 OF THE MODESTO MUNICIPAL CODE AND ADDING SECTION 12-1.10 THERETO RELATING TO LANDSCAPING.

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

SECTION 1. AMENDMENT OF CODE. Sections 12-1.03, 12-1.04, 12-1.05, 12-1.06, and 12-1.07 of Chapter 1 of Title 12 of the Modesto Municipal Code are hereby amended to read as follows:

**12-1.03. STANDARDS OF LANDSCAPE DESIGN.**

- (a) **Plan preparation.** It is required that a licensed landscape architect, landscape contractor, architect, or engineer, be employed in preparing the landscape and irrigation plans. In addition to plants, the use of structural elements like pools, fountains, raised planters, benches and sunshades are encouraged but not required in the landscape plan.

Prior to plan preparation, the Operations and Maintenance Director should be contacted for street tree information to ensure the landscape plantings will not interfere with the City's tree planting plan. Underground Service Alert and Modesto Irrigation District should also be contacted to avoid conflict with existing or proposed utility lines or appurtenances.

- (b) **Plant materials.** The selection of plant materials should include both evergreen and deciduous trees, shrubs, and attractive erosion-preventing ground cover. It is required that at least ninety (90) percent of the plants selected in non-turf areas be well suited to the climate of the region and require minimal water once established in the landscape. Up to ten (10) percent of the plants may be of a non-drought-tolerant variety as long as they are grouped together and can be irrigated separately. Attention shall be given to appearance, height, spread, growth rate, moisture requirements, potential root damage, disease, and pest susceptibility, climatic adaptability, soil type slope, function, and degree of maintenance required.
- (c) **Plant coverage.** Plants shall be so spaced and sized that, when mature, they will fill the planter area. Although a reasonable number of growing seasons will be allowed for full plant coverage to develop, interim ground cover shall be provided

during this period. Interim cover of surfacing materials shall consist of rocks, gravel, wood mulch or chips, or any other acceptable material. Mulches must be a minimum of three (3) inches thick when used as an interim measure.

- (d) **Plant maintenance.** Underground automated irrigation systems shall be provided to assure efficient water use with a minimum of labor and water waste. Irrigation controllers must have multiple-cycle capabilities and include a rain-sensing override device. Plant material must be maintained in a healthy condition. Unhealthy plants shall be replaced. Planters shall be kept free of all weeds, debris and trash.
- (e) **Planter construction.** All planter islands shall have a peripheral concrete or permanent border as approved by the Parks, Recreation and Neighborhoods Director to prevent cars and pedestrians from damaging plant materials. All planters constructed adjacent to buildings or structures shall be designed so as to avoid irrigation water intrusion into or on that adjacent building or structure. The minimum width of a planter bed shall be four (4) feet measured from the inside of curbing or permanent border.
- (f) **Compacted soils.** Prior to the planting of any materials, the compacted soils surrounding a building site shall be cultivated or amended to a friable condition. "Friable condition" shall mean cultivation or amendment of the soil to an easily crumbled or loosely compacted condition down to a minimum depth per planting material requirements, whereby the root structure of newly planted material will be allowed to spread unimpeded.

#### **12-1.04. LANDSCAPE PLAN SPECIFICATIONS.**

- (a) Two (2) copies of the landscape plan shall be submitted for review and approval by the Parks, Recreation and Neighborhoods Director or his/her representative, in accordance with the standards of landscape design set forth in this chapter.
- (b) One (1) copy of all building elevations and site grading plans or one (1) copy of all building plans shall be submitted together with the landscape plan. The building elevation and site grading plans shall be in sufficient detail to permit determination of the location, width, and height of all doors and windows, and roof overhangs on all proposed buildings within or adjacent to proposed landscaped areas.
- (c) The landscape plans shall be legible and drawn to a scale no smaller than one (1) inch equals twenty (20) feet. Maximum sheet size on all drawing shall be twenty-four (24) inches by thirty-six (36) inches ("D" size).

- (d) The landscape plans shall indicate property lines, important dimension lines, setback lines, walls and fences, driveways, adjacent streets, outline of all structures, and adjacent land uses.
- (e) The landscape plans shall indicate planting details, pre-emergent soil treatment rates and materials.

Soil test for horticultural suitability and infiltration rates shall be required at time of landscape plan submittal. Soils shall be prepared and/or amended as appropriate to encourage successful plant growth.

A minimum of three (3) inches of mulch shall be added in non-turf areas to the soil surface after planting. Plant types that are intolerant to mulch shall be excluded from this requirement.

Sheet plastic and other non-porous material shall not be placed under mulch.

- (f) The use of turf as a plant material will not be permitted in narrow planter areas (less than seven (7) feet in width), in traffic median strips, parking strips, between curbs and sidewalks (if narrower than seven (7) feet), and on slopes that are in excess of three to one (3:1).

On slopes exceeding fifteen (15) percent, a level buffer zone of eighteen (18) inches is required between bermed turf areas and any hardscape (i.e., streets, walkways, etc.).

- (g) The landscape plans shall include a plant list giving the common and botanical names of plants to be used. This plant list shall be arranged in legend form with a key number assigned to each plant. On the plan, each plant shall be identified by a key number. The size of the plant, its spacing, and the quantity to be used, shall follow in the legend, as the following example illustrates.

<u>No.</u>	<u>Botanical Name</u>	<u>Common Name</u>	<u>Size</u>	<u>Space</u>	<u>Quantity</u>
1.	Campanula isophylla	Italian bellflower	Flat	6"	6
2.	Eucalyptus polyanthemos	Silver dollar gum	5 gal.	20'	10
3.	Pinus mugo mughus	Mugho pine	1 gal	10'	14
4.	Ajuga reptans	Carpet bugle	Flat	6"	5
5.	Callistemon red chico	Fireball bush	1 gal.	10'	6
6.	Hedra canariensis	Algerian ivy	Flat	10'	3

#### **12-1.05. IRRIGATION PLAN SPECIFICATIONS.**

- (a) Three (3) copies of the irrigation plans shall be submitted for review and approval by the Parks, Recreation and Neighborhoods Director to ensure adequate irrigation coverage and compliance with the requirements of the Plumbing Code of the City. The irrigation system shall be designed with water conservation in mind. Wind direction, surface drainage, soil type, and application method shall be considered.
- (b) Irrigation plan shall indicate potable water system point of connection and size, water pressure available, and maximum demand of the system in gallons per minute or gallons per hour if appropriate.

Reclaimed water may also be used as an alternate irrigation water source if it is supplied through a dual distribution system that conforms to Stanislaus County Health Department Standards.

- (c) Irrigation equipment specified must be identified by manufacturer's name and equipment identification number.
- (d) Performance data for irrigation heads and emitters including discharge rates, effective diameter, and operating pressure shall be listed in irrigation legend.
- (e) All locations of irrigation valves, controllers, hose bibs, quick coupler valves, sprinkler heads, and backflow prevention devices, valves, filters, pressure regulators, emitters, rain switches, and moisture sensors must be indicated.
- (f) Irrigation details must be used to clarify particular situations. Typical details should include backflow prevention devices, valves, irrigation heads, emitters, filters, pressure regulators, moisture sensors, rain switches, check valves, and irrigation controllers.
- (g) All irrigation lines must be sized.
- (h) Schedule 40 P.V.C. pipe for mainline and laterals under two (2) inch outside diameter, and Class 315 pipe for mainline and laterals over two (2) inch outside diameter is required under all paved areas. Piping must be installed (in sleeves under all paved areas) at a minimum depth of eighteen (18) inches cover over the top pipe for lateral irrigation lines and a minimum of twenty-four (24) inches cover over the top of pipe for mainline. Emitter distribution tubing may be located at grade. Each tree well or planting area shall have one (1) bubbler and three (3) foot minimum tree deep root watering tube located at base of each tree.

- (i) Irrigation watering schedules for the entire year must be provided on irrigation drawings. These schedules will include an establishment (first twelve (12) months) and post-establishment. Post-establishment schedules will be divided into four (4) quarters. Those quarters are winter, spring, summer and fall. All watering schedules must be in compliance with current City of Modesto water scheduling requirements.
- (j) Irrigation system must be designed by a qualified designer. Qualified designers would include: certified irrigation designers, landscape contractors, and landscape architects, and engineers.
- (k) Pop-up sprinklers in turf areas shall have a minimum four (4) inch pop-up height. Sprinkler coverage shall be one hundred (100) percent. Heads shall be placed at a maximum of fifty (50) percent of the diameter of throw (head to head). Sprinkler heads must have matched precipitation rates within each control valve circuit. System should be designed for minimum runoff and over-spray onto non-irrigated areas.
- (l) Sprinklers and sprays shall not be used in areas less than seven (7) feet wide. Drip and bubblers shall be used that do not exceed one and one-half (1.5) gallons per minute per device.
- (m) Serviceable check valves are required where elevation differential may cause low head drainage.
- (n) Irrigation controllers must be capable of dual or multiple programming. Controllers must have multiple cycle start capacity and a flexible calendar program. Controllers shall be set to operate between sunset and sunrise.
- (o) Water application rates shall not exceed the infiltration rate of soil. A minimum of a one (1) hour period shall be allowed prior to the application of additional water.

#### **12-1.06. INSPECTION.**

Upon installation of landscaping and irrigation systems, the installer must contact the Parks, Recreation and Neighborhoods Department and request an inspection. An inspector from the Parks, Recreation and Neighborhoods Department will inspect the installation to verify compliance with the approved landscape and irrigation plans. The landscape and irrigation installation must conform to the approved plans before a certificate of occupancy will be issued by the Chief Building Official.

## **12-1.07. MAINTENANCE.**

Whenever a landscaping and irrigation plan is required by this Code, or as a condition of an action authorized by this Code, it shall be a violation of this Code if a property owner fails to maintain said property in accordance with that approved landscape or irrigation plan.

Alterations or deviations to original approved landscape plan shall be reviewed and approved or rejected by the Parks Planning and Development Division. Any landscape area that does not have approved plans shall require submittal of landscape plans to the Parks Planning and Development Division for approval.

- (a) All types of tree maintenance, including trimming, shall be done in accordance with guidelines established by the International Society of Arboriculture. Tree trimming shall maintain the fifty (50) percent surface shading requirements as established by Section 10-2.2006(b) of this Code.
- (b) Any vegetation requiring removal due to disease, death, or other reasons, shall be accomplished through the landscape review process. Replacement trees shall meet the fifty (50) percent surface shading requirements as established by Section 10-2.2006 of this Code and shall be at least fifteen (15) gallon size stock when planted.

SECTION 2. AMENDMENT OF CODE: Section 12-1.10 is hereby added to Chapter 1 of Title 12 to read as follows:

### **12-1.10. ADMINISTRATIVE REMEDIES.**

Title 1, Chapter 6, of this Code established the administrative enforcement of remedies for violations of this Code and applicable state codes. The general remedies include administrative abatement, summary abatement, civil penalties, administrative citations, recordation of notices of violation and mediation. The City of Modesto may pursue any of these administrative remedies for violations 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 8<sup>th</sup> day of July, 2003, by Councilmember Frohman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Fisher, Frohman, Jackman, Keating, O'Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: Conrad

APPROVED:   
CARMEN SABATINO, Mayor

ATTEST:

By   
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

***Effective Date:***

Ord. No. 3313-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 22<sup>nd</sup> day of July, 2003, Councilmember Conrad moved its final adoption, which motion being duly seconded by Councilmember Frohman, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Conrad, Fisher, Frohman, Jackman, Keating, O'Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:   
MAYOR CARMEN SABATINO

ATTEST:   
JEAN ZAHR City Clerk

Effective Date: August 21, 2003

ORDINANCE No. 3314-C.S.

AN ORDINANCE AMENDING SECTIONS 10-2.402 and 10-2.502 OF CHAPTER 2 OF TITLE 10 OF THE MODESTO MUNICIPAL CODE AND ADDING SECTION 10-2.243 THERETO RELATING TO SHIPPING CONTAINERS.

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

SECTION 1. AMENDMENT OF CODE. Sections 10-2.402 and 10-2.502 of Chapter 2 of Title 10 of the Modesto Municipal Code are hereby amended to read as follows:

**10-2.402. PERMITTED USES.**

The following are permitted uses:

- (a) The growing of fruit and nut trees, vines, row crops and horticultural stock, and the maintenance of livestock and other farm animals excluding pig farming, dairies, and feed lots.
- (b) One (1) single-family dwelling per lot.
- (c) The provision of lodging and/or boarding to a maximum of three (3) persons by a proprietor who lives on the premises. Lodgers and boarders may use the proprietor's kitchen, but shall not be permitted separate eating, cooking or food storage facilities.
- (d) The operation of a bed and breakfast home, provided that not more than two (2) bedrooms may be used for the lodging of guests and that the property owner shall reside on the premises.
- (e) Adult day care for three (3) or fewer persons in addition to members of the family.
- (f) Twenty-four-hour care for six (6) or fewer persons in addition to members of the family. Twenty-four-hour care is not permitted where there are two (2) dwellings on a lot except as allowed by a conditional use permit.
- (g) Child day care for twelve (12) or fewer children in addition to members of the family. Only one (1) day care business is permitted per lot.
- (h) Parks owned and operated by a governmental agency.

- (i) A dish-type, satellite antenna, subject to the following conditions:
  - (1) A satellite antenna shall be located at least five (5) feet from the rear lot line and entirely outside of any required front yard and side yard. A satellite antenna shall not be located in the area between a required front yard and the front of a main building on a lot if the satellite antenna will be visible from the front lot line. A satellite antenna shall not be located in the area between a required side-street side yard and a main building on a lot if the satellite antenna will be visible from the side street lot line.
  - (2) A satellite antenna shall not exceed thirteen (13) feet in diameter.
  - (3) A satellite antenna shall be ground-mounted and shall not exceed a height of fifteen (15) feet at the highest point of the antenna.
- (j) Signs subject to the provisions of the R-1 Zone specified in Article 21.
- (k) Accessory uses and structures customarily incidental to the above permitted uses. Use of shipping containers as defined is not permitted.

**10-2.502. PERMITTED USES.**

The following are permitted uses:

- (a) One (1) single-family dwelling per lot.
- (b) Two (2) single-family dwellings or a duplex on any corner lot, provided that the driveway serving the off-street parking for one (1) dwelling unit shall have access to one (1) street and the driveway serving the off-street parking for the other dwelling unit shall have access to another street. If the lot has access to an alley, one (1) or both driveways may access to the alley.
- (c) The provision of lodging and/or boarding to a maximum of three (3) persons by a proprietor who lives on the premises. Lodgers and boarders may use the proprietor's kitchen, but shall not be permitted separate eating, cooking or food storage facilities. Lodging or boarding is not permitted where there are two (2) dwellings on a lot.

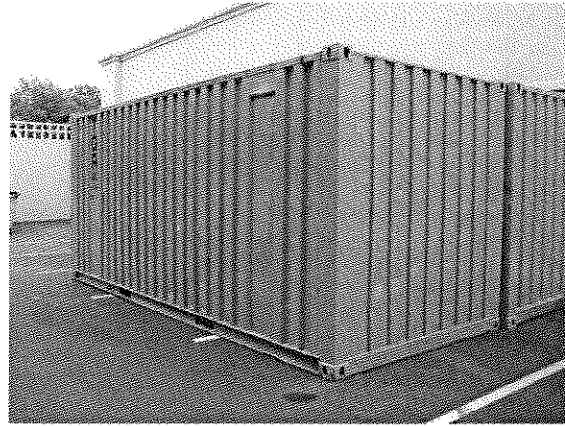
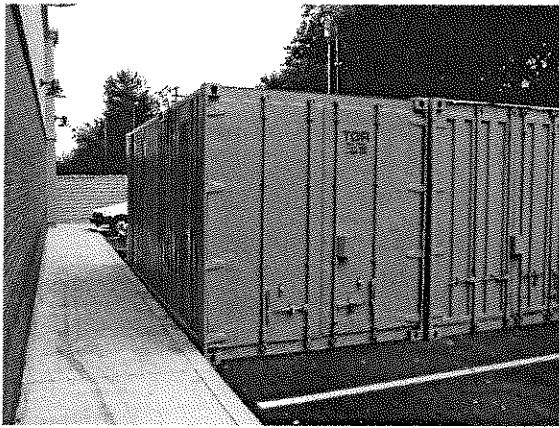
- (d) The operation of a bed and breakfast home, provided that not more than two (2) bedrooms may be used for the lodging of guests and that the property owner shall reside on the premises.
- (e) Adult day care for three (3) or fewer persons in addition to members of the family if there is only one (1) dwelling unit on the lot.
- (f) Child day care for twelve (12) or fewer children in addition to members of the family. Only one (1) day care business is permitted per lot.
- (g) Residential care facility.
- (h) Parks owned and operated by a governmental agency.
- (i) The growing of fruit and nut trees, vines, row crops and horticultural stock.
- (j) A dish-type, satellite antenna, subject to the following conditions:
  - (1) A satellite antenna shall be located at least five (5) feet from the rear lot line and entirely outside of any required front yard and side yard. A satellite antenna shall not be located in the area between a required front yard and the front of a main building on a lot if the satellite antenna will be visible from the front lot line. A satellite antenna shall not be located in the area between a required side-street side yard and a main building on a lot if the satellite antenna will be visible from the side-street lot line. In the case of a through lot or multiple-frontage lot, a satellite antenna shall not be located so as to be visible from any street.
  - (2) A satellite antenna shall not exceed thirteen (13) feet in diameter.
  - (3) A satellite antenna shall be ground-mounted and shall not exceed a height of fifteen (15) feet at the highest point of the antenna.
- (k) Signs subject to the provisions of Article 21.
- (l) Accessory uses and structures customarily incidental to the above permitted uses. Use of shipping containers as defined is not permitted.
- (m) Residential service facility for up to six (6) persons.

SECTION 2. AMENDMENT OF CODE. Section 10-2.243.1 is hereby added to

Chapter 2 of Title 10 of the Modesto Municipal Code to read as follows:

**10-2.243.1. SHIPPING CONTAINER.**

Structure designed and intended for the movement of materials over long distances, typically constructed of corrugated steel, and commonly associated with ship, train or tractor-trailer shipping. See illustration below.



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 8<sup>th</sup> day of July, 2003, 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: Conrad, Fisher, Frohman, Jackman, Keating, O'Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:   
CARMEN SABATINO, Mayor

ATTEST:

By   
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

***Effective Date:***

Ord. No. 3314-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 22<sup>nd</sup> day of July, 2003, Councilmember Frohman moved its final adoption, which motion being duly seconded by Councilmember Conrad, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Conrad, Fisher, Frohman, Jackman, Keating, O'Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:   
MAYOR CARMEN SABATINO

ATTEST:   
JEAN ZAHR City Clerk

Effective Date: August 21, 2003

ORDINANCE NO. 3315-C.S.

AN ORDINANCE AMENDING SECTION 19-3-9 OF THE ZONING MAP TO REZONE FROM A PORTION OF PLANNED DEVELOPMENT ZONE, P-D(416), AND PLANNED DEVELOPMENT ZONE, P-D(550), TO PLANNED DEVELOPMENT ZONE, P-D(561), PROPERTY LOCATED ON THE NORTHWEST CORNER OF WEST ORANGEBURG AND MARTIN AVENUES (TUTINO)

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

SECTION 1. ZONING CHANGE. Section 19-3-9 of the Zoning Map is hereby amended to reclassify the following described property from Planned Development Zone, P-D(416) and P-D(550), to Planned Development Zone, P-D(561):

Rezone P-D(550) to P-D(561)

All that certain real property situated in the City of Modesto, County of Stanislaus, State of California, and being a portion of the Northwest Quarter of Section 19, Township 3 South, Range 9 East, Mount Diablo Base and Meridian, more particularly described as follows:

All of Lot A as shown on that certain map filed for record on February 17, 1988 of Orangeview Manor in Book 32 of Maps, Page 67; and all of Parcel 4 on that certain Parcel Map filed for record on June 30, 1987, in Book 39 of Parcel Maps, Page 67;

Also including all of Teresa Street and all Martin Avenue and the northerly half of W. Orangeburg Avenue, all being immediately adjacent to the above described property.

Rezone Portion of P-D(416) to P-D(561)

All that certain real property situated in the City of Modesto, County of Stanislaus, State of California, and being a portion of the Northwest Quarter of Section 19, Township 3 South, Range 9 East, Mount Diablo Base and Meridian, more particularly described as follows:

All of Parcel 3 on that certain Parcel Map filed for record on June 30, 1987, in Book 39 of Parcel Maps, Page 67;

Also including the northerly half of West Orangeburg Avenue, all being immediately adjacent to the above described property.

SECTION 2. USES. The following uses shall be permitted in said P-D(61) 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. Hotel.

SECTION 3. ZONING MAP. Section Map 19-3-9 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 8<sup>th</sup> day of July, 2003, by Councilmember Frohman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Conrad, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Conrad, Frohman, Keating, O'Bryant, Mayor Sabatino

NOES: Councilmembers: Fisher, Jackman

ABSENT: Councilmembers: None

APPROVED:   
CARMEN SABATINO, Mayor

ATTEST:

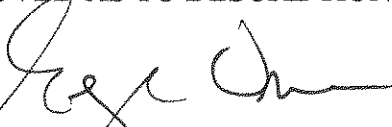
By   
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

APPROVED AS TO DESCRIPTION:

By   
Community & Economic Development  
Department Planning Division

**Effective Date:**

Ord. No. 3315-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 22<sup>nd</sup> day of July, 2003, Councilmember Conrad moved its final adoption, which motion being duly seconded by Councilmember Frohman, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Conrad, Fisher, Frohman, Jackman, Keating, O'Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:   
MAYOR CARMEN SABATINO

ATTEST:   
JEAN ZAHIR, City Clerk

Effective Date: August 21, 2003

ORDINANCE NO. 3316-C.S.

AN ORDINANCE AMENDING SECTION 11-1.06 OF  
CHAPTER 1 OF TITLE 11 OF THE MODESTO MUNICIPAL  
CODE RELATING TO WATER RATES AND REGULATIONS  
B METERED SERVICES.

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

SECTION 1. AMENDMENT OF CODE. Section 11-1.06 of Chapter 1 of Title 11  
of the Modesto Municipal Code is hereby amended to read as follows:

**11-1.06. METERED SERVICES.**

- (a) All hotels, lodging houses, single-family dwellings located within the City's outlying water systems, multiple-family dwellings, campgrounds, office buildings, eating houses, commercial establishments, industrial plants, theaters, hospitals, laundries, dance halls, warehouses, bus stations, milk plants, manufacturing establishments, service stations, wash racks, cooling systems and any or all other places offering services to the public or commodities for sale, as well as owners of gardens using water for irrigation of flowers and vegetables to be used commercially, must be equipped with meters and shall be charged for water on the metered rate as specified in Section 11-1.07 of this chapter.
- (b) New single-family dwellings issued a building permit on or after October 1, 1991, within the City of Modesto water system shall be equipped with a meter but shall not be charged for water on a metered rate.
- (c) Where clusters of single-family dwellings are located on a single parcel of property, service may be provided by a metered connection for each individual unit or a single metered connection serving all units under one (1) ownership.
- (d) All buildings of any kind whatsoever, whether industrial, commercial or residential, heretofore or hereafter equipped with water using heat pumps or refrigeration units shall be equipped with meters and shall be charged for water on the metered rate as specified in Section 11-1.07 of this chapter.
- (e) Each swimming pool and bathing pool heretofore or hereafter constructed shall be metered except those located on residential property and equipped

with a filtering system meeting the standards approved by the Community Development Director; provided, further, that every swimming pool and bathing pool heretofore or hereafter constructed which is used commercially or by a closed membership association or corporation shall be metered. The connection fee and water rates for pools required to be metered shall be as provided for other metered connections.

- (f) For all metered services, the City will furnish, install and maintain all meters, with the consumer to pay the cost of the meter and installation. The cost of meters and installation shall be in accordance with a schedule approved by the Council from time to time by resolution and on file in the offices of the City Clerk, Engineering and Transportation Director and Finance Director. In the case of existing meters under the ownership of the consumer, the City will assume responsibility for maintenance and replacement of the meters upon receipt of transfer of title from the owner. Said title shall be in a form satisfactory to the Engineering and Transportation Director.
- (g) Except as provided in Section 11-1.06(d) and 11-1.14(a) single-family dwellings issued a building permit prior to October 1, 1991, shall not be required to have metered 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 8<sup>th</sup> day of July, 2003, by Councilmember Jackman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Conrad, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Conrad, Fisher, Frohman, Jackman, Keating, O'Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:   
CARMEN SABATINO, Mayor

ATTEST:

By   
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

***Effective Date:***

Ord. No. 3316-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 22<sup>nd</sup> day of July, 2003, Councilmember Frohman moved its final adoption, which motion being duly seconded by Councilmember Conrad, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Conrad, Fisher, Frohman, Jackman, Keating, O'Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:   
MAYOR CARMEN SABATINO

ATTEST:   
JEAN ZAHR, City Clerk

Effective Date: August 21, 2003

ORDINANCE NO. 3317-C.S.

AN ORDINANCE AMENDING ORDINANCE NO. 3237-C.S. ENTITLED "AN ORDINANCE GRANTING AN EXCLUSIVE TWO-YEAR ADVERTISING SIGN FRANCHISE TO SAFER INTERSECTIONS, INC. FOR THE RIGHT, PRIVILEGE AND PERMISSION TO OPERATE A BATTERY BACK-UP SYSTEM EQUIPMENT DONATION FRANCHISE AND OCCUPY THE PUBLIC RIGHT-OF-WAY AT DESIGNATED LOCATIONS ALONG THE STREETS IN THE CITY OF MODESTO FOR ADVERTISING SIGNS," EXTENDING BATTERY BACK-UP SYSTEM EQUIPMENT DONATING FRANCHISE FOR A PERIOD OF THREE (3) YEARS.

Ordinance No. 3237-C.S. is hereby amended to read as follows:

**PURPOSE.**

To establish terms, conditions and procedures for granting a Battery Back-up System Equipment Donation Franchise for the exclusive right, privilege and permission to occupy the public right-of-way and to advertise at designated locations along the intersections in the City of Modesto.

**SECTION 1. DEFINITIONS**

- (a) "Grantee" refers to Safer Intersection, Inc. as the designated donor of a battery backup system placed at various intersections in Modesto, hereinafter called Grantee.
- (b) "The City" means and refers to the City of Modesto.
- (c) "Battery Backup System" or "BBS" refers to a system, as described in Exhibit A, that shall provide reliable emergency power to a traffic signal in the event of power failure or interruption.
- (d) "Designated Intersection" refers to the area where two or more streets cross with traffic signals that both parties have mutually agreed upon for placement of Battery Back-up System equipment or advertising signage.
- (e) "Franchise" means and refers to this ordinance and all of the rights, privileges, obligations, terms, conditions and restrictions set forth herein.

## **SECTION 2. SCOPE AND TERM OF FRANCHISE.**

- (a) **Scope.** Grantee shall have the right, privilege and permission to occupy the public right-of-way to advertise business names at designated locations along the intersections in the City of Modesto in accordance with this Franchise. The City of Modesto will install and maintain battery back-up system equipment donated in accordance with this Franchise.
- (b) **Term/Termination for Convenience.** The term of this Franchise will last three years. It shall commence on January 1, 2004, and shall end no later than January 1, 2007. The City shall have the right to terminate the Franchise for convenience at any time by providing Grantee written notice of such termination at least ninety (90) days in advance of the date of termination. Notice of termination of Franchise shall be in writing and may be served by certified United States mail. Service of notice of termination of Franchise for convenience shall be deemed complete upon the mailing of the notice to the Grantee – Safer Intersections, c/o James Reed, 2501 Stone Crop Lane, Modesto, CA 95355. Grantee is responsible for notifying the City in writing of any change of address. Failure of Grantee to give City written notice of change of address shall not toll or otherwise prevent the commencement of the ninety (90) day notice period. If either Grantee or City terminates this Franchise, any accompanying signs in place prior to the termination will remain in place for a two-year period of time or less, which is at the discretion of the City Manager or his designee.

## **SECTION 3. FRANCHISE FEE.**

For the exclusive rights and privileges set forth herein, Grantee shall donate the battery back-up system equipment. Said donation shall be deemed just and adequate compensation for granting of this Franchise. Grantee is required to donate a minimum of one (1) BBS in order to fulfill the obligations under this agreement. In the event there is a failure to deliver on at least one (1) battery back-up system equipment, the Grantee agrees to pay the City the total sum of \$500 as just and adequate compensation for granting of this Franchise (See Section 19).

## **SECTION 4. ADVERTISING PROHIBITED.**

No person(s) shall install or maintain a battery back-up system or advertise along any designated intersection in the City except in accordance with this Franchise.

## **SECTION 5. SIGNS**

Advertising signs, in conjunction with each donation, will be provided by the Grantee to the City for installation at designated intersections. The signs will not exceed 24 inches by 30 inches (24"x30") in size and will consist of a blue background with the heading "Modesto is working towards a safer community." The sign will advertise the business name and/or logo of the donor on a white inlet background. Where two businesses may sponsor a battery back-up system equipment donation jointly, their business names and/or logos will be placed on the same sign. The sign will feature the logos of the City of Modesto and Safer Intersections in the lower left-hand and lower right-hand corners of each sign. All signs will be required to meet the advertising conditions as described in Section 8 of this Agreement.

## **SECTION 6. SIGN PRINTING SCREENS.**

Grantee shall be responsible for the safe storage of the sign printing screens, furnished by Grantee to the City, for the duration of this franchise.

## **SECTION 7. MAINTENANCE OF SIGNS.**

The Grantee will regularly monitor the condition of signs on which advertising will be placed and is responsible for notifying the City when a sign has been damaged or is in need of maintenance. The City is responsible for replacing damaged signs and agrees that the Grantee will pay costs for one/twelfth of needed replacement signs. The City reserves the right to remove any such signs that pose a safety hazard, but will not inspect, repair, or maintain such signs on a regular basis.

## **SECTION 8. ADVERTISING SIGN RESTRICTIONS.**

Grantee shall utilize only the front surface of the intersection sign for the placement of printed matter. No other material whatsoever shall be permitted on any portion of the intersection sign except as specified by City. Printed matter or signs shall be placed in accordance with the following conditions:

- (1) Grantee shall submit to the City Manager or his designee, copies of all ads proposed to be placed on intersection sign for placement or replacement approval.
- (2) Should CITY, in its sole discretion, determine any advertising placed on any intersection sign to be improper, offensive or likely to interfere with, mislead, or distract traffic or conflict with any traffic control system, City shall remove all such material within twenty-four (24) hours and serve written removal notice to Grantee with cause for removal.
- (3) Examples of words included in the prohibition stated in the next preceding paragraph are the words, "Stop," "Look," "Drive-in," "Danger," but this list is not inclusive.

- (4) No advertising or signs or devices shall be permitted in conjunction with BBS advertising which comprise rotating, revolving or flashing lighting devices or any other moving parts.
- (5) No advertising for beverages containing alcohol, tobacco, or any business regulated by Modesto Municipal Code Sections 5-9.101 through 5-9.406 shall be permitted.
- (6) No advertising that, in the sole opinion of the CITY, contains any depiction of an act of an immoral, violent, or debasing nature, or otherwise not in keeping with the standards and surroundings of the intersection, shall be permitted.
- (7) No advertising for products or services on the signage shall be permitted.
- (8) No advertising that discriminates based on gender, race, ethnic origin, or other factors shall be permitted.
- (9) No advertising that is false, misleading, deceptive or clearly defamatory shall be permitted.

#### **SECTION 9. PLACEMENT OF SIGNS BEARING ADVERTISING.**

Grantee shall have the right and privilege, subject to prior city approval, to choose among designated intersections for the placement of the accompanying advertising signs related to this Franchise. Subject to the specifications and limitations contained herein, Grantee shall have the right to place up to 4 signs for each battery back-up system donated at designated intersections, or such other place as the City and Grantee may agree. No advertising signs related to this Franchise, will be installed or maintained by the City's Operations and Maintenance Department without the express written approval of the proposed location by the City Manager or his designee.

#### **SECTION 10. REMOVAL OF SIGNS BEARING ADVERTISING.**

No advertising signs related to this Franchise, after being installed, shall be removed by Grantee at any time except with the express written approval of the City Manager or his designee. The City Manager or his designee may, for a cause considered by him/her reasonable, order the City's Operations and Maintenance Department to move or remove any advertising sign.

#### **SECTION 11. LEASE OF SIGN POLES/PAYMENT.**

For the exclusive rights and privileges set forth herein, Grantee shall lease sign poles from the City for a period no greater than two (2) years. For the right and privilege of leasing the sign poles, Grantee prior to January 1, 2002, shall pay to the City One Dollar and no/100ths dollars (\$1.00), which sum shall thereafter be pre-paid to the City by January 1 each year for the duration of the franchise. Should the City terminate this Franchise, the City shall not reimburse the lease payment to Grantee.

#### **SECTION 12. CITY USE OF ADVERTISING SIGNS.**

Grantee shall make available to CITY, at no cost to CITY, a maximum of twenty (20) signs – four signs at five different intersections selected by the City Manager or his designee – at no cost. Said twenty (20) signs will be used for the purpose of displaying printed messages selected by CITY to promote CITY programs or messages determined by CITY to be of importance to the public. CITY shall have the sole ability to select said twenty (20) locations. CITY shall be responsible for the cost of printing sign screens or otherwise applying its printed message to the signs it utilizes and shall have the ability to utilize the sign advertisement vendor of its choice. CITY shall be responsible for installing said CITY signs. Grantee shall have the ability to request CITY signs be removed from locations that may subsequently be purchased by advertisers but shall relocate displaced CITY signs to other locations selected by CITY.

#### **SECTION 13. BATTERY BACK-UP SYSTEM SPECIFICATIONS.**

The battery back-up systems to be donated shall be designed for outdoor applications in accordance with the Caltrans Transportation Electrical Equipment Specifications set forth in Exhibit A.

#### **SECTION 14. PLACEMENT OF BATTERY BACKUP SYSTEMS.**

The City, in its sole discretion, will decide the intersection locations for placement of the battery back-up systems. The Battery Back-up System equipment shall be placed, maintained, relocated and removed as required by the City Manager or his designee.

#### **SECTION 15. OWNERSHIP/REMOVAL OF BATTERY BACK-UP SYSTEMS.**

Once donated, the battery back-up systems become the sole property of the City. No battery back-up system equipment after being installed at the intersections in the City shall be removed by the Grantee.

## SECTION 16. WARRANTY

Grantee will provide in the form of a pass through from the manufacturer any and all warranties on the battery back-up system equipment. Warranty will commence on the date of installation, not on the date of donation.

## SECTION 17. INSURANCE.

The Grantee shall provide at its own expense and maintain at all times the following insurance with insurance companies licensed in the State of California and shall provide evidence of such insurance to the CITY as may be required by the City Clerk of the CITY. The policies or certificates thereof shall provide that, thirty (30) days prior to cancellation or material change in the policy, notices of same shall be given to the Risk Manager of the CITY by registered mail, return receipt requested, for all of the following stated insurance policies.

- A. General Liability insurance with a minimum limit of liability per occurrence of \$1,000,000 for bodily injury and \$100,000 for property damage or \$1,000,000 combined single limit. This insurance shall indicate on the certificate of insurance the following coverages and indicate the policy aggregate limit applying to: premises and operations; broad form contractual; independent contractors and subcontractors; products and completed operations; and/or professional liability.
- B. Automobile Liability insurance with a minimum limit of liability per occurrence of \$1,000,000 for bodily injury and \$100,000 for property damage or \$1,000,000 combined single limit. This insurance shall cover any automobile for bodily injury and property damage.
- C. Advertiser's Liability insurance with a minimum limit of liability per occurrence of \$1,000,000 for legal liability; damages resulting from libel, slander, or defamation; infringement of copyright, title or slogan; and invasion of rights to privacy.

If at any time any of said policies shall be unsatisfactory to the CITY, as to form or substance or if a company issuing such policy shall be unsatisfactory to the CITY, the Grantee shall promptly obtain a new policy, submit the same to the Risk Manager for approval and submit a certificate thereof as hereinabove provided. Upon failure of the Grantee to furnish, deliver or maintain such insurance and certificates as above provided, this Franchise, at the election of the CITY, may be forthwith declared suspended, or terminated. Failure of the Grantee to obtain and/or maintain any required insurance shall not relieve the Grantee from any liability under this Franchise, nor shall the insurance requirements be construed to conflict with or otherwise limit the obligations of the Grantee concerning indemnification. The CITY, its agents, officers, employees, and volunteers shall be named as an additional insured on all insurance policies required herein, except Workers' Compensation. The Workers' Compensation insurer shall agree

to waive all rights of subrogation against the CITY, its agents, officers, employees, and volunteers for losses arising from work performed by Grantee for the CITY. The Grantee's insurance policy(ies) shall include a provision that the coverage is primary as respects the CITY; shall include no special limitations to coverage provided to additional insured; and, shall be placed with insurer(s) with acceptable Best's rating of A:VII or with approval of the Risk Manager.

#### **SECTION 18. INDEMNITY AND HOLD HARMLESS**

The Grantee shall hold the CITY, its agents, officers, employees, and volunteers, harmless from and save, defend and indemnify them against any and all claims, losses, liabilities and damages from every cause, including but not limited to injury to person or property or wrongful death, with the indemnity to include reasonable attorney's fees, and all costs and expenses, arising directly or indirectly out of any act or omission of Grantee, relating to or during the performance of its obligations under this Franchise.

#### **SECTION 19. PERFORMANCE BOND/SECURITY.**

The Grantee shall post a performance bond or other surety approved by CITY'S City Attorney in the sum of Five Hundred and no/100ths to the CITY guaranteeing its performance of the conditions of this franchise and stating that the said sum shall be forfeited to the CITY as liquidated damages in the event that Grantee shall fail to perform the conditions of its franchise. Said bond shall be furnished by a surety company authorized to do business in the State of California and shall be approved by the City Attorney. (Cash, irrevocable letter of credit, or a certified cashiers check may be substituted for a bond.).

#### **SECTION 20. DEFAULT.**

In the event that either party shall fail or neglect to do or perform each and all of the terms and conditions of this franchise on his or its part to be performed, the aggrieved party may give the party in default thirty (30) days' written notice to correct the conditions in default, and if the party in default refuses or neglects to make such corrections within the thirty (30) day period, the aggrieved party may terminate this franchise. Should Grantee herein default, Grantee agrees to leave all signs in the positions approved per Section 10 herein.

Should Grantee default, and at all times throughout the term of this franchise ordinance, and notwithstanding City's election at any time to exercise any particular remedy described herein or otherwise available in law or equity, City hereby reserves and retains the right to elect and exercise any and all remedies, whether simultaneously or consecutively, described herein or otherwise available in law and equity.

**SECTION 21. INSPECTION OF BOOKS.**

The CITY shall have the right at all reasonable times to examine all books, papers, and records of the Grantee for the purpose of verifying the statements or reports required and for any other purpose whatsoever connected with this franchise.

**SECTION 22. DEFACING ADVERTISING SIGNS PROHIBITED.**

No person shall tamper with or deface any advertising sign placed under the Franchise granted by this ordinance.

**SECTION 23. PENALTY FOR VIOLATION OF SECTION 22.**

It shall be unlawful for any person to violate the provisions of SECTION 22 of this franchise, or to cause, permit or suffer the same to be done; and any person who does shall be deemed guilty of a misdemeanor, and upon conviction of any such violation, such person shall be punished by a fine of not more than One Thousand and no/100ths Dollars (\$1,000.00) or by imprisonment for not more than one year or by both such fine and imprisonment.

**SECTION 24. TRANSFER OR ASSIGNMENT.**

This franchise may not be sold, transferred, assigned or otherwise disposed of, in whole or in part, without the prior written consent of the Modesto City Council. The Council may grant or deny any such request and may impose such conditions as it may deem to be in the public interest. Any attempted disposition made without such consent shall be void.

**SECTION 25. EFFECTIVE DATE.**

This ordinance shall become effective January 1, 2004, or thirty (30) days after its final passage and adoption, whichever is later, provided that Grantee, prior to said effective date, shall have filed with the City Clerk written acceptance thereof and an agreement to be bound by and comply with all of the requirements thereof, and delivers to the City Clerk the bond and insurance policies required to be furnished pursuant to the provisions of Section 14 and 15 thereof.

**SECTION 26. PUBLICATION.**

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

**SECTION 27. TAX PROVISION.**

Grantee shall be responsible for prompt payment of all tax liabilities created by operation of this franchise including but not limited to, a possessory interest tax levied by Stanislaus County. Grantee's continued failure to pay such tax after written notice from CITY shall constitute grounds for revocation of this franchise.

**SECTION 28. PROTESTS MAY BE FILED.**

At any time not later than the hour set for the hearing, any person interested may make written protest stating objections against the granting of such franchise. Such protests must be signed by the protestant and be delivered to the City Clerk. (Sec. 6, Ord. 1048-N.S.)

The foregoing ordinance was introduced at a special meeting of the Council of the City of Modesto held on the 6<sup>th</sup> day of August, 2003, by Councilmember Frohman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Conrad, Fisher, Frohman, Jackman, Keating, O'Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: *Carmen Sabatino*  
CARMEN SABATINO, Mayor

ATTEST:

By *Jean Zahr*  
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:  
By *Michael D. Milich*  
MICHAEL D. MILICH, City Attorney

By *Ben E. Bankard*  
BEN E. BANKARD, Acting Risk Manager

ACCEPTANCE OF FRANCHISE

Safer Intersections, Inc. of Modesto, California, located within Stanislaus County, does hereby agree with and accept all of the terms and conditions set forth in Ordinance No. 3317-C.S., introduced by the Council of the City of Modesto on August 6, 2003, granting a three-year Battery Back-up System Equipment Donation Franchise extension.

Dated: 10-27-2003 SAFER INTERSECTIONS, INC.

By: James W. Reel

Title: PRESIDENT

By: \_\_\_\_\_

Title \_\_\_\_\_

(SEAL)

APPROVED AS TO FORM:

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

\*\*\*\*\*  
CERTIFICATE OF CLERK

I hereby certify that the foregoing ACCEPTANCE OF FRANCHISE was received by me at the hour of \_\_\_\_\_ o'clock p.m. on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Jean Zahir  
JEAN ZAHIR, City Clerk

Ord. No. 3317-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 7<sup>th</sup> day of October, 2003, Councilmember Fisher moved its final adoption, which motion being duly seconded by Councilmember Jackman, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Conrad, Fisher, Frohman, Jackman, Keating, O'Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:   
MAYOR CARMEN SABATINO

ATTEST:   
JEAN ZAHR, City Clerk

Effective Date: November 6, 2003

ORDINANCE NO. 3318-C.S.

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

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, 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 Village One Specific Plan of the City of Modesto because the resulting development would be consistent with the land uses of the Village One Specific Plan.
2. The Development Agreement is consistent with the specific content and other requirements of City Council Resolution No. 91-185, which establishes 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 65864 et seq.
3. As per Sections 15168(c) and 15182 of the California Environmental Quality Act "CEQA" Guidelines, the project is within the scope of the projects covered by the Program EIR and no new environmental document or findings are required by CEQA.
4. There are no substantial changes proposed in the project that will require major revisions of the Village One Specific Plan Program EIR as amended by the Village One Supplemental EIR.
5. There are no substantial changes occurring with respect to the circumstances under which the project is being undertaken which will require major revisions in the Village One Specific Plan Program EIR as amended by the Village One Supplemental EIR.
6. No new information, which was not known and could not have been known at the time the Village One Specific Plan Program EIR was certified as complete, has become available.
7. There are no specific features that are unique to the proposed project that require project-specific mitigation measures. Accordingly, the certified mitigation measures identified in the Program EIR will be sufficient for this project.
8. All feasible mitigation measures set forth in the Program EIR that are appropriate to the project shall be incorporated in the project.
9. The Initial Study, Environmental Assessment No. EA/C&ED 2003-61, provides the substantial evidence to support findings 3-8, noted above.

SECTION 2. APPROVAL OF DEVELOPMENT AGREEMENT. The 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 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 City Manager or his authorized designee are 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 12<sup>th</sup> day of August, 2003, by Councilmember Fisher, 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: Conrad, Fisher, Jackman, Keating, O'Bryant, Mayor Sabatino  
NOES: Councilmembers: Frohman  
ABSENT: Councilmembers: None

APPROVED:   
CARMEN SABATINO, Mayor

ATTEST:

By   
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

**Effective Date: October 7, 2003**

Ord. No. 3318-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 2<sup>nd</sup> day of September, 2003, Councilmember Conrad 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: Conrad, Jackman, Keating, O'Bryant, Mayor Sabatino

NOES: Councilmembers: Frohman

ABSENT: Councilmembers: Fisher

APPROVED:

  
MAYOR CARMEN SABATINO

ATTEST:

  
JEAN ZAHR, City Clerk

Effective Date: October 1, 2003

ORDINANCE NO. 3319-C.S.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MODESTO AUTHORIZING A LOAN OF \$35,000 FROM THE CITY OF MODESTO'S GENERAL FUND RESERVE TO FUND 2690 FOR FORMATION OF THE VILLAGE ONE CFD #2

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

WHEREAS, Government Code Section 53314.8 authorizes the City to loan monies to a community facilities district, either before or after formation of the district, to pay for the provision of authorized services and incidental expenses, provided the loan is memorialized by ordinance,

WHEREAS, on May 13, 2003, the City Council of the City of Modesto ("City"), State of California (the "Council"), adopted Resolution No. 2003-244 authorizing the transfer of \$35,000 from its General Fund Reserves to the Village One CFD #2 (Fund 2690) for the creation of the new Village One Community Facilities District, and

WHEREAS, the terms of the transfer require that the amounts be loaned to the new Village One CFD and expended on the formation of the new Village One CFD, and that the money be reimbursed to the City of Modesto, with simple interest of six (6%) percent, from the proceeds of the first bond sale authorized by the Village One CFD #2, and

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

SECTION 1. This Council finds and determines that the above recitals are all true and correct.

SECTION 2. By the passage of this Ordinance, a \$35,000 loan from the City of Modesto's General Fund Reserves to Fund 2690 is hereby memorialized.

SECTION 3. That the amounts expended on the formation of the Village One CFD #2 shall be reimbursed to the City of Modesto's General Fund Reserves, with simple interest of six (6%) percent, from the proceeds of the first bond sale authorized by the Village One CFD #2.

SECTION 4. EFFECTIVE DATE. This Ordinance shall be effective thirty (30) days from 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 2<sup>nd</sup> day of September, 2003, by Councilmember Frohman, 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: Conrad, Frohman, Jackman, Keating, O'Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: Fisher

APPROVED: *Carmen Sabatino*  
CARMEN SABATINO, Mayor

ATTEST:

By: *Jean Zahr*  
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:  
MICHAEL D. MILICH, City Attorney

By: *Alison A. Barratt-Green*  
ALISON A. BARRATT-GREEN,  
Senior Deputy City Attorney

Ord. No. 3319-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 9<sup>th</sup> day of September, 2003, Councilmember Frohman 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: Conrad, Fisher, Frohman, Jackman, Keating, O'Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:   
MAYOR CARMEN SABATINO

ATTEST:   
JEAN ZAHR City Clerk

Effective Date: October 8, 2003

ORDINANCE NO. 3320- C.S.

AN ORDINANCE AMENDING SECTION 6-1.101 OF ARTICLE  
1 OF CHAPTER 1 OF TITLE 6 OF THE MODESTO  
MUNICIPAL CODE RELATING TO LICENSING IN GENERAL  
- DEFINITIONS.

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

SECTION 1. AMENDMENT OF CODE. Section 6-1.101 of Article 1 of Chapter 1 of  
Title 6 of the Modesto Municipal Code is hereby amended to read as follows:

**6-1.101. DEFINITIONS.**

For the purposes of this chapter, the words and phrases used herein shall have the following meaning unless the context shows a different meaning.

- (a) **Business.** All professions, trades and occupations and all and every kind of calling carried on for profit or livelihood.
- (b) **Business District.** Any area zoned for business purposes by the zoning regulations of the City.
- (c) **Commission Broker.** One who, for a commission or fee, handles the buying and/or selling of commodities, or an agent or an agency for marketing manufactured goods or other commodities, but who does not take ownership of commodities sold.
- (d) **Day.** The term "day" shall mean a calendar day. If the last day for performance of any act provided for shall be a holiday the act may be performed upon the next business day with the same effect as if it had been performed upon the day appointed. For purposes of this section, the Friday in November immediately after Thanksgiving Day shall be considered a holiday.
- (e) **Director.** The Finance Director, or his/her duly authorized deputies or assistants who may be charged with the collection of license taxes and the issuance of licenses.
- (f) **Fixed Place of Business.** A place of business in the City of Modesto occupied for the particular purpose of conducting the business thereat and regularly kept open for that purpose with a competent person in attendance for the purpose of attending to said business.

- (g) **Gross Receipts.** The total amount of the sale price of all sales and the total amount charged or received for the performance of any act, service, or employment for whatever nature it may be, for which a charge is made or credit allowed. Included in gross receipts shall be all receipts, cash, credits and property of any kind or nature and any amount for which credit is allowable by the seller to the purchaser without any deduction therefrom on account of the cost of the property sold, the cost of the materials used, labor or service cost, interest paid or payable, or losses or other expenses whatever.

The following shall be excluded from gross receipts:

- (1) Cash discounts allowed and taken on sales;
- (2) Value of property accepted as part of the purchase price;
- (3) Any taxes collected which are separately stated and collected for and paid to a governmental agency;
- (4) Such part of the sale price of property returned by the purchaser upon rescission of the contract of sale as is refunded either in cash or by credit;
- (5) Receipts of refundable deposits, except that refundable deposits forfeited and taken into income of the business shall not be excluded;
- (6) Collection for others where the business is acting as an agent or trustee to the extent that payments are made to those for whom collected;
- (7) Sales of real estate by an agent or sales of commodities by a commission broker, except that portion of the sale which represents commissions or other income to the agent;
- (8) That portion of the receipts of a general contractor which represents payments to subcontractors, providing such subcontractors are licensed under Article 2 of this chapter and further provided that the general contractor furnishes the Director with the names and addresses of the subcontractors and the amounts paid each subcontractor; and

- (9) The amount of gross receipts which has been subject to a license tax paid to any other city.
- (10) Receipts of an Independent Physician Association, as defined herein:
  - Independent Physician Association (“IPA”) means a legal “person” organized in accordance with California law having all of the following characteristics:
    - (i) One hundred (100) percent ownership or control by California licensed medical doctors (“members”);
    - (ii) With the exception of members who are employed by, or are partners in a medical group practice, and who contract with the IPA, all IPA members practice independently of other members;
    - (iii) Enter into direct contracts with “Health Plans” as defined in Health and Safety Code Section 1345(F), as amended from time to time;
    - (iv) Contracts between IPA and Health Plans must provide for payment by Health Plans to IPA for medical services to Health Plan enrollees; and
    - (v) IPA contracts in (iv) above must make IPA a fixed fee administrator with no risk for gains or losses from capitation revenues paid to it by Health Plans. “Capitation” being a fixed amount paid by a Health Plan to IPA or its members per Health Plan enrollee per month, and “Fixed Fee” being either a sum stated, or a fixed percentage of capitation received.
- (h) **Itinerant Vendor.** Any person who shall travel from town to town, house to house, apartment to apartment, office to office, place to place, person to person, or any combination thereof for the purpose of selling, offering for sale, or soliciting orders for, goods, wares, or merchandise at retail, but shall not include selling and delivering, or offering to sell and deliver, items of food and drink for human consumption by a vendor to regular customers along established routes in accordance with invitations previously made to such vendor to make regular calls at specific intervals at such premises for said purpose.

An itinerant vendor shall include but not be limited to a hawker, peddler,

street vendor, sidewalk vendor, flower vendor, arts or crafts vendor, or a vendor from a truck or vehicle. An itinerant vendor shall not include any authorized agent or representative of a person having a fixed place of business in the City of Modesto, nor shall it include a charitable institution which sponsors an occasional bazaar, festival, or rummage sale at which the goods, wares or merchandise have been purchased by, prepared by, or donated to the charitable institution and at which no other person makes a profit, nor shall it include youth and senior part-time occupations as set forth in Section 6-1.106.

- (i) **Manufacturing.** One who engages in the business of manufacturing, fabricating or processing any materials, raw or partly wrought, into goods, wares or merchandise, or assembling or packaging any manufactured or processed materials, whether such manufactured or processed goods are sold or distributed to wholesalers, brokers, or other channels for the purpose of resale.
- (j) **Month.** The term "month" shall mean a calendar month.
- (k) **Operator.** The term "operator" shall mean any person operating a business subject to the tax, including, but not limited to, the owner or proprietor of such premises, lessee, sublessee, mortgagee in possession, licensee or any other person otherwise operating such business.
- (l) **Person.** The term "person" shall mean any individual, firm, company, partnership, limited liability partnership, joint venture, association, proprietorship, social club, fraternal organization, joint stock company, domestic or foreign corporation, limited liability corporation, estate, trust, business trust, receiver, trustee, trustee in bankruptcy, administrator, executor, assignee, syndicate, or any other group or combination acting as a unit, whether mutual, cooperative, fraternal, nonprofit or otherwise, excepting: the United States of America, the State of California, and any political subdivision of either thereof upon which the City is without power to impose the tax herein provided.

Whenever the term "person" is used in any clause in this Article imposing either a tax liability or a penalty for failure to perform any act, such term shall include any natural person who as an individual or with a spouse and/or lineal descendants owns or controls fifty (50) percent or more of the voting stock of a corporation obligated to file returns and pay or remit tax; and in addition, is a person with the power to control the fiscal decision-making process by which the corporation allocates funds to creditors in preference to its tax obligations. An individual who is an officer or director of a

"person," as defined above, shall rebuttably be presumed to be a person with the power to control said entity's fiscal decision-making processes.

Whenever the term "person" is used in any clause prescribing and imposing a penalty, the term as applied to associations shall include the owners or part owners thereof, and as applied to corporations, the officers, shareholders and directors thereof, in their individual capacities, if such owners, officers, shareholders and directors have charge of the affairs of said association or corporation.

- (m) **Processor.** One who engages in business of converting an article, substance or commodity into marketable form for the purpose of resale by changing its physical or chemical composition.
- (n) **Public Utility.** Any person furnishing the public with communication, water, light, heat, power or other public utility or service subject to regulation by the Public Utilities Commission of the State of California.
- (o) **Return.** The term "return" shall mean any written statement required to be filed pursuant to this chapter and containing information necessary to the determination of the tax, such as a declaration of gross receipts.
- (p) **Tax Collector.** The term "Tax Collector" shall mean the Finance Director, as defined herein, or his or her designee.
- (q) **Taxpayer.** The term "taxpayer" shall mean a person required under this chapter to file a return or pay or remit a tax.
- (r) **Vehicle.** Every device, in, upon, or by which any person or property is or may be transported or drawn upon a public highway.
- (s) **Wholesaler.** One who engages in the business of selling or soliciting the sale of goods, wares, merchandise, or services for the purpose of resale and not to consumers or users thereof.

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 2<sup>nd</sup> day of September, 2003, by Councilmember Jackman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Frohman, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Conrad, Frohman, Jackman, Keating, O'Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: Fisher

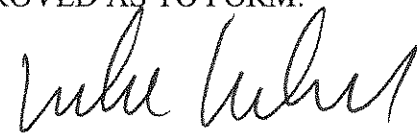
APPROVED:   
CARMEN SABATINO, Mayor

ATTEST:

By   
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

Ord. No. 3320-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 9<sup>th</sup> day of September, 2003, Councilmember Keating moved its final adoption, which motion being duly seconded by Councilmember Frohman, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Conrad, Fisher, Frohman, Jackman, Keating, O'Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: *Carmen Sabatino*  
MAYOR CARMEN SABATINO

ATTEST: *Jean Zahr*  
JEAN ZAHR, City Clerk

Effective Date: October 8, 2003

ORDINANCE NO. 3321-C.S.

AN ORDINANCE ADDING SECTIONS 2-3.404, 2-3.405 AND 2-3.406 TO ARTICLE 4 OF CHAPTER 3 OF TITLE 2 OF THE MODESTO MUNICIPAL CODE RELATING TO FINANCE DEPARTMENT – TREASURY DUTIES.

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

SECTION 1. AMENDMENT OF CODE. Sections 2-3.404, 2-3.405 and 2-3.406 are hereby added to Article 4 of Chapter 3 of Title 2 of the Modesto Municipal Code to read as follows:

**2-3.404. TREASURY DUTIES OF THE FINANCE DEPARTMENT.**

The Finance Department shall:

- (a) Be responsible for the safe deposit of all moneys in the custody of the City.
- (b) Deposit and invest City funds for the benefit of the City in legally authorized banks and securities in accordance with California Government Code Sections 53601 and/or 53635 as those sections exist and may be amended from time to time.
- (c) Deposit moneys in and enter into contracts with any depository in accordance with California Government Code Section 53682.
- (d) Account for the disbursement of all moneys and audit all expenditures to ensure that appropriations are not exceeded.
- (e) Have the authority to examine all contracts, orders and other documents by which the City may incur a financial obligation.
- (f) Be responsible for the assessment of all taxable properties within the corporate limits of the City unless such function has been delegated to another governmental agency.
- (g) Receive all City revenues; provided, however, that nothing herein shall prohibit contractual agreements for the collection of such revenues on behalf of the City.
- (h) Prescribe the form of all receipts.

- (i) Have the responsibilities and duties assigned by this Code to the treasurer, and such other duties as the Modesto Municipal Code or the City Manager shall specify.

**2-3.405. COLLECTION OF ACCOUNTS.**

It shall be the duty of the Finance Department to diligently properly bill, record and pursue, all moneys due the City. Penalty for late payment or adjudication of overdue accounts will be determined by Council action by classification within the ordinance setting fees or charges, but in no event shall such penalties be less than one (1) percent per month.

**2-3.406. WRITE OFF UNCOLLECTIBLE OF ACCOUNTS.**

Where a fee or charge in excess of twenty-five thousand dollars (\$25,000) is incorrectly levied or found to be uncollectible, such accounts will be referred to the City Manager who will promptly report them to the City Council with his/her recommendation. Where a fee or charge of twenty-five thousand dollars (\$25,000) or less, is incorrectly levied or found to be uncollectible, the City Manager will establish a policy and process its disposition. A report of disposition shall be filed with the City Clerk

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 23<sup>rd</sup> day of September, 2003, by Councilmember Conrad, 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: Conrad, Fisher, Frohman, Jackman, Keating, O'Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: *Carmen Sabatino*  
CARMEN SABATINO, 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. 3321-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 14<sup>th</sup> day of October, 2003, Councilmember Frohman moved its final adoption, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Conrad, Fisher, Frohman, Jackman, Keating, O'Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:   
MAYOR CARMEN SABATINO

ATTEST:   
JEAN ZAHR, City Clerk

Effective Date: November 13, 2003

ORDINANCE NO. 3322-C.S.

AN ORDINANCE AMENDING SECTION 8-2.612 OF ARTICLE 6 OF  
CHAPTER 2 OF TITLE 8 OF THE MODESTO MUNICIPAL CODE  
RELATING TO TRANSIENT OCCUPANCY TAX – REFUNDS.

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

SECTION 1. AMENDMENT OF CODE. Section 8-2.612 of Article 6 of

Chapter 2 of Title 8 of the Modesto Municipal Code is hereby amended to read as follows:

**8-2.612. REFUNDS.**

- (a) Whenever the amount of any tax, interest or penalty has been overpaid or paid more than once or has been erroneously or illegally collected or received by the City under this article it may be refunded as provided in subparagraphs (b) and (c) of this section provided a claim in writing therefor, is filed with the Tax Collector in accordance with Section 2-1.202 of this Code.
- (b) An operator may claim a refund or take as credit against taxes collected and remitted the amount overpaid, paid more than once or erroneously or illegally collected or received when it is established in a manner prescribed by the Tax Collector that the person from whom the tax has been collected was not a transient or was exempt; provided, however, that neither a refund nor a credit shall be allowed unless the amount of the tax so collected has either been refunded to the transient or credited to rent subsequently payable by the transient to the operator.
- (c) A transient may obtain a refund of taxes overpaid or paid more than once or erroneously or illegally collected or received by the city by filing a claim in the manner provided in subparagraph (a) of this section, but only when the tax was paid by the transient directly to the Tax Collector, or when the transient having paid the tax to the operator, establishes to the satisfaction of the Tax Collector that the transient has been unable to obtain a refund from the operator who collected the tax.
- (d) No refund shall be paid under the provisions of this section unless the claimant establishes his/her right thereto by written records showing entitlement thereto.

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 23<sup>rd</sup> day of September, 2003, by Councilmember Conrad, 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: Conrad, Fisher, Frohman, Jackman, Keating, O'Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:   
CARMEN SABATINO, Mayor

ATTEST:

By   
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

Ord. No. 3322-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 14<sup>th</sup> day of October, 2003, Councilmember Frohman moved its final adoption, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Conrad, Fisher, Frohman, Jackman, Keating, O'Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: *Carmen Sabatino*  
MAYOR CARMEN SABATINO

ATTEST: *Jean Zahr*  
JEAN ZAHR, City Clerk

Effective Date: November 13, 2003

ORDINANCE NO. 3323-C.S.

AN ORDINANCE AMENDING SECTION 8-2.914 OF  
ARTICLE 9 OF CHAPTER 2 OF TITLE 8 OF THE MODESTO  
MUNICIPAL CODE RELATING TO UTILITY USERS' TAX –  
REFUNDS–ERRONEOUS PAYMENTS.

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

SECTION 1. AMENDMENT OF CODE. Section 8-2.914 of Article 9 of

Chapter 2 of Title 8 of the Modesto Municipal Code is hereby amended to read as follows:

**8-2.914. REFUNDS - ERRONEOUS PAYMENTS**

- (a) Whenever the amount of any tax, interest or penalty has been overpaid or paid more than once, or has been erroneously or illegally collected or received by the City under this article, it may be refunded as provided in subsections (b) and (c) of this section, provided a claim in writing therefor, is filed in accordance with Section 2-4.202 of this Code and Government Code Section 911.2.
- (b) A service supplier may claim a refund or take as credit against taxes collected and remitted an amount overpaid, paid more than once, or erroneously or illegally collected or received, when it is established that the person from whom the tax has been collected was not a service user.
- (c) Any service user may obtain a refund of taxes overpaid, or paid more than once, or erroneously or illegally collected or received by the City, by filing a claim in the manner provided in subsection (a) of this section, but only when the service user having paid the tax to the service supplier establishes to the satisfaction of the Finance Director that the service user has been unable to obtain a refund from the service supplier who collected the tax.
- (d) No refund shall be paid under the provisions of this section unless the claimant establishes his or her right thereto by written records showing entitlement thereto.

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 23<sup>rd</sup> day of September, 2003, by Councilmember Conrad, 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: Conrad, Fisher, Frohman, Jackman, Keating, O'Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: *Carmen Sabatino*  
CARMEN SABATINO, 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. 3323-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 14<sup>th</sup> day of October, 2003, Councilmember Frohman moved its final adoption, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Conrad, Fisher, Frohman, Jackman, Keating, O'Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:   
MAYOR CARMEN SABATINO

ATTEST:   
JEAN ZAHR, City Clerk

Effective Date: November 13, 2003

ORDINANCE NO. 3324-C.S.

AN ORDINANCE ADDING SECTION 8-8.307 TO ARTICLE 3 OF CHAPTER 8 OF TITLE 8 OF THE MODESTO MUNICIPAL CODE RELATING TO CITY OF MODESTO WATER FACILITIES REVENUE BOND LAW – AUDIT.

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

SECTION 1. AMENDMENT OF CODE. Section 8-8.307 is hereby added to Article 3 of Chapter 8 of Title 8 of the Modesto Municipal Code to read as follows:

**8-8.307. AUDIT.**

The Finance Director or designee shall have the authority to audit taxpayers and fee payers for the period of three (3) years following payment or in case of nonpayment, for a period of three (3) years from the date payment was deemed due by the City. He/she shall have such reasonable ancillary powers to require production of books and records at reasonable times, interview and record statements of witnesses, undertake evidentiary hearings, and if the Director finds it appropriate, issue written or oral findings, as well as such other similar powers as may be reasonable in a particular case.

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 23<sup>rd</sup> day of September, 2003, by Councilmember Conrad, 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: Conrad, Fisher, Frohman, Jackman, Keating, O'Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: *Carmen Sabatino*  
CARMEN SABATINO, Mayor

ATTEST:

By *Jean Zahr*  
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By *Mike Milich*  
MICHAEL D. MILICH, City Attorney

Ord. No. 3324-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 14<sup>th</sup> day of October, 2003, Councilmember Frohman moved its final adoption, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Conrad, Fisher, Frohman, Jackman, Keating, O'Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:   
MAYOR CARMEN SABATINO

ATTEST:   
JEAN ZAHR, City Clerk

Effective Date: November 13, 2003

**ORDINANCE NO. 3325-C.S.**

**AN ORDINANCE AMENDING SECTION 7-3.9 OF THE ZONING MAP TO REZONE FROM LOW-DENSITY RESIDENTIAL ZONE, R-1, TO PLANNED DEVELOPMENT ZONE, P-D(562), PROPERTY LOCATED ON THE WEST SIDE OF CARVER ROAD, OPPOSITE MONTCLAIR DRIVE (MARY SILVEIRA)**

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

SECTION 1. ZONING CHANGE. Section 7-3.9 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(562):

R-1 to P-D(562)

All that certain real property situated in the City of Modesto, County of Stanislaus, State of California, and being a portion of the Southwest Quarter of Section 7, Township 3 South, Range 9 East, Mount Diablo Base and Meridian, more particularly described as follows:

All of Parcel "1" as per Parcel Map filed on August 31, 1979 in Book 29 of Parcel Maps, at Page 88, Stanislaus County Records;

Also including the westerly half of Carver Road, all being immediately adjacent to the above-described property.

SECTION 2. USES. The following uses shall be permitted in said P-D(562) 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 14-unit townhouse-style apartment complex.

SECTION 3. ZONING MAP. Section Map 7-3.9 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 14<sup>th</sup> day of October, 2003, by Councilmember Conrad, who moved its introduction and passage to print, which motion being duly seconded by Councilmember O'Bryant, was upon roll call carried and ordered printed and published by the following vote:

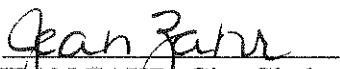
AYES: Councilmembers: Conrad, Fisher, Frohman, Jackman, Keating,  
O'Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:   
CARMEN SABATINO, 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. 3325-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 28<sup>th</sup> day of October, 2003, Councilmember Frohman moved its final adoption, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Conrad, Fisher, Frohman, Jackman, Keating, O'Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:   
MAYOR CARMEN SABATINO

ATTEST:   
JEAN ZAHR, City Clerk

Effective Date: November 27, 2003

ORDINANCE NO. 3326-C.S.

AN ORDINANCE ADOPTING A PRECISE PLAN FOR AREA NO. 2 OF THE VILLAGE ONE SPECIFIC PLAN, RELATING TO PROPERTY LOCATED AT THE SOUTHEAST CORNER OF SYLVAN AVENUE AND OAKDALE ROAD. (RONALD L. La FORCE ET AL., MODESTO VENTURE 168, AND CHRIS AND PAULINE GIANULIAS)

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 Ronald L. La Force et al., Modesto Venture 168, and Chris and Pauline Gianulias for a Precise Plan for Area No. 2 property located at the southeast corner of Sylvan Avenue and Oakdale Road, and

WHEREAS, a public hearing was held by the Planning Commission of the City of Modesto on September 8, 2003, in the Tenth Street Place Chambers located at 1010 10<sup>th</sup> Street, Modesto, California, and

WHEREAS, after considering public comments, the Planning Commission, by Resolution No. 2003-54, recommended to the City Council approval of a Precise Plan for Area No. 2 of the Village One Specific Plan, and

WHEREAS, said matter was set for a public hearing of the City Council of the City of Modesto to be held on October 28, 2003, at 5:30 p.m., in the Tenth Street Place Chambers located at 1010 10<sup>th</sup> Street, Modesto, California, and

WHEREAS, the Council declared that said Precise Plan for Area No. 2 of the Village One Specific Plan is required by public necessity, convenience, and general welfare for the following reasons:

1. The proposed Precise Plan is consistent with the Modesto Urban Area General Plan and Village One Specific Plan.
2. The design of the proposed Precise Plan is compatible with surrounding existing and future development.
3. Adequate infrastructure exists to serve the proposed development.

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

SECTION 1. APPROVAL OF PRECISE PLAN. That the City Council has reviewed and considered the Precise Plan for Area No. 2 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 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 28<sup>th</sup> day of October, 2003, by Councilmember Fisher, 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: Conrad, Fisher, Frohman, Jacking, Keating, O'Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

  
CARMEN SABATINO, Mayor

ATTEST:

By   
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

Ord. No. 3326-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 5<sup>th</sup> day of November, 2003, Councilmember Fisher moved its final adoption, which motion being duly seconded by Councilmember Frohman, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Conrad, Fisher, Frohman, Jackman, Keating, O'Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:   
MAYOR CARMEN SABATINO

ATTEST:   
JEAN ZAHR, City Clerk

Effective Date: December 5, 2003

ORDINANCE NO. 3327-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 SOUTHEAST CORNER OF SYLVAN AVENUE AND OAKDALE ROAD. (PRECISE PLAN FOR AREA NO. 2 - RONALD L. La FORCE ET AL., MODESTO VENTURE 168, AND CHRIS AND PAULINE GIANULIAS)

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 Ronald L. La Force et al., Modesto Venture 168 and Chris and Pauline Gianulias for a Precise Plan for Area No. 2, property located at the southeast corner of Sylvan Avenue and Oakdale Road, 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 September 8, 2003, in the Tenth Street Place Chambers located at 1010 10<sup>th</sup> Street, Modesto, California, and

WHEREAS, after a public hearing held on September 8, 2003, 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. 2003-54, adopted September 8, 2003, the Planning Commission recommended that the application of Ronald L. La Force et al., Modesto Venture 168 and Chris and Pauline Gianulias to rezone Village One property from Specific Plan-Holding Zone, SP-H, to Specific Plan-Overlay Zone, SP-O, for property located at the southeast corner of Sylvan Avenue and Oakdale Road be approved, and

WHEREAS, said matter was set for a public hearing of the City Council to be held on October 28, 2003, at 5:30 p.m., in the Tenth Street Place Chambers located at 1010 10<sup>th</sup> 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 October 28, 2003, in the Tenth Street Place Chambers located at 1010 10<sup>th</sup> Street, Modesto, California, this Council finds and determines that the requested rezoning is in accordance with the General 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.

SECTION 2. ZONING CHANGE. Section 11-3-9 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 2

All the certain real property situate in a portion of the Southwest Quarter of Section 11, Township 3 South, Range 9 East, Mount Diablo Meridian, in the City of Modesto, County of Stanislaus, State of California, described as follows:

BEGINNING at the Northwest corner of said Southwest Quarter of Section 11, said corner also being the center line intersection point of Oakdale Road and Sylvan Road as shown on the City of Modesto's Village One Circulation Plan; thence South 89°40'28" East along the North line of said Southwest Quarter and the center line of Sylvan Avenue, a distance of 1318.58 feet to the intersection point of the center line of Wood Sorrel Drive (Road "E" on said Circulation Plan); thence South 00°34'36" East along last said center line, a distance of 1325.98 feet to the point on the center line of Hillglen Avenue (Road "Q" on said Circulation Plan); thence North 89°40'04" West along last said center line, a distance of 132.21 feet to the Beginning Point of the center line of Road "P" on said Circulation Plan and being a point of curvature of a tangent curve, concave South-easterly, having a radius of 345.00 feet, of which radius point bears South 00°19'56" West; thence Southwesterly along the arc of said curve and the center line of said Road "P" through a central angle of 90°57'08", an arc distance of 547.66 feet; thence South 00°37'12" East along the center line of said Road "P", a distance of 308.39 feet to the intersection point of Road "G" on said Circulation Plan; thence North 89°40'43" West along the center line of said Road "G", a distance of 833.28 feet to a point on the west line of said Southwest Quarter of Section 11 and the center line of Oakdale Road; thence North 00°39'28" West along last said line, a distance of 1985.19 feet to the Point of Beginning.

Containing 53.32 acres more or less.

SECTION 3. ZONING MAP. Section 11-3-9 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 28<sup>th</sup> day of October, 2003, by Councilmember Fisher, 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: Conrad, Fisher, Frohman, Jacking, Keating, O'Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

  
CARMEN SABATINO, 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. 3327-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 5<sup>th</sup> day of November, 2003, Councilmember Fisher moved its final adoption, which motion being duly seconded by Councilmember Frohman, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Conrad, Fisher, Frohman, Jackman, Keating, O'Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:   
MAYOR CARMEN SABATINO

ATTEST:   
JEAN ZAHR, City Clerk

Effective Date: December 5, 2003

ORDINANCE NO. 3328-C.S.

AN ORDINANCE ADOPTING A PRECISE PLAN FOR AREA NO. 15 OF THE VILLAGE ONE SPECIFIC PLAN, RELATING TO PROPERTY LOCATED AT THE NORTHWEST CORNER OF KODIAK DRIVE AND BEAR CUB LANE. (RONALD L. La FORCE ET AL., MODESTO VENTURE 168, AND CHRIS AND PAULINE GIANULIAS)

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 Ronald L. La Force et al., Modesto Venture 168, and Chris and Pauline Gianulias for a Precise Plan for Area No. 15 property located at the northwest corner of Kodiak Drive and Bear Cub Lane, and

WHEREAS, a public hearing was held by the Planning Commission of the City of Modesto on September 8, 2003, in the Tenth Street Place Chambers located at 1010 10<sup>th</sup> Street, Modesto, California, and

WHEREAS, after considering public comments, the Planning Commission, by Resolution No. 2003-52, recommended to the City Council approval of a Precise Plan for Area No. 15 of the Village One Specific Plan, and

WHEREAS, said matter was set for a public hearing of the City Council of the City of Modesto to be held on October 28, 2003, at 5:30 p.m., in the Tenth Street Place Chambers located at 1010 10<sup>th</sup> Street, Modesto, California, and

WHEREAS, the Council declared that said Precise Plan for Area No. 15 of the Village One Specific Plan is required by public necessity, convenience, and general welfare for the following reasons:

1. The proposed Precise Plan is consistent with the Modesto Urban Area General Plan and Village One Specific Plan.
2. The design of the proposed Precise Plan is compatible with surrounding existing and future development.
3. Adequate infrastructure exists to serve the proposed development.

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

SECTION 1. APPROVAL OF PRECISE PLAN. That the City Council has reviewed and considered the Precise Plan for Area No. 15 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 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 28<sup>th</sup> day of October, 2003, by Councilmember Fisher, 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: Conrad, Fisher, Frohman, Jacking, Keating, O'Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

  
CARMEN SABATINO, Mayor

ATTEST:

By   
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

Ord. No. 3328-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 5<sup>th</sup> day of November, 2003, Councilmember Fisher moved its final adoption, which motion being duly seconded by Councilmember Frohman, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Conrad, Fisher, Frohman, Jackman, Keating, O'Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:   
MAYOR CARMEN SABATINO

ATTEST:   
JEAN ZAHR City Clerk

Effective Date: December 5, 2003

ORDINANCE NO. 3329-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 NORTHWEST CORNER OF KODIAK DRIVE AND BEAR CUB LANE. (PRECISE PLAN FOR AREA NO. 15 - RONALD L. La FORCE ET AL., MODESTO VENTURE 168, AND CHRIS AND PAULINE GIANULIAS)

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 Ronald L. La Force et al., Modesto Venture 168 and Chris and Pauline Gianulias for a Precise Plan for Area No. 15, property located at the northwest corner of Kodiak Drive and Bear Cub Lane, 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 September 8, 2003, in the Tenth Street Place Chambers located at 1010 10<sup>th</sup> Street, Modesto, California, and

WHEREAS, after a public hearing held on September 8, 2003, 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. 2003-52, adopted September 8, 2003, the Planning Commission recommended that the application of Ronald L. La Force et al., Modesto Venture 168 and Chris and Pauline Gianulias to rezone Village One property from Specific Plan-Holding Zone, SP-H, to Specific Plan-Overlay Zone, SP-O, for property located at the northwest corner of Kodiak Drive and Bear Cub Lane be approved, and

WHEREAS, said matter was set for a public hearing of the City Council to be held on October 28, 2003, at 5:30 p.m., in the Tenth Street Place Chambers located at 1010 10<sup>th</sup> 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 October 28, 2003, in the Tenth Street Place Chambers located at 1010 10<sup>th</sup> Street, Modesto, California, this Council finds and determines that the requested rezoning is in accordance with the General 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.

SECTION 2. ZONING CHANGE. Section 11-3-9 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 15

ALL that certain real property situate in portions of Sections 11 and 14, Township 3 South, Range 9 East, Mount Diablo Base and Meridian, in the City of Modesto, County of Stanislaus, State of California, described as follows:

COMMENCING at the Southeast corner of the Southwest Quarter of said Section 11; thence North  $00^{\circ}30'58''$  West along the East line of said Southwest Quarter of Section 11, a distance of 4.00 feet to the center line of Kodiak Drive as shown on the City of Modesto's Village One Circulation Plan and the TRUE POINT OF BEGINNING of this description; thence Westerly along last said center line the following (5) Five Courses: 1.) North  $89^{\circ}41'58''$  West, a distance of 55.20 feet to a point of curvature of a tangent curve concave Southerly, having a radius of 2000.00 feet, of which radius point bears South  $00^{\circ}18'02''$  West; thence 2.) Westerly along the arc of said curve, through a central angle of  $01^{\circ}24'14''$ , an arc distance of 49.00 feet; thence 3.) South  $88^{\circ}53'48''$  West, a distance of 399.97 feet to a point of curvature of a tangent curve, concave Northerly, having a radius of 2000.00 feet, of which radius point bears North  $01^{\circ}06'12''$  West; thence 4.) Westerly along the arc of said curve, through a central angle of  $01^{\circ}24'14''$ , an arc distance of 49.00 feet; thence 5.) North  $89^{\circ}41'58''$  West, a distance of 100.00 feet to the center line of Road "H" as shown on said Village One Circulation Plan; thence North  $00^{\circ}40'27''$  West along said centerline of Road "H" a distance of 1327.34 feet to the centerline of Road "Q" as shown on said Village One Circulation Plan, said point being 2.75 feet South of the North line of the South half of said Southwest Quarter of Section 11; thence Easterly along said centerline of Road "Q" the following (6) Six Courses: 1.) South  $89^{\circ}40'04''$  East, parallel with and 2.75 feet South of said North line of the South half of the Southwest Quarter of Section 11, a distance of 99.87 feet to a point of curvature of a tangent curve, concave Northerly, having a radius of 2000.00 feet, of which radius point bears North  $00^{\circ}19'56''$  East; thence 2.) Easterly along the arc of said curve, through a central angle of  $00^{\circ}30'37''$ , an arc distance of 17.81 feet; thence 3.) North  $89^{\circ}49'19''$  East, a distance of 290.97 feet to a point of curvature of a tangent curve, concave Southerly, having a radius of 2000.00 feet, of which radius point bears South  $00^{\circ}10'41''$  East; thence 4.) Easterly along the arc of said curve, through a central angle of  $00^{\circ}30'37''$ , an arc distance of 17.81 feet to a point on said North line of the South half of the Southwest Quarter of Section 11; thence 5.) South  $89^{\circ}40'04''$  East along last said line a distance of 230.38 feet to the Northeast corner of the Southeast

Quarter of the Southwest Quarter of said Section 11; thence 6.) South 89°42'12" East along the North line of the South half of the Southwest Quarter of said Section 11, a distance of 732.83 feet to the center line of Bear Cub Lane; thence Southerly along last said center line the following (5) Five Courses: 1.) South 00°17'48" West, a distance of 125.51 feet to a point of curvature of the tangent curve, concave Northeasterly, having a radius of 250.00 feet, of which radius point bears South 89°42'12" East; thence 2.) Southerly along the arc of said curve, through a central angle of 42°40'15", an arc distance of 186.19; thence 3.) South 42°22'27" East, a distance of 100.00 feet to a point of curvature of a tangent curve, concave South-westerly, having a radius of 250.00 feet, of which radius point bears South 47°37'33" West; thence 4.) Southerly along the arc of said curve, through a central angle of 41°51'40", an arc distance of 182.65 feet; thence 5.) South 00°30'47" East, a distance of 784.28 feet to a point on the center line of said Kodiak Drive and also being a point 4.00 feet North of the South line of the Southeast Quarter of said Section 11; thence North 89°41'58" West along last said center line and 4.00 feet North of and parallel with said South line of the Southeast Quarter of Section 11, a distance of 925.33 feet to the Point of Beginning.

SECTION 3. ZONING MAP. Section 11-3-9 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 28<sup>th</sup> day of October, 2003, by Councilmember Fisher, 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: Conrad, Fisher, Frohman, Jacking, Keating, O'Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

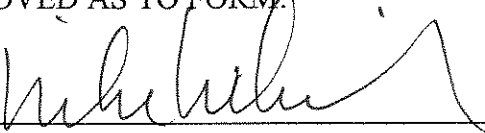
  
CARMEN SABATINO, Mayor

ATTEST:

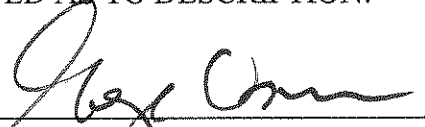
By   
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

APPROVED AS TO DESCRIPTION:

By   
Community Development Department  
Planning Division

Ord. No. 3329-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 5<sup>th</sup> day of November, 2003, Councilmember Fisher moved its final adoption, which motion being duly seconded by Councilmember Frohman, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Conrad, Fisher, Frohman, Jackman, Keating, O'Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:   
MAYOR CARMEN SABATINO

ATTEST:   
JEAN ZAHR, City Clerk

Effective Date: December 5, 2003

ORDINANCE NO. 3330-C.S.

AN ORDINANCE ADOPTING A PRECISE PLAN FOR AREA NO. 16 OF THE VILLAGE ONE SPECIFIC PLAN, RELATING TO PROPERTY LOCATED IMMEDIATELY EAST OF THE CONVERGENCE OF HILLGLEN AVENUE AND KODIAK DRIVE. (RONALD L. La FORCE ET AL., MODESTO VENTURE 168, AND CHRIS AND PAULINE GIANULIAS)

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 Ronald L. La Force et al., Modesto Venture 168, and Chris and Pauline Gianulias for a Precise Plan for Area No. 16 property located immediately east of the convergence of Hillglen Avenue and Kodiak Drive, and

WHEREAS, a public hearing was held by the Planning Commission of the City of Modesto on September 8, 2003, in the Tenth Street Place Chambers located at 1010 10<sup>th</sup> Street, Modesto, California, and

WHEREAS, after considering public comments, the Planning Commission, by Resolution No. 2003-53, recommended to the City Council approval of a Precise Plan for Area No. 16 of the Village One Specific Plan, and

WHEREAS, said matter was set for a public hearing of the City Council of the City of Modesto to be held on October 28, 2003, at 5:30 p.m., in the Tenth Street Place Chambers located at 1010 10<sup>th</sup> Street, Modesto, California, and

WHEREAS, the Council declared that said Precise Plan for Area No. 16 of the Village One Specific Plan is required by public necessity, convenience, and general welfare for the following reasons:

1. The proposed Precise Plan is consistent with the Modesto Urban Area General Plan and Village One Specific Plan.
2. The design of the proposed Precise Plan is compatible with surrounding existing and future development.
3. Adequate infrastructure exists to serve the proposed development.

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

SECTION 1. APPROVAL OF PRECISE PLAN. That the City Council has reviewed and considered the Precise Plan for Area No. 16 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 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 28<sup>th</sup> day of October, 2003, by Councilmember Fisher, 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: Conrad, Fisher, Frohman, Jacking, Keating, O'Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

  
CARMEN SABATINO, Mayor

ATTEST:

By   
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

Ord. No. 3330-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 5<sup>th</sup> day of November, 2003, Councilmember Fisher moved its final adoption, which motion being duly seconded by Councilmember Frohman, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Conrad, Fisher, Frohman, Jackman, Keating, O'Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:   
MAYOR CARMEN SABATINO

ATTEST:   
JEAN ZAHR, City Clerk

Effective Date: December 5, 2003

ORDINANCE NO. 3331-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 IMMEDIATELY EAST OF THE CONVERGENCE OF HILLGLEN AVENUE AND KODIAK DRIVE. (PRECISE PLAN FOR AREA NO. 16 - RONALD L. La FORCE ET AL., MODESTO VENTURE 168, AND CHRIS AND PAULINE GIANULIAS)

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 Ronald L. La Force et al., Modesto Venture 168 and Chris and Pauline Gianulias for a Precise Plan for Area No. 16, property located immediately east of the convergence of Hillglen Avenue and Kodiak 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 September 8, 2003, in the Tenth Street Place Chambers located at 1010 10<sup>th</sup> Street, Modesto, California, and

WHEREAS, after a public hearing held on September 8, 2003, 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. 2003-53, adopted September 8, 2003, the Planning Commission recommended that the application of Ronald L. La Force et al., Modesto Venture 168 and Chris and Pauline Gianulias to rezone Village One property from Specific Plan-Holding Zone, SP-H, to Specific Plan-Overlay Zone, SP-O, for property located immediately east of the convergence of Hillglen Avenue and Kodiak Drive be approved, and

WHEREAS, said matter was set for a public hearing of the City Council to be held on October 28, 2003, at 5:30 p.m., in the Tenth Street Place Chambers located at 1010 10<sup>th</sup> 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 October 28, 2003, in the Tenth Street Place Chambers located at 1010 10<sup>th</sup> Street, Modesto, California, this Council finds and determines that the requested rezoning is in accordance with the General 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.

SECTION 2. ZONING CHANGE. Section 11-3-9 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 16

All that certain real property situate in portions of Sections 11 and 14, Township 3 South, Range 9 East, Mount Diablo Base and Meridian, in the City of Modesto, County of Stanislaus, State of California, described as follows:

COMMENCING at the southeast corner of the southwest quarter of said Section 11; thence North  $0^{\circ}32'11''$  West along the east line of said southwest quarter of Section 11, a distance of 4.00 feet to the centerline of Kodiak Drive as shown on the City of Modesto's Village One Circulation Plan; thence Westerly along said centerline of Kodiak Drive the following 5 courses:

1. North  $89^{\circ}41'13''$  West 55.20 feet,
2. Westerly 49.00 feet along a tangent curve, concave to the south, having a radius of 2000.00 feet and a central angle of  $1^{\circ}24'14''$ ,
3. South  $88^{\circ}54'33''$  West 400.00 feet,
4. Westerly 49.00 feet along a tangent curve, concave to the north, having a radius of 2000.00 feet and a central angle of  $1^{\circ}24'14''$  to a point 7.00 feet south of the south line of said Section 11, and
5. North  $89^{\circ}41'13''$  West parallel with and 7.0 feet south of said south line of Section 11, a distance of 100.00 feet to the centerline of Road "H" as shown on said Village One Circulation Plan and the TRUE POINT OF BEGINNING of this description; thence continuing North  $89^{\circ}41'13''$  West along said centerline of Kodiak Drive a distance of 798.28 feet; thence

Northwesterly 536.16 feet along a tangent curve, concave to the northeast, having a radius of 345.00 feet and a central angle of  $89^{\circ}02'32''$ ; thence North  $0^{\circ}38'42''$  West along the centerline of Road "P" as shown on said Village One Circulation Plan, a distance of 637.57 feet; thence North-easterly 547.66 feet along a tangent curve, concave to the southeast, having a radius of 345.00 feet and a central angle of  $90^{\circ}57'08''$  to a point 2.75 feet south of the north line of the south half of said southwest quarter of Section 11; thence South  $89^{\circ}41'33''$  East parallel with and 2.75 feet south of said

north line of the south half of the southwest quarter of Section 11, a distance of 789.30 feet to said centerline of Road "H"; thence South 0°32'10" East along said centerline of Road "H" a distance of 1327.70 feet to the point of beginning.

SECTION 3. ZONING MAP. Section 11-3-9 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 28<sup>th</sup> day of October, 2003, by Councilmember Fisher, 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: Conrad, Fisher, Frohman, Jacking, Keating, O'Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

  
CARMEN SABATINO, 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. 3331-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 5<sup>th</sup> day of November, 2003, Councilmember Fisher moved its final adoption, which motion being duly seconded by Councilmember Frohman, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Conrad, Fisher, Frohman, Jackman, Keating, O'Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:   
MAYOR CARMEN SABATINO

ATTEST:   
JEAN ZAHR, City Clerk

Effective Date: December 5, 2003

ORDINANCE NO. 3332-C.S.

AN ORDINANCE ADOPTING A PRECISE PLAN FOR AREA NO. 17 OF THE VILLAGE ONE SPECIFIC PLAN, RELATING TO PROPERTY LOCATED AT THE NORTHEAST CORNER OF FLOYD AVENUE AND OAKDALE ROAD. (RONALD L. La FORCE ET AL., MODESTO VENTURE 168, AND CHRIS AND PAULINE GIANULIAS)

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 Ronald L. La Force et al., Modesto Venture 168, and Chris and Pauline Gianulias for a Precise Plan for Area No. 17 property located at the northeast corner of Floyd Avenue and Oakdale Road, and

WHEREAS, a public hearing was held by the Planning Commission of the City of Modesto on September 8, 2003, in the Tenth Street Place Chambers located at 1010 10<sup>th</sup> Street, Modesto, California, and

WHEREAS, after considering public comments, the Planning Commission, by Resolution No. 2003-55, recommended to the City Council approval of a Precise Plan for Area No. 17 of the Village One Specific Plan, and

WHEREAS, said matter was set for a public hearing of the City Council of the City of Modesto to be held on October 28, 2003, at 5:30 p.m., in the Tenth Street Place Chambers located at 1010 10<sup>th</sup> Street, Modesto, California, and

WHEREAS, the Council declared that said Precise Plan for Area No. 17 of the Village One Specific Plan is required by public necessity, convenience, and general welfare for the following reasons:

1. The proposed Precise Plan is consistent with the Modesto Urban Area General Plan and Village One Specific Plan.
2. The design of the proposed Precise Plan is compatible with surrounding existing and future development.
3. Adequate infrastructure exists to serve the proposed development.

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

SECTION 1. APPROVAL OF PRECISE PLAN. That the City Council has reviewed and considered the Precise Plan for Area No. 17 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 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 28<sup>th</sup> day of October, 2003, by Councilmember Fisher, 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: Conrad, Fisher, Frohman, Jacking, Keating, O'Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

  
CARMEN SABATINO, Mayor

ATTEST:

By   
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

Ord. No. 3332-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 5<sup>th</sup> day of November, 2003, Councilmember Fisher moved its final adoption, which motion being duly seconded by Councilmember Frohman, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Conrad, Fisher, Frohman, Jackman, Keating, O'Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:   
MAYOR CARMEN SABATINO

ATTEST:   
JEAN ZAHR City Clerk

Effective Date: December 5, 2003

ORDINANCE NO. 3333-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 FLOYD AVENUE AND OAKDALE ROAD. (PRECISE PLAN FOR AREA NO. 17 - RONALD L. La FORCE ET AL., MODESTO VENTURE 168, AND CHRIS AND PAULINE GIANULIAS)

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 Ronald L. La Force et al., Modesto Venture 168 and Chris and Pauline Gianulias for a Precise Plan for Area No. 17, property located at the northeast corner of Floyd Avenue and Oakdale Road, 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 September 8, 2003, in the Tenth Street Place Chambers located at 1010 10<sup>th</sup> Street, Modesto, California, and

WHEREAS, after a public hearing held on September 8, 2003, 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. 2003-55, adopted September 8, 2003, the Planning Commission recommended that the application of Ronald L. La Force et al., Modesto Venture 168 and Chris and Pauline Gianulias 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 Floyd Avenue and Oakdale Road be approved, and

WHEREAS, said matter was set for a public hearing of the City Council to be held on October 28, 2003, at 5:30 p.m., in the Tenth Street Place Chambers located at 1010 10<sup>th</sup> 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 October 28, 2003, in the Tenth Street Place Chambers located at 1010 10<sup>th</sup> Street, Modesto, California, this Council finds and determines that the requested rezoning is in accordance with the General 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.

SECTION 2. ZONING CHANGE. Sections 11-3-9 and 14-3-9 of the Zoning

Map of the City of Modesto are 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 17

All that certain real property situate in a portion of the Southwest Quarter of Section 11 and the Northwest Quarter of Section 14, Township 3 South, Range 9 East, Mount Diablo Meridian, in the City of Modesto, County of Stanislaus, State of California, described as follows:

BEGINNING at the Southwest corner of said Section 11, said corner also lies on the center line of Oakdale Road as shown on the City of Modesto's Village One Circulation Plan; thence North  $00^{\circ}39'28''$  West along the West line of said Southwest Quarter of Section 11 and center line of Oakdale Road, a distance of 662.09 feet to the point of intersection with the center line of Road "G" on said Circulation Plan; thence South  $89^{\circ}40'43''$  East along last said center line, a distance of 833.28 feet to the point of intersection with the center line of Road "P" on said Circulation Plan; thence South  $00^{\circ}37'12''$  East along last said center line, a distance of 329.28 feet to a point of curvature of a tangent curve, concave North-easterly, having a radius of 345.00 feet, of which radius point bears North  $89^{\circ}22'48''$  East; thence Southeasterly along the arc of said curve and the center line of said Road "P", through a central angle of  $89^{\circ}04'46''$ , an arc distance of 536.38 feet; thence South  $89^{\circ}41'58''$  East along the center line of said Road "P", a distance of 137.50 feet to the point of intersection with the center line of Orchard Park Way as shown on said Circulation Plan; thence South  $00^{\circ}18'02''$  West along the center line of said Orchard Park Way, a distance of 560.64 feet to a point of curvature of a tangent curve, concave Northwesterly, having a radius of 300.00 feet, of which radius point bears North  $89^{\circ}41'58''$  West; thence Southwesterly along the arc of said curve and last said center line, through a central angle of  $26^{\circ}53'54''$ , and arc distance of 140.84 feet; thence South  $27^{\circ}11'56''$  West along last said center line, a distance of 318.83 feet to a point of curvature of a tangent curve, concave Southeasterly, having a radius of 300.00 feet, of which radius point bears South  $62^{\circ}48'04''$  East; thence Southerly along the arc of said curve and last said center line, through a central angle of  $26^{\circ}53'19''$ , an arc distance of 140.79 feet; thence South  $00^{\circ}18'37''$  West along last said center line, a distance of 199.00 feet to the point of intersection with the South line of the Northwest Quarter of the Northwest Quarter of said Section 14 and also being the center line of Floyd Avenue as shown on said Circulation Plan; thence North  $89^{\circ}41'23''$  West, along last said line, a distance of 1082.85 feet to the Southwest corner of said Northwest Quarter of the Northwest Quarter of Section 14 and being a point on the center line of Oakdale Road; thence

North 00°28'33" West along the West line of said Northwest Quarter of the Northwest Quarter of Section 14 and the center line of Oakdale Road, a distance of 1322.21 feet to the Point of Beginning.

Containing 50.35 acres more or less.

SECTION 3. ZONING MAP. Sections 11-3-9 and 14-3-9 of the Zoning Map of the City of Modesto are 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 28<sup>th</sup> day of October, 2003, by Councilmember Fisher, 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: Conrad, Fisher, Frohman, Jacking, Keating, O'Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

  
CARMEN SABATINO, 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. 3333-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 5<sup>th</sup> day of November, 2003, Councilmember Fisher moved its final adoption, which motion being duly seconded by Councilmember Frohman, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Conrad, Fisher, Frohman, Jackman, Keating, O'Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: *Carmen Sabatino*  
MAYOR CARMEN SABATINO

ATTEST: *Jean Zahr*  
JEAN ZAHR, City Clerk

Effective Date: December 5, 2003

ORDINANCE NO. 3334-C.S.

AN ORDINANCE GRANTING AN EXCLUSIVE FIVE-YEAR BUS BENCH FRANCHISE TO UNITED CEREBRAL PALSY ASSOCIATION FOR THE RIGHT, PRIVILEGE AND PERMISSION TO OPERATE BENCHES BEARING PRINTED MATTER OR SIGNS THEREON AT DESIGNATED LOCATIONS ALONG THE STREETS IN THE CITY OF MODESTO AND TO LEASE BENCHES FOR THIS PURPOSE FROM THE CITY OF MODESTO.

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

**SECTION 1. DEFINITIONS.**

- (a) "Grantee" means United Cerebral Palsy Association, Inc., of Stanislaus/Tuolumne Counties, hereinafter called Grantee.
- (b) "The City" means and refers to the City of Modesto.
- (c) "Bench" means and refers to benches presently located and in the future placed by or on behalf of the City upon public property along the public way for the accommodation of persons awaiting public transportation.
- (d) "Street" means and refers to any public thoroughfare or way including the sidewalk, the parkway and other public property fronting upon a public way in the City.
- (e) "Franchise" means and refers to this Ordinance and all of the rights, privileges, obligations, terms, conditions and restrictions set forth herein.

**SECTION 2. BENCHES PROHIBITED.** No person shall install or maintain any bench bearing printed matter or a sign along any street in the City except in accordance with the provisions of this franchise.

**SECTION 3. SCOPE AND TERM OF FRANCHISE.**

(a) **Scope.** Grantee shall have the exclusive franchise for the right, privilege and permission to lease benches from the City and to place and maintain printed matter or signs on benches at designated locations along the streets in the City of Modesto in accordance with the provisions of this Franchise.

(b) **Term/Termination for Convenience.** The term of the Franchise shall commence on January 1, 2004, and shall end no later than December 31, 2008. The City shall have the right to terminate the Franchise for convenience at any time by providing Grantee with written notice of such termination at least ninety (90) days in advance of the date of termination. Notice of termination of Franchise shall be in writing and may be served by regular United States mail. Service of notice of termination of Franchise for convenience shall be deemed complete upon the mailing of the notice to Sandra J. Elespuru-Bishop, 950 10th Street, Suite 8, Modesto, California 95354. Grantee is responsible for notifying the City in writing of any change of address. Failure of Grantee to give the City written notice of change of address shall not toll or otherwise prevent the commencement of the ninety (90) day notice period.

**SECTION 4. BENCHES AND BENCH PARTS.** Grantee shall be responsible for the safe storage of benches and spare bench parts, if any, furnished to Grantee by the City. A list of benches and bench parts provided to Grantee by the CITY is included in Exhibit A. Grantee shall be responsible for the safe transportation of benches and bench parts from the current storage location to Grantee's storage location. Grantee shall establish, in a manner satisfactory to the City, an inventory system to track the number of bench legs in Grantee's inventory and to note for each bench leg that is removed from the inventory the reason for its removal. From time to time during the period of the franchise City may, at its discretion and

after consultation with Grantee, provide additional benches to Grantee for placement pursuant to the terms of this franchise. City may also supply bench legs to replace those that are damaged beyond repair, lost or stolen, but is under no obligation to do so. Grantee may provide additional bench legs with the approval of the City Manager or his designee. Bench legs provided by Grantee shall become the property of the City upon placement of the bench legs at a City of Modesto bus stop. Except for concrete bench legs, Grantee shall supply all other replacement parts necessary for repair of benches, including, but not limited to, slats for bench seats and bench backs, and hardware necessary to secure bench seats and backs. Plywood or other material upon which advertising signs will be painted or affixed shall be provided by Grantee. Grantee shall dispose of any metal sign frames that might have been supplied by City if said frames, in the opinion of the City Manager or his designee, do not fit tightly against the bench backrest.

**SECTION 5. LEASE OF BENCHES/PAYMENT.** For the exclusive rights and privileges set forth herein, Grantee shall lease benches from the City for a period no greater than five (5) years.

For the right and privilege of leasing the benches, Grantee prior to January 1, 2004, shall pay to the City Eight Hundred and no/100ths (\$823.00) per month, which sum shall thereafter be paid to the City monthly prior to the first day of each month.

**SECTION 6. PLACEMENT OF BUS PASSENGER SHELTERS BEARING PRINTED MATTER OR SIGNS THEREON.** City shall have the authority to place printed matter or signs providing information about public transportation systems on all bus shelters located along City's public transportation system routes. The City shall also have the authority to

place bus passenger shelters bearing paid advertising messages and other printed matter or signs thereon at up to five locations within the City of Modesto selected by the City Manager or his designee. Where such shelters are placed, Grantee shall remove benches unless otherwise directed by the City Manager or his Designee.

**SECTION 7. BENCH RESTRICTIONS.** Grantee shall utilize only the front surface of the bench backrest for the placement of printed matter or signs. No other material whatsoever shall be permitted on any portion of the bench except as specified by CITY. Printed matter or signs shall be placed in accordance with the following stipulations:

(1) No printed matter shall be placed on any benches erected and maintained adjacent to property zoned by the CITY as R-1, R-2 or as P-D where land use resembles an R-1 or R-2 Zone. The City Manager or his designee's determination of which P-D zoned properties resemble R-1 or R-2 zones shall be conclusive.

(2) Grantee shall submitted the City Manager or designee copies of all ads proposed to be placed on benches for preplacement approval unless directed otherwise by the City Manager or his designee.

(3) Should CITY, in its sole discretion, determine any advertising placed on any bench to be improper, offensive or a display that is likely to interfere with, mislead, or distract traffic or conflict with any traffic control system, Grantee shall remove all such material within twenty-four (24) hours after the CITY serves a written removal notice upon Grantee. Should the Grantee fail to remedy the situation within the twenty-four (24) hour period, CITY may elect to paint over said material.

(4) Examples of words included in the prohibition stated in the next preceding paragraph are the words, "Stop," "Look," "Drive-in," "Danger," but this list is not inclusive.

(5) No advertising or signs or devices shall be permitted in conjunction with bus bench advertising which comprise rotating, revolving or flashing lighting devices or any other moving parts.

(6) No advertising for tobacco, beverages containing alcohol, or businesses regulated by Modesto Municipal Code Sections 5-9.101 through 5-9.406 shall be permitted.

(7) No advertisement that, in the sole opinion of CITY, contains any depiction of an act of an immoral, violent, or debasing nature, or otherwise not in keeping with the standards and surroundings of the bus bench locale, shall be permitted.

(8) No advertisement for products or services which compete with any primary products or services offered by any businesses occupying the abutting property where the bench or benches are placed shall be permitted.

(9) No advertising that is either false, misleading, deceptive or clearly defamatory shall be permitted.

(10) Reasonable proof or clarification of statements contained in any advertisement, exhibit material or announcement placed on a bus bench may be required by CITY as a condition of use or continued use of bus bench advertising space.

(11) Advertisements displayed with dated content shall be removed by Grantee within ten (10) working days of the expiration or obsolescence of the ad content unless otherwise mutually agreed upon in advance with CITY.

**SECTION 8. APPROVAL OF LOCATION.** Benches shall be placed, maintained, relocated, and removed as required by the City Manager or his designee. Grantee shall maintain an up to date listing of locations where benches are in place. Said listing shall include the street that the bench faces, the nearest cross street, and the name of the business or, for non business locations, the type of land use in front of which the bench is located. The benches contemplated are designed for the convenience of those using public transit buses in the CITY and shall be placed only at locations designated as bus stops by the City Manager or his designee. One bench shall be maintained at each bus stop location where a bench is currently in place as of December 31, 2003, so long as a sufficient number of benches are available to do so. No bench shall be installed or maintained:

(a) Without the express written approval of the proposed location of the bench by the City Manager or his designee;

(b) In any alley;

(c) At any location where the distance from the face of the curb to the property line is less than six feet (6'); provided that whenever, in the opinion of the City Manager or his designee, observance of this requirement would result in inconvenience or hardship, this requirement may be waived by the City Manager or his designee; or

(d) At any location when the owner or the person in lawful possession or control of the property abutting upon the public street at the place where the bench is located, requests in writing to the City Manager or his designee that the bench not be placed or maintained at such location; provided that whenever in the opinion of the City Manager or his

designee, observance of this requirement would result in inconvenience or hardship, this requirement may be waived by the City Manager.

(e) At any location where a bus passenger shelter with advertising thereon is located, unless otherwise directed by the City.

**SECTION 9. RATIO OF BENCHES BETWEEN COMMERCIAL AND RESIDENTIAL AREAS.** For each seven (7) benches installed in areas where benches bearing printed matter or signs are allowed, at least one bench shall be installed in areas where benches bearing printed matter or signs are not allowed. The specific locations of these latter benches shall be specified by the City Manager or his designee. Grantee shall place the newest benches in its inventory in areas where benches bearing printed matter or signs are prohibited.

**SECTION 10. MAINTENANCE OF BENCHES.** All benches owned by the City, regardless of location inside or outside of the City of Modesto, shall be cleaned on a regular schedule and when needed, and shall be maintained in good repair in a safe and sightly condition. Benches shall be inspected and cleaned, as more particularly described in the following section, a minimum of at least once each week including removal of graffiti. Benches shall be cleaned more frequently as needed. The City Manager or his designee's determination as to the state of repair and condition shall be conclusive. Grantee shall inspect each bench periodically to assure full compliance with the provisions of this section. With the exception of concrete bench legs, Grantee shall repair or replace all other bench parts necessary to provide a fully complete, safe and sightly bench. For this purpose Grantee may utilize bench parts provided by the City, if any, at the beginning of the franchise. After the bench parts supplied by the CITY at the initiation of this franchise are completely utilized, Grantee shall, with the

exception of concrete bench legs, be responsible for supplying any additional bench parts needed at Grantee's expense. The City shall replace concrete bench legs at its discretion. Replacement bench parts shall become the property of the CITY upon their placement within the street right-of-way at a bus stop. Grantee shall be responsible for transporting and installing new or replacement benches and disposing of destroyed or unrepairable benches. Wooden bench parts shall be painted no less than once each year and more frequently if needed. When notified by the City, Grantee shall clean or repair benches identified by the City within twenty-four (24) hours' notification by the City of the need for the repair or cleaning.

**SECTION 11. CLEANING AROUND BENCHES.** Grantee shall, at least once each week and more often if needed, remove trash and other debris from within five (5) feet of each bench. The City Manager or his designee may specify up to twenty (20) bench locations to be cleaned on a daily basis. Said twenty (20) specific locations may be changed weekly by the City Manager or his designee. The City Manager or his designee's decision as to the need for trash and debris removal shall be conclusive. Grantee shall inspect each bench location periodically to ensure full compliance with the provisions of this section.

**SECTION 12. PENALTY FOR IMPROPER MAINTENANCE AND CLEANING.** Each bench which has not been maintained, cleaned, or had graffiti removed as required in Section 10, or which has not had the area around it cleaned as required in Section 11 will subject Grantee to a penalty of Twenty and no/100ths Dollars (\$20.00) for each occurrence. Violation of this section shall be determined by the City Manager or his designee after Grantee has had opportunity to respond. A maximum of Two Hundred and no/100ths Dollars (\$200.00) in penalties under this section may be assessed by the CITY during any one calendar month.

Penalties are due and payable to the CITY within fifteen (15) days of mailing of an invoice by the CITY in the U.S. Mail. The invoice will specify the bench locations, which do not meet the cleaning and/or maintenance requirements.

**SECTION 13. TRASH RECEPTACLE.** At its sole discretion, the CITY may install up to twenty (20) trash receptacles at bench locations selected by the CITY. If the CITY installs said receptacles, Grantee shall maintain up to twenty (20) of said receptacles in a safe and sanitary condition and empty said receptacles as necessary but not less than once each week. Plastic bags for said receptacles will be furnished by the City. City will make available to Grantee a facility where Grantee can deposit, at no cost to Grantee, the litter, which is collected from said receptacles.

**SECTION 14. REMOVAL OF BENCHES.** No bench after being installed on the streets or sidewalks of the CITY shall be removed by the Grantee during the term of this franchise except with the consent of the City Manager or his designee. Benches shall be moved or removed only as directed by the City Manager or his designee. The City Manager or his designee may, for a cause considered by him reasonable, order the Grantee to move or remove any bench. When the City Manager or his designee orders the bench moved or removed, the Grantee shall move or remove it within three (3) days at its own expense. If the Grantee shall fail to do so, the City Manager or his designee may order the removal of the bench, and in addition, bill the Grantee for the removal in a sum not in excess of Twenty-five and no/100ths Dollars (\$25.00) per bench.

**SECTION 15. LOCATION OF BENCHES AND BENCH SPECIFICATIONS.** All benches shall be placed on sidewalks parallel to the curb line and at a

distance from the curb to be determined by the City Manager or his designee. No bench shall be placed so as to injuriously obstruct passage on the sidewalk or street. No bench shall be placed within fifteen feet (15') of any fire hydrant. The clearance between the bench and the nearest obstruction on the sidewalk shall be no less than forty-two inches (42"). No more than two benches may be placed at any one bus stop unless approved by the City Manager or his designee.

**SECTION 16. EMERGENCY SITUATIONS.** Grantee shall be present at the site of an emergency situation within one hour of verbal notification that such an emergency exists. An emergency is defined as damage to or unauthorized movement to a new location of a bench which presents a serious hazard to the public. If the City Manager or his designee determine that an emergency situation exists, their determination shall be conclusive. Failure of Grantee to respond within the prescribed time limit shall result in a penalty of up to Fifty and no/100ths Dollars (\$50.00) for each failure to respond. Penalties are due and payable to the City within fifteen (15) days of mailing an invoice by the City in the U.S. Mail. The CITY may, at its discretion, move the bench to a safe location pending arrival of Grantee.

**SECTION 17. INDEMNITY, INSURANCE AND HOLD HARMLESS.** The Grantee shall provide at its own expense and maintain at all times the following insurance with insurance companies licensed in the State of California and shall provide evidence of such insurance to the CITY as may be required by the City Clerk of the CITY. The policies or certificates thereof shall provide that, thirty (30) days prior to cancellation or material change in the policy, notices of same shall be given to the Risk Manager of the CITY by registered mail, return receipt requested, for all of the following stated insurance policies.

- A. Workers' Compensation - in compliance with the statutes of the State of California, plus employer's liability with a minimum limit of liability of \$500,000.
- B. General Liability insurance with a minimum limit of liability per occurrence of \$1,000,000 for bodily injury and \$100,000 for property damage or \$1,000,000 combined single limit. This insurance shall indicate on the certificate of insurance the following coverages and indicate the policy aggregate limit applying to: premises and operations; broad form contractual; independent contractors and subcontractors; products and completed operations; ~~and/or professional liability.~~ *BSB.*
- C. Automobile Liability insurance with a minimum limit of liability per occurrence of \$1,000,000 for bodily injury and \$100,000 for property damage or \$1,000,000 combined single limit. This insurance shall cover any automobile for bodily injury and property damage.
- D. Advertiser's Liability insurance with a minimum limit of liability per occurrence of \$1,000,000 for legal liability; damages resulting from libel, slander, or defamation; infringement of copyright, title or slogan; and invasion of rights to privacy.

If at any time any of said policies shall be unsatisfactory to the CITY, as to form or substance or if a company issuing such policy shall be unsatisfactory to the CITY, the Grantee shall promptly obtain a new policy, submit the same to the Risk Manager for approval and submit a certificate thereof as hereinabove provided. Upon failure of the Grantee to furnish,

deliver or maintain such insurance and certificates as above provided, this Franchise, at the election of the CITY, may be forthwith declared suspended, or terminated. Failure of the Grantee to obtain and/or maintain any required insurance shall not relieve the Grantee from any liability under this Franchise, nor shall the insurance requirements be construed to conflict with or otherwise limit the obligations of the Grantee concerning indemnification. The CITY, its agents, officers, employees, and volunteers shall be named as an additional insured on all insurance policies required herein, except Workers' Compensation. The Workers' Compensation insurer shall agree to waive all rights of subrogation against the CITY, its agents, officers, employees, and volunteers for losses arising from work performed by Grantee for the CITY. The Grantee's insurance policy(ies) shall include a provision that the coverage is primary as respects the CITY; shall include no special limitations to coverage provided to additional insured; and, shall be placed with insurer(s) with acceptable Best's rating of A:VII or with approval of the Risk Manager. The Grantee shall hold the CITY, its agents, officers, employees, and volunteers, harmless from and save, defend and indemnify them against any and all claims, losses, liabilities and damages from every cause, including but not limited to injury to person or property or wrongful death, with the indemnity to include reasonable attorney's fees, and all costs and expenses, arising directly or indirectly out of any act or omission of Grantee, whether or not the act or omission arises from the sole negligence or other liability of CITY, or its agents, officers, employees, or volunteers relating to or during the performance of its obligations under this Franchise.

**SECTION 18. PERFORMANCE BOND/SECURITY.** The Grantee shall post a performance bond or other surety approved by the CITY'S City Attorney in the sum of Two

Thousand and no/100ths to the CITY guaranteeing its performance of the conditions of this franchise and stating that the said sum shall be forfeited to the CITY as liquidated damages in the event that Grantee shall fail to perform the conditions of its franchise. Said bond shall be furnished by a surety company authorized to do business in the State of California and shall be approved by the City Attorney. (Cash, irrevocable letter of credit, or a certified cashiers check may be substituted for a bond.)

**SECTION 19. DEFAULT.** In the event that either party shall fail or neglect to do or perform each and all of the terms and conditions of this franchise on his or its part to be performed, the aggrieved party may give the party in default thirty (30) days' written notice to correct the conditions in default, and if the party in default refuses or neglects to make such corrections within the thirty (30) day period, the aggrieved party may terminate this franchise. Should Grantee herein default, Grantee agrees to leave all benches in the positions approved per Section 9 herein.

Should Grantee default, and at all times throughout the term of this franchise ordinance, and notwithstanding City's election at any time to exercise any particular remedy described herein or otherwise available in law or equity, City hereby reserves and retains the right to elect and exercise any and all remedies, whether simultaneously or consecutively, described herein or otherwise available in law and equity.

**SECTION 20. INSPECTION OF BOOKS.** The CITY shall have the right at all reasonable times to examine all books, papers, and records of the Grantee for the purpose of verifying the statements or reports required and for any other purpose whatsoever connected with this franchise.

**SECTION 21. DEFACING BENCHES PROHIBITED.** No person shall tamper with or deface any bench placed under the franchise granted by this ordinance.

**SECTION 22. PENALTY FOR VIOLATION OF SECTION 21.** It shall be unlawful for any person to violate the provisions of SECTION 21 of this franchise, or to cause, permit or suffer the same to be done; and any person who does shall be deemed guilty of a misdemeanor, and upon conviction of any such violation, such person shall be punished by a fine of not more than One Thousand and no/100ths Dollars (\$1,000.00) or by imprisonment for not more than one year or by both such fine and imprisonment.

**SECTION 23. TRANSFER OR ASSIGNMENT.** This franchise may not be sold, transferred, assigned or otherwise disposed of, in whole or in part, without the prior written consent of the City Council. The Council may grant or deny any such request and may impose such conditions as it may deem to be in the public interest. Any attempted disposition made without such consent shall be void.

**SECTION 24. REPEALS.** Ordinance No. 3107-C.S. is hereby repealed effective December 31, 2003.

**SECTION 25. EFFECTIVE DATE.** This ordinance shall become effective January 1, 2004, or thirty (30) days from and after its final passage and adoption, whichever is later, provided that Grantee, prior to said effective date, shall have filed with the City Clerk written acceptance thereof and an agreement to be bound by and comply with all of the requirements thereof, and delivers to the City Clerk the bond and insurance policies required to be furnished pursuant to the provisions of Section 17 and 18 thereof.

**SECTION 26. PUBLICATION.** At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the CITY; and a notice shall be published once in The Modesto Bee, the official newspaper of the City of Modesto, setting forth the title of this ordinance, the date of its introduction and the places where this ordinance is posted.

**SECTION 27. TAX PROVISION.** Grantee shall be responsible for prompt payment of all tax liabilities created by operation of this franchise including but not limited to, a possessory interest tax levied by Stanislaus County. Grantee's continued failure to pay such tax after written notice from the CITY shall constitute grounds for revocation of this franchise.

**SECTION 28. CITY USE OF BENCHES.** Grantee shall make available to the CITY, at no cost to the CITY, a maximum of twenty (20) benches that are without paid advertising or which carry only the Grantee's advertisement for the sale of advertising space on the benches. Said twenty (20) benches will be used for the purpose of displaying printed messages selected by the CITY to promote CITY programs or messages determined by the CITY to be of importance to the public. The CITY shall have the sole ability to select said twenty (20) locations. The CITY shall be responsible for the cost of painting or otherwise applying its printed message to the benches it utilizes and shall have the ability to utilize the bench advertisement painter of its choice. Grantee shall install said the CITY signs on the benches at no cost to the CITY. Grantee shall have the ability to remove the CITY signs from locations that may subsequently be purchased by advertisers but shall relocate displaced the CITY signs to other locations selected by the CITY.

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 28<sup>th</sup> day of October, 2003, by Councilmember Fisher, 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: Conrad, Fisher, Frohman, Jackman, Keating, O'Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

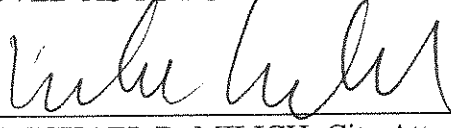
APPROVED:   
CARMEN SABATINO, Mayor

ATTEST:

By:   
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By:   
MICHAEL D. MILICH, City Attorney

By:   
BEN BANKARD, Risk Manager

ACCEPTANCE OF FRANCHISE

United Cerebral Palsy Association, Inc., of Stanislaus/Tuolumne Counties does hereby agree with and accept all of the terms and conditions set forth in Ordinance No. 3334-C.S., introduced by the Council of the City of Modesto on October 28, 2003, granting a five-year bus bench franchise.

Dated: 11/26/03.

UNITED CEREBRAL PALSY ASSOCIATION, INC., OF  
STANISLAUS/TUOLUMNE COUNTIES

Sandra Espinoza-Bishop  
Executive Director

(SEAL)

APPROVED AS TO FORM:

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

Carmen Sabatino

\*\*\*\*\*  
CERTIFICATE OF CLERK

I hereby certify that the foregoing ACCEPTANCE OF FRANCHISE was received by me at the hour of 8:30 o'clock <sup>a.m.</sup>~~p.m.~~ on the 26<sup>th</sup> day of November, 2003.

JEAN ZAHR, City Clerk

Ord. No. 3334-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 5<sup>th</sup> day of November, 2003, Councilmember Fisher moved its final adoption, which motion being duly seconded by Councilmember Frohman, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Conrad, Fisher, Frohman, Jackman, Keating, O'Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:   
MAYOR CARMEN SABATINO

ATTEST:   
JEAN ZAHR, City Clerk

Effective Date: December 5, 2003

ORDINANCE NO. 3335-C.S.

AN ORDINANCE AMENDING SECTION 3-2.1401.1 OF ARTICLE 14 OF CHAPTER 2 OF TITLE 3 OF THE MODESTO MUNICIPAL CODE RELATING TO SPEED LIMITS.

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

SECTION 1. AMENDMENT OF CODE. Section 3-2.1401.1 of Article 14 of Chapter 2 of Title 3 of the Modesto Municipal Code is hereby amended to read as follows:

**3-2.1401.1. CHANGE IN SPEED LIMITS SET BY STATE LAW: FOR PURPOSE OF ENFORCEMENT USING RADAR OR OTHER ELECTRONIC DEVICE.**

By authority of, and upon the basis of engineering and traffic surveys conducted pursuant to Vehicle Code and the Traffic Manual of the Department of Transportation, it is determined that the prima facie speed limits which follow would facilitate the orderly movement of vehicular traffic and would be reasonable and safe.

<u>NAME OF STREET OR PORTION AFFECTED</u>	<u>DECLARED PRIMA FACIE SPEED LIMIT</u>	<u>DATE SURVEYED</u>
BANGS AVENUE, between Dale Road and McHenry Avenue	45 miles per hour	September 4, 2000
BLUE GUM AVENUE, between Morse Road and Carpenter Road	35 miles per hour	March 19, 2003
BRIGGSMORE AVENUE, between Prescott Road and Tully Road	45 miles per hour	May 6, 2003
BRIGGSMORE AVENUE, between Tully Road and McHenry Avenue	45 miles per hour	September 4, 2000
BRIGGSMORE AVENUE, westbound between McHenry Avenue and Coffee Road	45 miles per hour	May 6, 2003
BRIGGSMORE AVENUE, eastbound between McHenry Avenue and Coffee Road	45 miles per hour	May 10, 2002

BRIGGSMORE AVENUE, between Coffee Road and Oakdale Road	50 miles per hour	May 6, 2003
BRIGGSMORE AVENUE, between Oakdale Road and Claus Road	50 miles her hour	February 26, 2003
BRIGGSMORE AVENUE, between Claus Road and Santa Fe Railroad Tracks	45 miles per hour	May 22, 2002
BRIGHTON AVENUE, between Coffee Road and Locke Road	30 miles per hour	May 10, 2002
CALIFORNIA AVENUE, between Carpenter Road and Martin Luther King Drive	30 miles per hour	July 11, 2002
CARPENTER ROAD, between Blue Gum Avenue and Woodland Avenue	40 miles per hour	February 21, 2003
CARPENTER ROAD, between Woodland Avenue and Maze Boulevard	40 miles per hour	September 4, 2000
CARPENTER ROAD, between Maze Boulevard and Paradise Road	50 miles per hour	June 15, 1999
CARVER ROAD, between Bangs Avenue and Pelandale Avenue	40 miles per hour	September 4, 2000
CARVER ROAD, between Pelandale Avenue and Brixton Lane	35 miles per hour	May 10, 2002
CARVER ROAD, between Brixton Lane and Briggsmore Avenue	35 miles per hour	May 10, 2002
CARVER ROAD, between Briggsmore Avenue and Orangeburg Avenue	35 miles per hour	May 10, 2002

CARVER ROAD, between Orangeburg Avenue and 9th Street	35 miles per hour	May 10, 2002
CELESTE DRIVE, between Coffee Road and Oakdale Road	30 miles per hour	May 17, 2002
CLAUS ROAD, between Sylvan Avenue and Briggsmore Avenue	50 miles per hour	May 23, 2002
CLAUS ROAD, between Briggsmore Avenue and Scenic Drive	45 miles per hour	May 23, 2002
CLAUS ROAD, between Scenic Drive and Yosemite Boulevard	50 miles per hour	September 4, 2000
COFFEE ROAD, between Claratina Avenue and Sylvan Avenue	40 miles per hour	April 4, 2000
COFFEE ROAD, between Sylvan Avenue and Floyd Avenue	40 miles per hour	February 26, 2003
COFFEE ROAD, between Floyd Avenue and Briggsmore Avenue	40 miles per hour	May 7, 2003
COFFEE ROAD, between Briggsmore Avenue and Scenic Drive	40 miles per hour	February 21, 2003
COLLEGE AVENUE, between Rumble Road and Bowen Avenue	30 miles per hour	February 21, 2003
COLLEGE AVENUE, between Bowen Avenue and Princeton Avenue	35 miles per hour	February 21, 2003
COLLEGE AVENUE, between Princeton Avenue and Needham Avenue	25 miles per hour	February 21, 2003
CREEKWOOD DRIVE, between Claus Road and Yosemite Boulevard	35 miles per hour	May 7, 2003
CROWS LANDING ROAD, between 7th Street and Hatch Road	35 miles per hour	May 7, 2003

CROWS LANDING ROAD, between Hatch Road and Whitmore Avenue	35 miles per hour	May 7, 2003
DALE ROAD, between Pelandale Avenue and Snyder Avenue	40 miles per hour	September 4, 2000
DALE ROAD, between Snyder Avenue and Veneman Avenue	40 miles per hour	May 16, 2002
DALE ROAD, between Veneman Avenue and Standiford Avenue	35 miles per hour	May 16, 2002
EASTRIDGE DRIVE, between Orangeburg Avenue and Scenic Drive	30 miles per hour	June 18, 2002
EL VISTA AVENUE, between Scenic Drive and Yosemite Boulevard	40 miles per hour	May 7, 2003
EMERALD AVENUE, between Maze Boulevard and California Avenue	30 miles per hour	May 28, 2002
EVERGREEN AVENUE, between Orangeburg Avenue and Carver Road	30 miles per hour	May 21, 2002
FLOYD AVENUE, between McHenry Avenue and Coffee Road	30 miles per hour	July 11, 2002
FLOYD AVENUE, between Coffee Road and Oakdale Road	30 miles per hour	July 10, 2002
FLOYD AVENUE, between Oakdale Road and Roselle Avenue	35 miles per hour	July 10, 2002
FLOYD AVENUE, between Roselle Avenue and Fine Avenue	35 miles per hour	July 10, 2002
GRANGER AVENUE, between Tully Road and McHenry Avenue	35 miles per hour	May 6, 2003

GRANGER AVENUE, between McHenry Avenue and Sunrise Avenue	35 miles per hour	May 6, 2003
H STREET, between Washington Street and 5th Street	30 miles per hour	July 3, 2002
HATCH ROAD, between Carpenter Road and Crows Landing Road	45 miles per hour	September 4, 2000
KANSAS AVENUE, between Morse Road and Rosemore Avenue	40 miles per hour	May 6, 2003
KANSAS AVENUE, between Rosemore Avenue and Carpenter Road	40 miles per hour	May 6, 2003
KANSAS AVENUE, between Carpenter Road and Emerald Avenue	35 miles per hour	May 6, 2003
KANSAS AVENUE, between Emerald Avenue and Ninth Street	35 miles per hour	May 6, 2003
LA LOMA AVENUE, between Burney Street and Yosemite Boulevard	30 miles per hour	September 4, 2000
LAKEWOOD AVENUE, between Briggsmore Avenue and Scenic Drive	35 miles per hour	February 26, 2003
LINCOLN AVENUE, between Dry Creek and Yosemite Boulevard	35 miles per hour	September 4, 2000
MABLE AVENUE, between Coffee Road and Oakdale Road	30 miles per hour	July 10, 2002
MARTIN LUTHER KING DRIVE, between Maze Boulevard and Paradise Road	30 miles per hour	June 13, 2002
MERLE AVENUE, between Oakdale Road and Roselle Avenue	30 miles per hour	February 26, 2003

MERLE AVENUE, between Roselle Avenue and Claus Road	35 miles per hour	May 13, 2003
MILLER AVENUE, between La Loma Avenue and El Vista Avenue	35 miles per hour	May 7, 2003
MITCHELL ROAD, between Finch Road and the southerly City limits	50 miles per hour	May 7, 2003
MORRIS AVENUE, between McHenry Avenue and Coffee Road	30 miles per hour	May 24, 2002
MORSE ROAD, between Blue Gum Avenue and Kansas Avenue	40 miles per hour	May 24, 2002
MT. VERNON DRIVE, between Prescott Road and College Avenue	30 miles per hour	June 23, 1999
NEECE DRIVE, between Tuolumne Boulevard and Rouse Avenue	35 miles per hour	June 13, 2002
NEEDHAM STREET, between 9th Street and L Street	35 miles per hour	June 17, 2002
NORWEGIAN AVENUE, between McHenry Avenue and Coffee Road	35 miles per hour	May 6, 2003
OAKDALE ROAD, between 1300 feet north of Mable Avenue and Sylvan Avenue	45 miles per hour	August 29, 2000
OAKDALE ROAD, between Sylvan Avenue and Floyd Avenue	45 miles per hour	August 29, 2000
OAKDALE ROAD, between Floyd Avenue and Briggsmore Avenue	40 miles per hour	May 7, 2003
OAKDALE ROAD, between Briggsmore Avenue and Scenic Drive	40 miles per hour	May 7, 2003

ORANGEBURG AVENUE, between Briggsmore Avenue and Martin Avenue	35 miles per hour	May 21, 2002
ORANGEBURG AVENUE, between Martin Avenue and McHenry Avenue	40 miles per hour	May 23, 2002
ORANGEBURG AVENUE, between McHenry Avenue and Coffee Road	40 miles per hour	May 22, 2002
ORANGEBURG AVENUE, between Coffee Road and Oakdale Road	35 miles per hour	May 22, 2002
ORANGEBURG AVENUE, between Oakdale Road and Lakewood Avenue	35 miles per hour	May 22, 2002
ORANGEBURG AVENUE, between Lakewood Avenue and Claus Road	35 miles per hour	May 22, 2002
PARADISE ROAD, between Carpenter Road and Martin Luther King Drive	35 miles per hour	May 28, 2002
PARADISE ROAD, between Martin Luther King Drive and Washington Street	30 miles per hour	July 3, 2002
PELANDALE AVENUE, between Sisk Road and Dale Road	45 miles per hour	May 16, 2002
PELANDALE AVENUE, between Dale Road and Prescott Road	50 miles per hour	August 29, 2000
PELANDALE AVENUE, between Prescott Road and McHenry Avenue	50 miles per hour	June 18, 2002
PRESCOTT ROAD, between Snyder Avenue and Standiford Avenue	40 miles per hour	May 17, 2002

PRESCOTT ROAD, between Standiford Avenue and Rumble Road	40 miles per hour	May 17, 2002
PRESCOTT ROAD, between Rumble Road and Briggsmore Avenue	35 miles per hour	May 17, 2002
RIVERSIDE DRIVE, between Edgebrook Drive and Yosemite Boulevard	30 miles per hour	August 30, 2000
ROSE AVENUE, between Floyd Avenue and Briggsmore Avenue	30 miles per hour	July 11, 2002
ROSE AVENUE, between Briggsmore Avenue and Scenic Drive	30 miles per hour	July 11, 2002
ROSEBURG AVENUE, between Carver Road and Tully Road	30 miles per hour	June 13, 2002
ROSEBURG AVENUE, between Tully Road and McHenry Avenue	30 miles per hour	May 24, 2002
ROSEBURG AVENUE, between McHenry Avenue and Sunrise Avenue	30 miles per hour	June 13, 2002
ROSELLE AVENUE, between Sylvan Avenue and Floyd Avenue	40 miles per hour	February 26, 2003
ROSELLE AVENUE, between Floyd Avenue and Briggsmore Avenue	45 miles per hour	November 4, 2000
ROSEMORE AVENUE, between Blue Gum Avenue and Kansas Avenue	35 miles per hour	August 30, 2000
ROUSE AVENUE, between Colorado Avenue and Neece Drive	30 miles per hour	June 13, 2002

RUMBLE ROAD, between Sisk Road and Conant Avenue	30 miles per hour	May 17, 2002
RUMBLE ROAD, between Conant Avenue and Tully Road	30 miles per hour	May 17, 2002
RUMBLE ROAD, between Tully Road and McHenry Avenue	30 miles per hour	May 17, 2002
RUMBLE ROAD, between McHenry Avenue and Coffee Road	30 miles per hour	May 17, 2002
SANTA CRUZ AVENUE, between Yosemite Boulevard and Legion Park Drive	30 miles per hour	November 4, 2000
SCENIC DRIVE, between Burney Street and Coffee Road	35 miles per hour	June 17, 2002
SCENIC DRIVE, between Coffee Road and Oakdale Road	40 miles per hour	June 17, 2002
SCENIC DRIVE, between Oakdale Road and Lakewood Avenue	40 miles per hour	June 17, 2002
SCENIC DRIVE, between Lakewood Avenue and Lillian Drive	40 miles per hour	June 17, 2002
SCENIC DRIVE, between Lillian Drive and Claus Road	40 miles per hour	June 17, 2002
SHARON AVENUE, between Fine Avenue and Claus Road	40 miles per hour	November 17, 2000
SIERRA DRIVE, between G Street and 7th Street	30 miles per hour	May 28, 2002
SISK ROAD, between Pelandale Avenue and Vintage Drive	45 miles per hour	June 14, 1999
SISK ROAD, between Vintage Drive and Standiford Avenue	45 miles per hour	June 14, 1999

SISK ROAD, between Standiford Avenue and Briggsmore Avenue	45 miles per hour	August 29, 2000
SNYDER AVENUE, between Dale Road and Prescott Road	30 miles per hour	May 16, 2002
SNYDER AVENUE, between Prescott Road and Tully Road	30 miles per hour	May 16, 2002
STANDIFORD AVENUE, between Sisk Road and Prescott Road	45 miles per hour	May 13, 2003
STANDIFORD AVENUE, between Prescott Road and Tully Road	40 miles per hour	August 29, 2000
STANDIFORD AVENUE, between Tully Road and McHenry Avenue	40 miles per hour	May 7, 2003
SUNRISE AVENUE, between Floyd Avenue and Lucern Avenue	30 miles per hour	May 24, 2002
SUTTER AVENUE, between Paradise Road and Robertson Road	30 miles per hour	May 7, 2003
SYLVAN AVENUE, between McHenry Avenue and Coffee Road	40 miles per hour	May 7, 2003
SYLVAN AVENUE, between Coffee Road and Oakdale Road	40 miles per hour	February 7, 2001
SYLVAN AVENUE, between Oakdale Road and Roselle Avenue	40 miles per hour	February 27, 2003
SYLVAN AVENUE, between Roselle Avenue and Claus Road	45 miles per hour	February 27, 2003
TENAYA DRIVE, between Empire Avenue and the easterly city limit on Tenaya Drive	30 miles per hour	June 18, 2002
TULLY ROAD, between Bangs Avenue and Standiford Avenue	45 miles per hour	May 21, 2002

TULLY ROAD, between Standiford Avenue and Briggsmore Avenue	35 miles per hour	May 21, 2002
TULLY ROAD, between Briggsmore Avenue and Coldwell Avenue	35 miles per hour	June 13, 2002
TUOLUMNE BOULEVARD, between Paradise Road and 7th Street	35 miles per hour	May 28, 2002
UNION AVENUE, between Tully Road and McHenry Avenue	30 miles per hour	August 29, 2000
VENEMAN AVENUE, between Dale Road and Regency Park Drive	30 miles per hour	July 10, 2002
VIRGINIA AVENUE, between Roseburg Avenue and Needham Street	30 miles per hour	May 24, 2002
WHITMORE AVENUE, between Ustick Road and Crows Landing Road	45 miles per hour	June 18, 2002
WHITMORE AVENUE, between Crows Landing Road and Morgan Road	40 miles per hour	June 18, 2002
WOODLAND AVENUE, between Morse Road and Carpenter Road	30 miles per hour	July 11, 2002
WOODLAND AVENUE, between Carpenter Road and 9th Street	30 miles per hour	June 13, 2002
WOODROW AVENUE, between Tully Road and McHenry Avenue	30 miles per hour	May 21, 2002
5TH STREET, between L Street and Sierra Drive	25 miles per hour	May 28, 2002
6TH STREET, between M Street and Sierra Drive	30 miles per hour	May 28, 2002

7TH STREET BRIDGE, between B Street and River Road	30 miles per hour	August 30, 2000
9TH STREET, between Carpenter Road and Tully Road	45 miles per hour	June 13, 2002
9TH STREET, between Tully Road and L Street	35 miles per hour	May 23, 2002
9TH STREET, between D Street and Morton Boulevard	30 miles per hour	November 4, 2000

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 5<sup>th</sup> day of November, 2003, by Councilmember Jackman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Conrad, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Conrad, Frohman, Jackman, Keating, O'Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: Fisher

APPROVED: *Carmen Sabatino*  
CARMEN SABATINO, 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. 3335-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 special meeting of the Council of the City of Modesto held on the 13<sup>th</sup> day of November, 2003, Councilmember Jackman moved its final adoption, which motion being duly seconded by Councilmember Conrad, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Conrad, Frohman, Jackman, Keating, O'Bryant

NOES: Councilmembers: None

ABSENT: Councilmembers: Fisher & Mayor Sabatino

APPROVED:   
MAYOR CARMEN SABATINO

ATTEST:   
JEAN ZAHR, City Clerk

Effective Date: December 13, 2003

ORDINANCE NO. 3336-C.S.

AN ORDINANCE REPEALING SECTION 4-2.25 OF  
CHAPTER 2 OF TITLE 4 OF THE MODESTO MUNICIPAL  
CODE RELATING TO MISDEMEANORS – SELLING OF  
CONFECTIONS REQUIRED TO MAINTAIN DISTANCE  
FROM SCHOOLS.

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

SECTION 1. AMENDMENT OF CODE. Section 4-2.25 of Chapter 2 of Title 4  
of the Modesto Municipal Code is hereby repealed.

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 13<sup>th</sup> day of November, 2003, by Councilmember Frohman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Conrad, Fisher, Frohman, Jackman, Keating, O'Bryant, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: *Carmen Sabatino*  
CARMEN SABATINO, 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. 3336-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 11<sup>th</sup> day of December, 2003, Councilmember Frohman 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: Frohman, Hawn, Jackman, Keating, Marsh, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: O'Bryant

APPROVED:   
MAYOR CARMEN SABATINO

ATTEST:   
JEAN ZAHR, City Clerk

Effective Date: January 10, 2003

ORDINANCE NO. 3337 - C.S.

AN ORDINANCE AMENDING SECTION 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 16<sup>TH</sup> AND G STREETS. (PRATT)

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

SECTION 1. ZONING CHANGE. Section 28-3-9 of the Zoning Map is hereby amended to reclassify the following described property from Planned Development Zone, P-D(480), to Planned Development Zone, P-D(563):

P-D(480) to P-D(563)

All that certain real property situate in a portion of the southwest Quarter of Section 28, Township 3 South, Range 9 East, Mount Diablo Base and Meridian, in the City of Modesto, County of Stanislaus, State of California, described as follows:

Lots 25, 26, 27, 28, 29, 30, 31, and 32, in block 128 of the City of Modesto, according to the Official Map thereof, filed in the Office of the Recorder of Stanislaus County, California, on April 18, 1903, in Volume 1 of Maps, at Page 82.

Including also all of the Northeast one half of 80.00-foot-wide 16<sup>th</sup> Street, Southeast one half of 80.00-foot-wide G Street and the Southwest one half of the adjacent 20.00-foot-wide alley and all immediately adjacent to the above described property.

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. General office use as allowed in the P-D zone.

SECTION 3. ZONING MAP. Section Map 28-3-9 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 25th day of November, 2003, by Councilmember O'Bryant, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Frohman, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Frohman, Jackman, Keating, Marsh, O'Bryant, and Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: Hawn

APPROVED:   
CARMEN SABATINO, 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. 3337-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 11<sup>th</sup> day of December, 2003, Councilmember Marsh moved its final adoption, which motion being duly seconded by Councilmember Frohman, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Frohman, Jackman, Marsh, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: Hawn, Keating, O'Bryant

APPROVED:

  
MAYOR CARMEN SABATINO

ATTEST:

  
JEAN ZAHR, City Clerk

Effective Date: January 10, 2003

ORDINANCE NO. 3338-C.S.

AN ORDINANCE AMENDING SECTION 12-4.202 OF  
ARTICLE 2 OF CHAPTER 4 OF TITLE 12 OF THE MODESTO  
MUNICIPAL CODE RELATING TO USE OF PARK AND  
RECREATION AREAS AND FACILITIES – GENERAL  
REGULATIONS GOVERNING USE OF PARKS.

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

SECTION 1. AMENDMENT OF CODE. Section 12-4.202 of Article 2 of

Chapter 4 of Title 12 of the Modesto Municipal Code is hereby amended to read as follows:

**12-4.202. GENERAL REGULATIONS GOVERNING USE OF PARKS.**

- (a) Except as otherwise authorized by law, it shall be unlawful and an infraction for any person, firm or corporation to do or cause or permit to be done any of the acts hereinafter specified within any park owned or operated by the City of Modesto.
- (1) To enter or trespass in any area, building or facility which is fenced and locked or enclosed and locked or is posted with a “No Trespassing” sign.
  - (2) To ride or bring any horse or other similar animal or to propel a vehicle in or upon any area of a park, except those areas specifically provided and designated for such purposes, unless prior written permission is obtained from the Director.
  - (3) To ride a bicycle unless on trails or pathways designated for bicycle use.
  - (4) To drive or operate any motor vehicle in any park in excess of fifteen (15) miles per hour.
  - (5) To park any automobile or other vehicle in any park at any place other than designated parking areas. Places where parking is permitted shall be designated by appropriate signs.
  - (6) To drive or operate any automobile, or other vehicle including gasoline or electric powered go-carts, motorcycles, motorized bicycles, or any motorized scooter or similar device used for recreation as defined in California Vehicle Code Section

407.5(a), any model airplanes, boats or midget cars in any park except in designated areas or unless prior written permission is obtained from the Director. This section does not restrict the use of motorized devices, electric or assistive technology devices to aid persons with disabilities and/or mobility needs as defined under the Americans with Disabilities Act.

- (7) To clean, wash, polish or make other than emergency repairs upon any automobile, motorcycle or self-driven vehicle in any park.
- (8) To carry, bring into or ignite, fire or otherwise set off any firearms, air guns, slingshots, firecrackers or fireworks in any park except those fireworks which are part of organized and permitted special events for which prior written permission to use fireworks has been obtained from the Director.
- (9) To make a fire in any park other than in stoves, pits or braziers provided by the City unless prior written permission is obtained from the Director and a permit is obtained from the Air Pollution Control District for burning in open pits.
- (10) To bring into any park any material which will, if spilled or spread, be injurious to the turf or plant growth.
- (11) To cut or remove any wood, turf, rock, tree, flower, shrub, sand or gravel from any park unless prior written permission is obtained from the Director.
- (12) To throw or dispose of in any park any bottles, tin cans, broken glass, paper, clothes, cast iron, rubbish, soil, tree trimmings, garbage, ashes or other debris of any kind except in approved containers provided by the City.
- (13) To remove, damage or destroy any athletic equipment provided by the City, normal wear and tear excepted.
- (14) To move or remove from one (1) location to another any part or parts of field equipment.
- (15) To move or remove from one (1) location to another any equipment used for park maintenance.
- (16) To open or close any valve pertaining to the water mains or sprinkler system or to expose or interfere with any gas pipe,

hydrant, stopcock, sewer, catch basin, backflow preventer, or other similar device in any park.

- (17) To cut, break or deface in any way buildings, equipment, grounds or other facilities of any park.
- (18) To wound, kill or catch any bird or other wild animal in any park.
- (19) To indulge in indecent or riotous conduct or language or to otherwise make noises in such a manner as to disturb any picnic, meeting, concert or exhibition in any park.
- (20) To operate a public address system without prior written permission of the Director. This prohibition shall not include the use of small portable radios used to receive regularly broadcasted programs, as long as such radios are operated at such a volume as not to disturb other persons present in the park.
- (21) To disturb or interfere with any employee of the City of Modesto acting within the scope of his/her employment, or to disturb or interfere with any spectator or participant in any event or activity conducted in any park, or to enter any park for the purpose of committing any such disturbance or interference.
- (22) To camp or lodge in or upon any park unless prior written permission is obtained from the Director.
- (23) To sell refreshments, foodstuffs or novelties in any park or on any street immediately adjacent thereto without the prior written permission of the Director or the City Council.
- (24) To practice, carry on, conduct or solicit for any trade, occupation, business or profession in any park without the prior written permission of the City Council.
- (25) To play or engage in any game or contest in any park except in such places as are specially provided or designated for that purpose.
- (26) To play upon any tennis courts wearing shoes other than those having vulcanized soles and heels, commonly known as tennis shoes.

- (27) To refuse to open any tennis court being used for singles play to doubles play at the end of the set being played when other persons are waiting, unless prior written permission is obtained from the Director.
- (28) To refuse to relinquish any tennis court being used for doubles play at the end of the set being played when other persons are waiting unless prior written permission is obtained from the Director.
- (29) To use any tennis courts for tennis tournaments, team practices or other special events of any kind without the prior written permission of the Director or the City Council.
- (30) To play or engage in the hitting of golf balls in any park, except on driving ranges and golf courses.
- (31) To ride bicycles through any children's playground area.
- (32) To use tobacco products of any kind, including, but not limited to, chewing tobacco, cigars and cigarettes, within fifty (50) feet of children's play areas (playgrounds/tot lots, wading pools, skate parks) installed and/or built for public use by children and/or to discard lighted or unlighted cigars or cigarettes in said areas.
- (33) To wade or swim in any pool in any park except when supervised.
- (34) To use any park facility for which a charge is now or hereafter made without first having paid the fee requested and having received the required permit.
- (35) To enter any park facility for which a charge is made without first paying the full legal charge made for such entrance unless such entrance is by the consent or permission of the person or persons in charge.
- (36) To use any park facility or equipment which has been reserved or which is indicated by an authorized or official sign to have been reserved without first having received the written permission of the Director.

- (37) To remove any authorized or official sign indicating that any park facility or equipment is reserved.
  - (38) For any male person to resort to any toilet set apart for women, and for any female person to resort to any toilet set apart for men, provided that this prohibition shall not apply to children accompanied by their father, mother or guardian.
  - (39) It shall be unlawful to climb onto any building or structure in a park not designated for such activity.
  - (40) To possess any container made of glass in any park or to bring, carry or transport any container made of glass into any park except that the sponsor of an organized event may obtain permission from the Department to possess glass containers.
  - (41) It shall be unlawful for any person without authority to tear down, deface or destroy any sign posted pursuant to the above subsections.
  - (42) It shall be unlawful for any person to consume alcoholic beverages within fifteen (15) feet of an abutting edge of any public parking lot that directly abuts a City park, unless approved in advance in writing by the Director.
  - (43) It shall be unlawful for any person to consume alcoholic beverages without a permit in any city-owned or operated park which has been conspicuously posted with signs alerting the public to this prohibition.
- (b) Except as otherwise authorized by law, it shall be unlawful and a misdemeanor for any person, firm or corporation to do or cause or permit to be done any of the acts hereinafter specified within any park owned or operated by the City of Modesto.
- (1) No person shall remain in any park between the hours of 10:00 p.m. and 6:00 a.m. of the following day.
  - (2) The prohibitions contained in subsection (b)(1) of this section will not apply to:
    - (i) Special use facilities, as may be posted by the Department extending use hours;

(ii) Any person attending a meeting, entertainment event, recreation activity, dance or similar activity in such park, provided such activity is sponsored or co-sponsored by the Department or permit therefor, has been issued by the Department;

(iii) Any person exiting such park immediately after the conclusion of any activity set forth in subsection (b)(2)(ii) of this section;

(iv) Any peace officer or employee of the City while engaged in the performance of his/her duties.

(c) The City of Modesto hereby designates all of its public parks as drug-free zones pursuant to and within the meaning of Health & Safety Code Section 11380.5.

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 11<sup>th</sup> day of December, 2004, by Councilmember Marsh, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Frohman, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Hawn, Frohman, Keating, Marsh

NOES: Councilmembers: Jackman, Mayor Sabatino

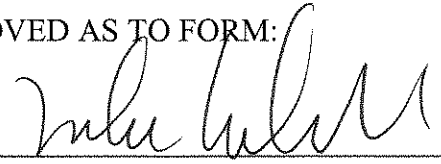
ABSENT: Councilmembers: O'Bryant

APPROVED:   
CARMEN SABATINO, Mayor

ATTEST:

By   
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:  
By   
MICHAEL D. MILICH, City Attorney

Ord. No. 3338-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 6<sup>th</sup> day of January, 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: Dunbar, Hawn, Jackman, Keating, Marsh, O'Bryant, Mayor Ridenour

NOES: Councilmembers: Jackman

ABSENT: Councilmembers: None

APPROVED: 

MAYOR JIM RIDENOUR

ATTEST:

  
JEAN ZAHR, City Clerk

Effective Date: February 5, 2004

**CITY OF MODESTO  
ORDINANCE NO. 2003-3339**

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. 2003-1 (FAIRVIEW VILLAGE)

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

WHEREAS, on October 28, 2003, this City Council adopted a resolution entitled "A Resolution Declaring the City Council's Intention to Establish City of Modesto Community Facilities District No. 2003-1 (Fairview Village) 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. 2003-1 (Fairview Village) (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 entitled "A Resolution Establishing City of Modesto Community Facilities District No. 2003-1 (Fairview Village), 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. 2003-1 (Fairview Village)," and "A Resolution Calling a Special Election for the City of Modesto Community Facilities District No. 2003-1 (Fairview Village)," 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. 2003-1 (Fairview Village), 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 be effective after thirty (30) days from its final passage and adoption.

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

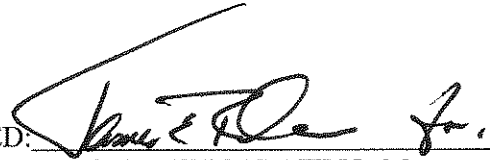
The foregoing Ordinance was introduced at a regular meeting of the City Council of the City of Modesto, California, held on December 11, 2003, by Councilmember Jackman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Hawn, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Frohman, Hawn, Jackman, Keating, Marsh, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: O'Bryant

APPROVED: \_\_\_\_\_



CARMEN SABATINO, Mayor

ATTEST:

By Jean Zahr  
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

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

**ATTACHMENT A**  
**CITY OF MODESTO**  
**COMMUNITY FACILITIES DISTRICT NO. 2003-1**  
**(FAIRVIEW VILLAGE)**

**RATE AND METHOD OF APPORTIONMENT OF SPECIAL TAX**

Special Taxes applicable to each Assessor's Parcel in Community Facilities District No. 2003-1 (Fairview Village) [herein "CFD No. 2003-1" 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. 2003-1, 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. 2003-1 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. 2003-1 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 Maintenance Special Tax"** means a special tax levied in any Fiscal Year to pay the Maintenance Special Tax Requirement, as defined below.

**"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 on Bonds, (ii) to create or replenish reserve funds, (iii) to cure

any delinquencies in the payment of principal or interest on indebtedness of CFD No. 2003-1 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 (iv) to pay construction expenses to be funded directly from Annual Facility Special Tax proceeds. 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. 2003-1 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.

**“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.

**“Bonds”** means bonds or other debt (as defined in the Act), whether in one or more series, issued, insured or assumed by CFD No. 2003-1 related to public infrastructure and/or improvements that are authorized to be funded by CFD No. 2003-1.

**“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. 2003-1 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. 2003-1.

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

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

- 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.
- 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.

**“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.

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

**“Maintenance Special Tax Requirement”** means that amount necessary in any Fiscal Year to (i) pay for authorized maintenance expenses, (ii) pay administrative expenses of CFD No. 2003-1, 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.

**“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 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 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 on Taxable Property to pay the One-Time Facilities Special Tax Requirement and collected by the City prior to a structural building permit being issued for new construction on Taxable Property.

**“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. 2003-1, which will not be paid by the Bonds or Annual Facilities Special Tax.

**“Original Parcel”** means an Assessor’s Parcel in CFD No. 2003-1 at the time of CFD Formation, as identified in Attachment 2. 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.

**“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. 2003-1 that is owned by the federal government, State of California, County, City, or other public agency.

**"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 and are offered as for-sale Units, 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.

**"Taxable Property"** means all of the Assessor's Parcels within the boundaries of CFD No. 2003-1 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. 2003-1 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 prior Fiscal Years.

**"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. 2003-1 at CFD Formation; additional Tax Zones may be created when property is annexed into the CFD.

**"Tax Zone #1"** means the geographic area that was identified in Fiscal Year 2003-04 by Assessor's Parcel number 56-27-02 and is designated in Attachment 1 of this Rate and Method of Apportionment of Special Tax as Tax Zone #1.

**"Undeveloped Property"** means, in any Fiscal Year, all Parcels of Taxable Property within CFD No. 2003-1 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. If, in any Fiscal Year, an Assessor’s Parcel includes both Developed Property and Undeveloped Property, the Administrator shall determine the acreage associated with the Developed Property, subtract this acreage from the total Acreage of the Assessor’s Parcel, and use the remaining acreage to calculate the Special Tax that will apply to Undeveloped Property within the Assessor’s Parcel. The Special Tax shall then be calculated for the Developed Property on the Parcel, and the total Special Tax levied on the Assessor’s Parcel shall be the sum of the Special Taxes determined separately for the Undeveloped Property and Developed Property on the Parcel.

**C. CALCULATING THE MAXIMUM SPECIAL TAXES**

The Administrator shall use the procedures set forth below to calculate the Maximum Special Taxes for each Parcel in CFD No. 2003-1 in each Fiscal Year, including the Maximum One-Time Facilities Special Tax, Annual Facilities Special Tax, and Annual Maintenance Special Tax.

**1. Original Parcels**

The Maximum Special Taxes for each Original Parcel in CFD No. 2003-1 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.

*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 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 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 shall be increased by four percent (4%) of the amount in effect in the prior year.

**2. Annual Facilities Special Tax**

Beginning with Fiscal Year 2005-06, 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 2005 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. 2003-1 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 that Fiscal

Year. The Annual Facilities Special Tax shall then be levied on all Parcels of Taxable Property 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;

**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 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.

## **E. 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. 2003-1, and shall be immediately delinquent if not so paid.

The Annual Facilities Special Tax and Annual Maintenance Special Tax for CFD No. 2003-1 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 2050-2051. The Annual Maintenance Special Tax will continue to be levied and collected unless and until the City determines that Annual Maintenance Special Tax revenues are no longer needed to pay authorized services of 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 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 \$3.8 million 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 lower number as shall be determined by the City as sufficient to fund improvements that are authorized to be funded by the CFD. The Public Facilities Requirements shown above may be adjusted or a separate Public Facilities Requirements identified each time property annexes into CFD No. 2003-1; 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 public facility costs 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.

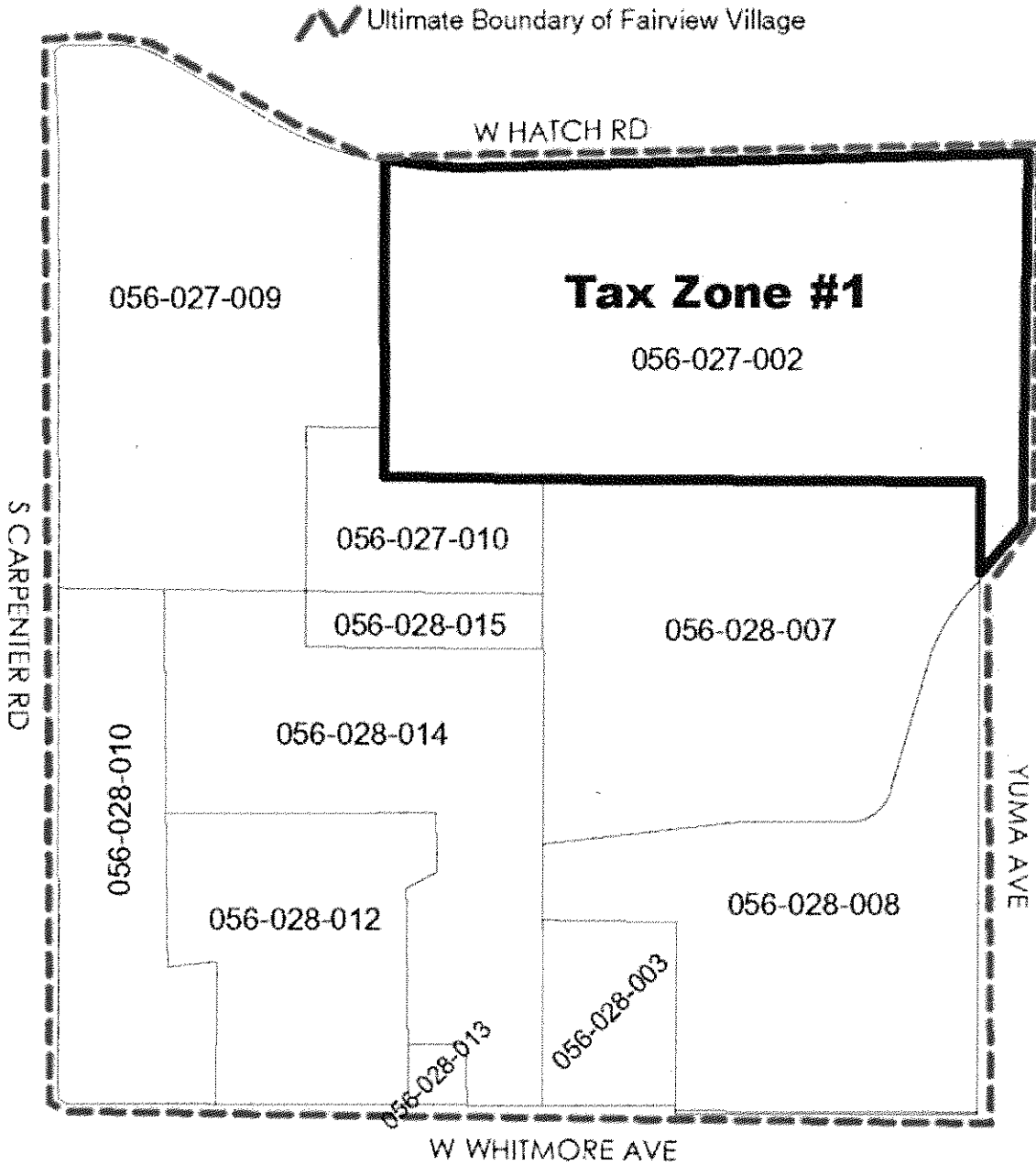
- Step 8:** Compute the amount of interest the City reasonably expects to derive from reinvestment of the Bond Redemption Amount plus the Redemption Premium from the first Bond interest payment date after which the prepayment has been received until the redemption date for the Outstanding Bonds.
- Step 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*”).

**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 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. 2003-1  
(FAIRVIEW VILLAGE)

IDENTIFICATION OF TAX ZONES



ATTACHMENT 2

CITY OF MODESTO  
COMMUNITY FACILITIES DISTRICT NO. 2003-1  
(FAIRVIEW VILLAGE)

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

Tax Zone	APN	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]
1	56-27-02	\$0	\$326,517	\$108,585

1. Beginning in January 2005 and each January thereafter, the Maximum One-Time Facilities Special Tax shall escalate by 4.0% of the amount in effect in the prior Fiscal Year.
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 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.

Ord. No. 3339-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 6<sup>th</sup> day of January, 2004, 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: 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: February 5, 2004