

*Celik*

ORDINANCE NO. 2969 -C.S.

AN ORDINANCE AMENDING SECTIONS 1-3-8, 5-3-9, 6-3-9, 7-3-9, AND 8-3-9 OF THE ZONING MAP OF THE CITY OF MODESTO PREZONING CERTAIN PROPERTY LOCATED THEREON. (PELANDALE/SNYDER)

WHEREAS, pursuant to Modesto Municipal Code Section 10-2.2604, the City of Modesto proposes to initiate a prezoning of the area designated as the Pelandale/Snyder Comprehensive Planning District, described more specifically on Exhibit A, for the purpose of determining the zoning that will apply to the property upon annexation, and

WHEREAS, it is the policy of the Stanislaus Local Agency Formation Commission (policy 021(a)) to require prezoning for annexation to cities, and

WHEREAS, on October 16, 1995, the Planning Commission held a duly noticed public workshop to hear staff presentation on the Specific Plan, the Draft EIR, the Prezone, the Annexation, and received public comment, and

WHEREAS, after a public hearing held on December 4, 1995, in the Council Chambers, City Hall, 801 11th Street, Modesto, California, the Planning Commission made the following findings:

1. That the proposed prezone, together with its recommendation of annexation is consistent with the Specific Plan.
2. That the development of this Specific Plan, General Plan Amendment, Prezone, and reorganization is logical and necessary for the orderly development of the City of Modesto.

3. That the proposed Pelandale/Snyder Specific Plan and the General Plan Amendment are internally consistent with the City of Modesto's current Urban Area General Plan as follows:
  - a. Multi-family housing is located along major streets, and provides an important component of the City's affordable housing goals.
  - b. The designation of the P-O area as shown on the plan to "mixed use" in the General Plan allows for professional offices at the intersection of a major street and a proposed expressway.
  - c. The single-family designation along with the multi-family designation is consistent with the development pattern throughout most of the City and provides a balance of residential land uses.
  
4. That along with the proposed General Plan Amendment that the proposed prezone request of A-2-10 in the unincorporated county to Professional Office (P-P-O), Single Family Residential (P-R-1), and Multi-family Residential (P-R-3) is consistent with the development goals of the City and that the City Council should adopt an ordinance that prezones these properties accordingly for the following reason:

Prezoning is the first action required pursuant to annexation and development.

WHEREAS, by Resolution No. 95-33, adopted on December 4, 1995, the Planning Commission recommended to the City Council an amendment to Sections 1-3-8, 5-3-9, 6-3-9, 7-3-8, and 8-3-9 of the Zoning Map to prezone the hereafter described property to Prezone Low Density Residential Zone, P-R-1, and Specific Plan Overlay Zone, SP-O; Prezone Medium High Density Residential Zone, P-R-3, and Specific Plan Overlay Zone, SP-O; and Prezone Professional Office Zone, P-P-O, and Specific Plan Overlay Zone, SP-O, and

WHEREAS, said matter was set for a public hearing of the City Council to be held on January 16, 1996, at 7:00 p.m., in the City Council Chambers, City Hall, 801 11th 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 January 16, 1996, 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 reasons set forth in Planning Commission Resolution No. 95-33 and quoted above.

SECTION 2. ZONING CHANGE. Sections 1-3-8, 5-3-9, 6-3-9, 7-3-9, and 8-3-9 of the Zoning Map are hereby amended to prezone the following described property to Prezone Low Density Residential Zone, P-R-1, and Specific Plan Overlay Zone, SP-O; Prezone Medium High Density Residential Zone, P-R-3, and Specific Plan Overlay Zone, SP-O; and Prezone Professional Office Zone, P-P-O, and Specific Plan Overlay Zone, SP-O:

Prezone to R-1 and SP-O

ALL that certain real property being a portion of the South Half of section 1, Township 3 South, Range 8 East, and a portion of the Southwest Quarter of the Southwest quarter of Section 6, Township 3 South, Range 9 East, Mount Diablo Meridian, County of Stanislaus,

State of California, being more particularly described as follows:

BEGINNING at the Southeast corner of said Section 1 with said point being on the existing city limits line; Thence South 89 degrees 07' 00" West along the South line of said Section and along said city limits line, a distance of 4507.44 feet; Thence leaving last said lines and proceeding North 0 degrees 53' 00" West, a distance of 300.00 feet to the beginning of a curve concave to the Southwest, having a radius of 250.00 feet; Thence Northwesterly 114.39 feet along said curve through a central angle of 26 degrees 13' 02" to the beginning of a curve concave to the Northeast, having a radius of 250.00 feet; Thence Northwesterly along said curve through a central angle of 26 degrees 13' 18"; Thence North 0 degrees 52' 44" West, a distance of 803.69 feet to a point on the South line of the North half of the South half of said Section 1; Thence North 89 degrees 07' 16" East along last said line, a distance of 3940.14 feet to a point on the centerline of the 100.00 foot wide right-of-way for Modesto Irrigation District Lateral No. 6; Thence South 25 degrees 09' 20" East along said centerline, a distance of 1320.39 feet to the beginning of a curve concave to the Northeast, having a radius of 302.90 feet; Thence Southeasterly 158.91 feet along said curve and along said centerline through a central angle of 30 degrees 03' 30" to a point on the south line of the above mentioned Section 6, with said point lying on the existing city limits line; Thence North 88 degrees 36' 20" West along last said Section line and along said city limits line, a distance of 23.61 feet to the POINT OF BEGINNING.

Containing 128.43 Acres, more or less.

ALL that certain real property being a portion of the South half of Section 6 and the North half of Section 7, Township 3 South, Range 9 East, Mount Diablo Meridian, County of Stanislaus, State of California, being more particularly described as follows:

BEGINNING at the Northeast corner of LOT 6 as shown on the Map of the NASH TRACT, filed for record December 22, 1908 in Book 4 of Maps at Page 10, Stanislaus County Records; Thence South 88 degrees 31' 21" East, along the North line of Lots 7, 9 and 11 of said Nash Tract a distance of 2833.78 feet to the beginning of a curve concave to the Northwest, having a radius of 5000.00 feet, and from which point a radial line bears

North 3 degrees 46' 02" West; Thence Northeasterly 394.03 feet along said curve through a central angle of 4 degrees 30' 55" to the beginning of a curve concave to the Southeast, having a radius of 5000.00 feet; Thence Northeasterly 820.38 feet along said curve through a central angle of 9 degrees 24' 03"; Thence South 88 degrees 52' 54" East, a distance of 106.16 feet; Thence South 1 degree 15' 20" East, a distance of 1568.86 feet to a point on the Southerly line of the right-of-way for Modesto Irrigation District Lateral No. 6 and also a point on the existing city limits line; Thence along said right-of-way line and along the existing city limits line the following three (3) courses:

- (1) Thence North 88 degrees 36' 03" West, 135.98 feet;
- (2) Thence North 0 degrees 29' 50" West, 18.53 feet;
- (3) Thence North 88 degrees 36' 20" West, 2,000.88 feet to a point on the East right-of-way line of Carver Road; Thence North 0 degrees 48' 09" West, along said East right-of-way line of Carver Road and the existing city limits line, a distance of 108.06 feet to a point on the South line of said Section 6; Thence North 88 degrees 36' 20" West, along said South line of Section 6, and the centerline of Snyder Avenue and the existing city limits line, a distance of 2008.75 feet to the Southeast corner of said LOT 6; thence North 0 degrees 49' 06" West along the East line of said lot, a distance of 1323.29 feet to the POINT OF BEGINNING.

Containing 133.69 Acres, more or less.

Prezone to R-3 and SP-0

ALL that certain real property being a portion of the Southwest quarter of Section 1, Township 3 South, Range 8 East, Mount Diablo Meridian, County of Stanislaus, State of California, being more particularly described as follows:

BEGINNING at the Southwest corner of the North half of the South half of Section 1, Township 3 South, Range 8 East, Mount Diablo Base and Meridian, as shown on the map filed in Volume 8 of Surveys, at Page 26, Stanislaus County Records; Thence North 89 degrees 07' 16" East, along said South line of the North half of the South half of Section 1, a distance of 733.85 feet; Thence leaving last said line and proceeding South 0 degrees 52' 44" East, a distance of 803.69 feet to the beginning of a curve concave to the Northeast, having a radius of 250.00 feet; Thence Southeasterly 114.42 feet

along said curve through a central angle of 26 degrees 13' 18" to the beginning of a curve concave to the Southwest, having a radius of 250.00 feet; Thence Southeasterly 114.39 feet along said curve through a central angle of 26 degrees 13' 02"; thence South 0 degrees 53' 00" East, a distance of 300.00 feet to a point on the South line of said Section 1 and a point on the existing city limits line; Thence South 89 degrees 07' 00" West along last said lines, a distance of 798.14 feet to the Southwest corner of said Section 1 and the centerline of Dale Road; Thence leaving said city limit line North 0 degrees 19' 30" West, along the West line of said Section 1 and the centerline of Dale Road, a distance 1,324.72 feet to the POINT OF BEGINNING.

Containing 23.00 Acres, more or less.

ALL that certain real property being a portion of the Southeast quarter of Section 1, Township 3 South, Range 8 East and the Southwest quarter of Section 6, Township 3 South, Range 9 East, Mount Diablo Meridian, County of Stanislaus, State of California, being more particularly described as follows:

BEGINNING at a point on the line common to the above mentioned Sections 1 and 6 with said point marking the Northwest corner of LOT 6 as shown on the Map of the NASH TRACT, filed for record December 22, 1908 in Book 4 of Maps at Page 10, Stanislaus County Records; Thence South 88 degrees 31' 21" East along the North line of said LOT 6, a distance of 649.13 feet to the Northeast corner thereof; Thence leaving last said line and proceeding South 0 degrees 49' 06" East along the East line of said LOT 6, a distance of 1323.29 feet to the Southeast corner thereof, with said point lying on the South line of said Section 6; Thence North 88 degrees 36' 20" West along the South line of said Section 6, a distance of 625.01 feet to a point on the centerline of the 100.00 foot wide right-of-way for Modesto Irrigation District Lateral No. 6 and the beginning of a curve concave to the Northeast, having a radius of 302.90 feet, and from which point a radial line bears North 34 degrees 47' 10" East; Thence leaving said section line and proceeding Northwesterly along said curve and along said centerline a distance of 158.91 feet through a central angle of 30 degrees 03' 30"; Thence North 25 degrees 09' 20" West, along said centerline, a distance of 1320.39 feet to a point on the South line of the North half of the South half of the above mentioned Section 1; Thence leaving said

centerline and proceeding North 89 degrees 7' 16" East along said South line of the North half of the South half of Section 1, a distance of 619.71 feet to the POINT OF BEGINNING.

Containing 29.41 Acres, more or less.

ALL that certain real property being a portion of the Southeast quarter of Section 6 and the Northeast quarter of Section 7, Township 3 South, Range 9 East, Mount Diablo Meridian, County of Stanislaus, State of California being more particularly described as follows:

BEGINNING at the corner common to Sections 5, 6, 7 and 8, above mentioned Township and Range, with said point lying on the centerline of a county road known as Tully Road; Thence South 0 degrees 31' 19" East along said centerline and along the line common to said Sections 7 and 8, a distance of 126.51 feet to a point on the Southerly line of the right-of-way for Modesto Irrigation District Lateral No. 6; Thence North 88 degrees 36' 03" West along said right-of-way line, a distance of 690.33 feet; Thence leaving said right-of-way line and proceeding North 1 degree 15' 20" West, a distance of 1568.86 feet; Thence South 88 degrees 52' 54" East, a distance of 691.81 feet to a point on the above mentioned centerline of Tully Road, with said point lying on the line common to said Sections 5 and 6; Thence South 1 degree 15' 20" East along said centerline and section line, a distance of 1445.68 feet to the POINT OF BEGINNING.

Containing 24.92 Acres, more or less.

Prezone to P-O and SP-O

ALL that certain real property being a portion of the Southwest quarter of Section 5 and the Northwest quarter of Section 8, Township 3 South, Range 9 East, Mount Diablo Meridian, County of Stanislaus, State of California being more particularly described as follows:

BEGINNING at the corner common to Sections 5, 6, 7 and 8, above mentioned Township and Range, with said point lying centerline of a county road known as Tully Road; Thence North 1 degree 15' 20" West along said centerline and along the line common to said Sections 5 and 6, a distance of 1462.69 feet to the Westerly prolongation of the North line of Parcel 1, as shown on

the map filed on January 29, 1985 in Book 36 of Parcel Maps, at Page 21, Stanislaus County Records; Thence South 88 degrees 51' 54" East, along last said line and along the North line of Parcels 1 and 2 of aforesaid parcel map and the Easterly prolongation thereof, a distance of 2,604.35 feet to the intersection with the Westerly right-of-way line of Union Pacific Railroad; Thence South 1 degree 19' 04" East along said Westerly right-of-way line of Union Pacific Railroad right-of-way, a distance of 457.29 feet to the intersection with the Southeasterly right-of-way line of Modesto Irrigation District Lateral No. 6; Thence in a Southwesterly direction along said Southeasterly right-of-way line of Modesto Irrigation District Lateral No. 6 and the existing city limits line, the following nine (9) courses: (1) Thence South 68 degrees 19' 55" West, 732.55 feet to the beginning of a curve, concave to the Southeast, having a radius of 242.90 feet; 2) Thence 81.93 feet along the arc of said curve through a central angle of 19 degrees 19' 35"; 3) Thence South 49 degrees 00' 20" West, 654.01 feet; 4) Thence South 49 degrees 32' 46" West, 208.15 feet; 5) Thence South 40 degrees 27' 14" East, 5.00 feet to the beginning of a curve, concave to the Northwest, having a radius of 367.90 feet from which a radial line bears South 40 degrees 27' 14" East; 6) Thence 175.40 feet along the arc of said curve through a central angle of 27 degrees 19' 00"; 7) Thence South 76 degrees 51' 46" West, 550.72 feet to the beginning of a curve concave to the North and having a radius of 367.90 feet; 8) Thence 96.32 feet along the arc of said curve through a central angle of 15 degrees 00' 01"; 9) Thence North 88 degrees 08' 13" West, 395.19 feet to a point on the above mentioned centerline of Tully Road with said point lying on the line common to said Sections 7 and 8; Thence North 0 degrees 31' 19" West along said centerline and said section line, a distance of 126.51 feet to the POINT OF BEGINNING.

Containing 68.66 Acres, more or less.

SECTION 4. ZONING MAP. Sections 1-3-8, 5-3-9, 6-3-9, 7-3-9, and 8-3-9 of the Zoning Map of the City of Modesto are hereby amended to appear as set forth on the maps attached hereto, which are hereby made a part of this ordinance by reference.

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 16th day of January, 1996, by Councilmember Friedman, 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, Friedman, McClanahan, McKinsey, Serpa, Mayor Lang

NOES: Councilmembers: Dobbs

ABSENT: Councilmembers: None

APPROVED: 

RICHARD A. LANG, Mayor

ATTEST:

BY 

JEAN ADAMS, City Clerk

(SEAL)

APPROVED AS TO FORM:

BY 

MICHAEL D. MILICH, City Attorney

APPROVED AS TO DESCRIPTION:

BY 

Community Development Department  
Development Services

Ord. No. 2969-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 23rd day of January, 1996, Councilmember Friedman moved its final adoption, which motion being duly seconded by Councilmember McClanahan, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Fisher, Friedman, McClanahan, McKinsey, Serpa,  
Mayor Lang  
NOES: Councilmembers: Dobbs  
ABSENT: Councilmembers: None

APPROVED:

  
MAYOR RICHARD A. LANG

ATTEST:

  
JEAN ADAMS, City Clerk

Effective Date: February 22, 1996

Clerk  
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ORDINANCE NO. 2970-C.S.

AN ORDINANCE AMENDING CHAPTER 1 OF TITLE IX 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. Chapter 1 of Title IX of the Modesto Municipal Code is hereby amended to read as follows:

**CHAPTER 1 - BUILDING CODE**

**SEC. 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, 1994 Edition," Volume 1, Volume 2 and Volume 3, published by the International Conference of Building Officials, together with Volume 1 Appendix Chapters 15, 31, Division 111 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.

**SEC. 9-1.02. TITLE**

That subsections 101.1 and 101.3 of Section 101 of said Building Code be amended to read as follows:

**Section 101.1.**

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

### **Section 101.3. Scope**

The provisions of this Code shall apply to the construction, alteration, moving, demolition, repair, maintenance and use of any building or structure within this jurisdiction, except work located primarily in a public way, public utility towers and poles, mechanical equipment not specifically regulated in this Code, and hydraulic flood control structures.

For additions, alterations, moving and maintenance of buildings and structures, see Chapter 34. For temporary buildings and structures see Section 3103.

Where, in any specific case, different sections of this Code specify different materials, methods of construction or other requirements, the most restrictive shall govern. Where there is a conflict between a general requirement and a specific requirement, the specific requirement shall be applicable.

When ever in this Code reference is made to the appendix, the provisions in the appendix shall not apply unless specifically adopted.

### **SEC. 9-1.03. VIOLATIONS.**

That Section 103 of said Building Code be amended to read as follows:

#### **Section 103.**

It shall be unlawful for any person, firm, or corporation to erect, construct, enlarge, alter, repair, move, improve, remove, convert or demolish, equip, use, occupy, or maintain any building or structure in the City, or cause the same to be done, contrary to or in violation of any of the provisions of this Code.

### **SEC. 9-1.04. INTERPRETATION.**

That subsection 104.2.1 of Section 104 of said Building Code be amended to read as follows:

**Section 104.2.1.**

The building official is hereby authorized and directed to enforce all the provisions of this Code. 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 conformance with the intent and purpose of this Code. Such interpretations may be appealed to the Board of Building Appeals.

The language used in this Code is intended to convey the common and accepted meaning familiar to the building industry.

**SEC. 9-1.05. NONRESPONSIBILITY OF CITY.**

That subsections 104.2.6 and 104.2.8 of Section 104 of said Building Code be amended to read as follows:

**Section 104.2.6.**

**Nonresponsibility of City.** Neither the City, nor any department, nor any board, commission, officer or employee thereof shall be held liable or responsible for any damage or injury caused by or resulting from the issuance of or failure to issue or the revocation of any permit or certificate of inspection or the making of any inspection under the provisions of this Code.

**Section 104.2.8.**

Alternative materials, alternative design and methods of construction.

The provisions of this Code are not intended to prevent the use of any material, alternative design or method of construction not specifically prescribed by this Code, provided the alternative has been approved and its use authorized by the building official.

The building official may approve any such alternative, provided the building official finds that the proposed design is satisfactory and complies with the provisions of this Code and that the material, method or work offered is, for the purpose intended, at

least the equivalent of that prescribed in this Code in suitability, strength, effectiveness, fire resistance, durability, safety and sanitation.

The building official shall require that sufficient evidence or proof be submitted to substantiate any claims that may be made regarding its use.

#### **SEC. 9-1.06. BOARD OF BUILDING APPEALS.**

That Section 105 of said Building Code be amended to read as follows:

##### **Section 105.1.**

In order to determine the suitability of alternate materials and methods of construction and to provide for reasonable interpretations of the provisions of this Code, the Uniform Mechanical Code, the Uniform Plumbing Code, the Uniform Housing Code, the National Electrical Code, Flood Damage Prevention regulation and the Uniform Code for the Abatement of Dangerous Buildings, and to hear appeals provided for in said codes and regulations, there shall be and is hereby created a Board of Building Appeals, hereinafter referred to as the Board, consisting of five (5) members who are qualified by experience and training to pass upon matters pertaining to building construction. The Building Official shall act as Secretary of the Board. The members of the Board shall be appointed and hold office in accordance with the provisions of Article XI of the Charter of the City of Modesto.

The Board of Building Appeals created hereby shall be the successor to the Board of Appeals created by Title IX of the Modesto Municipal Code, as said chapters existing previous to the effective date of this Code, and the members of said Board of Appeals holding office when this Code becomes effective shall continue to hold office as members of the Board of Building Appeals created by this Code, for the remainder of the terms to which they were originally appointed and until their respective successors shall be appointed and qualified. All actions taken and decisions made by said Board of Appeals prior to the effective date of this Code shall continue in full force and effect the same as if taken or made by the Board of Building Appeals created by this Code.

**Section 105.2.**

The Board shall adopt reasonable rules and regulations for conducting its business and shall render all decisions and findings in writing to the Building Official with a duplicate copy to the appellant and may recommend to the Council of the City of Modesto such new legislation is consistent therewith.

**Section 105.3.**

Except as otherwise provided in the Uniform Mechanical Code, the Uniform Plumbing Code, the Uniform Housing Code, the National Electrical Code, Flood Damage Prevention regulation and the Uniform Code for the Abatement of Dangerous Buildings, the Board shall hear appeals in accordance with the procedures set forth herein.

**Section 105.4.**

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.

**Section 105.5.**

Whenever in the course of any proceedings taken hereunder, the Board shall have cause to request additional information, the same may be requested of Building Inspection, the Fire Department, the Health Department, or any other agencies charged by law with enforcement of health or safety requirements of local or state law.

**Section 105.6**

The decision of the Board in granting or denying an appeal shall become final and effective fifteen (15) days after the date of

adoption of the decision, unless within such fifteen-day period an appeal is filed by the appellant(s) in writing with the City Council. The filing of such appeal within such time limit shall stay the effective date of the decision of the Board until such time as the Council has acted on the appeal.

Decisions of the Board of Building Appeals shall be in writing and shall contain findings of fact, a determination of the issues presented, and the requirements to be complied with. A copy of the decision shall be delivered to the appellant personally or sent to him by certified mail, postage prepaid, return receipt requested.

The effective date of decisions of the Board of Building Appeals shall be as stated therein.

Upon receipt of a written appeal filed with the Council as provided herein, the Secretary of the Board shall thereupon transmit to the Council the Board's complete record of the case.

Within not to exceed forty (40) days following the receipt of the written appeal, the Council shall hold a hearing thereon. 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 City Clerk 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.

The Council shall announce its findings and decision by formal resolution not more than forty (40) days following the hearings, and said resolution shall recite, among other things, the facts and reasons which, in the opinion of the City Council, make the granting or denial of the appeal necessary, and shall order that the appeal be granted or denied or modified subject to such conditions or limitations that it may impose.

The action by the Council on such matters shall be by majority vote of the entire Council and shall be final and conclusive.

Not later than ten (10) days following the adoption of a resolution ordering that an appeal be granted or denied, a copy of such resolution shall be mailed to the appellant(s) and one (1) copy

shall be attached to the Board's file of the case and said file returned to the Secretary of the Board for permanent filing.

**SEC. 9-1.07. EXPIRATION.**

That subsection 106.4.4 of Section 106 of said Building Code be amended to read as follows:

**Section 106.4.4.**

**Expiration.** Every permit issued by the Building Official under the provisions of this Code shall expire by limitation and become null and void if the building or work authorized by such permit is not commenced within one hundred eighty (180) days from the date of said permit, or if such building or work authorized by such permit is suspended or abandoned at any time after the work has commenced for a period of one hundred eighty (180) days, or if the building or work authorized by such permit is not completed seven hundred thirty (730) days from the date of such permit. Before such work can be recommenced, a new permit shall be first obtained so to do, and the fee therefor shall be one-half the amount required to a new permit for such work, provided no changes have been made or will be made in the original plans and specifications for such work; and provided further that such suspension or abandonment has not exceeded one (1) year.

Any permittee holding an unexpired permit may apply for an extension of time within which he may commence the work under that permit when he is unable to commence work within the time required by this section for good and satisfactory reasons. The Building Official may extend the time for action by the permittee for a period not exceeding one hundred eighty (180) days upon written request by the permittee showing that circumstances beyond the control of the permittee have prevented action from being taken. No permit shall be extended more than once. In order to renew action on a permit after expiration, the permittee shall pay a new full permit fee.

**SEC. 9-1.08. PERMIT FEES.**

That subsection 107.2, 107.3 and Section 107.5.2 of Section 107 of said Building Code be amended to read as follows:

## **Section 107.2.**

**Building Permit Fees.** A fee for each building permit shall be paid to the Building Official as set forth in a schedule setting forth building fees as adopted from time to time by resolution of the City Council.

The determination of value or valuation under any of the provisions of this Code shall be made by the Building Official. The valuation to be used in computing the permit and plan-check fee shall be the total value of all construction work for which the permit is issued as well as all finished work, painting, roofing, electrical, plumbing, heating, air conditioning systems and any other permanent work or permanent equipment.

Permit fees for new buildings or additions to buildings of Group R, Division 3 and U occupancies may be determined by the Building Official by multiplying the square foot of floor area of such building or addition by the price per square foot value which results in the total fee for the building permit, the plan checking, the plumbing permit, the mechanical permit, and the electrical permit. The per square foot value shall be determined by the Building Official, and such value when multiplied by the floor areas shall result in a total fee which shall be commensurate with the sum of such fees if individually calculated by otherwise applicable provisions of the Municipal Code.

## **Section 107.3.**

**Plan-Checking Fees.** When the valuation of the proposed construction exceeds one thousand dollars (\$1,000.00), and a plan is required to be submitted by Section 106.3.2, a plan-checking fee shall be paid to the Building Official at the time of submitting plans and specifications for checking.

Said plan-checking fees for buildings of Groups R, Division 3 and U occupancies shall be twenty (20) percent of the building permit fees. Plan-checking fees for buildings of Group R, Division 3 for which Master Plans are approved shall be ten (10) percent of the building permit fees. Plan-checking fees for all other buildings shall be sixty-five (65) percent of the building permit fees as set forth in a schedule setting forth building fees as adopted from time to time by resolution of the City Council.

Where plans are incomplete, or changed so as to require additional plan checking, an additional plan-check fee shall be charged at a rate shown in a schedule setting forth building fees as adopted from time to time by resolution of the City Council.

The Building Official may require that the plan-checking fee be paid at the same time the permit fee is paid.

#### **Section 107.5.2.**

**Investigation Fee.** An investigation fee, in addition to the permit fee, shall be collected whether or not a permit is then or subsequently issued. The investigation fee shall be equal to the amount of the permit fee required by this Code. The minimum investigation fee shall be the same as the minimum fee set forth in a schedule setting forth building fees as adopted from time to time by resolution of the City Council.

#### **SEC. 9-1.09. FEES.**

That subsections 107.6 and 107.7 be added to Section 107 of said Building Code to read as follows:

#### **Section 107.6.**

**Fees to Governmental Agencies.** No permit fees shall be required for the issuance of building permits to governmental agencies; however, governmental agencies which obtain permits may be charged plan-checking and inspection fees to defray the actual cost of these services.

#### **Section 107.7.**

**Telephone Permit Procedure.** The Building Official is hereby authorized to establish a system for the issuance of routine permits upon telephonic request and to issue such directives and regulations as are deemed necessary to govern the operation and administration of such a system. Said directives and regulations shall have the force and effect of law and a violation thereof shall constitute a violation of this Code. Such a system may provide for the payment of permit fees on permits issued by telephone on an accounts receivable basis.

**SEC. 9-1.10. CERTIFICATE OF OCCUPANCY.**

That subsection 109.4 of Section 109 be amended to read as follows:

**Section 109.4.**

**Temporary Occupancy.** If any building or structure including Groups R, Division 3 or U occupancy is to be occupied with the approval of the Building Official prior to the final inspection and/or final corrections, the occupant, owner and contractor shall sign a temporary certificate of occupancy prior to occupying the building agreeing to make all corrections required and/or listed within thirty (30) days of occupancy. If corrections are not completed within thirty (30) days, the Building Official shall have the authority to request the immediate discontinuance of the electrical service and/or the gas service by the appropriate utility and may file a notice of noncompliance with the County Recorder. The notice of noncompliance shall be removed by the Building Official only after all items requiring correction are completed.

**SEC. 9-1.11. CERTIFICATE OF OCCUPANCY.**

That subsection 109.7 be added to Section 109 of said Building Code to read as follows:

**Section 109.7.**

If any building or structure is occupied prior to the issuance of a Certificate of Occupancy or Temporary Certificate of Occupancy as required by Section 109, the Building Official shall have the authority to request the immediate discontinuance of the electrical service and/or the gas service by the appropriate utility.

**SEC. 9-1.12. DEMOLITION OF BUILDINGS: CLEARANCE OF SITE AND SAFETY MEASURES REQUIRED.**

That Section 110 be added to said Building Code to read as follows:

**Section 110.**

Prior to the issuance of a permit to demolish a building, the owner of the property on which the building is to be demolished,

or his agent, shall file with the City Clerk a bond in favor of the City of Modesto conditioned as follows:

1. Before any work is started on a building or structure, the permittee or his authorized agent shall notify the appropriate utilities in order that all gas, electrical, sewer, water and oil pipelines that are to be disconnected from the building may be capped and sealed or otherwise secured.
2. Immediately after the demolition of any building or structure, the permittee or his authorized agent shall securely barricade all basement excavations and other holes or openings, as required by the Building Official.
3. Within ten (10) days after the demolition of any building or structure, the permittee or his authorized agent shall complete the following work:
  - 1.1. Securely close and seal any sanitary piping located on the property.
  - 1.2. Either fill with dirt or sand or remove, at the discretion of the Building Official, any septic tanks or cesspools located on the property.
  - 1.3. Fill any openings, excavations or basements remaining on the land with dirt or sand to street level or the natural level of adjoining property, unless otherwise directed by the Building Official.
  - 1.4. Remove any buried underground tanks formerly used for storage of flammable liquids, as may be required by the Fire Department.
  - 1.5. Remove all refuse, debris and waste materials from the property.

The bond required by this section shall be in an amount equal to the cost of the work proposed to be done, as estimated by the Building Official.

The bond may be in the form of a corporate surety bond, cash deposit, savings and loan certificate, or an instrument of credit.

An extension of time for completion of the work required by this section may be granted in writing by the Building Official when, in his discretion, circumstances justify such an extension; but no such extension shall release any bond or other security furnished pursuant to this section.

**SEC. 9-1.13. DISABLED ACCESS APPEALS BOARD.**

That Section 111 be added to said Building Code to read as follows:

**Section 111.1.**

In order to hear appeals to actions taken by the City and to provide reasonable interpretations of the California Access Laws, there is hereby created a Disabled Access Appeals Board, hereinafter referred to as the Board, consisting of five (5) members. Two (2) of the members are to be physically handicapped, two (2) members to be experienced in construction, and one (1) member a public member. The Building Official shall act as Secretary of the Board. The members of the Board shall be appointed and hold office in accordance with the provisions of Article XI of the Charter of the City of Modesto.

**Section 111.2.**

The Board shall adopt reasonable rules and regulations for conducting its business and shall render all decisions and findings in writing to the Building Official with a duplicate copy to the appellant and may recommend to the Council of the City of Modesto such new legislation as is consistent therewith.

**Section 111.3.**

The Board shall hear appeals in accordance with the procedures set forth herein.

#### **Section 111.4.**

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 not be 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 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.

#### **Section 111.5.**

The decision of the Board in granting or denying an appeal shall become final and effective fifteen (15) days after the date of adoption of the decision, unless within such fifteen-day period an appeal is filed by the appellant(s) in writing with the City Council. The filing of such appeal within such time limit shall stay the effective date of the decision of the Board until such time as the Council has acted on the appeal.

Upon receipt of a written appeal filed with the Council as provided herein, the Secretary of the Board shall thereupon transmit to the Council the Board's complete record of the case.

Within not to exceed forty (40) days following the receipt of the written appeal, the Council shall hold a hearing thereon. 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 City Clerk 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.

The Council shall announce its findings and decision by formal resolution not more than forty (40) days following the hearings, and said resolution shall recite, among other things, the facts and reasons which, in the opinion of the City Council, support its grant, or denial or modification subject to such conditions or limitations that it may impose.

The action by the Council on such matters shall be by majority vote of the entire Council and shall be final and conclusive.

Not later than ten (10) days following the adoption of a resolution ordering that an appeal be granted or denied, a copy of such resolution shall be mailed to the appellant(s) and one (1) shall be attached to the Board's file of the case and said file returned to the Secretary of the Board for permanent filing.

#### **SEC. 9-1.14. SPECIAL DOORS.**

That subsection 404.4.8 of Section 404 of said Building Code be amended to read as follows:

##### **Section 404.4.8.**

Revolving, sliding and overhead doors shall not be used as required exits. Approved power operated doors may be used for exit purposes.

EXCEPTION: Notwithstanding any other provisions of this Code, roll-up and sliding security grills or doors of a type approved by the Building Official and Fire Chief shall be permitted as required exits from a B occupancy into an enclosed, covered mall, provided:

- 1.1. That all B occupancies shall have another conforming means of egress. This conforming means of egress shall have panic hardware or shall have no latch or lock and shall have lighted exit signs in locations as required by the Building Official.
- 1.2. That all other exits from the mall shall be provided with panic hardware or shall have no latch or lock.
- 1.3. That all roll-up or sliding security grills or doors shall be provided with a key locking device so as to enable the grill to be locked in the full open position, and shall be so locked during any time that the public is in the B occupancy. A readily visible permanent sign shall be placed adjacent to such locking device stating, "THIS DOOR TO REMAIN LOCKED IN THE FULL OPEN POSITION WHENEVER THE PUBLIC IS IN THIS STORE."

The sign shall be in letters not less than one (1) inch high on a contrasting background.

- 1.4. That all electrically operated roll-up or sliding security grills or doors shall have a manual override within the B occupancy which shall allow easy manual opening of the grill or door. This manual override shall not be locked whenever the public is in the B occupancy. That a readily visible permanent sign shall be placed adjacent to such manual override giving instructions for its use in letters not less than one (1) inch high on a contrasting background.
- 1.5. When two or more exits are required, not more than one-half of the exits may be equipped with revolving, sliding or overhead doors.

The use of this exception may be revoked by the Building Official or the Fire Chief for due cause.

#### **SEC. 9-1.15. MINIMUM SLAB THICKNESS.**

That Section 1924 of said Building Code be amended to read as follows:

##### **Section 1924.**

1. The minimum thickness of concrete floor slabs supported directly on the ground shall be not less than three and one-half (3½) inches.
2. Concrete slab floors, when used as a finished floor or as a base for other floor finish in buildings to be used in Groups R, Divisions 1 and 3, shall be constructed according to the following additional requirements, or as approved by the Building Official:
  - 1.1. Four (4) inches of compacted gravel (three-fourths inch), maximum aggregate size shall be placed so that the surface of the base is not less than two (2) inches above finish grade.
  - 1.2. A membrane water proofing, six (6) mil, or water proofing acceptable to the Building Official shall be placed on the rock base. The membrane shall

extend to exterior walls and turn up to top of slab or down to bottom of footing for monolithic pours.

- 1.3. One-half inch of clean sand shall be placed on the membrane water proofing before placing of concrete.

**SEC. 9-1.16. SECTIONS TO BE DELETED FROM BUILDING CODE.**

That Chapters 11, 13, 30, 34 and Sections 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 1994 Edition of the Uniform Building code in lieu of the 1991 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 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 16th day of January, 1996, by Councilmember Friedman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Dobbs, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Dobbs, Fisher, Friedman, McClanahan, McKinsey, Serpa, Mayor Lang

NOES: Councilmembers: None

ABSENT: Councilmembers: None

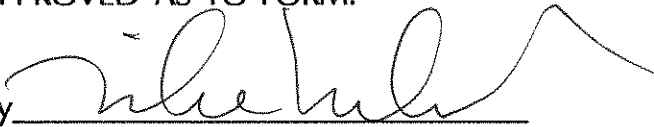
APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:

By   
JEAN ADAMS, City Clerk

(SEAL)

APPROVED AS TO FORM:

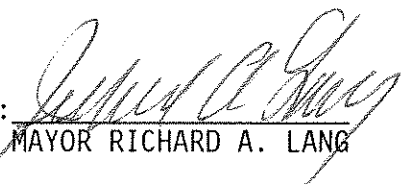
By   
MICHAEL D. MILICH, City Attorney

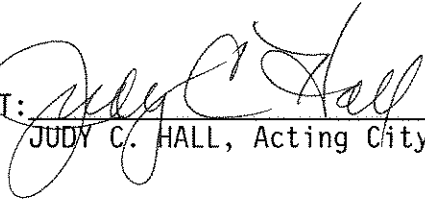
Ord. No. 2970-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 6th day of February, 1996, Councilmember Fisher moved its final adoption, which motion being duly seconded by Councilmember McKinsey, was upon roll call carried and the ordinance adopted by the following vote:

AYES:	Councilmembers:	Dobbs, Fisher, Friedman, McClanahan, McKinsey, Serpa, Mayor Lang
NOES:	Councilmembers:	None
ABSENT:	Councilmembers:	None

APPROVED:   
MAYOR RICHARD A. LANG

ATTEST:   
JUDY C. HALL, Acting City Clerk

Effective Date: March 7, 1996

*Clerk*

ORDINANCE NO. 2971 -C.S.

AN ORDINANCE AMENDING CHAPTER 7 OF TITLE IX 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. Chapter 7 of Title IX of the Modesto Municipal Code is hereby amended to read as follows:

**CHAPTER 7 - MECHANICAL CODE**

**SEC. 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, 1994 Edition", published by the International Conference of Building Officials, together with Appendices A, B, C, and D 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.

**SEC. 9-7.02. TITLE.**

That Section 101 of said Mechanical Code be amended to read as follows:

**Section 101.**

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

**SEC. 9-7.03. INTERPRETATION.**

That subsection 108.1 of Section 108 of said Mechanical Code be amended to read as follows:

**Section 108.1.**

**Interpretation.** The building official is hereby authorized and directed to enforce all the provisions of this Code. For such purposes, the building official shall have the powers of a law enforcement official.

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 conformance with the intent and purpose of this Code. Such interpretations may be appealed to the Board of Building Appeals.

The language used in this Code is intended to convey the common and accepted meaning familiar to the mechanical industry.

The Building Official is hereby authorized to determine the intent and meaning of any provision of this Code. Such determination shall be made in writing and a record kept, which shall be open to the public. Such determination may be appealed to the Board of Building Appeals.

**SEC. 9-7.04. NONRESPONSIBILITY OF CITY.**

That subsection 108.8 of Section 108 of said Mechanical Code be amended to read as follows:

**Section 108.8.**

**Nonresponsibility of City.** Neither the City, nor any department, nor any board, commission, officer or employee thereof shall be held liable or responsible for any damage or injury caused by or resulting from the issuance of or failure to issue or the revocation of any permit or certificate of inspection or the making of any inspection under the provisions of this Code.

**SEC. 9-7.05. BOARD OF APPEALS.**

That Section 110 of said Mechanical Code be amended to read as follows:

**Section 110.**

The Board of Building Appeals established by Section 105 of the Building Code of the City of Modesto shall determine the suitability of alternate materials and types of construction and provide for reasonable interpretations of the provisions of this Code and hear appeals from decisions of the Building Official regarding the intent an meaning of any provisions of this Code.

**SEC. 9-7.06. PERMIT ISSUANCE.**

That subsection 114.4.1 of Section 114 of said Mechanical Code be amended to read as follows:

**Section 114.4.1.**

**Expiration.** Every permit issued by the Building Official under the provisions of this Code shall expire by limitation and become null and void if the building or work authorized by such permit is not commenced within one hundred eighty (180) days from the date of said permit, or if such building or work authorized by such permit is suspended or abandoned at any time after the work has commenced for a period of one hundred eighty (180) days, or if the building or work authorized by such permit is not completed seven hundred thirty (730) days from the date of such permit. Before such work can be recommenced, a new permit shall be first obtained so to do, and the fee therefor shall be half the amount required of a new permit for such work, provided no changes have been made or will be made in the original plans and specifications for such work; and provided further that such suspension or abandonment has not exceeded one (1) year.

Any permittee holding an unexpired permit may apply for an extension of time within which he may commence the work under that permit when he is unable to commence work within the time required by this section for good and satisfactory reasons. The Building Official may extend the time for action by the permittee for a period not exceeding one hundred eighty (180) days upon written request by the permittee showing that

circumstances beyond the control of the permittee have prevented action from being taken. No permit shall be extended more than once. In order to renew action on a permit after expiration, the permittee shall pay a new full permit fee.

#### **SEC. 9-7.07. PERMIT FEES.**

That subsections 115.2 and 115.3 of Section 115 of said Mechanical Code be amended to read as follows:

##### **Section 115.2.**

The fee for each permit shall be as set forth in a schedule established by the Modesto City Council, which may be set or amended from time to time by City Council resolution. No permit fees shall be required for the issuance of mechanical permits to governmental agencies; however governmental agencies which obtain permits may be charged inspection fees to defray the actual cost of inspection services.

##### **Section 115.3.**

**Plan Review Fees.** When a plan or other data are required to be submitted by Section 113.2 a plan review fee shall be paid at the time of submitting plans and specifications for review. The plan review fees for mechanical work shall be equal to sixty-five (65) percent of the total permit fee as required in Section 115.2.

##### **Section 115.3.1.**

**Separate Fee for Plan Review.** The plan review fees specified in this section are separate fees from the permit fees specified in Section 115.1 and are in addition to the permit fees.

##### **Section 115.3.2.**

**Incomplete or Changed Plans.** When plans are incomplete or changed so as to require additional plan review, an additional plan review fee shall be charged as required by Section 115.2.

#### **SEC. 9-7.08. TELEPHONE PERMIT PROCEDURE.**

That Section 118 be added to said Mechanical Code to read as follows:

**Section 118.**

The Building Official is hereby authorized to establish a system for the issuance of routine permits upon telephonic request and to issue such directives and regulations as are deemed necessary to govern the operation and administration of such system. Said directives and regulations shall have the force and effect of law and a violation thereof shall constitute a violation of this Code. Such a system may provide for the payment of permit fees on permits issued by telephone on an accounts receivable basis.

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 1994 Edition of the Uniform Mechanical Code in lieu of the 1991 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 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 16th day of January, 1996, by Councilmember Friedman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Dobbs, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Dobbs, Fisher, Friedman, McClanahan, McKinsey, Serpa, Mayor Lang

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:

By   
JEAN ADAMS, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

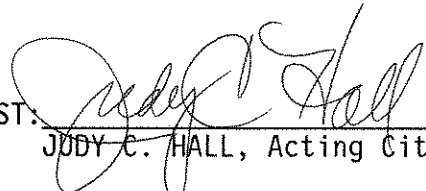
Ord. No. 2971-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 6th day of February, 1996, Councilmember Fisher moved its final adoption, which motion being duly seconded by Councilmember McKinsey, was upon roll call carried and the ordinance adopted by the following vote:

AYES:	Councilmembers:	Dobbs, Fisher, Friedman, McClanahan, McKinsey, Serpa, Mayor Lang
NOES:	Councilmembers:	None
ABSENT:	Councilmembers:	None

APPROVED:   
MAYOR RICHARD A. LANG

ATTEST:   
JUDY C. HALL, Acting City Clerk

Effective Date: March 7, 1996

Clerk

ORDINANCE NO. 2972C.S.

AN ORDINANCE AMENDING CHAPTER 2 OF TITLE IX 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. Chapter 2 of Title IX of the Modesto Municipal Code is hereby amended to read as follows:

**CHAPTER 2 - PLUMBING CODE**

**SEC. 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, 1994 Edition," adopted by the International Association of Plumbing and Mechanical Officials, together with Appendices A, B, C, F, 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.

**SEC. 9-2.02. TITLE.**

That Section 101.1 of said Plumbing Code be amended to read as follows:

**Section 101.1.**

This Code shall be known as the "Plumbing Code" and will be referred to as "this Code" herein.

**SEC. 9-2.03. PURPOSE.**

That Section 101.2 of said Plumbing Code be amended to read as follows:

## **Section 101.2.**

The purpose of this Code is to provide minimum standards to safeguard life or limb, health, property and public welfare by regulating and controlling the design, construction, installation, quality of materials, location, operation and maintenance of plumbing and drainage systems and any part or components thereof, and appliances connected thereto.

## **SEC. 9-2.04. AUTHORITY TO ABATE.**

That Section 101.6 is added to said Plumbing Code to read as follows:

### **Section 101.6.1.**

Any portion of a plumbing system found by the Building Official to be insanitary as defined herein is hereby declared to be a nuisance.

### **Section 101.6.2.**

Whenever it is brought to the attention of the Building Official that any insanitary conditions exist or that any construction or work regulated by this Code is dangerous, unsafe, unsanitary, a nuisance or a menace to life, health or property or otherwise is in violation of this Code, the Building Official, upon determining such information to be fact, shall order any person, firm or corporation using or maintaining any such condition or responsible for the use or maintenance thereof to discontinue the use or maintenance thereof or to repair, alter, change, remove or demolish the same as he may consider necessary for the proper protection of life, health or property and in the case of any gas piping or gas appliance may order any person, firm or corporation, supplying gas to such piping or appliance to discontinue supplying gas thereto until such piping or appliance is made safe to life, health or property.

Every such order shall be in writing, addressed to the owner, agent or person responsible for the premises in which such condition exists and shall specify the date or time for compliance with such order.

**Section 101.6.3.**

Refusal, failure or neglect to comply with any such notice or order shall be considered a violation of this Code.

**Section 101.6.4.**

When any plumbing system is maintained in violation of this Code and in violation of any notice issued pursuant to the provisions of this section or where a nuisance exists in any building or on a lot on which a building is situated, the Building Official shall institute any appropriate action or proceeding in any court of competent jurisdiction to prevent, restrain, correct or abate the violation or nuisance.

**SEC. 9-2.05. ADMINISTRATIVE AUTHORITY.**

That subsection 102.1 of Section 102 of said Plumbing Code be amended to read as follows:

**Section 102.1. Administrative Authority.**

The Administrative Authority is the Building Official, or his duly authorized representative who is hereby charged with the administration and enforcement of this Code. The Building Official is hereby authorized and directed to enforce all provisions of this Code. For such purposes he shall have the powers of a law enforcement officer.

**SEC. 9-2.06. DUTIES AND POWERS OF THE ADMINISTRATIVE AUTHORITY.**

That subsection 102.2.6 of Section 102 of said Plumbing Code be amended to read as follows:

**Section 102.2.6.**

**Nonresponsibility of City.** Neither the City nor any department, nor any board, commission, officer or employee thereof shall be held liable or responsible for any damage or injury caused by or resulting from the issuance of or failure to issue or the revocation of any permit or certificate of inspection or the making of any inspection under the provisions of this Code.

#### SEC. 9-2.07. VIOLATIONS.

That Section 102.3 of said Plumbing Code be amended to read as follows:

##### Section 102.3.

It shall be unlawful for any person, firm or corporation to erect, install, alter, repair, relocate, add to, replace, use or maintain plumbing or drainage systems or parts thereof or appliances connected thereto in the City, or cause the same to be done, contrary to or in violation of any of the provisions of this Code. Maintenance of equipment which was unlawful at the time it was installed and which would be unlawful under this Code if installed after the effective date of this Code shall constitute a continuing violation of this Code.

#### SEC. 9-2.08. PERMIT ISSUANCE.

That subsections 103.3.3 and 103.3.4 of Section 103.3 of Said Plumbing Code be amended to read as follows:

##### Section 103.3.3.

**Validity.** The issuance or granting of a permit or approval of plans and specifications shall not be construed to be a permit for, or an approval of, any violation of any of the provisions of this Code. No permit presuming to give authority to violate or cancel the provisions of this Code shall be valid, except insofar as the work or use which it authorizes is lawful.

##### Section 103.3.4.

**Expiration.** Every permit issued by the Building Official under the provisions of this Code shall expire by limitation and become null and void if the building or work authorized by such permit is not commenced within one hundred eighty (180) days from the date of said permit, or if such building or work authorized by such permit is suspended or abandoned at any time after the work has commenced for a period of one hundred eighty (180) days, or if the building or work authorized by such permit is not completed seven hundred thirty (730) days from the date of such permit. Before such work can be recommenced, a new permit shall be first obtained to do so, and the fee therefor shall be one-half the

amount required of a new permit for such work, provided no changes have been made or will be made in the original plans and specifications for such work; and provided further that such suspension or abandonment has not exceed one (1) year.

Any permittee holding an unexpired permit may apply for an extension of time within which he may commence the work under that permit when he is unable to commence work within the time required by this section for good and satisfactory reasons. The Building Official may extend the time for action by the permittee for a period not exceeding one hundred eighty (180) days upon written request by the permittee showing that circumstances beyond the control of the permittee have prevented action from being taken. No permit shall be extended more than once. In order to renew action on a permit after expiration, the permittee shall pay a new full permit fee.

#### **SEC. 9-2.09. FEES.**

That subsections 103.4.1 and 103.4.2 of Section 103.4 of said Plumbing Code be amended to read as follows:

##### **Section 103.4.1.**

**Plumbing Permit Fees.** A fee for each plumbing permit shall be paid to the building official as set forth in a schedule setting forth plumbing fees as adopted from time to time by resolution of the City Council.

No permit fees shall be required for the issuance of plumbing permits to governmental agencies; however, governmental agencies which obtain permits may be charged inspection fees to defray the actual cost of inspection services.

##### **Section 103.4.4.**

**Plan Review Fees.** When a plan or other data is required to be submitted by Section 103.2.2, a plan review fee shall be paid at the time of submitting plans and specifications for review. The plan review fee for plumbing work shall be equal to sixty-five (65) percent of the total fee as required by Section 103.4.1. When plans are incomplete or changed so as to require additional review, a fee shall be charged at the rate as required by Section 103.4.1.

#### **SEC. 9-2.10. REINSPECTIONS.**

That subsection 103.5.6 of Section 103.5 of said Plumbing Code be amended to read as follows:

##### **Section 103.5.6.**

**Reinspections.** A reinspection fee may be assessed for each inspection or reinspection when such portion of work for which inspection is called is not complete or when required corrections have not been made.

This provision is not to be interpreted as requiring reinspection fees the first time a job is rejected for failure to comply with the requirements of this Code, but as controlling the practice of calling for inspections before the job is ready for inspection or reinspection.

Reinspection fees may be assessed when the approved plans are not readily available to the inspector, for failure to provide access on the date for which the inspection is requested, or for deviating from plans requiring the approval of the Administrative Authority.

To obtain reinspection, the applicant shall file an application therefor in writing upon a form furnished for that purpose and pay the reinspection fee in accordance with Section 103.4.1.

In instances where reinspection fees have been assessed, no additional inspection of the work will be performed until the required fees have been paid.

#### **SEC. 9-2.11. BOARD OF APPEALS.**

That Section 103.9 be added to said Plumbing Code to read as follows:

##### **Section 103.9.**

The Board of Building Appeals established by Section 105 of the Building Code of the City of Modesto shall determine the suitability of alternate materials and types of construction and provide for reasonable interpretations of the provisions of this Code and hear appeals from decisions of the Building Official regarding the intent and meaning of any provision of this Code.

**SEC. 9-2.12. INTERPRETATION.**

That Section 103.10 be added to said Plumbing Code to read as follows:

**Section 103.10. Interpretation.**

The building official is hereby authorized and directed to enforce all the provisions of this Code. 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 conformance with the intent and purpose of this Code. Such interpretations may be appealed to the Board of Building Appeals.

The language used in this Code is intended to convey the common and accepted meaning familiar to the building industry.

**SEC. 9-2.13. TELEPHONE PERMIT PROCEDURE.**

That Section 103.11 be added to said Plumbing Code to read as follows:

**Section 103.11.**

The Building Official is hereby authorized to establish a system for the issuance of routine permits upon telephonic request and to issue such directives and regulations as are deemed necessary to govern the operation and administration of such a system. Said directives and regulations shall have the force and effect of law and a violation thereof shall constitute a violation of this Code. Such a system may provide for the payment of permit fees on permits issued by telephone on an accounts receivable basis.

**SEC. 9-2.14. RAINWATER PIPING.**

That Section 414 be added to said Plumbing Code to read as follows:

**Section 414.1.**

No overflow from a cistern, tank, expansion tank, drip pan or other device shall be directly connected to any soil, waste or vent pipe, house drain or house sewer.

**Section 414.2.**

Rainwater from roofs, parking areas, landscaped areas or other approved areas exposed to rainwater may be drained into the public positive storm water drainage system, but shall not drain into any sewer intended for sanitary sewage. A permit shall be procured in all cases to connect rainwater drainage to a positive storm water drainage system. The Public Works and Transportation Director is authorized to limit the rate of flow of storm water into the public storm water drainage system.

Rainwater from roofs, parking areas, landscaped areas or other approved areas may drain into the public street gutter; provided, that such gutter is paved and runs to a catch basin connected to the public positive storm drain system. The Public Works and Transportation Director is authorized to limit the rate at which this storm water flows into the public storm drain.

In areas of the City not served by a public, positive storm water drainage system, rainwater from roofs, parking areas, landscaped areas and other approved areas shall be retained on the premises and disposed of on the premises. On-premises disposal systems may consist of rock wells, retention basins, or other approved methods that allow the storm drainage to be absorbed into the soil.

**Section 414.3.**

No rainwater from roofs or other rainwater drainages of premises shall discharge upon a public sidewalk. When it is desired to conduct rainwater from a building or premises to a public street gutter, the outside underground piping shall be cast-iron soil pipe. Water leaders connecting to such underground drainage piping, which are on the outside of a building wall that abuts on a public thoroughfare shall be constructed of cast-iron pipe for a distance of five (5) feet vertically above grade.

**Section 414.4.**

No sheet metal water leader shall be installed on the inside of a building, inner court or vent shaft. No sheet metal leader shall be directly connected to any drainage system which connects to a public sewer.

**Section 414.5.**

When an existing sheet metal water leader pipe within the walls of a building becomes defective, such water leader shall be replaced with one which conforms to this Code.

**Section 414.6.**

All underground roof and area rainwater drainage piping within the walls of a building shall be cast-iron pipe and fittings and all such piping above ground shall be cast-iron pipe and fittings or galvanized wrought-iron or steel pipe with drainage fittings or approved standards.

**Section 414.7.**

Except the feeding of rainwater leader traps as herein required, no water leader or other rainwater piping shall be used as a soil, waste or vent pipe nor shall any soil, waste or vent pipe be used as a rainwater leader.

**Section 414.8.**

Rainwater leaders connecting to the storm water drainage system shall be effectively trapped if such water leader opening is within twelve (12) inches of a side or rear property line which does not abut on a public street or alley, or if such rainwater leader opening is within twelve (12) feet of any door or window or other source of ventilation or fresh air supply to any building. All water leaders may be served by one (1) master trap or each leader may be trapped separately. All water leader traps shall have their seals maintained by an automatic priming device, designed and installed for that purpose. When a rainwater drainage system is served by one (1) trap, such trap shall be provided with a fresh air inlet, not less than four (4) inches in diameter, which shall lead to the outer air and be provided with an approved cowl or

grating so installed as to prevent the entrance of soil, stones or other objectionable materials.

**Section 414.9.**

All roof boxes connected to concealed rainwater leaders (if made of light metal) shall be made by means of a lead stub and caulking ferrule which shall be firmly caulked with lead and oakum into said rainwater leader and the other end of lead stub to be firmly soldered to roof box. Cast-iron roof drains may be screwed or caulked to their respective rainwater leaders.

**Section 414.10.**

Rainwater from paved or unpaved areas shall not drain into the sanitary sewer system but may drain to the storm water drainage system. All such rainwater shall drain to a sump constructed of concrete with bottom and walls not less than four (4) inches in thickness. All sumps shall be provided with a trap formed by turning down the outlet pipe with a forty-five (45) degree bend so as to maintain a water seal of not less than twelve (12) inches. No part of such seal shall protrude inside the sump. All sumps shall be not less than eighteen (18) inches wide and eighteen (18) inches long and two (2) feet deep and be provided with suitable grates that may be removed for cleaning purposes.

**SEC. 9-2.15. TEMPORARY USE OF GAS.**

That Section 1208 of said Plumbing Code be amended to read as follows:

**Section 1208.**

A structure or building shall pass final inspection as per Section 108.5.6 of the Building Code prior to connection of the gas service by the gas supplier. Temporary gas connection to the gas source for a period not to exceed thirty (30) days may be granted prior to the final inspection if, in the opinion of the Building Official, the gas distributing line pipes and fittings are safe. If after thirty (30) days the structure or building has not passed final inspection, the Building Official shall have the authority to request the gas supplier to discontinue the service.

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 1994 Edition of the Uniform Plumbing Code in lieu of the 1991 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 16th day of January, 1996, by Councilmember Friedman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Dobbs, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Dobbs, Fisher, Friedman, McClanahan, McKinsey, Serpa, Mayor Lang

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:

By   
JEAN ADAMS, City Clerk

(SEAL)

APPROVED AS TO FORM: ~

By   
MICHAEL D. MILICH, City Attorney

Ord. No. 2972-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 6th day of February, 1996, Councilmember Fisher moved its final adoption, which motion being duly seconded by Councilmember McKinsey, was upon roll call carried and the ordinance adopted by the following vote:

AYES:	Councilmembers:	Dobbs, Fisher, Friedman, McClanahan, McKinsey, Serpa, Mayor Lang
NOES:	Councilmembers:	None
ABSENT:	Councilmembers:	None

ATTEST:   
JUDY C. HALL, Acting City Clerk

APPROVED:   
MAYOR RICHARD A. LANG

Effective Date: March 7, 1996

Clerk

ORDINANCE NO. 2973 -C.S.

AN ORDINANCE AMENDING CHAPTER 8 OF TITLE IX OF THE MODESTO MUNICIPAL CODE RELATING TO THE DANGEROUS BUILDINGS CODE.

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

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

**CHAPTER 8 - DANGEROUS BUILDINGS CODE**

**SEC. 9-8.01. ADOPTION BY REFERENCE OF "DANGEROUS BUILDINGS 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 Code for the Abatement of Dangerous Buildings, 1994 Edition" published by the International Conference of Building Officials, which said Code provides for a just, equitable and practicable method, to be cumulative and in addition to any other remedy available at law, whereby buildings or structures which from any cause endanger the life, limb, health, morals, property, safety or welfare of the general public or their occupants, may be required to be repaired, vacated or demolished, and providing procedures for processing appeals on decisions made by the Building Official, and providing for enforcement of orders, performance or work, repair or demolition, and for recovery of costs of repair or demolition, as hereinafter amended, deleted and added to, is hereby adopted by reference as the Dangerous Buildings Code of the City of Modesto.

**SEC. 9-8.02. TITLE.**

That Section 101 of said Dangerous Buildings Code be amended to read as follows:

**Section 101.**

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

**SEC. 9-8.03. BOARD OF APPEALS.**

That Section 205 of said Dangerous Buildings Code be amended to read as follows:

**Section 205.**

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. Appeals to the Board shall be processed in accordance with the provisions contained in Section 501 of this Code.

**SEC. 9-8.04. DANGEROUS BUILDINGS.**

That Section 302 of said Dangerous Buildings Code be amended to read as follows:

**Section 302.1.**

For the purpose of this Code, any building or structure which has any or all of the conditions or defects hereinafter described shall be deemed to be a dangerous building, unless the owner, or any other person entitled to service under Section 401.3, shall establish to the satisfaction of the Building Official or the Board of Building Appeals, as the case may be, that such conditions do not exist to the extent that the life, health, property, or safety of the public or its occupants are endangered.

- (a) Whenever any door, aisle, passageway, stairway or other means of exit does not comply with the minimum requirements of the Building Code of the City of Modesto or is not of sufficient width or size, or is not so arranged as to provide safe and adequate means of exit in case of fire or panic.
- (b) Whenever the stress in any materials, members or portions thereof, due to all dead loads, live loads, and lateral loads, is more than one and one-half ( $1\frac{1}{2}$ ) times the working stress of stresses allowed in the Building Code of the City of Modesto, for new buildings of similar structure, purpose or location.

- (c) Whenever any portion thereof has been damaged by fire, earthquake, wind, flood, or by any other cause, to such an extent that the structural strength or stability thereof is less than it was before such catastrophe and is less than the minimum requirements of the Building Code of the City of Modesto, for new buildings of similar structure, purpose or location.
- (d) Whenever any portion or member or appurtenance thereof is likely to fail, or to become detached or dislodged, or to collapse and thereby injure persons or damage property.
- (e) Whenever any portion of a building, or any member, appurtenance or ornamentation on the exterior thereof is not of sufficient strength or stability, or is not so anchored, attached or fastened in place so as to be capable of resisting a wind pressure of one-half of that specified in the Building Code of the City of Modesto for new buildings of similar structure, purpose or location without exceeding the working stresses permitted in the Building Code of the City of Modesto for such buildings.
- (f) Whenever any portion thereof has wracked, warped, buckled or settled to such an extent that walls or other structural portions have less resistance to winds or earthquakes than is required in the case of similar new construction.
- (g) Whenever the building or structure, or any portion thereof, because of (i) dilapidation, deterioration, or decay; (ii) faulty construction; (iii) the removal, movement or instability of any portion of the ground necessary for the purpose of supporting such building; (iv) the deterioration, decay or inadequacy of its foundation; or (v) any other cause, is likely to partially or completely collapse.
- (h) Whenever, for any reason, the building or structure, or any portion thereof, is unsafe for the purpose for which it is being used.
- (i) Whenever the exterior walls or other vertical structural members list, lean or buckle to such an extent that a

plumb line passing through the center of gravity does not fall inside the middle one-third of the base.

- (j) Whenever the building or structure, exclusive of the foundation, shows thirty-three (33) percent or more damage or deterioration of its supporting member or members, or fifty (50) percent damage or deterioration of its nonsupporting members, enclosing or outside walls or coverings.
- (k) Whenever the building or structure has been so damaged by fire, wind, earthquake or flood, or has become so dilapidated or deteriorated as to become (i) an attractive nuisance to children; (ii) a harbor for vagrants, criminals, or immoral persons; or as to (iii) enable persons to resort thereto for the purpose of committing unlawful or immoral acts.
- (l) Whenever any building or structure has been constructed, exists or is maintained in violation of any specific requirement or prohibition applicable to such building or structure provided by the building regulations of this City, as specified in the Building Code of the City of Modesto, Housing Code of the City of Modesto, or any other law or ordinance of this State or City relating to the condition, location, or structure of buildings.
- (m) Whenever any building or structure, whether or not erected in accordance with all applicable law and ordinances, has in any nonsupporting part, member or portion, less than fifty (50) percent or in any supporting part, member, or portion less than sixty-six (66) percent of the (i) strength, (ii) fire-resisting qualities or characteristics or (iii) weather-resisting qualities or characteristics required by law in the case of a newly constructed building of like area, height and occupancy in the same location.
- (n) Whenever a building or structure, used or intended to be used for dwelling purposes, because of inadequate maintenance, dilapidation, decay, damage, faulty construction or arrangement, inadequate light, air or sanitation facilities, or otherwise, is determined by the

Health Officer, in the exercise of his discretion, to be unsanitary, unfit for human habitation or in such a condition that is likely to cause sickness or disease.

- (o) Whenever any building or structure, because of obsolescence, dilapidated condition, deterioration, damage, inadequate exits, lack of sufficient fire-resistive construction, faulty electric wiring, gas connections or heating apparatus, or other cause, is determined by the Fire Chief, in the exercise of his discretion, to be a fire hazard.
- (p) Whenever any building or structure is in such a condition as to constitute a public nuisance known to the common law or in equity jurisprudence.
- (q) Whenever any portion of a building or structure remains on a site after the demolition or destruction of the building or structure or whenever any building or structure is abandoned for a period in excess of six (6) months so as to constitute such building or portion thereof an attractive nuisance or hazard to the public.
- (r) Whenever any other conditions or defects exist to the extent that the life, health, property, or safety of the public or its occupants are endangered.

#### Section 302.2.

No building shall be determined to be a fire hazard pursuant to subsection 302.1(a) hereof solely due to a lack of a Standard Automatic Fire Extinguishing System in the basement thereof, provided the entire basement is equipped with an Automatic Fire Detection and Alarm System which is installed and maintained in conformance with the Modesto Fire Code standards 10-2 and 10-3 and other nationally recognized standards. Such Automatic Fire Detection and Alarm System installation and maintenance shall include all of the following:

- (a) The System shall be directly connected to a central station or commercial alarm organization acceptable to the Fire Chief.

- (b) All System components shall be UL listed.
- (c) All System components; communication, maintenance, and testing contracts; and other related items shall be installed and maintained in conformance with Section 1007.3.1 of the Uniform Fire Code of the City of Modesto and nationally recognized standards.
- (d) Maintenance and testing contracts shall include, at a minimum, such annual inspection and testing as is required by the Modesto Fire Code standard 10-4 and nationally recognized standards and shall be performed by a commercial alarm organization acceptable to the Fire Chief.
- (e) A current copy of the contract between the owner or lessee of the basement and the commercial alarm organization shall be kept on file with the Fire Chief at all times.

### **Section 302.3.**

Nothing in this section shall be construed as providing an alternate method of construction for those buildings required to install a Standard Automatic Fire Extinguishing System pursuant to Section 904 of the Building Code of the City of Modesto, nor as permitting less frequent inspection or testing of systems required to be tested quarterly pursuant to Title 19 of the California Code of Regulations.

### **SEC. 9-8.05. NOTICE AND ORDER.**

That subsection 401.25 of Section 401 of said Dangerous Buildings Code be amended to read as follows:

#### **Section 401.25.**

Statements advising (1) that any person having any record title or legal interest in the building may appeal from the notice and order or any action of the Building Official to the Board of Building Appeals, provided the appeal is made in writing as provided in this Code, and filed with the Building Official within thirty (30) days from the date of service of such notice and order;

(ii) that any appellant may further appeal any decision of the Board of Building Appeals to the City Council, provided the appeal is made in writing as provided in this Code and filed with the City Clerk within fifteen (15) days from the date of the decision of the Board of Building Appeals; and (iii) that failure to file such appeals will constitute a waiver of all right to administrative hearings and determination of the matter.

#### SEC. 9-8.06. RECORDATION OF NOTICE AND ORDER.

That Section 402 of said Dangerous Buildings Code be amended to read as follows:

##### Section 402.

1. Upon issuing a notice and order, the Building Official may, in the exercise of his discretion, 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 correction 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, or an appeal has been granted declaring the building to not be substandard, the Building Official shall file a new certificate with the County Recorder certifying that the building has been demolished, that all required corrections have been made, or that an appeal has been granted so that the building is no longer substandard, whichever is appropriate.
2. When the Building Official has not, in the exercise of his discretion, recorded a certificate under the provisions of subsection (a) of this section, if compliance is not had within the time specified in the notice and order, and if (1) no appeal has been properly and timely filed or (2) an appeal has been heard and denied, the Building Official shall at that time file a certificate in the Office of the County Recorder, in accordance with and subject to the provisions set forth in subsection (a) of this section.

## SEC. 9-8.07. GENERAL.

That subsections 501.1 and 501.2 of Section 501 of said Dangerous Buildings Code be amended to read as follows:

### Section 501.1.

**Form of Appeal.** Any person entitled to service under Section 401.3 may appeal from any notice and order or any action of the Building Official under this Code by filing at the office of the Building Official within 30 days from the date of the service of such order, a written appeal containing:

1. A heading in the words: "Before the Board of Building Appeals of the City of Modesto."
2. A caption reading: "Appeal of \_\_\_\_\_," giving the names of all appellants participating in the appeal.
3. 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.
4. A brief statement in ordinary and concise language of that specific order or action protested, together with any material facts claimed to support the contentions of the appellant.
5. A brief statement in ordinary and concise language of the relief sought, and the reasons why it is claimed the protested order or action should be reversed, modified or otherwise set aside.
6. The signatures of all parties named as appellants, and their official mailing addresses.

### Section 501.2.

**Procedure for Appeal.** Except as otherwise provided in this Code, appeals shall be processed pursuant to the procedure of the Board of Building Appeals as set forth in Section 105 of the Building Code.

**SEC. 9-8.08. SCHEDULING AND NOTICING APPEAL FOR HEARING.**

That subsection 501.3 of Section 501 of said Dangerous Buildings Code is hereby deleted.

**SEC. 9-8.09. DUTIES AND RESPONSIBILITIES OF THE BOARD OF BUILDING APPEALS.**

That Section 601 of said Dangerous Buildings Code is hereby deleted.

**SEC. 9-8.10. FORM OF NOTICE OF HEARING.**

That Section 602 of said Dangerous Buildings Code is hereby deleted.

**SEC. 9-8.11. BOARD OF BUILDING APPEALS MAY REQUEST REPORTS.**

That Section 603 of said Dangerous Buildings Code be amended to read as follows:

**Section 603.**

Whenever in the course of any proceedings taken hereunder, the Board of Building Appeals shall have cause to request additional information, the same may be requested of the Building Department, the Fire Department, the Health Department, or any other agencies charged by law with enforcement of health or safety requirements of local or State law.

**SEC. 9-8.12. FORM OF DECISION.**

That Section 604 of said Dangerous Buildings Code be amended to read as follows:

**Section 604.**

Decisions of the Board of Dangerous Building Appeals shall be in writing and shall contain findings of fact, a determination of the issues presented, and the requirements to be complied with. A copy of this decision shall be delivered to the appellant personally or sent to him by certified mail, postage prepaid, return receipt requested.

**SEC. 9-8.13. EFFECTIVE DATE OF DECISION.**

That Section 605 of said Dangerous Buildings Code be amended to read as follows:

**Section 605.**

The effective date of decisions of the Board of Building Appeals shall be as stated therein.

**SEC. 9-8.14. COMPLIANCE.**

That subsections 701.1 and 701.2 of Section 701 of said Dangerous Buildings Code be amended to read as follows:

**Section 701.1.**

**General.** After any order of the Building Official, the Board of Building Appeals, or the City Council made pursuant to this Code shall have become final, no person to whom any such order is directed shall fail, neglect or refuse to obey any such order. It shall be unlawful for any person to so fail, neglect or refuse to obey any such order.

**Section 701.2.**

**Failure To Obey Order.** If, after any order of the Building Official, the Board of Building Appeals, or the City Council made pursuant to this Code has become final, the person to whom such order is directed shall fail, neglect or refuse to obey such order, the Building Official may (i) cause such person to be prosecuted under subsection 701.1 of this section or (ii) institute any appropriate action to abate such building as a public nuisance.

**SEC. 9-8.15. COSTS.**

That subsection 801.2 of Section 801 of said Dangerous Buildings Code be amended to read as follows:

**Section 801.2.**

**Costs.** Initially, the cost of such work shall be paid from the General Fund of the City. Such costs may be recovered by a special assessment against the property involved, or may be made a personal obligation of the property owner or both, whichever the City Council may determine appropriate. Such recovered costs shall be deposited in the General Fund of the City. Any money received by the City for the sale of buildings or structures shall be credited against such costs, and any excess over and above such costs shall be refunded to the property owner.

**SEC. 9-8.16. REPAIR AND DEMOLITION FUND.**

That Section 802 of said Dangerous Buildings Code is hereby deleted.

**SEC. 9-8.17. REPAYMENT OF COSTS.**

That Section 912 of said Dangerous Buildings Code is hereby amended to read as follows:

**Section 912.**

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. 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 1994 Edition of the Uniform Code for the Abatement of Dangerous Buildings Code in lieu of the 1991 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 dangerous buildings 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 16th day of January, 1996, by Councilmember Friedman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Dobbs, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Dobbs, Fisher, Friedman, McClanahan, McKinsey, Serpa, Mayor Lang

NOES: Councilmembers: None

ABSENT: Councilmembers: None

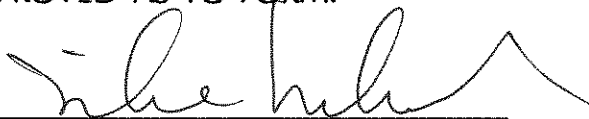
APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:

By   
JEAN ADAMS, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

Ord. No. 2973-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 6th day of February, 1996, Councilmember Fisher moved its final adoption, which motion being duly seconded by Councilmember McKinsey, was upon roll call carried and the ordinance adopted by the following vote:

AYES:	Councilmembers:	Dobbs, Fisher, Friedman, McClanahan, McKinsey, Serpa, Mayor Lang
NOES:	Councilmembers:	None
ABSENT:	Councilmembers:	None

APPROVED:   
MAYOR RICHARD A. LANG

ATTEST:   
JUDY C. HALL, Acting City Clerk

Effective Date: March 7, 1996

Clerk

ORDINANCE NO. 2974 -C.S.

AN ORDINANCE AMENDING CHAPTER 9 OF TITLE IX OF THE MODESTO MUNICIPAL 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 IX of the Modesto Municipal Code is hereby amended to read as follows:

CHAPTER 9 - HOUSING CODE

SEC. 9-9.01. ADOPTION BY REFERENCE OF "HOUSING 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 Housing Code, 1994 Edition", excepting Chapter 13 thereto, as published by the International Conference of Building Officials, which said Code provides for proper regulations for the alteration, relocation, removing, demolition, sanitation, occupancy, vacation, equipment, use and maintenance of residential buildings within the City, and provides procedures for processing appeals on decisions made by the Building Official, and provides for enforcement of orders, performance of repair or demolition work, and for recovering the costs of repair or demolition, as hereinafter amended, deleted and added to, is hereby adopted by reference as the Housing Code of the City of Modesto.

SEC. 9-9.02. TITLE.

That Section 101 of said Housing Code be amended to read as follows:

Section 101.

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

SEC. 9-9.03. BOARD OF APPEALS.

That Section 203 of said Housing Code be amended to read as follows:

**Section 203.**

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. Appeals to the Board shall be processed in accordance with the provisions contained in Section 1201 of this Code.

**SEC. 9-9.04. NOTICE AND ORDER.**

That subsection 1101.2.5 of Section 1101 of said Housing Code be amended to read as follows:

**Section 1101.2.5.**

Statements advising (i) that any person having any record title or legal interest in the building may appeal from the notice and order or any action of the Building Official to the Board of Building Appeals, provided the appeal is made in writing as provided in this Code, and filed with the Building Official within thirty (30) days from the date of service of such notice and order; (ii) that any appellant may further appeal any decision of the Board of Building Appeals to the City Council, provided the appeal is made in writing as provided in this Code and filed with the City Clerk within fifteen (15) days from the date of the decision of the Board of Building Appeals; and (iii) that failure to file such appeals will constitute a waiver of all right to administrative hearings and determination of the matter.

**SEC. 9-9.05. RECORDATION OF NOTICE AND ORDER.**

That Section 1102 of said Housing Code be amended to read as follows:

**Section 1102.**

1. Upon issuing a notice and order, the Building Official may, in the exercise of his discretion, 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, or an appeal has been granted declaring the building to not be substandard, the Building Official shall file a new certificate with the County Recorder certifying that the building has been demolished, that all required corrections have been made, or that an appeal has been granted so that the building is no longer substandard, whichever is appropriate.

2. When the Building Official has not, in the exercise of his discretion, recorded a certificate under the provisions of subsection 1 of this section, if compliance is not had within the time specified in the notice and order, and if (1) no appeal has been properly and timely filed or (2) an appeal has been heard and denied, the Building Official shall at that time file a certificate in the Office of the County Recorder, in accordance with and subject to the provisions set forth in subsection 1 of this section.

**SEC. 9-9.06. STANDARDS TO BE FOLLOWED.**

That Section 1103 of said Housing Code be amended to read as follows:

**Section 1103.**

**Standards to be Followed.** The following standards shall be followed by the Building Official (and by the Board of Building Appeals, and the City Council, if appeals are taken) in ordering the repair, vacation or demolition of any substandard building or structure:

- (1) If any building is declared a substandard building under this Code, it shall either be repaired in accordance with the current Building Code or shall be demolished at the option of the building owner.
- (2) 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.

## SEC. 9-9.07. GENERAL.

That subsections 1201.1 and 1201.2 of Section 1201 of said Housing Code be amended to read as follows:

### Section 1201.1.

**Form of Appeal.** Any person entitled to service under Section 1101.3 may appeal from any notice and order or any action of the Building Official under this Code by filing at the office of the Building Official within 30 days from the date of the service of such order, a written appeal containing:

- (a) A heading in the words: "Before the Board of Building Appeals of the City of Modesto."
- (b) A caption reading: "Appeal of \_\_\_\_\_," giving the names of all appellants participating in the appeal.
- (c) 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.
- (d) A brief statement in ordinary and concise language of that specific order or action protested, together with any material facts claimed to support the contentions of the appellant.
- (e) A brief statement in ordinary and concise language of the relief sought, and the reasons why it is claimed the protested order or action should be reversed, modified or otherwise set aside.
- (f) The signatures of all parties named as appellants, and their official mailing addresses.

### Section 1201.2.

**Procedure for Appeal.** Except as otherwise provided in this Code, appeals shall be processed pursuant to the procedure of the Board of Building Appeals as set forth in Section 105 of the Building Code.

**SEC. 9-9.08. SCHEDULING AND NOTICING APPEAL FOR HEARING.**

That subsection 1201.3 of Section 1201 of said Housing Code is hereby deleted.

**SEC. 9-9.09. COSTS.**

That subsection 1501.2 of Section 1501 of said Housing Code be amended to read as follows:

**Section 1501.2.**

**Costs.** Initially, the cost of such work shall be paid from the General Fund of the City. Such costs may be recovered by a special assessment against the property involved, or may be made a personal obligation of the property owner or both, whichever the City Council may determine appropriate. Such recovered costs shall be deposited in the General Fund of the City. Any money received by the City for the sale of buildings or structures shall be credited against such costs, and any excess over and above such costs shall be refunded to the property owner.

**SEC. 9-9.10. REPAIR AND DEMOLITION FUND.**

That Section 1502 of said Housing Code is hereby deleted.

**SEC. 9-9.11. REPAYMENT OF COSTS.**

That Section 1612 of said Housing Code be amended to read as follows:

**Section 1612.**

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. 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 1994 Edition of the Uniform Housing Code in lieu of the 1991 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 housing 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 16th day of January, 1996, by Councilmember Friedman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Dobbs, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Dobbs, Fisher, Friedman, McClanahan, McKinsey, Serpa, Mayor Lang

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: 

RICHARD A. LANG, Mayor

ATTEST:

By 

JEAN ADAMS, City Clerk

(SEAL)

APPROVED AS TO FORM:

By 

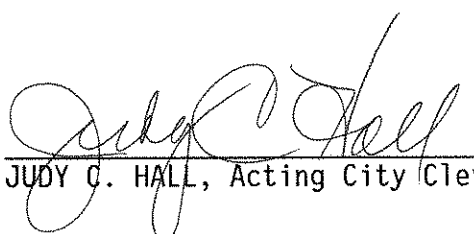
MICHAEL D. MILICH, City Attorney

Ord. No. 2974-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 6th day of February, 1996, Councilmember Fisher moved its final adoption, which motion being duly seconded by Councilmember McKinsey, was upon roll call carried and the ordinance adopted by the following vote:

AYES:	Councilmembers:	Dobbs, Fisher, Friedman, McClanahan, McKinsey, Serpa, Mayor Lang
NOES:	Councilmembers:	None
ABSENT:	Councilmembers:	None

ATTEST:   
JUDY C. HALL, Acting City Clerk

APPROVED:   
MAYOR RICHARD A. LANG

Effective Date: March 7, 1996

ORDINANCE NO. 2975-C.S.

AN ORDINANCE AMENDING CHAPTER 3 OF TITLE IX 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. Chapter 3 of Title IX of the Modesto Municipal Code is hereby amended to read as follows:

CHAPTER 3 - ELECTRICAL CODE

ARTICLE 1. GENERAL PROVISIONS

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 1993 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.

SEC. 9-3.102. ENFORCEMENT.

That Article 90.4 of said Electrical Code be amended to read as follows:

Article 90.4.

- (a) **General.** The Building Official is hereby authorized and directed to enforce, all the provisions of this Code. For such purpose he shall have the powers of a law enforcement officer. The Building Official may waive specific requirements in this Code or permit alternative methods where it is assured that equivalent objectives can be achieved by establishing and maintaining effective safety.

- (b) **Deputies.** In accordance with the procedure and with the approval of the chief appointing authority of the City, the Building Official may appoint such number of officers, inspectors and assistants, and other employees as shall be authorized from time to time. He may deputize such employees as may be necessary to carry out the functions of the Building Department.
- (c) **Right of Entry.** Whenever necessary to make an inspection to enforce any of the provisions of this Code, or whenever the Building Official or his authorized representative has reasonable cause to believe that there exists in any building or upon any premises, any condition which makes such building or premises unsafe as defined in Section 102 of the Building Code, the Building Official or his authorized representative may enter such building or premises at all reasonable times to inspect the same or to perform any duty imposed upon the Building Official by this Code; provided that if such building or premises be occupied, he shall first present proper credentials and request entry, and if such building or premises be unoccupied, he shall first make a reasonable effort to locate the owner or other persons having charge or control of the building or premises and request entry. If such entry is refused, the Building Official or his authorized representative shall have recourse to every remedy provided by law to secure entry.

When the Building Official or his authorized representative shall have first obtained a proper inspection warrant or other remedy provided by law to secure entry, no owner or occupant or any other person having charge, care or control of any building or premises shall fail or neglect, after proper request is made as herein provided, to properly permit entry therein by the Building Official or his authorized representative for the purpose of inspection and examination pursuant to this Code. Any person violating this subsection shall be guilty of a misdemeanor.

- (d) **Stop Orders.** Whenever any work is being done contrary to the provisions of this Code, the Building Official may order the work stopped by notice in writing served on any persons engaged in the doing or causing such work to be done; and any such persons shall forthwith stop such

work until authorized by the Building Official to proceed with the work.

- (e) **Authority To Condemn Equipment.** Whenever the Building Official learns or ascertains that any equipment, as defined in this Code, has become hazardous to life, health or property, he shall order, in writing, that such equipment be restored to a condition of safety or be dismantled and removed from its present location. The written notice shall fix a time limit for compliance with such order. No person shall use or maintain the defective equipment after receiving such notice.
- (f) **Interpretation.** The Building Official is hereby authorized and directed to enforce all the provisions of this Code. 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 conformance with the intent and purpose of this Code. Such interpretations may be appealed to the Board of Building Appeals.

- (g) **Nonresponsibility of City.** Neither the City, nor any department, board, commission, officer or employee thereof shall be held liable or responsible for any damage or injury caused by or resulting from the issuance of or failure to issue or the revocation of any permit or certificate of inspection or the making of any inspection under the provisions of this Code.

The language used in this Code is intended to convey the common and accepted meaning familiar to the electrical industry.

The Building Official is hereby authorized to determine the intent and meaning of any provisions of this Code.

**SEC. 9-3.103. FORMAL INTERPRETATIONS.**

That Article 90.6 of said Electrical Code is hereby deleted.

**SEC. 9-3.104. VIOLATIONS.**

That Article 90.10 be added to said Electrical Code to read as follows:

**Article 90.10.**

It shall be unlawful for any person, firm or corporation to erect, install, alter, repair, relocate, add to, replace, use or maintain electrical systems or parts thereof or cause the same to be done contrary to or in violation of this Code. Maintenance of equipment which was unlawful at the time it was installed and which would be unlawful under this Code, if installed after the effective date of this Code, shall constitute a continuing violation of this Code.

**SEC. 9-3.105. EXISTING EQUIPMENT.**

That Article 90.11 be added to said Electrical Code to read as follows:

**Article 90.11.**

Electrical systems, parts or components thereof, and other miscellaneous appliances connected thereto lawfully installed prior to the effective date of this Code, may have their existing use, maintenance or repair continued if the use, maintenance or repair is in accordance with the original design and location and is not a hazard to life, health, or property.

All electrical systems, parts or components thereof, and other miscellaneous appliances connected thereto, both existing and new, and all parts thereof, shall be maintained in a safe condition. The owner or his designated representative shall be responsible for maintenance of the electrical system.

**SEC. 9-3.106. PERMIT REQUIRED.**

That Article 90.12 be added to said Electrical Code to read as follows:

**Article 90.12.**

- (a) No electrical wiring, devices, appliances, apparatus or equipment shall be installed within or on any building, structure or premises, nor shall any alteration or addition be made in any such existing electrical wiring, devices, appliances, apparatus or equipment without first securing a permit therefor from the Building Official.
- (b) A separate permit shall be obtained for each building or structure.

**SEC. 9-3.107. WORK NOT REQUIRING A PERMIT.**

That Article 90.13 be added to said Electrical Code to read as follows:

**Article 90.13.**

**Exempt Work.** An electrical permit shall not be required for the following:

- (a) Portable motors or other portable appliances energized by means of a cord or cable having an attachment plug end to be connected to an approved receptacle when that cord or cable is permitted by this Code.
- (b) Repair or replacement of fixed motors, transformers or fixed approved appliances of the same type and rating in the same location.
- (c) Temporary decorative lighting.
- (d) Repair or replacement of current-carrying parts of any switch, contractor or control device.
- (e) Reinstallation of attachment plug receptacles, but not the outlets therefor.
- (f) Repair or replacement of an overcurrent device of the required capacity in the same location.
- (g) Repair or replacement of electrodes or transformers of the same size and capacity for signs or gas tube system.

- (h) Taping joints.
- (i) Removal of electrical wiring.
- (j) Temporary wiring for experimental purposes in suitable experimental laboratories.
- (k) The wiring for temporary theater, motion picture or television stage sets.
- (l) Electrical wiring, devices, appliances, apparatus or equipment operating at less than 25 volts and not capable of supplying more than 50 watts of energy.
- (m) Low-energy power, control and signal circuits of Classes II and III as defined in this Code.
- (n) A permit shall not be required for the installation, alteration or repair of electrical wiring, apparatus or equipment or the generation, transmission, distribution or metering of electrical energy or in the operation of signals or the transmission of intelligence by a public or private utility in the exercise of its function as a serving utility.

Exemption from the permit requirements of this Code shall not be deemed to grant authorization for any work to be done in violation of the provisions of this Code or any other laws or ordinances of this jurisdiction.

#### **SEC. 9-3.108. APPLICATION FOR PERMIT.**

That Article 90.14 be added to said Electrical Code to read as follows:

##### **Article 90.14.**

Any person legally entitled to apply for and receive a permit shall make such application on forms provided for that purpose. He shall give a description of the character of the work proposed to be done, and the location, ownership, occupancy and use of the premises in connection therewith. The Building Official may require plans, specifications or drawings and such other information as he may deem necessary.

If the Building Official determines that the plans, specifications, draftings, descriptions or information furnished by the applicant is in compliance with this Code, he shall issue the permit applied for upon payment of the required fee as hereinafter fixed.

Applications for which no permit is issued within one hundred eighty (180) days following the date of application shall expire by limitation, and plans submitted for checking may thereafter be returned to the applicant or destroyed by the Building Official.

#### SEC. 9-3.109. TELEPHONE PERMIT PROCEDURE.

That Article 90.15 be added to said Electrical Code to read as follows:

##### Article 90.15.

The Building Official is hereby authorized to establish a system for the issuance of routine permits upon telephonic request and to issue such directive and regulations as are deemed necessary to govern the operation and administration of such a system. Said directives and regulations shall have the force and effect of law and a violation thereof shall constitute a misdemeanor. Such a system may provide for the payment of permit fees on permits issued by telephone on an accounts receivable basis.

#### SEC. 9-3.110. VALIDITY AND LENGTH OF PERMIT.

That Article 90.16 be added to said Electrical Code to read as follows:

##### Article 90.16.

- (a) **Validity.** The issuance or granting of a permit or approval of plans and specifications shall not be construed to be a permit for or an approval of any violation of any of the provisions of this Code or of any ordinance. No permit presuming to give authority to violate or cancel the provisions of this Code shall be valid.

The issuance of a permit based upon plans, specifications and other data shall not prevent the Building Official from thereafter requiring the correction of errors in said plans, specifications and other data, or from preventing building operations being carried on thereunder when in violation of this Code or of any other ordinance.

- (b) **Expiration.** Every permit issued by the Building Official under the provisions of this Code shall expire by limitation and become null and void if the building or work authorized by such permit is not commenced within one hundred eighty (180) days from the date of said permit, or if such building or work authorized by such permit is suspended or abandoned at any time after the work has commenced for a period of one hundred eighty (180) days, or if the building or work authorized by such permit is not completed seven hundred thirty (730) days from the date of such permit. Before such work can be recommenced, a new permit shall be first obtained to do so, and the fee therefor shall be half the amount required of a new permit for such work, provided no changes have been made or will be made in the original plans and specifications for such work; and provided further that such suspension or abandonment has not exceeded one (1) year.

Any permittee holding an unexpired permit may apply for an extension of time within which he may commence the work under that permit when he is unable to commence work within the time required by this section for good and satisfactory reasons. The Building Official may extend the time for action by the permittee for a period not exceeding one hundred eighty (180) days upon written request by the permittee showing that circumstances beyond the control of the permittee have prevented action from being taken. No permit shall be extended more than once. In order to renew action on a permit after expiration, the permittee shall pay a new full permit fee.

- (c) **Suspension or Revocation.** The Building Official may, in writing, suspend or revoke a permit issued under provisions of this Code whenever the permit is issued in error or on the basis of incorrect information supplied, or in violation of any ordinance or regulation or any of the provisions of this Code.

#### SEC. 9-3.111. COST OF PERMIT.

That Article 90.17 be added to said Electrical Code to read as follows:

**Article 90.17.**

- (a) **Permit Fee.** Every applicant for a permit to do work regulated by this Code shall state in writing on the application form provided for that purpose the character of work proposed to be done and the amount and kind in connection therewith, together with such information, pertinent thereto as may be required.

Such applicant shall pay for each permit issued at the time of issuance a fee in accordance with a schedule established by the Modesto City Council, which may be set or amended from time to time by City Council resolution.

- (b) **Investigation Fee.** Whenever any work for which a permit is required by this Code has been commenced without first obtaining said permit, a special investigation shall be made before a permit may be issued for such work.

An investigation fee, in addition to the permit fee, shall be collected whether or not a permit is then or subsequently issued. The investigation fee shall be equal to the amount of the permit fee required by this Code. The minimum investigation fee shall be the same as the minimum fee established by 90.17(a). The payment of such investigation fee shall not exempt any person from compliance with all other provisions of this Code nor from any penalty prescribed by law.

This provision shall not apply to emergency work when it shall be provided to the satisfaction of the Building Official that such work was urgently necessary and that it was not practical to obtain a permit therefor before the commencement of the work.

- (c) **Plan Review Fees.** When a plan or other data is required by Section 90.14, a plan review fee shall be paid at the time of submitting plans and specifications for review. The plan review fee for electrical work shall be equal to sixty-five (65) percent of the total fee as required by Section 90.17(a). When plans are incomplete or changed so as to

require additional review, a fee shall be charged at the rate as required by Section 90.17(a).

- (d) No permit fees shall be required for the issuance of electrical permits to governmental agencies; however, governmental agencies which obtain permits may be charged inspection fees to defray the actual cost of inspection services.

**SEC. 9-3.112. INSPECTION.**

That Article 90.18 be added to said Electrical Code to read as follows:

**Article 90.18.**

All work for which a permit is obtained under this Code shall be inspected by the Building Official.

That portion of any work intended to be concealed shall not be concealed until inspected and approved.

When the work is complete, a second or final inspection shall be made.

A final inspection approval may, upon written notice, be revoked by the Building Official if he finds that the work fails in any respect to comply with the requirements of this Code, or that the installation is unsafe, dangerous, or a hazard to life or property.

**SEC. 9-3.113. REQUEST FOR INSPECTION.**

That Article 90.19 be added to said Electrical Code to read as follows:

**Article 90.19.**

The Building Official may require that every request for inspection be filed at least one (1) day before such inspection is desired.

It shall be the duty of the person requesting inspection of any work regulated by this Code to provide access to and means for proper inspection of such work.

The Building Official shall not be liable for any expense entailed in the removal or replacement of any material required to allow the inspection.

**SEC. 9-3.114. DANGEROUS AND UNSAFE CONSTRUCTION.**

That Article 90.20 be added to said Electrical Code to read as follows:

**Article 90.20.**

- (a) Any portion of an electrical system found by the Building Official to be unsafe as defined herein is hereby declared to be a nuisance.
- (b) Whenever it is brought to the attention of the Building Official that any unsafe equipment or conditions exist or that any construction or work regulated by this Code is dangerous, a nuisance or a menace to life, health or property or otherwise in violation of this Code, the Building Official, upon determining such information to be fact, shall order any person, firm or corporation using or maintaining any such equipment or condition or responsible for the use or maintenance thereof to discontinue the use or maintenance thereof or to repair, alter, change, remove or demolish the same as he may consider necessary for the proper protection of life, health or property. The Building Official may order any person, firm or corporation supplying electricity to such equipment or system to discontinue supplying electricity thereto until such equipment or system is made safe to life, health or property.

Every such order shall be in writing, addressed to the permit holder and/or the owner, agent or person responsible for the premises in which such equipment or condition exists and shall specify the date or time for compliance with such order.

- (c) Refusal, failure or neglect to comply with any such notice or order shall be considered a violation of this Code.
- (d) When any electrical system is maintained in violation of this Code and in violation of any notice issued pursuant to the provisions of this section or where a nuisance exists in

any building or on a lot on which a building is situated, the Building Official shall institute any appropriate action or proceedings in any court of competent jurisdiction to prevent, restrain, correct or abate the violation or nuisance.

**SEC. 9-3.115. CONNECTION TO SERVICE.**

That Article 90.21 be added to said Electrical Code to read as follows:

**Article 90.21.**

It shall be unlawful for any person, firm or corporation to make connection from a source of electrical energy to supply electrical service to any electrical wiring, devices, appliances, apparatus or equipment for the installation of which a permit is required unless such person, firm or corporation shall have obtained satisfactory evidence that such electrical wiring, devices, appliances, apparatus or equipment are in all respects in conformity with all applicable legal provisions.

In addition, the structure or building shall pass final inspection as per Section 108.5.6 of the Building Code prior to connection to the electrical source. Temporary electrical connection to the electrical source for a period not to exceed thirty (30) days may be granted prior to the final inspection if in the opinion of the Building Official the electrical service is safe. If after thirty (30) days the structure or building has not passed final inspection, the Building Official shall have the authority to request the serving utility to disconnect the service.

It shall be unlawful for any person, firm or corporation to make connections from a source of electrical energy or to supply electrical service to any electrical wiring, devices, appliances, apparatus or equipment which has been disconnected or ordered to be disconnected by the Building Official or the use of which has been ordered by the Building Official to be disconnected until a certificate of approval has been issued by him authorizing the reconnection and use of such electrical wiring, devices, appliances, apparatus or equipment.

**SEC. 9-3.116. SPECIFIC REQUIREMENTS.**

That Article 90.22 be added to said Electrical Code to read as follows:

**Article 90.22.**

- (a) All installations, materials, devices, appliances, apparatus and equipment installed or used shall be in conformity with the provisions of this Code and with approved standards for safety of life and property.
- (b) Listing or labeling, as conforming to the Standards of the Underwriters' Laboratories, Inc., the National Bureau of Standards, the United States Bureau of Mines, or other nationally recognized laboratories shall be prima facie evidence of conformity with the approved standards for safety to life and property.
- (c) Previously used material shall be relisted or labeled as per item (b) above and shall not be reused in any work without the written approval obtained in advance from the Building Official.
- (d) The maker's name, trademark or other identification symbol shall be placed on all electrical materials, signs, devices, appliances and equipment used or installed under the provisions of this Code.
- (e) Not more than ten (10) outlets shall be permitted on any residential lighting circuit on No. 14 AWG wire and not more than thirteen (13) outlets on any residential lighting circuit on No. 12 AWG wire.
- (f) Where the service conduit is extended to furnish a support for the service drop wires, only rigid metal conduit of not less than one and one-fourth (1¼) inch trade size may be used and shall not extend more than thirty (30) inches beyond the last support.
- (g) Substandard service equipment shall be brought up to standard on any and all remodeling jobs or in any case where additional wiring is installed.
- (h) Conduits and equipment installed in metal suspension ceiling systems (T-bar).
  - (1) Sizes 3/4 and larger inch conduit(s) shall be supported by an approved trapeze method or

equivalent means. Wire supports shall not be used to support conduits or any equipment.

- (2) Conduits smaller than 3/4 shall be permitted to be supported by support wires except that multiple runs of conduits shall be supported by the methods described in the larger than 3/4 inch size conduits. Conduits or raceways supported by wires shall be secured laterally in each direction.
- (i) Automatic dishwashers, refrigerated coolers or any fixed motors rated over one-third horsepower or any fixed appliance or device rated over one thousand (1,000) watts shall be installed on a separate circuit with not less than No. 12 AWG wire.
- (j) Residential electrical ranges shall be wired with not less than No. 8 AWG copper or No. 6 AWG aluminum wire. Built-in cooking tops and ovens may have a smaller circuit run separately to each and shall not be smaller than No. 10 AWG copper.
- (k) Type NM and NMC nonmetallic sheath cable shall not be used in A, B, E, F, H, I, M, and S occupancies. Occupancies are defined in the Building Code.

EXCEPTION: Type NM and NMC nonmetallic sheath cable, may be used when R-3 occupancies are converted to E-3 day care occupancies with less than twenty (20) children.

- (l) In A, B, E, F, H, I, M, S, and U occupancies, a maximum of four (4) convenience outlets per circuit for No. 14 AWG wire and a maximum of six (6) convenience outlets per circuit for No. 12 AWG wire is allowed.
- (m) Aluminum wiring shall not be used except as follows: Stranded aluminum wiring shall be allowed in No. 8 or larger sizes only.
- (n) Electrical, telephone, communication and data system wiring penetrations of fire-resistive separations:

- (1) For penetrations of one-hour walls, the following is required: A length of EMT extends through the wall for a distance of at least thirty (30) inches from each face of the wall. The ends of the EMT are to be securely fastened. The ends of the EMT shall terminate in approved connectors, and the EMT must be of a size permitted by the National Electrical Code. Ends are to be packed with rock wool or equal. Where the EMT penetrates gypsum wallboard, the void between the EMT and the wallboard must be solidly packed on both sides with wallboard compound to the thickness of the wallboard.
  - (2) For penetrations of two-hour walls, the following is required: Same as (n)(1) except EMT extends sixty (60) inches from each face of the wall.
- (o) Nonmetallic sheath cable shall be protected to eight (8) feet, zero (0) inches above the floor with half-inch gypsum board covering two (2) studs minimum or equal. Board runners to be run the entire length of all nonmetallic sheath cable in exposed garage areas above eight (8) feet.
  - (p) Residential occupancies as used in this Code means any R occupancy as defined in the Building Code.
  - (q) Dishwasher shall be cord connected.
  - (r) A concrete encased grounding electrode conductor shall be required in industrial, commercial and residential occupancies. This shall be limited to new construction only. Service changes in existing occupancies shall comply with other applicable code sections.
  - (s) All electrical wiring and neon tubing shall be totally enclosed within an approved material or barrier to prevent physical contact up to a height of 8 feet above finished grade or floor level.
  - (t) Buildings in R-1 Zones shall be served by one electrical service. Additional buildings and structures on the premises shall not have an additional service installed unless evidence is submitted that demonstrates that the

building or structure meets all applicable zoning and building codes and that permits have been obtained and all applicable fees have been paid.

**SEC. 9-3.117. BOARD OF APPEALS.**

That Article 90.23 be added to said Electrical Code to read as follows:

**Article 90.23.**

The Board of Building Appeals established by Section 105 of the Building Code of the City of Modesto shall determine the suitability of alternate materials and types of construction and provide for reasonable interpretations of the provisions of this Code and hear appeals from decisions of the Building Official regarding the intent and meaning of any provisions of this Code.

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 1993 Edition of the National Electrical Code in lieu of the 1990 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. 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 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 16th day of January, 1996, by Councilmember Friedman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Dobbs, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Dobbs, Fisher, Friedman, McClanahan, McKinsey, Serpa, Mayor Lang

NOES: Councilmembers: None

ABSENT: Councilmembers: None

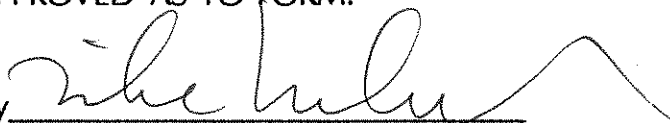
APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:

By   
JEAN ADAMS, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

Ord. No. 2975-C.S.

FINAL ADOPTION CLAUSE

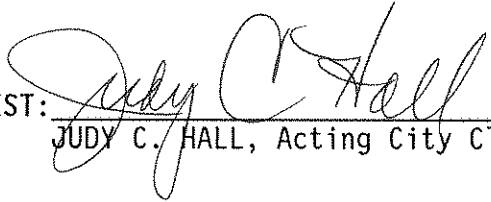
The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 6th day of February, 1996, Councilmember Fisher moved its final adoption, which motion being duly seconded by Councilmember McKinsey, was upon roll call carried and the ordinance adopted by the following vote:

AYES:	Councilmembers:	Dobbs, Fisher, Friedman, McClanahan, McKinsey, Serpa, Mayor Lang
NOES:	Councilmembers:	None
ABSENT:	Councilmembers:	None

APPROVED:

  
MAYOR RICHARD A. LANG

ATTEST:

  
JUDY C. HALL, Acting City Clerk

Effective Date: March 7, 1996

*Clerk*

ORDINANCE NO. 2976-C.S.

AN ORDINANCE AMENDING CHAPTER 1 OF TITLE III OF THE MODESTO MUNICIPAL CODE RELATING TO FIRE CODE AND HAZARDOUS MATERIALS.

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

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

**CHAPTER 1. FIRE CODE AND HAZARDOUS MATERIALS**

**ARTICLE 1. FIRE CODE**

**SEC. 3-1.101. ADOPTION BY REFERENCE OF "UNIFORM FIRE CODE".**

That certain document, three (3) copies of which are on file in the Office of the City Clerk of the City of Modesto, being marked and designated as "Uniform Fire Code, 1994 Edition," together with appendices I-C, II-B, II-E, II-F, II-I, III-A, IV-A, V-A, VI-A, VI-B, VI-C, VI-D, VI-E, VI-F, and VI-G thereto, as adopted and revised from time to time by the International Fire Code Institute, and as compiled and published by the International Conference of Building Officials, The Western Fire Chiefs' Association, and the Association of International Fire Chiefs, which Code prescribes regulations governing conditions hazardous to life and property from fire and explosion, as hereinafter amended, deleted and added to, be and the same is hereby adopted by reference as the Fire Code of the City of Modesto for the protection of the public health and safety.

**SEC. 3-1.102. AUTOMATIC SPRINKLER SYSTEMS.**

Section 1003.2 of said Fire Code is amended to read as follows:

Subsections 9 and 10 are hereby added to Section 1003.2 of said Fire Code to read as follows:

- 9. **New Construction.** An approved automatic fire sprinkler system is required in all new buildings and structures constructed on or after the effective date of this ordinance, notwithstanding the use and occupancy thereof, when the

total floor area under one roof exceeds five thousand (5,000) square feet.

**EXCEPTION:** Buildings and structures classified as R-3 and U-1 occupancies.

10. **Existing Buildings and Structures.** An approved automatic fire sprinkler system shall be installed in all existing buildings and structures when additions, alterations, or repairs are made within any twelve-month period that exceed fifty (50) percent of the total value (current county assessed valuation) of an existing building or structure that exceeds five thousand (5,000) square feet or which result in said building or structure exceeding five thousand (5,000) square feet.

**EXCEPTION:**

1. Buildings and structures classified as R-3 and U-1 occupancies.
2. Each portion of an existing building or structure separated by one or more area separation walls, constructed in accordance with Section 504.6 of the current adopted edition of the Uniform Building Code, when each portion does not exceed five thousand (5,000) square feet.

#### **SEC. 3-1.103. SPRINKLER SYSTEM SUPERVISION ALARMS.**

Section 1003.3 of said Fire Code is amended to read as follows:

All valves controlling the water supply for automatic sprinkler systems and water-flow switches on all sprinkler systems shall be electrically supervised when the number of sprinklers are:

1. Twenty or more in Group I, Division 1.1 and 1.2 Occupancies.
2. One hundred or more in all other occupancies.

Valve monitoring and water-flow alarm and trouble signals shall be distinctly different and shall be automatically transmitted to a

UL LISTED central station or proprietary supervision station as defined by U.F.C. Standard 10-2, or, when approved by the building official with the concurrence of the chief, shall emit an audible signal at a constantly attended location.

**EXCEPTION:** Underground key or hub valves in roadway boxes provided by the City or a public utility need not be monitored.

#### **SEC. 3-1.104. INCINERATORS AND OPEN BURNING.**

Subsections 2 and 3 of Section 1102 of said Fire Code are amended to read as follows:

2. **Incinerators.** The use of incinerators is prohibited inside the City limits of Modesto.
3. **Open Burning.** No person shall kindle, conduct, or maintain any burning of grass, weeds, agricultural trimmings, or other combustibles or authorize any such fire to be kindled, conducted, or maintained without a permit as required by the San Joaquin Valley Unified Air Pollution Control District and compliance with all safeguards pursuant thereto.

Any such permitted burning shall be restricted to agricultural purposes and confined to areas of the City in which agricultural uses are lawful.

#### **SEC. 3-1.105. TYPE OF LOCK OR LATCH FOR PREMISES WHERE GOLD OR BULLION IS TRADED.**

Section 1207 of said Fire Code is amended to add subsection 8 to read as follows:

8. **Special Latching Devices.** An exit door from a business which has as its primary commercial activity the sale, resale, exchange, or trade of gold or silver coin, bullion, or metal ore may be equipped with a locking mechanism which is not openable from inside without the use of a key or which requires special knowledge or effort so long as all of the following conditions are met during all times that the business is open to the public:

1. The locking mechanism is connected to a smoke detector system in such a manner that activation or malfunction of the smoke detector system results in automatically unlocking the exit door;
2. The locking mechanism is connected to the electrical power supply for the building in such a manner that any loss of electrical power to the building results in automatically unlocking the exit door;
3. Two (2) employees must be within the area of the premises used for retail purposes, including adjacent service and utility rooms, at all times; and
4. A sign is permanently posted upon the premises so as to be readily seen by any person or persons entering the business stating that ingress and egress are electronically controlled by the management.

**SEC. 3-1.106. FUELING AND DEFUELING.**

Section 2402.3.3 of said Fire Code is amended to read as follows:

**Transfer Personnel.** During fuel transfer operations of any passenger-occupied aircraft, a qualified person shall be in control of each transfer nozzle and another qualified person shall be in immediate control of the fuel-pumping equipment to shut off or otherwise control the flow of fuel from the time fueling operations are begun until they are completed.

**EXCEPTION:** For underwing refueling, the person stationed at the point of fuel intake is not required.

**SEC. 3-1.107. PORTABLE UNVENTED HEATING APPLIANCES.**

Section 6105.3 of said Fire Code is amended to read as follows:

**Location.** The use of listed portable unvented oil-burning heating appliances is limited to supplemental heating in Group S, Division 4 and U occupancies.

**SEC. 3-1.108. EXPLOSIVE MATERIALS PROHIBITED AND LIMITED ACTS.**

Subsections 1 and 2 of Section 7701.7 of said Fire Code are amended to read as follows:

1. **Manufacturing.** Explosive materials shall not be manufactured within the City limits of Modesto.
2. **Limits established by law.** The storage of explosives and blasting agents is restricted to those areas of the City zoned as Heavy Industrial Zone (M-2).

**EXCEPTION:**

1. Temporary storage for use in connection with approved blasting operations conducted in accordance with all applicable provisions of this article.
2. Wholesale and retail storage and display of ammunition and gunpowder shall be in accordance with Section 7702 of this article.

**SEC. 3-1.109. PERMITS: MANUFACTURE, DISPLAY, AND SALES OF FIREWORKS.**

Section 7801.3 of said Fire Code is amended to read as follows:

1. **Fireworks.**
  - 1.1. **Manufacturing.** The manufacturing of fireworks is prohibited in the City of Modesto.
  - 1.2. **Displays.**
    1. Permits are required to conduct a fireworks display. See Uniform Fire Code, Section 4.108. Permit applications shall be made not less than 14 days prior to the scheduled date of the display. The permit application shall include a diagram of the grounds on which the display is to be held showing the point at which the fireworks are to be discharged; the location of buildings, highways and other lines of communication; the lines behind

which the audience will be restrained; and the location of nearby trees, telegraph or telephone lines and other overhead obstructions. At the time of permit application, the chief shall be consulted regarding requirements for standby apparatus.

2. The Chief may grant the permit as applied for, or with condition thereto, unless he/she finds that to do so would be contrary to the public health, safety, or welfare. The decision of the Chief shall be in writing and shall be mailed, postage prepaid, to the applicant.
3. The decision of the Chief, in acting on an application for permission to conduct a public display in accordance with the provisions of this section may be appealed to the City Manager. Notice of an appeal of the Chief's decision shall be filed by the applicant, with the City Clerk, within ten (10) days after the date of the decision. Upon failure to file such notice within the ten day period, the action of the Chief shall be final and conclusive. The applicant may appeal the decision of the City Manager to the City Council by filing a notice of appeal to the City Clerk within ten (10) days after the date of the City Manager's decision. Upon failure to file such notice within the ten-day period, the action of the City Manager, or his/her designee, shall be final and conclusive.
4. Every application for permission to conduct a public display of fireworks shall be accompanied by a non-refundable fee as established by resolution of the City Council from time to time. This fee shall be in addition to any other fee or tax imposed by Title VI of the Modesto Municipal Code.

- 1.3. **Sales.** Permits are required for the retail sales of "Safe and Sane" fireworks in the City of Modesto.
1. It shall be unlawful to engage in the sale of "Safe and Sane" fireworks in the City of Modesto without first having secured a permit to do so.
  2. The total number of sales permits issued in any given year shall be limited to one hundred twenty (120) sales permits. Ninety (90) of the sales permits shall be apportioned for local non-profit organizations, and thirty (30) sales permits shall be apportioned for local profit organizations.
  3. Each organization shall be limited to a maximum of three (3) sales permits. A separate sales permit shall be required for each proposed location of a fireworks stand.
  4. Permits for the sale of "Safe and Sane" fireworks in the City of Modesto shall be issued only to local non-profit organizations and local for profit organizations as defined herein.
    - (A) A "non-profit organization" shall mean any non-profit association, club, or corporation organized primarily for veteran, patriotic, welfare, religious, civic betterment, youth activity or charitable purposes, which has been issued a tax exempt certificate as required under the revenue and taxation code of the State of California or a group which is an integral part of a recognized national organization having such a tax exempt status.
    - (B) A "local non-profit organization" must have its principal and permanent meeting place in the City of Modesto and must have been organized and

established in the City of Modesto for a minimum of one (1) continuous year preceding the filing of the application for permit, and must have a bona fide membership of at least ten (10) members who reside in the City of Modesto.

- (C) A "local for profit organization" must have a permitted business location in the City of Modesto and must have been in business in the City of Modesto for a minimum of one (1) continuous year preceding the filing of the application for permit.
5. Permits for retail sales of "Safe and Sane" fireworks in the City of Modesto issued pursuant to provision of this Code are not transferable by the holder of the permit. The permit may be used only by the organization to whom it is issued.
  6. All applications for permits shall be in writing to the Fire Chief on forms supplied by the City. Applications may only be filed during normal business hours from January 2nd of each year up to and including February 15th of the same year, at which time the filing period for that year will close.
  7. Applications shall set forth the proposed location of the fireworks stand including the seven (7) digit parcel number (APN) of the Stanislaus County Assessor and other information as may be required by the Fire Chief. Written permission from the property owner, or his/her designee, to sell fireworks at that location shall accompany the permit application.
  8. Applicants for permits shall be notified by May 1st of each year, by the Fire Chief, of approval or disapproval of such application.

All approved applications shall be picked up, from the Fire Chief, by 4:00 PM on May 15th of that year. Permit will be issued on the day the applicant begins selling, and after inspection of the stand reveals compliance with all conditions of this ordinance.

9. Every application shall be accompanied by proof of insurance as specified in Modesto Municipal Code Section 3-1.11.3.
10. Every application shall be accompanied by a non-refundable application fee as established by resolution of the City Council from time to time. This application fee shall be in addition to any fees or taxes imposed by Title VI of the Modesto Municipal Code.
11. The Fire Chief, or his/her designee, may revoke, immediately and without notice or hearing, the "Safe and Sane" fireworks permit of any location or organization when any of the provisions of Modesto Municipal Code Section 3-1.110.2, 3, 4, 5(1), 5(2) or 5(3), are violated. The Chief shall inform the permittee that permittee may seek review of the Chief's decision, by the City Manager, on the next business day. At the earliest opportunity on the next business day after revocation, the Chief shall provide the City Manager with written notice that a fireworks permit has been revoked, including the name of the permittee and a brief statement of the grounds for revocation. If requested by the permittee, the City Manager, or his/her designee, shall meet with the permittee and the Chief, or his/her designee, that day to review the Chief's decision. The decision of the City Manager shall be final.
12. Revocation of any permit will be effective for that calendar year.

2. **Pyrotechnic Special Effects Material.** A permit is required to manufacture, compound, store or use pyrotechnic special effects material. A permit for use shall be granted only to a State of California licensed pyrotechnic operator.

**SEC. 3-1.10. SALES, STORAGE, USE, AND HANDLING OF FIREWORKS.**

Section 7802.1 of said Fire Code is amended to read as follows:

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

1. **Sales.** Retail sale or display with the intent to sell fireworks is limited to State of California Fire Marshal approved and labeled "Safe and Sane" fireworks within the City of Modesto by State of California licensed retailers, provided a permit to sell those fireworks has been approved and obtained from the Chief. Fireworks may be sold or offered for sale from 12:00 noon to 10:00 p.m. on June 28, 9:00 a.m. to 10:00 p.m. on June 29 through July 5, and 9:00 a.m. to 12:00 noon on July 6.
2. **Storage.**
  - 2.1 The storage of fireworks within the City of Modesto is limited to State of California Fire Marshal-approved and labeled "Safe and Sane" fireworks by State of California licensed wholesalers and retailers.
  - 2.2 **Wholesalers Storage.** Wholesalers may store "Safe and Sane" fireworks within the City of Modesto solely during the period of June 1 through July 31 of each year. Storage facilities shall comply with H1 occupancy classification requirements as defined by the Uniform Building Code.
  - 2.3 **Retailers Storage.** Retailers may store "Safe and Sane" fireworks within the City of Modesto solely during the period of June 22 through July 15 of each year. "Safe and Sane" fireworks that are not being sold or displayed with the intent to sell, shall be stored solely in the following manner:

- (A) Within the permitted fireworks stand with a responsible adult on the premises at all times.
  - (B) In a completely enclosed and locked utility type trailer constructed of 1/4 inch plywood or other approved noncombustible material.
  - (C) In a completely detached garage on residential property. There shall be no open-flame or spark producing equipment, or Class 1 flammable liquids stored or used within in the garage.
  - (D) Fireworks shall not be stored within forty (40) feet of any building classified or used as a public or private school, day care facility, residential care facility, hospital, place of detention, public oil/gas station, or public garage, or any place of public assembly that can accommodate fifty (50) or more persons.
3. **Operator Safety.** Each year, one or more representatives from each organization, that is granted a permit to sell fireworks, shall attend a stand operator safety seminar conducted by the Fire Department and the fireworks industry. Failure to attend the seminar shall result in the revocation of the organization's permit to sell fireworks for that calendar year.
4. **Temporary Fireworks Stands.**
- (1) All retail sales of "Safe and Sane" fireworks shall be permitted only from within a temporary fireworks stand and sales from any other building or structure is hereby prohibited.
  - (2) The fireworks stands shall be located at least twenty (20) feet from other structures.
  - (3) Zoning of property, in which the fireworks stand will be located, shall be in accordance with Modesto Municipal Code Section 10-2.2330.

- (4) Fireworks shall not be stored, sold, offered for sale, or discharged within one hundred (100) feet of a location where gasoline, LPG, other class 1 flammable liquids or flammable gasses are stored or dispensed.
- (5) All unsold stock and accompanying litter shall be removed from the location by 5:00 p.m. on the 6th day of July.
- (6) The fireworks stand shall be removed from the temporary location by 12:00 noon on the 10th day of July, and all accompanying litter shall be cleared from said location by said time and date.

5. **Safety Precautions.**

- (1) No person under the age of eighteen (18) shall sell, or handle for sale, any classification of fireworks.
- (2) No person under the age of eighteen (18) shall purchase or be allowed to purchase any classification of fireworks.
- (3) Smoking, open-flame, and spark-producing equipment shall be prohibited for a distance of twenty (20) feet around any fireworks stand.
- (4) Dry grass, weeds, trash, and other combustible material shall be removed for a distance of twenty (20) feet around any fireworks stand.

6. **Stand Construction.**

- (1) Merchandise may be displayed in approved glass enclosed counters or showcases, or
- (2) Merchandise may be displayed in stands constructed in the following manner:
  - (A) Walls and roof shall be of plywood at least 1/4" thick or of an approved noncombustible material.

- (B) The stand shall be provided with a roof.
- (C) Walls shall extend to a minimum height of 6 feet 8 inches, on at least three (3) sides. These three sides shall be without openings, except for an exit door.
- (D) An exit door with a minimum size of twenty (24) inches in width and six (6) feet in height, shall be provided in each stand. Exits shall be maintained clear and unobstructed at all times.
- (E) The front wall of the stand shall provide a physical barrier not less than eighteen (18) inches in height between the public and the merchandise on display.
- (F) Approved "NO SMOKING" signs shall be prominently displayed in and on the stand.
- (G) Approved "NO SALES TO PERSONS UNDER THE AGE OF 18" signs shall be prominently displayed in the stand.
- (H) An approved fire extinguisher having a minimum U.L. classification of 2A shall be located in the stand, near the exit and readily accessible.
- (I) Sellers of fireworks shall comply with all rules and regulations of Title 19 of the California Code of Regulations and with the rules and regulations of the Chief.

**7. Operation of Fireworks Stand Only by Permittee.**

- (1) It is unlawful for the permittee organization to permit any person other than the permittee organization to operate the fireworks stand for which the permit is issued or to otherwise participate in the profits of the operation of such fireworks stand.

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

#### SEC. 3-1.11. FIREWORKS DISPLAYS.

Subsections 2 and 3 of Section 7802.4 of said Fire Code are amended to read as follows:

2. **Pyrotechnic Operator.** Fireworks display operations shall be under the direct supervision of a State of California licensed pyrotechnic operator. The pyrotechnic operator shall be responsible for all aspects of the display related to pyrotechnics.
3. **Insurance.**
  - (1) The permittee shall furnish a certificate of insurance for each policy required, executed by the company issuing such policy, and approved as to form by the Risk Manager. Such policies shall contain a provision which holds the City as an additional insured and declaring said insurance to be primary and that no other insurance carried by an insured party shall be called upon for contribution. Notwithstanding any other provision of this section, the failure of the permittee to carry such insurance during the time covered by such permit shall automatically revoke the permit as of the date of expiration of such insurance policy or policies. A payment of fifty dollars (\$50.00) shall be made to the City before any such revoked permit may be reinstated.

- (2) The permittee/licensee shall carry general liability insurance with a minimum limit of liability per occurrence of one million dollars (\$1,000,000.00) for bodily injury and one hundred thousand dollars (\$100,000.00) for property damage, or one million dollars (\$1,000,000.00) combined single limit. The certificate of insurance shall include the following coverages and indicate the policy aggregate limit applying to: premises and operations, broad form contractual, and, products and completed operation.
- (3) The permittee/licensee shall agree to hold the City of Modesto, its agents, officers, employees, and volunteers harmless from and save, defend, and indemnify them against any and all claims, losses, liabilities, and from every cause, including but not limited to injury to person or property or wrongful death, with the indemnity to include reasonable attorney fees and all costs and expenses arising directly or indirectly out of any act or omission of permittee arising out of any activity authorized by the permit.
- (4) The permittee/licensee shall provide at its own expense and maintain at all times the specified insurance policies with insurance companies approved by the State of California and shall provide evidence of such insurance to the City as may be required by the Risk Manager 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 City Clerk of the City by registered mail, return receipt requested.

**SEC. 3-1.112. RESTRICTED LOCATIONS OF STATIONARY ABOVEGROUND TANKS.**

Section 7902.2.2.1 of said Fire Code is amended to read as follows:

The storage of Class I and Class II flammable liquids in aboveground tanks outside of buildings is prohibited, with the exception of protected tanks designed, installed and maintained in accordance with Appendix II-F. The provisions of this Section

7902.2.2.1 shall not apply to facilities for the production, generation, or transmission of electric energy that provide power to entities furnishing retail electrical services to the general public within the City of Modesto.

#### SEC. 3-1.113. UNDERGROUND TANKS.

Section 7902.6.4 of said Fire Code is amended to read as follows:

**Depth and Cover.** Excavation for underground storage tanks shall be made with due care to avoid undermining foundations of existing structures. Underground tanks shall be set on firm foundations and surrounded with at least 6 inches (152.4 mm) of noncorrosive inert material such as clean sand or gravel well tamped in place or in accordance with the manufacturer's installation instructions. Fiber liners shall be installed between the native soil and the backfill material. Tanks shall be covered with a minimum of 2 feet (609.6 mm) of earth or shall be covered by not less than 1 foot (304.8 mm) of earth, on top of which shall be placed a slab of reinforced concrete not less than 4 inches (101.6 mm) thick.

When underground tanks are, or are likely to be subjected to traffic, they shall be protected against damage from vehicles passing over them by at least 3 feet (914.4 mm) of earth cover, or 18 inches (457.2 mm) of well-tamped earth plus 6 inches (152.4 mm) of reinforced concrete, or 8 inches (203.2 mm) of asphaltic concrete. When asphaltic or reinforced concrete paving is used as part of the protection, it shall extend at least 1 foot (304.8 mm) horizontally beyond the outline of the tank in all directions.

For tanks built in accordance with Section 7902.1.8, the burial depth and the height of the vent line shall be such that the static head imposed at the bottom of the tank will not exceed 10 psig (68.9 kPa) if the fill or vent pipe is filled with liquid.

If the depth of cover exceeds 7 feet (2133.6 mm) or the manufacturer's specifications, reinforcements shall be provided in accordance with the tank manufacturer's recommendations.

Nonmetallic underground tanks shall be installed in accordance with the manufacturer's instructions. The minimum depth of cover shall be as specified above in Section 7902.6.4.

**SEC. 3-1.114. OPERATING HEATING, LIGHTING, AND COOKING APPLIANCES PROHIBITED.**

Section 7903.2.1.4 of said Fire Code is amended to read as follows:

No person shall use within a building or structure any heating, lighting, or cooking appliance which uses any flammable or combustible liquid.

**SEC. 3-1.115. ABOVEGROUND TANK STORAGE AND DISPENSING OF FLAMMABLE AND COMBUSTIBLE LIQUIDS ON FARMS AND CONSTRUCTION SITES.**

Section 7904.2.5.1 of said Fire Code is amended to read as follows:

**General.** The capacity of temporary aboveground tanks containing Class I and II liquids shall not exceed 1,100 gallons (4163.9 L). The capacity of permanent aboveground tanks containing Class I and II liquids shall not exceed 10,000 gallons (37,854 L). Temporary tanks of single-compartment design shall be constructed in accordance with Section 7902.1.8.2; permanent tanks shall be constructed in accordance with Section Appendix II-F.

**SEC. 3-1.116. LOCATION OF BULK PLANTS FOR STORAGE OF FLAMMABLE AND COMBUSTIBLE LIQUIDS.**

Section 7904.4.1 of said Fire Code is amended to read as follows:

Portions of properties where flammable and combustible liquids are received by tank vessels, pipe lines, tank cars or tank vehicles and are stored or blended in bulk for the purpose of distributing such liquids by tank vessels, pipe lines, tank cars, tank vehicles or containers shall be in accordance with Section 7904.4.

The construction of new bulk plants for storage of flammable or combustible liquids is restricted to areas of the City zoned Heavy Industrial Zones (M-2). All existing nonconforming bulk plants for storage of flammable or combustible liquids which substantially comply with the requirements of this Code may be continued in use if a permit therefor shall be granted by the Chief.

**SEC. 3-1.117. OPERATION OF TANK VEHICLES.**

Section 7904.5.4 of said Fire Code is amended to read as follows:

Subsection 5 is hereby added to Section 7904.5.4:

5. Tank vehicles shall be parked on private property while being unloaded. It shall be unlawful to unload any tank vehicle while it is parked on any street, highway, avenue, alley, or public right-of-way. While a tank vehicle is being unloaded, it shall not be parked in such a manner as to be endangered by other traffic.

**SEC. 3-1.118. OUTSIDE STORAGE AND USE OF LIQUEFIED PETROLEUM GASES; LOCATIONS OF CONTAINERS.**

Section 8201 of said Fire Code is amended to read as follows:

The storage of liquefied petroleum gas (LP-gas) shall conform to the provisions of City of Modesto zoning ordinances. The outside storage and use of liquefied petroleum gases is restricted as specified in this section.

1. Storage and dispensing of LP-gas for resale purposes, into approved containers and vehicles, is restricted to those areas of the City zoned as Commercial-Light Industrial (C-M), Heavy Industrial (M-2), and, in addition thereto, to other commercially zoned properties used as automotive service stations. Dispensing shall be performed only by qualified persons.
2. Dispensing of LP-gas for private use is restricted to those zones identified in subsection 1, and when approved by the chief, may be permitted in those areas of the City zoned General Commercial (C-2). Dispensing shall be performed only by qualified persons.
3. For cooking, lighting, or heating in a building, only on a property that does not have natural gas service existing on a boundary line of said property or when prohibition of such storage would cause undue hardship.
4. For temporary use on construction sites, when authorized by the chief.

5. For use as an alternative fuel supply for an emergency standby generator, when authorized by the chief.
6. For use with certain mobile vending equipment.
7. For use by Artisans in pursuit of their trade, when authorized by the chief.

**SEC. 3-1.119. PERMITS AND PLANS.**

Section 8202.1 of said Fire Code is amended to read as follows:

**Permits and Plans.** A permit is required to store, use, handle or maintain any portable or stationary LP-gas container.

**EXCEPTION:**

1. Containers not exceeding 5 gallon water capacity, used for residential "barbecue" cooking, when used and stored outside of buildings.
2. Approved containers not exceeding 16.4 ounces when displayed for sale in mercantile occupancies.

Distributors shall not fill an LP-gas container for which a permit is required unless a permit for the installation has been issued for that location by the chief.

The installer shall submit plans for any stationary LP-gas installation, regardless of size.

**SEC. 3-1.120. USE OF LIQUEFIED PETROLEUM GAS CONTAINERS IN BUILDINGS.**

Section 8203.2.1 of said Fire Code is amended to read as follows:

Portable LP-gas containers, as defined in U.F.C. Standard 82-1 shall not be used in buildings except as specified in this section.

1. Portable containers, not exceeding 5 gallon water capacity, may be allowed in buildings or areas undergoing construction, when permitted by the chief.

2. In educational, business, and institutional occupancies when used for research and experimentation provided the individual capacity of any one container does not exceed 16.4 ounces and the aggregate capacity of all containers does not exceed 2-1/2 gallons water capacity. When more than one such container is present in the same room, each container shall be separated by a distance of not less than 10 feet.
3. At demonstrations and public exhibitions for temporary use provided the individual capacity of any one container does not exceed 8 ounces and when more than one such container is present in the same room, each container shall be separated by a distance of not less than 10 feet. Such containers shall not be used for commercial or residential food preparation.
4. With self contained torch assemblies and similar appliances provided that the individual capacity does not exceed 16.4 ounces. Such containers shall not be used for residential or commercial food preparation.
5. On industrial vehicles and floor maintenance machines in accordance with U.F.C. Standard 82-1, Section 3-6.

**SEC. 3-1.121. MAXIMUM CAPACITY OF LPG CONTAINERS.**

Section 8204.2 of said Fire Code is amended to read as follows:

The aggregate capacity of any one installation shall not exceed two thousand (2,000) gallons, except that in particular installations this capacity limit may be altered by the Chief, after consideration of special features such as topographical conditions, nature of occupancy, proximity of buildings, capacity of proposed tanks, degree of private fire protection to be provided, and facilities of the local Fire Department.

**EXCEPTION:** Storage of LP-gas in accordance with Sections 8201.3, 8201.4 and 8201.5 shall not exceed 250 gallon's water capacity.

**SEC. 3-1.122. PERMIT FEE.**

The Council of the City of Modesto may, by resolution adopted from time to time, fix a fee for any permit issued pursuant to the Fire Code.

**ARTICLE 2. HAZARDOUS MATERIALS**

**SEC. 3-1.201. DEPOSITS OF HAZARDOUS MATERIALS; CLEANUP, ABATEMENT, OR MITIGATION REQUIRED; LIABILITY FOR COSTS.**

Section 8001.5.2.5 of said Fire Code is amended to read as follows:

**Responsibility for cleanup.** The person, firm or corporation responsible for an unauthorized discharge shall institute and complete all actions necessary to remedy the effects of such unauthorized discharge, whether sudden or gradual, at no cost to the jurisdiction. When deemed necessary by the chief, cleanup may be initiated by the fire department or by an authorized individual or firm. Costs associated with such cleanup shall be borne by the owner, operator or other person responsible for the unauthorized discharge. The remedy provided by this section shall be in addition to any other remedies provided by law.

For purposes of this section, costs incurred by the City of Modesto shall include, but shall not necessarily be limited to, the following: actual labor costs of City personnel, including worker's compensation benefits, fringe benefits, administrative overhead; cost of equipment operation; cost of materials obtained directly by the City; and cost of any contract labor and materials.

The authority to recover costs under this section shall not include actual fire suppression services which are normally or usually provided by the Fire Department.

**SEC. 3-1.202. DEFINITION; HAZARDOUS MATERIALS.**

Section 209-H of said Fire Code is amended to read as follows:

**HAZARDOUS MATERIALS** are those chemicals or substances which are physical hazards or health hazards as defined and classified in Article 80, or as defined in the California Health and Safety Code, Division 20, Chapter 6.95, commencing with Section 25500, whether the materials are in usable or waste condition.

**SEC. 3-1.203. PERMIT REQUIRED FOR CERTAIN OPERATIONS.**

Section 105.8 of said Fire Code is amended to read as follows:

- (a) Subsection f.3.3 is amended to read as follows:

To store, handle or use Class II, Class III-A, or Class III-B liquids in excess of 25 gallons (94.6 L) in a building or in excess of 55 gallons (208.2 L) outside a building.

- (b) Subsection h.1 is amended to read as follows:

**Hazardous materials.** To store, transport on site, dispense, use, or handle hazardous materials in excess of the amounts listed in Table No. 105-C, or the threshold planning quantity listed in 40-CFR-355, or as specified in the California Health and Safety Code, Division 20, Chapter 6.95, commencing with Section 25500; or to install, repair, abandon, remove, place temporarily out of service, close, or substantially modify a storage facility or other area regulated by Article 80 when the hazardous materials in use or storage exceed the amounts listed in Table No. 105-C.

- (c) Subsections a.4, c.5, c.6, f.1, f.5, 0.1 and p.1 are hereby deleted.

**SEC. 3-1.204. PERMIT AMOUNTS FOR COMPRESSED GASES.**

Table 105-A of said Fire Code is amended to read as follows:

**Table 105-A--Permit Amounts for Compressed Gases<sup>1</sup>**

Type of Gas	Amount (Cubic Feet) x 0.0283 for m <sup>3</sup>
Corrosive	Any amount
Flammable (except cryogenic fluids and liquified petroleum gas)	200 cubic feet
Highly toxic	Any amount
Inert and simple asphyxiant	200 cubic feet

Irritant	200 cubic feet
Other Health Hazards	200 cubic feet
Oxidizing (including oxygen)	200 cubic feet
Pyrophoric	Any amount
Radioactive	Any amount
Sensitizer	200 cubic feet
Toxic	Any amount
Unstable (reactive)	Any amount
Acutely hazardous (as listed in 40-CFR-355)	Threshold Planning Quantity or more.

<sup>1</sup> See Articles 74, 80 and 82 for additional requirements and exceptions.

**SEC. 3-1.205. PERMIT AMOUNTS FOR CRYOGENS.**

Table 105-B of said Fire Code is amended to read as follows:

**Table 105-B--Permit Amounts for Cryogens<sup>1</sup>**

Type of Cryogen	Inside Building	Outside Building
Corrosive	Over 1 gallon	Over 1 gallon
Flammable	Over 1 gallon	55 gallons
Highly toxic	Over 1 gallon	Over 1 gallon
Nonflammable	55 gallons	55 gallons
Oxidizer (including oxygen)	50 gallons	50 gallons

<sup>1</sup> See Article 75

**SEC. 3-1.206. HAZARDOUS MATERIALS PERMITS.**

Section 8001.3 of said Fire Code is amended to read as follows:

Subsection 4 is hereby added to Section 8001.3:

4. **Key Box.** When required by the chief, an approved key box, sized to contain emergency information, shall be provided.

**SEC. 3-1.207. PARKING AND GARAGING.**

Subsection 8 is hereby added to Section 8001.10.3 of said Fire Code to read as follows:

8. That parking and garaging of transportation vehicles carrying hazardous materials as defined in Section 8002 shall be in accordance with Sections 7904.6.5 and 7904.6.6 of said Fire Code.

**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 16th day of January, 1996, by Councilmember Friedman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Dobbs, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Dobbs, Fisher, Friedman, McClanahan, McKinsey, Serpa, Mayor Lang

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:

Richard A. Lang  
RICHARD A. LANG, Mayor

ATTEST:

By

Jean Adams  
JEAN ADAMS, City Clerk

(SEAL)

APPROVED AS TO FORM:

By

Michael D. Milich  
MICHAEL D. MILICH, City Attorney

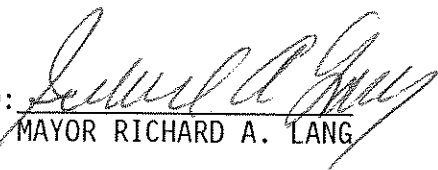
Ord. No. 2976-C.S.

FINAL ADOPTION CLAUSE

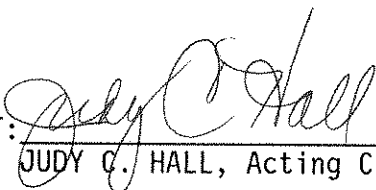
The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 6th day of February, 1996, Councilmember Fisher moved its final adoption, which motion being duly seconded by Councilmember McKinsey, was upon roll call carried and the ordinance adopted by the following vote:

AYES:	Councilmembers:	Dobbs, Fisher, Friedman, McClanahan, McKinsey, Serpa, Mayor Lang
NOES:	Councilmembers:	None
ABSENT:	Councilmembers:	None

APPROVED:

  
MAYOR RICHARD A. LANG

ATTEST:

  
JUDY G. HALL, Acting City Clerk

Effective Date: March 7, 1996

*Check*

ORDINANCE NO. 2977-C.S.

AN ORDINANCE AMENDING SECTION 4-12.503 OF ARTICLE 5 OF CHAPTER 12 OF TITLE IV OF THE MODESTO MUNICIPAL CODE RELATING TO RECOVERY OF CITY FUNDS.

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

SECTION 1. AMENDMENT OF CODE. Section 4-12.503 of Article 5 of Chapter 12 of Title IV of the Modesto Municipal Code is hereby amended to read as follows:

**SEC. 4-12.503. RECOVERY OF CITY FUNDS.**

- (a) Pursuant to Government Code Section 53069.3, if the City has used City funds to remove graffiti or other inscribed material, the City may recover the City funds according to the following procedure:
  - (1) The City Manager, or his or her designee ("hearing officer"), shall give the person or the minor and the parent or guardian having custody and control of the minor not less than forty-eight (48) hours' notice of a hearing to be held by the hearing officer for the purpose of showing cause why the City should not recover the City funds from the person or the minor and the parent or guardian having custody and control of the minor.
  - (2) Following notice, the hearing shall be held by the hearing officer at the time, date, and place designated and at such hearing the person or the minor and the parent or guardian having custody and control of the minor may each be heard and provided with the opportunity to show cause why the City should not recover City funds from the person or the minor and the parent or guardian having custody and control of the minor.
  - (3) Following the hearing, the hearing officer shall determine whether the City should recover City funds from the person or the minor and the parent or guardian having custody and control of the minor.

- (4) If the hearing officer determines that the City should recover City funds from the person or the minor and the parent or guardian having custody and control of the minor, the City shall provide an accounting of the City funds along with a demand for payment to the person or the minor and the parent or guardian having custody and control of the minor.
- (5) The parent or guardian having custody and control of the minor shall be jointly and severally liable with the minor for the City funds pursuant to Government Code Sections 38772, 38773.2, and 38773.6.
- (6) If payment is not made within thirty (30) days from the date of the accounting and demand for payment, the payment shall be deemed delinquent and shall be subject to a penalty assessment of one hundred (\$100.00) dollars plus interest on the unpaid amount plus penalty, which interest shall accrue at the rate of one and one-half (1½) percent per month until paid.
- (7) In the event the funds have not been paid within thirty (30) days from the date of issuing an accounting and demand for payment, the amount unpaid including any penalty and interest therein, shall constitute a lien pursuant to Government Code Sections 38772, 38773, 38773.1, and 38773.2 against the property of the person or the minor and against the property of the parent or guardian having custody and control of the minor. Prior to recording a notice of lien, the hearing officer shall provide notice pursuant to Government Code Section 38773.1 or 38773.2. Any such lien not paid by June 30 of each year shall, upon adoption of a resolution by the City Council, may be collected along with, and in the same manner as, the general property taxes. The lien property shall be subject to the penalties, procedures, and sale in case of delinquency as provided in the Civil Code of California.
- (8) As an alternative to a lien and pursuant to Government Code Section 38773.5 or 38773.6, the City funds shall constitute a special assessment against a parcel of land owned by the person or the minor or by the parent or guardian having custody and control of the minor. The

assessment shall be collected as provided for in Government Code Section 38773.5 or 38773.6.

- (9) In addition to any other remedy provided herein or available at law, the City funds pursuant to Government Code Section 38772 shall constitute a personal obligation against the minor and a personal obligation against the parent or guardian having custody and control of the minor.

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 27th day of February, 1996, by Councilmember Friedman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember McClanahan, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Dobbs, Fisher, Friedman, McClanahan, McKinsey, Serpa, Mayor Lang

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:

By   
JEAN ADAMS, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

Ord. No. 2977-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 5th day of March, 1996, Councilmember McClanahan moved its final adoption, which motion being duly seconded by Councilmember Friedman, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Dobbs, Friedman, McClanahan, McKinsey, Serpa,  
Mayor Lang  
NOES: Councilmembers: None  
ABSENT: Councilmembers: Fisher

APPROVED:

  
MAYOR RICHARD A. LANG

ATTEST:

  
JEAN ADAMS, City Clerk

Effective Date: April 4, 1996

Check

ORDINANCE NO. 2978 -C.S.

AN ORDINANCE AMENDING SECTIONS 12 AND 13-3-8 OF THE ZONING MAP OF THE CITY OF MODESTO, RECLASSIFYING CERTAIN PROPERTY LOCATED THEREON. (BILL ZOSLOCKI)

WHEREAS, a verified application for an amendment to Sections 12 and 13-3-8 of the Zoning Map was filed by Bill Zoslocki on January 22, 1996, to reclassify from Planned Development Zone, P-D(466), to Medium Density Residential Zone, R-2, property located on the southeast corner of West Rumble Road and Lou Ann Drive, and

WHEREAS, after a public hearing held on February 26, 1996, 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. 96-12, adopted on February 26, 1996, the Planning Commission recommended to the Council that the application of Bill Zoslocki to amend Sections 12 and 13-3-8 of the Zoning Map to reclassify the hereinafter described property from Planned Development Zone, P-D(466), to Medium Density Residential Zone, R-2, be approved,

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

SECTION 1. After a public hearing held on March 19, 1996, in the Council Chambers, City Hall, 801 11th 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 reasons:

1. The R-2 Zone will allow medium-density residential development of the property and contribute to a mixture of uses provided for in the (MU) Mixed Use Area designated for this portion of West Rumble Road.
2. Eventual plot plan review including conditions of approval required by the Planning Commission will assure that medium-density residential development of this property will be compatible with adjacent neighborhood uses.

SECTION 2. ZONING CHANGE. Sections 12 and 13-3-8 of the Zoning Map is hereby amended to reclassify the following described property from Planned Development Zone, P-D(466), to Medium Density Residential Zone, R-2:

P-D(466) to R-2

All that certain real property situate in a portion of the Southwest quarter of Section 12 and the Northwest quarter of Section 13, Township 3 South, Range 8 East, Mount Diablo Base and Meridian, in the City of Modesto, County of Stanislaus, State of California, described as follows:

Parcel "C" as shown on that certain parcel map filed in the office of the Recorder of Stanislaus County, California, on April 25, 1975, in Volume 21 of Parcel Map, Page 16. Including the Northwestern 30.00 feet of 60.00 foot Brenner Way, Northeastern 30.00 feet of 60.00 foot wide Lou Ann Drive, and the South 30.00 feet of 60.00 foot wide West Rumble Road and all immediately adjacent to the above described property.

SECTION 3. ZONING MAP. Sections 12 and 13-3-8 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 19th day of March, 1996, by Councilmember Friedman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember McClanahan, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Dobbs, Friedman, McClanahan, McKinsey, Serpa, Mayor Lang

NOES: Councilmembers: None

ABSENT: Councilmembers: Fisher

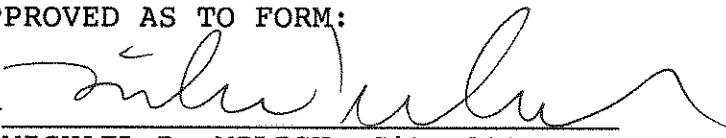
APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:

By   
JEAN ADAMS, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

APPROVED AS TO DESCRIPTION:

By   
Community Development Department  
Development Services

Ord. No. 2978-C.S.

FINAL ADOPTION CLAUSE

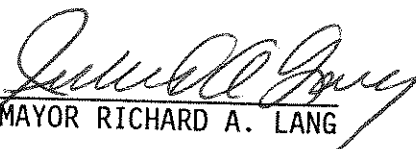
The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 26th day of March, 1996, Councilmember Dobbs moved its final adoption, which motion being duly seconded by Councilmember McKinsey, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Dobbs, Friedman, McClanahan, McKinsey, Serpa,  
Mayor Lang

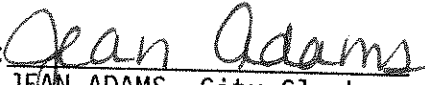
NOES: Councilmembers: None

ABSENT: Councilmembers: Fisher

APPROVED:

  
MAYOR RICHARD A. LANG

ATTEST:

  
JEAN ADAMS, City Clerk

Effective Date: April 25, 1996

Clerk  
10

ORDINANCE NO. 2979 -C.S.

AN ORDINANCE AMENDING SECTION 8-7.04 OF CHAPTER 7 OF TITLE VIII OF THE MODESTO MUNICIPAL CODE RELATING TO ENTERPRISE DESIGNATION BUSINESS.

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

SECTION 1. AMENDMENT OF CODE. Section 8-7.04 of Chapter 7 of Title VIII of the Modesto Municipal Code is hereby amended to read as follows:

**SEC. 8-7.04. ENTERPRISE DESIGNATION BUSINESS.**

For any qualifying new or expanding business located within the Enterprise Designation area, City shall apply the following Enterprise Designation benefits to qualifying new or expanding businesses which shall apply within a month of obtaining their building permit:

- (a) A rebate for the water systems fee paid by such business under Title XI of the Modesto Municipal Code.
- (b) A rebate for the building inspection fees and plan checking fees paid by such business.
- (c) The project is eligible for accelerated inspection and plan check if the building and capital equipment of the new or expanding business exceeds five hundred thousand dollars (\$500,000.00).

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 2nd day of April, 1996, by Councilmember Fisher, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Friedman, was upon roll call carried and ordered printed and published by the following vote:

AYES:	Councilmembers:	Dobbs, Fisher, Friedman, McClanahan, McKinsey, Serpa, Mayor Lang
NOES:	Councilmembers:	None
ABSENT:	Councilmembers:	None

APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:

By   
JEAN ADAMS, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

Ord. No. 2979-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 9th day of April, 1996, Councilmember Friedman moved its final adoption, which motion being duly seconded by Councilmember McClanahan, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Dobbs, Friedman, McClanahan, McKinsey, Serpa,  
Mayor Lang

NOES: Councilmembers: None

ABSENT: Councilmembers: Fisher

APPROVED:   
MAYOR RICHARD A. LANG

ATTEST:   
JEAN ADAMS, City Clerk

Effective Date: May 9, 1996

*Clerk*

ORDINANCE NO. 2980 -C.S.

AN ORDINANCE AMENDING THE LICENSE GRANTED TO BERTOLOTTI DISPOSAL, INC., A CALIFORNIA CORPORATION, DBA BERTOLOTTI DISPOSAL SERVICE, FOR THE COLLECTION OF GARBAGE, INDUSTRIAL GARBAGE AND SALVAGEABLE WASTE IN THE CITY OF MODESTO TO INCLUDE THE RIGHT TO CONTINUE TO PROVIDE SERVICE TO EXISTING ACCOUNTS IN THE VILLAGE I AREA AND REPEALING ORDINANCE NO. 2829-C.S.

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

SECTION 1. This ordinance is enacted pursuant to the authority provided in, and pursuant to, all of the provisions, terms, and conditions of, Article XIV of the Charter of the City of Modesto and Chapter 5 of Title V of the Modesto Municipal Code.

SECTION 2. A license to collect garbage, industrial garbage, and salvageable waste, including recyclable materials, in the City of Modesto is hereby granted to Bertolotti Disposal, Inc., a California Corporation, dba Bertolotti Disposal Service, subject to the following terms and conditions:

- a. This license shall be for a term of five (5) calendar years commencing retroactively to July 8, 1992, and ending on July 8, 1997, or when Bertolotti Disposal, Inc., ceases to have a license from the County of Stanislaus to provide garbage service and curbside recycling to Stanislaus County Refuse Collection Area No. Ia, whichever occurs first, unless terminated at an earlier date under the provisions of this license. Nothing herein shall be deemed or construed to impair or affect in any way the right of the City to acquire the equipment and assume the operations of the Licensee at any time during the term of this license by purchase of the Licensee's equipment at a fair and just market value, which shall not include any amount for the license itself or for any of the rights or privileges granted by this license.

- b. This license shall be for a term of eight (8) calendar years commencing retroactively to January 1, 1995, for the collection of industrial garbage and salvageable waste. During every third year of the term of this license, including both the initial term and any extensions thereof, the licensee may apply to the City to extend the term of this license to eight (8) calendar years commencing on January 1 of the following calendar year. Applications for extensions of this license shall be submitted and considered in accordance with the provisions of Chapter 5 of Title V of the Modesto Municipal Code.
- c. This license shall be an exclusive license to collect garbage and curbside recycling materials from Licensee's existing accounts as of July 8, 1992, within the area delineated and marked as Area 8 on that certain map entitled "Bertolotti Service Area" dated January 6, 1975 and amended on September 22, 1992 on file in the office of the City Clerk, and to which reference is hereby made, and a nonexclusive license to collect industrial garbage, salvageable waste.
- d. In accepting this license, Licensee thereby agrees to serve the areas covered by the license for the terms herein specified in compliance with the provisions of this ordinance and the provisions of Chapter 5 of Title V of the Modesto Municipal Code.
- e. This license shall automatically extend to any portion of the Licensee's County of Stanislaus service area, which is hereafter annexed to the City, to continue to serve such area or portions thereof for such period of time, not to exceed five (5) years from the date of annexation, as the City deems proper. The Licensee, when required to serve new portions of the City, shall promptly extend its routes and services and, when necessary, shall hire additional personnel and obtain additional equipment.
- f. Rates and charges to be charged by the Licensee for the collection of garbage shall be established by the Council by resolution. Service charges and costs of operation of the Licensee will be reviewed annually by the City and, if deemed necessary by the City Council, rate adjustments shall be made to become effective on or after January 1 of each year.

The City reserves the right to require adjustments in operations of the Licensee due to changing community needs, and/or developments in the field of garbage collection and disposal. Rate adjustments, if necessary, will be considered in such cases.

- g. The Licensee shall bill and collect all garbage service charges, provided, however, that the City may require that all or some of said garbage service charges shall be billed and collected by the City, and may require the Licensee to pay to the City fees, to be determined by the City, for such billing and collection service.
- h. The City reserves the right to revise the provisions of Chapter 5 of Title V of the Modesto Municipal Code, from time to time, as required in order to protect the public health, safety and welfare of the City.
- i. The Licensee shall comply with all existing and future State and Federal laws, and all ordinances and regulations which may in any manner affect the Licensee's operations under the terms and conditions of this license.
- j. The Public Works and Transportation Director of the City of Modesto shall administer and supervise the Licensee's operations under the terms of this license and in accordance with the provisions of Chapter 5 of Title V of the Municipal Code.

In the event of any disagreement between the Licensee and customers regarding the amount of charges for garbage collection service or the type or extent of service provided by the Licensee, the Public Works and Transportation Director shall make an investigation and determination, and the decision of the Public Works and Transportation Director shall be final.

- k. The Licensee shall establish and maintain an office within the City of Modesto, or other location approved by the City Manager, and shall keep said office open for business from 8:00 a.m. to 5:00 p.m. of every day except Saturday, Sunday, and all legal holidays observed by the City of Modesto.

The Licensee shall keep and maintain in said office at all times during the hours it is required to be open, competent personnel who shall

have authority to represent the Licensee in its relations with the City and with the public. The Licensee shall obtain and keep in said office sufficient listed telephones and personnel to courteously, quickly, and expeditiously receive and answer all telephone and other calls to said office. A daily log of service calls received and the disposition thereof shall be kept by the Licensee for all operations hereunder.

1. The Licensee shall maintain full and complete books of account and other records showing all business transacted in connection with this license by said Licensee including but not limited to records of all special monthly collections, receipts, expenses, profits, supporting statements and vouchers, balance sheets, profit and loss statements, and other documents, accurately reflecting and showing all business of the Licensee. All such books and records shall be subject to audit and inspection at any and all reasonable times by the City and its authorized officers, agents, or employees, and shall be made available at said office for such inspection or audit at any and all reasonable times upon written request or demand of the City Attorney, Auditor, Manager, or Public Works and Transportation Director.
  
- m. The Licensee shall provide the City annually, not later than ninety (90) days after the end of the fiscal year ending June 30th, with five (5) copies of an annual balance sheet and profit and loss statement. The annual financial statement shall include a separate description of costs and revenues resulting from salvage and recycling operations hereunder and shall encompass cumulative data from the monthly statistical reports required by Section 2 subparagraph y.(4), below. Licensee may include the operating costs of the curbside recycling license when calculating profits of Licensee's entire waste collection license hereunder. Financial statements submitted by the Licensee to the City shall be regarded by the City as confidential financial records of the Licensee, and shall not be released as a public record for inspection by any party other than authorized City officers unless the City is so ordered by a court of competent jurisdiction.

The City may require a complete financial audit prepared by a Certified Public Accountant with his or her opinion attached thereto and such other

financial information deemed necessary by the City when considering a request for rate adjustments.

- n. The Licensee shall collect and remove from any and all premises, not later than twenty-four (24) hours after notice, demand or request, any and all garbage and recyclable which Licensee shall have failed to collect and remove at the regularly scheduled time. The customer's failure to place garbage and recyclable for collection at the regularly scheduled time and place shall not be deemed a missed collection.
- o. The Licensee shall collect garbage and recyclable at least once each calendar week, Mondays through Fridays, for residential collections, and on Mondays through Saturdays for commercial and industrial collections. For purposes of such collection, the Licensee shall divide the City into collection routes. Such collection routes shall be each wholly within the City limits, and shall be approved by the Public Works and Transportation Director. Upon approval of the proposed routes by the Public Works and Transportation Director, the Licensee shall prepare route books as soon as possible which shall indicate the address of each service, number of containers, frequency of collection, and such other pertinent information as the Public Works and Transportation Director may require. The Licensee shall keep route books up to date at all times. The Licensee shall give reasonable notice to the general public as to the days and times for collection on each route. No changes in collection schedules shall be made without the approval of the Public Works and Transportation Director and reasonable notice thereof to the customers concerned by the Licensee.

The Licensee is not required to make collections on Sundays or legal holidays observed by the City. The Licensee may arrange with commercial and industrial customers for Sunday and holiday collections, however. Scheduled collections not made on legal holidays shall be made within twenty-four (24) hours, Sundays excepted.

- p. The Licensee shall make garbage collection service available on request to all schools, public agencies, institutions, and other nonresidential premises at the same rates established for business locations. In special cases where unusual quantities of materials, special types of materials, or special methods of handling and/or

disposing are required, the Public Works and Transportation Director may permit independent arrangements between Licensee and the special customer.

- q. The Licensee shall furnish, to all residential customers, a standard sixty (60) gallon or ninety (90) gallon automated collection container for the containerization of household garbage and garden refuse. The Licensee shall be responsible for the general repair and upkeep of all the standard automated collection containers furnished to the residential customers. Containers shall be kept in serviceable condition at all times.

The Licensee shall have approved detachable containers for apartment, commercial, business and industrial services on a rental basis. The Licensee shall be responsible for the general repair and upkeep of all detachable containers. Containers shall be kept in serviceable condition at all times. The Licensee shall provide detachable container cleaning service at a rate approved by the Public Works and Transportation Director.

Detachables shall be metal and so constructed that no liquid can leak from said containers. However, containers made of materials other than metal may be proposed by the Licensee for the approval of the Public Works and Transportation Director during the term of this license. No materials may be substituted without prior approval.

- r. The Licensee shall supply all occupants or premises in the Licensee's service areas with printed information cards approved by the Public Works and Transportation Director containing information regarding amounts of garbage and recyclable which will be collected, complaint procedures, charges, regulations, and days of collection. Such cards shall be distributed as required by the Public Works and Transportation Director, and, in addition, upon request by occupants or owners of any premises and in advance of route, charge, or regulation changes.
- s. The Licensee shall not litter any premises or public property in making collections of garbage, nor shall garbage be allowed to leak, blow, or fall from collection vehicles; however, if in spite of normal precautions against spillage, litter is caused on any premises or public

property, the Licensee shall immediately remove same and clean up the area of spillage. The Licensee shall, without delay, after removing garbage from any container, replace the container in its designated position on the premises with covers closed on lidded containers, and shall repair or replace at its expense any containers damaged as a result of its handling thereof, normal wear and tear excepted. The Licensee shall close all gates after making collections and shall avoid crossing private or public planted areas and climbing or jumping over hedges and fences. Licensee's personnel shall make all collections in a quiet and orderly manner and shall refrain from making unnecessary disturbances and noise. If, for any reason, garbage is not picked up, such as overweight container, not in container, etc., the Licensee shall attach a tag to the container explaining the reason therefor, and shall maintain a log or record of such refusals.

The Licensee's collection vehicles shall be operated in full compliance with the California Vehicle Code and local ordinances. Vehicles shall be thoroughly washed and disinfected inside the collection body each day, or as approved by the Public Works and Transportation Director, and the exterior of each vehicle shall be cleaned and washed at least once a week.

- t. All equipment used for the collection and hauling of garbage shall be approved by the Public Works and Transportation Director and shall be so constructed and maintained as to prevent leakage, spillage, or overflow. Trucks shall not be loaded in excess of requirements of the California Vehicle Code.

All trucks and equipment shall be clearly identified by an assigned equipment number and with the firm name and local telephone number affixed thereto. Collection trucks shall be painted white, or another color approved by the Public Works and Transportation Director, and shall be equipped with the safety devices and warning lights required by the California Vehicle Code.

All vehicles and equipment used in the collection of garbage, if kept within the boundaries of the City, shall, at all times when not in use in the collection of garbage, be kept on private property in the appropriate zone and not on streets or other public ways.

u. All garbage collection vehicles shall be well maintained, properly identified, painted, clean and in satisfactory mechanical condition. The Licensee shall institute a complete and comprehensive system of preventive maintenance on all vehicles and shall keep them lubricated and in good repair. Records in a form approved by the Public Works and Transportation Director to provide data on operating, maintenance and repair costs shall be kept on each piece of equipment.

v. For purposes of this paragraph the following definitions apply:

(1) "Interruption of service" means:

(a) Any time period during which garbage collection services by the Licensee are interrupted by a labor dispute and scheduled collections are discontinued or substantially reduced; or

(b) Any time period after notice by the City of the termination of the license by reason of a breach or default by the Licensee and until other suitable equipment can reasonably be purchased or otherwise acquired by the City for such purpose.

(2) "Equipment" means any and all vehicles and equipment used by the Licensee for the purpose of performing the services provided for in the license at any time within the ninety (90) days immediately prior to the commencement of the interruption of service.

(3) "Payment for use" has the following meaning:

(a) In the case of equipment subject to a contract, "payment for use" shall mean any installment payment coming due under a contract for such equipment while the City is possessing and using such equipment pursuant to this paragraph during an interruption of service. Payment for use shall not be deemed to include any payment coming due under such contract either prior to, or after the expiration of, such period. Payment for use shall be made by the City, from time to time, directly to the person or company to whom the payment is owed under the contract, and the making of

such payment or payments shall constitute full compensation to all persons for the City's temporary use of such equipment.

- (b) In the case of equipment not subject to a contract, "payment for use" shall mean the reasonable rental value of such equipment for such period of time during which the City possesses and uses such equipment pursuant to this paragraph during an interruption of service. Such payment shall, at termination of service interruption, be applied against any sums then owed to the City by the Licensee, or, if none, shall be paid by the City to the Licensee.
- (4) "Contract" means any conditional sales contract, mortgage, encumbrance, lease, rental agreement, or other agreement which provides for retention of title to said equipment or grants a security interest therein, that may exist at the commencement of the interruption of service.
- (5) "Notice" means written notification actually received by the person to be notified or mailed to him or her by registered or certified mail at the most recent address furnished by him or her to the City Clerk of the City of Modesto. As to the holder of a contract, the City shall be required to give notice only if the holder's identity is known to the City and the holder has furnished his or her address to said City Clerk.

In the event of an interruption of service, the City shall be entitled to have the temporary possession of all or any portion of the equipment of Licensee on the condition that the City shall, from time to time, make the payment for use as provided in Section 2 subparagraph u.(3), above. Upon taking such temporary possession, City shall forthwith give notice thereof to the Licensee and to the holder at that time, if any, of the contract on such equipment. Such temporary use shall not be deemed a breach of the terms of any contract regarding said equipment, but it shall otherwise be subject to the terms of such contract which are not in conflict herewith, except that the City shall not be required to make any payment other than the

payment for use prescribed in Section 2 subparagraph u.(3), above. The City's payment for use prescribed in Section 2 subparagraph u.(3) shall be deemed to be compensation only for the temporary use of such equipment and the City shall not thereby acquire any ownership interest in such equipment.

So long as the City continues to make the payment for use of equipment when due or within ten (10) days thereafter, such equipment may be retained by the City and shall not be repossessed from the City. In the event the City fails to make a payment for use when due or within ten (10) days thereafter, the City's right to continued temporary use of such equipment shall cease, and possession of such equipment may be retaken by the Licensee or by the holder of any contract thereon.

At the expiration of the City's temporary possession of any such equipment, the City shall give written notice of such expiration to the Licensee and to the current holder, if any, of a contract on such equipment. In the event the Licensee shall fail to take possession of such equipment within ten (10) days after such notice, the Licensee shall be deemed to have abandoned such equipment and waived all interest therein, and the City shall be free to use and dispose of such equipment without liability or compensation to the Licensee, subject to the terms of any contract that may then exist with regard to such equipment.

All equipment used by the Licensee for the purpose of performing the services provided for in this license shall be solely owned by the Licensee except that the Licensee may, with the prior approval of the City Manager, enter into contracts as defined in Section 2 subparagraph u.(4), above, with respect to such equipment. All such contracts shall provide for temporary possession by the City as set forth herein and shall provide that such temporary possession shall not be deemed a breach of such contract.

- w. All vehicles and equipment used by the Licensee for the collection and hauling of garbage shall be solely owned by Licensee, except that the Licensee

may, with the prior approval of the City Manager, enter into conditional sales contracts, mortgages, encumbrances, leases, rental agreements, and other appropriate agreements for the purpose of purchasing, leasing or renting vehicles and equipment to be used in providing the services provided for in this license. All such documents shall provide for temporary possession by the City as set forth in Section 2 subparagraph u.(5) above and shall provide that such temporary possession shall not be deemed a breach of the agreement.

- x. Garbage collected by the Licensee shall be disposed of at the Fink Road sanitary landfill or at the resource recovery facility depending on the makeup of the waste. The City reserves the right to designate other sanitary landfill areas for disposal and other methods of disposal. Disposal of garbage at the sanitary landfill will be in compliance with regulations in effect for the same as they now exist or may hereafter be amended. Industrial garbage collected by the Licensee may be disposed of at such other locations as are approved by the Health Officer.
- y. Pursuant to Licensee's nonexclusive license to collect salvageable waste and recyclable materials, Licensee shall, at its sole cost and expense, furnish all labor and equipment required to perform curbside collection pursuant to this Ordinance and to bear all costs and charges in connection with the sale of recyclable and salvageable materials. Besides collection of sorted recyclable materials, salvaging or scavenging by the Licensee's employees is prohibited on collection routes; however, salvaging activities are encouraged at properly zoned and otherwise suitable locations.
- z. For the purposes of this Ordinance, recyclable materials means newspapers, glass containers, tin cans, aluminum cans, used motor oil, PET plastic, and such other materials as may be mutually agreed upon in writing by Licensee and the Public Works and Transportation Director, which are collected by Licensee pursuant to this Ordinance. Licensee shall perform recycling services in the City of Modesto as follows:
  - (1) Licensee shall collect and remove all recyclable materials that have been segregated, donated, and placed on scheduled service days at the curb of the public street fronting on all single-family residences and

from designated locations near multi-family dwellings located within the service areas as established in Section 2 subparagraphs b., c., and d., above. Licensee shall have the sole right to any and all funds and proceeds from the sale of salvaged and recycled materials. Such funds and proceeds shall be accounted for as part of Licensee's gross revenues.

- (2) Licensees recycling rights and duties hereunder shall commence upon the effective date of this Ordinance and shall thereafter coincide with the license term and extension provisions contained in Section 2 subparagraph a. of this Ordinance.
- (3) Licensee shall collect recyclable materials sorted and placed at the curbside for collection once each week, regardless of weather conditions. Collection shall be scheduled as for regular garbage collection service in Section 2.n, above. Licensee may collect recyclable materials between 6:00 a.m. and 6:00 p.m. Licensee shall service missed collections as provided in Section 2 subparagraph m., above.
- (4) Licensee shall file with the City written monthly statistical reports, not later than the tenth of each month to report statistics for the previous month. Reports shall be directed to the Recycling Program Coordinator of the City of Modesto, Suite 16, 1012 I Street, Modesto, California 95354. The following statistics shall be included in the monthly reports:
  - (a) Daily record of volumes collected for aluminum cans, tin cans, PET plastic, glass, newspaper, and used motor oil.
  - (b) Daily record of the number of set-outs, stops, or pick ups.
  - (c) Monthly totals for each of the above.
  - (d) A copy of the Recycling Miss Log of the missed pick ups reported to Licensee during the preceding month.
  - (e) A summary of the preceding month's sale of recyclable, identifying purchaser,

purchase price, costs involved, and quantity sold.

- (f) Information regarding any problems, changes in routes, drivers, and/or equipment.
  - (g) Suggestions for the expansion or improvement of the recycling program.
- (5) Licensee shall provide reasonable public access to Licensee's facility where recyclable materials, including items not picked up at curbside, may be dropped off and where waste oil may be deposited.
- (6) Licensee shall not deposit, in any landfill or waste-to-energy facility, wherever located, any substantial quantity of easily separable recyclable materials without City's prior written consent.
- aa. The Licensee shall file with the City Clerk and maintain during the term of this license a corporate surety bond or other form of security satisfactory to the City Attorney in the sum of One Hundred Thousand and no/100ths (\$100,000.00) Dollars. Said bond or security shall be conditioned upon the faithful performances of the terms and conditions of this license and the provisions of Chapter 5 of Title V of the Modesto Municipal Code.
- ab. Licensee agrees, in connection with the performance of all operations under or pursuant to this license, to be an Equal Opportunity Employer and to refrain from discrimination against any employee or applicant for employment because of race, creed, color, national origin, sex, age, or handicap.
- (1) Licensee agrees that it will undertake an affirmative action program to ensure that no person shall on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any employment activities or opportunities. Licensee shall fully document these efforts and shall submit to City on or before January 31 of each year a report detailing the affirmative actions Licensee has taken during the prior calendar year. Licensee shall ensure that seniority practices, job classifications, work assignments, and other

personnel practices, including employment reduction actions, do not have a discriminatory effect by continually monitoring all personnel and employment-related activities to ensure that the equal employment opportunity actions required by this License are being carried out.

- (2) Licensee agrees to ensure and maintain a working environment free of harassment, intimidation, and coercion at all job locations and in all facilities where Licensee's employees are assigned to work. Licensee shall specifically ensure that all foremen and forewomen, superintendents, and other on-site supervisory personnel are aware of and carry out the Licensee's obligation to maintain such a working environment with specific attention to minority and women at such work locations or in such facilities.
- (3) In the event of breach of any of the above nondiscrimination, equal opportunity, and affirmative action covenants, the Council of the City of Modesto shall have the right to revoke this license in accordance with the provisions of Section 5-5.31 of the Modesto Municipal Code.

ac. Licensee and City shall cooperate, on such terms as shall be agreed upon, to support, develop, publicize, expand, and promote the concept and benefits of recycling by any reasonable and effective methods. Licensee shall reimburse City for its expenses and mailing costs whenever City determines that it is in the best interest of the curbside recycling program to distribute information and promotional materials to Licensee's customers.

SECTION 3. SUPERSEDES AND REPEALS. This ordinance supersedes and repeals Ordinance No. 2829-C.S.

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; provided, however, that the license hereby granted shall not become effective unless and until Licensee files with the City Clerk

written acceptance thereof and an agreement to be bound by and comply with all of the requirements thereof, in a form satisfactory to the City Attorney, and delivers to the City Clerk the bond and insurance policies required to be furnished, pursuant to the provisions of this ordinance and of Chapter 5 of Title V of the Modesto Municipal Code.

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 9th day of April, 1996, by Councilmember Dobbs who moved its introduction and passage to print, which motion being duly seconded by Councilmember McKinsey, was upon roll call carried and order printed and published by the following vote:

AYES: Councilmembers: Dobbs, Friedman, McClanahan, McKinsey, Serpa, Mayor Lang

NOES: Councilmembers: None

ABSENT: Councilmembers: Fisher

APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:

By   
JEAN ADAMS, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

Ord. No. 2980-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 16th day of April, 1996, Councilmember McKinsey moved its final adoption, which motion being duly seconded by Councilmember Friedman, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Dobbs, Fisher, Friedman, McClanahan, McKinsey, Serpa, Mayor Lang

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:   
MAYOR RICHARD A. LANG

ATTEST:   
JEAN ADAMS, City Clerk

Effective Date: May 16, 1996

Clerk (6)

ORDINANCE NO. 2981 -C.S.

AN ORDINANCE AMENDING SECTION MAP 22-3-9 OF  
THE ZONING MAP OF THE CITY OF MODESTO,  
RECLASSIFYING CERTAIN PROPERTY LOCATED  
THEREON. (NORMAN E. WILSON, AIA)

WHEREAS, a verified application for an amendment to  
Section 22-3-9 of the Zoning Map was filed by Norman Wilson, AIA  
on December 19, 1995, to reclassify from Low Density Residential  
Zone, R-1, to Professional Office Zone, P-O, property located on  
the east side of Coffee Road south of East Orangeburg Avenue at  
1310 and 1320 Coffee Road, and

WHEREAS, after a public hearing held on February 5,  
1996, 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. 96-10, adopted on  
February 5, 1996, the Planning Commission recommended to the  
Council that the application of Norman Wilson, AIA to amend  
Section 22-3-9 of the Zoning Map to reclassify the hereinafter  
described property from Low Density Residential Zone, R-1, to  
Professional Office Zone, P-O, be approved,

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

SECTION 1. After a public hearing held on April 9,  
1996, in the Council Chambers, City Hall, 801 11th 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 reasons:

1. The P-O Zone will allow professional office development of the property and contribute to a mixture of uses provided for in the Mixed Use (MU) area designated for this portion of Coffee Road.
2. Plot plan review including conditions of approval required by the Board of Zoning Adjustment will assure a professional office development compatible with the adjacent residential neighborhood.
3. Development of this property for professional offices will include provisions to control the number and location of shared driveway approaches together with vehicular access ways in a manner contributing to a positive traffic flow along the Coffee Road frontage of this property.

SECTION 2. 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, to Professional Office Zone, P-O:

R-1 to P-O

All that certain real property situate in a portion of the Southwest quarter of the Northwest quarter of Section 22, 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 Northwest quarter/quarter corner of said Section 22, also being the intersection of the centerlines of Coffee Road which bears South 0° 27' 00" East and East Orangeburg Avenue which bears North 89° 54' 00" East as shown on that certain parcel map filed in the office of the Recorder of Stanislaus County, California, on January 21, 1974, in Volume 18 of Parcel Maps, at page 49; thence along the centerline of Coffee Road, South 0° 27' 00" East to a point established by the intersection of said Coffee Road centerline and the

western prolongation of a property line which is parallel to and 359.20 feet distant from the centerline of East Orangeburg Avenue and the True Point of Beginning of this description; thence leaving the centerline of Coffee Road and along said western prolongation, North 89° 54' 00" East 45.00 feet to the East line of Coffee Road; thence continuing along aforementioned parallel property line North 89° 54' 00" East 390.00 feet to a Western line of Parcel "B" as shown on the aforementioned parcel map; thence South 0° 27' 00" East 200.00 feet along said West line to a Northern line of said parcel "B"; thence along a Northern line of said parcel "B" and the North line of parcel "A" of said parcel map South 89° 56' 05" West 388.81 feet to the Northwest corner of said parcel "A"; thence along the westerly prolongation of said north line of parcel "A" South 89° 56' 05" West 47.19 feet to the centerline of Coffee Road; thence along said centerline North 0° 27' 00" West 200.00 feet to the point of beginning.

SECTION 3. ZONING MAP. Section 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 9th day of April, 1996, by Councilmember Dobbs, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Friedman, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Dobbs, Friedman, McClanahan, McKinsey, Serpa, Mayor Lang  
NOES: Councilmembers: None  
ABSENT: Councilmembers: Fisher

APPROVED: *Richard A. Lang*  
RICHARD A. LANG, Mayor

ATTEST:

By *Jean Adams*  
JEAN ADAMS, City Clerk

(SEAL)

APPROVED AS TO FORM:

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

APPROVED AS TO DESCRIPTION:

By *Georg Osner* *rec*  
Community Development Department  
Development Services

Ord. No. 2981-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 16th day of April, 1996, Councilmember McKinsey moved its final adoption, which motion being duly seconded by Councilmember Friedman, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Dobbs, Fisher, Friedman, McClanahan, McKinsey,  
Serpa, Mayor Lang

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:

  
MAYOR RICHARD A. LANG

ATTEST:

  
JEAN ADAMS, City Clerk

Effective Date: May 16, 1996

Check

ORDINANCE NO. 2982 -C.S.

AN ORDINANCE AMENDING SECTIONS 12-3-8 AND 13-3-8 OF THE ZONING MAP TO REZONE FROM LOW DENSITY RESIDENTIAL ZONE, R-1, TO PLANNED DEVELOPMENT ZONE, P-D(346), AS AN ADDITION TO PLANNED DEVELOPMENT ZONE, P-D(346), PROPERTY LOCATED ON THE SOUTH SIDE OF WEST RUMBLE ROAD EAST OF HAHN DRIVE. (TERRY MUNDY)

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

SECTION 1. ZONING CHANGE. Sections 12-3-8 and 13-3-8 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(346), as an addition to Planned Development Zone, P-D(346):

R-1 to P-D(346) as an Addition to P-D(346)

All that certain real property situate in a portion of the Southwest quarter of Section 12 and the Northwest quarter of Section 13, Township 3 South, Range 8 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 Parcel "C" as shown on that certain parcel map filed in the office of the Recorder of Stanislaus County, California, on April 25, 1975, in Volume 21 of Parcel Maps, Page 16; thence along the east line of said Parcel "C" South 0°47'00" East 320.00 feet to the Southeast corner of said Parcel "C" and the north line of a 20.00-foot-wide alley as shown on said Parcel Map; thence along the north line of said alley, North 88°52'00" East 198.00 feet; thence leaving said north alley line and along a parcel line bearing North 0°47'00" West 330.00 feet to the south line of the original 40.00-foot-wide West Rumble Road; thence along said south line, South 88°52'00" West 198.00 feet to a point of intersection with the northerly prolongation of the east line of aforementioned Parcel "C"; thence along said prolongation, South 0°47'00" East 10.00 feet to the point of beginning.

Including the South 20.00 feet of the original 40.00-foot-wide West Rumble Road and the North 10.00 feet of the adjacent 20.00-foot-wide alley and all immediately contiguous to the above described property.

SECTION 2. USES. The following uses shall be permitted in said P-D(346) Zone, as an addition to P-D(346), 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. Convalescent hospital complex.
2. Off-street parking areas.

SECTION 3. ZONING MAP. Sections 12-3-8 and 13-3-8 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

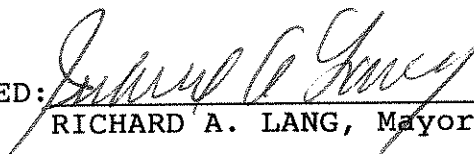
title of this ordinance, the date of its introduction and the places where this ordinance is posted.

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 9th day of April, 1996, by Councilmember Serpa, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Friedman, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Dobbs, Friedman, McClanahan, McKinsey, Serpa, Mayor Lang

NOES: Councilmembers: None

ABSENT: Councilmembers: Fisher

APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:

By   
JEAN ADAMS, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

APPROVED AS TO DESCRIPTION:

By   
Community Development Department  
Development Services

Ord. No. 2982-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 16th day of April, 1996, Councilmember McKinsey moved its final adoption, which motion being duly seconded by Councilmember Friedman, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Dobbs, Fisher, Friedman, McClanahan, McKinsey, Serpa, Mayor Lang

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:   
MAYOR RICHARD A. LANG

ATTEST:   
JEAN ADAMS, City Clerk

Effective Date: May 16, 1996

*Clerk*

ORDINANCE NO. 2983 -C.S.

AN ORDINANCE AMENDING SECTION 12-3-8 OF THE ZONING MAP OF THE CITY OF MODESTO, TO REZONE THE EAST PORTION OF PLANNED DEVELOPMENT ZONE P-D(346) TO LOW DENSITY RESIDENTIAL ZONE, R-1, AS A REVOCATION, PROPERTY LOCATED ON THE NORTH SIDE OF WEST RUMBLE ROAD EAST OF HAHN DRIVE. (TERRY MUNDY)

WHEREAS, a verified application for an amendment to Section 12-3-8 of the Zoning Map was filed by Terry Mundy on January 8, 1996, to rezone the east portion of Planned Development Zone, P-D(346), to Low Density Residential Zone, R-1, as a revocation, property located on the north side of West Rumble Road east of Hahn Drive, and

WHEREAS, after a public hearing held on March 4, 1996, 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. 96-15, adopted on March 4, 1996, the Planning Commission recommended to the Council that the application of Terry Mundy to amend Section 12-3-8 of the Zoning Map to rezone the east portion of Planned Development Zone, P-D(346), to Low Density Residential Zone, R-1, as a revocation, be approved,

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

SECTION 1. After a public hearing held on April 9, 1996, in the Council Chambers, City Hall, 801 11th 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:

1. Rezoning of the undeveloped eastern portion of the convalescent care hospital back to a Low-Density Residential Zone, due to unsuccessful negotiations to acquire the property, will allow continued use of the property for a single family dwelling.

SECTION 2. ZONING CHANGE. Section 12-3-8 of the Zoning Map is hereby amended to rezone the east portion of Planned Development Zone, P-D(346), to Low Density Residential Zone, R-1, as a revocation:

Portion of P-D(346) to R-1

All that certain real property situate in a portion of the Southwest quarter of Section 12, Township 3 South, Range 8 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 Parcel "A" as shown on that certain official Parcel Map filed in the office of the Recorder of Stanislaus County, California, on February 29, 1984, in Volume 35 of Parcel Maps, at Page 2; thence along the northern prolongation of the east line of said Parcel "A" North 0°15'05" West 25.00 feet to the north line of 25.00-foot-wide part width English Oaks Drive also as shown on said Parcel Map recorded in Volume 35 of Parcel Maps, at Page 2; thence along the eastern prolongation of the north line of said part width English Oaks Drive North 89°21'15" East 80.00 feet; thence leaving the eastern prolongation of the north line of half-width English Oaks Drive, South 0°15'05" East 240.00 feet to the north line of original 40.00-foot-wide West Rumble Road; thence along said north line, South 89°21'15" west 80.00 feet to the southern prolongation of said east line of aforementioned Parcel "A"; thence along said southern prolongation North 0°15'05" West 10.00 feet to the Southeast corner of said Parcel "A"; thence along said east line of Parcel "A" North 0°15'05" West

205.00 feet to the point of beginning of this description.

Including also all of the North 20.00 feet of the original 40.00-foot-wide West Rumble Road immediately adjacent to the above-described property.

SECTION 3. ZONING MAP. Section 12-3-8 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 9th day of April, 1996, by Councilmember Serpa, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Friedman, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Dobbs, Friedman, McClanahan, McKinsey, Serpa, Mayor Lang  
NOES: Councilmembers: None  
ABSENT: Councilmembers: Fisher

APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:

By   
JEAN ADAMS, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

APPROVED AS TO DESCRIPTION:

By   
Community Development Department  
Development Services

Ord. No. 2983-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 16th day of April, 1996, Councilmember McKinsey moved its final adoption, which motion being duly seconded by Councilmember Friedman, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Dobbs, Fisher, Friedman, McClanahan, McKinsey,  
Serpa, Mayor Lang

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:   
MAYOR RICHARD A. LANG

ATTEST:   
JEAN ADAMS, City Clerk

Effective Date: May 16, 1996

Clerk

ORDINANCE NO. 2984 -C.S.

AN ORDINANCE AMENDING THE PRECISE PLAN FOR AREA NO. 8 OF THE VILLAGE ONE SPECIFIC PLAN, TO REZONE FROM R-3 TO R-1 AS UNDERLYING ZONING, PROPERTY LOCATED ON THE SOUTHEAST CORNER OF SYLVAN AVENUE AND LITT ROAD EXTENDED, AND REZONING SAID PROPERTY. (INLAND WESTPOINTE PARTNERSHIP-VILLAGE HIGHLANDS)

WHEREAS, the City Council, in October, 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, Section 10-2.1904 provides that concurrent with the review and approval of a Precise Plan, all properties included in the Precise Plan shall be rezoned, consistent with the basic land use categories of the Village One Specific Plan, to the principal underlying zones set forth in Title X of the Modesto Municipal Code, and

WHEREAS, Village Highlands Vesting Tentative Subdivision Map encompasses all of Precise Plan for Area No. 8, "PPA No. 8" except for an 8.6-acre, southeast quadrant remainder, which has an underlying zoning of R-3 for multiple-family development in accordance with the Village One Specific Plan, and

WHEREAS, Ordinance No. 2965-C.S., which became effective on March 7, 1996, adopted a Precise Plan for Area No. 8 of the Village One Specific Plan, including conditions and provisions for a development agreement relating to property

located on the south side of Sylvan Avenue east of Litt Road, extended (Inland Westpointe Partnership Village Highlands), and

WHEREAS, Ordinance No. 2966-C.S., which became effective on March 7, 1996, rezoned the property encompassed by Precise Plan for Area No. 8 to Low Density Residential Zone, R-1, and Medium High Density Residential Zone, R-3, as Underlying Zoning together with a Specific Plan-Overlay Zone, SP-O, and

WHEREAS, applications were filed on March 18, 1996, by Lew-Garcia-Davis, Engineers, on behalf of Inland Westpointe Partnership and Village Ventures One Limited Partnership for amendments to the Village One Specific Plan to delete the multiple-family development designation from the Precise Plan for Area No. 8, (PPA No. 8) and Precise Plan for Area No. 33, (PPA No. 33), respectively; to downsize the underlying zoning from R-3 to R-1 in PPA No. 8; and to amend the vesting tentative subdivision map of Village Highlands to extend the single-family subdivision from the approved 151 lots to 203 lots, and

WHEREAS, a public hearing was held by the Planning Commission of the City of Modesto on April 1, 1996, in the City Council Chambers, City Hall, 801 11th Street, Modesto, and

WHEREAS, after considering public comments, the Planning Commission, by Resolution 96-16, recommended to the City Council approval of an amendment to the Precise Plan for Area No. 8 only of the Village One Specific Plan, and the rezoning of the hereinafter described property from R-3 to R-1 as underlying zoning, and

WHEREAS, said matter was set for a public hearing of the Council of the City of Modesto to be held on May 14, 1996, at 4:00 p.m., in the City Council Chambers, City Hall, 801 11th Street, Modesto, and

WHEREAS, a duly noticed public hearing to consider said recommendations of the Planning Commission was held at the date and time above mentioned, and

WHEREAS, the Council declares that said amendment to the Precise Plan for Area No. 8 and downzoning from R-3 to R-1 as underlying zoning is required by public necessity, convenience, and general welfare for the following reasons:

1. There is a current lack of feasibility to develop multi-family residential land in Village One due to lack of demand, tax incentives, and a depressed market for multi-family construction in Modesto.
2. Due to infrastructure investment required of the earlier developments in Village One, the developers must utilize all of their lands for marketable product and not hold back portions for future construction.
3. Amendments to the Specific Plan to affect Precise Planning Areas Nos. 8 and No. 33 to delete the multiple-family designation and underlying R-3 zoning will not preclude the City from allowing other projects to develop at higher densities or from allowing future rezones to R-3 for undeveloped properties if R-3 enjoys a return to prominence in the future.

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

**SECTION 1. APPROVAL OF AMENDMENT TO THE PRECISE PLAN.**

That the City Council has reviewed and considered the amendment to the Precise Plan for Area No. 8 of the Village One Specific

Plan to downzone the underlying zoning from R-3 to R-1 as recommended by the Planning Commission, and the Council does hereby approve said amendment to the Precise Plan for Area No. 8

SECTION 2. ZONING CHANGE. Section 12-3-9 of the Zoning Map is hereby amended to reclassify the following described property from R-3 to R-1 as underlying zoning:

R-3 to R-1 (SP-O)

All that area labeled as "Remainder" as shown in Approved Precise Plan for Area No. 8 which was indicated for multi-family development as referenced in Ordinance No. 2966-C.S.

SECTION 3. ZONING MAP. Section 12-3-9 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 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.

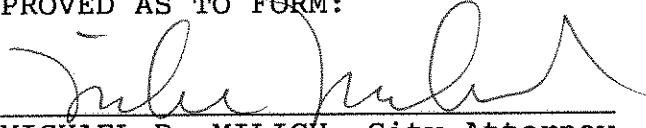
SECTION 6. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in The Modesto Bee, the official newspaper of the City of Modesto, setting forth the title of this ordinance, the date of its introduction and the places where this ordinance is posted.

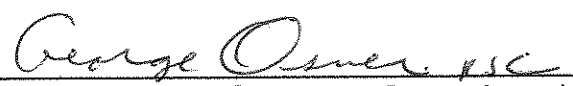
The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 14th day of May, 1996, by Councilmember McClanahan, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Friedman, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Dobbs, Friedman, McClanahan, McKinsey, Serpa, Mayor Lang  
NOES: Councilmembers: Fisher  
ABSENT: Councilmembers: None

APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:  
By   
JEAN ADAMS, City Clerk

(SEAL)  
APPROVED AS TO FORM:  
By   
MICHAEL D. MILICH, City Attorney

APPROVED AS TO DESCRIPTION:  
By   
Community Development Department  
Development Services

Ord. No. 2984-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 21st day of May, 1996, Councilmember Friedman moved its final adoption, which motion being duly seconded by Councilmember McKinsey, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Dobbs, Friedman, McKinsey, Serpa, Mayor Lang  
NOES: Councilmembers: None  
ABSENT: Councilmembers: Fisher, McClanahan

APPROVED:

  
MAYOR RICHARD A. LANG

ATTEST:

  
JEAN ADAMS, City Clerk

Effective Date: June 20, 1996

*Check*  
*17*

ORDINANCE NO. 2985 -C.S.

AN ORDINANCE AMENDING SECTION 12-1.08 OF CHAPTER 1 OF TITLE XII OF THE MODESTO MUNICIPAL CODE RELATING TO LANDSCAPING AND IRRIGATION FEES.

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

SECTION 1. AMENDMENT OF CODE. Section 12-1.08 of Chapter 1 of Title XII of the Modesto Municipal Code is hereby amended to read as follows:

**SEC. 12-1.08. FEES.**

A landscaping and irrigation plan review fee shall be paid to the Chief Building Official when a plan review is requested. The landscape inspection fee for the inspection required in Section 12-1.06 shall be paid before the building permit is issued. The amount of both fees will be calculated by multiplying the total square footage of landscaped area times a rate determined from time to time by resolution of the 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 14th day of May, 1996, by Councilmember Friedman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember McClanahan, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Dobbs, Fisher, Friedman, McClanahan, McKinsey, Serpa, Mayor Lang

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: 

RICHARD A. LANG, Mayor

ATTEST:

By 

JEAN ADAMS, City Clerk

(SEAL)

APPROVED AS TO FORM:

By 

MICHAEL D. MILICH, City Attorney

Ord. No. 2985-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 21st day of May, 1996, Councilmember Serpa moved its final adoption, which motion being duly seconded by Councilmember Dobbs, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Dobbs, Friedman, McKinsey, Serpa, Mayor Lang

NOES: Councilmembers: None

ABSENT: Councilmembers: Fisher, McClanahan

APPROVED:   
MAYOR RICHARD A. LANG

ATTEST:   
JEAN ADAMS, City Clerk

Effective Date: June 20, 1996

Clerk

ORDINANCE NO. 2986 -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(512), PROPERTY LOCATED ON THE NORTHEAST CORNER OF STANDIFORD AVENUE AND CARVER ROAD (IRWIN STEINPRESS).

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(512):

R-1 to P-D(512)

The land referred to herein is situated in the State of California, County of Stanislaus, City of Modesto, and is described as follows:

All that portion of the North one-half of Section 7, Township 3 South, Range 9 East, Mount Diablo Base and Meridian, described as follows:

Beginning at a point on the North line of a County Road known as Standiford Avenue 20.00 feet north of the center of said Section 7; thence South 89° 28' East along the North line of Standiford Avenue, 9.50 feet to a point; thence North 1° 0' West 203.50 feet to a point; thence North 89° 20' West 212.50 feet to the East line of a county road known as Carver Road; thence South 1° 10' East along the East line of said road 203.50 feet to the North line of Standiford Avenue; thence South 89° 28' East along the North line of said last mentioned road 203 feet to the point of beginning.

Excepting therefrom all that portion granted to the City of Modesto by deed recorded November 30, 1977 in Volume 2991 of Official Records, Page 706, as Instrument No. 35077.

Also excepting therefrom all that portion granted to the City of Modesto by Deed recorded July 17, 1989 as instrument No. 054544.

Also including the east half of Carver Road and the North half of Standiford Avenue, all being immediately adjacent to the above described property.

SECTION 2. USES. The following uses shall be permitted in said P-D(512) 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. Restaurant.

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.

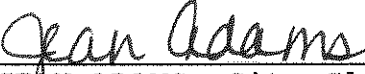
SECTION 5.. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in The Modesto Bee, the official newspaper of the City of Modesto, setting forth 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 28th day of May, 1996, by Councilmember Dobbs, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Serpa, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Dobbs, Fisher, Friedman, McKinsey, Serpa, Mayor Lang  
NOES: Councilmembers: None  
ABSENT: Councilmembers: McClanahan

APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:

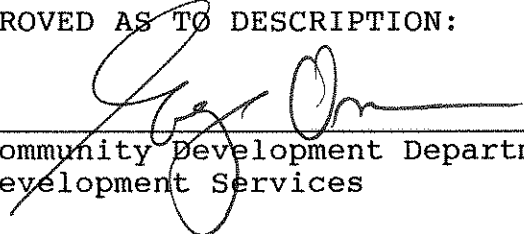
By   
JEAN ADAMS, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

APPROVED AS TO DESCRIPTION:

By   
Community Development Department  
Development Services

Ord. No. 2986-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 4th day of June, 1996, Councilmember Friedman moved its final adoption, which motion being duly seconded by Councilmember Serpa, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Dobbs, Fisher, Friedman, McKinsey, Serpa, Mayor Lang

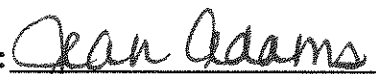
NOES: Councilmembers: None

ABSENT: Councilmembers: McClanahan

APPROVED:

  
MAYOR RICHARD A. LANG

ATTEST:

  
JEAN ADAMS, City Clerk

Effective Date: July 4, 1996

*Check*

ORDINANCE NO. 2987 -C.S.

AN ORDINANCE AMENDING SECTION MAP 7-4-9 OF THE ZONING MAP OF THE CITY OF MODESTO PREZONING CERTAIN PROPERTY LOCATED THEREON. (DAVID DEVELOPMENT)

WHEREAS, a verified application for an amendment to Section 7-4-9 of the Zoning Map was filed by David Development Company, on March 11, 1996, to prezone, unincorporated County land to Low Density Residential Zone, PR-1, property located between Yuma and Tucson Avenues, north of Whitmore and south of the alley between Imperial and Inyo Avenues, hereinafter described, and

WHEREAS, after a public hearing held on April 15, 1996, it was found and determined by the Planning Commission that prezoning of the property as requested is required by public necessity, convenience and general welfare for the following reasons:

1. That the proposed prezone application is in accordance with community objectives as set forth in the General Plan, which provides for single-family development in the Baseline Developed Area.
2. That the proposal is consistent with the General Plan MEIR State CEQA Statute 21157.1(b).

WHEREAS, by Resolution No. 96-20, adopted on April 15, 1996, the Planning Commission recommended to the Council that the application of David Development Company to amend Section 7-4-9 of the Zoning Map to prezone the hereafter described property to Low Density Residential Zone, PR-1, be approved, and

WHEREAS, said matter was set for a public hearing of the City Council to be held on June 4, \_\_\_\_\_, 1996, at 7:00 p.m., in the City Council Chambers, City Hall, 801 11th 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 June 4 \_\_\_\_\_, 1996, 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 reasons set forth in Planning Commission Resolution No. 96-20 and quoted above.

SECTION 2. ZONING CHANGE. Section 7-4-9 of the Zoning Map is hereby amended to prezone the following described property to Low Density Residential Zone, PR-1:

All that certain real property situated in a portion of Section 7 Township 4 South Range 9 East Mount Diablo Base & Meridian lying in the County of Stanislaus, State of California more particularly described as follows:

Commencing at the Southeast corner of said Section 7 as shown on the map of the Fairview Tract filed per records in Volume 17 of Maps at page 16, Stanislaus County Records: thence North 89° 50' 00" West along the South line of said Section 7, 1481.04 feet; thence North 0° 13' 00" East, 50.00 feet to a point on the West right of way line of Yuma Avenue and the true point of beginning of this description; thence continuing North 0° 13' 00" along said West right of

way line 1949.40 feet; thence South 89° 50' 00" East 44.00 feet to a point on the North line of a 20.00-foot-wide alley of Block 9741 of said Fairview Tract Subdivision; thence continuing South 89° 50' 00" East along said North line, 726.52 feet to a point on the East right of way line of Tucson Avenue (60.00 feet wide); thence South 0° 13' 00" along said East right-of-way line, 1949.40 feet to a point on the North right-of-way line of Whitmore Avenue (said North line being 50.00 feet North of said South line of Section 7); thence North 89° 50' 00" West 61.52 feet of Lot #12 of Block 9712 of Fairview Tract, thence North 0° 13' 00" East a distance of 10.00 feet, thence North 89° 50' 00" West a distance of 60.5 feet, thence South 0° 13' 00" West a distance of 10 feet, thence North 89° 50' 00" West a distance of 60.5 feet, thence North 0° 13' 00" East a distance of 10 feet, thence North 89° 50' 00" West a distance of 60.5 feet, thence South 0° 13' 00" West a distance of 10 feet, thence North 89° 50' 00" West along said North right-of-way line a distance of 427.50 feet to the point of beginning of this description.


SECTION 3. ZONING MAP. Section 7-4-9 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 4th day of June, 1996, by Councilmember Dobbs, who moved its introduction and passage to print, which motion being duly seconded by Councilmember McClanahan, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Dobbs, Fisher, Friedman, McClanahan, McKinsey, Serpa, Mayor Lang  
NOES: Councilmembers: None  
ABSENT: Councilmembers: None

APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:

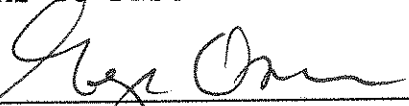
By   
JEAN ADAMS, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

APPROVED AS TO DESCRIPTION:

By   
Community Development Department  
Development Services

Ord. No. 2987-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 11th day of June, 1996, Councilmember Serpa moved its final adoption, which motion being duly seconded by Councilmember McClanahan, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Dobbs, Friedman, McClanahan, McKinsey, Serpa, Mayor Lang

NOES: Councilmembers: None

ABSENT: Councilmembers: Fisher

APPROVED:   
MAYOR RICHARD A. LANG

ATTEST:   
JEAN ADAMS, City Clerk

Effective Date: July 11, 1996

ORDINANCE NO. 2988 -C.S.

AN ORDINANCE AMENDING SECTION 12-4.103 OF ARTICLE 1 OF CHAPTER 4 OF TITLE XII OF THE MODESTO MUNICIPAL CODE RELATING TO MANCINI BOWL GENERAL REGULATIONS.

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

SECTION 1. AMENDMENT OF CODE. Section 12-4.103 of Article 1 of Chapter 4 of Title XII of the Modesto Municipal Code is hereby amended to read as follows:

**SEC. 12-4.103. GENERAL REGULATIONS.**

- (a) **Evening Use.** Any evening use of the Bowl shall be terminated, and all person must clear the Bowl, vacate the premises and all lights must be turned off by 10:00 p.m on the date of use.
- (b) **Use of Amplifiers or Loudspeaking Equipment.** In the event that amplifiers or loudspeaking equipment is utilized, the volume of the sound shall be regulated or controlled so as not to unreasonably disturb or annoy the peace and quiet of the persons residing in areas adjoining Graceada Park.
- (c) **Selling of Merchandise, Services or Products.** No merchandise, services or products shall be sold by any organization using the Bowl without the prior consent of the Parks and Recreation Director which, in considering the request, shall consider the public interest, convenience and welfare to assure that the use is compatible with park purposes and the existing uses in the surrounding area. In the event the Parks and Recreation Director denies such a request, the applicant may appeal such denial to the City Council.
- (d) **Type of Activity.** No organization shall carry on any activity in the Bowl which will injure the facility.
- (e) **Alcoholic Beverages.** Sale, possession, consumption or use of alcoholic beverages in Mancini Bowl is prohibited unless approved in advance in writing by the Parks and Recreation Director.

- (f) **Indemnification.** All organizations obtaining permission to use Mancini Bowl shall indemnify and hold the City, its agents, officers and employees harmless from any and all liability for personal injuries, property damage and lost articles sustained or suffered by users of the Bowl, including the permittee, its agents, officers, employees or members.
- (g) **Reimbursement for Damages.** Any person or organization obtaining permission to use the Bowl shall be responsible for reimbursing the City for any damages to the facility occurring or resulting during its use.
- (h) **Compliance With Regulations.** The person or organization obtaining the permit for the use of Mancini Bowl shall be responsible for seeing that these regulations are complied with.

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 4th day of June, 1996, by Councilmember Friedman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember McClanahan, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Dobbs, Fisher, Friedman, McClanahan, McKinsey, Serpa, Mayor Lang

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:

By   
JEAN ADAMS, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

Ord. No. 2988-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 11th day of June, 1996, Councilmember Serpa moved its final adoption, which motion being duly seconded by Councilmember McClanahan, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Dobbs, Friedman, McClanahan, McKinsey, Serpa, Mayor Lang

NOES: Councilmembers: None

ABSENT: Councilmembers: Fisher

APPROVED:   
MAYOR RICHARD A. LANG

ATTEST:   
JEAN ADAMS, City Clerk

Effective Date: July 11, 1996

Clerk

ORDINANCE NO. 2989 -C.S.

AN ORDINANCE ADOPTING THE OPERATING BUDGET AND FIRST YEAR OF THE 1996-97 CAPITAL IMPROVEMENT PROGRAM FOR THE CITY OF MODESTO FOR THE FISCAL YEAR ENDING JUNE 30, 1997, 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 1996-1997 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, and

WHEREAS, in accordance with the City Charter, a public hearing has been held upon the adoption of the proposed budget after due notice, as provided by law, 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. That the "City of Modesto Proposed Annual Budget 1996-97", presented by the City Manager to the City Council at its meeting held May 14, 1996, 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, excluding the items relating to the Airport Fuel Flowage Fee increase and the Lincoln Lakewood Bridge project, as the budget for the City of Modesto for the fiscal year ending June 30, 1997, and the several amounts stated therein as proposed expenditures.

SECTION 2. That funds of the City of Modesto encumbered on June 20, 1996, are hereby appropriated for the purposes for which they are encumbered and shall be a part of the budget for the fiscal year 1996-1997 adopted hereby.

SECTION 3. That Capital Projects carried over from fiscal year 1995-1996 are hereby re-appropriated as a part of the budget for the fiscal year 1996-1997 adopted hereby. The amount of said appropriations will equal the Reserve for Appropriated Carryover Projects established in the General Ledger Accounts of the City of Modesto for all funds as of June 30, 1996.

SECTION 4. That the City Council is authorized by resolution to transfer funds from one fund to another fund and to transfer and authorize the expenditure of funds from the Reserved Fund Balances for specific purposes.


SECTION 5. That the City Manager is authorized to transfer funds within departmental budgets, and between departments within the General Fund, among the following classifications, to wit: Employee Services, Professional and Contractual Services, Materials and Supplies, other operating expenses and Capital Appropriations; and to transfer appropriations for capital items budgeted within the same capital fund and that the City Manager may delegate this authority to the Deputy City Manager.

SECTION 6. Pursuant to Section 722 of the Charter of the City of Modesto, this ordinance shall take effect upon adoption.

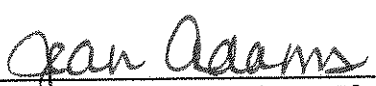
SECTION 7. Copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in The Modesto Bee, the official newspaper of the City of Modesto, setting forth the title of this ordinance, the date of its adoption and the places where this ordinance is posted.

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 18th day of June, 1996, by Councilmember Friedman, who moved its adoption and passage to print, which motion being duly seconded by Councilmember Serpa, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Dobbs, Fisher, Friedman, McClanahan, McKinsey, Serpa, Mayor Lang  
NOES: Councilmembers: None  
ABSENT: Councilmembers: None

APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:

By   
JEAN ADAMS, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

*Clerk*

ORDINANCE NO. 2990-C.S.

AN ORDINANCE AMENDING SECTION 4-2.09 OF CHAPTER 2 OF TITLE IV OF THE MODESTO MUNICIPAL CODE RELATING TO DRINKING IN PUBLIC.

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

SECTION 1. AMENDMENT OF CODE. Section 4-2.09 of Chapter 2 of

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

**SEC. 4-2.09. DRINKING IN PUBLIC.**

No person shall drink and/or be in possession of an open container of any beer, wine or other intoxicating beverage on any public street, sidewalk, alley, playground, or walkway.

Nor shall any person drink and/or be in possession of an open container containing any intoxicating beverage on any private parking lot held open to the public except for intoxicating beverages dispensed or consumed on a private parking lot pursuant to a license issued for that purpose by the State of California. Nor shall any person drink and/or be in possession of any open container containing any intoxicating beverage on any public parking lot except those that directly abut a City park, and only with advance written approval of the Parks and Recreation Director. This section shall not be deemed to make punishable any act or acts which are prohibited by any law of the State of California.

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 18th day of June, 1996, by Councilmember Friedman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Dobbs, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Dobbs, Fisher, Friedman, McClanahan, McKinsey, Serpa, Mayor Lang

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:

By   
JEAN ADAMS, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

Ord. No. 2990-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 25th day of June, 1996, Councilmember Friedman 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: Dobbs, Fisher, Friedman, McKinsey, Serpa, Mayor  
Lang  
NOES: Councilmembers: None  
ABSENT: Councilmembers: None

APPROVED:   
MAYOR RICHARD A. LANG

ATTEST:   
JEAN ADAMS, City Clerk

Effective Date: July 25, 1996

*Click*

ORDINANCE NO. 2991 -C.S.

AN ORDINANCE AMENDING SECTION 12-4.202 OF ARTICLE 2 OF CHAPTER 4 OF TITLE XII OF THE MODESTO MUNICIPAL CODE RELATING TO 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 XII of the Modesto Municipal Code is hereby amended to read as follows:

**SEC. 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.
  - (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 location to another any part or parts of field equipment.
- (15) To move or remove from one 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 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 discard lighted or unlighted cigars or cigarettes in children's playground 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 sections.
  - (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.
- (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 Section 12-4.202(b)(1) 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 Section 12-4.202(b)(2)(ii);

(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 18th day of June, 1996, by Councilmember Friedman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Dobbs, was upon roll call carried and ordered printed and published by the following vote:

AYES:	Councilmembers:	Dobbs, Fisher, Friedman, McClanahan, McKinsey, Serpa, Mayor Lang
NOES:	Councilmembers:	None
ABSENT:	Councilmembers:	None

APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:

By   
JEAN ADAMS, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

Ord. No. 2991-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 25th day of June, 1996, Councilmember Friedman 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: Dobbs, Fisher, Friedman, McKinsey, Serpa, Mayor Lang  
NOES: Councilmembers: None  
ABSENT: Councilmembers: None

APPROVED:   
MAYOR RICHARD A. LANG

ATTEST:   
JEAN ADAMS, City Clerk

Effective Date: July 25, 1996

ORDINANCE NO. 2992 -C.S.

AN ORDINANCE AMENDING SECTION 4-6.307 OF ARTICLE 3 OF CHAPTER 6 OF TITLE IV OF THE MODESTO MUNICIPAL CODE RELATING TO TAXICAB RATES.

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

SECTION 1. AMENDMENT OF CODE. Section 4-6.307 of Article 3 of Chapter 6 of Title IV of the Modesto Municipal Code is hereby amended to read as follows:

**SEC. 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:** Two dollars and seventy-five cents (\$2.75) 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.

**SECTION 2. EMERGENCY PROVISIONS. DECLARATION OF URGENCY.**

The Council of the City of Modesto hereby finds and declares that the foregoing ordinance is necessary as an emergency measure for preserving the public peace, health and safety for the following reasons:

At the close of the public hearing by the Council on June 25, 1996, for the purpose of considering the request of Dennis McDonald, owner of

Red Top Taxi and Modesto Cab Companies, Mr. McDonald stated that due to the sudden and large size of the recent fuel cost increase he may not be able to stay in business unless the rate increase is effective immediately. Since Mr. McDonald provides a valuable service to the citizens of Modesto, the public peace, health and safety require that this ordinance become effective immediately.

SECTION 2. EFFECTIVE DATE. Pursuant to Section 722 of the Charter of the City of Modesto, this ordinance shall go into effect and be in full force and operation as of the date of its adoption.

SECTION 3. PUBLICATION. Copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in The Modesto Bee, the official newspaper of the City of Modesto, setting forth the title of this ordinance, the date of its adoption and the places where this ordinance is posted.

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 25th day of June, 1996, by Councilmember Dobbs, 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: Dobbs, Fisher, Friedman, McClanahan, McKinsey, Serpa, Mayor Lang

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:

By   
JEAN ADAMS, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

*Clark*

ORDINANCE NO. 2993 -C.S.

AN ORDINANCE AMENDING SECTION 11-6.02 OF CHAPTER 6 OF TITLE XI OF THE MODESTO MUNICIPAL CODE RELATING TO DEPOSITS FOR UTILITY SERVICES.

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

SECTION 1. AMENDMENT OF CODE. Section 11-6.02 of Chapter 6 of Title XI of the Modesto Municipal Code is hereby amended to read as follows:

**SEC. 11-6.02. DEPOSITS FOR UTILITY SERVICES.**

An advance deposit for utility services, as may be established from time to time by resolution duly adopted by the Council, shall be required for each service based solely on credit worthiness of the consumer; except that if the Finance Director is of the opinion that a larger deposit is required in order to protect the interests of the City, the Director may require a deposit that does not exceed twice the estimated average periodic bill or three times the estimated average monthly bill. Said advance deposit shall not be required upon proof of credit worthiness satisfactory to the Finance Director.

Said advance deposit may be applied toward the nonpayment of the utility services charges upon delinquency and subsequent scheduling for disconnection of services for nonpayment, at the time of discontinuance of service or upon reaching credit worthiness satisfactory to the Finance Director. If said deposit is applied to a delinquent account, service shall not be resumed on such account until such time as the deposit is replaced to the satisfaction of the Finance Director.

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 2nd day of July, 1996, by Councilmember Friedman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Serpa, was upon roll call carried and ordered printed and published by the following vote:

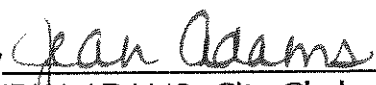
AYES: Councilmembers: Dobbs, Friedman, McClanahan, McKinsey, Serpa, Mayor Lang

NOES: Councilmembers: None

ABSENT: Councilmembers: Fisher


APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:

By   
JEAN ADAMS, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

Ord. No. 2993-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 16th day of July, 1996, Councilmember McClanahan moved its final adoption, which motion being duly seconded by Councilmember Friedman, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Dobbs, Fisher, Friedman, McClanahan, Mayor Lang

NOES: Councilmembers: None

ABSENT: Councilmembers: Serpa

APPROVED:

  
MAYOR RICHARD A. LANG

ATTEST:

  
JEAN ADAMS, City Clerk

Effective Date: August 15, 1996

Clerk 3

ORDINANCE NO. 2994 -C.S.

AN ORDINANCE AMENDING SECTION 33-3-9 OF THE ZONING MAP TO REZONE FROM LOW DENSITY RESIDENTIAL ZONE, R-1, PROFESSIONAL OFFICE ZONE, P-O, AND LIGHT INDUSTRIAL ZONE, M-1, TO PLANNED DEVELOPMENT ZONE, P-D(514), PROPERTY LOCATED ON THE NORTH SIDE OF YOSEMITE BOULEVARD, WEST OF DRY CREEK AND EAST OF D STREET. (GALLO GLASS CO.)

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

SECTION 1. ZONING CHANGE. Section 33-3-9 of the Zoning Map is hereby amended to reclassify the following described property from Low Density Residential Zone, R-1, Professional Office Zone, P-O, and Light Industrial Zone, M-1, to Planned Development Zone, P-D(514):

R-1, P-O, and M-1 to P-D(514)

All that certain real property situate in a portion of the south half of Section 33, Township 3 South, Range 9 East, Mount Diablo Base and Meridian, in the County of Stanislaus, State of California, described as follows:

- 1) Lots 9 thru 16 of Block 216 as shown on City maps and all of Block 217 as shown on City maps, including also the south one-half of Jennie Street, the north one-half of Yosemite Boulevard, all of Groveland Street, all of Willow Street, and the east one-half of an alley, all immediately adjacent to the above described property.
- 2) Starting at the north quarter-corner of said section, thence easterly along the north section line 37 feet more or less to the centerline of Dry Creek, thence southeasterly along the centerline of said Dry Creek 101 feet more or less to a point on the north side of Yosemite Boulevard, thence southwesterly along a non-tangent curve also being the northerly line of Yosemite Boulevard 154 feet more or less to the intersection of a non-tangent line, thence southeasterly along said non-tangent

line 32 feet, thence southwesterly along a non-tangent curve also being the northerly line of Yosemite Boulevard 339 feet more or less, thence northerly along the east line of 60 foot Willow Street 262 feet more or less, thence easterly along the north line of said Section 415 feet more or less to the point of beginning.

Including also the north half of Yosemite Boulevard, all immediately adjacent to the above described property.

SECTION 2. USES. The following uses shall be permitted in said P-D(514) 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. Manufacturing, warehousing and printing as allowed in the M-1 zone.
2. Business professional office space.
3. Off-street parking as shown on the approved plans.

SECTION 3. ZONING MAP. Section Map 33-3-9 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 9th day of July, 1996, by Councilmember Dobbs, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Serpa, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Dobbs, Fisher, McClanahan, Serpa, Mayor Lang

NOES: Councilmembers: None

ABSENT: Councilmembers: Friedman

APPROVED:

  
RICHARD A. LANG, Mayor

ATTEST:

By   
JEAN ADAMS, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

APPROVED AS TO DESCRIPTION:

By   
Community Development Department  
Development Services

Ord. No. 2994-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 16th day of July, 1996, Councilmember Dobbs 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: Dobbs, Fisher, McClanahan, Mayor Lang

NOES: Councilmembers: None

ABSENT: Councilmembers: Friedman, Serpa

APPROVED:

  
MAYOR RICHARD A. LANG

ATTEST: Jean Adams  
JEAN ADAMS, City Clerk

Effective Date: August 15, 1996

*Clerk*

ORDINANCE NO. 2995 -C.S.

AN ORDINANCE AMENDING SECTION 28-3-9 OF THE ZONING MAP TO REZONE FROM MEDIUM DENSITY RESIDENTIAL ZONE, R-2, AND NEIGHBORHOOD COMMERCIAL ZONE, C-1, TO PLANNED DEVELOPMENT ZONE, P-D(513), PROPERTY LOCATED ON THE NORTH SIDE OF SCENIC DRIVE WEST OF HIGH STREET, AND EAST OF KIMBLE STREET (ERNIE YOSHINO/FRANK SALAS JR.)

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 Medium Density Residential Zone, R-2, and Neighborhood Commercial Zone, C-1, to Planned Development Zone, P-D(513):

R-2 to P-D(513)

All that certain real property situate in a portion of the southeast quarter of the northwest quarter of Section 28, Township 3 South, Range 9 East, Mount Diablo Base and Meridian, in the County of Stanislaus, State of California, described as follows:

Lots 12, 13, 26, and 27 of the MAP OF THE EASTERN ADDITION TO THE CITY OF MODESTO, according to the official Map, thereof, filed in the office of the Recorder of Stanislaus County, California, on February 26, 1912, in Volume 6 of Maps at page 31.

Including also the east half of 60 foot Kimble Street; the west half of 60 foot High Street; and the north, east and west half of a 20 foot alley, all immediately adjacent to the above described property.

C-1 to P-D(513)

All that certain real property situate in a portion of the southeast quarter of the northwest quarter of Section 28, Township 3 South, Range 9 East, Mount Diablo Base and Meridian, in the County of Stanislaus, State of California, described as follows:

Lots 14 thru 23 of the MAP OF THE EASTERN ADDITION TO THE CITY OF MODESTO, according to the official Map, thereof, filed in the office of the Recorder of Stanislaus County, California, on February 26, 1912, in Volume 6 of Maps at page 31.

Including also the north half of 80 foot Scenic Drive, the west half of 60 foot High Street, and south and west half of a 20 foot alley, all immediately adjacent to the above described property.

SECTION 2. USES. The following uses shall be permitted in said P-D(513) 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. Funeral chapel and related facilities.
2. Off-street parking as shown on the approved development plan.

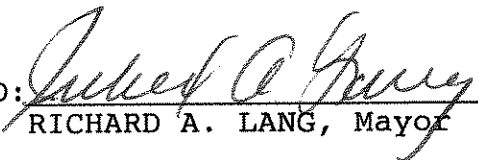
SECTION 3. ZONING MAP. Section Map 28-3-9 of the Zoning Map of the City of Modesto is amended to appear as set forth on the map attached hereto, which is hereby made a part of this ordinance by reference.

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

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 16th day of July, 1996, by Councilmember Friedman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Dobbs, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Dobbs, Fisher, Friedman, McClanahan, Mayor Lang  
NOES: Councilmembers: None  
ABSENT: Councilmembers: Serpa

APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:

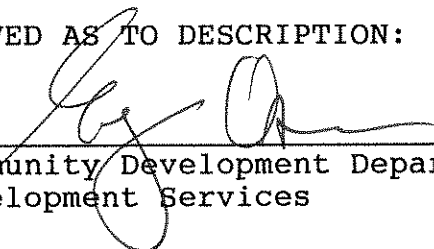
By   
JEAN ADAMS, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

APPROVED AS TO DESCRIPTION:

By   
Community Development Department  
Development Services

Ord. No. 2995-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 23rd day of July, 1996, Councilmember Friedman moved its final adoption, which motion being duly seconded by Councilmember Serpa, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Cogdill, Dobbs, Fisher, Friedman, McClanahan, Serpa,  
Mayor Lang

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:

  
MAYOR RICHARD A. LANG

ATTEST:

  
JEAN ADAMS, City Clerk

Effective Date: August 22, 1996

Junk 23

ORDINANCE NO. 2996 -C.S.

AN ORDINANCE AMENDING SECTION 8-3.102 OF ARTICLE 1 OF CHAPTER 3 OF TITLE VIII OF THE MODESTO MUNICIPAL CODE RELATING TO 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 VIII of the Modesto Municipal Code is hereby amended to read as follows:

**SEC. 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 amount of twenty thousand dollars (\$20,000.00) or less. Except as noted below, no contract involving an expenditure in excess of twenty thousand dollars (\$20,000.00) may be authorized, approved or executed without City Council approval. The twenty thousand dollars (\$20,000.00) 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 thousand dollars (\$200,000.00) or less.
- (b) Contracts for public works projects consisting of the improvement, repair, expansion, renovation, or modification of the baseball stadium facilities located at John Thurman Field 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 three million dollars (\$3,000,000.00) or less.

Any contract for public works projects which may be so approved as set forth in subsections (a) and (b) above and authorized by the City Manager 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 23rd day of July, 1996, by Councilmember Friedman, who moved its introduction and passage to print, which motion being duly seconded by Mayor Lang, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Cogdill, Dobbs, Fisher, Friedman, Serpa, Mayor Lang

NOES: Councilmembers: McClanahan

ABSENT: Councilmembers: None

APPROVED: *Richard A. Lang*  
RICHARD A. LANG, Mayor

ATTEST:

By *Jean Adams*  
JEAN ADAMS, City Clerk

(SEAL)

APPROVED AS TO FORM:

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

Ord. No. 2996-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 6th day of August, 1996, Councilmember Friedman 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: Cogdill, Dobbs, Fisher, Friedman, Serpa, Mayor  
Lang  
NOES: Councilmembers: McClanahan  
ABSENT: Councilmembers: None

APPROVED:

  
MAYOR RICHARD A. LANG

ATTEST:

  
JEAN ADAMS, City Clerk

Effective Date: September 5, 1996

ORDINANCE NO. 2997-C.S.

AN ORDINANCE ADOPTING A PRECISE PLAN FOR AREA NO. 25 OF THE VILLAGE ONE SPECIFIC PLAN, INCLUDING CONDITIONS AND PROVISION FOR A DEVELOPMENT AGREEMENT RELATING TO PROPERTY LOCATED ON THE SOUTHEAST CORNER OF FLOYD AVENUE AND ESTA AVENUE. (WARREN LAWSON AND LOWE DEVELOPMENT, INC./DELAMARE-FULTZ).

WHEREAS, the City Council, in October, 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, Section 10-2.1904 provides that concurrent with the review and approval of a Precise Plan, all properties included in the Precise Plan shall be rezoned, consistent with the basic land use categories of the Village One Specific Plan, to the principal underlying zones set forth in Title X of the Modesto Municipal Code, and

WHEREAS, Delamare-Fultz Engineering and Surveying, on behalf of Lawson/Lowe Development, have filed a proposal to develop a 113-lot, single-family subdivision with a recreation building and RV parking facility within a gated community (Olympic Village Subdivision), on a 19.9-acre site which comprises the west half of Precise Plan Area No. 25, located on the south side of Floyd Avenue east of Esta Avenue and north of Sharon Avenue, and

WHEREAS, in accordance with the requirements of the Village One Specific Plan, as amended by SPA No. 8, an application for approval of a Precise Plan for Area No. 25 of the

Village One Specific Plan has been filed, which proposed Precise Plan contains provisions for a development agreement for funding A.O.B. requirements, and

WHEREAS, the application package also seeks underlying zoning of Low Density Residential, R-1, which is to be coupled with the Specific Plan Overlay, SP-O, Zone in accordance with the requirements of the Village One Specific Plan, and

WHEREAS, a public hearing was held by the Planning Commission of the City of Modesto on July 1, 1996, in the City Council Chambers, City Hall, 801 11th Street, Modesto, and

WHEREAS, after considering public comments, the Planning Commission, by Resolution 95-25, recommended to the City Council approval of a Precise Plan for Area No. 25 of the Village One Specific Plan, and

WHEREAS, said matter was set for a public hearing of the Council of the City of Modesto to be held on August 6, 1996, at 7:00 p.m., in the City Council Chambers, City Hall, 801 11th Street, Modesto, and

WHEREAS, a duly noticed public hearing to consider said recommendations of the Planning Commission was held at the date and time above mentioned, and

WHEREAS, the Council declares that the proposed Precise for Area No. 25 of the Village One Specific Plan and rezoning to Low Density Residential, R-1, as underlying zoning together with Specific Plan Overlay, SP-O, zoning is required by public

necessity, convenience, and general welfare for the following reasons:

1. The proposed Precise Plan for Area No. 25 conforms to the Specific Plan in that it follows the previously-established land use, the street layout and development specifications.
2. The proposed Precise Plan for Area No. 25 provides for A.O.B. funding via a Development Agreement between the developer and the City of Modesto.
3. The proposed Rezoning to Low Density Residential, R-1, with a Specific Plan Overlay, SP-O, zone is necessary as an integral step toward development under the Village One Specific Plan.

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. 25 of the Village One Specific Plan and rezoning to Low Density Residential, R-1, as underlying zoning together with Specific Plan Overlay, SP-O, zoning as recommended by the Planning Commission, and the Council does hereby approve said Precise Plan for Area No. 25, subject to the following conditions:

1. Except as amended herein or by reference, all development shall be in accordance with the Village One Specific Plan and the specifications contained in the booklet entitled "Village One - Precise Plan Area No. 25" and Olympic Village Vesting Tentative Subdivision Map - Modesto, California, prepared for the Lowe Development by Delamare-Fultz Engineering, dated received May 2, 1996, and the vesting tentative subdivision map entitled "Olympic Village", stamped approved by the Planning Commission on July 1, 1996, and on file in the office of the Community Development Director.

2. Prior to recordation of a final map, the developer shall secure and establish a funding source for both capital improvements and ongoing maintenance of the landscaped areas, including but not limited to landscaping and lighting district, Mello-Roos Community Facilities District, or special assessment district.
  
3.
  - a. Prior to the recordation of a final map, all subdivision dedications and improvements as required in the Modesto Municipal Code, the cumulative California State Subdivision Law, and the Village One Specific Plan shall be accepted by the City of Modesto and installed or secured to the satisfaction of the Public Works and Transportation Director. This condition shall include street requirements to implement the appropriate mitigation measures 4.4.1 through 4.4.8 of the Village One Program Environmental Impact Report. This shall also include Public Services and Utilities necessary to implement the appropriate mitigation measures 4.10 through 4.10.14c.
  
  - b. With respect to Esta Avenue and Sharon Avenue extended, prior to recordation of a final map, the developer shall complete, or secure the construction thereof to the satisfaction of the Public Works and Transportation Director, the full frontage improvements up to the off-site curbs.
  
4. Prior to recordation of a final map, the developer shall advance the necessary infrastructure costs or shall construct the facilities necessary to extend infrastructure service to the area. If temporary measures are utilized, the developer shall also fund the amount necessary to effect a permanent provision when such can be accomplished. The costs shall be determined by the Director of Public Works and Transportation.
  
5. Prior to approval of the final map, the City and Developer shall negotiate and execute a development agreement specifying the conditions of the development. The development agreement shall be adopted by ordinance as provided in SPA #8 of the Village One Specific Plan.

6. It is anticipated that a portion of the Public Facilities necessary to serve development in Village One will be financed through the formation of an Area of Benefit (AOB) for Village One. This AOB will assign a fair share of certain identified public facility costs needed to serve Village One to each Precise Plan area and ultimately each parcel or lot receiving development entitlements.

In the event that the AOB for Village One is established prior to the issuance of building permits for this project, then developer shall pay the AOB assessment for each lot prior to the issuance of each building permit.

7. In the event that the developer seeks issuance of building permits prior to the establishment of the AOB for Village One, then in lieu of the AOB assessment, developer shall pay for each lot an amount to be determined by the City Council after holding a public hearing for that purpose prior to the issuance of any building permit. It is the intent of this condition that the developer fully participate by paying their fair share in the Village One Financing Plan. Any fees paid in excess of the actual AOB assessment shall be reimbursed pursuant to the development agreement.
8. Prior to recordation of a final map, annexation to the School District's Mello-Roos District shall be completed.
9. Public utility easements, as required by the utility companies serving the subdivision, shall be dedicated by the final map.
10. Prior to the issuance of a building permit, a landscaping and irrigation plan shall be approved by the Parks and Recreation Department Director. The landscaping and the irrigation system shall be installed and maintained in accordance with the approved plan.
11. All landscaping, fences, and walls shall be maintained and the premises shall be kept free of weeds, trash, and other debris.
12. Street dedication consistent with Standard Specifications shall be made prior to the issuance of a building permit or at any time requested by the Public Works and Transportation Director to

alleviate a health, safety, or traffic problem in the area.

13. Street improvements consistent to the Precise Plan shall be provided prior to the occupancy of any structures or when requested by the Public Works and Transportation Director to alleviate a health, safety or traffic problem in the area.
14. Prior to issuance of a building permit, improvement plans for required improvements shall be prepared by a registered civil engineer and approved by the Public Works and Transportation Director. Improvements shall be constructed in accordance with the approved plans.
15. All private streets and parking areas shall be constructed in accordance with the standard vertical structural section for residential streets as contained in the City of Modesto Standard Specifications.
16. Irrigation lines shall be removed, relocated or protected, as required by the Modesto Irrigation District and the Public Works and Transportation Director. Easements for irrigation lines to remain shall be dedicated.
17. All utilities shall be underground and cable television service shall be stubbed into all units.
18. Prior to recordation of a final map, the developer shall show on the plans submitted to Building Inspection all fire hydrants as required by the Fire Chief. All hydrants required by the Fire Chief shall be installed and operable prior to construction of any structures.
19. Prior to the issuance of a building permit for any structure, a final subdivision map shall be recorded.
20. Prior to City Council approval of a final subdivision map, the subdivider shall submit evidence in a form satisfactory to the City Attorney that there has been created a Homeowners' Association to guarantee common facility and private property maintenance in accordance with the approved plans.

21. The applicant shall record a "Notice of Conditions" in the Stanislaus County Recorder's Office on a form available in the Planning and Community Development Department.
22. The developer shall indemnify, defend, and hold harmless the City of Modesto, its agents, officers, and employees from any and all claims, actions, or proceedings against the City of Modesto, its agents, officers, and employees to attack, set aside, void, or annul, any approval by the City of Modesto of a subdivision approval, which action is brought within the time period provided for in Code of Civil Procedure Section 1094.6 and Public Resource Code 21167 of the State of California. The City of Modesto shall promptly notify the subdivider of any claim, action, or proceeding and shall cooperate fully in the defense. If the City fails to do so, the developer shall not thereafter be responsible to defend, indemnify, or hold City harmless.

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 6th day of August, 1996, by Councilmember Friedman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Cogdill, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Cogdill, Dobbs, Fisher, Friedman, McClanahan, Serpa, Mayor Lang  
NOES: Councilmembers: None  
ABSENT: Councilmembers: None

APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:

By   
JEAN ADAMS, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

Ord. No. 2997-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 13th day of August, 1996, Councilmember Friedman moved its final adoption, which motion being duly seconded by Councilmember Serpa, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Cogdill, Dobbs, Fisher, Friedman, McClanahan,  
Serpa, Mayor Lang

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:   
MAYOR RICHARD A. LANG

ATTEST:   
JEAN ADAMS, City Clerk

Effective Date: September 12, 1996

ORDINANCE NO. 2998 -C.S.

AN ORDINANCE REZONING VILLAGE ONE PROPERTY FROM SPECIFIC PLAN-HOLDING ZONE, SP-H, TO SPECIFIC PLAN-OVERLAY ZONE, SP-O, AND LOW DENSITY RESIDENTIAL ZONE, R-1, AS UNDERLYING ZONING, PROPERTY LOCATED AT THE SOUTHEAST CORNER OF FLOYD AVENUE AND ESTA AVENUE. (PRECISE PLAN FOR AREA NO. 25 - LAWSON/LOWE/DELMARE-FULTZ)

WHEREAS, the City Council in October, 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, Delmare-Fultz Engineering and Surveying, on behalf of Lawson/Lowe Development, have filed a proposal to develop a 113-lot, single-family subdivision called Olympic Village on a 19.9-acre site which comprises the west half of Precise Plan Area No. 25, located on the south side of Floyd Avenue east of Esta Avenue and north of Sharon Avenue, and

WHEREAS, in accordance with the requirements of the Village One Specific Plan as amended by SPA No. 8, an application for approval of a Precise Plan for Area No. 25 of the Village One Specific Plan has been filed which proposed Precise Plan contains provisions for a development agreement for funding A.O.B. requirements, and

WHEREAS, the application package also seeks underlying zoning of Low Density Residential Zone, R-1, which is to be coupled with the Specific Plan-Overlay Zone, SP-O, in accordance with the requirements of the Specific Plan, and

WHEREAS, after a public hearing held on July 1, 1996, it was found and determined by the Planning Commission that zoning of the property as requested is required by public necessity, convenience and general welfare, and

WHEREAS, by Resolution No. 96-34, adopted July 1, 1996, the Planning Commission recommended that the application of Delmare-Fultz Engineering and Surveying, on behalf of Lawson/Lowe Development to rezone Village One property from Specific Plan-Holding Zone, SP-H, to Specific Plan-Overlay Zone, SP-O, and Low Density Residential Zone, R-1, as underlying zoning, for property located on the south side of Floyd Avenue east of Esta Avenue and north of Sharon Avenue, be approved, and

WHEREAS, said matter was set for a public hearing of the City Council to be held on August 6, 1996, at 7:00 p.m., in the City Council Chambers, City Hall, 801 11th 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. After a public hearing held on August 6, 1996, in the Council Chambers, City Hall, 801 11th 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 reasons:

1. The proposed Precise Plan for Area No. 25 conforms to the Specific Plan in that it follows the previously established land-use, the street layout, and development specifications.
2. The proposed Precise Plan for Area No. 25 provides for A.O.B. funding via a Development Agreement between the developer and the City of Modesto.
3. The proposed Rezoning to R-1 with SP-O zone overlay is necessary as an integral step toward development under the Village One Specific Plan.

SECTION 2. ZONING CHANGE. Section 13-3-9 of the Zoning Map of the City of Modesto is hereby amended to rezone the following described property from Specific Plan-Holding Zone, SP-H, to Specific Plan-Overlay Zone, SP-O, and Low Density Residential Zone, R-1, as underlying zoning,

R-1 (SP-O)

All that certain real property situate in a portion of the north half of Section 13, 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 northwest corner of Lot 10 of the Adams Colony recorded in Volume 4 of Maps, Page 5, Stanislaus County Records; thence North 0°25'40" West along the west line of Lot 7 of said Adams Colony a distance of 661.89 feet to the northwest corner of said Lot 7; thence North 89°51'54" East along the north line of said Lot 7 a distance of 347.40 feet; thence North 0°08'06" West 111.00 feet; thence South 89°51'54" West 1.54 feet; thence North 0°08'30" West 530.91 feet to the existing south line of 40 foot wide Floyd Avenue; thence South 89°51'30" West along said south line of Floyd Avenue a distance of 778.26 feet to the future westerly line of 64 foot wide Esta Avenue; thence south-westerly along said future westerly line of Esta Avenue the following 3 courses:

South 0°32'15" East 199.67 feet, southwesterly 206.62 feet along a tangent curve, concave to the west, having a radius of 470.75 feet, and a central angle of 25°08'55", and South 24°36'40" West 435.64 feet to the west line of the east half of the southeast quarter of the northwest quarter of said Section 13; thence South 0°27'44" East along said west line a distance of 204.57 feet to the future southerly line of 70 foot wide Sharon Avenue; thence South 63°00'59" East along said future southerly line of Sharon Avenue a distance of 665.76 feet to the south line of the northwest quarter of said Section 13; thence North 89°51'39" East along said south line of the northwest quarter a distance of 66.27 feet to the point of beginning.

Containing: 19.87 Acres

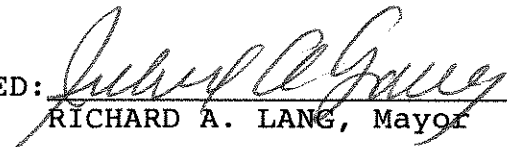
SECTION 3. ZONING MAP. Section 13-3-9 of the Zoning Map of the City of Modesto is amended to appear as set forth on the map attached hereto, which is hereby made a part of this ordinance by reference.

SECTION 4. EFFECTIVE DATE. This ordinance shall go into effect and be in full force and operation from and after thirty (30) days after its final passage and adoption.

SECTION 5. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in The Modesto Bee, the official newspaper of the City of Modesto, setting forth the title of this ordinance, the date of its introduction and the places where this ordinance is posted.

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 6th day of August, 1996, by Councilmember Friedman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Cogdill, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Cogdill, Dobbs, Fisher, Friedman, McClanahan, Serpa, Mayor Lang  
NOES: Councilmembers: None  
ABSENT: Councilmembers: None

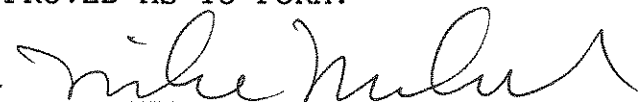
APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:

By   
JEAN ADAMS, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

APPROVED AS TO DESCRIPTION:

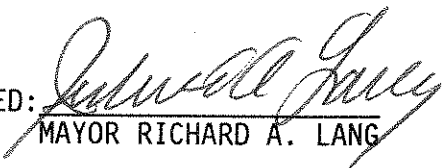
By   
Planning and Community  
Development Department

Ord. No. 2998-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 13th day of August, 1996, Councilmember Friedman moved its final adoption, which motion being duly seconded by Councilmember Serpa, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Cogdill, Dobbs, Fisher, Friedman, McClanahan,  
Serpa, Mayor Lang  
NOES: Councilmembers: None  
ABSENT: Councilmembers: None

APPROVED:   
MAYOR RICHARD A. LANG

ATTEST:   
JEAN ADAMS, City Clerk

Effective Date: September 12, 1996

ORDINANCE NO. 2999-C.S.

AN ORDINANCE AMENDING SECTION 9-3-9 OF THE ZONING MAP TO REZONE FROM HIGHWAY COMMERCIAL ZONE, C-3, TO PLANNED DEVELOPMENT ZONE, P-D(515), PROPERTY LOCATED ON THE EAST SIDE OF MC HENRY AVENUE, SOUTH OF CORAL WOOD DRIVE. (FOOD-FOR-LESS SHOPPING CENTER, STONE-WEBB).

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

SECTION 1. ZONING CHANGE. Section 9-3-9 of the Zoning Map is hereby amended to reclassify the following described property from Highway Commercial Zone, C-3, to Planned Development Zone, P-D(515):

C-3 to P-D(515)

All that certain real property situate in a portion of the northwest quarter of Section 9, 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:

All of Parcels A and B according to the official parcel map filed in the office of the Recorder of Stanislaus County, California, on February 29, 1984, in Volume 35 of Parcel Maps, Page 03.

Including also the following described property: Commencing at the most Southern Southwest corner of aforementioned Parcel B, said corner also lying on the north line of a 46.00 foot wide driveway known as Meilly Way and being a portion of adjacent Parcel 1 according to the official parcel map filed in the office of the Recorder of Stanislaus County, California, on April 1, 1985 in

Volume 38 of Parcel Maps, Page 01, thence along a west line of said Parcel B, North 0° 42' 00" East 4.16 feet to the point of beginning, thence leaving the west line of Parcel B and in a Westerly direction along said north line of Meily Way and said Parcel 1, on a curve concave to the south having a length of 46.48 feet, a central angle of 15° 51' 03" and a radius of 168.00 feet, thence continuing along the north line of Parcel 1 and Meily Way North 89° 18' 20" west 70.62 feet to the northwest corner of said Parcel 1 and the East line of 110.00 foot wide McHenry Avenue, thence along said East line North 0° 53' 13" West 124.32 feet to the most western Southwest corner of said Parcel B, thence North 89° 07' 00" East 120.00 feet, thence South 00° 42' 00" west 134.10 feet to the point of beginning.

Including also all of the East 55.00 feet of 110.00 foot wide McHenry Avenue located immediately adjacent to the above described properties.

SECTION 2. USES. The following uses shall be permitted in said P-D(515) 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 shopping center allowing C-3 Commercial uses.
2. A free-standing sign package.

SECTION 3. ZONING MAP. Section 9-3-9 of the Zoning Map of the City of Modesto is amended to appear as set forth on the map attached hereto, which is hereby made a part of this ordinance by reference.

SECTION 4. EFFECTIVE DATE. This ordinance shall go into effect and be in full force and operation from and after thirty (30) days after its final passage and adoption.

SECTION 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 27th day of August, 1996, by Councilmember Cogdill, 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: Cogdill, Dobbs, Fisher, Friedman,  
McClanahan, Serpa, Mayor Lang  
NOES: Councilmembers: None  
ABSENT: Councilmembers: None

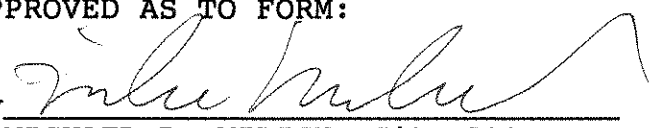
APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:

By   
JEAN ADAMS, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

APPROVED AS TO DESCRIPTION:

By   
COMMUNITY DEVELOPMENT DEPARTMENT  
Development Services Division

Ord. No. 2999-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 17th day of September, 1996, Councilmember Friedman 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: Cogdill, Dobbs, Fisher, Friedman, McClanahan,  
Serpa, Mayor Lang

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:

  
MAYOR RICHARD A. LANG

ATTEST:

  
JEAN ADAMS, City Clerk

Effective Date: October 17, 1996

ORDINANCE NO. 3000 -C.S.

AN ORDINANCE AMENDING ARTICLE 24 OF CHAPTER 2 OF TITLE X OF THE MODESTO MUNICIPAL CODE PERTAINING TO ZONING REGULATIONS APPLICABLE TO ADULT ENTERTAINMENT BUSINESSES AND AMENDING CHAPTER 9 OF TITLE V OF THE MODESTO MUNICIPAL CODE RELATING TO ADULT ENTERTAINMENT BUSINESSES.

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

SECTION 1. FINDINGS. The City Council of the City of Modesto

hereby finds that:

(a) The City Council, in adopting this ordinance, takes legislative notice of the existence and content of the following studies concerning the adverse secondary side effects of adult entertainment businesses in other cities: Garden Grove, California (1991); Tucson, Arizona (1990); Seattle, Washington (1989); Austin, Texas (1986); Oklahoma City, Oklahoma (1986); Indianapolis, Indiana (1984); Houston, Texas (1983); Beaumont, Texas (1982); Minneapolis, Minnesota (1980); Phoenix, Arizona (1979); Whittier, California (1978); Amarillo, Texas (1977); Cleveland, Ohio (1977); Los Angeles, California (1977). The City Council finds that these studies are relevant to the problems addressed by the City in enacting this ordinance to regulate the adverse secondary side effects of adult entertainment businesses, and more specifically finds that these studies provide convincing evidence that:

(1) Adult entertainment businesses are linked to increases in the crime rates in those areas in which they are located and in surrounding areas.

(2) Both the proximity of adult businesses to sensitive land uses and the concentration of adult businesses tend to result in the blighting and deterioration of the areas in which they are located.

(3) The proximity and concentration of adult entertainment businesses adjacent to residential, recreational, religious, educational and other adult entertainment business uses can cause other businesses and residences to move elsewhere.

(4) There is substantial evidence that an increase in crime tends to accompany, concentrate around, and be aggravated by adult entertainment businesses, including but not limited to an increase in the crimes of narcotics distribution and use, prostitution, pandering, and violence against persons and property. The studies from other cities establish convincing evidence that adult businesses which are not regulated as to permissible locations often have a deleterious effect on nearby businesses in residential areas, causing, among other adverse secondary effects, an increase in crime and a decrease in property values.

(b) Based on the foregoing, the City Council of the City of Modesto finds and determines that special regulation of adult entertainment businesses is necessary to ensure that their adverse secondary side effects will not contribute to an increase in crime rates or to the blighting or deterioration of the areas in which they are located or surrounding areas. The need for such special regulations is based upon the recognition that adult entertainment businesses have serious objectionable operational characteristics, particularly when several of them are

concentrated under certain circumstances or located in direct proximity to sensitive uses such as parks, schools, churches, thereby having a deleterious effect upon the adjacent areas. It is the purpose and intent of these special regulations to prevent the concentration of adult businesses and thereby prevent such adverse secondary side effects.

(c) The locational requirements established by this ordinance do not unreasonably restrict the establishment or operation of constitutionally protected adult entertainment businesses in the City of Modesto, and a sufficient reasonable number of appropriate locations for adult businesses are provided by this ordinance.

(d) In developing this ordinance, the City Council has been mindful of legal principles relating to regulation of adult businesses and does not intend to suppress or infringe upon any expressive activities protected by the First Amendments of the United States and California Constitutions, but instead desires to enact reasonable time, place, and manner regulations that address the adverse secondary effects of adult entertainment businesses. The City Council, has considered decisions of the United States Supreme Court regarding local regulation of adult entertainment businesses, including but not limited to: Young v. American Mini Theaters, Inc., 427 U.S. 50 (1976) Reh. Denied 429 U.S. 873; Renton v. Playtime Theaters, 475 U.S. 41 (1986) Reh. Denied 475 U.S. 1132; FW/PBS, Inc. v. Dallas, 493 U.S.215 (1990); Barnes v. Glenn Theater, 111 S.Ct. 2456 (1991); United States Court of Appeals 9th Circuit decisions, including but not limited to: Topanga Press, et al. v. City of Los Angeles, 989 F.2d 1524 (1993); and several California cases including but

not limited to: City of National City v. Wiener, 3 Cal.4th 832 (1992); People v. Superior Court (Lucero) 49 Cal.3d 14 (1989); and City of Vallejo v. Adult Books, et al., 167 Cal.App.3d 1169 (1985).

(e) The City Council of the City of Modesto also determines that locational criteria alone do not adequately protect the health, safety, and general welfare of the citizens of the City of Modesto, and thus certain requirements with respect to the ownership and operation of adult entertainment businesses are in the public interest. In addition to the findings and studies conducted in other cities regarding increases in crime rates, decreases in property values and the blighting of areas in which such businesses are located, the City Council also takes legislative notice of the facts recited in the case of Kev, Inc. v. Kitsap County, 793 F.2d 1053 (1986), regarding how live adult entertainment results in secondary effects such as prostitution, drug dealing, and other law enforcement problems.

(f) The studies referred to above show that adult entertainment businesses are frequently used for sexual activities including prostitution and for other sexual liaisons of a casual nature in places open to the public, and, therefore, the City Council of the City of Modesto has a legitimate concern over sexually transmitted diseases, including AIDS, and this legitimate health concern demands reasonable regulations of adult entertainment businesses in order to protect the health and well-being of the citizens of Modesto.

(g) Zoning, licensing and other police power regulations are legitimate, reasonable means of accountability to help protect the quality of life in

the community of Modesto and to help assure that all operators of adult entertainment businesses comply with reasonable regulations and are located in places that minimize the adverse secondary effects which naturally accompany the operation of such businesses.

(h) The City Council of the City of Modesto recognizes the possible harmful effects on children and minors exposed to the effects of such adult entertainment businesses and the deterioration of respect for family values, and the need and desire of children and minors to stay away from and avoid such businesses, which causes children to be fearful and cautious when walking through or visiting the immediate neighborhood of such businesses; and the City Council desires to minimize and control the adverse secondary side effects associated with the operation of adult entertainment businesses and thereby protect the health, safety, and welfare of the citizens of Modesto; protect the citizens from increased crime; preserve the quality of life; preserve property values and the character of surrounding neighborhoods and businesses; deter the spread of urban blight and protect against the threat to health from the spread of communicable and sexually transmitted diseases.

(i) It is not the intent of the City Council of the City of Modesto in enacting this ordinance, or any provision thereof, to condone or legitimize the distribution of obscene material, and the City of Modesto recognizes that state law prohibits the distribution of the obscene materials and expects and encourages law

enforcement officials to enforce state obscenity statutes against such illegal activities in the City of Modesto.

(j) Nothing in this ordinance is intended to authorize, legalize, or permit the establishment, operation, or maintenance of any business, building, or use which violates any City ordinance or any statute of the State of California regarding public nuisances, unlawful or indecent exposure, sexual conduct, lewdness, obscene or harmful matter or the exhibition or public display thereof.

SECTION 2. AMENDMENT OF CODE. Article 24 of Chapter 2 of Title X of the Modesto Municipal Code is hereby amended to read as follows:

**ARTICLE 24. ADULT ENTERTAINMENT BUSINESSES.**

**SEC. 10-2.2401. PURPOSE.**

It is the intent of this article to prevent community wide adverse economic impacts, increased crime, decreased property values, and the deterioration of neighborhoods which can be brought about by the concentration of adult entertainment businesses in close proximity to each other or proximity to other incompatible uses such as schools for minors, churches, and residentially zoned districts or uses. The City Council finds that it has been demonstrated in various communities that the concentration of adult entertainment businesses causes an increase in the number of transients in the area, and an increase in crime, and in addition to the effects described above can cause other businesses and residents to move elsewhere. It is, therefore, the purpose of this article to establish reasonable and uniform regulations to prevent the concentration of adult entertainment businesses or their close proximity to incompatible uses, while permitting the location of adult businesses in certain areas.

**SEC. 10-2.2402. DEFINITIONS.**

(a) **Establishment of an adult entertainment business.** As used herein, to "establish" an adult entertainment business shall mean and include any of the following:

- (1) The opening or commencement of any adult entertainment business as a new business;
  - (2) The conversion of an existing business, whether or not an adult entertainment business, to any adult entertainment business defined herein;
  - (3) The addition of any of the adult entertainment businesses defined herein to any other existing adult entertainment business; or
  - (4) The relocation of any such adult entertainment business.
- (b) **Specified anatomical areas.** As used herein, "specified anatomical areas" shall mean and include any of the following:
- (1) Less than completely and opaquely covered human (i) genitals or pubic region; (ii) buttocks; and (iii) female breast below a point immediately above the top of the areola; and
  - (2) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.
  - (3) Any device, costume or covering that simulates any of the body parts included in subdivisions (1) or (2) above.
- (c) **Specified sexual activities.** As used herein, "specified sexual activities" shall mean and include any of the following, whether performed directly or indirectly through clothing or other covering:
- (1) The fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breast;
  - (2) Sex acts, actual or simulated, including intercourse, oral copulation, or sodomy;
  - (3) Masturbation, actual or simulated;
  - (4) Excretory functions as part of or in connection with any of the other activities described in subdivision (1) through (3) of this subsection.

- (d) **Adult Entertainment Businesses.** "Adult entertainment businesses" means any one of the following:
- (1) **Adult arcade.** The term "adult arcade" as used in this chapter, is an establishment where, for any form of consideration, one or more still or motion picture projectors, or similar machines, for viewing by five (5) or fewer persons each, are used to show films, computer generated images, motion pictures, video cassettes, slides or other photographic reproductions thirty (30) percent or more of the number of which are distinguished or characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas.
  - (2) **Adult bookstore.** The term "adult bookstore" as used in this chapter, is an establishment that has thirty (30) percent or more of its stock in books, magazines, periodicals or other printed matter, or of photographs, films, motion pictures, video cassettes, slides, tapes, records or other form of visual or audio representations which are distinguished or characterized by an emphasis upon the depiction or description of specified sexual activities and/or specified anatomical areas.
  - (3) **Adult cabaret.** The term "adult cabaret" as used in this chapter, means a nightclub, restaurant, or similar business establishment which: (1) regularly features live performances which are distinguished or characterized by an emphasis upon the display of specified anatomical areas or specified sexual activities; and/or (2) shows films, computer generated images, motion pictures, video cassettes, slides, or other photographic reproductions thirty (30) percent or more of the number of which are distinguished or characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas.
  - (4) **Adult hotel/motel.** The term "adult hotel/motel" as used in this chapter, means a hotel or motel or similar business establishment offering public accommodations for any form of consideration which, (1) provides patrons with closed-circuit television transmissions, films, computer generated images, motion pictures, video cassettes, slides,

or other photographic reproductions thirty (30) percent or more of the number of which are distinguished or characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas; and (2) rents, leases, or lets any room for less than a six (6) hour period, or rents, leases, or lets any single room more than twice in a 24-hour period.

- (5) **Adult motion picture theater.** The term "adult motion picture theater" as used in this chapter, is a business establishment where, for any form of consideration, films, computer generated images, motion pictures, video cassettes, slides or similar photographic reproductions are shown, and thirty (30) percent or more of the number of which are distinguished or characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas.
  - (6) **Adult theater.** The term "adult theater" as used in this chapter, means a theater, concert hall, auditorium, or similar establishment which, for any form of consideration regularly features live performances which are distinguished or characterized by an emphasis on the display of specified anatomical areas or specified sexual activities.
  - (7) **Modeling studio.** The term "modeling studio" as used in this chapter, means a business which provides, for pecuniary compensation, monetary or other consideration, hire or reward, figure models who, for the purposes of sexual stimulation of patrons, display "specified anatomical areas" to be observed, sketched, photographed, painted, sculpted or otherwise depicted by persons paying such consideration. "Modeling studio" does not include schools maintained pursuant to standards set by the State Board of Education. "Modeling studio" further does not include a studio or similar facility owned, operated, or maintained by an individual artist or group of artists, and which does not provide, permit, or make available "specified sexual activities."
- (e) **Church.** The term "church" as used in this article, is a structure which is used primarily for religious worship and related religious activities.

- (f) **Distinguished or characterized by an emphasis upon.** As used in this ordinance, the term "distinguished or characterized by an emphasis upon" shall mean and refer to the dominant or essential theme of the object described by such phrase. For instance, when the phrase refers to films "which are distinguished or characterized by an emphasis upon" the depiction or description of specified sexual activities or specified anatomical areas, the films so described are those whose dominant or predominant character and theme are the depiction of the enumerated sexual activities or anatomical areas. See Pringle v. City of Covina, 115 Cal.App.3 151 (1981).
- (g) **Regularly Features.** The term "regularly features" with respect to an adult theater or adult cabaret means a regular and substantial course of conduct. The fact that live performances which are distinguished or characterized by an emphasis upon the display of specified anatomical areas or specified sexual activities occurs on two (2) or more occasions within a thirty (30) day period; three (3) or more occasions within a sixty (60) day period; or four (4) or more occasions within a one hundred and eighty (180) day period, shall to the extent permitted by law be deemed to be a regular and substantial course of conduct.
- (h) **School.** The term "school" as used in Section 10-2.2403, is any child or day care facility, or an institution of learning for minors, whether public or private, offering instruction in those courses of study required by the California Education Code and maintained pursuant to standards set by the State Board of Education. This definition includes a nursery school, kindergarten, elementary school, middle or junior high school, senior high school, or any special institution of education, but it does not include a vocational or professional institution of higher education, including a community or junior college, college, or university.
- (i) **Semi-nude.** Means a state of dress in which clothing covers no more than the genitals, pubic region, buttocks, areola of the female breast, as well as portions of the body covered by supporting straps or devices.

#### **SEC. 10-2.2403. MINIMUM PROXIMITY REQUIREMENTS.**

No adult entertainment business shall be established or located in any zone in the City other than Light Industrial (M-1) Zone or Heavy

Industrial (M-2) Zone, or within certain distances of certain specified land uses or zones as set forth below:

- (a) No such business shall be established or located in any zone in the City other than Light Industrial (M-1) Zone or Heavy Industrial (M-2) Zone, or within five hundred (500) feet of any other adult entertainment business.
- (b) No such business shall be established or located in any zone in the City other than Light Industrial (M-1) Zone or Heavy Industrial (M-2) Zone, or within three hundred (300) feet from any existing residential zone or use, park, church, school.
- (c) The distances set forth above shall be measured as a radius from the primary entrance of the adult business to the property lines of the property so zoned or used without regard to intervening structures.

**SEC. 10-2.2404. AMORTIZATION OF NONCONFORMING ADULT BUSINESS USES.**

Any use of real property existing on November 2, 1995, which does not conform to the provisions of Section 10-2.2403, but which was constructed, operated, and maintained in compliance with all previous regulations, shall be regarded as a nonconforming use which may be continued until November 3, 1996. (One (1) year after the effective date of this ordinance.) On or before such latter date, all such nonconforming uses shall be terminated unless an extension of time has been approved by the Board of Zoning Adjustment in accordance with the provisions of Section 10-2.2405.

- (a) **Abandonment.** Notwithstanding the above, any discontinuance or abandonment of the use of any lot or structure as an adult entertainment business shall result in a loss of legal nonconforming status of such use.
- (b) **Amortization -- annexed property.** Any adult entertainment business which was a legal use at the time of annexation of the property and which is located in the City, but which does not conform to the provisions of Section 10-2.2403 shall be terminated within one (1) year of the date of annexation unless an extension of time has been approved by the Board of Zoning Adjustment in accordance with the provisions of Section 10-2.2405.

**SEC. 10-2.2405. EXTENSION OF TIME FOR TERMINATION OF NONCONFORMING USE.**

The owner or operator of a nonconforming use as described in Section 10-2.2404 may apply under the provisions of this section to the Board of Zoning Adjustment for an extension of time within which to terminate the nonconforming use.

- (a) **Time and manner of application.** An application for an extension of time within which to terminate a use made nonconforming by the provisions of Section 10-2.2403, may be filed by the owner of the real property upon which such use is operated, or by the operator of the use. Such an application must be filed with the Community Development Director at least ninety (90) days but no more than 180 (one hundred eighty) days prior to the time established in Section 10-2.2404 for termination of such use.
- (b) **Content of application; fees.** The application shall state the grounds for requesting an extension of time. The filing fee for such application shall be the same as that for a variance as is set forth in the schedule of fees established by resolution from time to time by the City Council.
- (c) **Hearing procedure.** The City Manager shall appoint a hearing officer to hear the application. The hearing officer shall set the matter for hearing within forty-five (45) days of receipt of the application. All parties involved shall have the right to offer testimonial, documentary and tangible evidence bearing on the issues; may be represented by counsel; and shall have the right to confront and cross-examine witnesses. Any relevant evidence may be admitted that is the sort of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs. Any hearing under this section may be continued for a reasonable time for the convenience of a party or a witness. The decision of the hearing officer shall be final and subject to judicial review pursuant to Code of Civil Procedure Section 1094.6.
- (d) **Approval of extension; findings.** An extension under the provisions of this section shall be for a reasonable period of time commensurate with the investment involved, and shall be approved only if the hearing officer makes all of the following findings or such other findings as are required by law:

- (1) The applicant has made a substantial investment (including but not limited to lease obligations) in the property or structure on or in which the nonconforming use is conducted; such property or structure cannot be readily converted to another use; and such investment was made prior to July 5, 1994;
- (2) The applicant will be unable to recoup said investment as of the date established for termination of the use; and
- (3) The applicant has made good faith efforts to recoup the investment and to relocate the use to a location in conformance with Section 10-2.2403.

SECTION 3. AMENDMENT OF CODE. Chapter 9 of Title V of the Modesto Municipal Code is hereby amended to read as follows:

#### CHAPTER 9. ADULT ENTERTAINMENT BUSINESSES

##### ARTICLE 1. GENERAL PROVISIONS

###### SEC. 5-9.101. LEGISLATIVE PURPOSE.

It is the purpose of this ordinance to regulate adult oriented businesses in order to promote the health, safety, morals, and general welfare of the citizens of the City. The provisions of this ordinance have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intent nor effect of this ordinance to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this ordinance to condone or legitimize the distribution of obscene material.

###### SEC. 5-9.102. DEFINITIONS.

For the purpose of this chapter the following words and phrases shall have the meanings respectively ascribed to them by this section:

- (a) **Adult Entertainment Businesses.** "Adult entertainment businesses" means any one of the following:

- (1) **Adult arcade.** The term "adult arcade" as used in this chapter, is an establishment where, for any form of consideration, one or more still or motion picture projectors, or similar machines, for viewing by five (5) or fewer persons each, are used to show films, computer generated images, motion pictures, video cassettes, slides or other photographic reproductions thirty (30) percent or more of the number of which are distinguished or characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas.
- (2) **Adult bookstore.** The term "adult bookstore" as used in this chapter, is an establishment that has thirty (30) percent or more of its stock in books, magazines, periodicals or other printed matter, or of photographs, films, motion pictures, video cassettes, slides, tapes, records or other form of visual or audio representations which are distinguished or characterized by an emphasis upon the depiction or description of specified sexual activities and/or specified anatomical areas.
- (3) **Adult cabaret.** The term "adult cabaret" as used in this chapter, means a nightclub, restaurant, or similar business establishment which: (1) regularly features live performances which are distinguished or characterized by an emphasis upon the display of specified anatomical areas or specified sexual activities; and/or (2) shows films, computer generated images, motion pictures, video cassettes, slides, or other photographic reproductions thirty (30) percent or more of the number of which are distinguished or characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas.
- (4) **Adult hotel/motel.** The term "adult hotel/motel" as used in this chapter, means a hotel or motel or similar business establishment offering public accommodations for any form of consideration which, (1) provides patrons with closed-circuit television transmissions, films, computer generated images, motion pictures, video cassettes, slides, or other photographic reproductions thirty (30) percent or more of the number of which are distinguished or characterized by an emphasis upon the depiction or

description of specified sexual activities or specified anatomical areas; and (2) rents, leases, or lets any room for less than a six (6) hour period, or rents, leases, or lets any single room more than twice in a 24-hour period.

- (5) **Adult motion picture theater.** The term "adult motion picture theater" as used in this chapter, is a business establishment where, for any form of consideration, films, computer generated images, motion pictures, video cassettes, slides or similar photographic reproductions are shown, and thirty (30) percent or more of the number of which are distinguished or characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas.
- (6) **Adult theater.** The term "adult theater" as used in this chapter, means a theater, concert hall, auditorium, or similar establishment which, for any form of consideration regularly features live performances which are distinguished or characterized by an emphasis on the display of specified anatomical areas or specified sexual activities.
- (7) **Escort bureau.** The term "escort bureau" as used in this chapter, means a business which, for pecuniary compensation, consideration, hire or reward furnishes or offers to furnish escorts.
- (8) **Modeling studio.** The term "modeling studio" as used in this chapter, means a business which provides, for pecuniary compensation, monetary or other consideration, hire or reward, figure models who, for the purposes of sexual stimulation of patrons, display "specified anatomical areas" to be observed, sketched, photographed, painted, sculpted or otherwise depicted by persons paying such consideration. "Modeling studio" does not include schools maintained pursuant to standards set by the State Board of Education. "Modeling studio" further does not include a studio or similar facility owned, operated, or maintained by an individual artist or group of artists, and which does not provide, permit, or make available "specified sexual activities."

- (b) **Adult entertainment business operator.** "Adult entertainment business operator" (hereinafter "operator") means a person who supervises, manages, inspects, directs, organizes, controls or in any other way is responsible for or in charge of the premises of an adult entertainment business or the conduct or activities occurring on the premises thereof.
- (c) **Applicant.** A person who is required to file an application for a permit under this chapter, including an individual owner, managing partner, officer of a corporation, or any other operator, manager, employee, or agent of an "adult entertainment business."
- (d) **Bar.** For the purposes of this ordinance [chapter], a bar is defined as any commercial establishment licensed by the State Department of Alcoholic Beverage Control to serve any alcoholic beverages on the premises.
- (e) **Distinguished or characterized by an emphasis upon.** As used in this ordinance, the term "distinguished or characterized by an emphasis upon" shall mean and refer to the dominant or essential theme of the object described by such phrase. For instance, when the phrase refers to films "which are distinguished or characterized by an emphasis upon" the depiction or description of specified sexual activities or specified anatomical areas, the films so described are those whose dominant or predominant character and theme are the depiction of the enumerated sexual activities or anatomical areas. See Pringle v. City of Covina, 115 Cal.App.3 151 (1981).
- (f) **Escort.** "Escort" means a person who, for pecuniary compensation, monetary or other consideration, hire or reward, (i) escorts or accompanies others to or about social affairs, entertainment or places of amusement, or (ii) keeps company with others about any place or public resort or within any private quarters, or (iii) who agrees or offers to privately model lingerie or to privately perform a striptease for another person, or (iv) who agrees to provide any service which is distinguished or characterized by an emphasis upon the display of specified anatomical areas or specified sexual activities.
- (g) **Figure model.** "Figure model" means any person who, for pecuniary compensation, consideration, hire or reward, poses in

a modeling studio to be observed, sketched, painted, drawn, sculptured, photographed or otherwise depicted.

- (h) **Health Officer.** The Health Officer of the City of Modesto or his or her duly authorized representative.
- (i) **Nudity or a state of nudity.** "Nudity or a state of nudity" means the showing of the human male or female genitals, pubic area, or buttocks with less than a fully opaque covering, the showing of the female breast with less than a fully opaque covering of any part of the nipple, or the showing of the covered male genitals in a discernible turgid state.
- (j) **Operate an adult entertainment business.** As used in this article "operate an adult entertainment business" means the supervising, managing, inspecting, directing, organizing, controlling or in any way being responsible for or in charge of the conduct of activities of an adult entertainment business or activities within an adult entertainment business.
- (k) **Permittee.** "Permittee" means the person to whom an adult entertainment business permit is issued.
- (l) **Person.** Any individual, partnership, copartnership, firm, association, joint stock company, corporation, or combination of the above in whatever form or character.
- (m) **Police Chief.** The Police Chief of the City of Modesto or the authorized representatives thereof.
- (n) **Regularly Features.** The term "regularly features" with respect to an adult theater or adult cabaret means a regular and substantial course of conduct. The fact that live performances which are distinguished or characterized by an emphasis upon the display of specified anatomical areas or specified sexual activities occurs on two (2) or more occasions within a thirty (30) day period; three (3) or more occasions within a sixty (60) day period; or four (4) or more occasions within a one hundred and eighty (180) day period, shall to the extent permitted by law be deemed to be a regular and substantial course of conduct.
- (o) **Semi-nude.** Means a state of dress in which clothing covers no more than the genitals, pubic region, buttocks, areola of the

female breast, as well as portions of the body covered by supporting straps or devices.

- (p) **Specified anatomical areas.** As used herein, "specified anatomical areas" shall mean and include any of the following:
- (1) Less than completely and opaquely covered human (i) genitals or pubic region; (ii) buttocks; and (iii) female breast below a point immediately above the top of the areola; and
  - (2) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.
  - (3) Any device, costume or covering that simulates any of the body parts included in subdivisions (1) or (2) above.
- (q) **Specified sexual activities.** As used herein, "specified sexual activities" shall mean and include any of the following, whether performed directly or indirectly through clothing or other covering:
- (1) The fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breast;
  - (2) Sex acts, actual or simulated, including intercourse, oral copulation, or sodomy;
  - (3) Masturbation, actual or simulated;
  - (4) Excretory functions as part of or in connection with any of the other activities described in subdivision (1) through (3) of this subsection.

#### **SEC. 5-9.103. PERMITS REQUIRED.**

- (a) It shall be unlawful for any person to engage in, conduct or carry on, or to permit to be engaged in, conducted or carried on, in or upon any premises in the City of Modesto, the operation of an adult entertainment business unless the person first obtains and continues to maintain in full force and effect a permit from the City of Modesto as herein required. (Adult Entertainment Business Regulatory Permit)

- (b) It shall be unlawful for any persons to engage in or participate in any live performance depicting specified anatomical areas or involving specified sexual activities in an adult entertainment business unless the person first obtains and continues in full force and effect a permit from the City of Modesto as herein required. (Adult Entertainment Business Performer Permit)
- (c) It shall be unlawful for any person to act as an escort, figure model, or to take any other position of employment with an escort bureau or modeling studio in the City of Modesto unless the person first obtains and continues to maintain in full force and effect a permit from the City of Modesto as herein required. (Escort Permit, Figure Model Permit)

## ARTICLE 2. APPLICATION AND PERMITS

### SEC. 5-9.201. ADULT ENTERTAINMENT BUSINESS REGULATORY PERMIT REQUIRED.

- (a) Every person who proposes to maintain, operate or conduct an adult entertainment business in the City of Modesto shall file an application with the Police Chief upon a form provided by the City of Modesto and shall pay a filing fee, as established by resolution adopted by the City Council from time to time, which shall not be refundable.

### SEC. 5-9.202. APPLICATIONS.

- (a) Adult Entertainment Business Regulatory Permits are nontransferable, except in accordance with Section 5-9.205. Therefore, all applications shall include the following information:
  - (1) If the applicant is an individual, the individual shall state his or her legal name, including any aliases, address, and submit satisfactory written proof that he or she is at least eighteen (18) years of age.
  - (2) If the applicant is a partnership, the partners shall state the partnership's complete name, address, the names of all partners, whether the partnership is general or limited, and attach a copy of the partnership agreement, if any.
  - (3) If the applicant is a corporation, the corporation shall provide its complete name, the date of its incorporation,

evidence that the corporation is in good standing under the laws of California, the names and capacity of all officers and directors, the name of the registered corporate agent and the address of the registered office for service of process.

- (b) If the applicant is an individual, he or she shall sign the application. If the applicant is other than an individual, an officer of the business entity or an individual with a ten (10) percent or greater interest in the business entity shall sign the application.
- (c) If the applicant intends to operate the Adult Entertainment Business under a name other than that of the applicant, the applicant shall file the fictitious name of the Adult Business and show proof of registration of the fictitious name.
- (d) A description of the type of Adult Entertainment Business for which the Permit is requested and the proposed address where the Adult Business will operate, plus the names and addresses of the owners and lessors of the Adult Entertainment Business site.
- (e) The address to which notice of action on the application is to be mailed.
- (f) The names of all employees, independent contractors, and other persons who will perform required by Section 5-9.206 to obtain an Adult Entertainment Business Performer License (for ongoing reporting requirements see Section 5-9.206).
- (g) A sketch or diagram showing the interior configuration of the premises, including a statement of the total floor area occupied by the Adult Entertainment Business. The sketch or diagram need not be professionally prepared, but must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six (6) inches.
- (h) A certificate and straight-line drawing prepared within thirty (30) days prior to application depicting the building and the portion thereof to be occupied by the Adult Entertainment Business, and:  
(1) the property line of any other Adult Entertainment Business within 500 feet of the primary entrance of the Adult Entertainment Business for which a Permit is requested; and (2) the property lines of any church, school, park, residential zone or

use within 300 feet of the primary entrance of the Adult Entertainment Business.

- (i) A diagram of the off-street parking areas and premises entries of the Adult Entertainment Business showing the location of the lighting system required by Section 5-9.301(c).
- (j) If the Police Chief determines that the applicant has completed the application improperly, the Police Chief shall promptly notify the applicant of such fact and, on request of the applicant, grant the applicant an extension of time of ten (10) days or less to complete the application properly. In addition, the applicant may request an extension, not to exceed ten (10) days, of the time for the Police Chief to act on the application. The time period for granting or denying a Permit shall be stayed during the period in which the applicant is granted an extension of time.
- (k) The fact that an applicant possesses other types of state or City permits or licenses does not exempt the applicant from the requirement of obtaining an Adult Entertainment Business Regulatory Permit.

#### SEC. 5-9.203. INVESTIGATION AND ACTION ON APPLICATION.

- (a) Upon receipt of a completed application and payment of the application and Permit fees, the Police Chief shall immediately stamp the application as received and promptly investigate the information contained in the application to determine whether the applicant shall be issued an Adult Entertainment Business Regulatory Permit.
- (b) Within thirty (30) days of receipt of the completed application, the Police Chief shall complete the investigation, grant or deny the application in accordance with the provisions of this Section, and so notify the applicant as follows:
  - (1) The Police Chief shall write or stamp "Granted" or "Denied" on the application and date and sign such notation.
  - (2) If the application is denied, the Police Chief shall attach to the application a statement of the reasons for denial.

- (3) If the application is granted, the Police Chief shall attach to the application an Adult Entertainment Business Regulatory Permit.
  - (4) The application as granted or denied and the Permit, if any, shall be placed in the United States mail, first class postage prepaid, addressed to the applicant at the address stated in the application.
- (c) The Police Chief shall grant the application and issue the Adult Entertainment Business Regulatory Permit upon findings that the proposed business meets the locational criteria of Section 10-2.2403; and that the applicant has met all of the development and performance standards and requirements of Section 5-9.301, unless the application is denied for one or more of the reasons set forth in Section 5-9.204. The Permittee shall post the Permit conspicuously in the Adult Entertainment Business premises.
- (d) If the Police Chief grants the application or if the Police Chief neither grants nor denies the application within thirty (30) days after it is stamped as received (except as provided in Section 5-9.202 (j)), the applicant may begin operating the Adult Entertainment Business for which the Permit was sought, subject to strict compliance with the development and performance standards and requirements of Sections 5-9.301.

#### **SEC. 5-9.204. PERMIT DENIAL.**

The Police Chief shall deny the application for any of the following reasons:

- (a) The building, structure, equipment, or location used by the business for which an Adult Entertainment Business Regulatory Permit is required do not comply with the requirements and standards of the health, zoning, fire and safety laws of the City and the State of California, or with the locational or development and performance standards and requirements of these regulations.
- (b) The applicant, his or her employee, agent, partner, director, officer, shareholder or manager has knowingly made any false, misleading or fraudulent statement of material fact in the application for an Adult Business Regulatory Permit.

- (c) An applicant is under eighteen (18) years of age.
- (d) The required application fee has not been paid.

Each Adult Entertainment Business Regulatory Permit shall expire one (1) year from the date of issuance, and may be renewed only by filing with the Police Chief a written request for renewal, accompanied by the Annual Permit Fee and a copy of the Permit to be renewed. The request for renewal shall be made at least thirty (30) days before the expiration date of the Permit. When made less than thirty (30) days before the expiration date, the expiration of the Permit will not be stayed. Applications for renewal shall be acted on as provided herein for action upon applications for Permits.

#### **SEC. 5-9.205. TRANSFER OF ADULT ENTERTAINMENT REGULATORY PERMITS.**

- (a) A permittee shall not operate an Adult Entertainment Business under the authority of an Adult Entertainment Business Regulatory Permit at any place other than the address of the Adult Entertainment Business stated in the application for the Permit.
- (b) A permittee shall not transfer ownership or control of an Adult Entertainment Business or transfer an Adult Entertainment Business Regulatory Permit to another person unless and until the transferee obtains an amendment to the Permit from the Police Chief stating that the transferee is now the permittee. Such an amendment may be obtained only if the transferee files an application with the Police Chief in accordance with Sections 5-9.201 and 5-9.202, accompanies the application with a transfer fee in an amount set by resolution of the City Council, and the Police Chief determines in accordance with Section 5-9.203 that the transferee would be entitled to the issuance of an original Permit.
- (c) No Permit may be transferred when the Police Chief has notified the permittee that the Permit has been or may be suspended or revoked.
- (d) Any attempt to transfer a permit either directly or indirectly in violation of this section is hereby declared void, and the Permit shall be deemed revoked.

**SEC. 5-9.206. ADULT ENTERTAINMENT BUSINESS PERFORMER PERMIT.**

- (a) No person shall engage in or participate in any live performance depicting specified anatomical areas or involving specified sexual activities in an Adult Entertainment Business, without a valid Adult Entertainment Business Performer Permit issued by the City. All persons who have been issued an Adult Entertainment Business Regulatory Permit shall promptly supplement the information provided as part of the application for the Permit required by Section 5-9.201, with the names of all Performers required to obtain an Adult Entertainment Business Performer Permit, within thirty (30) days of any change in the information originally submitted. Failure to submit such changes shall be grounds for suspension of the Adult Entertainment Business Regulatory Permit.
- (b) The Police Chief shall grant, deny and renew Adult Entertainment Business Employee Permits.
- (c) The application for a Permit shall be made on a form provided by the Police Chief. An original and two copies of the completed and sworn permit application shall be filed with the Police Chief.
- (d) The completed application shall contain the following information and be accompanied by the following documents:
  - (1) The applicant's legal name and any other names (including "stage names" and aliases) used by the applicant;
  - (2) Age, date and place of birth;
  - (3) Height, weight, hair and eye color;
  - (4) Present residence address and telephone number;
  - (5) Whether the applicant has ever been convicted of:
    - (i) Any of the offenses set forth in Sections 315, 316, 266a, 266b, 266c, 266e, 266g, 266h, 266i, 647(a), 647(b) and 647(D) of the California Penal Code as those sections now exist or may hereafter be amended or renumbered.

- (ii) The equivalent of the aforesaid offenses outside the State of California.
- (6) Whether such person is or has ever been licensed or registered as a prostitute, or otherwise authorized by the laws of any other jurisdiction to engage in prostitution in such other jurisdiction. If any person mentioned in this subsection has ever been licensed or registered as a prostitute, or otherwise authorized by the laws of any other state to engage in prostitution, a statement shall be submitted giving the place of such registration, licensing or legal authorization, and the inclusive dates during which such person was so licensed, registered, or authorized to engage in prostitution.
- (7) State driver's license or identification number;
- (8) Satisfactory written proof that the applicant is at least eighteen (18) years of age;
- (9) The applicant's fingerprints on a form provided by the Police Department, and a color photograph clearly showing the applicant's face. Any fees for the photographs and fingerprints shall be paid by the applicant;
- (10) If the application is made for the purpose of renewing a License, the applicant shall attach a copy of the License to be renewed.
- (e) The completed application shall be accompanied by a non-refundable application fee. The amount of the fee shall be set by resolution of the City Council.
- (f) Upon receipt of an application and payment of the application fees, the Police Chief shall immediately stamp the application as received and promptly investigate the application.
- (g) If the Police Chief determines that the applicant has completed the application improperly, the Police Chief shall promptly notify the applicant of such fact and grant the applicant an extension of time of not more than ten (10) days to complete the application properly. In addition, the applicant may request an extension, not to exceed ten (10) days, of the time for the City Manger to

act on the application. The time period for granting or denying a Permit shall be stayed during the period in which the applicant is granted an extension of time.

**SEC. 5-9.207. INVESTIGATION AND ACTION ON APPLICATION.**

- (a) Within five (5) days after receipt of the properly completed application, the Police Chief shall grant or deny the application and so notify the applicant as follows:
  - (1) The Police Chief shall write or stamp "Granted" or "Denied" on the application and date and sign such notation.
  - (2) If the application is denied, the Police Chief shall attach to the application a statement of the reasons for denial.
  - (3) If the application is granted, the Police Chief shall attach to the application an Adult Entertainment Business Employee Permit.
  - (4) The application as granted or denied and the Permit, if any, shall be placed in the United States mail, first class postage prepaid, addressed to the applicant at the residence address stated in the application.
- (b) The Police Chief shall grant the application and issue the Permit unless the application is denied for one or more of the reasons set forth in subsection (d) of this section.
- (c) If the Police Chief grants the application or if the Police Chief neither grants nor denies the application within five (5) days after it is stamped as received (except as provided in Section 5-9.206(g)), the applicant may begin performing in the capacity for which the License was sought.
- (d) The Police Chief shall deny the application for any of the following reasons:
  - (1) The applicant has knowingly made any false, misleading, or fraudulent statement of a material fact in the application for a Permit or in any report or document required to be filed with the application;
  - (2) The applicant is under eighteen (18) years of age;

- (3) The Adult Entertainment Business Employee Permit is to be used for performing in a business prohibited by State or City law.
  - (4) The applicant has been registered in any state as a prostitute.
  - (5) The applicant has been convicted of any of the offenses enumerated in Section 5-9.206(d)(5) or convicted of an offense outside the State of California that would have constituted any of the described offenses if committed within the State of California. A Permit may be issued to any person convicted of the described crimes if the conviction occurred more than five (5) years prior to the date of the application.
- (e) Each Adult Entertainment Business Performer Permit shall expire one (1) year from the date of issuance and may be renewed only by filing with the Police Chief a written request for renewal, accompanied by the application fee and a copy of the Permit to be renewed. The request for renewal shall be made at least thirty (30) days before the expiration date of the Permit. When made less than thirty (30) days before the expiration date, the expiration of the Permit will not be stayed. Applications for renewal shall be acted on as provided herein for applications for Permits.

**SEC. 5-9.208. SUSPENSION OR REVOCATION OF ADULT ENTERTAINMENT BUSINESS REGULATORY PERMITS AND ADULT ENTERTAINMENT BUSINESS PERFORMER PERMITS.**

An Adult Entertainment Business Regulatory Permit or Adult Entertainment Business Performer Permit may be suspended or revoked in accordance with the procedures and standards of this Section.

- (a) On determining that grounds for Permit revocation exist, the Police Chief shall furnish written notice of the proposed suspension or revocation to the Permittee. Such notice shall set forth the time and place of a hearing, and the ground or grounds upon which the hearing is based, the pertinent Code sections, and a brief statement of the factual matters in support thereof. The notice shall be mailed, postage prepaid, addressed to the last known address of the Permittee, or shall be delivered to the Permittee personally, at least ten (10) days prior to the hearing

date. Hearings shall be conducted in accordance with procedures established by the Police Chief, but at a minimum shall include the following:

- (1) All parties involved shall have a right to offer testimonial, documentary, and tangible evidence bearing on the issues; may be represented by counsel; and shall have the right to confront and cross-examine witnesses. Any relevant evidence may be admitted that is the sort of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs. Any hearing under this Section may be continued for a reasonable time for the convenience of a party or a witness. The Police Chief's decision may be appealed in accordance with Section 5-9.209.
- (b) A Permittee may be subject to suspension or revocation of his Permit, or be subject to other appropriate disciplinary action, for any of the following causes arising from the acts or omissions of the Permittee, or an employee, agent, partner, director, stockholder, or manager of an Adult Entertainment Business:
- (1) In the case of a Permittee of an Adult Entertainment Business Regulatory Permit only, the building, structure, equipment, or location used by the Adult Entertainment Business fails to comply with all applicable building, fire, electrical, plumbing, health, and zoning requirements of the Modesto City Code, all applicable State and federal requirements of a similar nature which are customarily enforced by the City, and all provisions of these regulations and this Code relating to Adult Entertainment Businesses, including the Adult Entertainment Business Development and Performance Standards contained in Section 5-9.301.
  - (2) The Permittee has knowingly made any false, misleading or fraudulent statement of material facts in the application for a Permit, or in any report or record required to be filed with the City.
  - (3) The Permittee, employee, agent, partner, director, stockholder, or manager of an Adult Entertainment Business has knowingly allowed or permitted, and has failed to make a reasonable effort to prevent the

occurrence of any of the following on the premises of the Adult Entertainment Business, or in the case of an Adult Entertainment Business Performer, the permittee has engaged in one of the activities described below while on the premises of an Adult Entertainment Business:

- (i) Any act of unlawful sexual intercourse, sodomy, oral copulation, or masturbation.
  - (ii) Use of the establishment as a place where unlawful solicitations for sexual intercourse, sodomy, oral copulation, or masturbation openly occur.
  - (iii) Any conduct constituting a criminal offense which requires registration under Section 290 of the California Penal Code.
  - (iv) The occurrence of acts of lewdness, assignation, or prostitution, including any conduct constituting violations of Sections 315, 316, or 318 or Subdivision b of Section 647 of the California Penal Code.
  - (v) Any act constituting a violation of provisions in the California Penal Code relating to obscene matter or distribution of harmful matter to minors, including but not limited to Sections 311 through 313.4.
  - (vi) Any conduct prohibited by this chapter.
- (4) Failure to abide by an disciplinary action previously imposed by an appropriate City official.
- (c) After holding the hearing in accordance with the provisions of this Section, if the Police Chief finds and determines that there are grounds for disciplinary action, based upon the severity of the violation, the Police Chief shall impose one of the following:
- (1) A warning;
  - (2) Suspension of the Permit for a specified period not to exceed six months;
  - (3) Revocation of the Permit.

**SEC. 5-9.209. APPEAL OF DENIAL. SUSPENSION OR REVOCATION.**

After denial of an application for an Adult Entertainment Business Regulatory Permit or an Adult Entertainment Business Performer Permit, or after denial of renewal of a Permit, or suspension or revocation of a Permit, the applicant or person to whom the Permit was granted may seek review of such administrative action by the City Council in accordance with the provisions of Chapter 4 of Title I of the Modesto Municipal Code. If the denial, suspension or revocation is affirmed on review, the applicant, Permittee may seek prompt judicial review of such administrative action pursuant to California Code of Civil Procedure Section 1094.5. The City shall make all reasonable efforts to expedite judicial review, if sought by the Permittee.

**SEC. 5-9.210. ADDITIONAL PERMITS REQUIRED.**

- (a) No person shall act as an "escort" unless an escort permit is first obtained.
- (b) No person shall act as a "figure model" in a modeling studio unless a figure model permit is first obtained. The issuance of a business license pursuant to Section 6-1.103 of the Modesto Municipal Code shall not authorize acting as an "escort," or as a "figure model" in a modeling studio until the necessary regulatory permit has been lawfully granted.

**SEC. 5-9.211. APPLICATION FOR ESCORT OR FIGURE MODEL PERMIT.**

- (a) An applicant for an "escort" or "figure model" permit shall make an application under penalty of perjury to the Police Chief or his authorized representative upon a form provided by the City of Modesto. A nonrefundable fee, as established by resolution adopted by the City Council from time to time, shall be paid to the City of Modesto to reimburse the City for the cost of the investigation. A copy of the receipt issued by the City of Modesto Finance Department shall accompany the application. The permit fee required under this section is in addition to any other license or permit fee required by the Modesto Municipal Code.
- (b) The application for permit does not authorize the applicant to act as an "escort" or as a "figure model" until such permit has been granted.

- (c) Every application submitted to the Police Chief shall include the following information:
- (1) The applicant's full name, any other names used, date of birth, California driver's license number or California identification number, social security number, present resident address, telephone number, sex, height, weight, color of hair, and color of eyes.
  - (2) Previous two (2) residence addresses of the applicant and the inclusive dates at each address.
  - (3) The applicant's business, occupation, and employment history for five (5) years preceding the date of application and inclusive dates of same.
  - (4) The permit history of the applicant; whether such person ever had any permit or license issued to him or her by any other public entity in this state; the date of issuance of any such permit or license, whether any such permit or license has ever been revoked or suspended; and if any such license or permit has been revoked or suspended, the reason therefor.
  - (5) All convictions for any crimes involving conduct which requires registration under any state law similar to and including California Penal Code Section 290, or of conduct which is a violation of the provisions of any state laws similar to and including California Penal Code Sections 243.4, 261, 261.5, 262, 266a, 266b, 266c, 266d, 266e, 266f, 266g, 266h, 266i, 266j, 267, 309, 311.2, 311.3, 311.4, 311.5, 311.6, 311.10, 311.11, 313.1, 314, 315, 316, 318, 647(a), 647(b), 647(d), or 647.6.
  - (6) Any offense requiring registration under provisions of Section 11590 of the California Health and Safety Code; or any felony offense involving the possession, possession for sale, sale, transportation, furnishing, giving away, of a controlled substance specified in Section 11054, 11055, 11056, 11057, or 11058 of the California Health and Safety Code, or as those sections may hereafter be amended or renumbered.

- (7) Whether such person is or has ever been licensed or registered as a prostitute, or otherwise authorized by the laws of any other jurisdiction to engage in prostitution in such other jurisdiction. If any person mentioned in this subsection has ever been licensed or registered as a prostitute, or otherwise authorized by the laws of any other state to engage in prostitution, a statement shall be submitted giving the place of such registration, licensing or legal authorization, and the inclusive dates during which such person was so licensed, registered, or authorized to engage in prostitution.
- (8) Acceptable written proof that the applicant is at least eighteen (18) years of age.
- (9) A complete set of fingerprints acceptable to the Police Chief.
- (10) The applicant shall make himself or herself available to the Modesto Police Department in order to be photographed.
- (11) Authorization for the City of Modesto, its agents, and employees to seek information and conduct an investigation into the truth of the statements set forth in the application.

#### **SEC. 5-9.212. ISSUANCE AND DENIAL OF PERMITS.**

- (a) The Police Chief or his authorized representative shall have thirty (30) days from the date the application is accepted as complete in which to investigate the application and background of the applicant. Upon completion of the investigation, the Police Chief or his designated representative shall approve or deny the permit. The Police Chief may refuse to issue permit for "escort" or "figure model" for any of the following reasons, which reasons will be set forth fully in writing and delivered to the applicant:
  - (1) The applicant has been convicted of any of the offenses enumerated in the paragraphs (c)(5) and (6) of Section 5-9.211, or convicted of an offense outside the State of California that would have constituted any of the described offenses if committed within the State of California. A permit may be issued to any person convicted of any of

the crimes described if such conviction occurred more than five (5) years prior to the date of the application.

- (2) The applicant has been licensed or registered in any state as a prostitute.
  - (3) Any false statements made in the initial application for "escort" or "figure model" permit.
  - (4) That the applicant has had an "escort" or "figure model" permit denied or revoked for cause by this City within the last five (5) years.
  - (5) That the applicant is not at least eighteen (18) years of age.
  - (6) That the applicant has not paid the required fee to the City of Modesto Finance Department.
- (b) Any refusal to issue a permit pursuant to this section or the suspension, or revocation of a permit under the provisions of Section 5-9.213 is appealable to the City Council in accordance with the provisions of Chapter 4 of Title I of the Modesto Municipal Code. After the denial of any such appeal, the applicant may seek prompt judicial review of such administrative action in any court of competent jurisdiction pursuant to California Code of Civil Procedure Section 1094.5. The court shall promptly review the action taken by the City Council.

#### **SEC. 5-9.213. REVOCATION OR SUSPENSION OF PERMITS.**

After following the procedure in Section 5-9.205, the Police Chief may revoke or suspend an "escort" or "figure model" permit for conviction of any of the crimes specified in Section 5-9.211(c)(5) and (6). The decision of the Police Chief shall be in writing and shall be mailed postage prepaid to the escort or figure model.

#### **SEC. 5-9.214. TERM OF PERMIT.**

- (a) Permits issued under the provisions of the section shall be valid for a period of one (1) year from the date of issuance and shall be renewable annually.

- (b) An application for renewal for an "escort" or "figure model" permit shall be accompanied by a nonrefundable filing fee, as established by resolution adopted by the City Council from time to time.

### ARTICLE 3. FACILITIES AND EMPLOYEES.

#### SEC. 5-9.301. ADULT ENTERTAINMENT BUSINESS DEVELOPMENT AND PERFORMANCE STANDARDS.

- (a) Maximum occupancy load, fire exits, aisles and fire equipment shall be regulated, designed and provided in accordance with the Fire Department and building regulations and standards adopted by the City of Modesto.
- (b) No Adult Entertainment Business shall be operated in any manner that permits the observation of any material or activities depicting, describing or relating to "Specified Sexual Activities" or "Specified Anatomical Areas" from any public way or from any location outside the building or area of such establishment. This provision shall apply to any display, decoration, sign, show window or other opening. No exterior door or window on the premises shall be propped or kept open at any time while the business is open, and any exterior windows shall be covered with opaque covering at all times.
- (c) All off-street parking area and premise entries of the sexually oriented business shall be illuminated from dusk to closing hours of operation with a lighting system which provides an average maintained horizontal illumination of one (1) foot candle of light on the parking surface and/or walkways. The required lighting level is established in order to provide sufficient illumination of the parking areas and walkways serving the sexually oriented business for the personal safety of patrons and employees and to reduce the incidence of vandalism and criminal conduct. The lighting shall be shown on the required sketch or diagram of the premises.
- (d) The premises within which the Adult Entertainment Business is located shall provide sufficient sound-absorbing insulation so that noise generated inside said premises shall not be audible anywhere on any adjacent property or public right-of-way or within any other building or other separate unit within the same building.

- (e) Except for those businesses also regulated by the California Department of Alcoholic Beverage Control, an Adult Entertainment Business shall be open for business only between the hours of 8:00 a.m. and midnight on any particular day.
- (f) Any Adult Entertainment Business which is also a "picture arcade" pursuant to Section 4-1.1302 of this code shall comply with Sections 4-1.1303 and 4-1.1304.
- (g) The building entrance to an Adult Entertainment Business shall be clearly and legibly posted with a notice indicating that persons under eighteen (18) years of age are precluded from entering the premises. Said notice shall be constructed and posted to the satisfaction of the Community Development Director or designee. No person under the age of eighteen (18) years shall be permitted within the premises at any time.
- (h) All indoor areas of the Adult Entertainment Business within which patrons are permitted, except rest rooms, shall be open to view by the management at all times.
- (i) The Adult Entertainment Business shall provide and maintain separate rest room facilities for male patrons and employees, and female patrons and employees. Male patrons and employees shall be prohibited from using the rest room(s) for females, and female patrons and employees shall be prohibited from using the rest room(s) for males, except to carry out duties of repair, maintenance and cleaning of the rest room facilities. The rest rooms shall be free from any Adult Material. Rest rooms shall not contain television monitors or other motion picture or video projection, recording or reproduction equipment. The foregoing provisions of this paragraph shall not apply to an Adult Entertainment Business which deals exclusively with sale or rental of Adult Material which is not used or consumed on the premises, such as an Adult Bookstore or Adult Video Store, and which does not provide rest room facilities to its patrons or the general public.
- (j) The following additional requirements shall pertain to Adult Entertainment Businesses providing live entertainment depicting Specified Anatomical Areas or involving Specified Sexual Activities, except for businesses regulated by the Alcoholic Beverage Control Commission:

- (1) No person shall perform live entertainment for patrons of an Adult Entertainment Business except upon a stage at least eighteen (18) inches above the level of the floor which is separated by a distance of at least ten (10) feet from the nearest area occupied by patrons, and no patron shall be permitted within ten (10) feet of the stage while the stage is occupied by an entertainer. "Entertainer" shall mean any person who is an employee or independent contractor of the Adult Entertainment Business, or any person who, with or without any compensation or other form of consideration, performs live entertainment for patrons of an Adult Entertainment Business.
- (2) The Adult Entertainment Business shall provide separate dressing room facilities for entertainers which are exclusively dedicated to the entertainers' use.
- (3) The Adult Entertainment Business shall provide an entrance/exit for entertainers which is separate from the entrance/exit used by patrons.
- (4) The Adult Entertainment Business shall provide access for entertainers between the stage and the dressing rooms which is completely separated from the patrons. If such separate access is not physically feasible, the Adult Business shall provide a minimum three-foot (3') wide walk aisle for entertainers between the dressing room area and the stage, with a railing, fence or other barrier separating the patrons and the entertainers capable of (and which actually results in) preventing any physical contact between patrons and entertainers.
- (5) No entertainer, either before, during or after performances, shall have physical contact with any patron and no patron shall have physical contact with any entertainer either before, during or after performances by such entertainer. This subsection shall only apply to physical contact on the premises of the Adult Entertainment Business.
- (6) Fixed rail(s) at least thirty (30) inches in height shall be maintained establishing the separations between entertainers and patrons required by this subsection.

- (7) No patron shall directly pay or give any gratuity to any entertainer and no entertainer shall solicit any pay or gratuity from any patron.
  - (8) No owner or other person with managerial control over an Adult Entertainment Business (as that term is defined herein) shall permit any person on the premises of the Adult-Oriented Business to engage in a live showing of the human male or female genitals, pubic area or buttocks with less than a fully opaque coverage, and/or the female breast with less than a fully opaque coverage over any part of the nipple or areola and/or covered male genitals in a discernibly turgid state. This provision may not be complied with by applying an opaque covering simulating the appearance of the specified anatomical part required to be covered.
- (k) Adult Entertainment Businesses shall employ security guards in order to maintain the public peace and safety, based upon the following standards:
- (1) Adult Entertainment Businesses featuring live entertainment shall provide at least one (1) security guard at all times while the business is open. If the occupancy limit of the premises is greater than thirty-five (35) persons, an additional security guard shall be on duty.
  - (2) Security guards for other Adult Entertainment Businesses may be required if it is determined by the Police Chief that their presence is necessary in order to prevent any of the conduct listed in Section 5-9.208(b)(3) from occurring on the premises.
  - (3) Security guard(s) shall be charged with preventing violations of law and enforcing compliance by patrons of the requirements of these regulations. Security guards shall be uniformed in such a manner so as to be readily identifiable as a security guard by the public and shall be duly licensed as a security guard as required by applicable provisions of state law. No security guard required pursuant to this subsection shall act as a door person, ticket seller, ticket taker, admittance person, or sole occupant of the manager's station while acting as a security guard.

The foregoing applicable requirements of this Section shall be deemed conditions of Adult Entertainment Business Regulatory Permit approvals, and failure to comply with every such requirement shall be grounds for revocation of the Permit issued pursuant to these regulations.

**SEC. 5-9.302. REGISTER AND PERMIT NUMBER OF EMPLOYEES.**

- (a) Every permittee of an "adult entertainment business" which provides live entertainment depicting specified anatomical areas or involving specified sexual activities must maintain a register of all persons so performing on the premises and their permit numbers. Such register shall be available for inspection during regular business hours by any police officer or health officer of the City of Modesto.

**SEC. 5-9.303. DISPLAY OF PERMIT AND IDENTIFICATION CARDS.**

- (a) Every "adult entertainment business" shall display at all times during business hours the permit issued pursuant to the provisions of this chapter for such "adult entertainment business" in a conspicuous place so that the same may be readily seen by all persons entering the "adult entertainment business."
- (b) The Police Chief shall provide each Adult Entertainment Business Performer required to have a Permit pursuant to the chapter, with an identification card containing the name, address, photograph and permit number of such performer.
- (c) The Police Chief shall provide each "escort" or "figure model" granted a permit with an identification card containing the name, address, photograph, and permit number of the "escort" or "figure model."
- (d) An "escort" shall carry such card at all times while providing escort services.
- (e) A "figure model" shall have such card available for inspection at all times during the hours of operation of the model studio.
- (f) An Adult Entertainment Business Performer shall have such card available for inspection at all times during which such person is on the premises of the Adult Entertainment Business.

**SEC. 5-9.304. EMPLOYMENT OF AND SERVICES RENDERED TO PERSONS UNDER THE AGE OF EIGHTEEN (18) YEARS PROHIBITED.**

- (a) It shall be unlawful for any permittee, operator, or other person in charge of any "adult entertainment business" to employ any person who is not at least eighteen (18) years of age.
- (b) It shall be unlawful for any permittee, operator or other person in charge of any Adult-Oriented Business to permit to enter, or remain within the Adult-Oriented Business, any person who is not at least eighteen (18) years of age.

**ARTICLE 4. MISCELLANEOUS PROVISIONS**

**SEC. 5-9.401. INSPECTION.**

An applicant or Permittee shall permit representatives of the Police Department, Health Department, Fire Department, Planning Division, or other City Departments or Agencies to inspect the premises of an Adult Entertainment Business for the purpose of insuring compliance with the law and the development and performance standards applicable to Adult Entertainment Businesses, at any time it is occupied or opened for business. A person who operates an Adult Entertainment Business or his or her agent or employee is in violation of the provisions of this section if he/she refuses to permit such lawful inspection of the premises at any time it is occupied or open for business.

**SEC. 5-9.402. REGULATIONS NONEXCLUSIVE.**

The provisions of this article regulating Adult Entertainment Businesses are not intended to be exclusive and compliance therewith shall not excuse noncompliance with any other regulations pertaining to the operation of businesses as adopted by the City Council of the City of Modesto.

**SEC. 5-9.403. EMPLOYMENT OF PERSONS WITHOUT PERMITS UNLAWFUL.**

- (a) It shall be unlawful for any owner, operator, manager, or permittee in charge of or in control of an "adult entertainment business" which provides live entertainment depicting specified anatomical areas or involving specified sexual activities to allow any person to perform such entertainment who is not in

possession of a valid, unrevoked Adult Entertainment Business Performer Permit.

- (b) No permittee or operator of an escort service shall allow or permit a person to act as an "escort" for such service unless said person possesses a valid escort permit under the provisions of this article. It shall be the responsibility of the permittee and the operator to ensure that each such person employed as an "escort" shall first have obtained a valid permit pursuant to this article.
- (c) No permittee or operator of a model studio shall allow or permit a person to act as a "figure model" for such studio unless the person possesses a valid figure model permit under the provisions of this article. It shall be the responsibility of the permittee and the operator to ensure that each such person employed as a "figure model" shall first have obtained a valid permit pursuant to this article.

**SEC. 5-9.404. TIME LIMIT FOR FILING APPLICATION FOR PERMIT.**

All persons who possess an outstanding business license heretofore issued for the operation of an "adult entertainment business" and all persons required by this chapter to obtain an Adult Entertainment Business Performer Permit, or an Escort Permit, or a Figure Model Permit must apply for and obtain such a permit within ninety (90) days of the effective date of this chapter. Failure to do so and continued operation of an "adult entertainment business", or continued employment as an "escort" or "figure model", or the continued performances depicting specified anatomical areas or specified sexual activities in an "adult entertainment business" after such time without a permit shall constitute a violation of this chapter.

**SEC. 5-9.405. CERTAIN CONDUCT IN BARS PROHIBITED.**

The City Council of the City of Modesto finds that barroom nudity is a direct cause of increased demand for police services in and about such establishments, and finds further that the activities commonly engaged in by both employees and patrons of such establishments are inimical to the public welfare in that nudity in such establishments has been demonstrated to increase the occurrence of illegal activity in and occurring around such establishments. Accordingly, the following acts or conduct on the premises of any bar are deemed contrary to the

public interest and welfare and the best interests of the community and, therefore:

- (a) No bar owner or operator or an employee thereof shall permit any person on the premises to display or expose his or her genitals, pubic hair, buttocks, anal region, or any portion of the female breast at or below the areola thereof.
- (b) No bar owner or operator or employee thereof shall permit any person on the premises to perform "specified sexual activities" as defined in Section 5-9.102.

Any bar owner, operator or employee thereof who permits any of the above while alcoholic beverages are being sold or in the presence of anyone who has consumed any alcoholic beverages on the premises at any time during the four (4) hours immediately preceding the act or display referred to above shall be guilty of a misdemeanor.

Any person who exposes his or her genitals, pubic hair, buttocks, anal region, or any portion of the female breast at or below the areola thereof on the premises while alcoholic beverages are being sold, or on the premises and in the presence of anyone who has consumed any alcoholic beverages on such premises at any time during the four (4) hours immediately preceding such display or exposure shall be guilty of a misdemeanor.

#### SEC. 5-9.406. SEVERABILITY.

If any section, subsection, subdivision, paragraph, sentence, clause, or phrase in this chapter or any part thereof is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this chapter or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase thereof irrespective of the fact that any one (1) or more subsections, subdivisions, paragraphs, sentences, clauses, or phrases be declared unconstitutional, or invalid, or ineffective.

#### SECTION 4. CALIFORNIA ENVIRONMENTAL QUALITY ACT FINDING.

The City Council finds that this ordinance is enacted in order to mitigate the threat

posed to the public peace, health, or safety by adult entertainment businesses. In this regard, the findings set forth in Section 1 of this ordinance are incorporated herein by reference. This ordinance provides for the amendment of existing regulations applicable to adult entertainment businesses. Therefore, it can be seen with certainty that there is no possibility that this ordinance may have a significant adverse effect on the environment, and therefore the adoption of this ordinance is exempt from CEQA pursuant to Section 15061(b)(3) of the CEQA guidelines.

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 27th day of August, 1996, by Councilmember Serpa, 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: Cogdill, Dobbs, Fisher, Friedman, McClanahan, Serpa, Mayor Lang

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:

  
RICHARD A. LANG, Mayor

ATTEST:

By   
JEAN ADAMS, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

Ord. No. 3000-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 3rd day of September, 1996, Councilmember Friedman moved its final adoption, which motion being duly seconded by Councilmember McClanahan, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Cogdill, Dobbs, Fisher, Friedman, McClanahan,  
Serpa, Mayor Lang

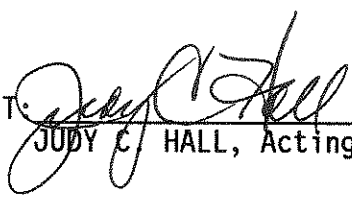
NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:

  
MAYOR RICHARD A. LANG

ATTEST:

  
JUDY C. HALL, Acting City Clerk

Effective Date: October 3, 1996

ORDINANCE NO. 3001-C.S.

AN ORDINANCE APPROVING THE DEVELOPMENT AGREEMENT BETWEEN THE CITY OF MODESTO AND THE BECK FAMILY TRUST, INLAND DEVELOPERS, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY, AND HERITAGE GROUP, LLC., A CALIFORNIA LIMITED LIABILITY COMPANY, REGARDING THAT DEVELOPMENT KNOWN AS VILLAGE HIGHLANDS IN THE VILLAGE ONE COMMUNITY.

WHEREAS, a request for a Development Agreement has been filed for the Village Highlands Subdivision, together with a proposed agreement entitled "Development Agreement Between City of Modesto and The Beck Family Trust, Inland Developers, LLC, a California Limited Liability Company, and Heritage Group, LLC, a California Limited Liability Company, regarding that development known as Village Highlands in the Village One Community", to be located on the south side of Sylvan Avenue east of Litt Road, extended, in Modesto, California, and

WHEREAS, the Development Agreement is required pursuant to condition No. 6 of Planning Commission Resolution No. 95-26, which approved the Vesting Tentative Subdivision Map of Village Highlands Subdivision, and

WHEREAS, Condition No. 7 of City Council Ordinance No. 2965-C.S. anticipated that a portion of the public facilities necessary to serve development would be financed through the formation of an area of benefit for Village One, however, in-lieu of an area of benefit for Village One, the Council, by Resolution No. 96-51, adopted on September 3, 1996, initiated proceedings to establish a Community Facilities District (CFD No. 1996-1) to levy a special tax within the proposed district in order to

finance the construction and/or acquisition of certain public facilities 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", and

WHEREAS, after a public hearing held on September 6, 1996, by Resolution No. 96-39, the Planning Commission recommended to the City Council approval of a Development Agreement for Village Highlands Subdivision, and

WHEREAS, a duly noticed public hearing was held by the City Council on September 17, 1996, to consider the proposed Development Agreement between the City of Modesto and The Beck Family Trust, Inland Developers, LLC, a California Limited Liability Company, and Heritage Group, LLC, a California Limited Liability Company, regarding that development known as Village Highlands in the Village One Community", to be located on the south side of Sylvan Avenue east of Litt Road, extended, in Modesto, California, 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 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, 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:

- a. That the proposed Development Agreement is consistent with the Modesto Urban Area General Plan and the Village One Specific Plan as well as subdivision and zoning provisions of the Modesto Municipal Code and Government Code Sections 65864, et seq.
- b. That the proposed Development Agreement is within the scope of the Specific Plan approved earlier, and the Program Environmental Impact Report adequately describes the project for the purposes of CEQA.

SECTION 2. APPROVAL OF DEVELOPMENT AGREEMENT. The Development Agreement between the City of Modesto and The Beck Family Trust, Inland Developers, LLC, a California Limited Liability Company, and Heritage Group, LLC, a California Limited Liability Company, regarding that development known as Village Highlands in the Village One Community", to be located on the south side of Sylvan Avenue east of Litt Road, extended, in Modesto, California, is hereby approved. A copy of said Development Agreement is on file in the Office of the City Clerk.

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

SECTION 4. RECORDING OF AGREEMENT. Pursuant to Government Code Section 65868.5, no later than ten (10) days after the City enters into the 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 17th day of September, 1996, by Councilmember McClanahan, 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: Cogdill, Dobbs, Fisher, Friedman, McClanahan, Serpa, Mayor Lang

NOES: Councilmembers: None

ABSENT: Councilmembers: None

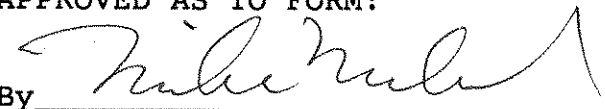
APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:

By   
JEAN ADAMS, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

Ord. No. 3001-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 24th day of September, 1996, Councilmember Friedman moved its final adoption, which motion being duly seconded by Councilmember Serpa, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Cogdill, Dobbs, Fisher, Friedman, McClanahan, Serpa, Mayor Lang

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:   
MAYOR RICHARD A. LANG

ATTEST:   
JEAN ADAMS, City Clerk

Effective Date: October 24, 1996

ORDINANCE NO. 3002-C.S.

AN ORDINANCE APPROVING THE DEVELOPMENT AGREEMENT BETWEEN THE CITY OF MODESTO AND BETTY AND STEWART BRADLEY REGARDING THAT DEVELOPMENT KNOWN AS NOTTINGHAM PLACE IN THE VILLAGE ONE COMMUNITY.

WHEREAS, a request for a Development Agreement has been filed for the Village Highlands Subdivision, together with a proposed agreement entitled "Development Agreement Between City of Modesto and Betty and Stewart Bradley regarding that development known as Nottingham Place in the Village One Community", to be located on the south side of Merle Avenue east of Roselle Avenue in Modesto, California, and

WHEREAS, the Development Agreement is required pursuant to condition No. 6 of Planning Commission Resolution No. 95-28, which approved the Vesting Tentative Subdivision Map of Nottingham Place Subdivision, and

WHEREAS, Condition No. 7 of City Council Ordinance No. 2967-C.S. anticipated that a portion of the public facilities necessary to serve development would be financed through the formation of an area of benefit for Village One, however, in-lieu of an area of benefit for Village One, the Council, by Resolution No. 96-51, adopted on September 3, 1996, initiated proceedings to establish a Community Facilities District (CFD No. 1996-1) to levy a special tax within the proposed district in order to finance the construction and/or acquisition of certain public facilities 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", and

WHEREAS, after a public hearing held on September 6, 1996, by Resolution No. 96-40, the Planning Commission recommended to the City Council approval of a Development Agreement for Nottingham Place Subdivision, and

WHEREAS, a duly noticed public hearing was held by the City Council on September 17, 1996, to consider the proposed Development Agreement between the City of Modesto and Betty and Stewart Bradley regarding that development known as Nottingham Place in the Village One Community", to be located on the south side of Merle Avenue east of Roselle Avenue in Modesto, California, 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 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, 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:

- a. That the proposed Development Agreement is consistent with the Modesto Urban Area

General Plan and the Village One Specific Plan as well as subdivision and zoning provisions of the Modesto Municipal Code and Government Code Sections 65864, et seq.

- b. That the proposed Development Agreement is within the scope of the Specific Plan approved earlier, and the Program Environmental Impact Report adequately describes the project for the purposes of CEQA.

SECTION 2. APPROVAL OF DEVELOPMENT AGREEMENT. The Development Agreement between the City of Modesto and Betty and Stewart Bradley regarding that development known as Nottingham Place in the Village One Community", to be located on the south side of Merle Avenue east of Roselle Avenue in Modesto, California, is hereby approved. A copy of said Development Agreement is on file in the Office of the City Clerk.

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

SECTION 4. RECORDING OF AGREEMENT. Pursuant to Government Code Section 65868.5, no later than ten (10) days after the City enters into the 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 17th day of September, 1996, by Councilmember Friedman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Cogdill, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Cogdill, Dobbs, Fisher, Friedman, McClanahan, Serpa, Mayor Lang

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: 

RICHARD A. LANG, Mayor

ATTEST:

By 

JEAN ADAMS, City Clerk

(SEAL)

APPROVED AS TO FORM:

By 

MICHAEL D. MILICH, City Attorney

Ord. No. 3002-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 24th day of September, 1996, Councilmember Friedman moved its final adoption, which motion being duly seconded by Councilmember Serpa, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Cogdill, Dobbs, Fisher, Friedman, McClanahan, Serpa,  
Mayor Lang

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:

  
MAYOR RICHARD A. LANG

ATTEST:

  
JEAN ADAMS, City Clerk

Effective Date: October 24, 1996

Clerk

ORDINANCE NO. 3003 -C.S.

AN ORDINANCE AMENDING SECTION 3-1.109 OF ARTICLE 1 OF CHAPTER 1 OF TITLE III OF THE MODESTO MUNICIPAL CODE RELATING TO MANUFACTURE, DISPLAY, AND DISPLAY OF SALES OF FIREWORKS.

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

SECTION 1. AMENDMENT OF CODE. Section 3-1.109 of Article 1 of Chapter 1 of Title III of the Modesto Municipal Code is hereby amended to read as follows:

**SEC. 3-1.109. PERMITS: MANUFACTURE, DISPLAY, AND SALES OF FIREWORKS.**

Section 7801.3 of said Fire Code is amended to read as follows:

**1. Fireworks.**

1.1. **Manufacturing.** The manufacturing of fireworks is prohibited in the City of Modesto.

**1.2. Displays.**

1. Permits are required to conduct a fireworks display. See Uniform Fire Code, Section 4.108. Permit applications shall be made not less than fourteen (14) days prior to the scheduled date of the display. The permit application shall include a diagram of the grounds on which the display is to be held showing the point at which the fireworks are to be discharged; the location of buildings, highways and other lines of communication; the lines behind which the audience will be restrained; and the location of nearby trees, telegraph or telephone lines and other overhead obstructions. At the time of permit application, the chief shall be consulted regarding requirements for standby apparatus.

2. The Chief may grant the permit as applied for, or with condition thereto, unless he/she finds that to do so would be contrary to the public health, safety, or welfare. The decision of the Chief shall be in writing and shall be mailed, postage prepaid, to the applicant.
  3. The decision of the Chief, in acting on an application for permission to conduct a public display in accordance with the provisions of this section may be appealed to the City Manager. Notice of an appeal of the Chief's decision shall be filed by the applicant, with the City Clerk, within ten (10) days after the date of the decision. Upon failure to file such notice within the ten-day period, the action of the Chief shall be final and conclusive. The applicant may appeal the decision of the City Manager to the City Council by filing a notice of appeal to the City Clerk within ten (10) days after the date of the City Manager's decision. Upon failure to file such notice within the ten-day period, the action of the City Manager, or his/her designee, shall be final and conclusive.
  4. Every application for permission to conduct a public display of fireworks shall be accompanied by a non-refundable fee as established by resolution of the City Council from time to time. This fee shall be in addition to any other fee or tax imposed by Title VI of the Modesto Municipal Code.
- 1.3. **Sales.** Permits are required for the retail sales of "Safe and Sane" fireworks in the City of Modesto.
1. It shall be unlawful to engage in the sale of "Safe and Sane" fireworks in the City of Modesto without first having secured a sales permit to do so.

2. The total number of sales permits issued in any given year shall be limited to one hundred twenty (120) sales permits. Ninety (90) of the sales permits shall be apportioned for local non-profit organizations, and thirty (30) sales permits shall be apportioned for local profit organizations.
3. Each organization shall be limited to apply for a maximum of three (3) sales permits as provided in Paragraph 6(b). A separate sales permit shall be required for each proposed location of a fireworks stand.
4. Sales permits for the sale of "Safe and Sane" fireworks in the City of Modesto shall be issued only to local non-profit organizations and local for-profit organizations as defined herein.
  - (A) A "non-profit organization" shall mean any non-profit association, club, or corporation organized primarily for veteran, patriotic, welfare, religious, civic betterment, youth activity or charitable purposes, which has been issued a tax exempt certificate as required under the revenue and taxation code of the State of California or a group which is an integral part of a recognized national organization having such a tax exempt status.
  - (B) A "local non-profit organization" must have its principal and permanent meeting place in the City of Modesto and must have been organized and established in the City of Modesto for a minimum of one (1) continuous year preceding the filing of the application for permit, and must have a bona fide membership of at least ten (10) members who reside in the City of Modesto.

- (C) A "local for profit organization" must have a permitted fixed business location in the City of Modesto and must have been in business in the City of Modesto for a minimum of one (1) continuous year preceding the filing of the application for permit.
5. Sales permits for retail sales of "Safe and Sane" fireworks in the City of Modesto issued pursuant to provision of this Code are not transferable by the holder of the permit. The sales permits may be used only by the organization to whom it is issued.
  6.
    - (A) All applications for sales permits shall be in writing to the Fire Chief on forms supplied by the City. Applications may only be filed during normal business hours from March 1st of each year up to and including March 31st of the same year, at which time the filing period for that year will close.
    - (B) Each organization may file an application for two (2) sales permits from March 1st of each year up to and including March 15th of the same year and may file an application for one (1) additional sales permit from March 16th of each year up to and including March 31st of the same year, at which time the filing period for that year will close.
  7. Applications shall set forth the proposed location of the fireworks stand including the seven (7) digit parcel number (APN) of the Stanislaus County Assessor and other information as may be required by the Fire Chief. Written permission from the property owner, or his/her designee, to sell fireworks at that location shall accompany the permit application.

8. Applicants for sales permits shall be notified by June 15th of each year, by the Fire Chief, of approval or disapproval of such application. All approved applications shall be picked up, from the Fire Chief, by 4:00 p.m. on June 25th of that year. Sales permits will be issued on the day the applicant begins selling, and after inspection of the stand reveals compliance with all conditions of this ordinance.
9. Every application shall be accompanied by proof of insurance as specified in Modesto Municipal Code Section 3-1.111.3.
10. Every application shall be accompanied by a non-refundable application fee as established by resolution of the City Council from time to time. This application fee shall be in addition to any fees or taxes imposed by Title VI of the Modesto Municipal Code.
11. The Fire Chief, or his/her designee, may revoke, immediately and without notice or hearing, the "Safe and Sane" fireworks sales permit of any location or organization when any of the provisions of Modesto Municipal Code Section 3-1.110.2, 3, 4, 5(1), 5(2) or 5(3), are violated. The Chief shall inform the permittee that permittee may seek review of the Chief's decision, by the City Manager, on the next business day. At the earliest opportunity on the next business day after revocation, the Chief shall provide the City Manager with written notice that a fireworks sales permit has been revoked, including the name of the permittee and a brief statement of the grounds for revocation. If requested by the permittee, the City Manager, or his/her designee, shall meet with the permittee and the Chief, or his/her designee, that day to review the Chief's decision. The decision of the City Manager shall be final.

12. Revocation of any sales permit will be effective for that calendar year.

2. **Pyrotechnic Special Effects Material.** A permit is required to manufacture, compound, store or use pyrotechnic special effects material. A permit for use shall be granted only to a State of California licensed pyrotechnic operator.

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.

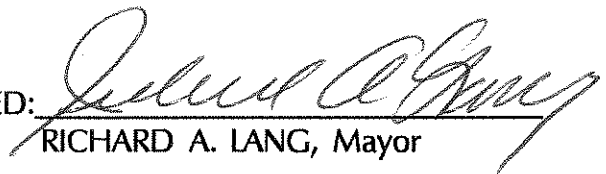
SECTION 3. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in The Modesto Bee, the official newspaper of the City of Modesto, setting forth 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 17th day of September, 1996, by Councilmember Friedman, 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: Cogdill, Dobbs, Fisher, Friedman, McElnahan, Serpa, Mayor Lang

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:

By   
JEAN ADAMS, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

Ord. No. 3003-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 24th day of September, 1996, Councilmember Friedman moved its final adoption, which motion being duly seconded by Councilmember Serpa, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Cogdill, Dobbs, Fisher, Friedman, McClanahan, Serpa,  
Mayor Lang

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:   
MAYOR RICHARD A. LANG

ATTEST:   
JEAN ADAMS, City Clerk

Effective Date: October 24, 1996

*Clerk*  
3.

ORDINANCE NO. 3004-C.S.

AN ORDINANCE AMENDING ARTICLE 19 OF CHAPTER 2 OF TITLE X OF THE MODESTO MUNICIPAL CODE RELATING TO SPECIFIC PLAN OVERLAY ZONE (SP-O).

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

SECTION 1. AMENDMENT OF CODE. Article 19 of Chapter 2 of Title X of the Modesto Municipal Code is hereby amended to read as follows:

**ARTICLE 19. SPECIFIC PLAN-OVERLAY (SP-O) ZONE**

**SEC. 10-2.1901. PURPOSE AND INTENT.**

The purpose and intent of the SP-O Zone is to permit various land uses including residential, industrial, and commercial development through Specific Plans, pursuant to Government Code Section 65450, et seq. The intent of this "overlay zone" is to implement policies regarding certain uses, standards, and development review processes adopted through the Specific Plan process.

**SEC. 10-2.1902. APPLICATION OF THE SP-O ZONE.**

The SP-O Zone shall be applied on the zoning map, in the manner specified by, and appropriate to, the relevant Specific Plan which it is intended to implement. Once the SP-O Zone is applied to the zoning map, the general public shall be guided to the appropriate Specific Plan, which shall determine the means to comply with the SP-O Zone.

**SEC. 10-2.1093. EFFECT OF THE SP-O ZONE.**

Once property is rezoned to an SP-O Zone all subsequent development shall comply with the uses, standards, and development review procedures of the adopted Specific Plan, including all implementation actions 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 8th day of October, 1996, by Councilmember Friedman, 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: Cogdill, Dobbs, Fisher, Friedman, McClanahan, Serpa, Mayor Lang

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: Richard A. Lang  
RICHARD A. LANG, Mayor

ATTEST:

By Jean Adams  
JEAN ADAMS, City Clerk

(SEAL)

APPROVED AS TO FORM:

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

Ord. No. 3004-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 15th day of October, 1996, Councilmember Friedman moved its final adoption, which motion being duly seconded by Councilmember Dobbs, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Cogdill, Dobbs, Fisher, Friedman, McClanahan, Serpa,  
Mayor Lang

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:

  
MAYOR RICHARD A. LANG

ATTEST:

  
JEAN ADAMS, City Clerk

Effective Date: November 14, 1996

ORDINANCE NO. 3005 -C.S.

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

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,

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

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

SECTION 2. 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 1996-97 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 3. The Finance Director 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 4. 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 5. 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 and the Resolution of Formation.

SECTION 6. 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 7. 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 8. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in The Modesto Bee, the official newspaper of the City of Modesto, setting forth the title of this ordinance, the date of its introduction and the places where this ordinance is posted.

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 8th day of October, 1996, by Councilmember Fisher, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Friedman, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Cogdill, Dobbs, Fisher, Friedman,  
McClanahan, Serpa, Mayor Lang  
NOES: Councilmembers: None  
ABSENT: Councilmembers: None

APPROVED: 

RICHARD A. LANG, Mayor

ATTEST:

By   
JEAN ADAMS, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

EXHIBIT A

RATE, METHOD, AND MANNER OF APPORTIONMENT  
OF SPECIAL TAX

**EXHIBIT A**  
**RATE, METHOD AND MANNER OF APPORTIONMENT**  
**OF SPECIAL TAX**

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 and trails.

"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 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 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 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 a portion of the acreage of any non-arterial right-of-way that fronts the Parcel determined by drawing lines at right angles to the right-of-way, and (ii) subtracting a portion of the acreage of any arterial right-of-way that fronts the Parcel determined by drawing lines at right angles to the right-of-way.

**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.

**Table 1**  
**Per-Acre Special Tax to be Used in**  
**Calculation of Maximum Facilities Special Tax**  
**(Fiscal Year 1996-97)**

Land Use Class	Description	Per-Acre Special Tax
1	Very Low Density Residential	\$19,214 per Gross Acre
2	Village Residential	\$28,833 per Gross Acre
3	Multi-Family Residential	\$75,073 per Gross Acre
4	Commercial	\$84,597 per Gross Acre
5	Industrial	\$39,748 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 the CFD 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.

Ord. No. 3005-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 15th day of October, 1996, Councilmember Friedman moved its final adoption, which motion being duly seconded by Councilmember Dobbs, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Cogdill, Dobbs, Fisher, Friedman, McClanahan, Serpa,  
Mayor Lang

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:   
MAYOR RICHARD A. LANG

ATTEST:   
JEAN ADAMS, City Clerk

Effective Date: November 14, 1996

ORDINANCE NO. 3006 -C.S.

AN ORDINANCE AMENDING SECTION 14-3-9 OF THE ZONING MAP TO REZONE FROM PROFESSIONAL OFFICE ZONE, P-O, TO PLANNED DEVELOPMENT ZONE, P-D(518), PROPERTY LOCATED ON THE EAST SIDE OF OAKDALE ROAD AT LANCEY DRIVE (DONALD R. GONSALVES)

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

SECTION 1. ZONING CHANGE. Section 14-3-9 of the Zoning Map is hereby amended to reclassify the following described property from Professional Office Zone, P-O, to Planned Development Zone, P-D(518):

P-O to P-D(518)

All that portion of O. McHenry Ranch according to the map filed in Volume 2 of Maps, at Page 7, Mount Diablo Base and Meridian in the Stanislaus County Records, situated in the Southwest One-Quarter of Section 14, Township 3 South, Range 9 East, described as follows:

Commencing at the Southwest corner of said Lot 3; thence North 0°19' West and along the West line of said Lot 3 and along the centerline of the 40.00 foot County Road known as Old Oakdale Road, a distance of 665.04 feet to the true point of beginning of this description; thence continuing North 0°19' West and along the West line of said Lot 3 a distance of 239.05 feet; thence South 89°30'30" East a distance of 259.20 feet; thence South 37° 50' 40" East a distance of 24.57 feet; thence South 9°19'20" East a distance of 32.91 feet; thence South 0°13'20" West a distance of 187.69 feet; thence North 89°26' West a distance of 277.55 feet to the true point of beginning of this description.

SECTION 2. USES. The following uses shall be permitted in said P-D(518) 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. Car wash facility
2. C-3 commercial uses.

SECTION 3. ZONING MAP. Section Map 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 15th day of October, 1996, by Councilmember Friedman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Serpa, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Cogdill, Dobbs, Fisher, Friedman, McClanahan, Serpa, Mayor Lang  
NOES: Councilmembers: None  
ABSENT: Councilmembers: None

APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:

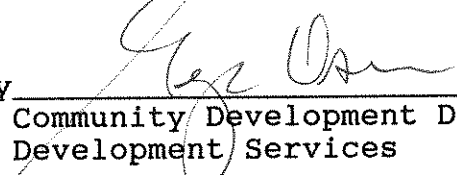
By   
JEAN ADAMS, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

APPROVED AS TO DESCRIPTION:

By   
Community Development Department  
Development Services

Ord. No. 3006-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 22nd day of October, 1996, Councilmember Serpa, moved its final adoption, which motion being duly seconded by Councilmember Friedman, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Cogdill, Dobbs, Friedman, McClanahan, Serpa,  
Mayor Lang  
NOES: Councilmembers: None  
ABSENT: Councilmembers: Fisher

APPROVED:

  
MAYOR RICHARD A. LANG

ATTEST:

  
JEAN ADAMS, City Clerk

Effective Date: November 21, 1996

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ORDINANCE NO. 3007 -C.S.

AN ORDINANCE AMENDING SECTION 27-3-9 OF THE ZONING MAP TO REZONE FROM MEDIUM-HIGH DENSITY RESIDENTIAL ZONE, R-3, TO PLANNED DEVELOPMENT ZONE, P-D(517), PROPERTY LOCATED ON THE NORTH SIDE OF SCENIC DRIVE BETWEEN BRIGHTON AND ROSE AVENUES. (TED SEYBOLD)

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 Medium-High Density Residential Zone, R-3, to Planned Development Zone, P-D(517):

R-3 to P-D(517)

ALL that certain real property situate in a portion of the Northeast quarter of Section 27, 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 intersection of the centerlines of original 40.00 foot wide Brighton Avenue and 50.00 foot wide Scenic Drive; thence along the centerline of Scenic Drive North 73° 47' 09" East 684.89 feet to the centerline of a 90.00 foot wide abandoned road right-of-way known as Brighton Avenue; thence along said center-line of the abandoned right-of-way on a curve concave to the west having a central angle of 2° 51' 58" and a radius of 900.00 feet as shown on that certain parcel map recorded in Volume 01 of Parcel Maps at Page 102, Stanislaus County Records, on April 13, 1996, a distance of 45.02 feet to the north line of Scenic Drive and the True Point of Beginning of this description; thence South 73° 47' 09" West 45.00 feet to the western line of said abandoned Brighton Avenue; thence along said western line, Northwesterly 16.11 feet on the tangent of a curve having a radius of 15.00 feet and being concave to the northwest; thence continuing along said west line 209.30 feet on a curve concave to the west and having a radius of 855.00 feet; thence leaving said west line of abandoned 90.00 foot wide Brighton Avenue North 0° 35' 24" West 162.22 feet

to the Eastern line of said abandoned right-of-way; thence South 34° 20' 10" East 350.47 feet; thence continuing along said Eastern line 239.79 feet on a curve concave to the west and having a radius of 945.00 feet; thence continuing along said Eastern line 14.09 feet on the tangent of a curve having a radius of 15.00 feet and being concave to the northeast to the intersection with aforementioned north line of Scenic Drive; thence along said north line, South 73° 47' 09" West 45.00 feet to the point of beginning.

Also including that northerly portion of Scenic Drive extending to the centerline of the original 40 foot Scenic Drive, all immediately adjacent to the above described property.

SECTION 2. USES. The following uses shall be permitted in said P-D(517) 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 mini-storage facility.

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

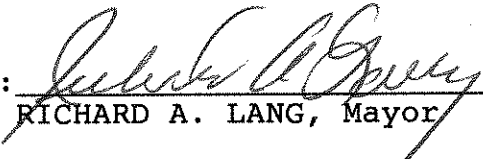
in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in The Modesto Bee, the official newspaper of the City of Modesto, setting forth the title of this ordinance, the date of its introduction and the places where this ordinance is posted.

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 15th day of October, 1996, by Councilmember Fisher, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Dobbs, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Cogdill, Dobbs, Fisher, Friedman, McClanahan, Serpa, Mayor Lang

NOES: Councilmembers: None

ABSENT: Councilmembers: None


APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:

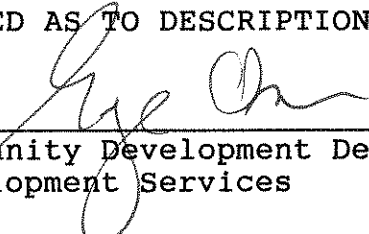
By   
JEAN ADAMS, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

APPROVED AS TO DESCRIPTION:

By   
Community Development Department  
Development Services

Ord. No. 3007-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 22nd day of October, 1996, Councilmember Serpa, moved its final adoption, which motion being duly seconded by Councilmember Friedman, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Cogdill, Dobbs, Friedman, McClanahan, Serpa,  
Mayor Lang  
NOES: Councilmembers: None  
ABSENT: Councilmembers: Fisher

APPROVED:

  
MAYOR RICHARD A. LANG

ATTEST:

  
JEAN ADAMS, City Clerk

Effective Date: November 21, 1996

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BUS BENCH FRANCHISE ORDINANCE

ORDINANCE NO. 3008 -C.S.

AN ORDINANCE GRANTING AN EXCLUSIVE ONE-YEAR BUS BENCH FRANCHISE TO COMPUTER PATHWAYS, INC., 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 Computer Pathways, Inc., a California corporation, 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 from the City and to maintain benches 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, 1997, and shall end no later than December 31, 1997. 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 Don Langman, President, Computer Pathways, Inc., 937 N. Emerald Avenue, Modesto, CA 95351. 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. Should the City terminate for convenience, it shall return to the Grantee a sum of money as described in Section 5.

(c) Extension of Term. Upon mutual agreement of the CITY and Grantee, the franchise may be extended for a one-year period.

SECTION 4. BENCH PARTS. Grantee shall be responsible for the safe storage of spare benches and bench parts 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 the spare benches and bench parts from the current storage location to Grantee's storage location.

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 of no greater than one (1) year.

For the right and privilege of leasing the benches, Grantee shall pay to the City eight thousand and no/100ths dollars, which sum shall be pre-paid to the City prior to the commencement of the Franchise.

Should the City terminate this Franchise, the City shall reimburse Grantee a sum of money determined by the following formula:

$$a = \frac{b}{c} \times d \$8,000.00$$

WHERE:

a = The sum to be returned to the Grantee.

b = The number of days left in the one year franchise period after the effective date of termination.

c = The total number of days in the one year franchise period (three hundred sixty-five, 365).

d = The lump sum amount pre-paid to City as provided for in this section.

**SECTION 6. PLACEMENT OF BUS PASSENGER SHELTERS BEARING PRINTED MATTER OR SIGNS THEREON.** The City shall have the authority to place bus passenger shelters bearing printed matter on 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 other than bus schedules 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) For benches which have one-piece backrests, bus schedules, which will be supplied by CITY, shall be placed on the front of the bench backrest on every bus bench by Grantee in the upper left or right hand corner of each bench in a space which measures ten (10) inches horizontally by eleven (11) inches vertically. CITY will also supply schedules to fit benches which use two (2) inch by six (6) inch boards for backrests. Bus schedules affixed to benches shall be appropriate for the routes served by the bus stop where the bench is located. Grantee shall place a clear plastic, plexiglass, or polycarbonate cover over the schedules to protect them from weathering and vandalism if said covering material is provided by CITY and after an experimental phase which Grantee and City agree successfully demonstrates that said coverings provide appropriate coverage of schedules. Said coverings shall be affixed to the bench backrest with tamper-resistant fittings provided by the CITY. Such coverings shall be replaced by Grantee as needed to keep them in "like-new" condition and shall be replaced as required by CITY with covering material provided by CITY.

(3) Grantee shall submit, upon request, to the City Manager or designee copies of all ads proposed to be placed on benches for preplacement approval.

(4) 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.

(5) 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.

(6) 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.

(7) No advertising for beverages containing alcohol, tobacco, or businesses regulated by Modesto Municipal Code Sections 5-9.101 through 5-9.406 shall be permitted.

(8) 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.

(9) 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.

(10) No advertising that is either false, misleading, deceptive or clearly defamatory shall be permitted.

(11) 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.

(12) 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. 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, 1996, 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 other than bus schedules are allowed, at least one bench shall be installed in areas where benches bearing printed matter or signs other than bus schedules are not allowed. The specific locations of these latter benches shall be specified by the City Manager or his designee.

**SECTION 10. MAINTENANCE OF BENCHES.** All benches owned by the City, regardless of location inside or outside of the City of Modesto, must be cleaned regularly and when needed, and must 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. Grantee shall replace broken seat boards as necessary. Grantee shall provide replacement boards and hardware to secure replacement boards in place. Grantee shall utilize bench parts provided by CITY at beginning of franchise to replace those that are damaged. After the bench parts supplied by CITY at the initiation of this franchise are completely utilized, Grantee shall be responsible for supplying any additional bench parts needed at Grantee's expense. 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 benches.

**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 twelve (12) bench locations to be cleaned on a daily basis. Said twelve (12) 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 CITY in the U.S. Mail. The invoice shall specify the bench numbers and locations which do not meet the cleaning and/or maintenance requirements.

**SECTION 13. TRASH RECEPTACLE.** At its sole discretion, CITY may install up to twenty (20) trash receptacles at bench locations selected by CITY. If 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 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 thirty (30) 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. 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.
- 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 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. 2960-C.S. is hereby repealed effective January 1, 1997.

**SECTION 25. EFFECTIVE DATE.** This ordinance shall become effective January 1, 1997, 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.

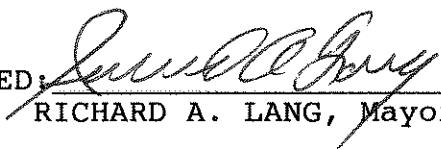
SECTION 27. TAX PROVISION. Grantee shall be responsible for prompt payment of all tax liabilities created by operation of this franchise including but not limited to, a possessory interest tax levied by Stanislaus County. Grantee's continued failure to pay such tax after written notice from CITY shall constitute grounds for revocation of this franchise.

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 5th day of November, 1996, by Councilmember Dobbs, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Lang, was upon roll call carried and ordered printed and published by the following vote:

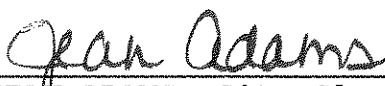
AYES: Councilmembers: Dobbs, Fisher, Friedman, McClanahan, Mayor Lang

NOES: Councilmembers: None

ABSENT: Councilmembers: Cogdill, Serpa

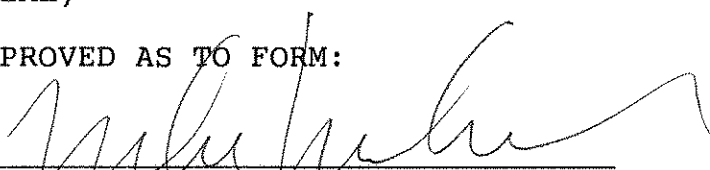
APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:

By   
JEAN ADAMS, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

Ord. No. 3008-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 12th day of November, 1996, Councilmember Friedman moved its final adoption, which motion being duly seconded by Councilmember Dobbs, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Cogdill, Dobbs, Fisher, Friedman, McClanahan, Mayor  
Lang


NOES: Councilmembers: None

ABSENT: Councilmembers: Serpa

APPROVED:

  
MAYOR RICHARD A. LANG

ATTEST:

  
JEAN ADAMS, City Clerk

Effective Date: December 12, 1996

Clark 127

ORDINANCE NO. 3009-C.S.

AN ORDINANCE ADDING CHAPTER 10 ENTITLED "STORM WATER MANAGEMENT AND DISCHARGE CONTROLS" TO TITLE V OF THE MODESTO MUNICIPAL CODE, AND REPEALING SECTIONS 5-6.22, 5-6.23, 5-6.25, AND 5-6.26 OF THE MODESTO MUNICIPAL CODE.

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

SECTION 1. AMENDMENT OF CODE. Chapter 10 entitled "Storm Water Management and Discharge Controls" is hereby added to Title V of the Modesto Municipal Code to read as follows:

**CHAPTER 10. STORM WATER MANAGEMENT AND DISCHARGE CONTROLS**

**ARTICLE 1. STORM DRAIN REGULATIONS**

**SEC. 5-10.101. TITLE.**

This chapter shall be known as the City of Modesto Storm Water Management and Discharge Controls Ordinance and may be so cited.

**SEC. 5-10.102. BACKGROUND**

In 1987, the Clean Water Act was amended by passage of the Water Quality Act. Section 402(p) of the Clean Water Act gives the U.S. Environmental Protection Agency (EPA) authority over storm water discharge permit requirements under the National Pollutant Discharge Elimination System (NPDES) program. The EPA promulgated its storm water permit requirements on November 16, 1990, NPDES permit application regulations for storm water dischargers; Final Rule (Storm Water Regulations) -- 40 CFR Parts 122, 123, and 124. In addition to NPDES permit application regulations for storm water discharges, the Final Rule mandates the control of urban storm water quality.

**SEC. 5-10.103. PURPOSE AND INTENT.**

The purpose of this chapter is to ensure the future health, safety, and general welfare of City of Modesto citizens by:

- (a) Regulating non-storm water discharges to the municipal separate storm drain.
- (b) Controlling the discharge to municipal separate storm drains from spills, dumping or disposal of materials other than storm water.
- (c) Reducing pollutants in storm water discharges to the maximum extent practicable.

The intent of this chapter is to protect and enhance the water quality of City watercourses, water bodies, ground water, and wetlands in a manner pursuant to and consistent with the Federal Clean Water Act.

**SEC. 5-10.104. DEFINITIONS.**

The terms as used in this chapter shall have the following meanings:

- (a) **Best Management Practice (BMPs)** shall mean schedules of activities, prohibitions of practices, general good housekeeping practices, maintenance procedures, educational programs, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to waters of the United States. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, and drainage from raw materials storage. The California Storm Water Best Management Practice Handbooks for Municipal, Industrial/Commercial and Construction Activity provide a detailed discussion of BMPs.
- (b) **City** shall mean the City of Modesto.
- (c) **Council** shall mean the City Council of the City of Modesto.
- (d) **Illicit Discharge** shall mean any discharge to the storm drain system that is not composed entirely of storm water runoff except discharges made pursuant to a National Pollutant Discharge Elimination System (NPDES) permit.
- (e) **Illicit Connection** shall mean any physical connection to a storm drain system which has not been permitted by the City.
- (f) **National Pollutant Discharge Elimination System (NPDES) Permit** shall mean a storm water discharge permit issued by the State

Water Resources Control Board in compliance with the Federal Clean Water Act.

- (g) **Municipal NPDES Permit** shall mean an area-wide NPDES permit issued to a government agency or agencies for the discharge of storm water from a storm water system.
- (h) **Non-Storm Water Discharge** shall mean any discharge to the storm drain system that is not entirely composed of storm water.
- (i) **Person** shall mean any natural person, firm, association, club, organization, corporation, partnership, business trust, company or other entity which is recognized by law as the subject of rights or duties.
- (j) **Pollutant** shall mean anything which causes the deterioration of water quality such that it impairs subsequent and or competing uses of the water. Pollutants may include but are not limited to paints, oil and other automotive fluids, soil, rubbish, trash, garbage, debris, refuse, waste, fecal coliform, fecal streptococcus, enterococcus, heavy metals, hazardous waste, chemicals, fresh concrete, yard waste from commercial landscaping operations, animal waste, materials that result from the process of constructing a building or structure, nauseous or offensive matter of any kind.
- (k) **Premises** shall mean any building, lot, parcel of land, land or portion of land whether improved or unimproved.
- (l) **Storm Drain System** shall mean any facility by which storm water may be conveyed to waters of the United States. The storm drain system includes but is not limited to any roads with drainage systems, streets, curbs, gutters, catch basin, natural and artificial channels, ditches, aqueducts, storm drains, rockwells, inlets, conduit or other drainage structure, and any terminal, treatment or discharge facility.
- (m) **Storm Water Runoff** shall mean surface runoff and drainage associated with rain storm events and snow melt.
- (n) **Director** shall mean the Public Works and Transportation Director.

- (o) **Authorized Enforcement Officer** shall include the Director or his/her designee.
- (p) **Uncontaminated pumped groundwater** is impure groundwater or groundwater mixed with a pollutant.

**SEC. 5-10.105. RESPONSIBILITY FOR ADMINISTRATION.**

This chapter shall be administered for the City by the Director.

**SEC. 5-10.106. REGULATORY CONSISTENCY.**

This chapter shall be construed to assure consistency with the requirements of the Federal Clean Water Act and acts amendatory thereof or supplementary thereto, applicable implementing regulations, and any existing or future municipal NPDES Permits and any amendments, revisions or reissuance thereof.

**SEC. 5-10.107. SEVERABILITY.**

If any provision, clause, sentence, or paragraph of this chapter or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this chapter which can be given effect without the invalid provision or application, and to this end, the provisions of this chapter are hereby declared to be severable.

**SEC. 5-10.108. COMPLIANCE BY INDUSTRIAL USERS WITH FEDERAL AND STATE STANDARDS.**

- (a) All Industrial activities shall comply with the strictest of any applicable Federal or State standards or regulations covering the discharge of storm water or surface water, including but not limited to those adopted pursuant to the Clean Water Act PL 95-217, as amended, and the National Pollutant Discharge Elimination System (NPDES).
- (b) Any industrial activity not complying with the standards or regulations as required by subsection (a) hereof may be required by the Director to develop and implement a compliance schedule for any measures or facilities as may be necessary to meet said standards and regulations.

- (c) The Director may require the submission of such notices of self-monitoring reports from the site of industrial activities as he may consider necessary to assure compliance with said standards and regulations.
- (d) Holders of NPDES industrial storm water permits which discharge storm water or surface water to the City's storm drainage facilities shall comply with applicable requirements of the City's NPDES permit for its Municipal Separate Storm Sewer System. In addition, the Director or his/her designee may impose other, and/or stricter requirements in individual cases when the Director deems it beneficial to the general welfare of the City to do so.
- (e) Industrial activities required to obtain NPDES permits requiring the discharge of storm water and surface water to the City's storm drainage facilities shall notify the Director that they are subject to such permit. Notice shall be made in writing at least thirty (30) days before such activity commences. The NPDES permit holders shall notify the Director immediately by phone upon discovery of any discharge in violation of their permit.
- (f) The Director or his/her designee shall have access to the site of the industrial activity regulated by a NPDES industrial storm water permit, for purposes of inspection and monitoring, upon notice to the designated representative of the NPDES permit holder.
- (g) The Director may establish standards and guidelines implementing BMP's designed to control the rate and volume of storm water runoff from industrial activities as may be appropriate to minimize the discharge and transport of pollutants.

#### **SEC. 5-10.109. STORM DRAINAGE USER CHARGE.**

The City is implementing activities to improve the environmental quality of storm water by decreasing the amount of pollutants that enter the system. Each person owning property within the city limits shall pay a storm drainage user charge to the City in accordance with rates and charges as established by the Council from time to time by resolution and on file in the office of the City Clerk and the Director. The user charge is based on the size, type of, and use and intensity of use of property and shall go to pay the costs of the City NPDES program,

operation and maintenance of the storm drain system, improvements and additions to the storm drain system, and any other costs associated with the storm drain enterprise. Property owners shall remain responsible for the cost of storm water management and quality control on their property. The Council shall have the power to establish, by agreement or resolution, the rate or rates to be charged and the method of collecting the storm drainage user charge for properties outside the boundaries of the city limits for those properties which discharge into the City's storm drain system.

#### **SEC. 5-10.110. INDUSTRIAL ACTIVITIES FEES.**

Council shall, from time to time, establish by resolution a schedule of industrial activities fees. These fees shall apply to parcels which are required by Federal law to obtain a National Pollutant Discharge Elimination System (NPDES) permit regulating the discharge of storm water and surface water from the site of an industrial activity. The fees shall correspond to the costs expended by the City in monitoring the discharge from such a site of industrial activity for compliance with the conditions of its NPDES permit, as well as any costs associated with damage to or degradation of City's storm drain system.

#### **SEC. 5-10.111. CONSTRUCTION ACTIVITIES FEES.**

Council shall, from time to time, establish by resolution a schedule of construction activities fees. These fees shall apply to parcels which are required by federal law to obtain a National Pollutant Discharge Elimination System (NPDES) permit regulating the discharge of storm water and surface water from the site of construction activity. The fees shall correspond to the costs expended by the City in monitoring the discharge from such a site of construction activity for compliance with the conditions of its NPDES permit, as well as any costs associated with damage to or degradation of City's storm drain system.

#### **SEC. 5-10.112 . ADMINISTRATIVE REVIEW.**

Any parcel owner who disputes the amount of any storm drainage user charge or who requests a deferred payment schedule therefor must request a revision or modification of such charge in writing from the Director. The Director may notify any owner or occupier and take appropriate action in the event the Director considers the charge to be inadequate or improper.

## **ARTICLE 2. DISCHARGE REGULATIONS AND REQUIREMENTS**

### **SEC. 5-10.201. DISCHARGE OF POLLUTANTS.**

A non-storm water discharge to the storm drain system is a violation of this chapter except as specified below.

- (a) The prohibition of discharges shall not apply to any discharge regulated under a National Pollutant Discharge Elimination System (NPDES) permit or waiver issued to the discharger and administered by the State of California under the authority of the Environmental Protection Agency (EPA), provided that the discharger is in full compliance with all requirements of the permit or waiver and other applicable laws or regulations.
- (b) Discharges from the following activities will not be considered a source of pollutants to waters of the United States when properly managed: water line flushing and other discharges from potable water sources, landscape irrigation and lawn watering, irrigation water, diverted stream flows, rising ground waters, infiltration to separate storm drains, uncontaminated pumped ground water, foundation and footing drains, water from crawl space pumps, air-conditioning condensation, springs, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges or flows from fire fighting.

### **SEC. 5-10.202. DISCHARGE IN VIOLATION OF PERMIT.**

Any discharge that would result in or contribute to a violation of the City's existing or future Municipal NPDES Permit and any amendment, revision or reissuance thereof, either separately considered or when combined with other discharges, is a violation of this chapter and is prohibited. Liability for any such discharge shall be the responsibility of the person(s) causing or responsible for the discharge, as well as the parcel owner on whose property the discharge occurs, who shall be strictly liable for its consequences, and such persons and/or owners shall defend, indemnify and hold harmless the City in any administrative or judicial enforcement action relating to such discharge.

### **SEC. 5-10.203. ILLICIT CONNECTIONS.**

It is a violation of this chapter to establish, use, maintain, or continue illicit drainage connections to the City storm drain system, and to

commence or continue any illicit discharges to the City storm drain system. This prohibition against illicit connections is retroactive and applies to unpermitted connections made in the past, regardless of whether permissible under the law or practices applicable or prevailing at the time of the connection.

#### **SEC. 5-10.204. REDUCTION OF POLLUTANTS IN STORM WATER.**

It is a violation of this chapter to throw, deposit, leave, maintain, keep, or permit to be thrown, deposited, placed, left or maintained, garbage, abandoned vehicle or other discarded or abandoned objects, articles, and accumulations, in or upon any street, alley, sidewalk, storm drain, inlet, catch basin, conduit or other drainage structures, business place, or upon any public or private plot of land in the City. The only exception being where such pollutant is being temporarily placed in an appropriate container with a spill containment system for timely collection and removal. It is a violation of this chapter to cause or permit any dumpster, solid waste bin, or similar container to leak such that any pollutant is discharged into any street, alley, sidewalk, storm drain, inlet, catch basin, conduit, rockwell or other drainage structures, storm drain system component, business place, or upon any public or private plot of land in the City.

#### **SEC. 5-10.205. OUTDOOR STORAGE AREAS - COMMERCIAL AND INDUSTRIAL FACILITIES.**

In outdoor areas, no person shall improperly store grease, oil or other hazardous substances. In outdoor areas, no person shall improperly store motor vehicles, machine parts, or other objects in a manner that may leak grease, oil, or other hazardous substances. To prevent the discharge of hazardous substances from the property, the City may require the installation of a spill containment system. Spill containment systems may consist of a system of dikes, walls, barriers, berms, or other devices as required. No person shall operate a spill containment system such that it allows incompatible liquids to mix and thereby create a hazardous condition.

#### **SEC. 5-10.206. CONSTRUCTION SITES.**

Any person performing construction work in the City shall comply with the provisions of this chapter.

The Director may establish standards and guidelines implementing BMP's designed to control the rate and volume of storm water runoff from construction sites as may be appropriate to minimize the discharge and transport of pollutants. All construction sites shall comply with the State General Construction Activity Permit.

#### **SEC. 5-10.207. NEW DEVELOPMENT AND REDEVELOPMENT.**

To minimize the discharge and transport of pollutants, the City may require, in its discretion, a new development or redevelopment project, greater than five acres, to control the volume and rate of storm water runoff from the project so as to prevent any deterioration of water quality which would impair the subsequent or competing uses of the water. The Director may establish standards and guidelines implementing BMP's designed to control the rate and volume of storm water runoff from new developments and redevelopments as may be appropriate to minimize the discharge and transport of pollutants.

Acceptable methods and standards for controlling storm water runoff volumes, rates, and pollutant load may include but are not limited to the following:

- (a) **Increase Permeable Areas.** Avoid placing impervious surfaces in highly porous soil areas; incorporate landscaping and open space into the project design; use porous materials for or near driveways and walkways; incorporate detention ponds and infiltration pits into the project's design; avoid placing pavement and other impervious surfaces in low lying areas.
- (b) **Direct Runoff to Permeable Areas.** Direct storm water runoff away from impermeable areas to swales, berms, green strip filters, gravel beds, and french drains. Install rain gutters and orient them toward permeable areas. Modify the grade of the property to divert flow to permeable areas and minimize the amount of storm water runoff leaving the property. When designing curbs, berms or other structures, avoid designs which isolate permeable or landscaped areas.
- (c) **Maximize Storm Water Storage for Reuse.** Use retention structures, subsurface areas, cisterns, or other structures to store storm water runoff for reuse or slow release.

#### **SEC. 5-10.208. STORM DRAINAGE RULES AND REGULATIONS.**

The following rules and regulations shall apply to all persons using storm drainage facilities. Failure to comply with any provision, requirement, rule, or regulation under this chapter shall be unlawful and punishable as an infraction.

- (a) The willful or negligent disposal of petroleum products (oil and grease), pesticides, fertilizers, household or industrial chemicals, industrial process wastewater, domestic sewage, animal waste or other pollutants into storm drainage facilities is prohibited.
- (b) Domestic roof drain leaders may not be directly connected to sidewalks and gutters, but must discharge into landscaped areas.
- (c) Discharge of water from swimming pools into rockwells is prohibited. Discharge of water from swimming pools into positive storm drainage facilities is allowed only with the written permission of the Director. Such discharge may not cause flooding of the street. Water from pumping out swimming pools may be discharged to the sanitary sewer.
- (d) Storm water or surface water which is causing flooding on private property served by an on-site storm drainage system may not be discharged to the City's storm drainage facilities.

#### **SEC. 5-10.209. COMPLIANCE WITH GENERAL PERMITS.**

Any industrial discharger, discharger associated with construction activity, or other discharger subject to any general NPDES permit issued by the United States Environmental Protection Agency, the State Water Resources Control Board, or the Regional Water Quality Control Board, shall comply with all requirements of such permit. Proof of compliance with said NPDES General Permits may be required in a form acceptable to the Director prior to issuance of any City grading, building, occupancy, or other permits.

### **ARTICLE 3. INSPECTION AND ENFORCEMENT**

#### **SEC. 5-10.301. AUTHORITY TO INSPECT.**

Whenever necessary to make an inspection to enforce any of the provisions of this chapter, or whenever an authorized enforcement

officer has reasonable cause to believe that there exists in any building or upon any premises any condition which constitutes a violation of the provisions of this chapter, the officer may enter such building or premises at all reasonable times to inspect the same or perform any duty imposed upon the officer by this chapter; provided that (i) if such building or premises be occupied, he or she shall first present proper credentials and request entry; and (ii) if such building or premises be unoccupied, he or she shall first make a reasonable effort to locate the owner or other persons having charge or control of the building or premises and request entry.

Any such request for entry shall state that the property owner or occupant has the right to refuse entry and that in the event such entry is refused, inspection may be made only upon issuance of a search warrant by a duly authorized magistrate. In the event the owner and/or occupant refuses entry after such request has been made, the officer is hereby empowered to seek assistance from any court of competent jurisdiction in obtaining such entry.

Routine or area inspections shall be based upon such reasonable selection processes as may be deemed necessary to carry out the objectives of this chapter, including but not limited to random sampling and/or sampling in areas with evidence of storm water contamination, illicit discharges, discharge of non-storm water to the storm water system, or similar factors.

- (a) **Authority to Sample and Establish Sampling Devices.** With the consent of the owner or occupant or pursuant to a search warrant, any authorized enforcement officer may establish on any property such devices as are necessary to conduct sampling or metering operations. During all inspections as provided herein, the Officer may take any samples deemed necessary to aid in the pursuit of the inquiry or in the recordation of the activities on-site.
- (b) **Notification of Spills.** All persons in charge of a facility or responsible for emergency response for a facility have a personal responsibility to train facility personnel and maintain notification procedures to assure immediate notification is provided to the City of any suspected, confirmed or unconfirmed release of material, pollutants or waste creating a risk of discharge into the City Storm drain system. As soon as any person in charge of a facility or responsible for emergency response for a facility has

knowledge, such person shall take all necessary steps to ensure the discovery and containment and clean up of such release and shall notify the City of the occurrence by telephoning the illicit discharge hotline, (phone number to be established by resolution) and confirming the notification by correspondence to Director.

- (c) **Requirement to Test or Monitor.** Any authorized enforcement officer may request that any person engaged in any activity and/or owning or operating any facility which may cause or contribute to storm water pollution or contamination, illicit discharges, and/or discharge of non-storm water to the storm water system, undertake such monitoring activities and/or analysis and furnish such reports as the officer may specify. The burden, including costs, of these activities, analysis and reports shall bear a reasonable relationship to the need for the monitoring, analysis and reports and the benefits to be obtained. The recipient of such request shall undertake and provide the monitoring, analysis and/or reports requested. In the event the owner or operator of a facility subject to a monitoring and/or analysis order fails to conduct required monitoring and/or analysis and furnish the required reports in the form required, the authorized enforcement officer may cause such monitoring and/or analysis and the cost, therefore, including the reasonable additional administrative costs incurred by the City shall be borne by the owner of the property and the cost thereof shall be invoiced to the owner of the property. If the invoice is not paid within sixty (60) days of the issuance thereof, the costs shall be a lien upon and against the property and continue in existence until the same shall be paid. If the lien is not satisfied by the owner of the property within three (3) months after the completion by an authorized enforcement officer of the required monitoring and/or analysis and reports, the property may be sold in satisfaction thereof in a like manner as other real property is sold under execution.

#### **SEC. 5-10.302. VIOLATIONS CONSTITUTING MISDEMEANORS.**

Unless otherwise specified by this chapter, the violation of any provision of this chapter, or failure to comply with any of the mandatory requirements of this chapter shall constitute a misdemeanor; except that notwithstanding any other provisions of this chapter, any such violation constituting a misdemeanor under this chapter, at the

discretion of the authorized enforcement officer may be charged and prosecuted as an infraction.

#### **SEC. 5-10.303. PENALTIES.**

It shall be unlawful for any person to violate any provision of this chapter. Any person violating any provision of this chapter shall be deemed guilty of an infraction or misdemeanor as hereinafter specified. Such person shall be deemed guilty of a separate offense for each and every day or portion thereof during which any violation of any of the provisions of this chapter is committed, continued, or permitted.

Any person so convicted shall be: (1) guilty of an infraction offense and punished by a fine not exceeding one hundred dollars (\$100.00) for a first violation; (2) guilty of an infraction offense and punished by a fine not exceeding two hundred dollars (\$200.00) for a second violation. The third and any additional violations shall constitute a misdemeanor offense and shall be punishable by a fine not exceeding one thousand dollars (\$1,000.00) or six (6) months in jail, or both. Notwithstanding the above, a first offense may be charged and prosecuted as a misdemeanor. Payment of any penalty herein shall not relieve a person from the responsibility for correcting the violation.

At the option of the Director or an authorized enforcement officer, such officer may, instead of the foregoing criminal procedure, utilize the administrative enforcement powers granted in Section 5-10.309, below, to enforce any of the provisions of this chapter, and to ensure the correction of any violations of this chapter. These shall include the powers to lien granted in that section, and shall include as well the power to levy an administrative (civil) penalty against an offender in such dollar amount as the Council may, from time to time, specify by resolution adopted pursuant to this chapter. Appeal from the imposition of any such fine shall be first to the Director, and, ultimately, to Council.

#### **SEC. 5-10.304. CONCEALMENT.**

Causing, permitting, aiding, abetting or concealing a violation of any provision of this chapter shall constitute a violation of such provision.

**SEC. 5-10.305. ACTS POTENTIALLY RESULTING IN VIOLATION OF FEDERAL CLEAN WATER ACT AND/OR PORTER-COLOGNE ACT.**

Any person who violates any provision of this chapter, any provision of any permit issued pursuant to this chapter, or who discharges waste or wastewater which causes pollution, or who violates any cease and desist order, prohibition, or effluent limitation, also may be in violation of the Federal Clean Water Act and/or Porter-Cologne Act and may be subject to the sanctions of those Acts including civil and criminal penalty. In that event, any person who may be required to defend, indemnify and hold the City harmless pursuant to Section 5-10.202 above shall also be required to do so in connection with any claim, enforcement action, or other legal action taken against the City arising out of the discharge or violation. Any enforcement action authorized under this chapter should also include notice to the violator of such potential liability. This section shall be retroactive to the fullest extent permitted by law.

**SEC. 5-10.306. VIOLATIONS DEEMED A PUBLIC NUISANCE.**

In addition to the penalties hereinbefore provided, any condition caused or permitted to exist in violation of any of the provisions of this chapter is a threat to the public health, safety and welfare, and may be declared and deemed a nuisance, and may be summarily abated and/or restored by any authorized enforcement officer, and/or civil action to abate, enjoin or otherwise compel the cessation of such nuisance may be taken by Council.

The cost of such abatement and restoration shall be borne by the owner of any property affected thereby, and the cost thereof shall be a lien upon and against any such property and such lien shall continue in existence until the same shall be paid. If the lien is not satisfied by the owner of the property within three (3) months after the completion by the authorized enforcement officer of the removal of the nuisance and the restoration of the property to its original condition, the property may be sold in satisfaction thereof in a like manner as other real property is sold under execution.

In any administrative or civil proceeding under this chapter in which the City prevails, the City shall be awarded all costs of investigation, administrative overhead, out-of-pocket expenses, costs of administrative hearings, costs of suit and reasonable attorney fees.

**SEC. 5-10.307. JUDICIAL REVIEW.**

The provisions of Section 1094.6 of the California Code of Civil Procedure are applicable to judicial review of City decisions pursuant to this chapter.

**SEC. 5-10.308. CIVIL ACTIONS.**

In addition to any other remedies provided in this section, this chapter may be enforced by civil action brought by the City. In any such action, the court may grant, as appropriate, any or all of the following remedies:

- (a) A temporary and/or permanent injunction.
- (b) Assessment of the violator/parcel owner for the costs of any investigation, inspection, or monitoring survey which led to the establishment of the violation, and for the reasonable costs of preparing and bringing legal action under this subsection.
- (c) Costs incurred in removing, correcting, or terminating the adverse effects resulting from the violation.
- (d) Compensatory damages for loss or destruction to water quality, wildlife, fish and aquatic life. Assessments under this subsection shall be paid to the City to be used exclusively for costs associated with monitoring and establishing storm water discharge pollution control systems and/or implementing or enforcing the provisions of this chapter.

**SEC. 5-10.309. ADMINISTRATIVE ENFORCEMENT POWERS.**

In addition to the other enforcement powers and remedies established by this chapter, any authorized enforcement officer has the authority to utilize the following administrative remedies.

- (a) **Cease and Desist Orders.** When an authorized enforcement officer finds that a discharge has taken place or is likely to take place in violation of this chapter, the officer may issue an order to cease and desist such discharge, or practice, or operation likely to cause such discharge and direct that those persons not complying shall: a) comply with the requirement, b) comply with a time schedule for compliance, and/or c) take appropriate

remedial or preventive action to prevent the violation from recurring.

- (b) **Notice to Clean.** Whenever an authorized enforcement officer finds any oil, earth dirt, tin cans, rubbish, refuse, waste or any other material of any kind, in or upon the sidewalk abutting or adjoining any parcel of land, or upon any parcel of land or grounds, which may result in an increase in pollutants entering the City storm drain system or natural watercourse, he or she may give notice to remove such oil, earth, dirt, tin cans, rubbish, refuse, waste or other material, in any manner that he or she may reasonably provide. The recipient of such notice shall undertake the activities as described in the notice.

In the event the owner or operator of a facility fails to conduct the activities as described in the notice, the authorized enforcement officer may cause such required activities as described in the notice and the cost thereof shall be invoiced to the owner of the property. If the invoice is not paid within sixty (60) days, a lien shall be placed upon and against the property. If the lien is not satisfied by the owner of the property within three (3) months after the completion of the required activities by the authorized enforcement officer, the property may be sold in satisfaction thereof in a like manner as other real property is sold under execution.

#### **SEC. 5-10.310. AUTHORITY TO ARREST OR ISSUE CITATIONS.**

Authorized enforcement officers shall have and are hereby vested with the authority to arrest or cite any person who violates any Section of this chapter in the manner provided by the California Penal Code for the arrest or release on citation of misdemeanors or infractions as prescribed by Chapter 5, 5c, and 5d of Title 3, Part 2 of the Penal Code (or as the same may be hereinafter amended).

Such authorized enforcement officers or employees may issue a citation and notice to appear in the manner prescribed by chapter 5c of Title 3, Part 2 of the Penal Code, including Section 853.6 (or as the same may hereafter be amended). It is the intent of the Council that the immunities prescribed in Section 836.5 of the Penal Code be applicable to public officers or employees or employees acting in the course and scope of employment pursuant to this chapter. (Bail for infractions shall be as set by resolution of the City Council.)

**SEC. 5-10.311. NONEXCLUSIVITY OF REMEDIES.**

Remedies under this chapter are in addition to and do not supersede or limit any and all other remedies, civil or criminal. The remedies provided for herein shall be cumulative and not exclusive.

**SEC. 5-10.312. APPEAL.**

Any person, firm, corporation or organization required to perform monitoring, analysis, reporting and/or corrective activities by an authorized enforcement officer who is aggrieved by the decision of the authorized enforcement officer may appeal such decision to the Director within ten (10) days following the effective date of the decision by writing to the Director. Upon receipt of such request, the Director shall request a report and recommendation from the authorized enforcement officer and shall set the matter for hearing at the earliest practical date. At said hearing, the Director may hear additional evidence, and may reject, affirm or modify the Authority Enforcement officer's decision. Such decision shall be final.

**SEC. 5-10.313. DISCLAIMER OF LIABILITY.**

The degree of protection required by this chapter is considered reasonable for regulatory purposes and is based on scientific, engineering and other relevant technical considerations. The standards set forth herein are minimum standards and this chapter does not imply that compliance will ensure that there will be no unauthorized discharge of pollutants into the waters of the United States. This chapter shall not create liability on the part of the City, any officer or employee thereof for any damages that result from reliance on this chapter or any administrative decision lawfully made thereunder.

SECTION 2. AMENDMENT OF CODE. Sections 5-6.22, 5-6.23, 5-6.25, and 5-6.26 of Chapter 6 of Title V of the Modesto Municipal Code are hereby repealed.

SECTION 3. EFFECTIVE DATE. This ordinance shall go into effect and be in full force and operation from and after thirty (30) days after its final passage and adoption.

SECTION 4. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in *The Modesto Bee*, the official newspaper of the City of Modesto, setting forth the title of this ordinance, the date of its introduction and the places where this ordinance is posted.

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 12th day of November, 1996, by Councilmember Friedman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember McClanahan, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Cogdill, Dobbs, Fisher, Friedman, McClanahan, Serpa, Mayor Lang

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:

By   
JEAN ADAMS, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

Ord. No. 3009-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 19th day of November, 1996, Councilmember Friedman, moved its final adoption, which motion being duly seconded by Councilmember McClanahan, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Cogdill, Dobbs, Friedman, McClanahan, Serpa,  
Acting Mayor Fisher

NOES: Councilmembers: None

ABSENT: Councilmembers: Mayor Lang

APPROVED:



TIM S. FISHER, Acting Mayor

ATTEST:

  
JEAN ADAMS, City Clerk

Effective Date: December 19, 1996

ORDINANCE NO. 3010 -C.S.

AN ORDINANCE ADDING ARTICLE 10 TO CHAPTER 1 OF TITLE VIII OF THE MODESTO MUNICIPAL CODE RELATING TO TRAFFIC OFFENDER FUND.

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

SECTION 1. AMENDMENT OF CODE. Article 10 is hereby added to Chapter 1 of Title VIII of the Modesto Municipal Code to read as follows:

**ARTICLE 10. TRAFFIC OFFENDER FUND**

**SEC. 8-1.1001. CREATION OF FUND.**

A fund is hereby created for the purpose of traffic safety for the City of Modesto.

**SEC. 8-1.1002. TITLE OF FUND.**

Such fund shall be known as "Traffic Offender Fund".

**SEC. 8-1.1003. PURPOSE OF FUND.**

- (a) There is hereby established a special fund for the purposes of receiving and expending fees collected pursuant to Section 8-1.1004. This special fund shall be known and designated as the Traffic Offender Fund.
- (b) **Expenditure of Monies.** The appropriation of all monies in the Traffic Offender Fund shall be made exclusively for the purposes of traffic safety programs within the City of Modesto.

The traffic offender program shall include the enforcement of, education for, and prosecution of a suspended or revoked driving privilege, unlicensed driver, and persons driving under the influence of alcohol and/or drugs. Expenditures shall include, but not be limited to, purchase of equipment, contractual services, material and supplies, or any other expenditure related to traffic safety and the enforcement of traffic laws within the City of Modesto. The administration of the fund shall conform to this Code and all accounting principles practiced by the City.

- (c) **Accumulation of Monies in the Fund.** The balance remaining in the Traffic Offender Fund at the close of any fiscal year shall be deemed to have been provided for a specific purpose and shall be carried forward and accumulated in said fund for the purposes set forth herein.

**SEC. 8-1.1004. ESTABLISHMENT OF ADMINISTRATIVE FEE.**

- (a) **Administrative Fee -- Police Department.** A fee to reimburse the City of Modesto for costs incurred in the administration of procedures for removing vehicles shall be charged by the Modesto Police Department to the owner of a vehicle removed pursuant to Sections 14602.6, 22651(h), 22651(o), 22651(p), or 22655.5 of the California Vehicle Code. Said charges shall be in accordance with and by the authority of Section 22850.5 of the California Vehicle Code.
- (b) The Police Chief shall propose the fee authorized by Section 8-1.1004(a). The fees shall not go into effect until approved by resolution by the Modesto City Council. The fee shall not exceed an amount that covers the actual administrative costs incurred by the City relating to the removal, impoundment, storage, and release of the vehicle.
- (c) The Police Chief, with the approval of the City Council, is hereby authorized to adopt such rules, regulations, and procedures as are necessary for the release of properly impounded vehicles and for the Modesto Police Department to impose, collect, and administer the fee by this section.

**SEC. 8-1.1005. REIMBURSEMENT FOR TOW ON VEHICLES.**

The fee may be reimbursed to the owner or person in lawful possession of the vehicle if the fee was incurred:

- (a) Because the vehicle was towed and stored at the order of the Modesto Police Department to examine the vehicle for evidence of a crime;
- (b) Because the vehicle was towed and stored by the order of the Modesto Police Department and said towing or storage was not authorized by any of the several provisions of the California Vehicle Code;

- (c) Because officers, agents or employees of the Modesto Police Department were negligent in the reporting, filing, or recording of the circumstances of the towing and storage of the vehicle;
- (d) Because officers, agents, or employees of the Modesto Police Department were negligent in reporting a vehicle as subject to towing or storage or ordering a vehicle towed and stored when in fact such vehicle was not subject to towing and storage; or
- (e) Because a vehicle was towed or stored by order of the Modesto Police Department for removal of components of the vehicle, which components were placed on the vehicle in violation of Section 10751 of the California Vehicle Code, or when the vehicle was towed as a recovered stolen vehicle, 10851 CVC, and the legal or registered owner lives within the boundary of 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 19th day of November, 1996, by Councilmember Friedman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Dobbs, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Cogdill, Dobbs, Friedman, McClanahan, Serpa, Acting Mayor Fisher

NOES: Councilmembers: None

ABSENT: Councilmembers: Mayor Lang

APPROVED:



TIMOTHY S. FISHER, Acting Mayor

ATTEST:

By Jean Adams  
JEAN ADAMS, City Clerk

(SEAL)

APPROVED AS TO FORM:

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

Ord. No. 3010-C.S.

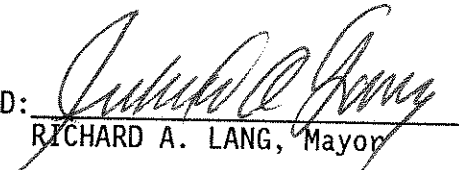
FINAL ADOPTION CLAUSE


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 26th day of November, 1996, Councilmember Friedman, moved its final adoption, which motion being duly seconded by Councilmember Serpa, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Cogdill, Dobbs, Fisher, Friedman, McClanahan,  
Serpa, Mayor Lang

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:   
JEAN ADAMS, City Clerk

Effective Date: December 26, 1996

Clark

ORDINANCE NO. 3011 -C.S.

AN ORDINANCE AMENDING SECTION 28-3-9 OF THE ZONING MAP TO REZONE FROM NEIGHBORHOOD COMMERCIAL ZONE, C-1, TO PLANNED DEVELOPMENT ZONE, P-D(490), AS AN ADDITION TO PLANNED DEVELOPMENT ZONE, P-D(490), PROPERTY LOCATED ON THE NORTHEAST CORNER OF SCENIC DRIVE AND BODEM STREET. (ACACIA MEMORIAL PARK)

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 Neighborhood Commercial Zone, C-1, to Planned Development Zone, P-D(490), as an addition to Planned Development Zone, P-D(490):

C-1 to P-D(490) as an Addition to P-D(490)

All that certain real property situate in a portion of the southeast quarter of the northwest quarter of Section 28, Township 3 South, Range 9 East, Mount Diablo Base and Meridian, in the County of Stanislaus, State of California, described as follows:

Starting at the southeast corner of the northeast quarter of the northwest quarter of said Section 28, as shown on the map of Capital Heights Addition filed in the office of the Recorder of Stanislaus County, on May 29, 1912, in Volume 6 of Maps, Page 41; thence southerly 690 feet, more or less, to the southeast corner of Block 595, being also on the northerly line of 80 foot Scenic Drive, also being the Point of Beginning; thence southwesterly 218 feet, more or less, to the southwest corner of said Block 595; thence northerly 196 feet, more or less, to a point on the east line of Bodem Street 560 feet south of the north line of said Block 595; thence on a line parallel to the north line of said Block 595; easterly 197 feet, more or less, to a point of the east line of said Block 595; thence southerly 100 feet, more or less, to the Point of Beginning.

Including also the north half of 80 foot Scenic Drive, and the east half of 60 foot Bodem Street, all immediately adjacent to the above-described property.

SECTION 2. USES. The following uses shall be permitted in said P-D(490) Zone, as an addition to P-D(490), 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. Burial plots.

SECTION 3. ZONING MAP. Section 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 26th day of November, 1996, by Councilmember Dobbs, 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: Dobbs, Fisher, Friedman, McClanahan, Serpa, Mayor Lang  
NOES: Councilmembers: None  
ABSENT: Councilmembers: Cogdill

APPROVED: 

RICHARD A. LANG, Mayor

ATTEST:

By 

JEAN ADAMS, City Clerk

(SEAL)

APPROVED AS TO FORM:

By 

MICHAEL D. MILICH, City Attorney

APPROVED AS TO DESCRIPTION:

By 

Community Development Department  
Development Services

Ord. No. 3011-C.S.

FINAL ADOPTION CLAUSE

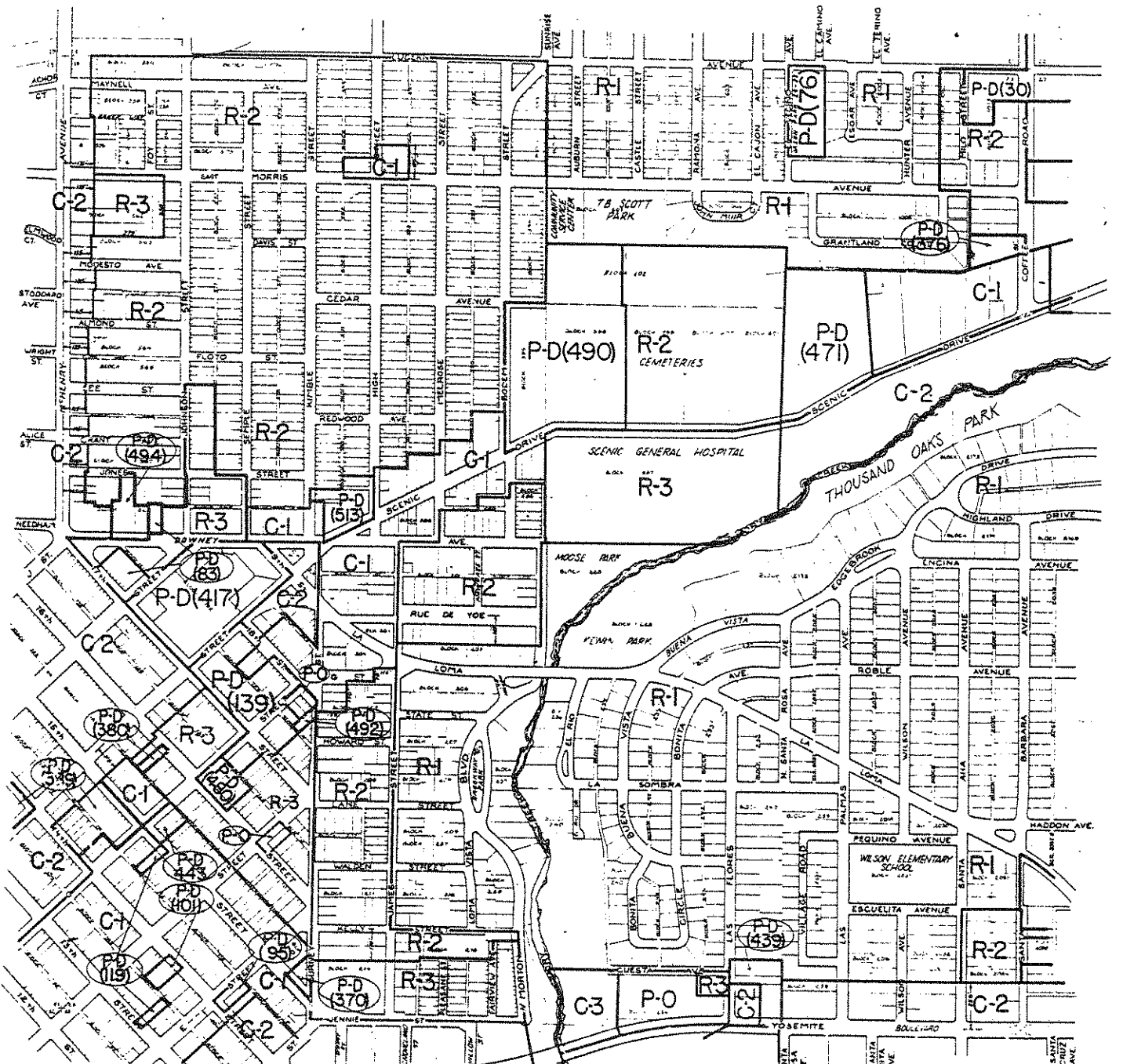
The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the special meeting of the Council of the City of Modesto held on the 16th day of December, 1996, Councilmember Friedman, moved its final adoption, which motion being duly seconded by Councilmember McClanahan, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Dobbs, Fisher, Friedman, McClanahan, Serpa,  
Mayor Lang  
NOES: Councilmembers: None  
ABSENT: Councilmembers: Cogdill

APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:   
JEAN ADAMS, City Clerk

Effective Date: January 15, 1997



ZONING MAP OF THE CITY OF MODESTO

28-3-9

*check*

ORDINANCE NO. 3012 -C.S.

AN ORDINANCE AMENDING SECTION MAP 3-3-9 OF THE ZONING MAP OF THE CITY OF MODESTO REZONING PROPERTY FROM LOW DENSITY RESIDENTIAL ZONE, R-1, TO SPECIFIC PLAN-OVERLAY ZONE, SP-O, PROPERTY WITHIN THE NORTH BEYER PARK SPECIFIC PLAN. (FLORSHEIM DEVELOPMENT)

WHEREAS, pursuant to Modesto Municipal Code Title X, Article 26, the City of Modesto proposes to initiate a zone boundary change of the area designated as the North Beyer Comprehensive Planning District in the City's General Plan, described more specifically on Exhibit "A" attached hereto, and

WHEREAS, pursuant to Modesto Municipal Code Section 10-2.1902, the Specific Plan Overlay Zone shall be applied on the zoning map to reflect the relevant Specific Plan which it is intended to implement, and

WHEREAS, pursuant to Government Code Section 65450 et seq. the Planning Commission has recommended the adoption of the North Beyer Park Specific Plan for the area described on Exhibit "A" for the purpose of implementing the City's General Plan and establishing policies and standards for the development of that area, and

WHEREAS, after a public hearing held on November 4, 1996, it was found and determined by the Planning Commission that zoning of the property as requested is in accordance with Government Code Section 65855, and

WHEREAS, by Resolution No. 96-56, adopted November 4, 1996, the Planning Commission recommended to the City Council an

amendment to Section 3-3-9 of the Zoning Map to rezone property from Low Density Residential Zone, R-1, to Specific Plan-Overlay Zone, SP-O, property within the North Beyer Park Specific Plan, and

WHEREAS, said matter was set for a public hearing of the City Council to be held on November 26, 1996, at 4:00 p.m., in the City Council Chambers, City Hall, 801 11th 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. After a public hearing held on November 26 1996, in the Council Chambers, City Hall, 801 11th 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 reasons:

1. The requested rezoning is required by public convenience and necessity because the proposed North Beyer Park Specific Plan will provide needed services and facilities for that area.
2. The requested rezoning will result in orderly planning and use of land resources because the proposed North Beyer Park Specific Plan would provide for the social and economic development of this portion of the Modesto Urban Area.

3. The requested rezoning is in accordance with the policies and goals presented in the North Beyer Park Specific Plan.

SECTION 2. ZONING CHANGE. Section 3-3-9 of the Zoning Map of the City of Modesto is hereby amended to rezone the following described property from Low Density Residential Zone, R-1, to Specific Plan-Overlay Zone, SP-O,

R-1 to SP-O

ALL that certain real property being a portion of the South half of Section 3, Township 3 South, Range 9 East, Mount Diablo Meridian, Stanislaus County, California, being more particularly described as follows:

BEGINNING at the Southwest corner of the above mentioned Section 3, with said point lying at the centerline-centerline intersection of Mable Avenue and Coffee Road; thence North  $01^{\circ}08'08''$  West along the West line of said Section 3 and along the centerline of Coffee Road, a distance of 1333.03 feet to an angle point; thence continuing along last said lines, North  $01^{\circ}07'56''$  West, a distance of 28.78 feet to the intersection with the centerline of Claratina Avenue as shown on the Official Plan Line for Pelandale Avenue/Claratina Avenue, adopted by the Stanislaus County Board of Supervisors on February 9, 1982; thence along last said line the following three (3) courses: 1) south  $88^{\circ}49'31''$  East, a distance of 1010.04 feet; 2) North  $89^{\circ}33'12''$  East, a distance of 1613.84 feet to a point on the North-South quarter line through said Section 3; 3) South  $89^{\circ}40'56''$  East, a distance of 2622.98 feet to a point on the East line of said Section 3, with said point lying on the centerline of a county road known as Oakdale Road; thence South  $00^{\circ}33'27''$  East along last said section line and along the centerline of said Oakdale Road, a distance of 1321.57 feet to the Southeast corner of said section, with said point lying on the above mentioned centerline of Mable Avenue; thence South  $89^{\circ}48'54''$  West along the South line of said section and along the centerline of said Mable Avenue, a distance of 2616.02 feet to the South quarter corner of said Section 3; thence continuing along last said lines, South  $89^{\circ}48'18''$  West, a distance of 2616.44 feet to the POINT OF BEGINNING.

SUBJECT TO all easements and/or rights-of-way of record.

Containing 161.01 Acres, more or less.

SECTION 3. ZONING MAP. Section 3-3-9 of the Zoning Map of the City of Modesto is amended to appear as set forth on the map attached hereto, which is hereby made a part of this ordinance by reference.

SECTION 4. EFFECTIVE DATE. This ordinance shall go into effect and be in full force and operation from and after thirty (30) days after its final passage and adoption.

SECTION 5. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in The Modesto Bee, the official newspaper of the City of Modesto, setting forth the title of this ordinance, the date of its introduction and the places where this ordinance is posted.

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 26th day of November, 1996, by Councilmember Friedman, 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: Cogdill, Dobbs, Fisher, Friedman, McClanahan, Serpa, Mayor Lang  
NOES: Councilmembers: None  
ABSENT: Councilmembers: None

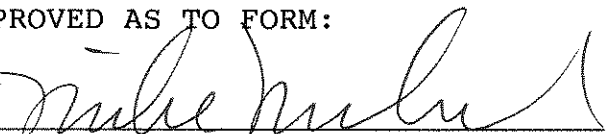
APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:

By   
JEAN ADAMS, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

APPROVED AS TO DESCRIPTION:

By   
Community Development Department  
Development Services

Ord. No. 3012-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 16th day of December, 1996, Councilmember Friedman, moved its final adoption, which motion being duly seconded by Councilmember Dobbs, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Cogdill, Dobbs, Fisher, Friedman, McClanahan,  
Serpa, Mayor Lang

NOES: Councilmembers: None

ABSENT: Councilmembers: None

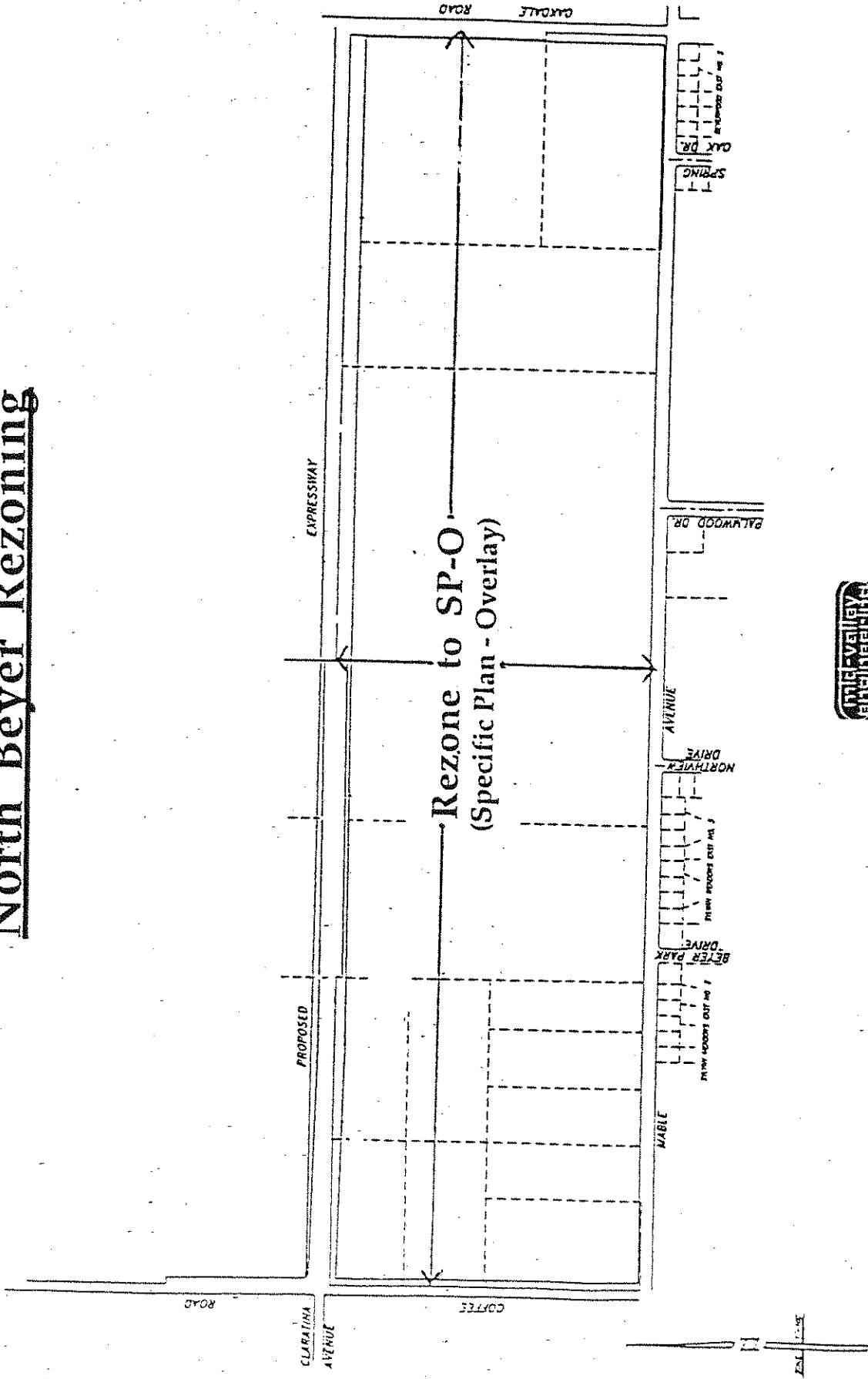
APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:   
JEAN ADAMS, City Clerk

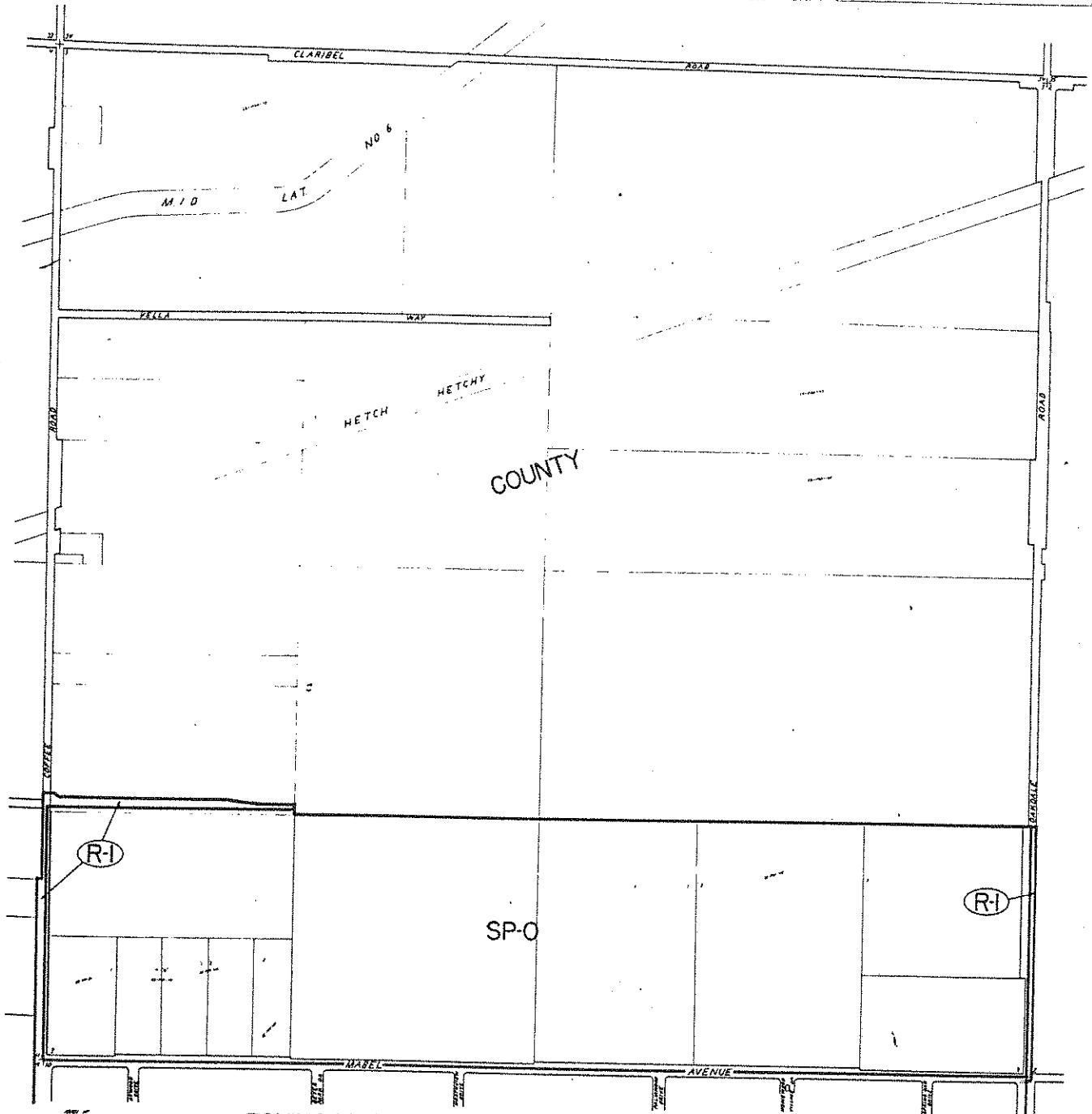
Effective Date: January 15, 1997

# North Beyer Rezoning

EXHIBIT A



LAND PLANNING • ENGINEERING • SURVEYING  
900 H STREET, SUITE C IRVINE, CA 92614 TEL: (714) 926-4214



ZONING MAP OF THE CITY OF MODESTO

3-3-9

Clark

ORDINANCE NO. 3013 -C.S.

AN ORDINANCE AMENDING SECTIONS 6-1.111, 6-1.128, 6-1.201, 6-1.202, 6-1.204, 6-1.205, 6-1.206, AND 6-1.207; AND ADDING SECTION 6-1.114.1 TO CHAPTER 1 OF TITLE VI OF THE MODESTO MUNICIPAL CODE TO PROVIDE FOR THE ANNUAL BILLING OF BUSINESS LICENSES.

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

SECTION 1. AMENDMENT OF CODE. Sections 6-1.111, 6-1.128, 6-1.201, 6-1.202, 6-1.204, 6-1.205, 6-1.206, and 6-1.207 of Chapter 1 of Title VI of the Modesto Municipal Code are hereby amended to read as follows:

**SEC. 6-1.111. LICENSES. WHEN PAYABLE AND DELINQUENT.**

- (a) All license taxes due hereunder shall be paid in advance at the office of the Director unless otherwise expressly provided, and shall be due and payable and delinquent as follows:
- (1) **Daily License.** Due on its effective date and delinquent at 5:00 p.m. of due day.
  - (2) **Weekly License.** Due on Monday of each week and delinquent at 5:00 p.m. on Friday of said week.
  - (3) **Monthly License.** Due on the 1st day of each month for which the license is sought and delinquent at 5:00 p.m. on the last day of the month.
  - (4) **Quarterly License.** Due on the 1st day of October, January, April and July and delinquent at 5:00 p.m. on the last day of the first month in which the quarterly license is due.
  - (5) **Quarterly Gross Receipts Tax.** Due on the 1st day of October, January, April and July for the preceding quarterly period and delinquent at 5:00 p.m. on the last day of the month following the quarterly license period.

- (6) **Yearly Gross Receipts Tax.** Due on the 1st day of January for the preceding yearly period and delinquent at 5:00 p.m. on the last day of the month following the yearly license period.
  - (7) **Semiannual License.** Due on the 1st day of July and January and delinquent at 5:00 p.m. on the last day of the first month in which the semiannual license is due.
  - (8) **Annual License.** Due on the 1st day of January and July and delinquent at 5:00 p.m. on the last day of January and July.
  - (9) **Annual Registration Tax.** Due on the 1st day of January and July and delinquent at 5:00 p.m. on the last day of January and July.
- (b) In lieu of paying said license taxes at the office of the Director as specified in subsection (a) hereof, said license taxes may be deposited in United States mail, postage prepaid, on the due date, provided the transmitting envelope contains a postage cancellation stamp showing cancellation not later than 12:00 p.m. on the due day.
  - (c) If the due day falls on Saturday, Sunday or a holiday, the due day shall be the next regular business day on which the City Hall is open to the public.
  - (d) The Director may, for good cause, extend for not more than thirty (30) days the time for filing any report or paying any sum required to be paid hereunder. The extension may be granted at any time provided a written request therefor is filed with the Director prior to the delinquency date.

**SEC. 6-1.128. DEPOSIT OR SAVINGS AND LOAN CERTIFICATE AND SHARE REQUIRED.**

Every person who begins the operation of a new business subject to a license under the provisions of Sections 6-1.201, 6-1.202, 6-1.204, 6-1.206, and 6-1.207, of this chapter, upon making application for a license, shall deposit with the Director the amount of fifty dollars (\$50.00) or a savings and loan certificate and share in a form approved by the City Attorney a guarantee that the license tax will be paid. Said deposit or savings and loan certificate and share shall be refunded:

- (a) At the expiration of six (6) months from the first of the next ensuing quarter, provided, however that no refund or deposit or savings and loan certificate and share shall be made unless all charges imposed under the terms of this chapter shall have been paid and all reports required by this chapter shall have been filed with the Director on or before the delinquent date for two (2) consecutive quarters.
- (b) Upon cessation of business in the City, providing all charges imposed by this chapter shall have been paid and final reports required by this Chapter shall have been filed.
- (c) At the expiration of one (1) year from the first of the next ensuing year, provided, however, that no refund of deposit or savings and loan certificate and share shall be made unless all charges imposed under the terms of this chapter shall have been paid and all reports required by this chapter shall have been filed with the Director on or before the delinquent date for the previous year.

Provided further that the Director may apply said deposit or savings and loan certificate and share, or any portion thereof to the business license tax or other taxes due the City from said business; and provided further that the Director may declare said deposit or savings and loan certificate and share forfeited for failure to report and pay the liability to the City within six (6) months after the report becomes delinquent. Such forfeiture shall not relieve or excuse the licensee from payment of the balance of license tax due and unpaid.

Every change in ownership of a business shall be construed as the commencement of a new business by the owner, and shall require the payment of a license tax and the deposit of fifty dollars (\$50.00) as above stated or a savings and loan certificate and share. The Director may waive the deposit or savings and loan certificate and share requirements for a new or additional business operated by a person previously licensed under this chapter, providing said person has had a satisfactory experience in payment of license taxes to the City.

#### **SEC. 6-1.201. RETAIL MERCHANTS AND MISCELLANEOUS BUSINESSES.**

Every person conducting, carrying on or managing a retail business from a fixed place of business within the City shall pay an annual registration tax of fifty dollars (\$50.00), and in addition thereto shall pay a business license tax equal to one (1) mill on each dollar of gross receipts

resulting from the operation of said business, payable quarterly or annually.

In the event that any such retail business is specifically licensed by any other section of this chapter, said business shall be subject to the provisions of this section, in addition to said specific license, to the extent that the activities or proceeds resulting from the conduct of said business are not licensed by said specific license.

The business license tax imposed by this section shall be computed by excluding the proceeds or receipts received or derived from such retail businesses as are otherwise specifically licensed and taxed by any other section or sections of this chapter.

#### SEC. 6-1.202. PROFESSIONS AND SERVICES.

Every person conducting, carrying on or managing any of the following named professions, occupations, services or trades from a fixed place of business within the City, which business is not otherwise specifically licensed by Sections 6-1.205 and 6-1.215 of this chapter, shall pay an annual registration tax of fifty dollars (\$50.00) and in addition thereto shall pay a business license tax equal to two (2) mills on each dollar of the gross receipts resulting from the operation of said business, payable quarterly or annually:

Accountant	Janitorial Service
Advertising Agency	Juke Box Rental
Alterations, Dressmaking, Tailoring	Locksmith
Appraiser	Laundries
Architect	Laboratories or Technicians
Armored Car Service	Landscape Architects
Arts or Craft Teacher	Lapidary
Auto Camp and Motel	Linen Service
Attorney	
Auctioneer	Museum
	Music Teachers
Barber Shop	Messenger Service
Beauty Shop	
Business Service	Optician
	Optometrists
Car Wash	Osteopaths
Chiropractor	
Chiropodist	Photographers

Child Nurseries	Physical Therapists
Check Cashing Service	Physicians
Check Room	Places of Amusement
Credit Agency	Photostat and Blue Printing
Cleaners	Parking Lots and Auto Storage
Collection Agency	
Commission Brokers	Reducing Salon
	Rooming House
Dance Schools or Studios	Real Estate Agent
Dentist	Rest Home
Delivery Service	Radio and TV Broadcasting
Diaper Service	Station
Electrologist	Stock Exchange
Employment Agency	Stocks and Bonds
Engineer	Surgeon
Equipment Rental	Surveyor
Finance and Loan	Theaters
Funeral Parlor	Transfer and Storage
	Travel Bureau
Gardener	Ticket Agency
Gymnasium	Turkish Bath Establishment
	Tree Trimmer
House Movers	Trailer Court
Hauling for Hire	
Hotel	All Other Professions and
	Semiprofessions
Interior Decorator	All Other Service Occupations

#### SEC. 6-1.204. CONTRACTORS.

Every person conducting, carrying or engaging in business as a contractor from a fixed place of business in the City shall pay an annual business license tax of fifty dollars (\$50.00), and in addition thereto shall pay a business license tax equal to one (1) mill on each dollar of gross receipts resulting from the operation of said business, payable quarterly or annually.

For the purpose of this chapter a contractor is defined as any person, who contracts for a project with another person who is licensed by the State of California as a contractor or architect or registered civil engineer acting solely in his professional capacity, who in any capacity other than an employee of another with wages as the sole compensation,

undertakes to or offers to undertake to or submits a bid to, or does himself or by or through others construct, alter, repair, add to, subtract from, improve, move, wreck or demolish any building, highway, road, railroad, excavation, or other structure, project, development, or improvement, or do any part thereof, including the erection of scaffolding, or other structures or works in connection therewith.

**SEC. 6-1.205. MINIMUM LICENSE BASED ON GROSS RECEIPTS.**

Every person carrying on, conducting or managing a business from a fixed place of business within the City, which business is not otherwise specifically licensed under the provisions of Sections 6-1.208 through 6-1.225 of this chapter, shall pay an annual business license tax of thirty-five dollars (\$35.00) for any year during which the annual gross receipts resulting from the operation of said business do not exceed the sum of two thousand dollars (\$2,000.00). Every person licensed under this section shall file a declaration of gross receipts quarterly or annually on forms prescribed by the City.

**SEC. 6-1.206. OUTSIDE CONTRACTORS.**

Every person not having a fixed place of business within the City who engages in business as a contractor within the City shall pay an annual business license tax of seventy-five dollars (\$75.00), and in addition thereto shall pay a business license tax equal to two (2) mills on each dollar of gross receipts resulting from the business done within the City, payable quarterly; provided, however, that for any license year during which the annual gross receipts resulting from the operation of said business within the City do not exceed two thousand dollars (\$2,000.00), the total amount of the business license tax shall be twenty dollars (\$20.00). Every person licensed under this section shall file a declaration of gross receipts quarterly or annually on forms prescribed by the City.

**SEC. 6-1.207. OTHER OUTSIDE BUSINESSES.**

Every person not having a fixed place of business in the City who engages in business within the City, which business is not specifically licensed by any other section of this chapter shall pay an annual license tax of seventy-five dollars (\$75.00), and in addition thereto shall pay a business license tax equal to two (2) mills on each dollar of gross receipts resulting from the business done within the City, payable quarterly; provided, however, that for any license year during which the annual gross receipts resulting from the operation of said business

within the City do not exceed two thousand dollars (\$2,000.00), the total amount of the business license tax shall be twenty dollars (\$20.00). Every person licensed under this section shall file a declaration of gross receipts quarterly or annually on forms prescribed by the City.

SECTION 2. AMENDMENT OF CODE. Section 6-1.114.1 is hereby added to Chapter 1 of Title VI of the Modesto Municipal Code to read as follows:

**SEC. 6-1.114.1. FILING OF YEARLY DECLARATION OF GROSS RECEIPTS.**

Every person conducting, carrying on or managing a business who is required to pay a business license tax measure by gross receipts shall file a yearly declaration of gross receipts for the previous year on or before the last day of the first month of the following year with the Director on forms prescribed by the City.

SECTION 3. EFFECTIVE DATE. This ordinance shall go into effect and be in full force and operation from and after thirty (30) days after its final passage and adoption.

SECTION 4. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in The Modesto Bee, the official newspaper of the City of Modesto, setting forth the title of this ordinance, the date of its introduction and the places where this ordinance is posted.

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 26th day of November, 1996, by Councilmember Friedman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Serpa, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Cogdill, Dobbs, Fisher, Friedman, McClanahan, Serpa, Mayor Lang

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:

By   
JEAN ADAMS, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

Ord. No. 3013-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 16th day of December, 1996, Councilmember Friedman, moved its final adoption, which motion being duly seconded by Councilmember Dobbs, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Cogdill, Dobbs, Fisher, Friedman, McClanahan,  
Serpa, Mayor Lang

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:   
JEAN ADAMS, City Clerk

Effective Date: January 15, 1997

Check  
7

ORDINANCE NO. 3014 -C.S.

AN ORDINANCE AMENDING SECTION 22-3-9 OF THE ZONING MAP TO REZONE FROM PROFESSIONAL OFFICE ZONE, P-O, TO PLANNED DEVELOPMENT ZONE, P-D(519), PROPERTY LOCATED ON THE EAST SIDE OF COFFEE ROAD BETWEEN BRIGHTON AVENUE AND EAST ORANGEBURG AVENUE. (D. RICK CHENEY)

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 Professional Office Zone, P-O, to Planned Development Zone, P-D(519):

P-O to P-D(519)

All that certain real property situate in a portion of the Southwest quarter of the Northwest quarter of Section 22, 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 Northwest quarter/quarter corner of said Section 22, also being the intersection of the centerlines of Coffee Road which bears South 0° 27' 00" East and East Orangeburg Avenue which bears North 89° 54' 00" East as shown on that certain parcel map filed in the office of the Recorder of Stanislaus County, California, on January 21, 1974, in Volume 18 of Parcel Maps, at page 49; thence along the centerline of Coffee Road, South 0° 27' 00" East to a point established by the intersection of said Coffee Road centerline and the western prolongation of a property line which is parallel to and 359.20 feet distant from the centerline of East Orangeburg Avenue and the True Point of Beginning of this description; thence leaving the centerline of Coffee Road and along said western prolongation, North 89° 54' 00" East 45.00 feet to the East line of Coffee Road; thence continuing along aforementioned parallel property line North 89° 54' 00" East 390.00 feet to a Western line of Parcel "B" as shown on the aforementioned parcel map; thence South 0°

27' 00" East 200.00 feet along said West line to a Northern line of said parcel "B"; thence along a Northern line of said parcel "B" and the North line of parcel "A" of said parcel map South 89° 56' 05" West 388.81 feet to the Northwest corner of said parcel "A"; thence along the westerly prolongation of said north line of parcel "A" South 89° 56' 05" West 47.19 feet to the centerline of Coffee Road; thence along said centerline North 0° 27' 00" West 200.00 feet to the point of beginning.

SECTION 2. USES. The following uses shall be permitted in said P-D(519) Zone if the plan for construction conforms in principle to the approved plan, or if changes are approved by the Secretary of the Planning Commission as required by Section 10-2.1709(c) of the Modesto Municipal Code, or by the Planning Commission if any changes not conforming in principle to the approved plan are proposed, as required by Section 10-2.1709(a) or (b) of the Modesto Municipal Code:

1. Office condominium allowing all P-O Zone uses.

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 3rd day of December, 1996, by Councilmember Friedman, 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: Cogdill, Dobbs, Fisher, Friedman, McClanahan, Serpa, Mayor Lang  
NOES: Councilmembers: None  
ABSENT: Councilmembers: None

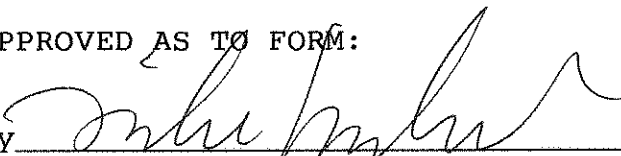
APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:

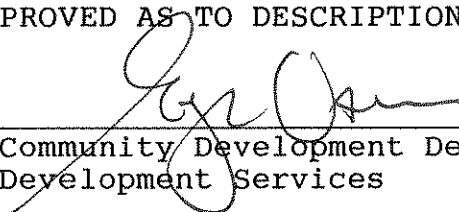
By   
JEAN ADAMS, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MIZICH, City Attorney

APPROVED AS TO DESCRIPTION:

By   
Community Development Department  
Development Services

Ord. No. 3014-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 16th day of December, 1996, Councilmember Friedman, moved its final adoption, which motion being duly seconded by Councilmember Dobbs, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Cogdill, Dobbs, Fisher, Friedman, McClanahan,  
Serpa, Mayor Lang

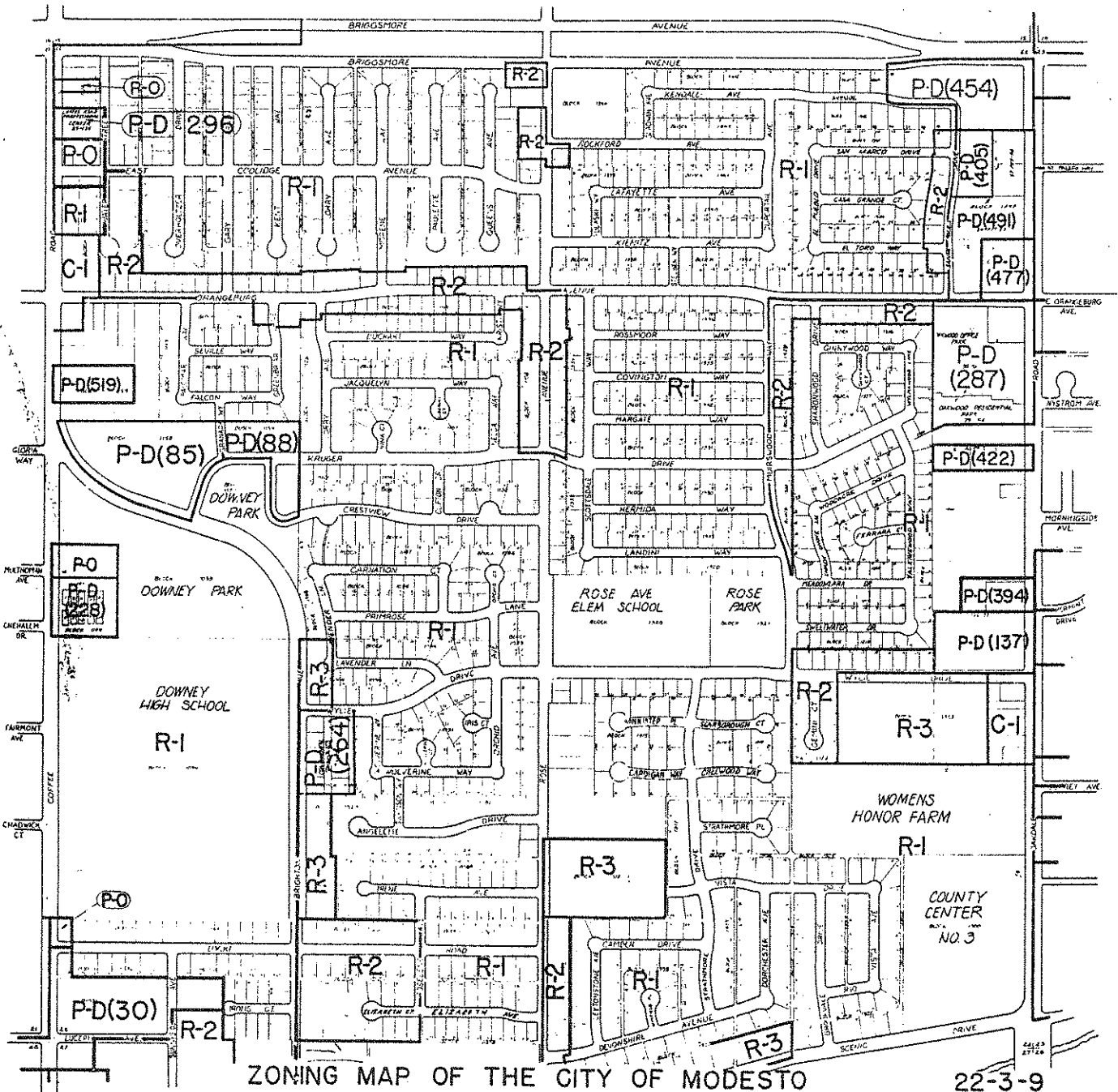
NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:   
JEAN ADAMS, City Clerk

Effective Date: January 15, 1997



ZONING MAP OF THE CITY OF MODESTO

22-3-9

ORDINANCE NO. 3015 C.S.

AN ORDINANCE ADOPTING A PRECISE PLAN FOR AREA NO. 3 OF THE VILLAGE ONE SPECIFIC PLAN, INCLUDING CONDITIONS RELATING TO PROPERTY LOCATED ON THE SOUTH SIDE OF SYLVAN AVENUE EAST OF OAKDALE ROAD. (REDEV, INC.)

WHEREAS, the City Council, in October, 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, Section 10-2.1904 provides that concurrent with the review and approval of a Precise Plan, all properties included in the Precise Plan shall be rezoned, consistent with the basic land use categories of the Village One Specific Plan, to the principal underlying zones set forth in Title X of the Modesto Municipal Code, and

WHEREAS, Redev, Inc., filed a proposal to develop into a 101-lot, single-family subdivision called Symphony Park, and a 9.8-acre, multi-family residential area to be developed as a later phase, all on a 38.78 acre site which comprises the entire Precise Plan Area No. 3 located on the south side of Sylvan Avenue east of Oakdale road, and

WHEREAS, the application package also seeks underlying zoning of Specific Plan Overlay, SP-O, which is to be coupled with the Precise Plan, in accordance with the requirements of the Village One Specific Plan, and

WHEREAS, a public hearing was held by the Planning Commission of the City of Modesto on November 18, 1996, in the City Council Chambers, City Hall, 801 11th Street, Modesto, and

WHEREAS, after considering public comments, the Planning Commission, by Resolution 96-59, recommended to the City Council approval of a Precise Plan for Area No. 3 of the Village One Specific Plan, and

WHEREAS, said matter was set for a public hearing of the Council of the City of Modesto to be held on November 26, 1996, at 4:00 p.m., in the City Council Chambers, City Hall, 801 11th Street, Modesto, and

WHEREAS, a duly noticed public hearing to consider said recommendations of the Planning Commission was held at the date and time above mentioned, and

WHEREAS, the Council declares that the proposed Precise for Area No. 3 of the Village One Specific Plan and rezoning from Specific Plan Holding, SP-H, to Specific Plan Overlay, SP-O, zoning is required by public necessity, convenience, and general welfare for the following reasons:

1. The proposed Precise Plan for Area No. 3 conforms to the revised Specific Plan in that it follows the previously-established land-use mix, the street layout and development specifications.
2. The proposed Rezoning to the Specific Plan Overlay, SP-O, zone is necessary as an integral step toward development under the Village One Specific Plan.

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. 3 of the Village One Specific Plan and rezoning from Specific Plan Holding, SP-H, to Specific Plan Overlay, SP-O, as recommended by the Planning Commission, and the Council does hereby approve said Precise Plan for Area No. 3, subject to the following conditions:

1. Except as amended herein or by reference, all development shall be in accordance with the Village One Specific Plan and the specifications contained in the booklet entitled "Village One - Precise Plan Area No. 3" Modesto, California, prepared for Redev, Inc., by Thompson-Hysell Engineers, stamped approved by the City Council on November 26, 1996, and on file in the office of the Community Development Director.
2. Prior to recordation of a final map, the developer shall submit and obtain approval of landscaping and irrigation plans, including Sylvan Avenue dedicated landscaping. all landscaping, irrigation, and maintenance shall be in accordance with the approved plans. Deferral of actual improvements are permitted b must be bonded for as approved.
3. Prior to recordation of a final map, the developer shall secure and establish a City Mello-Roos Community Facilities District for both capital improvements and ongoing maintenance.
4. a. Prior to the recordation of a final map, all subdivision dedications and improvements as required in the Modesto Municipal Code, the cumulative California State Subdivision Law, and the Village One Specific Plan shall be accepted by the City of Modesto and installed or secured to the satisfaction of the Public Works and Transportation Director. This

condition shall include street requirements to implement the appropriate mitigation measures 4.4.1 through 4.4.8 of the Village One Program Environmental Impact Report. This shall also include Public Services and Utilities necessary to implement the appropriate mitigation measures 4.10 through 4.10.14c.

- b. Sylvan Avenue is to ultimately be 118 feet, wide at this location, but some improvements to Sylvan Avenue may be deferred until the appropriate amount of fees have been collected by the Community Facilities District (CFD). Interim access onto Sylvan Avenue from Road F is allowed, so long as Road F is ultimately developed as shown in the Precise Plan.
5. Prior to recordation of a final map, the developer shall advance the necessary infrastructure costs or shall construct the facilities necessary to extend infrastructure service to the area. If temporary measures are utilized, the developer shall also fund the amount necessary to effect a permanent provision when such can be accomplished. The costs shall be determined by the Director of Public Works and Transportation.
6. Prior to recordation of a final map, all improvement plans, prepared by a registered civil engineer, shall be prepared and approved. All improvements shall be in accordance with the approved plans.
7. Prior to recordation of a final map, annexation to the School District's Mello-Roos District shall be completed.
8. Public utility easements, as required by the utility companies serving the subdivision, shall be dedicated by the final map.
9. Irrigation lines within the Precise Plan Area No. 3 shall be removed, protected, or relocated as required by the Modesto Irrigation District and the Public Works and Transportation Director. Appropriate easements for irrigation lines to remain shall be dedicated as necessary.

10. Prior to recordation of a final map, the developer shall show on the plans submitted to Engineering all fire hydrants as required by the Fire Chief. All hydrants required by the Fire Chief shall be installed and operable prior to construction of any structures.
11. The applicant shall record a "Notice of Conditions" in the Stanislaus County Recorder's Office on a form available in the Planning and Community Development Department.
12. The subdivider shall indemnify, defend, and hold harmless the City of Modesto, its agents, officers, and employees from any and all claims, actions or proceedings against the City of Modesto, its agents, officers, and employees to arbitrate, attack, review, set aside, void, or annul, any approval by the City of Modesto and its advisory agency, appeal board, or a legislative body concerning a subdivision. The City of Modesto shall promptly notify the subdivider of any claim, action, or proceeding and shall cooperate fully in the defense. If the City fails to do so, the developer shall not thereafter be responsible to defend, indemnify, or hold City harmless.
13. Prior to recordation, the developer shall provide proper street names which have been cleared b Stanislaus County.
14. Prior to recordation of any final map, specific language shall be added to the Precise Plan for Area No. 3 from the Specific Plan pertaining to:
  - a. Language pertaining to fireplaces and wood stoves (III D.11) of the Specific Plan.
  - b. Include language stated at III D.8 relating to agricultural land.
  - c. Include language stated at III D.15 on pages III-7 and III-8.
15. Prior to recordation of any final map, a set of specific plans for handling storm water shall be prepared and approved in accordance with the requirements of the Director of Public Works and Transportation.

The rezoning from Specific Plan Holding, SP-H, to Specific Plan Overlay, SP-O, will be approved by the Council by a separate ordinance concurrent with the adoption 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 special meeting of the Council of the City of Modesto held on the 16th day of December, 1996, by Councilmember McClanahan, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Friedman, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Dobbs, Friedman, McClanahan, Serpa, Mayor Lang.  
NOES: Councilmembers: None  
ABSENT: Councilmembers: Cogdill, Fisher

APPROVED: 

RICHARD A. LANG, Mayor

ATTEST:

By 

JEAN ADAMS, City Clerk

(SEAL)

APPROVED AS TO FORM:

By 

MICHAEL D. MILICH, City Attorney

Ord. No. 3015-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 7th day of January, 1997, Councilmember Friedman moved its final adoption, which motion being duly seconded by Councilmember McClanahan, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Dobbs, Friedman, McClanahan, Serpa, Mayor Lang


NOES: Councilmembers: None

ABSENT: Councilmembers: Cogdill, Fisher

APPROVED:

  
MAYOR RICHARD A. LANG

ATTEST:

  
JEAN ADAMS, City Clerk

Effective Date: February 6, 1997

*Check*

ORDINANCE NO. 3016-C.S.

AN ORDINANCE AMENDING SECTION MAP 11-3-9 OF THE ZONING MAP REZONING VILLAGE ONE PROPERTY FROM SPECIFIC PLAN-HOLDING ZONE, SP-H, TO SPECIFIC PLAN-OVERLAY ZONE, SP-O, PROPERTY LOCATED ON THE SOUTH SIDE OF SYLVAN AVENUE EAST OF OAKDALE ROAD. (PRECISE PLAN FOR AREA NO. 3 - REDEV, INC.)

WHEREAS, the City Council in October, 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, Redev, Inc., has filed a proposal to develop a 101-lot, single-family subdivision called Symphony Park and a 9.8-acre, multiple-family residential area to be developed as a later phase, all on a 38.78 acre site which comprises the entire Precise Plan Area No. 3, located on the south side of Sylvan Avenue east of Oakdale Road, and

WHEREAS, in accordance with the requirements of the Village One Specific Plan as amended by SPA No. 8, an application for approval of a Precise Plan for Area No. 3 of the Village One Specific Plan has been filed, and

WHEREAS, the application package also seeks underlying zoning of Specific Plan-Overlay Zone, SP-O, which is to be coupled with the Precise Plan in accordance with the requirements of the Specific Plan, and

WHEREAS, after a public hearing held on November 18, 1996, it was found and determined by the Planning Commission that

zoning of the property as requested is required by public necessity, convenience and general welfare, and

WHEREAS, by Resolution No. 96-59, adopted November 18, 1996, the Planning Commission recommended that the application of Redev, Inc., to rezone Village One property from Specific Plan-Holding Zone, SP-H, to Specific Plan-Overlay Zone, SP-O, for property located on the south side of Sylvan Avenue east of Oakdale Road, be approved, and

WHEREAS, said matter was set for a public hearing of the City Council to be held on November 26, 1996, at 4:00 p.m., in the City Council Chambers, City Hall, 801 11th 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. After a public hearing held on November 26, 1996, in the Council Chambers, City Hall, 801 11th 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 reasons:

1. The proposed Precise Plan for Area No. 3 conforms to the revised Specific Plan in that it follows the previously-established land use mix, the street layout and development specifications.

2. The proposed Rezoning to SP-O Zone Overlay is necessary as an integral step toward development under the Village One Specific Plan.

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

All that certain real property situate, lying and being in the City of Modesto, County of Stanislaus, State of California, described as follows:

All that portion of Parcels 1 and 2, as shown on the map filed in Book 37 of Parcel Maps, at Page 75, Stanislaus County Records, and a portion of the southwest quarter of Section 11, T.3 S., R.9 E., Mount Diablo Base and Meridian, more particularly described as follows:

COMMENCING at the northeast corner of the southwest quarter of said section 11, said corner being marked by a concrete monument; thence South  $00^{\circ}35'08''$  East 55.01 feet to the northeast corner of said Parcel 2, and the TRUE POINT OF BEGINNING of this description; thence along the easterly line of said Parcel 2, South  $00^{\circ}35'08''$  East 1268.29 feet to the southeast corner of said Parcel 2; thence along the southerly line of said Parcel 2 and its westerly prolongation North  $89^{\circ}44'34''$  West 1313.60 feet; thence North  $00^{\circ}37'08''$  West 1303.28 feet to the southerly line of Sylvan Avenue; thence North  $00^{\circ}37'08''$  West 20.0 feet to the north line of said southwest quarter of section 11, thence along said north line South  $89^{\circ}44'38''$  East 1314.34 feet, thence along the northerly prolongation of the easterly line of said Parcel 1 South  $0^{\circ}35'08''$  East 44 feet, more or less, to the Point of Beginning.

Containing 38.78 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 special meeting of the Council of the City of Modesto held on the 16th day of December, 1996, by Councilmember McClanahan, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Friedman, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Dobbs, Friedman, McClanahan,  
Serpa, Mayor Lang

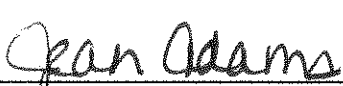
NOES: Councilmembers: None

ABSENT: Councilmembers: Cogdill, Fisher

APPROVED: 

RICHARD A. LANG Mayor

ATTEST:

By   
JEAN ADAMS, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

APPROVED AS TO DESCRIPTION:

By   
Community Development Department  
Development Services

Ord. No. 3016-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 7th day of January, 1997, Councilmember McClanahan moved its final adoption, which motion being duly seconded by Councilmember Friedman, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Dobbs, Friedman, McClanahan, Serpa, Mayor Lang

NOES: Councilmembers: None

ABSENT: Councilmembers: Cogdill, Fisher

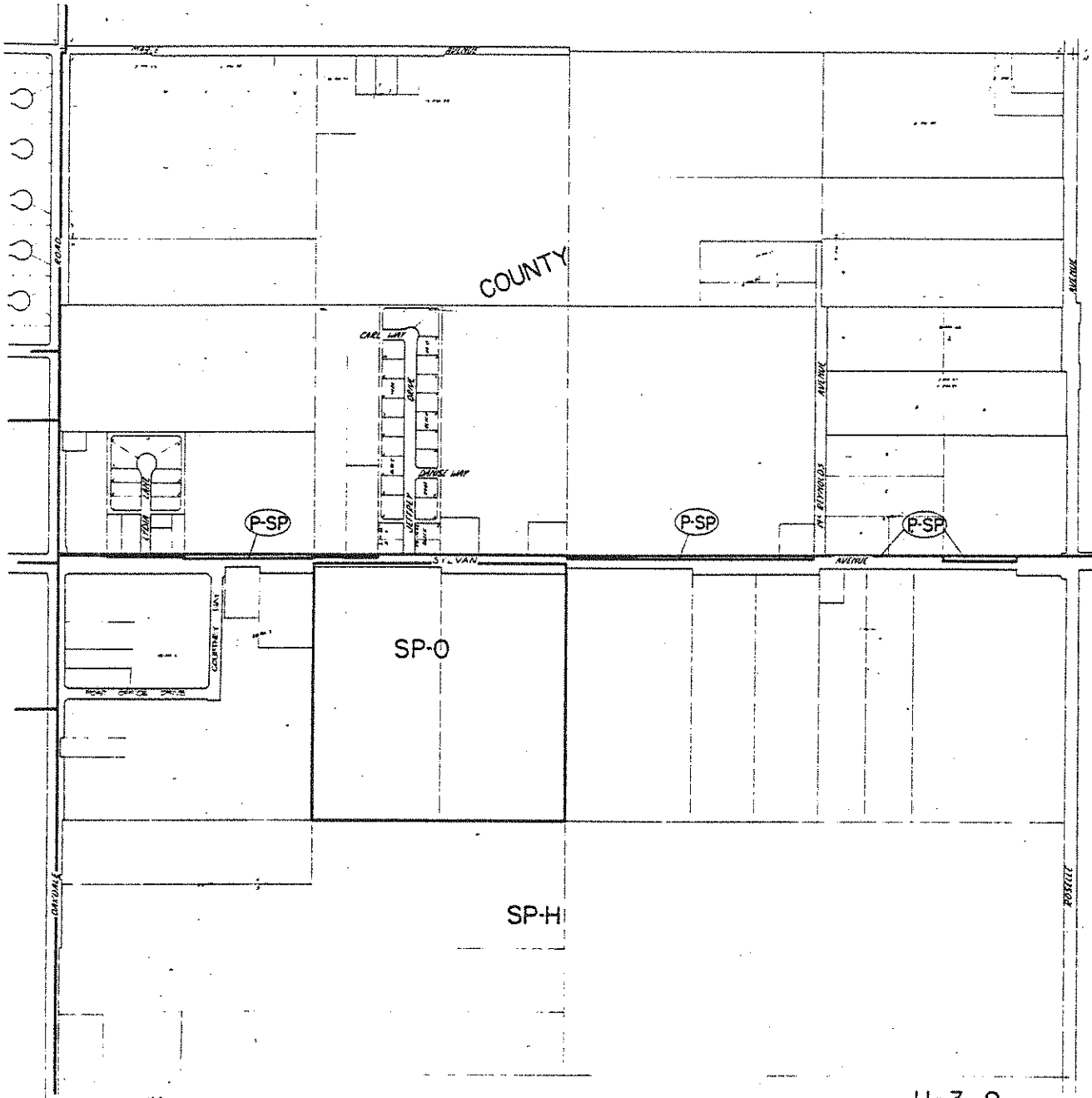
APPROVED:

  
MAYOR RICHARD A. LANG

ATTEST:

  
JEAN ADAMS, City Clerk

Effective Date: February 6, 1997



ZONING MAP OF THE CITY OF MODESTO

11-3-9

*Clerk*

ORDINANCE NO. 3017 -C.S.

AN ORDINANCE AMENDING SECTION 22-3-9 OF THE ZONING MAP TO REZONE FROM LOW DENSITY RESIDENTIAL ZONE, R-1, TO PLANNED DEVELOPMENT ZONE, P-D(516), PROPERTY LOCATED ON A PORTION OF THE COUNTY CENTER NO. 3 SITE AT THE NORTHWEST CORNER OF SCENIC DRIVE AND OAKDALE ROAD. (SAVE MART SUPERMARKETS AND I.C.I.)

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, to Planned Development Zone, P-D(516):

R-1 to P-D(516)

ALL that certain real property being a portion of the Southeast quarter of Section 22, Township 3 South, Range 9 East, Mount Diablo Meridian, City of Modesto, County of Stanislaus, State of California, being more particularly described as follows:

BEGINNING at the centerline-centerline intersection of Oakdale Road and Scenic Drive, with said point lying on the East line of said Section 22 and being marked by a 2 inch iron pipe with brass cap as shown on Stanislaus County Survey No. 1638; thence South 80°11'39" West along the centerline of said Scenic Drive, a distance of 718.09 feet; thence leaving said centerline and proceeding North 00°42'00" West, a distance of 1034.09 feet; thence North 89°57'00" East, a distance of 707.40 feet to a point on the above mentioned centerline of Oakdale Road with said point also lying on the east line of said Section 22; thence South 00°48'21" East along last said lines, a distance of 912.42 feet to the POINT OF BEGINNING.

SUBJECT TO all easements and/or rights-of-way of record.

Containing 15.82 acres, more or less.

SECTION 2. USES. The following uses shall be permitted in said P-D(516) 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. Commercial development allowing C-2 Zone uses.
2. Off-street parking as shown on the approved development plan.

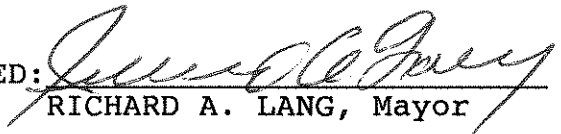
SECTION 3. ZONING MAP. Section Map 22-3-9 of the Zoning Map of the City of Modesto is amended to appear as set forth on the map attached hereto, which is hereby made a part of this ordinance by reference.

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 special meeting of the Council of the City of Modesto held on the 16th day of December, 1996, by Councilmember Serpa, 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: Dobbs, Fisher, Friedman, McClanahan, Serpa, Mayor Lang  
NOES: Councilmembers: None  
ABSENT: Councilmembers: Cogdill

APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:

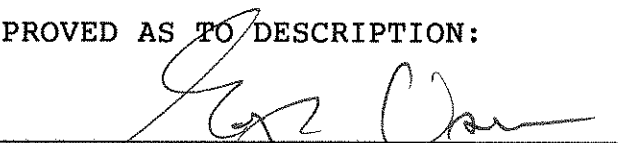
By   
JEAN ADAMS, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

APPROVED AS TO DESCRIPTION:

By   
Community Development Department  
Development Services

Ord. No. 3017-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 7th day of January, 1997, Councilmember McClanahan moved its final adoption, which motion being duly seconded by Councilmember Serpa, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Dobbs, Friedman, McClanahan, Serpa, Mayor Lang

NOES: Councilmembers: None

ABSENT: Councilmembers: Cogdill, Fisher

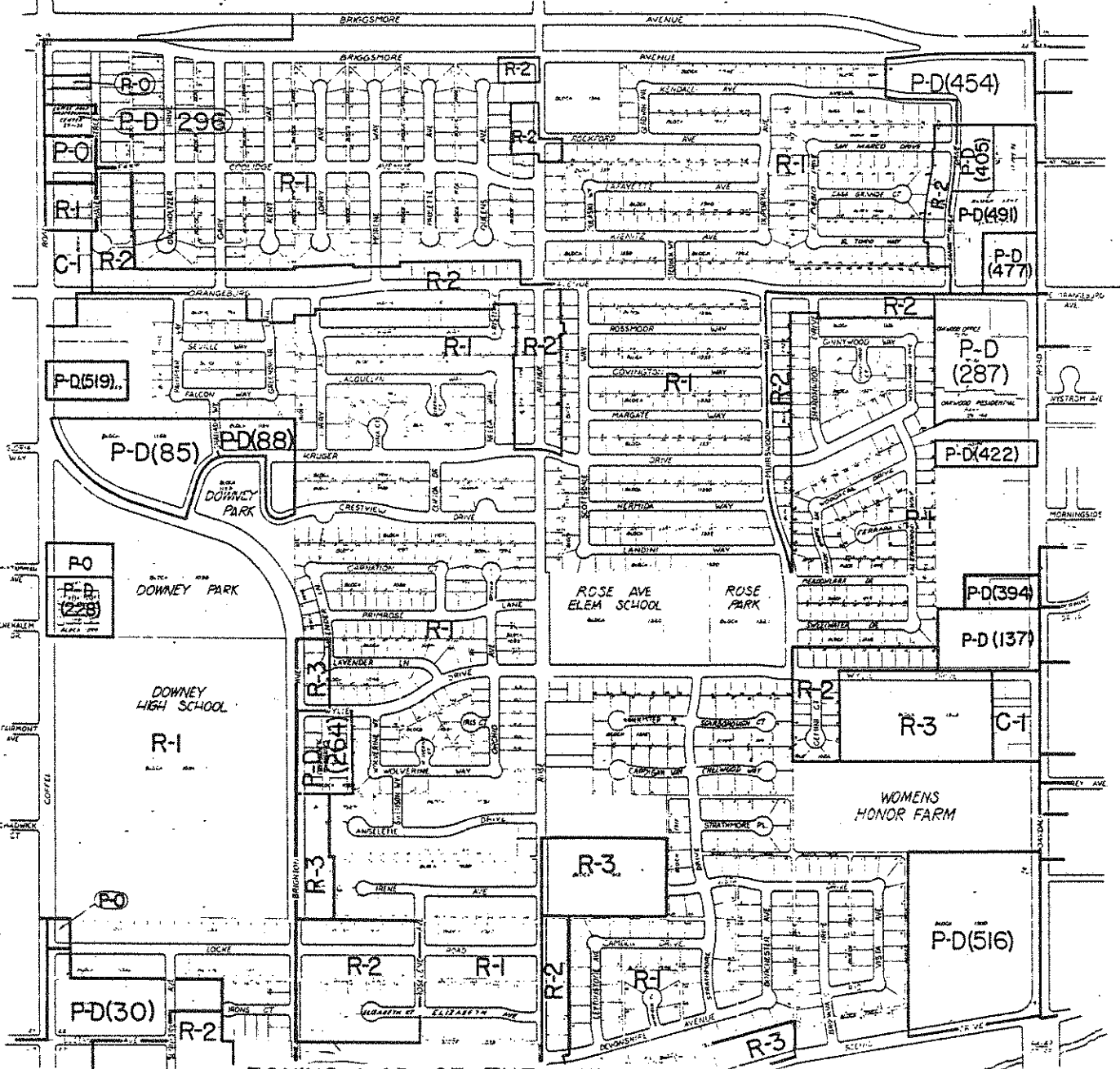
APPROVED:

  
MAYOR RICHARD A. LANG

ATTEST:

  
JEAN ADAMS, City Clerk

Effective Date: February 6, 1997



ZONING MAP OF THE CITY OF MODESTO

22-3-9

ORDINANCE NO. 3018 -C.S.

AN ORDINANCE AMENDING CHAPTER 5 OF TITLE V OF THE MODESTO MUNICIPAL CODE RELATING TO SOLID WASTE AND REPEALING ORDINANCE NOS. 2868-C.S. AND 2872-C.S.

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

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

**CHAPTER 5 - SOLID WASTE**

**SEC. 5-5.01. DECLARATION OF POLICY.**

The accumulation, collection, removal and disposal of solid waste must be controlled by the City for the protection of the public health, safety and welfare. The Council finds that to give effect to this policy, a comprehensive system for the periodic collection, removal and disposal of solid waste from all premises in the City is essential and benefits all occupants of premises in the City, and, therefore, all such occupants are required to have solid waste collection service.

**SEC. 5-5.02. PENALTY PROVISIONS.**

A violation of any provision of this chapter shall be punishable as an infraction as set forth in Section 1-2.01 of this Code, except where provisions of this chapter specifically make such violation a misdemeanor.

**SEC. 5-5.03. DEFINITIONS.**

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

- (a) **"Annexation"** means the legal process of including new territory within the incorporated boundaries of the City.
- (b) **"Automated collection container"** means a standard container designed for automated collection.

- (c) **"Cannery or food processing waste"** means the solid residues resulting from canning/food processing operations, which is segregated by the generator and which is collected for reuse.
- (d) **"Collection"** means the collection and transport of solid waste.
- (e) **"Collection routes"** means streets or areas designated for collection on a particular day/schedule.
- (f) **"Collection vehicle"** means any vehicle used by the collector for the collection of solid waste.
- (g) **"Collector"** means a person or firm authorized by a valid service agreement with the City of Modesto to collect solid waste within the City limits.
- (h) **"Commercial"** means occurring in a business zone.
- (i) **"Construction and demolition sites"** means sites where construction or demolition activities are taking place.
- (j) **"Containerized yard waste"** means yard waste set out for collection in a standard container.
- (k) **"Customer"** shall mean any person, firm or corporation receiving service under the provisions of this chapter.
- (l) **"Designated recycling collection location"** means the location where an authorized recycling collector has agreed with a customer to pick up segregated recyclable materials as approved by the Public Works and Transportation Director.
- (m) **"Detachable container"** means a container, watertight and with a cover, designed for direct dumping into a collection vehicle, and constructed in standard sizes with a minimum of one (1) cubic yard in capacity, as approved by the Public Works and Transportation Director, and furnished by a collector.
- (n) **"Disposal"** means the final disposition of solid waste at a solid waste facility.
- (o) **"Drop box container"** means a metal box designed for loading upon a vehicle for transportation to a solid waste facility, with a minimum of twenty (20) cubic yards' capacity, of a design

approved by the Public Works and Transportation Director, and furnished by a collector.

- (p) **"Finance Director"** means the Finance Director of the City of Modesto or his/her duly authorized agent.
- (q) **"Garbage"** means putrescible kitchen and table food waste and animal, fish, food, fowl, fruit or vegetable matter, or any portion thereof, resulting from the storage, preparation, cooking, or handling of food stuffs, or any other material contaminated by or rendered useless because of contact with any putrescible matter, except that garbage shall not include cannery or food processing wastes as defined in Section 5-5.03(c), industrial garbage as defined in Section 5-5.03(w), or swill as defined in Section 5-5.03(ao).
- (r) **"Garbage/Recyclables"** means garbage and recyclables commingled in the same container. Garbage/recyclables shall also include rubbish when said rubbish is included in the same container.
- (s) **"Hazardous substance or hazardous wastes"** means all substances defined as hazardous waste, acutely hazardous waste, or extremely hazardous waste by the State of California in the Health and Safety Codes or in future amendments to or recodifications of such statutes, or identified and listed as hazardous waste by the U.S. Environmental Protection Agency pursuant to the Federal Resource Conservation and Recovery Act and all future amendments thereto.
- (t) **"Household hazardous waste"** means hazardous waste generated at a residential location within the City.
- (u) **"Health Officer"** means the Stanislaus County Department of Environmental Resources.
- (v) **"Industrial areas"** means areas which are zoned industrial by the City's zoning code.
- (w) **"Industrial garbage"** means garbage produced by any person, firm or corporation engaged in the business of processing or manufacturing agricultural products, animals, poultry, goods, wares or other products or materials, who processes or manufactures the same for the purpose of wholesale in

processed or manufactured form, and shall include cannery/food processing waste. Industrial garbage also means garbage produced by any person, firm or corporation engaged in the business of building construction and/or building demolition.

- (x) **"Industrial garbage collector"** means an agent or employee of the City, or any person, or the employees thereof, with whom an agreement shall have been entered under the terms of this chapter for the collection of industrial garbage.
- (y) **"Initial term and any extensions"** means the term of a service agreement and any extensions beyond that time period as established by the City Council.
- (z) **"Place" or "Premises"** means every dwelling house, dwelling unit, apartment house or multiple-dwelling building, trailer or mobile home park, store, restaurant, rooming house, hotel, motel, hospital, office building, department store; manufacturing, processing or assembling shop or plant; warehouse; and every other property or building where any person resides or any business or activity is carried on or conducted within the City of Modesto.
- (aa) **"Property value"** means a worth to the extent that a person will collect the materials involved with compensation to the owner or producer, or at no cost to the owner or producer.
- (ab) **"Pruned refuse"** means tree trimmings and similar material not to exceed six (6) feet in length and six (6) inches in diameter, and no single piece shall weigh more than fifty (50) pounds.
- (ac) **"Public Works and Transportation Director"** means the Public Works and Transportation Director of the City of Modesto and his/her duly authorized agent.
- (ad) **"Recyclable materials"** means domestic, commercial or industrial by-products which may have an economic value if recycled, which may be source separated, set aside, handled, packaged or offered for collection by the residence/business. Recyclables include, but are not limited to, glass, newspaper, plastics, metal, bi-metal, aluminum, and other materials.
- (ae) **"Recyclables"** means recyclable materials.

- (af) **"Recycling"** means the process of collecting, sorting, cleansing, treating, reconstituting, and/or marketing recyclable materials which would otherwise be disposed of in a landfill. The collection, transport or disposal of solid waste which is not intended for, or capable of being, reused, shall not be construed to be recycling.
- (ag) **"Recycling collector"** means a person, firm, organization or company which the City has authorized to provide recycling service in the City.
- (ah) **"Recycling container"** means any container provided by an authorized recycling collector to a customer for the purpose of segregating recyclable materials for collection by collector. Recycling containers shall be clearly marked to indicate purpose and to warn that theft of the container, theft of its contents, or diversion for uses other than by the collector are punishable under the Municipal Code.
- (ai) **"Residential premises"** means any dwelling unit the occupant of which places his/her solid waste in a standard container.
- (aj) **"Rubbish"** means nonputrescible, useless, unused, unwanted or discarded material or debris, either combustible or noncombustible, which by their presence may injuriously affect the health, safety and comfort of persons and property in the vicinity thereof.
- (ak) **"Salvageable waste"** means matter and material which will be reused and which has a property value.
- (al) **"Service area"** means the area of the City to be served by a collector as described in the service agreement between City and collector.
- (am) **"Solid waste"** means all putrescible and nonputrescible solid, semi-solid and liquid waste accumulated or delivered for collection and disposal within the City and includes, but is not limited to, construction debris, demolition debris, bulky waste, and yard waste. Solid waste does not include hazardous waste or household hazardous waste, designated waste, infectious waste, recyclable materials when recycled, sewage, or abandoned automobiles.

- (an) **"Standard container"** means a plastic container, watertight and with a close-fitting cover, of not less than sixty (60) nor more than ninety (90) gallons' net capacity of a design satisfactory to the Public Works and Transportation Director or such other disposal unit approved by the Public Works and Transportation Director, and supplied by the solid waste collector to its residential customers. The Public Works and Transportation Director shall make the determination whether a residential customer receives a sixty- or a ninety-gallon container.
- (ao) **"Swill"** means all classes of putrescible, animal, fish, fowl, fruit or vegetable matter, and shall include matter or substances used in the preparation, cooking, dealing in or storage of meats, fowl, fish, fruits and vegetables that are subject to immediate decay and the attraction of flies or rodents, and having a property value.
- (ap) **"Swill collector"** means an agent or employee of the City, or any person, or the agents, assignees, or employees thereof, with whom an agreement shall have been entered under the terms of this chapter for the collection of swill.
- (aq) **"Term"** means the length of an agreement entered under the terms of this chapter.
- (ar) **"Yard waste"** means leaves, weeds, grass cuttings, vines, shrubbery, similar soft vegetative materials, and woody prunings from trees which are cut up into two (2) foot lengths no larger than six (6) inches in diameter for placement in a yard waste recycling container, except that yard waste shall not include pruned refuse or source separated leaves set out for collection between November 1 and December 31 of each year pursuant to Article 11 of Chapter 7 of Title IV of the Modesto Municipal Code.
- (as) **"Yard waste recycling container"** means a dark green standard container to be used for the separate collection and recycling of yard waste. Yard waste recycling container shall also mean a detachable or other container as approved by the Public Works and Transportation Director, used for the collection and recycling of yard waste from commercial or other customer classes.

**SEC. 5-5.04. SEGREGATION AND DISPOSITION OF SOLID WASTE MATERIALS.**

Every producer of solid waste may segregate the same into garbage, recyclables, garbage/recyclables, containerized yard waste, industrial garbage, rubbish, and/or swill, and dispose of the same as provided in this chapter.

**SEC. 5-5.05. DEPOSITING OR BURYING SOLID WASTE.**

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

**SEC. 5-5.06. ACCUMULATION OF GARBAGE GARBAGE/RECYCLABLES, YARD WASTE, OR RUBBISH.**

Every person shall keep the premises occupied by that person, and every owner of any unoccupied premises or property and every owner of three-family dwellings, apartment houses and multiple-dwelling buildings shall keep the same in a clean and sanitary condition, and shall not cause, suffer, or permit any garbage, garbage/recyclables, or yard waste to accumulate on such premises or property for a period in excess of one (1) calendar week; or cause, suffer, or permit any rubbish to accumulate on their premises for a period in excess of one (1) calendar month; provided, however, that this provision shall not be construed to prohibit any person from keeping building materials on any premises or property during the period of active construction, reconstruction, or repair of a building or structure thereon under a current valid building permit; nor the neat storage of clean recyclables intended to be taken by the occupant to a recycling center, nor the keeping of wood, neatly piled, upon such premises for household use; nor the composting of grass or trimmings in a manner allowed pursuant to the Composting Regulations of the State of California.

**SEC. 5-5.07. GARBAGE, GARBAGE/RECYCLABLES, YARD WASTE, AND/OR SWILL COLLECTION.**

Collection of garbage, garbage/recyclables, and yard waste shall be made at least once a week, and collection of swill shall be made daily. The collector shall transfer the contents of all containers into the collection vehicle provided therefor without spilling any contents.

**SEC. 5-5.08. CONTAINERS REQUIRED.**

It shall be unlawful for any person occupying any premises within the City, or for any person owning, controlling or maintaining any premises within the City where solid waste is created, produced, or accumulated, to fail or neglect to provide a sufficient number of each approved type of standard containers for receiving and holding without leakage or escape of odors all solid waste produced, created, or accumulated upon such premises, except as hereinafter provided; and all such persons shall deposit all such solid waste in the correct containers, and all such containers shall be at all times kept in a good, usable and sanitary condition. Containers shall be kept continuously closed except when solid waste is being placed therein or removed therefrom, and shall at all times be closed against the access of flies, rodents, and animals to the contents thereof. Garbage, rubbish and/or garbage/recyclables may be deposited in the same container. It shall be unlawful for any person to place garbage, garbage/recyclables, recyclables, or any other unapproved material in a yard waste recycling container. It shall further be unlawful for any person to place yard waste in any solid waste collection container, other than a container approved for yard waste. Containers shall not exceed one hundred (100) pounds in weight when filled for removal, except when detachable or drop box containers are used.

**SEC. 5-5.09. NUMBER OF CONTAINERS REQUIRED.**

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

- (a) One-family and two-family dwellings: Effective January 1, 1997, one (1) black standard container for garbage and

garbage/recyclables, and one (1) dark green standard container for yard waste recycling per dwelling unit.

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

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

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

#### **SEC. 5-5.10. PROHIBITED LOCATION OF CONTAINERS.**

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

**SEC. 5-5.11. CONTAINER LOCATIONS.**

- (a) On single-family and two-family premises, standard solid waste containers shall be placed by the customer on the premises and collected by the collector as follows:
- (1) Where alleys exist, immediately adjacent to and accessible from the alley without the necessity of entering the premises.
  - (2) Where alleys do not exist, on the front portion of the sidewalk next to the curb, on the edge of the driveway apron, or such other location as approved by the Public Works and Transportation Director.
  - (3) Where sidewalks are not adjacent to the curb, containers to be placed in the planting strip between the sidewalk and the curb.
  - (4) Where sidewalks or curbs do not exist, containers shall be placed adjacent to but not in the roadway.
  - (5) All containers shall be placed no more than four (4) feet from an area where the collection vehicle can reasonably park. All residential containers set out for collection shall have the necessary clearance from obstructions on either side of the container as well as overhead clearance needed for the collection vehicle to empty contents of the container without causing damage to public or private property. In case of dispute, an acceptable residential container location shall be as determined by the Public Works and Transportation Director.
  - (6) All containers shall be screened from public view, except on pickup day, in a manner approved by the Public Works and Transportation Director.
- (b) Standard and detachable containers for solid waste service to multiple-dwelling buildings, apartments, commercial and industrial premises shall be placed in a location no greater than fifty (50) feet from the nearest point where the collector's vehicle can reasonably be parked. Drop box containers shall be located as agreed upon between the customer and the collector. In case

of dispute, the location shall be as determined by the Public Works and Transportation Director.

- (c) Containers for solid waste may be placed on premises at locations other than described in this section if the customer is handicapped or disabled and the location is approved by the Public Works and Transportation Director.

#### **SEC. 5-5.12. EXPLOSIVES OR HAZARDOUS MATERIALS.**

No person shall deposit in any container used for solid waste, any explosive, highly flammable, radioactive or otherwise hazardous material or substance. A violation of this section shall be punishable as a misdemeanor.

#### **SEC. 5-5.13. SPILLAGE OF SOLID WASTE.**

All solid waste hauled by any person over public streets in the City shall be secured during the hauling thereof so as to prevent spillage or blowing.

#### **SEC. 5-5.14. FURNISHING OF DETACHABLE AND DROP BOX CONTAINERS.**

Any agreement entered into by the City for garbage, garbage/recyclables, yard waste collection shall provide for the availability of approved detachable containers and drop box containers by the collector on a rental basis. The collector shall be responsible for the general repair and upkeep of all detachable containers and drop box containers. The customer shall maintain all rented detachable containers and drop box containers in sanitary condition at all times.

#### **SEC. 5-5.15. HOURS OF COLLECTION.**

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

- (c) No collection shall be made from premises in residential or commercial areas other than described in subsections (a) and (b) above except when prior approval has been given by the Public Works and Transportation Director.

#### **SEC. 5-5.16. COLLECTION EQUIPMENT.**

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

#### **SEC. 5-5.17. AGREEMENT TO COLLECT SOLID WASTE.**

- (a) It shall be unlawful for any person to engage in the business of collecting solid waste within the City unless such person is an employee or agent of the City, or is a party to an agreement approved by the Council pursuant to this chapter, or is the employee of such a party.
- (b) It shall be unlawful for any person to interfere in any manner with the lawful operations of such a collector or their authorized agents or assignees.
- (c) The City may provide in any agreement pursuant to this chapter that the collector may assign a portion or portions of the solid waste collection services for which that person or entity is so contracted to one (1) or more agents or assignees upon approval of the City Council. The collector shall be responsible for the operation and conduct of such agents or assignees.

#### **SEC. 5-5.18. REMOVAL OF SOLID WASTE BY PRODUCERS.**

Notwithstanding the provisions of Section 5-5.17:

- (a) Any person may remove or dispose of, or may cause to be removed and disposed of, from premises occupied by that person or under their control, such solid waste as is created or produced on such premises in excess of the regular solid waste collection made by City's collector if the following conditions have been or will be complied with:
  - (1) Such removal and disposal activity shall be only by the owner or occupant personally, or by such owner's or

occupant's regularly employed personnel carried on the owner's or occupant's payroll records as an employee.

- (2) All vehicles used in carrying out such removal and disposal activities shall be owned by or under the exclusive control of the owner or occupant, and shall meet all the requirements of this chapter and all other laws and ordinances of the State of California and the City. Any such vehicle shall be subject to inspection by the Public Works and Transportation Director.
- (b) Any producer of industrial garbage or swill, or their employees, may transport the same upon or through any street or public place of the City for disposal at a permitted disposal facility or site.
- (c) It shall be unlawful for any person acting as an employee of a producer of industrial garbage or swill to collect or transport such industrial garbage or swill from more than one (1) industrial producer thereof.
- (d) Any person engaged in the business of gardening or tree trimming, or building demolition, or construction cleanup work, including both yards and building interiors, is authorized to remove and dispose of yard waste, rubbish or salvageable waste produced as an incident to such business.

#### **SEC. 5-5.19. FEE FOR COLLECTION OF SOLID WASTE AND INDUSTRIAL GARBAGE.**

The privilege of engaging in the businesses of collecting solid waste, industrial garbage or swill is conditioned on entering into a contractual relationship with the City to provide some or all of these services.

#### **SEC. 5-5.20. FEE FOR COLLECTION OF SWILL.**

The fee for the privilege of engaging in the business of collecting swill in the City shall be the sum of twenty-five dollars (\$25.00) per calendar quarter, or fraction thereof, payable in advance.

#### **SEC. 5-5.21. DELINQUENT FEES.**

- (a) **Penalty.** To all fees not paid within thirty (30) days following the close of the preceding quarter there shall be added a penalty of

five (5) percent of the amount of fees due per month or fraction thereof until paid; the maximum penalty imposed on any one (1) delinquency occurring heretofore or hereafter shall not exceed twenty-five (25) percent of the amount of service agreement fees due.

- (b) **Interest.** In addition to any penalties imposed by this section, delinquent service agreement fees heretofore or hereafter occurring shall be subject to interest at the rate of seven (7) percent per annum until paid.

#### **SEC. 5-5.22. COLLECTION AGREEMENT PROPOSALS.**

Proposals to enter into a collection agreement with the City pursuant to this chapter shall be submitted in writing to the City Clerk. Each proposal shall contain the following information:

- (a) **Name and address of the proponent.** If the proponent is a firm or partnership, names of all owners and partners of all classes, limited and general, shall be listed. If the proponent is a corporation, the names and titles of each of the officers and directors shall be listed, and in addition the names of all stockholders owning, holding or controlling five (5) percent or more of corporate stock shall be listed.
- (b) The types of services offered.
- (c) The number, kind and capacity of the vehicles and other equipment to be used for such purposes.
- (d) A financial statement showing the proponent's financial status and their financial ability to conduct the collection operation proposed in their proposal.
- (e) Proposed consideration to the City if agreement is reached.

#### **SEC. 5-5.23. PROCEDURE TO ENTER INTO AGREEMENT.**

Upon receipt of a proposal to enter into an agreement hereunder, the Council shall pass a resolution declaring its intention to consider the proposal, setting forth notice of the day, hour and place, when and where any and all persons may appear before the Council and be heard thereon. The time fixed for such hearing shall be not less than ten (10)

days nor more than thirty (30) days after the date of the passage of said resolution.

**SEC. 5-5.24. 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 proposed agreement. Such protest must be signed by the protestant and delivered to the City Clerk.

**SEC. 5-5.25. HEARING.**

At the time set for the hearing, the Council shall proceed to hear the matter, and all persons shall be given opportunity to be heard. The Council may adjourn said hearing from time to time.

**SEC. 5-5.26. COMPETITIVE BIDS.**

The Council may in its discretion, in lieu of considering proposals for agreements, advertise for competitive bids for agreements specified by the City.

**SEC. 5-5.27. ENTERING AGREEMENTS.**

Upon consideration of a proposal or bid for an agreement, the Council may refuse to agree, or may enter into an agreement with any proponent or bidder as may appear from a proposal or bid to be in its opinion best qualified to render proper and efficient collection service.

Every agreement entered into by the Council pursuant to the provisions of this chapter shall cover the following matters:

- (a) The name and address of the person, firm or corporation with whom the agreement is made.
- (b) The type of collection service authorized.
- (c) Whether the agreement is exclusive or nonexclusive; limited or unlimited.
- (d) The term of the agreement, which in no case shall be longer than ten (10) years.
- (e) Such other conditions as the Council may provide.

**SEC. 5-5.28. LIMIT ON NUMBER OF AGREEMENTS.**

In order to preserve the health, safety and welfare of the people in the City, the Council hereby retains the authority to limit the number of agreements for the collection of solid waste, swill, and industrial garbage which will be made under this chapter.

**SEC. 5-5.29. INSURANCE.**

Each collector engaging in the collection of solid waste and industrial garbage 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 and shall be the same for all collectors.

**SEC. 5-5.30. FAITHFUL PERFORMANCE BOND BY SOLID WASTE COLLECTORS.**

Each party other than City to an agreement to collect solid waste pursuant to the provisions of this chapter shall file with the City Clerk a faithful performance bond or other form of security satisfactory to the City in an amount required by the agreement, and said amount shall be the same for all collectors. Said bond or security shall be conditioned upon the faithful performance of all of the terms and conditions of said agreement and the provisions of this chapter, insofar as they are applicable to said collector.

**SEC. 5-5.31. ASSIGNMENT OF AGREEMENTS.**

No agreement entered into by the Council with a collector pursuant to the provisions of this chapter and no ownership interest in any party to such an agreement can be sold, gifted, transferred, leased, assigned, mortgaged, pledged, hypothecated, or otherwise encumbered or disposed of, in whole or in part, directly or indirectly, whether voluntarily or by operation of law, or through any stock transfer, transfer in trust, change in control, consolidation or merger of any company or corporation, without the prior written consent of the City Council granted after a public hearing in accordance with the procedures specified in Sections 5-5.22, 5-5.23, 5-5.24 and 5-5.25 of this chapter. The Council may grant or deny such a request, and may impose such conditions as it may deem to be in the public interest including, but not limited to, conditions requiring acceptance of amendments to this service agreement and the payment to City of a reasonable transfer fee in an amount to be determined by the City Council sufficient to cover

the City's costs associated with the transfer. Any attempted disposition made without such consent shall be void.

- (a) **Proof of Financial Responsibility.** In the event of any assignment duly authorized by the Council, the assignee shall assume the liability and responsibilities of the collector. Any such transfer or assignment shall be made only by an instrument in writing, such as a bill of sale or similar document, a duly executed copy of which shall be filed in the office of the City Clerk with thirty (30) days after any such transfer or assignments. Consent of the Council may not be unreasonably refused; provided, the proposed assignee shall demonstrate to the City Council the financial responsibility as required by all the provisions of this chapter and the service agreement.
- (b) **Hypothecation.** Prior consent of the Council shall be required for a transfer in trust, mortgage or other hypothecation, in whole or in part, to secure an indebtedness, when such indebtedness hypothecations shall equal or exceed fifty (50) percent of the independently appraised market value of the property used by collector in its operation. Such consent shall not be unreasonably withheld.
- (c) **Acquisitions of Interest.** In the event the collector is a corporation, it shall notify the Council when ownership of more than thirty (30) percent of the voting stock of the collector is acquired by a person or group of persons acting in concert, none of whom already own twenty (20) percent or more of the voting stock, singly or collectively. Any such acquisition shall require the approval of the Council which approval shall not be unreasonably withheld. Failure to comply with this provision shall be grounds for the termination of the service agreement pursuant to the provisions of this chapter and the service agreement.
- (d) **Bankruptcy.** In the event that collector should become insolvent or if proceedings in bankruptcy shall be instituted by or against collector, or if collector shall be adjudged bankrupt or insolvent by any court, or if a receiver or trustee in bankruptcy or a receiver of any property of collector shall be appointed in any suit or proceeding brought by or against collector, or if collector shall make an assignment for the benefit of creditors, and during the pendency of said proceeding the collector fails to maintain

service levels as required herein or by any other applicable law, City may initiate termination of the service agreement.

#### SEC. 5-5.32. TERMINATION OF AGREEMENTS.

Any agreement entered by the Council pursuant to the provisions of this chapter may be terminated by the Council, if after conducting a public hearing on said termination, the Council finds and determines that the person doing business by virtue of such agreement has failed to comply with any of its material terms, or this chapter, or has failed to render satisfactory collection services.

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

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

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

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

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

- (4) The City Council shall set the appeal on the matter referred by the City Manager for hearing within sixty (60) days from receipt by the City Manager of the appeal or referral. At the hearing, the City Council shall consider the report of the Public Works and Transportation Director indicating the deficiencies, and shall give the collector, or its representatives and any other interested person, a reasonable opportunity to be heard.
  - (5) Based on the evidence presented at the public hearing, the Council shall determine whether the service agreement should be terminated, liquidated damages imposed, or both. The City Council may also find in favor of collector. The decision of the City Council shall be final and binding. Collector's performance under the service agreement is not excused during the period of time prior to the City Council's final determination as to whether such performance is deficient.
- (c) **Remedies: Liquidated Damages.** The City Council may, at its discretion, assess liquidated damages not to exceed the sum of five thousand dollars (\$5,000.00) per day, for each calendar day that service is not provided by collector in accordance with the service agreement for a period not to exceed forty-five (45) days.
- (d) **Additional Remedies.** In addition to liquidated damages, above, the City shall have the following rights:
- (1) **To rent or lease equipment from collector.** The City may rent or lease equipment from collector for the purpose of collecting, transporting, and disposing of solid waste which collector is obligated to collect, transport, and dispose of pursuant to its service agreement, for a period not to exceed six (6) months.
  - (2) **To contract with others to perform the services.** The City may contract others to perform the services otherwise to be performed by collector hereunder, or perform such services itself.
  - (3) **To obtain injunctive relief.** In the event of a breach under the terms of the service agreement by collector, City may suffer irreparable injury and incalculable damages sufficient

to support injunctive relief, to enforce the provisions of the service agreement and to enjoin the breach thereof.

- (4) **To reduce the service area.** If at the time of the annual review the total number of unresolved complaints exceeds two and one-half tenths (0.25) of one percent of the total annual stops for the prior year, the City Council may determine whether it is appropriate to decrease the service area of collector because of poor performance and authorize another collector to provide services. The maximum reduction in service area for poor performance under this provision shall be ten (10) percent for each occurrence.
  - (5) **To invoke eminent domain.** Nothing set forth in a service agreement entered into between City and collector shall be deemed or construed to impair or affect, in any way, to any extent, the right of the City to acquire the property of the collector, either by purchase or through the exercise of the right of eminent domain, at fair market value, or be construed to contract away or to modify or abridge, whether for a term or in perpetuity, the City's right of eminent domain.
  - (6) **To collect and bill collector.** Should collector fail to provide collection services as stipulated in its service agreement, within twenty-four (24) hours of a request being communicated by the City to collector to do so, the City may collect and dispose of same and collector shall be liable for all expenses incurred including, but not limited to, disposal, operating, administration, and legal costs. Reimbursement to City for such expenses will be paid by collector within thirty (30) days after date of invoice.
  - (7) **To conduct inspections.** At all reasonable times, during any normal business hours, the collector shall permit the City's authorized representatives to examine all property of the collector, and to examine and copy any and all records kept or maintained by the collector under its control which pertain to the service agreement.
- (e) **Force Majeure.** Collector shall not be in default under its service agreement in the event that any of the services provided by the

collector under the terms of the agreement are temporarily interrupted or discontinued for any of the following reasons: riots, wars, sabotage, civil disturbances, insurrections, explosion, natural disasters such as floods, earthquakes, landslides, fires, strikes, lockouts, other labor disturbances or other catastrophic events which are beyond the reasonable control of collector. Other catastrophic events do not include the financial inability of the collector to perform or failure of the collector to obtain any necessary permits or licenses from other governmental agencies or the right to use the omissions of the collector. In the event a labor disturbance interrupts collection services as required by a service agreement, City may elect to exercise its rights under the service agreement.

**SEC. 5-5.33. CUSTOMER MAY CONTRACT FOR EXCESS COLLECTION.**

Any owner or occupant of any premises may contract with a City collector, or their agents or assignees, for special haul services for the removal of solid waste or rubbish in excess of services provided by the collector under regular collection fees established by the City Council.

**SEC. 5-5.34. COLLECTION OF SOLID WASTE CHARGES.**

Any agreement entered by the Council pursuant to the provisions of this chapter for the collection of solid waste, except industrial garbage, shall specify whether the charges for solid waste service shall be billed and collected by the City and/or by the collector. If an agreement specifies that any or all of the charges for solid waste service shall be billed and collected by the City, it shall also specify the fees to be paid to the City by the collector for such billing and collection service.

**SEC. 5-5.35. RECORDS REQUIRED.**

Each collector pursuant to the provisions of this chapter shall maintain detailed records of all receipts and expenditures received or incurred in the operation of such business, including all fees collected for services rendered.

The City, its officers and employees shall be entitled to inspect, audit and copy such books and records upon notice at all reasonable times.

**SEC. 5-5.36. ANNUAL FINANCIAL REPORT BY SOLID WASTE COLLECTORS.**

Each collector of solid waste or industrial garbage pursuant to the provisions of this chapter shall file each year with the Finance Director a detailed financial statement, including a balance sheet and profit and loss statement. Said statement shall be filed on or before the date set forth in said agreement for the fiscal or calendar year specified in said agreement. Any collector who fails to file said statement on or before said date shall pay a penalty of one hundred dollars (\$100.00) a day for each calendar day, or part thereof, until said statement is filed.

This section shall not apply to swill collectors.

**SEC. 5-5.37. INSPECTION AND ENFORCEMENT.**

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

**SEC. 5-5.38. APPLICATION OF OTHER PROVISIONS OF THIS CODE.**

Except for the provisions of Article 3 thereof, the provisions of Chapter 1 of Title VI of this Code shall not apply to collectors under the provisions of this chapter.

**SEC. 5-5.39. COLLECTION.**

- (a) It shall be unlawful and punishable as an infraction for any person, other than an authorized curbside recycling collector, or its employees or agents, to remove salvageable waste which has been placed at a designated collection location. Placement of salvageable waste at a designated collection location shall constitute consent to its collection by an authorized recycling collector.
- (b) Theft of recycling containers or diversion of said containers to uses other than their designated purpose shall be punishable as an infraction.

**SEC. 5-5.40. UNATTENDED NEWSPAPER RECYCLING RECEPTACLES PROHIBITED WITHOUT THE ISSUANCE OF A TEMPORARY PERMIT.**

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

SECTION 2. REPEAL. Ordinance Nos. 2868-C.S. and 2872-C.S. are hereby repealed.

SECTION 3. EFFECTIVE DATE. This ordinance shall go into effect and be in full force and operation from and after thirty (30) days after its final passage and adoption.

SECTION 4. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in The Modesto Bee, the official newspaper of the City of Modesto, setting forth the title of this ordinance, the date of its introduction and the places where this ordinance is posted.

The foregoing ordinance was introduced at a <sup>special</sup> meeting of the Council of the City of Modesto held on the 16th day of December, 1996, by Councilmember Dobbs, who moved its introduction and passage to print, which motion being duly seconded by Mayor Lang, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Dobbs, Fisher, Serpa, Mayor Lang

NOES: Councilmembers: Cogdill, Friedman

ABSENT: Councilmembers: McClanahan

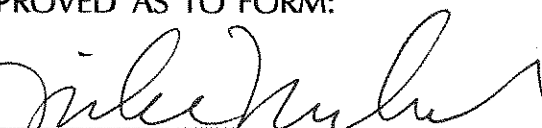
APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:

By   
JEAN ADAMS, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

Ord. No. 3018-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 14th day of January, 1997, Councilmember Dobbs moved its final adoption, which motion being duly seconded by Councilmember Lang, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Dobbs, Fisher, Serpa, Mayor Lang

NOES: Councilmembers: Cogdill, Friedman

ABSENT: Councilmembers: McClanahan

APPROVED:

  
MAYOR RICHARD A. LANG

ATTEST:

  
JEAN ADAMS, City Clerk

Effective Date: February 13, 1997