

AN ORDINANCE AMENDING SECTIONS 3-1.101, 3-1.105, 3-1.107, 3-1.114, 3-1.115, 3-1.116, 3-1.117, 3-1.120, 3-1.121, 3-1.123 AND 3-1.124 OF ARTICLE 1 OF CHAPTER 1 OF TITLE III OF THE MODESTO MUNICIPAL CODE AND REPEALING SECTIONS 3-1.118 AND 3-1.119 THEREOF, RELATING TO THE FIRE CODE AND FIRE DISTRICTS OF THE CITY OF MODESTO.

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

SECTION 1. FINDINGS. The City Council of the City of Modesto

hereby finds that the following local conditions exist in the City of Modesto:

(a) Summer weather conditions are very dry 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:

Divide City from northeast City limits between Tully and McHenry to the west side of Ninth Street.

Run parallel to Highway 99 through City, restricting response at locations where overpasses are not provided.

Run parallel to Yosemite Boulevard (M. & E. T.) blocking access to the Airport, Tuolumne Regional Park, and adjacent areas.

Restrict access at intersections and streets in the areas of 9th, 10th, D, and E. These streets are often blocked due to train operations.

(d) Irrigation Canal Lateral #3 restricts access to the Orchard Neighborhood from Oakdale to Claus above Briggsmore.

SECTION 2. AMENDMENT OF CODE. Sections 3-1.101, 3-1.105, 3-1.107, 3-1.114, 3-1.115, 3-1.116, 3-1.117, 3-1.120, 3-1.121, 3-1.123 and 3-1.124 of Article 1 of Chapter 1 of Title III of the Modesto Municipal Code are hereby amended to read as follows:

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

That certain document, three (3) copies of which are on file in the Office of the City Clerk of the City of Modesto, being marked and designated as "Uniform Fire Code, 1982 Edition", together with appendices I, II, III, IV, V, and VI thereto, as compiled and published by the International Conference of Building Officials and the Western Fire Chiefs' Association, which Code prescribes regulations governing conditions hazardous to life and property from fire and explosion, as hereinafter amended, deleted and added to, be and the same is hereby adopted by reference as the Fire Code of the City of Modesto.

SEC. 3-1.105. UNLAWFUL CONTINUANCE OF FIRE HAZARD.

That Section 3.101 of said Fire Code be amended to read as follows:

Section 3.101.

- (a) Any person operating or maintaining any occupancy, premises or vehicle subject to this Code who shall permit any fire hazard to exist on premises under his control or who shall fail to take immediate action to abate a fire hazard when ordered or notified to do so by the Chief or his duly authorized representative shall be guilty of an infraction with the exception of the following Articles or Sections which are misdemeanors:

Sections: 10.102, 11.102, 11.103, 11.104, 11.301, 11.302, 11.401, 11.402 and all Sections of Articles 25, 77 and 78.

SEC. 3-1.107. AUTOMATIC SPRINKLER SYSTEMS.

That Section 10.309 of said Fire Code be amended to read as follows:

Section (h) is hereby added to Section 10.309 of said Fire Code to read as follows:

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

That certain document, three (3) copies of which are on file in the Office of the City Clerk of the City of Modesto, being marked and designated as "Uniform Fire Code, 1982 Edition", together with appendices I, II, III, IV, V, and VI thereto, as compiled and published by the International Conference of Building Officials and the Western Fire Chiefs' Association, which Code prescribes regulations governing conditions hazardous to life and property from fire and explosion, as hereinafter amended, deleted and added to, be and the same is hereby adopted by reference as the Fire Code of the City of Modesto.

SEC. 3-1.105. UNLAWFUL CONTINUANCE OF FIRE HAZARD.

That Section 3.101 of said Fire Code be amended to read as follows:

Section 3.101.

- (a) Any person operating or maintaining any occupancy, premises or vehicle subject to this Code who shall permit any fire hazard to exist on premises under his control or who shall fail to take immediate action to abate a fire hazard when ordered or notified to do so by the Chief or his duly authorized representative shall be guilty of an infraction with the exception of the following Articles or Sections which are misdemeanors:

Sections: 10.102, 11.102, 11.103, 11.104, 11.301, 11.302, 11.401, 11.402 and all Sections of Articles 25, 77 and 78.

SEC. 3-1.107. AUTOMATIC SPRINKLER SYSTEMS.

That Section 10.301 of said Fire Code be amended to read as follows:

Section (h) is hereby added to Section 10.301 of said Fire Code to read as follows:

(h) New Construction.

1. The installation of an approved automatic sprinkler system shall be required in all buildings and structures, hereafter constructed, notwithstanding the use or occupancy thereof, where:
  - A. The total floor area under one roof exceeds five thousand (5,000) square feet, except for:
    - i. Dwellings four (4) units or less.
    - ii. Dwellings of the R-3 occupancy group that are separated by an area separation wall as defined by Section 505(d) of the Building Code.
    - iii. Buildings of occupancy groups A, B, E, H, I, M and R-1 that are separated by an area separation wall of not less than two-hour fire resistive construction as defined by Section 505(d) of the Building Code.
  - B. The building or structure is four (4) or more stories or exceeds fifty feet (50') in height as in Section 409 of the Building Code.
  - C. Additions, alterations, or repairs within any twelve (12) month period exceed fifty percent (50%) of the value of an existing building or structure and which result in said building or structure exceeding five thousand (5,000) square feet.

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

That Section 79.108 of said Fire Code be amended to read as follows:

Section 79.108. A person shall not use within a building or structure any heating, lighting or cooking appliance which uses Class I or II flammable or combustible liquids.

SEC. 3-1.115. RESTRICTED LOCATIONS AND FIRE PROTECTION.

That Section 79.501 of said Fire Code be amended to read as follows:

Section 79.501.

The storage of flammable or combustible liquids in outside aboveground tanks is prohibited. All existing nonconforming tanks which substantially comply with or are made to comply with the requirements of this Code may be continued in use and a permit therefore shall be granted by the Chief.

SEC. 3-1.116. ABANDONMENT OF TANKS.

That Section 79.113 of said Fire Code be amended to read as follows:

That subsection (g) be added to Section 79.113 of said Fire Code to read as follows:

(g) The safe removal of all underground tanks shall require that all flammable or combustible liquids be removed from the tank, all openings in the tank be capped or plugged prior to removal, and the tank be lifted directly out of hole without the use of choker chain or dragging.

SEC. 3-1.117. LOCATION OF PLANTS.

That Section 79.1401 of said Fire Code be amended to read as follows:

Section 79.1401.

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

SEC. 3-1.120. OPERATION OF TANK VEHICLES.

That Section 79.1204 of said Fire Code be amended to read as follows:

That subsection (n) is hereby added to Section 79.1204 of said Fire Code to read as follows:

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

SEC. 3-1.121. PARKING AND GARAGING.

That Section 79.1206 of said Fire Code be amended to read as follows:

Section 79.1206.

- (a) Parking on Thoroughfare. A tank vehicle shall not be left unattended on any residential street; nor in or within 500 feet of any residential area, apartment or hotel complex, educational, hospital or care facility at any time, or at any other place that would, in the opinion of the Chief, present an extreme life hazard.
  - (1) In locations other than those specified in Section 79.1206(a) a driver shall not leave a tank vehicle unattended on any street, highway, avenue or alley.

EXCEPTIONS:

- i. The necessary absence in connection with loading or unloading the vehicle, but during actual discharge of the vehicle, the provision of Section 79.1204(b) shall apply.
  - ii. Stops for meals during the day or night, if the street is well lighted at the point of parking.
- (b) Parking off Thoroughfare. A tank vehicle shall not be parked at any one point for longer than one hour except:
    - (1) Inside a bulk plant and twenty-five (25) feet from the property line or within a building approved for such use.
    - (2) At other approved locations not less than fifty (50) feet from any building except those approved for the storage or servicing of such vehicle.

- (3) When in case of breakdown or other emergency the operator must leave the vehicle to take necessary action to correct the emergency.
- (c) Garaging. Tank vehicles shall not be parked or garaged in any buildings other than those specifically approved for such use by the Chief.
  - (1) Tank vehicles used for flammable and combustible liquids shall be repaired only in locations approved by the Chief.

SEC. 3-1.123. PROHIBITED USE OF LIQUEFIED PETROLEUM GAS.

That Section 82.107 of the Fire Code be amended to read as follows:

Section 82.107. Prohibited use of Liquefied Petroleum Gas.

- (a) Liquefied petroleum gas shall not be used for the purpose of operating any devices or equipment unless such equipment or device is approved for use with a liquefied petroleum gas.
- (b) Liquefied petroleum gas shall not be released to the atmosphere except through an approved liquid level gauge or other approved device.
- (c) The use of stoves and other similar fuel burning appliances using liquefied petroleum gas for cooking, lighting or heating is prohibited in the City of Modesto except as permitted in subsection (e) of this section.
- (d) The storage and use of liquefied petroleum gas shall be prohibited in hotels, motels and apartment houses and in buildings or on property or streets adjacent to property used for the following purposes: Schools, churches, public assemblages, hospitals, carnivals, circuses, public parks and similar uses involving gatherings of more than fifty (50) people.
- (e) The storage and use of liquefied petroleum gas may be permitted by the Chief on construction sites and residential property when the prohibition of such storage would cause an undue hardship. When permitted, the total aggregate storage of liquefied petroleum gases on any one property shall not exceed two hundred fifty (250)

gallons. The use of liquefied petroleum gases when permitted shall be limited to approved devices used for cooking and heating.

- (f) Liquefied petroleum gas may be dispensed by Automotive Service Stations by employees only.

SEC. 3-1.125. GENERAL REQUIREMENTS.

That subsection (j) be added to Section 80.103 to read as follows:

- (j) The parking and garaging of transportation vehicles carrying hazardous materials as defined in Section 80.101 shall be in accordance with Section 79.1206 of this Code.

SECTION 3. REPEALS. Sections 3-1.118 and 3-1.119 of Article 1 of Chapter 1 of Title III of the Modesto Municipal Code are hereby repealed.


SECTION 4. EFFECTIVE DATE. This ordinance shall go into effect and be in full force and operation from and after thirty (30) days after its final passage and adoption.

SECTION 5. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in The Modesto Bee, the official newspaper of the City of Modesto, setting forth the title of this ordinance, the date of its introduction and the places where this ordinance is posted.

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 3rd day of July, 1984, by Councilmember Sutton, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Bright, was upon roll call carried and ordered printed and published by the following vote:


AYES: Councilmembers: Bright, Lang, Muratore, Patterson, Sutton, Whiteside, Mayor Mensinger  
NOES: Councilmembers: None  
ABSENT: Councilmembers: None

APPROVED:

  
PEGGY MENSINGER, Mayor

ATTEST:

By

  
NORRINE COYLE, City Clerk

(SEAL)

APPROVED AS TO FORM:

By

  
ELYW L. JOHNSON, City Attorney

Ord. No. 2273-C.S.

**FINAL ADOPTION CLAUSE**

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 17th day of July, 1984, Councilmember Whiteside moved its final adoption, which motion being duly seconded by Councilmember Sutton, was upon roll call carried and the ordinance adopted by the following vote:

- AYES:** Councilmembers: Bright, Muratore, Sutton, Whiteside; Mayor Mensinger
- NOES:** Councilmembers: None
- ABSENT:** Councilmembers: Lang, Patterson

**APPROVED** *Peggy Mensinger*  
MAYOR PEGGY MENSINGER

**ATTEST:** *Judy C. Hall*  
JUDY C. HALL, Acting City Clerk

**EFFECTIVE DATE:** August 16, 1984

ORDINANCE NO. 2274 -C.S.

AN ORDINANCE AMENDING SECTION 22-3-9 OF THE ZONING MAP TO REZONE FROM P-D(180) TO R-1, PROPERTY LOCATED ON THE NORTH SIDE OF EAST ORANGEBURG AVENUE WEST OF OAKDALE ROAD.

WHEREAS, the City Council, by Ordinance No. 1720-C.S., which was adopted on March 27, 1978, finally adopted on April 3, 1978, and which became effective May 3, 1978, amended Section Map 22-3-9 of the Zoning Map to reclassify from Low Density Residential Zone, R-1, to Planned Development Zone, P-D(180), for a ten triplex residential project on the north side of East Orangeburg Avenue west of Oakdale Road, and

WHEREAS, the City Council, by Resolution No. 78-307, approved the development plan for Planned-Development Zone, P-D(180), with a development schedule which specified that the construction be in one phase, construction to begin on or before May 1, 1980, and completion to be not later than May 1, 1981, and

WHEREAS, by Resolution No. 80-127, adopted on June 2, 1980, the Planning Commission granted a nineteen month extension to the development schedule of P-D(180), and

WHEREAS, by Resolution No. 81-254, adopted on December 7, 1981, the Planning Commission granted a further two-year extension to the development schedule for P-D(180), which extension specified that construction was to begin on or before December 1, 1983, and be completed by not later than December 1, 1984, and

WHEREAS, construction has not started as required by the extended development schedule, and

WHEREAS, the Planning Commission, by Resolution No. 84-84, set the date for a public hearing for review and repeal or modification of P-D(180) because the extended development schedule had not been met and a new development

schedule had not been requested, and

WHEREAS, a public hearing was held by the Planning Commission on June 4, 1984, in the City Council Chambers, City Hall, 801 11th Street, Modesto, California, at which hearing evidence both oral and documentary was received and considered, and

WHEREAS, the Planning Commission, by Resolution No. 84-107, adopted on June 4, 1984, found and determined that an amendment to Section 15-3-9 of the Zoning Map to repeal Planned Development Zone, P-D(180), and rezone to Low Density Residential Zone, R-1, property located on the north side of East Orangeburg Avenue west of Oakdale Road, is required by public necessity, convenience and general welfare for the following reasons:

1. P-D(180) has been in effect six years but no development has occurred.
2. The applicant has indicated no current plans to build on the site.
3. Planned Development zoning can be considered pursuant to a new application when there are firm development plans for the property.

and

WHEREAS, said amendment was set for public hearing before the City Council at its regular meeting place in the Council Chambers in the City Hall, 801 11th Street, Modesto, California, on July 10, 1984, at 7:30 p.m., and

WHEREAS, after hearing evidence, both oral and documentary, the Council finds and determines that the proposed amendment to Section 22-3-9 of the Zoning Map to rezone from Planned Development Zone, P-D(180), to Low Density Residential Zone, R-1, property located on the north side of East Orangeburg Avenue west of Oakdale Road, in the City of Modesto, should be approved,

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

SECTION 1. COUNCIL FINDINGS. The Council of the City of Modesto finds and determines that the amendment of Section 22-3-9 of the Zoning Map to rezone from Planned Development Zone, P-D(180), to Low Density Residential Zone, R-1, is required by public necessity, convenience and general welfare for the reasons set forth in Planning Commission Resolution No. 84-107, and quoted above.

SECTION 2. Zoning Change. Section 22-3-9 of the Zoning Map is hereby amended to repeal Planned Development Zone, P-D(180), and rezone to Low Density Residential Zone, R-1, property located on the north side of east Orangeburg Avenue west of Oakdale Road, in the City of Modesto, and described as follows:

All that certain real property being a portion of Lots 1 and 8, of the Broughton Colony Tract, located in Section 22, Township 3 South, Range 9 East, Mount Diablo Base and Meridian, as recorded in Book 1 of Maps, at page 78, Stanislaus County Records in the City of Modesto, County of Stanislaus, State of California, more particularly described as follows:

BEGINNING at the Southwest corner of said Lot 8; thence North  $0^{\circ}41'25''$  West, along the West line of said Lot 8, a distance of 138.59 feet; thence North  $89^{\circ}52'15''$  East, parallel with and 750.00 feet measured at right angles from the North line of property conveyed to the Modesto City School District by deed filed in Volume 2029 of Official Records, at Page 509, Stanislaus County Records, a distance of 735.05 feet; thence North  $0^{\circ}07'45''$  West, 125.00 feet; thence South  $89^{\circ}52'15''$  West, 22.71 feet; thence North  $0^{\circ}07'45''$  West, 125.00 feet; thence North  $4^{\circ}21'38''$  East, 92.40 feet; thence North  $9^{\circ}40'14''$  East, 90.22 feet; thence North  $7^{\circ}24'22''$  East, 80.72 feet; thence North  $0^{\circ}07'45''$  West, 113.96 feet; thence North  $89^{\circ}52'15''$  East 12.15 feet; thence North  $0^{\circ}07'45''$  West, 125.00 feet to said North line of the property conveyed to the Modesto City School District; thence North  $89^{\circ}52'15''$  East, along said line, a distance of 121.00 feet; thence South  $0^{\circ}07'45''$  East, 165.00 feet to a tangent curve concave to the West having a radius of 1000.00 feet; thence Southwesterly

202.29 feet along said curve, through an angle of 11°35'26" to a reverse curve concave to the East having a radius of 800.00 feet; thence Southeasterly 273.63 feet along said curve, through an angle of 19°35'50" to a reverse curve concave to the West having a radius of 800.00 feet; thence Southerly 112.30 feet along said curve, through an angle of 8°02'34" to a tangent line; thence South 0°05'35" East, 139.11 feet to a point on the South line of said Lot 8; thence South 89°54'25" West, along said South line a distance of 856.11 feet to the point of beginning.

Containing 4.929 acres .

EXCEPTING THEREFROM that portion of the above described property lying north of the line running North 89°52'15" East a distance of 735.05 feet and an easterly prolongation thereof.

SECTION 3. ZONING MAP. Section 22-3-9 of the Zoning Map of the City of Modesto is amended to appear as set forth on the map attached hereto, which is hereby made a part of this ordinance by reference.

SECTION 4. EFFECTIVE DATE. This ordinance shall go into effect and be in full force and operation from and after thirty (30) days after its final passage and adoption.

SECTION 5. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in The Modesto Bee, the official newspaper of the City of Modesto, setting forth the title of this ordinance, the date of its introduction and the places where this ordinance is posted.

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 10th day of June, 1984, by Councilmember Patterson, who moved its introduction and passage to

print, which motion being duly seconded by Councilmember Lang, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Bright, Lang, Muratore, Patterson, Sutton, Whiteside, Mayor Mensinger

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: *Peggy Mensinger*  
PEGGY MENSINGER, Mayor

ATTEST:

By *Norrine Coyle*  
NORRINE COYLE, City Clerk

(SEAL)

APPROVED AS TO FORM:

By *Elwyn L. Johnson*  
ELWYN L. JOHNSON, City Attorney

APPROVED AS TO DESCRIPTION:

*William P. ...*  
Department of Planning and  
Community Development

Ordinance 2274 C.S.  
Exhibit A – Map

Oversized map folded and bound within Ordinance Book. Unable to  
remove safely for scanning.

Ord. No. 2274-C.S.

**FINAL ADOPTION CLAUSE**

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 17th day of July, 1984, Councilmember Whiteside moved its final adoption, which motion being duly seconded by Councilmember Sutton, was upon roll call carried and the ordinance adopted by the following vote:

**AYES:** Councilmembers: Bright, Muratore, Sutton, Whiteside, Mayor Mensinger

**NOES:** Councilmembers: None

**ABSENT:** Councilmembers: Lang, Patterson

APPROVED

Peggy Mensinger  
MAYOR PEGGY MENSINGER

ATTEST:

Judy C. Hall  
JUDY C. HALL, Acting City Clerk

**EFFECTIVE DATE:** August 16, 1984

ORDINANCE NO. 2275 -C.S.

AN ORDINANCE AMENDING SECTION 5-6.12 OF CHAPTER 6 OF TITLE V OF THE MODESTO MUNICIPAL CODE RELATING TO SEWAGE COLLECTION AND DISPOSAL.

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

SECTION 1. AMENDMENT OF CODE. Section 5-6.12 of Chapter 6 of Title V of the Modesto Municipal Code is hereby amended to read as follows:

SEC. 5-6.12. PERMITS.

Industrial Users. Before an industrial waste connection is made to the sewage system, a permit must first be obtained from the Director. Application for a permit to discharge such wastes shall be in writing and shall contain the following information:

- (1) Name and address of applicant.
- (2) Proposed location of connection.
- (3) Estimated gallonage of wastes proposed to be discharged, estimated time of discharge, time of peak loads, and other similar data.
- (4) Character of waste proposed to be discharged.
- (5) Other information as may be deemed to be necessary by the Director.

Upon receipt of an application as provided, the Director shall promptly make such investigation as he shall deem necessary.

In the event that the Director finds and determines:

- (1) That the trunk sewer in which the connection is to discharge has sufficient unused carrying capacity for the disposition of these wastes;
- (2) That the character of the wastes proposed to be discharged by the applicant is such that they can successfully be treated;

- (3) That such wastes will not result in damage to the sewage system;

then he shall issue a permit to the applicant as requested.

The Director, at his discretion, and toward the end of fulfilling the intent and purposes of this chapter, may grant a permit in part only and may thereupon prescribe conditions with respect to discharge of such waste into such system, and may require treatment thereof, the maintenance of individual screens to collect waste products and/or may require the construction and use of tanks designed to equalize flow and reduce peak load.

In the event that after the granting of a permit, as provided for herein, it shall develop, by reason of increased flow, change of character of discharge or for any cause whatsoever that it becomes necessary or desirable to change the conditions prescribed at the time of issuing said permit, then the Director may revoke said permit or may impose further conditions with respect thereto, toward the end of remedying such conditions.

In the event that a permittee does not comply with the conditions of a permit and wastes are discharged to the sewage system that cause, or threaten to cause, the Water Quality Control Plant's waste treatment facilities to malfunction or otherwise result in a violation of waste discharge requirements or limitations imposed by state or federal regulatory agencies, the permittee shall be liable for any or all of the following:

- (1) Any and all monetary penalties, charges, fees and other costs that may be imposed on the City by state or federal regulatory agencies as a result of threatened or actual violation(s) or malfunction(s), including administrative and legal fees.
- (2) Any and all judgments and associated costs that may be awarded to individuals or entities as a result of threatened or actual violation(s) or malfunction(s).
- (3) The total cost of any interim waste treatment measures that the Director may deem necessary to abate threatened or actual violation(s) or malfunction(s) including consulting and administrative fees.

- (4) The total cost of providing waste treatment facilities needed to remedy threatened or actual violation(s) or malfunction(s).

Capacity Allocation. Each industrial user, at the time a permit is issued in accordance with subsection (a) above, shall be assigned a capacity allocation for peak rate of discharge; daily discharge, monthly discharge and annual discharge measured in million gallons (MG). Whenever the gallonage of flow of an industrial user falls below eighty (80%) percent of the user's capacity allocation for two (2) consecutive calendar years, a new permit shall be issued. The Director shall assign a revised capacity allocation for peak rate of discharge; daily discharge, monthly discharge, and annual discharge for a new permit based on the actual gallonage recorded during the two (2) consecutive calendar years during which the gallonage of flow fell below eighty (80%) percent of the industrial user's assigned capacity allocation.

All Other Users. Permits for all sewer connections, except industrial users, shall be obtained in accordance with the provisions of the Plumbing Code of the City.

SECTION 2. DECLARATION OF EMERGENCY. The Council of the City of Modesto hereby finds and declares that the foregoing ordinance is necessary as an emergency measure for preserving the public peace, health and safety, and the following is a statement of reasons for its urgency:

The State Regional Water Quality Control Board has notified the City of Modesto that the City must take measures to ensure that the 1984 effluent summer discharge is in compliance with State requirements. Local dischargers have indicated that they will have potentially high summer discharges as a result of their planned operations. Also, the coming summer season will be earlier than usual, and high loads of effluent summer discharge will occur in late July instead of August. This makes it necessary to enact the foregoing amendment to the Modesto Municipal Code immediately to define liability and safeguard the wastewater system as soon as possible.

SECTION 3. EFFECTIVE DATE. Pursuant to Section 722 of the Charter of the City of Modesto, this ordinance shall go into effect and be in full force and operation as of the date of its adoption.

SECTION 4. PUBLICATION. Copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in the Modesto Bee, the official newspaper of the City of Modesto, setting forth the title of this ordinance, the date of its adoption and the places where this ordinance is posted.

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 10th day of July, 1984, by Councilmember Muratore, who moved its introduction and adoption which motion being duly seconded by Councilmember Whiteside, was upon roll call carried by the following vote:

AYES: Councilmembers: Bright, Lang, Muratore, Patterson, Sutton, Whiteside, Mayor Mensinger

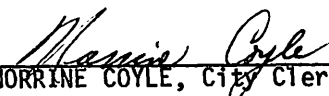
NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:

  
PEGGY MENSINGER, Mayor

ATTEST:

By   
NORRINE COYLE, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
ELWYN L. JOHNSON, City Attorney

ORDINANCE NO. 2276 -C.S.

AN ORDINANCE AMENDING SECTION 5-6.12 OF CHAPTER 6 OF TITLE V OF THE MODESTO MUNICIPAL CODE RELATING TO SEWAGE COLLECTION AND DISPOSAL.

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

SECTION 1. AMENDMENT OF CODE. Section 5-6.12 of Chapter 6 of Title V of the Modesto Municipal Code is hereby amended to read as follows:

SEC. 5-6.12. PERMITS.

- (a) Industrial Users. Before an industrial waste connection is made to the sewage system, a permit must first be obtained from the Director. Application for a permit to discharge such wastes shall be in writing and shall contain the following information:
- (1) Name and address of applicant.
  - (2) Proposed location of connection.
  - (3) Estimated gallonage of wastes proposed to be discharged, estimated time of discharge, time of peak loads, and other similar data.
  - (4) Character of waste proposed to be discharged.
  - (5) Other information as may be deemed to be necessary by the Director.

Upon receipt of an application as provided, the Director shall promptly make such investigation as he shall deem necessary.

In the event that the Director finds and determines:

- (1) That the trunk sewer in which the connection is to discharge has sufficient unused carrying capacity for the disposition of these wastes;
- (2) That the character of the wastes proposed to be discharged by the applicant is such that they can successfully be treated;

- (3) That such wastes will not result in damage to the sewage system;

then he shall issue a permit to the applicant as requested.

The Director, at his discretion, and toward the end of fulfilling the intent and purposes of this chapter, may grant a permit in part only and may thereupon prescribe conditions with respect to discharge of such waste into such system, and may require treatment thereof, the maintenance of individual screens to collect waste products and/or may require the construction and use of tanks designed to equalize flow and reduce peak load.

In the event that after the granting of a permit, as provided for herein, it shall develop, by reason of increased flow, change of character of discharge or for any cause whatsoever that it becomes necessary or desirable to change the conditions prescribed at the time of issuing said permit, then the Director may revoke said permit or may impose further conditions with respect thereto, toward the end of remedying such conditions.

In the event that a permittee does not comply with the conditions of a permit and wastes are discharged to the sewage system that cause, or threaten to cause, the Water Quality Control Plant's waste treatment facilities to malfunction or otherwise result in a violation of waste discharge requirements or limitations imposed by state or federal regulatory agencies, the permittee shall be liable for any or all of the following:

- (1) Any and all monetary penalties, charges, fees and other costs that may be imposed on the City by state or federal regulatory agencies as a result of threatened or actual violation(s) or malfunction(s), including administrative and legal fees.
- (2) Any and all judgments and associated costs that may be awarded to individuals or entities as a result of threatened or actual violation(s) or malfunction(s).
- (3) The total cost of any interim waste treatment measures that the Director may deem necessary to abate threatened or actual violation(s) or malfunction(s) including consulting and administrative fees.

- (4) The total cost of providing waste treatment facilities needed to remedy threatened or actual violation(s) or malfunction(s).
- (b) Capacity Allocation. Each industrial user, at the time a permit is issued in accordance with subsection (a) above, shall be assigned a capacity allocation for peak rate of discharge; daily discharge, monthly discharge and annual discharge measured in million gallons (MG). Whenever the gallonage of flow of an industrial user falls below eighty (80%) percent of the user's capacity allocation for two (2) consecutive calendar years, a new permit shall be issued. The Director shall assign a revised capacity allocation for peak rate of discharge; daily discharge, monthly discharge, and annual discharge for a new permit based on the actual gallonage recorded during the two (2) consecutive calendar years during which the gallonage of flow fell below eighty (80%) percent of the industrial user's assigned capacity allocation.
- (c) All Other Users. Permits for all sewer connections, except industrial users, shall be obtained in accordance with the provisions of the Plumbing Code of 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. 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 resolution was introduced at a regular meeting of the Council of the City of Modesto held on the 10th day of July,

1984, by Councilmember Muratore, who moved its adoption, which motion being duly seconded by Councilmember Whiteside, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Bright, Lang, Muratore, Patterson, Sutton, Whiteside, Mayor Mensinger

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: *Norrine Coyle*  
NORRINE COYLE, City Clerk

(SEAL)

APPROVED AS TO FORM:

By *Elwyn L. Johnson*  
ELWYN L. JOHNSON, City Attorney

Ord. No. 2276-C.S.

**FINAL ADOPTION CLAUSE**

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 17th day of July, 1984, Councilmember Whiteside moved its final adoption, which motion being duly seconded by Councilmember Sutton, was upon roll call carried and the ordinance adopted by the following vote:

**AYES: Councilmembers:** Bright, Muratore; Sutton, Whiteside, Mayor Mensinger

**NOES: Councilmembers:** None

**ABSENT: Councilmembers:** Lang, Patterson

**APPROVED**

Peggy Mensinger  
MAYOR PEGGY MENSINGER

**ATTEST:**

Judy C. Hall  
JUDY C. HALL, Acting City Clerk

**EFFECTIVE DATE:** August 16, 1984

ORDINANCE NO. 2277-C.S.

AN ORDINANCE REPEALING SECTION 12-1.01 OF CHAPTER 1 OF TITLE XII OF THE MODESTO MUNICIPAL CODE RELATING TO RULES AND REGULATIONS FOR LAKE MODESTO.

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

SECTION 1. REPEALS. Section 12-1.01 of Chapter 1 of Title XII of the Modesto Municipal Code is hereby repealed.

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

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

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 24th day of July, 1984, by Councilmember Lang, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Patterson, was upon

roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Bright, Lang, Muratore, Patterson, Sutton,  
Whiteside, Mayor Mensinger

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:

  
PEGGY MENSINGER, Mayor

ATTEST:

By   
NORRINE COYLE, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
ELWYN L. JOHNSON, City Attorney

Ord. No. 2277-C.S.

**FINAL ADOPTION CLAUSE**

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 7th day of August, 1984, Councilmember Whiteside moved its final adoption, which motion being duly seconded by Councilmember Muratore, was upon roll call carried and the ordinance adopted by the following vote:

**AYES:** Councilmembers: Bright, Lang, Muratore, Patterson, Sutton, Whiteside, Mayor Mensinger

**NOES:** Councilmembers: None

**ABSENT:** Councilmembers: None

**APPROVED** *Peggy Mensinger*  
MAYOR PEGGY MENSINGER

**ATTEST:** *Horrine Coyle*  
HORRINE COYLE, City Clerk

**EFFECTIVE DATE:** September 6, 1984

ORDINANCE NO. 2278 -C.S.

AN ORDINANCE AMENDING SECTION 19-3-10 OF THE ZONING MAP TO REZONE FROM P-D(267) TO R-1, PROPERTY LOCATED EAST OF CLAUS ROAD, SOUTH OF PARKER ROAD (ANRUL N.V. C/O LAPATA INTERNATIONAL, LTD.).

WHEREAS, the City Council, by Ordinance No. 1957-C.S., which was introduced on June 17, 1980, finally adopted on June 24, 1980, and which became effective July 24, 1980, amended Section Map 19-3-10 of the Zoning Map to reclassify from Low Density Residential Zone, R-1, to Planned Development Zone, P-D(267), for zero lot line patio houses, property located east of Claus Road south of Parker Road, and

WHEREAS, the City Council, by Resolution No. 80-587, which was adopted on June 17, 1980, approved the development plan for Planned Development Zone, P-D(267), and

WHEREAS, a verified application for an Amendment to Section 19-3-10 of the Zoning Map was filed by Anrul N.V., C/O Lapata International Ltd. on May 29, 1984, to reclassify Planned Development Zone, P-D(267), to Low Density Residential Zone, R-1, and

WHEREAS, a public hearing was held by the Planning Commission on July 2, 1984, in the City Council Chambers, City Hall, 801 11th Street, Modesto, California, at which hearing evidence both oral and documentary was received and considered, and

WHEREAS, the Planning Commission, by Resolution No. 84-119, adopted on July 2, 1984, found and determined that the requested amendment to Section

19-3-10 of the Zoning Map to rezone from Planned Development Zone, P-D(267), to Low Density Residential Zone, R-1, property located east of Claus Road south of Parker Road, is required by public necessity, convenience and general welfare for the following reasons:

1. The property is under a different ownership than when P-D(267) was granted and the new owners do not wish to develop the approved P-D plan.
2. The rezoning will allow East Orangeburg Avenue to be extended along the north line of the property to serve its future development as well as development on the property to the north.

and

WHEREAS, said amendment was set for public hearing before the City Council at its regular meeting place in the Council Chambers in the City Hall, 801 11th Street, Modesto, California, on August 7, 1984, at 4:00 p.m., and

WHEREAS, after hearing evidence, both oral and documentary, the Council finds and determines that the requested amendment to Section 19-3-10 of the Zoning Map to rezone from Planned Development Zone, P-D(267), to Low Density Residential Zone, R-1, property located east of Claus Road south of Parker Road, in the City of Modesto, should be approved,

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

SECTION 1. COUNCIL FINDINGS. The Council of the City of Modesto finds and determines that the requested amendment to Section 19-3-10 of the Zoning Map to rezone from Planned Development Zone, P-D(267), to Low Density Residential Zone, R-1, is required by public necessity, convenience and

general welfare for the reasons set forth in Planning Commission Resolution No. 84-119, and quoted above.

SECTION 2. ZONING CHANGE. Section 19-3-10 of the Zoning Map is hereby amended to rezone Planned Development Zone, P-D(267), to Low Density Residential Zone, R-1, property located east of Claus Road south of Parker Road, in the City of Modesto, and described as follows:

All that portion of the Southeast quarter of the Northwest quarter of Section 19, Township 3 South, Range 10 East, Mount Diablo Base and Meridian, in the City of Modesto, County of Stanislaus, State of California, described as follows:

Beginning at the Northwest corner of the Southeast quarter of the Northwest quarter of said Section 19, said point being on the Eastern line of the Modesto Irrigation District right-of-way as recorded in Volume 1747 Official Records, at Page 92, Stanislaus County Records; thence South 89°02'09" East along the Northerly line of said Southeast quarter of the Northwest quarter a distance of 950+ feet to the centerline of 60.00 foot wide Cedarcreek Drive; thence along said centerline on a curve concave to the Northwest in a southwesterly direction; said curve having a radius of 6,000.00 feet through a central angle of 8°02'35" a distance of 842.27 feet, thence continuing along centerline on a curve concave to the Northwest in a southwesterly direction, said curve having a radius of 1800.00 feet, through a central angle of 3°19'23" a distance of 104.40 feet; thence North 89°28'10" West a distance of 442+ feet to a point on the Eastern line of said Modesto Irrigation District right-of-way; thence North 0°07'56" East along said Eastern line a distance of 808+ feet to the point of beginning.

SECTION 3. ZONING MAP. Section 19-3-10 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 August, 1984, by Councilmember Muratore, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Lang, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Bright, Lang, Muratore, Patterson, Sutton, Whiteside, Mayor Mensinger

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:

Peggy Mensinger  
PEGGY MENSINGER, Mayor

ATTEST:

By Norrine Coyle  
NORRINE COYLE, City Clerk

(SEAL)

APPROVED AS TO FORM:

By Elwyn L. Johnson  
ELWYN L. JOHNSON, City Attorney

APPROVED AS TO DESCRIPTION:

By William J. Morris  
Department of Planning and  
Community Development

Ordinance 2278 C.S.  
Exhibit A – Map

Oversized map folded and bound within Ordinance Book. Unable to  
remove safely for scanning.

Ord. No. 2278-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 August, 1984, Councilmember Sutton moved its final adoption, which motion being duly seconded by Councilmember Patterson, was upon roll call carried and the ordinance adopted by the following vote:

- AYES:** Councilmembers: Bright, Lang, Muratore, Patterson, Sutton, Whiteside, Mayor Mensinger
- NOES:** Councilmembers: None
- ABSENT:** Councilmembers: None

**APPROVED** *Peggy Mensinger*  
MAYOR PEGGY MENSINGER

**ATTEST:** *Morrine Coyle*  
MORRINE COYLE, City Clerk

**EFFECTIVE DATE:** September 13, 1984

AN ORDINANCE AMENDING SECTION MAP 19-3-10 OF  
THE ZONING MAP OF THE CITY OF MODESTO, RECLASSIFYING  
CERTAIN PROPERTY LOCATED THEREON. (RICK HELD)

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

SECTION 1. ZONING CHANGE. Section 19-3-10 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 (359) :

All that certain real property situate in a portion of the North half of  
the North half of Section 19, Township 3 South, Range 10 East, Mount  
Diablo Base and Meridian, described as follows:

Beginning at the Northwest corner of property conveyed to Oliver E. and  
Shirley K. Bauman by deed recorded January 11, 1978, in Book 3008,  
Official Records at Page 283, as Instrument No. 44135, Stanislaus County  
Records, said point being on the Southerly right-of-way line of 40.00  
foot wide Parker Road; thence North 0°27'00" East, 20.00 feet to the  
centerline of said Parker Road; thence South 89°20'00" East, along said  
centerline of Parker Road, a distance of 390.85 feet to an angle point in  
said centerline; thence North 78°44'00" East, 74.71 feet; thence leaving  
said centerline of Parker Road, South 0°27'00" West, 649.12 feet to the  
beginning of a curve, concave to the Northeast, having a radius of 390.00  
feet; thence 209.78 feet along said curve, through a central angle of  
30°49'08" to a point of reverse curve, concave to the West, having a  
radius of 400.00 feet; thence 215.16 feet along said curve through a  
central angle of 30°49'08"; thence South 0°27'00" West, 193.24 feet, to a  
point on the quarter quarter line; thence North 89°04'00" West, along  
said quarter quarter line 1,020.59 feet to a point on the Easterly  
right-of-way line of 100.00 foot wide M.I.D. right-of-way; thence North  
0°27'00" East, along said Easterly right-of-way line 635.00 feet to the  
Southwest corner of property conveyed to Parker Road Ranches, a Joint  
Venture, by deed recorded July 27, 1979, in Book 3219, Official Records,  
at Page 382, as Instrument No. 6393, Stanislaus County Records; thence  
South 88°56'12" East, along the South line of said property conveyed to  
Parker Road Ranches, 445.03 feet to the Southeast corner thereof; thence  
North 0°27'00" East, along the East line of property conveyed to Parker  
Road Ranches, 574.56 feet to the point of beginning.

Including also all of the northern one-half of 40.00 foot wide Parker  
Road and that portion of the 140.00 foot wide Modesto Irrigation Lateral  
Number 3 right-of-way located immediately adjacent to and between the  
above described area and the north section line of aforementioned Section  
19.

SECTION 2. USES. The following uses shall be permitted in said P-D(359) Zone subject to securing approval of the Secretary of the Planning Commission if the plan for construction conforms in principle to the approved plan, as required by Section 10-2.2704 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 10-2.2708(b) of the Modesto Municipal Code.

Mobile home park, including common recreational area  
Recreational vehicle storage area

**SECTION 3. ZONING MAP.** Section Map 19-3-10 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 August, 1984, by Councilmember Lang, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Patterson, was upon roll call carried and ordered printed

and published by the following vote:

AYES: Councilmembers: Bright, Lang, Muratore, Patterson, Sutton, Whiteside,  
Mayor Mensinger

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:

*Peggy Mensinger*  
PEGGY MENSINGER, Mayor

ATTEST:

*Norrine Coyle*  
NORRINE COYLE, City Clerk

(SEAL)

APPROVED AS TO FORM:

By *Elwyn L. Johnson*  
ELWYN L. JOHNSON, City Attorney

APPROVED AS TO DESCRIPTION:

By *Altham Records*  
Department of Planning and  
Community Development

Ordinance 2279 C.S.  
Exhibit A – Map

Oversized map folded and bound within Ordinance Book. Unable to  
remove safely for scanning.

Ord. No. 2279-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 August, 1984, Councilmember Sutton moved its final adoption, which motion being duly seconded by Councilmember Patterson, was upon roll call carried and the ordinance adopted by the following vote:

**AYES:** Councilmembers: Bright, Lang, Muratore, Patterson, Sutton, Whiteside, Mayor Mensinger  
**NOES:** Councilmembers: None  
**ABSENT:** Councilmembers: None

**APPROVED** *Peggy Mensinger*  
MAYOR PEGGY MENSINGER

**ATTEST:** *Morrine Coyle*  
MORRINE COYLE, City Clerk

**EFFECTIVE DATE:** September 13, 1984

ORDINANCE NO. 2280-C.S.

AN ORDINANCE ADDING ARTICLE 14 TO CHAPTER 3 OF TITLE II OF THE MODESTO MUNICIPAL CODE RELATING TO THE OFFICE OF ECONOMIC DEVELOPMENT.

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

SECTION 1. AMENDMENT OF CODE. Article 14 is hereby added to Chapter 3 of Title II of the Modesto Municipal Code to read as follows:

ARTICLE 14. OFFICE OF ECONOMIC DEVELOPMENT

SEC. 2-3.1401. CREATION AND FUNCTION.

The Office of Economic Development is hereby established. The function of the Office of Economic Development shall be to coordinate and facilitate economic development in the City of Modesto.

SEC. 2-3.1402. ORGANIZATION AND DIRECTION.

There shall be an Economic Development Manager who shall be appointed by the City Manager and subject to his administrative direction and control.

SECTION 2. EMERGENCY PROVISIONS. DECLARATION OF URGENCY. The Council of the City of Modesto hereby finds and declares that the foregoing ordinance is necessary as an emergency measure for preserving the public peace, health and safety because of the following:

- (a) It is necessary to create an Office of Economic Development to coordinate and facilitate economic development in the City of Modesto to alleviate a continuing high unemployment rate and to improve the City's economy.
- (b) The City of Modesto has been able to recruit a person to serve as Economic Development Manager who will commence work on August 22, 1984.
- (c) It is necessary to create the Office of Economic Development prior to the Economic Development Manager commencing work for the City of Modesto on August 22, 1984.

SECTION 3. EFFECTIVE DATE. Pursuant to Section 722 of the Charter of the City of Modesto, this ordinance shall go into effect and be in full force and operation as of the date of its adoption.

SECTION 4. PUBLICATION. Copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in The Modesto Bee, the official newspaper of the City of Modesto, setting forth the title of this ordinance, the date of its adoption and the places where this ordinance is posted.

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 7th day of August, 1984, by Councilmember Whiteside, who moved its introduction and adoption which motion being duly seconded by Councilmember Muratore, was upon roll call carried by the following vote:

AYES: Councilmembers: Bright, Lang, Muratore, Patterson, Sutton, Whiteside, Mayor Mensinger

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: *Peggy Mensinger*  
PEGGY MENSINGER, Mayor

ATTEST:

By *Norrine Coyle*  
NORRINE COYLE, City Clerk

(SEAL)

APPROVED AS TO FORM:

By *Elwyn L. Johnson*  
ELWYN L. JOHNSON, City Attorney

ORDINANCE NO. 2281 -C.S.

AN ORDINANCE ADDING ARTICLE 14 TO CHAPTER 3 OF TITLE II OF THE MODESTO MUNICIPAL CODE RELATING TO THE OFFICE OF ECONOMIC DEVELOPMENT.

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

SECTION 1. AMENDMENT OF CODE. Article 14 is hereby added to Chapter 3 of Title II of the Modesto Municipal Code to read as follows:

ARTICLE 14. OFFICE OF ECONOMIC DEVELOPMENT

SEC. 2-3.1401. CREATION AND FUNCTION.

The Office of Economic Development is hereby established. The function of the Office of Economic Development shall be to coordinate and facilitate economic development in the City of Modesto.

SEC. 2-3.1402. ORGANIZATION AND DIRECTION.

There shall be an Economic Development Manager who shall be appointed by the City Manager and subject to his administrative direction and control.

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 August, 1984, by Councilmember Whiteside, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Muratore, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Bright, Lang, Muratore, Patterson, Sutton, Whiteside, Mayor Mensinger

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: Peggy Mensinger  
PEGGY MENSINGER, Mayor

ATTEST:

By Norrine Coyle  
NORRINE COYLE, City Clerk

(SEAL)

APPROVED AS TO FORM:

By Ewyn L. Johnson  
EYWN L. JOHNSON, City Attorney

Ord. No. 2281-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 August, 1984, Councilmember Sutton moved its final adoption, which motion being duly seconded by Councilmember Patterson, was upon roll call carried and the ordinance adopted by the following vote:

- AYES:** Councilmembers: Bright, Lang, Muratore, Patterson, Sutton, Whiteside, Mayor Mensinger
- NOES:** Councilmembers: None
- ABSENT:** Councilmembers: None

**APPROVED** *Peggy Mensinger*  
MAYOR PEGGY MENSINGER

**ATTEST:** *Morrine Coyle*  
MORRINE COYLE, City Clerk

**EFFECTIVE DATE:** September 13, 1984

ORDINANCE NO. 2282-C.S.

AN ORDINANCE GRANTING TO ORANGE LINE SANITATION COMPANY, INC., A CALIFORNIA CORPORATION, A LICENSE FOR THE COLLECTION OF GARBAGE IN THE CITY OF MODESTO.

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

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

SECTION 2. A license to collect garbage including industrial garbage and salvageable waste, in the City of Modesto is hereby granted to Orange Line Sanitation Company, Inc., a California Corporation, subject to the following terms and conditions:

(a) This license shall be for a term of four (4) years and three (3) months commencing on October 1, 1984 and ending on December 31, 1988. The terms of this license may be terminated at an earlier date under the provisions of this ordinance or the provisions of Chapter 5 of Title V of the Modesto Municipal Code. Nothing herein shall be deemed or construed to impair or affect in any way the right of the City to acquire the equipment and assume the operations of the Licensee at any time during the initial term of this license or any extensions thereof by purchase of the Licensee's equipment at a fair and just market value, which shall not include any amount for the license itself or for any of the rights or privileges granted by this license.

(b) This license shall be an exclusive license to collect garbage except industrial garbage and salvageable waste, within the area delineated and marked as Area D on that certain map entitled "Garbage Areas" dated July 11, 1972, on file in the office of the City Clerk, and to which reference is hereby made. This license shall be a nonexclusive license to collect industrial garbage and salvageable waste.

(c) In accepting this license, Licensee thereby agrees to serve the area covered by the license for the term herein specified in compliance with the provisions of this ordinance and the provisions of Chapter 5 of Title V of the Modesto Municipal Code.

(d) This license shall automatically extend to any portion of the Licensee's service area, as shown on the map referred to in paragraph (b) above, which is hereafter annexed to the City, except that City may permit any person or firm licensed by the County of Stanislaus and then serving such area or portion thereof to continue to serve such area or portion thereof for such period of time, not to exceed five (5) years from the date of annexation, as

the City deems proper. The Licensee, when required to serve new portions of the City, shall promptly extend its routes and services and, when necessary, shall hire additional personnel and obtain additional equipment.

(e) Rates and charges to be charged by the Licensee for the collection of garbage shall be established by the Council by resolution. Service charges and costs of operation of the Licensee will be reviewed annually by the City and, if deemed necessary by the City Council, rate adjustments made to be effective on or after January 1 of each year.

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

(f) The Licensee shall bill and collect all garbage service charges, provided, however, the City may require that all or some of said garbage service charges shall be billed and collected by the City, and for the Licensee to pay to the City fees, to be determined by the City, for such billing and collection service.

(g) The City reserves the right to revise the provisions of Chapter 5 of Title V of the Modesto Municipal Code, from time to time, as required in order to protect the public health, safety and welfare of the City.

(h) The Licensee shall comply with all existing and future State and Federal laws, and all ordinances and regulations which may in any manner affect the Licensee's operations under the terms and conditions of this license.

(i) The Director of Utility Services of the City of Modesto shall administer and supervise the Licensee's operations under the terms of this license and in accordance with the provisions of Chapter 5 of Title V of the Municipal Code.

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

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

The Licensee shall keep and maintain in said office at all times during the hours it is required to be open, competent personnel who shall have authority to represent the Licensee in its relations with the City and with the public. The Licensee shall obtain and keep in said office sufficient listed telephones and personnel to courteously, quickly and expeditiously receive and answer all telephone and other calls to said office. A daily log of service calls received and the disposition thereof shall be kept by the Licensee.

(k) The Licensee shall maintain full and complete books of account and other records showing all business transacted in connection with this license by said Licensee including but not limited to records of all special monthly collections, receipts, expenses, profits, supporting statements and vouchers, balance sheets, profit and loss statements, and other documents, accurately reflecting and showing all business of the Licensee. All such books and records shall be subject to audit and inspection at any and all reasonable times by the City and its authorized officers, agents, or employees, and shall be made available at said office for such inspection or audit at any and all reasonable times upon request or demand of the authorized City official.

The Licensee shall provide the City annually, within ninety (90) days of the end of the preceding fiscal year ending June 30th, with five (5) copies of an annual balance sheet and profit and loss statement. Financial statements submitted by the Licensee to the City shall be regarded by the City as confidential financial records of the Licensee, and shall not be released as a public record for inspection by any party other than authorized City officers.

The City may require a complete financial audit prepared by a "Public Accountant" with his "opinion" attached thereto and such other financial information deemed necessary by the City when considering a request for rate adjustments.

(l) The Licensee shall collect and remove from any and all premises, within twenty-four (24) hours, and no later, after notice, demand or request, any and all garbage which Licensee shall have failed to collect and remove at the regularly scheduled time. The customer's failure to place garbage for collection at the regularly scheduled time shall not be deemed a missed collection.

(m) The Licensee shall collect garbage at least once each calendar week, on a Monday through Friday basis for residential collections, and on a Monday through Saturday basis for commercial collections. For purposes of such collection, the Licensee shall divide the City into collection routes. Such collection routes shall be each wholly within the City limits, and shall be approved by the Director of Utility Services. Upon

approval of the proposed routes by the Director of Utility Services, the Licensee shall prepare route books as soon as possible which shall indicate the address of each service, number of containers, frequency of collection, and such other pertinent information as the Director of Utility Services may require. The Licensee shall keep route books up to date at all times. The Licensee shall give reasonable notice to the general public as to the days and times for collection on each route. No changes in collection schedules shall be made without the approval of the Director of Utility Services and reasonable notice thereof to the customers concerned by the Licensee.

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

(n) The Licensee shall make garbage collection service available on request to all schools, public agencies, institutions, and other non-residential premises at the same rates established for business locations. In special cases where unusual quantities of materials or special type of materials, or where special methods of handling and/or disposing is required, the Director of Utility Services may permit independent arrangements with the Licensee.

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

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

(p) The Licensee shall supply all occupants or premises in the Licensee's service area with printed information cards approved by the Director of Utility Services containing information regarding amounts of garbage which will be collected, complaint procedures, charges, regulations and days of collection. Such cards shall be distributed as required by the Director of Utility Services, and, in addition, upon request by occupants or owners of any premises and in advance of route, charge or regulation changes.

(q) The Licensee shall not litter any premises or public property in making collections of garbage, nor shall garbage be allowed to leak, blow or fall from collection vehicles; however, if in spite of normal precautions against spillage, a litter is made on any premises or public property, the Licensee shall immediately remove same and clean up the area of spillage. The Licensee shall, without delay, after removing garbage from any container replace the container in its designated position on the premises with its cover on, and shall repair or replace at its expense any containers damaged as a result of its handling thereof, normal wear and tear excepted. The Licensee shall close all gates after making collections and shall avoid crossing private or public planted areas and climbing or jumping over hedges and fences. Licensee's personnel shall make all collections in a quiet and orderly manner and shall refrain from making unnecessary disturbances and noise. If, for any reason, garbage is not picked up, such as overweight container, not in container, etc., the Licensee shall attach a tag to the container explaining the reason therefor, and shall maintain a log or record of such refusals.

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

(r) All equipment used for the collection and hauling of garbage shall be approved by the Director of Utility Services and shall be so constructed and maintained as to prevent leakage, spillage, or overflow. Trucks shall not be loaded in excess of requirements of the State of California Motor Vehicle Code.

All trucks and equipment shall be clearly identified by an assigned equipment number and with the firm name and local telephone number affixed thereto. Collection trucks shall be painted white, or other color approved by the Director of Utility Services, and shall be equipped with such safety devices and warning lights required by the State of California Motor Vehicle Code.

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

(s) All garbage collection vehicles shall be well maintained, properly identified, painted, clean and in satisfactory mechanical condition. The Licensee shall institute a complete and comprehensive system of preventative maintenance on all vehicles and shall keep them lubricated and in

good repair. Records in a form approved by the Director of Utility Services to provide data on operating, maintenance and repair costs shall be kept on each piece of equipment.

(t) For purposes of this paragraph the following definitions shall apply:

(1) "Interruption of service" shall mean:

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

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

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

(3) "Payment for use" shall have the following meaning:

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

(ab) In the case of a piece of equipment not subject to a contract, "payment for use" shall mean the reasonable rental value of such piece of equipment for such period of time during which the City possesses and uses such piece of equipment pursuant to this paragraph during an interruption of service. Such payment shall, at the expiration of the term of the interruption of such service, be applied against any sums then owed to the City by the Licensee, or, if none, it shall be paid by the City to the Licensee.

(4) "Contract" shall mean any conditional sales contract, mortgage, encumbrance, lease, rental agreement or other agreement which provides for retention of title to said equipment or grants a security interest therein, that may exist at the commencement of the interruption of service with regard to a piece of equipment.

(5) "Notice" shall mean written notification actually received by the person to be notified or mailed to him by registered or certified mail at the most recent address furnished by him to the City Clerk of the City of Modesto. As to the holder of a contract, the City shall be required to give notice only if the holder's identity is known to the City and the holder has furnished his address to said City Clerk.

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

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

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

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

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

(v) Garbage collected by the Licensee shall be disposed of at the Geer Road sanitary landfill. The City reserves the right to designate other sanitary landfill areas for disposal, and other methods of disposal. Disposal of garbage at the sanitary landfill will be in accordance with regulations in effect for the same as they now exist or may hereafter be amended.

(w) The Licensee shall have the full and exclusive right to all salvageable materials collected in connection with the collection of garbage under this license, and shall have the sole right to any and all funds received from the sale of said salvageable materials. Such funds shall be accounted for as part of the gross revenues of Licensee.

Salvaging or scavenging by the Licensee, or any of its employees, is prohibited on the collection routes. Salvaging at a suitable location is encouraged, however.

(x) The Licensee agrees to keep the Director of Utility Services advised as to any current developments in recycling programs, and to participate in such recycling programs when it can be done on a sound economical basis. The Licensee agrees to cooperate on any reasonable basis with local civic organizations who desire to participate in a recycling program. The term recycling as used herein means any process which has as its goal the conversion of garbage, rubbish or salvageable waste into a usable product.

(y) The Licensee shall file with the City Clerk and maintain during the term of this license a corporate surety bond or other form of security satisfactory to the City Attorney in the sum of One Hundred Thousand

and no/100ths (\$100,000.00) Dollars. Said bond or security shall be conditioned upon the faithful performances of the terms and conditions of this license and the provisions of Chapter 5 of Title V of the Modesto Municipal Code.

(z) Licensee agrees, in connection with the performance of all operations under or pursuant to this license, to be an Equal Opportunity Employer and not to discriminate against any employee or applicant for employment because of race, creed, color or national origin.

SECTION 3. EFFECTIVE DATE. This ordinance shall become effective from and after October 1, 1984; provided, however, that the license hereby granted shall not become effective unless and until Licensee files with the City Clerk written acceptance thereof and an agreement to be bound by and comply with all of the requirements thereof, in a form satisfactory to the City Attorney, and delivers to the City Clerk the bond and insurance policies required to be furnished, pursuant to the provisions of this ordinance and of Chapter 5 of Title V of the Modesto Municipal Code.

SECTION 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 21st day of August, 1984, by Councilmember Lang who moved its introduction and passage to print, which motion being duly seconded by

Councilmember Muratore, was upon roll call carried and order printed and published by the following vote:

AYES: Councilmembers: Bright, Lang, Muratore, Patterson, Whiteside, Mayor Mensinger

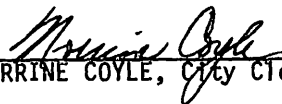
NOES: Councilmembers: None

ABSENT: Councilmembers: Sutton

APPROVED:

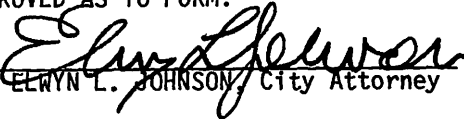
  
~~PEGGY MENSINGER, Mayor~~

ATTEST:

By   
NORRINE COYLE, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
ELWYN L. JOHNSON, City Attorney

Ord. No. 2282-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 August, 1984, Councilmember Patterson moved its final adoption, which motion being duly seconded by Councilmember Whiteside, was upon roll call carried and the ordinance adopted by the following vote:

**AYES:** Councilmembers: Bright, Lang, Muratore, Patterson, Whiteside, Mayor Mensinger  
**NOES:** Councilmembers: None  
**ABSENT:** Councilmembers: Sutton

APPROVED

Peggy Mensinger  
MAYOR PEGGY MENSINGER

ATTEST:

Morrine Coyle  
MORRINE COYLE, City Clerk

EFFECTIVE DATE: September 27, 1984

ORDINANCE NO. 2283 -C.S.

AN ORDINANCE AMENDING SECTION 2-3.302 OF ARTICLE 3 OF CHAPTER 3 OF TITLE II OF THE MODESTO MUNICIPAL CODE, AMENDING THE TITLE OF ARTICLE 2 OF CHAPTER 4 OF TITLE II OF THE MODESTO MUNICIPAL CODE AND AMENDING SECTIONS 2-4.203 AND 2-4.204 OF ARTICLE 2 OF CHAPTER 4 OF TITLE II OF THE MODESTO MUNICIPAL CODE RELATING TO SIGNING CHECKS, DRAFTS AND WARRANTS.

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

SECTION 1. AMENDMENT OF CODE. Section 2-3.302 of Article 3 of Chapter 3 of Title II of the Modesto Municipal Code is hereby amended to read as follows:

SEC. 2-3.302. CREATION AND FUNCTIONS.

The office of the City Clerk and Auditor is established by the Charter. This office as an administrative division shall be under the direct control of the City Clerk and Auditor as to statutory duties, but subject to general administrative direction of the City Manager. It shall be the duty of the City Clerk and Auditor to perform all duties and have such authorities and responsibilities as are prescribed by the Charter and ordinances of the City and the laws of the State of California. The City Clerk and Auditor shall perform the following duties:

- (a) Attend all meetings of the Council and record, index and maintain a full and true record of all the Council's proceedings.
- (b) Maintain appropriately certified and indexed original copies of resolutions and ordinances adopted by the Council and of written contracts made by the City and deeds for property rights obtained or held by the City.
- (c) Verify cash receipts, the distribution of revenues to the appropriate funds, and certify as to legality and correctness all bills, invoices, payrolls, demands and charges against the City.
- (d) Audit fiscal transactions relating to the deposit, transfer, withdrawal or investment of City monies.

(e) Perform such other duties as may be required by the Council.

The City Clerk and Auditor may require any claimant to make oath as to the validity of any claim or demand against the City. He may investigate any such claim or demand and for such purpose may examine witnesses under oath; and if he finds it erroneous, fraudulent, or otherwise invalid, he shall refuse to certify the same for payment.

SECTION 2. AMENDMENT OF CODE. The title of Article 2 of Chapter 4 of Title II of the Modesto Municipal Code is hereby amended to read as follows:

ARTICLE 2. CLAIM AND CHECK SIGNING PROCEDURES

SECTION 3. AMENDMENT OF CODE. Sections 2-4.203 and 2-4.204 of Article 2 of Chapter 4 of Title II of the Modesto Municipal Code are hereby amended to read as follows:

SEC. 2-4.203. AUTHORIZATION TO APPROVE CLAIMS.

The City Manager is hereby authorized to approve payment of all claims against the City, except those required by law to be approved by the Council.

SEC. 2-4.204. AUTHORIZATION TO SIGN CHECKS, DRAFTS AND WARRANTS.

The City Manager or the City Clerk are hereby authorized to sign all checks, drafts or warrants for and on behalf of the City. The Risk Manager is hereby authorized to sign checks, drafts or warrants drawn on the City's Worker's Compensation Revolving Trust Fund Account. Facsimile signatures on checks, drafts or warrants of the City in lieu of personal signatures are hereby authorized.

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 21st day of August, 1984, by Councilmember Whiteside, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Muratore, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Bright, Lang, Muratore, Patterson, Sutton, Whiteside, Mayor Mensinger  
NOES: Councilmembers: None  
ABSENT: Councilmembers: None

APPROVED: Peggy Mensinger  
PEGGY MENSINGER, Mayor

ATTEST:

By Norrine Coyle  
NORRINE COYLE, City Clerk

(SEAL)

APPROVED AS TO FORM:

By Elwyn L. Johnson  
ELWYN L. JOHNSON, City Attorney

Ord. No. 2283-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 August, 1984, Councilmember Patterson moved its final adoption, which motion being duly seconded by Councilmember Lang, was upon roll call carried and the ordinance adopted by the following vote:

**AYES:** Councilmembers: Bright, Lang, Muratore, Patterson, Sutton, Whiteside, Mayor Mensinger  
**NOES:** Councilmembers: None  
**ABSENT:** Councilmembers: None

APPROVED

  
MAYOR REGGY MENSINGER

ATTEST:

  
WORRINE COYLE, City Clerk

EFFECTIVE DATE: September 27, 1984

ORDINANCE NO. 2284 -C.S.

AN ORDINANCE AMENDING SECTION 15-3-9 OF THE ZONING MAP TO REZONE FROM P-D(280) TO R-3 and P-0, PROPERTY LOCATED ON THE EAST SIDE OF COFFEE ROAD NORTH OF CELESTE DRIVE (VILLA VERDE NORTH).

WHEREAS, the City Council, by Ordinance No. 1993-C.S., which was introduced on November 4, 1980, finally adopted November 12, 1980, and which became effective on December 12, 1980, amended Section Map 15-3-9 of the Zoning Map to reclassify from Professional Office Zone, P-0, and Medium High Density Residential Zone, R-3, to Planned Development Zone, P-D(280), to allow condominium conversion of a 115-unit apartment complex known as Villa Verde North, property located on the east side of Coffee Road north of Celeste Drive, and

WHEREAS, the City Council, by Resolution No. 80-1122, approved the development plan for Planned-Development Zone, P-D(280), with a development schedule which specified that the construction be in one phase, to begin construction on or before June 1, 1983, and completion to be not later than June 1, 1984, and

WHEREAS, upon a request from Contek Associates for a three-year time extension, the Planning Commission, on May 16, 1983, by Resolution No. 83-70, granted a one-year extension to the development schedule, and

WHEREAS, the Planning Commission, by Resolution No. 84-110, set a hearing to review Planned Development Zone, P-D(280), and modify or repeal it since the development schedule had expired and construction pursuant to converting the apartments to condominiums had not begun, and

WHEREAS, a public hearing was held by the Planning Commission on July 16, 1984, in the City Council Chambers, City Hall, 801 11th Street, Modesto, California, at which hearing evidence both oral and documentary was received and considered, and

WHEREAS, the Planning Commission, by Resolution No. 84-125, adopted on July 16, 1984, found and determined that an amendment to Section 15-3-9 of the Zoning Map to repeal Planned Development Zone, P-D(280), and rezone to Medium High Density Residential Zone R-3, and Professional Office Zone, P-0, property located on the east side of Coffee Road north of Celeste Drive, in the City of Modesto, is required by public necessity, convenience, and general welfare for the following reasons:

1. The project has had 2 1/2 years in which to begin development.
2. The property owner has indicated that he does not intend to make the condominium conversion within the foreseeable future.

and

WHEREAS, said amendment was set for public hearing before the City Council at its regular meeting place in the Council Chambers in the City Hall, 801 11th Street, Modesto, California, on August 28, 1984 at 7:30 p.m., and

WHEREAS, after hearing evidence, both oral and documentary, the Council finds and determines that the proposed amendment to Section 15-3-9 of the Zoning Map to rezone from Planned Development Zone, P-D(280), to Medium High Density Residential Zone, R-3, and Professional Office Zone, P-0, property located on the east side of Coffee Road north of Celeste Drive, in the City of Modesto, should be approved,

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

SECTION 1. COUNCIL FINDINGS. The Council of the City of Modesto finds and determines that the amendment of Section 15-3-9 of the Zoning Map to rezone from Planned Development Zone, P-D(280), to Medium High Density Residential Zone, R-3, and Professional Office Zone, P-0, is required by public necessity, convenience and general welfare for the reasons set forth in Planning Commission Resolution No. 84-125 and quoted above.

SECTION 2. ZONING CHANGE. Section 15-3-9 of the Zoning Map is hereby amended to repeal Planned Development Zone, P-D(280), and rezone to Medium High Density Residential Zone, R-3, and Professional Office Zone, P-0, property located on the east side of Coffee Road north of Celeste Drive, in the City of Modesto, and described as follows:

All that certain real property situate in a portion of Section 15, Township 3 South, Range 9 East, Mount Diablo Base and Meridian, and lying within the City of Modesto, County of Stanislaus, State of California, described as follows:

P-D(280) to R-3

Beginning at the Northeast corner of Parcel 1 as shown on the map filed in volume 9 of Parcel Maps at page 86, Stanislaus County Records, said corner also being a point on the West right-of-way line of Vera Cruz Drive, as shown on said map; thence North 89° 45' 50" East along the Easterly prolongation of the North line of said Parcel 1, a distance of 30.00 feet to a point on the centerline of Vera Cruz Drive; thence South 0° 53' East along said centerline 297.00 feet; thence continuing along said centerline along the arc of a tangent curve concave to the East having a radius of 900.00 feet, through a central angle of 2° 44' 23", an arc distance of 43.04 feet; thence South 89° 45' 50" West along the South line of said Parcel 1 and its Easterly prolongation, 633.93 feet; thence North 0° 53' West 338.99 to the North line of said Parcel 1, thence North 89° 45' 50" East, along said North line of Parcel 1, a distance of 602.58 feet to the point of beginning.

P-D(280) to P-0

Beginning at the Northwest corner of Parcel 1 as shown on the map filed in volume 9 of Parcel Maps at page 86, Stanislaus County Records, said corner also being a point on the east right-of-way line of Coffee Road as shown on said map; thence North  $89^{\circ} 45' 50''$  East along the North line of said Parcel 1, a distance of 245.42 feet; thence South  $0^{\circ} 53'$  East a distance of 189.02 feet; thence North  $85^{\circ} 34'$  West along the Southwesterly line of said Parcel 1, 246.14 feet to a point on the East line of Coffee Road; thence North  $0^{\circ} 53'$  West along the East line of Coffee Road, 170.00 feet to the point of beginning.

Including also all of Coffee Road located immediately adjacent to and between the above described property and the West section line of the above-mentioned Section 15.

SECTION 3. ZONING MAP. Section 15-3-9 of the Zoning Map of the City of Modesto is amended to appear as set forth on the map attached hereto, which is hereby made a part of this ordinance by reference.

SECTION 4. EFFECTIVE DATE. This ordinance shall go into effect and be in full force and operation from and after thirty (30) days after its final passage and adoption.

SECTION 5. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in The Modesto Bee, the official newspaper of the City of Modesto, setting forth the title of this ordinance, the date of its introduction and the places where this ordinance is posted.

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 28th day of August, 1984, by Councilmember Muratore, who moved its introduction and passage

to print, which motion being duly seconded by Councilmember Lang,  
was upon roll call carried and ordered printed and published by the following  
vote:

AYES: Councilmembers: Bright, Lang, Muratore, Patterson, Sutton, Whiteside,  
Mayor Mensinger

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: *Peggy Mensinger*  
PEGGY MENSINGER, Mayor

ATTEST:

By *Norrine Coyle*  
NORRINE COYLE, City Clerk

(SEAL)

APPROVED AS TO FORM:

By *Elwyn L. Johnson*  
ELWYN L. JOHNSON, City Attorney

APPROVED AS TO DESCRIPTION:

By *William Nichols*  
Department of Planning and  
Community Development

Ordinance 2284 C.S.  
Exhibit A – Map

Oversized map folded and bound within Ordinance Book. Unable to  
remove safely for scanning.

Ord. No. 2284-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 September, 1984, Councilmember Sutton moved its final adoption, which motion being duly seconded by Councilmember Whiteside, was upon roll call carried and the ordinance adopted by the following vote:

**AYES:** Councilmembers: Lang, Muratore, Patterson, Sutton, Whiteside, Mayor Mensinger

**NOES:** Councilmembers: None

**ABSENT:** Councilmembers: Bright

**APPROVED**

*Reggie Mensinger*  
MAYOR REGGIE MENSINGER

**ATTEST:**

*Horrine Coyle*  
HORRINE COYLE, City Clerk

**EFFECTIVE DATE:** October 11, 1984

ORDINANCE NO. 2285 -C.S.

AN ORDINANCE AMENDING SECTION 15-3-9 OF THE ZONING MAP TO REZONE FROM P-D(281) TO R-3 PROPERTY LOCATED ON THE NORTH SIDE OF CELESTE DRIVE EAST OF COFFEE ROAD (VILLA VERDE CELESTE).

WHEREAS, the City Council, by Ordinance No. 1992-C.S., which was introduced on November 4, 1980, finally adopted November 12, 1980, and which became effective on December 12, 1980, amended Section Map 15-3-9 of the Zoning Map to reclassify from Medium High Density Residential Zone, R-3, to Planned Development Zone, P-D(281), to allow condominium conversion of a 115-unit apartment complex known as Villa Verde Celeste, property located on the north side of Celeste Drive east of Coffee Road, and

WHEREAS, the City Council, by Resolution No. 80-1121, approved the development plan for Planned-Development Zone, P-D(281), with a development schedule which specified that the construction be in one phase, to begin construction on or before June 1, 1983, and completion to be not later than June 1, 1984, and

WHEREAS, upon a request from Contek Associates for a three-year time extension, the Planning Commission, on May 16, 1983, by Resolution No. 83-69, granted a one-year extension to the development schedule, and

WHEREAS, the Planning Commission, by Resolution No. 84-111, set a hearing to review Planned Development Zone, P-D(281), and modify or repeal it since the development schedule had expired and construction pursuant to converting the apartments to condominiums had not begun, and

WHEREAS, a public hearing was held by the Planning Commission on July 16, 1984, in the City Council Chambers, City Hall, 801 11th Street, Modesto, California, at which hearing evidence both oral and documentary was received and considered, and

WHEREAS, the Planning Commission, by Resolution No. 84-126, adopted on July 16, 1984, found and determined that an amendment to Section 15-3-9 of the Zoning Map to repeal Planned Development Zone, P-D(281), and rezone to Medium High Density Residential Zone, R-3, property located on the north side of Celeste Drive east of Coffee Road, in the City of Modesto, is required by public necessity, convenience, and general welfare for the following reasons:

1. The project has had 2 1/2 years in which to begin development.
2. The property owner has indicated that he does not intend to make the condominium conversion within the foreseeable future.

and

WHEREAS, said amendment was set for public hearing before the City Council at its regular meeting place in the Council Chambers in the City Hall, 801 11th Street, Modesto, California, on August 28, 1984 at 7:30 p.m., and

WHEREAS, after hearing evidence, both oral and documentary, the Council finds and determines that the proposed amendment to Section 15-3-9 of the Zoning Map to rezone from Planned Development Zone, P-D(281), to Medium High Density Residential Zone, R-3, property located on the north side of Celeste Drive east of Coffee Road, in the City of Modesto, should be approved,

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

SECTION 1. COUNCIL FINDINGS. The Council of the City of Modesto finds and determines that the amendment of Section 15-3-9 of the Zoning Map to rezone from Planned Development Zone, P-D(281), to Medium High Density Residential Zone, R-3, is required by public necessity, convenience and general welfare for the reasons set forth in Planning Commission Resolution No. 84-126 and quoted above.

SECTION 2. ZONING CHANGE. Section 15-3-9 of the Zoning Map is hereby amended to repeal Planned Development Zone, P-D(281), and rezone to Medium High Density Residential Zone, R-3, property located on the north side of Celeste Drive east of Coffee Road, in the City of Modesto, and described as follows:

All that certain real property situate in a portion of Section 15, Township 3 South, Range 9 East, Mount Diablo Base and Meridian, and lying within the City of Modesto, County of Stanislaus, State of California, described as follows:

P-D(281) to R-3

Beginning at the Northwest corner of Parcel 3 as shown on the map filed in Volume 9 of Parcel Maps at page 86, Stanislaus County Records; thence North  $89^{\circ} 45' 50''$  East along the North line of said Parcel 3 and its Easterly prolongation 633.93 feet to the intersection with the centerline of Vera Cruz; thence along said centerline and along the arc of a curve concave to the East having a radius of 900.00 feet, through a central angle of  $10^{\circ} 18' 48''$  an arc distance of 162.00 feet; thence South  $89^{\circ} 45' 50''$  West along the South line of said Parcel 3 and its Easterly prolongation, 395.86 feet; thence South  $0^{\circ} 53'$  East along an East line of said Parcel 3 and its Southerly prolongation 377.36 feet to the intersection with the centerline of Celeste Drive; thence along said centerline of Celeste Drive and along the arc of a curve concave to the North having a radius of 1,800.00 feet, through a central angle of  $8^{\circ} 25' 12''$ , an arc distance of 264.52 feet; thence North  $0^{\circ} 53'$  West along the West line of said Parcel 3 and its Southerly prolongation 586.11 feet to the point of beginning.

SECTION 3. ZONING MAP. Section 15-3-9 of the Zoning Map of the City of Modesto is amended to appear as set forth on the map attached hereto, which is hereby made a part of this ordinance by reference.

SECTION 4. EFFECTIVE DATE. This ordinance shall go into effect and be in full force and operation from and after thirty (30) days after its final passage and adoption.

SECTION 5. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in The Modesto Bee, the official newspaper of the City of Modesto, setting forth the title of this ordinance, the date of its introduction and the places where this ordinance is posted.

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 28th day of August, 1984, by Councilmember Muratore, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Lang,

was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Bright, Lang, Muratore, Patterson, Sutton, Whiteside, Mayor Mensinger

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: *Peggy Mensinger*  
PEGGY MENSINGER, Mayor

ATTEST:

By *Norrine Coyle*  
NORRINE COYLE, City Clerk

(SEAL)

APPROVED AS TO FORM:

By *Elwyn L. Johnson*  
ELWYN L. JOHNSON, City Attorney

APPROVED AS TO DESCRIPTION:

By *William Nichols*  
Department of Planning and  
Community Development

Ordinance 2285 C.S.  
Exhibit A – Map

Oversized map folded and bound within Ordinance Book. Unable to  
remove safely for scanning.

Ord. No. 2285-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 September, 1984, Councilmember Sutton moved its final adoption, which motion being duly seconded by Councilmember Whiteside, was upon roll call carried and the ordinance adopted by the following vote:

**AYES:** Councilmembers: Lang, Muratore, Patterson, Sutton, Whiteside, Mayor Mensinger

**NOES:** Councilmembers: None

**ABSENT:** Councilmembers: Bright

APPROVED

Peggy Mensinger  
MAYOR PEGGY MENSINGER

ATTEST:

Morrine Coyle  
MORRINE COYLE, City Clerk

**EFFECTIVE DATE:** October 11, 1984

ORDINANCE NO. 2286 -C.S.

AN ORDINANCE AMENDING SECTION 10-2.505 OF ARTICLE 5 OF CHAPTER 2 OF TITLE X OF THE MODESTO MUNICIPAL CODE RELATING TO SIDE YARD ZONING.

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

SECTION 1. AMENDMENT OF CODE. Section 10-2.505 of Article 5 of Chapter 2 of Title X of the Modesto Municipal Code is hereby amended to read as follows:

SECTION 10-2.505. SIDE YARDS.

- (a) The minimum side yard for a dwelling shall be five (5') feet. Use of a side yard by an adjacent property owner is permissible in a subdivision provided:
- (1) The side yard is included in a nonexclusive easement for landscaping by the adjacent property owner and subject to maintenance and repair rights of the property owner. Above or below ground structures shall not be constructed in the easement.
  - (2) Provisions for the nonexclusive easement are contained in the Conditions, Covenants and Restrictions for the subdivision with wording approved by the City Attorney.
  - (3) There are no doors or entry ways in the building walls installed adjacent to the easement.
  - (4) The side yard may not be used for the parking or storage of vehicles including but not limited to automobiles, trucks, trailers, motorhomes, mobilehomes, or other recreational vehicles.
- (b) The minimum side yard for a garage, carport, required parking space or accessory structure shall be five (5') feet except when located to the rear and at least five (5') feet from the dwelling(s), in which case no side yard is required. This minimum five (5') foot area between a dwelling and accessory building or use shall be unobstructed from the ground upward. In no case shall any portion of a building overhang a property line.

- (c) Side street side yards shall be unobstructed except that walls and fences outside the clear vision triangle are permitted a maximum of forty-two (42") inches in height.
- (d) On corner lots, the side street side yard shall be a minimum of fifteen (15') feet for a dwelling or accessory building except for lots legally existing or on an approved tentative subdivision map prior to July 7, 1955 which shall have a minimum side street side yard of seven and one-half (7.5') feet.
- (e) If a legally existing lot has less than the required lot width, the side yard shall be a minimum of ten (10%) percent of the lot width, but in no case shall an interior side yard be less than three (3') feet and a side street side yard be less than seven and one-half (7.5') feet.

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 September, 1984, by Councilmember Muratore, who moved its introduction and passage

to print, which motion being duly seconded by Councilmember Sutton,  
was upon roll call carried and ordered printed and published by the following  
vote:

AYES: Councilmembers: Bright, Muratore, Patterson, Sutton, Whiteside,  
Mayor Mensinger

NOES: Councilmembers: None

ABSENT: Councilmembers: Lang

APPROVED: *Peggy Mensinger*  
PEGGY MENSINGER, Mayor

ATTEST:

By *Norrine Coyle*  
NORRINE COYLE, City Clerk

(SEAL)

APPROVED AS TO FORM:

By *Elwyn L. Johnson*  
ELWYN L. JOHNSON, City Attorney

Ord. No. 2286-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 September, 1984, Councilmember Sutton moved its final adoption, which motion being duly seconded by Councilmember Whiteside, was upon roll call carried and the ordinance adopted by the following vote:

**AYES: Councilmembers:** Lang, Muratore, Patterson, Sutton, Whiteside, Mayor Mensinger  
**NOES: Councilmembers:** None  
**ABSENT: Councilmembers:** Bright

**APPROVED** *Peggy Mensinger*  
MAYOR PEGGY MENSINGER

**ATTEST:** *Norrine Coyle*  
NORRINE COYLE, City Clerk

**EFFECTIVE DATE:** October 11, 1984

ORDINANCE NO. 2287 -C.S.

AN ORDINANCE AMENDING SECTION 14-3-9 OF THE ZONING MAP TO REZONE FROM P-D(311) TO R-1 PROPERTY LOCATED ON THE SOUTH-EAST CORNER OF FLOYD AVENUE AND OAKDALE ROAD (ROSS BRILES).

WHEREAS, the City Council, by Ordinance No. 2050-C.S., which was introduced on June 23, 1981, finally adopted July 6, 1981, and which became effective on August 6, 1981, amended Section Map 14-3-9 of the Zoning Map to reclassify from Low Density Residential Zone, R-1, to Planned Development Zone, P-D(311), for a commercial development, property located on the south-east corner of Floyd Avenue and Oakdale Road, and

WHEREAS, the City Council, by Resolution No. 81-520, approved the development plan for Planned-Development Zone, P-D(311), with a development schedule which specified that the construction be in one phase, construction to begin on or before May 1, 1982, and completion to be not later than May 1, 1983, and

WHEREAS, on May 3, 1982, by Resolution No. 82-78, the Planning Commission granted a two-year time extension specifying that start of construction was to be on or before May 1, 1984, and completion to be not later than May 1, 1985, and

WHEREAS, on May 1, 1984, a request was received from Ross Briles, owner of P-D(311), for a further time extension of one year, and

WHEREAS, the Planning Commission, by Resolution No. 84-118, denied the requested one-year time extension to the development schedule; and initiated proceedings to repeal P-D(311) and rezone the property to R-1, and

WHEREAS, a public hearing was held by the Planning Commission on August 6, 1984, in the City Council Chambers, City Hall, 801 11th Street, Modesto, California, at which hearing evidence both oral and documentary was received and considered, and

WHEREAS, the Planning Commission, by Resolution No. 84-129, adopted on August 6, 1984, found and determined that an amendment to Section 14-3-9 of the Zoning Map to repeal Planned Development Zone, P-D(311), and rezone to Low Density Residential Zone, R-1, property located on the southeast corner of Floyd Avenue and Oakdale Road, in the City of Modesto, is required by public necessity, convenience, and general welfare for the following reasons:

1. The project has had three years in which to begin development.
2. No progress on the site has been made to warrant the extension.

and

WHEREAS, said amendment was set for public hearing before the City Council at its regular meeting place in the Council Chambers in the City Hall, 801 11th Street, Modesto, California, on September 11, 1984 at 7:30 p.m., and

WHEREAS, after hearing evidence, both oral and documentary, the Council finds and determines that the proposed amendment to Section 14-3-9 of the Zoning Map to rezone from Planned Development Zone, P-D(311), to Low Density Residential Zone, R-1, property located on the southeast corner of Floyd Avenue and Oakdale Road, in the City of Modesto, should be approved,

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

SECTION 1. COUNCIL FINDINGS. The Council of the City of Modesto finds and determines that the amendment of Section 14-3-9 of the Zoning Map to rezone from Planned Development Zone, P-D(311), to Low Density Residential Zone, R-1, property located on the southeast corner of Floyd Avenue and Oakdale Road in the City of Modesto, is required by public necessity, convenience and general welfare for the reasons set forth in Planning Commission Resolution No. 84-129 and quoted above.

SECTION 2. ZONING CHANGE. Section 14-3-9 of the Zoning Map is hereby amended to repeal Planned Development Zone, P-D(311), and rezone to Low Density Residential Zone, R-1, property located on the southeast corner of Floyd Avenue and Oakdale Road in the City of Modesto, and described as follows:

All that certain real property situate in a portion of the Northwest Quarter of Section 14, Township 3 South, Range 9 East, Mount Diablo Base and Meridian, in the City of Modesto, County of Stanislaus, State of California, described as follows:

All of Parcel 1 as shown on that certain parcel map filed in the Office of the Recorder of Stanislaus County, California, on February 17, 1970, in Volume 8 of Parcel Maps, page 36.

Including also the South 30.00 feet of Floyd Avenue and the East 50.00 feet of Oakdale Road immediately adjacent to the above described property.

SECTION 3. ZONING MAP. Section 14-3-9 of the Zoning Map of the City of Modesto is amended to appear as set forth on the map attached hereto, which is hereby made a part of this ordinance by reference.

SECTION 4. EFFECTIVE DATE. This ordinance shall go into effect and be in full force and operation from and after thirty (30) days after its final passage and adoption.

SECTION 5. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in The Modesto Bee, the official newspaper of the City of Modesto, setting forth the title of this ordinance, the date of its introduction and the places where this ordinance is posted.

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 11th day of September, 1984, by Councilmember Lang, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Muratore,

was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Lang, Muratore, Patterson, Sutton, Whiteside, Mayor Mensinger

NOES: Councilmembers: None

ABSENT: Councilmembers: Bright

APPROVED: *Peggy Mensinger*  
PEGGY MENSINGER, Mayor

ATTEST:

By *Norrine Coyle*  
NORRINE COYLE, City Clerk

(SEAL)

APPROVED AS TO FORM:

By *Ely Johnson*  
ELWYN L. JOHNSON, City Attorney

APPROVED AS TO DESCRIPTION:

By *Alttain Richards*  
Department of Planning and  
Community Development



Ordinance 2287 C.S.  
Exhibit A – Map

Oversized map folded and bound within Ordinance Book. Unable to  
remove safely for scanning.

Ord. No. 2287-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 18th day of September, 1984, Councilmember Whiteside moved its final adoption, which motion being duly seconded by Councilmember Lang, was upon roll call carried and the ordinance adopted by the following vote:

**AYES: Councilmembers:** Bright, Lang, Muratore, Patterson, Sutton, Whiteside, Mayor Mensinger.

**NOES: Councilmembers:** None

**ABSENT: Councilmembers:** None

**APPROVED**

*Peggy Mensinger*  
MAYOR PEGGY MENSINGER

**ATTEST:**

*Norrine Coyle*  
NORRINE COYLE, City Clerk

**EFFECTIVE DATE:** October 18, 1984

ORDINANCE NO. 2288 -C.S.

AN ORDINANCE AMENDING SECTION 2 OF ORDINANCE NO. 1973-C.S. ENTITLED "AN ORDINANCE AMENDING SECTION MAP 16-3-9 OF THE ZONING MAP OF THE CITY OF MODESTO, RECLASSIFYING CERTAIN PROPERTY LOCATED THEREON. (RULE ENTERPRISES)"

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

SECTION 1. AMENDMENT OF ORDINANCE NO. 1973-C.S. Section 2 of Ordinance No. 1973-C.S., is hereby amended to read as follows:

"SECTION 2. USES. The following uses shall be permitted in said P-D(275) Zone, subject to securing approval of the Secretary of the Planning Commission if the plan for construction conforms in principle to the approved plan, as required by Section 10-2.2704 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 10-2.2708(b) of the Modesto Municipal Code.

A condominium project for all uses permitted in the P-0 Zone."

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

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

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 18th day of September, 1984, by Councilmember Lang, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Muratore, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Bright, Lang, Muratore, Patterson, Sutton, Whiteside, Mayor Mensinger

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: Peggy Mensinger  
PEGGY MENSINGER, Mayor

ATTEST:

By Norrine Coyle  
NORRINE COYLE, City Clerk

(SEAL)

APPROVED AS TO FORM:

By Elwyn L. Johnson  
ELWYN L. JOHNSON, City Attorney



Ord. No. 2288-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 2nd day of October, 1984, Councilmember Lang moved its final adoption, which motion being duly seconded by Councilmember Whiteside, was upon roll call carried and the ordinance adopted by the following vote:

- AYES: Councilmembers:** Bright, Lang, Muratore, Sutton, Whiteside, Acting Mayor Patterson
- NOES: Councilmembers:** None
- ABSENT: Councilmembers:** Mayor Mensinger

**APPROVED** Richard Patterson  
ACTING MAYOR RICHARD PATTERSON

**ATTEST:** Judy C. Hall  
JUDY C. HALL, Acting City Clerk

**EFFECTIVE DATE:** November 1, 1984

ORDINANCE NO. 2289 -C.S.

AN ORDINANCE AMENDING SECTION 2 of ORDINANCE NO. 1861-C.S. ENTITLED "AN ORDINANCE AMENDING SECTION MAP 12-3-8 OF THE ZONING MAP OF THE CITY OF MODESTO, RECLASSIFYING CERTAIN PROPERTY LOCATED THEREON. (REX PROPERTIES)" AS PREVIOUSLY AMENDED BY ORDINANCE NO. 2077-C.S.

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

SECTION 1. AMENDMENT OF ORDINANCE NO. 1861-C.S. Section 2 of Ordinance No. 1588-C.S. as previously amended by Ordinance No. 2077-C.S., is hereby further amended to read as follows:

"SECTION 2. USES. The following uses shall be permitted in said P-D(234) Zone subject to securing approval of the Secretary of the Planning Commission if the plan for construction conforms in principle to the approved plan, or by the Planning Commission if any changes not conforming in principle to the approved plan are proposed, as required by Section 10-2.2708(b) of the Modesto Municipal Code:

- (a) Restaurant and cocktail lounge
- (b) Child Day Care Center
- (c) Off-street parking."

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

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

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 18th day of September, 1984, by Councilmember Whiteside, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Sutton, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Bright, Lang, Muratore, Patterson, Sutton, Whiteside, Mayor Mensinger  
NOES: Councilmembers: None  
ABSENT: Councilmembers: None

APPROVED: Peggy Mensinger  
PEGGY MENSINGER, Mayor

ATTEST:

By Norrine Coyle  
NORRINE COYLE, City Clerk

(SEAL)

APPROVED AS TO FORM:

By Elwyn L. Johnson  
ELWYN L. JOHNSON, City Attorney

Ord. No. 2289-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 2nd day of October, 1984, Councilmember Lang moved its final adoption, which motion being duly seconded by Councilmember Whiteside, was upon roll call carried and the ordinance adopted by the following vote:

**AYES: Councilmembers:** Bright, Lang, Muratore, Sutton, Whiteside, Acting Mayor Patterson

**NOES: Councilmembers:** None

**ABSENT: Councilmembers:** Mayor Mensinger

**APPROVED**

Richard Patterson  
ACTING MAYOR RICHARD PATTERSON

**ATTEST:**

Judy C. Hall  
JUDY C. HALL, Acting City Clerk

**EFFECTIVE DATE:** November 1, 1984

AN ORDINANCE ADDING CHAPTER 6 ENTITLED "CITY OF  
MODESTO WASTEWATER TREATMENT FACILITIES REVENUE BOND  
LAW" TO TITLE VIII OF THE MODESTO MUNICIPAL CODE  
RELATING TO POWERS AND PROCEDURES TO ISSUE  
REVENUE BONDS FOR THE PURPOSE OF FINANCING  
WASTEWATER TREATMENT FACILITIES OF THE CITY,  
AND INCLUDING DEFINITIONS, GENERAL PROVISIONS,  
POWERS, ISSUANCE PROCEDURES AND CERTAIN  
SUPPLEMENTAL PROVISIONS

WHEREAS, the City of Modesto (the "City") is a municipal corporation and charter city duly organized and existing under a freeholders' charter pursuant to which the City has the right and power to make and enforce all laws and regulations in respect of municipal affairs and certain other matters in accordance with and as more particularly provided in Sections 3, 5 and 7 of Article XI of the Constitution of the State of California and Section 200 of the Charter of the City (the "Charter"); and

WHEREAS, the City Council of the City, acting under and pursuant to the powers reserved to the City under Sections 3, 5 and 7 of Article XI of the Constitution of the State of California and Section 200 of the Charter, finds that the public interest and necessity require the adoption of this ordinance to authorize, and establish the procedures for, the sale and issuance of revenue bonds by the City for the purpose of providing financing for wastewater treatment facilities serving residents of the City;

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

SECTION 1. AMENDMENT OF CODE. Chapter 6 entitled "City of Modesto Wastewater Treatment Facilities Revenue Bond Law" is hereby added to Title VIII of the Modesto Municipal Code to read as follows:

CHAPTER 6 - CITY OF MODESTO WASTEWATER TREATMENT  
FACILITIES REVENUE BOND LAW

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS

SEC. 8-6.101. TITLE. This chapter may be cited as the City of Modesto Wastewater Treatment Facilities Revenue Bond Law.

SEC. 8-6.102. PURPOSE. The Council hereby finds and declares that it is necessary, essential, a public purpose and a municipal affair for the City to be authorized to provide financing for wastewater treatment facilities serving residents of the City in the interests of the public health, safety and welfare.

SEC. 8-6.103. DEFINITIONS. Unless the context otherwise requires, the following definitions shall govern the construction of this Chapter:

"Acquisition" and its variants means acquisition, construction, improvement, furnishing, equipping, remodeling, repair, reconstruction or rehabilitation.

"Bonds" means any bonds, notes, interim certificates, debentures or other obligations issued by the City pursuant to this Chapter, which are payable exclusively from Revenues and other funds permitted by this Chapter, and which are "industrial development bonds" within the meaning of Section 103(b) of the Internal Revenue Code of 1954, as amended, or any similar provision of said Code then in effect.

"Chapter" means this Chapter 6 of Title VIII of the Modesto Municipal Code, as amended from time to time in accordance herewith.

"Charter" means the charter of the City, as amended from time to time.

"City" means the City of Modesto, California, a charter city in the State existing under and exercising powers pursuant to the Charter and the Constitution of the State.

"City Council" means the City Council of the City.

"Costs" means, with reference to a Project, any or all of the following costs incurred for the acquisition thereof:

1. Obligations of the City incurred for labor and materials in connection with the acquisition of the Project;

2. The cost of acquisition of any property, whether real or personal and improved or unimproved, including franchise rights and other intangible property, and any interests therein, required for the acquisition of the Project;

3. The cost of demolishing, removing or relocating any building or structure, and the cost of making relocation assistance payments required by law;

4. The cost of contract bonds and of insurance of all kinds that may be required or necessary during the course of the acquisition of the Project;

5. All costs of engineering, legal and consultant services, including the costs of the City for surveys, estimates, plans and specifications and preliminary investigation therefor, and for supervising construction, as well as for the performance of all other duties required by or consequent upon the proper acquisition of the Project;

6. All costs incurred in connection with proceedings by the City necessary to comply with the California Environmental Quality Act of 1970, as amended;

7. All amounts required to fund any reserve funds for Bonds and any interest on Bonds becoming due and payable during a period not exceeding the period of acquisition of the Project and 12 months thereafter;

8. All costs of issuance of the Bonds;

9. All costs which the City shall be required to pay, under the terms of any contract or contracts, for the acquisition of the Project;

10. The refinancing of any existing indebtedness secured by an interest in any real property comprising any portion of the Project, so long as and to the extent that such refinancing does not cause interest on the Bonds to become taxable under Section 103 of the Internal Revenue Code of 1954, as amended; and

11. Any sums required to reimburse the City for advances made for any of the above items or for any other costs incurred and for work done which are properly chargeable to the Project.

"Enterprise" means any and all facilities of the City for the disposal or reuse of wastewater, including sewage treatment plants, intercepting and collecting sewers, outfall sewers, force mains, pumping stations, ejector stations, pipes, valves, machinery and all other appurtenances necessary, useful or convenient for the collection, treatment, purification or disposal of sewage, and any necessary lands, rights of way and other real or personal property useful in connection therewith.

"Revenues" means all gross income and revenue received by the City from the ownership and operation of the Enterprise, including all fees and charges received by the City for the services of the Enterprise and all other income and revenue howsoever derived by the City from the ownership and operation of the Enterprise or arising from the Enterprise, and including all receipts derived from the investment of such income or revenues, including moneys deposited in a sinking, redemption or reserve fund or other fund to secure the Bonds or to provide for the payment of the principal of or interest on the Bonds and such other moneys as the City Council may in its discretion make available therefor. With respect to any grant anticipation notes issued pursuant to Section 8-6.210 of this Chapter, the term "Revenues" shall also include the revenues derived from the proceeds of any federal or State grant with respect to the Enterprise.

"State" means the State of California.

ARTICLE 2. ISSUANCE OF BONDS TO  
FINANCE THE ENTERPRISE

SEC. 8-6.201. GENERAL POWERS. The City is authorized and empowered:

A. To issue Bonds for the purpose of financing or otherwise assisting the acquisition of Enterprises authorized by this Chapter and for the purpose of funding or refunding Bonds.

B. To establish the terms and conditions for the financing of any component of the Enterprise undertaken pursuant to this Chapter.

C. To employ or contract for such legal, consultant, underwriting, economic feasibility, or other services in connection with the financing of the Enterprise or any portion thereof, as may be necessary in the judgment of the City Council for the successful financing of a Enterprise and the issuance and sale of Bonds.

D. In addition to all other powers specifically granted in this Chapter, to do all things necessary or convenient to carry out the purposes of this Chapter.

SEC. 8-6.202. AUTHORIZATION OF BONDS. The City may issue its Bonds for the purpose of financing or otherwise assisting the acquisition of all or any portion of the Enterprise as authorized by this Chapter. Every issue of Bonds shall be a limited obligation of the City, payable solely from all or any part of the Revenues.

SEC. 8-6.203. ISSUANCE OF BONDS. The Bonds may be issued as serial Bonds or as term Bonds, or the City Council, in its discretion, may issue Bonds of both types. The Bonds shall be authorized by resolution of the City Council and shall bear such date or dates, mature at such time or times, bear interest at such fixed or variable rate or rates, be payable at such time or times, be in such denominations, be in such form, carry such registration privileges, be executed in such manner, be payable in lawful money of the United States of America, at such place or places, and be subject to such terms of redemption as the resolution or resolutions of the City Council may provide. The Bonds may be sold at either a public or private sale and for such prices as the City Council shall determine. Pending preparation of the definitive Bonds, the City may issue interim receipts, certificates, or temporary Bonds, which shall be exchanged for such definitive Bonds.

SEC. 8-6.204. TERMS OF BONDS. Any resolution or resolutions authorizing any Bonds or any issue of Bonds may contain provisions respecting any of the following terms and conditions, which shall be a part of the contract with the owners of the Bonds:

A. The pledge of all or any part of the Revenues, subject to such agreements with Bond owners as may then exist.

B. The interest and principal to be received and other charges to be charged and the amounts to be raised each year thereby, and the use and disposition of the Revenues.

C. The setting aside of reserves or sinking funds and the regulation and disposition thereof.

D. Limitations on the purposes to which the proceeds of a sale of any issue of Bonds, then or thereafter issued, may be applied, and pledging such proceeds to secure the payment of the Bonds or any issue of Bonds.

E. Limitations on the issuance of additional Bonds, the terms upon which additional Bonds may be issued and secured, and the refunding of outstanding Bonds.

F. The procedure, if any, by which the terms of any contract with Bond owners may be amended or abrogated, the amount of Bonds the owners of which must consent thereto, and the manner in which such consent may be given.

G. Specification of the acts or omissions to act which shall constitute a default in the duties of the City to the owners of the Bonds, and providing the rights and remedies of such owners in the event of default.

H. Such other terms and conditions pertaining to the issuance of the Bonds as are deemed advisable by the City Council.

SEC. 8-6.205. TRUST AGREEMENT. In the discretion of the City Council, any Bonds issued under the provisions of this Chapter may be secured by a trust agreement or indenture by and between the City and a corporate trustee or trustees, which may be any trust company or bank having the powers of a trust company within or without the State. Such trust agreement or the indenture may pledge or assign the Revenues to be received or proceeds of any contract or contracts pledged, and may convey or mortgage any property. Such trust agreement or indenture may contain such provisions for protecting and enforcing the rights and remedies of the Bond owners as may be reasonable and proper and not in violation of law, including such provisions as is permitted to be included in any resolution or resolutions of the City Council authorizing the issuance of Bonds hereunder. Any bank or trust company doing business under the laws of the State which may act as depository of the proceeds of Bonds or of Revenues or other moneys may furnish such indemnity bonds or pledge such securities as may be required by the City. Any such trust agreement or indenture may set forth the rights and remedies of the Bond owners and of the trustee or trustees, and may restrict the individual right of action by Bond owners. In addition to the foregoing, any such trust agreement or indenture may contain such other provisions as the City Council may deem reasonable and proper for the security of the Bond owners.

SEC. 8-6.206. PERSONAL LIABILITY. Neither the members of the City Council nor any person executing the Bonds shall be liable personally on the

Bonds or be subject to any personal liability or accountability by reason of the issuance thereof.

SEC. 8-6.207. REFUNDING BONDS. The City Council may provide for the issuance of Bonds any portion of which is to be used for the purpose of refunding outstanding Bonds, including the payment of the principal thereof and interest and redemption premiums, if any, thereon. The proceeds of Bonds issued to refund any outstanding Bonds may, in the discretion of the City Council, be applied to the retirement of such outstanding Bonds at maturity, or the redemption (on any redemption date) or purchase of such outstanding Bonds prior to maturity, upon such terms and subject to such conditions as the City Council shall deem advisable.

SEC. 8-6.208. REPAYMENT OF BONDS. Revenues, or any portion thereof, as designated in the resolution, agreement or indenture authorizing the issuance of the Bonds, shall be the sole source of funds pledged by the City for repayment of Bonds issued hereunder. Bonds issued hereunder shall not be deemed to constitute a debt or liability of the City or a pledge of the faith and credit of the City but shall be payable solely from Revenues. All Bonds shall contain on the face thereof a statement to the following effect:

"Neither the faith and credit nor the taxing power of the City of Modesto is pledged to the payment of the principal of or interest on this Bond."

The issuance of Bonds shall not directly, indirectly or contingently obligate the City Council to levy or pledge any form of taxation or to make any appropriation for their payment.

SEC. 8-6.209. TRUST FUNDS. All moneys received pursuant to the provisions of this Chapter, whether proceeds from the sale of Bonds or Revenues or other moneys or assets authorized by this Chapter to be pledged to secure payment of Bonds, shall, to the extent set forth in the resolution or trust agreement authorizing the issuance of the Bonds, be deemed to be trust funds to be held and applied solely for the purposes of this Chapter. Any bank or trust company in which such moneys are deposited shall act as trustee of such moneys and shall hold and apply the same for the purposes specified in this Chapter, subject to the terms of the resolution or trust agreement authorizing the Bonds.

SEC. 8-6.210. PURCHASE OF BONDS BY CITY. The City shall have the power out of any funds available therefor to purchase its Bonds. The City may hold, pledge, cancel or resell such Bonds, subject to and in accordance with its agreement with Bond owners.

SEC. 8-6.211. BOND ANTICIPATION NOTES. In anticipation of the sale of Bonds authorized by this Chapter, the City is hereby authorized to issue bond anticipation notes, and to renew the same from time to time, in such series and amounts as are determined by the Council to be necessary or appropriate for the Costs of the Enterprise approved by the Council. Such notes shall be payable from Revenues or other moneys or assets authorized by

this Chapter to be pledged to secure payment of Bonds, and which are not otherwise pledged, or from the proceeds or sale of the particular Bonds in anticipation of which they are issued. Such notes shall be issued in the same manner as Bonds.

SEC. 8-6.212. GRANT ANTICIPATION NOTES. In anticipation of the revenues derived from the proceeds of any federal or State grants with respect to the Enterprise or any portion thereof, the City is hereby authorized to issue grant anticipation notes, and to renew the same from time to time, in such series and amounts as are determined by the Council to be necessary or appropriate for the Costs of the Enterprise approved by the Council and reimbursable from such grants. Such notes shall be payable from the revenues derived from the proceeds of such grants or other moneys or assets authorized by this Chapter to be pledged to secure payment of Bonds, and which are not otherwise pledged, or from the proceeds or sale of the particular Bonds in anticipation of which they are issued. Such notes shall be issued in the same manner as Bonds.

### ARTICLE 3. MISCELLANEOUS PROVISIONS

SEC. 8-6.301. LIBERAL CONSTRUCTION. This Chapter, being necessary for the health, welfare and safety of the City and its residents, shall be liberally construed to effect its purposes. Furthermore, the City Council hereby declares that this Chapter is an exercise of the power granted to the City by the City Charter and the Constitution of the State and is an exercise by the City of its powers as to municipal affairs and its police powers, and this Chapter shall be liberally construed to uphold its validity under the laws of the State.

SEC. 8-6.302. PROVISIONS OF THIS CHAPTER ARE COMPLETE, ADDITIONAL AND ALTERNATIVE. This Chapter shall be deemed to provide a complete, additional and alternative method for doing the things authorized hereby, and shall be regarded as supplemental and additional to the powers conferred by other laws. The issuance of Bonds under the provisions of this Chapter need not comply with the requirements of any other law applicable to the issuance of bonds. The purposes authorized hereby may be effectuated and Bonds are authorized to be issued for any such purposes under this Chapter notwithstanding that any other law may provide for such purposes or for the issuance of bonds for like purposes and without regard to the requirements, restrictions, limitations or other provisions contained in any other law.

SEC. 8-6.303. ACTIONS TO DETERMINE VALIDITY OF BONDS AND PROCEEDINGS. An action may be brought pursuant to Chapter 9 (commencing with Section 860 of Title 10 of Part 2 of the Code of Civil Procedure) to determine the validity of Bonds and the legality and validity of all proceedings previously taken and proposed to be taken for the authorization, issuance, sale, and delivery of the Bonds and for the payment of the principal thereof and interest thereon.

SEC. 8-6.304. AMENDMENT OF CHAPTER. This Chapter shall not be amended so as to have a material, adverse affect upon the rights of the owners of any

outstanding Bonds theretofore issued hereunder, without the written consent of such Bond Owners; provided, however, that this Chapter may be amended at any time (a) to make such provisions for the purpose of curing any ambiguity, or of curing, correcting or supplementing any defective provision herein contained, as the City may deem necessary or desirable; or (b) if such amendment does not materially impair or adversely affect the interests of any such Bond owner or City in the opinion of the City Council; or (c) if such amendments apply solely to Bonds not theretofore issued.

SEC. 8-6.305. CHAPTER CONTROLLING. To the extent that the provisions of this Chapter are inconsistent with the provisions of any general statute or special act or parts thereof, the provisions of this Chapter shall be deemed controlling.

SEC. 8-6.306. PARTIAL INVALIDITY. If any Section, paragraph, sentence, clause or phrase of this Chapter shall for any reason be held illegal or unenforceable, such holding shall not affect the validity of the remaining portions of this Chapter. The City Council hereby declares that it would have adopted this Chapter and each and every other Section, paragraph, sentence, clause or phrase hereof and authorized the proceedings authorized to be taken pursuant thereto irrespective of the fact that any one or more Sections, paragraphs, sentences, clauses, or phrases of this Chapter may be held illegal, invalid or unenforceable.

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

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

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 18th day of September, 1984, by Councilmember Whiteside, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Lang, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Bright, Lang, Muratore, Patterson, Sutton, Whiteside, Mayor Mensinger

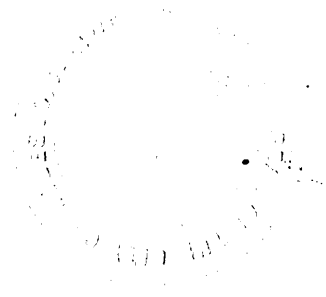
NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: Peggy Mensinger  
Mayor

ATTEST:

Morrine Coyle  
City Clerk



APPROVED AS TO FORM:

Elwyn L. Johnson  
ELWYN L. JOHNSON, City Attorney

**FINAL ADOPTION CLAUSE**

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 2nd day of October, 1984, Councilmember Lang moved its final adoption, which motion being duly seconded by Councilmember Whiteside, was upon roll call carried and the ordinance adopted by the following vote:

**AYES:** Councilmembers: Bright, Lang, Muratore, Sutton, Whiteside, Acting Mayor Patterson

**NOES:** Councilmembers: None

**ABSENT:** Councilmembers: Mayor Mensinger

**APPROVED**

Richard Patterson  
ACTING MAYOR RICHARD PATTERSON

**ATTEST:**

Judy C. Hall  
JUDY C. HALL, Acting City Clerk

**EFFECTIVE DATE:**

November 1, 1984

ORDINANCE NO. 2297-C.S.

AN ORDINANCE AMENDING CHAPTER 5 OF TITLE VI OF THE MODESTO MUNICIPAL CODE RELATING TO SECONDHAND JEWELRY DEALERS.

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

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

CHAPTER 5. SECONDHAND JEWELRY DEALERS.

SEC. 6-5.01. LICENSE REQUIRED.

It shall be unlawful for any person either as principal, agent, servant or employee to engage in, carry on, operate, manage or conduct within the City of Modesto the business of secondhand jewelry dealer unless such person or the principal or employer of such agent, servant or employee shall first have procured a license to do so as herein specified.

SEC. 6-5.02. EXCEPTION.

The provisions of this chapter shall not apply to any person who either as principal, agent, servant or employer is required to report the purchase, sale, trade or exchange of secondhand jewelry to the Chief of Police pursuant to the provisions of the State of California Business and Professions Code section 21625, et seq.

SEC. 6-5.03. DEFINITIONS.

- (a) "Secondhand Jewelry Dealer" shall include every person who engages in or conducts the business of buying, selling or exchanging of secondhand jewelry. The term "Secondhand Jewelry Dealer" shall include every person engaged in said business, whether as a separate business or in connection with another business or businesses.
- (b) "Secondhand Jewelry" shall include any amount of precious stones or used articles of gold, silver, platinum, silverware, jewelry, watches, and similar articles or pieces of property.

SEC. 6-5.04. LICENSES; APPLICATION; GROUNDS FOR DENIAL; GRANT.

The Chief of Police shall accept an application for and grant a license permitting the licensee to engage in the business of secondhand jewelry to an applicant who has not been convicted of an attempt to receive stolen property or any other offense involving stolen property. All forms for application and licensure, and license renewal, shall be prescribed and provided by the Chief of Police.

SEC. 6-5.05. LICENSE; RENEWAL; FORFEITURE; GROUNDS.

- (a) A license shall be renewable one year from the date of issue and annually thereafter upon the filing of a renewal application.
- (b) The license shall be subject to forfeiture for breach of any of the following conditions:
  - (1) The business shall be carried on only in the building or buildings designated in the license.
  - (2) The license shall be displayed on the premises where it can easily be seen.
  - (3) The licensee shall not engage in the business of secondhand jewelry dealer with any minor or with any person who is intoxicated or under the influence of drugs.
  - (4) The licensee shall not engage in any act which is a violation of this chapter.
  - (5) The licensee shall not be convicted of an attempt to receive stolen property or any other offense involving stolen property.

SEC. 6-5.06. REPORT REQUIRED; TIME.

Every secondhand jewelry dealer licensee shall report to the Chief of Police daily, or on the first working day after receipt or purchase of secondhand jewelry, on forms either approved or provided at actual cost by the Chief of Police, all secondhand jewelry which the licensee has purchased, taken in trade, or accepted for sale or consignment. The report shall include, but not be limited to, the following information:

- (a) The name and address of the intended seller of the secondhand jewelry.
- (b) A complete and reasonably accurate description of the secondhand jewelry including serial numbers or other identifying marks or symbols.
- (c) A certification by the intended seller that to his or her knowledge and belief the information is true and complete.

SEC. 6-5.07. INSPECTION OF RECORDS AND GOODS.

- (a) A licensee shall make available for inspection upon request by the Chief of Police or any member of the Modesto Police Department any reports, records, or goods regulated by this chapter. Any such inspection shall be made during normal business hours.
- (b) Each and every item or article or secondhand jewelry in the custody or possession of a licensee shall have attached to it a tag, or other device, containing sufficient information so that the particular item or article can be readily identified by reference to the records and reports required to be maintained by the licensee by section 6-5.06.

SEC. 6-5.08. RETENTION OF PROPERTY BY LICENSEE FOR 30-DAY PERIOD.

Every licensee shall retain in his possession for a period of 30 days all items of secondhand jewelry reported under the provisions of section 6-5.06. The 30-day holding period with respect to such property shall commence with the date the report of its acquisition was made to the Chief of Police by the licensee. The Chief of Police may for good cause authorize prior disposition of any such property described in a specific report provided that a licensee who disposes of any such property pursuant to such authorization shall report the sale thereof to the Chief of Police.

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 October, 1984,



Ord. No. 2291-C.S.

**FINAL ADOPTION CLAUSE**

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 9th day of October, 1984, Councilmember Whiteside moved its final adoption, which motion being duly seconded by Councilmember Sutton, was upon roll call carried and the ordinance adopted by the following vote:

**AYES:** Councilmembers: Bright, Lang, Muratore, Patterson, Sutton, Whiteside, Mayor Mensinger

**NOES:** Councilmembers: None

**ABSENT:** Councilmembers: None

**APPROVED** *Reggie Mensinger*  
MAYOR REGGIE MENSINGER

**ATTEST:** *Morrine Coyle*  
MORRINE COYLE, City Clerk

**EFFECTIVE DATE:** November 8, 1984

ORDINANCE NO. 2292-C.S.

AN ORDINANCE AMENDING CHAPTER 4 OF TITLE XI OF THE MODESTO MUNICIPAL CODE RELATING TO PROCEDURE FOR GRANTING CABLE COMMUNICATION SYSTEM FRANCHISES IN THE CITY OF MODESTO.

SECTION 1. AMENDMENT TO CODE. Chapter 4 of Title XI of the Modesto Municipal Code is hereby amended to read as follows:

CHAPTER 4 - PROCEDURE FOR GRANTING  
CABLE COMMUNICATION SYSTEM FRANCHISES

SEC. 11-4.01. DEFINITIONS.

For the purposes of this chapter, the following terms, phrases, words, abbreviations and their derivations shall have the following meanings. Except where specifically conflicting with the definitions below, this chapter incorporates by reference the cable communication definitions in Federal Communications Commission (FCC) Rules and Regulations, adopted from time to time, including but not limited to those set forth in Title 47, Code of Federal Regulations, Part 76, Section 76.5 Definitions. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number.

- (a) "Cable System" shall mean a cable communication system as defined below which is located in, on, above, or below streets, alleys, easements and other rights-of-way owned or controlled by the City.
- (b) "City" shall mean the City of Modesto, a municipal corporation of the State of California, in its present incorporated form or in any later reorganized, consolidated, enlarged or reincorporated form.
- (c) "City Manager" shall mean the City Manager of the City of Modesto or any other officer or employee of the City of Modesto designated by the City Manager to act in his place.
- (d) "Cable Communication System" shall mean a system of antennas, cables, amplifiers, towers, microwave links, cable-casting studios, and any other conductors, converters, equipment or facilities, designed and constructed for the primary purpose of distributing audio and video programming to subscribers, and for the secondary purpose of producing, receiving, amplifying, storing, processing, or distributing audio, video, digital, or other forms of electronic or electrical signals.

- (e) "Council" shall mean the present governing body of the City or any future board constituting the legislative body of the City.
- (f) "Duly noticed public hearing" means a public hearing before the City Council for which at least the ten (10) days' advance notice shall have been provided to the public, and to all interested parties who have so requested, in writing. Public notice may be satisfied by publication in the official newspaper of the City of Modesto. A grantee is a necessary party to any hearing conducted with regard to its operation, and notice to it will be satisfied by registered mail to its office in the City of Modesto. Notice required hereunder shall state clearly the proposed action or matter under consideration; the time provided for any response, including response by the public; and the date, location and time of the hearing.
- (g) "Federal Communications Commission" and "FCC" shall mean the Federal Communications Commission of the United States of America.
- (h) "Franchise" shall mean and include any authorization granted hereunder in terms of a franchise, privilege, permit, license or otherwise to construct, operate and maintain a system in the City.
- (i) "Franchise Area" shall mean the area within the City throughout which grantee shall be authorized to construct, maintain and operate its cable system and shall include any additions thereto.
- (j) "Franchise Documents" shall mean and include all of the following:
  - (1) Article XIV of the Charter of the City of Modesto;
  - (2) This chapter as it now exists or may hereafter be amended;
  - (3) The ordinance granting a franchise to a particular grantee; and
  - (4) The acceptance of a franchise by a grantee on a form issued by the City and signed by the Grantee.
- (k) "Full compliance" means complete satisfaction of all material elements and details of stated requirements.
- (l) "Grantee" shall mean the person, firm or corporation to whom or which a franchise, as hereinabove defined, is granted by the Council under this chapter, and the lawful successor, transferee or assignee of said person, firm, or corporation.

- (m) "Gross system receipts" shall mean all revenues derived directly or indirectly from the cable system in the City.

Gross system receipts shall not include any taxes on services furnished by the grantee imposed directly on any subscriber or user by any city, state or other governmental unit and collected by the grantee for such governmental unit.

- (n) "Property of grantee" shall mean all property owned, installed or used by a grantee in the conduct of a Cable system in the City under a franchise granted pursuant to this chapter.
- (o) "Public place" shall mean any place in which the public has an interest as affecting the safety, health, morals and welfare of the City and its citizens, including, but not limited to parks, public buildings, public facilities and public utility easements.
- (p) "Street" shall mean the surface of and the space above and below any public street, road, highway, freeway, lane, path, alley, court, sidewalk, parkway or drive, now or hereafter existing as such within the City.
- (q) "Subscriber" shall mean any person or entity legally receiving for any purpose the Cable service of a grantee.
- (r) "Substantial compliance" where used as to technical requirements, means that ninety-five percent (95%) of the received channels shall meet all applicable technical standards simultaneously at the time of measurement.

#### SEC. 11-4.02. FRANCHISE TO OPERATE.

- (a) A nonexclusive franchise to construct, operate and maintain a cable system within a franchise area may be granted by the Council to any person, firm or corporation, whether operating under an existing franchise or not, who or which offers to provide such system under and pursuant to the terms of this chapter.
- (b) Any franchise granted pursuant to the provisions of this chapter shall authorize and permit the grantee to engage in the business of operating and providing a cable system in the City in accordance with the provisions of this chapter.
- (c) No provision of this chapter may be deemed or construed as to require granting of a franchise when in the opinion of the Council it is in the public interest not to do so or to restrict the number of grantees.

- (d) The operative content of each franchise at any given time consists of all the franchise documents described under the definition of that term in Section 11-4.01, and includes any later changes thereto, including amendments to the City Charter, amendments to this chapter, and to the individual franchise ordinance granting a franchise to operate a cable system, provided such changes do not change the franchise in any way except as authorized by Section 11-4.32(d).
- (e) No franchise shall be for a term longer than fifteen (15) years following the commencement of the term of the franchise.

SEC. 11-4.03. APPLICATION FOR FRANCHISE.

- (a) Application for a cable system franchise shall be in writing, shall include an application fee of ten thousand dollars (\$10,000.00), shall be filed with the City Clerk, and shall include at a minimum:
  - (1) The name, address, and telephone number of the applicant.
  - (2) A detailed statement of the corporate or other business organization of the applicant including, but not limited to, the following:
    - (aa) The names, residence and business addresses of all officers, directors and associates of the applicant.
    - (ab) The names, residence and business addresses of all officers, persons and entities having, controlling, or being entitled to have or control of one percent (1%) or more of the ownership of the applicant and the respective share of each person or entity.
    - (ac) The names and addresses of any parent or subsidiary of the applicant, namely, any other business entity owning or controlling the applicant in whole or in part or owned or controlled in whole or in part by the applicant, and a statement describing the nature of any such parent or subsidiary business entity, including but not limited to cable communication systems owned or controlled by the applicant, its parent and subsidiary business entities and the areas served thereby.
    - (ad) A detailed description of all previous experience of the applicant in providing cable communication system service.

- (ae) A detailed and complete financial statement of the applicant prepared by a certified public accountant or other person satisfactory to the City Manager.
  - (af) A statement identifying, by place and date, any and all cable communication system franchises awarded the applicant, or its parent or subsidiary business entities; the status of those franchises; the total cost of such systems; and the amount of applicant's and its parent's or subsidiary's resources committed to their completion.
- (3) A thorough, detailed description of the proposed cable communication system and plan of operation of the applicant which shall include, but not be limited to the following:
- (aa) A detailed map indicating all areas proposed to be served, and a proposed time schedule for the installation of all equipment necessary to become operational throughout the entire area to be served.
  - (ab) A detailed, informative and referenced statement describing the actual equipment and operational and performance standards proposed by the applicant. In no event shall the operational and performance standards be less than those adopted by the Rules and Regulations of the FCC (contained in Title 47, Subpart K, Section 76.601 et. seq.).
  - (ac) A detailed estimate of the cost of constructing the proposed system.
  - (ad) A copy of the form of any agreement, undertaking or other instrument proposed to be entered into between the applicant and any subscriber.
  - (ae) A detailed statement setting forth in their entirety any and all agreements and undertakings, whether formal or informal, written, oral, or implied, existing or proposed to exist between the applicant and any person, firm or corporation which materially relate to or depend upon the application and the granting of the franchise.
  - (af) A schedule of all proposed service levels and rates and charges.

- (ag) A copy of any agreement existing between the applicant and any public utility subject to regulation by the California Public Utilities Commission providing for the use of any facilities of the public utility, including but not limited to poles, lines or conduits, within the City and/or adjacent areas.
- (ah) Any other details, statements, information or references pertinent to the application which shall be required by the Council.

SEC. 11-4.04. PROCEDURE TO CONSIDER APPLICATION.

- (a) Upon receipt of a complete application, the Council shall refer the application to the City Manager. The City Manager shall prepare a report and make recommendations on the application within one hundred and twenty (120) days.
- (b) Upon receipt of the report and recommendations of the City Manager, if the Council wishes to consider granting a franchise, it shall pass a resolution declaring its intent and setting the date and time for a public hearing. The hearing date shall be not less than twenty (20) days nor more than forty (40) days after the date of the resolution.
- (c) The City Clerk shall publish a notice of the hearing in the official newspaper of the City at least once ten (10) days prior to the hearing. The notice shall state the name of the applicant, the proposed terms of the franchise, any amounts or percentages to be paid to the City during the life of the franchise, any limitations as to time, place or type of service proposed, together with a general statement of the other major provisions of the proposed franchise, and that copies of the proposed franchise may be obtained at the office of the City Clerk.
- (d) At the time set for the hearing, the Council shall proceed to consider the application and all persons shall be given an opportunity to present their arguments. The Council may adjourn the hearing from time to time.
- (e) In determining whether to grant a franchise, the Council may consider the character and quality of proposed services, proposed rates, the experience, character and financial capability of the applicant, proposed management system, quality of proposed equipment, ability to meet construction requirements and any other factors deemed important to safeguard the interests of the public and the City.

**SEC. 11-4.05. GRANTING OR DENYING A FRANCHISE.**

- (a) Within thirty (30) days following the conclusion of the hearing, the Council shall by resolution deny or by ordinance grant the application for a franchise. The Council's action shall be final and conclusive.
- (b) No franchise shall become effective unless and until the ordinance granting same has become effective and, in addition, unless and until all things required by this section and Sections 11-4.20, 11-4.21, and 11-4.33 are done and completed, all of such things being hereby declared to be conditions precedent to the effectiveness of any franchise. In the event any of these things are not done and complete in the time and manner required, the Council may declare the franchise null and void.
- (c) Prior to the effective date of an ordinance granting a franchise, the grantee shall file with the City Clerk a written acceptance of the franchise, together with the surety bond, security fund, and insurance policies required by this chapter. The written acceptance shall include an agreement to be bound by and to comply with and to do all things required by the provisions of this chapter and the franchise. The written acceptance shall be acknowledged by the grantee before a notary public, and shall in form and content be satisfactory to and approved by the City Attorney.

**SEC. 11-4.06. REQUEST FOR PROPOSALS.**

The Council may, in lieu of considering unsolicited applications for franchises, issue a Request for Proposals for the award of a franchise(s).

**SEC. 11-4.07. FRANCHISE RENEWAL.**

Any franchise is renewable at the application of the grantee, in the same manner as required for obtaining the original franchise, except those provisions which are by their term expressly inapplicable; provided, however, that the Council may at its option waive compliance with any or all of the application requirements of Section 11-4.03. In considering an application for renewal, the Council shall take into account the record of compliance of the grantee with the franchise.

**SEC. 11-4.08. EXPIRATION OR TERMINATION OF A FRANCHISE.**

- (a) Any franchise may be terminated prior to its date of expiration by the Council in the event that the Council shall have found, after thirty (30) days' notice of any proposed termination and duly noticed public hearing, that:

- (1) The grantee has failed to comply with any material provision of this chapter, or has, by act or omission, violated any term or condition of the franchise ordinance.
  - (2) Any provision of this chapter or the franchise ordinance has become invalid, and the Council further finds that such provision was a material consideration to the granting of the franchise.
  - (3) The grantee has failed or refused to correct any deficiency disclosed by the annual performance verification for a period of more than ninety (90) days after notice by the City Manager as provided herein.
- (b) Nothing in this chapter shall be deemed or construed as an obligation to renew any expiring franchise or to give priority or preference to an existing grantee over new applicants.
  - (c) In case of either expiration or termination of a franchise, in order to prevent an interruption of service to the public, the grantee, during a reasonable interim period, may be required by the City to accept, and by acceptance of a franchise issued under the provisions of this chapter accepts, obligation to continue to operate the cable system. An accounting of net profits or losses shall be made for such interim period and fifty percent (50%) of any net profits shall be paid by the grantee to the City and the grantee shall be reimbursed for any net losses.
  - (d) In the event a grantee continues to operate after expiration or other termination of any franchise, without the consent of the City, the grantee shall pay to the City reasonable compensation and damages, of not less than twenty-five percent (25%) of its gross system receipts during the period.

#### SEC. 11-4.09. SYSTEM DESIGN AND TECHNICAL PERFORMANCE.

- (a) The cable system shall be designed and installed in accordance with best cable industry practice and at a minimum shall conform with the technical performance standards contained in the ordinance granting a franchise. In addition, should the Federal Communications Commission (FCC) or other state or federal authority having jurisdiction impose cable system technical performance standards either outside the scope of the technical performance standards contained in the ordinance granting a franchise, or requiring a higher level of cable system performance, those standards are hereby incorporated by reference.

- (b) All cable communication systems authorized by franchises granted pursuant to this chapter shall be, insofar as financially and technically feasible, technically compatible one with another.
- (c) At a subscriber's request, the grantee shall, at no installation or monthly cost, provide a means for locking out the audio and/or video portions of any pay television programming.

**SEC. 11-4.10. LOCAL ORIGINATION AND ACCESS REQUIREMENTS.**

The grantee shall provide facilities, equipment, staffing and funding for local origination and public access programming as provided for in the ordinance granting a franchise.

**SEC. 11-4.11. SERVICE TO PUBLIC BUILDINGS AND SCHOOLS.**

The grantee shall provide cable service to public buildings and facilities and to schools as provided for in the ordinance granting a franchise.

**SEC. 11-4.12. SYSTEM MAINTENANCE AND TESTING.**

- (a) The cable system shall be maintained in accordance with the best industry standards so that it consistently operates in substantial compliance with required technical standards.

The grantee shall provide a corrective maintenance program that will render efficient corrective service, make repairs promptly, and interrupt service only for good cause and for the shortest possible time. Interruptions shall be preceded by notice to affected subscribers where practicable and shall occur during a period of minimum use of the system if feasible. A permanent written log shall be maintained of all service interruptions. The log shall reflect the date, time, duration, and reason for each service interruption.

- (b) On the last regular working day of March, June and December of each year, the grantee shall submit to the City Manager system performance data taken within the previous seven (7) days. Measurements for said data shall be taken at the same test points selected to satisfy subsection (c) below during the last annual system performance test that data has been submitted to the City. Quarterly test data shall be limited to:

- (1) Visual signal level for all channels carried;
- (2) Visual signal-to-noise measurements on one active lowband and one active highband VHF channel; and

(3) Visual hum modulation on one channel or pilot carrier.

Quarterly tests shall be performed on a scheduled basis. A representative of the City shall be permitted to accompany the grantee during quarterly measurement activities. The grantee shall not be permitted to make any system adjustments during quarterly measurement activities without noting such adjustments on the test data form.

(c) During the month of September of each year, the grantee shall perform annual cable system performance tests.

(1) Such tests shall be in full compliance with FCC regulations.

(2) Such tests shall be independently witnessed, and the resultant data analyzed, by a representative of the City.

(3) All necessary test instrumentation shall be supplied by the grantee. A current certificate of calibration by an independent calibration laboratory shall be supplied for each test instrument. All costs for instrumentation and calibration shall be borne by the grantee.

(4) Measurement locations for all technical performance standards set forth in the ordinance granting the franchise, except those requirements regarding twenty-four (24)-hour visual signal amplitude and channel amplitude characteristics, shall include:

(A) End of each system major trunk; and

(B) End of each system trunk branch four (4) or more trunk amplifiers deep.

Actual test locations shall be selected to measure performance of the system in the franchise area and shall be (or as closely as possible simulate) actual subscriber locations.

(5) Measurements regarding twenty-four (24)-hour visual signal level and channel amplitude characteristic shall be made as required by the FCC.

(6) Measurement for compliance with manufacturer's specifications on all origination equipment employed in the system.

- (7) Measurement techniques shall be either (i) those suggested by the FCC or (ii) those mutually developed by the grantee and the City and agreed to in writing prior to system testing. If agreement cannot be reached, the City shall prescribe acceptable methods of measurement.
  - (8) Concurrent with annual performance tests, the City representative shall inspect all system headend facilities and outside plant for adherence to best industry installation, workmanship and safety practice.
- (d) The grantee shall maintain the system so it consistently operates within substantial compliance of the technical standards in its franchise.

**SEC. 11-4.13. ANNUAL TESTING AND REPORT.**

- (a) Annually the City Manager shall verify that each cable grantee is in compliance with the provisions of this chapter and its franchise.
- (b) On or before October 31st of each year, each grantee shall file the following report with the City Manager. The report shall be in a form approved by the City Manager and shall be signed under penalty of perjury by an officer of the grantee principally responsible for the grantee's system in the City. The report shall contain but not be limited to the following information. Except as otherwise required by the City Manager, the information contained in the report shall be as of September 30th of the same year.
  - (1) The name of the grantee and the address of its principal place of business and its principal local address.
  - (2) The name and title of the officer of the grantee principally responsible for the grantee's cable system in the City.
  - (3) The name of the engineer primarily responsible for the grantee's cable system in the City.
  - (4) The names and addresses of all current officers and directors of the grantee.
  - (5) The names and addresses of any parent or subsidiary corporations of the grantee to which the grantee makes payments for services, including the names and addresses of all officers and directors of such parent or subsidiary corporations, and the locations of their headquarters.

- (6) Recitation of the facts surrounding any change in corporate structure or organization of the grantee and parent or subsidiary corporations of the grantee to which the grantee makes payments for any services, including a full disclosure of how such changes affect the relationship of the grantee to its owners or subsidiaries.
  - (7) Recitation of the grantee's date of submission of all reports and other material required to be submitted by the grantee during the previous twelve (12) months to the FCC.
  - (8) Recitation as to required FCC proof of technical performance testing, including details as to the results thereof and any subsequent corrective action taken by the grantee.
  - (9) Recitation of the types of services provided by the grantee during the previous twelve (12) months.
  - (10) Certification that a current set of maps drawn to scale showing all cable system equipment installed in place in streets and other public places in the City exist in reproducible form and that such documentation is up-to-date.
  - (11) Results of technical performance tests performed during the month of September.
  - (12) Such other data, information, statements or assurances as the City Manager may determine are necessary to verify that a grantee is in compliance with the provisions of this chapter and its franchise.
- (c) Upon receiving such report, the City Manager shall determine whether the grantee is in compliance with the provisions of this chapter and its franchise, including the following:
- (1) That the commencement or continued operation of the grantee's cable system in the City is in conformity with the purposes of this chapter.
  - (2) That the commencement or continued operation of the grantee's cable system in the City is for the benefit of the public of the City, and of the subscribers of the system.
- (d) On or before December 31st of each year, the City Manager shall make a report to the Council on the results of the annual test and the grantee's report.

- (e) If the annual test discloses that the grantee is not in substantial compliance with the technical performance standards and in full compliance with all other provisions of this chapter and its franchise, the City Manager shall notify the grantee of such deficiency in writing and the grantee shall correct such deficiency within thirty (30) days after deposit of such written notice in the United States mail, postage prepaid.
- (f) A grantee may request an extension of time to correct a deficiency by making such request in writing to the City Manager with a statement of the reasons why such deficiency cannot be fully corrected within thirty (30) days. The City Manager shall consider and grant or deny such requests as in his judgment he deems justified. The grantee may appeal any such decision by the City Manager to the City Council in accordance with the provisions of Chapter 4 of Title I of the Modesto Municipal Code.
- (g) If a grantee fails or refuses to correct a deficiency within thirty (30) days or any extensions of time granted by the City Manager or the Council, the grantee shall pay to the City a penalty of Five Thousand Dollars (\$5,000.00) plus One Hundred Dollars (\$100.00) per calendar day, including the first day, for each day that the deficiency continues.
- (h) Assessment of all penalties against a grantee may be appealed to the Council, which shall have the authority, by resolution, to waive penalties if in the Council's judgment waiver is deemed justified.

#### SEC. 11-4.14. SUBSCRIBER RATES.

The grantee may make a charge to subscribers for installation or connection on its cable system and a fixed monthly charge as filed and approved as herein provided. No increase in the rates and charges to subscribers, as set forth in the schedule filed and approved with grantee's application, may be made without the prior approval of the Council expressed by resolution, unless the grantee is exempted from rate regulation by federal or state law or its franchise. For unusual circumstances, an additional installation charge over that normally charged may be imposed, with easements to be supplied by subscribers. For remote, relatively inaccessible subscribers within the City, installation may be made available on the basis of cost of materials, labor and easements if required by the grantee. The decision as to what are "unusual circumstances" or "remote, relative inaccessible subscribers" under this paragraph shall be made by the City Manager.

#### SEC. 11-4.15. SUBSCRIBER RATE REVIEW PROCEDURES.

- (a) Requests for rate changes by the grantee may be made at intervals of not more than once every twelve (12) months.

- (b) An application will be reviewed by the City and action taken thereon by the Council within six (6) months after the date a complete application is received by the City Manager.
- (c) An application for rate changes shall be submitted in writing and include:
  - (1) An audited balance sheet and statement of profit and loss for the most recently completed fiscal year.
  - (2) A projection or pro forma statement estimating for a three (3)-year period the financial effect of the rate changes.
  - (3) A statement of capital assets in the grantee's cable system in the City, showing original cost, depreciation and net depreciated value.
- (d) The City Manager shall receive applications and other material submitted by the grantee and other parties who are interested therein and make a recommendation thereon to the Council. This recommendation will be made after a thorough review, which includes but is not limited to:
  - (1) The need of the grantee for sufficient income from service fees to properly operate, maintain and expand the grantee's cable system in the City.
  - (2) Consideration of the information provided by the grantee in its application pursuant to subsection (c)(3) above. Changes in costs of capital assets of the grantee resulting from the sale or transfer of a franchise to a successor, transferee or assignee shall not be considered for rate review purposes.
  - (3) The cost of copyright fees, fees or taxes levied by governmental agencies, and expenditures required by the City or other governmental agencies for the express benefit of the public. Penalties for failure to perform under the franchise shall be excluded from the operating costs in the rate review procedures.
  - (4) Consideration of the application of reasonable economies in the operating costs which are reflected in the grantee's annual financial reports.
  - (5) Consideration of benefits received in relation to any costs charged by parent or subsidiary corporations.

- (6) Consideration of all income (and costs related thereto) generated from the grantee's cable system in the City other than and in addition to service fees.

#### SEC. 11-4.16. FRANCHISE PAYMENTS.

All grantees shall pay to the City, a sum equal to a set percentage of the gross annual system receipts as set forth in the grantee's franchise, and in addition such other sums as may be provided for in grantee's franchise. Payment by the grantee to the City shall be made annually, or more frequently if required in its franchise, by delivery to the City Manager. Franchise payments shall be in lieu of any business license, occupation tax or similar levy.

The grantee shall file with the City Manager within ninety (90) days after the expiration of the grantee's fiscal year or portion thereof during which such franchise is in force, a balance sheet and statement of profit and loss in a form as required in its franchise, showing in detail the gross system receipts, as defined herein, of grantee during the preceding fiscal year or portion thereof. It shall be the duty of the grantee to pay to the City, within fifteen (15) days after the time for filing such statements, the sum prescribed or any unpaid balance thereof for the fiscal year or portion thereof covered by such statements.

The City shall have the right to inspect and audit the grantee's fiscal records. No acceptance of any payment shall be construed as a release or as an accord and satisfaction of any claim the City may have for further or additional sums payable under this chapter or for the performance of any other obligation.

#### SEC. 11-4.17. SUBSCRIBER COMPLAINT PROCEDURES.

- (a) The grantee has the responsibility of assuring that subscribers receive quality service and quick and fair resolution of any complaints. The grantee shall maintain an office within the City with a telephone number available on a twenty-four hour basis, located so that subscribers may call without incurring added telephone toll charges, to receive and initiate action on all cable subscriber complaints and to take action to provide maintenance services. At the time each new subscriber is connected to the system, the grantee shall provide the subscriber with an up-to-date printed card giving appropriate information regarding complaint procedures. The wording of the information card shall be approved by the City Manager. Such an information card shall also quote for the benefit of all subscribers the applicable current sections of the California Penal Code on unauthorized connections to cable systems. The grantee shall be responsible for notifying all current subscribers of material changes in this information.

The City shall have a designated official responsible for receiving and dealing with any complaints that have not been timely handled by the grantee. Such City officials shall be designated by the City Manager, with a designated address and telephone number, and shall be responsible to receive and process all such complaints during office hours.

- (b) Except in emergencies and other situations approved by the City Manager, the grantee shall provide "same day service" response, seven (7) days a week for all complaints received prior to 2:00 p.m. each day. In no event shall the response time for calls received subsequent to 2:00 p.m exceed twenty-seven (27) hours. Any reported problem posing a threat of bodily injury or property damage shall be resolved immediately regardless of time of day or night.
- (c) Upon complaints to the designated City official, the latter shall first be assured that the matter has been brought to the attention of the designated official of the grantee. If the complaint has not been resolved by the grantee to the satisfaction of the subscriber, the responsible City official shall take appropriate action to so resolve it. Failing that, the City official, or the aggrieved subscribers, or the grantee may bring the matter to the attention of the City Manager. The City Manager shall have authority to resolve the complaint. The City Manager's decision may be appealed to the City Council by any party.
- (d) Both the designated official of the grantee and the designated City official shall maintain logs of the subscriber complaints received by them on forms to be approved by the City Manager, such logs to be permanent records and used as the basis for confirmation of action on complaints.

#### SEC. 11-4.18. PROVISION OF SERVICE.

No person, firm or corporation in the franchise area of the grantee shall be arbitrarily refused service; provided, however, that the grantee shall not be required to provide service to any subscriber who does not pay the applicable connection fee or monthly service charge.

#### SEC. 11-4.19. SUBSCRIBER CONTRACT.

Before grantee shall provide service to any subscriber, grantee shall obtain a signed contract from the subscriber containing a provision substantially as follows:

Subscriber understands that in providing service grantee is making use of streets and public places within the City, and that the continued use of these streets and public places is in no way guaranteed. In the event the continued use of such streets and public places is denied to grantee for any reason, grantee will make every reasonable effort to provide service over alternate routes. Subscriber agrees he will make no claim nor undertake any action against the City, its officers, its employees, or grantee if a service to be provided by grantee hereunder is interrupted or discontinued because the continued use of such streets and public places is denied to grantee for any reason.

The form of grantee's contract with its subscribers shall be subject to approval of the City Attorney.

#### SEC. 11-4.20. PERFORMANCE BOND.

- (a) The grantee shall, concurrently with filing of an acceptance of award of any franchise granted under this chapter, file with the City Clerk and at all time thereafter maintain in full force and effect throughout the term of such franchise or any renewal thereof, at grantee's sole expense, a corporate surety bond in a company authorized to do business in the State of California and in a form approved by the City Attorney, in the amount specified in the franchise, renewed annually, and conditioned upon the faithful performance of grantee and upon the further condition that in the event grantee shall fail to comply with any one or more of the provisions of this chapter, or of the franchise, there shall be recoverable jointly and severably from the principal and surety of such bond any damages or loss suffered by the City as a result thereof, including the full amount of any compensation, indemnification or cost of removal or abandonment of any property of the bond, said condition to be a continuing obligation for the duration of such franchise and any renewal thereof and thereafter until the grantee has liquidated all of its obligations with the City that may have arisen from its exercise of any privilege therein granted. The bond shall provide that thirty (30) days prior written notice of intention not to renew, cancellation, or material change, be given to the City.
- (b) Neither the provisions of this section, nor any bond accepted by the City pursuant hereto, nor any damages recovered by the City thereunder, shall be construed to excuse faithful performance by the grantee or limit the liability of the grantee under its franchise or for damages either to the full amount of the bond or otherwise.

SEC. 11-4.21. SECURITY FUND.

The City may, in any franchise granted hereunder, require the grantee to establish and maintain an insured account as security for the faithful performance by grantee of all the provisions of the franchise, and compliance with any requirements of any officer, board, commission, committee or employee of the City having jurisdiction over grantee's acts or defaults under the franchise, and the payment by the grantee of any monies due the City under the franchise. The security fund, if required, shall be subject to the following requirements:

- (a) Prior to the effective date of the franchise, the grantee shall deposit an amount of money as set forth in the franchise into an insured account in a financial institution acceptable to the City Manager, and maintain the deposit throughout the term of the franchise. The grantee shall have the right to earn interest on the monies deposited in the security fund.
- (b) Within thirty (30) days after notice by the City to the grantee that any amount has been withdrawn by the City from the security fund, the grantee shall deposit a sum of money sufficient to restore such security fund to the original amount.
- (c) If the grantee fails after ten (10) days' notice to pay the City any monies due, or fails to repay to the City any damages, costs or expense which the City shall be compelled to pay by reason of any act or default of the grantee in connection with the franchise or fails to comply with any provision of the franchise which the City reasonably determines can be remedied by an expenditure of the security, the City may immediately withdraw the amount thereof, including interest and penalties, from the security fund. Upon such withdrawal, the City shall notify the grantee of the amount withdrawn and grantee shall replace said amount in accordance with the requirements of subsection (b) above.
- (d) A security fund deposited pursuant to this section shall become the property of the City in the event that a franchise is cancelled by reason of the default of the grantee or revoked for cause. The grantee, however, shall be entitled to the return of the security fund, or portion thereof, as remains on deposit at the expiration of the term of the franchise, or upon termination of the franchise at an earlier date, provided that there is then no outstanding default on the part of the Grantee.
- (e) The rights reserved to the City with respect to the security fund are in addition to all other rights of the City whether reserved by a franchise or authorized by law, and no action, proceeding or

exercise of a right with respect to such security fund shall affect any other right the City may have.

**SEC. 11-4.22. LIMITATIONS AND PROHIBITIONS.**

- (a) Any franchise granted pursuant to this chapter shall include the following condition:

"The cable system herein franchised shall be used and operated solely and exclusively for the purpose expressly authorized by this ordinance and Chapter 4 of Title XI of the Modesto Municipal Code and no other purpose whatsoever."

Inclusion of the foregoing statement in any such franchise shall not be deemed to limit the authority of the City to handle any other reasonable condition, limitation or restriction which it may deem necessary to impose in connection with such franchise pursuant to the authority conferred by this chapter.

- (b) It shall be unlawful for any person to establish or operate in the City a cable system unless a franchise has first been obtained, and unless the franchise is in full force and effect.
- (c) It shall be unlawful for any person to construct, install or maintain within any public street in the City, or within any other public property of the City, or within any privately owned area within the City which has not yet become a public street, but is designated as a proposed public street on any tentative subdivision or parcel map approved by the City, any equipment or facilities for a cable communication system unless a franchise authorizing use of the street or property or area has first been obtained pursuant to the provisions of this chapter, and unless a franchise is in full force and effect.
- (d) It shall be unlawful for any person, firm or corporation to make any unauthorized connection, whether physically, electrically, acoustically, inductively or otherwise, with any part of a cable system within the City.
- (e) It shall be unlawful for any person, firm or corporation to make any unauthorized connection, whether physically, electrically, acoustically, inductively or otherwise, with any part of a cable system within the City, without payment to the owner of the system.
- (f) It shall be unlawful for any person, without the consent of the owner, to willfully tamper with, remove or injure any cables, wires or equipment of a cable system within the City.

- (g) Any franchise granted shall be nonexclusive.
- (h) Any privilege claimed under a franchise by the grantee in any street or other public property shall be subordinate to any prior lawful occupancy of the streets or other public property.
- (i) Any franchise shall be a privilege to be held in personal trust by the original grantee. It cannot in any event be sold, transferred, leased, assigned or disposed of, in whole or in part, either by forced or involuntary sale, or by voluntary sale, merger, consolidation, by change in control of a corporation or company, stock transfer, transfer in trust, mortgage, or other hypothecation, or otherwise, without the prior consent of the Council expressed by resolution, and then only under conditions as may be prescribed. Any transfer or assignment shall be made only by an instrument in writing, a duly executed copy of which shall be filed in the office of the City Clerk within thirty (30) days after transfer or assignment. The consent of the Council may not be arbitrarily refused; provided, however, the proposed assignee must show financial responsibility and must agree to comply with all provisions of this chapter; and provided, further, that no consent shall be required for a transfer in trust, mortgage or other hypothecation as a whole, to secure an indebtedness.
- (j) Time shall be of the essence of any such franchise granted. The grantee shall not be relieved of his obligation to comply promptly with any of the provisions of this chapter or by any failure of the City to enforce prompt compliance.
- (k) Any right or power in, or duty impressed upon, any officer, employee, department or board of the City shall be subject to transfer by the City to any other officer, employee, department or board of the City.
- (l) The grantee shall have no recourse whatsoever against the City for any loss, cost, expense or damage arising out of any provision or requirement of this chapter or of any franchise issued or because of its enforcement.
- (m) The grantee shall be subject to all provisions, rules, regulations and conditions prescribed by federal, state, city and local law heretofore or hereafter enacted during the term of any franchise; provided that, except as otherwise provided in Section 11-4.32(d), any such City law does not change a franchise in any way. Copies of all petitions, applications and communications submitted by the grantee to the Federal Communications Commission, Securities and Exchange Commission or any other federal or state regulatory

commission or agency having jurisdiction in respect to any matters affecting cable system operations authorized pursuant to its franchise shall be kept on file in the grantee's local office and be available for inspection by the City Manager.

- (n) Any franchise granted shall not relieve the grantee of any obligation involved in obtaining pole space from any department of the City, utility company or from others maintaining poles in streets.
- (o) Any franchise shall be in lieu of any and all other rights, privileges, powers, immunities and authorities owned, possessed, controlled or exercisable by the grantee, or any successor to any interest of the grantee, of or pertaining to the construction, operation or maintenance of any cable system in the City; and the acceptance of any franchise shall operate as between the grantee and the City, as an abandonment of any and all of such rights, privileges, powers, immunities and authorities within the City, to the effect that as between the grantee and the City, any and all construction, operation and maintenance by the grantee of any cable system in the City shall be, and shall be deemed and construed in all instances and respects to be, under and pursuant to said franchise, and not under or pursuant to any other right, privilege, power, immunity or authority whatsoever.

#### SEC. 11-4.23. PROGRAM CHANGES.

The grantee shall, whenever possible, provide the City sixty (60) days notice prior to deleting, revising, adding to or substituting any program of any television or FM radio broadcast station carried by the grantee, whether with or without the consent of the station.

#### SEC. 11-4.24. REPORTS, PROPERTY AND RECORDS OF THE GRANTEE.

- (a) At all reasonable times, the grantee shall permit any duly authorized representative of the City to examine all property of the grantee, together with any appurtenant property of the grantee situated within or without the City, and to examine and transcribe any and all maps and other records kept or maintained by the grantee or under its control which deal with the operations, affairs, transactions or property of the grantee with respect to its franchise. If any such maps or records are not kept in the City, or upon reasonable request made available in the City, and if the Council shall determine that an examination thereof is necessary or appropriate, then all travel and maintenance expense necessarily incurred in making such examination shall be paid by the grantee.

- (b) The grantee shall prepare and furnish to the City Manager at the times and in the form approved by the City reports with respect to its operations, affairs, transactions or property as may be reasonably necessary or appropriate to the performance of any of the rights, functions or duties of the City or any of its officers in connection with the franchise. These reports shall include a daily log of service requests, customer complaints, customer suggestions and the grantee's response, including the type, manner and time of response.
- (c) The grantee shall at all times maintain in its local office a current set of as-built maps drawn to scale, showing all cable system equipment installed and in place in streets and other public places in the City.
- (d) The grantee shall at all times maintain at its local office for public inspection a file containing copies of all reports required by Federal Communications Commission (FCC) Rules and Regulations, Part 76, Subpart H (General Operating Requirements) as the same now exist or may hereafter be changed or amended.
- (e) The grantee shall maintain copies of all reports required by Federal Communications Commission (FCC) Rules and Regulations Part 76, Subpart I (Forms and Reports) as the same now exist or may hereafter be changed or amended, including but not limited to FCC Form 325, FCC Form 395, and Annual Report of Complaints as defined within said subpart. Said documentation must be kept on file in the grantee's local office and be available for inspection by the City Manager.

**SEC. 11-4.25. PERMITS, INSTALLATION AND START OF SERVICE.**

- (a) Within sixty (60) days after acceptance of a franchise, the grantee shall apply for and diligently pursue the obtaining of all necessary permits and authorizations which are required in the conduct of its business, including but not limited to any utility joint use attachment agreements, microwave carrier licenses and any other permits, licenses and authorizations to be granted by duly constituted regulatory agencies having jurisdiction over the operation of cable systems, their associated microwave transmission facilities, or any other associated facility.
- (b) The grantee shall commence construction and installation of the cable system within ninety (90) days after obtaining all necessary permits, licenses and authorizations.

- (c) Within one hundred eighty (180) days after the commencement of construction of the system, the grantee shall provide service to subscribers, and the completion of the construction and installation shall be pursued with reasonable diligence thereafter, so that service to all parts of the franchise area shall be provided within two (2) years from the date that service was first provided, except as may be otherwise provided in any franchise.
- (d) Failure on the part of the grantee to commence and diligently pursue each of the foregoing requirements or any requirements for installation of its system or providing of service as set forth in its franchise, and to complete each of said matters, shall be grounds for termination of the franchise. However, the Council in its discretion may extend the time for obtaining of permits, authorizations and utility pole clearances, and for the commencement and completion of construction and installation for additional periods in the event the grantee, acting in good faith, experiences delays by reason of circumstances beyond its control.

SEC. 11-4.26. LOCATION OF PROPERTY OF GRANTEE.

- (a) The grantee may, at such locations and in such manner as shall be approved by the City Manager acting in the exercise of his reasonable discretion, erect, install, construct, repair, replace, reconstruct, maintain and retain in, on, over, under, upon, across and along streets and public places such poles, wires, cable, conductors, ducts, conduit, vaults, manholes, amplifiers, appliances, attachments and other property as may be necessary and appurtenant to the grantee's cable system only.
- (b) The grantee shall not install or erect any facilities or apparatus in or on other public property, places or rights-of-ways, or within any privately owned area within the City which has not yet become a public street, but is designated as a proposed public street on any tentative subdivision map approved by the City, except those installed or erected upon public utility facilities now existing, without obtaining the prior written approval of the City Manager.
- (c) In those areas and portions of the City where the transmission or distribution facilities of both the public utility providing telephone service and those of the utility providing electric service are underground, then the grantee shall likewise construct, operate and maintain all of its transmission and distribution facilities underground. In those areas and portions of the City where the transmission or distribution facilities of both the public utility providing telephone service and those of the utility providing electric service are hereafter placed underground, then

the grantee shall construct its transmission and distribution facilities underground concurrently with and at the same time as the transmission and distribution facilities of the telephone service and electric service are placed underground, and the grantee shall thereafter operate and maintain all of its transmission and distribution facilities underground in said areas and portions of the City. For the purpose of this subsection, "underground" shall include a partial underground system.

Amplifiers in the grantee's transmission and distribution lines may be in appropriate housings upon the surface of the ground. The type and location of the housings shall be subject to the approval of the City Manager. In granting or denying such approval, the City Manager shall take into account the overall design of the grantee's system, including technical requirements and costs, as well as other factors deemed appropriate. The City shall not in any manner be responsible for any costs incurred by the grantee in placing the grantee's facilities underground.

- (d) The grantee may install or erect service connection lines from the grantee's transmission cable over, under or across a subscriber's property. The type and location of said transmission cable shall be subject to the approval of the City Manager. In granting or denying such approval, the City Manager shall take into account the overall design of the grantee's system, including technical requirements and costs, as well as other factors deemed appropriate. All such service connection lines shall be maintained by the grantee.
- (e) The granting of a franchise pursuant to this chapter shall not be construed as permission or authority to enter on, occupy, or otherwise utilize private property outside of public utility easements without the express consent of the owner or agent in possession thereof.

#### SEC. 11-4.27. REMOVAL AND ABANDONMENT OF PROPERTY OF GRANTEE.

- (a) In the event that the use of any part of the cable system is discontinued for any reason for a continuous period of twelve (12) months, or in the event such system or property has been installed in any street or public place without complying with the requirements of the grantee's franchise or this chapter, or the franchise has been terminated, canceled or has expired, the grantee shall promptly, upon being given ten (10) days' notice remove from the streets or public places all such property and poles of such system other than any which the City Manager may permit to be abandoned in place. In the event of removal, the grantee shall promptly restore the street or other area from which the property has been removed to a condition satisfactory to the City Manager.

- (b) Any property of the grantee remaining in place sixty (60) days after the termination or expiration of the franchise shall be considered permanently abandoned. The City Manager may extend the time not to exceed an additional thirty (30) days.
- (c) Any property of the grantee to be abandoned in place shall be abandoned in a manner as the City Manager shall prescribe.
- (d) Subject to the provisions of any utility joint use attachment agreement, upon permanent abandonment of the property of the grantee in place, the property shall, at the option of the City, become that of the City, and, if the City exercises the option, the grantee shall submit to the Council an instrument in writing, to be approved by the City Attorney, transferring to the City the ownership of the property.

#### SEC. 11-4.28. CHANGES REQUIRED BY PUBLIC IMPROVEMENTS.

The grantee shall, at its expense, protect, support, temporarily disconnect, relocate in the same street or other public place, or remove from the street or other public place any property of the grantee when required by the City Manager by reason of traffic conditions, public safety, street vacation, freeway and street construction, change or establishment of street grade, installation of sewers, drains, water pipes, power lines, signal lines and tracks or any other type of structures or improvements by public agencies; provided, however, that the grantee shall in all such cases have the privileges and be subject to the obligations to abandon any property of the grantee in place, as provided in Section 11-4.27.

#### SEC. 11-4.29. FAILURE TO PERFORM STREET WORK.

Upon failure of the grantee to commence, pursue or complete any work required by law or by the provisions of this chapter or by its franchise to be done in any street or other public place, within the time prescribed, and to the satisfaction of the City Manager, the City Manager may cause such work to be done; and the grantee shall pay to the City the cost in the itemized amounts reported by the City Manager to the grantee within thirty (30) days after receipt of the itemized report.

#### SEC. 11-4.30. EMERGENCY USE OF SYSTEM.

In the case of any emergency or disaster, the grantee shall, upon request of the City Manager, make available its facilities to the City for emergency use during the emergency or disaster period.

SEC. 11-4.31. EXCLUSIVE USE OF TELEPHONE FACILITIES.

When and in the event that a grantee constructs, operates and maintains a cable system exclusively through telephone company facilities constructed, operated and maintained pursuant to a state-granted telephone franchise and offers proof satisfactory to the Council that in no event during the life of such franchise shall the grantee make any use of the streets independently of such telephone company facilities, said grantee shall be required to comply with all of the provisions hereof as a "licensee" and in such event whenever the term "grantee" is used herein it shall be deemed to mean and include "licensee."

SEC. 11-4.32. RIGHTS RESERVED TO THE CITY.

- (a) Nothing herein shall be deemed or construed to impair or affect, in any way, to any extent, the right of the City to acquire the property of the grantee, either by purchase or through the exercise of the right of eminent domain, at a fair and just value as a going business, which shall not include any amount for the franchise itself or for any of the rights or privileges granted; and nothing herein contained shall be construed to contract away or to modify or abridge, either for a term or in perpetuity, the City's right of eminent domain.
- (b) There is hereby reserved to the City every right and power which is required to be herein reserved or provided by any charter, law, ordinance or code of the City; and the grantee, by its acceptance of any franchise, agrees to be bound thereby and to comply with any action or requirements of the City in its exercise of such rights or power, heretofore or hereafter enacted or established.
- (c) Neither the granting of any franchise nor any of the provisions contained herein shall be construed to prevent the City from granting any identical, or similar, franchise to any other person, firm or corporation, within all or any portion of the City.
- (d) There is hereby reserved to the City the authority, after the holding of a public hearing, to amend any section or part of this chapter so as to require reasonable additional bonding or insurance on the part of the grantee.
- (e) Neither the granting of any franchise nor any provision hereof shall constitute a waiver or bar to the exercise of any governmental right or power of the City.
- (f) The Council may do all things which are necessary in the exercise of its jurisdiction under this chapter and may determine any question

of fact which may arise during the existence of any franchise granted hereunder. The City Manager is hereby authorized and empowered to adjust, settle or compromise any controversy or charge arising from the operations of any grantee under this chapter, either on behalf of the City, the grantee or any subscriber, in the best interest of the public. Either the grantee or any member of the public who may be dissatisfied with the decision of the City Manager and the Council may adjust, settle or compromise any controversy or cancel any charge arising from the operations of any grantee or from any provision of this chapter.

The grantee may appeal any determination of the Council under this chapter or any franchise granted hereto, to a court of competent jurisdiction.

- (g) The City shall have a lien against all property of the grantee located within the City against payment of all penalties, claims and taxes due the City under its franchise.

#### SEC. 11-4.33. INDEMNIFICATION AND INSURANCE REQUIREMENTS.

- (a) The grantee shall indemnify and save harmless the City, its officers, agents, and employees, from and against any and all liability, claims, demands, actions, suits and proceedings by others, including reasonable attorney's fees, for loss or damage for bodily injury, sickness and disease, including death resulting therefrom, and for property damage, occasioned by the construction, operation or maintenance of the grantee's system under this chapter and its franchise granted hereunder.
- (b) The grantee shall indemnify and save harmless the City, its officers, agents and employees, from and against any and all liability claims, demands, actions, suits, and proceedings by others, and against any loss, cost, expense and damages resulting therefrom, including reasonable attorney's fees, arising out of the construction, operation or maintenance of the grantee's system or failure by the grantee to secure consents from the owners, authorized distributors or licensees of programs to be delivered by the grantee's cable system.
- (c) The grantee shall at all times during the existence of its franchise granted hereunder maintain in full force and effect at its own cost and expense a comprehensive general liability policy, including but not limited to premises, operations, products (completed operations), contractual, and either Broadcasters Liability or Personal Injury Liability, protecting the City and all persons against any loss or claim for damages for bodily injury, sickness or

disease, including death resulting therefrom, and for personal injury, including but not limited to libel, slander and errors and omissions, and for any and all property damage, occasioned by the operations of grantee under this chapter and its franchise granted hereunder. The policy shall provide One Million Dollars (\$1,000,000.00) combined single limits of liability per occurrence and Two Hundred Fifty Thousand Dollars (\$250,000.00) property damage per occurrence.

- (d) The grantee shall at all times during the existence of its franchise granted hereunder maintain an automobile public liability policy carrying a minimum of Five Hundred Thousand Dollars (\$500,000.00) combined single limits per occurrence for bodily injury, sickness and disease, including death resulting therefrom, and Fifty Thousand Dollars (\$50,000.00) for any and all property damage.
- (e) The grantee shall, concurrently with the filing of an acceptance of award of any franchise granted under this Chapter, file with the City Clerk Certificates of Insurance evidencing the above required insurance policies. Said certificates shall be in form and content satisfactory to the City Attorney. The Certificates of Insurance shall contain contractual liability endorsements specially extending the policies to cover the liability assumed by the grantee under this Chapter and its franchise granted hereunder. Said certificates shall also contain provisions that the City shall receive written notice thirty (30) days in advance of any cancellation, nonrenewal or any reduction in the required coverages.

#### SEC. 11-4.34. SUPERVISION OF CABLE SYSTEM FRANCHISES.

- (a) In order to serve and maintain the City's continuing regulatory jurisdiction and supervision over the operation of outstanding cable franchises, the City Manager shall have general supervisory authority over all outstanding cable franchises, including, without limitation, the authority:
  - (1) To make recommendations to the Council on standards and guidelines for the governing of cable system franchises and for amendments to this chapter.
  - (2) To make written recommendations to the Council concerning the disposition of specific applications for the granting or renewal of cable franchises, each recommendation to be accompanied by a summary of the documents and other evidence considered and of the reasons for the recommendation.

- (3) To make written recommendations to the Council on applications for subscriber rate adjustments according to procedures prescribed in this chapter.
  - (4) To resolve subscriber complaints which have not been resolved by otherwise prescribed procedures.
  - (5) To monitor the use of public access and local origination channels and to promote citizen participation in and full local use of said channels.
  - (6) To review and audit all reports and other material required to be maintained and kept available by a cable grantee, to review a cable grantee's operating rules and subscriber service contracts.
  - (7) To conduct, or have conducted, performance evaluations of cable systems.
  - (8) To initiate investigations and make appropriate recommendations to a cable grantee and to the Council as to the grantee's performance under its franchise.
- (b) The Council hereby delegates to the City Manager all necessary and proper powers to carry out his prescribed duties and responsibilities under this chapter. The City Manager shall have no powers, duties or responsibilities with respect to the censorship of program content, whether as to off-air broadcast carriage or locally originated programming.

#### SEC. 11-4.35. SEVERABILITY.

If any section, subsection, sentence, clause or phrase of this chapter is for any reason held illegal, invalid or unconstitutional by the decision of any court of competent jurisdiction, or of any federal or state agency with preemptive powers, such decision shall not affect the validity of the remaining portions thereof. The Council hereby declares that it would have enacted this chapter and each section, subsection, sentence, clause or phrase hereof, irrespective of the fact that any one or more of such sections, subsections, sentences, clauses, or phrases be declared illegal, invalid or unconstitutional. The invalidity of any portion of this chapter shall not abate, reduce or otherwise affect any consideration or other obligation required of the grantee of any franchise awarded hereunder. If any portion of this chapter, which was a material consideration to the granting of any franchise, is invalidated for any reason, it will be subject to renegotiation with the grantee or grantees, subject so such guidance as may have been afforded by the invalidating authority.

SECTION 2. EFFECTIVE DATE. This ordinance shall go into effect and be in full force and operation from and after December 1, 1984.

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 October, 1984, by Councilmember Whiteside, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Sutton, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Bright, Lang, Muratore, Patterson, Sutton,  
Whiteside, Mayor Mensinger

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:


  
PEGGY MENSINGER, Mayor

ATTEST:

By   
NORRINE COYLE, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
ELWYN L. JOHNSON, City Attorney

Ord. No. 2292-C.S.

**FINAL ADOPTION CLAUSE**

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 23rd day of October, 1984, Councilmember Whiteside moved its final adoption, which motion being duly seconded by Councilmember Lang, was upon roll call carried and the ordinance adopted by the following vote:

- AYES:** Councilmembers: Bright, Lang, Muratore, Patterson, Sutton, Whiteside, Mayor Mensinger.
- NOES:** Councilmembers: None
- ABSENT:** Councilmembers: None

APPROVED

Peggy Mensinger  
MAYOR PEGGY MENSINGER

ATTEST:

Morrine Coyle  
MORRINE COYLE, City Clerk

EFFECTIVE DATE: November 22, 1984

ORDINANCE NO. 2293-C.S.

AN ORDINANCE GRANTING TO CAPITAL CITIES CABLE, INC., A NONEXCLUSIVE FRANCHISE TO CONSTRUCT, OPERATE AND MAINTAIN A CABLE COMMUNICATION SYSTEM WITHIN THE CITY OF MODESTO

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

SECTION 1. DEFINITIONS.

Unless it shall be apparent from the context that they have a different meaning, the following words and phrases shall have the following meanings:

- A. "GRANTEE" shall mean Capital Cities Cable, Inc.
- B. "FRANCHISE DOCUMENTS" shall mean and include all of the following:
  - (1) Article XIV of the Charter of the City of Modesto.
  - (2) Chapter 4 of Title XI of the Modesto Municipal Code, as amended by Ordinance No. 2292-C.S. or as it may hereafter be amended.
  - (3) This ordinance.
  - (4) The Acceptance of Franchise form signed by Grantee.

SECTION 2. AUTHORITY.

This ordinance is enacted pursuant to the authority provided in, and all of the provisions, terms and conditions of Article XIV of the Charter of the City of Modesto and Chapter 4 of Title XI of the Modesto Municipal Code.

SECTION 3. PERMITTED USES.

The cable communications system herein franchised shall be used and operated solely and exclusively for the purpose expressly authorized by this ordinance and Chapter 4 of Title XI of the Modesto Municipal Code, as amended by Ordinance No. 2292-C.S. or as it may hereafter be amended, and no other purpose whatsoever.

#### SECTION 4. GRANT OF FRANCHISE.

Pursuant to the provisions of Chapter 4 of Title XI of the Modesto Municipal Code, as amended by Ordinance No. 2292-C.S. or as it may hereafter be amended, a nonexclusive franchise to construct, operate and maintain a cable communications system within the City of Modesto, for a term of fifteen (15) years commencing on the effective date of this ordinance, is hereby granted to Grantee with all the rights and privileges and subject to each and all of the terms, conditions and limitations as set forth in the Franchise Documents.

The area included within the nonexclusive franchise granted hereby includes all areas within the city limits of the City of Modesto, and also includes all territory hereafter annexed, except that the City Council reserves the right to exclude such additional territory from the franchise area at the time it is annexed to the City.

#### SECTION 5. PERIODIC FRANCHISE REVIEW.

At the beginning of the third, sixth, ninth and twelfth years of the term of this franchise, the City and Grantee shall meet to review the provisions of the Franchise Documents. Both parties may propose changes to the Franchise Documents. Any changes will require approval of both parties.

#### SECTION 6. SERVICE REQUIREMENTS.

In areas hereafter added to Grantee's franchise area, Grantee shall provide service within one hundred twenty (120) days after the City provides notice to Grantee that the area has become a part of Grantee's franchise

area. The City Manager may extend this time for undeveloped or remote, relatively inaccessible areas.

In areas where Grantee's system has been installed, if service is not provided to a new subscriber for a single-family dwelling within fifteen (15) days after an application for service is received in Grantee's Modesto office, accompanied by the applicable installation charges, Grantee shall provide the subscriber with free service for a period of six (6) months.

In areas where Grantee's system has been installed, if service is not provided to a new subscriber for a multiple-family dwelling within forty-five (45) days or any extension thereof granted by the City Manager, after an application for service is received in Grantee's Modesto office, accompanied by the applicable installation charges, Grantee shall provide the subscriber with free service for a period of six (6) months.

In areas where Grantee's system must be extended to serve a subscriber in its franchise area, the system shall be constructed, installed and made operable so that service shall be provided either within sixty (60) days after an application for service is received in Grantee's Modesto office, accompanied by the applicable installation charges, or within one hundred twenty (120) days after the City provides notice to Grantee that the area in which the subscriber is located has become a part of Grantee's franchise area, whichever is the later date. If service is not provided within this required time, Grantee shall provide the subscriber with free service for a period of six (6) months.

SECTION 7. TIERS, RATES, AND CHARGES.

The Grantee is exempted from the provisions of Sections 11.4.14 and 11-4.15 of the Modesto Municipal Code, as added by Ordinance No. 2292-C.S., except that in consideration of that exemption and the granting of this franchise, Grantee agrees to the following:

- A. The City Manager retains the authority to determine what are "unusual circumstances" or "remote, relatively inaccessible subscribers".
- B. A level of service to be called "antenna" service shall be offered to all subscribers. Antenna service shall consist at a minimum of all local off-the-air television broadcast channels, the local higher education channel and the public access and local origination channels. Grantee has also indicated its intent to carry KQED as part of antenna service.

Grantee shall provide the City a minimum of sixty (60) days advance notice and all subscribers a minimum of thirty (30) days advance notice, of any changes in antenna service. If a service change is proposed, the replacement service will be an equivalent or better service. Within ten (10) days of the notice of a proposed change, the City Manager shall determine if the replacement service is equivalent or better and notify the Grantee. The City Manager's decision may be appealed to the Council by any party. The Council's decision shall be final, subject to the right of judicial appeal.

Upon commencement of the term of this franchise, maximum monthly service charges for antenna service shall be:

<u>First Outlet</u>	<u>Second Outlet</u>
\$ 8.95	\$2.00

These rates shall remain in effect until six (6) months after the completion of system reconstruction as required by Section 9 of this ordinance. For purposes of this franchise, system reconstruction shall be considered complete once service is available to ninety-five (95) percent of all subscribers. If completion of reconstruction is delayed by causes beyond the reasonable control of the Grantee, the City Council may, at the request of Grantee, modify the time during which these rates are guaranteed.

Grantee shall provide the City a minimum of sixty (60) days advance notice and all subscribers a minimum of thirty (30) days advance notice of any changes in antenna service rates or charges.

Grantee shall make arrangements so that subscribers can pay their monthly service charges at those pay stations where the City of Modesto water and sewer service charges are payable.

Subscribers shall receive a ten (10) percent discount on service charges paid one year in advance.

Upon subscriber request, Grantee shall provide refund of service charges on a pro rata basis for system outages of greater than twenty-four (24) hours.

C. Grantee has provided the City with the following information regarding additional services it intends to provide, although based on recent court and Federal Communications Commission rulings the extent of these services and the terms on which they are offered are not subject to City regulation.

1. "Basic" service will consist of a minimum of twenty-seven (27) channels. It will include all the antenna service channels and a minimum of fifteen (15) channels with distant broadcast or non-premium satellite services. Each of these fifteen (15) channels will be programmed a minimum of twelve (12) hours per day.

Grantee will provide the City a minimum of sixty (60) days advance notice and all subscribers a minimum of thirty (30) days advance notice, of any changes in basic service. If a service change is proposed, the replacement service will be a comparable service.

2. "Premium" service will consist of individual pay services or tiered pay services.
3. FM radio service
4. Grantee intends to provide these services at the following rates:

	<u>First Outlet</u>	<u>Second Outlet</u>
Basic service	\$ 10.95	\$ 2.00
Premium service	11.50 per channel 5.00 per tier	5.00 per channel 5.00 per tier
Remote converter	3.00	3.00
F. M.	1.00	0.50

These rates will remain in effect until six (6) months after the completion of system reconstruction. For purposes of this franchise, system reconstruction is considered complete once service is available to ninety-five (95) percent of all subscribers.

Grantee will also provide the City a minimum of sixty (60) days advance notice and all subscribers a minimum of thirty (30) days advance notice of any changes in rates or charges.

Subscribers will receive a ten (10) percent discount on service charges paid one year in advance and upon subscriber request, refund of service charges on a pro-rata basis for system outages greater than twenty-four (24) hours.

#### SECTION 8. FRANCHISE FEE.

As consideration for the granting of this franchise with its rights and privileges, Grantee shall pay to the City of Modesto a sum equal to three percent (3%) of the gross system receipts of Grantee, in accordance with the provisions of Chapter 4 of Title XI of the Modesto Municipal Code, as amended by Ordinance No. 2292-C.S. Grantee shall report gross system receipts on either the accrual or cash receipts basis of accounting.

Franchise fee payments shall be made within fifteen (15) days after the end of each calendar quarter. The quarterly payments shall be equal to one-fourth (1/4) the previous year's total fees with an adjusted final quarter payment.

Grantee shall file with the City Manager within ninety (90) days after the expiration of Grantee's fiscal year or portion thereof during which such franchise is in force, financial statements prepared in accordance with generally accepted accounting principles and in sufficient detail so as to disclose basic items of revenue and expense. At a minimum, revenue detail

will reflect income for the following categories from the City of Modesto and from all other jurisdictions served by the system: basic subscriber services, premium subscriber services, other (advertising, leasing, etc.). At a minimum, expense detail will reflect the following: direct operating costs, general, selling and administrative costs, interest and depreciation. The income statement should also reflect the net after tax income for the period covered.

In addition, if Grantee reports gross system receipts on the cash receipts basis of accounting, Grantee will provide a reconciliation of such gross system receipts reported on the cash receipts basis of accounting to the revenue from the City of Modesto as reported in the annual financial statements. At a minimum, the reconciliation will include the following revenue categories: basic subscriber services, premium subscriber services, and other (advertising, leasing, etc.).

For the initial year during which the franchise is effective and for every fourth year thereafter, the financial statements provided must be certified by an independent certified public accountant.

A delinquency charge of one and one-half (1.5) percent per month on the unpaid balance may be collected by the City on any franchise fee payments overdue by ten (10) days or more.

#### SECTION 9. TIMING, REVIEW AND NOTICE OF CONSTRUCTION.

Within ninety (90) days of the effective date of this ordinance, Grantee shall provide the City with a timetable for system reconstruction.

Reconstruction shall begin within twelve (12) months of the commencement of

the term of this franchise, and shall be completed within thirty-six (36) months of the commencement of the term of this franchise. In the event of delays in reconstruction caused by events not within the reasonable control of the Grantee, the City Council may, at the request of Grantee, extend the time for completion of reconstruction.

Within ninety (90) days of the commencement of the term of this franchise, grantee shall submit to the City Manager a preliminary system reconstruction plan for review. The City Manager shall comment on said plan within thirty (30) days following submittal . The final reconstruction plan shall at a minimum meet all of the requirements of the franchise documents and shall be mutually agreed upon by the Grantee and City Manager.

Grantee shall provide advance notice to residents in areas where reconstruction work will occur and to all subscribers of potential service outages due to system reconstruction.

#### SECTION 10. SYSTEM DESIGN.

The system shall be comprised of two cables, one serving all system subscribers (primary network) and one serving locations specified below (secondary network).

The downstream portion of the primary network shall be capable of a minimum of 450 MHz (carriage of a minimum of 58 Class I television channels, full FM broadcast band and adequate bandwidth for pilot carriers or such auxiliary signals as required for system control). The reverse or upstream portion of the primary network shall be capable of a minimum carriage of four (4) Class I television channels on any network trunk. The headend shall be

equipped with an automated switching capability to provide an effective upstream capacity equivalent to a multiple of the four (4) upstream channels by the number of network trunks. All amplifiers shall be spaced for 500 MHz bandwidth capacity.

The primary network shall be designed for conversion to a fully two-way, interactive addressable system with system status monitoring capability. At the periodic review at the beginning of the sixth (6th) year of this franchise, the City and Grantee shall review the economic feasibility of converting the primary network to fully two-way.

The secondary network shall be a fully two-way, interactive addressable system with system status monitoring. The downstream portion of the secondary network (223-450 MHz) shall be capable of a minimum carriage of 37 Class I television channels and adequate bandwidth for pilot carriers or such auxiliary signals as required for system control. The reverse or upstream portion of the secondary network (5-174 MHz) shall be capable of a minimum carriage of 26 Class I television channels. All amplifiers shall be spaced for 500 MHz bandwidth capacity.

The secondary network at a minimum shall service the following locations:

- A. All public and not-for-profit private schools and school administration buildings through grade 12
- B. Stanislaus County Department of Education Instructional Materials Center
- C. Modesto Junior College East Campus headend, auditorium, gym and football stadium

- D. Modesto City Hall, City Hall annex, satellite offices, corporation yard, wastewater treatment plant, Police Station and airport
- E. All Modesto City fire stations, the City's fire training facility and the City's Emergency Operations Center
- F. Stanislaus County Administration Building and Courthouse, Stanislaus County Center No. 2, Stanislaus County Center No. 3, Stanislaus County Center No. 4, and Stanislaus County Center No. 5
- G. Modesto-Stanislaus Library
- H. Doctors Medical Center, Memorial Hospital North, Modesto City Hospital and Scenic General Hospital

The secondary network shall be expanded at no charge to equivalent organizations and locations to those listed above as they are identified, constructed or as the franchise area expands. The secondary network shall be expanded upon request to serve uses and locations other than or not equivalent to those listed above at the cost of labor and materials. The determination as to equivalent organizations and locations shall be made by Grantee with right of appeal to the City Manager.

No charge for use of the secondary network shall be made for those organizations and locations listed above. The Grantee may require, though, an operational agreement to be entered into by all users. Grantee may charge for use of the secondary network by organizations and locations other than or not equivalent to those listed above.

#### SECTION 11. BANDWIDTH ALLOCATION.

- A. On the upstream portion of the primary network, a minimum of two (2) channels (T-8 and T-9) shall be reserved for public uses. Allocation of this bandwidth shall be by the City Manager. On the downstream portion of the primary network, a minimum of four (4)

channels shall be made available, on a priority basis, for the following public uses:

1. One (1) public access channel which complies with all applicable FCC rules and regulations. Access to this channel shall be from the public access and local origination programming studio required by this franchise. A complete record of the names and addresses of all persons or groups requesting access time shall be made and retained for a period of two (2) years. The public access channel shall be included in antenna and basic service. The public access channel may be programmed for other purposes by the Grantee when not in use for public access.
2. One (1) local origination programming channel. Access to this channel shall be from the public access and local origination programming studio required by this franchise. This channel shall be included in antenna and basic service.
3. Two (2) higher education channels. Primary access to one channel shall be from the East Campus of the Modesto Junior College at the campus headend facilities and at the Grantee's headend. Grantee shall provide Modesto Junior College with direct access to this channel by automatic remote switching capability from the campus headend. All equipment and inter-campus and intra-campus cabling shall be the responsibility of Modesto Junior College. Programming and scheduling of this channel shall be coordinated by Modesto Junior College. This channel shall be included in antenna and basic service.

Primary access to the second channel shall be from the Grantee's headend. Programming and scheduling of this channel shall be coordinated by Stanislaus State College. This channel shall be included in basic service. Grantee shall take the steps necessary to make possible a microwave link from the College to the Grantee's headend. The College shall provide the microwave reception equipment.

- B. On the secondary network, one-half (1/2) of all upstream and one-half (1/2) of all downstream channels shall be made available, on a priority basis, for public use including the following:

1. One (1) upstream and one (1) downstream channel for the City of Modesto. Primary access to this channel shall be from City Hall and Fire Station No. 1. Grantee shall provide direct access for the City to this channel by automatic remote

switching capability from City Hall and Fire Station No. 1. Programming and scheduling of this channel shall be the responsibility of the City.

2. Three (3) downstream channels for use of school districts. Access to these channels shall be from the Instructional Materials Center at the Office of the County Superintendent of Schools. Programming and scheduling of these channels is the responsibility of the County Superintendent of Schools.
3. The remaining public downstream and upstream channels shall be reserved for other public uses. Allocation shall be by the City Manager.

## SECTION 12. TECHNICAL STANDARDS.

A. Grantee shall comply with the Federal Communications Commission (FCC) Rules and Regulations, Part 76, Sub-part K (Technical Standards). However, to accommodate interactive and other state-of-the-art services as they become technically and economically feasible, augmentation of FCC standards, as required herein, are considered necessary. To meet system design objectives, the following referenced specifications will also apply, unless exception is agreed upon between the City and the Grantee.

1. Applicable City, County, State and National/Federal Codes and Ordinances and regulations.:
2. Applicable Utility joint pole attachment practices;
3. National Electrical Safety Code, NFPA No. 70;

The system shall be designed and constructed to meet all applicable technical performance specifications and standards over a temperature range of + 50 degrees F from the mean temperature of the Modesto area, and to function in all expected environmental extremes.

Performance standards definitions and measurements shall be in compliance with National Cable Television Association (NCTA) Manual 741: Signal Leakage and Interference Control, and NCTA Standard 008-0477: Standards of Good Engineering Practices for Measurements on Cable Television Systems.

B. The technical performance specifications contained in the following subsections, above and beyond the FCC minimum specifications, are provided as minimum standards for system performance in the

provision of interactive services, when offered. The combined forward trunk and distribution system should deliver signals to each and every subscriber's receiver that will meet or exceed the technical specifications, listed below, at the local mean temperature + 50 degrees. This should include the effects of drop cables, interior splits, and any terminal equipment such as descramblers and set top converters.

C. Primary network forward system specifications:

- |  |  |
|--|--|
| 1. Frequency response across any allocated TV channel  | +/- 2 DB (i)                                   |
| 2. Peak to Valley, any 6 MHz video channel, cable slope normalized   | +/- 1.5 DB                                     |
| 3. Peak to Valley, 54-450 MHz, slope normalized  | N/10 + 1 (Trunk)<br>N/10 + 2<br>(Distribution) |
| 4. Carrier to noise, 4 MHz bandwidth   | 42 DB  |
| 5. Cross modulation ratio  | 50 DB  |
| 6. Carrier to hum ratio  | 2.5%   |
| 7. Carrier to composite triple beat  | 50 DB  |
| 8. Carrier to discrete triple beat (CW carriers)   | 55 DB  |
| 9. Carrier to second order beat  | 60 DB  |
| 10. Chrominance-luminance delay  | +200 NS  |
| 11. Carrier to echo ratio (greater than 2 microseconds displacement)   | 40 DB  |
| 12. Differential gain  | 2.0 DB   |
| 13. Differential phase   | 3 degrees                                      |
| 14. Subscriber signal levels--the signal level delivered to the subscriber's receiver, except as modified by peak to valley specifications | 0 DBMV minimum                                 |

- 15. Level differential between adjacent channels 3 DB
- 16. FM levels shall be essentially uniform and carried at approximately the same level as the channel 6 sound carrier
- 17. Sufficient isolation between subscribers shall be provided to prevent interference between terminal equipment and other portions of the system 20 DB
- 18. Video carrier to sound carrier ratio 15 DB +/- 2 DB
- 19. RF radiation in compliance with FCC part 76.605

NOTE: (i) Frequency response of headend/hub processors or modulators to be +/- 2.0 DB from -.5 MHz to +3.75 MHz reference to picture carrier.

D. The reverse portion of the primary network should be capable of a minimum of 5 to 30 MHz in bandwidth, with return signals from each subscriber and institutional signal source to the end of any area in accordance with the specifications listed below:

- 1. The system capability shall include transmission of Color video, Black and White video, audio, and both low and high speed data, whether analog or digital.
- 2. No more than 50 dBmV output level should be required out of any customer modem to meet the system specifications. FCC rules may force this down in coming years.
- 3. Where applicable, the end of system specifications should include the effects of any signal reprocessing equipment necessary to achieve forward transmission.
- 4. For Class I signals, the signal delivered to the subscriber's TV receiver, after being transmitted to the headend/hub, processed and retransmitted down a forward channel should meet the specifications of Section C above.
- 5. Primary network reverse system specifications:
  - a. Peak to valley response, 5-30 MHz X/10 + 2 DB (i)
  - b. Peak to valley, any 6 MHz +/- 1.5 DB

- c. Carrier to noise ratio, 4 MHz 45 DB
- d. Cross modulation ratio 60 DB
- e. Carrier to hum ratio 2.5%
- f. Carrier to composite beat ratio 60 DB
- g. Carrier to discrete triple beat ratio 60 DB
- h. Carrier to second order beat ratio 60 DB
- i. Maximum subscriber modem output level 50 DBMV
- j. Carrier to echo ration (greater than 2 microseconds displacement) 40 DB
- k. Isolation between subscribers 20 DB

NOTE: (i)

"X" is the number of amplifiers in cascade, including line extenders  
To meet the above reverse system specifications it may be necessary to incorporate the following measures:

(ii)

- (a) Trunk/bridger stations equipped with code operated switch or equivalent to control reverse signal coming from feeder lines onto the trunk.
- (b) Trunk split locations equipped with code operated switch or equivalent to control reverse signal coming from either of the trunk lines.
- (c) Subscriber drops terminated by proper cable home terminal devices to maintain cable system integrity from outside signal ingress, noise, and interference.

The above system configuration, as determined by the present state-of-the-art, shall ensure the system noise and interference contributions from reverse trunk stations, reverse feeder stations, and subscriber home terminals, other than those through which upstream signal has to travel to get to the headend, are stopped from reaching the headend.

E. Secondary network forward system specifications:

1. Frequency response across any allocated TV channel +/- 2 DB (i)
2. Peak to valley, any 6 MHz video channel, cable slope normalized +/-1.5 DB
3. Peak to valley, 223-450 MHz, slope normalized N/10 + 1 (Trunk)  
N/10 + 2 (Distribution)
4. Carrier to noise, 4 MHz bandwidth 42 DB
5. Cross modulation ratio 50 DB
6. Carrier to hum ratio 2.5%
7. Carrier to composite triple beat 50 DB
8. Carrier to discrete triple beat (CW carriers) 55 DB
9. Carrier to second order beat 60 DB
10. Chrominance-luminance delay +200 NS
11. Carrier to echo ratio (greater than 2 microseconds displacement) 40 DB
12. Differential gain 2.0 DB
13. Differential phase 3 degrees
14. Subscriber signal levels--the signal level delivered to the subscriber's receiver, except as modified by peak to valley specifications 0 DBMV minimum
15. Level differential between adjacent channels 3 DB
16. Sufficient isolation between subscribers shall be provided to prevent interference between terminal equipment and other portions of the system 20 DB

17. Video carrier to sound carrier ratio                    15 DB +/- 2 DB
18. RF radiation in compliance with FCC part 76.605

NOTE: (i) Frequency response of headend/hub processors or modulators to be +/- 2.0 DB from -.5 MHz to +3.75 MHz reference to picture carrier.

F. Secondary network reverse system specifications:

1. Peak to valley response, 5-174 MHz                    X/10 + 2 DB (i)
2. Peak to valley, any 6 MHz                                +/- 1.5 DB
3. Carrier to noise ratio, 4 MHz                            45 DB
4. Cross modulation ratio                                    60 DB
5. Carrier to hum ratio                                        2.5%
6. Carrier to composite beat ratio                        60 DB
7. Carrier to discrete triple beat ratio                60 DB
8. Carrier to second order beat ratio                    60 DB
9. Maximum subscriber modem output level            50 DBMV
10. Carrier to echo ration (greater than 2  
microseconds displacement)                            40 DB
11. Isolation between subscribers                        20 DB

NOTE: (i) "X" is the number of amplifiers in cascade, including line extenders

(ii) To meet the above reverse system specifications it may be necessary to incorporate the following measures:

- (a) Trunk/bridger stations equipped with code operated switch or equivalent to control reverse signal coming from feeder lines onto the trunk.
- (b) Trunk split locations equipped with code operated switch or equivalent to control reverse signal coming from either of the trunk lines.

- (c) Subscriber drops terminated by proper cable home terminal devices to maintain cable system integrity from outside signal ingress, noise, and interference.

The above system configuration, as determined by the present state-of-the-art, shall ensure the system noise and interference contributions from reverse trunk stations, reverse feeder stations, and subscriber terminals, other than those through which upstream signal has to travel to get to the headend, are stopped from reaching the headend.

- G. For channels interchanged between other cable communication systems and Grantee's system, system technical performance measurements are to be determined by applying the combined contribution of distortion of all pertinent components of the worst case (temperature and location) signal path. The combined contribution should meet or exceed the specified technical specifications at the termination of the worst case signal path the channel could encounter.

At the interconnect point, the party delivering a channel or channels should provide signals, transported either in the forward or reverse system to the inter-connect point, that meet or exceed the following specifications at the local mean temperature  $+50$  degrees F. The signals should be in compliance as stated at a point which best represents the most direct signal path between the party providing the signal and that party receiving the signal. Only one such inter-connect point should be specified for all signal exchanges.

Interconnect specifications:

- |  |            |
|--|------------|
| 1. Frequency response, across any allocated TV channel | +/- 1.5 DB |
| 2. Carrier to noise, 4 MHz bandwidth                   | 45 DB      |
| 3. Cross modulation ratio                              | 57 DB      |
| 4. Carrier to hum ratio                                | 2.5%       |
| 5. Carrier to composite triple beat ratio              | 60 DB      |
| 6. Carrier to discrete triple beat (CW carriers) ratio | 63 DB      |
| 7. Carrier to second order beat ratio                  | 66 DB      |

- |     |   |                  |
|-----|---|------------------|
| 8.  | Differential group delay at 58.83 MHz<br>as referenced to 55.25 MHz | +/- 200 NS       |
| 9.  | Carrier to echo ratio (greater than 2<br>microseconds displacement) | 46 DB            |
| 10. | Differential gain   | 1.0 DB           |
| 11. | Differential phase  | 2.0 degrees      |
| 12. | Signal level at 1st amplifier input                                 | +10 DBMV minimum |
- H. During system reconstruction, completed trunks shall meet the above specifications. Trunks that have not been fully reconstructed shall meet the technical standards in Section 11-4.17 of the Modesto Municipal Code, as it was in effect on November 30, 1984.

SECTION 13. PUBLIC ACCESS AND LOCAL ORIGINATION PROGRAMMING.

Grantee shall provide a new local origination programming and public access studio at the headend complete with remote production capabilities and equipment. Grantee agrees that the studio shall be used exclusively for public access and local origination programming purposes unless otherwise authorized by the City Manager.

Within ninety (90) days of the commencement of the term of this franchise, Grantee shall provide the City with detailed plans and a timetable for design and construction. The preliminary design, final construction plans and equipment list shall be mutually agreed upon by the Grantee and City Manager. The studio shall be operable and staffed no later than the completion of system reconstruction. The operation of the studio shall be in accordance with an operational plan mutually agreed upon by the Grantee and City Manager.

Grantee agrees to staff the studio with a minimum of four (4) full time engineering and professional employees (excluding administrative support and maintenance employees) who have as their sole responsibility the production and administration of all local programming and public access.

Within twelve (12) months of the commencement of the term of this franchise, Grantee shall provide a minimum of ten (10) hours per week of original locally originated programming (exclusive of public agency meetings). No later than six (6) months after the public access/local origination studio becomes operable, Grantee shall provide a minimum of fifteen (15) hours per week of original locally originated programming (exclusive of public agency meetings).

Grantee agrees to pay all operating costs of the studio.

Attached as Exhibit "A" is a letter dated April 30, 1984, from the Grantee which outlines Grantee's initial proposal to satisfy the above requirements. This Exhibit outlines the preliminary proposal for the above requirement, but is not the final, mutually agreed upon plan.

Prior to operation of the studio required by this franchise, Grantee shall provide and maintain a studio and portable production system in accordance with Section 11-4.17 of the Modesto Municipal Code, as it was in effect on November 30, 1984.

The City Council shall appoint an advisory committee to advise the City on local origination programming matters and to provide support, guidance, and recommendations to the Grantee in local programming efforts.

#### SECTION 14. SERVICE TO PUBLIC BUILDINGS AND SCHOOLS.

Upon written request, Grantee shall provide, without charge, basic service to all offices, classrooms, libraries and multi-purpose buildings in all public and not-for-profit private elementary, senior elementary and junior high schools within the franchise area. At all public and not-for-profit private high schools, upon written request, Grantee shall provide, without charge, basic service to all offices, classrooms, libraries, gyms, auditoriums, and stadiums.

Grantee shall provide, without charge, one basic service to all City fire stations, police stations, recreation centers, City Hall and other public buildings as requested by the City Manager.

All labor and equipment necessary to provide these services shall be the responsibility of the Grantee. All other equipment shall be the responsibility of the public agency or school.

For unusual circumstances or remote, relatively inaccessible locations, service may be made available on the basis of cost of materials, labor and easements (if required). The decision as to what are unusual circumstances or remote, relatively inaccessible locations shall be made by the City Manager.

Once service is provided to any public building as required above, any physical damage to the cable communication system shall be the responsibility of the public agency to repair. Any signal quality problems shall be the responsibility of the Grantee to correct.

**SECTION 15. PERFORMANCE BOND.**

In accordance with the requirements of Section 11-4.20 of the Modesto Municipal Code, as added by Ordinance No. 2292-C.S., Grantee shall file and maintain in full force and effect throughout the term of this franchise, a corporate surety bond in the amount of Two Hundred and Fifty Thousand (\$250,000.00) Dollars.

**SECTION 16. SECURITY FUND.**

In accordance with the requirements of Sec. 11-4.21 of the Modesto Municipal Code, as added by Ordinance No. 2292-C.S., Grantee shall establish and maintain throughout the term of the franchise, a security fund in the amount of Twenty Thousand (\$20,000.00) Dollars.

**SECTION 17. POSSESSORY INTEREST TAX.**

It is expressly recognized and understood by the Grantee in accepting this franchise that the franchise may create a possessory interest subject to property taxation and that the Grantee may be subject to the payment of property taxes on such interest. By accepting this franchise, Grantee agrees to pay, without the right to deduct from any franchise fees required to be paid by this franchise, any and all property taxes, if any, assessed during the term of this franchise against the Grantee's possessory interest. Provided, however, that the provisions of this Section shall not be construed to prevent Grantee from challenging property taxes, if any, assessed against Grantee's possessory interest.

**SECTION 18. RIGHT OF ACQUISITION.**

In addition to any remedies provided by Chapter 4 of Title XI of the Modesto Municipal Code, as amended by Ordinance No. 2292-C.S. or as it may hereafter be amended, in the event Grantee has failed to comply with any material provisions of the franchise documents, the City shall have the right to acquire the property of the Grantee by purchase at a fair and just value as a going business, which shall not include any amount for this franchise itself or for any of the rights or privileges granted. In the event the City exercises this right or its right of eminent domain, Grantee shall continue to operate the system, subject to the direction and account of the City, so as to prevent interruption of service to subscribers until the acquisition can be completed.

**SECTION 19. FRANCHISE SUPERSEDED.**

The franchise granted by this ordinance shall supersede and replace the franchise granted by Ordinance No. 1766-C.S.

**SECTION 20. FRANCHISE DOCUMENTS.**

All of the franchise documents pertaining to the within franchise are hereby incorporated by reference into this ordinance, and shall be deemed to be a part of this ordinance.

**SECTION 21. EFFECTIVE DATE.**

This ordinance shall become effective on or after December 1, 1984, provided Grantee, prior to said effective date, shall have filed with the City Clerk written acceptance thereof and an agreement to be bound by and comply with all of the requirements thereof, and of Chapter 4 of Title XI of the

Modesto Municipal Code, it now exists or may hereafter be amended, and delivers to the City Clerk the bond, security fund and insurance policies required to be furnished pursuant to the provisions of Chapter 4 of Title XI of the Modesto Municipal Code, as amended by Ordinance No. 2292-C.S.

SECTION 22. 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 October, 1984, by Councilmember Whiteside, who moved its introduction and passage to print,

which motion being duly seconded by Councilmember Sutton was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Bright, Lang, Muratore, Patterson, Sutton  
Whiteside, Mayor Mensinger

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: *Peggy Mensinger*  
Peggy Mensinger, Mayor

ATTEST:

By *Norrine Coyle*  
Norrine Coyle, City Clerk

(SEAL)

APPROVED AS TO FORM:

By *Elwyn Johnson*  
Elwyn Johnson, City Attorney



April 30, 1984

Mr. Michael C. Herrero, Assistant City Manager  
City of Modesto  
810 11th Street, PO Box 642  
Modesto, CA. 95353

Dear Mike:

Capital Cities Cable, Inc. is prepared to make a significant commitment to Local Programming and Public Access in Modesto. This commitment consists of facilities, equipment, staff and programming hours which will provide the community with good programming of local events.

Our commitment is summarized as follows:

#### FACILITIES

We are prepared to provide the leasehold improvements in any site provided by the City or are prepared to provide a facility adjacent to our office at 1639 Princeton Avenue, Modesto.

In addition, we would provide a dedicated return line from the downtown area to provide coverage of City Council Meetings, Board of Supervisors' Meetings, Fire Department Training and Convention Center events without burden to the return capability of our plant.

Although there has been discussion about the merits of being near the Convention Center, we feel that the equipment proposed below and our ability to do remote production would make the Princeton Avenue site a workable alternative.

The facility we offer would be used only for local origination and public access.

A tentative floor plan of our facility is attached as Attachment I.

#### EQUIPMENT

We have reviewed our original submission of equipment and the list offered by your consultant and have revised it with the help of Mrs. Suzanne Skubick, our Director of Programming in our Plymouth, Michigan system.

A new list appears in Attachment II. It is important to note that our list will be either the equipment listed or it's equivalent

EXHIBIT A

*since products and prices are changing frequently. Of course we would integrate any equipment we currently have to avoid duplication of our investment.*

*The important point of our proposal is that we would provide adequate studio equipment, all necessary support equipment for productions, editing equipment, two complete portable studios, and a variety of color equipment to be available to the community for Public Access.*

### STAFFING

To provide solid programming a well organized and trained staff is necessary and our commitment would include the following positions:

Director of Programming  
Programming Engineer  
Executive Producer  
Sports Producer  
Programming Production Interns - as needed  
Programming Engineer Interns - as needed

This staff of at least four full-time employees will have as their sole duty the production and administration of all local programming and public access.

Tentative position descriptions for the above positions are in Attachment III.

We would also welcome the interface of an Advisory Committee to help us ascertain the desires of the community in the scheduling and planning of various program alternatives.

### PROGRAMMING HOURS

We would commit that we would provide ten (10) hours of original programming per week (exclusive of City Council and Board of Supervisors Meetings and all Public Access programming) within twelve months of the effective date of the franchise.

Further, we would provide fifteen (15) hours a week of original programming within six months after occupancy of a permanent site.

Mike, I believe that the above is a very workable solution of the needs expressed by both the Staff and Council Cable Committees and would provide the citizens with local coverage of local events.

Needless to say all costs and expenses will be borne by us (other than the facility if the city wishes to locate somewhere other than adjacent to our existing office).

We would also have to discuss some rearrangement of the channels given the city so that we could secure space on the expanded basic service for both local origination and public access. Our suggested Public Access Rules and Procedures are enclosed in Attachment IV.

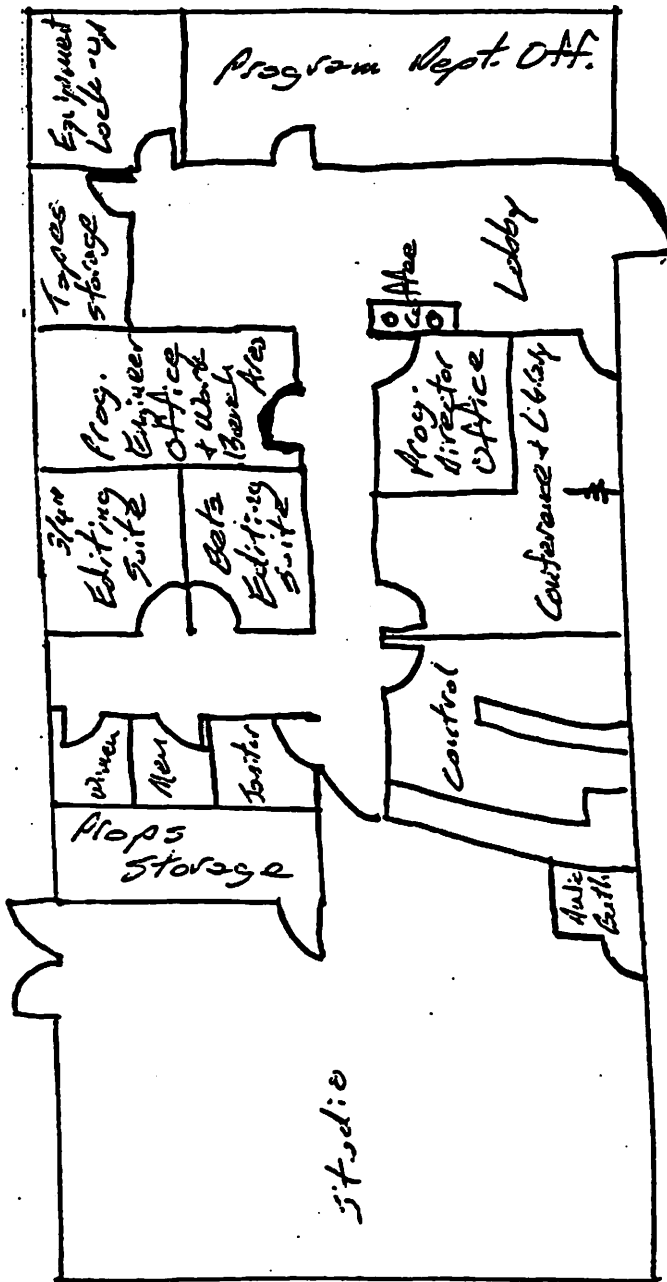
We shall look forward to our next meeting so that we can discuss this matter. In the meantime, should there be any questions, please do not hesitate to contact me.

Sincerely,



Harvey T. Boyd  
Senior Vice President  
Western Division

/djh



STUDIO & PORTABLE EQUIPMENT\*

MAIN STUDIO & CONTROL ROOM

- 3 JVC KY01900 cameras w/RS-1900 remote control, VCS513U Cable, H22100u 10x lens, H2 FMIOU Focus Control, H22510U Servozoom, VF2500 BU View finder.
- 3 JVC VC-513U 40 meter camera cable
- 3 O'Connor 30 head w/flat base, Quick release platform, 2 handles
- 3 Bogen heavy duty tripod/3067 dolly
- 6 Sony DR-10A headsets
- 1 Knox K128B/8 Character Generator (includes RC-128S 3 space roll & crawl; PP128 independent edit channel 2 screen; AC128 line by line auto center; IP008 4 extra pages)
- 4 Sony VO5600 Record/Playback VTR'S
- 1 Production Switcher with Sync Generator
- 3 B/W 5" Panasonic WV 5203B camera monitors triple
- 1 Video tek 12" color Program Monitor w/blue jun underscan & crosspulse
- 1 Panasonic NV-1300 VHS VTR
- 1 Sony SL 5000 Beta VTR
- 1 Waveform Monitor & Vector scope
- 1 Time Base Correctors Fortel CCD-1H
- 2 Modulators
- 1 Studio Color Monitor/Receiver 19" Panasonic CT 1930 V
- 1 Cyclorama-Curtain system 27' x 27' x 12' x 2 11' high including track & pipe clamps
- 1 Utah Scientific Model AV-20/20 11 x 10 routing switcher
- 1 Control Panel (rack mount) model CSP-300R for routing switcher
- 2 Processors

NOTE: All source CTR's are fed into the routing switcher for routing to desired outputs. Line in, from the production switcher allows airing of LIVE shows and/or pre-recorded material.

The audio is routing through the routing switcher also...to and from source and record VTR's, all audio sources are fed to the audio consoles for mixing.

The routing switcher allows any source and record combination for producing video tapes and transferring to or from any of the three formats.

The wiring of the control room allows productions in the studio and air operations to go on at the same time.

AUDIO COMPONENTS

- 1 6 pair audio microphone snake
- 1 8 channel audio console/tone generator
- 1 set of test pattern charts (resolutions, color bars, multiburst, etc.)
- 3 Monitor speakers (we have spares) for Studio, Control Room and Editing, with amplifiers
- 1 Cassette tape machine
- 1 Video & Audio, Subcarrier distribution Amplifiers (as needed)
- 1 Turntable

## Wiring Connectors Racks, Labor Diagrams &amp; Flow Charts of installation (51)

## PORTABLE EQUIPMENT

5 Sony HVC 2200 Color Cameras  
 5 Sony CMA-204 Camara Adaptors  
 5 Sony VO 4800 Portable 3/4" Record Decks  
 5 ITE T-20 Tripods w/heads  
 3 Strand Century 1053 Light kits  
 2 Quartz Light kits inclutes 3 600 watt lights & stands in case  
 Model K-2R  
 5 BP-60 Batteries  
 5 Cine-60 #7007-FC Battery Belts  
 Mics & mic stand and mic lines etc.  
 1 UNP-2 Monopods  
 1 CVC 100 Bulk.Erasers

## EDITING EQUIPMENT

2 Sony VO5850 Pac Type 5 U-Matic Edit  
 4 Panasonic CT-110MA 10" Color monitor w/8 pin cables  
 2 Knox K-50 Titlers  
 2 Winsted P-9207 Mobile Editing Consoles

## SUITCASE STUDIOS

2 JVC KY-1900 cameras w/RS-1900 remote control, VC513U cable,  
 H22100u 10 x lens, H2 FMIOU Focus Control, H22510U Servozoom,  
 VF2500 BU View finder.  
 2 JVC VC-513u 40 meter camera cable  
 1 Panasonic S.E.G.  
 1 Panasonic 5" WV520B Triple Monitor  
 1 Panasonic 5" CT 500 V Color TV Monitor  
 1 TEL RAK-22 (or whatever is appropriate for CT 500 V)  
 2 Bogen 3064 fluid tripod/dollies & handles  
 1 Shure M-267 Mic Mixer  
 1 Shure A-268 R rack mount  
 3 Sony DR-10A Headsets  
 1 Modulator w/audio & video AGC  
 4 Sony ECM-150 Mics  
 2 Electronic 635A Mics w/XLR connectors  
 2 Comprehensive MS-12C Floor Stands  
 2 Comprehensive XLRP-XLRJ-25' cable  
 1 Strand-Century 1053 Light kits

SUITCASE STUDIOS Continued...

- 1 Sony VO-5600 3/4' Player/Record VCR's
- 1 Sony RM-510 rackmount kit
- 1 Anvil 15 space (26 1/4") rackmount case w/4 heavy duty wheels,  
(2 lock)
- 1 Anvil 7 space (12 1/4") rackmount
- 1 TEL audio/patch panel
- 1 Labor to set-up, install, & test system
- Misc. cables, connectors & hardware
- 1 Additional JVC VC-513U 40 meter cable (spare)

PROGRAM DIRECTOR - JOB DESCRIPTION

I) Administrative/Leadership Duties

- A) Supervise both full-time and part-time programming staff. Also supervise interns and volunteers. Selection and hiring is included.
- B) Oversee productions of Executive Producers giving guidance and suggestions as needed.
- C) Insure total hours of production meet and exceed minimum requirements for community(s) served...per franchise commitments.
- D) Oversee studio operations including scheduling for taping, editing, workshops, tours, remotes with suitcase studios, etc.
- E) Determine staff assignments to productions.
- F) Determine community host/producers for local origination programs.
- G) Determine program line-up for L.O. and Access channel(s).
- H) Establish variety of internship programs including, college credit, junior interns, paid interns (if needed), volunteer interns.
- I) Coordinate materials for in-house movie service, if available, including securing classic movies, determine air schedule, arrange for publication of movie guide, etc.

II) Financial Duties

- A) Oversee administration of annual operating budget.
- B) Oversee administration of annual capital budget.
- C) Order equipment & supplies as needed.
- D) Oversee payment of all Programming Department bills.
- E) Make recommendations on purchase of equipment.

III) Organizational Duties

- A) Develop and establish public files containing information about programs aired; host/producers program proposals; equipment check-outs; dub requests; etc.
- B) Develop and establish tape storage system for tapes to air on channels being programmed by Department.
- C) Develop and establish equipment arrangements for ease of storage and check-out.

IV) Production/Technical Duties

- A) Be able to serve as on-air talent if needed for variety of community programs.
- B) Assist in studio productions and remotes as needed, operating camera or audio, or directing/switching, editing, floor directing, portable camera operation, conduct site surveys, etc.
- C) Be able to air programs on locally programmed channels if needed.
- D) Be able to perform simple, routine equipment maintenance.

- A) Organize and write local community version of "Host/Producer Guide to Cable TV Programming" to assist local host/producers learn about community programming.
- B) Organize and write local community version of portapak/editing workshop guide.
- C) Organize and write guide for programming employees and interns to help familiarize them with routines and procedures.
- D) Develop forms for all aspects of Programming Department operation; program logs, equipment check-out forms, trouble reports, dub requests, release forms, cablecast agreements, etc.
- E) Write and research scripts for community programs as needed.
- F) Research and contact community leaders to involve them in local programming.
- G) Write press releases about Programming Department activities to distribute to local media.

#### VI) Public Relations/Public Speaking Duties

- A) Appear before Community council(s)/board(s) as needed to address Programming Department efforts.
- B) Speak to community organizations/groups about role of access and local programming.
- C) Conduct tours of Programming facilities for various groups.
- D) Meet with local media to keep them informed about local program efforts.
- E) Participate as much as possible in community "good will" or "charity" events/drives.

#### VII) Teaching Duties

- A) Be able to teach community users, interns, and staffers use of all equipment...portable, studio, suitcase studio, etc.
- B) Be able to critique and work with all of the above in video taping and editing techniques.
- C) Select one or more staff to train in your functions and duties for those times when you are away from office.
- D) Regularly organize and conduct along with appropriate staff members in-house training session to refresh current staffers and interns in basics of productions.

## PROGRAMMING ENGINEER - JOB DESCRIPTION

### I) General Duties

- A) Responsible for air-operations on both channels. Can assign own interns or assume personal responsibility if they or other staff are not available.
- B) Responsible for locking up, bringing Van inside for night (When applicable), and in general making sure entire building is secure at the close of operations.

### II) Equipment Care & Maintenance

#### A) Control Room

- 1) Responsible for majorchanges/re-wiring of control room as needed to ensure efficient and smooth operations.
- 2) Responsible for all repairs within ability to handle.
- 3) Responsible for day-to-day preventive maintenance and care of equipment. (Perform as manufacturer requires but also as deemed necessary due to use conditions.)
- 4) Responsible for taking corrective action on Trouble Reports within 24 hours unless otherwise advised.
- 5) Responsible for notifying Program Director of equipment needs for repair, replacement, etc.
- 6) Responsible for general appearance of Control Room...should be kept in orderly condition.

#### B) Studio

- 1) Responsible for any modifications or improvements that can be made to improve productions.
- 2) Responsible for all repairs within ability to handle.
- 3) Responsible for day-to-day preventive maintenance and care of equipment such as regular phasing, maintenance of fluid levels, correct focus for cameras, etc. (Perform as manufacturer requires but also as deemed necessary due to use conditions.)
- 4) Responsible for taking corrective action on Trouble Reports within 72 hours unless otherwise advised.
- 5) Responsible for notifying Program Director of equipment needs for repair, replacement, etc.

#### C) Editing Room

- 1) Responsible for any modifications or improvements that can be made to improve operations.
- 2) Responsible for all repairs within ability to handle.
- 3) Responsible for day-to-day preventive maintenance and care of equipment. (Perform as manufacturer requires but also as deemed needed due to use.

- 4) Responsible for taking corrective action on Trouble Reports within 24 hours unless otherwise advised.
  - 5) Responsible for notifying Program Director of equipment needs for repair, replacement, etc.
  - 6) Responsible for general appearance of Editing Room... should be kept in orderly condition.
- D) Van/Suitcase Studios -
- 1) Responsible for all repairs within ability to handle.
  - 2) Responsible for preventive maintenance and care of equipment such as regular checks of cable lines, headsets, back focus on cameras, etc. (Perform as manufacturer requires but also as deemed necessary due to use conditions.)
  - 3) Responsible for taking corrective action on Trouble Reports within 24 hours unless otherwise advised.
  - 4) Responsible for notifying Program Director of equipment needs for repair, replacement, etc.
- E) Portable Equipment -
- F) Misc. -
- 1) Prepare Maintenance/Discrepancy Reports for all equipment in order to track problems and costs and keep file on reports.
  - 2) Develop special training programs on all of above items (i.e. equipment/operations) for staff and interns and conduct classes on regular (monthly) basis.

### III) Major Remote Location Productions:

- A) Pre-Production - Scout site and make all technical needs determination at least two weeks in advance unless sufficient notice wasn't given. The Technical Department should also be notified in the event of Programming Productions needing a reverse. Notice should be given to Techs two weeks in advance of production.
- B) Day of Remote - Assist in the set up of equipment and be on hand for entire production in event of technical problems. Assist in tear-down of equipment following production.
- C) Post-Remote - Always following major remote production, equipment should be checked out for problems and condition of such things as focus, fluid levels, etc. Extensive notes should be written about experience for future reference.

### IV) Technical Interns:

- A) Selection -
- 1) Shall interview and determine candidates for internships.
  - 2) Shall determine length of internships and hours to be worked.

B) Oversight -

- 1) Shall assign duties and projects to interns.
- 2) Shall evaluate interns performance.

V) Misc:

- A) Shall serve as back-up substitute for regular portapak/ editing classes as well as studio instruction.
- B) Shall work with production staff and interns to improve their overall knowledge of technical aspects of productions.

Overall this person should have good hands-on experience with small format video! Should know video and audio systems and understand how to put them together for smooth operation. Person should be able to read a Waveform Monitor and Vectorscope. Repair work Programming Engineer should be capable of includes replacing fuses; head alignments; adjusting back focus, etc. on cameras; soldering/building cable and more. Should be able to effectively troubleshoot problems with equipment. Should also have understanding of necessary video sync drives and have ability to set up Gen-Lock. Finally, able to set up multi-field remotes to include phasing and balancing of field system, (i.e. sub-carrier phase) horizontal and vertical delay, maintain proper light levels and adjust cameras to meet manufacturer specifications for registration and color balance.

EXECUTIVE PRODUCER - JOB DESCRIPTION

I) General Duties:

- A) Work with host/producers assigned for regular studio productions. Responsibilities include keeping hosts on schedule for tapings; directing/switching for production; assigning interns to crew positions; directing interns for studio set-up and tear-down; making final tape air worthy; etc.
- B) Playback of tapes for air operations if needed.
- C) Knowledge of computers for operation of Metrodata Character Generator.
- D) General Maintenance and clean-up of studio, control room, editing rooms, programming staff room, etc.

II) Studio Operations:

- A) Studio Set Up - White balancing cameras; Lighting; Set design; Operate cameras; Knowledge of audio; directing/switching skills; Editing; etc.
- B) Studio Sign Up - Coordinate volunteers and interns for regular and special productions; coordinate equipment use both portable and studio; etc.
- C) Misc. - Keep informed about studio and equipment rules and help enforce rules when public is using facilities.

III) Teaching Duties:

- A) Work with new interns to instruct them on camera and audio operations; setting up and striking a set; editing; directing/switching; etc.
- B) Teach portapak/editing community workshops.
- C) Teach studio community workshops.
- D) Assist in coordination for sign-up and scheduling of workshops.

IV) Remote Location Shoots:

A) Van Equipment -

- 1) Set up multi-camera field remotes to include phasing and balancing of field system, i.e. sub-carrier phase; horizontal and vertical delay, etc.
- 2) Understand necessary video sync drives and ability to set up Gen-Lock.
- 3) Maintain proper light levels and adjust cameras to meet manufacturer specifications for registration and color balance/white balance.
- 4) Able to read Waveform Monitor and Vectroscope.
- 5) Some troubleshooting ability to trace bad lines/cables.

B) Suitcase Studio Equipment - Same as above!

C) Portable Equipment -

- 1) Knowledge of operation and maintenance of both Beta and 3/4" portable decks and accompanying cameras (Sony HVC 2200).
- 2) Knowledge of audio alternatives; lighting; etc.

SENIOR EXECUTIVE PRODUCER - JOB DESCRIPTION

Qualifications - Same as Executive Producer except that this person should have two years of experience in cable TV production. Should be able to assume some of the duties of the Program Director and Program Engineer if either are absent. This means good people skills as well as strong technical abilities.

SPORTS DIRECTOR - JOB DESCRIPTION

Qualifications - Same as Executive Producer. This person should also have strong interest and knowledge of sports in general. Primary duties would be to cover area sporting events for schools, recreation departments, service clubs, etc. Secondly this person would work with host/producers on other types of programming.

PROGRAMMING ENGINEER INTERNS - JOB DESCRIPTION

I) Purpose of Internship:

The primary purpose of this intern program is to help you gain a practical understanding of the operation and maintenance of a cable television system's programming operation and it's associated equipment. Secondly you will become familiarized with all of the cable system's operation and maintenance.

II) Length of Internship:

The length of an internship shall be a minimum of three months. You may stay on for a longer period of time if it is mutually agreed by the Program Engineer and yourself. The normal progression of internship in this area will be to start in the air operation internship and move into maintenance internship. A request to serve in the same internship position for two consecutive time periods will be considered.

III) Hours:

Interns are required to work 16 to 20 hours per week. Hours will be set between the intern and the Program Engineer. It is important that you be on time or call sufficiently in advance if there is a problem. You are always welcome to participate in projects other than those assigned to you or outside of your assigned hours.

IV) Evaluations:

Interns will be evaluated every 4 to 6 weeks in order to express specific interest and suggestions, for goal setting and other concerns.

V) Types of Internships:

- A) Air Operations - General duties include...airing of programs and monitoring for technical problems on those channels programmed locally;dubbing assignments;general maintenance; involvement with studio and remote productions is also possible.
- B) Technical Maintenance - General duties include...trouble shooting and corrective maintenance of video and audio systems; pre-production system set-up and check-out;post-production system check-in;routine preventive maintenance tasks;involvement with studio and remote productions in production capacity is also possible.

PROGRAMMING PRODUCTION INTERNS - JOB DESCRIPTION

I) Purpose of Internship:

The primary purpose of this intern program is to help you gain a practical understanding and experience hands-on operation of video cameras both studio and portable, editing facilities, audio, directing/switching, etc...inshort, a comprehensive understanding of cable television productions. Secondly you will become familiarized with some of the technical aspects of the equipment.

II) Length of Internship:

The length of an internship shall be a minimum of three months. You may stay for a longer period of time if it is mutually agreed by the Program Director and yourself.

III) Hours:

Interns are required to work 16 to 20 hours a week if they are a paid or for credit intern. Volunteer interns must commit to 12 to 16 hours a week while junior interns need only work 8 hours a week for the duration of their internship. It is important that you be on time or call sufficiently in advance if there is a problem. You are always welcome to participate in projects other than those assigned to you or outside of your assigned hours. Hours will be set between the intern and the Program Director.

IV) Evaluations:

Regular school "for credit" evaluations will always be filled out on time by the Program Director. In addition, all interns will be evaluated every 4 to 6 weeks in order to express specific interests and suggestions, for goal setting and other concerns.

V) Types of Internships:

- A) College Credit - Intern can work for a school term (or longer if it is less than 3 months) to gain credit as well as experience.
- B) Volunteer - Must have had some hands-on experience although it does not have to be extensive. Basic familiarity with video and audio equipment is desired.
- C) Junior - No previous experience is needed. Persons from grade 6 thru 12 may participate in this program.
- D) Paid - Minimum wage will be paid for up to 20 hours a week. Person must have completed all schooling (college or vocational) in order to qualify for this position. Previous experience is required...i.e. a for credit or volunteer internship either at this cable system or some other comparable place.

- A) Studio Productions - Responsible for setting up and tearing down studio sets; cameras; mics; etc. Take direction for Program Director or Executive Producer(s) in charge of production.
- B) Remote Productions - Responsible for setting up and tearing down sets; cameras; mics; etc. Take direction from person serving as director for production.
- C) Editing - Will be required to perform some editing duties as needed.
- D) Dubbing - May be required to perform some dubbing chores.
- E) Portapak Shoots - Will be required to perform some portapak shoots as needed.
- F) General Maintenance - Will be responsible for the general appearance of the studio and editing facilities. Keep neat!
- G) Switching/Directing (Executive Producer) - May be assigned to program as Executive Producer once ability to perform switching and directing has been demonstrated. This will usually not occur any earlier than 4 to 6 weeks into internship.
- H) Prepare an audition tape to take with you upon departure from internship program.

PUBLIC ACCESS OPERATING RULES

CAPITAL CITIES CABLE, INC.  
(Serving Modesto, California)

I. PURPOSE: The following rules and regulations have been developed to govern the availability and use of access channels, access equipment and studio facilities on the cable television system owned and operated by Capital Cities Cable, Inc. (CCCI) in Modesto, California.

II. DEFINITIONS:

(a) CABLECASTING

Programming (exclusive of broadcast signals) carried on the cable television system.

(b) ACCESS CABLECASTING

Programing provided by access channel users on any access channel provided by CCCI ad defined in II(f) herein.

(c) ORIGINATING CABLECASTING

Programming originated by franchisee, carried on CCCI's cable television system over one or more channels and subject to CCCI's exclusive control.

(d) ACCESS CHANNEL USER OR USERS

Any person, group, organization, or other entity which makes proper application for access cablecasting over the access channels as defined in II(f) of these rules.

(e) LEGALLY QUALIFIED CANDIDATE

Any person who has publicly announced his or her intention to run for nomination or office in a special primary or general election for municipal, county, state, or national office, and who meets the qualifications prescribed by the applicable laws to hold that particular office so that he or she may be voted for by the electorate directly or by means of delegates or electors, and who:

(i) has qualified for a place on the ballot; or

(11) Has publicly committed him or herself to seeking election by write-in method and is eligible under applicable law to be voted for by sticker, by writing his or her name on the ballot; or other method, and (1) has been duly nominated by a political party which is commonly known and regarded as such, or (2) makes a substantial showing so that he or she is a bona fide candidate for nomination for office.

(f) PUBLIC ACCESS CHANNEL

One or more cable channels which are specifically designated by CCCI for public access.

(g) LEASED ACCESS CHANNEL

One or more cable channels which are specially designated (dedicated or composite) for use to promote commercial products or services including but not limited to, advertising by or on behalf of candidates for public office, and for which a fee is charged on the user.

(h) ADVERTISING MATERIAL

Any cablecasting material designed to promote the sale of commercial products or services (including advertising by or on behalf of candidates for public office).

(i) LOTTERY

Any device, scheme, plan, promotion, contest, or other program and/or presentation which involves directly or indirectly the elements of prize, chance and consideration; or any such device, scheme, plan, promotion, contest, or other program and/or presentation which is, has been, or would be declared a lottery under applicable local, state, or federal law.

(j) LOTTERY INFORMATION

Any advertising or information concerning any lottery, gift enterprise, or similar scheme offering prizes dependent in whole or in part upon lot or chance, or any list drawn or awarded by means of any such lottery, gift enterprise, or scheme, whether said list contains any part or all of such prizes.

(k) OBSCENE OR INDECENT MATERIAL

Any material in a program and/or presentation which is defined as obscene or indecent material under applicable local, state or federal law.

(1) PUBLIC ACCESS COORDINATOR

The person designated by the cable company for the maintenance, operation and supervision of its Access Channels, equipment and facilities.

(m) COMMUNITY CABLE COMMISSION

A group of residents appointed by the municipality to oversee the operation of the cable system.

III. OPERATING RULES GOVERNING PUBLIC ACCESS CHANNELS:

- (a) Advertising material designed to promote the sale of commercial products or services (including advertising by or on behalf of candidates for public office) is prohibited in connection with access cablecasting over any Access Channel. Nothing in this paragraph shall prohibit the announcement of a "Grant" received to underwrite the program.
- (b) No program and/or presentation shall be cablecast or permitted to be cablecast on any Access Channel which involves directly or indirectly any lottery information or which involves a lottery.
- (c) No program and/or presentation shall be cablecast or permitted to be cablecast on any Access Channel which involves any obscene or indecent material.
- (d) The Public Access channel shall be available for access cablecasting to any resident or representative of a group, organization or other entity located in CCCI's serviced communities. The Public Access channel shall be made available without charge for access cablecasting to any qualified access user on a first come, non-discriminatory basis upon the filing of the appropriate request forms and consistent with the available access channels. CCCI reserves the right to limit the amount of time granted to any resident, group, organization or other entity.
- (e) Public Access Channel use requests shall be processed on a first-come, non-discriminatory basis. An Access user may specify dates and times in his initial request, however, all scheduling will be done by CCCI. Access facilities obtained on behalf of one user may be assigned or transferred to another party, if no other user is inconvenienced and if prior written permission of the Public Access Coordinator is obtained.

Whenever requests for channel use exceeds the availability on a requested date, the following rules apply:

- 1) First time users shall have priority over regular users.
- 2) A previous user who has not been scheduled in prime time shall have priority for prime time scheduling.

(f) All video tapes of programs and applications for live cablecast that describe program content shall be submitted to the Access Coordinator at least two business days before scheduled to be cablecast so that there will be an opportunity for review for illegal content and technical quality. The judgment of the Access Coordinator shall be final in these matters with respect to the particular scheduled program.

- (g) All disputes arising over the allocation of the respective access facilities shall be resolved by the Public Access Coordinator in a manner which will maximize the diversity of expression on the access channels on a non-discriminatory basis.
- (h) Should the Public Access Coordinator or local System Manager determine or believe that the statements in the access facilities user's application are false, misleading or incomplete concerning the presentation of advertising material, lottery information, obscene or indecent material, CCCI will not cablecast or permit to be cablecast the material presented by the access user. The facility user may appeal such decision to the Modesto Cable Commission who will review the application with the user with the understanding that the user and CCCI will be bound by the decision of the commission.
- (i) Failure to comply with these rules may subject the user to forfeiture of the right to use access channels.

#### IV. OPERATING RULES GOVERNING USE OF ACCESS STUDIO AND REMOTE EQUIPMENT:

- (a) There will be no charge to the public access user as described in Section II, paragraph d, for the use of the access studio production facilities and remote equipment. Such access users shall be entitled, upon a demonstration of competency, to the full use of the studio production facilities, which will include post production facilities.
- (b) Application for use of studio production facilities by individuals or groups falling within the parameters of Section II, paragraph d, shall be submitted in writing and identify the proposed access channel user by name and address and specify the following language:
  - (i) The access channel desired;
  - (ii) The day or days for access cablecasting desired;
  - (iii) The time segment (e.g. 9:00 - 10:00 a.m. etc.) desired and duration of the cablecast;
  - (iv) A full and complete statement of the topic or topics to be discussed or portrayed;
  - (v) Whether the applicant desires use of available cablecasting equipment for editing; the time and duration for which the use of the equipment is requested;

- (vi) A statement that the access channel user is familiar with the definitions and operating rules of the access channel involved;
  - (vii) A statement that no lottery is involved and that no lottery information is to be cablecast;
  - (viii) A statement that no obscene or indecent material is to be cablecast;
  - (ix) A statement that all appropriate arrangements and clearances have been obtained from broadcast stations, networks, sponsors, music listening organizations, performers, representatives and without limitation by the above, any other and all other persons (natural or otherwise) as may be necessary for authorization to transmit its program material over the facilities of CCCI.
  - (x) In the case of equipment applications, the type of production equipment which will be necessary to record or present the access cablecast; and
- (c) All requests for access studio and equipment are to be submitted at least seven business days in advance of the desired date and time of the proposed access cablecast and may not exceed blocks of three (3) hours or more.
- (d) Requests for the use of public access time on behalf of minors (as defined under applicable state laws) should be made in the name of a responsible adult. Any such minors using the studio facilities and/or equipment of CCCI shall be accompanied by a responsible adult who shall supervise the use of the facilities and/or equipment and execute the necessary assurances that authorization has been obtained concerning the use of the studio and/or the equipment and/or appearance of any minors on a cablecast program. The adult shall also be responsible for liability resulting from the use of appearance by a minor. The Public Access Coordinator may waive these requirements in appropriate circumstances.
- (e) All requests shall be processed on a first-come, non discriminatory basis pursuant to Paragraph III hereof. An access studio user may specify alternative dates and times in his initial request. Time obtained on behalf of one user may be assigned or transferred to another party, if no other user is inconvenienced and if the permission of the Public Access Coordinator is obtained.
- (f) Should the Access Coordinator determine or believe that the statements in the access studio user's application are false, misleading or incomplete concerning the presentation of advertising material, lottery information, obscene or indecent material, CCCI, in compliance with the Rules of the Federal Communications Commission, shall not cablecast or permit to be cablecast the material presented for cablecast

by the access channel user. The facility user may appeal such decision to the Modesto Cable Commission who will review the application with the user with the understanding that the user and CCCI will be bound by the decision of the commission.

- (g) Failure to comply with these rules may subject the user to forfeiture of the right to use the access studio or equipment for a period of time appropriate to the infringement.
- (h) Once a person passes the course and is trained by CCCI in the operation of portable equipment, that person shall be entitled to utilize such equipment in accordance with the Equipment Loan Agreement. Once it is determined that a person, to the satisfaction of CCCI, is qualified and competent in the operation of portable equipment, that person shall be entitled to utilize such equipment in accordance with the Equipment Loan Agreement.
- (i) The normal checkout period for remote equipment is for no more than a six-hour block or overnight. If two or more requests for equipment are for the same time period, preference will be given to first time users.
- (j) Failure to return portable equipment on time may result in a restriction on the further use of the portable equipment by that user.

#### V. CCCI FACILITIES:

- (a) Anyone using the Production Facilities of Capital Cities Cable, Inc. (Access Studio, portable equipment, etc.), shall use such equipment only for the purpose of cablecasting on access channels provided by Capital Cities Cable, Inc. of Modesto. All programming produced using the access facilities will be available for cablecast on Capital Cities Cable, Inc. of Modesto.
- (b) No copyrighted material may be cablecast without the written permission of the copyright holder.
- (c) Users of portable access equipment must take all reasonable measures to identify themselves to persons being videotaped and to obtain all necessary clearances. Taping must cease if the person being taped expresses that desire. The user must not identify himself or herself as an employee or representative of Capital Cities Cable, Inc. of Modesto. Written releases must be obtained from those persons who make substantive appearances in the production.
- (d) The user will have the option to buy (for the cost of taping and dubbing) a copy of the finished program, but in no instance may such a program be used for commercial purposes without the express consent of Capital Cities Cable, Inc. of Modesto, nor shall such program be sold to or given to any other cable system without the express consent of Capital Cities Cable, Inc. of Modesto.

**VI. PUBLIC INSPECTION:**

- (a) CCCI shall maintain a complete record of the names and addresses of all persons (natural or otherwise), groups, organizations or entities requesting access time. Such records will be maintained in CCCI's public inspection files and will be available for public inspection during normal business hours.
- (b) Persons requesting public inspection shall identify themselves by name and address in order to assure administrative control of such records.
- (c) Access channels will not be made available to any access user who refuses to have his identity maintained in the records and available for public inspection as required by this Section.
- (d) All records required herein, including requests for access channels, shall be maintained for a period of two years.

**VII. REVIEW OF RULES:**

- (a) The appropriate cable commissions or municipal body and CCCI will review these rules annually and revise them when necessary.
- (b) CCCI shall be permitted to waive any of these rules without such waiver creating a precedent for future use of the access channels, studio and equipment.

**VIII. PROGRAM CONTENT CONTROL:**

CCCI will not exert any form of programming censorship as long as such programming is not in violation of Federal Communications Commission regulations, state or federal laws.

~~EXHIBIT~~ represents, warrants and covenants to  
Capital Cities Cable, Inc. (CCCI) that:

- a) Applicant has read the Access Operating Rules and assumes full responsibility for the use of Access Channel production facilities.
- b) The Programs, and any advertising, publicity, promotional and other materials in connection therewith will not contain any material which is libelous, slanderous, defamatory, obscene, or indecent and will not, when transmitted, distributed, exhibited, exploited, projected, or performed by CCCI pursuant to the Access Operating Rules, subject CCCI to liability for violation of any applicable law, rules, regulations, or guidelines or violate, infringe upon or give rise to any adverse claims with respect to any common law or other right (including, without limitation, any copyright, trade name, trademark, contractual dramatic, motion picture, or literary right or right of privacy) of any person, firm or corporation.
- c) With respect to the nondramatic performing rights to musical compositions distributed in connection with or contained in any of the Programs such rights are either (i) controlled by ASCAP, BMI, or SESAC, in which event, Applicant is solely responsible for obtaining and paying any such performing rights and license which may be required; (ii) controlled by Applicant; or (iii) in the public domain.
- d) The Programs and any advertising, promotion, or other materials in connection therewith will not contain any elements constituting a game of chance as such games are defined under applicable laws, rules, and regulations.
- e) All ideas, creations, and literary, musical, dramatic, artistic and intellectual properties furnished by Applicant are fully owned and originally created by Applicant (except for such of the foregoing materials as are in the public domain or are fully licensed for use by Applicant) and that the materials and the use hereof will not infringe upon or violate any rights of any kind or nature whatsoever of any person, firm or corporation.
- f) In connection with the Programs, CCCI shall have no responsibility or liability for any services, elements, or products performed or provided by any person, firm or corporation and CCCI shall in no way be responsible or liable for the making of any payments to any person (including, without limitation, any union, guild, actor, director, performer or craftsman).
- g) In connection with the production of the Programs and Program matter, which is intended for CATV distribution by CCCI, Applicant has not and will not accept, directly or indirectly, any money, service, goods or other valuable consideration for the inclusion of any matter as part of such Program without prior notice to CCCI.

h) Applicant, not its officers, agents, licensees or contractors shall be deemed to be an officer, employee, agent, licensee, or contractor of CCCI or to have any delegation of authority from CCCI for any purpose whatsoever.

---

INDEMNIFICATION

- a. Applicant shall indemnify, defend, and forever hold harmless CCCI, its officers, directors, employees, agents, or licensees (and any entity with which CCCI may be merged or consolidated or which acquires all of substantially all of CCCI's assets or any corporation with which CCCI is affiliated by common ownership and control) from and against any and all claims, judgments, costs, liabilities, damages, and expenses (including reasonable attorney's fees) arising out of (i) the use of any materials furnished by Applicant hereunder; (ii) any acts done or words spoken by Applicant, its agents, employees, licensees, or contractors in connection with the production, rehearsal or CATV distribution of the Program unless such acts or words spoken by Applicant shall have been requested or supplied by CCCI; (iii) any actual or alleged breach by Applicant of any provision of this Agreement; and (iv) any misrepresentation made by Applicant herein.
- b. Applicant, as soon as it learns of a claim or legal action concerning any matter relating to this Agreement, will immediately notify CCCI of this claim or action. CCCI shall promptly notify Applicant of any claim or litigation to which the indemnification applies by its own attorney at its own expense. CCCI shall have the right to participate in this defense with its own attorneys at Applicant's expense. Applicant will direct its attorney to cooperate with CCCI and its attorney.

---

Signature

CAPITAL CITIES CABLE, INC. OF MODESTO

STATEMENT OF COMPLIANCE

1. I have read and am thoroughly familiar with the operating rules governing video tape playbacks on the Public Access Channels of CCCI's cable system.
2. I understand that the availability of playback times and dates will be based on a first-come, first-served basis, and that late requests may need to be scheduled at a time other than requested.

I also understand that I must submit taped material prior to playback so that it can be checked for technical compatibility with the system.

3. Playback charges (if any) shall be fully explained to me in advance of the playback.
4. I accept full responsibility for any disputes arising from the contents of any material including prohibited material, unauthorized use of copyrighted material, slander/libel charges, and agree to hold blameless in any such disputes CCCI, it's employees and the City.
5. False or misleading statements made in this application are grounds for forfeiture of the right to use public access equipment and facilities.
6. After acceptance of the Program Director, this application is non-transferable.

\_\_\_\_\_  
Signature of Applicant

\_\_\_\_\_  
Date

\_\_\_\_\_  
Omnicom Agent

\_\_\_\_\_  
Approved

\_\_\_\_\_  
Not Approved

REASON \_\_\_\_\_  
\_\_\_\_\_

~~CAPITAL CITIES CABLE, INC. OF MDENSTG~~  
APPLICATION FOR ACCESS CHANNEL CABLECASTS

Channel Requested \_\_\_\_\_

1. Date of Application: \_\_\_\_\_, 1984.

2. Name: \_\_\_\_\_  
Person, Group or Organization Applying for Use

3. Address: \_\_\_\_\_

Phone: \_\_\_\_\_  
Business Home

4. Individual completing the Application (if same as listed in Question 2, answer "same").

\_\_\_\_\_  
Address: \_\_\_\_\_

Phone: \_\_\_\_\_  
Business Home

5. I hereby request Access Channel playback as follows:

(a) \_\_\_\_\_, 19\_\_\_\_  
Day of Week Month Date

(b) Time Segments (e.g. 7:00 - 7:15 p.m.) \_\_\_\_\_

(c) Alternative:

\_\_\_\_\_, 19\_\_\_\_  
Day of Week Month Date

CAPITAL CITIES CABLE, INC. OF MODESTO

NAME OF BORROWER: \_\_\_\_\_ PHONE NUMBER: \_\_\_\_\_

CALIFORNIA DRIVERS LICENSE: \_\_\_\_\_ SS#: \_\_\_\_\_

DATE & TIME OF CHECKOUT \_\_\_\_\_ DATE & TIME OF CHECKOUT \_\_\_\_\_

EQUIPMENT BORROWED: Pieces used and numbers where appropriate below

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

TAPES: \_\_\_\_\_

SIGNATURE OF BORROWER: \_\_\_\_\_

CCCI AGENT: \_\_\_\_\_

DATE SIGNED: \_\_\_\_\_

Please list equipment and number used here:

EQUIPMENT LOAN AGREEMENT

When you have signed out the portable equipment, it is your responsibility to pick it up and return it at the time agreed upon. If for any reason you will be late picking up or returning equipment, PLEASE CALL. If you can't make it at all, CALL AND CANCEL. FAILURE TO DO SO MAY RESULT IN SUSPENSION OF YOUR PUBLIC ACCESS PRIVILEGES.

When you have signed out studio and/or editing time, it is your responsibility to be sure all equipment is put away where it belongs. If you decide not to use the time, PLEASE CALL AND CANCEL. FAILURE TO DO SO MAY RESULT IN SUSPENSION OF YOUR PUBLIC ACCESS PRIVILEGES.

All equipment, studio and editing time will be signed out on a first-come, first-served basis. If equipment breaks down and we are forced to cancel all public access use until the equipment is repaired, all commitments will be cancelled. This means that when the equipment is repaired, we will begin scheduling again on a first-come, first-served basis regardless of who was supposed to have the equipment before it broke.

CCCI reserves the right to cancel your equipment reservation if circumstances are such that it is necessary for us to do so. This will not happen often, but there may be times when it is unavoidable.

I CERTIFY THAT I HAVE BEEN TRAINED BY CCCI IN THE OPERATION OF ALL THE EQUIPMENT. I HAVE READ THE ABOVE RULES AND I AGREE TO ALL OF THE CONDITIONS LISTED:

1. To return all equipment in good condition at the time due to the place designated by CCCI.
2. To use all equipment carefully.
3. To pay in full for any repairs or replacement of equipment necessary as a result of damage which occurred while the equipment was checked out in my name.
4. To pay in full for any tapes which are damaged while checked out in my name or not returned to CCCI.

---

SIGNATURE

ACCESS TRAINING PROGRAM

CCCI Access Training Program is designed to provide training to interested potential access users who are unfamiliar with the operation of production equipment.

Each piece of equipment which may be used for access programming will be described by the instructor in enough detail so as to provide access users with not only a good understanding of the equipment, but the ability to make decisions as to the types of equipment they will actually need for various types of productions. The use of various techniques associated with using the equipment (i.e., lighting and sound) will also be explained.

All equipment will be demonstrated by the instructor, allowing participants to see how the equipment should actually be handled and operated. The demonstration will include the operation of individual pieces of equipment as well as combinations of various pieces of equipment used together.

Participants in the program will also have the opportunity to gain "hands-on" experience with the equipment. Ample time will be provided for this part of the program so as to allow participants to practice those techniques with which they may be having problems.

DUPLICATION PROCESS POLICY

Here is the duplication process policy for Capital Cities Cable, Inc. Modesto studio. This policy may be subject to review and revision in the future.

The Modesto studio has the ability to make dubs from 1/2" VHS format to 3/4" video tapes. There are no plans to expand this ability into other formats.

When a program is produced in conjunction with a not-for-profit or charitable organization, CCCI will provide one copy of the particular program free of charge to that organization. The organization must provide the blank video tape.

For anyone desiring a copy of one of CCCI's local programs, the fee is \$50.00 per hour plus a blank video tape.

Eudcational institutions may schedule time to make one dub of educational programs free of charge.

CCCI will not make dubs of any programs other than our own local programs.

CCCI will not allow studio time to be checked out to make dubs of any programs other than our own local programs.

All duplication will proceed at CCCI's convenience. Dubs will usually be completed within two week.

CCCI will not allow any of its video tapes to be checked out.

CCCI plans to reuse its master tapes for new programming, old programs will not be saved for duplication purposes.

**FINAL ADOPTION CLAUSE**

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 23rd day of October, 1984, Councilmember Whiteside moved its final adoption, which motion being duly seconded by Councilmember Lang, was upon roll call carried and the ordinance adopted by the following vote:

**AYES:** Councilmembers: Bright, Lang, Muratore, Patterson, Sutton, Whiteside, Mayor Mensinger

**NOES:** Councilmembers: None

**ABSENT:** Councilmembers: None

**APPROVED** *Peggy Mensinger*  
MAYOR PEGGY MENSINGER

**ATTEST:** *Norrine Coyle*  
NORRINE COYLE, City Clerk

**EFFECTIVE DATE:** November 22, 1984

ORDINANCE NO. 2294 -C.S.

AN ORDINANCE AMENDING SECTION MAP 25-3-9 OF THE ZONING MAP OF THE CITY OF MODESTO, RECLASSIFYING CERTAIN PROPERTY LOCATED THEREON. (FIRST CITY'S AMERICA RESORTS)

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

SECTION 1. ZONING CHANGE. Section 25-3-9 of the Zoning Map is hereby amended to reclassify the following described property from Highway Frontage Zone, H-1, and Professional Office Zone, P-0, to Planned-Development Zone, P-D(360):

P-0 to P-D

All that certain real property situate in a portion of the Southwest quarter of the Southwest quarter of Section 25, Township 3 South, Range 9 East, Mount Diablo Base and Meridian, in the County of Stanislaus, State of California, described as follows:

Commencing at the Southwest corner of said Section 25; thence North  $89^{\circ} 34' 28''$  East along the South line of said Section 25, a distance of 20.00 feet to the intersection of the center line of Lincoln Avenue with the center line of Yosemite Boulevard; thence North  $0^{\circ} 32' 24''$  West along said center line of Lincoln Avenue a distance of 527.00 feet to the point of beginning of this description; thence continuing North  $0^{\circ} 32' 24''$  West along said center line 260.00 feet; thence North  $89^{\circ} 34' 28''$  East 400.00 feet; thence South  $0^{\circ} 32' 24''$  East a distance of 260.00 feet; thence South  $89^{\circ} 34' 28''$  West 400.00 feet to the point of beginning.

H-1 to P-D

All that certain real property situate in a portion of the Southwest quarter of the Southwest quarter of Section 25, Township 3 South, Range 9 East, Mount Diablo Base and Meridian, in the County of Stanislaus, State of California, described as follows:

Commencing at the Southwest corner of said Section 25; thence North  $89^{\circ} 34' 28''$  East along the South line of said Section 25, a distance of 20.00 feet to the intersection of the center line

of Lincoln Avenue with the center line of Yosemite Boulevard and the point of beginning of this description; thence North 0° 32' 24" West along said center line of Lincoln Avenue a distance of 527.00 feet; thence North 89° 34' 28" East 901.98 feet to the Westerly line of Parcel A, as shown on the Parcel Map filed in Volume 22 of Parcel Maps, at Page 79, Stanislaus County Records; thence South 0° 32' 24" East along said Westerly line of Parcel A and the westerly line of Parcel C, a distance of 299.13 feet; thence continuing along said boundary of Parcel C, South 89° 33' 48" West 9.00 feet; thence South 0° 32' 24" East 227.87 feet to said center line of Yosemite Boulevard; thence South 89° 34' 28" West along said center line a distance of 892.98 feet to the point of beginning.

SECTION 2. USES. The following uses shall be permitted in said P-D(360) Zone subject to securing approval of the Secretary of the Planning Commission if the plan for construction conforms in principle to the approved plan, as required by Section 10-2.2704 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 10-2.2708(b) of the Modesto Municipal Code:

Multiple-family housing.

SECTION 3. ZONING MAP. Section Map 25-3-9 of the Zoning Map of the City of Modesto is amended to appear as set forth on the map attached hereto, which is hereby made a part of this ordinance by reference.

SECTION 4. EFFECTIVE DATE. This ordinance shall go into effect and be in full force and operation from and after thirty (30) days after its final passage and adoption.

SECTION 5. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published

once in The Modesto Bee, the official newspaper of the City of Modesto, setting forth the title of this ordinance, the date of its introduction and the places where this ordinance is posted.

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 9th day of October, 1984, by Councilmember Patterson, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Sutton, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Patterson, Sutton, Whiteside, Mayor Mensinger

NOES: Councilmembers: Bright, Lang, Muratore

ABSENT: Councilmembers: None

APPROVED: Peggy Mensinger  
PEGGY MENSINGER, Mayor

ATTEST:

By Norrine Coyle  
NORRINE COYLE, City Clerk

(SEAL)

APPROVED AS TO FORM:

By Elwyn L. Johnson  
ELWYN L. JOHNSON, City Attorney

APPROVED AS TO DESCRIPTION:

By William Nichols  
Department of Planning and  
Community Development

Ordinance 2294 C.S.  
Exhibit A – Map

Oversized map folded and bound within Ordinance Book. Unable to  
remove safely for scanning.

**FINAL ADOPTION CLAUSE**

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 13th day of November, 1984, Councilmember Sutton moved its final adoption, which motion being duly seconded by Councilmember Patterson, was upon roll call carried and the ordinance adopted by the following vote:

- AYES:** Councilmembers: Patterson, Sutton, Whiteside, Mayor Mensinger
- NOES:** Councilmembers: Bright, Lang, Muratore
- ABSENT:** Councilmembers: None

APPROVED *Peggy Mensinger*  
MAYOR PEGGY MENSINGER

ATTEST: *Morrine Coyle*  
MORRINE COYLE, City Clerk

EFFECTIVE DATE: November 12, 1984