

ORDINANCE NO. 3240-C.S.

AN ORDINANCE AMENDING SECTION 27-3-9 OF THE ZONING MAP TO REZONE FROM LOW DENSITY RESIDENTIAL ZONE, R-1 TO PLANNED DEVELOPMENT ZONE, P-D(551), PROPERTY LOCATED ON THE NORTH SIDE OF SCENIC DRIVE WEST OF BRIGHTON AVENUE. (JEFF AND CHRISTI CARVER)

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 Low Density Residential Zone, R-1, to Planned Development Zone, P-D(551):

R-1 to P-D(551)

All that certain real property situate in a portion of the northwest 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, more particularly described as follows:

Commencing at the northeast corner of Lot 34 of Sunnyside Acres, according to the official map thereof, filed May 24, 1911 in Volume 5 of Maps, at page 46, Stanislaus County Records; thence along the northerly line of said Lot 34, South 74°33'09" West 108.88 feet to the northerly extension of the easterly line of Lot 9 in Block 1061 of Scenic Estates No. 2, as shown on the map filed May 19, 1990, in Volume 35 of Maps, at page 2, Stanislaus County Records; thence along said northerly extension and said easterly line of Lot 9, South 0°14'33" East 71.97 feet to the southeast corner of said Lot 9 and the true POINT OF BEGINNING of this description; thence continuing South 0°14'33" East, along the easterly lines of Lot 2 and Lot 1 of Scenic Estates, as shown on the map filed March 19, 1990, in Volume 34 of Maps, at page 94, Stanislaus County Records, a distance of 119.00 feet to the southeast corner of said Lot 1; thence parallel with and 45.00 feet northwesterly from the centerline of Scenic Drive as shown on said map of Scenic Estates, North 69°13'57" East 112.19 feet to the easterly line of said Lot 34 of Sunnyside Acres; thence along said easterly line of Lot 34, North 0°14'33" West 79.66 feet to the easterly extension of the southerly line of said Lot 9 of Scenic Estates No. 2; thence along said easterly extension South 89°45'27" West 105.07 feet to the point of beginning.

Containing 10,436 square feet, more or less.

SECTION 2. USES. The following uses shall be permitted in said P-D(551) 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. Multi-family residential uses consisting of three dwelling units and associated off-street parking.

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 11th day of December, 2001, 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:

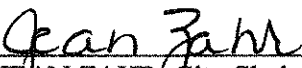
AYES: Councilmembers: Fisher, Friedman, Frohman, Serpa, Smith, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: Conrad

APPROVED: 
CARMEN SABATINO, Mayor

ATTEST:

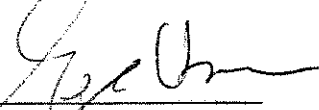
By 
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By 
MICHAEL D. MILICH, City Attorney

APPROVED AS TO DESCRIPTION:

By 
Community Development Department
Planning Division

Ord. No. 3240-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 January, 2002, 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: Fisher, Friedman, Frohman, Serpa, Smith, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: Conrad

APPROVED:


MAYOR CARMEN SABATINO

ATTEST:


JEAN ZAHR, City Clerk

Effective Date: February 14, 2002

ORDINANCE NO. 3241-C.S.

AN ORDINANCE ADOPTING A PRECISE PLAN FOR AREA NO. 28 OF THE VILLAGE ONE SPECIFIC PLAN, RELATING TO PROPERTY LOCATED ON THE NORTH SIDE OF MERLE AVENUE EAST OF DERMOND ROAD. (FLORSHEIM BROTHERS)

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

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

WHEREAS, an application has been filed by Florsheim Brothers for a Precise Plan for Area No. 28 property located on the north side of Merle Avenue east of Dermond Road, and

WHEREAS, a public hearing was held by the Planning Commission of the City of Modesto on December 3, 2001, in the Tenth Street Place Chambers located at 1010 10th Street, Modesto, California, and

WHEREAS, the Planning Commission was concerned that future property owners of lots that would result from this Precise Plan be notified of certain restrictions on their lots regarding maintenance and fencing of side-street side-yards adjacent to connector streets, and

WHEREAS, after considering public comments, the Planning Commission, by Resolution No. 2001-73, recommended to the City Council approval of a Precise Plan for Area No. 28 of the Village One Specific Plan with a requirement that language be added to the precise plan that future subdivisions in the precise plan include a disclosure statement notifying future property owners of the above restrictions, and

WHEREAS, subsequent to the Planning Commission action, the applicant modified the precise plan to incorporate the disclosure language recommended by the Planning Commission, and

WHEREAS, said matter was set for a public hearing of the City Council of the City of Modesto to be held on January 2, 2002, at 5:15 p.m., in the Tenth Street Place Chambers located at 1010 10th Street, Modesto, California, and

WHEREAS, the Council declared that said Precise Plan for Area No. 28 of the Village One Specific Plan is required by public necessity, convenience, and general welfare for the following reasons:

1. The proposed Precise Plan is consistent with the Modesto Urban Area General Plan and Village One Specific Plan.
2. The design of the proposed Precise Plan is compatible with surrounding existing and future development.
3. Adequate infrastructure exists to serve the proposed development.

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

SECTION 1. APPROVAL OF PRECISE PLAN. That the City Council has reviewed and considered the Precise Plan for Area No. 28 of the Village One Specific Plan as recommended by the Planning Commission, and the Council does hereby approve said Precise Plan, a copy of which is on file in the City Clerk's Office.

SECTION 2. EFFECTIVE DATE. This ordinance shall go into effect and be in full force and operation from and after thirty (30) days after its final passage and adoption.

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

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 2nd day of January, 2002, by Councilmember Friedman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Smith, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Friedman, Frohman, Serpa, Smith, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: Conrad, Fisher

APPROVED: Carmen Sabatino
CARMEN SABATINO, Mayor

ATTEST:

By Jean Zahr
JEAN ZAHR, City Clerk

APPROVED AS TO FORM:
By Michael D. Milich
MICHAEL D. MILICH, City Attorney

(SEAL)

Ord. No. 3241-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 January, 2002, Councilmember Friedman moved its final adoption, which motion being duly seconded by Councilmember Sabatino, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Friedman, Frohman, Serpa, Smith, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: Conrad & Fisher

APPROVED: *Carmen Sabatino*
MAYOR CARMEN SABATINO

ATTEST: *Jean Zahr*
JEAN ZAHR, City Clerk

Effective Date: February 14, 2002

ORDINANCE NO. 3242-C.S.

AN ORDINANCE REZONING VILLAGE ONE PROPERTY FROM SPECIFIC PLAN-HOLDING ZONE, SP-H, TO SPECIFIC PLAN-OVERLAY ZONE, SP-O, FOR PROPERTY LOCATED ON THE NORTH SIDE OF MERLE AVENUE EAST OF DERMOND ROAD. (PRECISE PLAN FOR AREA NO. 28 - FLORSHEIM BROTHERS)

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

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

WHEREAS, an application has been filed by Florsheim Brothers for a Precise Plan for Area No. 28, property located on the north side of Merle Avenue east of Dermond Road, and

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

WHEREAS, a public hearing was held by the Planning Commission of the City of Modesto on December 3, 2001, in the Tenth Street Place Chambers located at 1010 10th Street, Modesto, California, and

WHEREAS, after a public hearing held on December 3 2001, 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. 2001-73, adopted December 3, 2001, the Planning Commission recommended that the application of Florsheim Brothers to rezone Village One property from Specific Plan-Holding Zone, SP-H, to Specific Plan-Overlay Zone, SP-O, for property located on the north side of Merle Avenue east of Dermond Road be approved, and

WHEREAS, said matter was set for a public hearing of the City Council to be held on January 2, 2002, at 5:15 p.m., in the Tenth Street Place Chambers located at 1010 10th Street, Modesto, California, at which date and time said duly noticed public hearing of the Council was held and evidence both oral and documentary was received and considered,

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

SECTION 1. After a public hearing held on January 2, 2002, in the Tenth Street Place Chambers located at 1010 10th Street, Modesto, California, this Council finds and determines that the requested rezoning is in accordance with the General Plan and 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 rezoning to Specific Plan-Overlay Zone is required by the Village One Specific Plan concurrent with adoption of a precise plan and prior to development in the Specific Plan area.

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

SP-H to SP-O, PPA 28

All that certain real property situate in a portion 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 Southeast corner of the Southwest quarter of the Northwest quarter of said Section 13 as shown on Record of Survey filed July 15, 1996 in Volume 23 of Surveys at Page 22, Stanislaus County Records, being on the centerline of Belharbour Drive; thence along said centerline the following three (3) courses: 1. North 89° 51'39" East 263.08 feet, 2. Northeasterly 341.67 feet along a tangent curve concave to the Northwest having a radius of 300.00 feet and a central angle of 65°15'15", 3. North 24°36'24" East along a tangent line 204.60 feet to the future centerline of Road "K" as shown on said Record of Survey recorded in Volume 23 of Surveys at Page 22; thence South 66°00'59" East along said centerline 825.76 feet to future centerline of Road "S" as shown on said Record of Survey recorded in Volume 23 of Surveys at Page 22; thence South 0°26'09" East along said centerline of Road "S" 1307.68 feet to the centerline of Merle Avenue; thence along said centerline of Merle Avenue the following two (2) courses: 1. South 89°52'23" West 42.00 feet and 2. South 89°52'13" West 1312.59 feet to the Southeast corner of Precise Plan Area No. 27; thence North 0°29'56" West along the East line of said Precise Plan No. 27 a distance of 1323.69 feet to the point of beginning.

Containing: 44.92 Acres Gross

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 2nd day of January, 2002, by Councilmember Friedman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Smith, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Friedman, Frohman, Serpa, Smith, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: Conrad, Fisher

APPROVED: 
CARMEN SABATINO, Mayor

ATTEST:

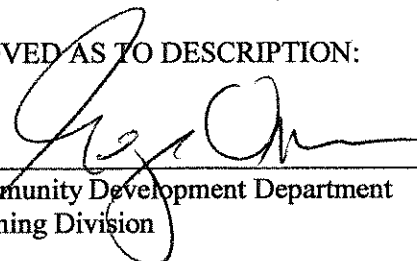
By 
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By 
MICHAEL D. MILICH, City Attorney

APPROVED AS TO DESCRIPTION:

By 
Community Development Department
Planning Division

Ord. No. 3242-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 January, 2002, Councilmember Friedman moved its final adoption, which motion being duly seconded by Councilmember Sabatino, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Friedman, Frohman, Serpa, Smith, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: Conrad & Fisher

APPROVED: 
MAYOR CARMEN SABATINO

ATTEST: 
JEAN ZAHR, City Clerk

Effective Date: February 14, 2002

ORDINANCE NO. 3243-C.S.

AN ORDINANCE AMENDING SECTION 21-3-9 OF THE ZONING MAP TO REZONE FROM MEDIUM-HIGH DENSITY RESIDENTIAL ZONE, R-3 TO PLANNED DEVELOPMENT ZONE, P-D(552), PROPERTY LOCATED ON THE NORTH SIDE OF EAST COOLIDGE AVENUE OPPOSITE ILA WAY. (ARCHITECTURE PLUS, INC.)

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

SECTION 1. ZONING CHANGE. Section 21-3-9 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(552):

R-3 to P-D(552)

The East 165 feet of the West 315 feet of the South half of Lot 4 COOLIDGE COLONY as per Map filed on November 15, 1910, in Vol. 5 of Maps, at page 17, Stanislaus County Records;

Including Parcel 2 as shown on that Parcel Map filed December 13, 1965, in Book 1, Page 17 of Parcel Maps in the Office of the County Recorder of Stanislaus County, being a portion of Lots 3 and 4 of COOLIDGE COLONY;

Also including the northerly 30 feet of E. Coolidge Avenue immediately adjacent to said Parcel 2 as shown on that Parcel Map filed December 13, 1965, in Book 1, Page 17 of Parcel Maps in the Office of the County Recorder of Stanislaus County

SECTION 2. USES. The following uses shall be permitted in said P-D(552) 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. Two- and three-story apartment complex and landscaped parking area.

SECTION 3. ZONING MAP. Section Map 21-3-9 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 2nd day of January, 2002, by Councilmember Friedman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Frohman, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Conrad, Friedman, Frohman, Serpa, Smith Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: Fisher

APPROVED: *Carmen Sabatino*
CARMEN SABATINO, Mayor

ATTEST:

By *Jean Zahr*
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

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

APPROVED AS TO DESCRIPTION:

By *[Signature]*
Community Development Department
Planning Division

Ord. No. 3243-C.S.

FINAL ADOPTION CLAUSE

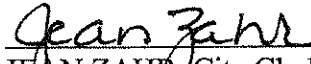
The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 15th day of January, 2002, Councilmember Conrad moved its final adoption, which motion being duly seconded by Councilmember Friedman, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Conrad, Friedman, Frohman, Serpa, Smith, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: Fisher

APPROVED: 
MAYOR CARMEN SABATINO

ATTEST: 
JEAN ZAHR, City Clerk

Effective Date: February 14, 2002

ORDINANCE NO. 3244-C.S.

AN ORDINANCE AMENDING SECTION 2 OF ORDINANCE NO. 2262-C.S. ENTITLED "AN ORDINANCE AMENDING SECTION MAP 12-3-8 OF THE ZONING MAP OF THE CITY OF MODESTO, PREZONING CERTAIN PROPERTY LOCATED THEREON. (ELWYN YOUNG)." (SAVE MART SUPERMARKETS).

SECTION 1. AMENDMENT OF ORDINANCE NO. 2262-C.S. Section 2 of Ordinance No. 2262-C.S., is hereby amended to read as follows:

"SECTION 2. USES. The following uses shall be permitted in said P-PD(353) 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. Neighborhood shopping center containing C-1 Zone uses.
2. General Commercial Zone, C-2, uses."

SECTION 2. EFFECTIVE DATE. This ordinance shall go into effect and be in full force and operation from and after thirty (30) days after its final passage and adoption.

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 January, 2002, 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: Conrad, Fisher, Friedman, Frohman, Serpa, Smith, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: *Carmen Sabatino*
CARMEN SABATINO, Mayor

ATTEST:

By: *Jean Zahr*
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

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

Ord. No. 3244-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 January, 2002, Councilmember Frohman 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: Conrad, Fisher, Friedman, Frohman, Serpa, Smith, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: *Carmen Sabatino*
MAYOR CARMEN SABATINO

ATTEST: *Jean Zahr*
JEAN ZAHR, City Clerk

Effective Date: February 21, 2002

ORDINANCE NO. 3245-C.S.

AN ORDINANCE AMENDING SECTION 2-9.01 OF CHAPTER 9 OF TITLE 2 OF THE MODESTO MUNICIPAL CODE RELATING TO MAIL BALLOT ELECTIONS.

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

SECTION 1. AMENDMENT OF CODE. Section 2-9.01 of Chapter 9 of Title 2 of the Modesto Municipal Code is hereby amended to read as follows:

2-9.01. MAIL BALLOT ELECTIONS.

The Council may call municipal elections to be conducted wholly by mail ballots. Such elections shall be conducted in accordance with the provisions of Section 4100 et seq. of the Elections Code of the State of California, as now exists or may hereafter be amended. Mail ballot elections called to meet the requirements of Articles XIIC and XIID of the California Constitution may, alternatively, be conducted in accordance with Article XIID(c), and any statute implementing either of those Articles. This section is enacted under the authority granted by Section 302 of the Charter 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 5th day of February, 2002, 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, Frohman, Smith

NOES: Councilmembers: Conrad, Serpa & Mayor Sabatino

ABSENT: Councilmembers: None

APPROVED: *Carmen Sabatino*
CARMEN SABATINO, Mayor

(SEAL)

ATTEST:

By: *Jean Zahr*
JEAN ZAHR, City Clerk

APPROVED AS TO FORM:

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

Ord. No. 3245-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 February, 2001, 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: Fisher, Friedman, Frohman, Smith, Mayor Sabatino

NOES: Councilmembers: Conrad, Serpa

ABSENT: Councilmembers: None

APPROVED: *Carmen Sabatino*
MAYOR CARMEN SABATINO

ATTEST: *Jean Zahr*
JEAN ZAHR, City Clerk

Effective Date: March 14, 2002

ORDINANCE NO. 3246-C.S.

AN ORDINANCE AMENDING A PORTION OF SECTIONS 19-3-10 AND 18-3-10 OF THE ZONING MAP OF THE CITY OF MODESTO PREZONING CERTAIN PROPERTY LOCATED THEREON. (JOHN AND JUDY MACHADO)

WHEREAS, pursuant to Modesto Municipal Code Section 10-2.2604, the City of Modesto proposes to initiate a rezoning to Specific Plan-Overlay Zone, (SP-O), 24.4 acres of property located on the south side of Parker Road east of the Burlington Northern and Santa Fe Railroad north of Dry Creek within the Empire North Unit 1 Specific Plan 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 rezoning for annexation to cities, and

WHEREAS, after a public hearing held on December 3, 2001, in the Tenth Street Place Chambers located at 1010 10th Street, Modesto, California, it was found and determined by the Planning Commission that rezoning to Specific Plan-Overlay Zone, (SP-O), 24.4-acres of property located on the south side of Parker Road east of the Burlington Northern and Santa Fe Railroad north of Dry Creek within the Empire North Unit 1 Specific Plan as requested is in accordance with Government Code Section 65855 for the following reasons:

1. The proposed rezoning is required by public convenience or necessity because the proposed Empire North Unit One Specific Plan will provide needed services and facilities for that area.
2. The proposed rezoning will result in an orderly planning and use of land resources because the Empire North Unit One Specific Plan would implement the Community Growth Policies of the Modesto Urban Area General Plan.
3. The proposed rezoning will further the City's economic development goals because it facilitates further development within the North Empire Unit One Specific Plan.

4. The proposed rezoning is in accordance with the community's objectives as set forth in the General Plan because the proposed area is part of the adopted Empire North Unit One Specific Plan and focused EIR, which is consistent with the Modesto Urban Area General Plan.

WHEREAS, by Resolution No. 2001-70, adopted on December 3, 2001, the Planning Commission recommended to the City Council an amendment to a portion of Sections 19-3-10 and 18-3.10 of the Zoning Map to prezone the hereafter described property to Specific Plan-Overlay Zone, (SP-0), and

WHEREAS, said matter was set for a public hearing of the City Council to be held on January 22, 2002, at 5:15 p.m., in the Tenth Street Place Chambers located at 1010 10th Street, Modesto, California, at which date and time said duly noticed public hearing of the Council was held and evidence both oral and documentary was received and considered,

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

SECTION 1. COUNCIL FINDINGS. After a public hearing held on January 22, 2002, 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. 2001-70 and quoted above.

SECTION 2. ZONING CHANGE. A Portion of Sections 19-3-10 and 18-3-10 of the Zoning Map are hereby amended to prezone the following described property to Specific Plan-Overlay Zone, (SP-O):

A portion of the Northeast Quarter of Section 19 and a portion of the Southeast Quarter of Section 18, Township 3 South, Range 10 East, Mount Diablo Meridian, situate in the County of Stanislaus, State of California, more particularly described as:

Beginning at the Northwest corner of the Northeast Quarter of said Section 19, and having coordinate values of Northing = 2065609.177 and Easting = 6443748.769 thence along the following twenty-four (24) courses:

1. thence North 00°03'48" East, a distance of 20.00 feet to the North right-of-way line of Parker Road;
2. thence North 89°28'02" East along last said line, a distance of 26.67 feet to the west right-of-way line of Dewitt Road;
3. thence North 00°34'58" West along last said West right-of-way line, a distance of 30.00 feet to a point on the Westerly extension of said Parker Road;
4. thence North 89°28'02" East along last said extension and the North right-of-way line of Parker Road, a distance of 961.92 feet to an angle point in last said right-of way line;
5. thence North 79°26'18" East along last said right-of-way line, a distance of 108.67 feet;
6. thence South 10°33'42" East, a distance of 70.00 feet to a point on the dividing line between said Sections 18 and 19;
7. thence North 89°28'02" East along the North line of said Section 19, a distance of 206.81 feet to the Northeast corner of said Section 19;
8. thence South 00°01'19" East along the East line of said Section 19, a distance of 70.00 feet to the center line of Dry Creek as shown on the map filed in Volume 14 of Surveys at Page 13, Stanislaus County Records;
9. thence along the center line of said Dry Creek the following fifteen (15) courses as shown on said map beginning with course No. 9;
 - 1.) South 80°35'57" West, 240.68 feet
 - 2.) South 62°49'11" West, 709.58 feet
 - 3.) South 36°33'36" West, 202.55 feet

- 4.) South 62°32'49" West, 109.04 feet
- 5.) South 13°10'31" East, 59.42 feet
- 6.) South 29°29'42" East, 93.57 feet
- 7.) South 49°50'31" East, 244.88 feet
- 8.) South 07°51'10" East, 180.89 feet
- 9.) South 24°16'01" West 154.32 feet
- 10.) South 00°07'42" West, 188.41 feet
- 11.) South 32°20'37" West, 115.92 feet
- 12.) South 44°05'38" West, 97.56 feet
- 13.) South 44°31'25" West, 200.15 feet
- 14.) South 42°43'28" West, 233.18 feet
- 15.) South 49°32'44" West, 99.68 feet to a point on the West line of the East half of the Northeast Quarter of said Section 19; thence leaving said center line of Dry Creek and proceeding
- 16.) North 00°03'48" East along last said West line, a distance of 2040.63 feet to a POINT OF BEGINNING

Containing 24.4 acres, more or less.

SECTION 3. ZONING MAP. A portion of Sections 19-3-10 and 18-3-10 of the Zoning Map of the City of Modesto are hereby amended to appear as set forth on the map attached hereto and which are 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

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 5th day of February, 2002, 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: Fisher, Friedman, Smith, Mayor Sabatino

NOES: Councilmembers: Frohman & Serpa

ABSENT: Councilmembers: Conrad

APPROVED: *Carmen Sabatino*
CARMEN SABATINO, Mayor

ATTEST:

By *Jean Zahr*
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:
By *Michael D. Milich*
MICHAEL D. MILICH, City Attorney

APPROVED AS TO DESCRIPTION:

By *Steve Mitchell* ~~for~~ GO
Community Development Department
Planning Division

Ord. No. 3246-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 February, 2001, 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: Fisher, Friedman, Smith, Mayor Sabatino

NOES: Councilmembers: Frohman, Serpa

ABSENT: Councilmembers: Conrad

APPROVED: *Carmen Sabatino*
MAYOR CARMEN SABATINO

ATTEST: *Jean Zahr*
JEAN ZAHR, City Clerk

Effective Date: March 14, 2002

ORDINANCE NO. 3247-C.S.

AN ORDINANCE ADOPTING A PRECISE PLAN FOR AREA NO. 13 OF THE VILLAGE ONE SPECIFIC PLAN, RELATING TO PROPERTY BOUNDED BY ROSELLE AVENUE, HILLGLEN AVENUE, MILLBROOK AVENUE AND KODIAK DRIVE. (GARRAD MARSH)

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

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

WHEREAS, an application has been filed by Garrad Marsh for a Precise Plan for Area No. 13 property bounded by Roselle Avenue, Hillglen Avenue, Millbrook Avenue and Kodiak Drive, and

WHEREAS, a public hearing was held by the Planning Commission of the City of Modesto on January 7, 2002, in the Tenth Street Place Chambers located at 1010 10th Street, Modesto, California, and

WHEREAS, City staff recommended that the proposed precise plan incorporate a roundabout at the intersection of Hillglen Avenue and Esta Avenue, and

WHEREAS, after considering public comments, the Planning Commission, by Resolution No. 2002-04, recommended to the City Council approval of a Precise Plan for Area No. 13 of the Village One Specific Plan, with the addition of a roundabout at the intersection of Hillglen Avenue and Esta Avenue, and

WHEREAS, said matter was set for a public hearing of the City Council of the

City of Modesto to be held on February 26, 2002, at 5:15 p.m., in the Tenth Street Place Chambers located at 1010 10th Street, Modesto, California, and

WHEREAS, the Council declared that said Precise Plan for Area No. 13 of the Village One Specific Plan is required by public necessity, convenience, and general welfare for the following reasons:

1. The proposed Precise Plan is consistent with the Modesto Urban Area General Plan and Village One Specific Plan.
2. The design of the proposed Precise Plan is compatible with surrounding existing and future development.
3. Adequate infrastructure exists to serve the proposed development.

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

SECTION 1. APPROVAL OF PRECISE PLAN. That the City Council has reviewed and considered the Precise Plan for Area No. 13 of the Village One Specific Plan as recommended by the Planning Commission, and the Council does hereby approve said Precise Plan, a copy of which is on file in the City Clerk's Office.

SECTION 2. EFFECTIVE DATE. This ordinance shall go into effect and be in full force and operation from and after thirty (30) days after its final passage and adoption.

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

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 26th day of February, 2002, 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: Conrad, Fisher, Friedman, Frohman, Smith, Mayor Sabatino

NOES: Councilmembers: Serpa

ABSENT: Councilmembers: None

APPROVED: *Carmen Sabatino*
CARMEN SABATINO, Mayor

ATTEST:

By *Jean Zahr*
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

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

Ord. No. 3247-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 March, 2002, Councilmember Fisher 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: Conrad, Fisher, Friedman, Frohman, Smith, Mayor Sabatino

NOES: Councilmembers: Serpa

ABSENT: Councilmembers: Smith

APPROVED: *Carmen Sabatino*
MAYOR CARMEN SABATINO

ATTEST: *Jean Zahr*
JEAN ZAHR, City Clerk

Effective Date: April 18, 2002

ORDINANCE NO. 3248-C.S.

AN ORDINANCE REZONING VILLAGE ONE PROPERTY FROM SPECIFIC PLAN-HOLDING ZONE, SP-H, TO SPECIFIC PLAN-OVERLAY ZONE, SP-O, FOR PROPERTY BOUNDED BY ROSELLE AVENUE, HILLGLEN AVENUE, MILLBROOK AVENUE AND KODIAK DRIVE. (PRECISE PLAN FOR AREA NO. 13 - GARRAD MARSH)

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

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

WHEREAS, an application has been filed by Garrad Marsh for a Precise Plan for Area No. 13, property bounded by Roselle Avenue, Hillglen Avenue, Millbrook Avenue and Kodiak Drive, and

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

WHEREAS, a public hearing was held by the Planning Commission of the City of Modesto on January 7, 2002, in the Tenth Street Place Chambers located at 1010 10th Street, Modesto, California, and

WHEREAS, after a public hearing held on January 7, 2002, 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. 2002-04, adopted January 7, 2002, the Planning Commission recommended that the application of Garrad Marsh to rezone Village One property from Specific Plan-Holding Zone, SP-H, to Specific Plan-Overlay Zone, SP-O, for property bounded by Roselle Avenue, Hillglen Avenue, Millbrook Avenue and Kodiak Drive be approved, and

WHEREAS, said matter was set for a public hearing of the City Council to be held on February 26, 2002, at 5:15 p.m., in the Tenth Street Place Chambers located at 1010 10th Street, Modesto, California, at which date and time said duly noticed public hearing of the Council was held and evidence both oral and documentary was received and considered,

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

SECTION 1. After a public hearing held on February 26, 2002, in the Tenth Street Place Chambers located at 1010 10th Street, Modesto, California, this Council finds and determines that the requested rezoning is in accordance with the General Plan and 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 rezoning to Specific Plan-Overlay Zone is required by the Village One Specific Plan concurrent with adoption of a precise plan and prior to development in the Specific Plan area.**

SECTION 2. ZONING CHANGE. Section 12-3-9 of the Zoning Map of the City of Modesto is hereby amended to rezone the following described property from Specific Plan-Holding Zone, SP-H, to Specific Plan-Overlay Zone, SP-O:

SP-H to SP-O, PPA 13

All that certain real property being a portion of the Southwest Quarter of Section 12, and the Northwest Quarter of Section 13, Township 3 South, Range 9 East, Mount Diablo Base and Meridian, City of Modesto, County of Stanislaus, State of California, more particularly described as follows:

Beginning at the Southwest Corner of said Section 12, said corner being on the centerline of Roselle Avenue; thence North $00^{\circ}18'41''$ West, along the West line of the Southwest Quarter of said Section 12, and the Centerline of Roselle Avenue, a distance of 1336.07 feet to a point that bears South $00^{\circ}18'41''$ East 1309.45 feet from the Centerline of Sylvan Avenue; thence North $89^{\circ}50'26''$ East 400.88 feet to a point of curvature, concave Southerly, having a radius of 2000.00 feet; thence easterly along the arc of said curve, through a central angle of $00^{\circ}25'48''$, an arc distance of 15.01 feet; thence South $89^{\circ}43'47''$ East 304.84 feet to a point of curvature, concave Northerly, having a radius of 2000.00 feet; thence easterly along the arc of said curve, through a central angle of $00^{\circ}25'48''$, an arc distance of 15.01 feet; thence North $89^{\circ}50'26''$ East 833.85 feet to a point of curvature, concave Northerly, having a radius of 2000.00 feet; thence easterly along the arc of said curve, through a central angle of $02^{\circ}36'47''$, an arc distance of 91.21 feet; thence North $87^{\circ}13'39''$ East 68.86 feet to a point on the centerline of Millbrook Avenue; thence South along the centerline of Millbrook Avenue the following three (3) courses: South $02^{\circ}46'29''$ East 295.93 feet; 2.) South $00^{\circ}19'52''$ East 828.20 feet to a point of curvature, concave Easterly, having a radius of 497.25 feet; 3.) Southerly along the arc of said curve, through a central angle of $25^{\circ}36'45''$, an arc distance of 222.28 feet to a point on the south line of said Section 12; thence South $89^{\circ}49'38''$ West 89.97 feet to a point of curvature, concave Southerly, having a radius of 500.00 feet; thence westerly along the arc of said curve, through a central angle of $14^{\circ}32'01''$, an arc distance of 126.83 feet to a point of reverse curvature, concave Northerly, having a radius of 500.00 feet; thence westerly along the arc of said curve, through a central angle of $14^{\circ}32'01''$, an arc distance of 126.83 feet; thence South $89^{\circ}49'38''$ West 326.57 feet to a point of curvature, concave Southerly, having a radius of 2000.00 feet; thence westerly along the arc of said curve, through a central angle of $01^{\circ}00'01''$, an arc distance of 34.91 feet; thence South $88^{\circ}49'37''$ West 649.74 feet to a point of curvature, concave Northerly, having a radius of 2000.00 feet; thence westerly along the arc of said curve, through a central angle of $01^{\circ}03'34''$, an arc distance of 36.98 feet; thence South $89^{\circ}53'12''$ West 402.23 feet to a point on the West line of the Northwest Quarter of said Section 13: thence North $00^{\circ}28'42''$ West, along said West line, a distance of 43.69 feet to the Point of Beginning, and containing 54.8 acres, more or less.

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 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 February, 2002, 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: Conrad, Fisher, Friedman, Frohman, Smith, Mayor Sabatino

NOES: Councilmembers: Serpa

ABSENT: Councilmembers: None

APPROVED: *Carmen Sabatino*
CARMEN SABATINO, Mayor

ATTEST:

By *Jean Zahr*
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

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

APPROVED AS TO DESCRIPTION:

By *Steve Mitchell for CO*
Community Development Department
Planning Division

Ord. No. 3248-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 March, 2002, Councilmember Friedman moved its final adoption, which motion being duly seconded by Councilmember Conrad, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Conrad, Fisher, Friedman, Frohman, Smith, Mayor Sabatino

NOES: Councilmembers: Serpa

ABSENT: Councilmembers: Smith

APPROVED: 
MAYOR CARMEN SABATINO

ATTEST: 
JEAN ZAHR, City Clerk

Effective Date: April 18, 2002

ORDINANCE NO. 3249-C.S.

AN ORDINANCE ADOPTING A PRECISE PLAN FOR AREA NO. 9 OF THE VILLAGE ONE SPECIFIC PLAN, RELATING TO PROPERTY LOCATED AT THE SOUTHWEST CORNER OF SYLVAN AVENUE AND THE FUTURE CLAUS ROAD EXPRESSWAY. (WAYNE BRIGMAN)

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

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

WHEREAS, an application has been filed by Garrad Marsh for a Precise Plan for Area No. 9 property located at the southwest corner of Sylvan Avenue and the future Claus Road expressway, and

WHEREAS, a public hearing was held by the Planning Commission of the City of Modesto on January 7, 2002, in the Tenth Street Place Chambers located at 1010 10th Street, Modesto, California, and

WHEREAS, after considering public comments, the Planning Commission, by Resolution No. 2002-06, recommended to the City Council approval of a Precise Plan for Area No. 9 of the Village One Specific Plan, and

WHEREAS, said matter was set for a public hearing of the City Council of the City of Modesto to be held on February 26, 2002, at 5:15 p.m., in the Tenth Street Place Chambers located at 1010 10th Street, Modesto, California, and

WHEREAS, the Council declared that said Precise Plan for Area No. 9 of the

Village One Specific Plan is required by public necessity, convenience, and general welfare for the following reasons:

1. The proposed Precise Plan is consistent with the Modesto Urban Area General Plan and Village One Specific Plan.
2. The design of the proposed Precise Plan is compatible with surrounding existing and future development.
3. Adequate infrastructure exists to serve the proposed development.

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

SECTION 1. APPROVAL OF PRECISE PLAN. That the City Council has reviewed and considered the Precise Plan for Area No. 9 of the Village One Specific Plan as recommended by the Planning Commission, and the Council does hereby approve said Precise Plan, a copy of which is on file in the City Clerk's Office.

SECTION 2. EFFECTIVE DATE. This ordinance shall go into effect and be in full force and operation from and after thirty (30) days after its final passage and adoption.

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

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 26th day of February, 2002, by Councilmember Fisher, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Conrad, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Conrad, Fisher, Friedman, Frohman, Smith, Mayor Sabatino

NOES: Councilmembers: Serpa

ABSENT: Councilmembers: None

APPROVED: 
CARMEN SABATINO, Mayor

ATTEST:

By 
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By 
MICHAEL D. MILICH, City Attorney

Ord. No. 3249-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 March, 2002, Councilmember Conrad 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: Conrad, Fisher, Friedman, Frohman, Smith, Mayor Sabatino

NOES: Councilmembers: Serpa

ABSENT: Councilmembers: Smith

APPROVED: 
MAYOR CARMEN SABATINO

ATTEST: 
JEAN ZAHR, City Clerk

Effective Date: April 18, 2002

ORDINANCE NO. 3250-C.S.

AN ORDINANCE REZONING VILLAGE ONE PROPERTY FROM SPECIFIC PLAN-HOLDING ZONE, SP-H, TO SPECIFIC PLAN-OVERLAY ZONE, SP-O, FOR PROPERTY LOCATED AT THE SOUTHWEST CORNER OF SYLVAN AVENUE AND THE FUTURE CLAUS ROAD EXPRESSWAY. (PRECISE PLAN FOR AREA NO. 9 - WAYNE BRIGMAN)

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

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

WHEREAS, an application has been filed by Wayne Brigman for a Precise Plan for Area No. 9, property located at the southwest corner of Sylvan Avenue and the future Claus Road expressway, and

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

WHEREAS, a public hearing was held by the Planning Commission of the City of Modesto on January 7, 2002, in the Tenth Street Place Chambers located at 1010 10th Street, Modesto, California, and

WHEREAS, after a public hearing held on January 7, 2002, 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. 2002-06, adopted January 7, 2002, the Planning Commission recommended that the application of Wayne Brigman to rezone Village One property from Specific Plan-Holding Zone, SP-H, to Specific Plan-Overlay Zone, SP-O, for property located at the southwest corner of Sylvan Avenue and the future Claus Road expressway be approved, and

WHEREAS, said matter was set for a public hearing of the City Council to be held on February 26, 2002, at 5:15 p.m., in the Tenth Street Place Chambers located at 1010 10th Street, Modesto, California, at which date and time said duly noticed public hearing of the Council was held and evidence both oral and documentary was received and considered,

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

SECTION 1. After a public hearing held on February 26, 2002, in the Tenth Street Place Chambers located at 1010 10th Street, Modesto, California, this Council finds and determines that the requested rezoning is in accordance with the General Plan and 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 rezoning to Specific Plan-Overlay Zone is required by the Village One Specific Plan concurrent with adoption of a precise plan and prior to development in the Specific Plan area.**

SECTION 2. ZONING CHANGE. Section 12-3-9 of the Zoning Map of the City of Modesto is hereby amended to rezone the following described property from Specific Plan-Holding Zone, SP-H, to Specific Plan-Overlay Zone, SP-O:

SP-H to SP-O, PPA 9

All that certain real property being a portion of the Southeast Quarter of Section 12, Township 3 South, Range 9 East, Mount Diablo Base and Meridian, in the City of Modesto, County of Stanislaus, State of California, more particularly described as follows:

Commencing at the East Quarter Corner of said Section 12, said corner being the centerline intersection of Sylvan Avenue and Claus Road; thence South 89 degrees 52' 26" West, along the centerline of Sylvan Avenue, a distance of 528.34 feet to a point of curvature, non-tangent to the preceding course, concave easterly, having a radius of 4998.00 feet, of which radius bears South 88 degrees 52' 26" East and the Point of Beginning; thence southerly along the arc of said curve, through a central angle of 11 degrees 21' 26", an arc distance of 990.70 feet; thence South 89 degrees 48' 45" West 862.05 feet; thence North 00 degrees 14' 41" West 987.26 feet to a point on the centerline of Sylvan Avenue; thence North 89 degrees 52' 26" East, along the centerline of Sylvan Avenue, a distance of 790.42 feet to the Point of Beginning, and containing 18.4 acres, more or less.

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 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 February, 2002, by Councilmember Fisher, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Conrad, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Conrad, Fisher, Friedman, Frohman, Smith, Mayor Sabatino

NOES: Councilmembers: Serpa

ABSENT: Councilmembers: None

APPROVED: *Carmen Sabatino*
CARMEN SABATINO, Mayor

ATTEST:

By *Jean Zahr*
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

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

APPROVED AS TO DESCRIPTION:

By *Steve Mitchell* *for GO*
Community Development Department
Planning Division

Ord. No. 3250-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 March, 2002, Councilmember Conrad 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: Conrad, Fisher, Friedman, Frohman, Smith, Mayor Sabatino

NOES: Councilmembers: Serpa

ABSENT: Councilmembers: Smith

APPROVED: 
MAYOR CARMEN SABATINO

ATTEST: 
JEAN ZAHR, City Clerk

Effective Date: April 18, 2002

ORDINANCE NO. 3250A-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. 2002-1
(NORTHPOINTE)

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

WHEREAS, on January 22, 2002, the City Council of the City of Modesto ("City"), State of California (the "Council"), adopted its Resolution No. 2002-30 (the "Resolution of Intention to Establish the District") stating its intention to form Community Facilities District No. 2002-1 of the City of Modesto (the "District") for the purpose of financing the costs of certain facilities (hereinafter "Facilities") and certain services (hereinafter "Services") specified in the Resolution of Intention to Establish the District pursuant to Chapter 2.5 of Part 1 of Division 2 of Title 5 (commencing with Section 53311) of the California Government Code, commonly known as the "Mello-Roos Community Facilities Act of 1982" (the "Act"), and

WHEREAS, a notice was published as required by law relative to the intention of this Council to form the proposed District and to establish an appropriations limit for the District in the amount of \$1,000,000.00 per fiscal year in connection with the proposed Facilities and Services, and

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

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

WHEREAS, this Council, upon the conclusion of the hearing, did, on February 26, 2002, adopt its Resolution No.2002-96 (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 March 6, 2002, on the proposition of levying a special tax and establishing an appropriations limit within the District, and

WHEREAS, on March 6, 2002, or sooner in accordance with law, and in accordance with the Resolution of Formation a consolidated election was held within the District in which the qualified voters approved by more than a two-thirds vote the proposition to levy the special tax and establish an appropriations limit within the District,

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

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

SECTION 2. By the passage of this Ordinance, a 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 2001-2002 and in each fiscal year thereafter, unless reduced by subsequent resolution of this Council, at the Maximum Annual Special Tax rate described in Exhibit "A" hereto.

SECTION 3. The District Administrator of the City of Modesto is hereby authorized each year to determine the special tax rate and amount to be levied for the next ensuing fiscal year, except that the special tax rate to be levied shall not exceed that set forth in Exhibit "A" hereto.

SECTION 4. No properties or entities are exempt from the special tax unless the properties or entities are expressly exempted in the Resolution of Formation (including the Public Report included therein by reference and attached hereto as Exhibit "A"), or in any subsequent resolution of consideration to levy a new special tax or special taxes or to alter the rate or method of apportionment or an existing special tax as provided in Section 53334 of the Act.

SECTION 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 to Establish the District 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 be effective after thirty (30) days from 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 26th day of February, 2002, 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:

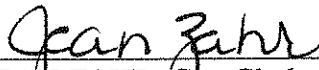
AYES: Councilmembers: Conrad, Fisher, Friedman, Serpa, Smith, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: Frohman

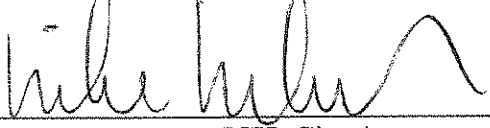
APPROVED: 
CARMEN SABATINO, Mayor

ATTEST:

By: 
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: 
MICHAEL D. MILICH, City Attorney

Ord. No. 3250A-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 28th day of May, 2002, Councilmember Fisher moved its final adoption, which motion being duly seconded by Councilmember Conrad, was upon roll call carried and the ordinance adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: *Carmen Sabatino*
MAYOR CARMEN SABATINO

ATTEST: *Jean Zahr*
JEAN ZAHR, City Clerk

Effective Date: June 27, 2002

PUBLIC REPORT

EXHIBIT A

**CITY OF MODESTO
NORTHPOINTE
COMMUNITY FACILITIES DISTRICT NO. 2002-1**

CFD REPORT

January 2, 2002

Prepared By:

**Goodwin Consulting Group, Inc.
701 University Avenue, Suite 225
Sacramento, CA 95825
(916) 561-0890**

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Appendices

Appendix A: CFD Boundary Map

Appendix B: Rate and Method of Apportionment of Special Tax

Appendix C: Services to be Funded by CFD No. 2002-1

I. INTRODUCTION

On April 1, 1997, the City Council of the City of Modesto approved the Kiernan Business Park Specific Plan which sets forth a plan of development for approximately 614 acres that were, at that time, located adjacent to the City's northern border, east of Highway 99 and south of Kiernan Avenue in a portion of unincorporated Stanislaus County. To date, approximately 250 acres within the Specific Plan area have been annexed into the City, of which almost 55 of these acres are included within the NorthPointe project.

The intent of the Kiernan Business Park Specific Plan is to provide for the development of new business park and industrial uses, which will assist in implementing the City's long-range objectives to enhance its local economy, generate jobs for residents, and create a better jobs/housing balance. The NorthPointe project has already furthered these objectives by securing Costco and Lowe's as tenants.

II. STRUCTURE OF COMMUNITY FACILITIES DISTRICT NO. 2002-1

A. Introduction

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

A resolution was adopted by the Modesto City Council stating its intention to form CFD No. 2002-1. After a public hearing and a successful election by the landowners within the CFD, the CFD will be formed and the levy of a special tax will be authorized.

B. Boundaries of NorthPointe CFD

The boundaries of the CFD include the two assessor's parcels on which Costco and Lowe's are located, as well as six additional assessor's parcels which are anticipated for future commercial and industrial development. Assessor's parcel number 078-14-43 is included within the boundaries of CFD No. 2002-1 but will not be subject to the levy of special taxes until a building permit for new construction on the parcel has been issued by the City. This Parcel is identified as "Zone 2" for purposes of the special tax levy, as discussed further below. The other parcels within the CFD make up Zone 1 for purposes of the Rate and Method of Apportionment of Special Tax. A copy of the boundary map for CFD No. 2002-1 is included as Appendix A of this Report.

C. CFD Special Tax Structure

Each year a special tax will be levied and collected from parcels within the CFD to pay costs associated with the installation and maintenance of landscaping of a storm drain basin, maintenance of the basin and access road, and replacement of a storm drain pump station. The Rate and Method of Apportionment of Special Tax ("RMA"), which describes in detail how the tax will be allocated among properties in the CFD, is included as Appendix B of this report.

As explained in the RMA, two different special taxes will be levied within the CFD. First, a "One-Time Special Tax" will be levied to pay for the initial installation of landscaping around the storm drain basin, installation of water service and meter, CFD formation costs, and administration and contingency associated with these costs. The One-Time Special Tax will be levied on all property in the CFD except property within Zone 2, which is currently identified by Assessor's Parcel number 078-14-43. The maximum One-Time Special Tax that can be levied within Zone 1 of the CFD is \$3,859 per acre. In addition, an "Annual Special Tax" will be levied on all property in the CFD, including property in Zone 2 once a building permit for new construction has been issued for property within Zone 2. Each Fiscal Year, the Annual Special Tax will be levied up to the amount needed to pay authorized expenses of the CFD; such amount will be identified in a budget set forth by the District Administrator. The maximum Annual Special Tax for fiscal year 2001-02 is \$2,005 per acre prior to a building permit being issued within Zone 2 and \$1,273 per acre after a permit is issued in Zone 2.

A portion of the Annual Special Tax is being collected to create a sinking fund for replacement of the storm drain pump station. The sinking fund portion of the Annual Special Tax will not escalate in future years; the remainder of the Annual Special Tax will increase each year beginning January 2002 by applying the greater of (i) the percentage increase, if any, in the Engineering News Record construction cost index for the San Francisco region for the prior twelve month period, or (ii) four percent (4%).

III. DESCRIPTION OF SERVICES AND EXPENSES TO BE FUNDED BY CFD NO. 2002-1

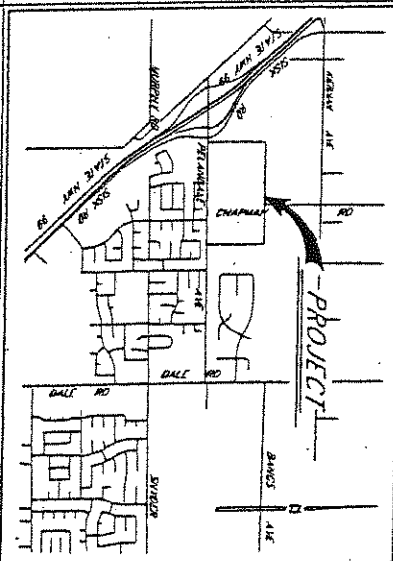
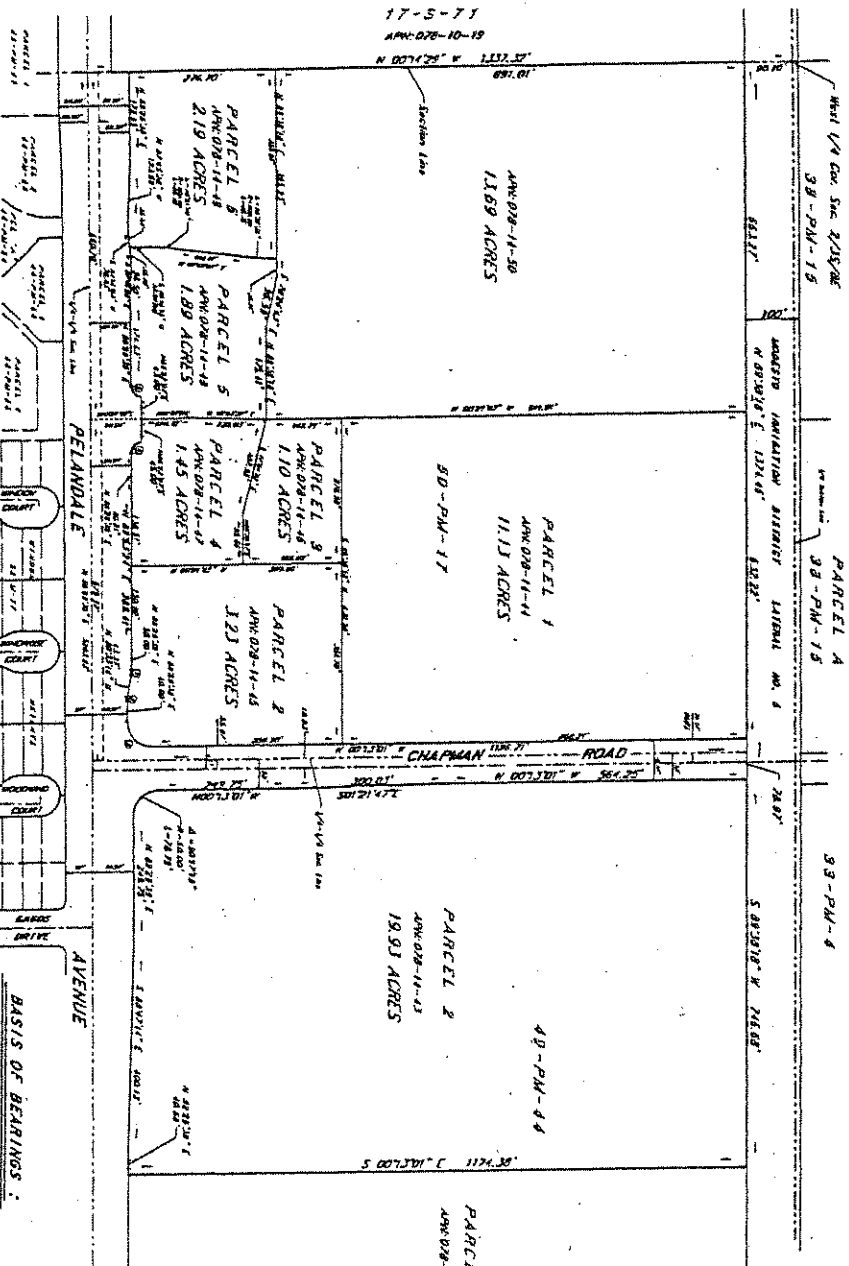
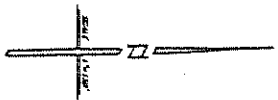
The individual line-item service and improvement costs to be funded by CFD No. 2002-1 are identified in Appendix C of this report.

APPENDIX A

**NORTHPOINTE COMMUNITY FACILITIES DISTRICT NO. 2002-1
OF THE CITY OF MODESTO**

CFD BOUNDARY MAP

NORTHPOINTE CFD NO. 2002-1
PROPOSED BOUNDARIES OF CFD DISTRICT NO. 2002-1
CITY OF MODESTO, COUNTY OF STANISLAUS
STATE OF CALIFORNIA



VICINITY MAP
NO SCALE

This day of _____, 2001, of the hour of _____, County of Stanislaus, State of California, I, the undersigned, being duly sworn, depose and say that the foregoing is a true and correct copy of the original map as the same appears on file in the Office of the County Recorder of the County of Stanislaus, State of California.

RAVEN JANDREWS, County Recorder of the County of Stanislaus, State of California.

ELAN ZHANG, City Clerk

This is the Office of the City Clerk of the City of Modesto in accordance with the provisions of the City Charter, Chapter 1, Article 1, Section 1, of the City of Modesto, California.

ELAN ZHANG, City Clerk

BASIS OF BEARINGS

The bearings of North 20° 32' 37" West between GPS Monument 2701 and 2700 as shown on Sheet 22 of Survey of Penandale, Stanislaus County Records, was used as the basis for all bearings shown hereon.

LINE	BEARING	DISTANCE	AREA	PERIMETER
1	N 00° 00' 00" E	1174.38	1368.00	1174.38
2	S 89° 59' 59" W	1174.38	1368.00	1174.38
3	N 00° 00' 00" E	1174.38	1368.00	1174.38
4	S 89° 59' 59" W	1174.38	1368.00	1174.38
5	N 00° 00' 00" E	1174.38	1368.00	1174.38
6	S 89° 59' 59" W	1174.38	1368.00	1174.38
7	N 00° 00' 00" E	1174.38	1368.00	1174.38
8	S 89° 59' 59" W	1174.38	1368.00	1174.38
9	N 00° 00' 00" E	1174.38	1368.00	1174.38
10	S 89° 59' 59" W	1174.38	1368.00	1174.38
11	N 00° 00' 00" E	1174.38	1368.00	1174.38
12	S 89° 59' 59" W	1174.38	1368.00	1174.38
13	N 00° 00' 00" E	1174.38	1368.00	1174.38
14	S 89° 59' 59" W	1174.38	1368.00	1174.38
15	N 00° 00' 00" E	1174.38	1368.00	1174.38
16	S 89° 59' 59" W	1174.38	1368.00	1174.38
17	N 00° 00' 00" E	1174.38	1368.00	1174.38
18	S 89° 59' 59" W	1174.38	1368.00	1174.38
19	N 00° 00' 00" E	1174.38	1368.00	1174.38
20	S 89° 59' 59" W	1174.38	1368.00	1174.38
21	N 00° 00' 00" E	1174.38	1368.00	1174.38
22	S 89° 59' 59" W	1174.38	1368.00	1174.38
23	N 00° 00' 00" E	1174.38	1368.00	1174.38
24	S 89° 59' 59" W	1174.38	1368.00	1174.38
25	N 00° 00' 00" E	1174.38	1368.00	1174.38
26	S 89° 59' 59" W	1174.38	1368.00	1174.38
27	N 00° 00' 00" E	1174.38	1368.00	1174.38
28	S 89° 59' 59" W	1174.38	1368.00	1174.38
29	N 00° 00' 00" E	1174.38	1368.00	1174.38
30	S 89° 59' 59" W	1174.38	1368.00	1174.38
31	N 00° 00' 00" E	1174.38	1368.00	1174.38
32	S 89° 59' 59" W	1174.38	1368.00	1174.38
33	N 00° 00' 00" E	1174.38	1368.00	1174.38
34	S 89° 59' 59" W	1174.38	1368.00	1174.38
35	N 00° 00' 00" E	1174.38	1368.00	1174.38
36	S 89° 59' 59" W	1174.38	1368.00	1174.38
37	N 00° 00' 00" E	1174.38	1368.00	1174.38
38	S 89° 59' 59" W	1174.38	1368.00	1174.38
39	N 00° 00' 00" E	1174.38	1368.00	1174.38
40	S 89° 59' 59" W	1174.38	1368.00	1174.38
41	N 00° 00' 00" E	1174.38	1368.00	1174.38
42	S 89° 59' 59" W	1174.38	1368.00	1174.38
43	N 00° 00' 00" E	1174.38	1368.00	1174.38
44	S 89° 59' 59" W	1174.38	1368.00	1174.38
45	N 00° 00' 00" E	1174.38	1368.00	1174.38
46	S 89° 59' 59" W	1174.38	1368.00	1174.38
47	N 00° 00' 00" E	1174.38	1368.00	1174.38
48	S 89° 59' 59" W	1174.38	1368.00	1174.38
49	N 00° 00' 00" E	1174.38	1368.00	1174.38
50	S 89° 59' 59" W	1174.38	1368.00	1174.38
51	N 00° 00' 00" E	1174.38	1368.00	1174.38
52	S 89° 59' 59" W	1174.38	1368.00	1174.38
53	N 00° 00' 00" E	1174.38	1368.00	1174.38
54	S 89° 59' 59" W	1174.38	1368.00	1174.38
55	N 00° 00' 00" E	1174.38	1368.00	1174.38
56	S 89° 59' 59" W	1174.38	1368.00	1174.38
57	N 00° 00' 00" E	1174.38	1368.00	1174.38
58	S 89° 59' 59" W	1174.38	1368.00	1174.38
59	N 00° 00' 00" E	1174.38	1368.00	1174.38
60	S 89° 59' 59" W	1174.38	1368.00	1174.38
61	N 00° 00' 00" E	1174.38	1368.00	1174.38
62	S 89° 59' 59" W	1174.38	1368.00	1174.38
63	N 00° 00' 00" E	1174.38	1368.00	1174.38
64	S 89° 59' 59" W	1174.38	1368.00	1174.38
65	N 00° 00' 00" E	1174.38	1368.00	1174.38
66	S 89° 59' 59" W	1174.38	1368.00	1174.38
67	N 00° 00' 00" E	1174.38	1368.00	1174.38
68	S 89° 59' 59" W	1174.38	1368.00	1174.38
69	N 00° 00' 00" E	1174.38	1368.00	1174.38
70	S 89° 59' 59" W	1174.38	1368.00	1174.38
71	N 00° 00' 00" E	1174.38	1368.00	1174.38
72	S 89° 59' 59" W	1174.38	1368.00	1174.38
73	N 00° 00' 00" E	1174.38	1368.00	1174.38
74	S 89° 59' 59" W	1174.38	1368.00	1174.38
75	N 00° 00' 00" E	1174.38	1368.00	1174.38
76	S 89° 59' 59" W	1174.38	1368.00	1174.38
77	N 00° 00' 00" E	1174.38	1368.00	1174.38
78	S 89° 59' 59" W	1174.38	1368.00	1174.38
79	N 00° 00' 00" E	1174.38	1368.00	1174.38
80	S 89° 59' 59" W	1174.38	1368.00	1174.38
81	N 00° 00' 00" E	1174.38	1368.00	1174.38
82	S 89° 59' 59" W	1174.38	1368.00	1174.38
83	N 00° 00' 00" E	1174.38	1368.00	1174.38
84	S 89° 59' 59" W	1174.38	1368.00	1174.38
85	N 00° 00' 00" E	1174.38	1368.00	1174.38
86	S 89° 59' 59" W	1174.38	1368.00	1174.38
87	N 00° 00' 00" E	1174.38	1368.00	1174.38
88	S 89° 59' 59" W	1174.38	1368.00	1174.38
89	N 00° 00' 00" E	1174.38	1368.00	1174.38
90	S 89° 59' 59" W	1174.38	1368.00	1174.38
91	N 00° 00' 00" E	1174.38	1368.00	1174.38
92	S 89° 59' 59" W	1174.38	1368.00	1174.38
93	N 00° 00' 00" E	1174.38	1368.00	1174.38
94	S 89° 59' 59" W	1174.38	1368.00	1174.38
95	N 00° 00' 00" E	1174.38	1368.00	1174.38
96	S 89° 59' 59" W	1174.38	1368.00	1174.38
97	N 00° 00' 00" E	1174.38	1368.00	1174.38
98	S 89° 59' 59" W	1174.38	1368.00	1174.38
99	N 00° 00' 00" E	1174.38	1368.00	1174.38
100	S 89° 59' 59" W	1174.38	1368.00	1174.38

APPENDIX B

NORTHPOINTE COMMUNITY FACILITIES DISTRICT NO. 2002-1
OF THE CITY OF MODESTO

RATE AND METHOD OF APPORTIONMENT OF SPECIAL TAX

APPENDIX B

CITY OF MODESTO NORTHPOINTE COMMUNITY FACILITIES DISTRICT NO. 2002-1

RATE AND METHOD OF APPORTIONMENT OF SPECIAL TAX

A special tax applicable to each Assessor's Parcel in NorthPointe Community Facilities District No. 2002-1 (herein "CFD No. 2002-1") 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. 2002-1, 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. 2002-1 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 or other parcel map recorded at the Stanislaus County Recorder's Office.

"Annual Special Tax" means a special tax levied in any Fiscal Year to pay the Maintenance Special Tax Requirement.

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

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

"City" means the City of Modesto.

"City Council" means the City Council of the City of Modesto, acting as the legislative body of CFD No. 2002-1.

"Developed Property" means, in any Fiscal Year, that a building permit for new construction was issued on or prior to June 30 of the preceding Fiscal Year.

“**District Administrator**” means the individual(s) designated by the City Council to administer the CFD in accordance with the authority and powers granted by the City Council to said individual(s).

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

“**Maintenance Special Tax Requirement**” means the amount necessary in any Fiscal Year to (i) pay authorized maintenance expenses, (ii) create a sinking fund for replacement of facilities, (iii) pay administrative expenses of CFD No. 2002-1, (iv) cure any delinquencies in the payment of Annual Special Taxes levied in prior Fiscal Years or (based on delinquencies in the payment of Annual Special Taxes which have already taken place) are expected to occur in the Fiscal Year in which the tax will be collected, and (v) maintain a reasonable reserve, as determined by the District Administrator, for unforeseen expenses, cost overruns, etc.

“**Maximum Special Tax**” means the maximum Annual Special Tax and the maximum One-Time Special Tax, determined in accordance with Section C below that can be levied on Taxable Property in any Fiscal Year.

“**One-Time Special Tax**” means the special tax set forth in Section C below that will be levied once on all Parcels in the CFD, with the exception of Parcels within Zone 2.

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

“**Taxable Property**” means all of the Assessor’s Parcels within the boundaries of CFD No. 2002-1 which are not exempt from the One-Time Special Tax and Annual Special Tax pursuant to law or Section E below.

“**Zone 1**” means all Parcels within CFD No. 2002-1 that are not included within Zone 2, as defined below.

“**Zone 2**” means all property included within the geographic area identified by Assessor’s Parcel number 078-14-43 in Fiscal Year 2001-02.

B. STATUS OF DEVELOPMENT IN ZONE 2

On or about July 1 of each Fiscal Year, the District Administrator shall determine whether any property within Zone 2 has become Developed Property. To the extent the original Assessor’s Parcel included within Zone 2 has been subdivided, all of the subsequent Parcels shall be considered Developed Property if a building permit has been issued for any Parcel within Zone 2.

C. MAXIMUM SPECIAL TAX

1. *One-Time Special Tax*

The maximum One-Time Special Tax that can be levied on Parcels of Taxable Property within Zone 1 is \$3,859 per Acre. After the One-Time Special Tax has been levied on and collected from all Parcels within Zone 1, no additional One-Time Special Tax shall be levied within the CFD unless a separate One-Time Special Tax is approved for property that subsequently annexes into the CFD. No One-Time Special Tax shall be levied on property within Zone 2.

2. *Annual Special Tax*

Ultimately, all Taxable Property within the CFD shall be subject to an Annual Special Tax that will be levied each Fiscal Year to meet the Maintenance Special Tax Requirement. Until Zone 2 becomes Developed Property, no Annual Special Tax shall be levied on any property within Zone 2. Once Zone 2 becomes Developed Property, all Parcels of Taxable Property within Zone 2 shall be subject to the Annual Special Tax levy in the then current and all future Fiscal Years.

The following maximum rates apply to all Parcels of Taxable Property within CFD No. 2002-1 for each Fiscal Year in which the Annual Special Tax will be levied. The appropriate Maximum Special Tax will be applied depending on whether property within Zone 2 has become Developed Property:

TABLE 1 Maximum Annual Special Tax Fiscal Year 2001-02			
Status of Development in Zone 2	Maximum Maintenance Portion of Annual Special Tax (fy 2001-02)	Maximum Sinking Fund Portion of Annual Special Tax	Total Maximum Annual Special Tax (fy 2001-02)
Zone 2 is <u>not</u> Developed Property	\$1,879 per Acre	\$126 per Acre	\$2,005 per Acre
Zone 2 is Developed Property	\$1,193 per Acre	\$80 per Acre	\$1,273 per Acre

Beginning in January 2002, the maintenance portion of the maximum Annual Special Tax shall be adjusted annually by applying the greater of (i) the percentage increase, if any, in the construction cost index for the San Francisco region for the prior twelve (12) month period as

published in the Engineering News Record or other comparable source if the Engineering News Record is discontinued or otherwise not available, or (ii) four percent (4.0%). Each annual adjustment of the maintenance portion of the maximum Annual Special Tax shall become effective on the subsequent July 1. The sinking fund portion of the maximum Annual Special Tax shall not escalate.

D. METHOD OF LEVY AND COLLECTION OF THE SPECIAL TAX

1. *One-Time Special Tax*

The One-Time Special Tax shall be levied by the District Administrator through a direct billing or on the County tax roll. If levied through a direct billing, the District Administrator shall identify a date by which the One-Time Special Tax is due, and the One-Time Special Tax shall be immediately delinquent if not paid by such date.

2. *Annual Special Tax*

Each Fiscal Year, the District Administrator shall determine the Maintenance Special Tax Requirement for that Fiscal Year. The Annual Special Tax shall then be levied on all Parcels of Taxable Property as follows:

- Step 1:** Calculate the total Annual Special Tax revenues that could be collected from Taxable Property within the CFD based on application of the maximum Annual 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 Annual Special Tax determined pursuant to Section C on all Taxable Property in the CFD. If the ratio determined in Step 2 is less than 1, continue to Step 4.
- Step 4:** Levy the Annual Special Tax against all Parcels of Taxable Property in equal percentages up to 100% of the maximum Annual Special Tax determined pursuant to Section C above.

The Annual Special Tax for CFD No. 2002-1 shall be collected in the same manner and at the same time as ordinary ad valorem property taxes provided, however, that CFD No. 2002-1 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 Annual Special Tax will be equally subject to foreclosure if delinquent.

E. LIMITATIONS

Notwithstanding any other provision of this Rate and Method of Apportionment of Special Tax, no One-Time Special Tax or Annual Special Tax shall be levied on land that has been conveyed to a Public Agency, except as otherwise provided in Sections 53317.3 and 53317.5 of the Mello-Roos Community Facilities Act of 1982. In addition, no One-Time Special Tax shall be levied in any Fiscal Year on Parcels in Zone 2, and no Annual Special Tax shall be levied on Parcels in Zone 2 until at least one Parcel within Zone 2 becomes Developed Property.

F. ENFORCEMENT

All delinquent One-Time Special Taxes, or delinquent Annual Special Taxes billed off the County tax roll, shall be subject to an immediate 10% penalty plus interest charges of 1½% 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.

APPENDIX C

**NORTHPOINTE COMMUNITY FACILITIES DISTRICT No. 2001-1
OF THE CITY OF MODESTO**

DETAIL OF EXPENSES TO BE FUNDED BY CFD

NorthPointe CFD No. 2001-1
 Overview - Storm Drain Basin Expenses
 (Combination - Rebuild & Replace Pumps)

Description	One-Time Expense	Annual Expense
Weed Control & Litter Pick-Up (excludes repair for fence)		\$2,000.00
Landscape Perimeter - area between MID lateral and basin (7,380 sf x \$2.50)	\$18,450.00	
Landscape Perimeter - Remainder of Basin Area (appx 10000 sf x \$2.50)	\$25,000.00	
Maintain Median (includes maint, replacement, repair) 11,000 sq ft x \$.61		\$6,710.00
Maintain Perimeter - area between MID lateral and basin (7,380 sf x \$.61)		\$4,501.80
Maintain Perimeter - Remainder of Basin Area (appx 10000 sf x \$.61)		\$6,100.00
<i>Subtotal - Submitted by Recreation & Neighborhoods</i>	\$43,450.00	\$19,311.80
Maintenance Mechanic		\$3,867.18
Crew Leader		\$328.36
Supervisor		\$137.39
Electrician		\$273.24
Equipment		
GRW Service Vehicle		\$492.96
1/2 ton full size pick-up truck		\$28.44
1/2 4x4 full size pick-up truck		\$10.00
1 ton van w/ aerial lift		\$44.37
Materials - turbine oil		\$25.00
Erosion repair & silt excavation		\$2,400.00
Fence Repair		\$800.00
County Property Tax for 5.5 acres (Based on \$315,000 paid for 2.5 acres)		\$6,930.00
Annual lab tests		\$1,747.00
MID Power Costs		\$4,400.00
Removal of contaminated dirt		\$1,140.00
Repair Berm/Irrigation Line		\$1,500.00
Maintenance of Access Road		\$1,200.00
<i>Subtotal - Submitted by Operations & Maintenance</i>	\$0.00	\$25,323.94
Replacement - Storm Drain Pump Station (20 year life span) [includes pumps & controls]		\$4,125.00
Installation of water service and meter	\$4,000.00	
Maintenance of water service and meter		\$10.00
Annual cost for water		\$1,000.00
<i>Subtotal - Submitted by Engineering & Transportation</i>	\$4,000.00	\$5,135.00
Administration (7% of total cost)	\$3,321.50	\$3,483.95
Contingency (25%)	\$11,862.50	\$12,442.68

TOTAL	\$62,634.00	\$65,697.37
	One-Time Expense	Annual Expense

ORDINANCE NO. 3251-C.S.

AN ORDINANCE AMENDING ARTICLE 8 OF CHAPTER 3 OF TITLE 2 OF THE MODESTO MUNICIPAL CODE TO CHANGE THE TITLE OF THE COMMUNITY DEVELOPMENT DEPARTMENT TO COMMUNITY AND ECONOMIC DEVELOPMENT DEPARTMENT.

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

SECTION 1. AMENDMENT OF CODE. Article 8 of Chapter 3 of Title 2 of the

Modesto Municipal Code is hereby amended to read as follows:

ARTICLE 8. COMMUNITY AND ECONOMIC DEVELOPMENT DEPARTMENT

2-3.801. CREATION AND FUNCTION.

A Community and Economic Development Department is hereby established. The functions of the Community and Economic Development Department shall include:

- (a) **Long Range Planning:** Provide long range planning services, including advance planning, land use, transportation and utility planning services, and provide services associated with updates to and amendments of the City's General Plan.
- (b) **Development Services:** Provide development services, including the processing of land use entitlements, engineering review and improvement plans, and building and plan check inspection services.
- (c) **Business Development:** Provide business development services, including the solicitation of new investment and reinvestment opportunities, and providing related services such as redevelopment assistance and advice related to public financing.
- (d) **Housing and Neighborhoods:** Provide services related to community housing, including implementation of the Comprehensive Housing Affordability Strategy and other services designed to preserve and enhance existing neighborhoods.
- (e) **Related Services:** The Community and Economic Development Department will also be responsible for providing staff support to those

City Council appointed boards and commissions whose powers and duties relate to the above four (4) functional areas of responsibility. In addition, the Community and Economic Development Department shall perform such other duties as the City Manager may direct.

2-3.802. ORGANIZATION AND DIRECTION.

There shall be a Community and Economic Development Director who shall be appointed by the City Manager and be subject to the City Manager's general administrative direction. The Community and Economic Development Director, subject to the approval of the City Manager, shall organize and maintain such divisions in the department as in the Director's judgment the operations may require and shall be responsible for the direction and control of all functions assigned to the department.

2-3.803. ACTING COMMUNITY AND ECONOMIC DEVELOPMENT DIRECTOR.

In the absence or disability of the Community and Economic Development Director, the City Manager shall designate a person to perform the duties and exercise the powers of the Community and Economic Development Director.

2-3.804. REFERENCES.

- (a) Whenever this code or any ordinance, resolution or other official document or action of the City of Modesto refers to or uses the names Director of Planning, Planning Director, Economic Development Director, or Community Development Director, they shall be deemed to refer to the Community and Economic Development Director.
- (b) Whenever this code or any ordinance, resolution or other official document or action of the City of Modesto refers to or uses the names Planning Department, or Department of Planning, Department of Planning and Community Development, Economic Development Department, or Community Development Department, they shall be deemed to refer to the Community and Economic Development Department.

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 12th day of March, 2002, by Councilmember Frohman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Conrad, Fisher, Friedman, Frohman, Serpa, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: Smith

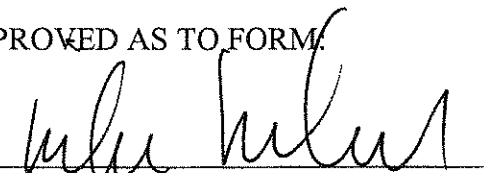
APPROVED: 
CARMEN SABATINO, Mayor

ATTEST:

By 
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By 
MICHAEL D. MILICH, City Attorney

Ord. No. 3251-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 March, 2002, Councilmember Fisher moved its final adoption, which motion being duly seconded by Councilmember Frohman, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Conrad, Fisher, Friedman, Frohman, Serpa, Smith, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: Smith

APPROVED: *Carmen Sabatino*
MAYOR CARMEN SABATINO

ATTEST: *Jean Zahr*
JEAN ZAHR, City Clerk

Effective Date: April 18, 2002

ORDINANCE NO. 3251A-C.S.

AN ORDINANCE ADDING SECTIONS 11-4.38 AND 11-4.39 TO CHAPTER 4 OF TITLE 11 OF THE MODESTO MUNICIPAL CODE RELATING TO THE VIDEO SERVICE CUSTOMER ACT.

WHEREAS, the California Legislature has enacted the Video Customer Service Act, Government Code Section 53088 et seq. which provides for standards for cable television and video provider customer service within the State of California, and

WHEREAS, Section 53088.2(q) requires cities and counties to establish penalties for violation of the Act by ordinance.

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

SECTION 1. AMENDMENT OF CODE. Sections 11-4.38 and 11-4.39 are hereby added to Chapter 4 of Title 11 of the Modesto Municipal Code to read as follows:

11-4.38. VIDEO CUSTOMER SERVICE ACT.

The Video Customer Service Act, Government Code Section 53088 et seq. is hereby adopted and is applicable within the City.

11-4.39. PENALTIES.

As required by the Video Customer Service Act, the following maximum penalties for violation or breach of the requirements of the Act are hereby established:

- (a) First Material Breach: For each day of each material breach of any of the subdivisions (a) to (n) of Government Code Section 53088.2 or any other provision of the Video Customer Service Act, a video provider shall be subject to a penalty not to exceed two hundred dollars (\$200.00) for each day of each material breach not to exceed six hundred dollars (\$600.00) for each occurrence of material breach. The amount of the penalty shall be established by the City Council after notice to the video provider and hearing on the alleged material breach.

- (b) Second Material Breach(es) within one year: Where a material breach of any of subdivisions (a) to (n) of Government Code Section 53088.2, inclusive, has occurred and the City has provided notice and a fine or penalty has been assessed against a video provider, in a subsequent material breach of the same nature occurring within twelve (12) months, the penalties may be increased to a maximum of four hundred dollars (\$400.00) for each day of each material breach, not to exceed twelve hundred dollars (\$1,200.00) for each occurrence of the material breach. The amount of the penalty shall be established by the City Council after notice to the video provider and hearing on the alleged material breach.
- (c) Third and Further Material Breach(es). Where a third or further material breach of the same nature as the second material breach occurs within those same twelve (12) months, and the City has provided notice and a fine or penalty has been assessed against a video provider, the penalties may be increased to a maximum of one thousand dollars (\$1,000.00) for each day of each material breach, not to exceed three thousand dollars (\$3,000.00) for each occurrence of the material breach. The amount of the penalty shall be established by the City Council after notice to the video provider and hearing on the alleged material breach.
- (d) No monetary penalties shall be assessed for a material breach where the breach is out of the reasonable control of the video provider.
- (e) Franchisees. With respect to video providers who hold or are subject to a franchise or license issued by the City for cable or video services, any monetary penalties assessed under this section shall be reduced dollar for dollar to the extent any liquidated damage or penalty provision of the City's then current cable television ordinance, franchise contract, or license agreement imposes a monetary obligation upon a video provider for the same customer service failures.
- (f) This section is intended to provide for the imposition of the maximum penalties authorized under the Video Customer Service Act and shall be read in conjunction with that Act and in a manner to be consistent with the requirements of that Act.
- (g) This section is intended to provide additional remedies for violation of the applicable laws and regulations by video providers.
- (h) The City shall give the video provider written notice of any alleged material breach as set forth in the Video Customer Service Act. Upon receipt of written notice of breach, the video provider will have thirty (30) days to remedy the specified breach.

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 March, 2002, by Councilmember Frohman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Conrad, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Conrad, Fisher, Friedman, Frohman, Serpa, Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: Smith

APPROVED: *Carmen Sabatino*
CARMEN SABATINO, Mayor

ATTEST:

By *Jean Zahr*
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

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

Ord. No. 3251A-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 28th day of May, 2002, Councilmember Frohman moved its final adoption, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and the ordinance adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: *Carmen Sabatino*
MAYOR CARMEN SABATINO

ATTEST: *Jean Zahr*
JEAN ZAHR, City Clerk

Effective Date: June 27, 2002

ORDINANCE NO. 3252-C.S.

AN ORDINANCE AMENDING SECTION 20-3-9 OF THE ZONING MAP TO REZONE FROM LOW DENSITY RESIDENTIAL ZONE, R-1, AND MEDIUM-HIGH DENSITY RESIDENTIAL ZONE, R-3, TO PLANNED DEVELOPMENT ZONE, P-D(553), PROPERTY LOCATED BETWEEN ROSEBURG AND MENSINGER AVENUES WEST OF MCHENRY AVENUE. (MID-VALLEY ENGINEERING)

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

SECTION 1. ZONING CHANGE. Section 20-3-9 of the Zoning Map is hereby amended to reclassify the following described property from Low Density Residential Zone, R-1, and Medium-High Density Residential Zone, R-3, to Planned Development Zone, P-D(553):

R-1 & R-3 to P-D(553)

ALL that certain real property situate in and being a portion of the Northeast Quarter of the Southeast Quarter of Section 20, Township 3 South, Range 9 East, Mount Diablo Base and Meridian, City of Modesto, County of Stanislaus, State of California, being more particularly described as follows:

BEGINNING at the Northeast corner of PARCEL B as shown on the map filed for record on July 29, 1997 in Book 48 of Parcel Maps at Page 36, Stanislaus County Records, with said point lying on the South right-of-way line of Roseburg Avenue; thence South $00^{\circ} 16' 50''$ East along the East line of said PARCEL B and the Southerly extension thereof, a distance of 372.34 feet to a point on the North right-of way line of Mensinger Avenue; thence North $88^{\circ} 14' 41''$ West along last said right-of-way line, a distance of 216.03 feet; thence leaving last said right-of-way line and proceeding North $00^{\circ} 17' 27''$ West, a distance of 219.58 feet; thence South $88^{\circ} 13' 38''$ East, a distance of 16.63 feet; thence North $00^{\circ} 17' 23''$ West, a distance of 152.92 feet to a point on the above mentioned South right-of-way line of Roseburg Avenue; thence South $88^{\circ} 12' 04''$ East along last said right-of-way line, a distance of 199.47 feet to the POINT OF BEGINNING;

also including the north one-half of Mensinger Avenue and the south one-half of West Roseburg Avenue, all being immediately adjacent to the above described property.

SECTION 2. USES. The following uses shall be permitted in said P-D(553) Zone if the plan for construction conforms in principle to the approved plan, or if changes are approved by the Secretary of the Planning Commission as required by Section 10-2.1709(c) of the Modesto Municipal Code, or by the Planning Commission if any changes not conforming in principle to the approved plan are proposed, as required by Section 10-2.1709(a) or (b) of the Modesto Municipal Code:

1. Professional office development and associated off-street parking as allowed in the P-O Zone.

SECTION 3. ZONING MAP. Section Map 20-3-9 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 2nd day of April, 2002, by Councilmember Jackman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Keating, was upon roll call carried and ordered printed and published by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: Conrad, Mayor Sabatino

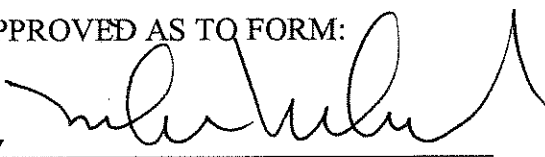
APPROVED: 
CARMEN SABATINO, Mayor

ATTEST:

By 
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By 
MICHAEL D. MILICH, City Attorney

APPROVED AS TO DESCRIPTION:

By 
Community Development Department
Planning Division

Ord. No. 3252-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, 2002, Councilmember Fisher moved its final adoption, which motion being duly seconded by Councilmember Jackman, was upon roll call carried and the ordinance adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: Conrad

APPROVED: *Carmen Sabatino*
MAYOR CARMEN SABATINO

ATTEST: *Jean Zahr*
JEAN ZAHR, City Clerk

Effective Date: May 16, 2002

ORDINANCE NO. 3253-C.S.

AN ORDINANCE AMENDING CHAPTER 3 OF TITLE 8 OF
THE MODESTO MUNICIPAL CODE RELATING TO CITY
CONTRACTS.

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

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

CHAPTER 3 - CITY CONTRACTS

ARTICLE 1. AUTHORITY

8-3.101. AUTHORITY.

- (a) In conformance with the provisions of Sections 801(k) and 1313 of the City Charter, the following policies and procedures governing contracting for goods and services by the City are established.
- (b) The City Council, being advised that the City is empowered to exercise full control over its municipal affairs, unaffected by general laws on the same subject matter, and subject only to limitations found in the Constitution and the City Charter, intends to abrogate in the maximum legal extent Public Contract Code Section 1100.7.
- (c) Exception is provided from Public Contract Code Section 1100.7 for each administrative act or decision, contract specification, term or provision of any type, resolution, ordinance or other legislative quasi-legislative or quasi-judicial act of the City constituting a matter of municipal concern.
- (d) Each act or writing specified in subsection (c) above is deemed to, and does conflict with any statute or statutory interpretation asserted in opposition to that act or writing.

8-3.102. CONTRACTING AUTHORITY.

The City Manager may approve and authorize all contracts and purchase orders involving an expenditure of City funds in the total amount of fifty thousand dollars (\$50,000.00) or less. Except as noted below, no contract involving an expenditure in excess of fifty thousand dollars (\$50,000.00) may be authorized, approved or executed without City Council approval. The fifty thousand dollars

(\$50,000.00) limit set forth in the preceding sentences does not apply to the following:

- (a) Contracts for public works projects consisting of the improvement or modification of traffic signals or signal systems including those street improvements which are incidental to or related to the improvement or modification of the traffic signal. The City Manager may approve and authorize all contracts for such projects involving an expenditure of City funds in the amount of two hundred fifty thousand dollars (\$250,000.00) or less.
- (b) Contracts for public works projects consisting of the construction, improvement, repair, expansion, renovation or modification of any facilities funded by a Mello-Roos Community Facilities District and involving an expenditure of District Facility Taxes in the amount of three million dollars (\$3,000,000.00) or less. The District Administrator may approve and authorize all contracts for such projects.
- (c) Contracts for public works projects consisting of the maintenance, repair, replacement, and improvement of existing water lines. The City Manager may approve and authorize all contracts for such projects involving an expenditure of City funds in the amount of three hundred thousand dollars (\$300,000.00) or less.
- (d) Contracts for public works projects consisting of the installation and establishment of water service connections associated with new development. The City Manager may approve and authorize all contracts for such projects involving an expenditure of City funds in the amount of seventy-five thousand dollars (\$75,000.00) or less.
- (e) Contracts for public works projects consisting of repairs determined by the City Manager to be of urgent necessity for the preservation of life, health, or property. The City Manager may approve and authorize all contracts for such projects in the amount of two hundred thousand dollars (\$200,000.00) or less. Within ten (10) days of the authorization for any such work, the City Manager shall report to the City Council the circumstances of the emergency.
- (f) Contracts for public works projects consisting of the construction, improvement, repair, expansion, renovation, or modification of any facilities associated with development and installed by the developer provided:

- (1) That an agreement is approved by the City Council prior to commencement of construction of the works.
 - (2) The agreement clearly defines the work to be done and the basis for reimbursement.
 - (3) That total reimbursement required by the agreement is less than three hundred thousand dollars (\$300, 000.00) in City funds.
- (g) Contracts for public works projects consisting of the installation, construction, and improvement, of the Coffee-Claratina Dual Use Neighborhood Park/Storm Basin in the City of Modesto. The City Manager may approve and authorize all contracts for such projects involving an expenditure of City funds in the amount of one million five hundred thousand dollars (\$1,500,000.00) or less.

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

8-3.103. DEFINITIONS.

The definitions below are applicable throughout this code:

- (a) Professional services shall mean accounting, appraisal, architectural, auditing, engineering, environmental, information system services, land surveying, construction management, legal services, financial planning, medical or planning services or any service which is similarly professional, scientific, expert, or technical in nature.
- (b) Public Works. Except as set forth in Section 8-3.102, every project exceeding fifty thousand dollars (\$50,000.00) for the construction or improvement of public buildings, works, drains, sewers, utilities, parks, playgrounds and streets (exclusive of projects for resurfacing, maintenance and repair of streets, or any park or parks playground project otherwise subject to the public bidding requirements of this chapter that involve any

donated labor and/or material) shall be deemed a public works project and be subject to the provisions set forth in Article 3 of this chapter commencing with Section 8-3.301.

- (c) Purchases. Means a contract to obtain supplies, nonprofessional services, materials and/or equipment in furtherance of City needs and purposes.

ARTICLE 2. CENTRAL PURCHASING

8-3.200. ADOPTION OF CENTRAL PURCHASING SYSTEM.

A central purchasing system is hereby established in order:

- (a) To establish efficient procedures for the purchase of the City's supplies, materials, nonprofessional services and equipment at the lowest possible cost commensurate with quality needed.
- (b) To exercise positive financial control over purchases.
- (c) To clearly define authority for the purchasing function.
- (d) To establish procedures for contracting for services needed by City from the most qualified persons at the most reasonable cost.
- (e) To assure the quality of the purchases.

SEC. 8-3.201. ORGANIZATION.

The central purchasing system shall be a division of the Finance Department of the City under the supervision of the Finance Director.

SEC. 8-3.202. GENERAL RESPONSIBILITIES AND DUTIES OF THE PURCHASING SUPERVISOR.

The position of Purchasing Supervisor is established by the Personnel Rules. The Purchasing Supervisor shall be appointed in accordance with the Personnel Rules and shall have the following responsibilities and duties:

- (a) Subject to the provisions of this article, shall be responsible to the Finance Director for contracting for and purchasing supplies, equipment, materials and contractual services, except professional services, required by all City departments and for the administration of the rules established by this chapter or by the City Charter not applicable to public work projects.

- (b) Encourage bulk and seasonal buying and prevent to the extent possible the subdivision of contracts and purchases to avoid the requirements of this chapter.
- (c) Be responsible for assuring written specifications for supplies, materials, equipment and contractual services as may be needed to conform to good and accepted purchasing practices and to the provisions of this article.
- (d) Prepare and maintain vendors' and contractors' files of persons, firms and corporations dealing in supplies, materials, equipment or services used by the City.
- (e) Strive to obtain all Federal and other tax exemptions to which the City is entitled.
- (f) Require that all supplies, materials, equipment or services purchased by the City be inspected by the respective receiving departments and that the procurement complies with the specifications.
- (g) Make such recommendations as may be necessary to implement the rules and regulations of the central purchasing system.
- (h) With the approval of the Council, join with the State of California and other units of government in cooperative purchasing plans when the best interest of the City would be served thereby.
- (i) Adhere to formal bidding requirements in accordance with this article.
- (j) Ensure that purchases which can or should, in the best interest of the City, be made by a single contract shall not be divided or segmented into more than one (1) contract in order to defeat the dollar limit authority provided in this chapter.

8-3.203. FORMAL BID PROCEDURES.

This formal bid procedure shall apply to all purchases whose total maximum cost to City exceeds fifty thousand dollars (\$50,000.00), and shall include at least the following:

- (a) Preliminary approval by the City Council of a staff proposed bid package, including all project, material, supply and/or equipment specifications, requirements and all other matters reasonably required of bidders, including, but not limited to, all contractual terms proposed. The total maximum cost to the City if a bid is accepted by the Purchasing

Supervisor, and a contract is executed by the City Manager or designee, shall be set forth.

- (b) Notice Inviting Bids. Notice inviting bids shall be published in the official newspaper by one (1) or more insertions, the first of which shall be at least seven (7) days before the time of bid opening, in accordance with the provisions of Section 1307 of the City Charter. The required newspaper notice shall include a general description of the supplies, materials, equipment, and contractual services to be purchased, state where bid blanks and specifications may be secured and the time and place for opening bids.

Wherever feasible, the Purchasing Supervisor shall send notices inviting bids to prospective vendors and contractors. It shall be the responsibility of the Purchasing Supervisor to encourage as wide a response as possible from prospective vendors or contractors.

- (c) Bid Deposits. Where required by the City Charter and when not so required but deemed necessary or desirable by the Purchasing Supervisor, all bids shall be accompanied by either a certified or cashier's check, or a bidder's bond executed by a corporate surety authorized to engage in such business in California, made payable to the City. Such security shall be in an amount not less than the amount specified in the notice inviting bids or in the specifications referred to therein, or if no amount is specified by the notice inviting bids, then in an amount not less than ten (10) percent of the aggregate amount of the bid. If the successful bidder neglects or refuses to enter into the contract, provide supplies, materials, equipment, or contractual services according to specifications within the time specified in the notice inviting bids or specifications referred to therein, the amount of the bidder's security shall be declared forfeited to the City, and shall be collected and paid into its General Fund, and all bonds forfeited shall be prosecuted and the amount thereof collected and paid into such fund.

All bids not submitted with the required deposit shall be rejected. Unsuccessful bidders shall be entitled to the return of deposits when such have been required after acceptance of the contract by the selected bidder.

- (d) Sealed Bids. Bids shall be sealed, shall be identified as bids on the envelope, shall be submitted at the place and no later than the time stated in the public notice inviting bids, and shall be opened at a public meeting at the time and place stated in the public notice. Bids received after the stated time shall not be accepted, whether or not a bid is late through any fault of the late bidder, and shall be returned to the bidder unopened.

- (e) Council May Reject Bids. The Council shall have the authority to accept or reject any or all bids, or to waive any informalities or minor irregularities in a bid. The Council, after rejecting bids, or if no bids are received, may declare and determine that, in its opinion, based on estimates approved by the City Manager, the purchase in question may be made without a formal bid procedure and, after the adoption of a resolution to this effect by at least five (5) affirmative votes of the Council, may proceed to have said purchase made in the manner stated without further observation of the provisions of this section.

- (f) Lowest Responsive and Responsible Bidder. In addition to price in determining the "lowest responsive and responsible bidder", consideration will be given to quality and performance of the commodity to be purchased, or service provided by the seller. Criteria for determining low bid shall include, but not be limited to, the following:
 - (1) The ability, capacity and skill of the bidder to provide the supplies, materials, equipment or contractual services as required.
 - (2) The ability of the bidder to provide the supplies, materials, equipment or contractual services within the time specified.
 - (3) The character, integrity, reputation, judgment, experience and efficiency of the bidder.
 - (4) The quality or performance of previous purchases from said bidder.
 - (5) The ability of the bidder to provide future maintenance, repair parts and services for the use of the commodity purchased.

- (g) Faithful Performance Bond. When the specifications so provide, the successful bidder shall furnish surety in the form of certified or cashier's check, corporate surety bond or savings and loan certificate for faithful performance of the contract.

8-3.204. EXCEPTIONS TO FORMAL BIDDING REQUIREMENTS.

Except as otherwise provided by this chapter or when directed by the City Manager, all purchases involving an expenditure of City funds in the amount of fifty thousand dollars (\$50,000.00) or less, shall be purchased, when feasible and when in the best interest of the City, in the open market by letter inquiry, informal solicitation, or telephone or facsimile solicitations, with or without newspaper advertisement, and without observation of prescribed formal bid procedures.

Open market purchases, whenever possible and practicable, shall be based on at least three (3) competitive quotations (letter inquiries and/or telephone solicitations), and shall be awarded to the person, firm or corporation submitting the lowest responsible quotation. In determining the lowest quotation, the City shall do so on the basis defined in Section 8-3.203 for establishing the lowest responsible bid used in formal bid purchases.

The Purchasing Supervisor shall keep a record of all open market orders and the quotations submitted in competition thereof. Such records shall be open to public inspection during business hours. Records of said open market orders or purchases may be disposed of by the Purchasing Supervisor following two (2) years from the date of the purchase.

All purchases in excess of fifty thousand dollars (\$50,000), or when directed by the City Manager for any purchase of fifty thousand dollars (\$50,000.00) or less, shall follow formal bid procedures, except for the following, which shall be exempt from the bid requirement:

- (a) Contracts for professional services as defined in Section 8-3.103.
- (b) Where the Purchasing Agency's requirements can be met solely by a single article or process.
- (c) Where the Purchasing Supervisor, in his or her discretion, determines that calling for bids on a competitive basis as set forth in Section 8-3.204 is undesirable due to exigent circumstances.
- (d) Where the Purchasing Supervisor, in his or her discretion, determines that a process other than the formal bid procedure set forth in Section 8-3.204 will result in a procurement for the City at the lowest possible cost commensurate with the desired quality. Such alternatives may include, but are not limited to, a "two-step" procurement process or a procurement based solely on a technical evaluation.

8-3.205. INSPECTION AND TESTING.

All supplies, materials, equipment or contractual services shall be adequately inspected or tested by the receiving department (assisted by the using department when necessary) upon delivery to the City. Approval of commodities purchased shall be indicated in writing by the receiving department to the Accounting Division on forms provided by the Central Purchasing Division.

8-3.206. PREFERENCE TO LOCAL MERCHANTS.

Preference shall be given to the purchase of supplies, materials, equipment and contractual services from local merchants, quality and price being equal, if the local merchant meets the requirement of the lowest responsible bidder.

8-3.207. TRADE-IN ALLOWANCES.

When replacing personal property belonging to the City, the Purchasing Supervisor is authorized to request quotations for trade-in allowances. Where the trade-in allowance is determined to be adequate and advantageous, the City Manager is authorized to accept said quotation. In those instances the Purchasing Supervisor is authorized to make the purchase.

8-3.208. PURCHASING-REVOLVING FUND.

A Purchasing-Revolving Fund has been created and is authorized for the use of the Purchasing Supervisor for the purchase of office, janitorial and other supplies for the use of all departments of the City. Said funds shall be accounted for as recommended by GAAP standards. By resolution the Council may provide the amount needed for the Purchasing-Revolving Fund and may, by resolution, increase or decrease the amount as the needs of the City change.

ARTICLE 3. GENERAL PROVISIONS

8-3.301. EMERGENCY PURCHASES BY CITY DIRECTORS.

If an emergency occurs at times other than regular business hours, the City Manager may authorize City department directors to purchase directly any supplies, materials, equipment, or contractual services where immediate procurement is essential to prevent delays in the work of the using department which may vitally affect the life, health or convenience of citizens. Except in events of defense or disaster, the authorized expenditure for each such emergency purchase shall not exceed the amount of five thousand dollars (\$5,000.00).

The director of such using department shall submit, as soon as possible, to the Central Purchasing Division a record of the emergency purchase together with a report of the circumstances of the emergency.

8-3.302. COLLUSION WITH BIDDER.

Any officer of the City or any department thereof who shall aid or assist a bidder in securing a contract to furnish supplies, materials, equipment or contractual services at a higher price than that proposed by any other bidder, or who shall

favor one bidder over another by giving or withholding information, or who shall willfully mislead any bidder in regard to the character of the materials or supplies called for, or who shall knowingly accept commodities of a quality inferior to those called for by the contract, or who shall knowingly certify to a greater amount of labor performed than has actually been performed, or to the receipt of a greater amount or different kind of materials or supplies than have actually been received, shall be deemed guilty of malfeasance and shall be removed from office.

8-3.303. COLLUSION BY BIDDER.

If at any time it shall be found that the person to whom a contract has been awarded has in presenting any bid or bids, colluded with any other party or parties for the purpose of preventing any other bid being made, then the contract so awarded shall be null and void.

ARTICLE 4. PROVISIONS APPLICABLE ONLY TO PUBLIC WORKS PROJECTS

8-3.401. GENERAL REQUIREMENTS.

The general requirements relating to the award of contracts for public works is contained in Section 1307 of the City Charter. The purpose of this article is to implement the provisions of that section. Other than the provisions of this article and Sections 8-3.102 and 8-3.104, none of the provisions of this chapter shall apply to public works projects.

8-3.402. FILING OF BIDS.

All bids for public works projects shall be sealed and filed with the City Clerk no later than the opening time specified in the Notice of Bids. The City Clerk shall be custodian of such bids and shall keep all things pertaining thereto confidential until they are opened and declared.

8-3.403. OPENING OF BIDS.

All bids shall be publicly opened and declared at the time and place fixed in the Notice Inviting Bids. Thereafter, the bids shall be tabulated and analyzed by the head of the department supervising the proposed work, who shall submit them, together with his or her recommendations thereon, to the City Manager. The City Manager shall review the bids and submit them to the Council, along with his or her recommendations at the next regular meeting of the Council.

8-3.404. BONDS.

At the time of the execution of the contract, the contractor shall execute and file with the City Clerk a payment bond executed by a corporate surety in the sum of not less than fifty (50) percent of the total amount payable by the terms of the contract. The provisions of such bond shall be in accordance with the provisions of California Civil Code Section 3248 as it now exists or is hereafter amended.

In addition to the foregoing bond, the contractor shall execute and file with the City Clerk, at the time of execution of the contract, a performance bond executed by a corporate surety, in the sum of not less than fifty (50) percent of the total amount payable by the terms of the contract. The provisions of such bond shall guarantee performance of the contract.

SECTION 2. EFFECTIVE DATE. This ordinance shall go into effect and be in full force and operation from and after thirty (30) days after its final passage and adoption.

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

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 9th day of April, 2002, by Councilmember Frohman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Jackman, was upon roll call carried and ordered printed and published by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: Mayor Sabatino

APPROVED: *Carmen Sabatino*
CARMEN SABATINO, Mayor

ATTEST:

By *Jean Zahr*
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

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

Ord. No. 3253-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, 2002, Councilmember Fisher moved its final adoption, which motion being duly seconded by Councilmember Frohman, was upon roll call carried and the ordinance adopted by the following vote:

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

NOES: Councilmembers: Conrad

ABSENT: Councilmembers: None

APPROVED: 
MAYOR CARMEN SABATINO

ATTEST: 
JEAN ZAHR, City Clerk

Effective Date: May 16, 2002

ORDINANCE NO. 3254-C.S.

AN ORDINANCE AMENDING SECTION 2-1.08 OF CHAPTER
1 OF TITLE 2 OF THE MODESTO MUNICIPAL CODE
RELATING TO CITY COUNCIL ORGANIZATION AND
PROCEDURE - ORDER OF BUSINESS.

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

SECTION 1. AMENDMENT OF CODE. Section 2-1.08 of Chapter 1 of Title 2
of the Modesto Municipal Code is hereby amended to read as follows:

2-1.08. ORDER OF BUSINESS.

Promptly at the hour set by law on the date of each regular meeting, the members of the Council, the City Clerk, City Attorney and City Manager shall take their regular stations in the Council Chambers, and the business of the Council shall be taken up for consideration and disposition in the following order, with the exception that the Mayor or other presiding officer may take any item out of order as the public necessity and convenience may require:

1. Roll call.
2. Pledge of allegiance to the flag.
3. Invocation.
4. City Clerk's announcements.
5. Declaration of conflicts of interest.
6. Acknowledgments and presentations.
7. Oral communications.
8. Council comments and reports.
9. Consent items.
10. Written communications.
11. Unfinished business.
12. Hearings.
13. New business.
14. Miscellaneous:
 - a. Legislation.
 - b. Appointments.
 - c. Other.
15. Matters too late for the agenda.
16. Adjournment.
17. Closed session items.

SECTION 2. EFFECTIVE DATE. This ordinance shall go into effect and be in full force and operation from and after thirty (30) days after its final passage and adoption.

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

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 9th day of April, 2002, by Councilmember Frohman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Jackman, was upon roll call carried and ordered printed and published by the following vote:

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

NOES: Councilmembers: Fisher

ABSENT: Councilmembers: Mayor Sabatino


APPROVED: 
CARMEN SABATINO, Mayor

ATTEST:

By 
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By 
MICHAEL D. MILICH, City Attorney

Ord. No. 3254-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, 2002, Councilmember Frohman moved its final adoption, which motion being duly seconded by Councilmember Conrad, was upon roll call carried and the ordinance adopted by the following vote:

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

NOES: Councilmembers: Fisher

ABSENT: Councilmembers: None

APPROVED: 
MAYOR CARMEN SABATINO

ATTEST: 
JEAN ZAHR, City Clerk

Effective Date: May 16, 2002

ORDINANCE NO. 3255-C.S.

AN ORDINANCE AUTHORIZING AN AMENDMENT TO THE
CONTRACT BETWEEN THE CITY OF MODESTO AND THE
BOARD OF ADMINISTRATION OF THE CALIFORNIA
PUBLIC EMPLOYEES' RETIREMENT SYSTEM.

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

SECTION 1. That an amendment to the contract between the City of Modesto and the Board of Administration, California Public Employees' Retirement System effective July 2, 2002, is hereby authorized, a copy of said amendment being attached hereto, marked Exhibit, and by such reference made a part hereof as though herein set out in full.

SECTION 2. The City Manager of the City of Modesto is hereby authorized, empowered, and directed to execute said amendment for and on behalf of the City of Modesto.

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 7th day of May, 2002, by Councilmember Frohman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and ordered printed and published by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: *Carmen Sabatino*
CARMEN SABATINO, Mayor

ATTEST:

By *Jean Zahr*
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

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

Ord. No. 3255-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 28th day of May, 2002, Councilmember Fisher moved its final adoption, which motion being duly seconded by Councilmember Frohman, was upon roll call carried and the ordinance adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: *Carmen Sabatino*
MAYOR CARMEN SABATINO

ATTEST: *Jean Zahr*
JEAN ZAHR, City Clerk

Effective Date: June 27, 2002

ORDINANCE NO. 3256 C.S.

AN ORDINANCE AMENDING THE PRECISE PLAN FOR AREA NO. 7 OF THE VILLAGE ONE SPECIFIC PLAN, TO MOVE 4.1 ACRES FROM PRECISE PLAN AREA NO. 6 TO PRECISE PLAN AREA NO. 7, PROPERTY LOCATED AT THE NORTHEAST CORNER OF HILLGLEN AND ESTA AVENUES. (K-D LAND & CATTLE INVESTMENTS, INC.)

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

WHEREAS, the Village One Specific Plan requires that precise plans be adopted prior to any development in the Village One area, and

WHEREAS, the Village One Specific Plan is divided into 35 precise plan areas, and a precise plan is required prior to development in each area, and

WHEREAS, Ordinance No. 3113-C.S., which became effective on January 7, 1999, adopted a Precise Plan for Area No. 7 of the Village One Specific Plan, and

WHEREAS, an application was filed by K-D Land & Cattle Investments, Inc. for an amendment to the Precise Plan for Area No. 7 to move 4.1 acres from Precise Plan Area No. 6 to Precise Plan Area No. 7, property located at the northeast corner of Hilglen and Esta Avenues, and

WHEREAS, a public hearing was held by the Planning Commission of the City of Modesto on February 25, 2002, in the Tenth Street Place Chambers located at 1010 10th Street, Modesto, California, and

WHEREAS, after considering public comments, the Planning Commission, by Resolution 2002-13, recommended to the City Council approval of an amendment to the Precise Plan for Area No. 7, and

WHEREAS, said matter was set for a public hearing of the Council of the City of Modesto to be held on May 7, 2002, at 5:15 p.m., in the Tenth Street Place Chambers located at 1010 10th Street, Modesto, California, 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. 7 is required by public necessity, convenience, and general welfare for the following reason:

That the proposed amendment to Precise Plan No. 7 is consistent with the General Plan and Village One Specific Plan.

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

SECTION 1. APPROVAL OF AMENDMENT TO THE PRECISE PLAN. The City Council has reviewed and considered the amendment to the Precise Plan for Area No. 7 of the Village One Specific Plan to move 4.1 acres from Precise Plan Area No. 6 to Precise Plan Area No. 7, property located at the northeast corner of Hillglen and Esta Avenues as recommended by the Planning Commission, and the Council does hereby approve said amendment to the Precise Plan for Area No. 7. A copy of said amendment is attached hereto as Exhibit "A", and incorporated herein by reference.

SECTION 2. EFFECTIVE DATE. This ordinance shall go into effect and be in full force and operation from and after thirty (30) days after its final passage and adoption.

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

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 7th day of May, 2002, by Councilmember Frohman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Conrad, Fisher, Frohman, Jackman, Keating, O'Bryant, Mayor Sabatino
NOES: Councilmembers: None
ABSENT: Councilmembers: None


APPROVED: 
CARMEN SABATINO, Mayor

ATTEST:

By 
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By 
MICHAEL D. MILICH, City Attorney

Ord. No. 3256-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 May, 2002, Councilmember Fisher moved its final adoption, which motion being duly seconded by Councilmember Jackman, was upon roll call carried and the ordinance adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: 
MAYOR CARMEN SABATINO

ATTEST: 
JEAN ZAHR, City Clerk

Effective Date: June 13, 2002

EXHIBIT "A"

AMENDMENT NO. 1
TO THE
DEVELOPMENT PLAN

For

City of Modesto
Village One

PRECISE PLAN
AREA NO. 7

January 31, 2002



Prepared by:
O'Dell Engineering
1101 M Street
Modesto, CA 95354

**AMENDMENT NO. 1
TO THE
DEVELOPMENT PLAN
FOR
PRECISE PLAN AREA NO. 7**

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Water
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I. INTRODUCTION

Project Description

This amendment is prepared for the purpose of including a 4.1 acre parcel, located at the northwest corner of Millbrook/Hillglen in this development plan. Refer to Exhibit 1 for proposed Site Plan.

Project Applicant

KD Land and Cattle Investments, Inc.
2725 Santiago Drive
Modesto, CA 95354

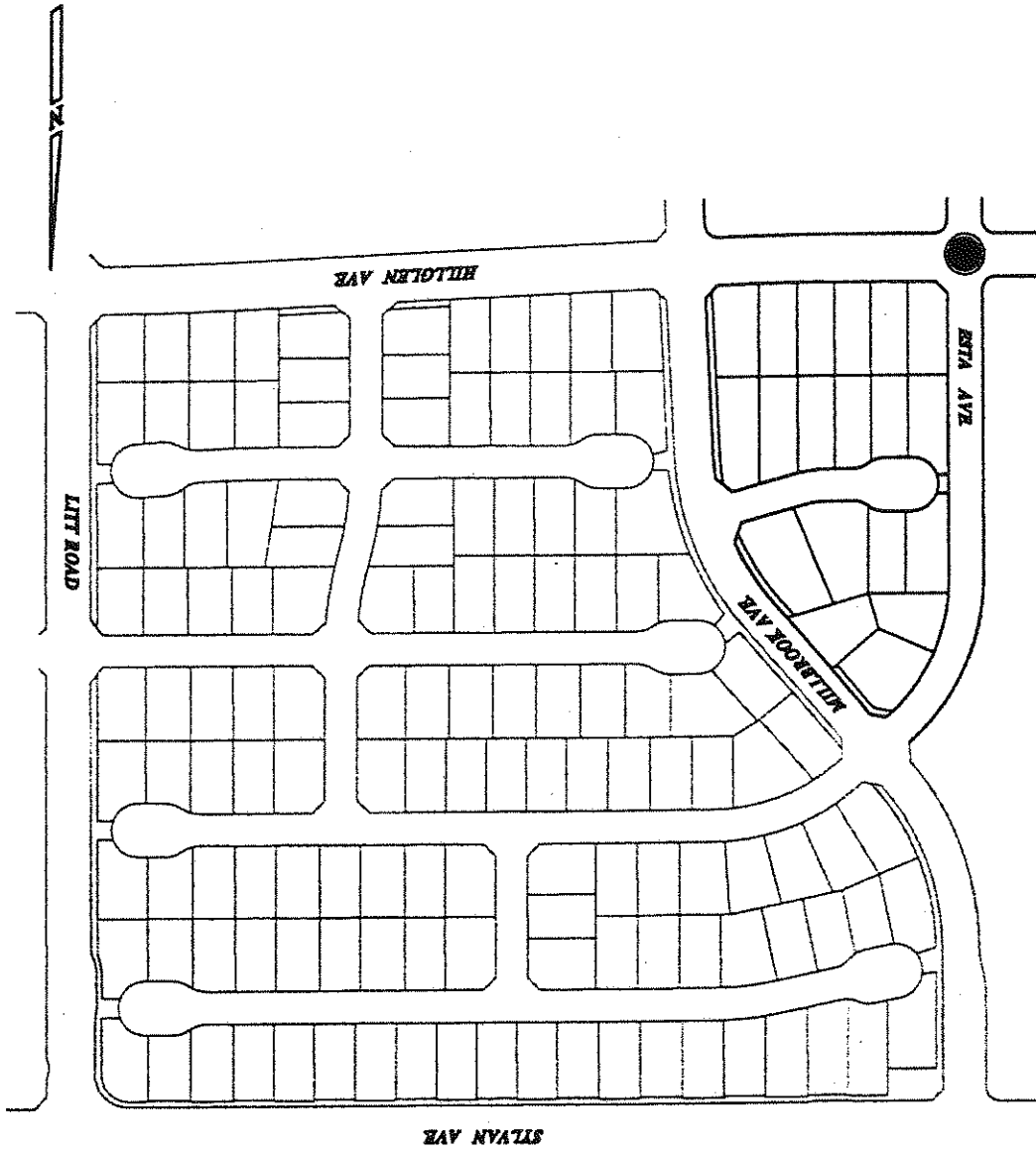
Project Planners, Engineers, and Surveyors

O'Dell Engineering
1101 M Street
Modesto, CA 95354
(209) 571-1765
(209) 571-2466 fax

Planning Area

Precise Planning Area No.7 has been increased by 4.1 acres by a Specific Plan Amendment. The newly adjusted planning area is 36.1 acres, 32 of which are already developed as single family lots.

SITE PLAN
Exhibit 1



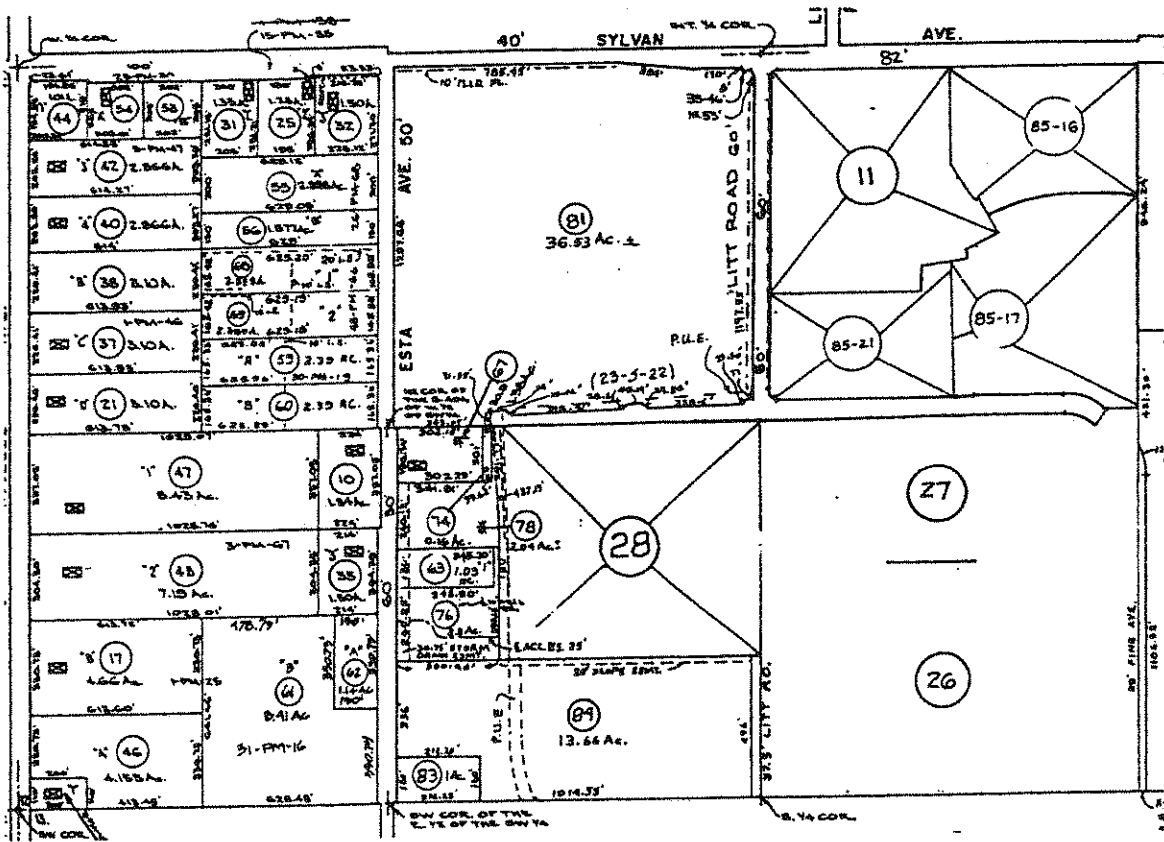
Property Owner List

Property owners within Precise Planning Area No.7:

KD Land and Cattle Investments, LLC
2725 Santiago Drive
Modesto, CA 95354

John Verner and Ed Machado
C/O Dan Thomson
1737 Columbard Court
Escalon, CA 95320

The project consists of APN 85-01-81 as shown on the following Assessors Parcel Map.



II. LAND USE

Acreage

Precise Plan Area No.7 will be 36.1 acres, all of which is zoned for Village Residential Use.

Existing Use

Currently, 4.1 acres are vacant (with an interim storm drainage basin). 32 acres have been developed into residential lots, by Atherton Place Final Subdivision Map.

Land Use Intensity

The average number of dwelling units allowed by the Village One Specific Plan is 160, which is a density factor of 5.0 units per acre. The proposed project on the remaining 4.1 acres has 19 dwelling units on 4.1 acres with a density factor of 4.63 units per acre.

Principal Underlying Zone

R-1 Single-Family Residential

Circulation

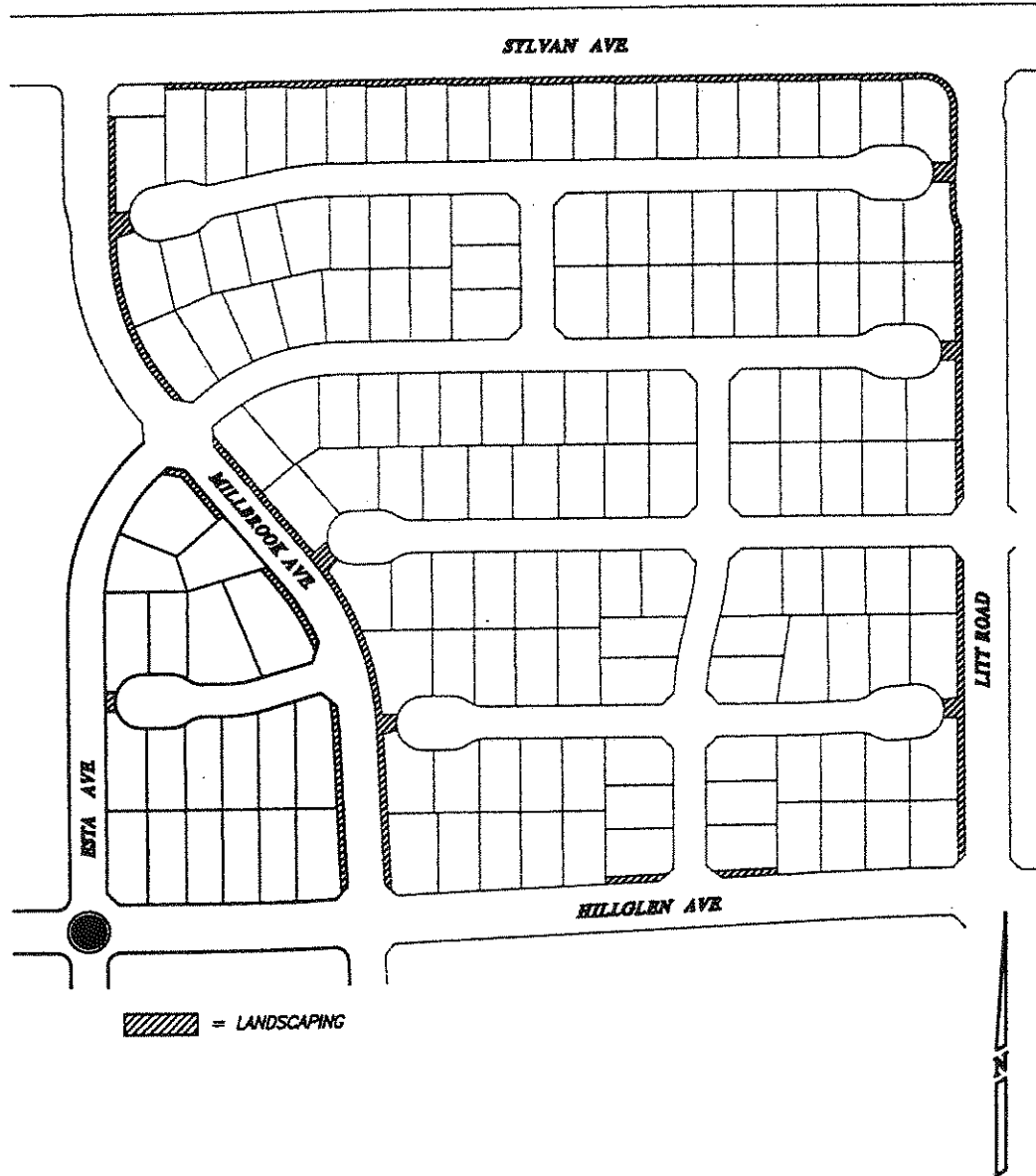
Circulation through Precise Plan Area No.7 will continue to be through a series of 48-foot wide minor residential streets which connect to Litt Road, Millbrook Avenue, Hillglen Avenue, and Esta Avenue.

A roundabout will eventually be constructed at the intersection of Esta Avenue and Hillglen Avenue. Individual projects will dedicate their proportionate rights of way, as the projects develop.

III. DESIGN

Landscape Areas

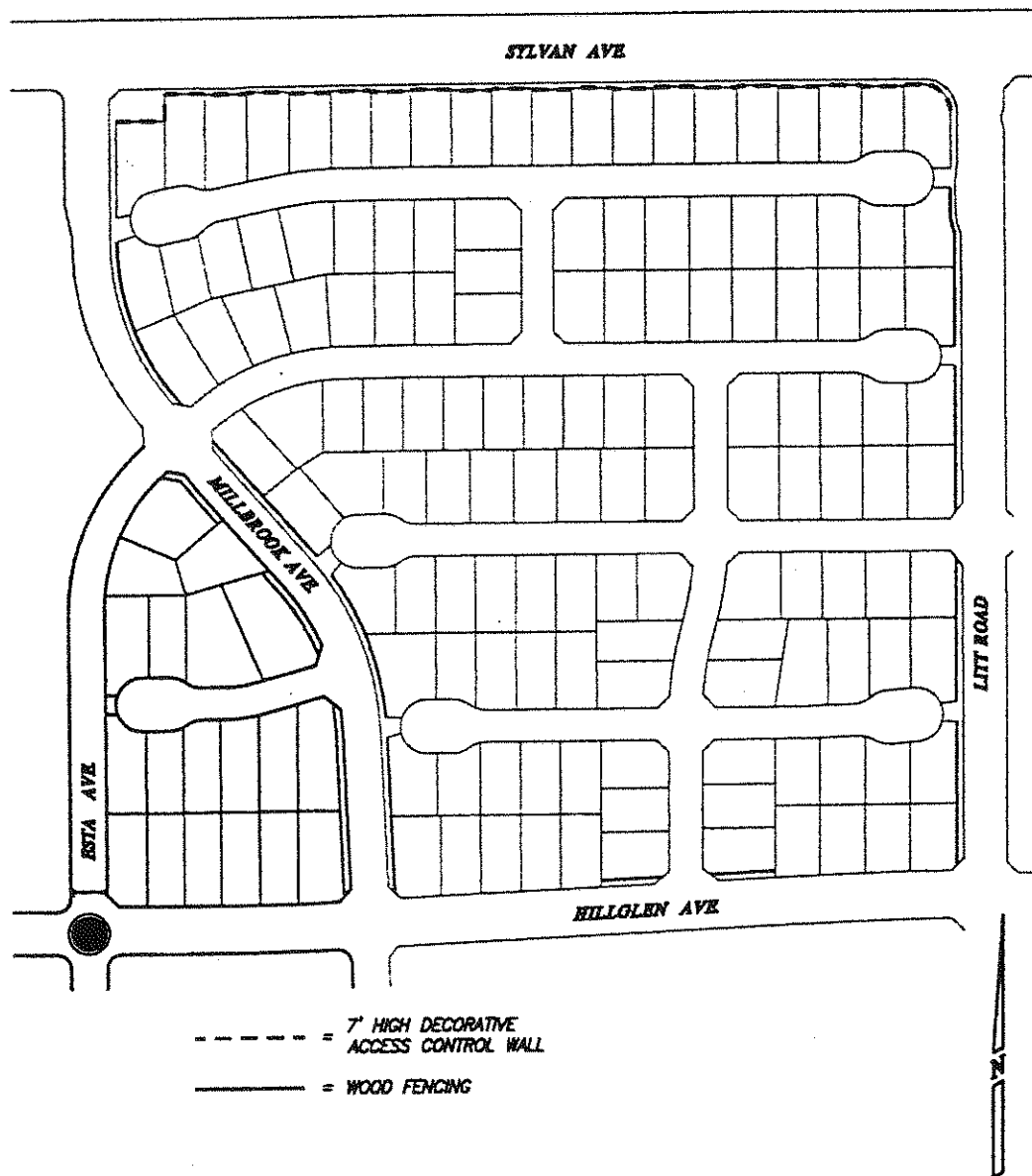
This amendment adds landscape maintenance areas along Millbrook, as shown on the following exhibit.



PERIMETER LANDSCAPE PLAN

Wall and Fencing

This amendment will add wood fences along the westerly side of Millbrook, as shown on the following exhibit. The fences shall be compatible with those proposed on the easterly side of Millbrook.



WALL AND FENCING PLAN

IV. VILLAGE ONE SPECIFIC PLAN

Specific Plan Conformance

Land Use and Community Design

This amendment is within the average residential density allowed in Precise Plan Area No. 7. The design of PPA No. 7 is consistent with the Village One Community Design Policies.

Circulation

This amendment provides for efficient interior circulation within the precise plan area and provides pedestrian access to other portions of Village One.

Public Facilities

This amendment allows the development of public facilities to serve new growth within the remaining precise plan area.

Schools

Development within PPA No. 7 will pay a school fee on a per house basis. This property has been annexed to the schools Mello-Roos District.

Parks

Development within PPA No. 7 will pay the applicable park fees.

Specific Plan Exceptions

No exceptions to the Village One Specific Plan and or the City of Modesto R-1 Zoning Ordinance are proposed. Setbacks for front, rear, and side yards will meet current codes.

V. INFRASTRUCTURE MASTER PLAN

Pipelines shown are existing or proposed. Proposed pipeline sizes for construction will be finalized when a vesting tentative subdivision map and improvement plans are completed.

Sanitary Sewer Plan

The City will provide sewer service for the subdivision. The proposed sewer lines in the subdivision will be per the City Standards, and will connect to the existing 27-inch sewer main in Millbrook Avenue.



SANITARY SEWER PLAN

Infrastructure Plan

Water

Domestic water for the subdivision will be provided by the City. The proposed water lines in the subdivision will be per the City Standards and will connect to an existing 12-inch water main in Hillglen Avenue.



WATER PLAN

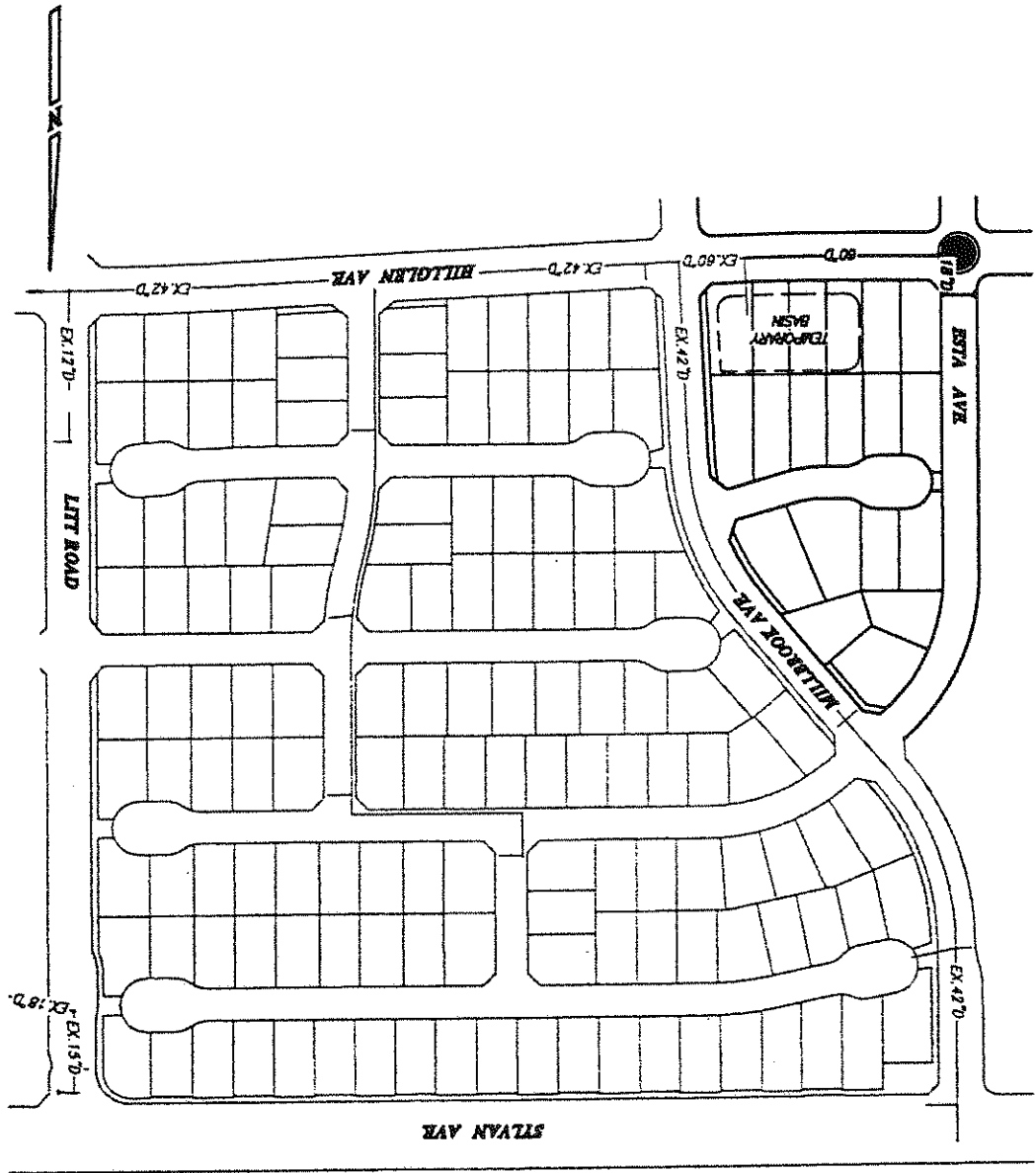
Infrastructure Plan

Storm Drainage

The Plan Area storm drainage system will ultimately connect to the City Master Planned West Basin via a proposed 60-inch pipeline in Hillglen. Until the City Master Planned West Basin is available, the individual project's drainage may be retained in temporary retention basins. Interim facilities will be designed for easy conversion to the permanent system, and must be connected to the permanent system when it is available.

If any subdivision within this precise plan utilizes temporary storm drain basins, then the developer of that subdivision shall be required to build and maintain the temporary basins at their cost until such time as the permanent storm drain facilities are available for connection. At that time, the developer shall construct the facilities necessary to connect to the permanent storm drain system, and shall fill the temporary basins to allow for reuse of the land. Prior to recordation of the final map, the developer shall be required to post adequate security to cover the maintenance and ultimate removal of the temporary storm drain facilities, and to enter into an agreement in a form acceptable to the City Attorney for same.

STORM DRAINAGE PLAN



VI. MISCELLANEOUS

Legal Description and Plat
Precise Plan Statements, as required by the "Village One Specific Plan"

Legal Description and Plat

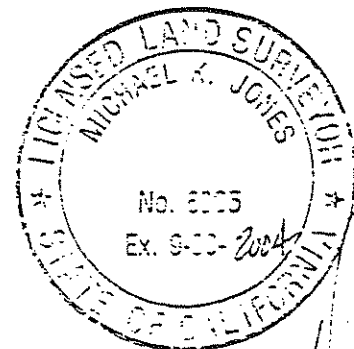
The legal description and accompanying sketch detail the boundary area of the proposed subdivision. The subdivision encompasses all of Precise Plan Area No. 7.

EXHIBIT "ONE"

All that portion of the North one-half of the East one-half of the Southwest Quarter of Section 12, Township 3 South, Range 9 East, Mount Diablo Base and Meridian, City of Modesto, State of California, more particularly described as follows:

Commencing at the Northeast corner of the Southwest Quarter of said Section 12; thence South $89^{\circ}48'45''$ West, along the North line of said Southwest Quarter, a distance of 2.75 feet to the Centerline of Litt Road and the **Point of Beginning**; thence South $00^{\circ}16'52''$ East, along the centerline of said Litt Road, 2.75 feet west of and parallel with the East line of said Southwest Quarter, a distance of 1272.48 feet to the centerline intersect of Hillglen Avenue; thence South $89^{\circ}49'11''$ West 38.68 feet to a point of curvature, concave southerly, having a radius of 4002.75 feet; thence westerly along the arc of said curve, through a central angle of $02^{\circ}35'32''$, an arc distance of 181.10 feet; thence South $87^{\circ}13'39''$ West 761.07 feet to a point of curvature, concave northerly, having a radius of 2000.00 feet; thence westerly along the arc of said curve, through a central angle of $02^{\circ}34'50''$, an arc distance of 90.08 feet; thence South $89^{\circ}48'29''$ West 244.84 feet to the centerline of Esta Avenue; thence North $00^{\circ}19'45''$ West, along the centerline of Esta Avenue, a distance of 485.29 feet to a point of curvature, concave southeasterly, having a radius of 300.00 feet; thence northeasterly, along the arc of said curve, through a central angle of $50^{\circ}01'21''$, an arc distance of 261.92 feet; thence North $49^{\circ}41'36''$ East 34.53 feet to a point on the centerline of Millbrook Avenue; thence northerly along the centerline of Millbrook Avenue the following three (3) courses: 1.) North $40^{\circ}18'24''$ West 49.39 feet to a point of curvature, concave northeasterly, having a radius of 400.00 feet; 2.) thence northerly along the arc of said curve, through a central angle of $39^{\circ}58'39''$, an arc distance of 279.09 feet; 3.) thence North $00^{\circ}19'45''$ West 280.71 feet to a point on the North line of said Southwest Quarter; thence North $89^{\circ}48'45''$ East, along said North line, a distance of 1307.57 feet to the **Point of Beginning**, and containing 38.50 acres, more or less.

END DESCRIPTION



LEGAL DESCRIPTION AND PLAT

SYLVAN

AVENUE

N 89°48'45" E 1307.57'

P.O.B.

8.50'
N 00°19'45" W
280.71'

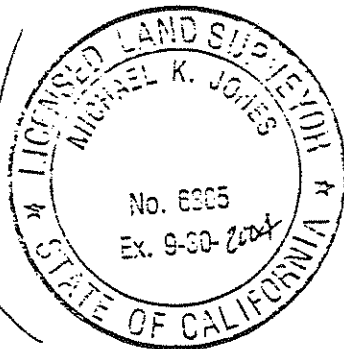
NORTH LINE OF
S.W. 1/4 OF
SEC. 12

N 40°18'24" W
49.39'

N 49°41'36" E
34.53'

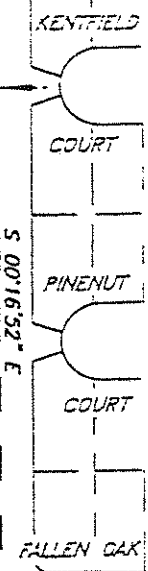
MILLBROOK

PORTION OF N.E. 1/4 OF
S.W. 1/4 OF SEC. 12
T. 3 S., R. 9 E., M.D.B.&M.



SCALE: 1" = 200'

ROAD



NORTH LINE OF
S.W. 1/4 OF
SEC. 12

LITT

CENTERLINE OF
LITT ROAD

1272.48'

AVENUE

HILLGLEN

AVENUE

S 87°13'39" W 761.07'

S 89°49'11" W
38.68'

S 89°48'29" W
244.84'

CURVE TABLE						
CURVE	DELTA	RADIUS	LENGTH	CHORD	TANGENT	CH. BEARING
1	2°35'32"	4002.75'	181.10'	181.08'	90.56'	S 88°31'25" W
2	2°34'50"	2000.00'	90.08'	90.07'	45.05'	N 88°31'04" E
3	50°01'21"	300.00'	261.92'	253.68'	139.96'	S 24°40'55" W
4	39°58'39"	400.00'	279.09'	273.47'	145.50'	S 20°19'05" E

SCALE: 1" = 200'

DRAWN BY: M. JONES

FILE: 482CPPA1.DWG

DATE: SEP. 7, 2001



O'Dell Engineering

1101 M St. Suite 1 Modesto, CA 95354
(209) 571-1765 FAX: (209) 571-2466

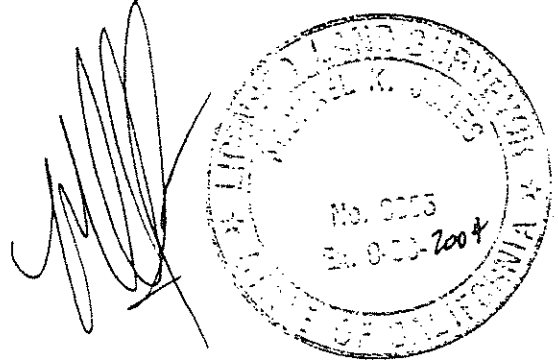
PRECISE PLAN
AREA No. 7

Addition to Precise Plan Area No. 7

A portion of the Northeast Quarter of the Southwest Quarter of Section 12, Township 3 South, Range 9 East, Mount Diablo Base and Meridian, as shown on map of Atherton Place filed in Book 39 of Maps, at Page 59, Stanislaus County Records, described as follows:

BEGINNING at a 3/4 inch iron pipe monument at the centerline intersection of Millbrook Avenue and Inverness Street; thence South $40^{\circ}18'24''$ East, along said centerline of Millbrook Avenue, a distance of 266.16 feet to the point of curvature of a 400.00 foot radius curve, concave westerly, from which the radius point bears South $49^{\circ}41'36''$ West; thence southerly along said curve, continuing along said centerline, through a central angle of $37^{\circ}31'55''$ an arc distance of 262.02 feet; thence South $02^{\circ}46'29''$ East, continuing along said centerline, a distance of 289.30 feet to a point on the centerline of Hillglen Avenue, as shown on said map of Atherton Place; thence South $87^{\circ}13'39''$ West, along the westerly prolongation of said centerline, a distance of 75.35 feet to the point of curvature of a 2000.00 foot radius curve, concave northerly, from which the radius point bears North $02^{\circ}46'21''$ West; thence westerly along said curve through a central angle of $02^{\circ}34'50''$ an arc distance of 90.08 feet; thence South $89^{\circ}48'29''$ West, a distance of 244.84 feet to the centerline of Esta Avenue; thence North $00^{\circ}19'45''$ West, along said centerline, a distance of 485.29 feet to the point of curvature of a 300.00 foot radius curve, concave easterly, from which the radius point bears North $89^{\circ}40'15''$ East; thence northerly along said curve, along said centerline, through a central angle of $50^{\circ}01'21''$ an arc distance of 261.92 feet; thence North $49^{\circ}41'36''$ East, along said centerline, a distance of 34.53 feet to the POINT OF BEGINNING.

Containing 5.53 Acres, more or less



SYLVAN

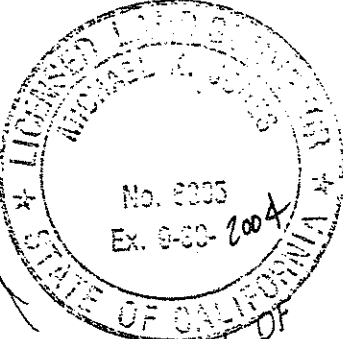
AVENUE

INT. 1/4 CORNER

N 89°48'45" E 1307.57'

8.50'
N 00°19'45" W
280.71'

NORTH LINE OF
S.W. 1/4 OF
SEC. 12



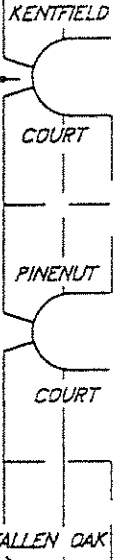
N 49°41'36" E
34.53'
N 40°18'24" W
49.39'
INVERNESS
STREET

P.O.B.
MILLBROOK
AVENUE

PORTION OF N.E. 1/4 OF
S.W. 1/4 OF SEC. 12
T. 3 S., R. 9 E., M.D.B.&M.

SCALE: 1" = 200'

ROAD



NORTH LINE OF
S.W. 1/4 OF
SEC. 12

CENTERLINE OF
LITT ROAD

LITT
ROAD

ATHERTON PLACE
BK 39 MAPS, PG 59,
SCR

ESTA
AVENUE

AVENUE

HILLGLEN

AVENUE

N 00°19'45" W 485.29'

REMAINDER
ATHERTON PLACE

75.35'

S 07°46'29" E 289.30'

S 87°13'39" W 685.72'
761.07'

S 89°49'11" W
38.68'

CURVE TABLE						
CURVE	DELTA	RADIUS	LENGTH	CHORD	TANGENT	CH. BEARING
1	2°35'32"	4002.75'	181.10'	181.08'	90.56'	S 88°31'25" W
2	2°34'50"	2000.00'	90.08'	90.07'	45.05'	N 88°31'04" E
3	50°01'21"	300.00'	261.92'	253.68'	139.96'	S 24°40'55" W
4	39°58'39"	400.00'	279.09'	273.47'	145.50'	S 20°19'05" E
5	37°31'55"	400.00'	262.02'	257.36'	135.91'	N 21°32'26" W

SCALE : 1" = 200'

DRAWN BY : JIMM

FILE : 4880PPA1A.DWG

DATE : 1-7-2002



O'Dell Engineering

1101 M St. Suite 1 Modesto, CA 95354
(209) 571-1765 FAX: (209) 571-2466

PRECISE PLAN
AREA No. 7

Precise Plans Statements (as required by the Village One Specific Plan)

1. All deeds for lots sold in this subdivision shall contain the following statements:
“This lot is located near existing agricultural operations. Residents may be subjected to customary and accepted farming practices that produce noise, dust, smoke, and other impacts. The grantee accepts the potential impacts of customary farming practices, which may include the application and use of various chemicals through spraying, spreading or other customary means in accordance with applicable state and federal regulations regarding such applications. The grantee also acknowledges the need to avoid activities that conflict with nearby farm uses.”
2. Prior to final inspection, Building Inspection Division shall verify that all fireplaces and wood stoves in residents units are equipped to meet the performance and emissions standards set forth in Part 60, Title 40, Subpart AAA Code of Federal Regulations, February 26, 1998.
3. Construction noise is regulated by the City’s Noise Ordinance, Section 4.9-103. Construction noise is generally permitted during the hours of 7:00 a.m. to 9:00 p.m. To avoid complains from nearby residents and possible citations the full text of the ordinance should be reviewed by builders prior to construction. City construction projects will be monitored by Construction Inspection Division for conformance with the City’s Noise Ordinance.
4. During construction activities, Building Inspection Division shall verify that contractors observe the requirements of the City of Modesto Standard Specification 1.8, Dust Control, and when necessary, Regulation VIII of San Joaquin Valley Unified Air Pollution District to control the generation of PM 10 from construction related dust and emissions.

ORDINANCE NO. 3257-C.S.

AN ORDINANCE REZONING VILLAGE ONE PROPERTY FROM SPECIFIC PLAN-HOLDING ZONE, SP-H, TO SPECIFIC PLAN-OVERLAY ZONE, SP-O, FOR PROPERTY LOCATED AT THE NORTHEAST CORNER OF HILLGLEN AND ESTA AVENUES. (K-D LAND AND CATTLE INVESTMENTS, INC.)

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

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

WHEREAS, an application has been filed by K-D Land and Cattle Investments, Inc. for an amendment to Precise Plan for Area No. 7, to move 4.1 acres from Precise Plan Area No. 6 to Precise Plan Area No. 7, property located at the northeast corner of Hillglen and Esta Avenues, and

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

WHEREAS, a public hearing was held by the Planning Commission of the City of Modesto on April 15, 2002, in the Tenth Street Place Chambers located at 1010 10th Street, Modesto, California, and

WHEREAS, after a public hearing held on April 15, 2002, 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. 2002-20, adopted April 15, 2002, the Planning Commission recommended that the application of K-D Land and Cattle Investments, Inc. to rezone Village One property from Specific Plan-Holding Zone, SP-H, to Specific Plan-Overlay Zone, SP-O, for property located at the northeast corner of Hillglen and Esta Avenues, and

WHEREAS, said matter was set for a public hearing of the City Council to be held on May 7, 2002, at 5:15 p.m., in the Tenth Street Place Chambers located at 1010 10th Street, Modesto, California, at which date and time said duly noticed public hearing of the Council was held and evidence both oral and documentary was received and considered,

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

SECTION 1. After a public hearing held on May 7, 2002, in the Tenth Street Place Chambers located at 1010 10th Street, Modesto, California, this Council finds and determines that the requested rezoning is in accordance with the General Plan and 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 rezoning to Specific Plan-Overlay Zone is required by the Village One Specific Plan concurrent with adoption of a precise plan and prior to development in the Specific Plan area.

SECTION 2. ZONING CHANGE. Section 12-3-9 of the Zoning Map of the City of Modesto is hereby amended to rezone the following described property from Specific Plan-Holding Zone, SP-H, to Specific Plan-Overlay Zone, SP-O:

SP-H to SP-O, PPA 7

A portion of the Northeast Quarter of the Southwest Quarter of Section 12, Township 3 South, Range 9 East, Mount Diablo Base and Meridian, as shown on map of Atherton Place filed in Book 39 of Maps, at Page 59, Stanislaus County Records, as described as follows:

BEGINNING at a ¾ inch iron pipe monument at the centerline intersection of Millbrook Avenue and Inverness Street; thence South 40°18'24" East, along said centerline of Millbrook Avenue, a distance of 266.16 feet to the point of curvature of a 400.00 foot radius curve, concave westerly, from which the radius point bears South 49°41'36" West; thence southerly along said curve, continuing along said centerline, through a central angle of 37°31'55" an arc distance of 262.02 feet; thence South 02°46'29" East, continuing along said centerline a distance of 289.30 feet to a point on the centerline of Hillglen Avenue, as shown on said map of Atherton Place; thence South 87°13'39" West, along the westerly prolongation of said centerline, a distance of 75.35 feet to the point of curvature of a 2000.00 foot radius curve, concave northerly, from which the radius point bears North 02°46'21" West; thence westerly along said curve through a central angle of 02°34'50" an arc distance of 90.08 feet; thence South 89°48'29" West, a distance of 244.84 feet to the centerline of Esta Avenue; thence North 00°19'45" West, along said centerline, a distance of 485.29 feet to the point of curvature of a 300.00 foot radius curve, concave easterly, from which the radius point bears North 89°40'15" East; thence northerly along said curve, along said centerline, through a central angle of 50°01'21" an arc distance of 261.92 feet; thence North 49°41'36" East, along said centerline, a distance of 34.53 feet to the POINT OF BEGINNING.

Containing 5.53 Acres, more or less.

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 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 7th day of May, 2002, by Councilmember Keating, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Jackman, was upon roll call carried and ordered printed and published by the following vote:

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

NOES: Councilmembers: Frohman

ABSENT: Councilmembers: None

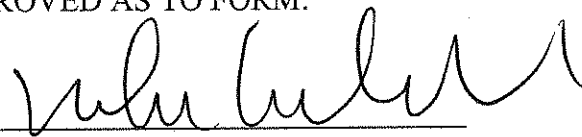
APPROVED: 
CARMEN SABATINO, Mayor

ATTEST:

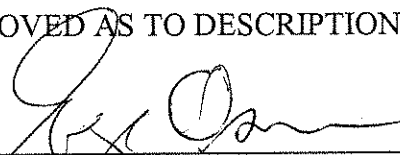
By 
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By 
MICHAEL D. MILICH, City Attorney

APPROVED AS TO DESCRIPTION:

By 
Community Development Department
Planning Division

Ord. No. 3257-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 May, 2002, Councilmember Fisher moved its final adoption, which motion being duly seconded by Councilmember Jackman, was upon roll call carried and the ordinance adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: 
MAYOR CARMEN SABATINO

ATTEST: 
JEAN ZAHR, City Clerk

Effective Date: June 13, 2002

ZONING MAP OF THE CITY OF MODESTO 12-3-9



ORDINANCE NO. 3258-C.S.

AN ORDINANCE AMENDING SECTIONS 2-1.01 AND 2-1.18 OF CHAPTER 1 OF TITLE 2 OF THE MODESTO MUNICIPAL CODE RELATING TO CITY COUNCIL ORGANIZATION AND PROCEDURE - REGULAR MEETINGS AND STANDING COMMITTEES.

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

SECTION 1. AMENDMENT OF CODE. Sections 2-1.01 and 2-1.18 of Chapter 1 of Title 2 of the Modesto Municipal Code are hereby amended to read as follows:

2-1.01. REGULAR MEETINGS.

- (a) **Time.** Regular meetings of the City Council shall be held on the first, second, and fourth Tuesday of each month, except for the month of December when meetings shall be held on the first and second Tuesdays only. The meetings shall commence at the hour of 5:15 p.m. Whenever the day fixed for any regular meeting of the Council falls upon a day designated by the City of Modesto as a holiday, such meeting shall be held at the same hour on the next succeeding day not a holiday.
- (b) **Place.** All regular meetings of the Council shall be held in the Council Chambers at 1010 10th Street, Modesto, California. If, due to an emergency it shall be unsafe to meet in the place designated, the meetings may be held for the duration of the emergency at such place as is designated by the Mayor.
- (c) **Public.** All meetings of the Council shall be open to the public; provided, however, the City Council may hold executive sessions as provided by the laws of the State of California.

2-1.18. STANDING COMMITTEES.

The standing committees of the Council shall be a Safety and Communities Committee, an Economic Development Committee, a Finance Committee, and an Audit Committee, each of which committees shall consist of three (3) members of the Council appointed by the Mayor. The responsibilities of the Audit Committee shall be established by resolution of the City Council.

SECTION 2. EFFECTIVE DATE. This ordinance shall go into effect and be in full force and operation from and after thirty (30) days after its final passage and adoption.

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

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 14th day of May, 2002, by Councilmember Fisher, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Jackman, was upon roll call carried and ordered printed and published by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: *Carmen Sabatino*
CARMEN SABATINO, Mayor

ATTEST:

By *Jean Zahr*
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

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

Ord. No. 3258-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 28th day of May, 2002, Councilmember Fisher moved its final adoption, which motion being duly seconded by Councilmember Frohman, was upon roll call carried and the ordinance adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: 
MAYOR CARMEN SABATINO

ATTEST: 
JEAN ZAHR, City Clerk

Effective Date: June 27, 2002

ORDINANCE NO. 3259-C.S.

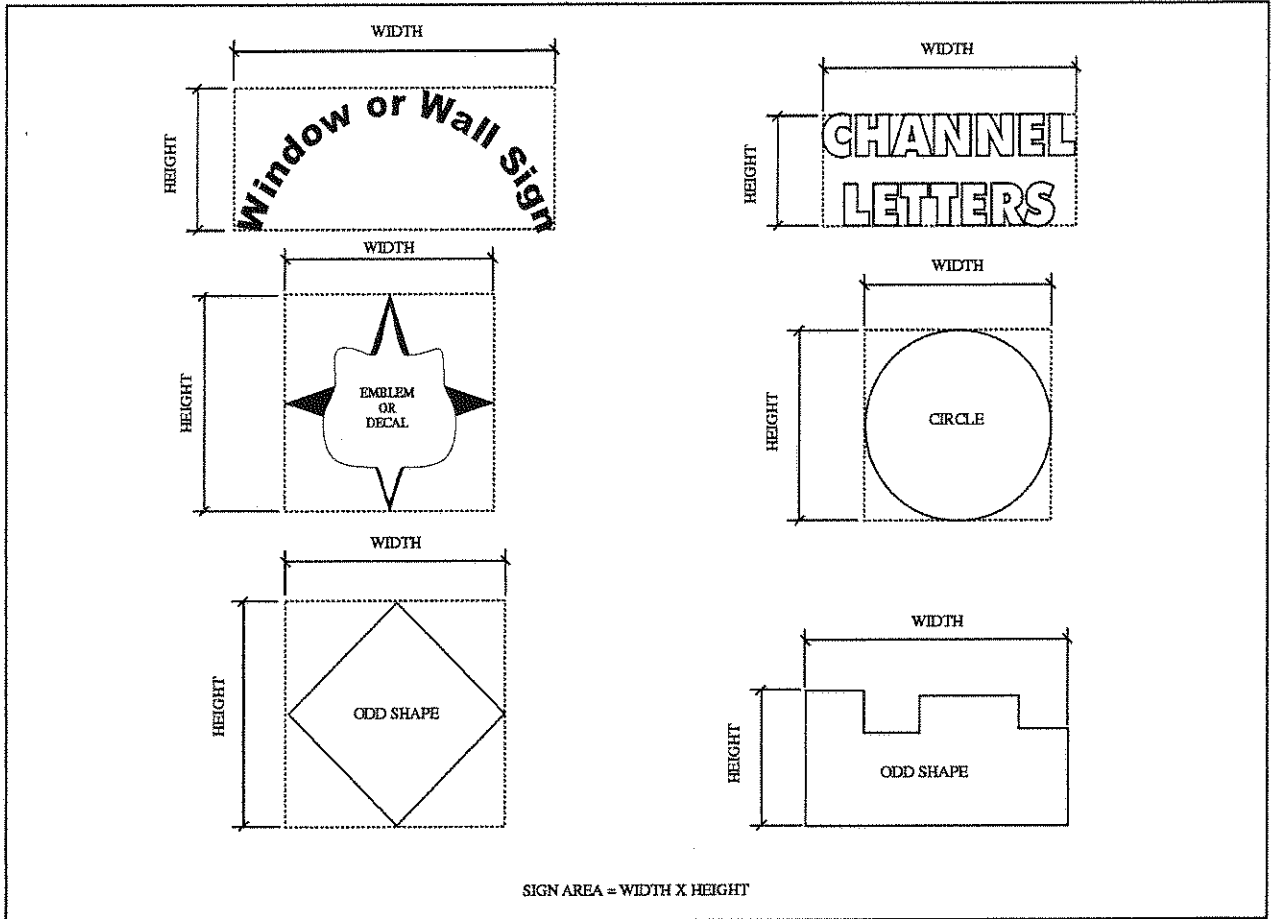
AN ORDINANCE AMENDING SECTIONS 10-2.2110 and 10-2.2112 OF CHAPTER 2 OF TITLE 10 OF THE MODESTO MUNICIPAL CODE RELATING TO SIGN REGULATIONS.

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

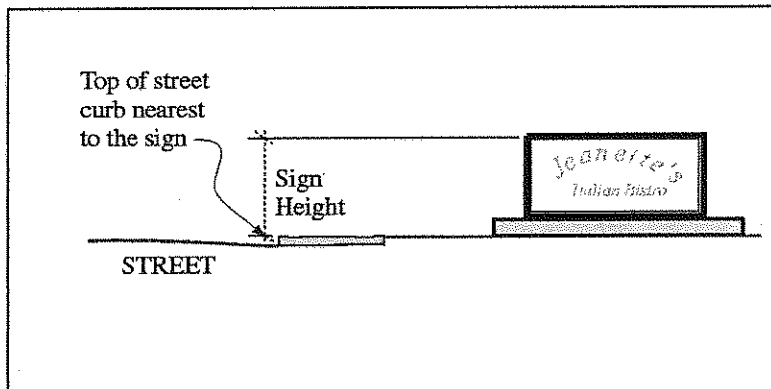
SECTION 1. AMENDMENT OF CODE. Sections 10-2.2110 and 10-2.2112 of Chapter 2 of Title 10 of the Modesto Municipal Code are hereby amended to read as follows:

10-2.2110. SIGN AREA, HEIGHT AND PLACEMENT.

- (a) **Measurement of sign area and height.** For the purposes of determining compliance with this article, the area and height of signs shall be measured as provided by this section.
- (1) **Sign area.** Sign area shall be measured as the area in square feet of the smallest simple geometric shape within which a single sign face can be enclosed. The total area of the sign shall include all sign faces, except where two (2) faces are placed back-to-back and are at no point more than two (2) feet from one (1) another, the area of the sign shall be taken as the area of one (1) face if the two (2) faces are of equal area, or as the area of the larger face if the two (2) faces are of unequal area. See Figure 21-6.
- (2) **Sign height.** Sign height shall be measured as the vertical distance from the top of the street curb nearest the sign, to the top of the sign, including the support structure and any design elements. See Figure 21-7.



**FIGURE 21-6
MEASUREMENT OF SIGN AREA**



**FIGURE 21-7
MEASUREMENT OF SIGN HEIGHT**

- (b) **Maximum sign area requirements.** The maximum allowable area for signs is determined by Sections 10-2.2112, and 10-2.2114. No

freestanding sign of any type or class, subject to this article shall exceed one hundred fifty (150) square feet in area.

(c) **Sign height limitations.** All signs shall comply with the following requirements.

(1) **Height limit.** No sign shall exceed a maximum height of thirty-five (35) feet in height, or other height limit established by this section, or by Sections 10-2.2112, and 10-2.2114, as applicable.

(2) **Ridgeline limitation.** A wall, canopy, marquee or projecting sign shall not project above the ridgeline of the building on which the sign is mounted. Where the ridgeline varies in height, no part of the sign shall extend above the ridgeline where it is placed nor above the height representing a minimum of seventy-five (75) percent of the ridgeline of the building.

(3) **Additional height.** A sign may be approved with a height in excess of the limitations provided by subsections (c)(1) and (c)(2) above in the following circumstances.

(aa) **Wall signs on multi-story buildings.** Wall signs above thirty-five (35) feet in height may be authorized through conditional use permit approval (see Article 25 of Chapter 2 of Title 10 of this Code), provided that:

(i) The building exceeds four (4) stories or forty-eight (48) feet in height; and

(ii) The BZA determines that:

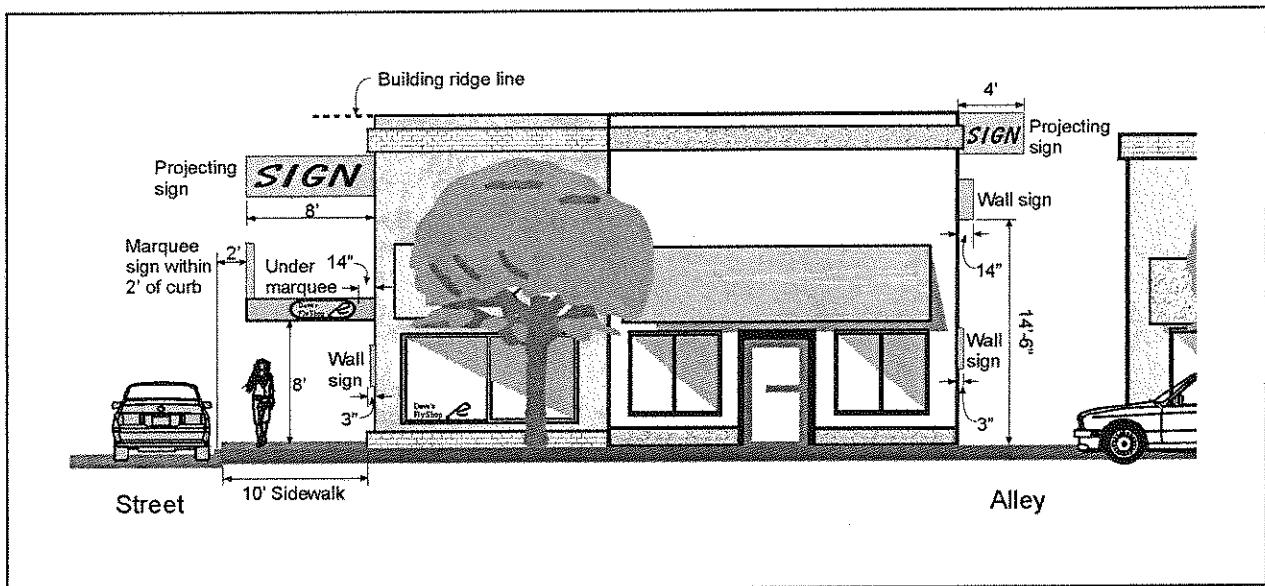
(a) The applicant has satisfactorily demonstrated that wall signs at thirty-five (35) feet cannot properly identify the building;

(b) The applicant has explored all feasible options to reach a satisfactory solution with a sign at thirty-five (35) feet or less; and

(c) The design of the sign will be compatible with the architectural design of the building.

- (ab) **Freeway-oriented signs.** Freeway-oriented signs with a height in excess of thirty-five (35) feet may be approved in compliance with Section 10-2.2114(g).
- (4) **Vertical clearance.** No sign shall be less than eight (8) feet above a public or private sidewalk, or fourteen and one-half (14.5) feet above ground level in areas open to vehicular traffic, except wall signs not exceeding three (3) inches in thickness.
- (d) **Sign placement on buildings.** Signs for tenants within buildings that have multiple tenants shall be placed on the portion of the building where the business being advertised is located, except that:
 - (1) Where the business tenant space has no street frontage, the review authority may grant a sign permit for sign placement on an exterior building wall determined to provide adequate visibility, and where the sign will be compatible in design and scale with the building architecture and the design and placement of other signs; and
 - (2) The BZA may grant a conditional use permit authorizing placement on other portions of the building, and/or the clustering of allowed signs on one (1) building wall, where the BZA determines that the adjusted sign placement is necessary to provide adequate identification of the subject businesses from the street, and that placement of the sign at the tenant location will unreasonably limit sign visibility.
- (e) **Projection of signs.** Signs may project into required front, side, and rear yards as approved by the review authority. A sign may project into a street or alley right-of-way only as follows: See Figure 21-8.
 - (1) **Bus bench sign.** May be located entirely within a right-of-way.
 - (2) **Freestanding signs.** Freestanding or exterior identification signs may encroach into a public right-of-way only if a specific encroachment permit is granted.
 - (3) **Marquee signs.** May project into a right-of-way to a point two (2) feet from the face of the curb.
 - (4) **Projecting signs.** May project up to eight (8) feet into a street right-of-way and up to four (4) feet into any alley right-of-way, but not closer than two (2) feet from the face of the curb.

- (5) **Wall signs.** May project into a right-of-way up to fourteen (14) inches in thickness, provided that:
- (aa) No display or messages shall be permitted on the edges of the sign, except the sign company identification required by Section 10-2.2116(e); and
 - (ab) Any portion of the sign which projects more than three (3) inches is located in compliance with the vertical clearance requirements of subsection (c)(4) above.



**FIGURE 21-8
EXAMPLES OF ALLOWED SIGN PROJECTIONS**

- (f) **Signs creating obstructions.** No sign shall be installed or maintained so that it may block access to any door, window, fire escape or exit way.

10-2.2112. SIGN REQUIREMENTS BY ZONE.

Only the signs listed this in section are permitted in the applicable zoning districts.

- (a) **Residential zones.** Any sign installed within the R-1, R-2, or R-3 zoning districts shall comply with the maximum sign area and height, number of signs allowed, and additional requirements shown in Table 21-1.
- (b) **Professional Office (P-O) zone.** Any sign installed within the P-O zoning district shall comply with the maximum sign area and height, number of signs allowed, and additional requirements shown in Table 21-2.

- (c) **Commercial and industrial zones, other than C-3.** Any sign installed within the C-1, C-2, C-M, M-1, and M-2 zoning districts shall comply with the maximum sign area and height, number of signs allowed, and additional requirements shown in Table 21-3.
- (d) **Highway Commercial (C-3) zone.** Any sign installed within the C-3 zoning district shall comply with the maximum sign area and height, number of signs allowed, and additional requirements shown in Table 21-4. Freestanding business identification signs are allowed within the C-3 zone as follows.
- (1) **Permit requirement.** Conditional use permit approval shall be required.
 - (2) **Type of signs allowed.** All freestanding business identification signs within the C-3 zone shall be monument signs.
 - (3) **Maximum number of signs and required site characteristics.** One (1) freestanding business identification sign may be approved for a site:
 - (aa) Which constitutes a block frontage; or
 - (ab) With six (6) or more tenants; or
 - (ac) With two hundred (200) feet or more of street frontage.
 - (4) **Area and height requirements.** The maximum area and height of a freestanding business identification sign within the C-3 zone shall be based on the length of the site street frontage, as follows:

Street Frontage Length of Site	Maximum Allowable Sign Area	Maximum Sign Height
300 ft. or less	12 sf per use to a maximum total of 72 sf; plus 4 sf for the required street address.	8 ft.
301 to 599 ft.		12 ft.
600 ft. or more		16 ft.

- (5) **Removal of directional signs required.** A freestanding business identification sign may be permitted only where any existing, exterior directional signs for all businesses on the site are first

removed. No new exterior directional signs shall be installed thereafter.

- (e) **Business Park (B-P) zone.** Any sign installed within the B-P zoning district shall comply with the maximum sign area and height, number of signs allowed, and additional requirements shown in Table 21-5.
- (f) **Planned Development (P-D) zone.** Any sign installed within the P-D zoning district shall comply with the maximum sign area and height, number of signs allowed, and additional sign requirements established as a condition of the applicable P-D zone, which shall be based on the provisions of the zoning classification most closely approximating the uses proposed in the specific P-D zone.

**TABLE 21-1
SIGNS PERMITTED IN RESIDENTIAL ZONES (R-1, R-2, R-3)**

Sign Class	Allowed Sign Types	Maximum Number of Signs	Maximum Sign Area	Maximum Sign Height	Additional Requirements
Identification - Residential uses	Resident/dwelling name plate	1 per dwelling unit	1 sf	Height of wall	None
	Gateway	1 on each side of a drive-way serving 5 or more dwellings	12 sf each	36 in	Sign copy shall be limited to housing project name and logo, street name and address, and/or for sale, rent, or lease.
Identification - Conditional uses (1)	Freestanding, identification or bulletin board	1 per site	25 sf, plus 4 sf for required street address	6 ft	None
	Freestanding, school or church identification		72 sf	20 ft	CUP required.
	Canopy and wall	No limitation on number	0.5 sf in combined area for each linear foot of wall	35 ft	Shall be externally illuminated only.
Identification - Nonconforming uses (2)	Canopy and wall	No limitation on number	0.5 sf in combined area for each linear foot of any wall facing a public street	35 ft	Shall face a public street; and shall be externally illuminated only.
	Window		No limitation on area	Height of window	Shall face a public street; and shall be externally illuminated only,

**TABLE 21-1
SIGNS PERMITTED IN RESIDENTIAL ZONES (R-1, R-2, R-3)**

Sign Class	Allowed Sign Types	Maximum Number of Signs	Maximum Sign Area	Maximum Sign Height	Additional Requirements
					except for neon signs inside of windows.
Directional	Freestanding, exterior	1 per driveway or pedestrian walkway serving 5 or more dwellings	12 sf	Freestanding sign: 6 ft Wall sign: 12 ft	Sign copy shall be limited to street name and address, housing project name and logo, and/or for sale, rent, or lease.
(Continues)	Freestanding, interior	No limitation on number	6 sf each	6 ft	None
Directional (continued)	Garage sale	2 per garage sale	3 sf each	5 ft	Shall be: unlighted; displayed only when sale is actually being conducted; and only installed on private property with the consent of the owner. These signs shall not be placed on street trees, utility poles, or otherwise within public rights-of-way.
Real estate	Freestanding or wall - For sale or rent	1 per street frontage	8 sf each	6 ft	Shall be unlighted.
	Freestanding - Open house	5 for each house or group of houses offered by the same realtor at the same	3 sf each	42 in	Shall be unlighted and in place during daylight hours only. Message shall be limited to real estate office name. The signs shall

**TABLE 21-1
SIGNS PERMITTED IN RESIDENTIAL ZONES (R-1, R-2, R-3)**

Sign Class	Allowed Sign Types	Maximum Number of Signs	Maximum Sign Area	Maximum Sign Height	Additional Requirements
		location			only be installed on private property with the consent of the owner.
	Freestanding - Subdivision sales	See Section 10-2.2114(m)			
Construction	Freestanding or wall	1 per site	64 sf	10 ft	Shall be removed within 30 days after completion of construction.
Political	Freestanding - On parcels with a residential structure	No limitation on number	6 sf each, and a maximum combined total of 60 sf	6 ft	Signs shall be unlighted. Signs shall be installed no more than 120 days prior to election date and be removed within 10 days after election.
	Freestanding - On parcels with no residential structure		32 sf each, and a maximum combined total of 100 sf	10 ft	

Notes:

- (1) These signs are allowed only for uses that are required by Chapter 2 of Title 10 of the Municipal Code (Zoning Regulations) to have conditional use permit approval in the applicable zoning district.
- (2) Allowed only for the purpose of replacing one nonconforming use with another nonconforming use, in compliance with Article 22 of Chapter 2 of Title 10 of the Municipal Code (Nonconforming Uses).

**TABLE 21-2
SIGNS PERMITTED IN THE P-O ZONE**

Sign Class	Allowed Sign Types	Maximum Number of Signs	Maximum Sign Area	Maximum Sign Height	Additional Requirements
Identification - Residential uses	Resident/dwelling name plate	1 per dwelling unit	1 sf	Height of wall	Shall be wall mounted and unlighted.
Identification - Non-residential uses	Freestanding	1 per street frontage	16 sf, plus 4 sf for required street address	8 ft	The sign facing the street which provides the street address of the site shall include a street address. See 10-2.2114.L.
	Canopy and wall	No limitation on number	0.5 sf in combined area for each linear foot of wall	35 ft	None
Identification - For uses also allowed in the R-3 zone with CUP approval (1)	Freestanding, identification or bulletin board	1 per site, in addition to the signs for nonresidential uses above	25 sf, plus 4 sf for required street address	6 ft	None
	Freestanding, school or church identification	1 per site	72 sf	20 ft	Conditional Use Permit approval required for sign.
Identification - Nonconforming uses (2)	Canopy and wall	No limitation on number	0.5 sf in combined area for each linear foot of any wall facing a public street	35 ft	Shall face a public street; and shall be externally illuminated only.
	Window		No limitation on area	Height of	Shall face a public street; and shall

**TABLE 21-2
SIGNS PERMITTED IN THE P-O ZONE**

Sign Class	Allowed Sign Types	Maximum Number of Signs	Maximum Sign Area	Maximum Sign Height	Additional Requirements
(Continues)				window	be externally illuminated only, except for neon signs inside of windows.
Directional	Freestanding, exterior	1 per driveway or pedestrian walkway serving 5 or more dwellings	12 sf	Freestanding sign: 6 ft Wall sign: 12 ft	Sign copy shall be limited to street name and address, housing project name and logo, and/or for sale, rent, or lease.
	Freestanding, interior	No limitation on number	6 sf each	6 ft	None
	Garage sale	2 per garage sale	3 sf each	5 ft each	Shall be: unlighted; displayed only when sale is actually being conducted; and only installed on private property with the consent of the owner. These signs shall not be placed on street trees, utility poles, or otherwise within public rights-of-way.
Real estate	Freestanding or wall - For sale or rent	1 per street frontage	8 sf each	6 ft	Shall be unlighted
	Freestanding - Open house	5 for each house or group of houses offered by the same	3 sf each	42 in	Shall be unlighted and in place during daylight hours only. Message shall be limited to real

**TABLE 21-2
SIGNS PERMITTED IN THE P-O ZONE**

Sign Class	Allowed Sign Types	Maximum Number of Signs	Maximum Sign Area	Maximum Sign Height	Additional Requirements
		realtor at the same location			estate office name. The signs shall only be installed on private property with the consent of the owner.
Construction	Freestanding or wall	1 per site	64 sf	10 ft	Shall be removed within 30 days after completion of construction.
Political	Freestanding - On parcels with a residential structure	No limitation on number	16 sf each, and a maximum combined total of 60 sf	6 ft	Signs shall be unlighted. Signs shall be installed no more than 120 days prior to election date and be removed within 10 days after election.
	Freestanding - On parcels with no residential structure		32 sf each, and a maximum combined total of 100 sf	10 ft	

Notes:

- (1) These signs are allowed only for land uses that are also allowed in the R-3 zone with conditional use permit approval.
- (2) Allowed only for the purpose of replacing one nonconforming use with another nonconforming use, in compliance with Article 22 of Chapter 2 of Title 10 of this Code (Nonconforming Uses).

**TABLE 21-3
SIGNS PERMITTED IN COMMERCIAL AND INDUSTRIAL ZONES (C-1, C-2, C-M, M-1, AND M-2)**

Sign Class	Allowed Sign Types	Maximum Number of Signs	Maximum Sign Area	Maximum Sign Height	Additional Requirements
Identification	Freestanding, or	1 freestanding, or 1 projecting, or 1 marquee per use, except in shopping centers (see 10-2.2114(k), and "Shopping Center Identification Signs" below). A second marquee sign is allowed if the 2 signs are single-faced, parallel, and placed on opposite ends of the marquee. A pylon/pole sign that existed on 3/1/77 which extends above the ridgeline may remain as a nonconforming sign in addition to one of the allowed signs.	Freestanding: 72 sf, plus 4 sf for a street address, as required by 10-2.2114(l).	20 ft	None
	Projecting, or		Projecting: 72 sf; 48 sf, if any portion of the sign projects over a street or alley right-of-way.	35 ft or the height of the ridgeline, whichever is less	
	Marquee		Marquee: 48 sf		

**TABLE 21-3
SIGNS PERMITTED IN COMMERCIAL AND INDUSTRIAL ZONES (C-1, C-2, C-M, M-1, AND M-2)**

Sign Class	Allowed Sign Types	Maximum Number of Signs	Maximum Sign Area	Maximum Sign Height	Additional Requirements
(Continues)	Canopy, marquee, and wall, on the <i>primary</i> building frontage	No limitation on number	<u>All signs on primary frontage:</u> 4 sf per linear foot of building frontage for first 50 ft of frontage, plus 2 sf per linear foot of building frontage for next 50 ft of frontage, plus 1 sf per linear foot of building frontage for each foot over 100 ft	35 ft or the height of the ridgeline, whichever is less. Wall signs may be approved at a greater height in compliance with 2-10.2110(c).	Signs shall be located on the portion of the building where the use is conducted, except for signs approved in compliance with 10-2.2110(c).
	Canopy, marquee, and wall, on the <i>secondary</i> building frontage		<u>All signs on secondary frontage:</u> 4 sf per linear foot of building frontage for first 50 ft of frontage, plus 2 sf per linear foot of building frontage for next 50 ft of frontage, plus 0.50 sf per linear foot of building frontage for each foot over 100 ft		

**TABLE 21-3
SIGNS PERMITTED IN COMMERCIAL AND INDUSTRIAL ZONES (C-1, C-2, C-M, M-1, AND M-2)**

Sign Class	Allowed Sign Types	Maximum Number of Signs	Maximum Sign Area	Maximum Sign Height	Additional Requirements
Identification (continued)	Window	No limitation on number	No limitation	No limitation	None
	Suspended	1 per use	6 sf per side; 12 sf total	Under the marquee, 8 ft minimum above sidewalk	None
	Freeway-oriented	See Section 10-2.2114(g)			
	Freestanding - Use without structures	1 per use	32 sf for pumpkin and Christmas tree lots; 72 sf for other uses (e.g., a parking lot, etc.)	12 ft for pumpkin and Christmas tree lots; 72 sf for other uses	None
Shopping center identification	Freestanding	1 for each street frontage of the center.	72 sf, plus 4 sf for a street address, as required by 10-2.2114	20 ft	See 10-2.2114(k)
	Freeway-oriented	See Section 10-2.2114(g)			
Directional	Freestanding, exterior	1 per use for each street frontage of the site; 1 allowed on a site with no public street frontage, provided the sign shall be oriented only to the street	12 sf	6 ft	Business identification shall not exceed 50% of each sign face

**TABLE 21-3
SIGNS PERMITTED IN COMMERCIAL AND INDUSTRIAL ZONES (C-1, C-2, C-M, M-1, AND M-2)**

Sign Class	Allowed Sign Types	Maximum Number of Signs	Maximum Sign Area	Maximum Sign Height	Additional Requirements
(Continues)		providing primary site access.			
	Freestanding, interior	No limitation on number	6 sf	6 ft	None
	Restaurant and car wash menu board	2 per site	48 sf	8 ft	Allowed for drive-in restaurants and car washes only
Real estate	Freestanding or wall	1 per site	64 sf	10 ft	None
Construction	Freestanding	1 per site	64 sf	10 ft	None
Political	Freestanding	No limitation on number	32 sf each; and a combined total of 150 sf per site	10 ft	Signs shall be installed no more than 120 days prior to election date and be removed within 10 days after election
Temporary	A-frames, banners, flags, etc	See Section 10-2.2114(a), (b), and (f).			

**TABLE 21-3
SIGNS PERMITTED IN COMMERCIAL AND INDUSTRIAL ZONES (C-1, C-2, C-M, M-1, AND M-2)**

Sign Class	Allowed Sign Types	Maximum Number of Signs	Maximum Sign Area	Maximum Sign Height	Additional Requirements
Outdoor advertising	Prohibited in all zones				

**TABLE 21-4
SIGNS PERMITTED IN THE C-3 COMMERCIAL ZONE**

Sign Class	Allowed Sign Types	Maximum Number of Signs	Maximum Sign Area	Maximum Sign Height	Additional Requirements
Identification	Freestanding - Individual and combined business identification	1 sign may be approved for a site: a. Which constitutes a block frontage; or b. Has six or more tenants; or c. Has 200 feet or more of street frontage.	See Section 10-2.2112(d).		Sign may be permitted only where any existing, exterior directional signs for all businesses on the site are first removed. No new exterior directional signs shall be installed thereafter. See 10-2.2112(d).

**TABLE 21-4
SIGNS PERMITTED IN THE C-3 COMMERCIAL ZONE**

Sign Class	Allowed Sign Types	Maximum Number of Signs	Maximum Sign Area	Maximum Sign Height	Additional Requirements
(Continues)	Canopy, marquee, and wall, on the <i>primary</i> building frontage	No limitation on number	<u>All signs on primary frontage:</u> 4 sf per linear foot of building frontage for first 50 ft of frontage, plus 2 sf per linear foot of building frontage for next 50 ft of frontage, plus 1 sf per linear foot of building frontage for each foot over 100 ft	35 ft or the height of the ridgeline, whichever is less. Wall signs may be approved at a greater height in compliance with 2-10.2110(c).	Signs shall be located on the portion of the building where the use is conducted, except for signs approved in compliance with 10-2.2110(c).
	Canopy, marquee, and wall, on the <i>secondary</i> building frontage		<u>All signs on secondary frontage:</u> 4 sf per linear foot of building frontage for first 50 ft of frontage, plus 2 sf per linear foot of building frontage for next 50 ft of frontage, plus 0.50 sf per linear foot of building frontage for each foot over 100 ft		

**TABLE 21-4
SIGNS PERMITTED IN THE C-3 COMMERCIAL ZONE**

Sign Class	Allowed Sign Types	Maximum Number of Signs	Maximum Sign Area	Maximum Sign Height	Additional Requirements
Identification (continued)	Window	No limitation on number	No limitation	No limitation	None
	Suspended	1 per use	6 sf per side; 12 sf total	Under the marquee, 8 ft minimum above sidewalk	None
	Freeway-oriented	See Section 10-2.2114(g)			
	Freestanding - Use without structures	1 per use	32 sf for pumpkin and Christmas tree lots; 72 sf for other uses (e.g., a parking lot, etc.)	12 ft for pumpkin and Christmas tree lots; 72 sf for other uses	None
Shopping center identification	Freeway-oriented	See Section 10-2.2114(g)			
Directional	Freestanding, exterior (Note: these signs are allowed only when the site and business have no freestanding identification sign)	1 for each street frontage of the site; 1 allowed on a site with no public street frontage, provided the sign shall be oriented only to the street providing primary site access.	12 sf	6 ft	Business identification shall not exceed 50% of each sign face

**TABLE 21-4
SIGNS PERMITTED IN THE C-3 COMMERCIAL ZONE**

Sign Class	Allowed Sign Types	Maximum Number of Signs	Maximum Sign Area	Maximum Sign Height	Additional Requirements
(Continues)	as allowed by 10-2.2112(d.)				
	Freestanding, interior	No limitation on number	6 sf	6 ft	None
	Restaurant and car wash menu board	2 per site	48 sf	8 ft	Allowed for drive-in restaurants and car washes only
Real estate	Freestanding or wall	1 per site	64 sf	10 ft	None
Construction	Freestanding	1 per site	64 sf	10 ft	None
Political	Freestanding or wall	No limitation on number	32 sf each; and a combined total of 150 sf per site	10 ft	Signs shall be installed no more than 120 days prior to election date and be removed within 10 days after election
Temporary	A-frames, banners, flags, etc	See Section 10-2.2114(a), (b), and (f).			

**TABLE 21-4
SIGNS PERMITTED IN THE C-3 COMMERCIAL ZONE**

Sign Class	Allowed Sign Types	Maximum Number of Signs	Maximum Sign Area	Maximum Sign Height	Additional Requirements
Outdoor advertising	Prohibited in all zones				

**TABLE 21-5
SIGNS PERMITTED IN THE B-P (BUSINESS PARK) ZONE**

Sign Class	Allowed Sign Types	Maximum Number of Signs	Maximum Sign Area	Maximum Sign Height	Additional Requirements
Identification	Freestanding - Individual business identification	1 sign per site	72 sf, plus 4 sf for required street address	20 ft	Sign shall include street address per 10-2.2114(l).
	Freestanding - Business park identification	1 sign for business park	72 sf	6 ft	BZA approval of plot plan required. Sign copy shall be limited to business park name and logo.
	Canopy, marquee, and wall, on the <i>primary</i> building frontage	No limitation on number	<u>All signs on primary frontage:</u> 4 sf per linear foot of building frontage for first 50 ft of frontage, plus 2 sf per linear foot of building frontage for next 50 ft of frontage, plus 1 sf per linear foot of building frontage for each foot over 100 ft	35 ft or the height of the ridgeline, whichever is less. Wall signs may be approved at a greater height in compliance with 2-10.2110(c).	Signs shall be located on the portion of the building where the use is conducted, except for signs approved in compliance with 10-2.2110(c).

**TABLE 21-5
SIGNS PERMITTED IN THE B-P (BUSINESS PARK) ZONE**

Sign Class	Allowed Sign Types	Maximum Number of Signs	Maximum Sign Area	Maximum Sign Height	Additional Requirements
(Continues)	Canopy, marquee, and wall, on the <i>secondary</i> building frontage		<u>All signs on secondary frontage:</u> 4 sf per linear foot of building frontage for first 50 ft of frontage, plus 2 sf per linear foot of building frontage for next 50 ft of frontage, plus 0.50 sf per linear foot of building frontage for each foot over 100 ft		
Identification (continued)	Window	No limitation on number	No limitation	No limitation	None
	Suspended	1 per use	6 sf per side; 12 sf total	Under the marquee, 8 ft minimum above sidewalk	None
	Freeway-oriented	See Section 10-2.2114(g).			
	Freestanding - Use without structures	1 per use	32 sf for pumpkin and Christmas tree lots; 72 sf for other uses (e.g., a parking lot, etc.)	12 ft for pumpkin and Christmas tree lots; 72 sf for other uses	None
Directional	Freestanding, exterior	1 for each street frontage of the site;	12 sf	6 ft	Business identification

**TABLE 21-5
SIGNS PERMITTED IN THE B-P (BUSINESS PARK) ZONE**

Sign Class	Allowed Sign Types	Maximum Number of Signs	Maximum Sign Area	Maximum Sign Height	Additional Requirements
(Continues)		1 allowed on a site with no public street frontage, provided the sign shall be oriented only to the street providing primary site access.			shall not exceed 50% of each sign face
	Freestanding, interior	No limitation on number	6 sf	6 ft	None
	Restaurant menu board	2 per site	48 sf	8 ft	Allowed for drive-in restaurants only
Real estate	Freestanding or wall	1 per site	64 sf	10 ft	None
Construction	Freestanding	1 per site	64 sf	10 ft	None
Political	Freestanding or wall	No limitation on number	32 sf each; and a combined total of 150 sf per site	10 ft	Signs shall be installed no more than 120 days prior to election date and be removed within 10 days after election
Temporary	A-frame signs, banners, flags, etc.	See Section 10-2.2114(a), (b), and (f).			
Outdoor advertising	Prohibited in all zones, except in compliance with Section 10-2.2114(i).				

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, 2002, by Councilmember Jackman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Keating, was upon roll call carried and ordered printed and published by the following vote:

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

NOES: Councilmembers: Fisher, Frohman

ABSENT: Councilmembers: None

APPROVED: 
CARMEN SABATINO, Mayor

ATTEST:

By 
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By 
MICHAEL D. MILICH, City Attorney

Ord. No. 3259-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 28th day of May, 2002, Councilmember Jackman moved its final adoption, which motion being duly seconded by Councilmember Conrad, was upon roll call carried and the ordinance adopted by the following vote:

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

NOES: Councilmembers: Fisher & Frohman

ABSENT: Councilmembers: None

APPROVED: *Carmen Sabatino*
MAYOR CARMEN SABATINO

ATTEST: *Jean Zahr*
JEAN ZAHR, City Clerk

Effective Date: June 27, 2002

ORDINANCE NO. 3260-C.S.

AN ORDINANCE AMENDING SECTION 2 OF ORDINANCE NO. 1502-C.S. ENTITLED "AN ORDINANCE AMENDING SECTION MAP 28-3-9 OF THE ZONING MAP OF THE CITY OF MODESTO, RECLASSIFYING CERTAIN PROPERTY LOCATED THEREON. (P-D(139) - MODESTO CITY HOSPITAL INC., OCTOMEDENT, INC., AND ANTASON'S)", (ASSOCIATED ENGINEERING GROUP, INC.)

SECTION 1. AMENDMENT OF ORDINANCE NO. 1502-C.S. Section 2 of Ordinance No. 1502-C.S., is hereby further amended to read as follows:

"SECTION 2. USES. The following uses shall be permitted in said P-D(139) 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. Hospital.
2. Medical and dental offices and laboratories.
3. Pharmacy.
4. Two freestanding signs.
5. Off-street parking.
6. Funeral parlor and related uses exclusive of cremation."

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, 2002, by Councilmember Frohman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and ordered printed and published by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: 
CARMEN SABATINO, Mayor

ATTEST:

By 
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By 
MICHAEL D. MILICH, City Attorney

Ord. No. 3260-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 28th day of May, 2002, Councilmember Fisher moved its final adoption, which motion being duly seconded by Councilmember Frohman, was upon roll call carried and the ordinance adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: *Carmen Sabatino*
MAYOR CARMEN SABATINO

ATTEST: *Jean Zahr*
JEAN ZAHR, City Clerk

Effective Date: June 27, 2002

ORDINANCE NO. 3261-C.S.

AN ORDINANCE AMENDING SECTIONS 2-1.01 OF CHAPTER 1 OF TITLE 2 OF THE MODESTO MUNICIPAL CODE RELATING TO CITY COUNCIL ORGANIZATION AND PROCEDURE.

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

SECTION 1. AMENDMENT OF CODE. Sections 2-1.01 of Chapter 1 of Title 2 of the Modesto Municipal Code is hereby amended to read as follows:

2-1.01. REGULAR MEETINGS.

- (a) **Time.** Regular meetings of the City Council shall be held on the first, second, and fourth Tuesday of each month, except for the month of December when meetings shall be held on the first and second Tuesdays only. The meetings shall commence at the hour of 5:30 p.m. Whenever the day fixed for any regular meeting of the Council falls upon a day designated by the City of Modesto as a holiday, such meeting shall be held at the same hour on the next succeeding day not a holiday.
- (b) **Place.** All regular meetings of the Council shall be held in the Council Chambers at 1010 10th Street, Modesto, California. If, due to an emergency it shall be unsafe to meet in the place designated, the meetings may be held for the duration of the emergency at such place as is designated by the Mayor.
- (c) **Public.** All meetings of the Council shall be open to the public; provided, however, the City Council may hold executive sessions as provided by the laws 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 4th day of June, 2002, by Councilmember Fisher, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Keating, was upon roll call carried and ordered printed and published by the following vote:

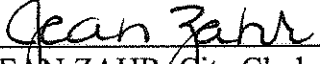
AYES: Councilmembers: Conrad, Fisher, Frohman, Jackman, Keating, O'Bryant
Mayor Sabatino

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: 
CARMEN SABATINO, Mayor

ATTEST:

By: 
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: 
MICHAEL D. MILICH, City Attorney

Ord. No. 3261-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, 2002, Councilmember Fisher moved its final adoption, which motion being duly seconded by Councilmember Conrad, was upon roll call carried and the ordinance adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: 
MAYOR CARMEN SABATINO

ATTEST: 
JEAN ZAHR, City Clerk

Effective Date: July 11, 2002

ORDINANCE NO. 3262-C.S.

AN ORDINANCE AMENDING SECTIONS 4-4.405 AND 4-4.601 OF CHAPTER 4 OF TITLE 4 OF THE MODESTO MUNICIPAL CODE RELATING TO VESTING TENTATIVE MAPS FOR SUBDIVISIONS OTHER THAN PARCEL MAPS AND FINAL MAPS.

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

SECTION 1. AMENDMENT OF CODE. Sections 4-4.405 and 4-4.601 of Chapter 4 of Title 4 of the Modesto Municipal Code are hereby amended to read as follows:

SEC. 4-4.405. VESTING TENTATIVE MAPS.

- (a) **Filing.** On or after January 1, 1988, a vesting tentative map for residential and nonresidential developments may be filed with the Planning Commission instead of a tentative map otherwise required by this chapter. The filing and departmental approval, form, required statement, and action pertaining to a vesting tentative map shall be the same as required by this article for other tentative maps except that the words "Vesting Tentative Map" shall be printed conspicuously on the face of the map.
- (b) **Development Rights.** Planning Commission approval or conditional approval of a vesting tentative map shall confer a vested right to proceed with development in substantial compliance with the ordinances, policies, and standards in effect at the time the application for the vesting tentative map is complete and accepted consistent with Government Code Section 66474.2 and as amended or repealed. The rights conferred by this section shall expire if a final map is not approved by the City Council prior to expiration of the vesting tentative map.
- (c) (1) **Time Limits.** The development rights conferred by a vesting tentative map shall remain in effect for two (2) years after the recording of a final map. When multiple final maps are recorded on various phases of a project covered by a single vesting tentative map, the two-year time period shall begin for each phase when the final map for that phase is recorded. At any time prior to the expiration of the two-year period provided by this section, the subdivider may apply to the Planning Commission for a one-year extension. If the extension is denied by the Planning Commission, the subdivider may appeal that denial to the City Council within fifteen (15) days. The time limits and extensions thereof for filing a final map based on an approved vesting tentative map shall be the same as specified by Section 4-4.601 for other tentative maps. *Effective until July 11, 2002 and after July 10, 2003.*

(2) **Time Limits.** The development rights conferred by a vesting tentative map shall remain in effect for two (2) years after the recording of a final map. When multiple final maps are recorded on various phases of a project covered by a single vesting tentative map, the two-year time period shall begin for each phase when the final map for that phase is recorded. At any time prior to the expiration of the two-year period provided by this section, the subdivider may apply to the City Council for a one-year extension. The time limits and extensions thereof for filing a final map based on an approved vesting tentative map shall be the same as specified by Section 4-4.601 for other tentative maps. *This subsection 4-4.405(c)(2) shall remain in effect and shall supersede subsection 4-4.405(c)(1) only until July 10, 2003, and as of that date is repealed unless extended or amended by a later enacted ordinance.*

- (d) **Amendments.** Minor amendments to the vesting tentative map may be approved by the Secretary of the Planning Commission when the Secretary determines that the proposed changes substantially conform to the approved vesting tentative map. At any time prior to the expiration of the vesting tentative map, the subdivider may apply to the Planning Commission for an amendment to the map when such amendment does not substantially conform to the previously approved vesting tentative map. If the requested amendment is approved by the Planning Commission, the development rights conferred by the vesting tentative map shall allow development in substantial compliance with the ordinances, policies, and standards in effect at the time the application for an amendment to the vesting tentative map is complete and accepted consistent with Government Code Section 66474.2 and as amended or repealed. The time limits for filing a final map or maps based on an amended vesting tentative map shall begin on the date such amendment is approved.
- (e) **Zoning.** If a subdivider files a vesting tentative map for a subdivision whose intended development is inconsistent with the zoning of the property in effect at the time the vesting tentative map is filed, that inconsistency shall be noted on the map. The Planning Commission may deny such vesting tentative map or approve it conditioned on the subdivider's obtaining the necessary change in zoning to eliminate the inconsistency. If the change in zoning is obtained, the approved or conditionally approved tentative map shall confer the vested right to proceed with the development in substantial compliance with the change in zoning and the map as approved.

- (f) **Variances and Exceptions.** Notwithstanding any provisions of this section, a property owner or his designee may seek approvals or permits for development which depart from the ordinances, policies, and standards in effect at the time a complete application for a vesting tentative map is accepted for filing. Such requested approvals or permits may be granted to the extent authorized by the Modesto Municipal Code or other applicable laws.

4-4.601. FILING.

- (a) (1) **Filing Within Twenty-Four Months of Tentative Approval.** The subdivider or his/her agent may file a final map within twenty-four (24) months after the approval or conditional approval of the tentative map. A map shall be deemed to be filed when it is accepted by the City as being in compliance with the provisions of this chapter and in substantial compliance with the tentative map. The twenty-four (24) month period shall not include any days during which the final map is being reviewed by the City. Upon application of the subdivider filed prior to the expiration of the approved or conditionally approved tentative map, the Planning Commission may extend the time for filing a final map for a period or periods not exceeding three (3) years if it determines that conditions affecting the subdivision have not substantially changed. In any case where a final map has not been filed within twenty-four (24) months or such extended period of time as may be granted by the Planning Commission, approval of a new tentative map shall be required.

If a subdivider's application for an extension of time for filing a final map is denied by the Planning Commission, the subdivider may appeal to the City Council within fifteen (15) days after the Planning Commission has denied the time extension. The City Council shall hear such appeal in accordance with the provisions of Section 4-4.404(f) of this chapter.
Effective until July 11, 2002 and after July 10, 2003.

- (2) **Filing Within Twenty-Four Months of Tentative Approval.** The subdivider or his/her agent may file a final map within twenty-four (24) months after the approval or conditional approval of the tentative map. A map shall be deemed to be filed when it is accepted by the City as being in compliance with the provisions of this chapter and in substantial compliance with the tentative map. The twenty-four (24) month period shall not include any days during which the final map is being reviewed by the City. Upon application of the subdivider filed prior to the expiration of the approved or conditionally approved tentative map, the City Council may extend the time for filing a final map for a period or periods not exceeding three (3) years if it determines that conditions affecting the subdivision have not substantially changed. In any case where a final map has not been filed within twenty-four (24) months or such extended period of time as may be granted by the City Council, approval of a new tentative map shall be required. *This subsection 4-4.601(a)(2) shall remain in effect and shall supersede subsection 4-4.601(a)(1) only until July 10, 2003, and as of that date is repealed unless extended or amended by a later enacted ordinance.*
- (b) **Fees.** A tracing of the final map shall be filed with the Engineering and Transportation Director. The subdivider shall deposit with the City the County Recorder's fee for recording the final map and shall pay to the City the fees for checking the map. The subdivider shall also pay at that time all other fees required by law to be paid in connection with the approval of a subdivision.
- (c) **Filing of Traverse Sheets.** At the time of the filing of final map with the Engineering and Transportation Director, the subdivider shall also file therewith traverse sheets showing traverse closures and the computation of all distances, angles, and course shown on the final map. The traverse of the boundaries of the tract and of lots and blocks shall close within a limit of error of one (1) in ten thousand (10,000).

- (d) **Report and Guarantee of Clear Title.** The final map shall be accompanied by a report prepared by a duly authorized title company naming the persons whose consent is necessary to the preparation and recordation of said map and to the dedication of the streets, alleys, and other public places shown on the map and certifying that as of the date of the preparation of the report, the persons therein named are all the persons necessary to give clear title to said subdivision. At the time of recording the approved map, there shall be filed with the County Recorder a guarantee executed by a duly authorized title company for the benefit and protection of the City showing that persons (naming them) consenting to the preparation and recordation of said map and offering for dedication the streets, alleys and other public places shown thereon are all the persons necessary to pass clear title to said subdivision and to the dedication shown thereon.

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, 2002, by Councilmember Frohman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Conrad, was upon roll call carried and ordered printed and published by the following vote:

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

NOES: Councilmembers: Fisher

ABSENT: Councilmembers: None

APPROVED: 
CARMEN SABATINO, Mayor

ATTEST:

By: 
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: 
MICHAEL D. MILICH, City Attorney

Ord. No. 3262-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, 2002, Councilmember Jackman moved its final adoption, which motion being duly seconded by Councilmember Sabatino, was upon roll call carried and the ordinance adopted by the following vote:

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

NOES: Councilmembers: Fisher

ABSENT: Councilmembers: None

APPROVED: *Carmen Sabatino*
MAYOR CARMEN SABATINO

ATTEST: *Jean Zahr*
JEAN ZAHR, City Clerk

Effective Date: July 11, 2002

ORDINANCE NO. 3263-C.S.

AN EMERGENCY INTERIM ORDINANCE OF THE CITY OF MODESTO ADOPTED PURSUANT TO GOVERNMENT CODE SECTION 65858 AND SECTIONS 716 AND 722 OF THE MODESTO CITY CHARTER PROHIBITING THE APPROVAL IN THE VILLAGE ONE SPECIFIC PLAN AREA OF ADDITIONAL PRECISE PLANS, PROPOSED TENTATIVE AND FINAL SUBDIVISION OR PARCEL MAPS FOR WHICH THE APPLICATION HAS NOT YET BEEN DEEMED COMPLETE, PLOT PLANS, USE PERMITS, REZONING, AND FINAL DEVELOPMENT PLANS, OR ANY OTHER LAND USE ENTITLEMENT ON UNVESTED LAND FOR A PERIOD OF FORTY-FIVE DAYS.

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

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

On May 28, 2002, the City Council accepted the Infrastructure Financing Plan for Village One Community Facilities District No. 1996-1 ("IFP") prepared by Goodwin Consulting Group, Inc. A copy of the IFP is attached and incorporated into this ordinance by reference.

The central purpose of the IFP was to determine the adequacy of the current Village One financing plan. The IFP concluded that the financing plan is not adequate to fund the infrastructure needs of Village One.

The IFP determined that the existing financing plan must be changed for the following reasons:

- **One time taxes in the existing Community Facilities District (CFD) are more than 100 percent too low, creating a funding shortfall of \$35.1 million.**

- **The existing Capital Facilities Fees (CFF) may be too low, resulting in a funding shortfall of up to \$11.4 million.**
- **Revenues have not in the past, and will not in the future, keep up with infrastructure costs.**

The report identifies five factors that have contributed to the shortfall of funding for Village One infrastructure. Those factors are as follows:

1. The cost to construct capital improvements have escalated since the 1997 Finance Plan Update was prepared.
2. The infrastructure costs were consistently reduced during the 1990s each time Financing Plan Updates were conducted. It is estimated that costs were probably reduced to at least twenty percent below an adequate level to properly serve Village One.
3. Land costs account for a significant portion of the total infrastructure cost. Land costs included in the amended Village One Finance Plan in April 1997 were estimated to be \$40,000 per acre. However, the City has experienced much higher costs for right-of-way and land purchases since that time, and an average cost of \$150,000 per acre is incorporated into the current cost estimates, based on recent historical figures.
4. The cost to administer the special tax program over the life of the Village One CFD were originally underestimated.
5. There is considerably less acreage over which to spread the remaining infrastructure costs.

As a result of the funding deficit exposed by the IFP, the City Council is considering an amendment to the Village One Specific Plan to require the participation of future development in Village One to make up the funding deficit. This may include, but is not limited to, one of the funding strategies discussed in the IFP.

The approval of additional precise plans, proposed tentative subdivision or parcel maps for which the application has not yet been deemed complete, final development plans, use permits, plot plans, rezoning and other land use entitlements on unvested land in Village One that are inconsistent with the contemplated Village One Specific Plan amendment would add to the Village One infrastructure funding deficit and worsen the City's inability to provide safe streets, adequate storm drainage facilities, and fully developed parks. Each new development entitlement on unvested land granted between now and the time said specific plan amendment is adopted further increases the funding deficit. As an example, the IFP identifies the funding deficit for each single-family residential unit at approximately \$10,000. Each such land use entitlement accordingly severely restricts the future exercise of discretion by the City Council to deal with the funding deficit. For these reasons, the City Council finds and determines that there is a current and immediate threat to the public health, peace, safety and welfare.

SECTION 2. PROHIBITION. Pursuant to the provisions of Government Code Section 65858, for a period of forty-five (45) days from the effective date of this ordinance, no precise plan, proposed tentative subdivision or parcel maps for which the application has not yet been deemed complete, use permit, rezoning, plot plan, final development plan, or other land use entitlement on unvested land shall be issued or approved that is not in compliance with the contemplated amendment to the Village One Specific Plan described in Section 1.

SECTION 3. The Community and Economic Development Department shall prepare for consideration and issuance by the City Council a written report describing the measures taken to alleviate the conditions which led to the adoption of this ordinance. The report shall be provided to the City Council so that it may be considered and issued by the City Council no later than ten days prior to the expiration date of this ordinance.

SECTION 4. SEVERABILITY. If any section, subsection, sentence, clause, phrase, or portion of this ordinance for any reason is held to be invalid by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

SECTION 5. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)
FINDING. The City Council finds that this emergency ordinance is enacted in order to temporarily suspend development in Village One in order to prevent or mitigate an emergency due to inadequate infrastructure funding. Therefore, this ordinance falls under the specific exemption from the California Environmental Quality Act (CEQA) found in Public Resources Code Section 21080(b)(4) and Section 21080(b)(5) and applicable guidelines, and no environmental review of this action is required. In addition, it can be seen with certainty that there is no possibility this emergency ordinance may have a significant affect on the environment, and this ordinance is exempt from CEQA requirements pursuant to Section 15061(b)(3) of the CEQA guidelines. This action is also taken pursuant to CEQA guideline 15308 in order to ensure the protection of the environment of the Village One Specific Plan Area.

SECTION 6. EFFECTIVE DATE. Pursuant to Sections 716 and 722 of the Charter of the City of Modesto and Section 65858(a) of the California Government Code, this ordinance shall go into effect and be in full force and operation as of the date of its adoption.

The foregoing ordinance was introduced and adopted at a regular meeting of the Council of the City of Modesto held on the 4th day of June, 2002, by Councilmember O'Bryant, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Conrad, was upon roll call carried and ordered printed and published by the following vote:

AYES:	Councilmembers:	Conrad, Fisher, Frohman, Jackman, Keating, O'Bryant, Mayor Sabatino
NOES:	Councilmembers:	None
ABSENT:	Councilmembers:	None

APPROVED: *Carmen Sabatino*
CARMEN SABATINO, Mayor

ATTEST:

By: *Jean Zahr*
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

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

ORDINANCE NO. 3264-C.S.

AN ORDINANCE ADOPTING THE 2002-2003 OPERATING BUDGET AND FIRST YEAR OF THE FISCAL YEAR 2002-2003 THROUGH 2011-2012 CAPITAL IMPROVEMENT PROGRAM FOR THE CITY OF MODESTO FOR THE FISCAL YEAR ENDING JUNE 30, 2003, 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 2002-2003 fiscal year has been submitted to the City Council by the City Manager, and the City Council has made such revisions as it has deemed advisable as per Exhibit "A" attached hereto and incorporated herein by this reference, and

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

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

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

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

SECTION 1. ADOPTION OF BUDGET. That the "City of Modesto Proposed Annual Budget 2002-2003", presented by the City Manager to the City Council at its meeting held on June 25, 2002, and as thereafter amended by the City Council, a copy of which Budget, as amended, is on file in the office of the City Clerk, is hereby adopted, as the Budget for the City

of Modesto for the fiscal year ending June 30, 2003, and the several amounts stated therein as proposed expenditures.

SECTION 2. ENCUMBRANCES. That the funds of the City of Modesto encumbered on June 30, 2002, are hereby appropriated for the purposes for which they are encumbered and shall be a part of the Budget for the fiscal year 2002-2003, adopted hereby.

SECTION 3. CAPITAL PROJECTS. That Capital Projects carried over from fiscal year 2001-2002 are hereby re-appropriated as a part of the Budget for the fiscal year 2002-2003, adopted hereby.

SECTION 4. CITY COUNCIL APPROVAL REQUIRED. That the City Council is authorized by resolution to:

- a. Approve appropriation of reserves.
- b. Approve transfers between funds.
- c. Approve appropriation of any non-departmental revenues.
- d. Approve inter-fund loans.
- e. Approve the creation of new CIP projects and appropriation increases in existing CIP projects.
- f. Approve the transfer and authorize the expenditure of funds from the Reserved Fund Balances for specific purposes.

SECTION 5. CITY MANAGER AUTHORITY. That the City Manager is authorized to transfer funds between budgeted activities or departments within a fund and to appropriate unbudgeted departmental revenues, and the City Manager may delegate this authority to the Deputy City Manager.

SECTION 6. DEPARTMENT HEAD AUTHORITY. That City Department Heads are authorized to allocate departmental appropriation to line item level.

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

SECTION 8. PUBLICATION: Copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in *The Modesto Bee*, the official newspaper of the City of Modesto, setting forth the title of this ordinance, the date of its introduction and the places where this ordinance is posted.

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 25th day of June, 2002, by Councilmember Jackman, who moved its adoption and passage to print, which motion being duly seconded by Councilmember Frohman, was upon roll call carried and ordered printed and published by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: Conrad

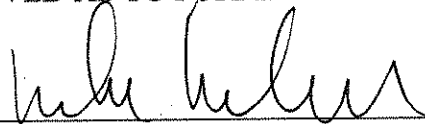
APPROVED: 
CARMEN SABATINO, Mayor

ATTEST:

By: 
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: 
MICHAEL D. MILICH, City Attorney

	CITY OF MODESTO AGENDA REPORT	AGENDA ITEM NO. COMMITTEE MEETING: 6/24/02
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Date: June 20, 2002

TO: Finance Committee

FROM: Robert V. Stout, Director of Finance

SUBJECT: Fiscal Year 2003 Budget Adoption Recommendations

CONTACT: Greg Baird, (gbaird@modestogov.com) 577-5458

RECOMMENDED COMMITTEE ACTION:

Motion acknowledging receipt of report; referring report and recommendations to City Council.

BACKGROUND:

The Finance Committee reviewed the overall proposed budget at four workshops during the month of May and June. Listed below are the Committee's recommendations for budget adoption.

Finance Committee Recommendations

Balanced Budget

The Committee recommends that the following items be accepted by the City Council in order to maintain a balanced budget with at least a General Fund reserve of 8% or approximately \$9.6 million.

- Fiscal Year 02: Department budget cuts of \$1.77 million
- Fiscal Year 02: Transfer of one half of Department ABS (Accountability Budgeting Savings) savings of \$1,523,371 to the General Fund Reserve
- Fiscal Year 02: Reduction of \$2.0 million from the General Fund Storm Drain set-aside money for the Storm Drain Fund
- Fiscal Year 03: Department budget cuts of \$2.25 million
- Fiscal Year 03: Transfer of \$2 million from the Fleet Fund (Fleet Rate Holiday) to the General Fund Reserve

Supplemental Requests

The Committee recommends the department supplemental budget requests listed below:

1. **Fire Department (Public Safety) – Should the City of Modesto fund the supplemental budget requests from the Fire Department?**

The Committee agreed that the need to fund the Fire Department's requests is critical. The supplemental requests listed below should be funded:

- Weapons of Mass Destruction Training (\$600,000 grant funded). Additional costs for equipment and training, as well as backfilling overtime, to prepare for terrorist activities should be funded in the amount of \$33,410.
 - Replacement of a Type 1 Engine. Total costs is \$350,000, of which \$177,453 is currently funded in the Fire Department FY 03 budget, with an additional amount of \$172,547 funded by this supplemental request.
 - Funding of a Fire Prevention Inspector should be funded in the amount of \$30,000. This represents partial funding for the position.
 - Start-up of the Pilot Paramedic Engine Company Program should be funded in the amount of \$37,000.
- 2. Personnel Department (Insurance Funds) - Should the City of Modesto provide an additional appropriation to fund an unanticipated increase in Property Insurance premiums?**
- The Committee recommends that an additional \$73,000 be added to Property Insurance Fund to cover this increase in premiums. The General Fund cost is \$18,980 and the non-General Fund cost is \$54,020.
- 3. Information Technology Department (Information Technology) - Should the City of Modesto provide additional funding for the Computer Replacement Fund?**
- The Committee recommends that an additional \$102,500 be added to the Computer Replacement Fund for the purchase of new computers in an effort to reduce the current 7-8 year computer replacement cycle. Also recommends purchasing computers in bulk quantities for best pricing and standardization to move toward efficiency gains with "push" technology.
- 4. Parks, Recreation and Neighborhoods Department (Contributions to Outside Organizations) - Should the City of Modesto reduce the Modesto Sister Cities Contribution by \$13,000?**
- The Committee recommends that the Modesto Sister Cities Contribution be evaluated each year when Sister Cities can review a budget with the City Council.
- 5. Community and Economic Development Department (Business Parks) - Should \$365,000 be re-appropriated for Business Park Development for fiscal year 2003?**
- The Committee recommends that this unspent amount be re-appropriated for Fiscal Year 2003.
- 6. Community and Economic Development Department (Ninth Street Renovations) - Should the Ninth Street Renovations budget request for \$50,000 be re-appropriated for Fiscal Year 2003?**

- The Committee recommends that this item be directed to full Council for consideration at a future Council meeting.
7. **Engineering & Transportation (Traffic Signal Maintenance) - Should the City of Modesto fund the supplemental request for Traffic Signal Maintenance?**
 - The Committee recommends that the equipment necessary for this request be fully funded in the amount of \$104,000 and that one half of the salary request for an Electrician position be funded in the amount of \$32,521 for a total amount of \$136,521.
 8. **Operations & Maintenance (Water Charges for new Municipal Park Sites) - Should the City of Modesto fund the supplemental request for additional monies to pay for water charges for new parks?**
 - The Committee recommends that this supplemental request be fully funded in the amount of \$30,000 to provide the necessary water to sustain newly planted vegetation in new City parks.
 9. **Operations & Maintenance (Mistletoe Removal Services) - Should the City of Modesto fund the supplemental request to pay for mistletoe removal services?**
 - The Committee recommends that this supplemental request be partially funded in the amount of \$50,000 to provide funds to contract for mistletoe removal.
 10. **Operations & Maintenance (Sidewalk Repairs Services) - Should the City of Modesto fund the supplemental request to pay for sidewalk repair services?**
 - The Committee recommends that this supplemental request be partially funded in the amount of \$50,000 to provide funds to contract for sidewalk repair services.
 11. **Operations & Maintenance (Wastewater Fund) - Should the City of Modesto fund the supplemental request for the cost share program from Non-General funds?**
 - The Committee recommends that this supplemental request be funded in the amount of \$100,000 for the cost share program impact (these monies will be appropriated from the Wastewater fund).
 12. **Finance Department (Interactive Voice Response System) - Should the City of Modesto fund the supplemental request for an Interactive Voice Response System?**
 - The Committee recommends that this supplemental request be funded from the water and wastewater utility funds in the amount of \$125,000.
 13. **Finance Department (Counter Reconstruction in Customer Services area).**
 - The Committee recommends that the counter reconstruction (estimated at \$200,000) be paid for through the Joint Powers Agency (JPA) and/or surplus funds redistributed between City and County at the close of books for JPA - 10th Street Project.

Summary of Budget Adjustments for 2003

Additional General Fund Funding

Fire Department WMD Training	\$ 33,410
Fire Department Replacement of Type 1 Engine	\$172,547
Fire Department Partial Funding for Fire Prevention Inspector	\$ 30,000
Fire Department Pilot Paramedic Engine Company Program	\$ 37,000
Property Insurance Premium	\$ 18,980
Information Technology Computer Replacement Fund	\$102,500
E&T Traffic Signal Maintenance/Electrician	\$136,521
O&M Water for New Parks	\$ 30,000
O&M Mistletoe Removal Services	\$ 50,000
O&M Sidewalk Repair Services	<u>\$ 50,000</u>
General Fund Total	\$660,958

Property Insurance Premium (additional amount paid by other funds) \$ 54,020

Finance Department Interactive Voice Response System \$125,000
(funded by Water and Wastewater Utility Funds)

Non-General Fund \$100,000 Wastewater Fund Appropriation
For the cost share program impact \$100,000

Budget Reductions

Modesto Sister Cities Contribution \$(13,000)

Committee Recommendations on Policy Issues

The following Committee recommendations on Policy Issues include Policy Issues not previously addressed in this staff report.

- Business Parks – the attraction of Business Park land should continue to be a high priority by the City Council. Funding for this item is included in the FY 03 budget in the Strategic Plan/Economic Development Fund.
- Public, Education & Government Programming (PEG) and Institutional Network (I-Net) – the City will initially fund the costs of these items from Franchise Fees and the Cable transfer settlement and may return to council with alternatives for additional funding, if necessary.
- PCE Litigation - the City Manager should be granted authority to appropriate fund balance reserves to pay for additional costs associated with Council-approved litigation (to be reviewed by Council each year).
- Golf Fund - under GASB34 policy, the Committee recommends that the General Fund loan be moved to a “subsidy” status. The Committee requests that a green fee increase of \$1.00 every other year be considered.
- Setting of Charges and Fees – a formal policy regarding Charges and Fees should be adopted.

- Wastewater Rate Increases – the current multi-year rate increases should be brought before Council each year for additional review and approval. A 4% increase approval for FY03 is needed.
- Community Partnerships – the City should continue to seek partnerships to complete beautification projects and re-appropriate \$50,000 in the FY 03 budget for this program.
- Littering – the City should continue to fund programs aimed at removing litter on City roadways and re-appropriate \$83,000 in the FY 03 budget for equipment and salary for a Sheriff Deputy to oversee the work crews

Committee Recommendations on the Capital Improvement Program

The Planning Commission and Finance Committee recommendations are as follows:

- Capital Improvement Program (CIP) Funding Plans – there is still a need to insure funding for Fire Station 11 construction (General Fund revenue was saved in FY 02 by allocating construction funds over the next two fiscal years)
- Capital Facilities District (CFD) projects comprise a significant part of the City's Capital infrastructure that is not currently addressed in the CIP. A comprehensive approach would dictate that all capital facilities be addressed in the CIP. The Commission recommends that future CIP's include CFD facilities.
- Storm drainage facilities are critical. As noted in the draft CIP, a rate increase is crucial to the continued successful operation of our storm drainage system. The Commission supports a rate increase.
- Increasing acreage of parks and recreational facilities carries with it an increasing maintenance and operational burden. The Commission recommends that the City explore funding mechanisms such as the establishment of Landscaping and Lighting District(s) or Mello-Roos District(s) for this purpose.
- The Commission notes that fees such as CFF do not include an interest component. A financing system in which facilities are required before all the fees are collected should make provision for interest costs. The Commission understands that a capital fees study is to be undertaken in the coming year and recommends that this issue be addressed.
- The Commission strongly recommends that the City identify and adopt funding mechanisms other than "pay-as-you-go" to provide for infrastructure necessary to support new development and growth.

Committee Recommendations on Additional Re-Appropriations

- Street Report: Update on budget vs actual for FY02 and new budget amounts for FY03

Committee Recommendations on Unfunded Priorities

The following recommendations are a summary from the Budget Workshops:

- Fire Department. Funding for 3 additional fire fighters was placed on the Priority list in the amount of \$300,000.

- Police Department. Matching funds in the amount of \$150,000 was added to the Priority list for any new grant funding for six additional Police officers.
- Parks, Recreation and Neighborhoods Department. The Neighborhood Preservation Unit Technician was added to the Priority list in the amount of \$44,895.
- Community and Economic Development Department. The Permit Tracking System was added to the Priority list in the amount of \$103,258. Interim General Plan fees/surcharges were added to the Priority list in an unspecified amount.

Finance Committee Agenda for the June 24, 2002 Budget Workshop

- Advertising budgets and Modesto Bee contract
- Discuss Fiscal 2003 Budget:
 1. Review of Redevelopment Agency
 2. Contributions to Outside Organizations
 3. Review of tentative changes to departmental budgets
 4. Review of "priority" items
 5. Update on Streets Report
 6. Approval of Recommendations to City Council

REASONS FOR RECOMMENDATION:

Fiscal Year 2003 Budget Adoption.

EXISTING POLICY/RELATIONSHIP TO STRATEGIC PLAN:

The City Charter requires adoption of a budget for each upcoming fiscal year by June 30.

POLICY ALTERNATIVES:

Policy alternatives were discussed at Committee workshops.

FISCAL IMPACTS:

Fiscal impacts were discussed at Committee workshops.

INTERDEPARTMENTAL COORDINATION:

All department representatives have been involved with the budget input and have met with the City Manager and Finance Department to review budget proposals to the Finance Committee and City Council.

PUBLIC PARTICIPATION:

The proposed budget was presented to Council on May 14, 2002. Workshops were conducted on May 23, May 30, June 5, June 18 and June 24, 2002. A public hearing was held on June 5, 2002. The proposed budget documents are available to the public at the County Library located at 1500 I Street in Modesto, City Clerk's office and through the Finance Department located at 1010 Tenth Street.


COMMITTEE RECOMENDATION:

N/A

STEPS FOLLOWING APPROVAL:

The Finance Committee's recommendations will go forward to the City Council for the budget adoption.

Prepared by:



Greg Baird, Interim Budget Officer

Reviewed and
Submitted by:



Robert V. Stout, Finance Director/Treasurer

ORDINANCE NO 3265 -C.S.

EXTENSION OF EMERGENCY INTERIM ORDINANCE NO. 3263-C.S. OF THE CITY OF MODESTO ADOPTED PURSUANT TO GOVERNMENT CODE SECTION 65858 AND SECTIONS 716 AND 722 OF THE MODESTO CITY CHARTER PROHIBITING THE APPROVAL IN THE VILLAGE ONE SPECIFIC PLAN AREA OF ADDITIONAL PRECISE PLANS, PROPOSED TENTATIVE AND FINAL SUBDIVISION OR PARCEL MAPS FOR WHICH THE APPLICATION HAS NOT YET BEEN DEEMED COMPLETE, PLOT PLANS, USE PERMITS, REZONING, AND FINAL DEVELOPMENT PLANS, OR ANY OTHER LAND USE ENTITLEMENT ON UNVESTED LAND FOR A PERIOD OF TEN MONTHS AND FIFTEEN DAYS.

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

SECTION 1. DECLARATION OF EMERGENCY. On June 4, 2002, the Council of the City of Modesto adopted an emergency interim ordinance prohibiting new development approvals on unvested land in Village One (Ordinance No. 3263-C.S.). The Council of the City of Modesto hereby finds and declares that the extension of Ordinance No. 3263-C.S. is necessary as an emergency measure because there is still a current and immediate threat to the public health, safety, and welfare for the following reasons:

On May 28, 2002, the City Council accepted the Infrastructure Financing Plan for Village One Community Facilities District No. 1996-1 ("IFP") prepared by Goodwin Consulting Group, Inc. A copy of the IFP is attached and incorporated into this ordinance by reference.

The central purpose of the IFP was to determine the adequacy of the current Village One financing plan. The IFP concluded that the financing plan is not adequate to fund the infrastructure needs of Village One.

The IFP determined that the existing financing plan must be changed for the following reasons:

- **One time taxes in the existing Community Facilities District (CFD) are more than 100 percent too low, creating a funding shortfall of \$35.1 million.**
- **The existing Capital Facilities Fees (CFF) may be too low, resulting in a funding shortfall of up to \$11.4 million.**
- **Revenues have not in the past, and will not in the future, keep up with infrastructure costs.**

The report identifies five factors that have contributed to the shortfall of funding for Village One infrastructure. Those factors are as follows:

1. The cost to construct capital improvements have escalated since the 1997 Finance Plan Update was prepared.
2. The infrastructure costs were consistently reduced during the 1990s each time Financing Plan Updates were conducted. It is estimated that costs were probably reduced to at least twenty percent below an adequate level to properly serve Village One.
3. Land costs account for a significant portion of the total infrastructure cost. Land costs included in the amended Village One Finance Plan in April 1997 were estimated to be \$40,000 per acre. However, the City has experienced much higher costs for right-of-way and land purchases since that time, and an average cost of \$150,000 per acre is incorporated into the current cost estimates, based on recent historical figures.
4. The cost to administer the special tax program over the life of the Village One CFD were originally underestimated.
5. There is considerably less acreage over which to spread the remaining infrastructure costs.

As a result of the funding deficit exposed by the IFP, the City Council is considering an amendment to the Village One Specific Plan to require the participation of future development in Village One to make up the funding deficit. This may include, but is not limited to, one of the funding strategies discussed in the IFP.

The approval of additional precise plans, proposed tentative subdivision or parcel maps for which the application has not yet been deemed complete, final development plans, use permits, plot plans, rezoning and other land use entitlements on unvested land in Village One that are inconsistent with the contemplated Village One Specific Plan amendment would add to the Village One infrastructure funding deficit and worsen the City's inability to provide safe streets, adequate storm drainage facilities, and fully developed parks. Each new development entitlement on unvested land granted between now and the time said specific plan amendment is adopted further increases the funding deficit. As an example, the IFP identifies the funding deficit for each single-family residential unit at approximately \$10,000. Each such land use entitlement accordingly severely restricts the future exercise of discretion by the City Council to deal with the funding deficit. For these reasons, the City Council finds and determines that there is a current and immediate threat to the public health, peace, safety and welfare.

SECTION 2. PROHIBITION. Pursuant to the provisions of Government Code Section 65858, for a period of ten (10) months and fifteen (15) days from the effective date of this ordinance, no precise plan, proposed tentative subdivision or parcel maps for which the application has not yet been deemed complete, use permit, rezoning, plot plan, final development plan, or other land use entitlement on unvested land shall be issued or approved that is not in compliance with the contemplated amendment to the Village One Specific Plan described in Section 1.

SECTION 3. EXCEPTION. The prohibition set forth in Section 2 shall not apply to any project with a significant component of multi-family housing as that term is defined in Government Code Section 65858(h).

SECTION 4. The Community and Economic Development Department shall prepare for consideration and issuance by the City Council a written report describing the measures taken to alleviate the conditions which led to the adoption of this ordinance. The report shall be provided to the City Council so that it may be considered and issued by the City Council no later than ten (10) days prior to the expiration date of this ordinance.

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

SECTION 6. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) FINDING. The City Council finds that this emergency ordinance is enacted in order to temporarily suspend development in Village One in order to prevent or mitigate an emergency due to inadequate infrastructure funding. Therefore, this ordinance falls under the specific exemption from the California Environmental Quality Act (CEQA) found in Public Resources Code Section 21080(b)(4) and Section 21080(b)(5) and applicable guidelines, and no environmental review of this action is required. In addition, it can be seen with certainty that there is no possibility this emergency ordinance may have a significant affect on the environment, and this ordinance is exempt from CEQA

requirements pursuant to Section 15061(b)(3) of the CEQA guidelines. This action is also taken pursuant to CEQA guideline 15308 in order to ensure the protection of the environment of the Village One Specific Plan Area.

SECTION 7. EFFECTIVE DATE. Pursuant to Sections 716 and 722 of the Charter of the City of Modesto and Section 65858(a) of the California Government Code, this ordinance shall go into effect and be in full force and operation as of the date of its adoption.

The foregoing ordinance was introduced and adopted at a regular meeting of the Council of the City of Modesto held on the 9th day of July, 2002, by Councilmember Jackman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Keating, was upon roll call carried and ordered printed and published by the following vote:


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

NOES: Councilmembers:Mayor Sabatino

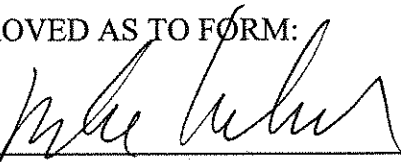
ABSENT: Councilmembers:None

APPROVED: 
CARMEN SABATINO, Mayor

ATTEST:

By 
JEAN ZAHR, City Clerk

APPROVED AS TO FORM:

By 
MICHAEL D. MILICH, City Attorney

(SEAL)

ORDINANCE NO. 3266 - C.S.

AN ORDINANCE AMENDING ARTICLE 1 OF CHAPTER 1
OF TITLE 6 OF THE MODESTO MUNICIPAL CODE AND
ADDING ARTICLE 4 THERETO RELATING TO
ADMINISTRATIVE AND PROCEDURAL PROVISIONS.

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

SECTION 1. AMENDMENT OF CODE. Article 1 of Chapter 1 of Title 6 of
the Modesto Municipal Code is hereby amended to read as follows:

ARTICLE 1. REQUIREMENTS, REGULATIONS AND PENALTIES

6-1.101. DEFINITIONS.

For the purposes of this chapter, the words and phrases used herein shall have the following meaning unless the context shows a different meaning.

- (a) **Business.** All professions, trades and occupations and all and every kind of calling carried on for profit or livelihood.
- (b) **Business District.** Any area zoned for business purposes by the zoning regulations of the City.
- (c) **Commission Broker.** One who, for a commission or fee, handles the buying and/or selling of commodities, or an agent or an agency for marketing manufactured goods or other commodities, but who does not take ownership of commodities sold.
- (d) **Day.** The term "day" shall mean a calendar day. If the last day for performance of any act provided for shall be a holiday the act may be performed upon the next business day with the same effect as if it had been performed upon the day appointed. For purposes of this section, the Friday in November immediately after Thanksgiving Day shall be considered a holiday.
- (e) **Director.** The Finance Director, or his/her duly authorized deputies or assistants who may be charged with the collection of license taxes and the issuance of licenses.

- (f) **Fixed Place of Business.** A place of business in the City of Modesto occupied for the particular purpose of conducting the business thereat and regularly kept open for that purpose with a competent person in attendance for the purpose of attending to said business.
- (g) **Gross Receipts.** The total amount of the sale price of all sales and the total amount charged or received for the performance of any act, service, or employment for whatever nature it may be, for which a charge is made or credit allowed. Included in gross receipts shall be all receipts, cash, credits and property of any kind or nature and any amount for which credit is allowable by the seller to the purchaser without any deduction therefrom on account of the cost of the property sold, the cost of the materials used, labor or service cost, interest paid or payable, or losses or other expenses whatever.

The following shall be excluded from gross receipts:

- (1) Cash discounts allowed and taken on sales;
- (2) Value of property accepted as part of the purchase price;
- (3) Any taxes collected which are separately stated and collected for and paid to a governmental agency;
- (4) Such part of the sale price of property returned by the purchaser upon rescission of the contract of sale as is refunded either in cash or by credit;
- (5) Receipts of refundable deposits, except that refundable deposits forfeited and taken into income of the business shall not be excluded;
- (6) Collection for others where the business is acting as an agent or trustee to the extent that payments are made to those for whom collected;
- (7) Sales of real estate by an agent or sales of commodities by a commission broker, except that portion of the sale which represents commissions or other income to the agent;
- (8) That portion of the receipts of a general contractor which represents payments to subcontractors, providing such subcontractors are licensed under Article 2 of this chapter and

further provided that the general contractor furnishes the Director with the names and addresses of the subcontractors and the amounts paid each subcontractor; and

- (9) The amount of gross receipts which has been subject to a license tax paid to any other city.
- (h) **Itinerant Vendor.** Any person who shall travel from town to town, house to house, apartment to apartment, office to office, place to place, person to person, or any combination thereof for the purpose of selling, offering for sale, or soliciting orders for, goods, wares, or merchandise at retail, but shall not include selling and delivering, or offering to sell and deliver, items of food and drink for human consumption by a vendor to regular customers along established routes in accordance with invitations previously made to such vendor to make regular calls at specific intervals at such premises for said purpose.

An itinerant vendor shall include but not be limited to a hawker, peddler, street vendor, sidewalk vendor, flower vendor, arts or crafts vendor, or a vendor from a truck or vehicle. An itinerant vendor shall not include any authorized agent or representative of a person having a fixed place of business in the City of Modesto, nor shall it include a charitable institution which sponsors an occasional bazaar, festival, or rummage sale at which the goods, wares or merchandise have been purchased by, prepared by, or donated to the charitable institution and at which no other person makes a profit, nor shall it include youth and senior part-time occupations as set forth in Section 6-1.106.

- (i) **Manufacturing.** One who engages in the business of manufacturing, fabricating or processing any materials, raw or partly wrought, into goods, wares or merchandise, or assembling or packaging any manufactured or processed materials, whether such manufactured or processed goods are sold or distributed to wholesalers, brokers, or other channels for the purpose of resale.
- (j) **Month.** The term "month" shall mean a calendar month.
- (k) **Operator.** The term "operator" shall mean any person operating a business subject to the tax, including, but not limited to, the owner or proprietor of such premises, lessee, sublessee, mortgagee in possession, licensee or any other person otherwise operating such business.

- (l) **Person.** The term "person" shall mean any individual, firm, company, partnership, limited liability partnership, joint venture, association, proprietorship, social club, fraternal organization, joint stock company, domestic or foreign corporation, limited liability corporation, estate, trust, business trust, receiver, trustee, trustee in bankruptcy, administrator, executor, assignee, syndicate, or any other group or combination acting as a unit, whether mutual, cooperative, fraternal, nonprofit or otherwise, excepting: the United States of America, the State of California, and any political subdivision of either thereof upon which the City is without power to impose the tax herein provided.

Whenever the term "person" is used in any clause in this Article imposing either a tax liability or a penalty for failure to perform any act, such term shall include any natural person who as an individual or with a spouse and/or lineal descendants owns or controls fifty (50) percent or more of the voting stock of a corporation obligated to file returns and pay or remit tax; and in addition, is a person with the power to control the fiscal decision-making process by which the corporation allocates funds to creditors in preference to its tax obligations. An individual who is an officer or director of a "person," as defined above, shall rebuttably be presumed to be a person with the power to control said entity's fiscal decision-making processes.

Whenever the term "person" is used in any clause prescribing and imposing a penalty, the term as applied to associations shall include the owners or part owners thereof, and as applied to corporations, the officers, shareholders and directors thereof, in their individual capacities, if such owners, officers, shareholders and directors have charge of the affairs of said association or corporation.

- (m) **Processor.** One who engages in business of converting an article, substance or commodity into marketable form for the purpose of resale by changing its physical or chemical composition.
- (n) **Public Utility.** Any person furnishing the public with communication, water, light, heat, power or other public utility or service subject to regulation by the Public Utilities Commission of the State of California.
- (o) **Return.** The term "return" shall mean any written statement required to be filed pursuant to this chapter and containing information necessary to the determination of the tax, such as a declaration of gross receipts.
- (p) **Tax Collector.** The term "Tax Collector" shall mean the Finance Director, as defined herein, or his or her designee.

- (q) **Taxpayer.** The term "taxpayer" shall mean a person required under this chapter to file a return or pay or remit a tax.
- (r) **Vehicle.** Every device, in, upon, or by which any person or property is or may be transported or drawn upon a public highway.
- (s) **Wholesaler.** One who engages in the business of selling or soliciting the sale of goods, wares, merchandise, or services for the purpose of resale and not to consumers or users thereof.

6-1.102. REVENUE MEASURE.

The provisions of this chapter are enacted solely to raise revenue for municipal purposes, and are not intended for regulation.

6-1.103. LICENSE REQUIRED.

- (a) There are hereby imposed upon the businesses, trades, professions, callings and occupations specified in this chapter license taxes in the amounts hereinafter prescribed. It shall be unlawful for any person to transact and carry on any business, trade, profession, calling or occupation in the City of Modesto without first having procured a license from said City so to do; or without complying with any and all applicable provisions of this chapter.
- (b) Any person carrying on for profit or livelihood, excepting persons providing services on behalf of a charitable organization as defined by State and Federal law, the solicitation of money for furnishing or performing, or attempting to furnish or perform, any services associated with the cleaning, washing, polishing or providing care to the exterior portion of a vehicle including, but not limited to, windshields or windows, must procure a business license from the City. Every person having a license issued under this section shall carry such license with them at all times while carrying on the occupation described in this section. Every person having a license under this section shall produce and exhibit the same, when requested to do so by any police officer, or by any officer or employee authorized to issue, inspect, or collect licenses.
- (c) This section shall not be construed to require any person to obtain a license prior to doing business within the City if such requirement conflicts with applicable statutes of the United States or of the State of California.

- (d) Persons not required to obtain a license prior to doing business within the City because of conflict with applicable statutes of the United States or of the State of California shall be liable for payment of the license tax imposed by this chapter.

6-1.104. LICENSE DOES NOT PERMIT BUSINESS OTHERWISE PROHIBITED.

The payment of a license tax required by the provisions of this chapter, and its acceptance by the City, and the issuance of such license to any person shall not entitle the holder thereof to carry on any business unless he/she has complied with all the requirements of this Code and all other applicable laws, nor to carry on any business in any building or on any premises designated in such license in the event that such building or premises are situated in a zone or locality in which the conduct of such business is in violation of any law.

6-1.105. NO SUBSTITUTE FOR OTHER REVENUE REQUIREMENTS.

Persons required to pay a tax for transacting and carrying on any business under this chapter shall not be relieved from the payment of any license tax for the privilege of doing such business required under any other provisions of this Code.

6-1.106. EXEMPTIONS.

The provisions of this chapter shall not be deemed or construed to require the payment of a license tax to conduct, manage or carry on the following businesses or occupations:

- (a) **Charitable Institutions, Etc.** From any institution or organization which is conducted, managed or carried on wholly for the benefit of charitable purposes, or from which profit is not derived either directly or indirectly by any person; nor shall any license be required for the conducting of any entertainment concert, exhibition or lecture on scientific, historical, literary, religious or moral subjects, whenever the receipts of any such entertainment, concert, exhibition or lecture are to be appropriated to any church, or school, or to any religious or benevolent purpose within the City; nor shall any license be required for the conducting of any entertainment, dance, concert, exhibition or lecture by any religious, charitable, fraternal, educational, military, state, county or municipal organization or association whenever the receipts of any such entertainment, dance, concert, exhibition or lecture are to be appropriated for the purposes and objects for which such association or organization was formed, and from which profit is not derived, either directly or indirectly

by any person; provided, however, that nothing in this section contained shall be deemed to exempt any such institution or organization from complying with the provisions of any law of the City requiring such institution or organization to obtain a permit from the proper board, or officer to conduct, manage or carry on any profession, trade, calling or occupation; provided that such institution or organization shall file with the Director satisfactory proof by affidavit that the receipts of such business are to be used for the purposes herein specified.

- (b) **Disabled Veterans.** Any disabled veteran who is physically unable to obtain a livelihood by manual labor and having honorable discharge or release papers showing disability incurred while in the service in the armed forces of the United States, shall have the right to distribute circulars and hawk, peddle and vend any goods, wares or merchandise owned by him/her without the payment of any license or tax upon the following terms and conditions:

The applicant shall furnish evidence satisfactory to the Director that he/she is physically unable to obtain a livelihood by manual labor, an honorably discharged or released member of the armed forces of the United States and that he/she sustained disability while serving in the armed forces of the United States during a war or military campaign in which the United States was engaged.

- (c) **Agricultural Producers.** The actual grower and producer of ranch, farm, orchard, vineyard or poultry produce or products, who, by himself or by an agent or employee, sells or delivers to the market or at a loading platform such produce or products actually produced or grown by him.
- (d) **Blind.** Any business conducted, carried on or managed solely by a totally blind person.
- (e) **Part-Time Occupations.** Any part-time occupation conducted or carried on solely by any natural person under the age of eighteen (18) years, or sixty-five (65) years of age or older. Part-time occupation as used in this subsection means an occupation in which the annual gross receipts do not exceed ten thousand dollars (\$10,000.00).
- (f) **Garage Sales.** Any garage sale held or conducted in accordance with the provisions of Section 10-2.506 of this Code. Garage sale as used in this subsection means the sale at retail or used or secondhand goods or merchandise at dwellings and on residentially zoned property; such sales are commonly known as patio sales, yard sales, etc.

6-1.107. EXCLUSIONS.

Except as may be otherwise specifically provided in this chapter, the terms hereof shall not be deemed or construed to apply to any of the following persons:

- (a) Any public utility which pays to the City a tax under a franchise or similar agreement, or any publicly owned public utility.
- (b) Banks, including national banking associations, to the extent that a city may not levy a license tax upon them under the provisions of Article XIII, Section 27, Subdivision 1(a) of the State Constitution.
- (c) Insurance companies and associations to the extent that a city may not levy a license tax upon them under the provisions of Article XIII, Section 28 of the State Constitution.
- (d) **City, Public Entity and Constitutional Exemptions.** Nothing in this Article shall be construed as imposing a tax upon:
 - (1) The City;
 - (2) The State of California, or any county, municipal corporation, district or other political subdivision of the State, except where any constitutional or statutory immunity from taxation is waived or is not applicable;
 - (3) The United States of America, or any of its agencies or subdivisions, except where any constitutional or statutory immunity from taxation is waived or is not applicable; or
 - (4) Any person when imposition of such tax upon that person would be in violation of the Constitution or statutes of the United States or the Constitution or statutes of the State of California.

The Director may require the filing of a verified statement from any person claiming to be excluded by the provisions of this section, which statement shall set forth all facts upon which the exclusion is claimed.

6-1.108. APPLICATIONS FOR A LICENSE.

Each applicant for a license shall complete and sign an application on forms provided by the City, except as otherwise provided in this chapter. Such forms shall require such information as the Director shall deem necessary to determine the proper license tax to be paid by the applicant, including the name and address

of the individual if a single proprietor, the names and addresses of all owners if a firm, or the names and addresses of all principal officers if a corporation, the name of the business, the address at which the business is to be conducted, the type of business, and the activities to be carried on for which the license is being sought. Upon determining the license tax due, the Director shall indicate the amount on the application form, and upon payment of the tax, shall issue to the applicant a receipt for taxes paid.

6-1.109. BRANCH ESTABLISHMENTS: SEPARATE TYPES OF BUSINESS.

A separate license must be obtained for each branch establishment or location of the business transacted or carried on, including any branch establishment or location of a business required to be licensed under the Business and Professions Code of the State of California, or for which a license has been obtained under the Business and Professions Code of the State of California, and for each separate type of business at the same location; provided that warehouses and distributing plants used in connection with and incidental to a business licensed under the provisions of this chapter shall not be deemed to be separate places of business, or branch establishments or separate types of business.

Except as otherwise provided in this section, each license shall authorize the licensee to transact and carry on only the type of business licensed thereby at the location or in the manner designated in such license.

6-1.110. DETERMINATION OF TYPE OR CLASS OF BUSINESS.

- (a) The determination of which business or businesses, or type or class of business or businesses, a licensee or applicant for a license is engaged in, or about to engage in, shall be an administrative function of the Director.
- (b) In any case where a licensee or applicant for a license believes that he/she is placed in the wrong business or class of businesses he/she may apply to the Director for a change in his/her classification. Such application may be made before, at, or within three (3) months after payment of the prescribed license tax. The applicant shall by affidavit and supporting testimony show such information as the Director may deem necessary in order to determine the proper classification. The Director may conduct his/her own investigation and shall have the administrative duty of determining the proper classification. Any applicant or licensee aggrieved by the decision of the Director shall have the right of appeal to the City Council. Such appeal shall be taken by filing with the Director, within fifteen (15) days after notice of the decision of the Director, a written

statement setting forth the grounds for the appeal. The City Clerk shall set a time and place for a hearing on such appeal within thirty (30) days after the receipt of the appeal. The decision and order of the Council if backed by substantial evidence shall be final and conclusive.

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. 6-1.112. DETERMINATION IF NO RETURN MADE; ESTIMATE OF LIABILITY, ADDITIONAL COSTS AND INTEREST.

- (a) If any taxpayer fails to make a timely return, the Tax Collector may make a determination based upon an estimate of the amount of the total tax liability of the taxpayer. The estimate shall be made for the period or periods in respect to which the person failed to timely make a return, failed to timely make a prepayment or failed to timely remit a tax, and may be based upon any information which is in the Tax Collector's possession or may come into his or her possession. Upon the basis of this estimate, the Tax Collector shall compute and determine the amount required to be paid to the City, adding to the sum thus computed an additional cost equal to twenty (20) percent thereof. One (1) or more determinations may be made for one or more than one (1) period.

In making a determination, the Tax Collector may offset overpayments for a period or periods, together with interest on the overpayments, against underpayments for another period or periods, against additional costs, and against the interest on the underpayments. The amount of the determinations, exclusive of additional costs, shall bear interest at the rate of one (1) percent per month, or fraction thereof, from the last day of the month following the close of the quarterly period for which the amount or any portion thereof, should have been returned until the date of payment.

- (b) Upon making his or her determination, the Tax Collector shall serve the person or persons determined to be liable therefor with written notice of the determination and penalty, the notice to be served personally or by mail.

6-1.113. PRORATION.

Except as otherwise provided herein no proration of any license tax due hereunder shall be made for any portion of the period for which a license is payable, except that in a case of a newly established business, the annual registration tax may be prorated for the number of months remaining in the year at the time of application for license. For the purpose of proration a fractional part of a month shall be considered as a full month.

6-1.114. FILING OF QUARTERLY 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 quarterly declaration of gross receipts for the previous quarter on or before the last day of the first month of the following quarter with the Director on forms prescribed by the City.

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.

6-1.115. CLOSE OR CHANGE OF OWNERSHIP.

In the event any business subject to a license tax measured by gross receipts closes or changes ownership, said business shall file a closing return with the City and pay the business license tax due thereon within (30) days from the time of closing or changing ownership of said business. A closing return shall be considered delinquent if not filed within the specified time.

6-1.116. LICENSE MAY BE WITHHELD FOR EVIDENCE OF TRUTH.

No statement required to be filed by the applicant or licensee shall be conclusive upon the City or the Director whenever it shall appear to the satisfaction of the Director that such statement does not set forth the true facts of the business for which a license is required. The Director may thereupon withhold the issuance of a license until the applicant shall have furnished satisfactory evidence of the truth of such statement.

6-1.117. LICENSE AVAILABLE AT ALL TIMES.

Every person having a license issued under the provisions of this chapter, and carrying on a trade, calling, profession, or occupation at a fixed place of business, shall keep such license posted and exhibited while in force in some conspicuous part of said place of business. Every person having such a license, and not having a fixed place of business shall carry such license with him/her at all times while carrying on the trade, calling, profession or occupation for which the same was granted. Every person having a license under the provisions of this chapter shall produce and exhibit the same, whenever requested to do so by any police officer, or by any officer or employee authorized to issue, inspect or collect licenses.

6-1.118. NO LICENSE TRANSFERABLE: NEW LICENSE FOR CHANGED LOCATION.

No license issued pursuant to this chapter shall be transferable; provided, that where a license is issued authorizing a person to transact and carry on a business at a particular place, such licensee may upon application therefor and paying a tax of five dollars (\$5.00), be issued a new license to authorize the transacting and carrying on of such business under said license at some other location to which the business is or is to be moved. Any change in type of business will be construed as a new business and subject to the provisions of Section 6-1.103.

6-1.119. DUPLICATE LICENSE.

A duplicate license may be issued by the Director to replace any license previously issued hereunder which has been lost or destroyed upon the licensee filing statement of such fact, and at the time of filing such statement paying to the Director a service charge of one dollar (\$1.00).

6-1.120. LICENSE RENEWAL.

Every person licensed under the provisions of this chapter shall, if he/she wishes to continue to carry on, conduct or manage the business in the City upon expiration of the license, renew the license by paying the taxes required in this chapter as provided in the section under which the original license was issued. It shall be the responsibility of the licensee to advise the Director of any changes in the type of business, the activities carried on, or changes in ownership from that shown on the original license. Any change in type of business or business activities conducted, or change in ownership, will require a new application to be prepared and the appropriate license tax to be paid. No license shall be renewed if the licensee is delinquent in any charges imposed by this chapter or delinquent in filing reports required by this chapter.

6-1.121. REVOCATION OF LICENSE.

Any license issued under the provisions of this chapter may be revoked by the Director upon the failure on the part of the licensee to pay the taxes, costs or other charges imposed by this chapter or to file reports as required by this chapter within six (6) months after such charges or reports become delinquent.

6-1.122. INFORMATION CONFIDENTIAL.

Financial information furnished or secured pursuant to this chapter, the disclosure of which would result in unfair competitive disadvantage to the person supplying such information, shall be deemed confidential in character, and shall not be subject to public inspection and shall be kept so that the contents thereof shall not become known except to the persons charged with the administration and enforcement of this chapter, subject to the provisions of the California Public Records Act.

6-1.123. RIGHT OF ENTRY AND INSPECTION.

The Director and his/her assistants and any City police officer shall have the power and authority to enter, free of charge, and at any reasonable time, any place of business required to be licensed herein, and demand an exhibition of its license certificate. It shall be the duty of the Director to cause a complaint to be filed against all persons refusing access of authorized City employees to that person=s business license certificate.

6-1.124. 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 one hundred dollars (\$100.00) 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 one hundred dollars (\$100.00) 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.

6-1.125. COSTS FOR DELINQUENT LICENSES.

An additional cost is a sum of money payable to City of Modesto for a taxpayer's failure to comply with the provisions of Section 6-1.111 of this chapter. Such costs shall be as follows:

- (a) **Delinquency, Time Value of Delinquent Sum.** To all delinquent license taxes there shall be added an additional sum of five (5) percent of the amount of taxes due per month or fraction thereof until paid; the maximum additional sum imposed on any one delinquency shall not exceed twenty-five (25) percent of the amount of taxes due.
- (b) **Fraud.** If the Director determines that the nonpayment of any license tax due under this chapter is due to fraud, a charge of twenty-five (25) percent of the amount of the tax may be added thereto in addition to the sums set forth in subparagraphs (a) and (d) of this section.

- (c) **Additional Costs Merged with Tax.** Every cost imposed under the provisions of this section shall become a part of the tax herein required to be paid.
- (d) The costs/additional sums described herein are cumulative and potentially in addition to those found in the California False Claims Act at California Government Code Section 12650, et seq. as it currently exists, and as that Act may be interpreted or amended in the future.

6-1.126. REFUND AUTHORITY.

The Director may waive or refund additional costs assessed on delinquent license tax in his/her sound discretion, for good cause shown. He/she may also refund taxes in an amount less than twenty thousand dollars (\$20,000.00) under the same circumstances. Any aggrieved person may appeal the final decision of the Director to the City Council.

6-1.127. EVIDENCE OF LIABILITY.

In any action brought under or arising out of any of the provisions of this Code or of any ordinance imposing a license tax, the fact that a party thereto represented himself as engaged in any business or calling for the transaction of which a license is required, or that such party exhibited a sign indicating such business or calling shall be conclusive evidence of the liability of such party to pay a license tax for such business.

6-1.128. ENFORCEMENT.

It shall be the duty of the Director, and he/she is hereby directed to enforce each and all of the provisions of this chapter, and the Police Chief shall render such assistance in the enforcement hereof as may from time to time be required by the Director or the Council.

The Director in the exercise of the duties imposed upon him/her hereunder, and acting through his/her deputies or duly authorized assistants, shall examine or cause to be examined all places of business in the City, to ascertain whether the provisions of this chapter have been complied with.

6-1.129. LICENSE TAX A DEBT.

The amount of any license tax and interest, additional cost or other charge imposed by the provisions of this chapter shall be deemed a debt to the City. An

action may be commenced in the name of said City in any court of competent jurisdiction, for the total amount of any delinquent tax and additional sums authorized by this section, or in this chapter.

6-1.130. REMEDIES CUMULATIVE.

All remedies prescribed in this chapter shall be cumulative and the use of one or more remedies by the City shall not bar the use of any other remedy for the purpose of enforcing the provisions hereof.

6-1.131. MISREPRESENTATION.

No person shall knowingly or intentionally misrepresent to any officer or employee of this City any material fact in procuring the license or permit herein provided for.

SECTION 2. AMENDMENT OF CODE: Article 4 is hereby added to Chapter 1 of Title 6 of the Modesto Municipal Code to read as follows:

ARTICLE 4. ADMINISTRATIVE PROVISIONS

6-1.401. DUTIES OF THE TAX COLLECTOR.

The Tax Collector shall collect and receive the taxes imposed by this chapter. The Tax Collector shall keep an accurate and separate account of all tax payments received by the Tax Collector, showing the name and address of the taxpayer and the date of the payments. The Tax Collector shall transmit all monies collected to the City treasury for deposit to the general fund, unless otherwise provided by law.

6-1.402. RECORDS; INVESTIGATION; SUBPOENAS.

- (a) Every taxpayer shall keep and preserve such records for a period of ten (10) years as may be necessary to determine the amount of tax for which he/she may be liable, including all local, State and federal tax returns of any kind. The Tax Collector shall have the right to inspect, examine, and copy such records at any time during normal business hours. Refusal to allow full inspection, examination or copying of such records shall subject the taxpayer to the measures authorized under Sections 6-1.407 and 6-1.410, and shall be unlawful. Where the taxpayer does not have the necessary records to determine liability under this Code or fails to produce such records in a timely fashion, the Tax Collector may determine the

taxpayer's liability based upon any information in the Tax Collector's possession or that may come into the Tax Collector's possession.

- (b) The Tax Collector may order any persons, whether as taxpayers, supposed taxpayers or witnesses, to produce for inspection, audit, examination and copying at the Tax Collector's office all books, papers and records which the Tax Collector believes may have relevance to enforcing compliance with the provisions of this chapter, and may also order the attendance before the Tax Collector of all persons, whether as taxpayers, supposed taxpayers or witnesses, whom the Tax Collector believes may have any knowledge thereof. The Tax Collector may issue, and serve, subpoenas to carry out these provisions. As an alternative to production at the Tax Collector's office, the Tax Collector may agree to inspect, examine and copy the requested books, papers and records at the taxpayer's place of business or some other mutually acceptable location, and may require the taxpayer to reimburse the City for the Tax Collector's ordinary and reasonable expenses incurred in the inspection, examination and copying of such books, papers and records, including food, lodging, transportation and other related items, as appropriate. All license taxpayers, applicants for licenses and persons doing business in the City are required to permit and cooperate in the examination, audit or inspection of their books and records for the purposes described in this chapter.

6.1.403. REQUEST FOR FINANCIAL INFORMATION.

- (a) In addition to a subpoena issued pursuant to Section 6-1.402(b), the Tax Collector may, at his or her discretion, send any person, whether as taxpayer, supposed taxpayer or witness, a written request for financial information relevant to verifying or redetermining any person's tax liability or tax-exempt status. "Financial information" shall include, but not be limited to, bank records, journals, ledgers and local, State and federal tax returns, and shall include relevant information regarding subsidiary or related accounts. The request shall be mailed to the person's last known address as indicated in the Tax Collector's records.
- (b) Each person to whom a written request for financial information has been sent pursuant to Subsection (a) of this section shall complete and return the form, with the information requested, to the Tax Collector within thirty (30) days of the date of the mailing of the written request. Said person shall provide such financial information that the Tax Collector has requested in writing.

6-1.404. REMEDIES FOR FAILURE TO FILE RESPONSE TO REQUEST FOR FINANCIAL INFORMATION.

Any persons, including taxpayers, supposed taxpayers and witnesses, who fail to respond to a written request for financial information shall be subject to the measures provided in Sections 6-1.407 and 6-1.410.

6-1.405. FILING AND PAYING BY MAIL.

- (a) **Delivery by Mail.** Except as otherwise provided in this section, any return or other document required to be filed under this chapter, or any payment, including a prepayment, required to be made under this chapter may be delivered to the Tax Collector by United States mail.
- (b) **Date of Postmark.** The date of postmark shall be deemed the date of delivery for any return or other document, or any payment, delivered to the Tax Collector by United States mail if:
 - (1) The postmark is made by the United States Postal Service;
 - (2) The postmark date falls within the prescribed period, or on or before the prescribed date, including any extension, for filing the return or other document, or for making the payment; and
 - (3) The return or other document, or the payment, was, within that time, deposited in the mail in the United States in an envelope or other appropriate wrapper, postage prepaid and properly addressed to the Tax Collector.

The Tax Collector may provide by regulation for application of this rule to postmarks not made by the United States Postal Service.

- (c) **Registered and Certified Mailing.** The registration of any return or other document, or payment, delivered to the Tax Collector by registered mail shall be prima facie evidence that the return or other document, or payment, was delivered to the Tax Collector, and the date of registration shall be deemed the postmark date. The Tax Collector may provide by regulation for the application of this subsection to returns or other documents, or payments, delivered to the Tax Collector by certified mail.
- (d) **Exceptions.** This section shall not apply to:
 - (1) The filing of a document in, or the making of a payment to, any court; or

- (2) Currency or other medium of payment unless actually received and accounted for.
- (e) **Private Delivery Services.** References in this section to the United States mail and a postmark of the United States Postal Service shall include any designated delivery service and any date recorded or marked as described herein by any designated delivery service.
- (1) A "designated delivery service" means any delivery service provided by a trade or business if such service is designated by the Tax Collector for purposes of this section. The Tax Collector may designate a delivery service only if he/she determines that such service:
- (i) Is available to the general public;
 - (ii) Is at least as timely and reliable on a regular basis as the United States mail;
 - (iii) Records electronically to its database, kept in the regular course of its business, or marks on the cover in which any item referred to in this section is to be delivered, the date on which such item was given to such trade or business for delivery; and
 - (iv) Meets such other criteria as the Tax Collector may prescribe.
- (2) The Tax Collector may provide a rule similar to the rule of Subsection (1) with respect to any service provided by a designated delivery service which is substantially equivalent to the United States registered or certified mail.

6-1.406. PARTIAL PAYMENTS.

Where a taxpayer owes payments for prior years, the Tax Collector may accept partial payments. The difference between the amount paid by the taxpayer and the total amount due shall be treated as a delinquent tax and shall be subject to additional costs applied to the unpaid balance pursuant to Section 6-1.125.

Unless the taxpayer specifies otherwise, the partial payments shall be applied to the oldest year's deficiency, first to interest, additional taxes and costs for that year, and the balance, if any, shall be applied to the taxes due for that year. Any remaining portion of the payment shall then be applied to the next oldest year's deficiency in the same manner and order.

The taxpayer may specify that the partial payment be applied to a tax year other than the oldest, but the order of payment between interest, additional taxes, costs, and taxes due shall remain the same.

6-1.407. COLLECTION OF TAX; SECURITY.

The Tax Collector, whenever he/she deems it necessary to insure compliance with this chapter, may require any person subject thereto to deposit with the Tax Collector such security as the Tax Collector may determine. The amount of the security shall be fixed by the Tax Collector, but shall not be greater than twice the person's estimated average liability for the period for which said person files returns, determined in such manner as the Tax Collector deems proper. The amount of the security may be increased or decreased by the Tax Collector. The Tax Collector may sell the security at public auction if it becomes necessary so to do in order to recover any tax or any amount required to be collected, interest, or additional taxes due. Notice of the sale may be served upon the person who deposited the security and upon the taxpayer, if different, personally or by mail. Upon any sale, any surplus above the amounts due shall be returned to the person who deposited the security.

6-1.408. COLLECTION OF TAX; PROPERTY HELD BY THIRD PARTY.

- (a) If any person is delinquent in the payment of the amount required to be paid by said person, or in the event a determination has been made against any person which remains unpaid, the Tax Collector may, not later than six (6) years after the tax became delinquent give notice thereof to all persons in the City having in their possession or under their control any credits or other personal property belonging to the delinquent, or owing any debts to the delinquent. However, there shall be no limitation on the time in which such actions shall be commenced in cases of fraud, intent to evade tax, or failure to make a return. After receiving such notice, the

persons so notified shall neither transfer nor make any other disposition of the credits, other personal property, or debts in their possession or under their control at the time they receive the notice until the Tax Collector consents to a transfer or disposition or until twenty (20) days elapse after the receipt of the notice. All persons so notified shall, within five days after receipt of the notice, advise the Tax Collector of all such credits, other personal property, or debts in their possession, under their control, or owing by them. If persons so notified transfer such assets in violation of the provisions of this subsection, they shall become indebted to the Tax Collector for the value of the property transferred.

- (b) In any case, if any person is delinquent in the payment of the amount required to be paid by said person, or in the event a determination has been made against any person which remains unpaid, the Tax Collector may, not later than six (6) years after the tax became delinquent, file an action in Superior Court on behalf of the City to recover all of the tax, penalties, costs and other remedies whatsoever specified in this Code and in State law to which the City may be entitled as a consequence of the delinquency. However, there shall be no limitation on the time in which such actions shall be commenced in cases of fraud, intent to evade tax, or failure to make a return.

6-1.409. DEFICIENCY DETERMINATIONS

Where it shall appear to the Director that he/she has not been advised of the true facts of a business for which a license is required, or if the tax collector is not satisfied with a return or returns of the tax or the amount of any tax required to be paid to the City by any person, or if it shall at any time appear to the tax collector that by reason of error, misrepresentation, fraud, or for any other cause whatsoever the license tax has not been properly determined for any license issued, or the tax collector determines that a person other than the taxpayer is jointly and severally liable for any third party tax, the tax collector may compute and determine the amount required to be paid upon the basis of the facts contained in a return or returns, or upon the basis of any information within the tax collector=s possession or that may come into the tax collector=s possession upon investigation. Thereafter, the tax collector shall give not less than twenty (20) days= written notice to the licensee of his/her determination of the tax. The notice shall provide that in the event the licensee disputes the tax it may show cause, either informally, or at the request of either the licensee or the tax collector, show cause at a quasi-judicial proceeding to be presided over by the Director which proceeding shall be recorded, and shall permit the taking of evidence, the examination and cross-examination of witnesses, and result in a written determination of the tax, including additional costs and interest, if any, by the Director. Notice of the

Director=s final determination shall be provided to the licensee in accordance with the provisions of this chapter.

The amount of determination, exclusive of additional costs, shall bear interest at the rate of one percent per month, or fraction thereof, from the fifteenth (15th) day after the quarterly period for which the amount or any portion thereof should have been returned until the date of payment.

In making a determination, the tax collector may offset overpayments for a period or periods together with interest on the overpayments against underpayments for another period or periods, against additional costs and against the interest on the underpayments.

6-1.410. JEOPARDY DETERMINATIONS; DUTY OF TAX COLLECTOR.

If the Tax Collector believes that the collection of any tax, or of any amount of tax required to be collected and paid to the City, or of any determination will be jeopardized, in whole or in part, by delay, the Tax Collector shall serve upon the taxpayer or other person determined to be liable for the tax notice of his or her determination of jeopardy, and of the tax or amount of tax required to be collected, and demand immediate payment of the tax, interest and additional costs, if any, determined to be due. The Tax Collector may consider all facts and circumstances relevant to determining whether the collection of any tax will be jeopardized by delay, including but not limited to indications that the taxpayer intends or is taking action to discontinue business activities in the City, dissipate or otherwise remove assets from the City, or sell, exchange, assign or otherwise dispose of personal or business income or property. The Tax Collector also may consider whether the taxpayer is insolvent or likely to become insolvent after the taxes at issue are assessed or collected; whether the taxpayer is or has been uncooperative or unresponsive in connection with any investigation, examination, audit, deficiency determination, assessment or collection action or procedure undertaken by the Tax Collector in connection with the taxes at issue; what taxable years are at issue; how many taxable years are at issue; and whether the taxes at issue are third-party taxes.

6-1.411. JEOPARDY DETERMINATIONS; WHEN DUE AND PAYABLE; STAY OF COLLECTION; PETITION FOR REDETERMINATION; TIME OF HEARING.

- (a) A jeopardy determination of tax, interest or penalty is immediately due and payable upon the service of the notice of jeopardy determination to the taxpayer or other person determined to be liable therefor. A lien for the amount due in the notice of jeopardy determination may be recorded

immediately, and judicial proceedings for collection may be commenced at once.

- (b) The collection of the whole or any amount of a jeopardy determination may be stayed by filing with the Tax Collector: (1) a bond or acceptable letter of credit in an amount equal to the amount (together with interest thereon to the date of payment) as to which the stay is desired, conditioned upon the payment of the amount, the collection of which is stayed by the bond, upon notice and demand by the Tax Collector after a final determination is reached on the appeal, or (2) other security in such amount as the Tax Collector may deem necessary, not exceeding triple the amount (together with interest thereon to the date of payment) as to which the stay is desired. Any stay pursuant to this subsection shall be effective only against the person on whose behalf the bond or other security is provided.
- (c) Upon filing of the bond or other security, the collection of so much of the jeopardy determination amount as is covered by the bond or other security shall be stayed pending the exercise by the taxpayer or other person determined to be liable for the tax of his or her appeal rights. The person on whose behalf the bond or other security is submitted, shall have the right to waive such stay at any time in respect of the whole or any part of the amount covered by the bond or other security, and if as a result of such waiver any part of the amount covered by the bond or other security is paid, then the bond or other security shall, at the request of said person, be proportionately reduced. If any portion of the jeopardy determination is abated, the bond or other security shall be proportionately reduced, at the request of the person on whose behalf the bond or other security was provided.
- (d) Where collection of the whole or any amount of a jeopardy determination has been stayed under this section, the period of limitation on any action to collect from the person on whose behalf the bond or other security has been provided shall be tolled during the period of such stay.

6-1.412. JEOPARDY DETERMINATIONS; EFFECT OF NONPAYMENT.

If the amount specified in the jeopardy determination is not paid within fifteen (15) days after service of notice thereof upon the person against whom the determination is made, and no petition for redetermination is filed within the fifteen (15) days, the additional costs provided in Section 6-1.125 shall attach to the tax or the amount of the tax required to be collected.

6-1.413. JEOPARDY DETERMINATIONS; PETITION FOR REDETERMINATION.

Any person against whom a jeopardy determination is made may petition for the redetermination thereof. The taxpayer shall, however, file the petition for redetermination with the Tax Collector within fifteen (15) days after the service upon him or her of notice of determination. If a petition for redetermination of a jeopardy determination is not filed within the foregoing 15-day period, the determination becomes final at the expiration of that period.

The filing of a petition for redetermination of a jeopardy determination shall not operate to stay collection. Collection may be stayed only as provided in Section 6-1.411(b) above.

If a petition for review is filed from a jeopardy determination, the Tax Collector shall review the matters raised in the petition including, if requested, whether the issuance of the jeopardy determination was reasonable under the circumstances. In making this determination, the Tax Collector shall grant the taxpayer or other person determined to be liable for the tax or his or her authorized representative a hearing, if that person has so requested in his or her petition.

The taxpayer or other person determined to be liable for the tax has the right to a hearing and determination by the Tax Collector upon the matters raised in the petition within forty-five (45) days from the date of the filing of the petition for redetermination, as scheduled by the Tax Collector, unless the taxpayer waives that time restriction. The Tax Collector shall give him or her ten (10) days' notice of the time and place of the hearing. The Tax Collector may continue the hearing from time to time as may be necessary.

If, in the review process, it is determined that the Tax Collector's determination of jeopardy was unreasonable under the circumstances any collection action taken shall be withdrawn, pending the ultimate administrative determination of the amount of the deficiency due from the taxpayer or other person claimed to be liable for the tax claimed to be due in the jeopardy determination notice. Neither the validity of the jeopardy determination's determination of tax, nor the burden of proof, shall be affected by a finding that the determination of jeopardy was unreasonable.

6-1.414. REDETERMINATIONS; ALTERATION OF DETERMINATION.

The Tax Collector may decrease or increase the amount of the determination before it becomes final, but the amount may be increased only if a claim for the increase is asserted by the Tax Collector at least five days before the hearing. Nothing in this section shall preclude a new audit or determination by the Tax Collector of a new or supplemental deficiency. The burden of proof in any

proceeding for redetermination or appeal thereof shall be in favor of the Tax Collector.

6-1.415. REFUNDS.

- (a) Except as otherwise provided in subdivision (c) below, so much of any tax as has been overpaid or paid more than once or has been erroneously collected or received by the City may be refunded, provided a valid, timely, claim in writing is filed with the City Clerk in accordance with Section 2-4.202 of this Code. For purposes of this section, a claim shall be deemed to accrue on the later of the date the return was due or the tax was paid.
- (b) Class claims for refunds shall not be permitted. If the claim is approved, the excess amount collected or paid may be refunded or may be credited on any amount due and payable, from the person from whom it was collected or by whom paid and the balance may be refunded to such person, his administrator or executors.
- (c) The Tax Collector, in his or her discretion and upon good cause shown, may waive the requirement set forth in subdivision (a) above that a taxpayer file a claim in any case in which the Tax Collector can and does determine on the basis of other evidence presented to him or her that (1) an amount of tax, interest or penalty has been overpaid or paid more than once, or has been erroneously or illegally collected or received by the City, and (2) all other conditions precedent to the payment of a refund to the taxpayer have been satisfied.

6-1.416. REFUNDS; INTEREST.

- (a) Any amounts of disputed taxes, including interest and additional charges if any, refunded shall bear interest at the average rate of interest computed over the preceding six-month period, lawfully obtainable on deposits of public funds at the time refund is made, whichever rate is lower, and shall be computed from the date of payment to the date of refund except for amounts refunded as a result of a final judicial determination of the invalidity of any portion of, or amendment to this Code, or the invalidity of any administrative interpretation thereof, in which case interest shall be computed from the date of the claim for refund to the date of refund.
- (b) If the Tax Collector offsets overpayments for a period or periods against underpayments for another period or periods, against penalties or against interest on the underpayments, the taxpayer will be credited with interest

on the amount so applied at the rate of interest set forth above, computed from the date of payment.

- (c) If a taxpayer chooses to apply all or part of a refund against a future year's liability, the taxpayer will not be credited with interest on the amount so applied.

6-1.417. RULES AND REGULATIONS.

Subject to the authority of the City Council under Section 6-1.436, the Tax Collector shall have power to adopt rules and regulations not inconsistent with the provisions of this Code for the purpose of carrying out and enforcing the payment, collection and remittance of the tax herein imposed; and a copy of such rules and regulations shall be on file and available for public examination in the Tax Collector's office. Failure or refusal to comply with any rules and regulations promulgated under this section shall be deemed a violation of this Code. The Tax Collector may prescribe the extent to which any ruling or regulation shall be applied without retroactive effect.

6-1.418. COSTS.

In addition to the taxes and other costs and charges imposed by this chapter, the Tax Collector may recover the actual costs, including attorney fees, expert witness fees, investigative costs, and costs of collection incurred by the City up to the time any amount owed is finally paid.

6-1.419. SUMMARY JUDGMENT; NOTICE; CERTIFICATE.

If any tax imposed pursuant to this chapter is not paid by the last day of the month succeeding the delinquency date, or after any jeopardy or deficiency determination of the Tax Collector becomes final pursuant to Sections 6-1.412 and 6-1.413, the Tax Collector may file, no sooner than ten (10) days after the mailing of the notice required in Subdivision (b), in the office of the County Clerk/Recorder, without fee, a certificate specifying as follows:

- (a) The fact that a notice of intent to file the certificate has been sent, by certified mail, to the operator, taxpayer or other person determined to be liable for the tax, at his or her last known address, not less than ten (10) days prior to the date of the certificate;
- (b) The fact that the notice required in Subdivision (a) set forth the following information:

- (1) The name of the operator, taxpayer or other person determined to be liable for the tax,
 - (2) The description of the operator's, taxpayer's or other person's business against which the tax has been assessed,
 - (3) The location and/or address of the business,
 - (4) The fact that judgment will be sought in the amount of the tax, penalty and interest remaining unpaid at the time of the filing of the certificate,
 - (5) The fact that, upon issuance and recordation of the judgment, additional interest will continue to accrue at the rate prescribed in this ordinance, and that any bond premium posted or other costs to enforce the judgment shall be an added charge,
 - (6) The fact that a recording fee in the amount set forth in Section 27361.3 of the California Government Code will be required to be paid for the purpose of the recordation of any release of the judgment lien;
- (c) The name of the operator, taxpayer or other person determined to be liable for the tax;
 - (d) The amount for which judgment is to be entered;
 - (e) The fact that the City has complied with all provisions of this Code in the computation and the levy of the tax, penalty or interest;
 - (f) The fact that a request is therein made for issuance and entry of judgment against the operator, taxpayer or other person determined to be liable for the tax.

6-1.420. SUMMARY JUDGMENT; FILING OF CERTIFICATE; ENTRY OF JUDGMENT.

The County Clerk/Recorder, immediately upon the filing of the certificate shall enter a judgment for the City against the operator, taxpayer or other person determined to be liable for the tax in the amount of the tax, additional costs and interest, if any, set forth in the certificate. The County Clerk/Recorder may file the judgment in a loose-leaf book entitled "City Summary Tax Judgments."

6-1.421. SUMMARY JUDGMENT; RECORDING OF JUDGMENT; LIEN.

An abstract or copy of the judgment shall be recorded, without fee, in the office of the County Clerk/Recorder. From the time of the recording, the amount of the tax, penalty and interest set forth constitutes a lien upon all property of the judgment debtor in the City, owned by the judgment debtor on the date of recording or acquired by the judgment debtor thereafter, and before the lien expires, acquired by the operator. The lien has the force, effect and priority of a judgment lien and continues for ten (10) years from the date of the recording unless sooner released or otherwise discharged.

6-1.422. SUMMARY JUDGMENT; PENALTY IN LIEU OF JUDGMENT INTEREST.

Notwithstanding any other provision of law relating to interest authorized or allowed as a result of any judgment duly entered, the additional costs provided for in Section 6-1.129 shall be imposed in lieu of any such judgment interest.

6-1.423. SUMMARY JUDGMENT; ADDITIONAL PENALTY.

In addition to any cost imposed pursuant to this chapter, an additional cost offsetting the reasonable costs incurred to enforce the judgment entered pursuant to Section 6-1.420 shall be imposed.

6-1.424. SUMMARY JUDGMENT; EXTENSION OF LIEN.

Within ten (10) years from the date of the recording or within ten (10) years from the date of the last extension of the lien in the manner provided for in this section, the lien may be extended by recording in the office of the County Clerk/Recorder an abstract or copy of the judgment. From the time of the recording the lien extends to the property for ten (10) years unless sooner released or otherwise discharged.

6-1.425. SUMMARY JUDGMENT; EXECUTION UPON THE JUDGMENT.

Execution shall issue upon the judgment upon request of the Tax Collector in the same manner as execution may issue upon other judgments, and sales shall be held under such execution as prescribed in the California Code of Civil Procedure.

6-1.426. SUMMARY JUDGMENT; SATISFACTION OF JUDGMENT; REMOVAL OF LIEN.

- (a) The judgment is satisfied and the lien removed when, but not before, the certificate of release or discharge from the judgment lien is recorded in the

office of the County Clerk/Recorder. In addition to the judgment amount, and any additional penalty authorized by this Code, the Tax Collector shall collect the recording fee in the amount required by Section 27361.3 of the California Government Code and shall transmit that amount to the Assessor/Recorder together with the documents for release or discharge.

- (b) The judgment is also satisfied and the lien removed when, but not before, the tax is legally canceled and a release or discharge from the judgment lien is recorded in the office of the County Clerk/Recorder. A recording under this Subsection (b) shall be made without fee.

6-1.427. REGULATIONS.

The Tax Collector may promulgate and enforce rules and regulations, and issue determinations and interpretations relating to the conducting of administrative hearings and rendering of decisions in accordance with and in furtherance of the purposes of existing ordinances and ordinances passed or amended by the City Council from time to time. Any rules and regulations promulgated by the Tax Collector and any modifications thereof made by the City Council shall be approved as to legal form by the City Attorney.

6-1.428. TRANSFEREE AND SUCCESSOR LIABILITY.

- (a) The liability at law or in equity of a successor, transferee or alter ego of any taxpayer or other person determined to be liable for any tax, interest or additional cost subject to this ordinance, imposed upon a taxpayer shall be determined, collected and paid in the same manner and subject to the same provisions and limitations as in the case of a deficiency determination pursuant to Section 6-1.409. Nothing in this subsection shall be construed to limit the rights or procedures available to the Tax Collector to collect from any successor, transferee or alter ego, at law or in equity, as may be provided under California statutory or decisional law.
- (b) No person shall purchase or acquire an interest in a business subject to any tax imposed under this Code without first obtaining either a receipt from the Tax Collector showing that all of the seller's taxes on the business have been paid, or a certificate stating that no amount is due. For purposes of this section, "purchase" shall include any other voluntary transfer for consideration of a business, except for purchase of stock of a publicly-traded company.
- (c) The Tax Collector shall issue such a receipt or certificate, or a notice of the amount that must be paid as a condition of issuing the certificate, to the buyer within thirty (30) days after receiving a written request. However,

failure of the Tax Collector to timely mail the notice will not release the buyer from his or her obligations under this section, except to the extent of penalties and interest in the event that the Tax Collector enforces the buyer's obligation in a civil action authorized pursuant to this Code.

- (d) If the buyer purchases or acquires an interest in a business owing any taxes, interest or penalties imposed under this Code, the buyer shall withhold from the purchase price a sufficient amount to satisfy said taxes, interest and penalties.
- (e) If the buyer purchases or acquires an interest in a business in violation of this section, the buyer shall become personally liable for the amount of taxes, interest and penalties owed on the business.
- (f) The buyer's obligations shall accrue at the time the business is purchased or the interest acquired, or at the time the Tax Collector determines the seller's final liability, whichever is later.

6-1.429. SEVERABILITY.

If any sentence, clause or section or any part of this chapter is for any reason held to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts of this ordinance. It is hereby declared to be the intent of the enacting body that this chapter would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included therein.

6-1.430. ADMINISTRATIVE APPEALS.

- (a) **Filing.** Any person aggrieved by any decision of the Tax Collector or of any other officer of the city made pursuant to the provisions of this chapter may appeal therefrom to the Council within ten (10) days after notice thereof by filing with the City Clerk a written notice of appeal, briefly stating in such notice each of the grounds relied upon for appeal.
- (b) **Hearing.** If such appeal is made within the time prescribed, the City Clerk shall cause the matter to be set for hearing before the Council within thirty (30) days from the date of receipt of such notice of appeal, giving the appellant not less than ten days notice in writing of the time and place of the hearing. Continuances shall not be granted except for good cause shown, and then only in the absolute discretion of the Council.

- (c) **Findings; notice.** The findings and determinations of the Council at such hearing shall be memorialized by resolution within sixty (60) days after the hearing, and shall be final and conclusive. Within ten (10) days after such findings and determinations are made in the form of a resolution, the City Clerk shall give notice thereof to the appellant.
- (d) **Failure to appeal.** In the event no appeal is taken by the permittee, the decision of the Tax Collector shall become final and conclusive on expiration of the time fixed for appeal in subsection (a) of this section.

6-1.431. JUDICIAL REVIEW.

- (a) After receipt of the Tax Collector's final decision or, as the case may be, the final decision of the City Council, an appellant may file an appeal in the superior court, but only after paying, in full, to the Tax Collector, all taxes, penalties, interest and costs found due of the appellant by the Tax Collector or Council.
- (b) The appeal shall be filed within ninety (90) days after the date of mailing of the final administrative decision to the appellant, or the order or decision shall be deemed confirmed. The filing of an appeal in Superior Court pursuant to this section shall fulfill the claim filing requirements of Section 2-4.202 and 6-1.415 of this article.
- (c) The appeal shall be in the nature of a request for writ of mandamus, shall state the reasons the appellant objects to the administrative findings or decision, and shall be served upon the City by appellant.
- (d) The superior court shall review the administrative record for substantial evidence, and the administrative actions taken for abuse of discretion.
- (e) The administrative record shall be received in evidence as prima facie evidence of the facts found therein, and reasonable conclusions drawn from those facts.
- (f) The burden of proof on each element of the appeal shall be on the appellant. Proof by either party may be made by a preponderance of the evidence, whether or not fraud is found or included in the sum appealed.
- (g) Notwithstanding any provision to the contrary in this Code, no nonpayment, refusal to pay or underpayment of tax may be considered or charged as an infraction, or crime of any sort.

6-1.432. RELATION TO OTHER LICENSE. ORDINANCES.

Upon providing written notice of nonpayment by any business license taxpayer, the Tax Collector may suspend or revoke any license or privilege for conducting any business in the City, and the person receiving such notice shall have the appeal right set forth in Section 6-1.430.

6-1.433. MISREPRESENTATION BAR TO REFUND.

No refund shall be made where the business license was issued under a misrepresentation of fact by the applicant and/or such applicant actually engaged in the conduct of the business for which the license was granted prior to the date stated in the applicant's original application

6-1.434. EVIDENCE OF LIABILITY.

In any action brought under or arising out of any of the provisions of this Title, the fact that a party thereto represented himself or herself as engaged in any business or calling for the transaction of which a license is required, or that such party exhibited a sign indicating such business or calling, shall be conclusive evidence of the liability of such party to pay for a license.

6-1.435. PLACE OF SALE.

For the purposes of this Title, all retail sales are consummated at the place of business of the retailer unless the tangible personal property sold is delivered by the retailer or his agent to an out-of-state destination or to a common carrier for delivery to an out-of-state destination. The gross receipts from such sales shall include delivery charges, when such charges are subject to the state sales and use tax, regardless of the place to which delivery is made.

6-1.436. APPORTIONMENT.

When, by reason of the provisions of the Constitution of the United States or the Constitution of the State of California, the business license tax imposed by this chapter cannot be enforced without there being an apportionment according to the amount of business done in the City, or in the State of California, as the case may be, apportionment rules shall be established as follows:

- (a) The Council from time to time shall adopt by resolution general guidelines for apportionment, and/or
- (b) The Finance Director, with the approval of the City Attorney, may make such rules and regulations for the apportionment of the tax as are necessary and desirable to overcome constitutional objections, and which

are consistent with the general apportionment guidelines adopted by resolution of the Council. The Finance Director shall publish such rules and regulations once in a newspaper of general circulation within the City. Within ten (10) days of the date of publication of such rules and regulations, any interested person may file a request with the City Clerk that the Council review the rules and regulations so published. The rules and regulations shall be final at the expiration of the period for requesting review in the event no request for review is filed, or in the event of the filing of a request for review, when the rules and regulations have been adopted by the Council.

- (c) None of the business license taxes provided for by this title shall be so applied as to occasion an undue burden upon interstate commerce or be violative of the Constitutions of the United States or the State of California. In any case where a business license tax is believed by a tax license holder or applicant for a license to place an undue burden upon interstate commerce, or be violative of such constitutional clauses, he may apply to the Tax Collector for an adjustment of the tax. Such application may be made before, at, or within six (6) months after payment of the prescribed business license tax. The applicant shall, by sworn statement and supporting testimony, show his method of business and the gross volume or estimated gross volume of business and such other information as the Tax Collector may deem necessary in order to determine the extent, if any, of such undue burden or violation. The Tax Collector shall then conduct an investigation and, after having first obtained the written approval of the City Attorney, shall fix as the business license tax for the applicant an amount that is reasonable and nondiscriminatory, or if the business license tax has already been paid, shall order a refund of the amount over and above the business license tax so fixed. In fixing the business license tax to be charged, the Collector shall base the tax upon a percentage of gross receipts or any other measure which will assure that the tax assessed shall be uniform with that assessed on businesses of like nature, and that the tax is imposed only on gross receipts resulting from business done with the City, or reasonably deemed to have been conducted in the City.

Notwithstanding any other provision contained in this chapter to the contrary, any person tendering payment of any tax, interest or penalties to the City pursuant to any provision of this chapter shall for all purposes thereafter be precluded and barred from appealing, contesting or otherwise challenging the validity or amount of any such tax, interest or penalties, or seeking refund of all or any portion thereof, pursuant to any otherwise available procedure set forth in this chapter, or otherwise available by law unless said payment is made under written protest to the City. The written

protest shall be deemed made for purposes of this section only by one of the following methods: (a) a written notation set forth on the check, draft, money order, or other negotiable instrument by which payment is tendered, indicating that such payment is made under protest; or (b) a written notice addressed and delivered to the Collector at the time of payment indicating that such payment is made under protest.

6-1.437. NOTICE NOT REQUIRED BY CITY.

The Finance Director is not required to send a renewal, delinquency or other notice or bill to any person subject to the provisions of this chapter and failure to send such notice or bill shall not affect the validity of any tax or penalty due under the provisions of this chapter

6-1.438. EFFECT OF REPEALS AND AMENDMENTS.

Except where a repealing or amendatory ordinance specifically provides otherwise, the amendment or repeal of any portion of this chapter shall not be construed to operate as a release or waiver of any liability or sum of money which may be due or owing to the City from any person under the provisions of this chapter as they existed prior to such amendment or repeal. The rule of construction required by this section is declared to be in clarification and confirmation of the existing intent of this chapter, and is not to be construed as applying solely to the effect of repealing or amendatory ordinances adopted subsequent to the effective date of this section.

6-1.439. RETROACTIVITY.

Any amendment to the procedural provisions of this chapter is intended by the City Council to retroactively affect pending matters to the fullest extent permitted by law, same and except that such retroactivity shall not have the affect of extinguishing an existing cause of action.

6-1.440. FRAUD. DEFINED.

Fraud, as that word is used in this Title, shall have the meaning defined in the False Claims Act of the State of California as set forth in Cal. Govt. Code Section 12650, et seq., as that law may be amended from time to time, and as interpreted by controlling decisional law of the courts of this State.

SECTION 3. EFFECTIVE DATE. This ordinance shall go into effect and be in full force and operation from and after thirty (30) days after its final passage and adoption.

SECTION 4. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in *The Modesto Bee*, the official newspaper of the City of Modesto, setting forth the title of this ordinance, the date of its introduction and the places where this ordinance is posted.

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 8th day of August, 2002, by Councilmember Frohman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and ordered printed and published by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None


APPROVED: 
CARMEN SABATINO, Mayor

ATTEST:

By 
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By 
MICHAEL D. MILICH, City Attorney

Ord. No. 3266-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 27th day of August, 2002, Councilmember Frohman moved its final adoption, which motion being duly seconded by Councilmember Conrad, was upon roll call carried and the ordinance adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: *Carmen Sabatino*
MAYOR CARMEN SABATINO

ATTEST: *Jean Zahr*
JEAN ZAHR, City Clerk

Effective Date: September 26, 2002

ORDINANCE NO. 3267-C.S.

AN ORDINANCE AMENDING SECTION 9-4-9 OF THE ZONING MAP TO REZONE FROM NEIGHBORHOOD COMMERCIAL ZONE, C-1, TO PLANNED DEVELOPMENT ZONE, P-D(554), PROPERTY LOCATED ON THE EAST SIDE OF CROWS LANDING ROAD, SOUTH OF WINMOORE WAY (GARY MACK/OWENS DESIGN CONSULTANTS).

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

SECTION 1. ZONING CHANGE. Section 9-4-9 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(554):

C-1 to P-D(554)

All that certain real property situated in the City of Modesto, County of Stanislaus, State of California, and being a portion of the Northwest Quarter of Section 9, Township 4 South, Range 9 East, Mount Diablo Base and Meridian more particularly described as follows:

All of Parcels 1 and 2 as shown on the Parcel Map filed for record in Book 32 of Parcel Maps, Page 109, Stanislaus County Records;

Also including the south one-half of 70.0 foot Winmoore Way, and the East 40.0 feet of 100.0 foot Crows Landing Road, all being immediately adjacent to the above described property.

SECTION 2. USES. The following uses shall be permitted in said P-D(554) 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:

Commercial uses as allowed in the C-2, General Commercial Zone.

SECTION 3. ZONING MAP. Section Map 9-4-9 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 27th day of August, 2002, by Councilmember Fisher, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Conrad, was upon roll call carried and ordered printed and published by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: *Carmen Sabatino*
CARMEN SABATINO, Mayor

ATTEST:

By *Jean Zahr*
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

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

APPROVED AS TO DESCRIPTION:

By *Jay Ann*
Community Development Department
Planning Division

Ord. No. 3267-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, 2002, Councilmember Frohman moved its final adoption, which motion being duly seconded by Councilmember Keating, was upon roll call carried and the ordinance adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: 
MAYOR CARMEN SABATINO

ATTEST: 
JEAN ZAHR, City Clerk

Effective Date: October 3, 2002

ORDINANCE NO. 3268-C.S.

AN ORDINANCE AMENDING SECTION 3-2.1401.1 OF ARTICLE 14 OF CHAPTER 2 OF TITLE 3 OF THE MODESTO MUNICIPAL CODE RELATING TO SPEED LIMITS.

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

SECTION 1. AMENDMENT OF CODE. Section 3-2.1401.1 of Article 14 of

Chapter 2 of Title 3 of the Modesto Municipal Code is hereby amended to read as follows:

3-2.1401.1. CHANGE IN SPEED LIMITS SET BY STATE LAW: FOR PURPOSE OF ENFORCEMENT USING RADAR OR OTHER ELECTRONIC DEVICE.

By authority of, and upon the basis of engineering and traffic surveys conducted pursuant to Vehicle Code and the Traffic Manual of the Department of Transportation, it is determined that the prima facie speed limits which follow would facilitate the orderly movement of vehicular traffic and would be reasonable and safe.

<u>NAME OF STREET OR PORTION AFFECTED</u>	<u>DECLARED PRIMA FACIE SPEED LIMIT</u>	<u>DATE SURVEYED</u>
BANGS AVENUE, between Dale Road and McHenry Avenue	45 miles per hour	September 4, 2000
BLUE GUM AVENUE, between Morse Road and Carpenter Road	40 miles per hour	September 4, 2000
BRIGGSMORE AVENUE, between Prescott Road and Tully Road	45 miles per hour	January 13, 1999
BRIGGSMORE AVENUE, between Tully Road and McHenry Avenue	45 miles per hour	September 4, 2000
BRIGGSMORE AVENUE, westbound between McHenry Avenue and Coffee Road	45 miles per hour	December 21, 1998
BRIGGSMORE AVENUE, eastbound between McHenry Avenue and Coffee Road	45 miles per hour	May 10, 2002

	BRIGGSMORE AVENUE, between Coffee Road and Oakdale Road	50 miles per hour	January 13, 1999
	BRIGGSMORE AVENUE, between Oakdale Road and Claus Road	50 miles her hour	May 14, 1998
	BRIGGSMORE AVENUE, between Claus Road and Santa Fe Railroad Tracks	45 miles per hour	May 22, 2002
	BRIGHTON AVENUE, between Coffee Road and Locke Road	30 miles per hour	May 10, 2002
	CALIFORNIA AVENUE, between Carpenter Road and Martin Luther King Drive	30 miles per hour	July 11, 2002
	CARPENTER ROAD, between Blue Gum Avenue and Woodland Avenue	40 miles per hour	May 28, 1998
2000	CARPENTER ROAD, between Woodland Avenue and Maze Boulevard	40 miles per hour	September 4,
	CARPENTER ROAD, between Maze Boulevard and Paradise Road	50 miles per hour	June 15, 1999
2000	CARVER ROAD, between Bangs Avenue and Pelandale Avenue	40 miles per hour	September 4,
	CARVER ROAD, between Pelandale Avenue and Brixton Lane	35 miles per hour	May 10, 2002
	CARVER ROAD, between Brixton Lane and Briggsmore Avenue	35 miles per hour	May 10, 2002
	CARVER ROAD, between Briggsmore Avenue and Orangeburg Avenue	35 miles per hour	May 10, 2002

	CARVER ROAD, between Orangeburg Avenue and 9th Street	35 miles per hour	May 10, 2002
	CELESTE DRIVE, between Coffee Road and Oakdale Road	30 miles per hour	May 17, 2002
	CLAUS ROAD, between Sylvan Avenue and Briggsmore Avenue	50 miles per hour	May 23, 2002
	CLAUS ROAD, between Briggsmore Avenue and Scenic Drive	45 miles per hour	May 23, 2002
2000	CLAUS ROAD, between Scenic Drive and Yosemite Boulevard	50 miles per hour	September 4,
	COFFEE ROAD, between Claratina Avenue and Sylvan Avenue	40 miles per hour	April 4, 2000
	COFFEE ROAD, between Sylvan Avenue and Floyd Avenue	40 miles per hour	May 28, 1998
	COFFEE ROAD, between Floyd Avenue and Briggsmore Avenue	40 miles per hour	January 11, 1999
	COFFEE ROAD, between Briggsmore Avenue and Scenic Drive	40 miles per hour	May 14, 1998
	COLLEGE AVENUE, between Rumble Road and Bowen Avenue	30 miles per hour	May 14, 1998
	COLLEGE AVENUE, between Bowen Avenue and Princeton Avenue	35 miles per hour	June 16, 1998
	CREEKWOOD DRIVE, between Claus Road and Yosemite Boulevard	35 miles per hour	March 17, 1999
1999	CROWS LANDING ROAD, between 7th Street and Hatch Road	35 miles per hour	August 24,

2000

CROWS LANDING ROAD, between Hatch Road and Whitmore Avenue	35 miles per hour	April 29, 1997
DALE ROAD, between Pelandale Avenue and Snyder Avenue	40 miles per hour	September 4,
DALE ROAD, between Snyder Avenue and Veneman Avenue	40 miles per hour	May 16, 2002
DALE ROAD, between Veneman Avenue and Standiford Avenue	35 miles per hour	May 16, 2002
EASTRIDGE DRIVE, between Orangeburg Avenue and Scenic Drive	30 miles per hour	June 18, 2002
EL VISTA AVENUE, between Scenic Drive and Yosemite Boulevard	40 miles per hour	December 22, 1998
EMERALD AVENUE, between Maze Boulevard and California Avenue	30 miles per hour	May 28, 2002
EVERGREEN AVENUE, between Orangeburg Avenue and Carver Road	30 miles per hour	May 21, 2002
FLOYD AVENUE, between McHenry Avenue and Coffee Road	30 miles per hour	July 11, 2002
FLOYD AVENUE, between Coffee Road and Oakdale Road	30 miles per hour	July 10, 2002
FLOYD AVENUE, between Oakdale Road and Roselle Avenue	35 miles per hour	July 10, 2002
FLOYD AVENUE, between Roselle Avenue and Fine Avenue	35 miles per hour	July 10, 2002
GRANGER AVENUE, between Tully Road and McHenry Avenue	35 miles per hour	December 21, 1998

	GRANGER AVENUE, between McHenry Avenue and Sunrise Avenue	35 miles per hour	December 21, 1998
	H STREET, between Washington Street and 5th Street	30 miles per hour	July 3, 2002
2000	HATCH ROAD, between Carpenter Road and Crows Landing Road	45 miles per hour	September 4,
	KANSAS AVENUE, between Morse Road and Rosemore Avenue	40 miles per hour	June 8, 1998
	KANSAS AVENUE, between Rosemore Avenue and Carpenter Road	40 miles per hour	June 8, 1998
	KANSAS AVENUE, between Carpenter Road and Emerald Avenue	35 miles per hour	January 13, 1999
	KANSAS AVENUE, between Emerald Avenue and Ninth Street	35 miles per hour	January 13, 1999
2000	LA LOMA AVENUE, between Burney Street and Yosemite Boulevard	30 miles per hour	September 4,
	LAKEWOOD AVENUE, between Briggsmore Avenue and Scenic Drive	35 miles per hour	June 18, 1997
2000	LINCOLN AVENUE, between Dry Creek and Yosemite Boulevard	35 miles per hour	September 4,
	MABLE AVENUE, between Coffee Road and Oakdale Road	30 miles per hour	July 10, 2002

	MARTIN LUTHER KING DRIVE, between Maze Boulevard and Paradise Road	30 miles per hour	June 13, 2002
	MERLE AVENUE, between Oakdale Road and Roselle Avenue	30 miles per hour	June 4, 2002
	MILLER AVENUE, between La Loma Avenue and El Vista Avenue	35 miles per hour	March 16, 1999
	MITCHELL ROAD, between Finch Road and the southerly City limits	50 miles per hour	April 28, 1997
	MORRIS AVENUE, between McHenry Avenue and Coffee Road	30 miles per hour	May 24, 2002
	MORSE ROAD, between Blue Gum Avenue and Kansas Avenue	40 miles per hour	May 24, 2002
	MT. VERNON DRIVE, between Prescott Road and College Avenue	30 miles per hour	June 23, 1999
	NEECE DRIVE, between Tuolumne Boulevard and Rouse Avenue	35 miles per hour	June 13, 2002
	NEEDHAM STREET, between 9th Street and L Street	35 miles per hour	June 17, 2002
	NORWEGIAN AVENUE, between McHenry Avenue and Coffee Road	35 miles per hour	January 11, 1999
2000	OAKDALE ROAD, between 1300 feet north of Mable Avenue and Sylvan Avenue	45 miles per hour	August 29,
2000	OAKDALE ROAD, between Sylvan Avenue and Floyd Avenue	45 miles per hour	August 29,

OAKDALE ROAD, between Floyd Avenue and Briggsmore Avenue	40 miles per hour	December 22, 1998
OAKDALE ROAD, between Briggsmore Avenue and Scenic Drive	40 miles per hour	December 22, 1998
ORANGEBURG AVENUE, between Briggsmore Avenue and Martin Avenue	35 miles per hour	May 21, 2002
ORANGEBURG AVENUE, between Martin Avenue and McHenry Avenue	40 miles per hour	May 23, 2002
ORANGEBURG AVENUE, between McHenry Avenue and Coffee Road	40 miles per hour	May 22, 2002
ORANGEBURG AVENUE, between Coffee Road and Oakdale Road	35 miles per hour	May 22, 2002
ORANGEBURG AVENUE, between Oakdale Road and Lakewood Avenue	35 miles per hour	May 22, 2002
ORANGEBURG AVENUE, between Lakewood Avenue and Claus Road	35 miles per hour	May 22, 2002
PARADISE ROAD, between Carpenter Road and Martin Luther King Drive	35 miles per hour	May 28, 2002
PARADISE ROAD, between Martin Luther King Drive and Washington Street	30 miles per hour	July 3, 2002
PELANDALE AVENUE, between Sisk Road and Dale Road	45 miles per hour	May 16, 2002
PELANDALE AVENUE, between Dale Road and Prescott Road	50 miles per hour	August 29,

2000

	PELANDALE AVENUE, between Prescott Road and McHenry Avenue	50 miles per hour	June 18, 2002
	PRESCOTT ROAD, between Snyder Avenue and Standiford Avenue	40 miles per hour	May 17, 2002
	PRESCOTT ROAD, between Standiford Avenue and Rumble Road	40 miles per hour	May 17, 2002
	PRESCOTT ROAD, between Rumble Road and Briggsmore Avenue	35 miles per hour	May 17, 2002
	RIVERSIDE DRIVE, between Edgebrook Drive and Yosemite Boulevard	30 miles per hour	August 30,
2000	ROSE AVENUE, between Floyd Avenue and Briggsmore Avenue	30 miles per hour	July 11, 2002
	ROSE AVENUE, between Briggsmore Avenue and Scenic Drive	30 miles per hour	July 11, 2002
	ROSEBURG AVENUE, between Carver Road and Tully Road	30 miles per hour	June 13, 2002
	ROSEBURG AVENUE, between Tully Road and McHenry Avenue	30 miles per hour	May 24, 2002
	ROSEBURG AVENUE, between McHenry Avenue and Sunrise Avenue	30 miles per hour	June 13, 2002
	ROSELLE AVENUE, between Floyd Avenue and Briggsmore Avenue	45 miles per hour	November 4,
2000	ROSEMORE AVENUE, between Blue Gum Avenue and Kansas Avenue	35 miles per hour	August 30,
2000			

	ROUSE AVENUE, between Colorado Avenue and Neece Drive	30 miles per hour	June 13, 2002
	RUMBLE ROAD, between Sisk Road and Conant Avenue	30 miles per hour	May 17, 2002
	RUMBLE ROAD, between Conant Avenue and Tully Road	30 miles per hour	May 17, 2002
	RUMBLE ROAD, between Tully Road and McHenry Avenue	30 miles per hour	May 17, 2002
	RUMBLE ROAD, between McHenry Avenue and Coffee Road	30 miles per hour	May 17, 2002
2000	SANTA CRUZ AVENUE, between Yosemite Boulevard and Legion Park Drive	30 miles per hour	November 4,
	SCENIC DRIVE, between Burney Street and Coffee Road	35 miles per hour	June 17, 2002
	SCENIC DRIVE, between Coffee Road and Oakdale Road	40 miles per hour	June 17, 2002
	SCENIC DRIVE, between Oakdale Road and Lakewood Avenue	40 miles per hour	June 17, 2002
	SCENIC DRIVE, between Lakewood Avenue and Lillian Drive	40 miles per hour	June 17, 2002
	SCENIC DRIVE, between Lillian Drive and Claus Road	40 miles per hour	June 17, 2002
2000	SHARON AVENUE, between Fine Avenue and Claus Road	40 miles per hour	November 17,
	SIERRA DRIVE, between G Street and 7th Street	30 miles per hour	May 28, 2002

	SISK ROAD, between Pelandale Avenue and Vintage Drive	45 miles per hour	June 14, 1999
	SISK ROAD, between Vintage Drive and Standiford Avenue	45 miles per hour	June 14, 1999
2000	SISK ROAD, between Standiford Avenue and Briggsmore Avenue	45 miles per hour	August 29,
	SNYDER AVENUE, between Dale Road and Prescott Road	30 miles per hour	May 16, 2002
	SNYDER AVENUE, between Prescott Road and Tully Road	30 miles per hour	May 16, 2002
	STANDIFORD AVENUE, between Sisk Road and Prescott Road	45 miles per hour	January 12, 1999
2000	STANDIFORD AVENUE, between Prescott Road and Tully Road	40 miles per hour	August 29,
	STANDIFORD AVENUE, between Tully Road and McHenry Avenue	40 miles per hour	December 22, 1998
	SUNRISE AVENUE, between Floyd Avenue and Lucern Avenue	30 miles per hour	May 24, 2002
	SUTTER AVENUE, between Paradise Road and Robertson Road	30 miles per hour	February 9, 1999
2000	SYCAMORE AVENUE, between Orangeburg Avenue and Griswold Avenue	30 miles per hour	November 14,
	SYLVAN AVENUE, between McHenry Avenue and Coffee Road	40 miles per hour	December 22, 1998

2001	SYLVAN AVENUE, between Coffee Road and Oakdale Road	40 miles per hour	February 7,
	SYLVAN AVENUE, between Oakdale Road and Roselle Avenue	45 miles per hour	June 4, 2002
	SYLVAN AVENUE, between Roselle Avenue and Claus Road	50 miles per hour	June 4, 2002
	TENAYA DRIVE, between Empire Avenue and the easterly city limit on Tenaya Drive	30 miles per hour	June 18, 2002
	TULLY ROAD, between Bangs Avenue and Standiford Avenue	45 miles per hour	May 21, 2002
	TULLY ROAD, between Standiford Avenue and Briggsmore Avenue	35 miles per hour	May 21, 2002
	TULLY ROAD, between Briggsmore Avenue and Coldwell Avenue	35 miles per hour	June 13, 2002
	TUOLUMNE BOULEVARD, between Paradise Road and 7th Street	35 miles per hour	May 28, 2002
2000	UNION AVENUE, between Tully Road and McHenry Avenue	30 miles per hour	August 29,
	VENEMAN AVENUE, between Dale Road and Regency Park Drive	30 miles per hour	July 10, 2002
	VIRGINIA AVENUE, between Roseburg Avenue and Needham Street	30 miles per hour	May 24, 2002
	WHITMORE AVENUE, between Ustick Road and Crows Landing Road	45 miles per hour	June 18, 2002

	WHITMORE AVENUE, between Crow's Landing Road and Morgan Road	40 miles per hour	June 18, 2002
	WOODLAND AVENUE, between Morse Road and Carpenter Road	30 miles per hour	July 11, 2002
	WOODLAND AVENUE, between Carpenter Road and 9th Street	30 miles per hour	June 13, 2002
	WOODROW AVENUE, between Tully Road and McHenry Avenue	30 miles per hour	May 21, 2002
	5TH STREET, between L Street and Sierra Drive	25 miles per hour	May 28, 2002
	6TH STREET, between M Street and Sierra Drive	30 miles per hour	May 28, 2002
	7TH STREET BRIDGE, between B Street and River Road	30 miles per hour	August 30,
2000			
	9TH STREET, between Carpenter Road and Tully Road	45 miles per hour	June 13, 2002
	9TH STREET, between Tully Road and L Street	35 miles per hour	May 23, 2002
	9TH STREET, between D Street and Morton Boulevard	30 miles per hour	November 4,
2000			

SECTION 2. EFFECTIVE DATE. This ordinance shall go into effect and be in full force and operation from and after thirty (30) days after its final passage and adoption.

SECTION 3. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in *The Modesto Bee*, the

official newspaper of the City of Modesto, setting forth the title of this ordinance, the date of its introduction and the places where this ordinance is posted.

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 24th day of September, 2002, by Councilmember Frohman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and ordered printed and published by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: 
CARMEN SABATINO, Mayor

ATTEST:

By 
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By 
MICHAEL D. MILICH, City Attorney

Ord. No. 3268-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, 2002, Councilmember Frohman moved its final adoption, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and the ordinance adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: 
MAYOR CARMEN SABATINO

ATTEST: 
JEAN ZAHR, City Clerk

Effective Date: November 21, 2002

ORDINANCE NO. 3269-C.S.

AN ORDINANCE ADDING CHAPTER 10 ENTITLED
“CONFLICT DISCLOSURE” TO TITLE 2 OF THE MODESTO
MUNICIPAL CODE.

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

SECTION 1. AMENDMENT OF CODE. Chapter 10 entitled “Conflict
Disclosure” is hereby added to Title 2 of the Modesto Municipal Code to read as follows:

CHAPTER 10 - CONFLICT DISCLOSURE

2-10.01. INTENT.

It is the intention of the City Council to require disclosure of every individual financial interest in every agreement of any kind that requires City Council approval and in any development project that comes before the City Council by application for land use approval, so that conflicts of interest that such agreements or applications create for Councilmembers can be more readily determined.

2-10.02. DEFINITIONS.

In furtherance of the purposes of the California Fair Political Practices Act, and the City’s “Tin Cup” ordinance, it is the intent of the City Council that the identities of all individuals with financial interest in every agreement of any kind that requires City Council approval and in land development applications before the City Council be known to the Council and to the public. The following definitions are intended to further this purpose:

- (a) **Development:** Any proposed use of real property, whether existing or to be constructed, which use may require City Council approval either directly, or on appeal from the Planning Commission.
- (b) **Agreement:**
 - (1) Public works contracts and agreements for goods and services that require Council approval as required by Chapter 3 of Title 8 of the Modesto Municipal Code;
 - (2) Any other agreements submitted by the City Manager to the City Council for approval and any other application, request for entitlement or approval whatsoever;

- (3) Grants of money or non-monetary city assistance to any organization, including but not limited to, non-profit corporations, or not for profit associations who seek such assistance from the City Council for any reason; and
 - (4) Franchises granted by the City Council as provided for in Article 14 of the City Charter and/or any applicable provision of the Modesto Municipal Code.
- (c) **Application:** Any submission of information required to be made to the City by state law, ordinance, contract or resolution for the purpose of development approval or agreement approval.
 - (d) **Applicant:** An applicant is any person who submits an application or on whose behalf an application is submitted.
 - (e) **City Council:** The Modesto City Council and the Modesto Redevelopment Agency.
 - (f) **Person:** Shall mean any individual, firm, company, partnership, limited liability partnership, limited liability corporation, joint venture, association, proprietorship, club or fraternal organization, joint stock company, domestic or foreign corporation, estate, trust, business trust, receiver, trustee, trustee in bankruptcy, administrator, executor, assignee, syndicate, or any other group or combination acting as a unit whether mutual, cooperative, fraternal, non-profit or otherwise.
 - (g) **Financial Interest:** Financial interest means ownership or control over any property, real or personal, tangible or intangible available for use by a person making an application including, but not limited to, real property, cash, securities, merchandise, raw materials, finished goods, operating supplies, ordinary maintenance material and parts, accounts receivable and notes and loans receivable, prepaid expenses, collateral used as security for a loan made to the person making an application, long-lived legal rights and competitive advantages developed or acquired by a person making an application including, but not limited to, redevelopment agreements as well as other intangible assets and rights. A financial interest may also be an expectation of receipt of gross revenue (before adjustments or deductions for any costs of doing business whatsoever) from a person making an application.

- (h) **Gross Revenue:** The term gross revenue shall include transactions in which a person making an application agrees to pay or to reduce the obligation of another.

2-10.03. COMPLETION OF APPLICATION.

- (a) No application for any land use approval from the City of any type including, but not limited to, subdivision map approvals, zoning changes, general plan amendments, precise plan approvals, conditional use permits, development agreements, and any other request for approval requiring the submission of information to the City, shall be deemed complete for the purposes of any California law, or ordinance including, but not limited to, the California Permit Streamlining Act, until all persons having any financial interest in the person submitting the application have been identified by name, in particular, individual persons owning or controlling “persons” or entities with financial interests in a person submitting an application, subject to the reasonable discretion of the City’s Community Development Director. No application deemed incomplete in this regard by the Community Development Director shall proceed, or be acted upon in any manner by either the Planning Commission or the City Council. To cause such an application to be acted upon by deception or otherwise shall be a violation of this Code and a misdemeanor.
- (b) No agreement shall be submitted to the City Council for approval until all persons having any financial interest in the person submitting the application have been identified by name, in particular individual persons owning or controlling “person” or entities with financial interests in a person submitting an application, subject to the reasonable discretion of the City department director proposing such approval to the City Council. No application deemed incomplete in this regard by the City department director proposing such approval shall be processed or be acted upon in any manner by the City Council. To cause such an application to be acted upon by deception or otherwise shall be a violation of this Code and a misdemeanor.
- (c) In order to implement this section every City department director proposing approval of each such application by the City Council shall provide every applicant with an application form for the purpose of disclosing the financial interest required by this section. Each applicant must verify in writing, under penalty of perjury, that the financial interest information provided in such application form is true, correct and complete.

- (d) Each applicant shall have a continuing obligation to maintain the truth, accuracy and completeness of the financial interest information provided on the application in accordance with this section until after the final consideration by the City Council of any matter arising out of or relating to the application.
- (e) In the event that the City Council finds that an applicant did not exert due diligence and good faith in its maintenance of true, accurate and complete financial interest information in accordance with the requirements of this section, then, and in that event, the application shall be deemed to have been, and treated for all purposes as if it had been incomplete from the first day it was filed through the date of the finding.
- (f) Nothing in this section is intended to imply any obligation on the part of City employees, consultants, volunteers or elected officials to investigate, research or otherwise verify the content of any application.
- (g) This chapter shall not apply to persons having an aggregate economic interest in an applicant less than two thousand dollars (\$2,000.00) at all times prior to final Council determination of the application.

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 22nd day of October, 2002, by Councilmember Conrad, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Jackman, was upon roll call carried and ordered printed and published by the following vote:

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

NOES: Councilmembers: Fisher, O'Bryant

ABSENT: Councilmembers: None

APPROVED: 
CARMEN SABATINO, Mayor

ATTEST:

By 
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By 
MICHAEL D. MILICH, City Attorney

Ord. No. 3269-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 November, 2002, Councilmember Conrad moved its final adoption, which motion being duly seconded by Councilmember Frohman, was upon roll call carried and the ordinance adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: *Carmen Sabatino*
MAYOR CARMEN SABATINO

ATTEST: *Jean Zahr*
JEAN ZAHR, City Clerk

Effective Date: December 6, 2002

ORDINANCE NO. 3271-C.S.

AN ORDINANCE AMENDING SECTION 8-3-9 OF THE ZONING MAP TO REZONE FROM LOW DENSITY RESIDENTIAL ZONE, R-1, TO PLANNED DEVELOPMENT ZONE, P-D(555), PROPERTY LOCATED AT 810 STANDIFORD AVENUE (HORIZON CONSULTING SERVICES).

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

SECTION 1. ZONING CHANGE. Section 8-3-9 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(555):

R-1 to P-D(555)

Lot 1, of Standiford Colony, as per map filed December 11, 1912 in Volume 7 of Maps, at Page 17, Stanislaus County Records.

Excepting there from that portion of East 20 feet lying South of the North 25 feet as conveyed to the Modesto Irrigation District, an irrigation district, by Deed recorded September 11, 1964 in Volume 1975 of Official Records, at Page 612, as instrument No. 35637;

also including the south one-half of original 40 foot Standiford Avenue, all being immediately adjacent to the above described property.

Assessor's Parcel No: 055-12-46-080

SECTION 2. USES. The following uses shall be permitted in said P-D(555) 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. Medical office development and associated off-street parking as allowed in the P-O Zone.

SECTION 3. ZONING MAP. Section Map 8-3-9 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 22nd day of October, 2002, by Councilmember Conrad, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Keating, was upon roll call carried and ordered printed and published by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: Fisher

APPROVED: *Carmen Sabatino*
CARMEN SABATINO, Mayor

ATTEST:

By *Jean Zahr*
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

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

APPROVED AS TO DESCRIPTION:

By *Greg Con*
Community & Economic Development
Department B Planning Division

Ord. No. 3271-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 November, 2002, Councilmember Frohman moved its final adoption, which motion being duly seconded by Councilmember Jackman, was upon roll call carried and the ordinance adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: Fisher

APPROVED: *Carmen Sabatino*
MAYOR CARMEN SABATINO

ATTEST: *Jean Zahr*
JEAN ZAHR, City Clerk

Effective Date: December 6, 2002

ORDINANCE NO. 3272-C.S.

AN ORDINANCE AMENDING SECTION 4-7.1103 OF
ARTICLE 11 OF CHAPTER 7 OF TITLE 4 OF THE MODESTO
MUNICIPAL CODE RELATING TO COLLECTION OF
PRUNED REFUSE.

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

SECTION 1. AMENDMENT OF CODE. Section 4-7.1103 of Article 11 of

Chapter 7 of Title 4 of the Modesto Municipal Code is hereby amended to read as follows:

4-7.1103. PLACEMENT FOR COLLECTION.

The following regulations shall govern the placement of pruned refuse for collection by the City. Failure to comply with any regulation shall be unlawful and punishable as an infraction.

- (a) **Place.** Persons desiring to have pruned refuse collected by the City shall place it in an abutting alley, if one exists. Where alleys do not exist, pruned refuse shall be placed in the abutting street for collection. During designated leaf season, leaves shall be placed in the abutting street at all locations.
- (b) **Location.** Pruned refuse and leaves during the designated leaf season placed in streets shall not be combined but be placed in separate piles in a compact manner and shall not extend into the street more than four (4) feet, nor shall the closest edge of the pile be placed less than one (1) foot from the face of the curb, or in case no curb exists, from the low point of the gutter, so as to permit drainage. Pruned refuse and leaves will not be collected when obstructed by parked vehicles, overhead obstruction, or not immediately accessible to the collection vehicle. With the exception of leaf season, no power blowers or any other method shall be used to blow or move any nonpruned refuse into the streets at any time. Pruned refuse placed in alleys shall be placed in a compact manner and shall not extend into the alley more than three (3) feet.
- (c) **Piling.** Pruned refuse shall be placed in a single compact pile, and only in front of, in the rear of, or on the side of, as the case may be, the property where it was accumulated.

- (d) **Size.** All tree limbs put out for collection shall not exceed six (6) feet in length or six (6) inches in diameter, and no single piece shall weigh more than fifty (50) pounds.
- (e) **Time.** Pickup will be on a once-a-month basis and pruned refuse may only be placed in conformance with this section during the time designated by the Operations and Maintenance Director at the beginning of pickup week. Pruned refuse shall be placed out for street collection not more than seventy-two (72) hours prior to the first Monday of each month and only during this seventy-two hour time period.

For areas with alleys, pruned refuse shall be placed out for collection in the alley not more than seventy-two (72) hours prior to the third Monday of each month and only during this seventy-two (72) hour time period.

- (f) **Leaves.** Leaves shall be collected in the street only between November 1 and December 31 of each year or as directed by the Operations and Maintenance Director. Leaves shall be placed separately from pruned refuse, grass clippings, shrubbery, Christmas trees and other similar materials. Leaves shall not be placed in plastic bags for collection by the City.
- (g) **Containers.** All refuse (grass clippings, leaves, twigs, shrubbery) shall be placed in containers of not more than ninety (90) gallons nor less than sixty (60) gallons capacity unless authorized by the Operations and Maintenance Director.
- (h) **Christmas Trees.** Christmas trees are to be placed in street or alley with pruned refuse to be collected by the City. Wooden tree stands attached to Christmas trees are acceptable for collection by the City.

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. City staff is hereby directed to conduct a public information campaign for the purposes of educating the public about the changes in the collection of pruned refuse established by this ordinance in the months of December, 2002 and January, 2003, and is further directed to implement and enforce this ordinance in February, 2003, as directed by the City Manager.

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 6th day of November, 2002, by Councilmember Frohman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Conrad, was upon roll call carried and ordered printed and published by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

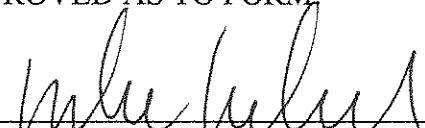
APPROVED: 
CARMEN SABATINO, Mayor

ATTEST:

By 
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By 
MICHAEL D. MILICH, City Attorney

Ord. No. 3272-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, 2002, Councilmember Frohman moved its final adoption, which motion being duly seconded by Councilmember Conrad, was upon roll call carried and the ordinance adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: 
MAYOR CARMEN SABATINO

ATTEST: 
JEAN ZAHR, City Clerk

Effective Date: December 26 2002

ORDINANCE NO. 3273-C.S.

AN ORDINANCE AMENDING SECTION 2-1.08 OF CHAPTER
1 OF TITLE 2 OF THE MODESTO MUNICIPAL CODE
RELATING TO CITY COUNCIL ORGANIZATION AND
PROCEDURE - ORDER OF BUSINESS.

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

SECTION 1. AMENDMENT OF CODE. Section 2-1.08 of Chapter 1 of Title 2

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

2-1.08. ORDER OF BUSINESS.

Promptly at the hour set by law on the date of each regular meeting, the members of the Council, the City Clerk, City Attorney and City Manager shall take their regular stations in the Council Chambers, and the business of the Council shall be taken up for consideration and disposition in the following order, with the exception that the Mayor or other presiding officer may take any item out of order as the public necessity and convenience may require:

1. Roll call.
2. Pledge of allegiance to the flag.
3. Invocation.
4. City Clerk's announcements.
5. Declaration of conflicts of interest.
6. Acknowledgments and presentations.
7. Oral communications.
8. Consent items.
9. Council comments and reports.
10. Written communications.
11. Unfinished business.
12. Hearings.
13. New business.
14. Miscellaneous:
 - a. Legislation.
 - b. Appointments.
 - c. Other.
15. Matters too late for the agenda.
16. Adjournment.
17. Closed session items.

SECTION 2. EFFECTIVE DATE. This ordinance shall go into effect and be in full force and operation from and after thirty (30) days after its final passage and adoption.

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

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 26th day of November, 2002, by Councilmember Frohman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Conrad, was upon roll call carried and ordered printed and published by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

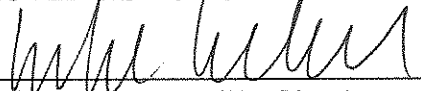
APPROVED: 
CARMEN SABATINO, Mayor

ATTEST:

By 
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By 
MICHAEL D. MILICH, City Attorney

Ord. No. 3273-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 10th day of December, 2002, Councilmember Frohman moved its final adoption, which motion being duly seconded by Councilmember Jackman, was upon roll call carried and the ordinance adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: *Carmen Sabatino*
MAYOR CARMÉN SABATINO

ATTEST: *Jean Zahr*
JEAN ZAHR, City Clerk

Effective Date: January 9 2003

ORDINANCE NO. 3274-C.S.

AN ORDINANCE AMENDING SECTION 10-3-9 OF THE ZONING MAP TO REZONE FROM MEDIUM DENSITY RESIDENTIAL ZONE, R-2, TO PLANNED DEVELOPMENT ZONE, P-D(556), PROPERTY LOCATED ON THE SOUTHEAST CORNER OF CARSON OAK DRIVE AND BRIDGEWOOD WAY. (GRANITE BAY HOLDINGS)

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

SECTION 1. ZONING CHANGE. Section 10-3-9 of the Zoning Map is hereby amended to reclassify the following described property from Medium Density Residential Zone, R-2, to Planned Development Zone, P-D(556):

R-2 to P-D(556)

All that certain real property situated in a portion of the Northeast quarter of Section 10, Township 3 South, Range 9 East, Mount Diablo Base and Meridian and lying within the City of Modesto, County of Stanislaus, State of California, more particularly described as follows:

“Parcel 3” as shown and designated on that certain Parcel Map filed in the Office of the County Recorder of Stanislaus County, California, on September 24, 1979 in book 29 of Parcel Maps, at page 100;

Including the Southerly one-half of Bridgewood Way and the Easterly one-half of Carson Oak Drive.

SECTION 2. USES. The following uses shall be permitted in said P-D(556) 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. Townhouses.

SECTION 3. ZONING MAP. Section Map 10-3-9 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.

Ord. No. 3274-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 10th day of December, 2002, Councilmember Fisher moved its final adoption, which motion being duly seconded by Councilmember O'Bryant, was upon roll call carried and the ordinance adopted by the following vote:

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

NOES: Councilmembers: Frohman

ABSENT: Councilmembers: None

APPROVED: 
MAYOR CARMEN SABATINO

ATTEST: 
JEAN ZAHR, City Clerk

Effective Date: January 9 2003

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 26th day of November, 2002, by Councilmember O'Bryant, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Jackman, was upon roll call carried and ordered printed and published by the following vote:

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

NOES: Councilmembers: Frohman

ABSENT: Councilmembers: None

APPROVED: *Carmen Sabatino*
CARMEN SABATINO, Mayor

ATTEST:

By *Jean Zahr*
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

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

APPROVED AS TO DESCRIPTION:

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

ORDINANCE NO. 3275-C.S.

AN ORDINANCE APPROVING AN AMENDED DEVELOPMENT AGREEMENT BETWEEN THE CITY OF MODESTO AND NORMAN GALAS, JUNE GALAS, STANLEY GALAS, BONNIE K. GALAS AND DEL VALLE CAPITAL CORPORATION, INC. RELATING TO EXTENDING THE LIFE OF THE TENTATIVE SUBDIVISION MAP TO JUNE 30, 2003.

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

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

WHEREAS, on September 16, 1997, the City Council introduced Ordinance No. 3061-C.S. which approved a Development Agreement with Norman Galas, June Galas, Stanley Galas, Bonnie K. Galas and Del Valle Capital Corporation, Inc. to allow the City to extend sewer service to the property without holding an advisory vote as required by Measure M, and

WHEREAS, Del Valle Capital Corporation, Inc. has applied for a First Amendment to said Development Agreement to extend the life of the Galas Brothers vesting tentative subdivision map to June 30, 2003, and containing provisions related to the provision of affordable and accessible housing and infrastructure master planning, and

WHEREAS, the Planning Commission on November 18, 2002, held a public hearing to consider the request of Del Valle Capital Corporation, Inc. to amend the Development Agreement, and

WHEREAS, a duly noticed public hearing was held by the Planning Commission of the City of Modesto on November 18, 2002, in the Tenth Street Place Chambers, located at 1010 10th Street, Modesto, California, for the purpose of making a recommendation to the City Council concerning the request to amend said Development Agreement, at which hearing evidence both oral and documentary was received and considered, and

WHEREAS, after said public hearing, the Modesto City Planning Commission, by Resolution No. 2002-48, adopted on November 18, 2002, recommended to the City Council approval of the proposed amended Development Agreement between the City of Modesto and Norman Galas, June Galas, Stanley Galas, Bonnie K. Galas and Del Valle Capital Corporation, Inc., and

WHEREAS, said matter was set for a public hearing of the City Council to be held at 5:30 p.m., on November 26, 2002, in the Tenth Street Place Chambers, located at 1010 10th Street, Modesto, California, at which date and time said duly noticed public hearing of the Council was held for the purpose of considering the requested First Amendment to the Development Agreement between the City of Modesto and Norman Galas, June Galas, Stanley Galas, Bonnie K. Galas and Del Valle Capital Corporation, Inc., to extend the life of the Galas Brothers vesting tentative subdivision map to June 30, 2003, and containing provisions related to the provision of affordable and accessible housing and infrastructure master planning, and

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

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

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

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

1. The proposed First Amendment to the Development Agreement is consistent with the General Plan and the Fairview Village Specific Plan of the City of Modesto because the resulting development would be consistent with the land uses of the Fairview Village Specific Plan and the proposed First Amendment to the Development Agreement would ensure that adequate infrastructure planning is done prior to development, as required by the General Plan.
2. The proposed Development Agreement is consistent with the specific content and other requirements of City Council Resolution No. 91-185, which establishes procedures and requirements for the consideration of development agreements and amendments thereto, the City's subdivision and zoning provisions of the Modesto Municipal Code, and Government Code Section 65864 et seq.
3. As per Section 15182 of the California Environmental Quality Act ("CEQA") Guidelines, the project is within the scope of the projects covered by the Fairview Village Focused EIR (SCH No. 95032006) and no new environmental document or findings are required by CEQA.

4. There are no substantial changes proposed in the project which will require major revisions of the Fairview Village Focused EIR.
5. There are no substantial changes occurring with respect to the circumstances under which the project is being undertaken which will require major revisions in the Fairview Village Focused EIR.
6. No new information, which was not known and could not have been known at the time the Fairview Village Focused EIR was certified as complete, has become available.

SECTION 2. APPROVAL OF DEVELOPMENT AGREEMENT. The First Amendment to the Development Agreement between the City of Modesto and Norman Galas, June Galas, Stanley Galas, Bonnie K. Galas and Del Valle Capital Corporation, Inc., to extend the life of the vesting tentative subdivision map to June 30, 2003, and containing provisions related to the provision of affordable and accessible housing and infrastructure master planning is hereby approved. A copy of the First Amendment to the Development Agreement is on file in the Office of the City Clerk.

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

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

SECTION 5. EFFECTIVE DATE. This ordinance shall go into effect and be in full force and operation from and after thirty (30) days after its final passage and adoption.

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

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 26th day of November, 2002, by Councilmember Fisher, who moved its introduction and passage to print, which motion being duly seconded by Councilmember O'Bryant, was upon roll call carried and ordered printed and published by the following vote:

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

NOES: Councilmembers: Frohman

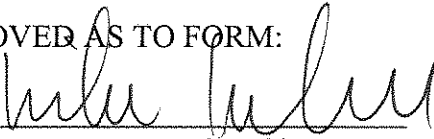
ABSENT: Councilmembers: None

APPROVED: 
CARMEN SABATINO, Mayor

ATTEST:

By 
JEAN ZAHR, City Clerk

(SEAL)

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

Ord. No. 3275-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 10th day of December, 2002, Councilmember Fisher moved its final adoption, which motion being duly seconded by Councilmember O'Bryant, was upon roll call carried and the ordinance adopted by the following vote:

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

NOES: Councilmembers: Frohman

ABSENT: Councilmembers: None

APPROVED: 
MAYOR CARMEN SABATINO

ATTEST: 
JEAN ZAHR, City Clerk

Effective Date: January 9 2003

ORDINANCE NO. 3276-C.S.

AN ORDINANCE AMENDING CHAPTER 10 OF TITLE 2 OF
THE MODESTO MUNICIPAL CODE RELATING TO
CONFLICT DISCLOSURE.

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

SECTION 1. AMENDMENT OF CODE. Chapter 10 of Title 2 of the Modesto
Municipal Code is hereby amended to read as follows:

CHAPTER 10 B CONFLICT DISCLOSURE

2-10.01. INTENT.

It is the intention of the City Council to require disclosure of every individual financial interest in every agreement of any kind that requires City Council approval and in any development project that comes before the City Council by application for land use approval, so that conflicts of interest that such agreements or applications create for Councilmembers can be more readily determined.

2-10.02. DEFINITIONS.

In furtherance of the purposes of the California Fair Political Practices Act, and the City's "Tin Cup" ordinance, it is the intent of the City Council that the identities of all individuals with a financial interest in every agreement of any kind that requires City Council approval and in land development applications before the City Council be known to the Council and to the public. The following definitions are intended to further this purpose:

- (a) **Development:** Any proposed use of real property, whether existing or to be constructed, which use may require City Council approval either directly, or on appeal from the Planning Commission.
- (b) **Agreement:**
 - (1) Public works contracts and agreements for goods and services that require Council approval as required by Chapter 3 of Title 8 of the Modesto Municipal Code;
 - (2) Any other agreements submitted by the City Manager to the City Council for approval and any other application, request for entitlement or approval whatsoever;

- (3) Grants of money or non-monetary city assistance to any organization, including but not limited to, non-profit corporations, or not for profit associations who seek such assistance from the City Council for any reason; and
 - (4) Franchises granted by the City Council as provided for in Article 14 of the City Charter and/or any applicable provision of the Modesto Municipal Code.
- (c) **Application:** Any submission of information required to be made to the City by state law, ordinance, contract or resolution for the purpose of development approval or agreement approval.
 - (d) **Applicant:** An applicant is any person who submits an application or on whose behalf an application is submitted.
 - (e) **City Council:** The Modesto City Council and the Modesto Redevelopment Agency.
 - (f) **Person:** Shall mean any individual, firm, company, partnership, limited liability partnership, limited liability corporation, joint venture, association, proprietorship, club or fraternal organization, joint stock company, domestic or foreign corporation, estate, trust, business trust, receiver, trustee, trustee in bankruptcy, administrator, executor, assignee, syndicate, or any other group or combination acting as a unit whether mutual, cooperative, fraternal, non-profit or otherwise.
 - (g) **Financial Interest:** Financial interest means ownership or control over any property, real or personal, tangible or intangible available for use by an applicant including, but not limited to, real property, cash, securities, merchandise, raw materials, finished goods, operating supplies, ordinary maintenance material and parts, accounts receivable and notes and loans receivable, prepaid expenses, collateral used as security for a loan made to the person making an application, long-lived legal rights and competitive advantages developed or acquired by an applicant including, but not limited to, redevelopment agreements as well as other intangible assets and rights. A financial interest may also be an expectation of receipt of gross revenue (before adjustments or deductions for any costs of doing business whatsoever) from a person making an application.
 - (h) **Gross Revenue:** The term gross revenue shall include transactions in which a person making an application agrees to pay or to reduce the obligation of another.

2-10.03. COMPLETION OF APPLICATION.

- (a) No application for any land use approval from the City of any type including, but not limited to, subdivision map approvals, zoning changes, general plan amendments, precise plan approvals, conditional use permits, development agreements, and any other request for approval requiring the submission of information to the City, shall be deemed complete for the purposes of any California law, or ordinance including, but not limited to, the California Permit Streamlining Act, until all persons having any financial interest in the applicant(s) have been identified by name, in particular, individual persons owning or controlling “persons” or entities with financial interests in a person submitting an application, subject to the reasonable discretion of the City’s Community Development Director. No application deemed incomplete in this regard by the Community Development Director shall proceed, or be acted upon in any manner by either the Planning Commission or the City Council. To cause such an application to be acted upon by deception or otherwise shall be a violation of this Code and a misdemeanor.
- (b) No agreement shall be submitted to the City Council for approval until all persons having any financial interest in the applicant(s) have been identified by name, in particular individual persons owning or controlling “persons” or entities with financial interests in an applicant, subject to the reasonable discretion of the City department director proposing such approval to the City Council. No application deemed incomplete in this regard by the City department director proposing such approval shall be processed or be acted upon in any manner by the City Council. To cause such an application to be acted upon by deception or otherwise shall be a violation of this Code and a misdemeanor.
- (c) In order to implement this section every City department director proposing approval of any application by the City Council shall provide every applicant with an application form for the purpose of disclosing the financial interests required to be disclosed by this section. Each applicant must verify in writing, under penalty of perjury, that the financial interest information provided in such application form is true, correct and complete.
- (d) Each applicant shall have a continuing obligation to maintain the truth, accuracy and completeness of the financial interest information provided on the application in accordance with this section until after the final consideration by the City Council of any matter arising out of or relating to the application.

- (e) In the event that the City Council finds that an applicant did not exert due diligence and good faith in its maintenance of true, accurate and complete financial interest information in accordance with the requirements of this section, then, and in that event, the application shall be deemed to have been, and treated for all purposes as if it had been, incomplete from the first day it was filed through the date of the finding.
- (f) Nothing in this section is intended to imply any obligation on the part of City employees, consultants, volunteers or elected officials to investigate, research or otherwise verify the content of any application.
- (g) This chapter shall not apply to persons having an aggregate economic interest in an applicant less than two thousand dollars (\$2,000.00) at all times prior to final Council determination of the application.
- (h) This chapter shall not apply to (1) business entities listed, or meeting the financial criteria for listing on the New York or the Pacific Stock exchanges unless it is reasonably foreseeable that a City Council decision will increase or decrease that entity's gross revenues or expenses by one million dollars (\$1,000,000) or more, and (2) business entities granted a waiver by a vote of two-thirds (2/3) of the City Council, sitting in public session.
- (i) Each Councilmember and the Mayor shall, at least once annually, in conjunction with their State Fair Political Practices Act disclosure requirements, file with the City Clerk a report setting forth the names and addresses of persons (associates) having a financial interest, as defined herein, in any property, contract, application, expectation of receipt of gross revenue or for profit enterprise or venture, no matter how organized, in which the reporting member has a financial interest. It shall be the further obligation of each member to file with the City Clerk amendments to their annual reports on a quarterly basis to ensure, in so far as possible, that the public is aware of matters coming before the Council in which a Councilmember associate has a financial interest.

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

Ord. No. 3276-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 10th day of December, 2002, Councilmember Fisher moved its final adoption, which motion being duly seconded by Councilmember O'Bryant, was upon roll call carried and the ordinance adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: 
MAYOR CARMEN SABATINO

ATTEST: 
JEAN ZAHR, City Clerk

Effective Date: January 9 2003

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, 2002, by Councilmember Jackman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Conrad, was upon roll call carried and ordered printed and published by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: Frohman

APPROVED: 
CARMEN SABATINO, Mayor

ATTEST:

By 
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By 
MICHAEL D. MILICH, City Attorney

ORDINANCE NO. 3277-C.S.

AN ORDINANCE AMENDING CHAPTER 1 OF TITLE 3 OF
THE MODESTO MUNICIPAL CODE RELATING TO
ADOPTION OF FIRE CODE.

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

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

CHAPTER 1. ADOPTION OF FIRE CODE

ARTICLE 1. FIRE CODE

3-1.101. ADOPTION OF THE UNIFORM FIRE CODE.

- (a) The City Council of the City of Modesto hereby adopts certain amendments, additions, deletions and exceptions, including fees and penalties the 2000 Uniform Fire Code, with errata and 2000 Uniform Fire Code Standards incorporating the 2001 California Fire Code, Part 9 of Title 24 of the California Code of Regulations including the 2000 Uniform Code Part IX, Appendices; Division I, Appendices I-A, I-B, I-C; Division II, Appendices II-A, II-B, II-C, II-D, II-E, II-H, II-I; Division III, Appendices III-A, III-C, III-D; Division IV, Appendices IV-A, IV-B; Division V, Appendices V-A, Division VI, Appendices VI-A, VI-D, VI-G; as compiled and published by the Western Fire Chiefs Association. The provisions of this 2000 Uniform Fire Code, California Fire Code, Fire Code Appendices, and Uniform Fire Code Standards shall be applicable in the City of Modesto.
- (b) Article 47 of the 2000 Uniform Fire Code, Fumigation and Thermal Insecticidal Fogging, is not adopted by the City of Modesto.

3-1.102. REPEAL OF CONFLICTING ORDINANCES.

All former ordinances or parts thereof conflicting or inconsistent with the provisions of this ordinance or of the 2000 Uniform Fire Code as adopted and amended are hereby repealed.

3-1.103. FINDINGS AND ADOPTION OF THE 2000 UNIFORM FIRE CODE.

The City Council of the City of Modesto hereby finds and determines: That the Western Fire Chiefs Association is a private organization which has been in existence for at least three (3) years. That the Uniform Fire Code, 2000 Edition, and 2000 Uniform Fire Code Standards, published by said organization, are nationally recognized compilation of proposed rules, regulations, and standards of said organization. That said 2000 Uniform Fire Code and Uniform Fire Code Standards have been printed and published as a code in book form within the meaning of Section 50022.2 et seq. of the Government Code. That one (1) copy of the 2000 Uniform Fire Code and one (1) copy of the Uniform Fire Code Standards, certified by the Clerk of the City of Modesto to be true copies, have been filed for use and examination by the public in the office of the Clerk of the City of Modesto. That the sections of said 2000 Uniform Fire Code and Uniform Fire Code Standards may be referred to by the number used in said published compilation, preceded by the words "Uniform Fire Code Section", "Fire Code Section", or "California Fire Code Section" and may also be referred to by additional reference to the Modesto Municipal Code and sections therein pertaining to said 2000 Uniform Fire Code and Uniform Fire Code Standards. That the additional requirements and standards established herein are needed to properly protect the health, safety, and welfare of the existing and future residents and workers of the City of Modesto. Said requirements and standards are reasonably necessary because of local climatic, geological, and topographical conditions, and comply with existing state laws and regulations.

Amendment of the 2000 Edition of the Uniform Fire Code is necessary so as to provide more stringent standards for fire extinguishing systems, fire hazard and hazardous materials controls is necessary to serve the public interest by reducing the risk to life and property of the citizens of Modesto because of the following local conditions:

- (a) Summer weather conditions are very dry, hot and windy causing ordinary combustibles to be easily ignited and fires to be fast spreading;
- (b) Very dense fog conditions occur in winter. Reduced visibility causes delays in fire response;
- (c) Fire response is delayed by railroad tracks which:
 - (1) Divide the City from northeast between Tully Road and McHenry Avenue to the west side of Ninth Street;

- (2) Run parallel to Highway 99 through the City, restricting response at locations where overpasses are not provided;
 - (3) Run parallel to Yosemite Boulevard restricting access to the airport, Tuolumne Regional Park, and adjacent areas; and
 - (4) Restrict access at intersections and streets in the areas of Ninth, Tenth, D, and E Streets.
- (d) Modesto Irrigation Canal #3 restricts access to the neighborhoods and developments to the north and east of Briggsmore Avenue from Oakdale Road to Claus Road;
- (e) Fire response is delayed by rivers and creeks which:
- (1) Divide the southwest area of the City and City contract areas and restrict access to these areas; and
 - (2) Divide the City from east to southwest along Scenic Drive.

THEREFORE, for the above reasons taken individually and cumulatively and in accordance with the authority granted in Sections 17958.5 and 17958.7 of the California Health and Safety Code, the Council of the City of Modesto expressly finds there are local climatic and topographical conditions that make the increased fire protection requirements set forth in this article reasonably necessary.

3-1.104. APPEALS.

Section 103.1.4 of the 2000 Uniform Fire Code is hereby amended to read as follows:

Applicant may appeal the decision of the Chief to the City Council within thirty (30) days from the date of the decision being appealed whenever the Chief:

- 1. Disapproves an application for use of alternate materials, methods and/or types of construction,
- 2. Disapproves an application for permit or refuses to grant a permit applied for,
- 3. When it is claimed that the provisions of the code do not apply, or

4. That the true intent and meaning of the code have been misconstrued or wrongly interpreted.

3-1.105. COMPLIANCE WITH ORDERS, NOTICES AND TAGS.

Section 103.4.3 of the 2000 Uniform Fire Code is hereby amended to read as follows:

Criminal Violations. It shall be unlawful for any person to violate any provision or to fail to comply with any of the requirements of this chapter.

A violation of any of the provisions or failing to comply with any of the mandatory requirements of this chapter shall constitute a misdemeanor; except that notwithstanding any other provision of this code, any such violation constituting a misdemeanor under this code may, in the discretion of the City Attorney, be charged and prosecuted as an infraction.

Any person convicted of a misdemeanor under the provisions of this chapter, unless provision is otherwise herein made, shall be punishable by a fine of not more than one thousand dollars (\$1,000.00) or by imprisonment in the county jail for a period of not more than six (6) months or by both fine and imprisonment. Any person convicted of an infraction under the provisions of this code, unless provision is otherwise herein made, shall be punishable by a fine only as follows: Upon a first conviction, by a fine of not exceeding two hundred fifty dollars (\$250.00) and for a second conviction or any subsequent conviction within a period of one year, by a fine of not exceeding five hundred dollars (\$500.00).

Each such person shall be charged with a separate offense for each and every day during any portion of which any violation of any provision of this code is committed, continued or permitted by such person and shall, upon conviction, be punished accordingly.

3-1.106. ADMINISTRATIVE REMEDIES.

Title 1, Chapter 6, of this Code established the administrative enforcement of remedies for violations of this Code and applicable state codes. The general remedies include administrative abatement, summary abatement, civil penalties, administrative citations, recordation of notices of violation and mediation. The City of Modesto may pursue any of these administrative remedies for violations of this chapter.

3-1.107. PERMIT REQUIRED FOR CERTAIN OPERATIONS.

Section 105.8 of the 2000 Uniform Fire Code is hereby amended to read as follows:

Subsections a.4, f.1, f.5, m.2, o.1 and p.1 are hereby deleted.

3-1.108. FEES.

- (a) **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.
- (b) **Plan Check Fee.** When the valuation of proposed construction exceeds one thousand dollars (\$1,000.00), and a plan is required to be submitted, the plan checking fee shall be paid at the time of submitting plans and specifications for checking.

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

3-1.108.1. WATER SUPPLIES AND FIRE HYDRANTS.

Section 903.4.2 of the 2000 Uniform Fire Code is hereby amended by adding the following:

903.4.2 Required Installations. The locations, number and type of fire hydrants connected to a water supply capable of delivering the required fire flow shall be provided on the public street or on the site of the premises or both to be protected as required and approved. See Appendix III-B.

Fire hydrants shall be located on the supply side of the fire suppression system check valve.

Fire hydrants shall be accessible to the Fire Department apparatus by roads meeting the requirements of Section 902.2.

3-1.108.2. PORTABLE FIRE EXTINGUISHERS.

Section 1002 of the 2000 Uniform Fire Code is hereby amended by adding the following:

1002.4 Maximum Installation Height. Extinguishers having a gross weight not exceeding forty (40) lbs. (18.14 kg) shall be installed so that the top of the extinguisher is not more than four (4) feet above the floor.

Extinguishers having a gross weight greater than forty (40) lbs. (18.14 kg) (except wheeled types) shall be so installed that the top of the extinguisher is not more than three and one-half (3.5) feet above the floor. In no case shall the clearance between the bottom of the extinguisher and the floor be less than four (4) inches.

Existing Installations. Portable fire extinguishers shall only be required to be lowered during tenant improvements.

3-1.109. FIRE EXTINGUISHING SYSTEMS.

Subsections 6 and 7 are hereby added to Section 1003.2.2 of the 2000 Uniform Fire Code:

6. **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. Area separation walls shall not be used for the purpose of eliminating automatic fire sprinkler systems required by this section.

EXCEPTION: Buildings and structures classified as R-3 U-1, and U-2 occupancies.

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

3. Existing buildings or structures and their addition(s) are exempt from automatic sprinklers when the cost of the remodel of the existing building(s) or structure(s) is less than fifty (50) percent of the value (current county assessed valuation for improvements) of the buildings or structures, and sprinklers are permitted to be omitted from the addition(s), due to type of construction, use, or other special situations, by National Fire Protection Association Standard 13.

3-1.110. SPRINKLER SYSTEM MONITORING AND ALARMS.

Section 1003.3 of the 2000 Uniform Fire Code is hereby amended to read as follows:

1003.3.1 Where Required. All valves controlling the water supply for automatic sprinkler systems and water-flow switches on all sprinkler systems shall be electrically monitored for integrity where the number of sprinklers is:

1. Twenty (20) or more in Group I, Division 1.1 and 1.2 Occupancies.
2. One hundred (100) 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 supervising station as defined by UFC 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 municipality or public utility need not be monitored.

3-1.110.1. FIRE ALARM SYSTEMS.

Section 1006.1.3 of the 2000 Uniform Fire Code is hereby amended by adding the following:

1006.1.3 Certification. A certificate from Underwriters Laboratories (UL) shall be required on all commercial fire alarm systems installed after the effective date of this ordinance. UL certification shall be provided for

all previously existing commercial fire alarm systems no later than January 1, 2005. UL certification is required to be maintained for commercial fire alarm systems throughout the life of the alarmed building.

3-1.111. INCINERATORS.

Section 1102.2 of the 2000 Uniform Fire Code is hereby amended to read as follows:

Incinerators. The use of incinerators is prohibited inside the City limits of Modesto. Subsections 1102.2.1, 1102.2.3, 1102.2.4, and 1102.2.5 are deleted.

3-1.112. VEGETATION REMOVAL.

Section 1103.2.4 of the 2000 Uniform Fire Code is hereby amended to read as follows:

Vegetation. Cut or uncut weeds, grass, vines and other seasonal and recurring growth on vacant land shall be deemed a public nuisance and shall be removed by the owner when notified to do so by the Chief. When the Chief determines that total removal of growth is impractical due to the size or environmental factors, approved fuel breaks shall be established. Designated areas shall be cleared of combustible vegetation to establish the fuel breaks.

Abatement of a public nuisance shall be in accordance with Article 6 of Chapter 6 of Title 1 of this Code. The Fire Department may impose a nuisance abatement lien pursuant to Section 1-6.702 of this Code.

The Fire Department may recover, from a property owner, those costs associated with the suppression costs incurred in fighting a fire and for providing rescue or emergency medical services should a fire occur on said property after the owner has been notified to abate such public nuisance and has failed to do so.

3-1.113. OPEN BURNING.

Section 1102.3 of the 2000 Uniform Fire Code is hereby amended to read as follows:

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.

3-1.114. TYPE OF LOCK OR LATCH FOR PREMISES WHERE GOLD OR BULLION IS TRADED.

Section 1207 of the 2000 Uniform Fire Code is amended to add subsection 8 as follows:

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.

3-1.115. FALSE ALARMS.

Section 1302.3 of the 2000 Uniform Fire Code is hereby amended to read as follows:

False alarms shall not be given, signaled or transmitted or caused or permitted to be given, signaled or transmitted. The City Council may adopt by resolution reasonable fees to recover the costs associated with responses to building or structures that have excessive false alarms.

3 B1.117. HOT WORKS.

Section 4901.9 of the 2000 Uniform Fire Code is hereby amended to read as follows:

A minimum 2-A: 20B:C-rated fire extinguisher or a charged water hose equipped with a nozzle shall be located within thirty (30) feet (9144 mm) of the location where hot works is in progress and shall be accessible without climbing stairs. When required by the Chief a minimum 2-A: 20B:C-rated fire extinguisher shall be mounted to each portable welding cart.

3-1.118. PORTABLE UNVENTED HEATING APPLIANCES.

Section 6106.3 of the 2000 Uniform Fire Code is hereby 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.

3-1.119. EXPLOSIVE MATERIALS.

Section 7701.1 of the 2000 Uniform Fire Code is hereby amended to read as follows:

Scope. Possession, storage, sale, transportation and use of explosive materials shall be in accordance with Article 77. See Appendix VI-F for excerpts from nationally recognized standards for separation distances for explosives.

3-1.120. PERMITS REQUIRED FOR EXPLOSIVES.

Section 7701.3.1 of the 2000 Uniform Fire Code is hereby amended to read as follows:

Required. When permits are required to be issued by the Chief, the Chief may grant the authority to the agency having enforcement jurisdiction. Permit shall be obtained:

1. To possess, store, sell, display or otherwise dispose of explosive materials at any location.
2. To transport explosive materials.

3. To use explosive materials.
4. To operate a terminal for handling explosive materials.

3-1.121. NOTICE OF NEW STORAGE SITES.

Section 7701.1.1 of the 2000 Uniform Fire Code is hereby amended to read as follows:

When a new explosive material storage location, including a temporary job-site, is established, the local law enforcement agency, fire department and emergency planning committee shall be notified immediately of the type, quantity and location of explosive materials at the site.

3-1.122. EXPLOSIVE MATERIALS PROHIBITED AND LIMITED ACTS.

Subsections 1 and 2 of Section 7701.7 of the 2000 Uniform 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.

3-1.123. PERMITS: MANUFACTURE OF FIREWORKS.

Subsection 7801.3.1.1 of the 2000 Uniform Fire Code is hereby amended to read as follows:

Manufacturing. The manufacturing of fireworks is prohibited in the City of Modesto.

3-1.124. PERMITS: DISPLAYS OF FIREWORKS AND APPEAL PROCESS.

Subsections 1, 2 and 3 are added to Section 7801.3.1.4 of the 2000 Uniform Fire Code:

1. 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.
2. 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 (10) 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 (10) day period, the action of the City Manager, or his/her designee, shall be final and conclusive.
3. A nonrefundable fee as established by resolution of the City Council from time to time shall accompany every application for permission to conduct a public display of fireworks. This fee shall be in addition to any other fee or tax imposed by Title 6 of this Code.

3-1.125. SALES OF FIREWORKS.

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

3. Sales. It shall be unlawful to engage in the sale of "Safe and Sane" fireworks in the City of Modesto without first having secured a permit to do so.
 - (1) The total number of sales permits issued in any given year shall be limited to one (1) sales permit for each two thousand five hundred (2,500) population or portion thereof; provided however, any organization applying for a sales permit who had such permit in 1999 and also in each

subsequent year shall be issued a permit if otherwise qualified. Sales permits shall be issued only to local nonprofit organizations and existing local for-profit organizations as defined herein, notwithstanding the fact that such issuance may increase the number of permits to more than that allowed herein.

- (2) Sales permits for the sale of "Safe and Sane" fireworks in the City of Modesto shall be issued only to local nonprofit organizations and existing local for-profit organizations as defined herein.
 - (A) A "nonprofit organization" shall mean any nonprofit association, club, or corporation organized for veteran, patriotic, welfare, religious, civic betterment, youth or charitable purposes, or affiliated with a public school located within the city limits of Modesto. Except for organizations affiliated with a public school, each organization shall provide the City with a tax exempt certificate issued pursuant to the Revenue and Taxation Code of the State of California or written verification that they are an integral part of a recognized national organization having such a tax exempt status.
 - (B) A "local nonprofit 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. In addition, organizations affiliated with a public school shall provide written verification of existence, acceptable to the Fire Chief, such as, but not limited to a current bank statement.
 - (C) An Aexisting local for-profit organization@ must have a permitted fixed business location in the City of Modesto, have been issued a fireworks sales permit the previous year, and have remained under the same management and/or ownership continuously since 1999.

- (3) Sales permits for retail sales of "Safe and Sane" fireworks in the City of Modesto issued pursuant to provision of this Code are not transferable by the holder of the permit. The sales permits may be used only by the organization to which it is issued.
- (4) All applications for sales permits shall be in writing to the Fire Chief on forms supplied by the City. Applications may only be filed during normal business hours from April 1st of each year up to and including April 30th of the same year, at which time the filing period for that year will close. A separate sales permit shall be required for each proposed location of a fireworks stand.
 - (A) In the year 2000 each organization may file an application for one (1) sales permit from April 1st of that year up to and including April 15th and may file an application for one (1) additional sales permit from April 16th up to and including April 30th of the same year, at which time the filing period for that year will close.
 - (B) In the year 2001, and in each subsequent year, each organization may file an application for one (1) sales permit.
- (5) 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.
- (6) Applicants for sales permits shall be notified by June 15th of each year by the Fire Chief of approval or disapproval of such application. All approved applications shall be picked up from the Fire Chief by 4:00 p.m. on June 20th 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.

- (7) Every application shall be accompanied by proof of insurance as specified in Section 3-1.128.
- (8) Every application shall be accompanied by a nonrefundable application fee as established by resolution of the City Council from time to time. This application fee shall be in addition to any fees or taxes imposed by Title 6 of this Code.
- (9) Any local nonprofit organization as defined herein may make application for a sale permit but pre-approved (continuously permitted since 1999) organizations will have first option for a permit.
 - (A) When additional sales permits are authorized and all current pre-approved organizations have applied for such permits, a lottery will be held to fill any vacancies.
 - (B) This lottery will be held after the last day of the filing period specified in paragraph 5 and will include the names of all new local nonprofit organizations that have filed a complete application within the said filing period.
 - (C) One organization will be drawn for each available vacancy. If the organization whose name is drawn declines the permit, another name will be drawn until each vacancy is filled.
- (10) A nonprofit organization may apply for a sales permit with regard to a booth located in an area annexed by the City of Modesto under the following conditions:
 - (A) Two (2) consecutive years prior to annexation, the applicant was issued a sales permit, by the City or County in which the property was formerly located, and applicant presents proof of the issuance of said permits;
 - (1) The applicant has received a valid City of Modesto business license; and
 - (2) The organization must either

- a) Meet the criteria of set forth in Section 3-1.125(2)(A) or
- b) Present documentary evidence establishing its primary meeting for a minimum of two (2) years preceding application to City of Modesto was at the location for which the sales permit is currently sought.

(B) Annexed property that was previously used for a temporary booth by an organization whose current primary meeting place is outside the City limits of Modesto is not eligible to make application for a sales permit.

Permits issued to these organizations will be in addition to those issued on the basis of population without the necessity of being selected by lottery, even though such issuance may increase the number of permits to more than allowed herein. The addition of these organizations does not change the original intent to issue one sales permit for each two thousand five hundred (2,500) population or portion thereof.

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

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

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

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

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

- (1) **Wholesale Storage.** Wholesalers may store "Safe and Sane" fireworks within the City of Modesto solely during the period of June 1 through July 31 of each year. Storage facilities shall comply with H1 occupancy classification requirements as defined by the Uniform Building Code.
 - (2) **Retailers Storage.** Retailers may store "Safe and Sane" fireworks within the City of Modesto solely during the period of June 22 through July 15 of each year. "Safe and Sane" fireworks that are not being sold or displayed with the intent to sell, shall be stored solely in the following manner:
 - (A) Within the permitted fireworks stand with a responsible adult on the premises at all times.
 - (B) In a completely enclosed and locked utility type trailer constructed of one-fourth (1/4) inch plywood or other approved noncombustible material.
 - (C) In a completely detached garage on residential property with a minimum ten (10) feet clearance from other structures or property lines. There shall be no open-flame or spark producing equipment, or Class 1 flammable liquids stored or used within in the garage.
 - (D) Fireworks shall not be stored within forty (40) feet of any building classified or used as a public or private school, day care facility, residential care facility, hospital, place of detention, public oil/gas station, or public garage, or any place of public assembly that can accommodate fifty (50) or more persons.
 - (E) In an approved and permitted fireworks warehouse.
3. **Operator Safety.** Each year, one (1) or more representatives from each organization, that is granted a permit to sell fireworks, shall

attend a stand operator safety seminar conducted by the Fire Department and the fireworks industry. Failure to attend the seminar shall result in the revocation of the organization's permit to sell fireworks for that calendar year.

4. Temporary Fireworks Stands.

- (1) All retail sales of "Safe and Sane" fireworks shall be permitted only from within a temporary fireworks stand and sales from any other building or structure is hereby prohibited.
- (2) City Business License, Fire Department Permit and State License shall be displayed in the fireworks stand during hours of operation.
- (3) Temporary fireworks stand shall not be set up before application for permit has been approved nor earlier than June 14.
- (4) The fireworks stands shall be located at least twenty (20) feet from other structures.
- (5) Zoning of property, in which the fireworks stand will be located, shall be in accordance with Section 10-2.2330.
- (6) Fireworks shall not be stored, sold, offered for sale, or discharged within one hundred (100) feet of a location where gasoline, LPG, other class 1 flammable liquids or flammable gasses are stored or dispensed.
- (7) All unsold stock and accompanying litter shall be removed from the location by 5:00 p.m. on the 6th day of July.
- (8) The fireworks stand shall be removed from the temporary location by 12:00 noon on the 12th day of July, and all accompanying litter shall be cleared from said location by said time and date.
- (9) A penalty of one hundred dollars (\$100.00) per day will be assessed to the permittee of any fireworks stand not removed by 12:00 noon on the 12th day of July.

5. **Safety Precautions.**

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

6. **Stand Construction.**

- (1) Merchandise may be displayed in approved glass enclosed counters or showcases, or
- (2) Merchandise may be displayed in stands constructed in the following manner:
 - (A) Walls and roof shall be of plywood at least one-fourth (1/4) inches thick or of an approved noncombustible material.
 - (B) The stand shall be provided with a roof.
 - (C) Walls shall extend to a minimum height of six (6) feet eight (8) inches, on at least three (3) sides. These three (3) sides shall be without openings, except for an exit door.
 - (D) An exit door with a minimum size of twenty-four (24) inches in width and six (6) feet in height, shall be provided in each stand. Exits shall be maintained clear and unobstructed at all times.

- (E) The front wall of the stand shall provide a physical barrier not less than eighteen (18) inches in height between the public and the merchandise on display.
- (F) Approved "NO SMOKING" signs shall be prominently displayed in and on the stand.
- (G) Approved "NO SALES TO PERSONS UNDER THE AGE OF 18" signs shall be prominently displayed in the stand.
- (H) An approved fire extinguisher having a minimum U.L. classification of 2A shall be located in the stand, near the exit and readily accessible.
- (I) Sellers of fireworks shall comply with all rules and regulations of Title 19 of the California Code of Regulations and with the rules and regulations of the Chief.

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.

3-1.127. REVOCATION OF PERMIT AND SEIZURE OF FIREWORKS.

Subsections 2 and 3 are added to Section 7802.2 of the 2000 Uniform Fire Code:

2. 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 Sections 3-1.124, 3-1.125, or 3-1.126 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.
3. Revocation of any sales permit will be effective for that calendar year.

3-1.128. FIREWORKS DISPLAYS INSURANCE REQUIRED.

Section 7802.4.3 of the 2000 Uniform Fire Code is hereby amended to read as follows:

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.

3-1.129. RESTRICTED LOCATIONS OF FLAMMABLE AND COMBUSTIBLE LIQUIDS IN TANKS.

Section 7902.2.2.1 of the 2000 Uniform Fire Code is hereby amended to read as follows:

Storage of Class I and II Liquids in aboveground tanks outside of buildings is prohibited, with the exception of protected tanks designed, installed and maintained in accordance with Article 52 of the 2000 Uniform Fire Code. The provisions of this Section 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.

3-1.130. OPERATING HEATING, LIGHTING, AND COOKING APPLIANCES PROHIBITED.

Section 7903.2.1.4 of the 2000 Uniform Fire Code is hereby amended to read as follows:

Heating, lighting, or cooking appliance which utilize flammable or combustible liquids shall not be operated within a building or structure.

3-1.131. ABOVEGROUND TANK STORAGE AND DISPENSING OF FLAMMABLE AND COMBUSTIBLE LIQUIDS ON FARMS AND CONSTRUCTION SITES.

Section 7904.2.5.1 of the 2000 Uniform Fire Code is hereby amended to read as follows:

General. The capacity of temporary aboveground tanks containing Class I and Class II Liquids shall not exceed one thousand one hundred (1,100) gallons (4163.9 L). The capacity of permanent aboveground tanks containing Class I and II Liquids shall not exceed ten thousand (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 Article 52 of the California Fire Code.

3-1.132. LOCATION OF BULK PLANTS FOR STORAGE OF FLAMMABLE AND COMBUSTIBLE LIQUIDS.

Section 7904.4.1 of the 2000 Uniform Fire Code is hereby 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.

3-1.133. TRANSFER OPERATIONS.

Section 7904.5.1.1 of the 2000 Uniform Fire Code is hereby amended to read as follows:

Bulk transfer and process transfer operations shall be in approved locations. Tank cars shall be unloaded only on private sidings or railroad siding facilities equipped for transferring flammable or combustible liquids. Tank vehicle and tank car

transfer facilities shall be separated from buildings, aboveground tanks, combustible materials, property lines, streets, alleys or public ways by a distance of twenty (25) feet (7620 mm) for Class I liquids and fifteen (15) feet (4572 mm) for Class II and III liquids measured from the nearest position of any loading or unloading valve.

Tank vehicles and tank cars shall be unloaded as soon as possible after arrival at point of delivery and shall not be used as storage tanks. Unless otherwise approved, a tank car shall not be allowed to remain on a siding at the point of delivery for more than twenty-four (24) hours while connected for transfer operations.

3-1.134. HAZARDOUS MATERIALS PERMITS.

Subsection 4 is added to Section 8001.3 of the 2000 Uniform Fire Code:

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

3-1.135. DEPOSITS OF HAZARDOUS MATERIALS; CLEANUP, ABATEMENT, OR MITIGATION REQUIRED; LIABILITY FOR COSTS.

Section 8001.5.2.5 of the 2000 Uniform Fire Code is hereby 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 born 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 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 that are normally or usually provided by the Fire Department.

3-1.136. GENERAL SAFETY PRECAUTIONS.

Section 8001.11.3 of the 2000 Uniform Fire Code is hereby amended to read as follows:

Protection from vehicles: Guard posts or other approved means shall be provided to protect storage tanks and connected piping, valves and fittings; dispensing areas; and use areas subject to vehicular damage. When guard posts are installed, the posts shall be:

1. Constructed of steel not less than six (6) inches in diameter and concrete filled,
2. Spaced not more than four (4) feet between posts on center,
3. Set not less than three (3) feet deep in a concrete footing of not less than a fifteen (15) inch diameter,
4. Set with the top of the posts not less than three (3) feet above ground, and
5. Located not less than five (5) feet from the tank.

3-1.137. PARKING AND GARAGING.

Subsection 4 is added to Section 8001.12 of the 2000 Uniform Fire Code:

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.

3-1.138. OUTSIDE STORAGE AND USE OF LIQUIFIED PETROLEUM GASES.

Section 8201 of the 2000 Uniform Fire Code is amended to follows:

The outside 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 (C2), 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 and certain commercial barbecue equipment and other specific uses when authorized by the Chief.
7. For use by Artisans in pursuit of their trade, when authorized by the Chief.
8. Storage of portable containers awaiting exchange may be permitted in commercially zoned areas of the City, including those zoned Neighborhood Commercial (C-1), when approved by the Chief and stored in accordance with Section 8212. Such storage shall be located a minimum of twenty (20) feet from any fuel dispenser.

3-1.139. PERMITS AND PLANS FOR LIQUIFIED PETROLEUM GASES.

Section 8202.1 of the 2000 Uniform Fire Code is hereby 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 five (5) gallon water capacity, used for "barbecue" cooking, when used and stored outside of buildings.
2. Approved containers not exceeding sixteen and four-tenths (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 the Chief has issued a permit for the installation for that location. The installer shall submit plans for any stationary LP-gas installation, regardless of size.

3-1.140. USE OF LIQUIFIED PETROLEUM GAS CONTAINERS IN BUILDINGS.

Section 8203.2.1 of the 2000 Uniform Fire Code is hereby 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. Areas undergoing construction.
 - A. Portable containers, not exceeding five (5) gallon water capacity, may be allowed in buildings or areas undergoing construction, when permitted by the Chief.
 - B. LP-gas containers shall not be used in a basement, pit, or similar location where heavier-than-air gas might collect. LP-gas containers not exceeding sixteen and four tenths (16.4) ounces may be used in an above-grade underfloor space or basement only when such space is provided with an approved means of ventilation.
2. In educational, business, and institutional occupancies when used for research and experimentation provided the individual capacity of any one container does not exceed sixteen and four-tenths (16.4) ounces and the aggregate capacity of all containers does not exceed two and one-half (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 ten (10) feet.
3. At demonstrations and public exhibitions for temporary use provided the individual capacity of any one container does not exceed sixteen and four-tenths (16.4) 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 ten (10) feet.

4. With self-contained torch assemblies and similar appliances provided that the individual capacity does not exceed sixteen and four-tenths (16.4) ounces.

Such containers shall not be used for commercial or residential food preparation.

3-1.141. MAXIMUM CAPACITY OF LPG CONTAINERS.

Section 8204.2 of the 2000 Uniform Fire Code is hereby 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:

1. Storage of LP-gas in accordance with Sections 8201.3, 8201.4 and 8201.5 shall be limited to one container not to exceed two hundred fifty (250) gallons water capacity.
2. The aggregate capacity of containers in storage and use in accordance with Sections 8201.6 and 8201.7 shall not exceed fifteen (15) gallons. Individual containers shall not exceed five (5) gallons water capacity, unless authorized by the Chief, and shall not be manifolded.

3-1.142. STORAGE OF PORTABLE LP-GAS CONTAINERS AWAITING USE, RESALE, OR EXCHANGE.

Section 8212.4 of the 2000 Uniform Fire Code is hereby amended to read as follows:

Separation from exits. Containers stored inside or outside buildings frequented by the public shall be located not less than ten (10) feet from any exit door or building opening, when only one (1) exit is provided from the building or area, and not less than five (5) feet from any exit door or building opening, when two (2) or more exits are provided from the building or area.

Table 8212-A of the 2000 Uniform Fire Code is hereby amended to read as follows:

Quantity of LP-Gas Stored	Distances to a Building or Group of Buildings, Public Way, or Line of Property that can be Built Upon (feet)
720 lb. Or less	0
721 to 250 lb.	10
2501 to 6000 lb.	15
6001 to 10000 lb.	20
Over 10000 lb.	25

ARTICLE 2. HAZARDOUS MATERIALS

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.

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.

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 twenty-five (25) gallons (94.6 L) in a building or in excess of fifty-five (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, o.1 and p.1 are hereby deleted.

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 Gases¹

Type of Gas	Amount (Cubic Feet) x 0.0283 for m³
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.

¹See Articles 74, 80 and 82 for additional requirements and exceptions.

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 Cryogen¹

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

¹ See Article 75

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.

3-1.207. PARKING AND GARAGING.

Subsection 8 is hereby added to Section 8001.12.3 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 3rd day of December, 2002, by Councilmember Conrad, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and ordered printed and published by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: Frohman

APPROVED: 
CARMEN SABATINO, Mayor

ATTEST:

By 
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By 
MICHAEL D. MILICH, City Attorney

Ord. No. 3277-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 10th day of December, 2002, Councilmember Fisher moved its final adoption, which motion being duly seconded by Councilmember O'Bryant, was upon roll call carried and the ordinance adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: 
MAYOR CARMEN SABATINO

ATTEST: 
JEAN ZAHR, City Clerk

Effective Date: January 9 2003