

ORDINANCE NO. 3496-C.S.

ORDINANCE AMENDING ORDINANCE NOS. 2203-C.S., 2269-C.S., 2793-C.S.,
2931-C.S., 3454-C.S., AND APPROVING AND ADOPTING AN AMENDMENT
TO THE AMENDED REDEVELOPMENT PLAN FOR THE MODESTO
REDEVELOPMENT PROJECT

WHEREAS, the City Council of the City of Modesto (the "City Council") adopted Ordinance No. 2203-C.S. on July 12, 1983, approving and adopting the Redevelopment Plan (the "Redevelopment Plan") for the Modesto Redevelopment Project (the "Redevelopment Project") pertaining to the "Original Project Area," and subsequently adopted Ordinance No. 2269-C.S. on June 19, 1984, amending the Redevelopment Plan to make certain modifications as required by law; and Ordinance No. 2793-C.S. on November 5, 1991, approving and adopting an Amended Redevelopment Plan, and adding certain area (the "Added Area") to the Redevelopment Project Area; and

WHEREAS, because the Added Area includes certain areas located within the unincorporated area of the County, the Board of Supervisors of the County of Stanislaus adopted Ordinance No. C.S. 423 on December 4, 1990, authorizing the Agency (as defined below) to redevelop certain portions of the County, and adopted Ordinance No. C.S. 454 on November 19, 1991, approving and adopting the Amended Redevelopment Plan; and

WHEREAS, on November 22, 1994, the City Council adopted Ordinance No. 2931-C.S., and on December 20, 1994, the Board of Supervisors adopted Ordinance No. C.S. 580, establishing and amending certain limitations with respect to the Redevelopment Plan, as required by law; and on October 2, 2007, the City Council adopted Ordinance No. 3454-C.S., and on Jan 15, 2008, the Board of Supervisors adopted Ordinance No. C.S.-1019, to further

amend certain time limitations with respect to the Redevelopment Plan (the term "Redevelopment Plan" refers to the Redevelopment Plan as amended to date); and

WHEREAS, the Redevelopment Agency of the City of Modesto (the "Agency") has been designated as the official redevelopment agency to carry out in the City of Modesto the functions and requirements of the Community Redevelopment Law of the State of California (Health and Safety Code Section 33000 *et seq.*) and to implement the Redevelopment Plan; and

WHEREAS, in furtherance of the Redevelopment Plan, the Agency adopted a Modesto Redevelopment Master Plan on October 9, 2007 (the "Master Plan") which provides updated goals and implementation strategies that respond to current and emerging trends in Modesto and refines and is intended to help implement the Redevelopment Plan; and

WHEREAS, on October 14, 2008, the City of Modesto adopted an Amendment to the City's Urban Area General Plan ("General Plan Amendment"), and the Redevelopment Plan and the Master Plan are both incorporated by reference into the General Plan Amendment; and

WHEREAS, in conjunction with the General Plan Amendment, the Agency has prepared a proposed Amendment to the Redevelopment Plan (the "Amendment") which would make a minor, technical modification to the Redevelopment Plan to ensure that the land uses specified in the Redevelopment Plan conform to the land use designations specified in the Redevelopment Master Plan, the City's Urban Area General Plan and, where applicable, the County's General Plan; and

WHEREAS, the Amendment does not change or expand the boundaries of the Redevelopment Project Area, nor does it amend any of the other limits or provisions currently

established under the existing Redevelopment Plan, and also does not modify the land uses established for the properties within the Redevelopment Project Area, and is not intended to modify the Agency's redevelopment activities or the goals and objectives of the Agency to redevelop the Redevelopment Project Area; and

WHEREAS, on September 8, 2008, the Planning Commission of the City of Modesto (the "Planning Commission") reviewed the proposed Amendment and recommended the approval and adoption of the Amendment, together with its certification that the Amendment conforms to the General Plan of the City of Modesto, as amended by the General Plan Amendment; and

WHEREAS, the City of Modesto prepared a Master Environmental Impact Report (the "General Plan MEIR") for the Urban Area General Plan Update (SCH No. 2007072023) pursuant to the California Environmental Quality Act (Public Resources Code Section 21000 et seq., hereinafter referred to as "CEQA"), the Guidelines for Implementation of the California Environmental Quality Act (14 California Code of Regulations, Section 15000 et seq., hereinafter referred to as the "State CEQA Guidelines") and procedures adopted by the City relating to environmental evaluation; and

WHEREAS, the Urban Area General Plan MEIR was certified as completed by the City Council on October 14, 2008, by Resolution No.2008-582 and certain findings were made relating to the Urban Area General Plan Update; and

WHEREAS, a Program Environmental Impact Report for the Redevelopment Master Plan (SCH No. 2006071118) ("Master Plan EIR") was also previously certified as completed by

the Agency on October 9, 2007, by Resolution No. 10-2007, and the Agency made findings and adopted mitigation measures and a mitigation monitoring plan relating to the Redevelopment Master Plan; and

WHEREAS, the City Council has received from the Agency the proposed Amendment, together with the Report of the Agency on the Amendment; and

WHEREAS, the City Council and the Agency held a joint public hearing on October 28, 2008, on adoption of the Amendment; and

WHEREAS, a notice of said hearing was duly and regularly published in a newspaper of general circulation in the City of Modesto, as required by law, and a copy of said notice and affidavit of publication are on file with the City Clerk and the Agency; and

WHEREAS, copies of the notice of public hearing, together with a statement concerning acquisition of property by the Agency, were mailed by first-class mail to the last known address of each assessee of each parcel of land in the Redevelopment Project Area, as shown on the last equalized assessment roll of the County of Stanislaus; and

WHEREAS, copies of the notice of public hearing were mailed by first-class mail to all residential and business occupants within the Redevelopment Project Area; and

WHEREAS, copies of the notice of public hearing were mailed by certified mail with return receipt requested to the governing body of each taxing agency which receives taxes from property in the Redevelopment Project Area; and

WHEREAS, the Council has considered the Report of the Agency and the report and recommendation of the Planning Commission, the Amendment, and provided an opportunity for all persons to be heard, and has received and considered all evidence and testimony presented for or against any and all aspects of the Amendment; and

WHEREAS, the Agency and the City Council have reviewed and considered the General Plan MEIR, as it pertains to the Amendment, and have determined that adoption of the Amendment will not have a significant effect on the environment;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MODESTO DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. The purposes and intent of the City Council with respect to the Amendment are to make a minor, technical modification to the Redevelopment Plan to ensure that the land uses specified in the Redevelopment Plan conform to the land use designations specified in the Redevelopment Master Plan, the City's Urban Area General Plan and, where applicable, the County's General Plan. The Amendment does not change or expand the boundaries of the Redevelopment Project Area; does not amend any of the other limits or provisions currently established under the existing Redevelopment Plan; does not modify the land uses established for the properties within the Redevelopment Project Area; and is not intended to modify the Agency's redevelopment activities or the goals and objectives of the Agency to redevelop the Redevelopment Project Area.

Section 2. The City Council does hereby specifically find and determine that:

a. Both at the time the Redevelopment Plan was originally adopted with respect to the Original Project Area, and when subsequently amended to add the Added Area, the City Council found and determined that the Redevelopment Project Area (including the Original Project Area and the Added Area, respectively) is a blighted area, the redevelopment of which is necessary to effectuate the public purposes declared in the Community Redevelopment Law. Since adoption of the Redevelopment Plan, the Agency has been successful in meeting many of its goals. However, conditions of blight still remain throughout the Redevelopment Project Area. The Amendment will not add additional area to the Redevelopment Project Area, but will merely enable the Agency to continue its efforts to implement the existing Redevelopment Plan, and ensure that the land uses specified in the Redevelopment Plan conform to the land use designations specified in the Redevelopment Master Plan, the City's Urban Area General Plan and, where applicable, the County's General Plan.

b. The Amendment will enable the Redevelopment Project Area to continue to be redeveloped in conformity with the Community Redevelopment Law and in the interests of the public peace, health, safety and welfare. This finding is based upon the fact that adoption of the Amendment will enable the Agency to continue to implement the goals and objectives of the Community Redevelopment Law by aiding in the elimination and correction of the conditions of blight and deterioration in the Redevelopment Project Area; providing for planning, development, redesign, clearance, reconstruction or rehabilitation of properties which need improvement; providing adequate land for parking and open spaces; providing affordable housing, including housing for low- and moderate-income persons; providing additional employment opportunities; providing for higher economic utilization of potentially useful land;

and enabling programs to continue to strengthen the retail and other commercial functions in the Redevelopment Project Area.

c. The adoption and carrying out of the Amendment is economically sound and feasible. This finding is based upon the fact that under the Redevelopment Plan the Agency is authorized to seek and utilize a variety of potential financing resources, including tax increments; that the nature and timing of public redevelopment assistance depends on the amount and availability of such financing resources, including tax increments generated by new investment in the Redevelopment Project Area; and that under the Redevelopment Plan no public redevelopment activities will be undertaken unless the Agency can demonstrate that it has adequate revenue to finance the activity. The Amendment does not modify any of these existing provisions, but merely enables the Agency to continue its efforts to implement the existing Redevelopment Plan, and ensure that the land uses specified in the Redevelopment Plan conform to the land use designations specified in the Redevelopment Master Plan, the City's Urban Area General Plan and, where applicable, the County's General Plan.

d. The Amendment is consistent with the General Plan of the City of Modesto, as amended by the General Plan Amendment, including, but not limited to, the housing element, which substantially complies with the requirements of Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code (the State housing laws). This finding is based on the report of the Planning Commission that the Amendment conforms to the General Plan of the City of Modesto, as amended by the General Plan Amendment.

e. The carrying out of the Amendment will promote the public peace, health, safety and welfare of the community and will effectuate the purposes and policies of the Community Redevelopment Law. This finding is based upon the fact that the continued implementation of the Redevelopment Plan, as amended by the Amendment, will benefit the Redevelopment Project Area by enabling the Agency to continue its efforts to implement the existing Redevelopment Plan and correct conditions of blight and by coordinating public and private actions to stimulate development and improve the economic, social and physical conditions of the Redevelopment Project Area, all in conformance with the Redevelopment Master Plan, the City's Urban Area General Plan and, where applicable, the County's General Plan.

f. The Agency's authority to acquire real property by condemnation or eminent domain, as set forth in Section 308 of the Redevelopment Plan, has expired and is no longer in force and effect. The Amendment does not authorize the use of eminent domain or extend or modify this previously expired authority, therefore the finding regarding condemnation of real property (set forth in Health and Safety Code Section 33367(d)(6)) is not applicable to the approval and adoption of the Amendment.

g. The Agency has a feasible method and plan for the relocation of families and persons who may be displaced, temporarily or permanently, from housing facilities in the Redevelopment Project Area. This finding is based upon the fact that the Amendment itself will not result in the displacement of any persons or families, temporarily or permanently, from housing facilities in the Redevelopment Project Area. The sole purpose of the proposed Amendment is to make minor, technical modifications to the language in the land use sections of

the Redevelopment Plan to ensure conformity between the Redevelopment Plan, the Master Plan (which is incorporated in the City's General Plan), the City's General Plan and, to the extent applicable, the County's General Plan. The Amendment will not modify or amend any of the goals or objectives of the Agency, or any of the Agency's proposed projects, programs or activities authorized under the Redevelopment Plan. No displacement or relocation of persons or families will occur as a result of the proposed Amendment. In the event any relocation does become necessary as a result of implementation of the Redevelopment Plan, the Agency will assist all persons, business concerns, and others displaced by the Redevelopment Project in finding other locations and facilities, pursuant to federal and state law for the new location and facilities. Further, the existing Redevelopment Plan provides for relocation assistance according to law.

h. There are, or are being provided, within the Redevelopment Project Area or within other areas not generally less desirable with regard to public utilities and public and commercial facilities and at rents or prices within the financial means of the families and persons who might be displaced from the Redevelopment Project Area, decent, safe and sanitary dwellings equal in number to the number of and available to such displaced families and persons and reasonably accessible to their places of employment. This finding is based upon the fact that the Amendment will not result in the displacement of any persons or families, temporarily or permanently, from housing facilities in the Redevelopment Project Area because the sole purpose of the proposed Amendment is to make minor, technical modifications to the language in the land use sections of the Redevelopment Plan to ensure conformity between the Redevelopment Plan, the Master Plan (which is incorporated in the City's General Plan), the City's General Plan and, to the extent applicable, the County's General Plan. Further, the existing

Redevelopment Plan provides that no person or family will be required to move from any dwelling unit in the Redevelopment Project Area until suitable replacement housing is available.

i. Families and persons shall not be displaced prior to the adoption of a relocation plan pursuant to Sections 33411 and 33411.1 of the Community Redevelopment Law; and dwelling units housing persons and families of low or moderate income within the Redevelopment Project Area shall not be removed or destroyed prior to the adoption of the replacement housing plan pursuant to Sections 33334.5, 33413, and 33413.5. This finding is based upon the fact that the Amendment will not result in the displacement of any persons or families, temporarily or permanently, from dwelling units in the Redevelopment Project Area because the sole purpose of the proposed Amendment is to make minor, technical modifications to the language in the land use sections of the Redevelopment Plan to ensure conformity between the Redevelopment Plan, the Master Plan (which is incorporated in the City's General Plan), the City's General Plan and, to the extent applicable, the County's General Plan.

j. The Amendment does not add territory to the Redevelopment Project Area, therefore the finding regarding noncontiguous areas (set forth in Health and Safety Code Section 33367(d)(9)) is not applicable to the approval and adoption of the Amendment.

k. The Amendment does not add territory to the Redevelopment Project Area, therefore the finding regarding the inclusion of non-blighted lands, buildings and improvements in the Redevelopment Project Area (set forth in Health and Safety Code Section 33367(d)(10)) is not applicable to the approval and adoption of the Amendment.

l. The elimination of blight and the redevelopment of the Redevelopment Project Area could not be reasonably expected to be accomplished by private enterprise acting

alone without the aid and assistance of the Agency. This finding is based upon the continued existence of blighting influences, including the lack of adequate public improvements, and the inability of individual developers to economically remove these blighting influences without public assistance to acquire and assemble sites for development, and the provision of public improvements, facilities and utilities, and the inadequacy of other governmental programs and financing mechanisms to eliminate blight, including the provision of necessary public improvements and facilities.

m. The Amendment does not add territory to the Redevelopment Project Area, therefore the finding that the Redevelopment Project Area is a predominantly urbanized area (set forth in Health and Safety Code Section 33367(d)(12)) is not applicable to the approval and adoption of the Amendment.

n. The Amendment does not modify or amend any of the time limits or the limitation on the number of dollars to be allocated to the Agency that are contained in the Redevelopment Plan, therefore the finding regarding limitations contained in the Redevelopment Plan (set forth in Health and Safety Code Section 33367(d)(13)) is not applicable to the approval and adoption of the Amendment.

o. The implementation of the Amendment will improve or alleviate the physical and economic conditions of blight in the Redevelopment Project Area, as described in the Report to Council prepared pursuant to Health and Safety Code Section 33352. This finding is based on the fact that the adoption of the Amendment is not intended to modify the Agency's redevelopment activities or the goals and objectives of the Agency to redevelop the Redevelopment Project Area, but will enable the Agency to continue to implement the goals and

objectives of the Community Redevelopment Law by aiding in the elimination and correction of the conditions of blight and deterioration in the Redevelopment Project Area; providing for planning, development, redesign, clearance, reconstruction or rehabilitation of properties which need improvement; providing adequate land for parking and open spaces; providing affordable housing, including housing for low- and moderate-income persons; providing additional employment opportunities; providing for higher economic utilization of potentially useful land; and enabling programs to continue to strengthen the retail and other commercial functions in the Redevelopment Project Area. This findings is further based on the information contained in the Agency's Report to Council, prepared pursuant to Health and Safety Code Sections 33457.1 and 33352.

Section 3. The City Council is satisfied that permanent housing facilities will be available within three years from the time occupants of the Redevelopment Project Area are displaced, if any, and that pending the development of such facilities, there will be available to any such displaced occupants temporary housing facilities at rents comparable to those in the City of Modesto at the time of their displacement. The Redevelopment Plan provides that no persons or families of low or moderate income shall be displaced from residences unless and until there is a suitable housing unit available and ready for occupancy by such displaced persons or families at rents comparable to those at the time of their displacement. Such housing units shall be suitable to the needs of such displaced persons or families and must be decent, safe, sanitary and otherwise standard dwellings. The Agency shall not displace any such persons or families until such housing units are available and ready for occupancy.

Section 4. The Council is satisfied that all written objections received before or at the noticed public hearing have been responded to in writing. In addition, written findings have been adopted in response to each written objection of an affected property owner or taxing entity which has been filed with the City Clerk either before or at the noticed public hearing.

Section 5. The findings and determinations, as identified in Council Resolution No. 2008-611 and Agency Resolution No. 20-2008, adopted on October 28, 2008, considering and making findings as to the General Plan MEIR, are incorporated into this Ordinance by reference and made a part of the Amendment.

Section 6. The Redevelopment Plan for the Redevelopment Project, as adopted by Ordinance No. 2203-C.S., and as subsequently amended by Ordinance Nos. 2269-C.S., 2793-C.S., 2931-C.S., and 3454-C.S. is hereby further amended as set forth in the proposed "Amendment to the Amended Redevelopment Plan for the Modesto Redevelopment Project", incorporated herein and made a part hereof by reference. As so amended, the Redevelopment Plan is hereby incorporated by reference herein and designated as the official Redevelopment Plan for the Modesto Redevelopment Project.

The Executive Director of the Agency, as he/she deems necessary, is hereby authorized to combine the existing Redevelopment Plan, as further amended by the Amendment, into a single document, and said document, when filed with the City Clerk and the Secretary of the Agency, shall constitute the official Redevelopment Plan in place of the document currently constituting said Redevelopment Plan.

Section 7. In order to implement and facilitate the effectuation of the Amendment hereby approved, it may be necessary for the City Council to take certain actions, and

accordingly, this City Council hereby (a) pledges its cooperation in helping to carry out the Amendment; (b) requests the various officials, departments, boards and agencies of the City having administrative responsibilities in the Redevelopment Project Area likewise to cooperate to such end and to exercise their respective functions and powers in a manner consistent with the redevelopment of the Redevelopment Project Area pursuant to the Amendment; (c) stands ready to consider and take appropriate action upon proposals and measures designed to effectuate the Amendment; and (d) declares its intention to undertake and complete any proceedings necessary to be carried out by the City under the provisions of the Amendment.

Section 8. Ordinance No. 2203-C.S., and the subsequently adopted Ordinance Nos. 2269-C.S., 2793-C.S., 2931-C.S., and 3454-C.S., are continued in full force and effect, except as amended by this Ordinance.

Section 9. The City Clerk is hereby directed to send a certified copy of this Ordinance to the Agency, whereupon the Agency is vested with the responsibility for carrying out the Redevelopment Plan as amended by the Amendment.

Section 10. The City Clerk is hereby directed to record with the County Recorder of Stanislaus County a notice of the approval and adoption of the Amendment pursuant to this Ordinance containing a statement that proceedings for the redevelopment of the Redevelopment Project Area pursuant to the Amendment have been instituted under the California Community Redevelopment Law.

Section 11. Effective Date. This Ordinance shall be in full force and effect ninety (90) days after its passage.

Section 12. Publication. The City Clerk is hereby ordered and directed to certify to the passage of this Ordinance and to cause the same to be published once in a newspaper of general circulation, published and circulated in the City of Modesto, California.

Section 13. Severability. If any part of this Ordinance, or the Amendment which it approves, is held to be invalid for any reason, such decision shall not affect the validity of the remaining portion of this Ordinance or of the Amendment, and this City Council hereby declares that it would have passed the remainder of the Ordinance, or approved the remainder of the Amendment, if such invalid portion thereof had been deleted.

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 28th day of October, 2008, by Councilmember Olsen, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Keating, was upon roll call carried and ordered printed and published by the following vote:


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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: 
JIM RIDENOUR, Mayor

ATTEST:

By 
STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By 
SUSANA ALCALA WOOD, 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 5th day of November, 2008, Councilmember Lopez moved its final adoption, which motion being duly seconded by Councilmember Hawn, was upon roll call carried and the ordinance adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: Marsh

APPROVED: 
MAYOR JIM RIDENOUR

ATTEST: 
STEPHANIE LOPEZ, City Clerk

Effective Date: February 4, 2009

ORDINANCE NO. 3497-C.S.

AN ORDINANCE GRANTING AN EXCLUSIVE FIVE-YEAR BUS BENCH FRANCHISE TO UNITED CEREBRAL PALSY ASSOCIATION FOR THE RIGHT, PRIVILEGE AND PERMISSION TO OPERATE BENCHES BEARING PRINTED MATTER OR SIGNS THEREON AT DESIGNATED LOCATIONS ALONG THE STREETS IN THE CITY OF MODESTO AND TO LEASE BENCHES FOR THIS PURPOSE FROM THE CITY OF MODESTO.

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

SECTION 1. DEFINITIONS.

- (a) "Grantee" means United Cerebral Palsy Association, Inc., of Stanislaus/Tuolumne Counties, hereinafter called Grantee.
- (b) "The City" means and refers to the City of Modesto.
- (c) "Bench" means and refers to benches presently located and in the future placed by or on behalf of the City upon public property along the public way for the accommodation of persons awaiting public transportation.
- (d) "Street" means and refers to any public thoroughfare or way including the sidewalk, the parkway and other public property fronting upon a public way in the City.
- (e) "Franchise" means and refers to this Ordinance and all of the rights, privileges, obligations, terms, conditions and restrictions set forth herein.

SECTION 2. BENCHES PROHIBITED. No person shall install or maintain any bench bearing printed matter or a sign along any street in the City except in accordance with the provisions of this franchise.

SECTION 3. SCOPE AND TERM OF FRANCHISE.

(a) **Scope.** Grantee shall have the exclusive franchise for the right, privilege and permission to lease benches from the City and to place and maintain printed matter or signs on benches at designated locations along the streets in the City of Modesto in accordance with the provisions of this Franchise.

(b) **Term/Termination for Convenience.** The term of the Franchise shall commence on January 1, 2009, and shall end no later than December 31, 2013. The City shall have the right to terminate the Franchise for convenience at any time by providing Grantee with written notice of such termination at least ninety (90) days in advance of the date of termination. Notice of termination of Franchise shall be in writing and may be served by regular United States mail. Service of notice of termination of Franchise for convenience shall be deemed complete upon the mailing of the notice to Robert S. Lonzak, Executive Director, 4265 Spyras Way, #2, Modesto, California 95356. Grantee is responsible for notifying the City in writing of any change of address. Failure of Grantee to give the City written notice of change of address shall not toll or otherwise prevent the commencement of the ninety (90) day notice period.

SECTION 4. BENCHES AND BENCH PARTS. Grantee shall be responsible for the safe storage of benches and spare bench parts, if any, furnished to Grantee by the City. A list of benches and bench parts provided to Grantee by the City is included in Attachment A. Grantee shall be responsible for the safe transportation of benches and bench parts from the current storage location to Grantee's storage location. Grantee shall establish, in a manner satisfactory to the City, an inventory system to track the number of bench legs in Grantee's inventory and to note for each bench leg that is removed from the inventory the reason for its removal. From time to time during the period of the franchise the City may, at its discretion and after consultation with Grantee, provide additional benches to Grantee for placement pursuant to

the terms of this franchise. The City, at its sole discretion, may also supply bench legs or other items to replace those that are damaged beyond repair, lost or stolen, but is under no obligation to do so. Grantee may provide additional bench legs with the approval of the City Manager or his designee. Bench legs provided by Grantee shall become the property of the City upon placement of the bench legs at a City of Modesto bus stop. Except for concrete bench legs, Grantee shall supply all other replacement parts necessary for repair of benches, including, but not limited to, slats for bench seats and bench backs, and hardware necessary to secure bench seats and backs. All parts supplied by Grantee shall be subject to approval by the City and shall be removed from Grantee's inventory if required by the City. Plywood or other material upon which advertising signs will be painted or affixed shall be provided by Grantee. Grantee shall dispose of any metal sign frames that might have been supplied by City if said frames, in the opinion of the City Manager or his designee, do not fit safely against the bench backrest. Wood slats and other bench parts shall be connected to bench legs as specified by the City.

SECTION 5. LEASE OF BENCHES/PAYMENT. For the exclusive rights and privileges set forth herein, Grantee shall lease benches from the City for a period no greater than five (5) years.

For the right and privilege of leasing the benches, Grantee, prior to January 1, 2009, shall pay to the City One Thousand One Hundred and no/100ths (\$1,100.00), which sum shall thereafter be paid to the City monthly prior to the first day of each month.

SECTION 6. PLACEMENT OF BUS PASSENGER SHELTERS BEARING PRINTED MATTER OR SIGNS THEREON. The City shall have the authority to place printed matter or signs providing information about local public transportation systems on all bus shelters located along the City's public transportation system routes. The City shall also have the

authority to place bus passenger shelters bearing paid advertising messages and other printed matter or signs thereon at up to five locations within the City of Modesto selected by the City Manager or his designee. Where such shelters are placed, Grantee shall remove benches unless otherwise directed by the City Manager or his Designee.

SECTION 7. BENCH RESTRICTIONS. Grantee shall utilize only the front surface of the bench backrest for the placement of printed matter or signs. No other material whatsoever shall be permitted on any portion of the bench except as specified by the City. Printed matter or signs shall be placed in accordance with the following stipulations:

(1) No printed matter shall be placed on any benches erected and maintained adjacent to property zoned by the City as R-1, R-2 or as P-D where land use resembles an R-1 or R-2 Zone except for Pelandale Avenue between Dale Road and McHenry Avenue, where printed matter is allowed regardless of the adjacent land use. The City Manager or his designee's determination of which P-D zoned properties resemble R-1 or R-2 zones shall be conclusive.

(2) Grantee shall submit to the City Manager or designee copies of all ads proposed to be placed on benches for preplacement approval unless directed otherwise by the City Manager or his designee.

(3) Should the City, in its sole discretion, determine any advertising placed on any bench to be improper, offensive or a display that is likely to interfere with, mislead, or distract traffic or conflict with any traffic control system, Grantee shall remove all such material within twenty-four (24) hours after the City serves a written removal notice upon Grantee. Should the Grantee fail to remedy the situation within the twenty-four (24) hour period, the City may elect to paint over said material.

(4) Examples of words included in the prohibition stated in the next preceding paragraph are the words, "Stop," "Look," "Drive-in," "Danger," but this list is not inclusive.

(5) No advertising or signs or devices shall be permitted in conjunction with bus bench advertising which comprise rotating, revolving or flashing lighting devices or any other moving parts.

(6) No advertising for tobacco, beverages containing alcohol, or businesses regulated by Modesto Municipal Code Sections 5-9.101 through 5-9.406 shall be permitted.

(7) No advertisement that, in the sole opinion of the City, contains any depiction of an act of an immoral, violent, or debasing nature, or otherwise not in keeping with the standards and surroundings of the bus bench locale, shall be permitted.

(8) No advertisement for products or services which compete with any primary products or services offered by any businesses occupying the abutting property where the bench or benches are placed shall be permitted.

(9) No advertising that is either false, misleading, deceptive or clearly defamatory shall be permitted.

(10) Reasonable proof or clarification of statements contained in any advertisement, exhibit material or announcement placed on a bus bench may be required by the City as a condition of use or continued use of bus bench advertising space.

(11) Advertisements displayed with dated content shall be removed by Grantee within ten (10) working days of the expiration or obsolescence of the ad content unless otherwise mutually agreed upon in advance with the City.

SECTION 8. APPROVAL OF LOCATION. Benches shall be placed, maintained, relocated, and removed as required by the City Manager or his designee, Grantee

shall maintain an up to date listing of locations where benches are in place. Said listing shall include the street that the bench faces, the nearest cross street, and the name of the business or, for non business locations, the type of land use in front of which the bench is located. The benches contemplated are designed for the convenience of those using public transit buses in the City and shall be placed only at locations designated as bus stops by the City Manager or his designee. One bench shall be maintained at each bus stop location where a bench is in place as of December 31, 2008, so long as a sufficient number of benches are available to do so. No bench shall be installed or maintained:

(a) Without the express written approval of the proposed location of the bench by the City Manager or his designee;

(b) In any alley;

(c) At any location where the distance from the face of the curb to the property line is less than six feet (6'); provided that whenever, in the opinion of the City Manager or his designee, observance of this requirement would result in inconvenience or hardship, this requirement may be waived by the City Manager or his designee; or

(d) At any location when the owner or the person in lawful possession or control of the property abutting upon the public street at the place where the bench is located, requests in writing to the City Manager or his designee that the bench not be placed or maintained at such location; provided that whenever in the opinion of the City Manager or his designee, observance of this requirement would result in inconvenience or hardship, this requirement may be waived by the City Manager.

(e) At any location where a bus passenger shelter with advertising thereon is located, unless otherwise directed by the City.

SECTION 9. RATIO OF BENCHES BETWEEN COMMERCIAL AND RESIDENTIAL AREAS. For each seven (7) benches installed in areas where benches bearing printed matter or signs are allowed, at least one bench shall be installed in areas where benches bearing printed matter or signs are not allowed. The specific locations of these latter benches shall be specified by the City Manager or his designee. Grantee shall place the newest benches in its inventory in areas where benches bearing printed matter or signs are prohibited.

SECTION 10. MAINTENANCE OF BENCHES.

(a) All benches owned by the City, regardless of location inside or outside of the City of Modesto, shall be cleaned on a regular schedule and when needed, and shall be maintained in good repair in a safe and sightly condition. Benches shall be inspected and cleaned, as more particularly described in the following section, a minimum of at least once each week including removal of graffiti. Benches shall be cleaned more frequently as needed. The City Manager or his designee's determination as to the state of repair and condition shall be conclusive. Grantee shall inspect each bench periodically to assure full compliance with the provisions of this section. With the exception of concrete bench legs, Grantee shall repair or replace all other bench parts necessary to provide a fully complete, safe and sightly bench. For this purpose Grantee may utilize bench parts provided by the City, if any, at the beginning of the franchise. After the bench parts supplied by the City at the initiation of this franchise are completely utilized, Grantee shall, with the exception of concrete bench legs, be responsible for supplying any additional bench parts needed at Grantee's expense. The City will replace concrete bench legs at its discretion. Replacement bench parts shall become the property of the City upon their placement within the street right-of-way at a bus stop. Grantee shall be responsible for transporting and installing new or replacement benches and disposing of destroyed or

unrepairable benches. Wooden bench parts shall be painted no less than once each year and more frequently if needed. Concrete bench legs shall not be painted. When notified by the City, Grantee shall clean or repair benches identified by the City within twenty-four (24) hours' notification by the City of the need for the repair or cleaning.

(b) Grantee shall designate a maintenance supervisor with whom City staff can communicate on a regular basis to resolve maintenance issues. To enable City staff to communicate with this individual electronically, Grantee shall ensure that this individual has access to and routinely and frequently monitors an e-mail account. Grantee shall also furnish this individual with a cellular telephone to further enhance communication with City staff.

SECTION 11. CLEANING AROUND BENCHES. Grantee shall, at least once each week and more often if needed, remove trash and other debris from within five (5) feet of each bench and accompanying street furniture such as trash receptacles and recycling bins. The City Manager or his designee may specify up to twenty (20) bench locations to be cleaned on a daily basis. Said twenty (20) specific locations may be changed weekly by the City Manager or his designee. The City Manager or his designee's decision as to the need for trash and debris removal shall be conclusive. Grantee shall inspect each bench location periodically to ensure full compliance with the provisions of this section.

SECTION 12. PENALTY FOR IMPROPER MAINTENANCE AND CLEANING. Each bench which has not been maintained, cleaned, or had graffiti removed as required in Section 10, or which has not had the area around it cleaned as required in Section 11 will subject Grantee to a penalty of Twenty and no/100ths Dollars (\$20.00) for each occurrence. Violation of this section shall be determined by the City Manager or his designee after Grantee has had opportunity to respond. A maximum of Two Hundred and no/100ths Dollars (\$200.00)

in penalties under this section may be assessed by the City during any one calendar month. Penalties are due and payable to the City within fifteen (15) days of mailing of an invoice by the City in the U.S. Mail. The invoice will specify the bench locations which do not meet the cleaning and/or maintenance requirements.

SECTION 13. TRASH RECEPTACLE. Grantee shall maintain all City-owned trash receptacles placed at City bus stops on McHenry Avenue between Needham Avenue and Briggsmore Avenue in a safe and sanitary condition and empty said receptacles as necessary but not less than once each week. Plastic bags for said receptacles shall be furnished by the Grantee. Grantee shall dispose of the litter collected from said receptacles in compliance with all local, State and Federal requirements.

SECTION 14. REMOVAL OF BENCHES. No bench, after being installed on the streets or sidewalks of the City, shall be removed by the Grantee during the term of this franchise except with the consent of the City Manager or his designee. Benches shall be moved or removed only as directed by the City Manager or his designee. The City Manager or his designee may, for a cause considered by him reasonable, order the Grantee to move or remove any bench. When the City Manager or his designee orders a bench moved or removed, the Grantee shall move or remove it within three (3) days at its own expense. If the Grantee shall fail to do so, the City Manager or his designee may order the removal of the bench, and in addition, bill the Grantee for the removal in a sum not in excess of One-Hundred and no/100ths Dollars (\$100.00) per bench.

SECTION 15. LOCATION OF BENCHES AND BENCH SPECIFICATIONS. All benches shall be placed on sidewalks parallel to the curb line and at a distance from the curb to be determined by the City Manager or his designee. No bench shall be

placed so as to injuriously obstruct passage on the sidewalk or street. No bench shall be placed within fifteen feet (15') of any fire hydrant. The clearance between the bench and the nearest obstruction on the sidewalk shall be no less than forty-two inches (42"). No more than two benches may be placed at any one bus stop unless approved by the City Manager or his designee. Bench locations shall comply with any additional location criteria established by the City Manager or his designee

SECTION 16. EMERGENCY SITUATIONS. Grantee shall be present at the site of an emergency situation within one hour of verbal notification that such an emergency exists. An emergency is defined as damage to or unauthorized movement to a new location of a bench which presents a serious hazard to the public. If the City Manager or his designee determines that an emergency situation exists, their determination shall be conclusive. Failure of Grantee to respond within the prescribed time limit shall result in a penalty of up to Fifty and no/100ths Dollars (\$50.00) for each failure to respond. Penalties are due and payable to the City within fifteen (15) days of mailing an invoice by the City in the U.S. Mail. The City may, at its discretion, move the bench to a safe location pending arrival of Grantee.

SECTION 17. INSURANCE REQUIREMENTS.

The Grantee shall provide at its own expense and maintain at all times the following insurance with insurance companies licensed in the State of California and shall provide evidence of such insurance to the City as may be required by the Risk Manager of the City. The policies or certificates thereof shall provide that, thirty (30) days prior to cancellation or material change in the policy, notices of same shall be given to the Risk Manager of the City by certified mail, return receipt requested, for all of the following stated insurance policies.

(a) Worker's Compensation - in compliance with the statutes of the State of California, plus employer's liability with a minimum limit of liability of \$1,000,000.

(b) General Liability insurance with a minimum limit of liability per occurrence of \$1,000,000 for bodily injury, property damage, and personal injury. This insurance shall indicate on the certificate of insurance the following coverages and indicate the policy aggregate limit applying to: premises and operations; broad form contractual; independent consultants and subcontractors; products and completed operations; and professional liability.

(c) Automobile Liability insurance with a minimum limit of liability per occurrence of \$1,000,000 for bodily injury and \$100,000 for property damage or \$1,000,000 combined single limit. This insurance shall cover any automobile for bodily injury and property damage.

(d) Advertiser's Liability insurance with a minimum limit of liability per occurrence of \$1,000,000 for legal liability; damages resulting from libel, slander, or defamation; infringement of copyright, title or slogan; and invasion of rights to privacy.

If at any time any of said policies shall be unsatisfactory to the City, as to form or substance, or if a company issuing such policy shall be unsatisfactory to the City, the Grantee shall promptly obtain a new policy, submit the same to the Risk Manager for approval and submit a certificate thereof as hereinabove provided. Upon failure of the Grantee to furnish, deliver or maintain such insurance and certificates as above provided, this Agreement, at the election of the City, may be forthwith declared suspended, or terminated. Failure of the Grantee to obtain and/or maintain any required insurance shall not relieve the Grantee from any liability under this Agreement, nor shall the insurance requirements be construed to conflict with or otherwise limit the obligations of the Grantee concerning indemnification. The City, its agents,

officers, employees, and volunteers shall be named as an additional insured on all insurance policies required herein, except Workers' Compensation and Advertiser's Liability. The Workers' Compensation insurer shall agree to waive all rights of subrogation against the City, its agents, officers, employees, and volunteers for losses arising from work performed by Grantee for the City. The Grantee's insurance policy(ies) shall include a provision that the coverage is primary as respects the City; shall include no special limitations to coverage provided to additional insured; and, shall be placed with insurer(s) with acceptable Best's rating of A:VII or with approval of the Risk Manager. The Grantee must deliver certificates evidencing existence of the insurance listed above to the City Clerk at the time the contract is signed.

The Grantee shall provide the City with separate endorsements evidencing proof of the City's additional insured status as to both the general liability and automobile liability insurance policies. In addition, the Grantee shall provide the City with a Workers Compensation subrogation waiver by way of a separate endorsement. All endorsements referenced above must include the applicable policy number.

For any claims related to this project, the Grantee's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Grantee's insurance and shall not contribute with it.

SECTION 18. PERFORMANCE BOND/SECURITY. The Grantee shall post a performance bond or other surety approved by the City's City Attorney in the sum of Two Thousand and no/100ths to the City guaranteeing its performance of the conditions of this franchise and stating that the said sum shall be forfeited to the City as liquidated damages in the event that Grantee shall fail to perform the conditions of its franchise. Said bond shall be

furnished by a surety company authorized to do business in the State of California and shall be approved by the City Attorney. (Cash, irrevocable letter of credit, or a certified cashiers check may be substituted for a bond.)

SECTION 19. DEFAULT. In the event that either party shall fail or neglect to do or perform each and all of the terms and conditions of this franchise on his or its part to be performed, the aggrieved party may give the party in default thirty (30) days' written notice to correct the conditions in default, and if the party in default refuses or neglects to make such corrections within the thirty (30) day period, the aggrieved party may terminate this franchise. Should Grantee herein default, Grantee agrees to leave all benches in the positions approved per Section 8 herein.

Should Grantee default, and at all times throughout the term of this franchise ordinance, and notwithstanding City's election at any time to exercise any particular remedy described herein or otherwise available in law or equity, City hereby reserves and retains the right to elect and exercise any and all remedies, whether simultaneously or consecutively, described herein or otherwise available in law and equity.

SECTION 20. INSPECTION OF BOOKS. The City shall have the right at all reasonable times to examine all books, papers, and records of the Grantee for the purpose of verifying the statements or reports required and for any other purpose whatsoever connected with this franchise.

SECTION 21. DEFACING BENCHES PROHIBITED. No person shall tamper with or deface any bench placed under the franchise granted by this ordinance.

SECTION 22. PENALTY FOR VIOLATION OF SECTION 21. It shall be unlawful for any person to violate the provisions of SECTION 21 of this franchise, or to cause,

permit or suffer the same to be done; and any person who does shall be deemed guilty of a misdemeanor, and upon conviction of any such violation, such person shall be punished by a fine of not more than One Thousand and no/100ths Dollars (\$1,000.00) or by imprisonment for not more than one year or by both such fine and imprisonment.

SECTION 23. TRANSFER OR ASSIGNMENT. This franchise may not be sold, transferred, assigned or otherwise disposed of, in whole or in part, without the prior written consent of the City Council. The Council may grant or deny any such request and may impose such conditions as it may deem to be in the public interest. Any attempted disposition made without such consent shall be void.

SECTION 24. REPEALS. Ordinance No. 3334-C.S. is hereby repealed effective January 1, 2009.

SECTION 25. EFFECTIVE DATE. This ordinance shall become effective January 1, 2009, or thirty (30) days from and after its final passage and adoption, whichever is later, provided that Grantee, prior to said effective date, shall have filed with the City Clerk written acceptance thereof and an agreement to be bound by and comply with all of the requirements thereof, and delivers to the City Clerk the bond and insurance policies required to be furnished pursuant to the provisions of Section 17 and 18 thereof.

SECTION 26. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in The Modesto Bee, the official newspaper of the City of Modesto, setting forth the title of this ordinance, the date of its introduction and the places where this ordinance is posted.

SECTION 27. TAX PROVISION. Grantee shall be responsible for prompt payment of all tax liabilities created by operation of this franchise including but not limited to, a possessory interest tax levied by Stanislaus County. Grantee's continued failure to pay such tax after written notice from the City shall constitute grounds for revocation of this franchise.

SECTION 28. CITY USE OF BENCHES. Grantee shall make available to the City, at no cost to the City, a maximum of twenty (20) benches that are without paid advertising or which carry only the Grantee's advertisement for the sale of advertising space on the benches. Said twenty (20) benches will be used for the purpose of displaying printed messages selected by the City to promote City programs or messages determined by the City to be of importance to the public. The City shall have the sole ability to select said twenty (20) locations. The City shall be responsible for the cost of painting or otherwise applying its printed message to the benches it utilizes and shall have the ability to utilize the bench advertisement painter of its choice. Grantee shall install said City signs on the benches at no cost to the City. Grantee shall have the ability to remove the City signs from locations that may subsequently be purchased by advertisers but shall relocate displaced City signs to other locations selected by the City.

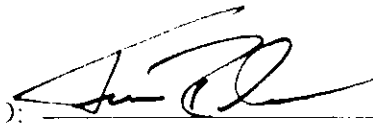
The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 25th day of November 2008, by Councilmember Marsh, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Olsen, was upon roll call carried and ordered printed and published by the following vote:

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

NOES: Councilmembers: None

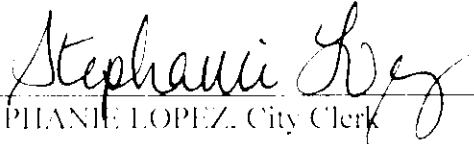
ABSENT: Councilmembers: None

APPROVED: _____



JIM RIDENOUR, Mayor

ATTEST:

By: 
STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By: 
SUSANA ALCALA WOOD, City Attorney

By: 
MARY AKIN, Risk Manager

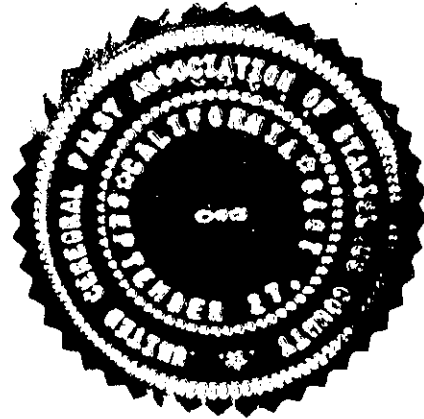
ACCEPTANCE OF FRANCHISE

United Cerebral Palsy Association, Inc., of Stanislaus/Tuolumne Counties does hereby agree with and accept all of the terms and conditions set forth in Ordinance No. 3497-C.S., introduced by the Council of the City of Modesto on November 25, 2008, granting a five-year bus bench franchise.

Dated: 1.21.09

GRANTEE: [Signature]

(SEAL)



APPROVED AS TO FORM:

By [Signature]
SUSANA ALCALA WOOD, City Attorney

CERTIFICATE OF CLERK

I hereby certify that the foregoing ACCEPTANCE OF FRANCHISE was received by me at the hour of 8:30 o'clock ^{am}~~pm~~ on the 21st day of January, 2009

[Signature]
STEPHANIE LOPEZ, City Clerk

Ord. No. 3497-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 December, 2008, Councilmember Lopez moved its final adoption, which motion being duly seconded by Councilmember Hawn, was upon roll call carried and the ordinance adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: 
MAYOR JIM RIDENOUR

ATTEST: 
STEPHANIE LOPEZ, City Clerk

Effective Date: January 10, 2009

ORDINANCE NO. 3498-C.S.

AN ORDINANCE AMENDING SECTION 19-3-9 OF THE ZONING MAP TO PREZONE FROM PREZONE HIGHWAY COMMERCIAL ZONE, P-C-3, AND PREZONE LIGHT INDUSTRIAL ZONE, P-M-1, TO PREZONE PLANNED DEVELOPMENT ZONE, P-P-D(588), PROPERTY LOCATED ON THE NORTH CORNER OF NORTH 9TH STREET AND CARVER ROAD (EAT)

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

SECTION 1. ZONING CHANGE: Section 19-3-9 of the Zoning Map is hereby amended to reclassify the following described property from Prezone Highway Commercial Zone, P-C-3, and Prezone Light Industrial Zone, P-M-1, to Prezone Planned Development Zone, P-P-D(588).

P-C-3 and P-M-1 to P-P-D(588)

All that real property situated in the unincorporated area of County of Stanislaus, State of California, described as follows:

COMMENCING at the Northeasterly corner of Lot 6 as shown on that certain map entitled "Plat of McDonald Tract", filed April 30, 1903, in Volume 1 of Maps, at Page 49, Stanislaus County Records; thence along the Northerly line of said Lot 6, South 89°52'41" West, 260.00 feet to the POINT OF BEGINNING; thence continuing along said line of said Lot 6, South 89°52'41" West, 236.05 feet to the Southeasterly corner of PARCEL B as shown on that certain Parcel Map entitled "PARCEL MAP OF PORTION OF LOTS 4 AND 5 OF THE McDONALD TRACT", filed June 16, 1967, in Book 3 of Parcel Maps, at Page 93, Stanislaus County Records; thence along the Easterly line of said PARCEL B, North 01°33'39" West, 240.00 feet to the Northeasterly corner thereof; thence along the general Southerly line of PARCEL 1 as shown on that certain Parcel Map filed July 2, 1999, in Book 49 of Parcel Maps, at Page 57, Stanislaus County Records, North 01°33'39" West, 15.10 feet and North 89°42'13" East, 50.00 feet; thence North 01°33'39" West, 143.40 feet to the general Northerly line of said PARCEL 1; thence along last said line the following five (5) courses: 1) North 89°56'36" West, 13.31 feet; 2) North 00°27'54" East, 2.00 feet; 3) North 89°56'36"

West, 384.35 feet; 4) South 00°22'06" East, 2.00 feet; and 5) North 89°56'36" West, 111.69 feet to the general Westerly line of said PARCEL 1; thence along last said line, South 05°23'22" East, 118.35 feet to the most Northerly corner of PARCEL 3937-01-01 as described in that certain Director's Deed from the State of California to William L. Sweeley and Sherel E. Sweeley, recorded March 15, 1979, in Book 3165, at Page 761, Official Records of Stanislaus County; thence along the Westerly line of said PARCEL 3937-01-01 and its Southerly prolongation, South 05°23'22" East, 256.50 feet to the centerline of North 9th Street as said street is shown on said Parcel Map filed on June 16, 1967; thence along said centerline, South 43°11'38" East, 492.07 feet to the Westerly prolongation of the Southerly line of PARCEL NO. 3 as described in that certain Grant Deed to Sylvia E. Cox and 4701 Stoddard, LLC, a California Limited Liability Company, recorded March 30, 2007 as Document Number 2007-0041116, Official Records of Stanislaus County; thence along last said prolongation and said line of said PARCEL NO. 3, North 84°07'22" East, 619.44 feet to the centerline of Carver Road as shown on said Parcel Map filed on June 16, 1967; thence along last said centerline, North 00°12'51" West, 170.49 feet to the Easterly prolongation of that course described as "North 89°43' East, 260 feet" in PARCEL NO. 4 as described in said Grant Deed (Document Number 2007-0041116); thence along last said prolongation and last said course, South 89°52'41" West, 280.94 feet to the Southerly terminus of that course described as "South 00°25' East, parallel to the West right-of-way line of Carver Road, 100 feet"; thence along last said course, North 00°13'38" West, 100.00 feet to the POINT OF BEGINNING.

CONTAINING 9.071 acres, more or less.

SECTION 2. USES. The following uses shall be permitted in said P-P-D(588) Zone, if the plan for construction conforms in principle to the approved plan, or if changes are approved by the Secretary of the Planning Commission as required by Section 10-2.1709(e) of the Modesto Municipal Code, or by the Planning Commission if any changes not conforming in principle to the approved plan are proposed, as required by Section 10-2.1709(a) or (b) of the Modesto Municipal Code:

1. A two-story 150-unit affordable housing development.

SECTION 3. ZONING MAP. Section 19-3-9 of the Zoning Map of the City of Modesto is hereby amended to appear as set forth on the map attached hereto, which is hereby made a part of this ordinance by reference.

SECTION 4. FINDINGS.

A public hearing was held by the City Council on December 2, 2008, in Chambers, Tenth Street Place, 1010 Tenth Street, Modesto, California, at which hearing evidence both oral and documentary was received and considered. The City Council certifies it has received and reviewed the Initial Study, Environmental Assessment No. EA/C&ED 2008-42, which concluded that the Project is within the scope of the General Plan Master EIR (SCH No. 2007072023) and that pursuant to Section 21157.1 of the Public Resources Code, no new environmental review is required.

The City Council hereby finds and determines as follows:

1. The requested rezoning of the Property is required by public convenience or necessity for the following reasons:
 - a. The proposed 150-unit affordable housing development is consistent with the Redevelopment Master Plan, which calls for housing to be developed in this area, among other things; and
 - b. The proposed project helps further General Plan Goal DD.4, which calls for Modesto to contain a diversity of housing types to enable citizens from a wide range of economic levels and age groups to live within its boundaries; and
 - c. The proposed rezoning will result in orderly planned use of land resources, because it will provide for infill development that is consistent with City Standards.

2. The proposed prezone is consistent with the Modesto Urban Area General Plan, because:
 - a. The project site lies within the redevelopment planning district, and the proposed 150-unit affordable housing development is consistent with the Redevelopment Master Plan, which is incorporated into the General Plan by reference; and
 - b. The location of the Property is immediately adjacent to the existing City limits and within the Sphere of Influence and is consistent with Urban Growth Policy II.C.1.b., which states "Urban development should be kept as contiguous as possible in order to avoid premature urbanization of valuable farm land, foster resident convenience, and provide for economy in City services."
3. The type of project is described in Chapter II of the Master Urban Area General Plan Master EIR (MEIR).
4. All applicable policies, regulations, and mitigation measures identified in the Master EIR have been applied to the project or otherwise made Conditions of Approval of the project.
5. An Initial Study was prepared by the City of Modesto that analyzed whether the proposed subsequent project may cause any significant effect on the environment that was not examined in the MEIR and it has been determined that the project was described in the MEIR as being within the scope of the MEIR.
6. Based on the Initial Study, the City of Modesto finds and determines:
 - a. The proposed subsequent project will have no additional significant effect as defined in CEQA Section 21158 beyond that which was identified in the MEIR.
 - b. No new or additional mitigation measures or alternatives are required.
7. The Initial Study, Environmental Assessment No EA/C&ED 2008-42, provides the substantial evidence to support findings 3-6, noted above.

SECTION 5. EFFECTIVE DATE. This ordinance shall go into effect and be in full force and operation from and after thirty (30) days after its final passage and adoption.

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

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 2nd day of December, 2008, by Councilmember Marsh, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Hawn, was upon roll call carried and ordered printed and published by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: 
JIM RIDENOUR, Mayor

ATTEST:

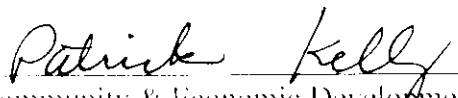
By 
STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By 
SUSANA ALCALA WOOD, City Attorney

APPROVED AS TO DESCRIPTION:

By 
Community & Economic Development
Department Planning Division

Ord. No. 3498-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 December, 2008, Councilmember Lopez moved its final adoption, which motion being duly seconded by Councilmember Hawn, was upon roll call carried and the ordinance adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:



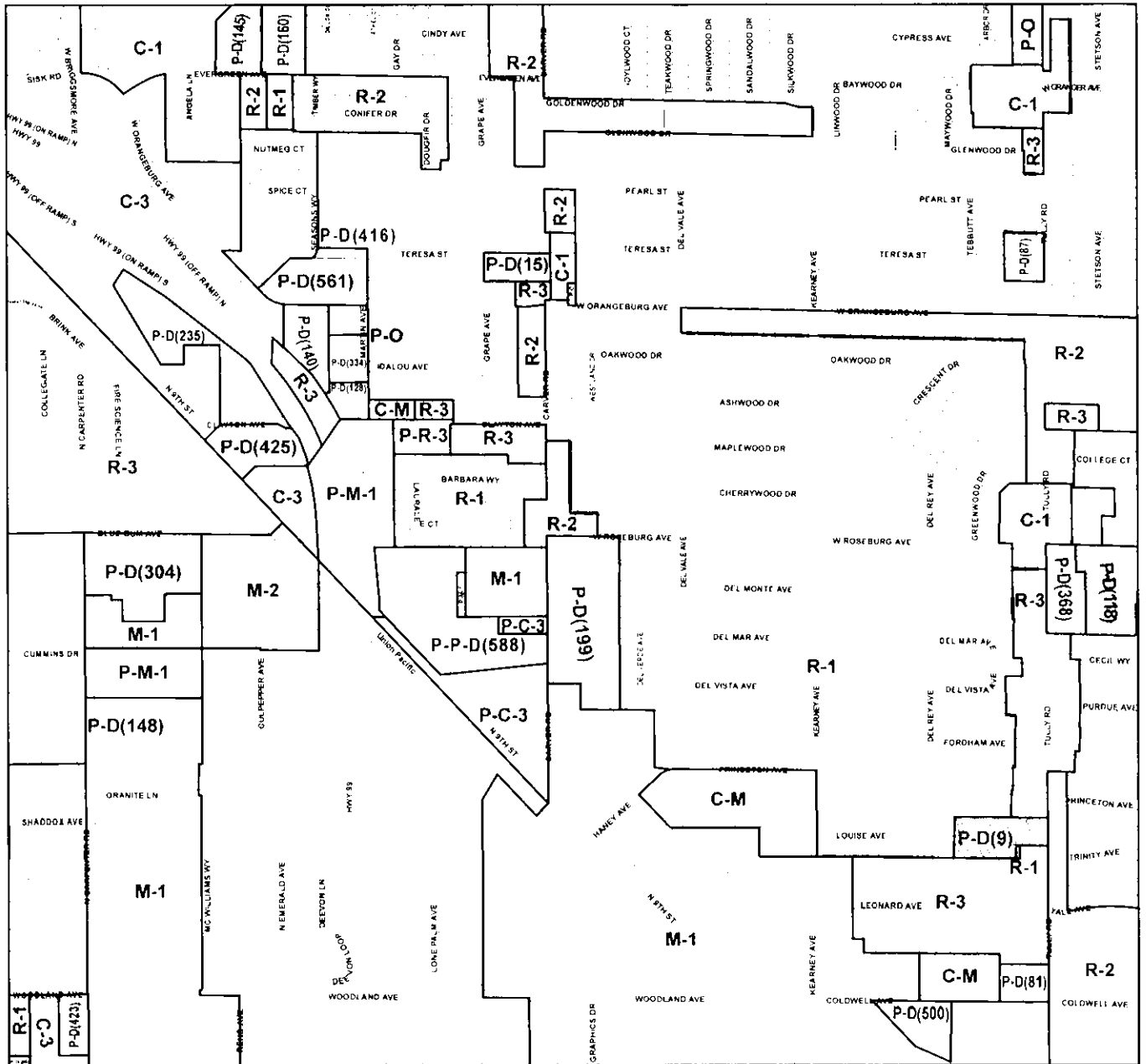
MAYOR JIM RIDENOUR

ATTEST:



STEPHANIE LOPEZ, City Clerk

Effective Date: January 10, 2009



December 12, 2008

Ordinance No. 3498-C.S.

City of Modesto Zoning Map 19-3-9

ORDINANCE NO. 3499-C.S.

AN ORDINANCE AMENDING SECTIONS 5-5.108, 5-5.109 AND 5-5.111 OF ARTICLE 1 OF CHAPTER 5 OF TITLE 5 OF THE MODESTO MUNICIPAL CODE RELATING TO SOLID WASTE, AND SECTIONS 11-6.12 AND 11-6.15 OF CHAPTER 6 OF TITLE 11 OF THE MODESTO MUNICIPAL CODE RELATING TO MANAGEMENT AND COLLECTION OF GARBAGE SERVICE CHARGES BY CITY-LICENSED GARBAGE COMPANIES

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

SECTION 1. AMENDMENT OF CODE. Sections 5-5.108, 5-5.109 and 5-5.111 of Article 1 of Chapter 5 of Title 5 of the Modesto Municipal Code, and Sections 11-6.12 and 11-6.15 of Chapter 6 of Title 11 of the Modesto Municipal Code are hereby amended to read as follows:

5-5.108. CONTAINERS REQUIRED.

It shall be unlawful for any person occupying any premises within the City, or for any person, controlling or maintaining any premises within the City where solid waste is created, produced, or accumulated, to fail or neglect to provide a sufficient number of each approved type of standard containers for receiving and holding without leakage or escape of odors all solid waste produced, created, or accumulated upon such premises, except as hereinafter provided; and all such persons shall deposit all such solid waste in the correct containers, and all such containers shall be at all times kept in a good, usable and sanitary condition. Containers shall be kept continuously closed except when solid waste is being placed therein or removed therefrom, and shall at all times be closed against the access of flies, rodents, and animals to the contents thereof. Garbage, rubbish and/or garbage/recyclables may be deposited in the same container. It shall be unlawful for any person to place non-compostables or any other unapproved material in a yard waste recycling container. It shall further be unlawful for any person to place yard waste in any solid waste collection container, other than a container approved for yard waste. Containers shall not exceed one hundred (100) pounds in weight when filled for collection or removal, except when detachable or

5-5.109. NUMBER OF CONTAINERS REQUIRED.

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

- (a) One (1) family and two (2) family dwellings: Effective January 1, 1997, one (1) black standard container for garbage and garbage/recyclables, and one (1) green standard container for yard waste/compostables per dwelling unit.
- (b) Three (3) family dwellings, apartment houses, and multiple-dwelling buildings: Effective January 1, 1998, one (1) standard container per dwelling unit for garbage and garbage/recyclables, unless a lesser number is authorized by the Parks, Recreation and Neighborhoods Director, and sufficient yard waste/compostables collection containers of a type approved by the Parks, Recreation and Neighborhoods Director.
- (c) Motel, hotel, trailer park, or mobile home park: One (1) standard container for garbage and garbage/recyclables per unit or space, unless a lesser number is authorized by the Parks, Recreation and Neighborhoods Director, and sufficient yard waste/compostables collection containers of a type approved by the Parks, Recreation and Neighborhoods Director.
- (d) Commercial place or premises: Effective January 1, 1998, not less than one (1) standard container for garbage or garbage/recyclables, or one (1) detachable container(s) for garbage or garbage/recyclables as determined by the Parks, Recreation and Neighborhoods Director, and sufficient yard waste/compostables collection containers of a type approved by the Parks, Recreation and Neighborhoods Director.

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

than described in this section if the customer is handicapped or disabled and the location is approved by the Parks, Recreation and Neighborhoods Director.

11-6.12. CHARGES FOR GARBAGE SERVICE.

- (a) Maximum charges to classes of customers, for example, residential, commercial and industrial customers, for garbage service may be established by Council from time to time by resolution and placed on file in the office of the City Clerk and Parks, Recreation and Neighborhoods Director.
- (b) Below maximum charges for garbage service shall be as determined by the collector for each customer class and shall not be subject to City review and mediation.
- (c) The Council may impose a separate solid waste recycling program charge. If such a charge is imposed, it shall be added to the charge for garbage service collected by collector and transmitted to the City. The method of accounting for the amount of such recycling program charges collected by the collector and the time and manner of transmitting them to the City shall be as determined by the Finance Director.

For residential premises receiving water/sewer bills, charges for garbage service may appear on the same bill.

For nonresidential and residential premises not connected to the municipal water/sewer systems, the collector shall bill and collect all garbage service charges, including any recycling charge. Recycling charge shall be accounted for and transmitted to the City as determined by the Finance Director.

11-6.15. MANAGEMENT AND COLLECTION OF GARBAGE SERVICE CHARGES BY CITY-LICENSED GARBAGE COMPANIES.

Only Sections 11-6.11 and 11-6.12, above, and this section of Chapter 6, shall apply to garbage collectors.

- (a) The City may contract with any collector to provide garbage invoice services for compensation, but the City shall not use its police powers or other authority to assist any collector with bill collection.

nonpayment.

- (iii) Collector is not required to start or restart service to any customer whose service has been discontinued due to nonpayment until such time as all previous charges, penalty fees, administrative charges and appropriate deposit are paid or other arrangements have been agreed to between the collector and the customer.

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

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

Ord. No. 3499-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 13th day of January, 2008, Councilmember Lopez moved its final adoption, which motion being duly seconded by Councilmember Keating, was upon roll call carried and the ordinance adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: _____



MAYOR JIM RIDENOUR

ATTEST: _____



STEPHANIE LOPEZ, City Clerk

Effective Date: February 14, 2009

ORDINANCE NO. 3500-C.S.

AN ORDINANCE AUTHORIZING AN AMENDMENT TO THE CONTRACT BETWEEN THE CITY OF MODESTO AND THE BOARD OF ADMINISTRATION OF THE CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM (CALPERS) TO PROVIDE SECTION 2118 (PARTIAL SERVICE RETIREMENT) FOR LOCAL MISCELLANEOUS MEMBERS.

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

SECTION 1. That an amendment to the contract between the City of Modesto and the Board of Administration, California Public Employees' Retirement System (CalPERS) effective March 6, 2009, to provide Section 2118 (Partial Service Retirement) for local miscellaneous members, a copy of said amendment being attached hereto, marked as an "Exhibit," and by such reference made a part hereof as though herein set out in full.

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

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

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

The foregoing ordinance was introduced at a regular meeting of the Council of

the City of Modesto held on the 13th day of January, 2009, by Councilmember Lopez, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Keating, was upon roll call carried and ordered printed and published by the following vote:

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

NOES: Councilmembers: None.

ABSENT: Councilmembers: None.

Approved: 
JIM RIDENOUR, Mayor

Attest: 
STEPHANIE LOPEZ, City Clerk

APPROVED AS TO FORM:

By: 
SUSANA ALCALA WOOD, City Attorney

Ord. No. 3500-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 3rd day of February, 2009, Councilmember Lopez moved its final adoption, which motion being duly seconded by Councilmember Marsh, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Hawn, Keating, Lopez, Marsh, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: O'Bryant

APPROVED: _____

MAYOR JIM RIDENOUR

ATTEST: _____

STEPHANIE LOPEZ, City Clerk

Effective Date: March 5, 2009

ORDINANCE NO. 3501-C.S.

AN ORDINANCE AMENDING SECTION 8-1.206 OF ARTICLE 2 OF CHAPTER 1 OF TITLE 8 OF THE MODesto MUNICIPAL CODE RELATING TO CAPITAL FEES, FEES - TIME OF COLLECTION.

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

SECTION 1. AMENDMENT OF CODE. Section 8-1.206 of Article 2 of

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

SECTION 8-1.206. FEES; TIME OF COLLECTION.

All fees described in Section 8-1.205 shall be collected prior to issuance of any building permit, except single-family residential fees. Single-family residential fees shall be collected prior to issuance of any Certificate of Occupancy. For a period of one year from the date this ordinance goes into effect,

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 13th day of January, 2009, by Councilmember Hawn, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Lopez, was upon roll call carried and ordered printed and published by the following vote:

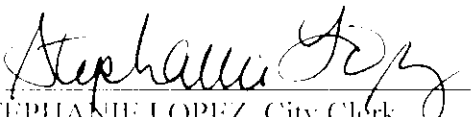
AYES: Councilmembers: Hawn, Keating, Lopez, Marsh, O'Bryant, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED 
JIM RIDENOUR, Mayor

ATTEST:

By 
STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By 
SUSANA ALCALA WOOD, City Attorney

Ord. No. 3501-C.S.

FINAL ADOPTION CLAUSE

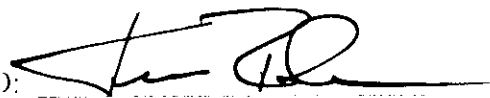
The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 27th day of January, 2009, Councilmember Hawn moved its final adoption, which motion being duly seconded by Councilmember Marsh, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Hawn, Keating, Lopez, Marsh, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: O'Bryant

APPROVED:



MAYOR JIM RIDENOUR

ATTEST:


STEPHANIE LOPEZ, City Clerk

Effective Date: February 27, 2009

ORDINANCE NO. 3502-C.S.

AN ORDINANCE AMENDING SECTION 7-3-9 OF THE ZONING MAP TO REZONE FROM GENERAL COMMERCIAL, C-2, PROFESSIONAL OFFICE, P-O, AND PLANNED DEVELOPMENT, P-D(133), TO PLANNED DEVELOPMENT ZONE, P-D(589), PROPERTY LOCATED AT 3619 TULLY ROAD (RENATA ENTERPRISES)

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

SECTION 1. ZONING CHANGE:: Section 7-3-9 of the Zoning Map is hereby amended to reclassify the following described property from General Commercial Zone, C-2, Professional Office Zone, P-O, and Planned Development Zone, P-D(133), to Planned Development Zone, P-D(589):

C-2 to P-D(589)

All that certain real property situated in the City of Modesto, County of Stanislaus, State of California, being a portion of the Northeast quarter of Section 7, Township 3 South, Range 9 East, Mount Diablo Base and Meridian, more particularly described as follows:

Commencing at the East quarter corner of Section 7, being also the intersection of the centerlines of Tully Road and Standiford Avenue; thence North $1^{\circ}14'15''$ West along the east line of said Section 7, and the centerline of Tully Road, a distance of 567.74 feet to the Point of Beginning for this description; thence South $88^{\circ}45'45''$ West, 228.8 feet; thence North $1^{\circ}14'15''$ West, 180.0 feet to the north line of Parcel "A" as shown on the map filed in Volume 3 of Parcel Maps at Page 64, Stanislaus County Records; thence North $88^{\circ}45'45''$ East along said north line, a distance of 228.8 feet to the centerline of Tully Road; thence returning South $1^{\circ}14'15''$ East, along said centerline, a distance of 180.0 feet to the Point of Beginning.

P-O to P-D(589)

All that certain real property situated in the City of Modesto, County of Stanislaus, State of California, being a portion of the Northeast quarter of Section 7, Township 3 South, Range 9 East, Mount Diablo Base and Meridian, more particularly described as follows:

Commencing at the East quarter corner of Section 7, being also the intersection of the centerlines of Tully Road and Standiford Avenue; thence North $1^{\circ}14'15''$ West along the east line of said Section 7, and the centerline of Tully Road, a distance of 497.74 feet to the easterly prolongation of the south line of Parcel "A" as shown on the map filed in Volume 3 of Parcel Maps at Page 64, Stanislaus County Records; thence South $88^{\circ}45'45''$ West along said prolongation and said south line of Parcel "A", a distance of 228.8 feet to the Point of Beginning for this description; thence continuing South $88^{\circ}45'45''$ West along said south line, a distance of 279.7 feet to the southwest corner thereof; thence North $0^{\circ}24'59''$ West along the west line of said Parcel "A" a distance of 250.03 feet to the northwest corner thereof; thence North $88^{\circ}45'45''$ East along the north line of said Parcel "A", a distance of 276.12 feet; thence returning South $1^{\circ}14'15''$ East, a distance of 250 feet to the Point of Beginning.

P-D(133) to P-D(589)

All that certain real property situated in the City of Modesto, County of Stanislaus, State of California, being a portion of the Northeast quarter of Section 7, Township 3 South, Range 9 East, Mount Diablo Base and Meridian, more particularly described as follows:

Commencing at the East quarter corner of Section 7, being also the intersection of the centerlines of Tully Road and Standiford Avenue; thence North $1^{\circ}14'15''$ West along the east line of said Section 7, and the centerline of Tully Road, a distance of 497.74 feet to the easterly prolongation of the south line of Parcel "A" as shown on the map filed in Volume 3 of Parcel Maps at Page 64, Stanislaus County Records, also being the Point of Beginning for this description; thence South $88^{\circ}45'45''$ West along said prolongation and south line, 228.8 feet; thence North $1^{\circ}14'15''$ West, 70.03 feet; thence North $88^{\circ}45'45''$ East, 228.8 feet to the

centerline of Tully road; thence returning South 14°15' East, along said centerline, a distance of 70.03 feet to the point of Beginning.

SECTION 2. USES. The following uses shall be permitted in said P-D(589) Zone, if the plan for construction conforms in principle to the approved plan, or if changes are approved by the Secretary of the Planning Commission as required by Section 10-2.1709(e) of the Modesto Municipal Code, or by the Planning Commission if any changes not conforming in principle to the approved plan are proposed, as required by Section 10-2.1709(a) or (b) of the Modesto Municipal Code:

1. Within the Phase 1 portion of the property, as shown on the approved plan titled "Development Plan for Renata Plaza": all uses as permitted in the General Commercial (C-2) Zone, including a car wash.
2. Within the Phase 2 portion of the property, as shown on the approved plan titled "Development Plan for Renata Plaza": RV storage, subject to Development Plan Review approval in accordance with Article 30 of the Modesto Municipal Code, Title 10.

SECTION 3. ZONING MAP. Section 7-3-9 of the Zoning Map of the City of Modesto is hereby amended to appear as set forth on the map attached hereto, which is hereby made a part of this ordinance by reference.

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

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

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 27th day of January, 2009 by Councilmember Hawn, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Marsh, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Hawn, Keating, Lopez, Marsh, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: O'Bryant

APPROVED: 
JIM RIDENOUR, Mayor

ATTEST:

By 
STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By 
SUSANA ALCALA WOOD, City Attorney

APPROVED AS TO DESCRIPTION:

By  for PK
Community & Economic Development
Department - Planning Division

Ord. No. 3502-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 10th day of February, 2009, Councilmember Hawn moved its final adoption, which motion being duly seconded by Councilmember Lopez, was upon roll call carried and the ordinance adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: _____



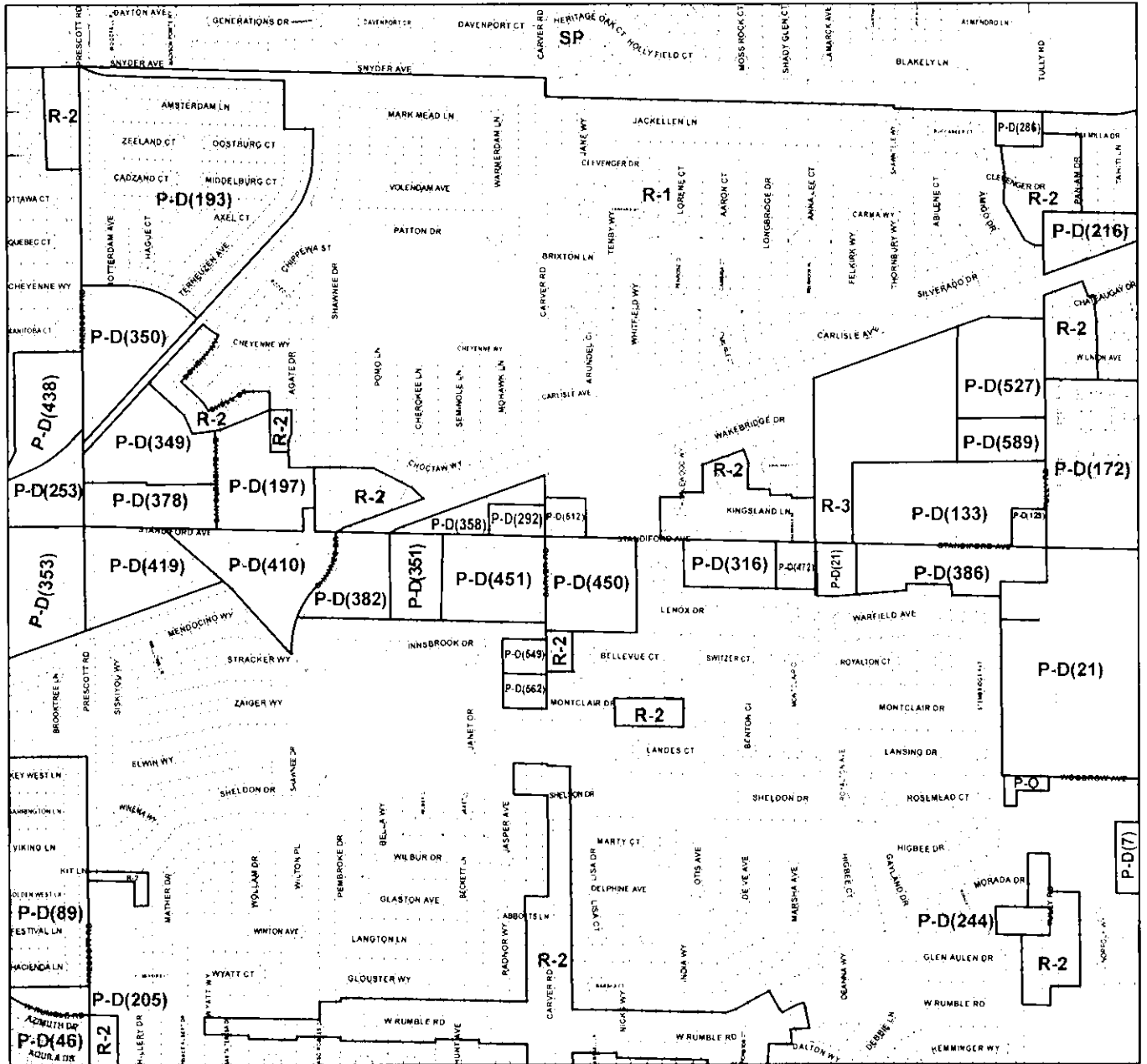
MAYOR JIM RIDENOUR

ATTEST: _____



STEPHANIE LOPEZ, City Clerk

Effective Date: March 12, 2009



February 13, 2009

Ordinance No. 3502-C.S.

City of Modesto Zoning Map 7-3-9

ORDINANCE NO. 3503-C.S.

**AN ORDINANCE ADDING ARTICLE 9 ENTITLED
“WASTEWATER TREATMENT CAPACITY BANKING
AND TRANSFER” TO CHAPTER 6 OF TITLE 5 OF THE
MODESTO MUNICIPAL CODE.**

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

SECTION 1. AMENDMENT OF CODE. Article 9 entitled “Wastewater Treatment Capacity Banking and Transfer” is hereby added to Chapter 6 of Title 5 of the Modesto Municipal Code to read as follows:

ARTICLE 9. WASTEWATER PERMITTED CAPACITY BANKING AND TRANSFER

5-6.901. DEFINITIONS.

- (a) **Assignable Cause** means any one of the following: 1) the User has a substantial and current permit violation that is not cured within a reasonable period of time after notice of violation from the City; 2) the transfer would cause an overload and/or surcharge of the City’s wastewater collection and treatment system; 3) the transfer would be detrimental to the public safety, health, or environment; 4) the transfer would be inconsistent with the economic development policy criteria as adopted by the City Council, but the City shall not be unreasonable in denying or conditioning a transfer request for assignable cause.
- (b) **Equivalent Dwelling Unit or EDU.** A single family equivalent dwelling unit based upon standardized estimated discharge characteristics of a typical single family dwelling of 290 gallons per day (gpd), 200 milligrams per liter (mg/L) of strength Five Day Biochemical Oxygen Demand (BOD), and 200 mg/l OF Total Suspended Solids content (TSS) as set forth in City Council Resolution 2007-287.
- (c) **Historical Capacity.** The “allocation level” as determined under City Council Resolution No. 2007-422 for the flows and substances listed in such resolution and any other constituents or substances for which the City imposes a limit in User’s Wastewater Discharge Permit (including without limitation constituents referred to in Modesto Municipal Code Section 5-

6.210 entitled Specific Pollutant Limitations (Local Limits)) (collectively, "substances").

- (d) **Permitted capacity.** The amount of wastewater treatment capacity, including any limits on flows, constituents and substances, currently permitted to an industrial User in accordance with State and City requirements and User need. This Article 9, including without limitation the provisions pertaining to transferability of wastewater treatment discharge rights control over any conflicting provisions of any other ordinance.
- (e) **User.** Industrial User as defined in Modesto Municipal Code Section 5-6.103.
- (f) **Wastewater Treatment Capacity.** The entire ability of the City to legally process and discharge wastewater in accordance with the laws and regulations of the State of California. This ability is under the exclusive dominion, ownership, and control of the City and its Sewer District No. 1 as licensed providers of wastewater services to the public.

5-6.902. PURPOSE AND FINDINGS.

At any particular time, sewer capacity for a proposed development project perceived as being in keeping with the City's goals and of considerable value to the City may be unavailable. Wastewater Treatment Capacity often lags behind system demands due to financing, permitting and construction constraints. In addition, surplus capacity is not normally built into wastewater treatment systems. Accordingly, it would be in the best interest of the City to provide an incentive for existing Industrial Users to conserve water and reduce wastewater discharges and transfer capacity to new and expanding businesses and create an economic incentive banking program for wastewater treatment capacity. Such a bank, called the Economic Incentive Wastewater Treatment Capacity Bank (Bank), would not impair the City's ownership and control of the wastewater treatment capacity. The following ordinances are in furtherance of that goal.

5-6.903. BANKING AND TRANSFER OF PERMITTED CAPACITY.

The City may receive into its Economic Incentive Wastewater Treatment Capacity Bank (Bank) Permitted Capacity from Users through purchases by the City, donations to the City, or other transfers to the City by Users, and the City may then bank, transfer, sell, lend, or otherwise distribute portions of Permitted

Capacity generated by Users (and other major industries subject to the provisions of Article 6 of this Title) to other industrial or commercial sewer customers within the City, subject to the provisions of this ordinance. The provisions of this ordinance shall have control over any conflicting provisions contained in this Code.

5-6.904. ECONOMIC INCENTIVE WASTEWATER TREATMENT CAPACITY BANK.

Permitted Capacity transferred to or taken by the City pursuant to this ordinance shall be placed in an account referred to as the Bank and shall be referred to as banked wastewater treatment capacity. Banked wastewater treatment capacity may be used to provide wastewater treatment capacity within the City's authorized sewer service area for:

- (a) Economic development projects limited to commercial and industrial development.
- (b) In-fill projects, as defined in the California Environmental Quality Act (CEQA) Guidelines Section 15332 and as certified by the City.
- (c) Affordable housing as defined in the California Health & Safety Code Sections 50079.5 and 50105 for low-income and very low-income households and as certified by the local jurisdiction.
- (d) Redevelopment projects.

5-6.905. BANKED CAPACITY ALLOCATIONS.

Permitted Capacity placed in the Bank shall be allowed for the uses described in Section 5-6.904 in a schedule approved by the Council from time to time by resolution. The Council may change the banked capacity allocations for use based on need, but in no case shall banked capacity be used for new residential development, except as provided in Section 5-6.904.

5-6.906. CONDITIONS FOR BANKING AND TRANSFER OF PERMITTED CAPACITY AND HISTORICAL CAPACITY.

The following conditions will apply to the banking and transfer of Permitted Capacity and Historical Capacity:

- (a) The City retains the absolute right to control the sale or other transfer of all Permitted Capacity and Historical Capacity from its Bank.
- (b) The banking and transfer of permitted capacity and historical capacity is limited to the area served by the City's wastewater treatment system ("City's Authorized Sewer Service Area").
- (c) A minimum Permitted Capacity in the amount of 1,000 gallons per day per acre must be left on an industrial property after a transfer to avoid stripping all wastewater treatment capacity from properties. Except for this per acre minimum, Permitted Capacity and Historical Capacity run with the User or sewer customer to whom a permit or allocation of discharge rights has been granted, rather than running with the real property or improvements.
- (d) Transfers, including but not limited to sales, leases, loans or gifts, of Permitted Capacity or Historical Capacity from one property to another property owned or leased by the same User, or from one User to another User, or from a User to the City, may proceed subject to City approval of the transfer, which approval may be withheld for only an assignable cause. The provisions of this portion of this ordinance shall have control over any conflicting provisions contained in this Code.
- (e) Sales of Permitted Capacity from a User to the City will be paid for by the City at the values set forth in Section 5-6.909 of this Code. Purchases of Permitted Capacity from a User by the City are subject to the City having the required funds available for the purchase. The City retains the right to reject requests by Users for the City to purchase capacity.
- (f) Wastewater collection system infrastructure must be able to accommodate the transfer of Permitted Capacity.
- (g) If the City denies a transfer of Permitted Capacity or Historical Capacity between properties owned by the same User or between Users because the transfer would cause an overload and/or surcharge of the City's wastewater treatment and/or collection system, the transfer will be allowed if the User has made provisions to correct the deficiencies, either through system infrastructure improvements or operational modifications as may be needed to accommodate the capacity transfer.

- (h) Unless there is a written agreement to the contrary between the User and the City, the City may appropriate without payment any unused Permitted Capacity for the Bank after three consecutive years of non-use of such capacity by a User, or any three years of non-use out of a five-consecutive year period. For purposes of this section, Permitted Capacity is "unused" when the City does not receive at least 80% of user fees from any User for that capacity. The City must first give one year prior written notice to the User. If the User makes use of said rights (by the payment of 80% of such fees or the actual use of such capacity for one year) within one year after receiving the written notice, then the City may not take said rights unless or until an additional three years of non-use or non-payment and an additional one-year notice period has expired. This section replaces and entirely supersedes Section 5-6.403.
- (i) No transfer may occur until the User requesting a transfer (petitioner) is current in payment of any wastewater or water charges owed to the City.
- (j) Permitted Capacity which is banked by the City may be assigned, Permitted, loaned, or otherwise transferred to the City's Users, transferred as specified in Section 5-6.904, or placed in reserve as prescribed by the City.
- (k) All capacity rights purchased by the City pursuant to this ordinance become the assets of the City's Bank. Such rights create no additional burden upon the City's treatment or conveyance facilities, as they are already calculated into the City's current treatment capabilities.
- (l) Users have no right to direct the transfer of Permitted Capacity from the Bank.
- (m) Users may not transfer to the City any Historical Capacity unless such capacity actually exists in the City Wastewater Treatment Capacity system and has been permitted to that User as Permitted Capacity. However, Historical Capacity may be transferred to the City with the express written permission of the City.
- (n) The process of transferring Permitted Capacity or Historical Capacity pursuant to this ordinance shall be initiated by submission of a written application for a proposed transfer of Permitted Capacity or Historical Capacity by the User from which the Permitted Capacity or Historical

Capacity will be transferred, on a form to be developed and provided by the City.

- (o) The City retains the right of first refusal as to any proposed transfer of Permitted Capacity or Historical Capacity between Users, and may exercise that right by purchasing the capacity on the same terms and conditions as the proposed transfer, provided, however, that such right of first refusal shall not apply to any transfer between different properties owned or leased by the same User, between a User and any affiliate of such User, or involving a lease or license with a duration of one year or less.

5-6.907. TRANSFER BY USERS OTHER THAN TO CITY.

The transfer, including but not limited to sales, leases, loans or gifts, of Permitted Capacity or Historical Capacity, between parcels owned by the same User, or to other Users within the City's Authorized Sewer Service Area, may take place if all conditions for the transfer are met. To complete the transfer, the following process is required:

- (a) A User must provide the City thirty (30) days written notice of intent and an application for the transfer of Permitted Capacity or Historical Capacity between parcels or Users.
- (b) The City will review the notice and application to determine if the conditions for the transfer of Permitted Capacity or Historical Capacity are met.
- (c) The City may initiate the transfers by written request avoiding (a) and (b) above.
- (d) The City will impose a surcharge of one percent (1%) of the Permitted Capacity transaction as a reserve for economic development. Such surcharge shall be in the form of like kind and character of that being sold. No surcharge shall be imposed for Permitted Capacity which is donated to the City, or transferred by lease or license with a duration of less than one year, or between properties owned by the same User, or between a User and its affiliate.
- (e) The City shall charge an application review and processing fee in an amount to be set by the City to recover direct cost.

5-6.908. TRANSFERS TO CITY BANK.

- (a) The User petitions City for a permanent reduction in Permitted Capacity or Historical Capacity.
- (b) City confirms that conditions are met for a transfer to the Wastewater Treatment Capacity Bank.
- (c) Banked Permitted Capacity that is not used within sixty (60) months of the City's acquisition may be removed from the bank and made available by the City at current capacity charge rate, save and except the City will undertake a public review before any such capacity will be removed from the bank.
- (d) Sales of Permitted Capacity or Historical Capacity from a User to the City will be paid for by the City at the values set forth in Section 5-6.909 of this Code.
- (e) The City shall charge an application review and processing fee in an amount to be set by the City to recover direct costs.

5-6.909. VALUE OF WASTEWATER CAPACITY TRANSFERRED TO CITY BANK.

- (a) Permitted Capacity or Historical Capacity transferred to the City and placed in the Wastewater Treatment Capacity Bank shall be presently purchased at the calculated 1999 allocation value of \$3,665 per Equivalent Dwelling Unit of wastewater capacity, consisting of \$3,067.18 in flow; \$472.31 BOD; and \$125.50 TSS, at a value of \$10.58 per gallon of flow; \$976.42 per pound of BOD; and \$259.45 per pound of TSS. This price can be amended by simple majority vote of the City Council at any time. Permitted Capacity or Historical Capacity transferred to the City and placed in the Bank may be sold by the City at any price decided upon by the City.
- (b) Transfers of Banked wastewater treatment Permitted Capacity or Historical Capacity from the Bank to Users shall be made in accordance with the provisions of this ordinance.

5-6.910. ANNUAL REPORT TO COUNCIL.

The Public Works Department will prepare an annual report on the Bank for the Council. The report will describe the following:

- (a) Overall use of the Bank during the reporting year.
- (b) Permitted Capacity and Historical Capacity transfers into the Bank during the reporting year.
- (c) Permanent Permitted Capacity and Historical Capacity transfers between Users during the reporting year.
- (d) Permanent Permitted Capacity and Historical Capacity transfers by Permitted use as described in Section 5-6.904 during the reporting year.
- (e) Recommendations for changes to levels of Permitted Capacity for Council consideration.

5-6.911. NO RESERVATION CHARGES.

Notwithstanding any other provision of this Code, Industrial Users shall not be charged a "reservation" or similar charge for unused Permitted Capacity, or for any Historical Capacity.

5-6.912. HISTORICAL CAPACITY AMOUNTS.

Notwithstanding any other provision of this Modesto Municipal Code, the Historical Capacity amounts recognized by the City of Modesto in City Council Resolution No. 2007-422 are deemed discharge rights of the Users that can be transferred subject to assignable cause.

5-6.913. NO CAPACITY CHARGE FOR HISTORICAL CAPACITY AMOUNTS.

If a User purchases Permitted Capacity rights, from either the City or another User pursuant to this Code, that User will pay the purchase price to the City's Bank or to the selling User, as the case may be, but the purchasing User will not pay a capacity charge to the City unless and until the purchased rights exceed that User's Historical Capacity (including any Historical Capacity transferred to the User) as calculated pursuant to and in accordance with City Council Resolution No. 2007-422.

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

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

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 27 day of January, 2009, by Councilmember Hawn, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Marsh, was upon roll call carried and ordered printed and published by the following vote:


AYES: Councilmembers: Hawn, Keating, Lopez, Marsh, Olsen, Mayor Ridenour

NOES: Councilmembers: None.

ABSENT: Councilmembers: O'Bryant

APPROVED: 
JIM RIDENOUR, Mayor

ATTEST:

By 
STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By 
SUSANA ALCALA WOOD, City Attorney

Ord. No. 3503-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 3rd day of February, 2009, Councilmember Lopez moved its final adoption, which motion being duly seconded by Councilmember Marsh, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Hawn, Keating, Lopez, Marsh, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: O'Bryant

APPROVED: _____



MAYOR JIM RIDENOUR

ATTEST: _____



STEPHANIE LOPEZ, City Clerk

Effective Date: March 5, 2009

ORDINANCE NO. 3504-C.S.

AN ORDINANCE ADDING CHAPTER 10 ENTITLED
"AWARD OF NON-CONSENSUAL TOWING CONTRACTS"
TO TITLE 3 OF THE MODESTO MUNICIPAL CODE.

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

SECTION 1. AMENDMENT OF CODE. Chapter 10 entitled "Award of Non-consensual Towing Contracts" is hereby added to Title 3 of the Modesto Municipal Code to read as follows:

ARTICLE 1. AWARD OF NON-CONSENSUAL TOWING CONTRACTS.

3-10.01. DEFINITION.

Section 11-2.01 and following of Title 11 of this Code provide procedures for granting public utility franchises. Section 11-2.07 requires that all such franchises be granted by ordinance. The Council finds that non-consensual towing, defined as towing of vehicles in circumstances not requiring their owners' consent, is a public utility within the meaning of Title 11, Chapter 2, of this Code.

3-10.02. AUTHORITY TO AWARD.

The Council may award non-exclusive, non-consensual towing franchises in the City in accordance with the following criteria:

- (a) Non-consensual towing service franchises must be awarded pursuant to the procedures in Title 11, Chapter 2, of this Code.
- (b) The granting of non-consensual towing franchises shall be done by an agreement approved by the Council and executed by the City Manager.
- (c) It shall be unlawful for any person to engage in the business of non-

consensual towing within the City, unless such person is an employee or agent of the City, or is a party (or the agent or employee of a party) to an agreement approved by the Council pursuant to this ordinance.

- (d) All non-consensual towing franchises shall be subject to the terms and conditions specified in the City Charter, this Code, applicable resolutions, the California Vehicle Code, and the franchise agreement.
- (e) In granting any non-consensual towing franchise, the Council may provide such other and additional terms and conditions as the Council deems necessary to protect the public health, safety and welfare.
- (f) The Council may indicate its consent to enter non-consensual towing franchise agreements granted in accordance with this ordinance by resolution.

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.

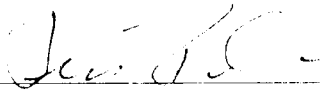
SECTION 3. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in *The Modesto Bee*, the official newspaper of the City of Modesto, setting forth 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 24 day of February, 2009, by Councilmember Marsh , who moved its introduction and passage to print, which motion being duly seconded by Councilmember Olsen, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Hawn, Lopez, Marsh, Olsen, Mayor
Ridenour , O'Bryant

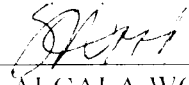
NOES: Councilmembers: None

ABSENT: Councilmembers: Keating

APPROVED: 
JIM RIDENOUR, Mayor

ATTEST:
By 
STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:
By 
SUSANA ALCALA WOOD, City Attorney

Ord. No. 3504-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 3rd day of March, 2009. Councilmember Lopez moved its final adoption, which motion being duly seconded by Councilmember Hawn, was upon roll call carried and the ordinance adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: _____



MAYOR JIM RIDENOUR

ATTEST: _____



STEPHANIE LOPEZ, City Clerk

Effective Date: April 3, 2009

AMENDED FOR CLERICAL ERROR

ORDINANCE NO. 3505-C.S.

AN ORDINANCE AMENDING SECTION 23-3-9 OF THE ZONING MAP TO REZONE FROM MEDIUM-HIGH DENSITY RESIDENTIAL ZONE (R-3) TO PROFESSIONAL OFFICE ZONE (P-O) PROPERTY LOCATED AT THE SOUTHEAST CORNER OF OAKDALE ROAD AND PEPPERMINT DRIVE (TRINITY VENTURES LLC)

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

SECTION 1. ZONING CHANGE. Section 23-3-9 of the Zoning Map is hereby amended to reclassify the following described property from Medium-High Density Residential Zone (R-3) to Professional Office Zone (P-O):

R-3 to P-O

All that certain real property situate in a portion of the Southwest quarter of Section 23, 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 Lot 1, of block 1423, as shown on the map filed August 26, 1970 of Morningside Estates, in Volume 22 of Maps at Page 61, Stanislaus County Records;

also including the Southerly one-half of Peppermint Drive and the Easterly one-half of Oakdale Road, all being immediately adjacent to the above property.

APN: 067-027-021

SECTION 2. ZONING MAP. Section 23-3-9 of the Zoning Map of the City of Modesto is amended to appear as set forth on the map attached hereto, which is hereby made a part of this ordinance by reference.

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

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

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 10th day of March, 2009, by Councilmember Marsh, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Olsen, was upon roll call carried and ordered printed and published by the following vote:

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

NOES: Councilmembers: None.

ABSENT: Councilmembers: None

APPROVED: 
JIM RIDENOUR, Mayor

ATTEST:

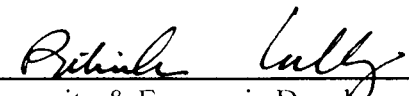
By 
STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By 
SUSANA ALCALA WOOD, City Attorney

APPROVED AS TO DESCRIPTION:

By 
Community & Economic Development
Department, Planning Division

Ord. No. 3505-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 24th day of March, 2009, Councilmember Lopez moved its final adoption, which motion being duly seconded by Councilmember Keating, was upon roll call carried and the ordinance adopted by the following vote:

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

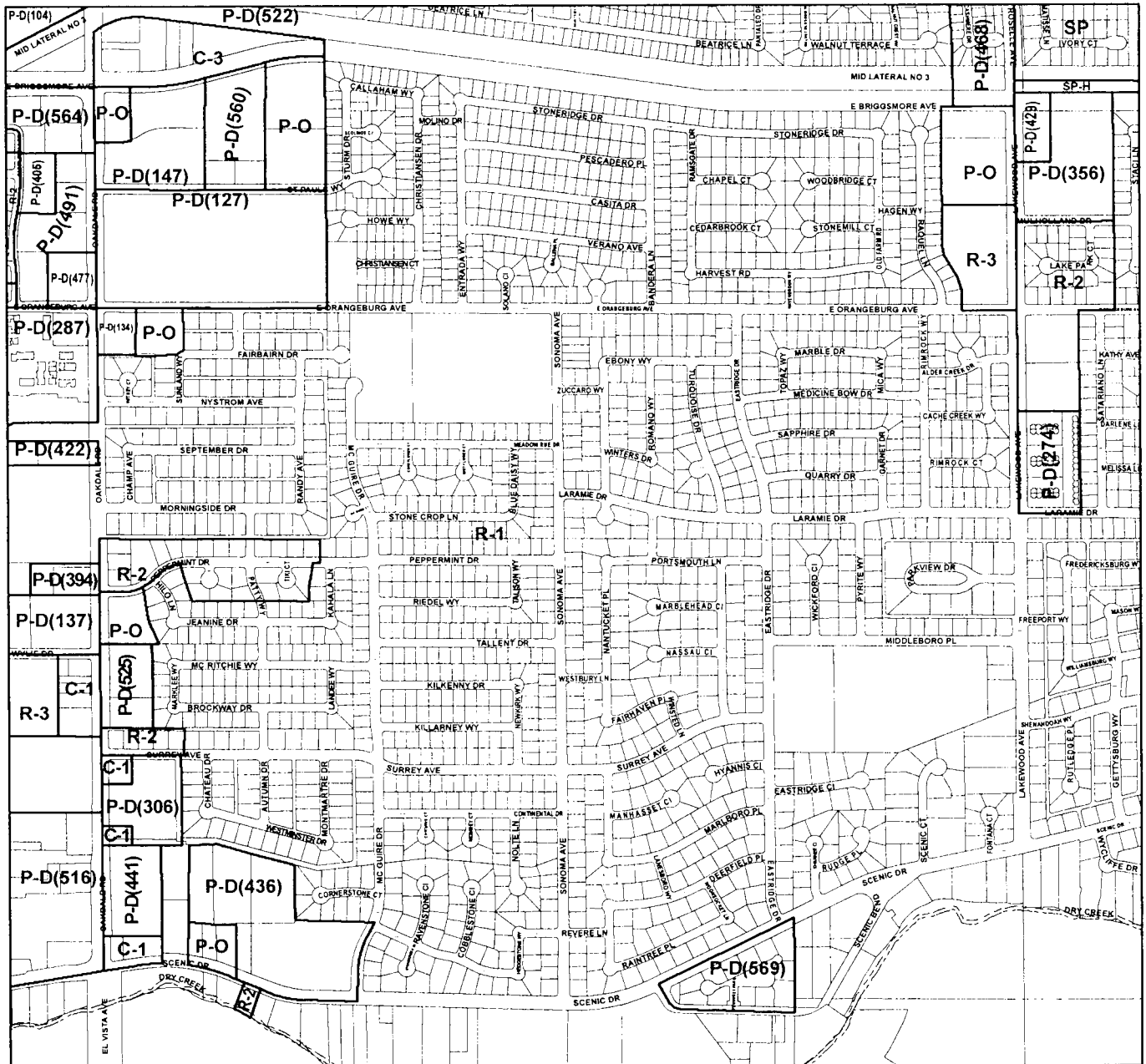
NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: 
MAYOR JIM RIDENOUR

ATTEST: 
STEPHANIE LOPEZ, City Clerk

Effective Date: April 24, 2009



March 16, 2009

Ordinance No. 3505-C.S.

City of Modesto Zoning Map 23-3-9

AMENDED FOR CLERICAL ERROR

ORDINANCE NO. 3506-C.S.

AN ORDINANCE AMENDING SECTION 23-3-9 OF THE ZONING MAP TO REZONE FROM LOW DENSITY RESIDENTIAL ZONE (R-1) TO PROFESSIONAL OFFICE ZONE (P-O) PROPERTY LOCATED ON THE SOUTH SIDE OF EAST ORANGEBURG AVENUE EAST OF OAKDALE ROAD (TRINITY VENTURES, LLC)

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

SECTION 1. ZONING CHANGE. Section 23-3-9 of the Zoning Map is hereby amended to reclassify the following described property from Low Density Residential Zone (R-1) to Professional Office Zone (P-O):

R-1 to P-O

All that certain real property situate in a portion of the Northwest quarter of Section 23, Township 3 South, Range 9 East, Mount Diablo Base and Meridian, in the City of Modesto, County of Stanislaus, State of California, described as follows:

All of Parcel "B", as shown on that Parcel map filed March 20, 1981, in Volume 31 of Parcel Maps at Page 92; being a portion of Lot 11 as shown on the Map of O McHenry Ranch filed in Book 2 of Maps, at page 7, Stanislaus County Records;

also including the Southerly one-half of East Orangeburg Avenue and the Northerly one-half of an alley, all being immediately adjacent to the above described property.

APN: 067-029-057

SECTION 2. ZONING MAP. Section 23-3-9 of the Zoning Map of the City of Modesto is amended to appear as set forth on the map attached hereto, which is hereby made a part of this ordinance by reference.

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

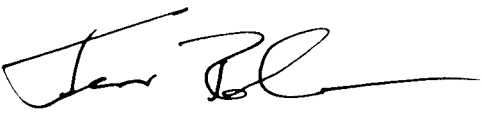
SECTION 4. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in *The Modesto Bee*, the official newspaper of the City of Modesto, setting forth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

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 10th day of March, 2009, by Councilmember Hawn, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Marsh, was upon roll call carried and ordered printed and published by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: 
JIM RIDENOUR, Mayor

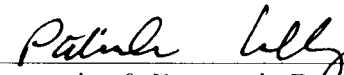
ATTEST:
By 
STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By 
SUSANA ALCALA WOOD, City Attorney

APPROVED AS TO DESCRIPTION:

By 
Community & Economic Development
Department, Planning Division

Ord. No. 3506-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 24th day of March, 2009, Councilmember Lopez moved its final adoption, which motion being duly seconded by Councilmember Keating, was upon roll call carried and the ordinance adopted by the following vote:

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

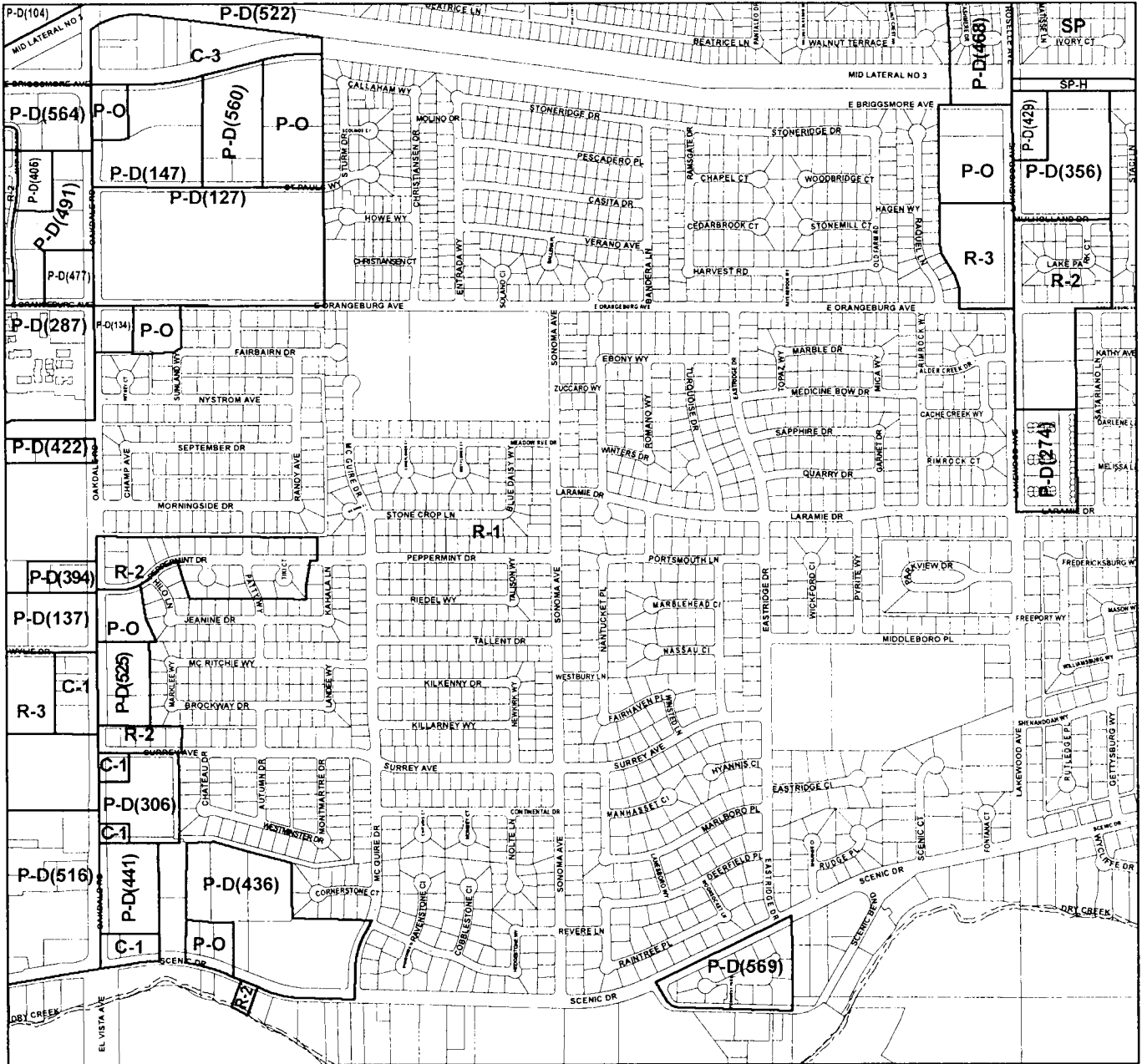
NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: 
MAYOR JIM RIDENOUR

ATTEST: 
STEPHANIE LOPEZ, City Clerk

Effective Date: April 24, 2009



March 16, 2009

City of Modesto Zoning Map 23-3-9

Ordinance No. 3506-C.S.

ORDINANCE NO. 3507-C.S.

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

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

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

8-3.206. PREFERENCE TO LOCAL MERCHANTS.

- (a) Preference shall be given to the purchase of supplies, materials, equipment and non-professional contractual services from local merchants, quality and other relevant non-price considerations being equal. Local merchants who have a business location within the City and a current City business license shall be granted a two percent (2%) bid preference on the purchase of vehicles and heavy equipment and a four percent (4%) preference on all other applicable purchases. This is intended to provide a minimal preference in the award of certain City contracts in order to encourage businesses to locate and remain in the City and also contribute to the City's economy through their business activities within the City.
- (b) Exceptions to the preference shall include those contracts which federal, state or City Charter law forbid from granting preferences, such as public works agreements and Federal Transit Administration expenditures.

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

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

3507-C.S.
Effective: May 29, 2009

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 April, 2009, by Councilmember Marsh, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Lopez, was upon roll call carried and ordered printed and published by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: 
JIM RIDENOUR, Mayor

ATTEST:

By 
STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By 
SUSANA ALCALA WOOD, City Attorney

3507-C.S.
Effective: May 29, 2009

Ord. No. 3507-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 April 2009, Councilmember Hawn moved its final adoption, which motion being duly seconded by Councilmember Marsh, was upon roll call carried and the ordinance adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: 
MAYOR JIM RIDENOUR

ATTEST: 
STEPHANIE LOPEZ, City Clerk

Effective Date: May 29, 2009

3507-C.S.
Effective: May 29, 2009

ORDINANCE NO. 3508-C.S.

AN ORDINANCE AMENDING SECTION 2 OF ORDINANCE NO. 3356-C.S. ENTITLED "AN ORDINANCE AMENDING SECTION 2-3-8 OF THE ZONING MAP TO REZONE FROM PREZONE SPECIFIC PLAN OVERLAY ZONE, P-SP-O, TO PREZONE PLANNED DEVELOPMENT ZONE, P-P-D(567), AND FROM SPECIFIC PLAN OVERLAY ZONE, SP-O, TO PLANNED DEVELOPMENT ZONE, P-D(567), PROPERTY LOCATED ON THE WEST SIDE OF DALE ROAD NORTH OF BANGS AVENUE (KAISER FOUNDATION HOSPITALS)" TO ALLOW A FARMERS MARKET AT THE KAISER MEDICAL FACILITY LOCATED AT 4601 DALE ROAD (KAISER FOUNDATION HOSPITALS)

SECTION 1. AMENDMENT OF ORDINANCE NO. 3356-C.S. Section 2 of Ordinance No. 3356-C.S. is hereby amended to add a farmers market to read as follows:

"SECTION 2. USES. The following uses shall be permitted in said P-D(567) Zone if the plan for construction conforms in principle to the approved plan, or if changes are approved by the Secretary of the Planning Commission as required by Section 10-2.1709(c) of the Modesto Municipal Code, or by the Planning Commission if any changes not conforming in principle to the approved plan are proposed, as required by Section 10-2.1709(a) or (b) of the Modesto Municipal Code:

Hospital, hospital support services, medical services buildings, administrative office buildings, central utility plant, parking facilities, farmers market, cafeteria, optical and pharmacy services. Restaurants and gift shops are also permitted if located within the existing buildings as shown on the approved site plan."

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.

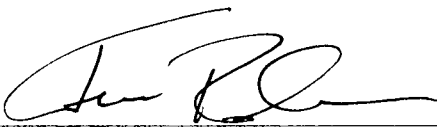
SECTION 3. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in *The Modesto Bee*, the official newspaper of the City of Modesto, setting forth 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 April, 2009, by Councilmember Keating, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Marsh, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Keating, Lopez, Marsh, O'Bryant, Olsen, Mayor Ridenour

NOES: Councilmembers: None.

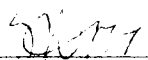
ABSENT: Councilmembers: Hawn

APPROVED: 
JIM RIDENOUR, Mayor

ATTEST:
By 
STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By 
SUSANA ALCALA WOOD, City Attorney

Ord. No. 3508-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 April, 2009, Councilmember Hawn moved its final adoption, which motion being duly seconded by Councilmember Marsh, was upon roll call carried and the ordinance adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:



MAYOR JIM RIDENOUR

ATTEST:


STEPHANIE LOPEZ, City Clerk

Effective Date: May 29, 2009

ORDINANCE NO. 3509-C.S.

AN ORDINANCE AMENDING SECTION 2 OF ORDINANCE NO. 2046-C.S. ENTITLED "AN ORDINANCE AMENDING SECTION 10-3-9 OF THE ZONING MAP OF THE CITY OF MODESTO, PREZONING CERTAIN PROPERTY LOCATED THEREON. (HAIG BERBERIAN PREZONING - COMMERCIAL SHOPPING CENTER)" PROPERTY LOCATED ON THE NORTHEAST CORNER OF COFFEE ROAD AND SYLVAN AVENUE, 3500 COFFEE ROAD (M&M STONE, INC.)

SECTION 1. AMENDMENT OF ORDINANCE NO. 2046-C.S. Section 2 of Ordinance No. 2046-C.S. is hereby amended to read as follows:

"SECTION 2. USES. The following uses shall be permitted in said P-D(53) Zone, if the plan for construction conforms in principle to the approved plan, or if changes are approved by the Secretary of the Planning Commission as required by Section 10-2.1709(e) of the Modesto Municipal Code, or by the Planning Commission if any changes not conforming in principle to the approved plan are proposed, as required by Section 10-2.1709(a) or (b) of the Modesto Municipal Code:

1. Neighborhood Commercial (C-1) uses
2. Restaurants with bars"

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 28th day of April, 2009, by Councilmember Marsh, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Lopez, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Keating, Lopez, Marsh, O'Bryant, Olsen, Mayor Ridenour

NOES: Councilmembers:

ABSENT: Councilmembers: Hawn

APPROVED: 
JIM RIDENOUR, Mayor

ATTEST:

By 
STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By 
SUSANA ALCALA WOOD, City Attorney

Ord. No. 3509-C.S.


FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 5th day of May, 2009, Councilmember Lopez moved its final adoption, which motion being duly seconded by Councilmember Keating, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Keating, Lopez, Marsh, O'Bryant, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: Hawn

APPROVED: 
JIM RIDENOUR, Mayor

ATTEST: 
STEPHANIE LOPEZ, City Clerk

Effective Date: June 5, 2009

ORDINANCE NO. 3510-C.S.

AN ORDINANCE ADDING ARTICLE 31 TO CHAPTER 2 OF TITLE 10 OF THE MODESTO MUNICIPAL CODE; AMENDING ARTICLE 25 OF CHAPTER 2 OF TITLE 10 OF THE MODESTO MUNICIPAL CODE; AND AMENDING SECTION 10-2.2304 OF ARTICLE 23 OF CHAPTER 2 OF TITLE 10 OF THE MODESTO MUNICIPAL CODE RELATING TO REGULATION OF WIRELESS TELECOMMUNICATION FACILITIES WITHIN THE CITY OF MODESTO

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

SECTION 1. AMENDMENT OF CODE. Article 31 is hereby added to Chapter 2 of Title 10 of the Modesto Municipal Code to read as follows:

ARTICLE 31. WIRELESS TELECOMMUNICATION FACILITIES.

10-2.3101. PURPOSE AND INTENT.

- (a) The purpose of this chapter is to provide for wireless telecommunication (“telecom”) facilities on public and private property consistent with federal and state law while ensuring public safety, reducing the visual effects of telecom equipment on public streetscapes and neighborhoods, protecting scenic views, and otherwise mitigating the impacts of such facilities while ensuring adequate service to the community.
- (b) It is the objective of the City that all telecom facilities be as unobtrusive as possible and that the number of freestanding telecom facilities be minimized. The standards and policies established by this Article are intended to ensure that telecom facilities within the City are developed in harmony with the surrounding environment through regulation of location and design.
- (c) The provisions of this chapter are not intended and shall not be interpreted to prohibit or to have the effect of prohibiting telecom services. This chapter shall not be applied in such a manner as to unreasonably discriminate among providers of functionally equivalent telecom services.

10-2.3102. DEFINITIONS.

For the purposes of this Article, certain terms shall have meanings as follows:

- (a) **“Antenna”** means a device used to transmit and/or receive radio or electromagnetic waves between Earth and/or satellite-based systems, including without limitation reflecting discs, panels, microwave dishes, whip antennas, direction and non-direction antennas consisting of one or more wires or elements, multiple antenna configurations, or other similar electromagnetic wave transmission and/reception devices.
- (b) **“Antenna array”** shall mean two (2) or more antennas having active elements extending in one or more directions, and directional antennas mounted upon and rotated through a vertical mast or tower interconnecting the beam and antenna support, all of which elements are deemed to be part of the antenna.
- (c) **“Camouflage” or “camouflaged facility”** means a telecom facility in which the antenna, monopole, uni-pole, and/or tower, and sometimes the support equipment, are hidden from view, or effectively disguised as may reasonably be determined by the Director or Board of Zoning Adjustment as applicable, in a false tree, monument, cupola, or other concealing structure which either mimics, or which also serves as, a natural or architectural feature. Concealing telecom facilities which do not mimic or appear as a natural or architectural feature to the average observer are not within the meaning of this definition.
- (d) **“Co-location”** means an arrangement whereby multiple telecom facilities owned or operated by different telecom operators share the same structure or site.
- (e) **“FCC”** means the Federal Communications Commission.
- (f) **“Feasible”** means capable of being accomplished in a successful manner within a reasonable period of time, taking into account environmental, physical, legal, costs and technological factors.
- (g) **“Lattice tower” or “tower”** means an open framework freestanding structure used to support one or more antennas, typically with three (3) or four (4) support legs on main vertical load-bearing members.
- (h) **“Monopole”** means a single freestanding pole used to act as or support an exposed antenna or antenna arrays.

- (i) **“Non-Residential Use”** includes uses such as churches, schools, residential care facilities that are not a residential use but may be allowed in a residential zone typically with a Conditional Use Permit.
- (j) **“Operator”** or **“telecom operator”** means any person, firm, corporation, company, or other entity that directly or indirectly owns, leases, runs, manages, or otherwise controls a telecom facility or facilities within the City.
- (k) **“Radio Frequency”** means electromagnetic waves in the frequency range of 300 kHz (300,000 cycles per second) to 300 Ghz (300 billion cycles per second).
- (l) **“Radome”** means a visually opaque, radio frequency transparent material which may be flat or cylindrical in design, and is used to visually hide antennas.
- (m) **“Support equipment”** means the physical, electrical and/or electronic equipment included within a telecom facility used to house, power, and/or process signals from or to the facility’s antenna or antennas.
- (n) **“Structure”** means any structure consistent with the definition provided in Section 10-2.248 but focusing on a structure that can be used for a telecom facility such as a monopole, uni-pole or tower, buildings, steeples, clock towers, park playfield lighting standards, water tanks, and signs.
- (o) **“Telecommunication(s) facility, telecom facility, wireless telecommunications facility,”** or simply **“facility”** means an installation that sends and/or receives wireless radio frequency signals or electromagnetic waves, including, but not limited to, directional, omni-directional and parabolic antennas, structures or towers to support receiving and/or transmitting devices, supporting equipment and structures, and the land or structure on which they are all situated. The term does not include mobile transmitting devices, such as vehicle or hand held radios/telephones and their associated transmitting antennas.
- (p) **“Uni-pole”** is a monopole that does not have antenna elements other than the pole itself or the antenna elements are concealed inside a radome of the same diameter as the pole, or exceeding the pole diameter by no greater than six inches.

- (q) **“Utility tower”** shall mean an open framework structure or steel pole used to support electric transmission facilities (see Lattice Tower).

10-2.3103. APPLICABILITY.

These regulations are applicable to telecom facilities providing voice and/or data transmission such as, but not limited to, mobile telephone services, fixed microwave services, and mobile data services.

- (a) **Exempt facilities.** Amateur radio antennas, antennas used solely for the purpose of receiving local broadcast stations, and satellite dish antennas of one (1) meter in diameter or smaller and City owned/operated communication facilities are exempt from the provisions of this chapter.

10-2.3104. FACILITY TYPE PRIORITIES.

- (a) **Facility Type Priorities.** When reviewing proposed facility types for telecom facilities the Community and Economic Development Director (Director) or Board of Zoning Adjustment (BZA), as applicable, shall utilize the following priority order provided in Table 31.1:

Priority Table 31.1 - Facility Type Priorities
1. New telecom facility fully camouflaged on existing or new building or structure
2. New telecom facility co-located on existing monopole, uni-pole, or tower
3. New camouflaged monopole, uni-pole, or tower
4. New non-camouflaged uni-pole without attached antenna elements
5. New non-camouflaged monopole with attached antenna elements
6. New non-camouflaged lattice tower

10-2.3105. REVIEW PROCESS.

- (a) **By Zoning Districts.** Telecom facilities shall be allowed in the residential, office, commercial, and industrial zoning districts subject to the review process as provided in Table 31.2 Telecom facilities on public buildings and public property are provided for in subsection (b) below:

Table 31.2 - Telecom Facility Requirement						
Telecom Facility		R-1,R-2, R-3	R-1, R-2, R-3	P-O,C-1	C-2, C-3, C-M	M-1, M-2, B-P
		Residential Use	Non-Residential Use			
On Building or other Structure						
Camouflaged		N	P	P	P	P
Non-Camouflaged		N	C	D	D	D
Monopole, Uni-pole, or Tower						
Camouflaged	Uni-pole	N	D	P	P	P
	Monopole	N	D	P	P	P
Non-Camouflaged	Uni-pole	N	C	D ¹	D ¹	D ¹
	Monopole	N	C	C	C	D ¹
	Lattice Tower	N	N	N	N	C
Co-location with existing facility						
Camouflaged		N	P	P	P	P
Non-Camouflaged		N	D	D	D	D
P=Permitted, Building Permit D=Development Plan Review by Director pursuant to Chapter 2, Article 30, Development Plan Review C=Conditional Use Permit by Board of Zoning Adjustment pursuant to Chapter 2, Article 25, Variance and Conditional Use Permits N=Not permitted						
¹ A Conditional Use Permit is required if the property of which the uni-pole or monopole is located is within 300 feet of a residential zone.						

- (b) **On Public Buildings and Public Property.** All telecom facilities that are camouflaged are permitted on public buildings and public property. Non-camouflaged telecom facilities that are co-located on an existing structure may be approved by the Director pursuant to Development Plan Review. A Conditional Use Permit as approved by the Board of Zoning Adjustment is required for a new non-camouflaged uni-pole or monopole.

10-2.3106. DEVELOPMENT STANDARDS.

- (a) **Fall Zone Setbacks.** All new monopole, uni-pole, lattice tower, or any other freestanding or guyed tower telecom facilities shall maintain a setback from any residential property line that is at least 110 percent of the

maximum height of the facility, including any Antenna or Antenna Array attached thereto. All new telecom facilities shall also meet the minimum setback requirements of the underlying zone. In approving such telecom facilities, the Director or BZA, as applicable, shall consider maximizing adjacent setbacks from streets and residential properties to minimize the visual obtrusiveness of telecom facilities.

- (b) **Separation Requirement.** Except on public buildings and public property, all non-camouflaged monopole, uni-pole, or tower telecom facilities shall maintain a minimum 1,000 feet separation from all other non-camouflaged monopole, uni-pole, or tower telecom facilities. Consideration for a separation of less than 1,000 feet for non-camouflaged monopole, uni-pole, or tower would be pursuant to Section 10-2.3107(d).
- (c) **Height.** In general, for a given location, the facility shall be at the lowest possible height consistent with the radio frequency coverage requirements of the applicant, which shall be disclosed to the City as prescribed by the Director.
 - (1) **Maximum Height.** The maximum height limits are as set forth in Tables 31.3. Requests for Facilities exceeding the height limits set forth in Tables 31.3 shall be made as a Variance, and subject to the findings for a Variance for Telecom Facilities provided in Municipal Code Section 10-2.2503.
 - (2) **Roof Mounted Facilities.** For roof mounted facilities, antennas and support structures shall not exceed the allowable height limit for the zoning district in which it is located by more than ten (10) feet or exceed the primary roof parapet height by more than six feet, whichever is less.

Table 31.3 - Telecom Facility Maximum Allowed Height (measured in feet)					
Telecom Facility	R-1, R-2, R-3	R-1, R-2, R-3	P-O, C-1	C-2, C-3, C-M	M-1, M-2, B-P
	Residential Use	Non-Residential Use ²			
On Building or other Structure ¹	N	10	10	10	10
Monopole, Uni-pole, or Tower ³	N	50	50	70 ⁴	70 ⁴

¹ Additional feet above permitted or actual building or structure height
² See definition
³ The height of a monopole, uni-pole, or tower that existed prior to the adoption of this ordinance may be increased by 10 feet if shown necessary for collocation purposes for uni-pole or camouflage design subject to Development Plan Approval by the Director.
⁴ The maximum height is 55 feet if the property of which the monopole, uni-pole, or tower is located is adjacent to any residential zone.
N = Not permitted

(d) **Projection.**

- (1) **Building Mounted Antennas.** The antenna and mountings shall not project more than 18 inches from the building surface to which it is mounted to the farthest point on the antenna or antenna mounting, whichever is farther, measured horizontally from the building surface.

(e) **Co-location requirements.**

- (1) **Co-location potential required.** To limit the adverse visual effects of a proliferation of telecom sites in the City, the proposed construction of new telecom facilities shall be designed to accommodate co-location of two or more service providers. Any new telecom facility may be required to co-locate with another existing or new facility, unless it can be demonstrated to be technically or economically infeasible.
- (2) **Co-location limitations.** Except on public buildings and public property, no more than three non-camouflaged telecom facilities on buildings or structures, or the number of antennas on a non-camouflaged monopole, uni-pole, or tower may co-locate at a single site unless findings can be made pursuant to Section 10-2.3107(e) can be made. More than three non-camouflaged telecom facilities on public buildings and public property require approval by the Director.
- (3) **Co-location on existing large towers.** Co-location on existing

large towers (100 feet or higher) may be approved by the Director if the new telecom facility is determined to result in minimal increase on the visual intrusiveness to the surrounding area.

- (f) **Screening criteria.** Telecom facilities must be visually compatible with surrounding buildings and vegetation through the use of techniques such as color and materials. In addition to the other design standards of this section, the following criteria shall be applied by the Director or BZA, as applicable, in connection with the processing of any permit.
- (1) **On a Roof.** Roof-mounted antennas shall be screened from view from adjacent properties and the public right-of-way. The screening may include parapets, walls, or similar architectural elements provided that they are designed, colored and textured to integrate with the existing architecture of the building.
 - (2) **On a Building Facade.** Building-mounted antennas shall be flush mounted and covered with an RF-transparent and visually opaque material of a color and texture to match the existing building, or be effectively disguised or screened as may be reasonably determined by the Director or BZA as applicable.
 - (3) **On Other Structures.** Antennas mounted on or within structures such as a clock tower, steeple, park playfield light or water tank shall be integrated with the structure or effectively screened from public view.
 - (4) **Monopole, Uni-pole, or Tower.** A monopole or tower facility shall be concealed, screened, or camouflaged by existing or proposed new vegetation, buildings, or other structures and blend into the surrounding environment to the greatest extent possible as may be reasonably determined by the Director or BZA as applicable.
 - (5) **Support Equipment.** Support equipment shall be screened from public view by decorative fence, wall, parapet, landscaping, berming or any combination thereof as approved by the Director or BZA, or shall be located within a building, enclosure, or underground vault, which is designed, colored, textured, and landscaped to match the adjacent architecture or blend in with the surrounding environment. For ground-mounted installations, support equipment may be required to be screened in a security enclosure consistent with the design provisions. Chain link

fencing including barbed wire and razor wire may be allowed if it is not visible from the public.

- (g) **Within the Public Right-of-Way.** Telecom facilities and/or support equipment proposed to be located in the public right-of-way shall comply with the provisions of the Modesto Municipal Code. Telecommunications support equipment located in the public right-of-way shall be placed within flush-to-grade enclosures utilizing flush-to-grade venting systems except in those cases where the Director or BZA, as applicable determines that it is not technically feasible to do so, in which case proper screening, as approved by the Director or BZA as applicable, shall be required. In addition, ground-mounted equipment in the public right-of-way shall comply with all requirements of the Americans With Disabilities Act (ADA), and shall not interfere with drivers' sight lines for roadways, sidewalks, and driveways.
- (h) **Building Code.** Wireless telecommunications facilities, including, but not limited to, antennas, support structures, equipment structures, and related structures and equipment shall be designed, constructed, and maintained in accordance with the most current California Building Code and other applicable codes, laws, and regulations, as enforced by the Division of Building Safety, to assure that all such facilities will maintain their structural integrity despite the efforts of the elements.
- (i) **Night Lighting.** Telecom facilities shall not be lighted except:
 - (1) For City-approved security lighting at the lowest intensity necessary for that purpose; and
 - (2) As necessary for the illumination of the flag of the United States or the flag of the State of California, when such flag(s) are attached to or associated with the telecom facility. Such lighting shall be shielded so that direct illumination does not shine on nearby properties.
 - (3) Any lighting which may be required by State or Federal law.
- (j) **Signs and Advertising.** No advertising signage or identifying logos shall be displayed on any telecom facility except for small identification, address, warning, and similar information plates not exceeding one (1) square foot or the minimum requirement by State or Federal law.

- (k) **Available Technology.** All telecom facilities approved under this Chapter shall utilize the most efficient and available technology in order to minimize the number of facilities and also to minimize their visual impact.

10-2.3107. FINDINGS.

- (a) **Development Plan Review.** Telecom facilities may be approved by the Director pursuant to Development Plan Review subject to all of the following findings:
 - (1) The proposed new telecom facility results in the least intrusive visual impact to the area.
 - (2) The proposed site will close a significant gap in coverage.
 - (3) The proposed telecom facility conforms with the provisions of this Article.
- (b) **Conditional Use Permit.** In considering any Conditional Use Permit pursuant to Table 31.1 above, the Board of Zoning Adjustment shall determine that the applicant has demonstrated all of the following:
 - (1) Other locations or type of telecom facilities not requiring such approval are either not available or not feasible.
 - (2) The proposed telecom facility will not adversely impact the use of the property, other buildings and structures on the property, or the surrounding area or neighborhood.
 - (3) The proposed new telecom facility results in the least intrusive visual impact to the area.
 - (4) The proposed site will close a significant gap in coverage.
 - (5) The proposed telecom facility confirms with the provisions of this Article.
- (c) **Maximum Height.** Consideration to exceed the maximum height pursuant to Table 31.3 located in Section 10-2.3106 may occur upon approval of a variance application based on making all of the following findings of Municipal Code Section 10-2.2503.

- (d) **Separation Requirement.** Consideration to reduce the 1,000 feet separation requirement located in Section 10-2.3106 for non-camouflaged monopole, uni-pole, or tower telecom facilities from another non-camouflaged monopole, uni-pole, or tower telecom facilities may occur upon approval of a Conditional Use Permit based on making all of the following findings:
 - (1) The visual impacts of the less than 1,000 feet separation are not significant.
 - (2) Requiring the 1,000 feet separation would result in a significant gap in coverage.
 - (3) There is no available feasible alternate location for a proposed new facility.
- (e) **Co-location.** Consideration for more than three non-camouflaged telecom facilities on buildings or structures, or the number of antennas on a non-camouflaged monopole, uni-pole, or tower may co-locate at a single site based on making the following findings.
 - (1) The net visual effect of locating an additional facility at a co-location site will be less than establishing a new location.
 - (2) There is no available feasible alternate location for a proposed new facility.

10.2-3108. APPLICATION SUBMITTAL REQUIREMENTS AND INITIAL REVIEW.

- (a) **Submission Requirements.** Applications for telecom facilities shall be accompanied by the following minimum documentation, in such form and on such form as required by the Director of Community and Economic Development. These are in addition to the usual zoning application submittal requirements for site plan review. The Director of community and Economic Development shall make changes to the form as necessary. The form shall be used to obtain required information to include in the City's administrative file for each project as required by federal law to base decisions on these projects on substantial evidence contained in the administrative file.
 - (1) **Justification.** A brief narrative, accompanied by written

documentation where appropriate, that explains the purpose of the facility and validates the applicant's efforts to comply with the design, location, and co-location standards of this chapter.

- (2) **Coverage and Location Maps of Current and Future Facilities.** As required by the Director, a map or maps showing the geographic areas to be served by the facility by area and radio frequency information. Maps and other supporting documentation demonstrating the need for the facility to close a significant gap in coverage, if such a gap is claimed by the applicant. In order to facilitate planning and reduce the need for future stand-alone telecom facilities, the Director may also require the applicant to submit a comprehensive plan of the operator's existing and future facilities that are or may be placed within the City limits of Modesto.
- (3) **Visual Simulations.** Visual simulations showing "before" and "after" views of the proposed facility, unless the Director determines that such simulations are not necessary for the application in question. Consideration shall be given to views from both public areas and private residences. Such photos, simulations or other accurately scaled representations shall include all proposed antenna structures, antennas, and related accessory equipment including, without limitation, all related physical structures to be placed on any new or existing equipment or support device.
- (4) **Emission Standards.** Documentation showing the specific frequency range that the facility will use upon and throughout activation, certification that the facility will continuously comply with FCC radio frequency emissions safety standards.
- (5) **Radio Frequency Compliance and RF Emissions Safety Report and Project Technology and Design Review.** At its discretion, the City may engage outside consultants to evaluate and/or verify compliance with FCC radio frequency (RF) emissions safety requirements in FCC Office of Engineering and Technology Bulletin 65 (or revisions or replacements thereto), as well as to conduct a project technology and design review. Estimated fees for the outside consultants shall be deposited with the City in advance.

- (6) **Supporting Materials.** Additional supporting materials deemed necessary by the reviewing Department Director in order to complete review of the proposal. Supporting materials may include, but are not limited to, color and material sample boards, proposed informational signage, landscaping plans, and other radio frequency related information.
- (7) **Supplemental Telecom Site Application Form.** The City may require the use of a City-developed supplemental antenna site application form to solicit information in support of the development of a comprehensive administrative record.
- (8) **Fee.** Applications shall be accompanied by a fee, as adopted by Resolution of the City Council, to defray all estimated reasonable costs and expenses incidental to review and processing of the application.

10-2.3109. REMOVAL OF TELECOM FACILITIES.

- (a) **Discontinued Use.** Any operator who intends to abandon or discontinue use of a telecom facility must notify the Community and Economic Development Director by certified mail no less than thirty (30) days prior to such action. The operator or owner of the affected real property shall have ninety (90) days from the date of abandonment or discontinuance, or a reasonable time as may be approved by the Community and Economic Development Director, within which to complete one of the following actions:
 - (1) Reactivate use of the telecom facility;
 - (2) Transfer the rights to use the telecom facility to another entity and the entity immediately commences use;
 - (3) Remove the telecom facility and restore the site at the permittee's sole expense.
- (b) **Abandonment.** Any telecom facility that is not operated for a continuous period of 180 days or whose operator did not remove the telecom facility in accordance with subsection (a) shall be deemed abandoned. Upon a finding of abandonment, the City shall provide notice to the telecom carrier last known to use such facility and, if applicable, the owner of the affected real property, providing thirty (30) days from the date of the

notice within which to complete one of the following actions:

- (1) Reactivate use of the telecom facility;
 - (2) Transfer the rights to use the telecom facility to another owner;
 - (3) Remove the telecom facility and restore the site at the permittee's sole expense.
- (c) **Removal.** The City may remove any telecom facility on City owned property where service provider has not responded to the 30-day notice as provided in (a) and (b) above. The cost of the removal shall be paid by the service provider.

SECTION 2. AMENDMENT OF CODE. Article 25 of Chapter 2 of Title 10 of the Modesto Municipal Code is amended to read as follows:

ARTICLE 25. VARIANCES AND CONDITIONAL USE PERMITS

10-2.2501. PURPOSE OF A VARIANCE.

When practical difficulties, unnecessary hardships or results inconsistent with the general purpose of this Chapter result from the strict and literal interpretation and enforcement of its provisions, the Board may grant variances. The sole purpose of a variance shall be to prevent discrimination, and no variance shall be granted which would have the effect of granting a special privilege not shared by other property in the same zone and immediate vicinity.

10-2.2502. REQUIRED FINDINGS FOR VARIANCE.

The applicant for a variance shall have the burden of proof of showing that:

- (a) There are special circumstances or conditions applicable to the property or buildings in question which do not exist for other property or buildings in the same zone and immediate vicinity.
- (b) The special circumstances or conditions are such that strict application of the provisions of this Chapter would deprive the applicant of practical use of the property or buildings.
- (c) Granting the variance will be consistent with the intent and purpose of this

Chapter and will not be detrimental to the neighborhood or public welfare.

10-2.2503. REQUIRED FINDINGS FOR VARIANCE - WIRELESS TELECOMMUNICATIONS FACILITIES.

The applicant for a variance shall have the burden of proof of showing that:

- (a) There are special radio frequency technology circumstances or conditions applicable to the property or building in question which do not exist for other properties or buildings within a radius of 2,000 feet from the proposed facilities site;
- (b) The special radio frequency technology circumstances or conditions are such that strict application of the provisions of this chapter would deprive the applicant of its ability to close a demonstrated significant gap in its own network coverage using the least intrusive means to close that gap;
- (c) Granting the variance will be consistent with the intent and purpose of this chapter and the Federal Communications Act of 1996 (Public Law 104-104).

10-2.2504. PURPOSE OF A CONDITIONAL USE PERMIT.

The purpose of a conditional use permit is to allow conditional uses subject to conditions the Board may determine necessary to ensure compatibility with other uses in the area.

10-2.2505. USE EXTENSION ACROSS A ZONE BOUNDARY.

If a zone boundary line divides a lot, the Board may grant a conditional use permit for a use permitted in either zone to extend a maximum of seventy-five (75) feet into the other zone.

10-2.2506. CONDITIONS OF APPROVAL.

In granting a variance or conditional use permit the Board may impose conditions deemed necessary or desirable to protect the public health, safety or welfare.

10-2.2507. APPLICATIONS.

- (a) A complete application for a variance or conditional use permit shall at a minimum contain:

- (1) An application form as prescribed by the Director.
 - (2) A development plan and any elevations, perspectives or floor plans necessary for project evaluation as determined by the Director.
 - (3) Other information that the Board or Director may require for project evaluation.
 - (4) A filing fee as established by the Council.
- (b) All plans, elevations, perspectives or floor plans shall conform to plot plan standards as published by the Director.
 - (c) If an application for a variance or conditional use permit is denied, an application for the same variance or use cannot be filed until one-year after date of denial. The Council or Board may waive the one-year wait if they feel circumstances have changed substantially and the interest of the general public will not be adversely affected.

10-2.2508. HEARING PROCEDURE OF BOARD.

- (a) Upon the filing of a complete application for a variance or conditional use permit, the Secretary shall set a public hearing date. The date shall be not less than ten (10) nor more than fifty (50) days after the filing date.
- (b) A public notice of the hearing shall be prepared which at a minimum identifies the hearing body, describes the location of the property, nature of the variance or use, and the date, the time and place of the hearing. The notice shall be distributed as follows:
 - (1) Mailing of a notice to the owner or authorized agent of the property owner and the project applicant. Mailing of a notice to every property owner as shown on the updated equalized assessment role of the County of Stanislaus, who owns property, any part of which is within three hundred (300) feet of the property involved. Mailing of a notice to the elementary and high school districts serving the area. The notice shall be deposited in the United States mail not less than ten (10) days prior to the hearing.
 - (2) Additional means of distribution may be used at the discretion of the Secretary or City Clerk. Additional means of distribution may

include mailing of notices not otherwise required or posting notices in the immediate area of the property.

- (c) No more than twenty (20) days after the closing of the public hearing the Board shall announce its findings and decision by resolution. The resolution shall state the reasons making the granting or denying of the application necessary to carry out the purpose of this Chapter as well as any conditions of approval. A copy of the resolution shall be mailed to the applicant.
- (d) A Board resolution shall be final and effective fifteen (15) days after date of adoption unless the decision is appealed to the Council within the fifteen-day period. Filing of an appeal shall stay the effective date of the Board's order until the Council has acted on the appeal.

10-2.2509. APPEAL OF BOARD DECISION TO COUNCIL.

- (a) Upon the filing of a written appeal, including receipt of a filing fee, the City Clerk shall set a public hearing date. The date shall be not less than ten (10) or more than fifty (50) days after filing of the appeal.
- (b) Prior to the Council hearing or the appeal, the Secretary shall send to the Council a copy of the Board's record of the case.
- (c) A public notice of the appeal shall be prepared and distributed as required above for the Board hearing.
- (d) No more than twenty (20) days after the closing of the Council hearing, the Council shall announce its findings and decision by resolution. The resolution shall state the reasons making, granting or denying the application necessary to carry out the purpose of this Chapter as well as any conditions of approval. A copy of the resolution shall be mailed to the applicant. The action of the Council shall be final.

10-2.2510. PERMANENT FILE.

The permanent file of a variance or conditional use permit application shall at a minimum contain the application, minutes of all public meetings or hearings, copies of all resolutions, and copies of all public notices and affidavits of their mailing, posting or publishing.

10-2.2511. REVOCATION OF USE PERMITS AND VARIANCES.

- (a) After a public hearing held in accordance with this Article, the Board may modify or revoke any conditional use permit or variance on one or more of the following grounds:
 - (1) The approval was obtained by fraud.
 - (2) The use for which approval was granted is not being exercised or has ceased to exist.
 - (3) The use permit or variance is being exercised contrary to the conditions of approval or in violation of other applicable laws or regulations.
 - (4) The use for which approval was granted is being exercised so as to be detrimental to the public health, safety or welfare, or so as to constitute a nuisance.
- (b) The resolution of the Board modifying or revoking a conditional use permit or variance shall be final and effective fifteen (15) days after date of adoption unless appealed to the Council as provided for in this Article.

SECTION 3. AMENDMENT OF CODE. Section 10-2.2304 of Article 23 of

Chapter 2 of Title 10 of the Modesto Municipal Code is amended to read as follows:

10-2.2304. UTILITIES AND RAILROADS.

- (a) The provisions of this Chapter shall not apply to the poles, lines or similar facilities, whether above ground or underground, whose sole purpose is non-wireless transmission of electricity or communications. This exclusion does not apply to the antennas, uni-poles, monopoles, towers, or any similar or related facilities of wireless communication services.
- (b) Railroad rights-of-way may be used solely for the purpose of accommodating the tracks, signals and other operating devices for controlling the movement of rolling stock, and the poles, wires, pipelines, communication circuits and similar facilities of other utilities, including only those wireless communication facilities associated with and required for the operation of the railroad.

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 April, 2009, by Councilmember Keating, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Marsh, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Hawn, Keating, Lopez, Marsh, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: O'Bryant

APPROVED: 
JIM RIDENOUR, Mayor

ATTEST:

By 
STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By 
SUSANA ALCALA WOOD, City Attorney

Ord. No. 3510-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 12th day of May, 2009, Councilmember Lopez moved its final adoption, which motion being duly seconded by Councilmember Hawn, was upon roll call carried and the ordinance adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:



MAYOR JIM RIDENOUR

ATTEST:



STEPHANIE LOPEZ, City Clerk

Effective Date: June 12, 2009

ORDINANCE NO. 3511-C.S.

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

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

SECTION 1. AMENDMENT OF CODE. Section 8-3.102 of Article 1 of
Chapter 3 of Title 8 of the Modesto Municipal Code is hereby amended to read as follows:

8-3.102. CONTRACTING AUTHORITY.

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

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

may approve and authorize all contracts for such projects involving an expenditure of City funds in the amount of three hundred thousand dollars (\$300,000.00) or less.

- (d) Contracts for public works projects consisting of the installation and establishment of water service connections associated with new development. The City Manager may approve and authorize all contracts for such projects involving an expenditure of City funds in the amount of seventy-five thousand dollars (\$75,000.00) or less.
- (e) Contracts for public works projects consisting of repairs determined by the City Manager to be of urgent necessity for the preservation of life, health, or property. The City Manager may approve and authorize all contracts for such projects in the amount of two hundred thousand dollars (\$200,000.00) or less. Within ten (10) days of the authorization for any such work, the City Manager shall report to the City Council the circumstances of the emergency.
- (f) Contracts for public works projects consisting of the construction, improvement, repair, expansion, renovation, or modification of any facilities associated with development and installed by the developer provided:
 - (1) That an agreement is approved by the City Council prior to commencement of construction of the works.
 - (2) The agreement clearly defines the work to be done and the basis for reimbursement.
 - (3) That total reimbursement required by the agreement is less than four hundred thousand dollars (\$400,000.00) in City funds.
- (g) Contracts for public works projects consisting of the installation, construction, and improvement, of the Coffee-Claratina Dual Use Neighborhood Park/Storm Basin in the City of Modesto. The City Manager may approve and authorize all contracts for such projects involving an expenditure of City funds in the amount of one million five hundred thousand dollars (\$1,500,000.00) or less.
- (h) Contracts for public works projects consisting of the installation and construction of any upgrade and/or rebuild of the City's Institutional

Network (INET). The City Manager may approve and authorize all contracts for such projects involving an expenditure of City funds in the amount of four million two hundred thousand dollars (\$4,200,000.00) or less.

- (i) Contracts for public works projects consisting of those improvements to the South Modesto water system identified in that certain technical memorandum prepared by West Yost and Associates dated October 17, 2005, as amended on November 7, 2005, for the benefit of the Galas Brothers Unit II Project bounded by Hatch Road, Estrella Way, Ironside Drive, Salazar Circle and Monticello Lane in the City of Modesto and any incidental work thereto. The City Manager may approve and authorize all contracts for this project involving a total expenditure of City funds not to exceed two million five hundred thousand dollars (\$2,500,000) or less.
- (j) Contracts for public works contracts consisting of the purchase, installation and replacement of water meters including an automated water meter reading (AMR) system and infrastructure work in conjunction with the system-wide water metering program. The City Manager may approve and authorize all contracts for such projects involving an expenditure of City funds in the amount of five million dollars (\$5,000,000) or less annually.
- (k) Contracts for paving and landscaping work to be done by City forces at the City's Traffic Operations Facility located at 117 Elm Street in the amount of one hundred thousand dollars (\$100,000) or less.
- (l) Contracts for public works projects consisting of the design, purchase and installation of water lines and associated equipment used to blend down contaminants at water well sites in the amount of one million five hundred thousand dollars (\$1,500,000) per project.
- (m) Contracts for public works projects consisting of additions and/or expansion of facilities and structures at John Thurman Field not to exceed two million four hundred thousand dollars (\$2,400,000) per project.
- (n) Contracts for work done by City forces to repair, replace and improve water lines and associated appurtenances for the McHenry Avenue Water System Upgrade Project in the amount of four hundred fifty thousand dollars (\$450,000) or less.

Any contract for a public works project which may be approved as set forth in subsections (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m) and (n) above of this section and authorized by the City Manager, District Administrator, or other authorized person, is not subject to the public bidding requirements of articles 2 and 4 of this chapter or of Section 1307 of the Modesto City Charter. This section is adopted pursuant to Sections 801(1c) and 1307 of the Modesto City Charter. The City Manager may delegate his or her authority in a manner consistent with the procedures established by this chapter. As set forth in Section 2-2.03 of this Code, all contract documents that require City Council approval shall be approved as to form by the City Attorney or the City Attorney's authorized representative before presentation to the City Council.

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

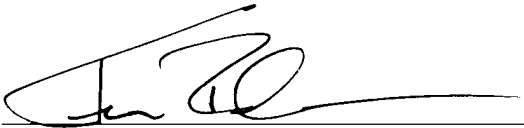
SECTION 3. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in *The Modesto Bee*, the official newspaper of the City of Modesto, setting forth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

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 5th day of May, 2009, by Councilmember Lopez who moved its introduction and passage to print, which motion being duly seconded by Councilmember Hawn, was upon roll call carried and ordered printed and published by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: 
JIM RIDENOUR, Mayor

ATTEST:

By 
STEPHANIE LOPEZ, Acting City Clerk

(SEAL)

APPROVED AS TO FORM:

By 
SUSANA ALCALA WOOD, City Attorney

Ord. No. 3511-C.S.


FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 12th day of May, 2009, Councilmember Lopez moved its final adoption, which motion being duly seconded by Councilmember Hawn, was upon roll call carried and the ordinance adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: 
MAYOR JIM RIDENOUR

ATTEST: 
STEPHANIE LOPEZ, City Clerk

Effective Date: June 12, 2009

ORDINANCE NO. 3512-C.S.

AN ORDINANCE REPEALING CHAPTER 9 OF TITLE 9 OF THE MODESTO MUNICIPAL CODE ENTITLED "HOUSING CODE", AND REPLACING WITH CHAPTER 9 OF TITLE 9 OF THE MODESTO MUNICIPAL CODE ENTITLED "PROPERTY MAINTENANCE CODE"

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

SECTION 1. REPEALS. Chapter 9 of Title 9 of the Modesto Municipal Code relating to the Housing Code is hereby repealed.

SECTION 2. AMENDMENT OF CODE. Chapter 9 entitled "Property Maintenance Code" is hereby added to Title 9 of the Modesto Municipal Code to read as follows:

CHAPTER 9 - PROPERTY MAINTENANCE CODE

ARTICLE 1. DESIGNATION, TITLE AND SCOPE

9-9.101. TITLE.

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

9-9.102. PURPOSE AND INTENT.

The Council of the City of Modesto finds and determines as follows:

The City has an important interest in setting standards for the improvement of the overall appearance and maintenance of properties in the City because adequate maintenance and appearance promote property values and improve the general welfare and quality of life of its citizens. In adopting this Chapter, one of the primary intents is to promote voluntary compliance with the minimum property maintenance standards set forth herein.

The purpose of this Chapter is to promote the health, safety, economic, aesthetic and general welfare of the citizens of the City, and to protect neighborhoods against nuisances, blight and deterioration by establishing requirements for all building exteriors, whether residential or non-residential, or structures of whatever kind, and establishing requirements for the maintenance of all land, whether improved or vacant.

Owners and occupants of some properties within the City permit conditions to exist which are injurious and inimical to the public health, safety and welfare of the residents of the City, and contribute substantially and increasingly to the deterioration of residential neighborhoods and commercial areas. There exists a need for further emphasis than currently exists on property maintenance and sanitation, in that certain conditions, as described herein, proliferate in different locations throughout the City.

The existence of the conditions as described in this Code are injurious and adverse to the public health, safety and welfare of the residents of the City, and contribute substantially and increasingly to the deterioration and blight of residential neighborhoods, commercial areas and industrial areas. Said conditions are declared to be public nuisances and violations of this Chapter, and constitute visual blight or result in conditions which are harmful or deleterious to the public health, safety and welfare.

The abatement of certain uses and abuses of property as described in this Chapter reasonably relates to the proper exercise of police power to protect the health, safety, and general welfare of the public.

Abatement of these conditions is in the best interest of the health, safety and welfare of the residents of the City because maximum use and enjoyment of properties closely proximate to one another depends upon maintenance of those properties at or above a minimum standard of sightliness. The beneficial effects of maintaining standards of sightliness for property in the City include, but are not limited to, appreciation of property values, physical improvement and stability of residential and commercial areas, attraction of investors of capital, and maximum use of property for its highest and best use.

In crafting this Chapter, it is the intent of the City to impose minimum city-wide standards for property maintenance. These provisions are intended to exist separate and apart from any existing community standards contained in any set of covenants, conditions and restrictions, and are not intended to enforce those standards.

9-9.103. APPLICABILITY.

The provisions of this Chapter shall apply to all properties within the City, or portions thereof, whether developed or undeveloped, and without regard to use, date of construction or alterations. This Chapter shall also apply to all publicly owned property in the City, including City property, to the extent allowed by law.

9-9.104. DEFINITIONS USED WITHIN THIS CHAPTER.

- (a) **Building or structure** means and includes, but is not limited to, any house, garage, carport, duplex, apartment, condominium, mobile home, storage shed, any commercial establishment, warehouse, fence, wall or other structures affixed to or upon real property, or any assemblage of materials on private property of another for the purpose of human habitation.
- (b) **City** means the area within the territorial city limits of the City of Modesto and all territory outside of the City over which the City has jurisdiction by virtue of any constitutional or Charter provisions, or any ordinance or law.
- (c) **City Manager** means the Manger of the City, the Deputy City Manager, or any person or persons designated by the City Manager to act in his/her stead in connection with this Chapter.
- (d) **Director** means and includes each of the directors of the City departments which are now or may in the future be charged with the enforcement of this Code.
- (e) **Code Enforcement Officer** means any City employee designated by any Director or by the City Manager to enforce the provisions of this Code. Such employees may be employed in any City department.
- (f) **Exterior property** shall mean the open space on the premises and on adjoining property under the control of owners or operators of such premises.
- (g) **Extermination** shall mean the control and elimination of insects, rats or other pests by eliminating their harborage places; by removing or making inaccessible materials that serve as their food; by poison spraying, fumigating, trapping or by any other approved pest elimination methods.
- (h) **Fire hazard** means a fire hazard as determine by the Fire Chief or his/her designee.
- (i) **Health hazard** means a health hazard as determined by the Health Officer or his/her designee.
- (j) **Hearing Officer** means any person appointed by the City Manager to preside over administrative enforcement hearings held pursuant to this Chapter.
- (k) **Inoperable motor vehicle** means any vehicle which cannot be driven

upon the public streets for reasons including, but not limited to, being unlicensed, wrecked, abandoned, in a state of disrepair, or incapable of being moved under its own power.

- (l) **Infestation** shall mean the presence, within or contiguous to, a structure or premises of insects, rats, vermin or other pests.

- (m) **Junk** means any of the following objects or materials upon a property if such object or material is left, placed, kept, exposed, or stored in public view for more than one-half (1/2) of any continuous ten (10) day period. Materials described below which are upon the property of a properly zoned business and which constitute lawfully stored or displayed merchandise or services of said business are excluded from this Article:
 - (1) An accumulation of dirt, soil, rock, gravel, bark, humus, sod, or other similar natural material; providing, however, the accumulation of such material which is an integral part of an organized landscape design, or which is part of an incomplete project, is excluded from this definition if the excess or the residue of such accumulation is completely removed from the property by the completion of the building or landscaping project. A project shall be deemed completed if there is no obvious change to the accumulation or to the project in any thirty (30) day period.
 - (2) Construction or packing material or supplies, including, but not limited to, lumber, dry wall, roofing tile, cement, nails, pallets, plywood, scrap lumber, or other building materials, products, or supplies; electrical, irrigation or plumbing supplies; provided, however, that a reasonable quantity of these materials and supplies is excluded from this definition during active construction upon the subject property. A project shall be deemed active if there is obvious change to the accumulation or to the project in any thirty (30) day period.
 - (3) Firewood greater than thirty-six (36) inches in length and greater than twenty-four (24) inches in diameter; all firewood that is not stacked.
 - (4) An accumulation of aluminum cans, newspaper, plastic bottles, glass, cardboard or cardboard boxes, or an accumulation of other recyclable materials that has been stored in public view for more than one-half (1/2) of any continuous ten (10) day period.
 - (5) Any appliance, tool, equipment, furniture, furnishing, or other item

of personal property including, but not limited to, any couch, love seat, sofa, sofa bed, recliner, hassock, upholstered chair, mattress, bed springs, box springs, bed frame, headboard, desk, dresser, bureau, cabinet, television, radio, stereo, stove, refrigerator, freezer, dish washer, washing machine, dryer, shopping cart, sinks, toilets, or any similar item, whether or not any such item is broken or abandoned, resting or being stored on the premises in public view for more than one-half (1/2) of any continuous ten (10) day period.

- (6) Any item or items or personal property, of any size and of any quantity, which are littered on or scattered upon or about the property in a random, haphazard, aimless, disarrayed, or disorganized manner, so as to cause a public nuisance for more than one-half (1/2) of any continuous ten (10) day period.
- (7) Any accumulation of parts from any motorized and non-motorized vehicle, equipment, aircraft or cycles, including, but not limited to, tires, wheels, body parts, motors, transmissions, upholstery or any similar item, whether or not any such item is broken or abandoned, resting or being stored on the premises in public view for more than one-half (1/2) of any continuous ten (10) day period.

(n) **Nuisance vegetation** means any of the following:

- (1) Dry grass, stubble, hay, brush, any dry or dead plant, bush, shrub, tree, or other dry vegetation which present a visual blight upon the area, which may harbor insect or rodent infestations or which may likely become a fire hazard or result in a condition which may threaten the health and safety or the economic welfare of adjacent property owners or occupants. Accumulated vegetative materials which comply with all regulations of the Pruned Refuse Collection Program of the City of Modesto (Sections 4-7.1101 to 4-7.1108 of this Code) are excluded from this definition; or
- (2) Any plant or grass, whether growing or dormant, which bears downy or winged seeds; or
- (3) Poison oak (*Rhus diversiloba*) or poison ivy (*Rhus toxicodendron*); or
- (4) Overgrown vegetation, whether living, dormant, dead, cultured or uncultured, which encroaches into the public right-of-way or renders that right-of-way unsafe by blocking vision or can

otherwise be hazardous to pedestrian or vehicular traffic or which is capable of harboring insects, rats, mice, or other vermin, or other similar conditions which are dangerous to the public health or welfare or which are hazardous to pedestrian or vehicular traffic. Grass or weeds must not grow to a height or bulk that creates a traffic, pedestrian, or fire hazard or which is a blight on the neighborhood, and in no event taller than twelve (12) inches above ground level; or

- (5) Any tree or other vegetation which is dead, decayed, infected, diseased, infested with or in danger of becoming infested with, objectionable insects, parasites, scale, or fungus, or which is otherwise a hazard to public safety and welfare. Accumulated vegetative materials which comply with all regulations of the pruned refuse collection program of the City (Sections 4-7.1101 to 4-7.1108 of this Code) are excluded from this definition; or
 - (6) Any tree, plant, vine, or foliage, whether living, dormant, or dead, that is otherwise noxious, dangerous or injurious to people or to city trees, or that interferes with the maintenance or inspection of a City tree; or
 - (7) Tumbleweeds (amaranths) and other similar vegetation which characteristically break away from their roots at maturity and can be blown by the wind to create hazards to pedestrian or vehicular traffic.
- (o) **Person** means any natural person, firm, association, business, or organization, corporation, partnership, trust, estate, or any other legal entity recognized by law as the subject of legal rights or duties.
 - (p) **Property** means any parcel of land which is identified in the secured roll of the Stanislaus County Assessor, all residential, commercial and other real property, including, but not limited to, front yards, side yards, backyards, driveways, walkways, alleys, sidewalks, and shall include any building or structure whether fixed or moveable, located on such property.
 - (q) **Property owner** means the record owner of real property as listed in the most current equalized assessment roll as maintained by the Stanislaus County Assessor.
 - (r) **Responsible party** means any occupant, lessor, lessee, manager, licensee, or other person having control over a property, including any structure or parcel of land. A responsible party may be a property owner.

- (s) **Repair shop** means any location at which any type of repair, alteration or modification is performed on any vehicle, equipment, apparatus, machinery, or device of which the owner is not a resident of the property on which such work is being performed.
- (t) **Violation** means a violation of any provision of this Code by any property owner or any responsible party.
- (u) **Visual blight** means any unreasonable or unlawful condition or use of premises or of a building exterior which, by reason of its appearance as viewed at ground level from the public right-of-way or from neighboring premises, is detrimental to the surrounding area and the property of others, or is detrimental to the health, safety and welfare of individuals residing within the community.
- (v) **Zoning regulations** means any provisions of Title 10 of this Code, also known as the land use code.

ARTICLE 2. REMEDIES FOR VIOLATIONS OF THIS CODE

9-9.201. EFFECT OF PRE-EXISTING PROVISIONS.

The remedy and penalty provisions of City of Modesto Community Preservation Code which were in effect prior to the effective date of this Chapter shall continue to apply to all violations where a notice and order or other official notice of violation was sent by the City of Modesto prior to the effective date of this Chapter.

9-9.202. CIVIL.

- (a) In addition to any other remedy provided by this Code, any provision of this Chapter may be enforced by injunction issued by the Superior Court upon a suit brought by the City.
- (b) As part of a civil action filed to enforce provisions of this Chapter, a court may assess a maximum civil penalty of Two Thousand Five Hundred Dollars (\$2,500.00) per violation of this Chapter for each day during which any person commits, continues, allows or maintains a violation of any provision of this Chapter.

9-9.203. CRIMINAL.

It is unlawful for any person to violate any provision or to fail to comply with any of the requirements of this Chapter. A violation of any of the provisions or failing

to comply with any of the mandatory requirements of this Chapter shall constitute a misdemeanor; except that notwithstanding any other provision of this Code, any such violation constituting a misdemeanor under this Code may, in the discretion of the City Attorney, be charged and prosecuted as an infraction.

Any person convicted of a misdemeanor under the provisions of this Chapter, unless provision is otherwise herein made, shall be punishable by a fine of not more than One Thousand Dollars (\$1,000.00) or by imprisonment in the county jail for a period of not more than six (6) months or by both fine and imprisonment.

Any person convicted of an infraction under the provisions of this Code, unless provision is otherwise herein made, shall be punishable by a fine only as follows: Upon a first conviction by a fine not to exceed Two Hundred Fifty Dollars (\$250.00), and for a second conviction or any subsequent conviction within a period of one (1) year, by a fine not to exceed Five Hundred Dollars (\$500.00).

Each such person shall be charged with a separate offense for each and every day during any portion of which any violation of any provision of this Code is committed, continued or permitted by such person and shall, upon conviction, be punished accordingly.

9-9.204. ADMINISTRATIVE.

The City may pursue any of the administrative remedies established under the provisions of Article 6 of Title 1 of the Municipal Code for violations of this Chapter.

9-9.205. SEVERABILITY.

If any section, subsection, sentence, clause, phrase or portion of this Chapter is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Article. The City Council declares that it would have adopted such section, subsection, sentence, clause, phrase or portion thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or portions be declared invalid or unconstitutional.

ARTICLE 3. MAINTENANCE OF PROPERTIES

9-9.301. DUTY OF REMOVAL.

It is hereby made the duty of every owner of real property in the City to keep said property free and clear of all junk, nuisance vegetation, and any other material prohibited thereon by this Code which from any cause whatsoever has

accumulated upon said property. It is hereby made the duty of every property owner to lawfully destroy or remove all such prohibited materials from his or her private property, from the abutting half of the street and/or alley, from the sidewalk space thereupon, and between the sidelines thereof as extended. Failure of any property owner so to do is unlawful and punishable civilly, criminally or administratively and creates a nuisance subject to penalty or abatement as provided in this Chapter.

9-9.302. ALLEYS.

- (a) It is unlawful for any person who owns, leases, occupies, or has charge, control, or possession of any property in the City to place or allow to remain in any alley abutting said property, from ground level up to a height of twelve (12) feet above the alley surface, any object, material, or growth of any nature except a garbage container, if such is allowed by Section 5-5.109 of the Code. Public utility and cable television equipment, owned or maintained by utilities, is exempt from this Section. Accumulated vegetative materials which comply with all regulations of the pruned refuse collection program of the City (Sections 4-7.1101 to 4-7.1108 of this Code) are excluded from this Section.
- (b) Any remedy utilized by the City to correct or abate a violation of this Section shall, whenever possible, be initially directed to any person who controls, occupies or is in possession of the property in violation. This does not preclude the City from pursuing any remedy available to it against the lessor, manager, or property owner in order to correct or abate the violation.

9-9.303. SANITATION.

All exterior property and premises shall be maintained in a clean, safe and sanitary condition in accordance with the provisions and requirements set forth in Title 5 of this Code. The occupant shall keep that part of the exterior property, which such occupant occupies or controls in a clean and sanitary condition.

9-9.304. GRADING AND DRAINAGE.

All premises shall be graded and maintained to prevent any of the following:

- (a) The erosion of soil;
- (b) The accumulation of stagnant water thereon; and
- (c) The drainage of water onto neighboring properties.

Exception:
Approved retention areas and reservoirs.

9-9.305. SIDEWALKS AND DRIVEWAYS.

All sidewalks, walkways, stairs, driveways, parking spaces and similar areas shall be kept unobstructed and in a proper state of repair, and maintained free from hazardous conditions.

9-9.306. MOTOR VEHICLES.

Except as provided for in Section 4-7.1903 of this Code, "Exclusions" or other regulations, no inoperative or unlicensed motor vehicle shall be parked, kept or stored on any premises, and no vehicle shall at any time be in a state of major disassembly, disrepair, or in the process of being stripped or dismantled. Painting of vehicles is prohibited unless conducted inside an approved spray booth.

Exception:
A vehicle of any type is permitted to undergo major overhaul, including body work, provided that such work is performed inside a structure or similarly enclosed area designed and approved for such purposes.

ARTICLE 4. EXTERMINATION

9-9.401. RODENT HARBORAGE.

All exterior property shall be kept free from rodent harborage and infestation. Where rodents are found, they shall be promptly exterminated by approved processes which will not be injurious to human health. After extermination, proper precautions shall be taken to eliminate rodent harborage and prevent reinfestation.

9-9.402. INFESTATION OF STRUCTURES.

All structures shall be kept free from insect and rodent infestation. All structures in which insects or rodents are found shall be promptly exterminated by approved processes that will not be injurious to human health. After extermination proper precautions shall be taken to prevent reinfestation.

9-9.403. OWNER RESPONSIBILITY.

The owner of any structure shall be responsible for extermination within the structure prior to renting or leasing the structure.

9-9.404. SINGLE OCCUPANT RESPONSIBILITY.

The occupant of a one-family dwelling or a single-tenant non-residential structure shall be responsible for extermination on the premises.

9-9.405. MULTIPLE OCCUPANCY RESPONSIBILITY.

The owner of a structure containing two or more dwelling units, a multiple occupancy, a rooming house or a non-residential structure shall be responsible for extermination in the public or shared areas of the structure and exterior property. If infestation is caused by failure of an occupant to prevent such infestation in the area occupied, the occupant shall be responsible for extermination.

9-9.406. ONGOING MAINTENANCE - OCCUPANT RESPONSIBILITY.

The occupant of any structure shall be responsible for the continued rodent and pest-free condition of the structure.

Exception:

Where the infestations are caused by defects in the structure, the owner shall be responsible for extermination.

ARTICLE 5. NUISANCE CONDITIONS

9-9.501. PUBLIC NUISANCE DEFINED.

A public nuisance consists of doing any act, or permitting or allowing any condition or thing to exist, occur, or accumulate upon any property within the City that is injurious to health, indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property and endangers the health or safety of others.

9-9.502. PROPERTIES DECLARED NUISANCES.

All properties within the City of Modesto or portions thereof which are determined to be in violation as defined in this Chapter, are hereby declared to be public nuisances and shall be abated by cleaning, restoring, desisting the use or violation, board-up, painting, monitoring, fencing or removal in accordance with the procedures set forth in Article 6 of Chapter 6 of Title 1 of the Modesto Municipal Code.

9-9.503. SIDEWALK ENCROACHMENT.

It is unlawful, and constitutes a public nuisance to place wires, cables, hoses,

including unattended garden hoses, and other objects across or on public sidewalks in such a manner that they may cause a tripping or other hazard for those using the sidewalk, or otherwise substantially impair the public use of the sidewalk.

9-9.504. FENCES AND WALLS.

It is unlawful, and constitutes a public nuisance, to allow on property in public view within the City, exterior perimeter walls and fences that either are structurally unsound so as to constitute a hazard to persons or property or are partially destroyed or permitted to remain in a state of partial construction for a period of one hundred eighty (180) days or more, and which by reason of such condition are either defective or are in such a condition of deterioration or disrepair that they are considered visual blight.

9-9.505. UNSECURED BUILDINGS.

It is unlawful and constitutes a public nuisance for any responsible party or owner of any property in the City to fail to install, or to fail to use, reasonable security measures to prevent unauthorized entry into any vacant or uninhabited building upon such property. Except when the owner or responsible party is personally upon the property, all exterior openings, such as doors and windows, affording entry into any building upon such property shall be reasonably secured against unauthorized entry into such building in accordance with Section 9-9.605 of this Code.

9-9.506. PARKING VEHICLES ON UNIMPROVED SURFACES.

It is unlawful and constitutes a public nuisance for any responsible party to park vehicles on unimproved surfaces like dirt or any other surfaces which are in violation of Sections 10-2.2001 and 10-2.2005 of this Code, and will contribute to elicit discharges, in violation of Sections 5-10.102, 5-10.201, 5-10.204 and/or 5-10.205 of this Code. The purpose of this Section is to protect and control the pollutants being discharged into the City of Modesto's MS4 system.

9-9.507. REQUIRED FENCING.

It is unlawful and constitutes a public nuisance for any responsible party to fail to install, remove or fail to maintain in good repair any fencing required as a condition of any permit or development approval or included in the project plans or application, as approved by the City, including, but not limited to, those fences which abut major thoroughfares, sound walls, fences securing a swimming pool or those fences required by a variance, use permit, or plan development. Any required fence must be maintained so as to match the materials used when the

fence was originally constructed.

9-9.508. CONDITIONS AFFECTING ADJOINING PROPERTIES.

It is unlawful and constitutes a public nuisance for any responsible party to engage in any land use which causes an unreasonable amount of noise, light, odor, dust, mud, vibration or electrical interference which adversely affects the lawful use of adjoining properties.

9-9.509. NUISANCE CONDITIONS OF THE PROPERTY.

It is unlawful, and a public nuisance, for any responsible party, to maintain or allow to be maintained, permit or cause the property, including adjacent parkways, sidewalks, alleys or streets, to be maintained with any of the following conditions which are visible from the street, sidewalk, alley or public right-of-way:

- (a) The accumulation of weeds, dirt, litter, rubbish or debris on the property to such an extent that it constitutes visual blight.
- (b) Neglected or inadequately maintained landscaping, trees, hedges, lawns, shrubs, plants or other vegetation which:
 - (1) is dead, decayed, diseased, debris laden, weed infested, overgrown, or dying as a result of neglect, physical damage, disease, pest infestation or lack of water;
 - (2) is overgrown as to be blighted or likely to harbor rats or vermin;
 - (3) could create a fire hazard or is otherwise dangerous to the public health, safety, and welfare;
 - (4) interferes with or impedes the flow of traffic, whether vehicular or pedestrian, or obstructs visibility on streets, intersections, clear vision triangles, sidewalks, alleys or other public rights-of-way or is in violation as defined in Section 10-2.2314 of this Code; or
 - (5) creates a blighted appearance due to lack of water; provided, however, that the provision as to dead or dying vegetation due to lack of water shall not be enforced during a drought, as determined by the City's Water Contingency Plan. For purposes of this subsection, a lawn area shall be deemed overgrown if any part exceeds twelve (12) inches in height.
- (c) Fences, walls, doors, windows, trash enclosures, parking areas, parking

lots or other structures, which are:

- (1) significantly cracked or broken, fallen, decayed, dry-rotted, warped, deteriorated, defective, defaced, in disrepair or missing components, or which either (a) threaten structural integrity, or (b) result in a dilapidated, decaying, disfigured, or partially ruined appearance to such an extent that they contribute to blight or threaten the public health, safety or welfare;
 - (2) leaning or listing more than fifteen (15) degrees from perpendicular or are in danger of collapse due to the elements, pest infestation, dry rot, lack of maintenance or other damage;
 - (3) in a state of partial construction for a period of one hundred eighty (180) days or more; or
 - (4) poorly maintained so as to become so defective, blighted, or in such condition of deterioration or disrepair that the same causes depreciation of the values of surrounding property or is materially detrimental to nearby properties and improvements.
- (d) Accumulated junk, as that term is defined in this Article.
- (e) Accumulated unsanitary or stagnant water caused by:
- (1) Hazardous pools, spas, ponds, and excavations; or
 - (2) Improper grading or poor grading maintenance.
- (f) Non-permitted land uses in violation of the zoning code, including, but not limited to:
- (1) Residential property uses such as repair shops, non-permitted home businesses, unlicensed home businesses, allowing boarders in violation of Section 10-2.502 of this Code, unlicensed residential care facilities, unlicensed day care facilities that cares for nine or more people, failure to comply with all conditions of the planned development, conditional use permits or variances, living in any mobile living quarters in violation of Sections 10-2.2901 and 10-2.2902 of this Code or graffiti on the exterior of any building, fence or other structure.
 - (2) Non-residential property uses such as unlawful signs, non-permitted uses, unlicensed businesses, failure to comply with all

provisions of the planned development, conditional use permits or variances, living in any mobile living quarters in violation of Sections 10-2.2901 and 10-2.2902 of this Code, or graffiti on the exterior of any building, fence, or other structure.

- (3) Any property failure to comply with all provisions of the planned development or use permits parking or storing of vehicles in violation of Sections 10-2.2001 and 10-2.2005 of this Code, and will contribute to elicit discharges, in violation of Sections 5-10.102, 5-10.201, 5-10.204 and/or 5-10.205 of this Code. The purpose of this Section is to protect and control the pollutants being discharged into the City of Modesto's MS4 system.
- (g) Broken windows constituting blighted or hazardous conditions or which invite trespassers and malicious mischief.
- (h) Any article, equipment, or fixture that is offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property.
- (i) Any blighted condition, or condition of deterioration or disrepair that causes appreciable diminution of the property values of surrounding properties or is materially detrimental to proximal properties and improvements.
- (j) The use of buildings, or portions thereof, for living, sleeping, cooking or dining purposes when such buildings, or portions thereof, were not designed or intended to be used for such purposes.
- (k) Any hazardous or unsanitary condition as determined by the Health Officer.
- (l) Any device, apparatus, equipment, combustible waste or vegetation which, in the opinion of the Fire Chief, is in such a condition as to cause a fire or explosion or provide a ready fuel to augment the spread and intensity of fire or explosion arising from any cause also know as fire hazard.
- (m) Any public nuisance known at common law or in equity jurisprudence.
- (n) Any attractive nuisance, which is defined as any condition which may prove detrimental to children whether in a building, on the premises of a building, or on an unoccupied lot. This shall include any abandoned wells, abandoned swimming pools or spas, shafts, basements or excavations, abandoned refrigerators and motor vehicles, and any structurally unsound

fences or structures, lumber, trash, fences, debris or vegetation which may prove a hazard for inquisitive minors.

- (o) Conditions which are dangerous to the life, limb, health or safety of the general public or building occupants.
- (p) Inadequate or unsanitary sewage or plumbing hook-ups that have a potential to discharge sewage or any other pollutant onto or into the ground.
- (q) Conditions which have a potential to cause the discharge of any known pollutants onto or into the ground.
- (r) Any building or structure or condition existing on a property which is defined as a public nuisance under this Code.

9-9.510. UNLAWFUL CONDITIONS NOT IN PUBLIC VIEW.

It is unlawful, and a public nuisance, for any responsible party to maintain or allow to be maintained, permit or cause the property to be maintained with any of the following conditions not in public view.

- (a) The accumulation of weeds, vegetation, junk, organic matter, debris, garbage, offal, rat harborages, stagnant water, combustible materials and similar materials or conditions on a premises constitutes fire, health or safety hazards.
- (b) Any device, apparatus, equipment, combustible waste or vegetation which, in the opinion of the Fire Chief, is in such a condition as to cause a fire or explosion or provide a ready fuel to augment the spread and intensity of fire or explosion arising from any cause.
- (c) Any public nuisance known at common law or in equity jurisprudence.
- (d) Attractive nuisances, which are defined as any condition which may prove detrimental to children whether in a building, on the premises of a building, or on an unoccupied lot. This includes any abandoned wells, abandoned swimming pools or spas, shafts, basements or excavations, abandoned refrigerators and motor vehicles, structurally unsound fences or structures, lumber, trash, fences, debris, or vegetation which may prove a hazard for inquisitive minors.
- (e) Conditions which are dangerous to the life, limb, health or safety of the general public or building occupants.

- (f) Any condition in violation of Section 4-12.1403 of this Code.

ARTICLE 6. VACANT AND BOARDED BUILDINGS

9-9.601. BOARDED BUILDINGS; DECLARATION OF PURPOSE.

Boarded buildings are a major cause and source of crime and blight in both residential and non-residential neighborhoods. In addition, vacant buildings which are boarded and unkempt, and which are vacant for long periods of time, discourage economic development and retard appreciation of property values.

9-9.602. VACANT BUILDING; DEFINED.

For the purposes of this Chapter, the term "vacant building" means an unoccupied or an illegally occupied structure or an occupied structure without adequate facilities/utilities.

9-9.603. BOARDED BUILDING - DEFINED.

For the purposes of this Chapter, the term "boarded building" means an unoccupied building some or all of whose doors and windows and other openings have been covered with plywood or other approved material for the purpose of preventing entry into the building.

9-9.604. VIOLATION.

Every owner or responsible person shall maintain their vacant or boarded building in accordance with all of the requirements set forth herein. Failure to do so constitutes a violation of this Code and is a public nuisance.

9-9.605. METHOD OF BOARDING PAINTING.

All windows, doors and openings shall be secured as per the board-up specifications maintained by the City of Modesto. All wood must be painted to match the paint on the property. If the property is multicolor, the paint should match the predominant color on that wall.

9-9.606. BOARDED OR VACANT BUILDING; TIME PERIOD MAINTENANCE.

No responsible party shall allow a building to stand vacant for more than sixty (60) days, unless one of the following applies:

- (a) The building is the subject of an active building permit and the owner is progressing diligently to repair the premises for occupancy;
- (b) The building meets all applicable codes in existence at either the time of its construction or at the time of its alteration or modification and is actively being offered for sale, lease, or rent;
- (c) The building is being maintained in a safe and orderly manner and does not contribute to blight conditions;
- (d) Maintenance in a safe and orderly manner shall include:
 - (1) Maintenance of any landscaping and plant materials in good condition.
 - (2) Maintenance of the exterior of the building, including but not limited to paint and finishes, in good condition.
 - (3) Regular removal of all exterior trash, debris and graffiti, and
 - (4) Maintenance of the building in continuing compliance with all applicable codes and regulations.

9-9.607. VACANT BUILDING MONITORING FEE.

- (a) Fee Imposed. There is hereby imposed upon every owner of a vacant building an annual vacant building monitoring fee in an amount to be set by resolution of the City Council. The fee shall not exceed the estimated reasonable cost of monitoring the vacant building. The fee shall be payable as to any building, residential or non-residential, which:
 - (1) Is boarded up by voluntary action of the owner or as the result of enforcement activities by the City; or
 - (2) Is vacant for more than sixty (60) days for any reason.
- (b) Fee Waiver. The vacant building monitoring fee may be waived by the Director upon a showing by the owner that:
 - (1) The owner has obtained a building permit and is progressing diligently to repair the premises for occupancy;
 - (2) The building meets all applicable codes and is actively being offered for sale, lease or rent; or

- (3) Imposition of the fee would impose a substantial economic hardship on the owner or would hinder the rehabilitation of the building.
- (c) Procedure.
- (1) The vacant building monitoring fee shall be billed to the owner of the property and mailed to the owner's address as set forth on the last equalized assessment roll of the County Assessor.
 - (2) Any owner billed may apply for a waiver on the grounds set forth in subsection (b) of this section by submitting a written statement of the grounds for the waiver, and the owner's daytime telephone number, to the Director within thirty (30) days after the billing is mailed to the owner. The Director shall review the written statement and may contact the owner to discuss the application for waiver. The Director shall prepare a written decision which shall be mailed to the owner.
 - (3) Any owner who disagrees with the decision of the Director may submit a written notice of appeal to the Director within thirty (30) days of receipt of the decision. Failure to timely appeal the decision of the Director relating to a denial of a waiver constitutes a waiver of all rights to an administrative hearing and determination of the matter subject only to review pursuant to Section 1094.5 of the California Code of Civil Procedure.
 - (4) If the fee is not paid within sixty (60) days after billing, or within sixty (60) days after the decision of the Director or after the decision upon appeal by the owner becomes final, the fee may be specially assessed against the property involved and made a personal obligation of the owner. If the fee is to be specially assessed against the property, a hearing officer, as designated by the City Manager, shall confirm the assessment and thereafter said assessment may be collected at the same time and in the same manner as ordinary real property taxes are collected and shall be subject to the same penalties and the same procedure and sale in case of delinquency as provided for ordinary real property taxes. All laws applicable to the levy, collection, and enforcement of real property taxes are applicable to the special assessment.
 - (5) The designated hearing officer may also cause a notice of lien to be recorded. The notice shall, at a minimum, identify the record owner or possessor of the property, set forth the last known address

of the record owner or possessor, a description of the real property subject to the lien, and the amount of the fee.

ARTICLE 7. IMPOSITION AND COLLECTION OF INSPECTION FEES

9-9.701. IMPOSITION AND COLLECTION OF INSPECTION FEES.

- (a) The City Council has authorized inspection fees for all third (3rd) and subsequent inspections of properties or activities regulated under this Chapter when, upon inspections, the City determines the properties or activities previously found not in compliance with the provisions of this Chapter continue not to be in compliance.
- (b) Inspection fees shall be charged according to the following schedule:
 - (1) Third (3rd) and fourth (4th) inspection:

2006-2007	\$33.00
2007-2008	\$34.00
2008-2009	\$35.00
2009-2010	\$36.00
2010-2011	\$37.00

(2) Fifth (5th) and all subsequent inspections:

2006-2007	\$101.00
2007-2008	\$104.00
2008-2009	\$107.00
2009-2010	\$110.00
2010-2011	\$114.00

- (c) Where the assessment of inspection fees is authorized under this Article, the City shall provide the responsible party with a written notice stating:
 - (1) The amount of inspection fees assessed;
 - (2) The dates on which all inspections took place; and
 - (3) The deadline for payment of such fees.
- (d) Code enforcement fees collected pursuant to this Chapter shall not be duplicated by any other action to recover these fees.
- (e) Failure of the responsible party to receive notice of inspection fees shall not affect the validity of any fees imposed under this Chapter.
- (f) The inspection fee schedule is established and will be revised as necessary by the City Council to reflect current costs incurred for the additional work undertaken by City staff when the responsible party fails to correct code violations identified in this Chapter in a timely manner.
- (g) The City shall collect the assessed inspection fees by the use of appropriate legal means, including but not limited to, referral to the Finance

Department for collection or assessment against the property.

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

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

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 5th day of May, 2009, by Councilmember Hawn who moved its introduction and passage to print, which motion being duly seconded by Councilmember Olsen, was upon roll call carried and ordered printed and published by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:



JIM RIDENOUR, Mayor

ATTEST:

By 

STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By 

SUSANA ALCALA WOOD, City Attorney

Ord. No. 3512-C.S.


FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 12th day of May, 2009. Councilmember Lopez moved its final adoption, which motion being duly seconded by Councilmember Hawn, was upon roll call carried and the ordinance adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: 
MAYOR JIM RIDENOUR

ATTEST: 
STEPHANIE LOPEZ, City Clerk

Effective Date: June 12, 2009

ORDINANCE NO. 3513-C.S.

AN ORDINANCE REPEALING CHAPTER 8 OF TITLE 9 OF THE MODESTO MUNICIPAL CODE ENTITLED "DANGEROUS BUILDING CODE" AND REPLACING WITH CHAPTER 8 OF TITLE 9 OF THE MODESTO MUNICIPAL CODE ENTITLED "BUILDING MAINTENANCE CODE"

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

SECTION 1. REPEALS. Chapter 8 of Title 9 of the Modesto Municipal Code entitled "Dangerous Building Code" is hereby repealed.

SECTION 2. AMENDMENT OF CODE. Chapter 8 entitled "Building Maintenance Code" is hereby added to Title 9 of the Modesto Municipal Code to read as follows:

CHAPTER 8. BUILDING MAINTENANCE CODE

ARTICLE 1. DESIGNATION, TITLE AND SCOPE.

9-8.101. TITLE.

These regulations shall be known as the Building Maintenance Code of the City of Modesto hereinafter referred to as "this Code."

9-8.102. SCOPE.

The provisions of this Code shall apply to all existing residential and nonresidential structures and all existing premises and constitute minimum requirements and standards for premises, structures, equipment and facilities for light, ventilation, space, heating, sanitation, protection from the elements, life safety, safety from fire and other hazards, and for safe and sanitary maintenance; the responsibility of owners, operators and occupants; the occupancy of existing structures and premises, and for administration, enforcement and penalties. Such occupancies in existing buildings may be continued as provided in Section 3401 of the California Building Code and the California Code of Regulations, Title 25 Article 5, except such structures as are found to be unsafe, unlawful, unfit for human occupancy or dangerous as defined in Article 9 of this Code.

9-8.103. INTENT.

This Code shall be construed to secure its expressed intent, which is to ensure public health, safety and welfare in so far as they are affected by the continued occupancy and maintenance of structures and premises. Existing structures and premises that are found to be unsafe, unlawful, unfit for human occupancy or dangerous as defined in Article 9 of this Code shall be altered or repaired to provide a minimum level of health and safety as required herein.

9-8.104. SEVERABILITY.

If a section, subsection, sentence, clause or phrase of this Code is, for any reason, held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this Code.

ARTICLE 2. APPLICABILITY.

9-8.201. GENERAL.

The provisions of this Code shall apply to all matters affecting or relating to structures and premises, as set forth in Article 1 of this Chapter. Where, in a specific case, different sections of this Code specify different requirements, the most restrictive shall govern.

9-8.202. MAINTENANCE.

Equipment, systems, devices and safeguards required by this Code or a previous regulation or code under which the structure or premises was constructed, altered or repaired shall be maintained in good working order. No owner, operator or occupant shall cause any service, facility, equipment or utility which is required under this Section to be removed from or shut off from or discontinued for any occupied dwelling, except for such temporary interruption as necessary while repairs or alterations are in progress. The requirements of this Code are not intended to provide the basis for removal or abrogation of fire protection and safety systems and devices in existing structures. Except as otherwise specified herein, the owner or the owner's designated agent shall be responsible for the maintenance of buildings, structures and premises.

9-8.203. APPLICATION OF OTHER CODES.

Repairs, additions or alterations to a structure, or changes of occupancy, shall be done in accordance with the procedures and provisions set forth in the Building, Plumbing, Electrical, and Mechanical Codes of the City of Modesto (Chapters 1,

2, 3, and 7 of Title 9 of the Modesto Municipal Code, respectively). Nothing in this Code shall be construed to cancel, modify or set aside any provision of Title 10 of the Modesto Municipal Code.

9-8.204. EXISTING REMEDIES.

The provisions in this Code shall not be construed to abolish or impair existing remedies available to the City of Modesto, or its officers or agencies, relating to the removal or demolition of any structure which is dangerous, unsafe, unlawful, and/or unsanitary.

9-8.205. WORKMANSHIP.

Repairs, maintenance work, alterations or installations which are caused directly or indirectly by the enforcement of this Code shall be executed and installed in a workmanlike manner and installed in accordance with the manufacturer's installation instructions.

9-8.206. HISTORIC BUILDINGS.

The provisions of this Code shall not be mandatory for existing buildings or structures designated as historic buildings when such buildings or structures are judged by the Building Official to be safe and in the public interest of health, safety and welfare.

9-8.207. REFERENCED CODES AND STANDARDS.

The codes and standards referenced in the Building, Plumbing, Electrical, and Mechanical Codes of the City of Modesto (Chapters 1, 2, 3, and 7 of Title 9 the Modesto Municipal Code, respectively) shall be considered part of the requirements of this Code to the prescribed extent of each such reference. Where differences occur between provisions of this Code and the referenced standards, the provisions of this Code shall apply.

9-8.208. REQUIREMENTS NOT COVERED BY CODE.

Requirements necessary for the strength, stability or proper operation of an existing fixture, structure or equipment, or for the public safety, health and general welfare, not specifically covered by this Code, shall be determined by the Building Official.

ARTICLE 3. DEFINITIONS.

9-8.301. SCOPE.

Unless otherwise expressly stated, the following terms shall, for the purposes of this Code, have the meanings shown in this Chapter.

9-8.302. INTERCHANGEABILITY.

Words stated in the present tense include the future; words stated in the masculine gender include the feminine and neuter; the singular number includes the plural and the plural the singular.

9-8.303. TERMS DEFINED IN OTHER CODES.

Where terms are not defined in this Code and are defined in the California Building, Plumbing, Mechanical, Electrical, and Fire Codes, as well as Chapter 10 of Title 9 of the Modesto Municipal Code, such terms shall have the meanings ascribed to them as stated in those Codes.

9-8.304. TERMS NOT DEFINED.

Where terms are not defined through the methods authorized by this Section, such terms shall have ordinarily accepted meanings such as the context implies.

9-8.305. PARTS.

Whenever the words "dwelling unit," "dwelling," "premises," "building," "rooming house," "rooming unit," "housekeeping unit" or "story" are stated in this Code, they shall be construed as though they were followed by the words "or any part thereof."

9-8.306. TERMS DEFINED.

As used in this Chapter:

- (a) "Approved" shall mean approved by the Building Official.
- (b) "Anchored" shall mean secured in a manner that provides positive connection.
- (c) "Basement" shall mean that portion of a building which is partly or completely below grade.
- (d) "Bathroom" shall mean a room containing plumbing fixtures including a bathtub or shower.

- (e) "Bedroom" shall mean any room or space used or intended to be used for sleeping purposes in either a dwelling or sleeping unit.
- (f) "Building Official" shall mean the officer or other designated authority charged with the administration and enforcement of this Code, or duly authorized representative. The office and title of Chief Building Official of the City of Modesto shall serve as the officer responsible for administration and enforcement of this Code.
- (g) "Condemn" shall mean to adjudge unfit for occupancy.
- (h) "Detached" shall mean when a structural element is physically disconnected from another and that connection is necessary to provide a positive connection.
- (i) "Deterioration" shall mean to weaken, disintegrate, corrode, rust or decay and lose effectiveness.
- (j) "Dwelling unit" shall mean a single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.
- (k) "Easement" shall mean that portion of land or property reserved for present or future use by a person or agency other than the legal fee owner(s) of the property. The easement shall be permitted to be for use under, on, or above a said lot or lots.
- (l) "Equipment support" shall mean those structural members or assemblies of members or manufactured elements, including braces, frames, lugs, snuggers, hangers or saddles, that transmit gravity load, lateral load and operating load between the equipment and the structure.
- (m) "Exterior property" shall mean the open space on the premises and on adjoining property under the control of owners or operators of such premises.
- (n) "Extermination" shall mean the control and elimination of insects, rats or other pests by eliminating their harborage places; by removing or making inaccessible materials that serve as their food; by poison spraying, fumigating, trapping or by any other approved pest elimination methods.
- (o) "Garbage" shall mean the animal or vegetable waste resulting from the

handling, preparation, cooking and consumption of food.

- (p) "Guard" shall mean a building component or a system of building components located at or near the open sides of elevated walking surfaces that minimizes the possibility of a fall from the walking surface to a lower level.
- (q) "Habitable space" shall mean space in a structure for living, sleeping, eating or cooking. Bathrooms, toilet rooms, closets, halls, storage or utility spaces, and similar areas are not considered habitable spaces.
- (r) "Housekeeping unit" shall mean a room or group of rooms forming a single habitable space equipped and intended to be used for living, sleeping, cooking and eating which does not contain, within such a unit, a toilet, lavatory and bathtub or shower.
- (s) "Imminent danger" shall mean a condition which could cause serious or life-threatening injury or death at any time.
- (t) "Labeled" shall mean devices, equipment, appliances, or materials to which has been affixed a label, seal, symbol or other identifying mark of a nationally recognized testing laboratory, inspection agency or other organization concerned with product evaluation that maintains periodic inspection of the production of the above-labeled items and by whose label the manufacturer attests to compliance with applicable nationally recognized standards.
- (u) "Let for occupancy" or "let" shall mean to permit, provide or offer possession or occupancy of a dwelling, dwelling unit, rooming unit, building, premise or structure by a person who is or is not the legal owner of record thereof, pursuant to a written or unwritten lease, agreement or license, or pursuant to a recorded or unrecorded agreement of contract for the sale of land.
- (v) "Neglect" shall mean the lack of proper maintenance for a building or structure.
- (w) "Nuisances" shall mean the following:
 - (1) Any public nuisance known at common law or in equity jurisprudence.
 - (2) Any attractive nuisance which may prove detrimental to children whether in a building, on the premises of a building, or on an

unoccupied lot. This includes any abandoned wells, abandoned swimming pools or spas, shafts, basements or excavations; abandoned refrigerators and motor vehicles; structurally unsound fences or structures; lumber, trash, fences, debris, or vegetation which may prove a hazard for inquisitive minors.

- (3) Conditions which are dangerous to the life, limb, health or safety of the public or building occupants.
- (4) Overcrowding a room with occupants.
- (5) Insufficient ventilation or illumination.
- (6) Inadequate or unsanitary sewage or plumbing facilities.
- (7) Uncleanliness.
- (8) Whatever renders air, food, or drink unwholesome or detrimental to the health, safety or welfare of human beings.
- (9) Any building or portion thereof which is determined to be substandard under this Chapter.
- (10) Any building or structure or condition existing on a property which is defined as a public nuisance under this Code.
- (x) "Occupancy" shall mean the purpose for which a building or portion thereof is utilized or occupied.
- (y) "Occupant" shall mean any individual living or sleeping in a building, or having possession of a space within a building.
- (z) "Openable area" shall mean that part of a window, skylight or door which is available for unobstructed ventilation and which opens directly to the outdoors.
- (aa) "Operator" shall mean any person who has charge, care or control of a structure or premises which is let or offered for occupancy.
- (bb) "Owner" shall mean any person, agent, operator, firm or corporation having a legal or equitable interest in the property; or recorded in the official records of the state, county or municipality as holding title to the property; or otherwise having control of the property, including the guardian of the estate of any such person, and the executor or

administrator of the estate of such person if ordered to take possession of real property by a court.

- (cc) "Person" shall mean an individual, corporation, partnership or any other group acting as a unit.
- (dd) "Premises" shall mean a lot, plot or parcel of land, easement or public way, including any structures thereon.
- (ee) "Public way" shall mean any street, alley or similar parcel of land essentially unobstructed from the ground to the sky, which is deeded, dedicated or otherwise permanently appropriated to the public for public use.
- (ff) "Rooming house" shall mean a building arranged or occupied for lodging, with or without meals, for compensation and not occupied as a one-or two-family dwelling.
- (gg) "Rooming unit" shall mean any room or group of rooms forming a single habitable unit occupied or intended to be occupied for sleeping or living, but not for cooking purposes.
- (hh) "Rubbish" shall mean combustible and noncombustible waste materials, except garbage; the term shall include the residue from the burning of wood, coal, coke and other combustible materials, paper, rags, cartons, boxes, wood, excelsior, rubber, leather, tree branches, yard trimmings, tin cans, metals, mineral matter, glass, crockery and dust and other similar materials.
- (ii) "Sleeping unit" shall mean a room or space in which people sleep, which can also include permanent provisions for living, eating and either sanitation or kitchen facilities, but not both. Such rooms and spaces that are also part of a dwelling unit are not sleeping units.
- (jj) "Strict liability offense" shall mean an offense in which the prosecution in a legal proceeding is not required to prove criminal intent as a part of its case. It is enough to prove that the defendant either did an act which was prohibited, or failed to do an act which the defendant was legally required to do.
- (kk) "Structure" shall mean that which is built or constructed or a portion thereof.

- (ll) "Tenant" shall mean a person, corporation, partnership or group, whether or not the legal owner of record, occupying a building or portion thereof as a unit.
- (mm) "Toilet room" shall mean a room containing a water closet or urinal but not a bathtub or shower.
- (nn) "Ultimate deformation" shall mean the deformation at which failure occurs and which shall be deemed to occur if the sustainable load reduces to eighty percent (80%) or less of the maximum strength.
- (oo) "Ventilation" shall mean the natural or mechanical process of supplying conditioned or unconditioned air to, or removing such air from, any space.
- (pp) "Workmanlike" shall mean executed in a skilled manner; e.g., generally plumb, level, square, in line, undamaged and without marring adjacent work.
- (qq) "Yard" shall mean an open space on the same lot with a structure.

ARTICLE 4. GENERAL REQUIREMENTS.

9-8.401. SCOPE.

The provisions of this Chapter shall govern the minimum conditions and the responsibilities of persons for maintenance of structures, equipment and exterior property.

9-8.402. RESPONSIBILITY.

The owner of the premises shall maintain the structures and exterior property in compliance with these requirements, except as otherwise provided for in this Code. A person shall not occupy as owner-occupant or permit another person to occupy premises which are not in a sanitary and safe condition and which do not comply with the requirements of this Chapter. Occupants of a dwelling unit, rooming unit or housekeeping unit are responsible for keeping in a clean, sanitary and safe condition that part of the dwelling unit, rooming unit, housekeeping unit or premises which they occupy and control.

9-8.403. VACANT STRUCTURES AND LAND.

All vacant structures and premises thereof or vacant land shall be maintained in a clean, safe, secure and sanitary condition as provided herein so as not to cause a

blighting problem or adversely affect the public health or safety.

ARTICLE 5. DUTIES AND POWERS OF BUILDING OFFICIAL.

9-8.501. GENERAL.

The Building Official is hereby authorized and directed to enforce all the provisions of this Code. For such purposes the Building Official shall have the powers of a law enforcement officer. The Building Official shall have the power to render interpretations of this Code and to adopt policies and procedures, and enforce policies and procedures, rules and supplemental regulations in order to clarify the application of its provisions. Such interpretations, rules, and regulations shall be in compliance with the intent and purpose of this Code. Such policies and procedures, rules and regulations shall not have the effect of waiving the requirements specifically provided for in this Code. Such interpretations may be appealed to the Board of Building Appeals.

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

9-8.502. DEPUTIES.

In accordance with the prescribed personnel procedures of the City of Modesto and with the concurrence of the Community and Economic Director, the Building Official shall have the authority to appoint a Deputy Building Official, the related technical officers, inspectors, plan examiners, and other employees. Such employees shall have powers as delegated by the Building Official. (Ord. 3465-C.S., §1, effective 1-3-08)

9-8.503. NOTICES AND ORDERS.

The Building Official shall issue all necessary notices or orders to ensure compliance with this Code.

9-8.504. UNAUTHORIZED TAMPERING.

Signs, tags or seals posted or affixed by the Building Official shall not be mutilated, destroyed, tampered with, or removed without authorization from the Building Official.

9-8.505. INSPECTIONS.

The Building Official shall make all of the required inspections. In lieu of

personally performing any inspection, the Building Official shall have the authority to accept reports of inspection by approved agencies or individuals. Reports of such inspections shall be in writing and shall be certified by a responsible officer of such approved agency or by the responsible individual. The Building Official is authorized to engage such expert opinion as deemed necessary to report upon unusual technical issues that arise. The Building Official's decision with regard to any inspection may be appealed under the provisions of Modesto Municipal Code Section 9-1.1306.

9-8.506. IDENTIFICATION.

The Building Official, or his/her designee, shall carry proper identification when inspecting structures or premises in the performance of duties under this Code.

9-8.507. RIGHT OF ENTRY.

Where it is necessary to make an inspection to enforce the provisions of this Code, or where the Building Official has reasonable cause to believe that there exists in a structure or upon a premises a condition that is contrary to or in violation of this Code which makes the structure or premises unsafe, dangerous, or hazardous, the Building Official, or his/her designee, is authorized to enter the structure or premises at reasonable times to inspect or to perform the duties imposed by this Code, provided that if such structure or premises be occupied that credentials be presented to the occupant and entry requested. If such structure or premises is unoccupied, the Building Official shall first make a reasonable effort to locate the owner or other person having charge or control of the structure or premises and request entry. If entry is refused, the Building Official shall have recourse to the remedies provided by law to secure entry for the purpose of inspection.

9-8.508. DEPARTMENT RECORDS.

The Building Official shall keep official records of applications received, permits and certificates issued, fees collected, reports of inspections, and notices and orders issued. Such records shall be retained in the official records for the period required by the City of Modesto records retention manual.

9-8.509. NON-RESPONSIBILITY OF THE CITY.

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

provisions of this Code.

9-8.510. APPROVED MATERIALS AND EQUIPMENT.

Materials, equipment, and devices approved by the Building Official shall be constructed and installed in accordance with such approval.

9-8.511. USED MATERIALS AND EQUIPMENT.

The use of used materials that meet the requirements of Sections 9-1.410, 9-2.410, 9-3.410 and 9-7.410 of the Modesto Municipal Code, rather than new materials, is permitted. Used equipment and devices shall not be reused without the express approval of the Building Official.

9-8.512. MODIFICATIONS.

Wherever there are practical difficulties involved in carrying out the provisions of this Code, the Building Official shall have the authority to grant modifications for individual cases, upon application of the owner or owner's representative, provided the Building Official shall first find that one or more special reasons make compliance with the strict letter of this Code impractical, that the requested modification complies with the intent and purpose of this Code, and that such modification does not reduce health, accessibility, life and fire safety, or structural requirements. The details of action granting modifications shall be recorded and entered in the files of the Building Safety Division.

9-8.513. ALTERNATIVE MATERIALS, DESIGN, AND METHODS OF CONSTRUCTION AND EQUIPMENT.

The provisions of this Code are not intended to prevent the installation of any material or to prohibit any design or method of construction not specifically prescribed by this Code, provided that any such alternative has been approved by the Building Official. An alternative material, design, or method of construction shall be approved where the Building Official finds that the proposed design is satisfactory and complies with the intent of the provisions of this Code, and that the material, method, or work offered is, for the purpose intended, at least the equivalent of that prescribed in this Code in quality, strength, effectiveness, fire resistance, durability, and safety.

9-8.514. RESEARCH REPORTS.

Supporting data, where necessary to assist in the approval of materials or assemblies not specifically provided for in this Code, shall consist of valid

research reports from approved sources.

9-8.515. TESTS.

Whenever there is insufficient evidence of compliance with the provisions of this Code, or evidence that a material or method does not conform to the requirements of this Code, or in order to substantiate claims for alternative materials or methods, the Building Official shall have the authority to require tests as evidence of compliance to be made at no expense to the jurisdiction. Test methods shall be as specified in this Code or by other recognized test standards. Where there is no recognized and accepted test method for a particular material or method, the Building Official shall have the authority to select and approve the testing procedure to be used. Tests shall be performed by an approved agency. Reports of such tests shall be retained by the Building Official for the period required for retention in the City of Modesto records retention manual.

ARTICLE 6. VIOLATIONS.

9-8.601. COMMENCEMENT OF PROCEEDINGS.

Whenever the Building Official has inspected or caused to be inspected any building and has found and determined that such building is unsafe, or when a structure is found unfit for human occupancy, or is found to be unlawful, the Building Official shall commence proceedings to cause the repair, rehabilitation, vacation, or demolition of the building.

9-8.602. UNLAWFUL ACTS.

It shall be unlawful for any person, firm, or corporation to erect, construct, alter, extend, repair, move, remove, demolish, or occupy any building, structure, plumbing, mechanical or electrical system, or parts thereof, or equipment regulated by this Code, or cause the same to be done, in conflict with or in violation of any of the provisions of this Code.

9-8.603. NOTICE AND ORDER.

The Building Official is authorized to serve a notice and order on the person responsible for the erection, construction, alteration, extension, repair, moving, removal, demolition, or occupancy of a building or structure in violation of the provisions of this Code, or in violation of a permit or certificate issued under the provisions of this Code. Such notice and order shall direct the discontinuance of the illegal action or condition and the abatement of the violation.

9-8.604. ISSUANCE OF NOTICE AND ORDER.

The Building Official shall issue a Notice and Order directed to the record owner of the building. The Notice and Order shall contain the following:

- (a) The street address and a legal description sufficient for identification of the premises upon which the building is located.
- (b) A statement that the Building Official has found the building to be unsafe, unfit for human occupancy, or is unlawful, with a brief and concise description of the conditions found to render the building unsafe, unfit for human occupancy, or is unlawful under the provisions of this Chapter.
- (c) A statement of the action required to be taken as determined by the Building Official.
 - (1) If the Building Official has determined that the building or structure must be repaired, the order shall require that all required permits be secured therefor and that the work be physically commenced within such time (not to exceed sixty (60) days from the date of the Order) and completed within such time as the Building Official shall determine is reasonable under all of the circumstances.
 - (2) If the Building Official has determined that the building or structure must be vacated, the Order shall require that the building or structure shall be vacated within a certain time from the date of the Order as determined by the Building Official to be reasonable.
 - (3) If the Building Official has determined that the building or structure must be demolished, the Order shall require that the building be vacated within such time as the Building Official shall determine reasonable (not to exceed sixty (60) days from the date of the Order), that all required permits be secured therefor within sixty (60) days from the date of the order and that the demolition be completed within such time as the Building Official shall determine is reasonable.
- (d) Statements advising that if any required repair or demolition work (without vacation also being required) is not commenced within the time specified, the Building Official (i) will order the building vacated and posted to prevent further occupancy until the work is completed, and (ii) may proceed to cause the work to be done and charge the costs thereof

against the property or its owner.

- (e) The Notice and Order shall establish a daily amount of civil penalties. The Building Official shall determine the daily amount of civil penalties pursuant to the criteria set forth in Article 3 of Chapter 6 of Title 1 of the Modesto Municipal Code.
- (f) The Notice and Order shall identify a date when civil penalties began to accrue and a date when the assessment of civil penalties ended, unless the violation is continuous. In the case of a continuous violation, there shall be an ongoing assessment of penalties at the daily rate established in the Notice and Order until the violations are corrected.
- (g) Statements advising (i) that any person having any record title or legal interest in the building may appeal from the Notice and Order of any action of the Building Official to the Board of Building Appeals, provided the appeal is made in writing, as provided in this Code, and filed with the Building Official within thirty (30) days from the date of service of such Notice and Order, and (ii) that failure to appeal will constitute a waiver of all right to an administrative hearing and determination of the matter.

9-8.605. FEE IMPOSED - NOTICE AND ORDER.

A fee shall be imposed on the owner of any property for which a Notice and Order is issued pursuant to this Section. The fee shall be calculated to recover the total cost of inspections and enforcement by the City of Modesto. This fee shall be set by resolution of the City Council. An additional fee which shall be set by resolution of the City Council shall be imposed on the owner of the property at the conclusion of any matter in which a Notice and Order has been issued. This closing fee shall be calculated to recover the cost of closing the file, removing or placing liens on the property, a title report, and other costs associated with the matter. Any fee imposed on the owner and not paid shall be collected pursuant to the procedures set forth in Article 7 of Chapter 6 of Title 1 of the Modesto Municipal Code.

9-8.606. SERVICE OF NOTICE AND ORDER.

Any Notice and Order of the Building Official may be amended or supplemented by the Building Official. The Notice and Order, or any amended or supplemental Notice and Order, shall be served upon the record owner and posted on the property. One (1) copy of the Notice and Order shall be served on each of the following, if known to the Building Official or disclosed from official public records: holder of any mortgage or deed of trust or other lien or encumbrance of

record; the owner or holder of any lease of record; and the holder of any other estate or legal interest of record in or to the building or the land on which it is located. The failure of the Building Official to serve any person required herein to be served shall not invalidate any proceedings hereunder as to any other person duly served or relieve any such person from any duty or obligation imposed by the provisions of this Chapter.

9-8.607. METHOD OF SERVICE.

Service of the Notice and Order may be made upon all persons entitled thereto either by personal delivery or by certified mail, return receipt requested. Service may be upon the record owner at his/her/their address as it appears on the last equalized assessment roll of Stanislaus County recorded documents, or as known to the Building Official. A copy of the Notice and Order and any amended or supplemental Notice and Order shall also be posted on the premises.

- (a) In lieu of personally serving the owner or service by certified mail, service of the Notice and Order, and/or any amended or supplemental Notice and Order, may be made as follows:
 - (1) In the event that the owner refuses to accept certified return receipt mail or cannot be personally served, service may be made by substituted service. Substituted service may be accomplished as follows:
 - (i) By leaving a copy during usual business hours in the recipient's business with the person who is apparently in charge, and by thereafter mailing by first class mail a copy to the recipient where the copy was left;
 - (ii) By leaving a copy at the recipient's dwelling or usual place of abode, in the presence of a competent member of the household and thereafter mailing, by first class mail, a copy to the recipient at the address where the copy was left.
 - (2) In the event the owner refuses to accept certified return receipt mail or cannot be personally served and has a property manager or rental agency overseeing the premises, substituted service may be as set forth in (1) above upon the property manager or rental agency.
 - (3) If the owner lives out of state and will not accept certified return receipt mail, then service may be made by first class mail.

- (4) If the owner of the property cannot be located, or service cannot be effected as set forth in this section, service may be made by publication in a Modesto newspaper of general circulation which is most likely to give actual notice and order to the owner. Service shall be deemed sufficient when it is accomplished pursuant to Government Code Section 6063.

The failure of any such person to receive such Notice and Order shall not affect the validity of any proceedings taken under this Section. Service by certified mail in the manner herein provided shall be effective on the date of mailing.

9-8.608. PROOF OF SERVICE.

Proof of service of the Notice and Order shall be certified to at the time of service by a written declaration under penalty of perjury executed by the person effecting service, declaring the time, date and manner in which service was made. The declaration, together with any receipt returned in acknowledgment of receipt by certified mail, shall be affixed to the copy of the Notice and Order retained by the Building Official.

9-8.609. RECORDATION OF NOTICE AND ORDER.

If compliance is not had with the Order within the time specified therein, and no appeal has been properly and timely filed, the Building Official may file in the office of the County Recorder a certificate describing the property and certifying (i) that the building is unsafe, unlawful, unfit for human habitation, or dangerous, and (ii) that the owner has been so notified. Whenever the corrections ordered shall thereafter have been completed or the building demolished so that it no longer exists as a substandard building on the property described in the certificate, the Building Official shall file a new certificate with the County Recorder certifying that the building has been demolished or all required corrections have been made and fees paid and that the building is no longer unsafe, unlawful, unfit for human habitation, or dangerous, whichever is appropriate.

ARTICLE 7. APPEALS.

9-8.701. RIGHT OF APPEAL.

Any person having any record title or legal interest in the building may appeal to the Board of Building Appeals from any Notice and Order or any action of the Building Official under this title by filing at the office of the Building Official within thirty (30) days from the date of service of the Notice and Order or other action, a written appeal which conforms to all of the following requirements.

- (a) The written appeal must contain a brief statement setting forth the legal interest of each of the appellants in the building or the land involved in the notice of violation or Notice and Order. The written appeal must contain a brief statement in ordinary and concise language of the specific order, action and or building code section under protest, together with any material facts that support the contentions of the appellant.
- (b) The written appeal must contain a brief statement in ordinary and concise language of the relief sought, and the reasons why it is claimed, why the protested order or action should be reversed, modified, or otherwise set aside.
- (c) The written appeal must contain signatures of all parties named as appellants and their official mailing addresses.
- (d) At least one (1) appellant must submit a declaration under penalty of perjury as to the truth of matters stated in the appeal. This declaration must be submitted with the written appeal itself.

9-8.702. PROCESSING OF APPEAL.

Upon receipt of any appeal filed and payment of the appeal fee, as adopted from time to time by resolution of the City Council of the City of Modesto, the Building Official shall calendar the appeal for an Administrative Hearing.

9-8.703. NOTICING THE APPEAL FOR HEARING.

The Building Official shall fix a date, time and place for the hearing of the appeal by the Board of Building Appeals. Such date shall be not less than ten (10) days nor more than forty-five (45) days from the date the appeal was filed with the Building Official. Written notice of the time and place of the hearing shall be given at least ten (10) days prior to the date of the hearing to the appellant(s) by the Building Official, either by causing a copy of such notice to be delivered to the appellant(s) personally or by mailing a copy thereof, postage prepaid, addressed to the appellant(s) at the address(es) shown on the appeal.

9- 8.704. FORM OF NOTICE OF HEARING.

The notice to appellant shall be substantially in the following form, but may include other information:

You are hereby notified that a hearing will be held before the Board of Building

Appeals at _____ on the day of _____, 20____, at the hour _____ upon the notice and order served upon you. You may be present at the hearing. You may be, but need not be, represented by counsel. You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You may request the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by filing an affidavit therefor with the Board of Building Appeals.

9-8.705. APPEAL FEE.

The Building Official shall collect and require an appeal fee to be paid at the time the written appeal notice is filed. The appeal fee shall be set by resolution of the City Council of the City of Modesto. The fee shall be calculated to recover the total City costs incurred in the appeal including, but not limited to, staff time to process and handle the appeal, preparation and services of notices and staff appearance at the appeal hearing. No appeal shall proceed without payment of the fee at the time the appeal is filed. The Building Official may waive the appeal fee upon written request for good cause shown. Good cause may include severe economic hardship, significant attempts to comply with the Notice and Order, and other factors indicating good faith attempts to comply with the Notice and Order.

9-8.706. EFFECT OF FAILURE TO APPEAL.

Failure of any person to file a timely appeal in accordance with the provisions of this Chapter shall constitute an irrevocable waiver of the right to an administrative hearing and a final adjudication of the Notice and Order, or any portion thereof, subject only to review pursuant to the provisions of California Code of Civil Procedure Section 1094.5.

9-8.707. SCOPE OF HEARING ON APPEAL.

Only those matters or issues specifically raised by the appellant in the appeal notice shall be considered in the hearing of the appeal.

9-8.708. STAY PENDING APPEAL.

Except for vacation orders made pursuant to Section 9-8.1001 of this Code, enforcement of any Notice and Order of the Building Official issued under this Code shall be stayed during the pendency of an appeal therefrom which is properly and timely filed.

9-8.709. APPEAL HEARING.

- (a) Hearing by Board of Building Appeals. At the time designated in the notice of hearing, the Board shall proceed to hear the testimony of the Building Official or the Building Official's authorized representatives, the testimony of the appellant and other competent persons, including members of the public, as to those matters or issues specifically listed by the appellant in the notice of appeal.
- (b) Record. A record of the entire proceedings shall be made by tape recording or by other means of permanent recording determined to be appropriate by the Board.
- (c) Reporting. The proceedings at the hearing shall also be reported by a phonographic reporter if requested by any party thereto. The cost of any such reporting shall be borne entirely by the requesting party. A transcript of the proceedings shall be made available to all parties upon request and upon payment of the fee prescribed therefor. Such fees may be established by the Board, but shall in no event be greater than the cost involved.
- (d) Continuances. The Board may, upon request of the appellant or the Building Official, grant continuances from time to time for good cause shown, or upon its own motion.
- (e) Oaths. The Board has the power to administer oaths and affirmations.

9-8.710. SUBPOENAS.

- (a) The issuance and service of a subpoena for the attendance of witnesses or the production of other evidence at a hearing upon the request of a member of the Board or upon the written demand of any party. The issuance and service of such subpoena shall be obtained upon the filing of an affidavit therefor which states the name and address of the proposed witness; specifies the exact things sought to be produced and the materiality thereof in detail to the issues involved; and states that the witness has the desired things in possession or under control. A subpoena need not be issued when the affidavit is defective in any particular.
- (b) Any person who refuses without lawful excuse to attend any hearing, or to produce material evidence which the person possesses or controls as required by any subpoena served upon such person as provided for herein shall be guilty of a misdemeanor.

9-8.711. CONDUCT OF HEARING.

- (a) Rules. Appeal hearings need not be conducted according to the technical rules relating to evidence and witnesses. Government Code Section 11513, subdivisions (a), (b) and (c) as currently written, or as amended in the future, shall apply to all hearings under this Chapter.
- (b) Oral Evidence. Oral evidence shall be taken only upon oath or affirmation.
- (c) Rights of Parties. Each party shall have the right to do the following:
 - (1) To call and examine witnesses on any matter relevant to the issues of the hearing;
 - (2) To introduce documentary and physical evidence;
 - (3) To cross-examine opposing witnesses on any matter relevant to the issues of the hearing;
 - (4) To impeach any witness regardless of which party first called the witness to testify;
 - (5) To rebut the evidence presented against the party;
 - (6) To represent himself/herself or to be represented by counsel.
- (d) Official Notice. In reaching a decision, official notice may be taken, either before or after submission of the case for decision, of any fact which may be judicially noticed by the courts of this state. Official notice may be taken of the official records of the Board of Building Appeals or of departments and ordinances of the City of Modesto as well as the rules and regulations of the Board of Building Appeals.

9-8.712. INSPECTION OF THE PREMISES.

- (a) The Board of Building Appeals may, with the owner's consent, inspect the building and premises involved in the hearing prior to, during, or after the hearing.
- (b) The Board of Building Appeals prior to an inspection of the building and premises involved in the hearing, must do the following:
 - (1) Give notice of the inspection to the parties before said inspection is made;

- (2) Advise the parties that they have the opportunity to be present during the inspection; and
 - (3) State for the record during the hearing, or file a written statement after the hearing for inclusion in the hearing record, all material facts observed by the board and the conclusions drawn therefrom.
- (c) Each party then shall have a right to rebut or explain the matter so stated by the Board of Building Appeals either for the record during the hearing or by filing a written statement after the hearing for inclusion in the hearing record.
- (d) Neither an inspection warrant nor the owner's consent to inspect the building and surrounding properties is required if the inspection can be made from the areas in which the general public has access or if made with permission of other persons authorized to provide access to the property on which the building is located.

9-8.713. DECISION.

- (a) If it is shown by a preponderance of the evidence that the owner has violated provisions of this Chapter, the Board shall order the owner to correct the substandard conditions or demolish the building within a reasonable time, and issue an administrative enforcement order which affirms or rejects the civil penalties and costs which were assessed in the Notice and Order or which modifies the daily rate or duration of civil penalties depending upon the review of the evidence. The Board may increase or decrease the total amount of civil penalties and costs that are assessed by the Notice and Order. If the owner fails, refuses or neglects to correct the substandard conditions or demolish the building within the time set forth in the Board's Order, the Board shall order that the City of Modesto may repair or demolish the building or institute an action to compel compliance with its Order. If the building is to be demolished, the decision of the Board shall state that the evidence presented during the hearing supports the Board's finding that it is not economically feasible to repair said building.
- (b) The Board may issue an administrative enforcement order which imposes additional civil penalties that will continue to be assessed until the responsible party complies with the hearing officer's decision and corrects the violation.

- (c) The Board may schedule subsequent review hearings as may be necessary or as requested by a party to the hearing to ensure compliance with the administrative enforcement order.
- (d) The decision of the Board shall be a final decision and shall be in the form of an Order and shall contain findings of fact, a determination of the issues presented, the requirements to be complied with by the appellant. A copy of the Order shall be delivered to the appellant personally or sent to him/her by certified mail, postage prepaid, return receipt requested.
- (e) The Order shall also inform the appellant that the decision of the Board is a final decision. It shall state that the time for and the manner of judicial review is governed by California Code of Civil of Procedure Section 1094.5.

ARTICLE 8. ENFORCEMENT OF A NOTICE AND ORDER.

9-8.801. PROSECUTION OF VIOLATION.

If the notice of violation or Notice and Order is not complied with promptly, the building official is authorized to request the legal counsel of the City of Modesto to institute the appropriate proceeding at law or in equity to restrain, correct, or abate such violation, or to require the removal or termination of the unlawful occupancy of the building or structure in violation of the provisions of this Code or of the Order or direction made pursuant thereto.

9-8.802. VIOLATION PENALTIES.

In addition to all other remedies available at law, any person who violates a provision of this Code or fails to comply with any of the requirements thereof or who erects, constructs, alters, or repairs a building or structure in violation of the approved construction documents or directive of the Building Official, or of a permit or certificate issued under the provisions of this Code, shall be subject to Administrative Remedies as prescribed by Chapter 6 of Title 1 of the Modesto Municipal Code.

9-8.803. CRIMINAL VIOLATIONS.

It shall be unlawful for any person to violate any provision or to fail to comply with any of the requirements of this Chapter. A violation of any of the provisions or failing to comply with any of the mandatory requirements of this Chapter shall constitute a misdemeanor; except that notwithstanding any other provision of this Code, any such violation constituting a misdemeanor under this Code may, in the

discretion of the City Attorney, be charged and prosecuted as an infraction. Any person convicted of a misdemeanor under the provisions of this Chapter, unless provision is otherwise herein made, shall be punishable by a fine of not more than one thousand dollars (\$1,000.00) or by imprisonment in the county jail for a period of not more than six (6) months or by both fine and imprisonment. Any person convicted of an infraction under the provisions of this Code, unless provision is otherwise herein made, shall be punishable by a fine only as follows: Upon a first conviction, by a fine of not exceeding two hundred fifty dollars (\$250.00) and for a second conviction or any subsequent conviction within a period of one year, by a fine of not exceeding five hundred dollars (\$500.00).

Each such person shall be charged with a separate offense for each and every day during any portion of which any violation of any provision of this Code is committed, continued or permitted by such person and shall, upon conviction, be punished accordingly.

9-8.804. ADMINISTRATIVE REMEDIES.

In addition to any other remedies set forth in this Chapter, administrative penalties pursuant to Chapter 6 of Title 1 of the Modesto Municipal Code may be imposed against any person, for violating any of the requirements set forth in this Chapter.

9-8.805. ABATEMENT OF VIOLATION.

The imposition of the penalties herein prescribed shall not preclude the City Attorney from instituting appropriate action to restrain, correct or abate a violation, or to prevent illegal occupancy of a building, structure or premises, or to stop an illegal act, conduct business or utilization of the building, structure or premises.

9-8.806. TRANSFER OF OWNERSHIP.

It shall be unlawful for the owner of any dwelling unit or structure who has received a compliance order or upon whom a notice of violation has been served to sell, transfer, mortgage, lease or otherwise dispose of such dwelling unit or structure to another until the provisions of the compliance order or notice of violation have been complied with, or until such owner shall first furnish the grantee, transferee, mortgagee or lessee a true copy of any compliance order or notice of violation issued by the Building Official and shall furnish to the Building Official a signed and notarized statement from the grantee, transferee, mortgagee or lessee, acknowledging the receipt of such compliance order or notice of violation and fully accepting the responsibility without condition for making the corrections or repairs required by such compliance order or notice of

violation.

9-8.807. OTHER PERMITS OR APPROVALS.

If a Notice and Order has not been satisfied on a particular property, further permits or approvals for continued work permitted by this Code shall not be granted for that property unless specifically approved by the Building Official and or the violation has been corrected, inspected and approved.

ARTICLE 9. UNSAFE STRUCTURES AND EQUIPMENT.

9-8.901. GENERAL.

When a structure or equipment is found by the Building Official to be unsafe, or when a structure is found unfit for human occupancy, or is found unlawful, such structure shall be condemned pursuant to the provisions of this Code.

9-8.902. UNSAFE STRUCTURES.

An unsafe structure is one that is found to be dangerous to the life, health, property or safety of the public or the occupants of the structure by not providing minimum safeguards to protect or warn occupants in the event of fire, or because such structure contains unsafe equipment or is so damaged, decayed, dilapidated, structurally unsafe or of such faulty construction or unstable foundation, that partial or complete collapse is possible.

9-8.903. UNSAFE EQUIPMENT.

Unsafe equipment includes any boiler, heating equipment, elevator, moving stairway, electrical wiring or device, flammable liquid containers or other equipment on the premises or within the structure which is in such disrepair or condition that such equipment is a hazard to life, health, property or safety of the public or occupants of the premises or structure.

9-8.904. STRUCTURE UNFIT FOR HUMAN OCCUPANCY.

A structure is unfit for human occupancy whenever the Building Official finds that such structure is unsafe, unlawful or, because of the degree to which the structure is in disrepair or lacks maintenance, is unsanitary, vermin or rat infested, contains filth and contamination, or lacks ventilation, illumination, sanitary or heating facilities or other essential equipment required by this Code, or because the location of the structure constitutes a hazard to the occupants of the structure or to the public.

9-8.905. UNLAWFUL STRUCTURE.

An unlawful structure is one found in whole or in part to be erected, altered or occupied contrary to law.

9-8.906. DANGEROUS STRUCTURE OR PREMISES.

For the purpose of this Code, any structure or premises that has any or all of the conditions or defects described below shall be considered dangerous:

- (a) Any door, aisle, passageway, stairway, exit or other means of egress does not conform to the adopted California Building and Fire Code as related to the requirements for existing buildings. The walking surface of any aisle, passageway, stairway, exit or other means of egress is so warped, worn loose, torn or otherwise unsafe as to not provide safe and adequate means of egress.
- (b) Any portion of a building, structure or appurtenance has been damaged by fire, earthquake, wind, flood, deterioration, neglect, abandonment, vandalism or by any other cause to such an extent that it is likely to partially or completely collapse, or to become detached or dislodged.
- (c) Any portion of a building, or any member, appurtenance or ornamentation on the exterior thereof is not of sufficient strength or stability, or is not so anchored, attached or fastened in place so as to be capable of resisting natural or artificial loads of one and one half the original designed value.
- (d) The building or structure, or part of the building or structure, because of dilapidation, deterioration, decay, faulty construction, the removal or movement of some portion of the ground necessary for the support, or for any other reason, is likely to partially or completely collapse, or some portion of the foundation or underpinning of the building or structure is likely to fail or give way.
- (e) The building or structure, or any portion thereof, is clearly unsafe for its use and occupancy
- (f) The building or structure is neglected, damaged, dilapidated, unsecured or abandoned so as to become an attractive nuisance to children who might play in the building or structure to their danger, becomes a harbor for vagrants, criminals or immoral persons or enables persons to resort to the building or structure for committing a nuisance or an unlawful act.

- (g) Any building or structure which has been constructed, exists or is maintained in violation of any specific requirement or prohibition applicable to such building or structure provided by the approved building or fire code of the jurisdiction, or of any law or ordinance to such an extent as to present either a substantial risk of fire, building collapse or any other threat to life and safety.
- (h) A building or structure, used or intended to be used for dwelling purposes, because of inadequate maintenance, dilapidation, decay, damage, faulty construction or arrangement, inadequate light, ventilation, mechanical or plumbing system, or otherwise, is determined by the Building Official to be unsanitary, unfit for human habitation or in such a condition that is likely to cause sickness or disease.
- (i) Any building or structure, because of a lack of sufficient or proper fire-resistive construction, fire protection systems, electrical system, fuel connections, mechanical system, plumbing system or other cause, is determined by the Building Official to be a threat to life or health.
- (j) Any portion of a building which remains on a site after the demolition or destruction of the building or structure or whenever any building or structure is abandoned so as to constitute such building or portion thereof as an attractive nuisance or hazard to the public contrary to the provisions of this Code, or in a dangerous or unsafe manner.

9-8.907. CLOSING OF VACANT STRUCTURES.

If the structure is vacant and unfit for human habitation and occupancy, and is not in danger of structural collapse, the Building Official is authorized to post a placard of condemnation on the premises and order the structure closed up so as not to be an attractive nuisance. Upon failure of the owner to close up the premises within the time specified in the Order, the Building Official shall cause the premises to be closed and secured through any available public agency or by contract or arrangement by private persons and the cost thereof shall be recovered in accordance with the provisions of Article 7 of Chapter 6 of Title 1 of the Modesto Municipal Code.

9-8.908. AUTHORITY TO DISCONNECT SERVICE UTILITIES.

The Building Official shall have the authority to authorize disconnection of utility service to the building, structure or system regulated by this Code and the referenced codes and standards set forth in Section 9-8.207 of this Code in case of emergency, where necessary to eliminate an immediate hazard to life or property.

or when such utility connection has been made without approval. The Building Official shall notify the serving utility and, whenever possible, the owner and occupant of the building, structure or service system of the decision to disconnect prior to taking such action. If not notified prior to disconnection, the owner or occupant of the building, structure or service system shall be notified in writing as soon as practical thereafter.

9-8.909. NOTICE.

Whenever the Building Official has condemned a structure or equipment under the provisions of this Section, notice shall be posted in a conspicuous place in or about the structure affected by such notice and served on the owner or the person or persons responsible for the structure or equipment in accordance with Section 9-8.607 (Method of Service). If the notice pertains to equipment, it shall also be placed on the condemned equipment. The notice shall be in the form prescribed in Section 1-6.303 of the Modesto Municipal Code.

9-8.910. PLACARDING.

Upon failure of the owner or person responsible to comply with the notice provisions within the time given, the Building Official shall post on the premises or on defective equipment a placard bearing the word "Condemned" and a statement of the penalties provided for occupying the premises, operating the equipment or removing the placard.

9-8.911. PLACARD REMOVAL.

The Building Official shall remove the condemnation placard whenever the defect or defects upon which the condemnation and placarding action were based have been eliminated. Any person who defaces or removes a condemnation placard without the approval of the Building Official shall be subject to the penalties provided by this Code.

9-8.912. PROHIBITED OCCUPANCY.

Any occupied structure condemned and placarded by the Building Official shall be vacated as ordered by the Building Official. Any person who shall occupy a placarded premises or shall operate placarded equipment, and any owner or any person responsible for the premises who shall let anyone occupy a placarded premises or operate placarded equipment shall be liable for the penalties provided by this Code.

ARTICLE 10. EMERGENCY MEASURES.

9-8.1001. IMMINENT DANGER.

When, in the opinion of the Building Official, there is imminent danger of failure or collapse of a building or structure which endangers life, or when any structure or part of a structure has fallen and life is endangered by the occupation of the structure, or when there is actual or potential danger to the building occupants or those in the proximity of any structure because of explosives, explosive fumes or vapors or the presence of toxic fumes, gases or materials, or operation of defective or dangerous equipment, the Building Official is hereby authorized and empowered to order and require the occupants to vacate the premises forthwith. The Building Official shall cause to be posted at each entrance to such structure a notice reading as follows:

**THIS STRUCTURE IS UNSAFE AND ITS OCCUPANCY
HAS BEEN PROHIBITED BY THE BUILDING OFFICIAL.**

It shall be unlawful for any person to enter such structure except for the purpose of securing the structure, making the required repairs, removing the hazardous condition or of demolishing the same.

9-8.1002. TEMPORARY SAFEGUARDS.

Notwithstanding other provisions of this Code, whenever, in the opinion of the Building Official, there is imminent danger due to an unsafe condition, the Building Official shall order the necessary work to be done, including the boarding up of openings, to render such structure temporarily safe whether or not the legal procedure herein described has been instituted; and shall cause such other action to be taken as the Building Official deems necessary to meet such emergency.

9-8.1003. CLOSING STREETS.

When necessary for public safety, the Building Official shall temporarily close structures and close, or order the authority having jurisdiction to close, sidewalks, streets, public ways and places adjacent to unsafe structures, and prohibit the same from being utilized.

9-8.1004. EMERGENCY REPAIRS.

For the purposes of this Section, the Building Official shall employ the necessary labor and materials to perform the required work as expeditiously as possible.

9-8.1005. COSTS OF EMERGENCY REPAIRS.

Costs incurred in the performance of emergency work shall be paid by the jurisdiction. The legal counsel of the jurisdiction shall institute appropriate action against the owner of the premises where the unsafe structure is or was located for the recovery of such costs.

9-8.1006. HEARING.

Any person ordered to take emergency measures shall comply with such Order forthwith. Any affected person shall thereafter, upon petition directed to the Board of Building Appeals, be afforded a hearing as described in this Code.

ARTICLE 11. DEMOLITION.

9-8.1101. GENERAL.

The Building Official shall order the owner of any premises upon which is located any structure, which in the Building Official's judgment is so old, dilapidated or has become so out of repair as to be dangerous, unsafe, unsanitary or otherwise unfit for human habitation or occupancy, and such that it is unreasonable to repair the structure, to demolish and remove such structure; or if such structure is capable of being made safe by repairs, to repair and make safe and sanitary or to demolish and remove at the owner's option; or where there has been a cessation of normal construction of any structure for a period of more than two years, to demolish and remove such structure.

9-8.1102. DEMOLITION PERMITS.

Permits for demolition must be obtained, in accordance with the applicable provisions of Chapter 1 of Title 9 of the Modesto Municipal Code.

9-8.1103. NOTICES AND ORDERS.

All notices and orders must be written in accordance with the provisions of Article 6 of this Chapter.

9-8.1104. FAILURE TO COMPLY.

If the owner of a premises fails to comply with a demolition order within the time prescribed, the Building Official shall cause the structure to be demolished and removed, either through an available public agency or by contract or arrangement with private persons, and the cost of such demolition and removal shall be

charged against the real estate upon which the structure is located and shall be a lien upon such real estate.

9-8.1105. SALVAGE MATERIALS.

When any structure has been ordered demolished and removed, the governing body or other designated officer under said contract or arrangement aforesaid shall have the right to sell the salvage and valuable materials at the highest price obtainable. The net proceeds of such sale, after deducting the expenses of such demolition and removal, shall be promptly remitted with a report of such sale or transaction, including the items of expense and the amounts deducted, for the person who is entitled thereto, subject to any order of a court. If such a surplus does not remain to be turned over, the report shall so state.

ARTICLE 12. ABATEMENT OF PUBLIC NUISANCES IN BUILDINGS AND STRUCTURES.

9-8.1201. AUTHORITY.

Once the Building Official, or his or her designee, has followed the procedures set forth herein for the service of a notice on the person responsible for the erection, construction, alteration, extension, repair, moving, removal, demolition, or occupancy of a building or structure in violation of the provisions of this Code, and an order directing the discontinuance of the illegal action or condition and the abatement of the violation, and the time for compliance has lapsed, if the violations, or any of them, remain, the City may act to abate the nuisance condition(s) under one of the following procedures:

- (a) Where the person served has appealed the Notice and Order, the Board of Building Appeals has determined that the nuisance condition exists and ordered its abatement, and where the nuisance has not been abated within the time allotted by the Board, the City may cause the nuisance to be abated by its employees or by independent contractors. Entry to the property for the purpose of abatement under this procedure shall be made only upon the written consent of the owner, or, lacking such consent, pursuant to an administrative inspection warrant issued by a Judge of the Superior Court.
- (b) Where the Notice and Order has not been appealed to the Board of Building Appeals, and the nuisance conditions have not been rectified within the time allotted in the Order, the City may seek an order from the Superior Court authorizing entry onto the property and the removal of any violation or the abatement of any nuisance specified in the Notice and

Order.

- (c) Where the Notice and Order has not been appealed to the Board of Building Appeals, and the nuisance conditions have not been rectified within the time allotted in the Order, the City may proceed administratively before the Board on an order to show cause why the building should not be condemned as a nuisance, and the nuisance be abated as provided in this article.

9-8.1202. ADMINISTRATIVE NOTICE TO ABATE NUISANCE.

If the Building Official decides to proceed with the abatement of a nuisance in a building or structure through administrative proceedings before the Board of Building Appeals, a second notice shall be given directing the owner of the building to appear before the Board at a stated time and place and show cause why the building should not be condemned as a nuisance, and the nuisance be abated as provided in this Article. The notice shall be headed "Notice to Abate Nuisance." The Notice and Order shall be in the following form:

NOTICE TO ABATE NUISANCE

The owner of the building situated at _____ is hereby notified to appear before the Board of Building Appeals of the City of Modesto at its meeting to be held on _____, 20__ , at Room _____, 1010 Tenth Street, Modesto, California, at the hour of _____ o'clock __.m., or as soon thereafter as the owner may be heard, and show cause, if any, why the building should not be condemned as a public nuisance and the nuisance be abated by reconstructing or properly repairing the building or by razing or removing it.

Dated: _____ By _____
(Name)
Chief Building Official

By: _____
(Name)
(Title of employee)

9-8.1203. MANNER OF SERVICE.

Notice shall be given in the following manner. The Notice and Order shall be

posted conspicuously on the building or structure where the nuisance condition(s) exist. In addition, the Notice and Order shall be served by registered mail, return receipt requested, postage pre-paid, to the person owning the land on which the building or structure is located as that person's name and address appear on the last equalized assessment roll, or as known to the Clerk of the Board of Building Appeals, and to any mortgagee or beneficiary. Those same persons shall also be served simultaneously by regular U.S. Mail.

Service by certified or regular mail in the manner described above shall be effective on the date of mailing.

The officer or employee giving such notice shall file a proof of service regarding the posting and mailing in the manner required herein, but the failure of any person with an interest in the property to receive any notice served in accordance with this Section shall not affect the validity of any proceedings taken under this Article.

9-8.1204. HEARING.

- (a) At the time fixed in said Notice, the Board of Building Appeals shall proceed to hear the testimony of the officers or employees of the City of Modesto and the owner or his representatives, if present at said hearing, and other competent persons who may be present and desire to testify, respecting the condition of said building or structure, the estimated cost of its reconstruction, repair or removal, and any other matter which the Board may deem pertinent thereto. Upon the conclusion of said hearing, the Board may, by resolution, declare its findings and, in the event that it so concludes, may declare said building to be a nuisance and direct the owner to abate the same within 30 days after the date of posting on said premises a notice of the passage of said resolution by having said building properly reconstructed or repaired, or having the same razed or removed and notifying said owner that if said nuisance is not abated said building will be razed or removed by the enforcement agency and the expense recovered by the City in accordance with the procedures set forth in Article 7 of Chapter 6 of Title 1 of the Modesto Municipal Code.
- (b) At any time within 60 days after the passage of any resolution directing the abatement of a nuisance, the Building Official shall cause to be posted a copy thereof conspicuously on the building so declared to be a nuisance and shall cause another copy to be mailed by registered mail, postage prepaid, return receipt requested, to the person owning the land on which the building is located as such person's name and address appear on the last equalized assessment roll of the County of Stanislaus or as known to

the clerk of the Board, and a copy of said Notice shall be mailed to each mortgagee or beneficiary under any deed of trust, of record, at the last known address of such mortgagee or beneficiary, and if such address is unknown to the enforcement agency, then said fact shall be stated in said copy so mailed and it shall be addressed to him at the county seat of the County of Stanislaus.

The officer or employee of the enforcement agency, upon giving notice as aforesaid, shall file a proof of service regarding the posting and mailing in the manner required herein.

The Board may grant any extension of time to abate said nuisance that it may deem justifiable upon good cause therefore being shown.

9-8.1205. TIME TO BRING ACTION.

Any owner or other interested person having any objections, or feeling aggrieved at any proceedings taken by the Board of Building Appeals in ordering abatements of any nuisance, must bring an action in a court of competent jurisdiction within 30 days after the date of posting on said premises a notice of the passage of the resolution declaring the nuisance to exist to contest the validity of any proceedings leading up to and including the adoption of the resolution; otherwise all objections will be deemed to have been waived.

9-8.1206. JURISDICTION TO ABATE.

Thirty days after the posting of the copies of the resolution declaring any building a nuisance, the Building Official shall be deemed to have acquired jurisdiction to abate such nuisance by razing or removing the building, unless the nuisance is abated by the owner or other person interested within the 30-day period or any extension thereof granted by the Board as provided for in this Article. In the event that the nuisance is not abated within the time prescribed the City of Modesto may thereupon raze and remove the building so declared to constitute a nuisance or have the same done under its direction and supervision.

9-8.1207. SALE OF MATERIALS.

The building materials contained in such building so razed or removed may be sold by the City of Modesto at public sale to the highest responsible bidder after not less than five days notice of intended sale published at least once in a newspaper of general circulation published in the City, either before or after said building has been razed or removed, and any amount received from the sale of such building materials shall be deducted from the expense of razing or removing said building. The Building Official shall keep an itemized account of the

expense involved in the razing or removing of any such building and shall deduct therefrom the amount received from the sale of the building materials. The Building Official shall cause to be posted conspicuously on the property from which the building was razed or removed a statement verified by the officer of the enforcement agency in charge of doing the work showing the gross and net expense of the razing or removing of such building together with a notice of the time and place when and where said statement shall be submitted to the Board of Building Appeals for approval and confirmation, and at which time the Board shall consider any objections or protests, if any, which may be raised by any property owner liable to be assessed for the cost of such work and any other interested persons. A copy of said statement and notice shall be mailed in the manner prescribed in Section 9-8.1203 of this Code, and an affidavit of such posting and mailing shall be filed in the manner prescribed in said section. The time for confirmation shall be not less than five days from the date of the posting and mailing of said statement and notice.

9-8.1208. STATEMENT OF EXPENSE.

- (a) At the time fixed for the hearing of the statement of expense the Board of Building Appeals shall consider the statement, together with any objections or protests which may be raised by any of the property owners liable to be assessed for doing the work and any other interested persons; and thereupon the Board may make such revision, correction, or modification in the statement as it may deem just, after which, by motion or resolution, said report as submitted, or in the event any revisions, corrections or modifications have been ordered made by the Board, then said statement as revised, corrected or modified, shall be confirmed. The Board may adjourn said hearings from time to time and its decisions on said statement and on all protests and objections which may be made shall be final and conclusive.
- (b) In the event that the cost for razing or removing the nuisance exceeds the proceeds received from the sale of any materials, then the amount of the net expense of abating the nuisance, if not paid within five days after the decision of the Board on its statement, shall constitute a lien on the real property upon which the same was abated or removed, which lien shall continue until the amount thereof and interest thereon at the rate of six percent (6%) per annum, computed from the date of confirmation of the statement until paid, or until it is discharged of record. This lien shall, for all purposes, be upon parity with the lien of state, county, and municipal taxes. In the event of nonpayment, the Board shall, at any time within sixty (60) days after its decision on the statement, cause to be filed in the office of the County Recorder of the County of Stanislaus a certificate

substantially in the following form:

NOTICE OF LIEN

Pursuant to the authority vested in the undersigned by Division 13, Part 1.5 of the Health and Safety Code and California Code of Regulations, Title 25, Chapter 1, Subchapter 1, of the State of California, the undersigned did on the ____ day of _____, 20____ cause a nuisance to be abated on the real property hereinafter described: and the undersigned did on the ____ day of _____, 20____, by action duly recorded in its official minutes as of that date, assess the cost of the abatement, less the amount received from the sale of any building materials upon the real property hereinafter described, and the same has not been paid nor any part thereof; and the City of Modesto does hereby claim a lien on the real property for the net expense of the doing of the work in the sum of \$ _____, and the same shall be a lien upon the real property until the sum, with interest at the rate of 6 percent per annum, from the _____ day of _____, 20____. [insert date of confirmation of statement] has been paid in full and discharged of record. The real property hereinbefore mentioned, and upon which a lien is claimed, is that certain piece or parcel of land lying and being in the City of Modesto, County of Stanislaus, State of California and particularly described as follows:

[Insert legal description of the property here]

Dated: _____

CITY OF MODESTO

By: _____

(Name)

Chief Building Official

- (c) From and after the date of the recording of said Notice of Lien all persons shall be deemed to have had notice of the contents thereof. The statute of limitations shall not run against the right of the enforcement agency to enforce the payment of said lien.
- (d) In the event that the amount received from the sale of material exceeds the expenses of razing or removing such building, then such excess shall be deposited with the Finance Director of the City of Modesto to the credit of the owner of said property, or to such other person legally entitled thereto.

and such excess shall be payable to said owner or other person on demand and upon producing evidence of ownership satisfactory to the Director of Finance.

9-8.1209. RECOVERY OF COSTS WHERE NUISANCE ABATED BY OWNER.

If the owner abates the nuisance conditions before the City performs the actual abatement pursuant to a Notice and Order to abate a public nuisance, the Building Official may still assess all costs incurred by the City against the owner pursuant to the procedure set forth herein.

ARTICLE 13. EXTERIOR PROPERTY AREAS.

9-8.1301. EXHAUST VENTS.

Pipes, ducts, conductors, fans or blowers shall not discharge gases, steam, vapor, hot air, grease, smoke, odors or other gaseous or particulate wastes directly upon abutting or adjacent public or private property or that of another tenant.

9-8.1302. ACCESSORY STRUCTURES.

All accessory structures, including detached garages, fences and walls, shall be maintained structurally sound and in good repair.

9-8.1303. SWIMMING POOLS.

Swimming pools, spas, hot tubs and their enclosure systems shall be maintained in a clean and sanitary condition, and in good repair and in accordance with the adopted Building Code in affect at the time in which they were constructed and the current requirements of the California State Health and Safety Code. All new pools, hot tubs, spas and their enclosure systems must comply with Section 3109 of the California Building Code, as adopted by the City of Modesto.

ARTICLE 14. EXTERIOR STRUCTURE.

9-8.1401. GENERAL.

The exterior of a structure shall be maintained in good repair, structurally sound and sanitary so as not to pose a threat to the public health, safety or welfare.

9-8.1402. UNSAFE CONDITIONS.

The following conditions shall be determined as unsafe and shall be repaired or replaced to comply with Article 1 of Title 9 of the Modesto Municipal Code:

- (a) The nominal strength of any structural member is exceeded by nominal loads, the load effects or the required strength;
- (b) The anchorage of the floor or roof to walls or columns, and of walls and columns to foundations is not capable of resisting all nominal loads or loads effects;
- (c) Structures or components thereof that have reached their limit state;
- (d) Siding and masonry joints including joints between the building envelope and the perimeter of windows doors, and skylights are not maintained, weather resistant or water tight;
- (e) Structural members that have evidence of deterioration or that are not capable of safely supporting all nominal loads and loads effects;
- (f) Foundation systems that are not firmly supported by footings, are not plumb and free from open cracks and breaks, are not properly anchored, or are not capable of supporting all nominal loads and resisting all load effects;
- (g) Exterior walls that are not anchored to supporting and supported elements or are not plumb and free of holes, cracks or breaks and loose or rotting materials, are not properly anchored or are not capable of supporting all nominal loads and resisting all loads effects;
- (h) Roofing or roofing components that have defects that admit rain, roof surfaces with inadequate drainage, or any portion of the roof framing that is not in good repair with signs of deterioration, fatigue or without proper anchorage and incapable of supporting all nominal loads and resisting all load effects;
- (i) Flooring and flooring components with defects that affect serviceability or flooring components that show signs of deterioration or fatigue, are not properly anchored or are incapable of supporting all nominal loads and resisting all load effects;
- (j) Veneer, cornices, belt courses, corbels, trim, wall facings and similar decorative features not properly anchored or that are anchored with connections not capable of supporting all nominal loads and resisting all load effects;

- (k) Overhang extensions or projections including, but not limited to, trash chutes, canopies, marquees, signs, awnings, fire escapes, standpipes and exhaust ducts not properly anchored or that are anchored with connections not capable of supporting all nominal loads and resisting all load effects;
- (l) Exterior stairs, decks, porches, balconies, and all similar appurtenances attached thereto, including guards and handrails, are not structurally sound, not properly anchored or that are anchored with connections not capable of supporting all nominal loads and resisting all load effects; or
- (m) Chimneys, cooling towers, smoke stacks and similar appurtenances which are not structurally sound or not properly anchored, or which are anchored with connections not capable of supporting all nominal loads and resisting all load effects.

Exceptions:

1. When substantiated otherwise by an approved method.
2. Demolition of unsafe conditions shall be permitted when approved by the Building Official.

9-8.1403. PROTECTIVE TREATMENT.

All exterior surfaces, including but not limited to, doors, door and window frames, cornices, porches, trim, balconies, decks and fences shall be maintained in good condition. Exterior wood surfaces, other than decay resistant woods, shall be protected from the elements and decay by painting or other protective covering or treatment. Peeling, flaking and chipped paint shall be eliminated and surfaces repainted. All siding and masonry joints as well as those between the building envelope and the perimeter of windows, doors, and skylights shall be maintained weather resistant and water tight. All metal surfaces subject to rust or corrosion shall be coated to inhibit such rust and corrosion and all surfaces with rust or corrosion shall be stabilized and coated to inhibit future rust and corrosion. Oxidation stains shall be removed from exterior surfaces. Surfaces designed for stabilization by oxidation are exempt from this requirement.

9-8.1404. PREMISES IDENTIFICATION.

Buildings shall have approved address in accordance with Chapter 5 of Title 9 of the Modesto Municipal Code

9-8.1405. STRUCTURAL MEMBERS.

All structural members shall be maintained free from deterioration, and shall be capable of safely supporting the imposed dead and live loads.

9-8.1406. FOUNDATION WALLS.

All foundation walls shall be maintained plumb and free from open cracks and breaks and shall be kept in such condition so as to prevent the entry of rodents and other pests.

9-8.1407. EXTERIOR WALLS.

All exterior walls shall be free from holes, breaks, and loose or rotting materials; and maintained weatherproof and properly surface coated where required to prevent deterioration.

9-8.1408. ROOFS AND DRAINAGE.

The roof and flashing shall be sound, tight and not have defects that admit rain. Roof drainage shall be adequate to prevent dampness or deterioration in the walls or interior portion of the structure. Roof drains, gutters and downspouts shall be maintained in good repair and free from obstructions. Roof water shall not be discharged in a manner that creates a public nuisance.

9-8.1409. DECORATIVE FEATURES.

All cornices, belt courses, corbels, terra cotta trim, wall facings and similar decorative features shall be maintained in good repair with proper anchorage and in a safe condition.

9-8.1410. OVERHANG EXTENSIONS.

All overhang extensions including, but not limited to, canopies, marquees, signs, metal awnings, fire escapes, standpipes and exhaust ducts shall be maintained in good repair and be properly anchored so as to be kept in a sound condition. When required, all exposed surfaces of metal or wood shall be protected from the elements and against decay or rust by periodic application of weather-coating materials, such as paint or similar surface treatment.

9-8.1411. STAIRWAYS, DECKS, PORCHES AND BALCONIES.

Every exterior stairway, deck, porch and balcony, and all appurtenances attached thereto shall be maintained structurally sound, in good repair, with proper

anchorage and capable of supporting the imposed loads.

9-8.1412. CHIMNEYS AND TOWERS.

All chimneys, cooling towers, smoke stacks, and similar appurtenances shall be maintained structurally safe and sound, and in good repair. All exposed surfaces of metal or wood shall be protected from the elements and against decay or rust by periodic application of weather coating materials, such as paint or similar surface treatment.

9-8.1413. HANDRAILS AND GUARDS.

Every handrail and guard shall be firmly fastened and capable of supporting normally imposed loads and shall be maintained in good condition.

9-8.1414. WINDOW, SKYLIGHT AND DOOR FRAMES.

Every window, skylight, door and frame shall be kept in sound condition, good repair and weather tight.

9-8.1415. GLAZING.

All glazing materials shall be maintained free from cracks and holes.

9-8.1416. OPENABLE WINDOWS.

Every window, other than a fixed window, shall be easily openable and capable of being held in position by window hardware.

9-8.1417. INSECT SCREENS.

Every door, window and other outside opening required for ventilation of habitable rooms, food preparation areas, food service areas or any areas where products to be included or utilized in food for human consumption are processed, manufactured, packaged or stored shall be supplied with approved tightly fitting screens of not less than 16 mesh per inch, and every screen door used for insect control shall have a self-closing device in good working condition.

Exception:

Screens shall not be required where other approved means, such as air curtains or insect repellent fans, are employed.

9-8.1418. DOORS.

All exterior doors, door assemblies and hardware shall be maintained in good condition. Locks at all entrances to dwelling units and sleeping units shall tightly secure the door. Locks on means of egress doors shall be in accordance with Section 702.3.

9-8.1419. BASEMENT HATCHWAYS.

Every basement hatchway shall be maintained to prevent the entrance of rodents, rain and surface drainage water.

9-8.1420. GUARDS FOR BASEMENT WINDOWS.

Every basement window that is openable shall be supplied with rodent shields, storm windows or other approved protection against the entry of rodents.

9-8.1421. BUILDING SECURITY.

Doors, windows or hatchways for dwelling units, room units or housekeeping units shall be provided with devices designed to provide security for the occupants and property within.

9-8.1422. DOORS.

Doors providing access to a dwelling unit, rooming unit or housekeeping unit that is rented, leased or let shall be equipped with a deadbolt lock designed to be readily openable from the side from which egress is to be made without the need for keys, special knowledge or effort and shall have a lock throw of not less than one (1) inch (25 mm). Such deadbolt locks shall be installed according to the manufacturer's specifications and maintained in good working order. For the purpose of this Section, a sliding bolt shall not be considered an acceptable deadbolt lock.

9-8.1423. WINDOWS.

Operable windows located in whole or in part within six (6) feet (1828 mm) above ground level or a walking surface below that provide access to a dwelling unit, rooming unit or housekeeping unit that is rented, leased or let shall be equipped with a window sash locking device.

9-8.1424. BASEMENT HATCHWAYS.

Basement hatchways that provide access to a dwelling unit, rooming unit or

housekeeping unit that is rented, leased or let shall be equipped with devices that secure the units from unauthorized entry.

ARTICLE 15. INTERIOR STRUCTURE.

9-8.1501. GENERAL.

The interior of a structure and equipment therein shall be maintained in good repair, structurally sound and in a sanitary condition. Occupants shall keep that part of the structure which they occupy or control in a clean and sanitary condition. Every owner of a structure containing a rooming house, housekeeping units, a hotel, a dormitory, two or more dwelling units or two or more nonresidential occupancies, shall maintain, in a clean and sanitary condition, the shared or public areas of the structure and exterior property.

9-8.1502. UNSAFE CONDITIONS.

The following conditions shall be determined as unsafe and shall be repaired or replaced to comply with the Article 9 of Chapter 1 of Title 9 of the Modesto Municipal Code:

- (a) The nominal strength of any structural member is exceeded by nominal loads, the load effects or the required strength;
- (b) The anchorage of the floor or roof to walls or columns, and of walls and columns to foundations is not capable of resisting all nominal loads or loads effects;
- (c) Structures or components thereof that have reached their limit state;
- (d) Structural members are incapable of supporting nominal loads and load effects;
- (e) Stairs, landings, balconies and all similar walking surfaces, including guards and handrails, are not structurally sound, not properly anchored or are anchored with connections not capable of supporting all nominal loads and resisting all load effects; or
- (f) Foundation systems that are not firmly supported by footings are not plumb and free from open cracks and breaks, are not properly anchored or are not capable of supporting all nominal loads and resisting all load effects.

Exceptions:

1. When substantiated otherwise by an approved method.
2. Demolition of unsafe conditions shall be permitted when approved by the Building Official.

9-8.1503. STRUCTURAL MEMBERS.

All structural members shall be maintained structurally sound, and be capable of supporting the imposed loads.

9-8.1504. INTERIOR SURFACES.

All interior surfaces, including windows and doors, shall be maintained in good, clean and sanitary condition. Peeling, chipping, flaking or abraded paint shall be repaired, removed or covered. Cracked or loose plaster, decayed wood and other defective surface conditions shall be corrected.

9-8.1505. STAIRS AND WALKING SURFACES.

Every stair, ramp, landing, balcony, porch, deck or other walking surface shall be maintained in sound condition and good repair.

9-8.1506. HANDRAILS AND GUARDS.

Every handrail and guard shall be firmly fastened and capable of supporting normally imposed loads and shall be maintained in good condition.

9-8.1507. INTERIOR DOORS.

Every interior door shall fit reasonably well within its frame and shall be capable of being opened and closed by being properly and securely attached to jambs, headers or tracks as intended by the manufacturer of the attachment hardware.

ARTICLE 16. HANDGUARDS AND GUARDRAILS.

9-8.1601. GENERAL.

Every exterior and interior flight of stairs having more than four risers shall have a handrail on one side of the stair and every open portion of a stair, landing, balcony, porch, deck, ramp or other walking surface which is more than thirty (30) inches (762 mm) above the floor or grade below shall have guards. Repairs or alterations to handrails and guardrails shall be completed in accordance with the

California Building Code. Existing handrails and guardrails shall be maintained in sound condition and good repair and be of sufficient strength and stability as to resist human impact loads.

Exception:

Guards shall not be required where exempted by the City of Modesto Building Code.

ARTICLE 17. COMPONENT SERVICEABILITY.

9-8.1701. GENERAL.

The components of a structure and equipment therein shall be maintained in good repair, structurally sound and in a sanitary condition.

9-8.1702. UNSAFE CONDITIONS.

Where any of the following conditions cause the component or system to be beyond its limit state, the component or system shall be determined as unsafe and shall be repaired or replaced to comply with the provisions of Chapter 1 of Title 9 of the Modesto Municipal Code:

- (a) Soils that have been subjected to any of the following conditions:
 - (1) Collapse of footing or foundation system;
 - (2) Damage to footing, foundation, concrete or other structural element due to soil expansion;
 - (3) Adverse affects to the design strength of footing, foundation, concrete or other structural elements due to a chemical reaction from the soil;
 - (4) Inadequate soil as determined by a geo-technical investigation;
 - (5) Where the allowable bearing capacity of the soil is in doubt; or
 - (6) Adverse affects to the footing, foundation, concrete or other structural element due to the water table.
- (b) Concrete that has been subjected to any of the following conditions:

- (1) Deterioration;
 - (2) Ultimate deformation;
 - (3) Fractures;
 - (4) Fissures;
 - (5) Spalling;
 - (6) Exposed reinforcement; or
 - (7) Detached, dislodged or failing connections.
- (c) Aluminum that has been subjected to any of the following conditions:
- (1) Deterioration;
 - (2) Corrosion;
 - (3) Elastic deformation;
 - (4) Ultimate deformation;
 - (5) Stress or strain cracks;
 - (6) Joint fatigue; or
 - (7) Detached, dislodged or failing connections.
- (d) Masonry that has been subjected to any of the following conditions:
- (1) Deterioration;
 - (2) Ultimate deformation;
 - (3) Fractures in masonry or mortar joints;
 - (4) Fissures in masonry or mortar joints;
 - (5) Spalling;
 - (6) Exposed reinforcement; or

- (7) Detached, dislodged or failing connections.
- (e) Steel that has been subjected to any of the following conditions:
 - (1) Deterioration;
 - (2) Elastic deformation;
 - (3) Ultimate deformation;
 - (4) Metal fatigue; or
 - (5) Detached, dislodged or failing connections.
- (f) Wood that has been subjected to any of the following conditions:
 - (1) Ultimate deformation;
 - (2) Deterioration;
 - (3) Damage from insects, rodents and other vermin;
 - (4) Fire damage beyond charring;
 - (5) Significant splits and checks;
 - (6) Horizontal shear cracks;
 - (7) Vertical shear cracks;
 - (8) Inadequate support;
 - (9) Detached, dislodged or failing connections; or
 - (10) Excessive cutting and notching.

Exceptions:

- 1. When substantiated otherwise by an approved method.

ARTICLE 18. LIGHT, VENTILATION AND OCCUPANCY LIMITATIONS.

9-8.1801. SCOPE.

The provisions of this Chapter shall govern the minimum conditions and standards for light, ventilation and space for occupying a structure.

9-8.1802. RESPONSIBILITY.

The owner of the structure shall provide and maintain light, ventilation and space conditions in compliance with these requirements. A person shall not occupy as owner-occupant, or permit another person to occupy, any premises that do not comply with the requirements of this Chapter.

9-8.1803. ALTERNATIVE DEVICES.

In lieu of the means for natural light and ventilation herein prescribed, artificial light or mechanical ventilation complying with the provisions of Chapter 1 of Title 9 of the Modesto Municipal Code shall be permitted.

9-8.1804. LIGHT IN HABITABLE SPACES.

Every habitable space shall have at least one window of approved size facing directly to the outdoors or to a court. The minimum total glazed area for every habitable space shall be eight percent (8%) of the floor area of such room. Wherever walls or other portions of a structure face a window of any room and such obstructions are located less than three (3) feet from the window and extend to a level above that of the ceiling of the room, such window shall not be deemed to face directly to the outdoors nor to a court and shall not be included as contributing to the required minimum total window area for the room.

Exception:

Where natural light for rooms or spaces without exterior glazing areas is provided through an adjoining room, the unobstructed opening to the adjoining room shall be at least eight percent (8%) of the floor area of the interior room or space, but not less than twenty-five (25) square feet. The exterior glazing area shall be based on the total floor area being served.

9-8.1805. LIGHT IN COMMON HALLS AND STAIRWAYS.

Every common hall and stairway in residential occupancies, other than in one-and two-family dwellings, shall be lighted at all times with at least a 60 watt standard incandescent light bulb for each 200 square feet of floor area or equivalent illumination, provided that the spacing between lights shall not be greater than 30 feet. In other than residential occupancies, means of egress, including exterior

means of egress, stairways shall be illuminated at all times the building space served by the means of egress is occupied with a minimum of one (1) footcandle at floors, landings and treads.

9-8.1806. LIGHT IN OTHER SPACES.

All other spaces shall be provided with natural or artificial light sufficient to permit the maintenance of sanitary conditions, and the safe occupancy of the space and utilization of the appliances, equipment and fixtures.

9-8.1807. VENTILATION OF HABITABLE SPACES.

Every habitable space shall have at least one openable window. The total openable area of the window in every room shall be equal to at least 45 percent of the minimum glazed area required in Section 9-8.1804 of this Code.

Exception:

Where rooms and spaces without openings to the outdoors are ventilated through an adjoining room, the unobstructed opening to the adjoining room shall be at least eight percent (8%) of the floor area of the interior room or space, but not less than twenty-five (25) square feet. The ventilation openings to the outdoors shall be based on a total floor area being ventilated.

9-8.1808. VENTILATION IN BATHROOMS AND TOILET ROOMS.

Every bathroom and toilet room shall comply with the ventilation requirements for habitable spaces as required by Section 9-8.1807 of this Code, except that a window shall not be required in such spaces equipped with a mechanical ventilation system. Air exhausted by a mechanical ventilation system from a bathroom or toilet room shall discharge to the outdoors and shall not be recirculated.

9-8.1809. COOKING FACILITIES.

Unless approved through the certificate of occupancy, cooking shall not be permitted in any rooming unit or dormitory unit, and a cooking facility or appliance shall not be permitted to be present in the rooming unit or dormitory unit.

Exceptions:

1. Where specifically approved in writing by the Building Official.

2. Devices such as coffee pots and microwave ovens shall not be considered cooking appliances.

9-8.1810. PROCESS VENTILATION.

Where injurious, toxic, irritating or noxious fumes, gases, dusts or mists are generated, a local exhaust ventilation system shall be provided to remove the contaminating agent at the source. Air shall be exhausted to the exterior and not be recirculated to any space.

9-8.1811. CLOTHES DRYER EXHAUST.

Clothes dryer exhaust systems shall be independent of all other systems and shall be exhausted in accordance with the manufacturer's instructions.

9-8.1812. PRIVACY.

Dwelling units, hotel units, housekeeping units, rooming units and dormitory units shall be arranged to provide privacy and be separate from other adjoining spaces.

9-8.1813. MINIMUM ROOM WIDTHS.

A habitable room, other than a kitchen, shall not be less than seven (7) feet in any plan dimension. Kitchens shall have a clear passageway of not less than three (3) feet between counterfronts and appliances or counterfronts and walls.

9-8.1814. MINIMUM CEILING HEIGHTS.

Habitable spaces, hallways, corridors, laundry areas, bathrooms, toilet rooms and habitable basement areas shall have a clear ceiling height of not less than seven (7) feet.

Exceptions:

1. In one-and two-family dwellings, beams or girders spaced not less than four (4) feet on center and projecting not more than six (6) inches below the required ceiling height.
2. Basement rooms in one-and two-family dwellings occupied exclusively for laundry, study or recreation purposes, having a ceiling height of not less than six (6) feet eight (8) inches with not less than six (6) feet four (4) inches of clear height under beams, girders, ducts and similar obstructions.
3. Rooms occupied exclusively for sleeping, study or similar purposes and having a sloped ceiling over all or part of the room, with a clear ceiling

height of at least seven (7) feet over not less than one-third of the required minimum floor area. In calculating the floor area of such rooms, only those portions of the floor area with a clear ceiling height of five (5) feet or more shall be included.

9-8.1815. BEDROOM AND LIVING ROOM REQUIREMENTS.

Every bedroom and living room shall comply with the requirements of Sections 9-8.1813 and 9-8.1814 of this Code.

9-8.1816. ROOM AREA.

Every living room shall contain at least 120 square feet and every bedroom shall contain at least 70 square feet.

9-8.1817. ACCESS FROM BEDROOMS.

Bedrooms shall not constitute the only means of access to other bedrooms or habitable spaces and shall not serve as the only means of egress from other habitable spaces.

Exception:

Units that contain fewer than two bedrooms.

9-8.1818. WATER CLOSET ACCESSIBILITY.

Every bedroom shall have access to at least one water closet and one lavatory without passing through another bedroom. Every bedroom in a dwelling unit shall have access to at least one water closet and lavatory located in the same story as the bedroom or an adjacent story.

9-8.1819. PROHIBITED OCCUPANCY.

Kitchens and non-habitable spaces shall not be used for sleeping purposes.

9-8.1820. OTHER REQUIREMENTS.

Bedrooms shall comply with the applicable provisions of this Code including, but not limited to, the light, ventilation, room area, ceiling height and room width requirements of this chapter; the plumbing facilities and water-heating facilities requirements set forth in Article 19 of this Code; the heating facilities and electrical receptacle requirements set forth in Article 24 of this Code; and the

smoke detector and emergency escape requirements set forth in Article 27 of this Code.

9-8.1821. OVERCROWDING.

The number of persons occupying a dwelling unit shall not create conditions that, in the opinion of the Building Official, endanger the life, health, safety or welfare of the occupants.

9-8.1822. EFFICIENCY UNITS.

Efficiency dwelling units shall comply with the following:

- (a) The unit shall have a living room of not less than 220 square feet of floor area. An additional 100 square feet of floor area shall be provided for each occupant of such unit in excess of two.
- (b) The unit shall be provided with a separate closet.
- (c) The unit shall be provided with a kitchen sink, cooking appliance and refrigeration facilities, each having a clear working space of not less than 30 inches (762 mm) in front. Light and ventilation conforming to this Code shall be provided.
- (d) The unit shall be provided with a separate bathroom containing a water closet, lavatory, and bathtub or shower.

9-8.1823. FOOD PREPARATION.

All spaces to be occupied for food preparation purposes shall contain suitable space and equipment to store, prepare and serve foods in a sanitary manner. There shall be adequate facilities and services for the sanitary disposal of food wastes and refuse, including facilities for temporary storage.

ARTICLE 19. PLUMBING FACILITIES AND FIXTURE REQUIREMENTS.

9-8.1901. SCOPE.

The provisions of this Article shall govern the minimum plumbing systems, facilities and plumbing fixtures to be provided.

9-8.1902. RESPONSIBILITY.

The owner of the structure shall provide and maintain such plumbing facilities and

plumbing fixtures in compliance with these requirements. A person shall not occupy as owner-occupant or permit another person to occupy any structure or premises which does not comply with the requirements of this Chapter.

9-8.1903. DWELLING UNITS.

Every dwelling unit shall contain its own bathtub or shower, lavatory, water closet and kitchen sink which shall be maintained in a sanitary, safe working condition. The lavatory shall be placed in the same room as the water closet or located in close proximity to the door leading directly into the room in which such water closet is located. A kitchen sink shall not be used as a substitute for the required lavatory.

9-8.1904. ROOMING HOUSES.

At least one water closet, lavatory and bathtub or shower shall be supplied for each four rooming units.

9-8.1905. HOTELS.

Where private water closets, lavatories and baths are not provided, one water closet, one lavatory and one bathtub or shower having access from a public hallway shall be provided for each ten occupants.

9-8.1906. EMPLOYEES' FACILITIES.

A minimum of one water closet, one lavatory and one drinking facility shall be available to employees.

9-8.1907. DRINKING FACILITIES.

Drinking facilities shall be a drinking fountain, water cooler, bottled water cooler or disposable cups next to a sink or water dispenser. Drinking facilities shall not be located in toilet rooms or bathrooms.

9-8.1908. TOILET FACILITY PRIVACY.

Toilet rooms and bathrooms shall provide privacy and shall not constitute the only passageway to a hall or other space, or to the exterior. A door and interior locking device shall be provided for all common or shared bathrooms and toilet rooms in a multiple dwelling.

9-8.1909. TOILET FACILITY LOCATION.

Toilet rooms and bathrooms serving hotel units, rooming units or dormitory units or housekeeping units, shall have access by traversing not more than one flight of stairs and shall have access from a common hall or passageway.

9-8.1910. LOCATION OF EMPLOYEE TOILET FACILITIES.

Toilet facilities shall have access from within the employees' working area. The required toilet facilities shall be located not more than one story above or below the employees' working area and the path of travel to such facilities shall not exceed a distance of 500 feet. Employee facilities shall either be separate facilities or combined employee and public facilities.

Exception:

Facilities that are required for employees in storage structures or kiosks, which are located in adjacent structures under the same ownership, lease or control, shall not exceed a travel distance of 500 feet from the employees' regular working area to the facilities.

9-8.1911. TOILET FACILITY FLOOR SURFACE.

In other than dwelling units, every toilet room floor shall be maintained to be a smooth, hard, nonabsorbent surface to permit such floor to be easily kept in a clean and sanitary condition.

ARTICLE 20. PLUMBING SYSTEMS AND FIXTURES.

9-8.2001. GENERAL.

All plumbing fixtures shall be properly installed and maintained in working order, and shall be kept free from obstructions, leaks and defects and be capable of performing the function for which such plumbing fixtures are designed. All plumbing fixtures shall be maintained in a safe, sanitary and functional condition.

9-8.2002. FIXTURE CLEARANCES.

Plumbing fixtures shall have adequate clearances for usage and cleaning.

9-8.2003. PLUMBING SYSTEM HAZARDS.

Where it is found that a plumbing system in a structure constitutes a hazard to the occupants or the structure by reason of inadequate service, inadequate venting,

cross connection, back siphonage, improper installation, deterioration or damage or for similar reasons, the Building Official shall require the defects to be corrected to eliminate the hazard.

ARTICLE 21. WATER SYSTEM.

9-8.2101. GENERAL.

Every sink, lavatory, bathtub or shower, drinking fountain, water closet or other plumbing fixture shall be properly connected to either a public water system or to an approved private water system. All kitchen sinks, lavatories, laundry facilities, bathtubs and showers shall be supplied with hot or tempered and cold running water in accordance with the Chapter 2 of Title 9 of the Modesto Municipal Code.

9-8.2102. CONTAMINATION.

The water supply shall be maintained free from contamination, and all water inlets for plumbing fixtures shall be located above the flood-level rim of the fixture. Shampoo basin faucets, janitor sink faucets and other hose bibs or faucets to which hoses are attached and left in place, shall be protected by place, shall be protected by an approved atmospheric-type vacuum breaker or an approved permanently attached hose connection vacuum breaker.

9-8.2103. SUPPLY.

The water supply system shall be installed and maintained to provide a supply of water to plumbing fixtures, devices and appurtenances in sufficient volume and at pressures adequate to enable the fixtures to function properly, safely, and free from defects and leaks.

9-8.2104. WATER HEATING FACILITIES.

Water heating facilities shall be properly installed, maintained and capable of providing an adequate amount of water to be drawn at every required sink, lavatory, bathtub, shower and laundry facility at a temperature of not less than 110°F (43°C). A gas-burning water heater shall not be located in any bathroom, toilet room, bedroom or other occupied room normally kept closed, unless adequate combustion air is provided. An approved combination temperature and pressure-relief valve and relief valve discharge pipe shall be properly installed and maintained on water heaters.

ARTICLE 22. SANITARY DRAINAGE SYSTEM.

9-8.2201. GENERAL.

All plumbing fixtures shall be properly connected to either a public sewer system or to an approved private sewage disposal system.

9-8.2202. MAINTENANCE.

Every plumbing stack, vent, waste and sewer line shall function properly and be kept free from obstructions, leaks and defects.

9-8.2203. GREASE INTERCEPTORS.

Where it has been determined that a grease interceptor is not being maintained and serviced as intended by this Code and the manufacturer's instructions, an approved interceptor monitoring system shall be provided or a maintenance program shall be established with documentation submitted to the Building Official.

ARTICLE 23. STORM DRAINAGE.

9-8.2301. GENERAL.

Drainage of roofs and paved areas, yards and courts, and other open areas on the premises shall not be discharged in a manner that creates a public nuisance.

ARTICLE 24. MECHANICAL AND ELECTRICAL REQUIREMENTS.

9-8.2401. SCOPE.

The provisions of this Chapter shall govern the minimum mechanical and electrical facilities and equipment to be provided.

9-8.2402. RESPONSIBILITY.

The owner of the structure shall provide and maintain mechanical and electrical facilities and equipment in compliance with these requirements. A person shall not occupy as owner-occupant or permit another person to occupy any premises which does not comply with the requirements of this Chapter.

9-8.2403. HEATING REQUIREMENTS FOR RESIDENTIAL OCCUPANCIES.

Dwelling units, guest rooms and congregate residences shall be provided with

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

9-8.2404. RESIDENTIAL HEAT SUPPLY.

Every owner and operator of any building who rents, leases or lets one or more dwelling units or sleeping units on terms, either expressed or implied, to furnish heat to the occupants thereof shall supply heat to maintain a temperature of not less than 70°F in all habitable rooms, bathrooms, and toilet rooms.

9-8.2405. HEATING REQUIREMENTS FOR OCCUPIABLE WORK SPACES.

Indoor occupiable work spaces shall be supplied with to maintain a temperature of not less than 65°F during the period the spaces are occupied.

Exceptions:

1. Processing, storage and operation areas that require cooling or special temperature conditions.
2. Areas in which persons are primarily engaged in vigorous physical activities

9-8.2406. MECHANICAL HEATING APPLIANCES.

All mechanical appliances, fireplaces, solid fuel-burning appliances, cooking appliances and water heating appliances shall be properly installed and maintained in a safe working condition, and shall be capable of performing the intended function.

9-8.2407. REMOVAL OF COMBUSTION PRODUCTS.

All fuel-burning equipment and appliances shall be connected to an approved chimney or vent.

Exception:

Fuel-burning equipment and appliances which are labeled for unvented operation.

9-8.2408. HEATING APPLIANCE CLEARANCES.

All required clearances to combustible materials shall be maintained.

9-8.2409. HEATING APPLIANCE SAFETY CONTROLS.

All safety controls for fuel-burning equipment shall be maintained in effective operation.

9-8.2410. HEATING APPLIANCE COMBUSTION AIR SUPPLY.

A supply of air for complete combustion of the fuel and for ventilation of the space containing the fuel-burning equipment shall be provided for the fuel-burning equipment.

9-8.2411. ENERGY CONSERVATION DEVICES.

Devices intended to reduce fuel consumption by attachment to a fuel-burning appliance, to the fuel supply line thereto, or to the vent outlet or vent piping therefrom, shall not be installed unless labeled.

9-8.2412. ELECTRICAL FACILITIES REQUIRED.

Every occupied building shall be provided with an electrical system in compliance with the requirements of this Article and Chapter 3 of Title 9 of the Modesto Municipal Code.

9-8.2413. ELECTRICAL SERVICE.

The size and usage of appliances and equipment shall serve as a basis for determining the need for additional facilities in accordance with the provisions of Chapter 3 of Title 9 of the Modesto Municipal Code. Dwelling units shall be served by a three-wire, 120/240 volt, single-phase electrical service having a rating of not less than 60 amperes.

9-8.2414. ELECTRICAL INSTALLATIONS.

All electrical equipment, wiring and appliances shall be properly installed and maintained in a safe and approved manner.

9-8.2415. RECEPTACLES.

Every habitable space in a dwelling shall contain at least two separate and remote

receptacle outlets. Every laundry area shall contain at least one grounded-type receptacle or a receptacle with a ground fault circuit interrupter protection.

9-8.2416. LUMINARIES.

Every public hall, interior stairway, toilet room, kitchen, bathroom, laundry room, boiler room and furnace room shall contain at least one electric luminaire.

ARTICLE 25. ELEVATORS, ESCALATORS AND DUMBWAITERS.

9-8.2501. GENERAL.

Elevators, dumbwaiters and escalators shall be maintained in compliance with ASME A17.1. The most current certification of inspection shall be on display at all times within the elevator or attached to the escalator or dumbwaiter, be available for public inspection in the office of the building operator, or be posted in a publicly in a conspicuous location approved by the Building Official. The inspection and tests shall be performed at not less than the periodical intervals listed in ASME A17.1, Appendix N., except where otherwise specified by the authority having jurisdiction.

9-8.2502. ELEVATORS.

In buildings equipped with passenger elevators, at least one elevator shall be maintained in operation all times when the building is occupied.

Exception:

Buildings equipped with only one elevator shall be permitted to have the elevator temporarily out of service for testing and servicing.

ARTICLE 26. DUCT SYSTEMS.

9-8.2601. GENERAL.

Duct systems shall be maintained free of obstructions and shall be capable of performing the required function.

ARTICLE 27. FIRE SAFETY REQUIREMENTS.

9-8.2701. SCOPE.

The provisions of this Chapter shall govern the minimum conditions and

standards for fire safety relating to structures and exterior premises, including fire safety facilities and equipment to be provided.

9-8.2702. RESPONSIBILITY.

The owner of the premises shall provide and maintain such fire safety facilities and equipment in compliance with these requirements. A person shall not occupy as owner-occupant or permit another person to occupy any premises that do not comply with the requirements of this Chapter.

9-8.2703. MEANS OF EGRESS - GENERAL.

A safe, continuous and unobstructed path of travel shall be provided from any point in a building or structure to the public way. Means of egress shall comply with the California Fire Code as adopted by the City of Modesto.

9-8.2704. AISLES.

The required width of aisles in accordance with the California Fire Code as adopted by the City of Modesto.

9-8.2705. LOCKED DOORS.

All means of egress doors shall be readily openable from the side from which egress is to be made without the need for keys, special knowledge or effort, except where the door hardware conforms to that permitted by the California Building Code as adopted by the City of Modesto.

9-8.2706. EMERGENCY ESCAPE OPENINGS.

Required emergency escape openings shall be maintained in accordance with the code in effect at the time of construction, and the following. Required emergency escape and rescue openings shall be operational from the inside of the room without the use of keys or tools. Bars, grilles, grates or similar devices are permitted to be placed over emergency escape and rescue openings provided the minimum net clear opening size complies with the code that was in effect at the time of construction and such devices shall be releasable or removable from the inside without the use of a key, tool or force greater than that which is required for normal operation of the escape and rescue opening.

9-8.2707. FIRE RESISTANCE RATED ASSEMBLIES.

The required fire resistance rating of fire-resistance-rated walls, fire stops, shaft

enclosures, partitions and floors shall be maintained.

9-8.2708. OPENING PROTECTIVES.

Required opening protectives shall be maintained in an operative condition. All fire and smoke top doors shall be maintained in operable condition. Fire doors and smoke barrier doors shall not be blocked or obstructed or otherwise made inoperable.

9-8.2709. FIRE PROTECTION SYSTEMS - GENERAL.

All systems, devices and equipment to detect a fire, actuate an alarm, or suppress or control a fire or any combination thereof shall be maintained in an operable condition at all times in accordance with the California Fire Code as adopted by the City of Modesto.

9-8.2710. SMOKE ALARMS.

Single or multiple-station smoke alarms shall be installed and maintained in Groups R-2, R-3, R-4 and in dwellings not regulated in Group R occupancies, regardless of occupant load at all of the following locations:

- (a) On the ceiling or wall outside of each separate sleeping area in the immediate vicinity of bedrooms.
- (b) In each room used for sleeping purposes.
- (c) In each story within a dwelling unit, including basements and cellars but not including crawl spaces and uninhabitable attics. In dwellings or dwelling units with split levels and without an intervening door between the adjacent levels, a smoke alarm installed on the upper level shall suffice for the adjacent lower level provided that the lower level is less than one full story below the upper level.

Single or multiple-station smoke alarms shall be installed in other groups in accordance with the California Fire Code as adopted by the City of Modesto.

9-8.2711. SMOKE ALARM POWER SOURCE.

In Group R occupancies and in dwellings not regulated as Group R occupancies, single-station smoke alarms shall receive their primary power from the building wiring provided that such wiring is served from a commercial source and shall be equipped with a battery backup. Smoke alarms shall emit a signal when the

batteries are low. Wiring shall be permanent and without a disconnecting switch other than as required for overcurrent protection.

Exception:

Smoke alarms are permitted to be solely battery operated in buildings where no construction is taking place, buildings that are not served from a commercial power source and in existing areas of buildings undergoing alterations or repairs that do not result in the removal of interior wall or ceiling finishes exposing the structure, unless there is an attic, crawl space or basement available which could provide access for building wiring without the removal of interior finishes.

9-8.2712. SMOKE ALARM INTERCONNECTION.

Where more than one smoke alarm is required to be installed within an individual dwelling unit in Group R-2, R-3, R-4 and in dwellings not regulated as Group R occupancies, the smoke alarms shall be interconnected in such a manner that the activation of one alarm will activate all of the alarms in the individual unit. The alarm shall be clearly audible in all bedrooms over background noise levels with all intervening doors closed.

Exceptions:

1. Interconnection is not required in buildings which are not undergoing alterations, repairs, or construction of any kind.
2. Smoke alarms in existing areas are not required to be interconnected where alterations or repairs do not result in the removal of interior wall or ceiling finishes exposing the structure, unless there is an attic, crawl space or basement available which could provide access for interconnection without the removal of interior finishes.

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

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

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 5th day of May, 2009, by Councilmember Hawn who moved its introduction and passage to print, which motion being duly seconded by Councilmember Olsen, was upon roll call carried and ordered printed and published by the following vote:

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

NOES: Councilmembers: None


ABSENT: Councilmembers: None

APPROVED: _____


JIM RIDENOUR, Mayor

ATTEST:


By _____


STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By _____


SUSANA ALCALA WOOD, City Attorney

Ord. No. 3513-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 12th day of May, 2009, Councilmember Lopez moved its final adoption, which motion being duly seconded by Councilmember Hawn, was upon roll call carried and the ordinance adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: 
MAYOR JIM RIDENOUR

ATTEST: 
STEPHANIE LOPEZ, City Clerk

Effective Date: June 12, 2009

ORDINANCE NO. 3514-C.S.

AN ORDINANCE AMENDING CHAPTER 12 OF TITLE 4 OF
THE MODESTO MUNICIPAL CODE RELATING TO
COMMUNITY PRESERVATION.

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

SECTION 1. AMENDMENT OF CODE. Chapter 12 of Title 4 of the Modesto

Municipal Code is hereby amended to read as follows:

CHAPTER 12. COMMUNITY PRESERVATION

ARTICLE 1. IN GENERAL

4-12.100. PURPOSE AND INTENT.

The City has a history and reputation for well-kept properties; and property values and the general welfare of the community are founded, in part, upon the appearance and maintenance of private properties. The purpose of this Chapter is to promote the health, safety, economic, aesthetic and general welfare of the citizens of the City, and to protect neighborhoods against nuisances, blight and deterioration by establishing requirements for all building exteriors, whether residential or nonresidential, or structures of whatever kind, and establishing requirements for the maintenance of all land, whether improved or vacant.

Owners and occupants of some properties within the City permit conditions to exist which are below the minimum conditions required by Title 4 and Title 10 of this Code and therefore injurious and inimical to the public health, safety, and welfare of the residents of the City and contribute substantially and increasingly to the deterioration of residential neighborhoods and commercial areas.

The abatement of certain uses and abuses of property as described in this Chapter reasonably relates to the proper exercise of police power to protect the health, safety, and general welfare of the public.

Abatement of conditions less than those required by Title 4 and Title 10 of this code will promote health, safety, and welfare of the residents of the City because maximum use and enjoyment of property in close proximity to another depends upon maintenance of both properties.

This Chapter shall apply to all buildings, structures and lands within the City

without regard to use, date of construction or alterations.

ARTICLE 2. REMEDIES

4-12.200. CIVIL VIOLATIONS.

- (a) In addition to any other remedy provided by this Code, any provision of this Chapter, may be enforced by injunction issued by the Superior Court upon a suit brought by the City.
- (b) As part of a civil action filed to enforce provisions of this Chapter, a court may assess a maximum civil penalty of two thousand five hundred dollars (\$2,500.00) per violation of this Chapter for each day during which any person commits, continues, allows or maintains a violation of any provision of this Chapter.

4-12.201. CRIMINAL VIOLATIONS.

It is unlawful for any person to violate any provision or to fail to comply with any of the requirements of this Chapter. A violation of any of the provisions or failing to comply with any of the mandatory requirements of this Chapter shall constitute a misdemeanor; except that notwithstanding any other provision of this Code, any such violation constituting a misdemeanor under this Code may, in the discretion of the City Attorney, be charged and prosecuted as an infraction. Any person convicted of a misdemeanor under the provisions of this Chapter, unless provision is otherwise herein made, shall be punishable by a fine of not more than one thousand dollars (\$1,000.00) or by imprisonment in the county jail for a period of not more than six (6) months or by both fine and imprisonment. Any person convicted of an infraction under the provisions of this Code, unless provision is otherwise herein made, shall be punishable by a fine only as follows: Upon a first conviction, by a fine of not exceeding two hundred fifty dollars (\$250.00) and for a second conviction or any subsequent conviction within a period of one (1) year, by a fine of not exceeding five hundred dollars (\$500.00).

Each such person shall be charged with a separate offense for each and every day during any portion of which any violation of any provision of this Code is committed, continued or permitted by such person and shall, upon conviction, be punished accordingly.

4-12.202. ADMINISTRATIVE REMEDIES.

Title 1, Chapter 6, of this Code established the administrative enforcement of remedies for violations of this Code and applicable State Codes. The general

remedies include administrative abatement, summary abatement, civil penalties, administrative citations, recordation of notices of violation and mediation. The City may pursue any of these administrative remedies for violations of this Chapter.

4-12.203. SEVERABILITY.

If any section, subsection, sentence, clause, phrase or portion of this Chapter is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this article. The City Council declares that it would have adopted such section, subsection, sentence, clause, phrase or portion thereof irrespective of the fact that any one (1) or more sections, subsections, sentences, clauses, phrases or portions be declared invalid or unconstitutional.

ARTICLE 3. NUISANCE - CREATING BEHAVIORS

4-12.300. FINDINGS.

The City Council finds as follows:

- (a) Just as the physical conditions of properties within the City can constitute public and private nuisances, so too the behavior of persons on properties within the City can constitute public and private nuisances. Examples of behavior which can constitute nuisances include large and noisy gatherings, noisy activities during late-night hours, use or sale of controlled substances on premises, and the coming and going of persons with the intent to purchase controlled substances.
- (b) It is as important for the public health, safety and welfare for interested residents of the City or the City itself to be able to abate nuisance-creating behaviors as it is to abate nuisance-creating physical conditions.
- (c) The owners of properties within the City are responsible to monitor their properties and to take appropriate action if a nuisance exists thereon, whether that nuisance be created by existing physical conditions or by nuisance-creating behaviors. Such nuisances can be avoided with adequate property management. If a property owner does not fulfill his or her responsibilities, it is necessary for the safety, health and welfare of neighborhoods and the City as a whole that interested persons or the City be able to undertake abatement action. An abatement remedy for nuisance-creating behaviors is needed.
- (d) Neighborhood health and safety must be protected in a way which does not

promote housing discrimination or promote evictions based on prejudice, unfounded fears, or personal animosities.

- (e) Nothing in the ordinance codified in this Chapter exempts property owners from strict compliance with state housing law on evictions, retaliatory conduct or discriminatory conduct or privacy.

4-12.301. PURPOSE.

- (a) The purpose of this article is:
 - (1) To set forth and make enforceable minimum standards for the management of human behavior on residential properties and to protect the public health, safety, and welfare, and
 - (2) To put in place a remedy which will permit aggrieved persons or the City to take effective, efficient judicial or administrative action against property owners who permit nuisance-creating behaviors to occur on their properties on a continuing basis, in order to compel such owners to abate the nuisance-creating behaviors.
- (b) Provisions of this Chapter are intended to be supplementary and complementary to all of the other provisions of this Code and State law and all remedies set forth herein shall be cumulative to other remedies which may be available under the Code or State law.

4-12.302. APPLICATION.

The provisions of this Chapter shall apply generally to all property throughout the City wherein any of the nuisances hereinafter specified, are found to exist; provided, however, that any condition which would constitute a violation of this Chapter, but which is duly authorized under any specific City, State or Federal statute, shall not be deemed to violate this Chapter.

The provisions of this Chapter shall not apply to activities which constitute a bona fide exercise of constitutional rights.

4-12.303. RESPONSIBILITY FOR PROPER PROPERTY MANAGEMENT.

- (a) Every owner of real property within the City and every person responsible for the management of real property within the City is required to manage the property in a manner that does not violate the provisions of this Code. The owner shall remain liable for violations thereof regardless of any

contract or agreement with any third party regarding the management or control of property.

- (b) Every responsible party or owner of real property in the City is required to behave on the property, and supervise anyone on the property, in a manner so as not to violate the provisions of this Code.

4-12.304. GENERALLY.

It is hereby declared a public nuisance and a violation of this Code for any responsible party or owner of any premises in this City to permit their premises to be used in such a manner that any one (1) or more of the activities described in the following subsections are found to occur repeatedly thereon:

- (a) The illegal sale of controlled or illegal drugs or substances.
- (b) The illegal use of controlled substances and other illegal drugs or substances.
- (c) The frequent gathering, or coming and going, of people who have an intent to purchase or use controlled substances or other illegal drugs or substances on the premises.
- (d) The occurrence of prostitution.
- (e) Unlawful activities of a criminal street gang (as defined in Penal Code Section 186.22).
- (f) The making or continuing, or causing to be made and continued, of any loud, unnecessary or unusual noise which disturbs the peace and quiet of the neighborhood or which causes discomfort or annoyance to more than one reasonable person of normal sensitivity residing in the area. This section shall only become effective when the police department has documented more than five (5) calls for service over any ninety (90) day period to the same address and/or dwelling in relation to making or continuing, or causing to be made and continued, any loud unnecessary and unusual noise which disturbs the peace and quiet of the neighborhood.
- (g) The firing of gunshots or brandishing of weapons by a resident of the premises, or by a guest of a resident.
- (h) The use of property to provide shelter to or seclusion of any action, act, or occurrence which is a crime under Federal, State, or local laws. To provide such shelter shall be to harbor a public nuisance, and shall be

unlawful.

4-12.305. ADMINISTRATIVE ENFORCEMENT ACTION.

- (a) Whenever an enforcement officer has inspected any premises and determined that the premises are in violation of this article, that officer may issue a notice and order to abate the nuisance.
- (b) No notice and order is required to be issued hereunder if the owner is making good faith efforts to abate the nuisance. Indicia of good faith may include prompt responses to City communications and requests, cooperation with enforcement officers, active professional property management, and taking steps to repair physical conditions which contribute to the nuisance.
- (c)
 - (1) Whenever an enforcement officer issues a notice and order pursuant to this article to an owner or responsible party for rental residential property regarding a nuisance that exists at their property, the officer shall concurrently issue a written notice to the tenants of the property who may also be deemed violators by that officer. The notice shall generally describe the nuisance and the City's remedies under this Code. The notice shall also state that tenants may contact the officer to provide or receive information about their building. Notice to the tenant or unit need not be given when the enforcement officer determines that doing so would endanger persons or compromise an ongoing police investigation.
 - (2) The enforcement officer shall follow reasonable procedures intended to provide all tenants with notice of subsequent proceedings and actions pursuant to this Chapter, but failure of any tenant to receive such notice shall not invalidate any subsequent action taken by the City.
- (d) After the time for abatement set forth in the notice and order has expired, the enforcement officer shall determine whether the owner has taken the action ordered by the officer and whether the nuisance has been abated. If the officer determines that the nuisance has been abated, the owner and any occupants other than the owner shall be notified in writing of such determination and the compliance order shall be void thereafter.
- (e) If the enforcement officer determines that the nuisance has not been abated and no written appeal has been received within the time specified in the notice and order, the compliance order shall become final except for the appropriate assessment of administrative penalties and costs against an

owner or responsible party, which assessment only may be appealed and heard by a hearing officer if a written appeal is received by the Director within thirty (30) days of the assessment. If an appeal is received, the Director shall set a hearing before a hearing officer in accordance with the provisions of Title 1, Chapter 6, Article 5.

4-12.306. REMEDIES.

- (a) The administrative enforcement procedure described in Section 4-12.505 notwithstanding, the City Attorney may, in addition to or alternatively to that procedure, bring a civil action for injunctive relief and seek civil penalties in an amount not to exceed twenty thousand dollars (\$20,000.00) against any owner or responsible party who violates this Code.
- (b) Any person affected by a public nuisance described in this article may bring a civil action for injunctive relief and damages against any owner or responsible party who violates this Code.
- (c) In any civil action brought pursuant to this Chapter, the court may award reasonable attorneys' fees and costs to the prevailing party.

ARTICLE 4. DEFACEMENT OF PROPERTY

4-12.400. PURPOSE.

The purpose of this legislation is to provide programs for removal of graffiti from public and private property within the City and to establish regulations designed to prevent and control the spread of graffiti in Modesto.

The City Council finds and determines that the increase of graffiti on both public and private buildings, structures, and in other places, creates a condition of blight within the City which can result in the deterioration of property values, business opportunities, and enjoyment of life for persons using adjacent and surrounding properties. The Council further finds and determines that graffiti is inconsistent with the City's property maintenance goals, crime prevention programs, and aesthetic standards, and, unless graffiti is quickly removed from public and private properties, other properties soon become the targets of graffiti.

4-12.401. DEFINITIONS.

As used in this article:

- (a) **"Graffiti"** means any inscription, word, figure, or design that is marked.

etched, scratched, drawn, sprayed, painted, pasted or otherwise affixed to, or on, any surface to the extent that same was unauthorized by the owner thereof, or, despite authorization, is otherwise deemed by the City Council to be a public nuisance.

- (b) **"Property"** means real or personal property, whether publicly or privately owned, within the City.
- (c) **"Pressurized container"** means any can, bottle, spray device or other mechanism designed to propel liquid which contains ink, paint, dye or other similar substance which is expelled under pressure, either through the use of aerosol devices, pumps or similar propulsion devices.
- (d) **"Ink marker"** means any broad-tipped marker pen with a tip of one-quarter (1/4) inch or greater in width.
- (e) **"Paint stick"** means any device containing a solid form of paint, chalk, wax, epoxy, or other similar substance capable of being applied to a surface and upon application leaving a mark upon property of at least one-quarter (1/4) inch or greater in width.
- (f) **"Graffiti implement"** means a pressurized container, ink marker, or a paint stick.
- (g) **"Responsible party"** means any person who is the owner of property, or who has primary responsibility for control over property, or who has primary responsibility for the repair and maintenance of property.

4-12.402. GRAFFITI DECLARED A PUBLIC NUISANCE.

The City Council hereby declares that graffiti is a public nuisance and is subject to punishment and abatement as prescribed in this Code.

4-12.403. GRAFFITI PROHIBITED.

- (a) It is unlawful for any person to apply graffiti upon any property within the City.
- (b) It is unlawful for any person owning or otherwise being in control of any property within the City to maintain, permit or allow any graffiti to remain upon such property when the graffiti is visible from the street or other public or private property.

4-12.404. ASSISTING IN OR ENCOURAGING VIOLATIONS.

It shall be unlawful for any person to assist, aid, abet or encourage another to violate the provisions of this article by words or overt act.

4-12.405. PUNISHMENT PROVISIONS.

- (a) Each penalty imposed for a violation of this article shall be (1) a penalty of one hundred twenty-five dollars (\$125.00) for a first violation; (2) a penalty of two hundred fifty dollars (\$250.00) for a second violation within a year; (3) a penalty of five hundred dollars (\$500.00) for each additional violation within one (1) year.
- (b) Where there has been a conviction, or guilty or nolo contendere plea of a violation of this article, the court shall, in addition to any penalty imposed pursuant to this article, and at the City's option, order the defendant to complete community service, including graffiti removal service, of not less than six (6) hours and no more than forty-eight (48) hours for a first conviction. Upon the second and subsequent conviction, a person shall be required, at the City's option, to perform community service, including graffiti removal service of not less than forty-eight (48) hours and no more than ninety-six (96) hours. A defendant shall be ordered to complete community service during a time other than during his or her hours of school attendance or employment.
- (c) Where there has been a conviction, or guilty or nolo contendere plea of a violation of this article, the court shall, in addition to any punishment imposed pursuant to this article, and at the victims option, order the defendant to perform the necessary labor to cleanup, repair, or replace the property damaged by that person.
- (d) Where there has been a conviction, or guilty or nolo contendere plea of a violation of this article, the court shall, in addition to any punishment imposed pursuant to this article, and at the victims option, and as restitution, order the defendant to pay for any related costs incurred for the clean up, repair, or replacement of the property damaged by that person.
- (e) If a minor is personally unable to pay any penalty or restitution levied for violating any provision of this article, the parent or legal guardian of the minor shall be liable for payment of the penalty and restitution.

4-12.406. REMOVAL OF GRAFFITI.

- (a) **Right of City to Require Removal by Responsible Party.** It is unlawful for any responsible party to permit property that has been defaced with graffiti to remain so defaced for a period of three (3) calendar days after having been given notice of the violation of this section.
- (b) **Consent to Enter; Abatement Upon Failure to Obtain Consent.**
 - (1) **Securing Responsible Party's Consent.** Prior to entering upon private property or property owned by a public entity other than the City for the purpose of removal of graffiti, the City shall attempt to secure the consent of the responsible party.
 - (2) **Failure to Obtain Responsible Party's Consent.** If a responsible party fails to remove the offending graffiti within the time herein specified or if the responsible party has refused to give consent to the City for entry on terms acceptable to the City consistent with the provisions of this section, the City may commence abatement of graffiti nuisance and recovery of expense of abatement proceedings for the removal of the graffiti according to the procedures herein.

4-12.407. ABATEMENT OF GRAFFITI NUISANCE AND RECOVERY OF EXPENSE OF ABATEMENT.

- (a) Abatement of graffiti nuisance and recovery of expense of abatement proceedings commenced against a responsible party shall be according to the following procedure:
 - (1) If a hearing is requested by the responsible party, the City Manager, or his or her designee ("hearing officer"), shall give the responsible party not less than forty-eight (48) hours' notice of a hearing to be held by the hearing officer for the purpose of showing cause why the public nuisance should not be abated by the City. Following notice, the hearing shall be held by the hearing officer at the time, date, and place designated and at such hearing the responsible party may be heard and provided with the opportunity to show cause why the nuisance should not be abated. Following the hearing, the hearing officer shall determine whether abatement of the nuisance shall be commenced.
 - (2) If the hearing officer determines that abatement of the nuisance shall be commenced, the City may enter upon the property and cause such nuisance to be removed in the manner determined most

appropriate by the City.

- (3) If a hearing has not been requested by the responsible party, the City may enter upon the property and cause such nuisance to be removed in the manner determined most appropriate by the City.
 - (4) Upon removal of the public nuisance, the City may provide an accounting of the expense of abatement along with a demand for payment to the responsible party.
 - (5) If payment is not made within thirty (30) days from the date of the accounting and demand for payment, the payment shall be deemed delinquent and shall be subject to a penalty assessment of one hundred dollars (\$100.00) plus interest on the unpaid amount plus penalty, which interest shall accrue at the rate of one and one-half (1-1/2) percent per month until paid.
 - (6) In the event the expense of abatement has not been paid within thirty (30) days from the date of issuing an accounting and demand for payment, the amount unpaid including any penalty and interest therein, shall constitute a lien pursuant to Government Code Sections 38773 and 38773.1 against the property of the responsible party. Prior to recording a notice of lien, the hearing officer shall provide notice pursuant to Government Code Section 38773.1. Any such lien not paid by June 30th of each year shall, upon adoption of a resolution by the City Council, be collected along with, and in the same manner as, the general property taxes. The liened property shall be subject to the penalties, procedures, and sale in case of delinquency as provided in the Civil Code of California.
 - (7) As an alternative to a lien and pursuant to Government Code Section 38773.5, the expense of abatement may constitute a special assessment against a parcel of land owned by the responsible party. The assessment shall be collected as provided for in Government Code Section 38773.5.
 - (8) In addition to any other remedy provided herein or available at law, expense of abatement pursuant to Government Code Sections 38773, 38773.1 and 38773.5 shall constitute a personal obligation against the responsible party.
- (b) The recovery of expense of abatement of any nuisance resulting from the

defacement of property by graffiti or any other inscribed material by a minor who has created, caused, or committed the nuisance shall be according to the following procedure:

- (1) The City Manager, or his or her designee ("hearing officer"), shall give the minor and the parent or guardian having custody and control of the minor not less than forty-eight (48) hours' notice of a hearing to be held by the hearing officer for the purpose of showing cause why the City should not recover the expense of abatement from the minor and the parent or guardian having custody and control of the minor. Following notice, the hearing shall be held by the hearing officer at the time, date, and place designated and at such hearing the minor and the parent or guardian having custody and control of the minor may each be heard and provided with the opportunity to show cause why the City should not recover the expense of abatement from the minor and the parent or guardian having custody and control of the minor. Following the hearing, the hearing officer shall determine whether the City should recover expense of abatement from the minor and the parent or guardian having custody and control of the minor.
- (2) If the hearing officer determines that the City should recover the expense of abatement from the minor and the parent or guardian having custody and control of the minor, the City may provide an accounting of the expense of abatement along with a demand for payment to the minor and the parent or guardian having custody and control of the minor.
- (3) The parent or guardian having custody and control of the minor shall be jointly and severally liable with the minor for the expense of abatement pursuant to Government Code Sections 38772, 38773.2, and 38773.6. If payment is not made within thirty (30) days from the date of the accounting and demand for payment, the payment shall be deemed delinquent and shall be subject to a penalty assessment of one hundred dollars (\$100.00) plus interest on the unpaid amount plus penalty, which interest shall accrue at the rate of one and one-half (1-1/2) percent per month until paid.
- (4) In the event the expense of abatement has not been paid within thirty (30) days from the date of issuing an accounting and demand for payment, the amount unpaid including any penalty and interest therein, shall constitute a lien pursuant to Government Code Sections 38772 and 38773.2 against the property of the minor and

against the property of the parent or guardian having custody and control of the minor. Prior to recording a notice of lien, the hearing officer shall provide notice pursuant to Government Code Section 38773.2. Any such lien not paid by June 30th of each year shall, upon adoption of a resolution by the City Council, be collected along with, and in the same manner as, the general property taxes. The lien property shall be subject to the penalties, procedures, and sale in case of delinquency as provided in the Civil Code of California.

- (5) As an alternative to a lien and pursuant to Government Code Section 38773.6, the expense of abatement shall constitute a special assessment against a parcel of land owned by the minor or by the parent or guardian having custody and control of the minor. The assessment shall be collected as provided for in Government Code Section 38773.6.
- (6) In addition to any other remedy provided herein or available at law, the expense of abatement pursuant to Government Code Section 38772 shall constitute a personal obligation against the minor and a personal obligation against the parent or guardian having custody and control of the minor.

4-12.408. ACCESSIBILITY TO GRAFFITI IMPLEMENTS.

Every person, firm or entity who owns, conducts, operates, or manages a retail commercial establishment selling graffiti implements within the City shall store, stock, keep or display for sale or transfer graffiti implements in an area secure and not accessible to the public in the regular course of business and accessible only to employees of such retail commercial establishments.

4-12.409. REWARD.

The City hereby offers a reward of one hundred dollars (\$100.00) or such other sum as Council may direct for information leading to the arrest and conviction of any person injuring, defacing, or destroying property by the application of graffiti.

4-12.410. CUMULATIVE REMEDIES.

The procedures set forth in this article are not exclusive and nothing contained herein shall be deemed to preclude the City Attorney from initiation of any civil or criminal action or from the pursuit of any available remedy.

ARTICLE 5. TENANT RELOCATION BENEFITS.

4-12.501. FINDINGS.

The Council of the City of Modesto finds and determines that:

- (a) Some residential rental units in Modesto have severe code violations which threaten the life, health and safety of tenants and require the units or rooms to be vacated to allow for extensive repairs. Such code violations are often caused by deferred maintenance, which may constitute a breach of the landlord's implied warranty of habitability. Tenants of substandard residential units or structures suffer financial hardship when required to vacate their housing, because the owner fails to correct the substandard conditions.
- (b) It is appropriate to require the owner to partially mitigate the tenant's hardship, since the hardship arises from the owner's failure to comply with the law and fulfill a landlord's obligations to the tenants. Financial hardship arises because the tenant generally needs a large sum of money to relocate, often including temporary housing, first and last month's rent, deposits, moving expenses, storage expenses, and utility deposits for a new residence. Low income tenants are generally unable to obtain such sums and, as a result, are at great risk of becoming homeless.

4-12.502. RELOCATION BENEFITS OWED BY OWNER.

Any tenant who is displaced from any residential unit as a result of a Notice and Order to vacate due to unsafe or hazardous living conditions, issued by an authorized City official, shall be entitled to receive relocation benefits from the owner as specified in this Article.

4-12.503. RELOCATION AMOUNT.

The relocation benefits shall be an amount equal to twice the established monthly rental rate paid by the tenant for the unit being vacated or the monthly amount paid by the tenant for the new unit where the tenant moves, whichever is less. The relocation benefits shall include an administrative fee per unit set by the City Council to cover the City's cost of administering these benefits. If the tenant is currently receiving General Relief Assistance from the County, the City may reimburse the County for its administrative expenses in the amount of Three Hundred Dollars (\$300.00) per unit. This amount shall be added to the amount owed by the owner.

4-12.504. EMERGENCY RELOCATION BENEFITS.

If the Notice and Order to Vacate requires the tenant to move out in 72 hours or less time, the tenant shall be entitled to the reasonable and actual cost for temporary housing (up to two weeks), moving expenses and the cost to store personal property (up to two weeks), while the tenant finds another place to live, in addition to the relocation benefits specified in Section 4-12.503.

4-12.505. RELOCATION BENEFITS ADVANCED BY CITY.

- (a) Any displaced tenant who needs relocation benefits may apply to the City Housing and Redevelopment Department for benefits not later than sixty (60) days after the date to vacate specified in the notice. In order for the tenant to be eligible for relocation benefits from the City, the tenant must have rented a new habitable unit within sixty (60) days after the date to vacate. The City may recover from the owner the amount the City pays in relocation benefits, emergency relocation benefits, and any amounts paid to the County plus the City's administrative fee.
- (b) The City shall notify the owner by mail of the amount of relocation benefits due. Any amounts due and unpaid from the owner ten (10) days after the notice is mailed shall constitute a personal obligation of the owner, and a lien may be recorded against the property. The remedies herein are cumulative and in addition to any other remedies available under law.
- (c) Nothing contained in this Article shall require the City to pay any relocation benefits to any tenant.

4-12.506. APPEALS.

An owner may appeal the determination that relocation benefits are owed within ten (10) days after the date the Notice and Order to Vacate is first mailed to the owner or posted on the premises following the administrative hearing procedures set forth in Article 5 of Title 1 of the Modesto Municipal Code.

4-12.507. WHEN RELOCATION BENEFITS NOT PAYABLE.

- (a) No relocation benefits shall be payable by the owner or City to any tenant who has caused or substantially contributed to the condition giving rise to the order to vacate as determined by the Building Official.
- (b) No relocation benefits shall be payable by the owner or City if the unit or

structure became unsafe or hazardous as a result of an earthquake, flood, fire or other natural disaster not proximately caused by building, plumbing, electrical, mechanical or fire code violations.

- (c) No relocation benefits shall be payable by the owner or City to any tenant who refuses to move into a habitable unit that the City determines is available for that tenant within sixty (60) days following the date to vacate.

4-12.508. SUMMARY OF PROVISIONS.

Any Notice and Order to Vacate issued to an owner or tenant shall be accompanied by information of the relocation benefits contained herein. Failure to provide such information shall not relieve any person of the obligations imposed by this Article.

4-12.509. EXCEPTIONS.

The provisions of this Article shall not apply to property owned by any governmental agency.

ARTICLE 6. REGISTRATION OF VACANT PROPERTIES.

4-12.601. PURPOSE - SCOPE.

It is the purpose and intent of the Council of the City of Modesto, through the adoption of this Chapter, to establish an abandoned or vacant property registration program as a mechanism to protect neighborhoods and commercial areas from becoming blighted through the lack of adequate maintenance and security of abandoned and vacated properties.

4-12.602. DEFINITIONS.

For the purposes of this Chapter, certain words and phrases used in this Chapter are defined as follows:

- (a) "Abandoned" means a property that is vacant and is:
 - (1) Under a current notice of default;
 - (2) Under a current notice of trustee's sale;
 - (3) Pending a tax assessor's lien sale;
 - (4) Any property that has been the subject of a foreclosure sale where

the title was retained by the beneficiary of a deed of trust involved in the foreclosure; and

- (5) Any property transferred under a deed in lieu of foreclosure/sale.
- (b) "Accessible property" means a property that is accessible through a compromised/breached window, gate, fence, wall, etc.
- (c) "Accessible structure" means a structure/building that is unsecured and/or breached in such a way as to allow access to the interior space by unauthorized persons.
- (d) "Beneficiary" means a lender or holder of a note secured by a deed of trust.
- (e) "Beneficiary/trustee" means both the beneficiary and the trustee. When any act is required of the beneficiary/trustee by this Chapter, both are responsible for performing such act and may be charged with a violation of this Code for failure to act. However, it is sufficient if it is accomplished by either one. If information is required to be provided, then both must provide such information.
- (f) "Deed in lieu of foreclosure/sale" means a recorded document that transfers ownership of a property from the trustor to the holder of a deed of trust upon consent of the beneficiary of the deed of trust.
- (g) "Deed of trust" means an instrument by which title to real estate is transferred to a third party trustee as security for a real estate loan and often used in California instead of a mortgage. This definition applies to any and all subsequent deeds of trust, i.e., second trust deed, third trust deed, etc.
- (h) "Distressed" means a property that is under a current notice of default and/or notice of trustee's sale and/or pending tax assessor's lien sale or has been foreclosed upon by the trustee or has been conveyed to the beneficiary/trustee via a deed in lieu of foreclosure/sale.
- (i) "Evidence of vacancy" means any condition that on its own or combined with other conditions present would lead a reasonable person to believe that the property is vacant and not occupied by authorized persons. Such conditions include, but are not limited to, overgrown and/or dead vegetation, accumulation of newspapers, circulars, flyers and/or mail, past due utility notices and/or disconnected utilities, accumulation of trash.

junk and/or debris, the absence of window coverings such as curtains, blinds and/or shutters, the absence of furnishings and/or personal items consistent with residential habitation, and statements by neighbors, passersby, delivery agents, government employees that the property is vacant.

- (j) "Local" means within 40-road/driving miles distance of the subject property.
- (k) "Neighborhood standard" refers to the conditions that are present on a simple majority of properties within a 300-foot radius of an individual property.
- (l) "Notice of default" means a recorded notice that a default has occurred under a deed of trust and that the beneficiary intends to proceed with a trustee's sale.
- (m) "Out of area" means in excess of 40-road/driving miles distance of the subject property.
- (n) "Owner of record" means the person having recorded title to the property at any given point in time the record is provided by the Stanislaus County Recorder's Office.
- (o) "Property" means any unimproved or improved real property, or portion thereof, situated in the City and includes the buildings or structures located on the property regardless of condition.
- (p) "Reasonable person" means any person, partnership, association, corporation, or fiduciary having legal or equitable title to or any interest in any real property and includes trustees and beneficiaries of a deed of trust on the property and any other lien holder on the property.
- (q) "Securing" means such measures as may be directed by the Director of Planning/designee that assist in rendering the property inaccessible to unauthorized persons, including but not limited to the repairing of fences and walls, chaining/padlocking of gates, the repair or boarding of door, window and/or other openings. Boarding shall be completed to a minimum of the current HUD securing standards at the time the boarding is completed or required.
- (r) "Trustee" means the person, firm or corporation holding a deed of trust on a property.

- (s) "Trustor" means a borrower under a deed of trust, who deeds property to a trustee as security for the payment of a debt.
- (t) "Vacant" means a building/structure that is not occupied by authorized persons.

4-12.603. REGISTRATION.

Any beneficiary/trustee, who holds a deed of trust on a property located within the City of Modesto, shall perform an inspection of the property that is the security for the deed of trust, upon default by the trustor, prior to recording a notice of default with the Stanislaus County Recorder's Office. If the property is found to be vacant or shows evidence of vacancy, it is, by this Chapter, deemed abandoned and the beneficiary/trustee shall, within 10 days of the inspection, register the property with the City Manager, or his/her designee, on forms provided by the City.

- (a) If the property is occupied but remains in default it shall be inspected by the beneficiary/trustee, or an agent/designee of the beneficiary/trustee, monthly until (1) the trustor or another party remedies the default; or (2) the foreclosure is completed and ownership is transferred to a new owner who is not the former beneficiary or trustee; or (3) it is found to be vacant or shows evidence of vacancy at which time it is deemed abandoned, and the beneficiary/trustee shall, within 10 days of that inspection, register the property with the City Manager, or his/her designee, on forms provided by the City.
- (b) The beneficiary/trustee shall also register any property which becomes vacant after a foreclosure sale where the title was transferred to the beneficiary of a deed of trust involved in the foreclosure and any property which becomes vacant after being transferred under a deed in lieu of foreclosure/sale.
- (c) Such registration shall contain the following information for both the beneficiary and the trustee: name (corporation or individual); the street/office address (not a P.O. box) and if different, the mailing address; a direct contact name and phone number for the person handling the deed of trust and/or foreclosure; and, in the case of a corporation or out-of-area beneficiary or trustee, the local property manager responsible for the security and maintenance of the property.
- (d) The annual registration fee established by City Council resolution, shall

accompany the registration form. The fee and registration shall be valid for the calendar year, or remaining portion of the calendar year, in which the registration was initially required. Subsequent registrations and fees are due January 1st of each year and must be received no later than January 31st of the year due.

- (e) Persons required to register properties pursuant to this Chapter shall keep such properties registered and all required information updated and comply with all the security and maintenance requirements of this Chapter for the entire time such properties remain vacant. When such properties become occupied or title is transferred, the beneficiary/trustee or prior responsible person shall notify the City Manager, or his/her designee, in writing.
- (f) Any person, firm or corporation required to register a property pursuant to this Chapter must report any change of information contained in the registration within 10 days of the change.

4-12.604. INSPECTION AND REGISTRATION OF PREVIOUSLY ABANDONED PROPERTIES.

Any beneficiary/trustee who holds a deed of trust on a property located within the City of Modesto, which property is, on the effective date of the ordinance codified in this article: (1) under a current notice of default; (2) under a current notice of trustee's sale; (3) pending a tax assessor's lien sale; (4) that has been subject of a foreclosure sale where the title was retained by the beneficiary of a deed of trust involved in the foreclosure; and (5) which was transferred under a deed in lieu of foreclosure/sale, shall, on or before June 30, 2008, perform an inspection of the property that is the security for the deed of trust. If the property is found to be vacant or shows evidence of vacancy, it is, by this article, deemed abandoned and the beneficiary/trustee shall, within 10 days of the inspection, register the property with the City Manager, or his/her designee, on forms provided by the City.

4-12.605. MAINTENANCE REQUIREMENTS.

Responsible persons, including beneficiaries/trustees, shall maintain properties subject to inspection and/or registration pursuant to this Chapter and any other applicable provisions of federal, state or local law, and shall keep such properties free of weeds, dry brush, dead vegetation, trash, junk, debris, building materials, any accumulation of newspapers, circulars, flyers, notices, except those required by federal, state or local law, discarded personal items including but not limited to furniture, clothing, large and small appliances, or printed material and shall take any other action necessary to prevent giving the appearance that the property is

abandoned, including but not limited to the following:

- (a) The property shall be kept free of graffiti, tagging or similar markings by removal or painting over with an exterior grade paint that matches the color of the exterior of the structure.
- (b) Visible front and side yards shall be landscaped and maintained in accordance with City requirements and neighborhood standards.
- (c) Permitted landscaping includes, but is not limited to, grass, ground covers, bushes, shrubs, hedges or similar plantings, decorative rock or bark or artificial turf/sod designed specifically for residential installation.
- (d) Permitted landscaping does not include weeds, gravel, broken concrete, asphalt, decomposed granite, plastic sheeting, indoor-outdoor carpet or any similar material.
- (e) Required maintenance includes but is not limited to regular watering, irrigation, cutting, pruning and mowing of required landscape and removal of all trimmings.
- (f) Pools and spas shall be kept in working order so the water remains clear and free of pollutants and debris or drained and kept dry. In either case properties with pools and/or spas must comply with the minimum security fencing requirements of the State of California.

4-12.606. SECURITY REQUIREMENTS.

Responsible persons, including beneficiaries/trustees, shall secure properties subject to inspection and/or registration pursuant to this Chapter, in a manner to prevent access by unauthorized persons, including but not limited to the following: the closure and locking of windows, doors (walk-through, sliding and garage), gates and any other opening of such size that it may allow a child to access the interior of the property and or structure(s). In the case of broken windows securing means the re-glazing or boarding of the window. Responsible persons shall do the following:

- (a) If the responsible person is a corporation and/or out-of-area beneficiary/trustee/owner, a local property manager shall be hired to perform weekly inspections to verify that the requirements of this Chapter, and any other applicable laws, are being met.
- (b) The property shall be posted with the name and 24-hour contact phone

number of the local property manager. The posting shall be no less than 18 inches by 24 inches and shall be of a font that is legible from a distance of 45 feet and shall contain, along with the name and 24-hour contact number, the words "THIS PROPERTY MANAGED BY" and "TO REPORT PROBLEMS OR CONCERNS CALL." The posting shall be placed on the interior of a window facing the street to the front of the property so it is visible from the street, or secured to the exterior of the building/structure facing the street to the front of the property so it is visible from the street or, if no such area exists, on a stake of sufficient size to support the posting in a location that is visible from the street to the front of the property but not readily accessible to vandals. Exterior posting must be constructed of and printed with weather-resistant materials.

- (c) The responsible person or local property manager shall inspect the property on a weekly basis to determine if the property is in compliance with the requirements of this Chapter.

4-12.607. ADDITIONAL AUTHORITY.

In addition to the enforcement remedies established in Title 9, Chapter 10 of the Modesto Municipal Code, the Chief Building Official shall have the authority to require the responsible person of any property affected by this section to implement additional maintenance and/or security measures including but not limited to securing any/all door, window or other openings, installing additional security lighting, increasing on-site inspection frequency, employment of an on-site security guard, disconnecting utilities and removing the meter boxes, or other measures as may be reasonably required to arrest the decline of the property and prevent unauthorized entry.

4-12.608. ENFORCEMENT.

Violations of this Chapter may be enforced in any combination as allowed in Title 9, Chapter 10 of the Modesto Municipal Code.

4-12.609. VIOLATION - PENALTY.

Violations of this Chapter shall be treated as a strict liability offense regardless of intent. Any person, firm and/or corporation that violates any portion of this section shall be subject to prosecution and/or administrative enforcement as provided in Title 9, Chapter 10 of the Modesto Municipal Code, and subject to the penalties set forth therein. It shall constitute a new and separate offense for each and every day during any portion of which a violation of, or failure to comply with, any provision or requirement of this Chapter is committed, continued, or

permitted by any person, and such person shall be punished accordingly.

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

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

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 5th day of May, 2009, by Councilmember Hawn who moved its introduction and passage to print, which motion being duly seconded by Councilmember Olsen, was upon roll call carried and ordered printed and published by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: 
JIM RIDENOUR, Mayor

ATTEST:

By 
STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By 
SUSANA ALCALA WOOD, City Attorney

Ord. No. 3514-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 12th day of May, 2009. Councilmember Lopez moved its final adoption, which motion being duly seconded by Councilmember Hawn, was upon roll call carried and the ordinance adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: 
MAYOR JIM RIDENOUR

ATTEST: 
STEPHANIE LOPEZ, City Clerk

Effective Date: June 12, 2009

ORDINANCE NO. 3515-C.S.

AN ORDINANCE AMENDING SECTION 3-1.304 OF ARTICLE 3 OF CHAPTER 1 OF TITLE 3 OF THE MODESTO MUNICIPAL CODE RELATING TO ADMINISTRATIVE REMEDIES.

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

SECTION 1. AMENDMENT OF CODE. Section 3-1.304 of Article 3 of Chapter 1 of Title 3 of the Modesto Municipal Code is hereby amended to read as follows:

3-1.304. ADMINISTRATIVE REMEDIES.

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

- (a) For violations of Section 3-1.227, possession, sale, use or discharge of dangerous fireworks, the administrative penalty shall be one thousand dollars (\$1,000.00) for each specific act found to be in violation of that section.
- (b) For all violations of this chapter, other than Section 3-1.227, possession, sale, use or discharge of dangerous fireworks, the amount of the administrative penalty shall be two hundred fifty dollars (\$250.00) for the first violation, five hundred dollars (\$500.00) for a second violation within any twelve (12) month period, and seven hundred fifty dollars (\$750.00) for any subsequent violations within any twelve (12) month period.

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

SECTION 3. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in

the City; and a notice shall be published once in *The Modesto Bee*, the official newspaper of the City of Modesto, setting forth the title of this ordinance, the date of its introduction and the places where this ordinance is posted.

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 5th day of May, 2009, by Councilmember Marsh who moved its introduction and passage to print, which motion being duly seconded by Councilmember Hawn, was upon roll call carried and ordered printed and published by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: 
JIM RIDENOUR, Mayor

ATTEST:

By 
STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By 
SUSANA ALCALA WOOD, City Attorney

Ord. No. 3515-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 12th day of May, 2009. Councilmember Marsh moved its final adoption, which motion being duly seconded by Councilmember Hawn, was upon roll call carried and the ordinance adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: _____


MAYOR JIM RIDENOUR

ATTEST: _____


STEPHANIE LOPEZ, City Clerk

Effective Date: June 12, 2009

ORDINANCE NO. 3516-C.S.

AN ORDINANCE ADOPTING THE 2009-10 ANNUAL AND MULTI-YEAR OPERATING BUDGETS AND THE 2009-10 CAPITAL IMPROVEMENT PROGRAM FOR THE CITY OF MODESTO AND THE RELATED INTER-FUND TRANSFERS

WHEREAS, pursuant to the Charter of the City of Modesto, the Mayor presented the Proposed Operating Budget and Capital Improvement Program for the 2009-10 Fiscal Year to the Finance Committee at workshops held during the week of May 18, 2009, and

WHEREAS, the Finance Committee reviewed the Proposed Annual and Multi-year Operating Budgets and the Capital Improvement Program in a series of televised public workshops on May 18, 19, and 20, 2009 and

WHEREAS, the Finance Committee recommended modifications to the Proposed Operating and Multi-year budgets and has forwarded said recommendations to the full City Council, and

WHEREAS, the Finance Committee is recommending the proposed Capital Improvement Program to the full City Council, and

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

WHEREAS, in accordance with the City Charter, a duly noticed public hearing was held on June 2, 2009, during which the City Council considered the recommendations of the Finance Committee relating to the Proposed Operating and Multi-year budgets and the Capital Improvement Program, and

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

WHEREAS, copies of the Proposed Operating and Multi-year budgets and the Capital Improvement Program have been and are available for inspection by the public at the office of the City Clerk,

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

SECTION 1. ADOPTION OF BUDGET. That the Proposed Operating and Multi-year Budgets, a copy of which is on file in the City Clerk's Office and as shown in Exhibits 3-9 (Proposed Revenue Budget by fund; Proposed Expense Budget by fund; Proposed Revenue and Expense budgets with Transfers; Proposed Transfers, In and Out, by fund; Multi-Year Operating Transfer In and Out; Addendum to the Proposed Operating and Multi-year Budgets), are hereby adopted as the Fiscal Year 2009-10 Operating and Multi-year Budgets for the City of Modesto.

SECTION 2. ADOPTION OF BUDGET CONTROLS/FINANCIAL POLICIES. That the Financial Policies for budgetary control and authority as shown in Exhibit 10 and incorporated herein by reference is hereby adopted for the Fiscal Year 2009-10.

SECTION 3. ADOPTION OF CAPITAL IMPROVEMENT PROGRAM. That the Capital Improvement Program, a copy of which is on file in the City Clerk's office and shown in Exhibit 1 and Exhibit 2 (which is incorporated by reference herein) and other amounts previously approved for spending on Capital Improvement Projects are hereby adopted as the 2009-10 Capital Improvement Program for the City of Modesto.

SECTION 4. MULTI-YEAR OPERATING PROGRAMS. That unexpended funds previously approved and appropriated in Multi-Year Programs are hereby re-appropriated for the programs for which they were originally authorized.

SECTION 6. COUNCIL POLICIES. That the Policy Issues outlined in the 2009-10 Proposed Operating and Multi-year Budgets have been reviewed and are adopted hereby.

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

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

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 2nd day of June, 2009, by Councilmember Hawn, who moved its adoption, and

passage to print, which motion being duly seconded by Councilmember Lopez, was upon roll call carried and the resolution adopted by the following votes:

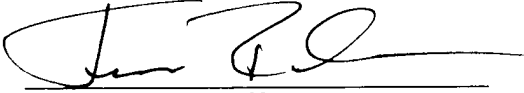
AYES: Councilmembers: Hawn, Keating, Lopez, Marsh, O'Bryant, Olsen, Mayor Ridenour
NOES: Councilmembers: None
ABSENT: Councilmembers: None

ATTEST: 
STEPHANIE LOPEZ, City Clerk

(seal)

APPROVED AS TO FORM:

By: 
SUSANA ALCALA WOOD, City Attorney

By: 
Jim Ridenour, Mayor

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 June, 2009, Councilmember Hawn, moved its final adoption, which motion being duly seconded by Councilmember Keating, was upon roll call carried and the ordinance adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:


MAYOR JIM RIDENOUR

ATTEST:


STEPHANIE LOPEZ, City Clerk

Effective Date: July 9, 2009

ORDINANCE NO. 3517-C.S.

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

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

SECTION 1. AMENDMENT OF CODE. Section 8-3.102 of Article 1 of Chapter 3 of Title 8 of the Modesto Municipal Code is hereby amended to read as follows:

8-3.102. CONTRACTING AUTHORITY.

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

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

may approve and authorize all contracts for such projects involving an expenditure of City funds in the amount of three hundred thousand dollars (\$300,000.00) or less.

- (d) Contracts for public works projects consisting of the installation and establishment of water service connections associated with new development. The City Manager may approve and authorize all contracts for such projects involving an expenditure of City funds in the amount of seventy-five thousand dollars (\$75,000.00) or less.
- (e) Contracts for public works projects consisting of repairs determined by the City Manager to be of urgent necessity for the preservation of life, health, or property. The City Manager may approve and authorize all contracts for such projects in the amount of two hundred thousand dollars (\$200,000.00) or less. Within ten (10) days of the authorization for any such work, the City Manager shall report to the City Council the circumstances of the emergency.
- (f) Contracts for public works projects consisting of the construction, improvement, repair, expansion, renovation, or modification of any facilities associated with development and installed by the developer provided:
 - (1) That an agreement is approved by the City Council prior to commencement of construction of the works.
 - (2) The agreement clearly defines the work to be done and the basis for reimbursement.
 - (3) That total reimbursement required by the agreement is less than four hundred thousand dollars (\$400,000.00) in City funds.
- (g) Contracts for public works projects consisting of the installation, construction, and improvement, of the Coffee-Claratina Dual Use Neighborhood Park/Storm Basin in the City of Modesto. The City Manager may approve and authorize all contracts for such projects involving an expenditure of City funds in the amount of one million five hundred thousand dollars (\$1,500,000.00) or less.
- (h) Contracts for public works projects consisting of the installation and construction of any upgrade and/or rebuild of the City's Institutional

Network (INET). The City Manager may approve and authorize all contracts for such projects involving an expenditure of City funds in the amount of four million two hundred thousand dollars (\$4,200,000.00) or less.

- (i) Contracts for public works projects consisting of those improvements to the South Modesto water system identified in that certain technical memorandum prepared by West Yost and Associates dated October 17, 2005, as amended on November 7, 2005, for the benefit of the Galas Brothers Unit II Project bounded by Hatch Road, Estrella Way, Ironside Drive, Salazar Circle and Monticello Lane in the City of Modesto and any incidental work thereto. The City Manager may approve and authorize all contracts for this project involving a total expenditure of City funds not to exceed two million five hundred thousand dollars (\$2,500,000) or less.
- (j) Contracts for public works contracts consisting of the purchase, installation and replacement of water meters including an automated water meter reading (AMR) system and infrastructure work in conjunction with the system-wide water metering program. The City Manager may approve and authorize all contracts for such projects involving an expenditure of City funds in the amount of five million dollars (\$5,000,000) or less annually.
- (k) Contracts for paving and landscaping work to be done by City forces at the City's Traffic Operations Facility located at 117 Elm Street in the amount of one hundred thousand dollars (\$100,000) or less.
- (l) Contracts for public works projects consisting of the design, purchase and installation of water lines and associated equipment used to blend down contaminants at water well sites in the amount of one million five hundred thousand dollars (\$1,500,000) per project.
- (m) Contracts for public works projects consisting of additions and/or expansion of facilities and structures at John Thurman Field not to exceed two million four hundred thousand dollars (\$2,400,000) per project.
- (n) Contracts for work done by City forces to repair, replace and improve water lines and associated appurtenances for the McHenry Avenue Water System Upgrade Project in the amount of four hundred fifty thousand dollars (\$450,000) or less.

- (o) Contracts for work done by City forces to repair, replace and improve water lines and associated appurtenances for the 9th Street Water Main Replacement Project in the amount of five hundred eighty-five thousand dollars (\$585,000) or less.

Any contract for a public works project which may be approved as set forth in subsections (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), (n) and (o) above of this section and authorized by the City Manager, District Administrator, or other authorized person, is not subject to the public bidding requirements of articles 2 and 4 of this chapter or of Section 1307 of the Modesto City Charter. This section is adopted pursuant to Sections 801(1c) and 1307 of the Modesto City Charter. The City Manager may delegate his or her authority in a manner consistent with the procedures established by this chapter. As set forth in Section 2-2.03 of this Code, all contract documents that require City Council approval shall be approved as to form by the City Attorney or the City Attorney's authorized representative before presentation to the City Council.

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

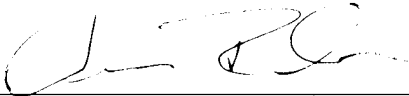
SECTION 3. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in *The Modesto Bee*, the official newspaper of the City of Modesto, setting forth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

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 9th day of June, 2009, by Councilmember Hawn, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Keating, was upon roll call carried and ordered printed and published by the following vote:

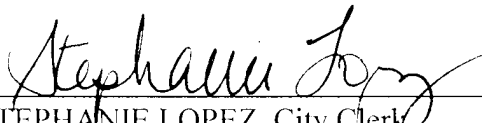
AYES: Councilmembers: Hawn, Keating, Lopez, Marsh, O'Bryant, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None


APPROVED: 
JIM RIDENOUR, Mayor

ATTEST:

By 
STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By 
SUSANA ALCALA WOOD, City Attorney

Ord. No. 3517-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 June, 2009. Councilmember Hawn moved its final adoption, which motion being duly seconded by Councilmember Lopez, was upon roll call carried and the ordinance adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:



MAYOR JIM RIDENOUR

ATTEST:



STEPHANIE LOPEZ, City Clerk

Effective Date: July 23, 2009

ORDINANCE NO. 3518-C.S.

AN ORDINANCE AMENDING SECTIONS 8-3.103, 8-3.203
AND 8-3.401 OF CHAPTER 3 OF TITLE 8 OF THE MODESTO
MUNICIPAL CODE RELATING TO CITY CONTRACTS

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

SECTION 1. AMENDMENT OF CODE. Sections 8-3.103, 8-3.203 and 8-3.401
of Chapter 3 of Title 8 of the Modesto Municipal Code are hereby amended to read as follows:

8-3.103. DEFINITIONS.

The definitions below are applicable throughout this code:

- (a) Professional services shall mean accounting, appraisal, architectural, auditing, engineering, environmental, information system services, land surveying, construction management, legal services, financial planning, medical or planning services or any service which is similarly professional, scientific, expert, or technical in nature.
- (b) Public Works. Except as set forth in Section 8-3.102, every project exceeding fifty thousand dollars (\$50,000.00) for the construction or improvement of public buildings, works, drains, sewers, utilities, parks, playgrounds and streets (exclusive of projects for resurfacing, maintenance and repair of streets, or any park or parks playground project otherwise subject to the public bidding requirements of this chapter that involve any donated labor and/or material) shall be deemed a public works project and be subject to the provisions set forth in Article 4 of this chapter commencing with Section 8-3.401.
- (c) Purchases. Means a contract to obtain supplies, nonprofessional services, materials and/or equipment in furtherance of City needs and purposes.

8-3.203. FORMAL BID PROCEDURES.

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

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

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

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

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

All bids not submitted with the required deposit shall be rejected.

Unsuccessful bidders shall be entitled to the return of deposits when such have been required after acceptance of the contract by the selected bidder.

- (d) **Sealed Bids.** Bids shall be sealed, shall be identified as bids on the envelope, shall be submitted at the place and no later than the time stated in the public notice inviting bids, and shall be opened at a public meeting at the time and place stated in the public notice. Bids received after the stated time shall not be accepted, whether or not a bid is late through any fault of the late bidder, and shall be returned to the bidder unopened.
- (e) **Council May Reject Bids.** The Council shall have the authority to accept or reject any or all bids, or to waive any informalities or minor irregularities in a bid. The Council, after rejecting bids, or if no bids are received, may declare and determine that, in its opinion, based on estimates approved by the City Manager, the purchase in question may be made without a formal bid procedure and, after the adoption of a resolution to this effect by at least five (5) affirmative votes of the Council, may proceed to have said purchase made in the manner stated without further observation of the provisions of this section.
- (f) **Lowest Responsive and Responsible Bidder.** In addition to price in determining the "lowest responsive and responsible bidder", consideration will be given to quality and performance of the commodity to be purchased, or service provided by the seller. Criteria for determining low bid shall include, but not be limited to, the following:
 - (1) The ability, capacity and skill of the bidder to provide the supplies, materials, equipment or contractual services as required.
 - (2) The ability of the bidder to provide the supplies, materials, equipment or contractual services within the time specified.
 - (3) The character, integrity, reputation, judgment, experience and efficiency of the bidder.
 - (4) The quality or performance of previous purchases from said bidder.
 - (5) The ability of the bidder to provide future maintenance, repair parts and services for the use of the commodity purchased.

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

8-3.401. GENERAL REQUIREMENTS.

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

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 July, 2009, by Councilmember Hawn, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Olsen, was upon roll call carried and ordered printed and published by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

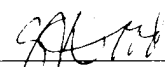
APPROVED: 
JIM RIDENOUR, Mayor

ATTEST:

By 
STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By 
SUSANA ALCALA WOOD, City Attorney

Ord. No. 3518-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 July, 2009, Councilmember Hawn moved its final adoption, which motion being duly seconded by Councilmember Lopez, was upon roll call carried and the ordinance adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: Marsh

APPROVED:


MAYOR JIM RIDENOUR

ATTEST:


STEPHANIE LOPEZ, City Clerk

Effective Date: August 14, 2009

ORDINANCE NO. 3519-C.S.

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

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

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

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

8-3.102. CONTRACTING AUTHORITY.

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

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

expenditure of City funds in the amount of three hundred thousand dollars (\$300,000.00) or less.

- (d) Contracts for public works projects consisting of the installation and establishment of water service connections associated with new development. The City Manager may approve and authorize all contracts for such projects involving an expenditure of City funds in the amount of seventy-five thousand dollars (\$75,000.00) or less.
- (e) Contracts for public works projects consisting of repairs determined by the City Manager to be of urgent necessity for the preservation of life, health, or property. The City Manager may approve and authorize all contracts for such projects in the amount of two hundred thousand dollars (\$200,000.00) or less. Within ten (10) days of the authorization for any such work, the City Manager shall report to the City Council the circumstances of the emergency.
- (f) Contracts for public works projects consisting of the construction, improvement, repair, expansion, renovation, or modification of any facilities associated with development and installed by the developer provided:
 - (1) That an agreement is approved by the City Council prior to commencement of construction of the works.
 - (2) The agreement clearly defines the work to be done and the basis for reimbursement.
 - (3) That total reimbursement required by the agreement is less than four hundred thousand dollars (\$400,000.00) in City funds.
- (g) Contracts for public works projects consisting of the installation, construction, and improvement, of the Coffee-Claratina Dual Use Neighborhood Park/Storm Basin in the City of Modesto. The City Manager may approve and authorize all contracts for such projects involving an expenditure of City funds in the amount of one million five hundred thousand dollars (\$1,500,000.00) or less.
- (h) Contracts for public works projects consisting of the installation and construction of any upgrade and/or rebuild of the City's Institutional Network (INET). The City Manager may approve and authorize all contracts for such projects involving an expenditure of City funds in the

amount of four million two hundred thousand dollars (\$4,200,000.00) or less.

- (i) Contracts for public works projects consisting of those improvements to the South Modesto water system identified in that certain technical memorandum prepared by West Yost and Associates dated October 17, 2005, as amended on November 7, 2005, for the benefit of the Galas Brothers Unit II Project bounded by Hatch Road, Estrella Way, Ironside Drive, Salazar Circle and Monticello Lane in the City of Modesto and any incidental work thereto. The City Manager may approve and authorize all contracts for this project involving a total expenditure of City funds not to exceed two million five hundred thousand dollars (\$2,500,000) or less.
- (j) Contracts for public works contracts consisting of the purchase, installation and replacement of water meters including an automated water meter reading (AMR) system and infrastructure work in conjunction with the system-wide water metering program. The City Manager may approve and authorize all contracts for such projects involving an expenditure of City funds in the amount of five million dollars (\$5,000,000) or less annually.
- (k) Contracts for paving and landscaping work to be done by City forces at the City's Traffic Operations Facility located at 117 Elm Street in the amount of one hundred thousand dollars (\$100,000) or less.
- (l) Contracts for public works projects consisting of the design, purchase and installation of water lines and associated equipment used to blend down contaminants at water well sites in the amount of one million five hundred thousand dollars (\$1,500,000) per project.
- (m) Contracts for public works projects consisting of additions and/or expansion of facilities and structures at John Thurman Field not to exceed two million four hundred thousand dollars (\$2,400,000) per project.
- (n) Contracts for work done by City forces to repair, replace and improve water lines and associated appurtenances for the McHenry Avenue Water System Upgrade Project in the amount of four hundred fifty thousand dollars (\$450,000) or less.
- (o) Contracts for work done by City forces to repair, replace and improve water lines and associated appurtenances for the 9th Street Water Main

Replacement Project in the amount of five hundred eighty-five thousand dollars (\$585,000) or less.

- (p) Contracts for Public Works projects consisting of bus stop improvements at various locations on the Modesto Area Express route system. The City Manager may approve all contracts for such projects in the amount of six hundred seventy-five thousand dollars (\$675,000) or less annually.

Any contract for a public works project which may be approved as set forth in subsections (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), (n), (o) and (p) above of this section and authorized by the City Manager, District Administrator, or other authorized person, is not subject to the public bidding requirements of articles 2 and 4 of this chapter or of Section 1307 of the Modesto City Charter. This section is adopted pursuant to Sections 801(1c) and 1307 of the Modesto City Charter. The City Manager may delegate his or her authority in a manner consistent with the procedures established by this chapter. As set forth in Section 2-2.03 of this Code, all contract documents that require City Council approval shall be approved as to form by the City Attorney or the City Attorney's authorized representative before presentation to the City Council.

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

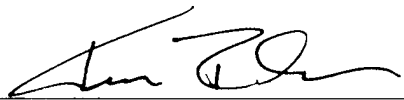
SECTION 3. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in *The Modesto Bee*, the official newspaper of the City of Modesto, setting forth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

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 1 day of September, 2009, by Councilmember Marsh, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Hawn, was upon roll call carried and ordered printed and published by the following vote:

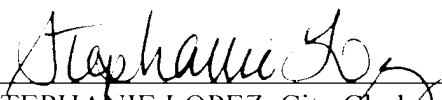
AYES: Councilmembers: Hawn, Keating, Lopez, Marsh, O'Bryant, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: 
JIM RIDENOUR, Mayor

ATTEST:

By 
STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By 
SUSANA ALCALA WOOD, City Attorney

Ord. No. 3519-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 8th day of September, 2009, Councilmember Hawn moved its final adoption, which motion being duly seconded by Councilmember Lopez, was upon roll call carried and the ordinance adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: 
MAYOR JIM RIDENOUR

ATTEST: 
STEPHANIE LOPEZ, City Clerk

Effective Date: October 9, 2009

ORDINANCE NO. 3520-C.S.

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

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

SECTION 1. AMENDMENT OF CODE. Section 3-2.1401.1 of Article 14 of Chapter 2 of Title 3 of the Modesto Municipal Code is hereby amended to read as follows:

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

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

<u>NAME OF STREET OR PORTION AFFECTED</u>	<u>DECLARED PRIMA FACIE SPEED LIMIT</u>	<u>DATE SURVEYED</u>
BANGS AVENUE, between Dale Road and McHenry Avenue	45 miles per hour	January 2, 2007
BLUE GUM AVENUE, between Morse Road and Carpenter Road	35 miles per hour	March 19, 2003
BRIGGSMORE AVENUE, between Claus Road and Santa Fe Railroad Tracks	45 miles per hour	January 30, 2007
BRIGGSMORE AVENUE, between Coffee Road and Oakdale Road	50 miles per hour	July 1, 2009

BRIGGSMORE AVENUE, between McHenry Avenue and Coffee Road	45 miles per hour	June 24, 2009
BRIGGSMORE AVENUE, westbound and eastbound between Oakdale Road and Claus Road	50 miles her hour	December 5, 2006
BRIGGSMORE AVENUE, between Prescott Road and Tully Road	45 miles per hour	May 6, 2003
BRIGGSMORE AVENUE, between Tully Road and McHenry Avenue	45 miles per hour	June 24, 2009
BRIGHTON AVENUE, between Coffee Road and Locke Road	30 miles per hour	January 31, 2007
CALIFORNIA AVENUE, between Carpenter Road and Martin Luther King Drive	30 miles per hour	July 11, 2002
CARPENTER ROAD, between Blue Gum Avenue and Woodland Avenue	40 miles per hour	February 21, 2003
CARPENTER ROAD, between Woodland Avenue and Maze Boulevard	40 miles per hour	February 1, 2007
CARPENTER ROAD, between Maze Boulevard and Paradise Road	50 miles per hour	August 25, 2004
CARVER ROAD, between Bangs Avenue and Pelandale Avenue	35 miles per hour	December 5, 2006
CARVER ROAD, between Pelandale Avenue and Brixton Lane	30 miles per hour	December 5, 2006

CARVER ROAD, between Brixton Lane and Briggsmore Avenue	30 miles per hour	December 7, 2006
CARVER ROAD, between Briggsmore Avenue and Orangeburg Avenue	30 miles per hour	December 6, 2006
CARVER ROAD, between Orangeburg Avenue and 9th Street	30 miles per hour	December 6, 2006
CELESTE DRIVE, between Coffee Road and Oakdale Road	30 miles per hour	February 14, 2007
CLARATINA AVENUE, between Coffee Road and Oakdale Road	55 miles per hour	July 1, 2009
CLAUS ROAD, between Sylvan Avenue and Briggsmore Avenue	50 miles per hour	February 15, 2007
CLAUS ROAD, between Briggsmore Avenue and Scenic Drive	45 miles per hour	February 20, 2007
CLAUS ROAD, between Scenic Drive and Yosemite Boulevard	50 miles per hour	February 21, 2007
COFFEE ROAD, between Claratina Avenue and Sylvan Avenue	40 miles per hour	October 7, 2004
COFFEE ROAD, between Sylvan Avenue and Floyd Avenue	40 miles per hour	February 26, 2003
COFFEE ROAD, between Floyd Avenue and Briggsmore Avenue	40 miles per hour	May 7, 2003
COFFEE ROAD, between Briggsmore Avenue and Scenic Drive	40 miles per hour	February 21, 2003
COLLEGE AVENUE, between Rumble Road and Bowen Avenue	30 miles per hour	February 21, 2003

COLLEGE AVENUE, between Bowen Avenue and Princeton Avenue	35 miles per hour	February 21, 2003
COLLEGE AVENUE, between Princeton Avenue and Needham Avenue	25 miles per hour	February 21, 2003
CREEKWOOD DRIVE, between Claus Road and Yosemite Boulevard	35 miles per hour	May 7, 2003
CROWS LANDING ROAD, between 7th Street and Hatch Road	35 miles per hour	May 7, 2003
CROWS LANDING ROAD, between Hatch Road and Whitmore Avenue	35 miles per hour	May 7, 2003
DALE ROAD, northbound and southbound, between Bangs Avenue and Kiernan Avenue	40 miles per hour	October 13, 2006
DALE ROAD, between Bangs Avenue and Snyder Avenue	35 miles per hour	February 27, 2007
DALE ROAD, between Snyder Avenue and Veneman Avenue	35 miles per hour	February 28, 2007
DALE ROAD, between Veneman Avenue and Standiford Avenue	35 miles per hour	March 1, 2007
EASTRIDGE DRIVE, between Orangeburg Avenue and Scenic Drive	30 miles per hour	June 18, 2002
EL VISTA AVENUE, between Scenic Drive and Yosemite Boulevard	35 miles per hour	August 13, 2009
EMERALD AVENUE, between Maze Boulevard and California Avenue	30 miles per hour	May 28, 2002

EVERGREEN AVENUE, between Orangeburg Avenue and Carver Road	30 miles per hour	March 6, 2007
FLOYD AVENUE, between Coffee Road and Oakdale Road	30 miles per hour	March 14, 2007
FLOYD AVENUE, between McHenry Avenue and Coffee Road	30 miles per hour	March 13, 2007
FLOYD AVENUE, eastbound and westbound, between Oakdale Road and Roselle Avenue	35 miles per hour	January 9, 2007
FLOYD AVENUE, between Roselle Avenue and Claus Road	40 miles per hour	June 24, 2009
GRANGER AVENUE, between Tully Road and McHenry Avenue	35 miles per hour	May 6, 2003
GRANGER AVENUE, between McHenry Avenue and Sunrise Avenue	35 miles per hour	May 6, 2003
HATCH ROAD, between Carpenter Road and Crows Landing Road	45 miles per hour	March 21, 2007
JEFFERSON STREET, between Maze Boulevard and Paradise Road	30 miles per hour	February 19, 2004
KANSAS AVENUE, between Morse Road and Rosemore Avenue	40 miles per hour	May 6, 2003
KANSAS AVENUE, between Rosemore Avenue and Carpenter Road	40 miles per hour	May 6, 2003
KANSAS AVENUE, between Carpenter Road and Emerald Avenue	35 miles per hour	May 6, 2003

KANSAS AVENUE, between Emerald Avenue and Ninth Street	35 miles per hour	May 6, 2003
LA LOMA AVENUE, between Burney Street and Yosemite Boulevard	30 miles per hour	March 22, 2007
LAKEWOOD AVENUE, between Briggsmore Avenue and Scenic Drive	35 miles per hour	February 26, 2003
LINCOLN AVENUE, between Dry Creek and Yosemite Boulevard	35 miles per hour	March 27, 2007
MABLE AVENUE, between Coffee Road and Oakdale Road	30 miles per hour	March 28, 2007
MARTIN LUTHER KING DRIVE, between Maze Boulevard and Paradise Road	30 miles per hour	March 29, 2007
MERLE AVENUE, between Oakdale Road and Roselle Avenue	30 miles per hour	February 26, 2003
MERLE AVENUE, between Roselle Avenue and Claus Road	35 miles per hour	May 13, 2003
MILLER AVENUE, between La Loma Avenue and El Vista Avenue	35 miles per hour	May 7, 2003
MITCHELL ROAD, between Finch Road and the southerly City limits	50 miles per hour	May 7, 2003
MORRIS AVENUE, between McHenry Avenue and Coffee Road	30 miles per hour	April 30, 2007
MORSE ROAD, between Blue Gum Avenue and Kansas Avenue	40 miles per hour	April 4, 2007
MT. VERNON DRIVE, between Prescott Road and College Avenue	30 miles per hour	August 25, 2004

NEECE DRIVE, between Tuolumne Boulevard and Rouse Avenue	35 miles per hour	April 17, 2007
NEEDHAM STREET, between 9th Street and L Street	35 miles per hour	April 18, 2007
NORWEGIAN AVENUE, between McHenry Avenue and Coffee Road	35 miles per hour	May 6, 2003
OAKDALE ROAD, between 1300 feet north of Mable Avenue and Sylvan Avenue	45 miles per hour	April 19, 2007
OAKDALE ROAD, between Sylvan Avenue and Floyd Avenue	45 miles per hour	April 24, 2007
OAKDALE ROAD, between Floyd Avenue and Briggsmore Avenue	40 miles per hour	May 7, 2003
OAKDALE ROAD, between Briggsmore Avenue and Scenic Drive	40 miles per hour	May 7, 2003
ORANGEBURG AVENUE, between Briggsmore Avenue and Martin Avenue	35 miles per hour	April 25, 2007
ORANGEBURG AVENUE, between Martin Avenue and McHenry Avenue	40 miles per hour	April 26, 2007
ORANGEBURG AVENUE, between McHenry Avenue and Coffee Road	40 miles per hour	May 1, 2007
ORANGEBURG AVENUE, between Coffee Road and Oakdale Road	35 miles per hour	May 2, 2007

ORANGEBURG AVENUE, between Oakdale Road and Lakewood Avenue	35 miles per hour	May 3, 2007
ORANGEBURG AVENUE, between Lakewood Avenue and Claus Road	35 miles per hour	May 8, 2007
PARADISE ROAD, between Carpenter Road and Martin Luther King Drive	35 miles per hour	May 9, 2007
PARADISE ROAD, between Martin Luther King Drive and Washington Street	30 miles per hour	May 10, 2007
PELANDALE AVENUE, between Sisk Road and Dale Road	45 miles per hour	November 30, 2006
PELANDALE AVENUE, between Dale Road and McHenry Avenue	50 miles per hour	November 30, 2006
PRESCOTT ROAD, between Snyder Avenue and Standiford Avenue	40 miles per hour	May 15, 2007
PRESCOTT ROAD, between Standiford Avenue and Rumble Road	40 miles per hour	May 16, 2007
PRESCOTT ROAD, between Rumble Road and Briggsmore Avenue	35 miles per hour	May 17, 2007
RIVERSIDE DRIVE, between Edgebrook Drive and Yosemite Boulevard	30 miles per hour	May 22, 2007
ROSE AVENUE, between Floyd Avenue and Briggsmore Avenue	30 miles per hour	May 24, 2007

ROSE AVENUE, between Briggsmore Avenue and Scenic Drive	30 miles per hour	May 30, 2007
ROSEBURG AVENUE, between Carver Road and Tully Road	30 miles per hour	June 13, 2002
ROSEBURG AVENUE, between Tully Road and McHenry Avenue	30 miles per hour	May 24, 2002
ROSEBURG AVENUE, between McHenry Avenue and Sunrise Avenue	30 miles per hour	June 13, 2002
ROSELLE AVENUE, between Sylvan Avenue and Floyd Avenue	40 miles per hour	February 26, 2003
ROSELLE AVENUE, between Floyd Avenue and Briggsmore Avenue	45 miles per hour	November 4, 2000
ROSEMORE AVENUE, between Blue Gum Avenue and Kansas Avenue	35 miles per hour	April 18, 2007
ROUSE AVENUE, between Colorado Avenue and Neece Drive	30 miles per hour	June 13, 2002
RUMBLE ROAD, between Sisk Road and Conant Avenue	30 miles per hour	May 17, 2002
RUMBLE ROAD, between Conant Avenue and Tully Road	30 miles per hour	May 17, 2002
RUMBLE ROAD, between Tully Road and McHenry Avenue	30 miles per hour	May 17, 2002
RUMBLE ROAD, between McHenry Avenue and Coffee Road	30 miles per hour	May 17, 2002

SANTA CRUZ AVENUE, between Yosemite Boulevard and Legion Park Drive	30 miles per hour	November 4, 2000
SCENIC DRIVE, between Burney Street and Coffee Road	35 miles per hour	July 8, 2009
SCENIC DRIVE, between Coffee Road and Oakdale Road	40 miles per hour	July 8, 2009
SCENIC DRIVE, between Oakdale Road and Lakewood Avenue	40 miles per hour	June 17, 2002
SCENIC DRIVE, between Lakewood Avenue and Lillian Drive	40 miles per hour	July 8, 2009
SCENIC DRIVE, between Lillian Drive and Claus Road	40 miles per hour	July 8, 2009
SIERRA DRIVE, between G Street and 7th Street	25 miles per hour	January 23, 2004
SISK ROAD, between Pelandale Avenue and Standiford Avenue	40 miles per hour	November 28, 2006
SISK ROAD, between Standiford Avenue and Briggsmore Avenue	40 miles per hour	November 29, 2006
SNYDER AVENUE, between Dale Road and Prescott Road	30 miles per hour	May 16, 2002
SNYDER AVENUE, between Prescott Road and Tully Road	30 miles per hour	May 16, 2002
STANDIFORD AVENUE, between Sisk Road and Prescott Road	45 miles per hour	May 13, 2003
STANDIFORD AVENUE, between Prescott Road and Tully Road	40 miles per hour	August 29, 2000

STANDIFORD AVENUE, between Tully Road and McHenry Avenue	40 miles per hour	May 7, 2003
SUNRISE AVENUE, between Floyd Avenue and Lucern Avenue	30 miles per hour	May 24, 2002
SUTTER AVENUE, between Paradise Road and Robertson Road	30 miles per hour	May 7, 2003
SYLVAN AVENUE, between McHenry Avenue and Coffee Road	40 miles per hour	May 7, 2003
SYLVAN AVENUE, between Coffee Road and Oakdale Road	40 miles per hour	February 7, 2001
SYLVAN AVENUE, between Oakdale Road and Roselle Avenue	45 miles per hour	June 24, 2009
SYLVAN AVENUE, between Roselle Avenue and Claus Road	45 miles per hour	February 27, 2003
TENAYA DRIVE, between Empire Avenue and the easterly city limit on Tenaya Drive	30 miles per hour	June 18, 2002
TULLY ROAD, between Bangs Avenue and Standiford Avenue	45 miles per hour	May 21, 2002
TULLY ROAD, between Standiford Avenue and Briggsmore Avenue	35 miles per hour	May 21, 2002
TULLY ROAD, between Briggsmore Avenue and Coldwell Avenue	35 miles per hour	June 13, 2002
TUOLUMNE BOULEVARD, between Paradise Road and 7th Street	35 miles per hour	May 28, 2002

UNION AVENUE, between Tully Road and McHenry Avenue	30 miles per hour	August 29, 2000
VENEMAN AVENUE, between Dale Road and Regency Park Drive	30 miles per hour	July 10, 2002
VIRGINIA AVENUE, between Roseburg Avenue and Needham Street	30 miles per hour	May 24, 2002
WHITMORE AVENUE, between Ustick Road and Crows Landing Road	45 miles per hour	June 18, 2002
WHITMORE AVENUE, between Crows Landing Road and Morgan Road	40 miles per hour	June 18, 2002
WOODLAND AVENUE, between Morse Road and Carpenter Road	30 miles per hour	July 11, 2002
WOODLAND AVENUE, between Carpenter Road and 9th Street	30 miles per hour	June 13, 2002
WOODROW AVENUE, between Tully Road and McHenry Avenue	30 miles per hour	May 21, 2002
5TH STREET, between I. Street and Sierra Drive	25 miles per hour	May 28, 2002
6TH STREET, between M Street and Sierra Drive	30 miles per hour	May 28, 2002
7TH STREET BRIDGE, between B Street and River Road	30 miles per hour	August 30, 2000
9TH STREET, between Carpenter Road and Tully Road	45 miles per hour	June 13, 2002

9TH STREET, between Tully Road and L Street	35 miles per hour	May 23, 2002
9TH STREET, between D Street and Morton Boulevard	30 miles per hour	November 4, 2000

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

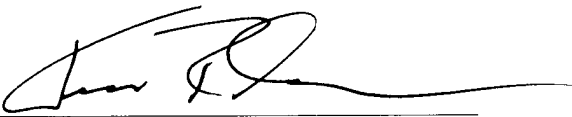
SECTION 3. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in *The Modesto Bee*, the official newspaper of the City of Modesto, setting forth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

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 6 day of October, 2009, by Councilmember Hawn, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Lopez, was upon roll call carried and ordered printed and published by the following vote:


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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: 
JIM RIDENOUR, Mayor

ATTEST:

By 
STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By 
SUSANA ALCALA WOOD, City Attorney

Ord. No. 3520-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 13th day of October, 2009, Councilmember Lopez moved its final adoption, which motion being duly seconded by Councilmember Hawn, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Hawn, Keating, Lopez, Marsh, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: O'Bryant

APPROVED:



MAYOR JIM RIDENOUR

ATTEST:


STEPHANIE LOPEZ, City Clerk

Effective Date: November 13, 2009

ORDINANCE NO. 3521-C.S.

AN ORDINANCE AMENDING SECTION 32-3-9 OF THE ZONING MAP TO REZONE FROM GENERAL COMMERCIAL ZONE, C-2, TO PLANNED DEVELOPMENT ZONE, P-D(590), PROPERTY LOCATED ON THE SOUTHWEST SIDE OF 10th STREET BETWEEN G AND H STREETS. (PAUL B. DRAPER)

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

SECTION 1. ZONING CHANGE. Section 32-3-9 of the Zoning Map is hereby amended to reclassify the following described property from General Commercial Zone, C-2, to Planned Development Zone, P-D(590):

C-2 to P-D(590)

All that portion of Block 54, City of Modesto, County of Stanislaus, State of California located in the Northeast one-quarter of Section 32, Township 3 South, Range 9 East, Mount Diablo Base and Meridian, described as follows:

All of Lots 1 through 16 in Block 54, City of Modesto, according to the Map thereof, filed in Volume 15 of Maps, Stanislaus County Records;

Also including the Southeasterly one-half of H Street, the Southwesterly one-half of 10th Street, the Northwesterly one-half of G Street, and the Northeasterly one-half of the alley in Block 54; all being immediately adjacent to the above described property.

SECTION 2. USES. The following uses shall be permitted in said P-D(590) Zone if the plan for construction conforms in principle to the approved plan, or if changes are approved by the Secretary of the Planning Commission as required by Section 10-2.1709(c) of the Modesto Municipal Code, or by the Planning Commission if any changes not conforming in principle to the approved plan are proposed, as required by Section 10-2.1709(a) or (b) of the Modesto Municipal Code:

1. General Commercial (C-2) Uses; and
2. Multi-family Dwellings, Including Residential Condominiums.

SECTION 3. ZONING MAP. Section Map 32-3-9 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 1st day of December, 2009, by Councilmember Marsh, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Keating, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Hawn, Keating, Lopez, Marsh, O'Bryant, Olsen

NOES: Councilmembers: None

ABSENT: Councilmembers: Mayor Ridenour

APPROVED: _____


JIM RIDENOUR, Mayor

ATTEST:

By _____


STEPHANIE LOPEZ, City Clerk

(SEAL)

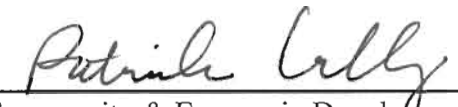
APPROVED AS TO FORM:

By _____


SUSANA ALCALA WOOD, City Attorney

APPROVED AS TO DESCRIPTION:

By _____


Community & Economic Development
Department – Planning Division

Ord. No. 3521-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 December, 2009, Councilmember Hawn moved its final adoption, which motion being duly seconded by Councilmember Olsen, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Hawn, Lopez, Marsh and Olsen

NOES: Councilmembers: None

ABSENT: Councilmembers: Geer, Muratore, and Mayor Ridenour

APPROVED: _____


MAYOR JIM RIDENOUR

ATTEST: _____


STEPHANIE LOPEZ, City Clerk

Effective Date: January 14, 2010