

*Black*

ORDINANCE NO. 3076 -C.S.

AN ORDINANCE AMENDING SECTION 19-3-9 OF THE ZONING MAP OF THE CITY OF MODESTO, RECLASSIFYING CERTAIN PROPERTY LOCATED THEREON. (JEFF STEPHENS/MST CONSTRUCTORS, INC.)

WHEREAS, a verified application for an amendment to Section 19-3-9 of the Zoning Map was filed by Jeff Stephens/MST Constructors, Inc. on October 6, 1997, to reclassify from Planned Development Zone, P-D(304), to Light Industrial Zone, M-1, property located on the east side of Carpenter Road south of Cummins Drive, and

WHEREAS, after a public hearing held on December 1, 1997, it was found and determined by the Planning Commission that rezoning of the property as requested is required by public necessity, convenience and general welfare, and

WHEREAS, by Resolution No. 97-95, adopted on December 1, 1997, the Planning Commission recommended to the Council that the application of Jeff Stephens/MST Constructors, Inc. to amend Section 19-3-9 of the Zoning Map to reclassify the hereinafter described property from Planned Development Zone, P-D(304), to Light Industrial Zone, M-1, be approved,

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

SECTION 1. After a public hearing held on January 6, 1998, in the Council Chambers, City Hall, 801 11th Street, Modesto, California, this Council finds and determines that the requested rezoning is in accordance with the general plan and will serve the

public health, safety and general welfare and provide the economic and social advantages resulting from orderly, planned use of land resource for the following reasons:

1. That the requested M-1, Light Industrial Zone is in an area designated by the General Plan for (ICP) Industrial/Commercial/Public Uses.
2. That rezoning of the property to M-1, Light Industrial zone will allow development of a use consonant with the surrounding industrial properties.

SECTION 2. ZONING CHANGE. Section 19-3-9 of the Zoning Map is hereby amended to reclassify the following described property from Planned Development Zone, P-D(304), to Light Industrial Zone, M-1:

P-D(304) to M-1

All that certain real property situate in a portion of Sections 19, Township 3 South, Range 9 East, Mount Diablo Base and Meridian, in the County of Stanislaus, State of California, described as follows,

All of Lot C in Block 6230, as shown on that certain map of Campus Commons 2, filed in the office of the Recorder of Stanislaus County, California, December 22, 1981, in Book 29 of Maps, Page 121;

Including also the easterly 50 feet of Carpenter Road.

Excepting therefrom the following described property: commencing at the Northwest corner of said Lot C; thence North 89°34'54" East along the north line of said Lot C, a distance of 101.09 feet to the Point of Beginning; thence continuing North 89°34'54" East along the north line of said Lot C, a distance of 304.00 feet; thence South 00°27'46" East, a distance of 151.12 feet to the easterly prolongation of the most southerly line of Lot 2 as shown on that certain map of College West Park, filed in the office of the Recorder of Stanislaus County, California, September 2, 1992; thence South 89°34'54" West along said westerly prolongation, the most southerly line of said Lot 2 and its easterly prolongation, a distance of 241.00 feet; thence North 00°27'46" West, a distance of 123.62 feet; thence South 89°34'54" West, a distance of 63.00 feet; thence North 00°27'46" West, a distance of 27.50 feet to the Point of Beginning.

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

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

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

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 6th day of January, 1998, by Councilmember Serpa, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Friedman, was upon roll call carried and ordered printed and published by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: Dobbs

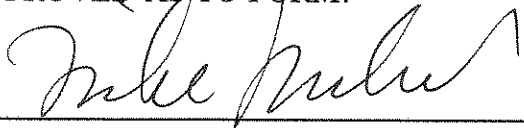
APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:

By   
JEAN ADAMS, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

APPROVED AS TO DESCRIPTION:

By   
Community Development Department  
Development Services

City of Modesto  
Initial Study

EA NO. 97-138

I. PURPOSE

The Master Environmental Impact Report for the Modesto Urban Area General Plan allows for limited environmental review of this proposal to rezone from R-1 to P-D, Planned Development Zone. The Final Master EIR (SCH #92052017) was certified by the Modesto City Council on August 15, 1995.

This Initial Study in accordance with Section 21157.1(b) of the Public Resources Code, analyzes whether this project may cause any significant effect on the environment that was not examined in the Final Master EIR (MEIR) for the General Plan. This Initial Study also provides documentation that the project is considered in the Master EIR as being within scope of the General Plan.

II. PROJECT DESCRIPTION

- A. Project title:  
Application of Jeff Stephens to Rezone a portion of P-D(304) to M-1, Light Industrial Zone, Property Located on the East side of Carpenter Road South of Cummins Drive.
- B. Lead agency name and address:  
City of Modesto, P.O. Box 642, Modesto, CA 95353
- C. Contact person, address and phone number:  
Jeff Stephens  
MST Constructors, Inc.  
595 Knowell Place  
Costa Mesa, CA. 92627  
phone (714) 458-3580
- D. Project Location:  
property located on east side of Carpenter Road south of Cummins Drive
- E. Project sponsor:  
Michael P. Zagaris  
1230 East Orangeburg Avenue  
Mod. , CA. 95350
- F. General Plan Designation:  
Industrial/Commercial/Public Uses (ICP)
- G. Zoning:  
Existing Portion of P-D(304), Industrial/Commercial/Office uses

H. Description of Proposed Project:

This is an application to rezone the southern 3.53 acres of the Phase II portion of P-D(304) to M-1, Light Industrial Zone. This rezoning is not subject to review of a plot plan or conditions of approval. However, the applicant has shared that proposed development of this area will be for a Public Storage facility. A storage facility is a permitted use in this zone with a building permit. Subject to building entitlements, the developer will be required to dedicate for the widening of Carpenter Road, provide public improvements as may be required, and provide development in accordance with the M-1 Zone.

I. Surrounding land uses:

North immediately north is developed portion of P-D(304)) which allows industrial/office/commercial uses

East County M, industrial Zone uses

South M-1, Light Industrial Zone uses

West P-D(148), allowing Industrial, commercial, and office uses

J. Other public agencies whose approval is required:  
None

III. ANALYSIS OF CONFORMANCE WITH THE MASTER EIR

There are eighteen subject areas in the Master EIR for the General Plan. Following is an analysis of how this project conforms with the analysis contained within the Master EIR.

A. Traffic and Circulation

Development of the property proposed to be rezoned to M-1 will generate an increase of traffic in the area. However, development of the property for a commercial or industrial use is consistent with the Traffic and Circulation needs section of the MEIR. The Existing Conditions, Impacts Analysis and Mitigation Measures listed in the MEIR for Traffic and Circulation Needs (pages IV-1-1 through IV-1-37) are, still valid.

B. Degradation of Air Quality

This proposed rezoning allowing development of industrial/commercial uses is within the urban developed area of the City of Modesto. These uses will not cause additional impacts to air quality beyond those described in the Degradation of Air Quality section of the MEIR. The Existing Conditions, Impacts Analysis and Mitigation Measures listed in the MEIR for Degradation of Air Quality (pages IV-2-1 through IV-2-25) are, still valid.

- C. Generation of Noise**  
This proposed rezoning for industrial/commercial development is adjacent to and surrounded by urban development. These adjacent uses consist of a mixture of industrial and commercial uses. Because of building walls and setbacks, the Day-Night Average Sound Level (Ldn) for this industrial area can be ensured. No significant noise impacts on this potential industrial/commercial development or the adjacent industrial neighborhood will be associated with the potential industrial/commercial uses. It will not create additional significant effects and the Mitigation Measures listed in the MEIR for Generation of Noise (pages IV-3-1 through IV-3-33) are, therefore still valid.
- D. Loss of Productive Agricultural Land**  
The proposed rezoning is located on land noted as Urban and Built-Up Land as shown on Figure 4-1 in the Loss of Productive Agricultural Land section of the MEIR. This property is currently zoned P-D allowing a mixture of commercial and industrial uses. The proposed M-1 zone will also potentially allow a mix of commercial and industrial uses. This property is also within an Industrial/Commercial/Public Use area (ICP) area as designated by the Modesto General Plan. Therefore, The Existing Conditions, Impacts Analysis, and Mitigation Measures listed in the MEIR for Loss of Productive Agricultural Land (pages IV-4-1 through IV-4-16) are, therefore still valid.
- E. Increased Demand for Water Supplies**  
The proposed rezoning will require no additional water beyond that identified in the Increased Demand for Water Supplies section of the MEIR. The Existing Conditions, Impacts Analysis and the Mitigation Measures listed in the MEIR for Increased Demand for Water Supplies (pages IV-5-1 through IV-5-11 are, therefore, still valid.
- F. Increased Demand for Sanitary Sewer Services**  
The proposed rezoning will create no additional demand for sewer capacity not identified in the MEIR. The Existing Conditions, Impacts Analysis and the Mitigation Measures listed in the MEIR for Increased Demand for Sanitary Sewer Services (pages IV-6-1 through IV-6-9) are therefore still valid.
- G. Loss of Sensitive Wildlife and Plant Habitat**  
The proposed rezoning is proposed in a built-up urban area and will not impact sensitive wildlife or any plant habitat above and beyond that which was identified in the Loss of Sensitive Wildlife and Plant Habitat section of the MEIR. The Existing Conditions, Impact Analysis, and the Mitigation Measures listed in this section of the MEIR (pages IV-7-1 through IV-7-30) are, therefore, still valid.
- H. Disturbance of Archaeological and Historic Sites**  
This proposed rezoning will not disturb any archaeological or historic sites that have been identified in the Disturbance of Archaeological or Historical Sites section of the MEIR. Figure 8-1 indicates that it is also outside the Archaeological Resource Study Area, which shows areas that may require additional site specific investigations. The Existing Conditions, Impacts Analysis and the Mitigation

Measures listed in the MEIR for Disturbance of Archaeological or Historical Sites (pages IV-8-1 through IV-8-21) are, therefore, still valid.

**L. Drainage, Flooding and Water Quality**

The proposed rezoning will not present any new impacts that have not already been addressed in the MEIR. The mitigation measures will not reduce the impacts of increased runoff within the baseline developed area to a less than significant level. The Existing Conditions, Impacts Analysis and the Mitigation Measures listed in the MEIR for the Drainage, Flooding, and Water Quality (pages IV-9-1 through IV- 9-23) are, therefore still valid.

**J. Increased Demand for Storm Drainage**

The proposed rezoning will not present any new impacts that have not already been addressed in the MEIR. The mitigation measures will not reduce the impacts of increased runoff within the baseline developed area to a less than significant level. The Existing Conditions, Impacts Analysis and the Mitigation Measures listed in the MEIR for the Increased Demand for Storm Drainage(pages IV-10-1 through IV- 10-8) are, therefore still valid.

**K. Increased Demand for Parks and Open Space**

This proposed rezoning will not have an effect upon the parks or open space needs in the area. The Existing Conditions, Impacts Analysis and the Mitigation Measures listed in the MEIR for the Increased Demand for Parks and Open Space (pages IV-11-1 through IV- 11-11) are, therefore still valid.

**L. Increased Demand for Schools**

This proposed rezoning will not impact the Modesto School system, as this proposal will add no residential units. However, the MEIR has determined that the mitigation measures for this impact adequately mitigate the impacts to a "less than significant level." Thus Existing Conditions, Impacts Analysis and the Mitigation Measures listed in the MEIR for the Increased Demand for Schools (pages IV-12-1 through IV- 12-11) are, therefore still valid.

**M. Increased Demand for Police Services**

This proposed rezoning will have a less than significant impact upon the need for additional police services to this area. The Existing Conditions, Impacts Analysis and the Mitigation Measures listed in the MEIR for the Increased Demand for Police Services (pages IV-13-1 through IV- 13-8) are, therefore still valid.

**N. Increased Demand for Fire Services**

This proposed rezoning will have a less than significant impact upon the need for additional fire services to this area. Fire Station Number 4 is located approximately 1200 feet a away. The Existing Conditions, Impacts Analysis and the Mitigation Measures listed in the MEIR for the Increased Demand for Fire Services (pages IV-14-1 through IV- 14-9) are, therefore still valid.

- O. Generation of Solid Waste**  
This proposed rezoning will not cause the generation of solid waste beyond that which is identified in the MEIR. The Existing Conditions, Impacts Analysis and the Mitigation Measures listed in the MEIR for the Generation of Solid Waste (pages IV-15-1 through IV- 15-10) are, therefore still valid.
- P. Generation of Hazardous Materials**  
This rezoning and commercial/industrial development will not result in additional hazardous materials generated beyond those identified in the MEIR. The Existing Conditions, Impacts Analysis and the Mitigation Measures listed in the MEIR for the Generation of Hazardous Materials (pages IV-16-1 through IV-16-14) are, therefore still valid.
- Q. Landslides and Seismic Activity**  
This rezoning and commercial/industrial use will result in no additional potential for exposing people to landslides or earthquake related hazards such as liquefaction beyond those identified in the MEIR. The Existing Conditions, Impacts Analysis and the Mitigation Measures listed in the MEIR for the Landslides and Seismic Activity(pages IV-17-1 through IV- 1-11) are, therefore still valid.
- R. Energy**  
This rezoning and resulting development will result in less than significant additional demands for energy, as identified in the MEIR. The Existing Conditions, Impacts Analysis and the Mitigation Measures listed in the MEIR for Energy (pages IV-18-1 through IV- 18-6) are, therefore still valid. Mitigation measures identified for air quality and traffic would also help to mitigate energy impacts.

**IV CONCLUSIONS/DETERMINATIONS OF FINDINGS**

- A. The proposed rezoning of a portion of P-D(304) to M-1, Light industrial Zone is within the scope of the General Plan covered by a Master Environmental Impact Report (SCH No. 92052017).
- B. The proposed rezoning and resulting development will have no new additional significant effect on the environment not identified in the Master EIR, and no new or additional mitigation measures are required.
- C. No new environmental document nor findings pursuant to Section 21081 shall be required by the California Environmental Quality Act (Section 21157.1).
- D. There are not specific features unique to this rezoning that require project specific mitigation measures. All certified mitigation measures identified in the MEIR will apply city wide, including this project as appropriate.
- E. This initial study provides substantial evidence to support findings "A, B, C, and D" above.

Signature:  Date: 11/13/99

**ORDINANCE AMENDING SECTION MAP**

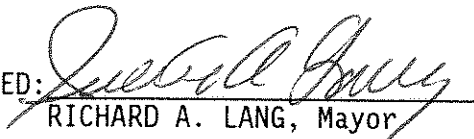
- 2 Attorney
- 1 Attorney - Shanna Willis
- 1 Applicant
- 1 CDD - Becky Jenkins
- 1 PW&T Engineering Services
- 5 Posting
- 1 Parking & Traffic
- 1 Code Service
- 1 County Assessor
- 1 CDD - Construction Administration
- 1 CDD - Building Inspection
- 1 CDD - NPU - Virginia M.
- 17

Ord. No. 3076-C.S.

FINAL ADOPTION CLAUSE

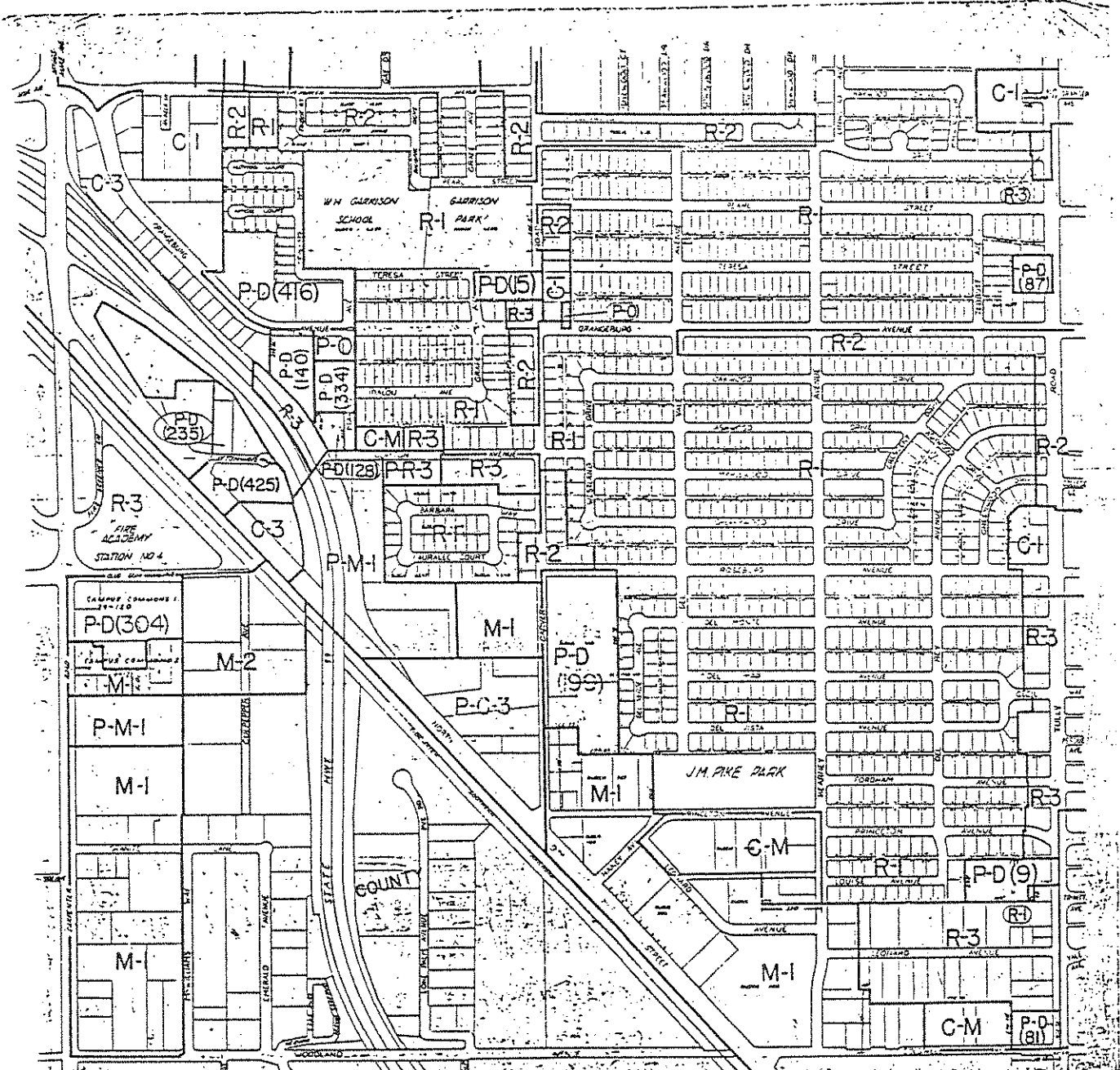
The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 20th day of January, 1998, Councilmember Friedman, moved its final adoption, which motion being duly seconded by Councilmember Serpa, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Conrad, Fisher, Friedman, Serpa, Smith, Mayor  
Lang  
NOES: Councilmembers: None  
ABSENT: Councilmembers: Dobbs

APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:   
JEAN ADAMS, City Clerk

Effective Date: February 19, 1998



ZONING MAP OF THE CITY OF MODESTO

19-3-9

Clerk

ORDINANCE NO. 3077 -C.S.

AN ORDINANCE ADDING ARTICLE 19 TO CHAPTER 7 OF TITLE IV OF THE MODESTO MUNICIPAL CODE RELATING TO ABANDONED, WRECKED, DISMANTLED OR INOPERATIVE VEHICLES, AND PARTS THEREOF.

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

SECTION 1. AMENDMENT OF CODE. Article 19 is hereby added to

Chapter 7 of Title IV of the Modesto Municipal Code to read as follows:

**ARTICLE 19. ABANDONMENT OF MOTOR VEHICLES**

**SEC. 4-7.1901. FINDINGS.**

In addition to and in accordance with the determination made and the authority granted by the State of California under Section 22660 of the Vehicle Code to remove abandoned, wrecked, dismantled or inoperative vehicles, or parts thereof, as public nuisances, the City Council makes the following findings and declarations:

The accumulation and storage of abandoned, wrecked, dismantled, or inoperative vehicles, or parts thereof, on private or public property, not including highways, is found to create a deteriorating environmental condition that if ignored and allowed to grow will damage and eventually ruin the security, health and economic vitality of a business district or a neighborhood. Such a condition tends to reduce the value of private property, to promote deterioration, to invite plundering, to create fire hazards, to constitute an attractive nuisance creating a hazard to the health and safety of minors, to create a harborage for rodents and insects and to be injurious to the health, safety and general welfare. Therefore, the presence of an abandoned, wrecked, dismantled or inoperative vehicle or parts thereof, on private or public property, not including highways, except as expressly hereinafter permitted, is declared to constitute a public nuisance which may be abated as such in accordance with the provisions of this article.

**SEC. 4-7.1902. DEFINITIONS.**

(a) Abandoned vehicle includes the following:

- (1) **Public Nuisance Vehicle:** Any vehicle, or parts thereof, that is abandoned, wrecked, dismantled, partially dismantled, or inoperative, that is left on public or private property, not including highways, and that creates a deteriorating environmental condition, reduces the value of private property, promotes deterioration of a business district or neighborhood, invites plundering, creates fire hazards, constitutes an attractive nuisance endangering the health and safety of minors, harbors rodents and insects or jeopardizes health, safety and general welfare.
  - (2) **Abandoned vehicle:** A vehicle is abandoned if it is left on public property, not including highways, or on private property in such inoperable and neglected condition that the owner's intention to relinquish his right to possession or all further rights or interests in it may be reasonably concluded.
- (b) **Dismantled vehicle:** Any vehicle that is partially or wholly disassembled, or in pieces, and is disabled by such condition.
  - (c) **Hearing officer:** The City Manager or his/her designee.
  - (d) **Highway:** A way or place of whatever nature, publicly maintained and open to the use of the public for purposes of vehicular travel. Highway includes street.
  - (e) **Inoperative vehicle:** Any vehicle that is:
    - (1) Mechanically incapable of being driven because it is missing any part essential for movement or such essential parts are broken or defective; or
    - (2) Prohibited from being operated on a public street or highway pursuant to Vehicle Code Sections 4000, 5202, 24002, or 40001, concerning license plates, registration, equipment, safety and related matters except where the owner has filed a Certificate of Nonoperation as required by Vehicle Code Section 4604.
  - (f) **Owner of the land:** The owner of the land on which the vehicle, or parts thereof, is located, as shown on the last equalized assessment roll.
  - (g) **Owner of the vehicle:** The last registered owner and legal owner of record.

- (h) **Public property:** Does not include "highway".
- (i) **Vehicle:** A device by which any person or property may be propelled, moved, or drawn upon a highway, except a device moved by human power or used exclusively upon stationary rails or tracks.
- (j) **Wrecked vehicle:** A wrecked vehicle is one which is destroyed, disabled, seriously damaged, crashed or ruined to such an extent that it cannot operate under its own power upon the highway without significant repairs. A vehicle which has been wrecked in a traffic accident, and which has been removed from the roadway to a storage facility, but which has not been claimed by its owner, will not be considered an abandoned vehicle.

**SEC. 4-7.1903. EXCLUSIONS.**

This article shall not apply to:

- (a) A vehicle, or parts thereof, which is completely enclosed within a building in a lawful manner where it is not visible from the street or other public or private property; or
- (b) Any vehicle, or parts thereof, located behind a solid fence five (5) feet in height and not visible from the highway; or
- (c) A vehicle, or parts thereof, which is placed totally within a carport and completely covered by a tarpaulin or similar covering; or
- (d) A vehicle, or parts thereof, which is stored or parked in a lawful manner on private property in connection with the business of a licensed dismantler, licensed vehicle dealer, a junk dealer, or when such storage or parking is necessary to the operation of a lawfully conducted business or commercial enterprise. Nothing in this section shall authorize the maintenance of a public or private nuisance as defined under provisions of law other than Chapter 10 (commencing with Section 22650) of Division 11 of the Vehicle Code and this article.

**SEC. 4-7.1904. ADMINISTRATION AND ENFORCEMENT.**

Except as otherwise provided herein, or by law, the provisions of this article shall be administered and enforced by the Modesto Police Chief. In the enforcement of this article, the Police Chief, and his/her designated employees, may enter upon private or public property to examine a vehicle, or parts thereof,

or obtain information as to the identity of a vehicle and to remove or cause the removal of a vehicle, or parts thereof, declared to be a nuisance pursuant to this article as authorized by California Vehicle Code Sections 2263 and 2269.

**SEC. 4-7.1905. RIGHT OF ENTRY OF PERSON UNDER CONTRACT WITH CITY.**

When the City Council has contracted with or granted a franchise to any person or persons, such person or persons shall be authorized to enter upon private property or public property to remove or cause the removal of a vehicle, or parts thereof, declared to be a nuisance pursuant to this article.

**SEC. 4-7.1906. REMOVAL; ADMINISTRATIVE COST ASSESSMENT.**

The City Council shall, from time to time, determine and fix an amount to be assessed as administrative costs (excluding the actual cost of removal of any vehicle or parts thereof) under this article.

**SEC. 4-7.1907. ABATEMENT AUTHORITY.**

The Police Chief shall have the authority to cause the abatement and removal of an abandoned, wrecked, dismantled, or inoperative vehicle, or parts thereof, on private property or public property within the City in accordance with the procedure set forth in this article.

**SEC. 4-7.1908. PROCEDURE.**

- (a) Except as otherwise provided by law or this article, not less than a ten (10) day notice of intention to abate and remove the vehicle, or parts thereof, as a public nuisance shall be mailed by registered or certified mail to the owner of the land and to the owner of the vehicle, unless the property owner and the owner of the vehicle have signed releases authorizing removal and waiving further interest in the vehicle, or parts thereof, except as provided in Vehicle Code Section 22661(c)
- (b) The notices of intention to abate and remove a vehicle, or parts thereof, shall be in substantially the following forms:

NOTICE OF INTENTION TO ABATE AND REMOVE  
AN ABANDONED, WRECKED, DISMANTLED, OR  
INOPERATIVE VEHICLE, OR PARTS THEREOF, AS  
A PUBLIC NUISANCE

(Name and address of owner of the land)

An owner shown on the last equalized assessment roll of the land located at (address), you are hereby notified that the undersigned pursuant to Section 4-7.1907 of the Modesto Municipal Code has determined that there exists upon said land an (or parts of an) abandoned, wrecked, dismantled or inoperative vehicle registered to \_\_\_\_\_ license number \_\_\_\_\_, which constitutes a public nuisance.

You are hereby notified to abate said nuisance by the removal of said vehicle (or said parts of a vehicle) within ten (10) days from the date of mailing of this notice, and upon your failure to do so, the same will be abated and removed by the City of Modesto and the costs thereof, together with administrative costs, assessed to you as owner of the land on which said vehicle (or said parts of a vehicle) is located.

As owner of the land on which said vehicle (or said parts of a vehicle) is located, you are hereby notified that you may, within ten (10) days after the mailing of this notice of intention, request a public hearing and if such a request is not received by the Police Chief of the City of Modesto within such ten (10) day period, the Police Chief shall have the authority to abate and remove said vehicle (or said parts of a vehicle) as a public nuisance and assess the costs as aforesaid without a public hearing. You may submit a sworn written statement within such ten (10) day period denying responsibility for the presence of said vehicle (or said parts of a vehicle) on said land, with your reasons for denial, and such statement shall be constituted as a request for hearing at which your presence is not required. You may appear in person at any hearing requested by you or the owner of the vehicle or, in lieu thereof, may present a sworn written statement as aforesaid in time for consideration at such hearing.

Notice mailed \_\_\_\_\_ s/ \_\_\_\_\_  
(date) Police Chief

NOTICE OF INTENTION TO ABATE AND REMOVE  
AN ABANDONED, WRECKED, DISMANTLED, OR  
INOPERATIVE VEHICLE, OR PARTS THEREOF, AS  
A PUBLIC NUISANCE

(Name and address of last registered and/or legal owner of  
record of vehicle-notice should be given to both if  
different)

As last registered (and/or legal) owner of record of  
(description of vehicle - make, model, license, etc.), you  
are hereby notified that the undersigned pursuant to  
Section 4-7.1907 of the Modesto Municipal Code has  
determined that said vehicle (or parts of a vehicle) exists  
as an abandoned, wrecked, dismantled or inoperative  
vehicle at (describe location on public or private property)  
and constitutes a public nuisance.

You are hereby notified to abate said nuisance by the  
removal of said vehicle (or said parts of a vehicle) within  
ten (10) days from the date of mailing of this notice.

As registered (and/or legal) owner of record of said  
vehicle (or said parts of a vehicle), you are hereby notified  
that you may, within ten (10) days after the mailing of this  
notice of intention, request a public hearing if such a  
request is not received by the Police Chief of the City of  
Modesto within such ten (10) day period, the Police Chief  
shall have the authority to abate and remove said vehicle  
(or said parts of a vehicle) without a hearing.

Notice mailed \_\_\_\_\_ s/ \_\_\_\_\_  
(date) Police Chief

**SEC. 4-7.1909. REQUEST FOR HEARING.**

- (a) Upon request by the owner of the land or the owner of the vehicle,  
received by the Police Chief within ten (10) days after the mailing of the  
notice of intention to abate and remove, a public hearing shall be held by  
the City Manager or his/her designee on the question of abatement and  
removal of the vehicle, or parts thereof, as an abandoned, wrecked,  
dismantled or inoperative vehicle. The hearing officer shall determine  
the administrative costs and costs of removal of the vehicle, or parts

thereof, to be assessed against the property on which it is located. If such a request for hearing is not received within the ten (10) days after mailing of the notice of intention to abate and remove, the City shall have the authority to abate and remove the vehicle, or parts thereof, as a public nuisance without holding a public hearing.

- (b) If the owner of the land submits a sworn written statement denying responsibility for the presence of the vehicle on the owner's land within such ten (10) day period, the statement shall be construed as a request for a hearing which does not require the owner's presence.
- (c) Notice of the hearing shall be mailed, by certified mail, return receipt requested, at least ten (10) days before the hearing to the owner of the land and to the owner of the vehicle, unless the vehicle is in such condition that identification numbers are not available to determine ownership.

#### **SEC. 4-7.1910. DETERMINATIONS AT HEARING.**

- (a) All hearings under this article shall be held before the City Manager or his/her designee who shall hear all facts and testimony the hearing officer deems pertinent. The facts and testimony may include testimony on the condition of the vehicle, or parts thereof, and the circumstances concerning its location on private property or public property. The hearing officer shall not be limited by the technical rules of evidence. The owner of the land may appear in person at the hearing and deny responsibility for the presence of the vehicle on the land. The owner of the land shall present reasons upon which he/she basis his/her denial of responsibility.
- (b) The hearing officer may impose such conditions and take such other action as the hearing officer deems appropriate under the circumstances to carry out the purpose of this article. The hearing officer may delay the time for removal of the vehicle, or parts thereof, if, in the hearing officer's opinion, the circumstances justify it.
- (c) At the conclusion of the public hearing the hearing officer may find that a vehicle, or parts thereof, in existence on public or private property, has been abandoned, wrecked, dismantled, or is inoperative, and order the same removed from the property as a public nuisance and disposed of as hereinafter provided. The hearing officer shall determine the administrative costs and the cost of removal to be charged against the owner of the land. The order requiring removal shall include a

description of the vehicle, or parts thereof, and the correct identification number and license number of the vehicle, if available.

- (d) If it is determined at the hearing that the vehicle was placed on the land without the consent of the owner of the land and that the owner has not subsequently acquiesced in its presence, the hearing officer shall not assess the costs of administration or removal of the vehicle against the property upon which the vehicle is located or otherwise attempt to collect such costs from such owner of the land.
- (e) If the owner of the land submits a sworn written statement denying responsibility for the presence of the vehicle on the owner's land but does not appear, or if an interested party makes a written presentation to the hearing officer but does not appear, he shall be notified in writing of the decision.

**SEC. 4-7.1911. ORDER OF HEARING OFFICER FINAL.**

The order of the hearing officer shall be final. There shall be no right of appeal to the City Council of the City of Modesto. The order of the hearing officer is reviewable by filing a petition for writ of mandate in the Superior Court pursuant to California Code of Civil Procedure Section 1094.5.

**SEC. 4-7.1912. VEHICLE REMOVAL AND DISPOSAL.**

Five (5) days after adoption of the order declaring the vehicle, or parts thereof, to be a public nuisance, or five (5) days from the date of mailing of notice of the decision if such notice is required by Section 4-7.1910(e), and upon the issuance of an inspection and abatement warrant by the Stanislaus County Municipal Court, the vehicle, or parts thereof, may be removed and stored or disposed of in accordance with the provisions of Vehicle Code Sections 22669, 22851.2, 22851.3 and the provisions of this article. After a vehicle has been removed, it shall not thereafter be constructed or made operable, unless it is a vehicle which qualifies for either horseless carriage license plates or historical vehicle license plates pursuant to Section 5004 of the California Vehicle Code, in which case the vehicle may be reconstructed or made operable.

**SEC. 4-7.1913. NOTICE TO DEPARTMENT OF MOTOR VEHICLES.**

Within five (5) days after the date of removal of the vehicle, or parts thereof, notice shall be given to the Department of Motor Vehicles identifying the vehicle or parts thereof removed. At the same time, there shall be transmitted

to the Department of Motor Vehicles any evidence of registration available, including registration certificates, certificates of title and license plates.

**SEC. 4-7.1914. ASSESSMENT.**

If the administrative costs and the cost of removal which are charged against the owner of a parcel of land pursuant to Section 4-7.1910 are not paid within thirty (30) days of the date of the order, or the final disposition of an appeal therefrom, such costs shall be assessed against the parcel of land pursuant to Section 38773.5 of the Government Code and shall be transmitted to the tax collector for collection. The assessment shall have the same priority as other taxes.

**SEC. 4-7.1915. PARKING, STORING OR LEAVING OF ABANDONED, WRECKED, DISMANTLED OR INOPERATIVE VEHICLES IS UNLAWFUL.**

It is unlawful and an infraction for any person to abandon, keep, park, store, maintain, or leave or permit the abandonment, parking, storing or leaving of any licensed or unlicensed vehicle, or parts thereof, which is in an abandoned, wrecked, dismantled or inoperative condition upon any private property or public property, not including highways, within the City for a period in excess of thirty (30) days unless such vehicle or parts thereof is completely enclosed within a building in a lawful manner where it is not plainly visible from the street or other public or private property in connection with the business of a licensed dismantler, licensed vehicle dealer, a junk dealer, or when such storage or parking is necessary to the operation of a lawfully conducted business or commercial enterprise.

**SEC. 4-7.1916. CUMULATIVE REMEDIES.**

This article is not the exclusive regulation of abandoned, wrecked, dismantled or inoperative vehicles within the City of Modesto. It shall supplement and be an addition to other regulatory codes, statutes, and ordinances as enacted by the City of Modesto, the state, or any other legal entity or agency having jurisdiction.

**SEC. 4-7.1917. SEVERABILITY.**

If any section, subsection, sentence, clause, phrase or portion of this article 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 each 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.

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, 1998, by Councilmember Serpa, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Friedman, was upon roll call carried and ordered printed and published by the following vote:

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

NOES: Councilmembers: Conrad, Fisher

ABSENT: Councilmembers: None

APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:

By   
JEAN ADAMS, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

Ord. No. 3077-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, 1998, Councilmember Friedman moved its final adoption, which motion being duly seconded by Councilmember Lang, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Conrad, Dobbs, Friedman, Serpa, Smith, Mayor Lang

NOES: Councilmembers: Fisher

ABSENT: Councilmembers: None

APPROVED:

  
MAYOR RICHARD A. LANG

ATTEST:

  
JEAN ADAMS, City Clerk

Effective Date: February 26, 1998

Clerk  
5

ORDINANCE NO. 3078 -C.S.

AN ORDINANCE AMENDING SECTION 21-3-9 OF THE ZONING MAP TO REZONE FROM LOW DENSITY RESIDENTIAL ZONE, R-1, TO PLANNED DEVELOPMENT ZONE, P-D(526), PROPERTY LOCATED ON THE NORTHEAST CORNER OF EAST ORANGEBURG AND MELROSE AVENUES (TIM FISHER/ARCHITECTURE PLUS, INC.)

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

SECTION 1. ZONING CHANGE. Section 21-3-9 of the Zoning Map is hereby amended to reclassify the following described property from Low Density Residential Zone, R-1, to Planned Development Zone, P-D(526):

R-1 to P-D(526)

All that certain real property situate in a portion of the Northeast Quarter of the Northwest Quarter of Section 21, Township 3 South, Range 9 East, Mount Diablo Base and Meridian, in the City of Modesto, County of Stanislaus, State of California, described as follows:

Beginning at the Southwest corner of the Southeast Quarter of the Northeast Quarter of the Northwest Quarter of said Section 21 and also being on the center line of 80.00-foot-wide East Orangeburg Avenue; thence along the center line of East Orangeburg Avenue West 5.00 feet to the intersection with the center line of 50.00-foot-wide Melrose Avenue; thence North along the center line of Melrose Avenue 217.00 feet; thence leaving said center line and along a line bearing East for a distance of 125.00 feet; thence along a line bearing South for a distance of 217.00 feet to the center line of aforementioned East Orangeburg Avenue; thence West along the center line of East Orangeburg Avenue a distance of 120.00 feet to the point of beginning.

SECTION 2. USES. The following uses shall be permitted in said P-D(526) Zone if the plan for construction conforms in principle to the approved plan, or if changes are approved by the Secretary of the Planning Commission as required by Section 10-2.1709(c) of the Modesto Municipal Code, or by the Planning Commission if any changes not conforming

in principle to the approved plan are proposed, as required by Section 10-2.1709(a) or (b) of the Modesto Municipal Code:

1. Professional/medical office complex.
2. Off-street parking as shown on approved plan.

SECTION 3. ZONING MAP. Section Map 21-3-9 of the Zoning Map of the City of Modesto is amended to appear as set forth on the map attached hereto, which is hereby made a part of this ordinance by reference.

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

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

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 27th day of January, 1998, by Councilmember Friedman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Dobbs, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Conrad, Dobbs, Friedman, Serpa, Smith, Mayor Lang

NOES: Councilmembers: None

ABSENT: Councilmembers: Fisher


APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:

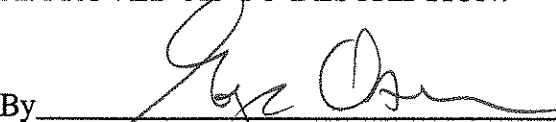
By   
JEAN ADAMS, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

APPROVED AS TO DESCRIPTION:

By   
Community Development Department  
Development Services

Ord. No. 3078-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, 1998, Councilmember Friedman moved its final adoption, which motion being duly seconded by Councilmember Dobbs, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Conrad, Dobbs, Friedman, Serpa, Smith, Mayor Lang

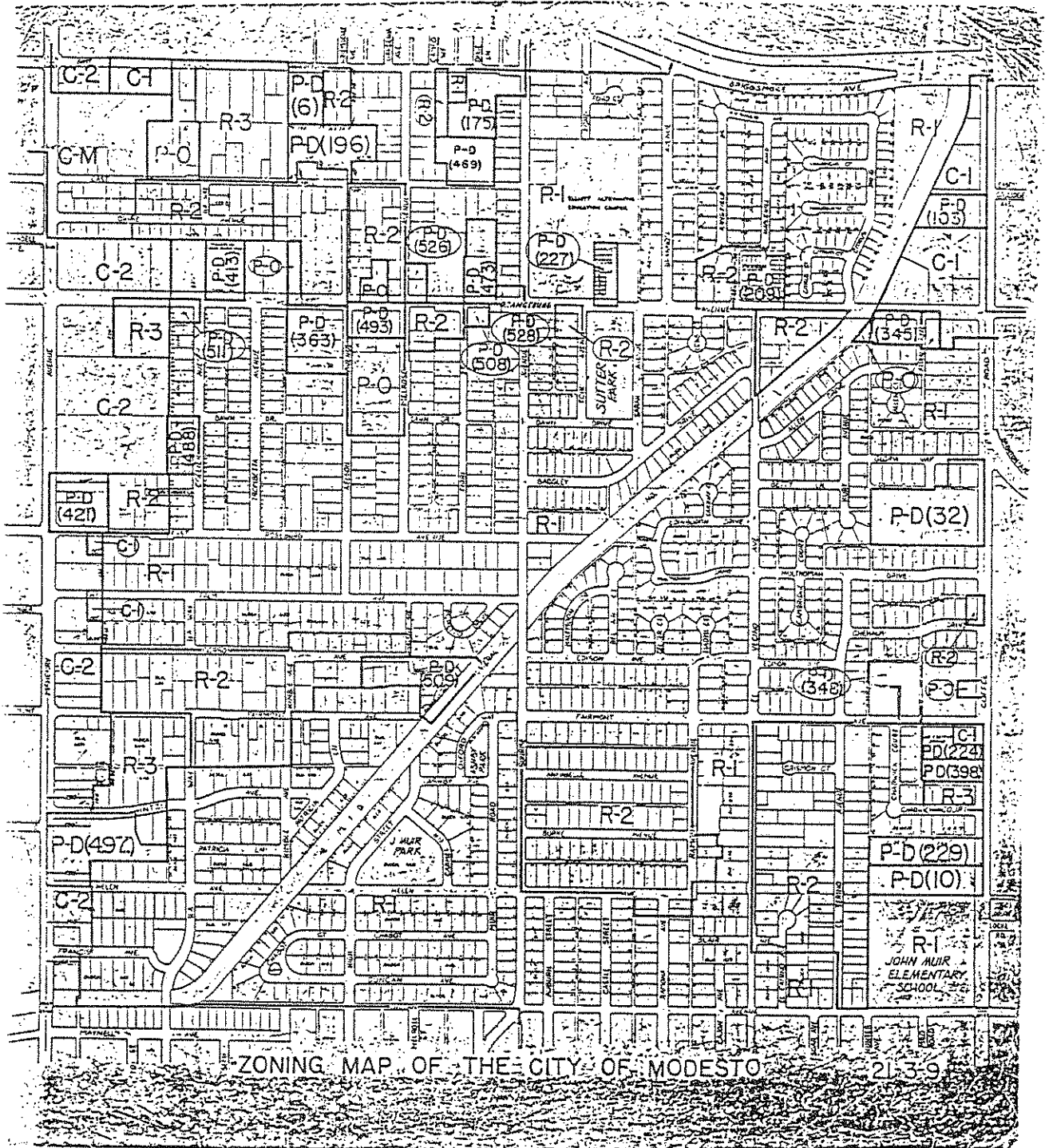
NOES: Councilmembers: Fisher

ABSENT: Councilmembers: None

APPROVED:   
MAYOR RICHARD A. LANG

ATTEST:   
JEAN ADAMS, City Clerk

Effective Date: March 5, 1998



ZONING MAP OF THE CITY OF MODESTO 21-3-9

Clerk

ORDINANCE NO. 3079 -C.S.

AN ORDINANCE AMENDING ARTICLE 6 OF CHAPTER 2  
OF TITLE VIII OF THE MODESTO MUNICIPAL CODE  
RELATING TO TRANSIENT OCCUPANCY TAX.

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

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

**ARTICLE 6. TRANSIENT OCCUPANCY TAX**

**SEC. 8-2.601. TITLE.**

This tax shall be known as the "Uniform Transient Occupancy Tax of the City  
of Modesto."

**SEC. 8-2.602. DEFINITIONS.**

Except where the context otherwise requires, the definitions given in this section  
govern the construction of this article.

- (a) **Person.** "Person" means any individual, firm, partnership, joint venture, association, social club, fraternal organization, joint stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate, or any other group or combination acting as a unit.
- (b) **Hotel.** "Hotel" means any structure, or any portion of any structure within the City, which is intended or designed for lodging or sleeping purposes wherein the owner or operator thereof offers occupancy as defined in subsection (c) of this section.
- (c) **Occupancy.** "Occupancy" means the use or possession, or the right to use or possession granted by the owner or operator thereof for compensation of any room or rooms or portion thereof for lodging or sleeping purposes for a period of twenty-seven (27) consecutive calendar days or less, counting portions of calendar days as full days.
- (d) **Transient.** "Transient" means any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license or other agreement for a period of twenty-seven (27) consecutive

calendar days or less, counting portions of calendar days as full days. Any such person exercising occupancy shall be deemed a transient until the period of twenty-seven (27) days has expired unless there is an agreement in writing between the operator and the occupant providing for a tenure of greater than twenty-seven (27) days for compensation.

- (e) **Rent.** "Rent" means the consideration charged, whether or not received, for the occupancy of space in a hotel valued in money, whether to be received in money, goods, labor or otherwise, including all receipts, cash, credits and property and services of any kind or nature, without any deduction therefrom whatsoever. Rent does not include compensation for services or products.
- (f) **Operator.** "Operator" means the person who is proprietor of the hotel, whether in the capacity of owner, lessee, sublessee, mortgagee in possession, licensee, or any other capacity. Where the operator performs his/her functions through a managing agent of any type or character other than an employee, the managing agent shall also be deemed an operator for the purpose of this article and shall have the same duties and liabilities as his/her principal. Compliance with the provisions of this article by either the principal or the managing agent shall, however, be considered to be compliance by both.
- (g) **Tax Administrator.** "Tax Administrator" means the Finance Director of the City of Modesto.

#### **SEC. 8-2.603. TAX IMPOSED.**

For the privilege of occupancy in any hotel, each transient is subject to and shall pay a tax in the following amount:

- (a) Commencing July 1, 1985, a tax in the amount of seven (7) percent of the rent charged by the operator.
- (b) Commencing July 1, 1986, a tax in the amount of eight (8) percent of the rent charged by the operator.
- (c) Commencing July 1, 1987, a tax in the amount of nine (9) percent of the rent charged by the operator.

Said tax constitutes a debt owed by the transient to the City which is extinguished only by payment to the operator or to the City. The transient shall pay the tax to the operator of the hotel at the time the rent is paid. If the rent is

paid in installments, a proportionate share of the tax shall be paid with each installment. The unpaid tax shall be due upon the transient's ceasing to occupy space in the hotel. If for any reason the tax due is not paid to the operator of the hotel, the Tax Administrator may require such tax shall be paid directly to the Tax Administrator.

#### **SEC. 8-2.604. EXEMPTIONS.**

No tax shall be imposed upon:

- (a) Any person as to whom, or any occupancy as to which, it is beyond the power of the City to impose the tax herein provided.
- (b) Any officer or employee of a foreign government who is exempt by reason of express provision of federal law or international treaty.
- (c) Any officer or employee of the United States Government, or of a federal credit union, or of a state, county, city or other domestic public entity who pays rent in the discharge of official government business.
- (d) Any officer or employee of a bank or insurance company who pays rent in the discharge of official bank or insurance company business.
- (e) Rent paid to any hospital, medical clinic, convalescent home or other temporary or permanent domicile equipped primarily for the care of aged or infirm people.
- (f) Any person, transient or operator upon whom the tax would not have been imposed by application of the definitions in Section 8-2.602 as they were prior to this amendment.

No exception shall be granted except upon a claim therefor made at the time rent is collected and under penalty of perjury upon a form prescribed by the Tax Administrator.

#### **SEC. 8-2.605. OPERATOR'S DUTIES.**

Each operator shall collect the tax imposed by this article to the same extent and at the same time as the rent is collected from every transient. The amount of tax shall be separately stated from the amount of the rent charged, and each transient shall receive a receipt for payment from the operator. No operator of a hotel shall advertise or state in any manner, whether directly or indirectly, that the tax or any part thereof will be assumed or absorbed by the operator, or that

it will not be added to the rent, or that, if added, any part will be refunded except in the manner hereinafter provided.

**SEC. 8-2.606. REGISTRATION.**

Within thirty (30) days after commencing business each operator of any hotel renting occupancy to transients shall register said hotel with the Tax Administrator and obtain from the Tax Administrator a "Transient Occupancy Registration Certificate" to be at all times posted in a conspicuous place on the premises. Said certificate shall, among other things, state the following:

- (a) The name of the operator;
- (b) The address of the hotel;
- (c) The date upon which the certificate was issued;
- (d) "This Transient Occupancy Registration Certificate signifies that the person named on the face hereof has fulfilled the requirements of the Uniform Transient Occupancy tax by registering with the Tax Administrator for the purpose of collecting from transients the Transient Occupancy Tax and remitting said tax to the Tax Administrator. This certificate does not authorize any person to conduct any unlawful business or to conduct any lawful business in an unlawful manner, nor to operate a hotel without strictly complying with all local applicable laws, including but not limited to those requiring a permit from any board, commission, department or office of this City. This certificate does not constitute a permit."

**SEC. 8-2.607. REPORTING AND REMITTING.**

Each operator shall, on or before the last day of the month following the close of each calendar quarter, or at the close of any shorter reporting period which may be established by the Tax Administrator, make a return to the Tax Administrator, on forms provided by the Tax Administrator, of the total rents charged and received and the amount of tax collected for transient occupancies. At the time the return is filed, the full amount of the tax collected shall be remitted to the Tax Administrator. The Tax Administrator may establish shorter reporting periods for any certificate holder if the Tax Administrator deems it necessary in order to insure collection of the tax and the Tax Administrator may require further information in the return. Returns and payments are due immediately upon cessation of business for any reason. All

taxes collected by operators pursuant to this article shall be held in trust for the account of the City until payment thereof is made to the Tax Administrator.

**SEC. 8-2.608. PENALTIES.**

- (a) **Delinquency.** Any operator who fails to remit any tax imposed by this article within the time required shall, in addition to the amount of the tax, pay a penalty of five (5) percent of the amount of the tax per month or fraction thereof until paid; the maximum penalty imposed on any one delinquency shall not exceed twenty-five (25) percent of the amount of the tax.
- (b) **Fraud.** If the Tax Administrator determines that the non-payment of any remittance due from any transient or operator under this article is due to intentional nonpayment or fraud, a penalty of twenty-five (25) percent of the amount of the tax shall be added thereto in addition to the penalties stated in subparagraph (a) of this section.
- (c) **Penalties Merged With Tax.** Every penalty imposed under the provisions of this section shall become a part of the tax herein required to be paid.

**SEC. 8-2.609. FAILURE TO COLLECT AND REPORT TAX.**

- (a) **Determination of Tax by Tax Administrator.** If any operator shall fail or refuse to collect said tax and to make, within the time provided in this article, any report and remittance of said tax or any portion thereof required by this article, the Tax Administrator shall proceed in such manner as the Tax Administrator may deem best to obtain facts and information on which to base his/her estimate of the tax due. As soon as the Tax Administrator shall procure such facts and information as the Tax Administrator is able to obtain upon which to base the assessment of any tax imposed by this article and payable by any operator who has failed or refused to collect the same and to make such report and remittance, the Tax Administrator shall proceed to determine and assess against such operator the tax and penalties provided for by this article. In case such determination is made, the Tax Administrator shall give a notice of the amount so assessed by serving it personally or by depositing it in the United States mail, postage prepaid, addressed to the operator so assessed at his/her last known place of address. Such operator may within thirty (30) days after the serving or mailing of such notice make application in writing to the Tax Administrator for a hearing on the amount assessed. If application by the operator for a hearing is

not made within the time prescribed, the tax and penalties, if any, determined by the Tax Administrator shall become final and conclusive and immediately due and payable. If such application is made, the Tax Administrator shall give not less than fifteen (15) days written notice in the manner prescribed herein to the operator to show cause at a time and place fixed in said notice why said amount specified therein should not be fixed for such tax and penalties. At such hearing, the operator may appear and offer evidence why such specified tax and penalties should not be so fixed. After such hearing the Tax Administrator shall determine the proper tax to be remitted and shall thereafter give written notice to the person in the manner prescribed herein of such determination and the amount of such tax and penalties. The amount determined to be due shall be payable after thirty (30) days unless an appeal is taken as provided in Section 8-2.610.

#### **SEC. 8-2.610. APPEAL.**

Any operator aggrieved by any decision of the Tax Administrator with respect to the amount of such tax and penalties, if any, may appeal the decision in accordance with the procedure established by Chapter 4 of Title I of this Code.

#### **SEC. 8-2.611. RECORDS.**

It shall be the duty of every operator liable for the collection and payment to the City of any tax imposed by this article to keep and preserve, for a period of three (3) years, all records as may be necessary to determine the amount of such tax as he/she may have been liable for the collection of and payment to the City, which records the Tax Administrator shall have the right to inspect with the operator's consent, or by use of a subpoena, administrative subpoena, search or inspection warrant.

#### **SEC. 8-2.612. REFUNDS.**

- (a) Whenever the amount of any tax, interest or penalty has been overpaid or paid more than once or has been erroneously or illegally collected or received by the City under this article it may be refunded as provided in subparagraphs (b) and (c) of this section provided a claim in writing therefor, stating under penalty of perjury the specific grounds upon which the claim is founded, is filed with the Tax Administrator within three (3) years of the date of payment. The claim shall be on forms furnished by the Tax Administrator.

- (b) An operator may claim a refund or take as credit against taxes collected and remitted the amount overpaid, paid more than once or erroneously or illegally collected or received when it is established in a manner prescribed by the Tax Administrator that the person from whom the tax has been collected was not a transient or was exempt; provided, however, that neither a refund nor a credit shall be allowed unless the amount of the tax so collected has either been refunded to the transient or credited to rent subsequently payable by the transient to the operator.
- (c) A transient may obtain a refund of taxes overpaid or paid more than once or erroneously or illegally collected or received by the city by filing a claim in the manner provided in subparagraph (a) of this section, but only when the tax was paid by the transient directly to the Tax Administrator, or when the transient having paid the tax to the operator, establishes to the satisfaction of the Tax Administrator that the transient has been unable to obtain a refund from the operator who collected the tax.
- (d) No refund shall be paid under the provisions of this section unless the claimant establishes his/her right thereto by written records showing entitlement thereto.

#### **SEC. 8-2.613. ACTIONS TO COLLECT.**

Any tax required to be paid by any transient under the provisions of this article shall be deemed a debt owed by the transient to the City. Any such tax collected by an operator which has not been paid to the City shall be deemed a debt owed by the operator to the City. Any person owing money to the City under the provisions of this article shall be liable to an action brought in the name of the City of Modesto for the recovery of such amount.

#### **SEC. 8-2.614. VIOLATIONS.**

Any operator or transient who fails or refuses to register as required herein, or fails or refuses to furnish any return required to be made, or fails or refuses to furnish a supplemental return or other data required by the Tax Administrator, or renders a false or fraudulent return or claim or makes any false or fraudulent report or claim with intent to defeat or evade the determination of any amount due required by this article shall be subject to one or both of the civil penalties provided in Section 8-2.608, as deemed appropriate by the tax administrator.

**SEC. 8-2.615. DISPOSITION OF PROCEEDS.**

All moneys received by the City under or pursuant to the provisions of this article shall be deposited and paid into the General Fund of the City.

**SEC. 8-2.616. SECURITY FOR COLLECTION OF TAX.**

- (a) The Tax Administrator, whenever the Tax Administrator deems it necessary to insure compliance with this article, may require any person subject thereto to deposit with the Tax Administrator such security in the form of cash, bond, or other security as the Tax Administrator may determine. The amount of the security shall be fixed by the Tax Administrator but shall not be greater than twice the person's estimated average liability for the period for which he/she files returns, determined in such manner as the Tax Administrator deems proper, or ten thousand dollars (\$10,000.00), whichever amount is the lesser. The amount of the security may be increased or decreased by the Tax Administrator subject to the limitations herein provided.
- (b) If any operator liable for any amount under this article sells out or quits his/her business or a substantial portion thereof, his/her successors or assigns shall withhold sufficient of the purchase price to cover any transient occupancy tax which is due against any portion of the business unless the former operator produces a receipt from the Tax Administrator showing that he/she has been paid or a certificate stating that no amount is due. If the successors or assigns of a business fail to withhold the tax from the purchase price as required, they shall be personally liable for the payment of the amount required to be withheld by them to the extent of the purchase price, valued in money. Said tax shall be a lien against the purchase price for any portion of the business. The successors or assigns may request in writing a certificate of no tax due. Within thirty (30) days after receiving a written request from the successors or assigns for a certificate, the Tax Administrator shall either issue the certificate or mail notice to them at the address given in the request of the amount that must be paid as a condition of issuing the certificate. Failure of the Tax Administrator to mail the notice will release the successors and assigns from any further obligation to withhold the purchase price as above provided. The time within which the obligation of the successors and assigns may be enforced shall start to run at the time the operator sells out his/her business or at the time that the determination against the operator becomes final, whichever event occurs later.

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 10th day of February, 1998, by Councilmember Friedman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and ordered printed and published by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: Dobbs

APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:

By   
JEAN ADAMS, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

Ord. No. 3079-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 17th day of February, 1998, Councilmember Friedman moved its final adoption, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Conrad, Dobbs, Fisher, Friedman, Serpa, Smith, Mayor Lang

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:   
MAYOR RICHARD A. LANG

ATTEST:   
JEAN ADAMS, City Clerk

Effective Date: March 19, 1998

ORDINANCE NO. 3080-C.S.

AN ORDINANCE AMENDING THE PRECISE PLAN FOR AREA NO. 3 OF THE VILLAGE ONE SPECIFIC PLAN TO REDESIGNATE 9.8 ACRES FROM MULTI-FAMILY TO VILLAGE RESIDENTIAL.

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

WHEREAS, the Village One Specific Plan designated 35 Precise Plan Areas in Village One, and required that prior to development in any of the Areas, that a Precise Plan be approved for that area, and

WHEREAS, the City Council, on December 16, 1996, approved a Precise Plan for Precise Plan Area No. 3, and

WHEREAS, Redev, Inc., filed a proposal to amend the Village One Specific Plan and to amend the Precise Plan for Area No. 3 for the purpose of redesignating a 9.8 acre site from Multi-family to Village Residential to allow development of a Single-family subdivision, and

WHEREAS, a duly noticed public hearing was held by the Planning Commission of the City of Modesto on January 26, 1998, in the City Council Chambers, City Hall 801 11th Street, Modesto, and

WHEREAS, after considering public comments, the Planning Commission, by Resolution No. 98-07 denied the requested amendment to Precise Plan No. 3 for the reasons set forth in said Resolution No. 98-07, and

WHEREAS, pursuant to Section 10-1.105 of the Modesto Municipal Code, an appeal to the decision of the Planning Commission's denial of the application was filed with the Office of the City Clerk by letter dated January 27, 1998, from David O. Romano, P.E., AICP, of Normoyle and Newman on behalf of Redev, Inc., requesting an amendment to the Village One specific Plan and Precise Plan No. 3 to redesignate 9.8 acres of Multi-family to Village Residential, and

WHEREAS, said appeal was set for a public hearing of the Council of the City of Modesto to be held on February 17, 1998, at 7:00 p.m., in the City Council Chambers, City Hall, 801 11th Street, Modesto, and

WHEREAS, after said public hearing, the Council adopted Resolution No. 98-97 granting the appeal filed by Redev, Inc., to the Planning Commission decision, and the Council approved Amendment No. 13 to the Village One Specific Plan and an amendment to Precise Plan No. 3, and

WHEREAS, the Council declares that the Amendment for Precise Plan No. 3 of the Village One Specific Plan to redesignate 9.8 acres from Multi-family to Village Residential is required by public necessity, convenience, and general welfare for the following reasons:

1. The proposed Specific Plan Amendment and Precise Plan Amendment do not decrease the amount of multi-family housing in Village One below the Specific Plan's goal of providing 20% of the housing as multi-family housing.
2. The proposed Specific Plan Amendment and Precise Plan Amendment will not significantly affect the City's ability to meet the affordable housing goals of the General Plan Housing Element.

3. The proposed Specific Plan Amendment and Precise Plan Amendment are consistent with the Guiding Principles and Comprehensive Policies of the Village One specific Plan.

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

SECTION 1. COUNCIL FINDINGS. After a public hearing held on February 17, 1998, this Council finds and determines that the requested amendment is consistent with the Modesto Urban Area General Plan and the Village One Specific Plan.

SECTION 2. APPROVAL OF PRECISE PLAN AMENDMENT. The City Council has reviewed and considered the Precise Plan Amendment for Area No. 3 of the Village One Specific Plan, and the Council does hereby approve said Precise Plan Amendment for Area No. 3.

SECTION 3. AMENDMENT OF PRECISE PLAN. This amendment will revise several pages in the Precise Plan to conform to the Specific Plan amendment, approved by Council Resolution No. 98-97 adopted concurrently with the introduction of this Ordinance, as set forth on the documents attached hereto entitled "Village One Precise Plan Area No. 3".

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 17th day of February, 1998, by Councilmember Dobbs, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Serpa, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Conrad, Dobbs, Serpa, Smith, Mayor Lang

NOES: Councilmembers: Friedman


ABSENT: Councilmembers: Fisher

APPROVED:

  
RICHARD A. LANG, Mayor

ATTEST:

By

  
JEAN ADAMS, City Clerk  
(SEAL)

APPROVED AS TO FORM:

By

  
MICHAEL D. MILICH, City Attorney

ATTACHMENTS

VILLAGE ONE  
PRECISE PLAN AREA NO. 3 AMENDMENT

VILLAGE ONE  
PRECISE PLAN AREA NO. 3 AMENDMENT

This amendment will revise several pages in the Precise Plan to conform with the proposed Specific Plan Amendment as follows:

1. Page 1 and 2; I. Introduction; F. Ownership: Changed Cipponeri property to APN 77-09-43 (original in error) and changed APN 77-09-44 to REDEV Inc.
2. Existing Land Owners Map: Changed APN 77-09-44 to REDEV Inc.
3. Page 4; II. Applications/Approvals; B. Vesting Tentative Subdivision Map: Revised to address the west half of Precise Plan.  
  
III. Land Use: Revised paragraph 1. to read 212 single family residences and deleted paragraph 2.
4. Underlying Zoning Map: Revised the R3 to R1 and change the east half owner to REDEV Inc.
5. Page 6; IV. Design/Development Standards Cont'd; G. Landscaping: Revised 2' jog in the wall to every two lots (approximately 120 feet).
6. Typical Road Sections 2 of 2: Revised Road E section to show dimensions without parking.
7. Landscaping Area Map: Deleted Multi-Family, revised street pattern.
8. Circulation Plan: Deleted Multi-Family, revised street pattern.
9. Sanitary Sewer Plan: Deleted Multi-Family, revised street pattern and sanitary design.
10. Water Plan: Deleted Multi-Family, revised street pattern and water design.
11. Storm Drainage Plan: Deleted Multi-Family, revised street pattern and storm design.
12. Page 8; C. PHASING: Revised owner to REDEV Inc., deleted VI. E. Affordable Housing paragraph.
13. Phasing Plan: Deleted Multi-Family, revised street pattern and indicated Phase II.
14. Boundary Plat: Revised owner of APN 77-09-44 to REDEV Inc.

**REVISED PRECISE PLAN #3 PAGES**

**I. INTRODUCTION**

**A. PURPOSE**

This precise plan has been prepared to provide a description of the standards and procedures that will govern the development of the Symphony Park Precise Plan - Area 3 Planning Area.

**B. PROJECT DESCRIPTION**

The proposed project includes a request for approval and adoption of a precise plan for Precise Plan Area No. 3. As well as the approval of a 101 lot vesting tentative subdivision map for the east half of Precise Plan - Area 3.

**C. PROJECT APPLICANT**

Resource Development  
2020 Standiford Avenue, Suite D-5  
Modesto, California 95350  
(209) 527-7466  
Fax 527-7565

**D. PROJECT ENGINEER/PLANNER**

Thompson-Hysell Engineers, Inc. 1016 12th Street Modesto, California 95354 (209) 521-8986 Fax 521-9045	Robert Braden Consulting 1920 Standiford Avenue, Suite 2 Modesto, California 95350 (209) 577-8294 Fax 578-0378
--	--

**E. SPECIAL CONSIDERATION**

The centerline of Sylvan Avenue as shown on the tentative map is 13' south of the section line, imposing an additional 13' of right-of-way dedication for this project. In order to accommodate a buildable layout, we are proposing an 8-10 foot landscape dedication along Sylvan Avenue rather than the 10 to 12 foot dedication called for in the specific plan.

**F. OWNERSHIP**

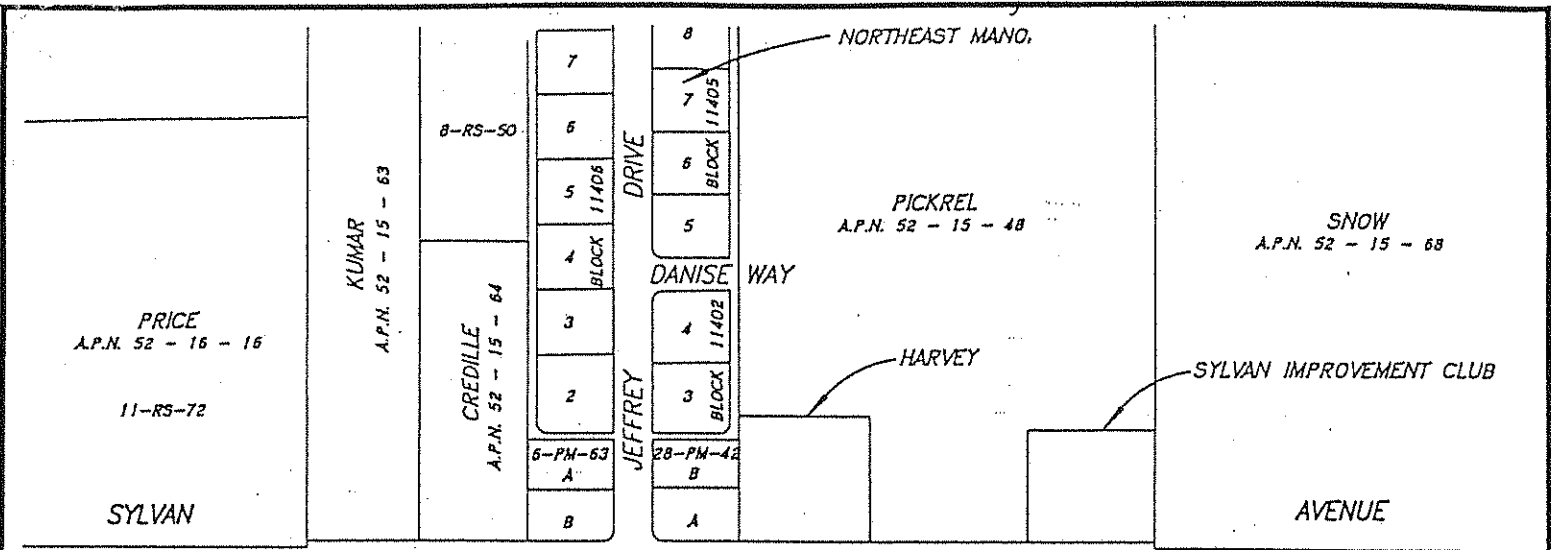
Property owners within Precise Plan Area No. 3.

APN 77-09-43  
Sebastiano & Josephine Cipponeri  
2500 Sylvan Avenue  
Modesto, California 95355  
(209) 577-8294  
Fax 578-0378

I. INTRODUCTION CONT'D.

APN 77-09-44  
REVDEV Inc.  
2020 Standiford Avenue, Suite D-5  
Modesto, California 95350  
(209) 527-7466  
Fax 527-7565

APN 77-09-02  
A. E. Ohlson & Rev. Trust  
2404 Sylvan Avenue  
Modesto, California 95355

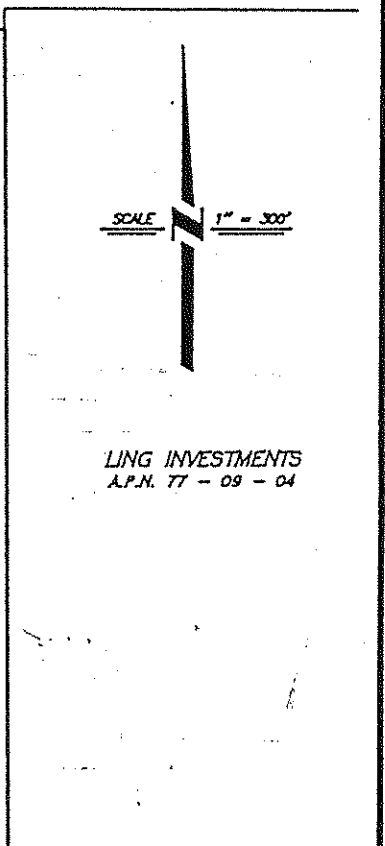


MODESTO CITY SCHOOL DISTRICT

OAKDALE PARK LP  
A.P.N. 77 - 33 - 07

A.E. OHLSON & REV TRUST  
2404 SYLVAN AVE.  
MODESTO CA 95355  
A.P.N. 77 - 09 - 02

REDEV INC.  
2020 STANDIFORD AVE.  
MODESTO CA 95350  
A.P.N. 77-09-44

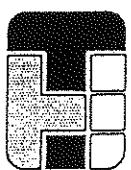


MAGADDINO  
A.P.N. 77 - 09 - 25

MODESTO TEES & GREENS  
A.P.N. 77 - 09 - 26

CITY OF MODESTO  
A.P.N. 77 - 09 - 41

① SEBASTIANO & JOSEPHINE CIPPONERI  
2500 SYLVAN AVE.  
MODESTO CA 95355  
A.P.N. 77 - 09 - 43



**THOMPSON-HYSELL ENGINEERS, INC.**

1016 12TH STREET, MODESTO, CA 95354  
(209) 521-8986 FAX (209) 521-9045

**EXISTING LAND OWNERS**

AREA NO.3 - PRECISE PLAN  
VILLAGE ONE  
MODESTO, CALIFORNIA

BY:	R.C.
DATE:	8/22/96
SHEET:	1 of 1
FILE:	188900\ELO.DWG

**II. APPLICATIONS/APPROVALS**

**A. APPLICATION FEES**

Vesting tentative subdivision map .....	\$730.00
Environmental questionnaire .....	\$535.00
Precise Plan .....	\$1,590.00
Rezone .....	\$1,000.00

**B. VESTING TENTATIVE SUBDIVISION MAP**

The east half is now (November 13, 1997) under development. A vesting tentative subdivision map for 101 units on the west half of the property will be submitted and processed concurrently with the Precise Plan Amendment.

**C. PRECISE PLAN**

Future development inconsistent with the approved Precise Plan would be required to amend Precise Plan Area No. 3.

**D. ZONE CHANGE**

With the approval of Precise Plan - Area 3. The project site zoning will change from Specific Plan Holding (SPH) to Specific Plan Overlay (SPO).

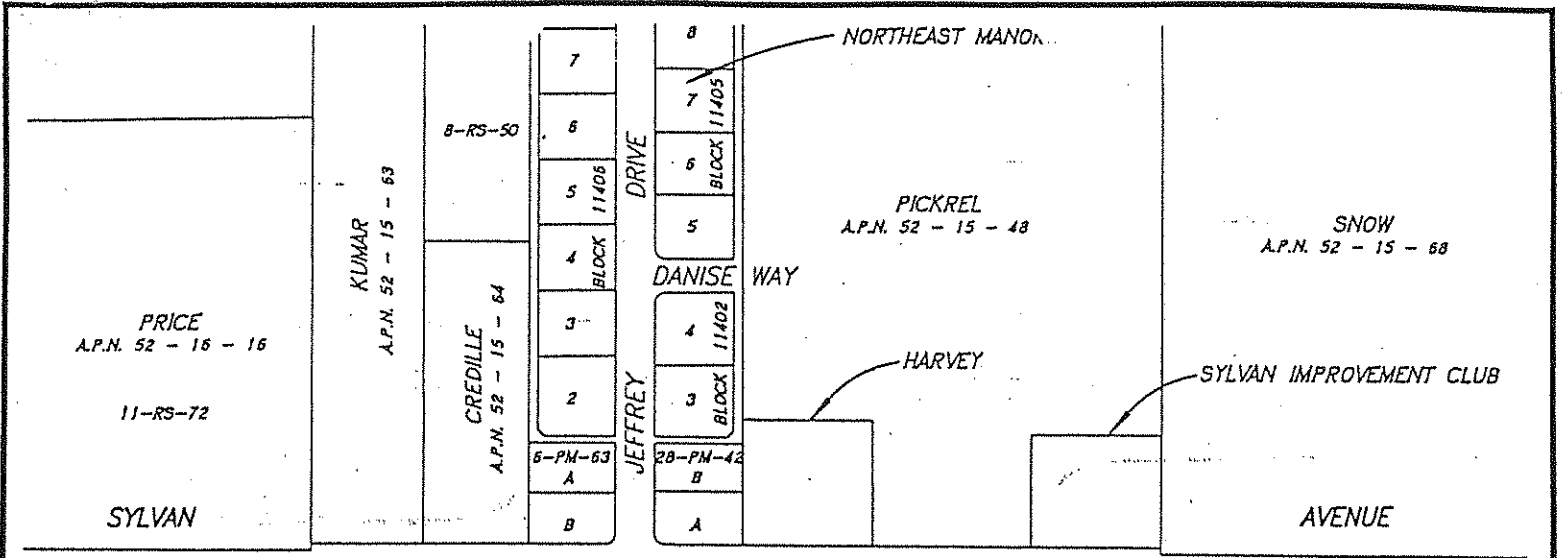
**III. LAND USE**

**A. RESIDENTIAL**

The Village One specific plan as amended proposes approximately 38.8 acres of single-family residential use within Precise Plan Area No. 3. The project site is currently: east half - subdivision under construction; west half - open space.

**1. Village Residential**

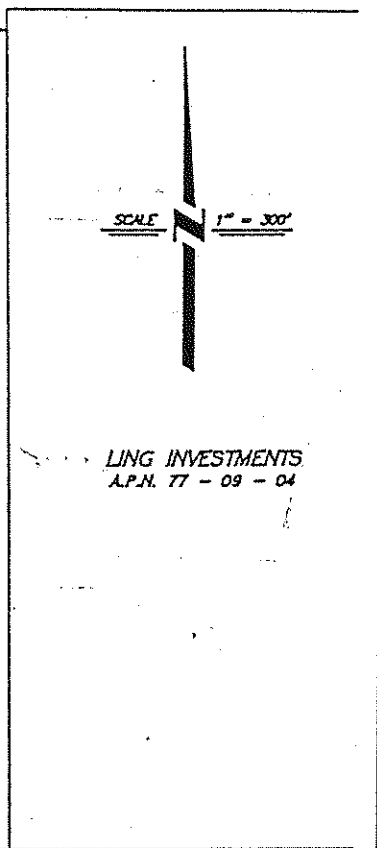
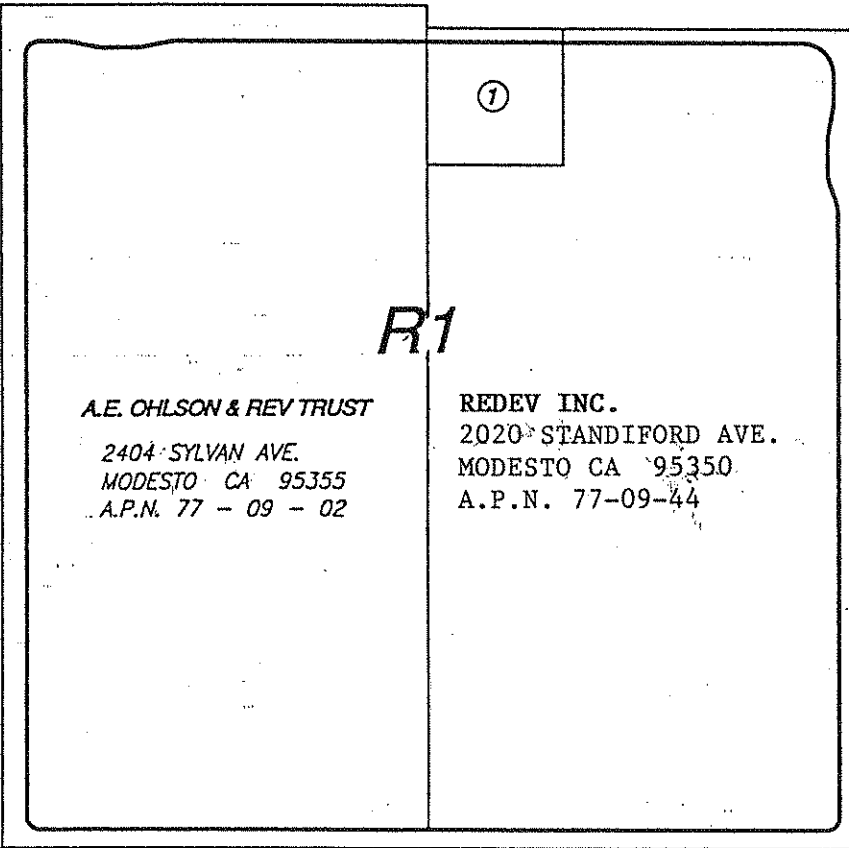
Within the planning area, a mixture of lot sizes will be allowed. Anticipated sizes will include more conventional single-family residential lots at 5,000 square feet to lots in excess of 6,000 square feet. 212 single family residences are anticipated in the planning area.



PRICE  
A.P.N. 52 - 16 - 16

11-RS-72

SYLVAN



MODESTO CITY SCHOOL DISTRICT

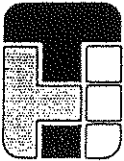
OAKDALE PARK LP  
A.P.N. 77 - 33 - 07

MAGADDINO  
A.P.N. 77 - 09 - 25

MODESTO TEES & GREENS  
A.P.N. 77 - 09 - 26

CITY OF MODESTO  
A.P.N. 77 - 09 - 41

① SEBASTIANO & JOSEPHINE CIPPONERI  
2500 SYLVAN AVE.  
MODESTO CA 95355  
A.P.N. 77 - 09 - 43



**THOMPSON-HYSELL ENGINEERS, INC.**

1016 12TH STREET, MODESTO, CA 95354  
(209) 521-8986 FAX (209) 521-9045

**UNDERLYING ZONING**

AREA NO.3 - PRECISE PLAN  
VILLAGE ONE  
MODESTO, CALIFORNIA

BY:	R.C.
DATE:	8/26/96
SHEET:	1 of 1
FILE:	188900\UZONE

#### **IV. DESIGN/DEVELOPMENT STANDARDS CONT'D**

##### **F. INTERIOR STREETS**

Interior streets will be developed with a 48' right-of-way that will include two travel lanes, parking and drive over curb and sidewalk.

##### **G. LANDSCAPING**

The landscaped areas will include an 8 to 10 foot landscape strip along Sylvan Avenue and 10 foot landscape strips adjacent of the lots where open ended cul-de-sacs are present. The areas that will be dedicated to and maintained by the City of Modesto are shown on the landscape area map.

##### **H. WALLS/FENCING**

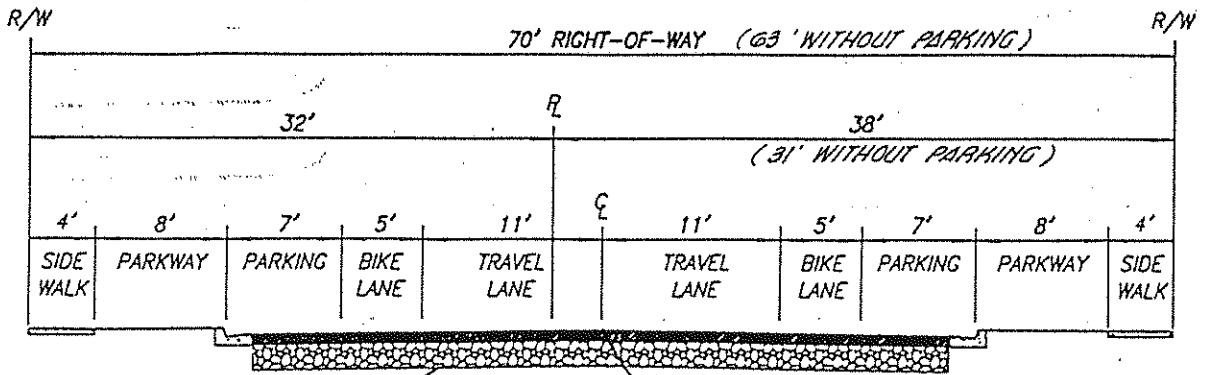
This project will have a 7' masonry sound wall along Sylvan Avenue. As required, there will be a 2' jog in the wall every two lots (approximately 120 feet). Where open ended cul-de-sacs exist, a 6' wood fence will be constructed on the property line.

#### **V. INFRASTRUCTURE**

##### **A. CIRCULATION**

Access to the interior of the property will be provided from Road Q, Road F and Road E. The project will be served by standard neighborhood streets with 48' right-of-way, allowing for two travel lanes and two lanes of parking. Vehicular and pedestrian access from Sylvan Avenue will not be permitted.

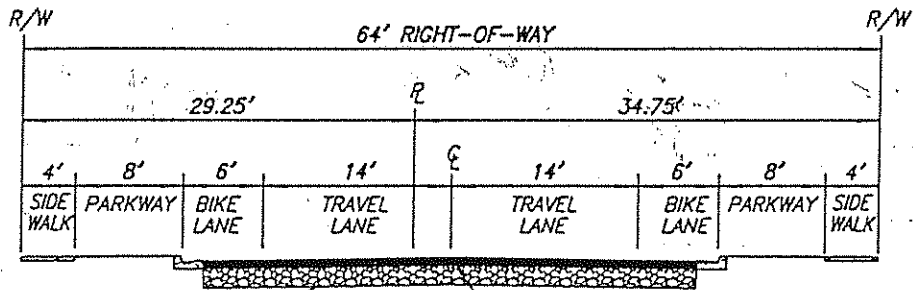
The precise plan is bordered on the north by an arterial (Sylvan Avenue) and neighborhood connectors on the remaining three sides (Road Q, Road F and Road E). The frontage improvements will be constructed with the development of the adjoining subdivision or as a part of the Village One infrastructure improvements. If the developer is required to construct the center portions of the arterial or neighborhood streets or off-site street improvements to provide adequate traffic circulation, the developer will be eligible for reimbursements from the City's Capital Facility Fees, area of benefit funds, or the adjoining property owners through reimbursements agreements. These improvements responsibilities and reimbursements will be identified in the subdivision agreement and/or development agreement for the individual projects.



0.4' ASPHALT CONCRETE  
1.25' AGGREGATE BASE

☉ TO BE 3.0' EAST OF R

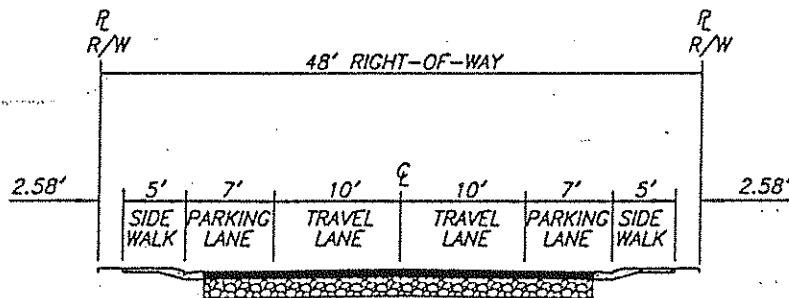
**ROAD "E"**  
ROAD "Q" TO SYLVAN AVENUE



0.4' ASPHALT CONCRETE  
1.25' AGGREGATE BASE

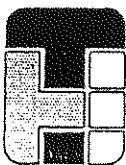
☉ TO BE 2.75' SOUTH OF R

**ROAD "Q"**  
ROAD "E" TO ROAD "F"



0.4' ASPHALT CONCRETE  
1.25' AGGREGATE BASE

**RESIDENTIAL STREET**  
48' RIGHT-OF-WAY



**THOMPSON-HYSELL  
ENGINEERS, INC.**

1016 12TH STREET, MODESTO, CA 95354  
(209) 521-8986 FAX (209) 521-9045

**TYPICAL ROAD SECTIONS**

AREA NO.3 - PRECISE PLAN

VILLAGE ONE

MODESTO, CALIFORNIA

BY: R.C.

DATE: 9/16/96

SHEET: 2 of 2

FILE: 188900/ROADSEC

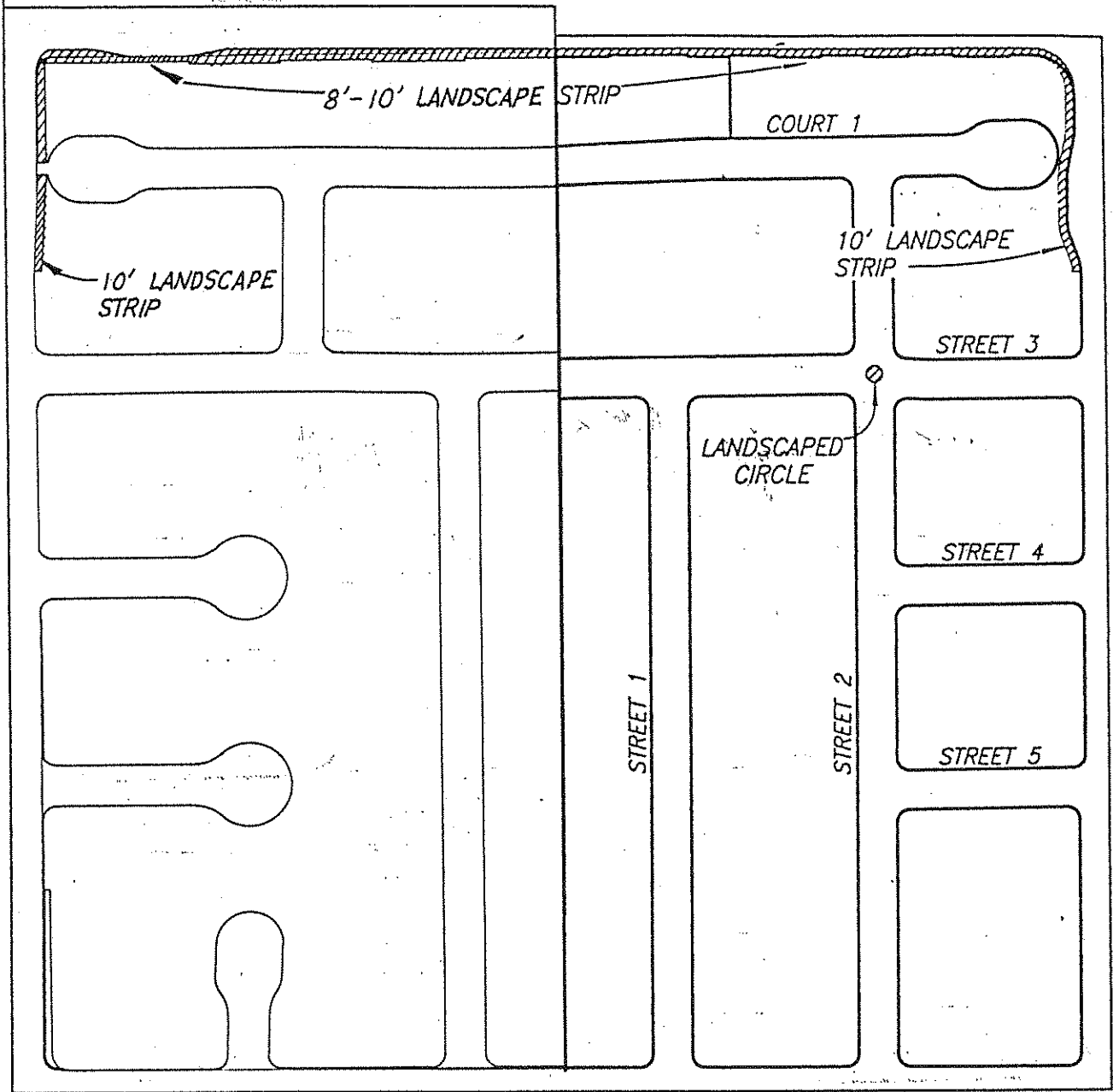
SYLVAN AVENUE

P.P.A. 2

ROAD (E)

P.P.A. 4

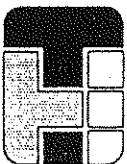
ROAD (F)



P.P.A. 16

P.P.A. 15

SCALE 1"=200'



**THOMPSON-HYSELL  
ENGINEERS, INC.**

1016 12TH STREET, MODESTO, CA 95354  
(209) 521-8986 FAX (209) 521-9045

**LANDSCAPE AREA MAP**

AREA NO.3 - PRECISE PLAN

VILLAGE ONE

MODESTO, CALIFORNIA

BY: D.J.

DATE: 9/16/96

SHEET: 1 of 1

FILE: 188900/LANDSCAP

SYLVAN AVENUE

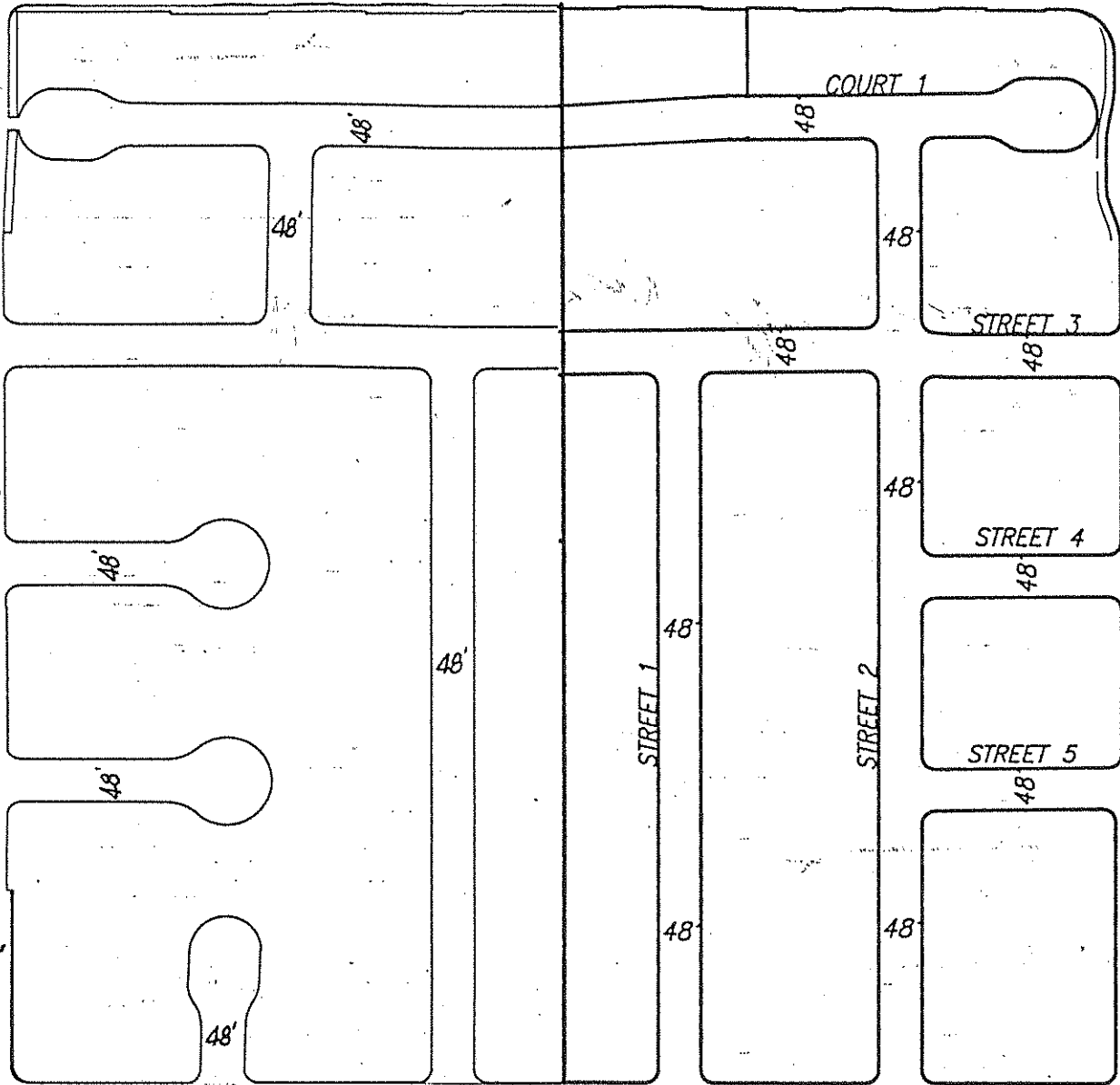
116'

116'

P.P.A. 2

ROAD (E)

ROAD (F) P.P.A. 4



73'

COURT 1

48'

48'

48'

48'

56'

STREET 3

48'

63'

48'

48'

STREET 4

48'

48'

48'

STREET 1

48'

STREET 2

STREET 5

48'

56'

70'

48'

48'

48'

STREET 6

48'

63'

64'

ROAD (Q)

64'

P.P.A. 16

P.P.A. 15

SCALE 1"=200'

**THOMPSON-HYSELL ENGINEERS, INC.**

1018 12TH STREET, MODESTO, CA 95354  
(209) 521-8988 FAX (209) 521-9045

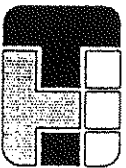
**CIRCULATION PLAN**

AREA NO.3 - PRECISE PLAN

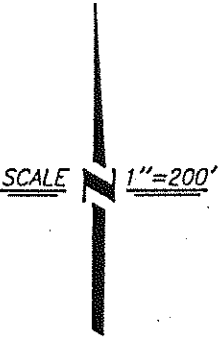
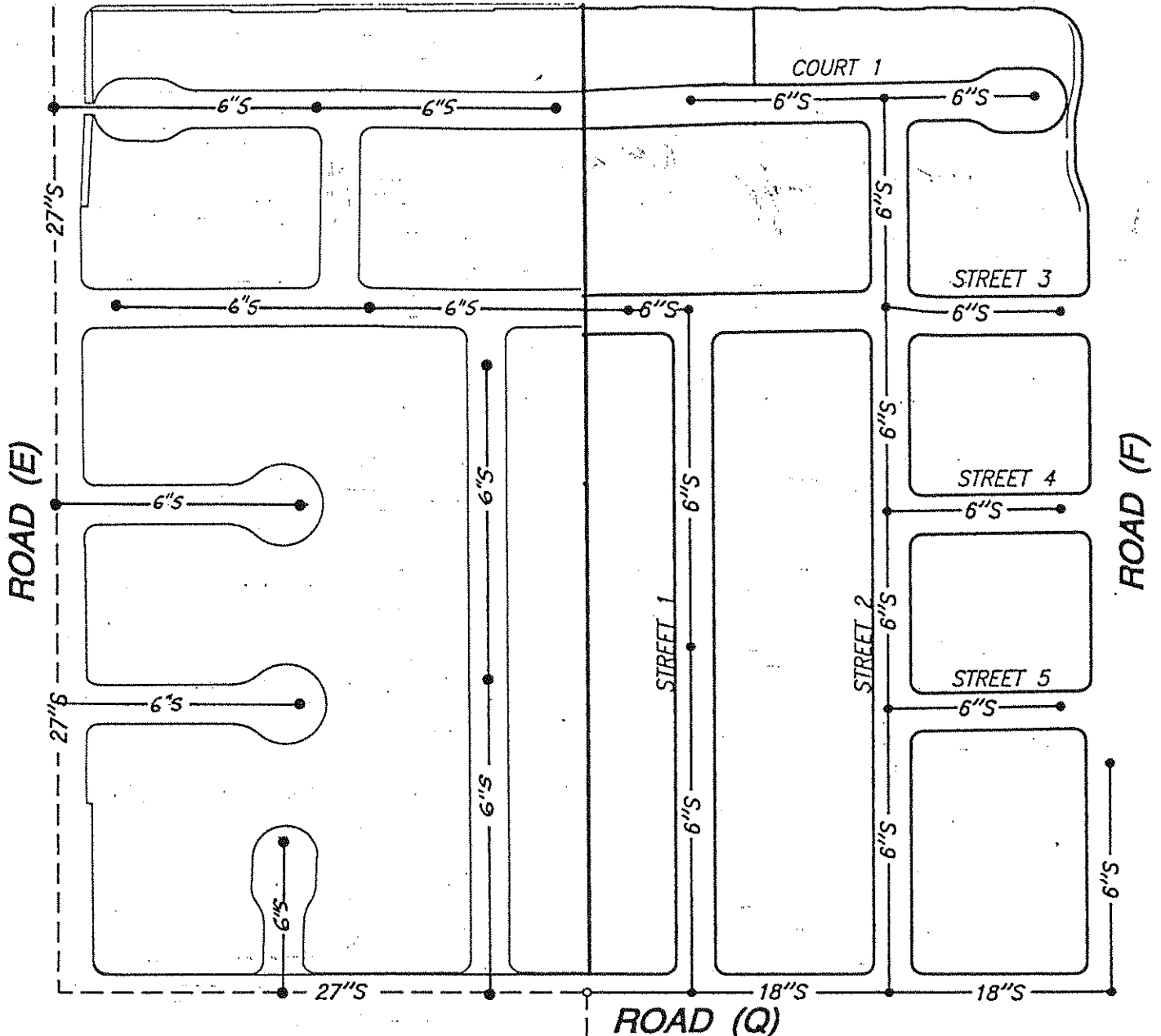
VILLAGE ONE

MODESTO, CALIFORNIA

BY:	D.J.
DATE:	9/16/96
SHEET:	1 of 1
FILE:	188900/CIRCPLAN



# SYLVAN AVENUE



- PROPOSED R/W
- 8" S — PROPOSED SEWER
- - - 27" S - - - EXISTING SEWER
- PROPOSED MANHOLE
- EXISTING MANHOLE

**THOMPSON-HYSELL ENGINEERS, INC.**

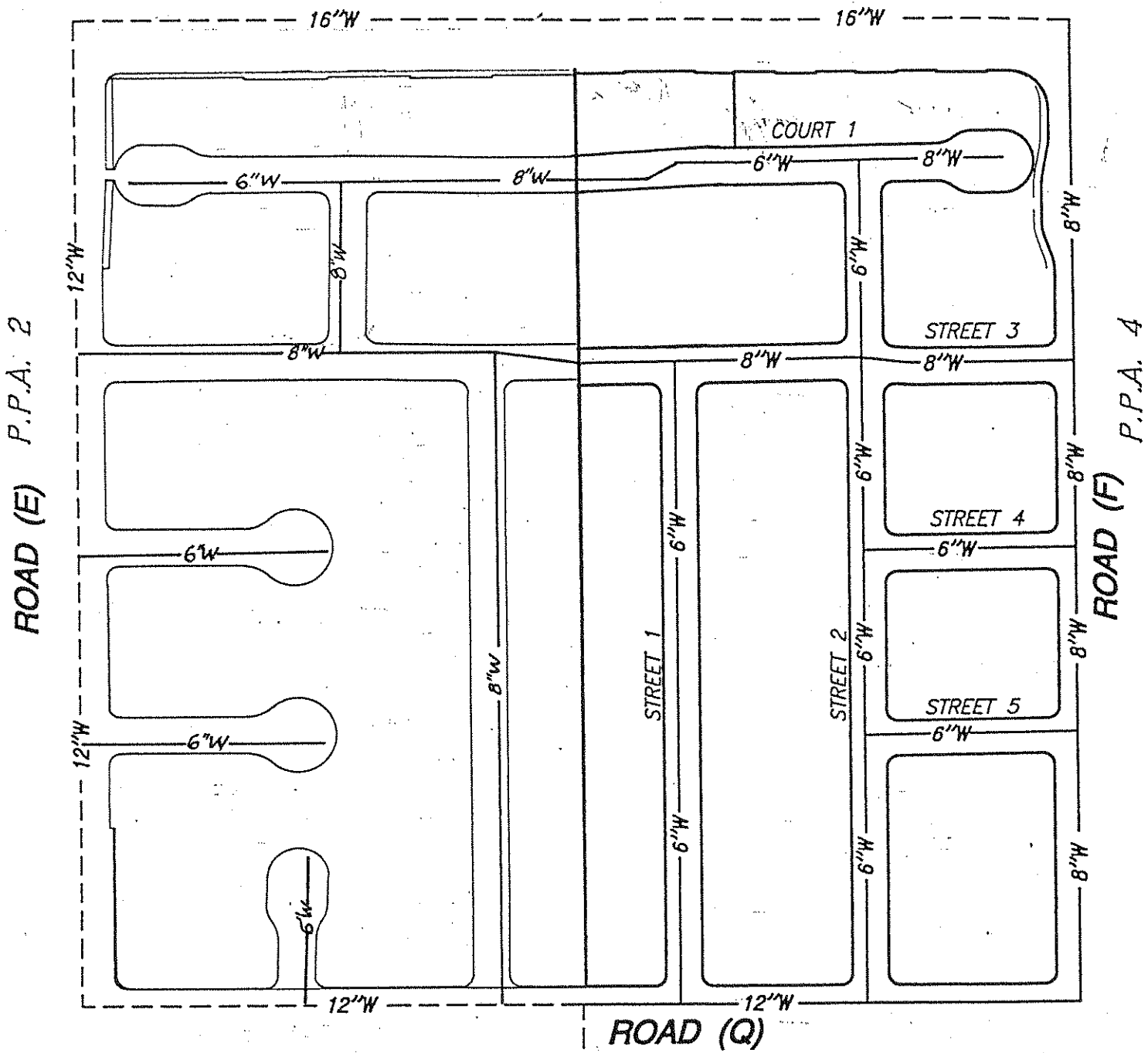
1016 12TH STREET, MODESTO, CA 95354  
 (209) 521-8986 FAX (209) 521-9045

## SANITARY SEWER PLAN

AREA NO.3 - PRECISE PLAN  
 VILLAGE ONE  
 MODESTO, CALIFORNIA

BY:	D.J.
DATE:	9/16/96
SHEET:	1 of 1
FILE:	188900/SSPLAN

**SYLVAN AVENUE**



ROAD (E) P.P.A. 2

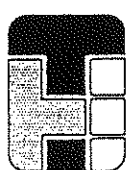
ROAD (F) P.P.A. 4

P.P.A. 16

P.P.A. 15

SCALE 1"=200'

- PROPOSED R/W
- 8"—— PROPOSED WATER
- 12"--- EXISTING WATER



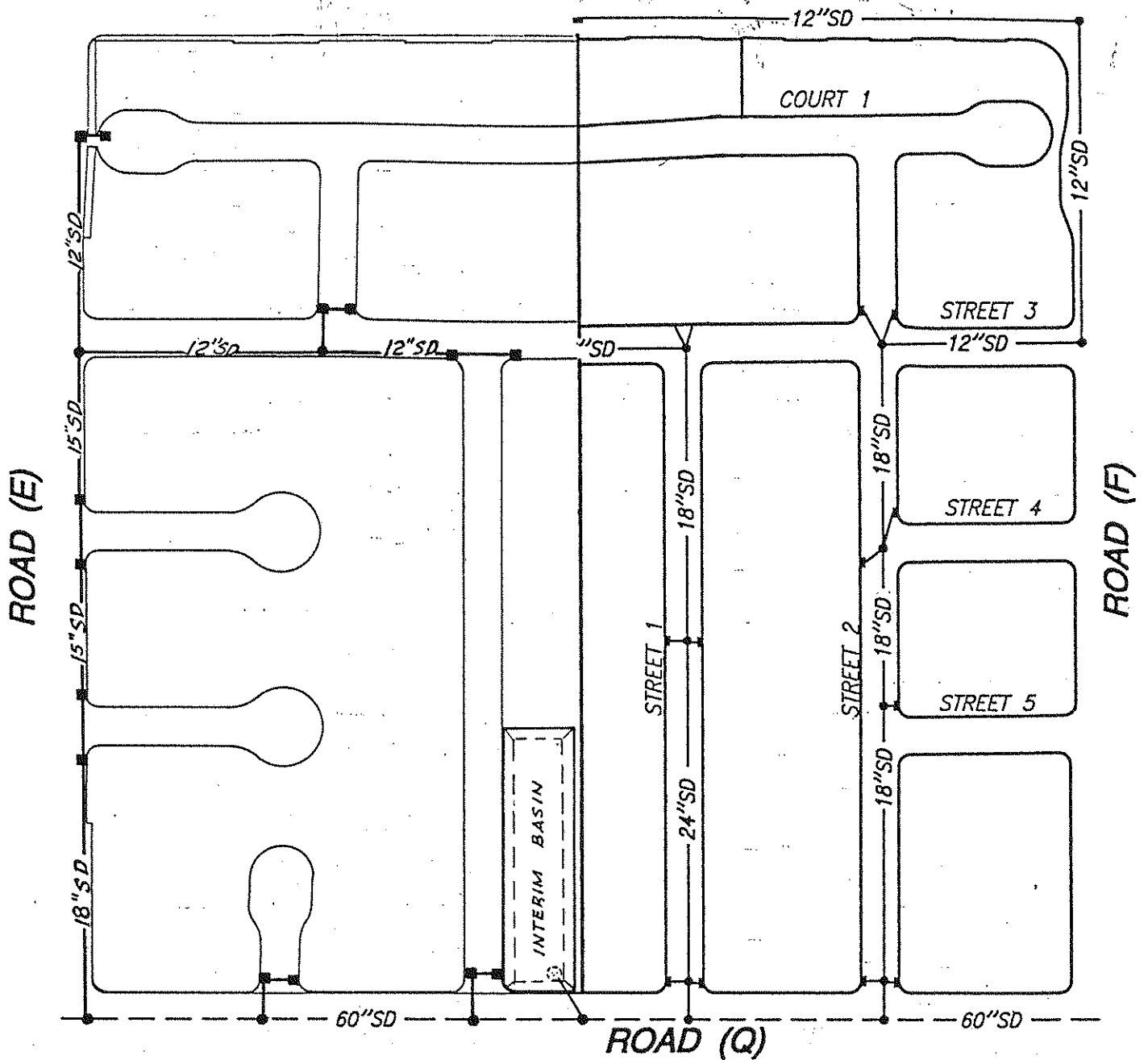
**THOMPSON-HYSELL ENGINEERS, INC.**

1016 12TH STREET, MODESTO, CA 95354  
 (209) 521-8986 FAX (209) 521-9045

**WATER PLAN**  
 AREA NO.3 - PRECISE PLAN  
 VILLAGE ONE  
 MODESTO, CALIFORNIA

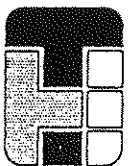
BY:	D.J.
DATE:	9/16/96
SHEET:	1 of 1
FILE:	188900/WTRPLAN

# SYLVAN AVENUE



SCALE 1"=200'

- PROPOSED R/W
- 12"SD — PROPOSED STORM DRAIN
- - 60"SD - - EXISTING STORM DRAIN
- PROPOSED MANHOLE
- PROPOSED CATCH BASIN



**THOMPSON-HYSELL  
ENGINEERS, INC.**

1016 12TH STREET, MODESTO, CA 95354  
(209) 521-8986 FAX (209) 521-9045

## STORM DRAINAGE PLAN

AREA NO.3 - PRECISE PLAN

VILLAGE ONE

MODESTO, CALIFORNIA

BY:	D.J.
DATE:	9/16/96
SHEET:	1 of 1
FILE:	188900/SDPLAN

C. PHASING

The project will be developed in multiple phases. The anticipated first phases will consist of the REDEV Inc. property, APN 77-09-44, which comprises approximately 18 acres. The timing of development for the other areas is unknown.

VI. SPECIFIC PLAN CONFORMANCE

A. LAND USE

This plan provides for the residential uses and densities as required by the specific plan.

B. COMMUNITY DESIGN

The Precise Plan Area No. 3 will be consistent with the Village One Community Design Policies.

C. SCHOOLS

Development within Precise Plan Area No. 3 will annex to the Community Facilities District 1994-1 established by "The School Infrastructure Finance Agency".

D. PARKS

Development within Precise Plan Area No. 3 will pay the applicable park fees.

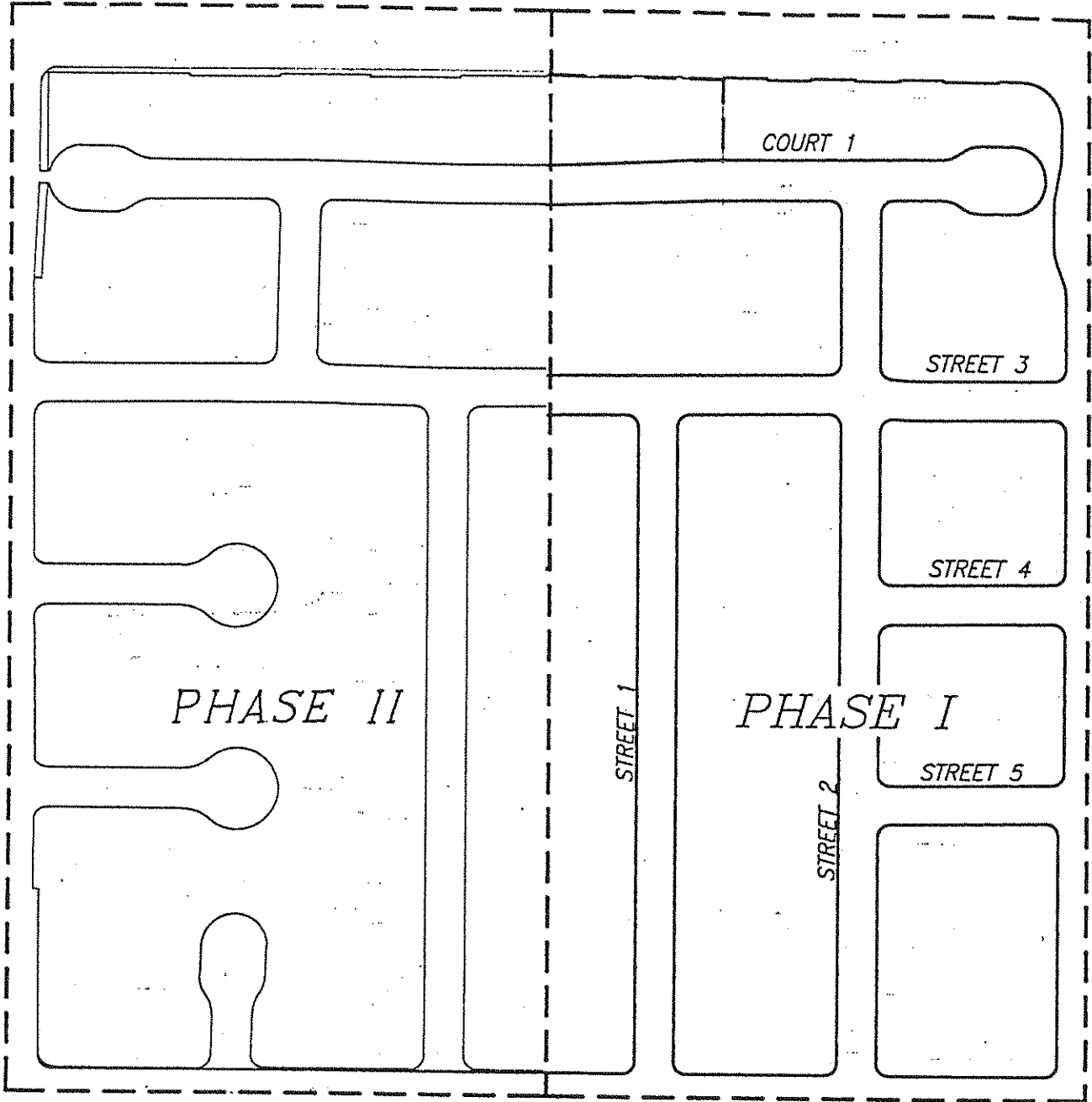
SYLVAN AVENUE

P.P.A. 2

ROAD (E)

P.P.A. 4

ROAD (F)



PHASE II

PHASE I

COURT 1

STREET 3

STREET 4

STREET 5

STREET 1

STREET 2

ROAD (Q)

P.P.A. 16

P.P.A. 15

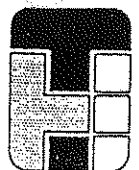
SCALE 1"=200'

**THOMPSON-HYSELL ENGINEERS, INC.**

1016 12TH STREET, MODESTO, CA 95354  
(209) 521-8986 FAX (209) 521-9045

PHASING PLAN  
AREA NO.3 - PRECISE PLAN  
VILLAGE ONE  
MODESTO, CALIFORNIA

BY:	D.J.
DATE:	9/16/96
SHEET:	1 of 1
FILE:	188900/PHASPLAN



ROAD

Q OAKDALE

SECTION LINE

JEFFREY DRIVE

DANISE WAY

N.E. CORNER OF THE S.W. 1/4 OF SECTION 11.

1/4 SECTION LINE

W. 1/4 CORNER SECTION 11

N 0°37'08" W 1303.28'

S 89°44'38" E 2631.07'  
S 89°44'38" E 656.60'

SYLVAN

S 00°37'08" E 35.00'

S 89°44'38" E 657.74'

AVENUE

209.00'  
209.00'  
209.00'  
209.00'

①

448.74'

A.E. OHLSON & REV TRUST  
2404 SYLVAN AVE.  
MODESTO CA 95355  
A.P.N. 77 - 09 - 02

1303.29'

REDEV INC.  
2020 STANDIFORD AVE.  
MODESTO CA 95350  
A.P.N. 77-09-44

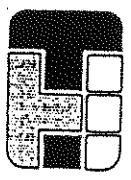
1059.29'

SCALE 1" = 300'

S 0°35'08" E 1268.29'

N 89°44'34" W 1313.60'

① SEBASTIANO & JOSEPHINE CIPPONERI  
2500 SYLVAN AVE.  
MODESTO CA 95355  
A.P.N. 77 - 09 - 43



**THOMPSON-HYSELL ENGINEERS, INC.**

1016 12TH STREET, MODESTO, CA 95354  
(209) 521-8988 FAX (209) 521-9045

**BOUNDRY PLAT**  
AREA NO.3 - PRECISE PLAN  
VILLAGE ONE  
MODESTO, CALIFORNIA

BY: R.C.  
DATE: 8/22/96  
SHEET: 1 of 1  
FILE: 188900\BND.DWG

Ord. No. 3080-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, 1998, Councilmember Dobbs, moved its final adoption, which motion being duly seconded by Councilmember Serpa, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Conrad, Dobbs, Serpa, Smith, Mayor Lang  
NOES: Councilmembers: Friedman  
ABSENT: Councilmembers: Fisher

APPROVED:

  
RICHARD A. LANG, Mayor

ATTEST:

  
JEAN ADAMS, City Clerk

Effective Date: April 2, 1998

Clerk

ORDINANCE NO. 3081 -C.S.

AN ORDINANCE AMENDING SECTIONS 10-2.219, 10-2.502, AND 10-2.504 OF CHAPTER 2 OF TITLE 10 AND ADDING SECTIONS 10-2.216.1, 10-2.241.4.a AND 10-2.241.4.b THERETO RELATING TO ZONING REGULATIONS -- FAIR HOUSING.

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

SECTION 1. AMENDMENT OF CODE. Sections 10-2.219, 10-2.502 and 10-2.504 of Chapter 2 of Title 10 of the Modesto Municipal Code are hereby amended to read as follows:

**10-2.219 FAMILY.**

“Family” means an individual or two (2) or more persons living together as a single household unit in a dwelling unit. Family does not include larger institutional group living situations including, but not limited to, fraternities and sororities nor does it include commercial group living arrangements including, but not limited to, boarding houses and lodging houses.

**10-2.502 PERMITTED USES.**

The following are permitted uses:

- (a) One (1) single-family dwelling per lot.
- (b) Two (2) single-family dwellings or a duplex on any corner lot, provided that the driveway serving the off-street parking for one dwelling unit shall have access to one street and the driveway serving the off-street parking for the other dwelling unit shall have access to another street. If the lot has access to an alley, one (1) or both driveways may access to the alley.
- (c) The provision of lodging and/or boarding to a maximum of three (3) persons by a proprietor who lives on the premises. Lodgers and boarders may use the proprietor's kitchen, but shall not be permitted separate eating, cooking or food storage facilities. Lodging or boarding is not permitted where there are two (2) dwellings on a lot.

(d) The operation of a bed and breakfast home, provided that not more than two (2) bedrooms may be used for the lodging of guests and that the property owner shall reside on the premises.

(e) Adult day care for three (3) or fewer persons in addition to members of the family if there is only one (1) dwelling unit on the lot.

(f) Child day care for twelve (12) or fewer children in addition to members of the family. Only one (1) day care business is permitted per lot.

(g) Residential care facility.

(h) Parks owned and operated by a governmental agency.

(i) The growing of fruit and nut trees, vines, row crops and horticultural stock.

(j) A dish-type, satellite antenna, subject to the following conditions:

(1) A satellite antenna shall be located at least five (5) feet from the rear lot line and entirely outside of any required front yard and side yard. A satellite antenna shall not be located in the area between a required front yard and the front of a main building on a lot if the satellite antenna will be visible from the front lot line. A satellite antenna shall not be located in the area between a required side-street side yard and a main building on a lot if the satellite antenna will be visible from the side-street lot line. In the case of a through lot or multiple-frontage lot, a satellite antenna shall not be located so as to be visible from any street.

(2) A satellite antenna shall not exceed thirteen (13) feet in diameter.

(3) A satellite antenna shall be ground-mounted and shall not exceed a height of fifteen (15) feet at the highest point of the antenna.

(k) Signs subject to the provisions of Article 21.

(l) Accessory uses and structures customarily incidental to the above permitted uses.

(m) Residential service facility for up to six (6) persons.

**10-2.504      CONDITIONAL USES.**

The following uses are permitted upon securing a conditional use permit from the Board:

- (a) Church.
- (b) Public buildings or grounds operated by any governmental agency which are not a permitted use.
- (c) Buildings, facilities or grounds operated by a utility company.
- (d) Private recreational grounds and facilities not open to the general public and to which no admission charge is made.
- (e) Storm drainage basins and related facilities.
- (f) Adult day care for three (3) or fewer persons in addition to members of the family where there are two (2) dwelling units on a lot.
- (g) Adult day care for four (4) or more persons in addition to members of the family if there is only one (1) dwelling unit on a lot.
- (h) Residential service facility for seven (7) or more persons.
- (i) Child day care for thirteen (13) or more children in addition to members of the family. Only one (1) conditional use permit for child day care is permitted per lot.
- (j) The provision of lodging and/or board to four (4) or more persons by a proprietor who lives on the premises. Lodgers and boarders may use the proprietor's kitchen, but shall not be permitted separate eating, cooking or food storage facilities. Lodging or boarding shall not be permitted where there are two (2) dwellings on a lot.
- (k) A parking area for an immediately adjacent nonresidential use in a nonresidential zone.
- (l) Parochial and private schools.
- (m) Two (2) or more residential service facilities occupying a property in one (1) ownership.

SECTION 2. AMENDMENT OF CODE. Sections 10-2.216.1, 10-2.241.4.a and 10-2.241.4.b are hereby added to Chapter 2 of Article 2 of Title 10 of the Modesto Municipal Code to read as follows:

**10-2.216.1 DISABILITY.**

“Disability” means a person with: (1) a physical or mental impairment that substantially limits one (1) or more of a person’s major daily living activities, (2) a record of having, or being perceived as having, a physical or mental impairment, but not including current illegal use of, or addiction to, a controlled substance (as defined by Section 102 of the Federal Control Substance Act, at 21 U.S.C. Sec. 802).

**10-2.241.4.a RESIDENTIAL CARE FACILITY.**

“Residential care facility” means a single-family dwelling unit which provides 24-hour non-medical care of persons who have a disability and are in need of personal service, supervision, or assistance essential for sustaining the activities of daily living or for the protection of the individual in a family-like environment. A residential care facility does not include family day care, foster care or any medical services, including nursing services, beyond that required by the residents of the residential care facility for sustaining the activities of daily living.

**10-2.241.4.b RESIDENTIAL SERVICE FACILITY.**

“Residential service facility” means a single-family dwelling unit which provides 24-hour non-medical care of persons who have no disability but are in need of personal services, supervision, or assistance essential for sustaining the activities of daily living or for the protection of the individual in a family-like environment. A residential service facility does not include family day care, foster care or any medical or nursing assistance.

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, 1998, by Councilmember Serpa, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Fisher, Friedman, Serpa, Smith, Mayor Lang

NOES: Councilmembers: None

ABSENT: Councilmembers: Conrad, Dobbs

APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:

By   
JEAN ADAMS, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

Ord. No. 3081-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 17th day of March, 1998, Councilmember Friedman, moved its final adoption, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Conrad, Dobbs, Fisher, Friedman, Serpa, Smith,  
Mayor Lang

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:   
JEAN ADAMS, City Clerk

Effective Date: April 16, 1998

Clerk

ORDINANCE NO. 3082 -C.S.

AN ORDINANCE ADOPTING A PRECISE PLAN FOR AREA 34 OF THE VILLAGE ONE SPECIFIC PLAN, RELATING TO PROPERTY LOCATED ON THE SOUTH SIDE OF MERLE AVENUE WEST OF CLAUS ROAD. (WES BRENDLER)

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

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

WHEREAS, an application has been filed by Wes Brendler for a Precise Plan for Area No. 34, property located on the south side of Merle Avenue west of Claus Road, and

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

WHEREAS, a public hearing was held by the Planning Commission of the City of Modesto on March 2, 1998, in the City Council Chambers, City Hall, 801 11th Street, Modesto, and

WHEREAS, after considering public comments, the Planning Commission, by Resolution No. 98-21, recommended to the City Council approval of a Precise Plan for Area No. 34 of the Village One Specific Plan, and Amendment to Section 13-3-9 of the Zoning Map to rezone from a Specific Plan-Holding Zone, SP-H, to Specific Plan-Overlay Zone, SP-O, and

WHEREAS, said matter was set for a public hearing of the City Council of the City of Modesto to be held on April 7, 1998, at 7:00 p.m., in the City Council Chambers, City Hall, 801 11th Street, Modesto, and

WHEREAS, the Council declares that said Precise Plan fore Area 34 of the Village One Specific Plan and rezoning to SP-O Overlay Zoning is required by public necessity, convenience, and general welfare for the following reasons:

1. The proposed Precise Plan for Area No. 34 conforms to the Village One Specific Plan.
2. The proposed Precise Plan for Area No. 34 is necessary as an integral step toward development under the Village One Specific Plan.

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

SECTION 1. APPROVAL OF PRECISE PLAN. That the City Council has reviewed and considered the Precise Plan for Area No. 34 of the Village One Specific Plan and rezoning of the Specific Plan-Holding Zone, SP-H, to the Specific Plan-Overlay Zone, SP-O, as recommended by the Planning Commission, and the Council does hereby approve said Precise Plan, a copy of which is attached hereto.

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, 1998, by Councilmember Friedman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Dobbs, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Conrad, Dobbs, Fisher, Friedman, Serpa, Smith, Mayor Lang

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:

  
RICHARD A. LANG, Mayor

ATTEST:

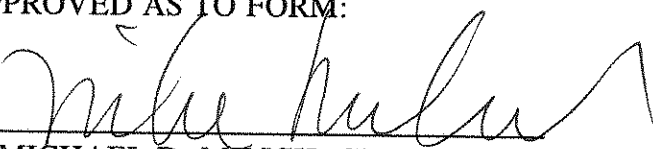
By

  
JEAN ADAMS, City Clerk

(SEAL)

APPROVED AS TO FORM:

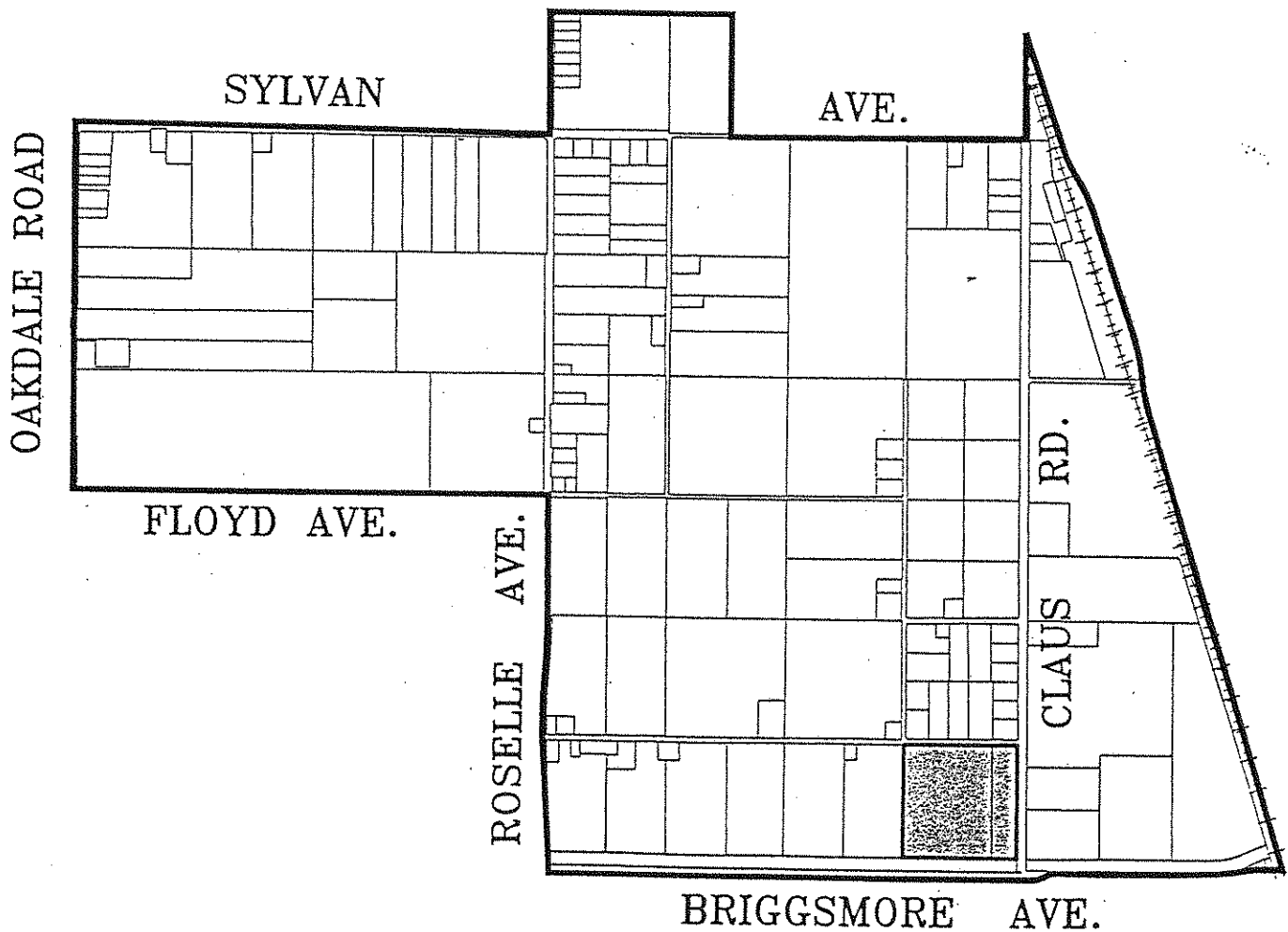
By

  
MICHAEL D. MILICH, City Attorney

# VILLAGE ONE

## PRECISE PLAN AREA NO. 34

MODESTO, CALIFORNIA



DATE SUBMITTED: \_\_\_\_\_  
P.C. APPROVAL: \_\_\_\_\_  
C.C. APPROVAL: \_\_\_\_\_



**LEW-GARCIA-DAVIS**  
ENGINEERING/SURVEYING  
PLANNING/MAPPING

3641 MITCHELL ROAD CERES, CA. 95307  
(209) 538-3360

## Table of Contents

- I. Introduction**
  - Project Description
  - Project Applicant
  - Project Planners, Engineers, Surveyors
  - Planning Area
  - Special Considerations
  - Property Owner List
  - Written Consent Form
- II. Applications / Approvals**
  - Application Fees
  - Environmental Review
  - Precise Plan Area Adoption
  - Zone Change
- III. Land Use**
  - Acreage
  - Existing Use
  - Land Use Intensity
  - Principal Underlying Zone
- IV. Design / Development Standards**
  - Street Sections
  - Landscaping Areas
  - Walls / Fencing
  - Circulation
- V. Specific Plan**
  - Conformance
  - Exceptions
- VI. Infrastructure Plan**
  - Sanitary Sewer
  - Water Plan
  - Storm Drainage Plan
  - Phasing Plan
- VII. Legal Description and Sketch**
- VIII. Policy Directions**

*Village One*  
*Precise Plan Area No. 34*

---

**VIII. Maps / Plans / Figures**

Street Sections

Landscape Area Map

Circulation Plan

Sanitary Sewer Plan

Water Plan

Storm Drainage Plan

Project Site Legal-Description / Sketch

*Village One  
Precise Plan Area No. 34*

---

## **I. Introduction**

### **Project Description**

The proposed project entails a request for approval and adoption of a Precise Plan for Precise Plan Area No. 34.

### **Project Applicant**

Wes Brendler  
2021 Woodland Avenue  
Modesto, CA 95358

### **Project Planners, Engineers, and Surveyors**

Lew-Garcia-Davis  
P.O. Box 1033  
Ceres, CA 95307  
(209) 538-3360  
FAX 538-7370

### **Planning Area**

Precise Plan Area No. 34 is bordered by Merle Avenue on the north, MID Lateral No. 3 on the south, Claus Road on the east, and Precise Plan Area 33 on the west.

### **Special Considerations**

The area is to be developed with single family residences only at a density consistent with the Village Residential Standard.

The existing alignment of Merle Avenue along with the landscaping and wall treatment will be maintained along the frontage of PPA 33.

Parcels fronting on the Claus Road Expressway shall provide a 95 foot wide traffic noise setback (from the edge of the public right of way) where no habitable dwellings shall be placed. Setback areas for landscaping and trails shall also be provided in accordance with the standards of Chapter II of the Village One Specific Plan.

*Village One*  
*Precise Plan Area No. 34*

---

**Property Owner List**

Property owners within Precise Plan Area No. 34

APN 52-24-58  
Wes Brendler  
2021 Woodland Avenue  
Modesto, CA 95358

APN 52-24-57  
Verna L. Hill  
3808 Nightingale Ct.  
Modesto, CA 95356

---

Property Owner Written Consent Form Precise Plan Area No. 34

APN 52-24-58  
Wes Brendler  
2021 Woodland Avenue  
Modesto, CA 95358

I, Wes Brendler do hereby consent to allow Lew-Garcia-Davis to file with the City of Modesto any maps, plans, applications, or other documents necessary for the approval of a Vesting Tentative Subdivision Map and Precise Plan Document for the above mentioned property.

Wes Brendler:

X Wesley R Brendler

Date:

12/31/97

*Village One  
Precise Plan Area No. 34*

---

**II. Applications / Approvals**

**Application Fees**

Environmental Questionnaire	\$ 535
Precise Plan	\$1,590
Rezone (SPH to SPO)	\$1,000
<b>Total</b>	<b>\$3,125</b>

**Environmental Review**

Applicant will pay fee but City of Modesto Staff will complete the Environmental Questionnaire and compile mitigation measures consistent with the original Village One Environmental Document.

**Precise Plan**

The City of Modesto will approve and adopt the Precise Plan Development Standards and Regulations for use in governing the development of projects within the geographic sub region. Future development within Precise Plan Area No. 34 that is not consistent with the Development Standards and Regulations proposed would be required to amend the Precise Plan Area No. 34 document accordingly.

**Zone Change**

Applicant will file and the City of Modesto will process a Zone Change for the project site that will effectively change the project site zoning from SPH (Specific Plan Holding) to SPO (Specific Plan Overlay).

*Village One*  
*Precise Plan Area No. 34*

---

### **III. Land Use**

#### **Acreage**

Precise Plan Area No. 34 encompasses approximately 36 Acres all of which is zoned for Village Residential Use. The underlying zone is R-1 Single Family Residential. A large portion of the overall acreage (+/-9 acres) will be utilized for the Claus Road Expressway / Briggsmore Overcrossing Right of Way.

#### **Existing Use**

The project site is currently being utilized for agricultural production and grazing land.

#### **Land Use Intensity**

The precise plan area will average 135 dwelling units based upon Village One Specific Plan.

#### **Principal Underlying Zone**

R-1 Single Family Residential

## **IV. Design / Development Standards**

### **Street Sections**

The precise plan will be developed in accordance with the attached street sections that were developed for use specifically in Village One.

### **Public Streets**

#### **Merle Avenue**

To be developed as 64' connector streets that include two travel lanes, 6' bike lanes, and an 8' parkway between the curb and sidewalk. On street parking will not be allowed. In addition to the 8' parkway there will be an additional 10' of landscaping behind the sidewalk which will be dedicated to and maintained by the city.

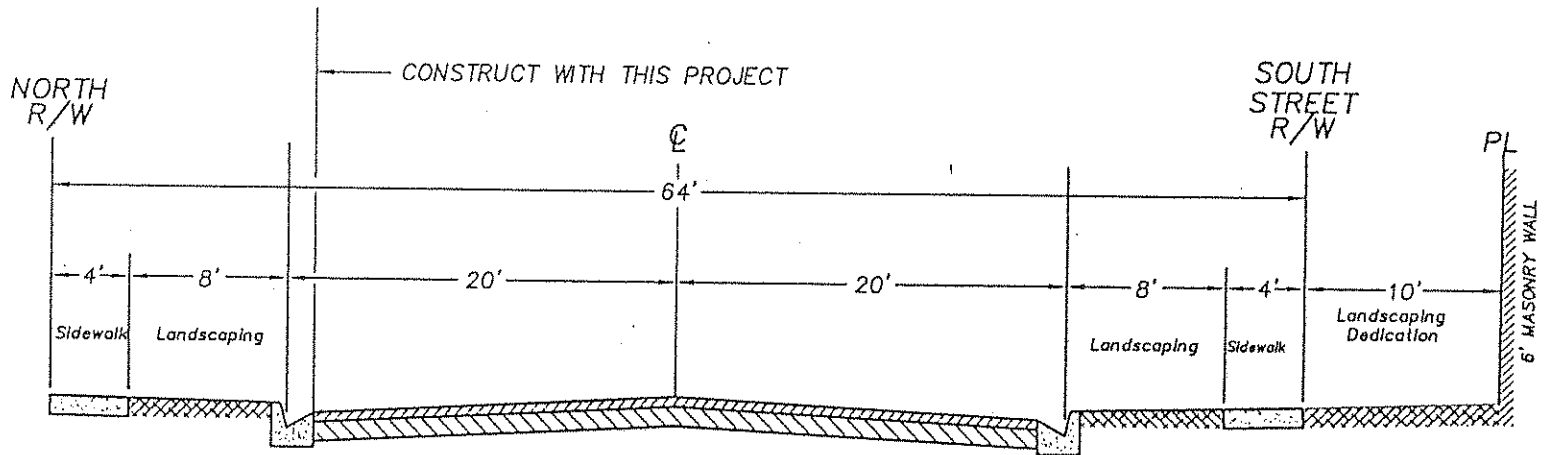
#### **Interior Streets**

To be developed as 48' right of ways that include two travel lanes, parking, and rollover curb and attached sidewalk. Street trees will be planted behind the sidewalk in a 4' planting easement.

### **Private Streets**

The Precise Plan will allow private gated communities that could be developed with private streets.

Interior Streets: The projects interior streets will be developed to the Village One standards for neighborhood streets in regard to the travel lanes and on street parking requirements. Private interior streets will have the option to not utilize sidewalks.



# MERLE AVENUE

Not to Scale



**LEW-GARCIA-DAVIS**  
 ENGINEERING/SURVEYING  
 MAPPING/PLANNING  
 3641 MITCHELL ROAD  
 DORIS, CA 95307  
 (209)538-3360

PRECISE PLAN AREA NO. 34  
 MERLE AVENUE

Date: 1/2/98

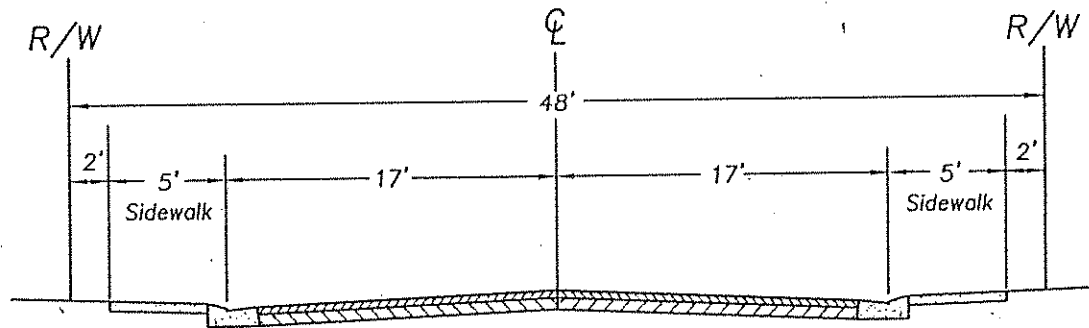
Scale: N.T.S.

Drawn: SH

Dwg.: 7044XSEC

Checked: DB

Job No. 97044



**48' INTERIOR STREET (PUBLIC)**

Not to Scale



**LEW-GARCIA-DAVIS**  
 ENGINEERING/SURVEYING  
 MAPPING/PLANNING  
 3641 MITCHELL ROAD CERES, CA 95307  
 (209) 538-3360

**PRECISE PLAN AREA NO. 34**  
**48' INTERIOR STREET**

Date: 1/2/98

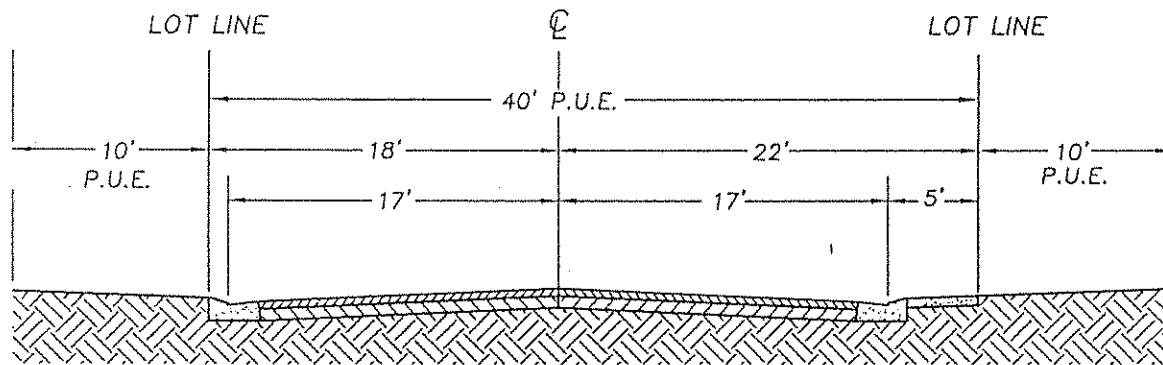
Scale: N.T.S.

Drawn: SH

Dwg.: 7044XSEC

Checked: DB

Job No. 97044



## 40' Interior Street (Private)

with sidewalk on one side  
Not to Scale

Optional for projects with a density of 1.0 – 4.0 units per gross acre  
as per Table H-1, Page APPH-7, City of Modesto Standard Specifications.



**LEW-GARCIA-DAVIS**  
ENGINEERING/SURVEYING  
MAPPING/PLANNING  
3641 MITCHELL ROAD CERES, CA 95307  
(209)538-3360

PRECISE PLAN AREA NO. 34  
40' INTERIOR STREET

Date: 3/2/98

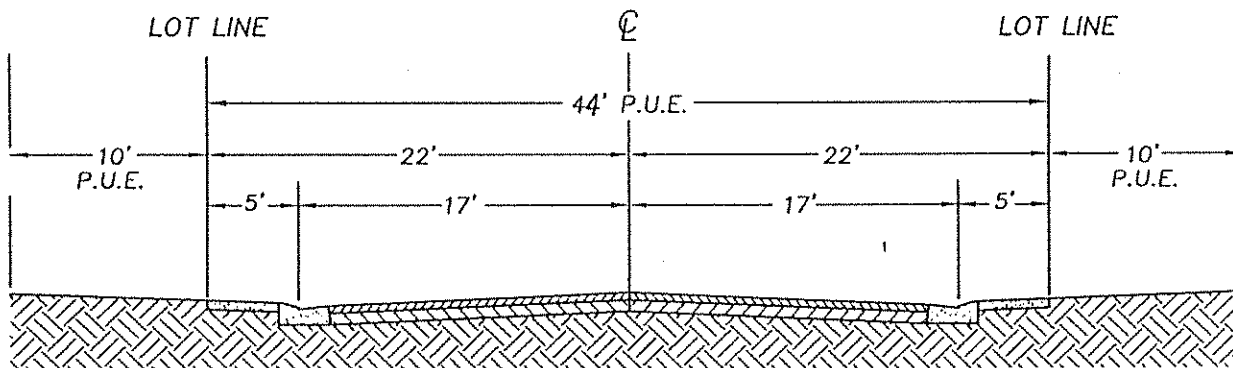
Scale: N.T.S.

Drawn: SH

Dwg.: 7044XSEC

Checked: DB

Job No. 97044



## 44' Interior Street (Private)

with sidewalk on both sides  
Not to Scale

Required for projects with a density over 4.0 units per acre as per  
Table H-1, Page APPH-7, City of Modesto Standard Specifications.

;



**LEW-GARCIA-DAVIS**  
ENGINEERING/SURVEYING  
MAPPING/PLANNING  
3641 MITCHELL ROAD CERES, CA. 95307  
(209)538-3380

**PRECISE PLAN AREA NO. 34**  
**44' INTERIOR STREET (PRIVATE)**

Date: 3/2/98

Scale: N.T.S.

Drawn: SH

Dwg.: 7044XSEC

Checked: DB

Job No. 97044

## **Design / Development Standards**

### **Landscaping Areas**

The landscaping areas shown on the attached map indicate the specific areas within the project that will be dedicated to and maintained by the City of Modesto. The project will annex to the Village One Community Facilities District to fund maintenance of these specified areas. Any future private landscaped areas will be privately maintained by a homeowners association.

### **Walls / Fencing**

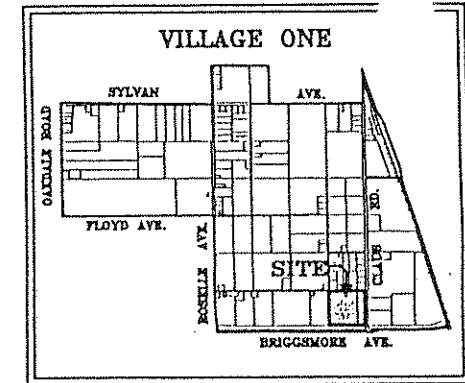
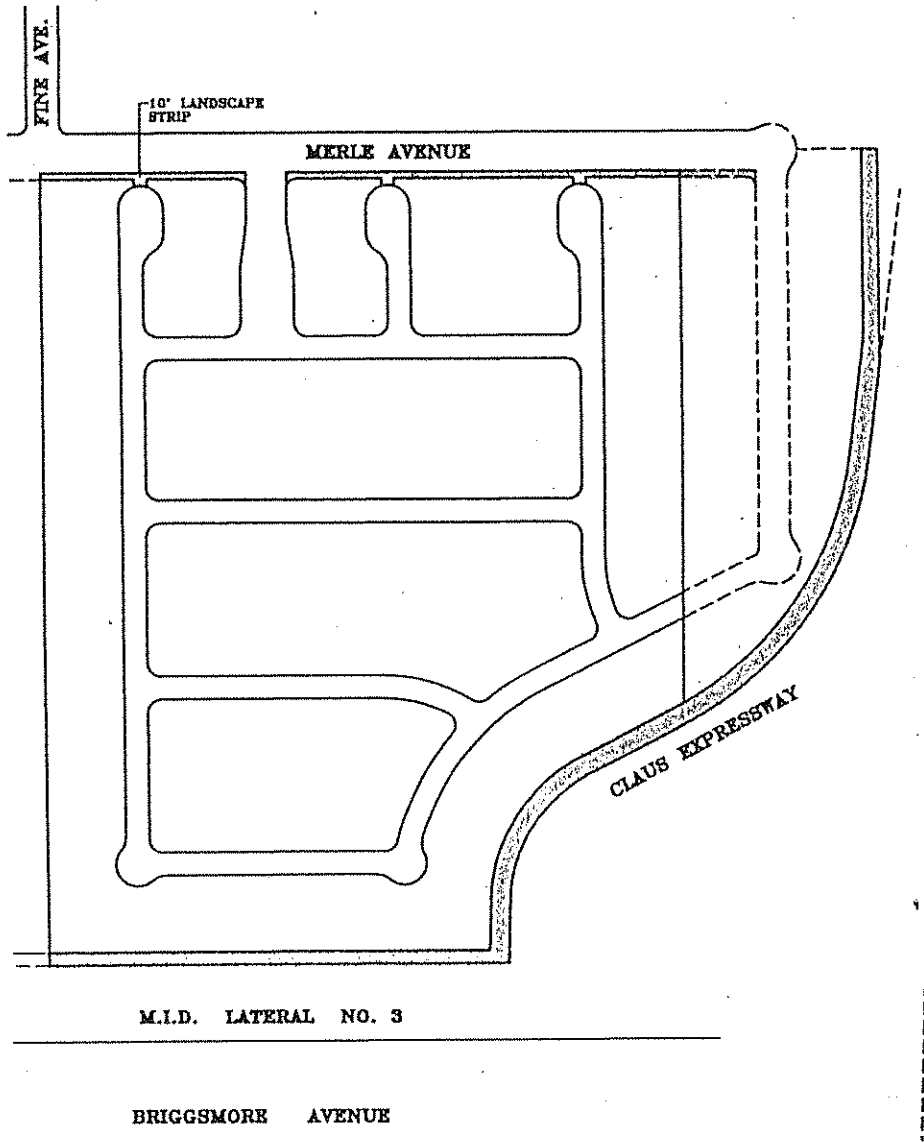
Developments along the Merle Avenue frontage of PPA 34 will be required to install a 7 foot decorative wall. Additional walls will include construction of a 6 foot soundwall along the southern boundary of the PPA 34 adjacent to the MID Lateral No. 3, and a 7 foot soundwall adjacent to the Claus Road Expressway and Briggsmore Avenue Overcrossing.

### **Circulation**

Circulation through PPA 34 will be through a series of minor residential streets that will connect Merle Avenue.

# PRECISE PLAN AREA NO. 34

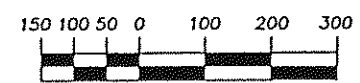
## LANDSCAPE AREA PLAN



VICINITY MAP

- PROPOSED
- - - - CONCEPTUAL
- LANDSCAPED AREAS

NOTE:  
LANDSCAPED AREAS TO BE DEDICATED  
TO THE VILLAGE ONE LANDSCAPE AND  
LIGHTING MAINTENANCE DISTRICT.



SCALE IN FEET

**LEW-GARCIA-DAVIS**  
ENGINEERING/SURVEYING  
MAPPING/PLANNING  
3641 MITCHELL ROAD CERES, CA 95307  
(209)538-3360

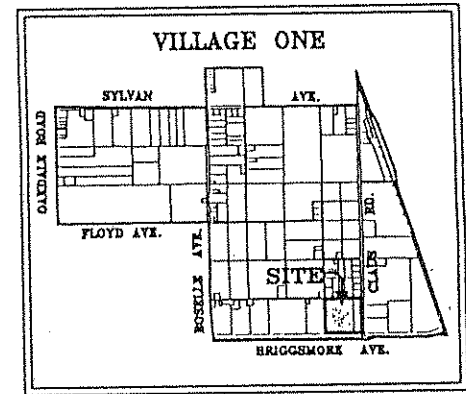
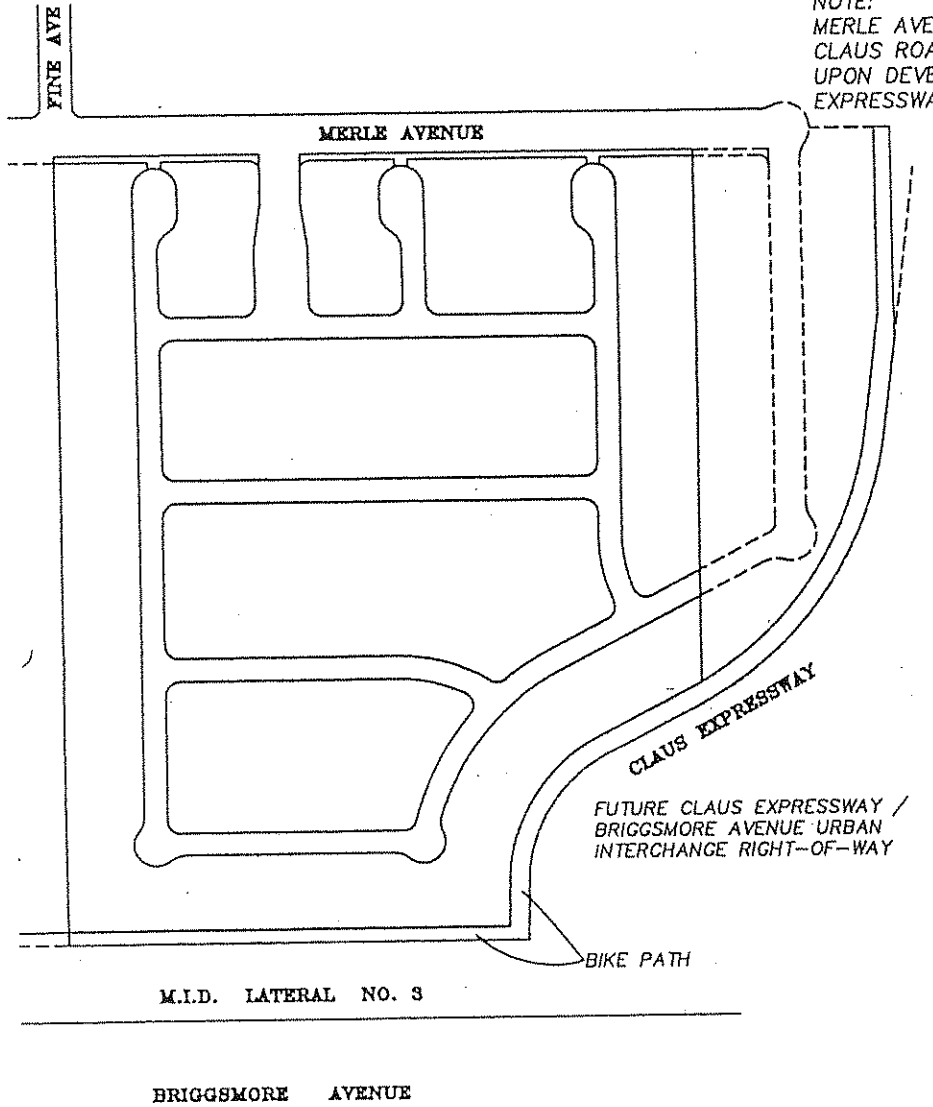
PRECISE PLAN NO. 34  
LANDSCAPING PLAN

Date: 1/5/98	Scale: N.T.S.
Drawn: SH	Dwg.: 7044PHS
Checked: DB	Job No. 97044

# PRECISE PLAN AREA NO. 34

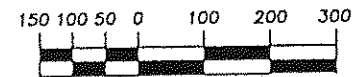
## CIRCULATION PLAN

NOTE:  
MERLE AVENUE CONNECTION TO  
CLAUS ROAD WILL BE ABANDONED  
UPON DEVELOPMENT OF CLAUS  
EXPRESSWAY.



VICINITY MAP

———— PROPOSED  
- - - - CONCEPTUAL



SCALE IN FEET



**LEW-GARCIA-DAVIS**  
ENGINEERING/SURVEYING  
MAPPING/PLANNING  
3641 MITCHELL ROAD GERRYS, CA 95307  
(209)538-3360

PRECISE PLAN NO. 34  
CIRCULATION PLAN

Date: 1/5/98

Scale: N.T.S.

Drawn: SH

Dwg.: 7044PHS

Checked: DB

Job No. 97044

## **V. Village One Specific Plan**

### **Specific Plan Conformance**

#### **Land Use / Community Design**

The plan meets the residential densities outlined for the subject portion of Precise Plan No. 34. The PPA design will be consistent with the Village One Community Design Policies.

#### **Circulation**

The plan provides for efficient interior circulation within the precise plan area and provides logical connection points for future development within the context of the Village One Plan.

#### **Public Facilities**

The plan will allow the development of public facilities to serve new growth within the precise plan area and provide logical connection points to allow for future development on the surrounding properties.

#### **Schools**

Development within PPA No. 34 will annex to the Schools Infrastructure Financing Agency Mello-Roos District.

*Village One  
Precise Plan Area No. 34*

---

## **Village One Specific Plan**

### **Specific Plan Exceptions**

The Precise Plan Document and Future Tentative Maps will be developed in accordance with the Village One Specific Plan as amended, and City of Modesto Municipal Code. The following items are exceptions to the Village One Specific Plan and or the City of Modesto R-1 Zoning Ordinance.

Rear yard setbacks will be in compliance with Village One standard for "Useable Rear Yard Space", 300 Sq. Ft. with no dimension less than 15' to meet this minimum.

### **Development Standards**

Front yard house setbacks will be 12' minimum. Garages setback will be 20' minimum.

Exterior side yard setbacks for houses with side yards on minor residential streets or private interior streets will be 10' minimum.

Exterior side yard setbacks for houses with side yards on Merle Avenue will be 5' minimum.

Interior side yard setbacks will be 5' minimum.

Three-car garage allowances:

The three car garage may constitute up to 60% of the front building elevation.

The front elevation shall be staggered by varying the setback on the house, a two car garage door, and one-car garage door.

Total garage frontage shall not exceed 31 feet.

The roof shall be articulated to differentiate the two-car garage door from the one-car garage door.

The developer will be encouraged to pave a set of tracks to the garage with central turf strips for one of the approaches to avoid a 30 foot wide paved apron.

## **VI. Infrastructure Plan**

### **Sanitary Sewer**

Sewer service for the subdivision will be provided by the City. The proposed sewer lines in the subdivision will be per the City Standards and will connect to the 18 inch sewer main to be extended from the west in Merle Avenue.

### **Water**

Domestic water for the subdivision will be provided by the City. The proposed water lines in the subdivision will be per the City Standards and will connect to the 8 inch water line to be extended from the west in Merle Avenue.

### **Storm Drainage**

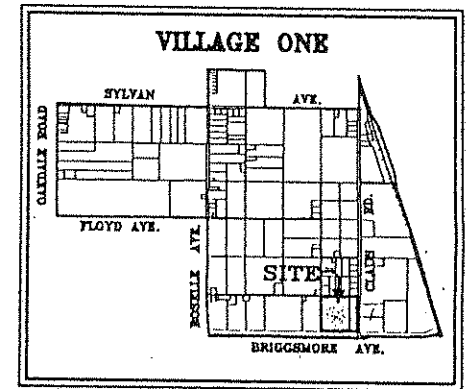
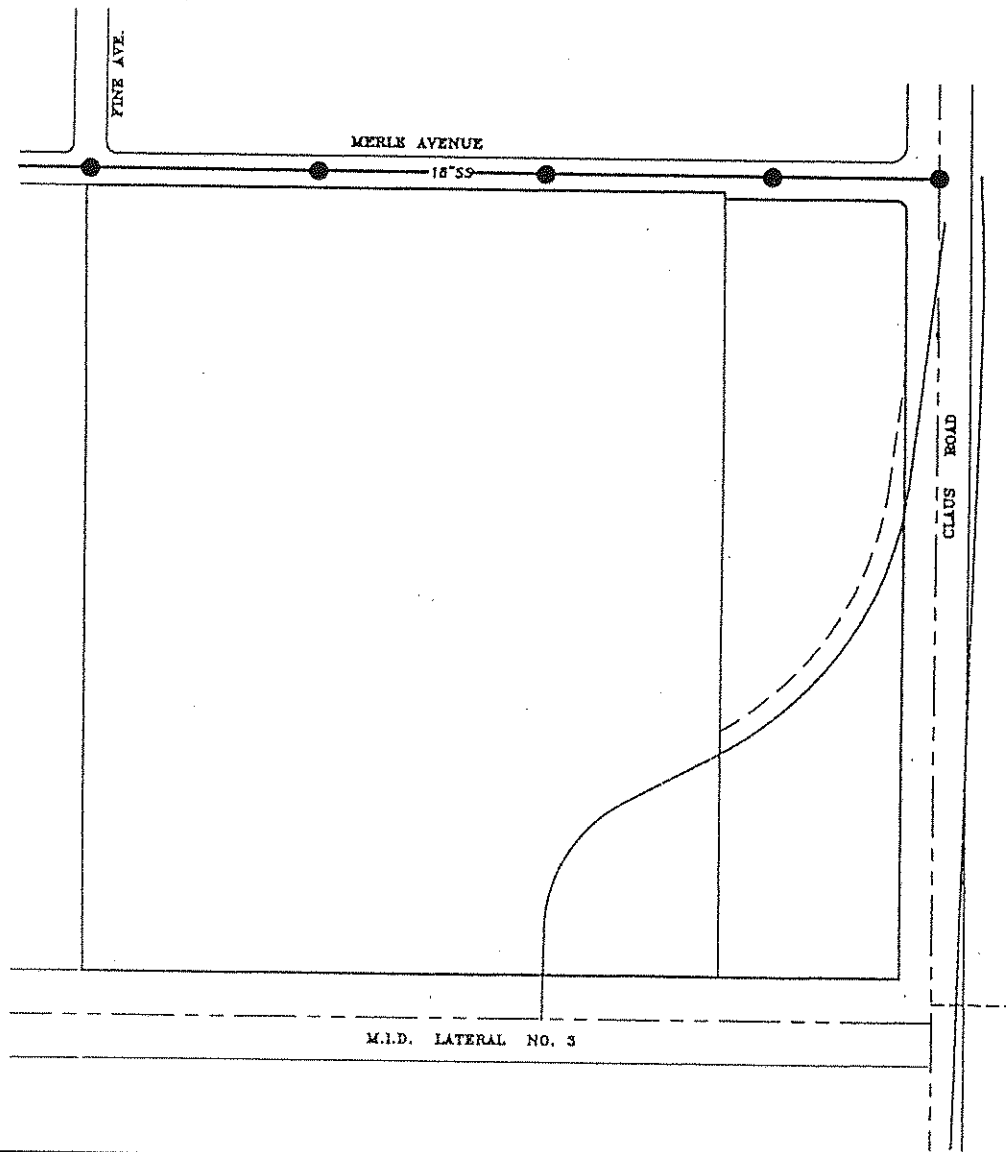
The storm drain system for the subdivision will tie into the central basin to the west via a 24 inch pipeline that will connect with the master planned facilities in Merle Avenue. A temporary basin may be utilized on a interim basis.

### **Phasing Plan**

Development of the site will likely take place in two to four phases. Specific phasing plans will be determined upon submittal of Vesting Tentative Subdivision Maps for each property.

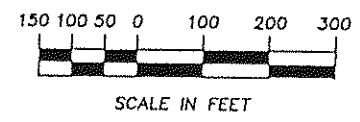
# PRECISE PLAN AREA NO. 34

## SANITARY SEWER PLAN



VICINITY MAP

- PROPOSED R/W
- - - - - CONCEPTUAL R/W
- 8"SS —— PROPOSED SEWER
- - - - - 8"SS - - - - - EXISTING SEWER
- PROPOSED MANHOLE
- EXISTING MANHOLE



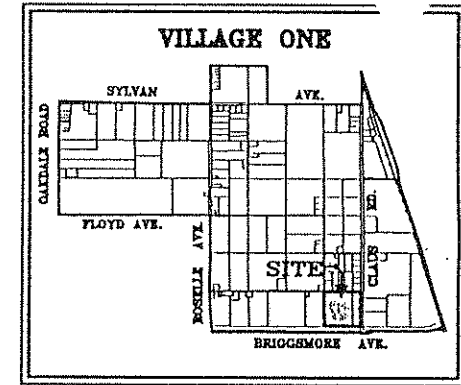
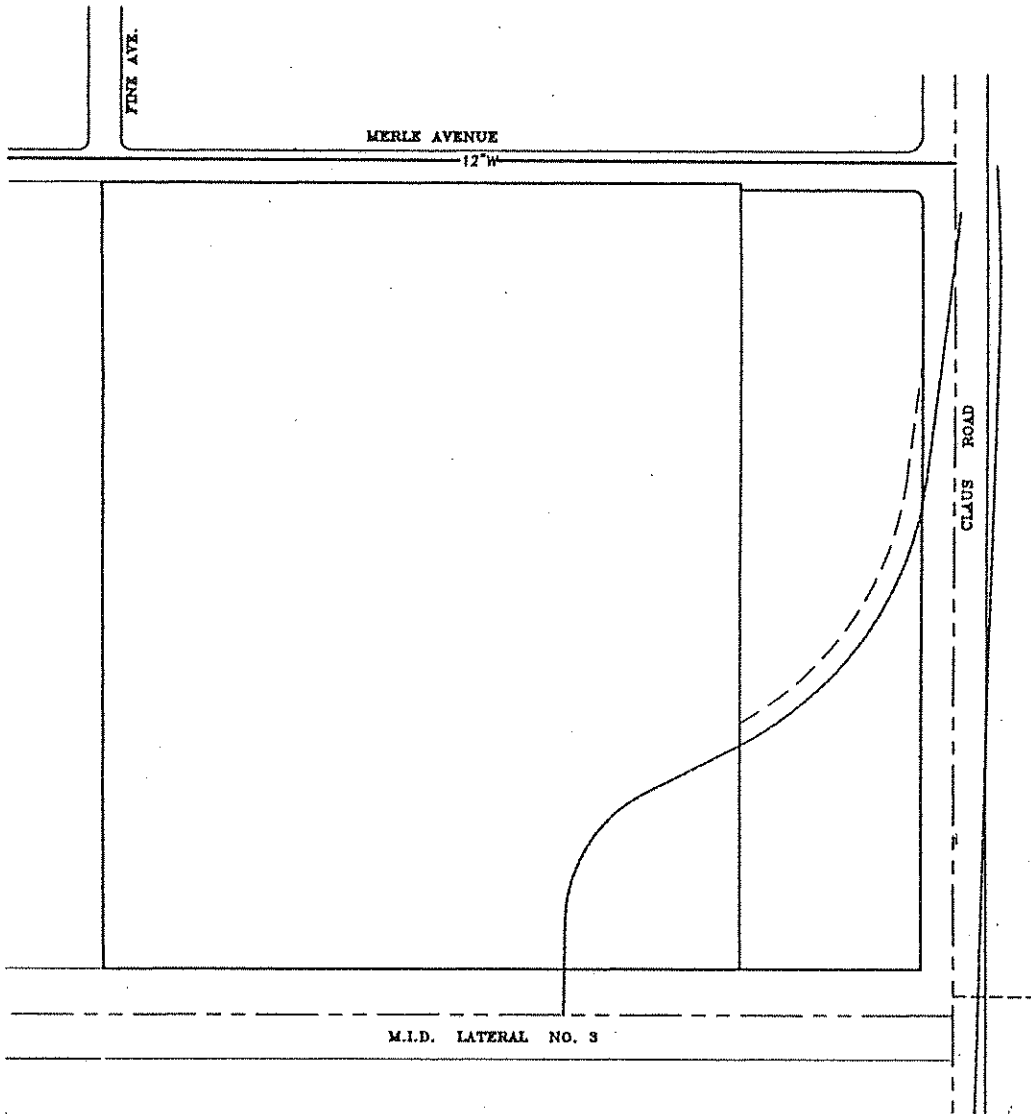
**LEW-GARCIA-DAVIS**  
ENGINEERING/SURVEYING  
MAPPING/PLANNING  
3641 MITCHELL ROAD    DERRIS, CA 95307  
(209)538-3300

PRECISE PLAN NO. 34  
SANITARY SEWER PLAN

Date: 1/5/98	Scale: N.T.S.
Drawn: SH	Dwg.: 7044MP
Checked: DB	Job No. 97044

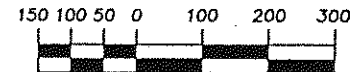
# PRECISE PLAN AREA NO. 34

## WATER PLAN



VICINITY MAP

- PROPOSED R/W
- CONCEPTUAL R/W
- 8" W —— PROPOSED WATER
- 12" W ----- EXISTING WATER



SCALE IN FEET



**LEW-GARCIA-DAVIS**  
 ENGINEERING/SURVEYING  
 MAPPING/PLANNING  
 3641 MITCHELL ROAD CERES, CA 95307  
 (209)538-3360

### PRECISE PLAN NO. 34

### WATER PLAN

Date: 1/5/98

Scale: N.T.S.

Drawn: SH

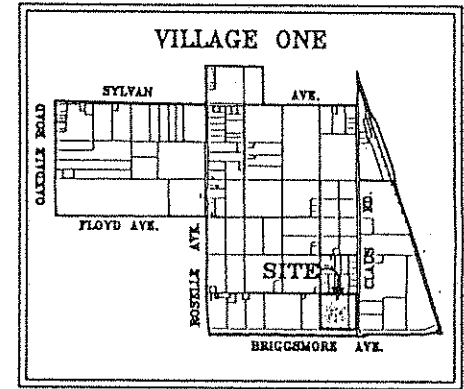
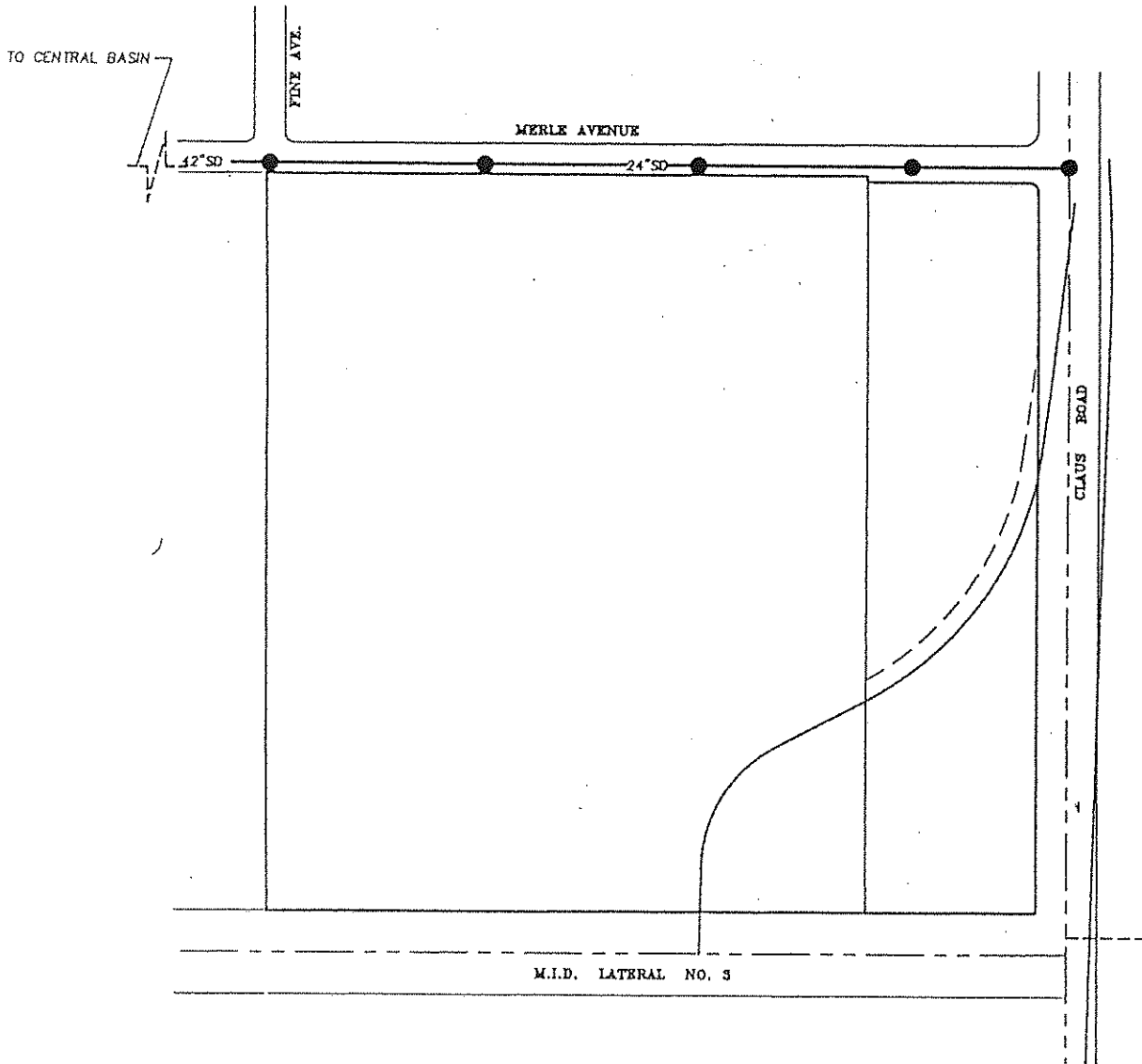
Dwg.: 7044MP

Checked: DB

Job No. 97044

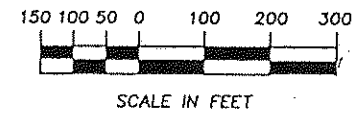
# PRECISE PLAN AREA NO. 34

## STORM DRAINAGE PLAN



VICINITY MAP

- PROPOSED R/W
- - - - - CONCEPTUAL R/W
- 18" SD—— PROPOSED STORM DRAIN
- - - -18" SD- - - - EXISTING STORM DRAIN
- PROPOSED MANHOLE
- EXISTING MANHOLE
- PROPOSED CATCH BASIN



**LEW-GARCIA-DAVIS**  
 ENGINEERING/SURVEYING  
 MAPPING/PLANNING  
 3641 MITCHELL ROAD CERES, CA 95307  
 (209) 536-3360

PRECISE PLAN NO. 34  
 STORM DRAINAGE PLAN

Date: 1/5/98

Scale: N.T.S.

Drawn: SH

Dwg.: 7044MP

Checked: DB

Job No. 97044

*Village One*  
*Precise Plan Area No. 34*

---

**VII. Legal Description and Sketch**

The attached legal description and accompanying sketch detail the boundary area of Precise Plan Area No. 34.

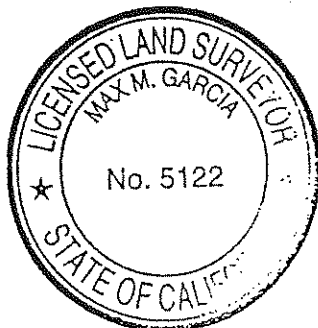
LEGAL DESCRIPTION FOR  
PRECISE PLAN AREA No. 34

Parcels A and B as shown in Book 15 of Parcel Maps, Page 4, Stanislaus County Records, lying in the southeast quarter of Section 13, Township 3 South, Range 9 East, Mount Diablo Base and Meridian, situate in the City of Modesto, County of Stanislaus, State of California, more particularly described as follows:

Beginning at the northwest corner of said Parcel B; thence North  $89^{\circ}22'11''$  East along the north line of said Parcel B also being the south line of Merle Avenue as shown on said Parcel Map, a distance of 982.55 feet to the northeast corner of said Parcel B; thence South  $00^{\circ}48'00''$  East along the east line of said Parcel B, a distance of 10.00 feet to the northwest corner of said Parcel A; thence North  $89^{\circ}22'11''$  East along the north line of said Parcel A also being the south line of Merle Avenue as shown on said Parcel Map, a distance of 265.05 feet to the beginning of a curve concave to the southwest, having a radius of 15.00 feet; thence southeasterly along the arc of said curve, through a central angle of  $89^{\circ}49'49''$ , a distance of 23.52 feet; thence South  $00^{\circ}48'00''$  East along the east line of said Parcel A also being the west line of Claus Road, said west line being 50.00 feet west of and parallel with the east line of said Section 13, a distance of 1208.88 feet to the southeast corner of said Parcel A; thence South  $89^{\circ}18'03''$  West along the south line of said Parcels A and B also being the north line of M.I.D. Lateral No. 2, a distance of 1261.42 feet to the southwest corner of said Parcel B; thence North  $00^{\circ}51'08''$  West along the west line of said Parcel B, a distance of 1235.35 feet to the point of beginning.

Contains 35.70 acres, more or less

The real property described has been prepared by me, or under my direction, in conformance with the Professional Land Surveyors Act.



*Max M. Garcia*      1/5/98  
Max M. Garcia, L.S. 5122      Date  
License Expires: 06/30/99

FINE AVE.

MERLE AVENUE

N 89°52'29" E

982.55'

N 89°52'29" E

265.04'

S 00°17'13" E  
10.00'

$\Delta = 89°50'17"$   
R = 15.00'  
L = 23.52'

POINT OF BEGINNING

1233.39'

N 00°20'40" W

PARCEL B  
15 - P.M. - 4

PARCEL A  
15 - P.M. - 4

1208.56'

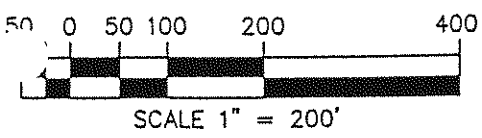
CLAUS ROAD

S 00°17'13" E

S 89°52'51" W

1261.31'

M.I.D. LATERAL NO. 3



*Village One  
Precise Plan Area No. 34*

---

## VIII. Policy Directions

Where appropriate the following design policies should be incorporated into developments within PPA 34 As per Section III D 1-15 on pages III-4 through III-8 of the Village One Specific Plan dated June 3, 1997.

1) Future developments within and adjacent to PPA 34 should incorporate the PPA 34 design and development standards to allow for effective transition between developments and Precise Plan Areas.

2) No existing structures within PPA 34.

3) N/A

4) N/A

5) Connector street alignments to be developed in accordance with PPA 34 and the Village One Facilities Master Plan.

6) Community Design Policies to be incorporated into developments within PPA 34.

7) All deeds for lots of subdivisions developed in this precise plan area shall contain the following statement:

"This lot is located near existing agricultural operations. Residents may be subjected to customary and accepted farming practices that produce noise, dust, smoke, and other impacts. The grantee accepts the potential impacts of customary farming practices, which may include the application and use of various chemicals through spraying, spreading, or other customary means in accordance with applicable state and federal regulations regarding such applications. The grantee also acknowledges the need to avoid activities that conflict with nearby farm uses."

8) Open ended cul de sacs with linkage to connector street pedestrian walkways to be encouraged with development of the Precise Plan Area.

9) Development within the Precise Plan Area to annex into the Community Facilities District No. 1996-1 (Village One).

10) Prior to Final Inspection, Building Inspection Division shall verify that all fireplaces and wood stoves in residential units are equipped to meet the

*Village One*  
*Precise Plan Area No. 34*

---

performance and emissions standards set forth in Part 60, Title 40, Subpart AAA Code of Federal Regulations, February 26, 1988.

11) Noise Mitigation as per Environmental Noise Analysis dated August 25, 1997 attached and made part of the Precise Plan.

12) Construction noise is regulated by the City's Noise Ordinance, Section 4.9-103. Construction noise is generally permitted during the hours of 7:00 a.m. to 9:00 p.m. To avoid complaints from nearby residents, and possible citations, the full text of the ordinance should be reviewed by builders prior to construction. City construction projects will be monitored by Construction Inspection Division for conformance with the City's Noise Ordinance.

13)

14) During construction activities, Building Inspection Division shall verify that contractors observe the requirements of City of Modesto Standard Specification 1.8, Dust Control, and when necessary, Regulation VIII of the San Joaquin Valley Unified Air Pollution Control District to control the generation of PM 10 from construction related dust and emissions.

Ord. No. 3082-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 April, 1998, Councilmember Fisher, moved its final adoption, which motion being duly seconded by Councilmember Conrad, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Conrad, Fisher, Friedman, Smith, Mayor Pro Tempore Dobbs

NOES: Councilmembers: None

ABSENT: Councilmembers: Serpa, Mayor Lang

APPROVED:   
STAN DOBBS, Mayor Pro Tempore

ATTEST:   
JEAN ADAMS, City Clerk

Effective Date: May 14, 1998

Clerk

ORDINANCE NO. 3083 -C.S.

AN ORDINANCE REZONING VILLAGE ONE PROPERTY FROM SPECIFIC PLAN-HOLDING ZONE, SP-H, TO SPECIFIC PLAN-OVERLAY ZONE, SP-O, FOR PROPERTY LOCATED ON THE SOUTH SIDE OF MERLE AVENUE WEST OF CLAUS ROAD. (PRECISE PLAN FOR AREA 34 - WES BRENDLER)

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

WHEREAS, an application has been filed by Wes Brendler for a Precise Plan for Area No. 34, property located on the south side of Merle Avenue west of Claus Road, for a gated community, and

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

WHEREAS, after a public hearing held on March 2, 1998, it was found and determined by the Planning Commission that zoning of the property as requested is required by public necessity, convenience and general welfare, and

WHEREAS, by Resolution No. 98-21, adopted March 2, 1998, the Planning Commission recommended that the application of Wes Brendler to rezone Village One property from Specific Plan-Holding Zone, SP-H, to Specific Plan-Overlay Zone, SP-O, for property located on the south side of Merle Avenue west of Claus Road be approved, and

WHEREAS, said matter was set for a public hearing of the City Council to be held on April 7, 1998, at 7:00 p.m., in the City Council Chambers, City Hall, 801 11th Street,

Modesto, California, at which date and time said duly noticed public hearing of the Council was held and evidence both oral and documentary was received and considered,

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

SECTION 1. After a public hearing held on April 7, 1998, in the Council Chambers, City Hall, 801 11th Street, Modesto, California, this Council finds and determines that the requested rezoning is in accordance with the General Plan and will serve the public health, safety and general welfare and provide the economic and social advantages resulting from orderly, planned use of land resource for the following reasons:

1. The proposed zoning conforms to the Village One Specific Plan.
2. The proposed zoning is necessary as an integral step toward development under the Village One Specific Plan.

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

SP-H to SP-O, PPA 34

Parcels A and B as shown in Book 15 of Parcel Maps, Page 4, Stanislaus County Records, lying in the southeast quarter of Section 13, Township 3 South, Range 9 East, Mount Diablo Base and Meridian, situate in the City of Modesto, County of Stanislaus, State of California, more particularly described as follows:

Beginning at the northwest corner of said Parcel B; thence North 89° 22' 11" East along the north line of said Parcel B also being the south line of Merle Avenue as shown on said Parcel Map, a distance of 982.55 feet to the northeast corner of said Parcel B; thence South 00° 48' 00" East along the east line of said Parcel B, a distance of 10.00 feet to the northwest corner of said Parcel A; thence North 89° 22' 11" East along the north line of said Parcel A also being

the south line of Merle Avenue as shown on said Parcel Map, a distance of 265.05 feet to the beginning of a curve concave to the southwest, having a radius of 15.00 feet; thence southeasterly along the arc of said curve, through a central angle of 89° 49' 49", a distance of 23.52 feet; thence South 00° 48' 00" East along the east line of said Parcel A also being the west line of Claus Road, said west line being 50.00 feet west of and parallel with the east line of said Section 13, a distance of 1208.88 feet to the southeast corner of said Parcel A; thence South 89° 18' 03" West along the south line of said Parcels A and B also being the north line of M.I.D. Lateral No. 3, a distance of 1261.42 feet to the southwest corner of said Parcel B; thence North 00° 51' 08" West along the west line of said Parcel B, a distance of 1235.35 feet to the point of beginning.

Including also that portion of Merle Avenue lying south of the centerline of original 40-foot Merle Avenue; that portion of Claus Road lying west of the centerline of 100-foot Claus Road, said centerline also being the east line of said Section 13; and that portion of M.I.D. Lateral Number 3 lying north of the centerline of said M.I.D. Lateral Number 3, said centerline also being the south line of said Section 13.

SECTION 3. ZONING MAP. Section 13-3-9 of the Zoning Map of the City of Modesto is amended to appear as set forth on the map attached hereto, which is hereby made a part of this ordinance by reference.

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

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

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 7th day of April, 1998, by Councilmember Friedman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Dobbs, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Conrad, Dobbs, Fisher, Friedman, Serpa, Smith, Mayor Lang

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:

By   
JEAN ADAMS, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

APPROVED AS TO DESCRIPTION:

By   
Community Development Department  
Development Services

Ord. No. 3083-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 April, 1998, Councilmember Fisher, moved its final adoption, which motion being duly seconded by Councilmember Conrad, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Conrad, Fisher, Friedman, Smith, Mayor Pro Tempore Dobbs

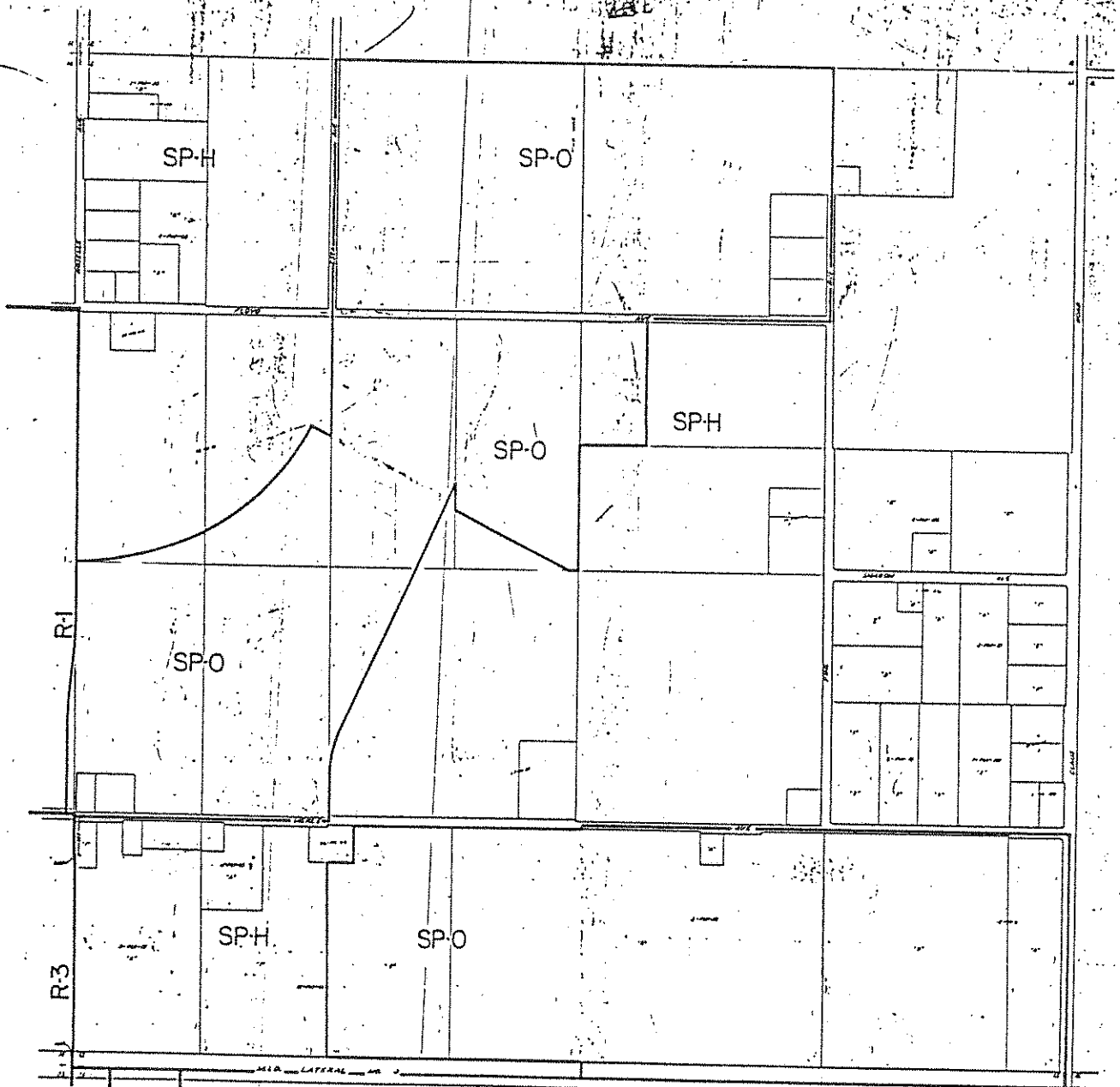
NOES: Councilmembers: None

ABSENT: Councilmembers: Serpa, Mayor Lang

APPROVED:   
STAN DOBBS, Mayor Pro Tempore

ATTEST:   
JEAN ADAMS, City Clerk

Effective Date: May 14, 1998



ZONING MAP OF THE CITY OF MODESTO

13-3-9

*Clark*

ORDINANCE NO. 3084 -C.S.

AN ORDINANCE AMENDING SECTION 7-3-9 OF THE ZONING MAP TO REZONE FROM MEDIUM-HIGH DENSITY RESIDENTIAL ZONE, R-3, AND PROFESSIONAL OFFICE ZONE, P-O, TO PLANNED DEVELOPMENT ZONE, P-D(527), PROPERTY LOCATED ON THE WEST SIDE OF TULLY ROAD NORTH OF STANDIFORD AVENUE (GREGORY DEVELOPMENT COMPANY)

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 Medium-High Density Residential Zone, R-3, and Professional Office Zone, P-O, to Planned Development Zone, P-D(527):

R-3 to P-D(527)

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

COMMENCING for reference at the East Quarter corner of the above mentioned Section 7, with said point lying at the intersection of the centerlines of Standiford Avenue and Tully Road; thence North 01° 14' 15" West along the East line of said Section 7 and along the centerline of said Tully Road, a distance of 1024.00 feet to the TRUE POINT OF BEGINNING; thence leaving last said lines and proceeding South 88° 45' 45" West, a distance of 500.96 feet to a point on the West line of PARCEL 2 as shown on that certain map filed for record on October 17, 1978 in Book 28 of Parcel Maps at Page 6, Stanislaus County Records; thence North 00° 24' 59" West along last said line and along the West line of PARCEL 3 as shown on said Parcel Map, a distance of 252.05 feet to the Northwest corner of said PARCEL 3, with said point lying on the Southeasterly right-of-way line of the Hetch Hetchy Aqueduct; thence North 69° 19' 52" East along the line common to said PARCEL 3 and the Hetch Hetchy Aqueduct, a distance of 157.06 feet; thence South 89° 24' 23" East along the North line of said PARCEL 3, a distance of 60.00 feet; thence leaving last said line and proceeding South 00° 24' 50" East, a distance of 269.68 feet to a point on the South line of said PARCEL 3; thence North 88° 45' 45" East along last said line and its Easterly prolongation, a distance of 293.14 feet to a point on

the above mentioned East line of Section 7 and the centerline of Tully Road; thence South 01° 14' 15" East along last said line, a distance of 32.70 feet to the POINT OF BEGINNING.

Containing 1.58 acres gross, more or less.

P-O to P-D(527)

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

COMMENCING for reference at the East Quarter corner of the above mentioned Section 7, with said point lying at the intersection of the centerlines of Standiford Avenue and Tully Road; thence North 01° 14' 15" West along the East line of said Section 7 and along the centerline of said Tully Road, a distance of 1056.70 feet to the Easterly prolongation of the South line of PARCEL 3 as shown on that certain map filed for record on October 17, 1978, in Book 28 of Parcel Maps at Page 6, Stanislaus County Records, and the TRUE POINT OF BEGINNING; thence South 88° 45' 45" West along said prolongation and along said South line of PARCEL 3, a distance of 293.14 feet; thence leaving last said line and proceeding North 00° 24' 50" West, a distance of 269.68 feet to a point on the North line of said PARCEL 3; thence South 89° 24' 23" East along said North line, a distance of 86.13 feet; thence leaving last said line and proceeding South 01° 14' 15" East, a distance of 122.60 feet; thence North 88° 45' 45" East, a distance of 203.18 feet to a point on the above mentioned East line of Section 7 and the centerline of Tully Road; thence South 01° 14' 15" East along last said lines, a distance of 144.30 feet to the POINT OF BEGINNING.

Containing 1.22 acres gross, more or less.

SECTION 2. USES. The following uses shall be permitted in said P-D(527)

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:

Mini-warehouse storage facility.

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

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

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

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 14th day of April, 1998, by Councilmember Friedman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Conrad, Fisher, Friedman, Smith, Mayor Pro Tempore Dobbs

NOES: Councilmembers: None

ABSENT: Councilmembers: Serpa, Mayor Lang

APPROVED: Stan Dobbs  
STAN DOBBS, Mayor Pro Tempore

ATTEST:

By Jean Adams  
JEAN ADAMS, City Clerk

(SEAL)

APPROVED AS TO FORM:

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

APPROVED AS TO DESCRIPTION:

By [Signature]  
Community Development Department  
Development Services

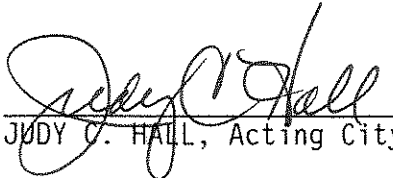
Ord. No. 3084-C.S.

FINAL ADOPTION CLAUSE

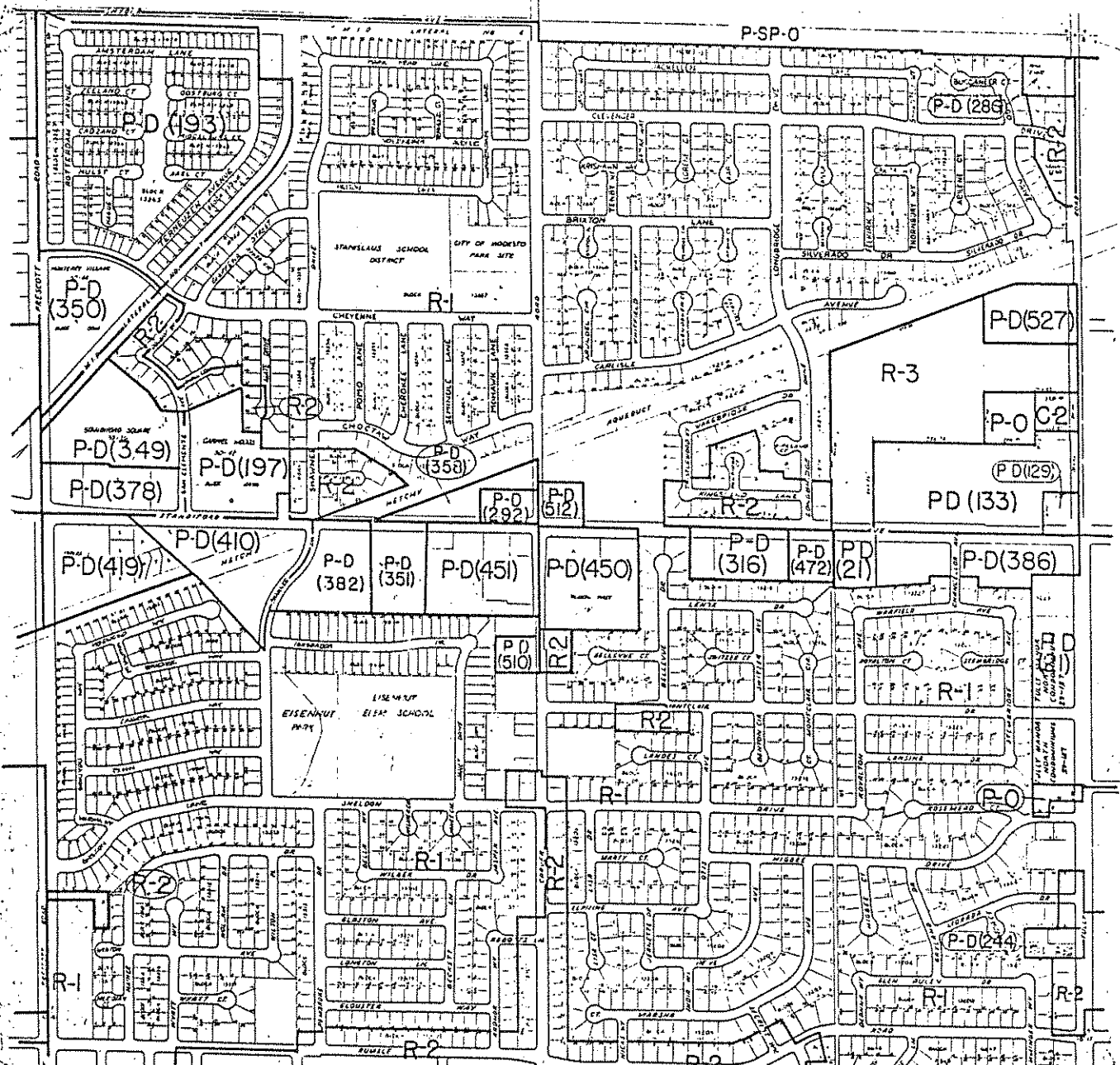
The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 21st day of April, 1998, Councilmember Friedman, moved its final adoption, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Conrad, Fisher, Friedman, Serpa, Smith, Mayor Lang  
NOES: Councilmembers: None  
ABSENT: Councilmembers: Dobbs

APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:   
JUDY C. HALL, Acting City Clerk

Effective Date: May 21, 1998



ZONING MAP OF THE CITY OF MODESTO

7-3-9

ORDINANCE NO. 3085-C.S.

AN ORDINANCE AMENDING SECTION 21-3-9 OF THE ZONING MAP TO REZONE FROM LOW DENSITY RESIDENTIAL ZONE, R-1, TO PLANNED DEVELOPMENT ZONE, P-D(528), PROPERTY LOCATED ON THE NORTHWEST CORNER OF EAST ORANGEBURG AVENUE AND SUNRISE AVENUE, 1407 SUNRISE AVENUE. (CALIFORNIA EQUITY MANAGEMENT GROUP, INC.)

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

SECTION 1. ZONING CHANGE. Section 21-3-9 of the Zoning Map is hereby amended to reclassify the following described property from Low Density Residential Zone, R-1, to Planned Development Zone, P-D(528):

R-1 to P-D(528)

All that certain real property situate in a portion of the Southeast Quarter, of the Northeast Quarter of the Northwest Quarter of Section 21, Township 3 South, Range 9 East, Mount Diablo Base and Meridian, in the City of Modesto, County of Stanislaus, State of California, described as follows:

Commencing at the Southeast corner of the Southeast Quarter of the northwest Quarter of said Section 21, being the intersection of the centerlines of 80.00 foot wide East Orangeburg and 60.00 foot wide Sunrise Avenues; thence West, along the centerline of East Orangeburg Avenue and the north quarter quarter line of said Section 21, 165.00 feet to the East line of P-D(473) thence leaving said centerline North along the east line of P-D(473) 100.00 feet; thence leaving said east line, East a distance of 165.00 feet to the centerline of said Sunrise Avenue; thence South along said centerline, South a distance of 100.00 feet to the point of beginning.

SECTION 2. USES. The following uses shall be permitted in said P-D(528) Zone if the plan for construction conforms in principle to the approved plan, or if changes are approved by the Secretary of the Planning Commission as required by Section 10-2.1709(c) of the Modesto Municipal Code, or by the Planning Commission if any changes not conforming

in principle to the approved plan are proposed, as required by Section 10-2.1709(a) or (b) of the Modesto Municipal Code:

1. Medical/dental and professional offices as allowed in the Professional Office Zone.
2. Off-street parking area.

SECTION 3. ZONING MAP. Section Map 21-3-9 of the Zoning Map of the City of Modesto is amended to appear as set forth on the map attached hereto, which is hereby made a part of this ordinance by reference.

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

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

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 14th day of April, 1998, by Councilmember Friedman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Conrad, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Conrad, Friedman, Smith, Mayor Pro Tempore Dobbs

NOES: Councilmembers: None

ABSENT: Councilmembers: Fisher, Serpa, Mayor Lang

APPROVED: Stan Dobbs  
STAN DOBBS, Mayor Pro Tempore

ATTEST:

By Jean Adams  
JEAN ADAMS, City Clerk

(SEAL)

APPROVED AS TO FORM:

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

APPROVED AS TO DESCRIPTION:

By [Signature]  
Community Development Department  
Development Services

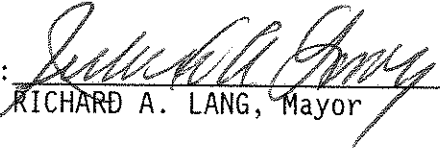
Ord. No. 3085-C.S.

FINAL ADOPTION CLAUSE


The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 21st day of April, 1998, Councilmember Friedman, moved its final adoption, which motion being duly seconded by Councilmember Conrad, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Conrad, Friedman, Serpa, Smith, Mayor Lang  
NOES: Councilmembers: None  
ABSENT: Councilmembers: Dobbs, Fisher

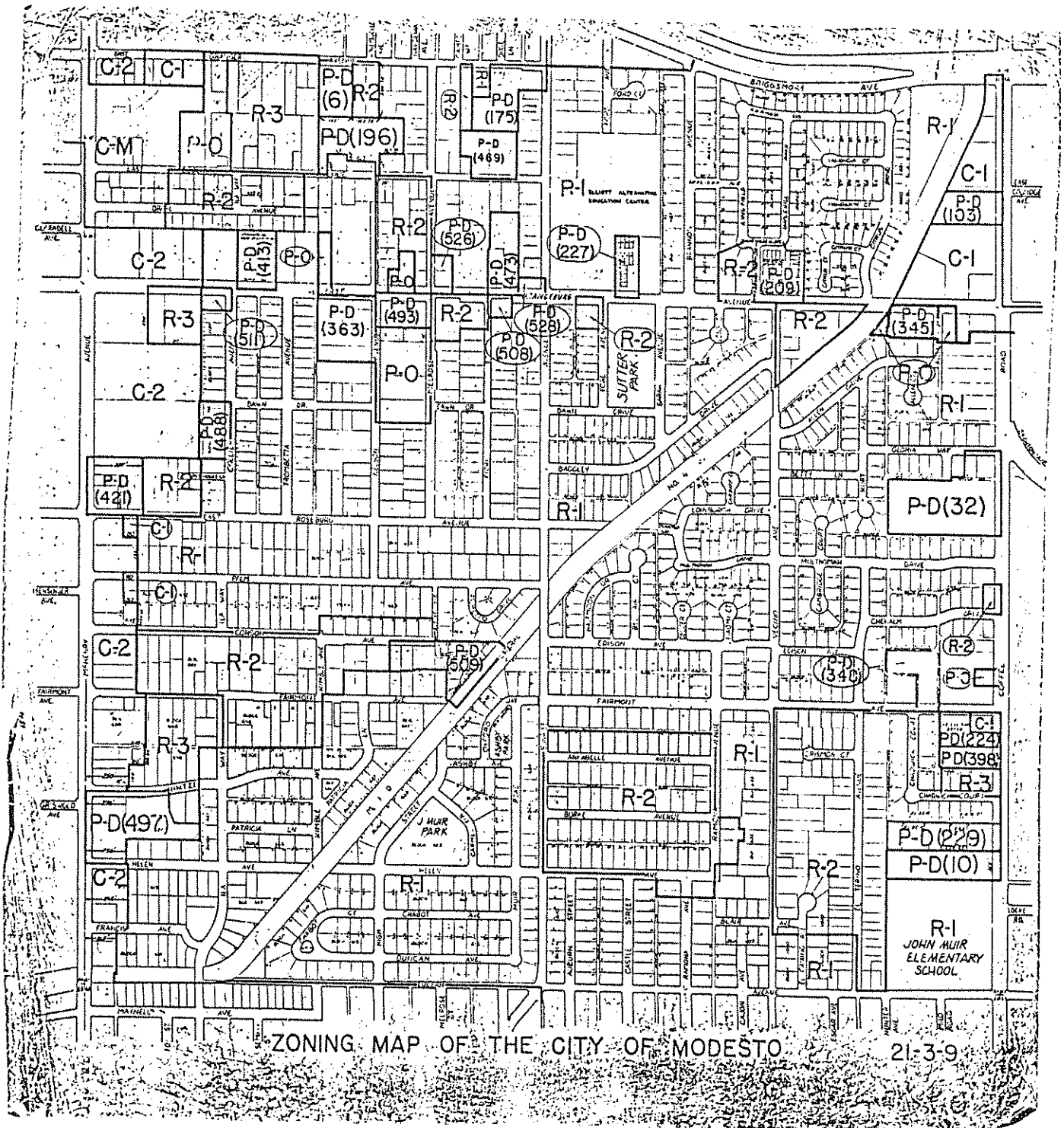
APPROVED:

  
RICHARD A. LANG, Mayor

ATTEST:

  
JUDY C. HALL, Acting City Clerk

Effective Date: May 21, 1998



Clerk

ORDINANCE NO. 3086 -C.S.

AN ORDINANCE AMENDING SECTION 6-1.129 OF ARTICLE 1 OF CHAPTER 1 OF TITLE 6 OF THE MODESTO MUNICIPAL CODE, ADDING SECTION 6-1.129.1 THERETO, AND REPEALING SECTION 6-1.112 THEREOF RELATING TO LICENSING IN GENERAL.

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

SECTION 1. AMENDMENT OF CODE. Section 6-1.129 of Article 1 of Chapter 1 of Title 6 of the Modesto Municipal Code is hereby amended to read as follows:

**6-1.129 PENALTIES FOR DELINQUENT LICENSES.**

A penalty is sum of money payable to City of Modesto for a taxpayer's failure to comply with the provisions of Section 6-1.111 of this chapter. Such penalties shall be imposed as follows:

- (a) **Delinquency.** To all delinquent license taxes there shall be added a penalty of five (5) percent of the amount of taxes due per month or fraction thereof until paid; the maximum penalty imposed on any one delinquency shall not exceed twenty-five (25) percent of the amount of taxes due.
- (b) **Fraud.** If the Director determines that the nonpayment of any license tax due under this chapter is due to fraud, a penalty of twenty-five (25) percent of the amount of the tax shall be added thereto in addition to the penalties stated in subparagraph (a) of this section.
- (c) **Penalties Merged with Tax.** Every penalty imposed under the provisions of this section shall become a part of the tax herein required to be paid.

SECTION 2. AMENDMENT OF CODE. Section 6-1.129.1 is hereby added to of Article 1 of Chapter 1 of Title 6 of the Modesto Municipal Code to read as follows:

**6-1.129.1 WAIVER OR REFUND OF LICENSE TAXES, PENALTIES AND COSTS.**

(a) Any waiver or refund of license taxes, penalties and costs under five thousand dollars (\$5,000.00) may be made by the Director, after approval by the City Attorney, as follows:

(1) **License Taxes, Penalties and Costs Collected or Received by the City.** License taxes, penalties and costs collected or received by the City may be refunded as herein provided upon the filing with the Director of a signed and verified claim within one (1) year after the date of payment. Such refund may be made only under the following conditions:

- (i) Where a refund is specifically authorized by the provision of law requiring payment of the license, permit or application tax.
- (ii) Where the money is paid to secure a license or permit not required by law.
- (iii) Where the amount paid was in excess of the amount required by law.
- (iv) Where the money paid was not required by law.
- (v) Where the applicant for any license has not, at any time after the commencement of the period or term during which the requested license would have been effective, commenced or engaged in the business or occupation, or performed any act, for which the license was required.
- (vi) Where the money paid was not required by law, or was erroneously or illegally collected or received by the City through mistake, inadvertence or error of law or fact, and whether paid or charged under color of any provision of this chapter, or otherwise.

(2) **Penalties Assessed on Delinquent License Tax.** The Director may waive or refund penalty charges assessed on delinquent license tax in the following situations:

- (i) **After Payment of Penalty.** Within thirty (30) days after payment of penalty charges by the taxpayer, the taxpayer shall file, in writing, a request for refund. The request shall be filed with the Director and it must state specific grounds upon which the request for refund is founded.
  - (ii) **After Receipt of Notice of Penalty.** Within thirty (30) days from the date of mailing of written notice to the taxpayer of penalty charges assessed by the City of Modesto, the taxpayer shall file, in writing, a request to the Director seeking a waiver of the penalty assessed. The request must state specific grounds upon which the request for waiver is founded.
  - (iii) **Notification to Taxpayer.** The Director must notify the taxpayer of his/her decision within thirty (30) days after receipt of a request for refund or request for waiver of penalty.
  - (iv) **Waiver or Refund Denied.** If the Director determines that the failure of the taxpayer to pay all taxes in a timely manner was due to either intentional action or by reason of carelessness on the part of the taxpayer no waiver or refund shall be allowed.
  - (v) **Waiver of Demand.** Failure of the taxpayer to file a request within the time limits prescribed above shall constitute a waiver of any such demand against the City.
- (b) Any refund of license taxes, penalties and costs for five thousand dollars (\$5,000.00) or more shall be made only by the City Council.
  - (c) Any person aggrieved by the decision of the Director may appeal the Decision to the "License Tax Appeals Board." Said Board shall consist of the City Manager, City Attorney and City Clerk. All decisions of the Board shall be final.

SECTION 3. REPEALS. Section 6-1.112 of Article 1 of Chapter 1 of Title 6 of the Modesto Municipal Code is hereby repealed.

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

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

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 14th day of April, 1998, by Councilmember Fisher, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Conrad, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Conrad, Fisher, Friedman, Smith, Mayor Pro Tempore Dobbs

NOES: Councilmembers: None

ABSENT: Councilmembers: Serpa, Mayor Lang

APPROVED: Stan Dobbs  
STAN DOBBS, Mayor Pro Tempore

ATTEST:

By Jean Adams  
JEAN ADAMS, City Clerk

(SEAL)

APPROVED AS TO FORM:

By Mike Milich  
MICHAEL D. MILICH, City Attorney

Ord. No. 3086-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 21st day of April, 1998, Councilmember Friedman, moved its final adoption, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and the ordinance adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: Dobbs

APPROVED:

  
RICHARD A. LANG, Mayor

ATTEST:

  
JUDY E. HALL, Acting City Clerk

Effective Date: May 21, 1998

*WJH*

ORDINANCE NO. 3087 -C.S.

AN ORDINANCE ADDING SECTION 7-4.04 TO CHAPTER 4 OF TITLE 7 OF THE MODESTO MUNICIPAL CODE RELATING TO USE OF PARK AND RECREATION AREAS AND FACILITIES - SKATEBOARD FACILITIES OWNED OR OPERATED BY THE CITY.

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

SECTION 1. AMENDMENT OF CODE. Section 7-4.04 is hereby added to Chapter 4 of Title 7 of the Modesto Municipal Code to read as follows:

**7-4.04. SKATEBOARD FACILITIES OWNED OR OPERATED BY THE CITY.**

- (a) In any skateboard park or facility owned or operated by the City, any person riding a skateboard, in-line skates, or similar device shall wear a helmet, elbow pads and knee pads.
- (b) The Operations and Maintenance Department shall cause a sign or signs to be posted at all such parks or facilities providing reasonable notice of subsection (a) of this section and stating that any person failing to comply with subsection (a) of this section will be guilty of an infraction and subject to citation.
- (c) Any person who fails or refuses to comply with the provisions of this section and who is injured while using the park or facility shall be deemed negligent.

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 21st day of April, 1998, by Councilmember Fisher, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Conrad, was upon roll call carried and ordered printed and published by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: Dobbs

APPROVED:

  
RICHARD A. LANG, Mayor

ATTEST:

By

  
JEAN ADAMS, City Clerk

(SEAL)

APPROVED AS TO FORM:

By

  
MICHAEL D. MILICH, City Attorney

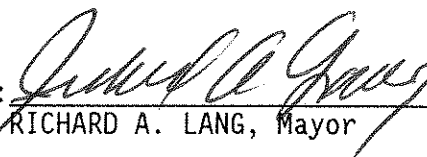
Ord. No. 3087-C.S.

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, 1998, Councilmember Friedman, moved its final adoption, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Conrad, Fisher, Friedman, Serpa, Smith, Mayor  
Lang  
NOES: Councilmembers: None  
ABSENT: Councilmembers: Dobbs

APPROVED:

  
RICHARD A. LANG, Mayor

ATTEST:

  
JEAN ADAMS, City Clerk

Effective Date: May 28, 1998

ORDINANCE NO. 3088 -C.S.

AN ORDINANCE AMENDING SECTION 32-3-9 OF THE ZONING MAP TO REZONE FROM MEDIUM DENSITY RESIDENTIAL ZONE, R-2, AND NEIGHBORHOOD COMMERCIAL ZONE, C-1, TO PLANNED DEVELOPMENT ZONE, P-D(529), PROPERTY LOCATED ON THE NORTHEAST CORNER OF N. MARTIN LUTHER KING DRIVE AND PARADISE ROAD. (JIM CLICK)

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 Medium Density Residential Zone, R-2, and Neighborhood Commercial Zone, C-1, to Planned Development Zone, P-D(529):

C-1 to P-D(529)

Lots 1 and 2 and the south 40 feet of Lot 14 in Block 343.

R-2 to P-D(529)

Lots 3, 4, 5, and 6 and the north 111.11 feet of Lot 14 in Block 343 of the Paradise Tract.

Including also the north one-half and east one-half of adjoining Paradise Avenue and N. Martin Luther King Drive respectively, and the south one-half of the alley, all immediately adjoining the above-described property.

SECTION 2. USES. The following uses shall be permitted in said P-D(529) 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. Fast food restaurant, retail commercial uses as allowed in the C-1, Neighborhood Commercial Zone.
2. Off-street parking as shown on the approved plans.

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 5th day of May, 1998, by Councilmember Friedman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Conrad, Dobbs, Fisher, Friedman, Serpa, Smith, Mayor Lang  
NOES: Councilmembers: None  
ABSENT: Councilmembers: None

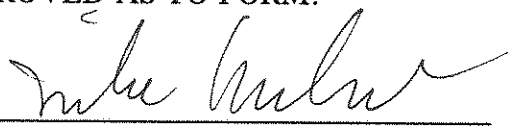
APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:

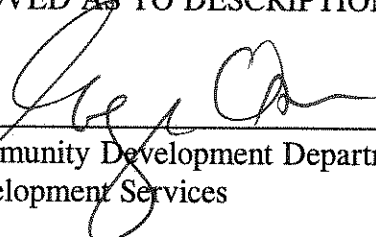
By   
JEAN ADAMS, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

APPROVED AS TO DESCRIPTION:

By   
Community Development Department  
Development Services

Ord. No. 3088-C.S.

FINAL ADOPTION CLAUSE

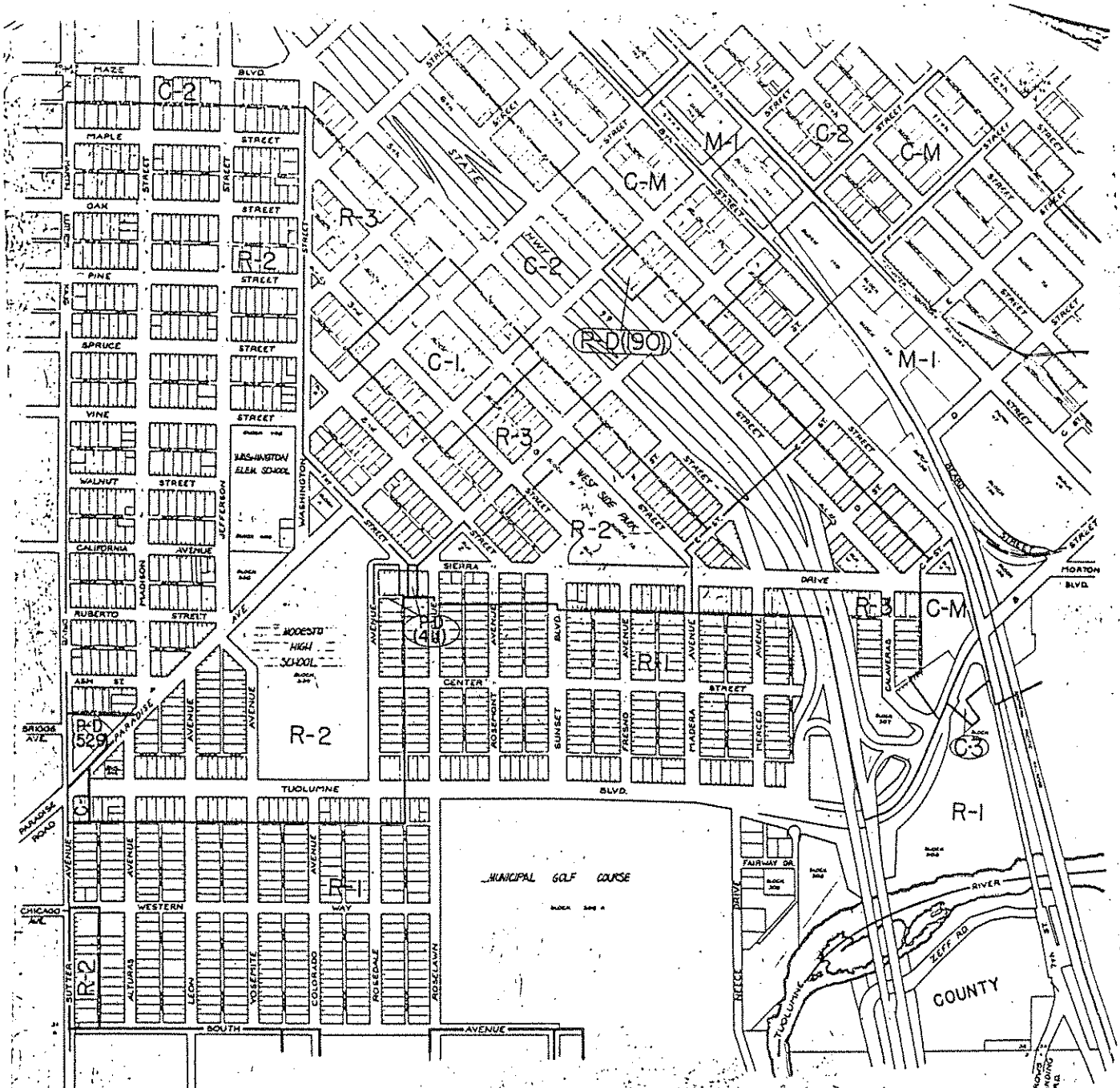
The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 12th day of May, 1998, Councilmember Friedman, moved its final adoption, which motion being duly seconded by Councilmember Smith, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Conrad, Dobbs, Friedman, Serpa, Smith, Mayor  
Lang  
NOES: Councilmembers: None  
ABSENT: Councilmembers: Fisher

APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:   
JEAN ADAMS, City Clerk

Effective Date: June 11, 1998



ZONING MAP OF THE CITY OF MODESTO 32-3-9

Clerk

ORDINANCE NO. 3089 -C.S.

AN ORDINANCE AMENDING ARTICLE 2 OF CHAPTER 7  
OF TITLE 4 OF THE MODESTO MUNICIPAL CODE  
RELATING TO CURFEW LAW.

WHEREAS, the City Council has determined that there has been an increase in juvenile violence, juvenile gang activity, and crime by persons under the age of eighteen (18) years in the City of Modesto resulting in juveniles being involved in a wide range of unacceptable behavior including vandalism, public drinking and littering, drug use, breaking and entering and harassment of residents, and

WHEREAS, persons under the age of eighteen (18) years are particularly susceptible by their lack of maturity and experience to participate in unlawful and gang-related activities and to become victims of older perpetrators of crime, and

WHEREAS, it is necessary to provide for the protection of minors from each other and from other persons, for the enforcement of parental control over and responsibility for children, for the protection, safety and welfare of the general public, and for the reduction of the incidence of juvenile criminal activities, and

WHEREAS, the offensive activities of juveniles are not easily controlled by existing laws and ordinances, and

WHEREAS, the City Council has determined that passage of a curfew ordinance for those under eighteen (18) will be in the interest of and promote the public health, safety, and general welfare and will help attain the foregoing objectives and diminish the undesirable impact of such conduct on the citizens of the City of Modesto by:

1. Reducing the likelihood that minors will be the victims of criminal acts during the curfew hours;
2. Reducing the likelihood that minors will become involved in criminal acts or be exposed to narcotics trafficking during the curfew hours;
3. Protecting the public from the illegal acts of minors, including graffiti and vandalism, committed during curfew hours; and
4. Aiding parents and guardians in carrying out their responsibility to exercise reasonable supervision of minors entrusted to their care, and

WHEREAS, parental responsibility for the whereabouts of children to the accepted norm and legal sanctions to enforce such responsibility have had demonstrated effectiveness in many cities, the City Council has determined that a curfew ordinance will increase parental responsibility for juveniles within their control and decrease juvenile delinquency.

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

SECTION 1. AMENDMENT OF CODE. Article 2 of Chapter 7 of Title 4 of the Modesto Municipal Code is hereby amended to read as follows:

## **ARTICLE 2. YOUTH PROTECTION CURFEW ORDINANCE**

### **4-7.201. DEFINITIONS.**

The definitions set forth in this section shall govern the application and interpretation of this article.

- (a) "Curfew hours" means:
  - (1) The hours between 10:00 p.m. to 5:00 a.m. for minors under the age of sixteen (16) years, or

- (2) The hours between 11:00 p.m. to 5:00 a.m. for minors under the age of eighteen (18) years.
- (b) **“Emergency”** means an unforeseen circumstance or circumstances or the resulting situation that calls for immediate action to prevent serious bodily injury or loss of life. The term includes, but is not limited to, a fire, a natural disaster, or automobile accident, or any situation requiring immediate action to prevent serious bodily injury or loss of life.
- (c) **“Establishment”** means any privately owned place of business to which the public or a substantial group of the public is invited, including but not limited to any place of amusement, entertainment, or recreation.
- (d) **“Guardian”** means:
- (1) Any person who, under court order, is the guardian of the person of a minor; or
  - (2) Any person to whom legal custody has been given by court order; or
  - (3) A public or private agency with whom a minor has been placed by a court; or
  - (4) A person who is at least eighteen (18) years of age and authorized by a parent or guardian to have the care and custody of a minor; or
  - (5) A person who stands *in loco parentis*.
- (e) **“Linger”** means to tarry and to stay unnecessarily upon the streets, including the congregation of groups (or of interacting minors) totaling three (3) or more persons in which any minor involved would not be using the streets for ordinary or serious purposes, such as mere passage or going home or any of the exemptions defined in Section 4-7.203.
- (f) **“Juvenile”** or **“minor”** means any person under eighteen (18) years of age.
- (g) **“Operator”** means any owner, operator, employee or other person in control of an establishment or public place.

- (h) **“Parent”** is any person having legal custody of a minor (i) as a natural parent, adoptive parent, or step-parent of a minor, or (ii) as a guardian.
- (i) **“Public place”** means:
  - (1) Any area to which the public or a substantial group of the public has access, including, but not limited to, streets, roads, highways, sidewalks (whether paved or unpaved), curbs, gutters, grass areas, driveways, alleys, vacant lots, parks, playgrounds, common areas of schools, shopping centers, transportation facilities, theaters, restaurants, shops, bowling alleys, taverns, cafes, arcades, and similar areas that are open to the public, and
  - (2) The out-of-doors common areas of establishments, including, but not limited to, entry ways, walkways, lawn or planter areas, patios, porches and parking lots.
- (j) **“Remain”** means to:
  - (1) Linger or stay behind; or
  - (2) Fail to leave a public place when requested to do so by a police officer or the operator of a public place or establishment.
- (k) **“Serious bodily injury”** means bodily injury that creates a substantial risk of death or that causes death, serious permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.
- (l) **“Years of age”** continues from one birthday, such as the sixteenth to (but not including the day of) the next, such as the seventeenth birthday, making it clear that sixteen or less years of age is herein treated as equivalent to the phrase “under seventeen years of age,” the latter phrase in practice, unfortunately, having confused a number of persons into the mistaken thought that seventeen (17) year olds might be involved. Similarly, for example, 11 or less years of age means “under 12 years of age”.

#### 4-7.202. PROHIBITION.

- (a) It is unlawful for any minor under the age of sixteen (16) years to linger or remain in any public place within the City during curfew hours, except as provided under Section 4-7.203.

- (b) It is unlawful for any minor under the age of eighteen (18) years to linger or remain in any public place within the City during curfew hours, except as provided under Section 4-7.203.

#### **4-7.203. EXEMPTIONS.**

A minor under the age of eighteen (18) shall not be in violation of this article if, at the time the minor was stopped by a police officer, the minor was:

- (a) Accompanied by the minor's parent;
- (b) Accompanied by an adult authorized by a parent of such minor to take said parent's place in accompanying said minor for a designated period of time and purpose within a specified area;
- (c) On an errand at the direction of the minor's parent, without detour or stop, until the hour of 1:00 a.m.;
- (d) In a motor vehicle involved in interstate travel;
- (e) Engaged in a lawful employment activity, or going to or returning home from and within one (1) hour of termination of a lawful employment activity, without detour or stop;
- (f) Acting in response to an emergency;
- (g) On the sidewalk abutting the minor's residence or abutting the residence which is immediately adjacent to or across the street from the minor's residence and the adult owner or resident of that property has given permission for the juvenile to be there;
- (h) Returning directly home, without detour or stop, from and within one (1) hour of termination of a school, cultural, sports, amusement, entertainment, or recreation activity, any organized rally, demonstration, parade, meeting or similar activity or any activity of a religious or other voluntary association;
- (i) On the premises of an eating establishment for the purpose of buying, ordering or consuming food and beverages. For purposes of this subparagraph, premises shall not include the parking lot of the eating establishment unless the minor is moving directly and without detour to or from his or her vehicle.

- (j) Waiting at a train or bus station or bus stop for transportation;
- (k) Emancipated in accordance with the California Family Code or other applicable state law.

#### **4-7.204. PERMITTING VIOLATION BY ADULT.**

Any parent, guardian, or other person having legal care, custody, or control of any minor under the age of eighteen (18) who knowingly allows or permits such minor to be in violation of Section 4-7.202 is guilty of a misdemeanor.

#### **4-7.205. PERMITTING VIOLATION BY OWNER, OPERATOR OR EMPLOYEE OF ESTABLISHMENT.**

Any operator who knowingly allows or permits a minor under the age of eighteen (18) to linger or remain in a public place or establishment in violation of Section 4-7.202 is guilty of a misdemeanor.

#### **4-7.206. ENFORCEMENT PROCEDURE.**

- (a) Before taking any enforcement action under Section 4-7.202, a police officer shall ask the apparent offender's age and reason for being in the public place.
- (b) The officer shall not take enforcement action under this article unless the officer has probable cause to believe that no exemption under Section 4-7.203 applies.
- (c) For purposes of enforcement, the officer shall take the juvenile to the police station or a designated curfew center where a parent or guardian shall immediately be notified to come for the juvenile whereupon the parent or guardian and the juvenile shall be questioned. This is intended to permit ascertainment, under constitutional safeguards, of relevant facts, and to centralize responsibility in the person designated there and then on duty for accurate, effective, fair, impartial and uniform enforcement, and recording, thus, making available experienced personnel and access to information and records.
- (d) The Police Chief or his/her designee shall send the minor and his or her parent a written notice of the violation pursuant to Section 7-4.204 with a warning that any subsequent violation will result in full enforcement of the ordinance, including enforcement of parental responsibility and of

applicable penalties, and liability for actual administration and transportation costs.

- (e) When a parent or guardian, immediately called, has come to take charge of the juvenile, and the appropriate information has been recorded, the juvenile shall be released to the custody of such parent. If the parent cannot be located or fails to take charge of the juvenile, then the juvenile shall be cited and released to the juvenile authorities or remain in the custody of police personnel until the end of the curfew period, except to the extent that in accordance with police regulations, the juvenile may temporarily be entrusted to an adult, neighbor or other person who will on behalf of a parent or guardian assume the responsibility of caring for the juvenile pending the availability or arrival of a parent or guardian.
- (f) Police procedures shall constantly be refined in the light of experience and may provide that the police officer may deliver to a parent or guardian thereof a juvenile under appropriate circumstances; for example, a juvenile of tender age, near home, whose identity and address may readily be ascertained or are known.
- (g) For the first violation of the ordinance by an operator of an establishment who permits a juvenile to remain on the premises, a police officer shall issue a written notice of the violation with a warning that any subsequent violation within 60 days of the first violation will result in full enforcement of the ordinance, including enforcement of operator responsibility and of applicable penalties.
- (h) On a second or subsequent violation of this ordinance, the minor and the parent or legal guardian having custody of a juvenile subject to this section shall be liable for the actual administrative and transportation costs incurred by the City in identifying, detaining, and returning the minor to his or her place of residence or to the custody of his or her parent or legal guardian.
- (i) The parent or legal guardian having custody of a juvenile subject to this section shall be liable for any fine or condition of restitution or reparation imposed by a court upon a curfew violator, provided that the curfew violator has not paid the fine or made restitution or reparation within the time ordered by the court, and further provided that the parent or legal guardian has been made a party defendant in all enforcement proceedings against the curfew violator and shall be served with all citations, summons, complaints, notices, and other documents required to be served on the curfew violator defendant.

- (j) Within six (6) months after the initial enforcement of this ordinance, and at least annually thereafter, the Police Chief shall review this ordinance and report and make recommendations to the City Council concerning the effectiveness of and the continuing need for the ordinance. The Police Chief's report shall specifically include the following information:
  - (1) The practicality of enforcing the ordinance and any problems with enforcement identified by the Police Chief;
  - (2) The assessment of the Police Department of the impact of the ordinance on crimes committed by and against minors;
  - (3) The number of persons cited for a violation of the ordinance; and
  - (4) The City's net cost of enforcing the ordinance.

#### **4-7.207. SEVERABILITY.**

If any section, subsection, sentence, clause or phrase of Sections 4-7.201 through 4-7.206 is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions. The City Council hereby declares that it would have passed those sections, subsections, clauses, phrases, irrespective that one (1) or more may be declared invalid or unconstitutional.

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

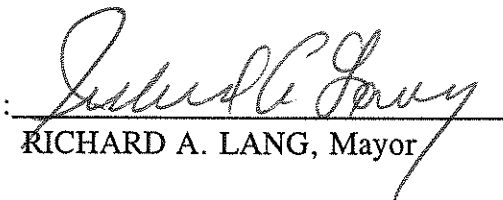
**SECTION 3. PUBLICATION.** At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in *The Modesto Bee*, the official newspaper of the City of Modesto, setting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

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 12th day of May, 1998, by Councilmember Serpa, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Dobbs, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Conrad, Dobbs, Fisher, Friedman, Serpa, Smith, Mayor Lang

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:

By   
JEAN ADAMS, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney


Ord. No. 3089-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 19th day of May, 1998, Councilmember Friedman, moved its final adoption, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Conrad, Fisher, Friedman, Serpa, Smith, Mayor  
Lang  
NOES: Councilmembers: None  
ABSENT: Councilmembers: Dobbs

APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:   
JEAN ADAMS, City Clerk

Effective Date: June 18, 1998

Cleck

ORDINANCE NO. 3090 -C.S.

AN ORDINANCE AMENDING SECTION 32-3-9 OF THE ZONING MAP TO REZONE FROM MEDIUM DENSITY RESIDENTIAL ZONE, R-2, TO PLANNED DEVELOPMENT ZONE, P-D(411), AS AN ADDITION TO P-D(411), PROPERTY LOCATED AT 908 SIERRA DRIVE ON THE SOUTH SIDE OF SIERRA DRIVE BETWEEN ROSEDALE AND ROSELAWN AVENUES. (MID-VALLEY ENGINEERING)

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 Medium Density Residential Zone, R-2, to Planned Development Zone, P-D(411), as an addition to P-D(411):

R-2 to P-D(411), as an addition to P-D(411)

All that real property situate in a portion of the Southwest one-quarter of Section 32, 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 Lots 3 and 4, in Block 333, as per Book 15 of Maps of Stanislaus County Records;

Including also all of the Southern one-half of 60.00-foot-wide Sierra Drive and Northern one-half of the 20.00-foot-wide alley, all immediately adjacent to the above-described property.

SECTION 2. USES. The following uses shall be permitted in said P-D(411) Zone, as an addition to P-D(411), 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. Private school facilities, classrooms, playground, etc.
2. Off-street parking as shown on the approved plan.

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 26th day of May, 1998, by Councilmember Friedman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Conrad, Dobbs, Fisher, Friedman, Serpa, Smith, Mayor Lang

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:


By   
JEAN ADAMS, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

APPROVED AS TO DESCRIPTION:

By   
Community Development Department  
Development Services

Ord. No. 3090-C.S.

FINAL ADOPTION CLAUSE


The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 2nd day of June, 1998, Councilmember Friedman, moved its final adoption, which motion being duly seconded by Councilmember Dobbs, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Conrad, Dobbs, Fisher, Friedman, Serpa, Smith,  
Mayor Lang

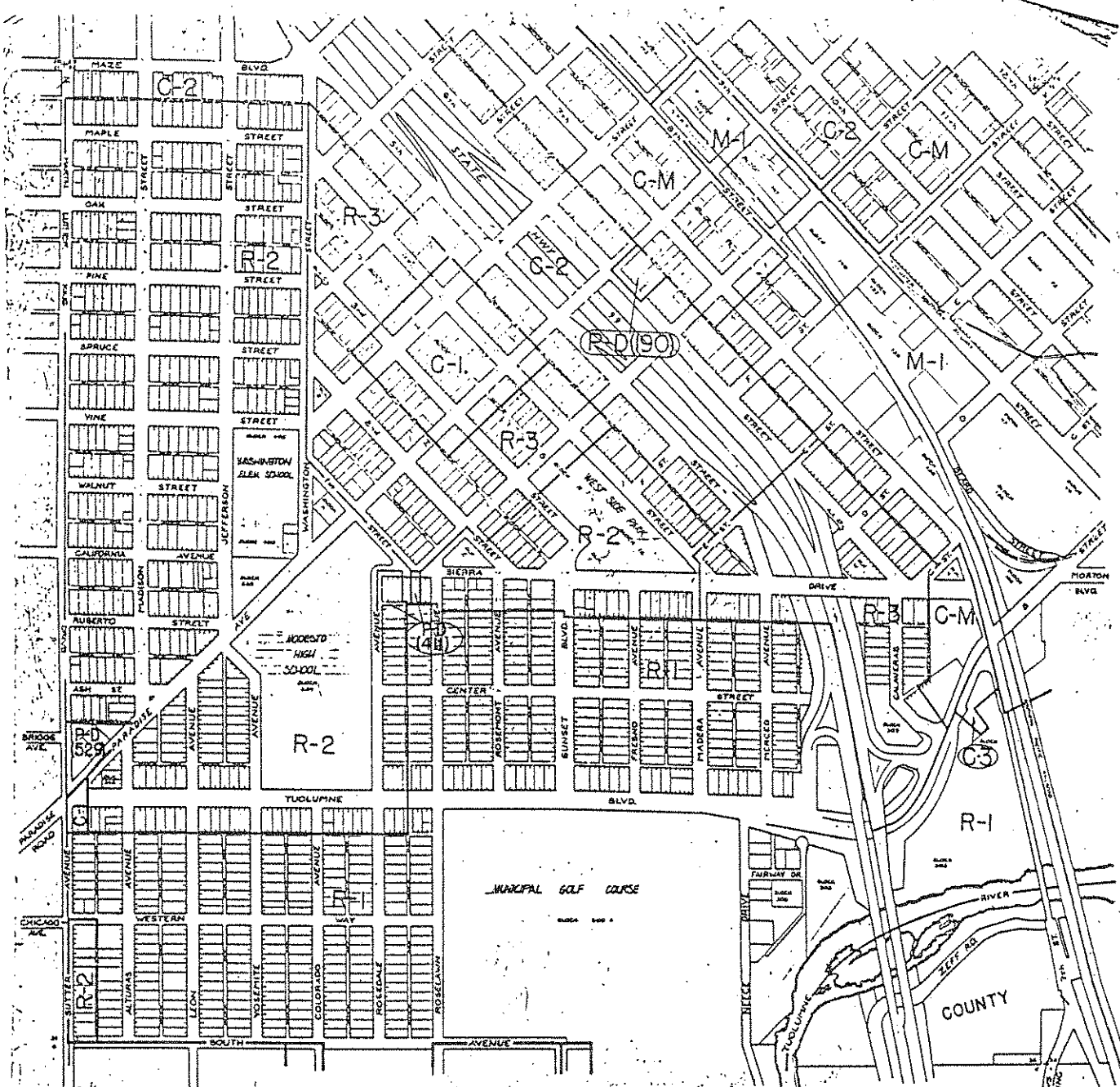
NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:   
JEAN ADAMS, City Clerk

Effective Date: July 2, 1998



ZONING MAP OF THE CITY OF MODESTO 32-3-9

ORDINANCE NO. 3091 -C.S.

AN ORDINANCE AMENDING SECTIONS 4-3-9, 5-3-9 AND 9-3-9 OF THE ZONING MAP OF THE CITY OF MODESTO PREZONING CERTAIN PROPERTY LOCATED THEREON. (COFFEE/CLARATINA)

WHEREAS, pursuant to Municipal Code Section 10-2.2604, the City of Modesto proposes to initiate a prezoning of the area designated as the Coffee/Claratina Comprehensive Planning District Specific Plan for the purpose of determining the zoning that will apply to the property upon annexation, and

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

WHEREAS, after a public hearing held on May 4, 1998, in the Council Chambers, City Hall, 801 11th Street, Modesto, California, it was found and determined by the Planning Commission that prezoning the Coffee/Claratina Comprehensive Planning District Specific Plan as requested is in accordance with Government Code Section 65855 for the following reasons:

1. The requested prezoning is required by public convenience and necessity because the proposed Coffee/Claratina Specific Plan will provide needed services and facilities for that area.
2. The requested prezoning will result in orderly planning and use of land resources because the proposed Coffee/Claratina Specific Plan would implement the Community Growth Policies of the General Plan.
3. The requested prezoning is in accordance with the community objectives set forth in the Modesto Urban Area General Plan because it provides for the social and economic development of Modesto.
4. The requested prezoning is in accordance with the policies and goals presented in the Coffee/Claratina Specific Plan.

WHEREAS, by Resolution No. 98-38, adopted on May 4, 1998, the Planning Commission recommended to the City Council an amendment to Sections 4-3-9, 5-3-9, and 9-3-9 of the Zoning Map to prezone the hereafter described property to Specific Plan Overlay Zone, SP-O, and

WHEREAS, said matter was set for a public hearing of the City Council to be held on June 2, 1998, at 7:00 p.m., in the City Council Chambers, City Hall, 801 11th Street, Modesto, California, at which date and time said duly noticed public hearing of the Council was held and evidence both oral and documentary was received and considered,

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

SECTION 1. COUNCIL FINDINGS. After a public hearing held on June 2, 1998, this Council finds and determines that the requested rezoning is in accordance with the General Plan and will serve the public health, safety and general welfare and provide the economic and social advantages resulting from orderly, planned use of land resource for the reasons set forth in Planning Commission Resolution No. 98-38 and quoted above.

SECTION 2. CEQA FINDING. That the Mitigated Negative Declaration for the Coffee/Claratina Comprehensive Planning District Specific Plan is complete and adequate, and that it has been prepared and completed in accordance with the provisions of CEQA.

SECTION 3. ZONING CHANGE. Sections 4-3-9, 5-3-9, and 9-3-9 of the Zoning Map are hereby amended to prezone the property described in the attached Exhibit "A" to Specific Plan Overlay Zone, SP-O.

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

SECTION 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 June, 1998, by Councilmember Fisher, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Dobbs, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Conrad, Dobbs, Fisher, Friedman, Smith, Mayor Lang

NOES: Councilmembers: Serpa

ABSENT: Councilmembers: None

APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:


By   
JEAN ADAMS, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

APPROVED AS TO DESCRIPTION:

By   
Community Development Department  
Development Services

PREZONE  
COFFEE/CLARATINA SPECIFIC PLAN AREA  
TO THE CITY OF MODESTO

DESCRIPTION

All that certain real property situate in portions of Sections 4, 5 and 9, Township 3 South, Range 9 East, Mount Diablo Base and Meridian, in the County of Stanislaus, State of California, described as follows:

BEGINNING at the northeast corner of Lot 1, Block 12461, as shown on "Grand Prix Estates" according to the official map thereof filed in Volume 26 of Maps, Page 68, Stanislaus County Records, said point being on the north line of the "North Coffee No. 1 Addition" to the City of Modesto; thence North 88°43'48" West along the north line of said "Grand Prix Estates", a distance of 1269.48 feet to the northwest corner of said "Grand Prix Estates"; thence North 0°21'25" West along the east line of "North Hampton Park No. 4" according to the official map thereof filed in Volume 27 of Maps, Page 6, Stanislaus County Records, being also the east line of the "North Rexford Addition" to the City of Modesto, a distance of 540.86 feet to the northeast corner of said "North Hampton Park No. 4"; thence North 88°43'48" West along the north lines of said "North Hampton Park No. 4" and "Hillsboro Park No. 1" according to the official map thereof filed in Volume 26 of Maps, Page 70, Stanislaus County Records, being also the north lines of said "North Rexford Addition" and the "Sylvan No. 3 Addition" to the City of Modesto, a distance of 1319.49 feet to the northwest corner of said "Hillsboro Park No. 1"; thence North 1°12'06" West along the east line of Parcel "A" as shown on map filed in Book 24 of Parcel Maps, Page 76, Stanislaus County Records, being also the east line of the "North McHenry No. 3 Addition" to the City of Modesto, a distance of 280.11 feet to the northeast corner of said Parcel "A"; thence North 89°29'33" West along the northerly line of said Parcel "A" and westerly extension thereof, being also the northerly line of said "North McHenry No. 3 Addition", a distance of 1758.49 feet to the east line of land described in Grant deed to Sidney M. Smith recorded in Volume 1826 of Official Records, Page 487, Stanislaus County Records; thence South 0°22'51" East along said east line of the Smith land, being also the northwesterly line of said "North McHenry No. 3 Addition", a distance of 549.76 feet to the southeast corner of said Smith land; thence North 88°48'51" West along the south line of said Smith land, being also the northerly line of said "North McHenry No. 3 Addition", a distance of 504.51 feet to the east line of Parcel "B" as shown on map filed in Book 13 of Parcel Maps, Page 45, Stanislaus County Records; thence North 0°22'31" West along the east lines of said Parcel "B" and Parcel "A" of said parcel map filed in Book 13 of Parcel Maps, Page 45, being also the easterly line of the "McHenry-Union Addition" to the City of Modesto, a distance of 444.10 feet to the northeast corner of said Parcel "A"; thence North 88°46'51" West along the north line of said Parcel "A" and westerly extension thereof, being also the northerly line of said "McHenry-Union Addition" and westerly extension thereof, a distance of 429.44 feet to the east line of Parcel "2" as shown on map filed in Book 36 of Parcel Maps, Page 38, Stanislaus County Records; thence North 1°14'43" West along the east line of said Parcel "2" and northerly extension thereof, being also the west right-of-way line of McHenry Avenue, a distance of 857.04 feet to the north line of land described in Grant Deed recorded in Book 2455 of Official Records, Page 882, Stanislaus County Records; thence South 88°52'41" East along said north line a distance of 30.03 feet; thence North 1°14'43" West along the existing west right-of-way line of McHenry Avenue, parallel with and 25.00 feet west of the west line of said Section 4, a distance of 357.72 feet to the westerly extension of the south lines of Parcels "2", "3" and "4" as shown on map filed in Book 31 of Parcel Maps, Page 22, Stanislaus County Records; thence easterly along the existing north right-of-way line of Claratina Avenue the following 14 courses:

1. South 89°30'27" East along said south lines of Parcels "2", "3" and "4" and the westerly extension thereof, a distance of 953.96 feet to the southeast corner of said Parcel "4",
2. South 1°14'27" East along the southerly extension of the east line of said Parcel "4" a distance of 30.01 feet,

3. South 89°30'27" East 486.67 feet to the southeasterly line of the 110.00 foot wide Hetch Hetchy right-of-way,
4. North 70°09'50" East along said southeasterly line of Hetch Hetchy Right-of-way a distance of 86.35 feet,
5. South 89°30'27" East 79.48 feet to the east line of Parcel "B" as shown on map filed in Book 17 of Parcel Maps, Page 69, Stanislaus County Records,
6. South 1°15'41" East along said east line of Parcel "B" a distance of 30.01 feet to the southeast corner of said Parcel "B",
7. South 89°30'27" East 1062.39 feet to the southerly extension of the west line of Parcel "1" as shown on map filed in Book 23 of Parcel Maps, Page 40, Stanislaus County Records,
8. North 1°11'04" West along said southerly extension of the west line of Parcel "1" a distance of 30.02 feet to the southwest corner of said Parcel "1",
9. South 88°58'12" East along the south line of said Parcel "1" a distance of 222.11 feet to the west line of Parcel "2" as shown on said map filed in Book 23 of Parcel Maps, Page 40,
10. South 1°11'04" East along said west line of Parcel "2" a distance of 30.02 feet,
11. South 88°58'12" East 1758.22 feet to the southerly extension of the west line of Parcel "A" as shown on map filed in Book 47 of Parcel Maps, Page 12, Stanislaus County Records,
12. North 1°08'56" West along said southerly extension of the west line of Parcel "A" a distance of 36.65 feet to the southwest corner of said Parcel "A",
13. South 89°36'23" East along the south line of said Parcel "A" a distance of 303.96 feet, and
14. South 88°58'12" East along said south line of Parcel "A" and easterly extension thereof a distance of 336.03 feet to the northerly extension of the west line of Coffee Road, being also the westerly line of the "North Beyer Park Reorganization" to the City of Modesto; thence southerly along said westerly line of the "North Beyer Park Reorganization" and northerly extension thereof the following four courses:
  1. South 1°08'11" East parallel with and 20.00 feet west of the east line of said Section 4, a distance of 459.81 feet,
  2. North 88°42'56" West 30.00 feet,
  3. South 1°08'11" East parallel with and 50.00 feet west of said east line of Section 4, a distance of 961.98 feet to the south line of said Section 4, and
  4. South 0°19'16" East parallel with and 50.00 feet west of the east line of said Section 9 a distance of 540.85 feet to the point of beginning.

Containing: 173.74 acres



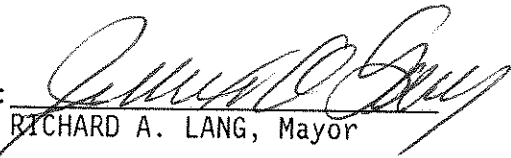
Ord. No. 3091-C.S.

FINAL ADOPTION CLAUSE

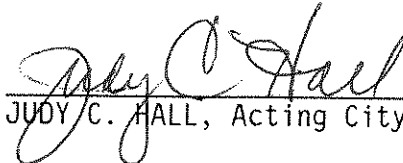
The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 9th day of June, 1998, Councilmember Friedman, moved its final adoption, which motion being duly seconded by Councilmember Smith, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Conrad, Dobbs, Fisher, Friedman, Smith, Mayor Lang  
NOES: Councilmembers: Serpa  
ABSENT: Councilmembers: None

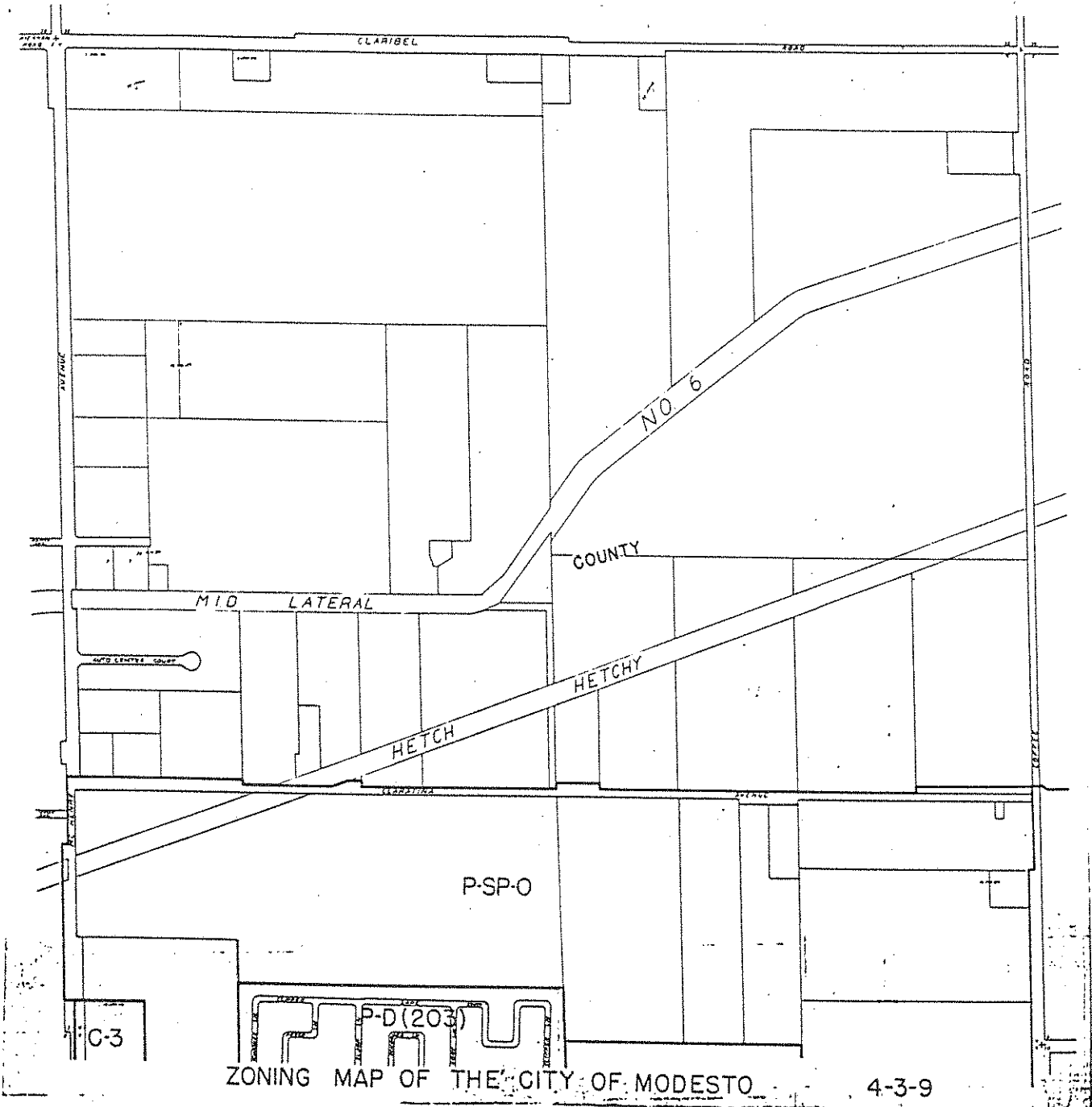
APPROVED:

  
RICHARD A. LANG, Mayor

ATTEST:

  
JUDY C. HALL, Acting City Clerk

Effective Date: July 9, 1998



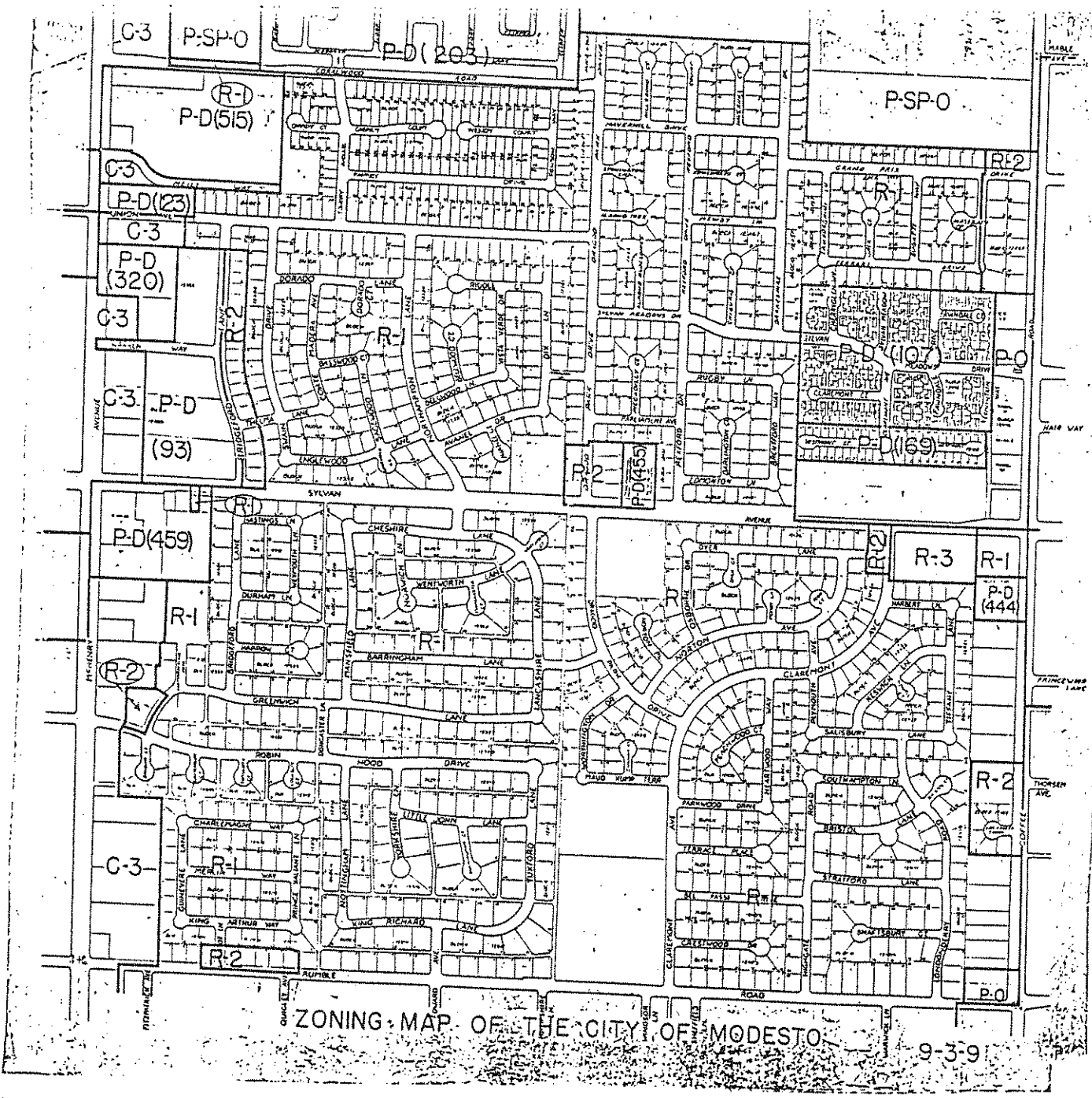
ZONING MAP OF THE CITY OF MODESTO

4-3-9



ZONING MAP OF THE CITY OF MODESTO

5-3-9



ZONING MAP OF THE CITY OF MODESTO

9-3-9

ORDINANCE NO. 3092-C.S.

AN ORDINANCE ADOPTING THE 1998-99 OPERATING BUDGET AND FIRST YEAR OF THE FISCAL YEAR 1998-99 THROUGH 2007-08 CAPITAL IMPROVEMENT PROGRAM FOR THE CITY OF MODESTO FOR THE FISCAL YEAR ENDING JUNE 30, 1999, AND PROVIDING FOR CERTAIN TRANSFERS OF FUNDS.

WHEREAS, pursuant to the Charter of the City of Modesto, a proposed Operating Budget and Capital Improvement Program (CIP) for the 1998-99 fiscal year has been submitted to the City Council by the City Manager, and the City Council has made such revisions as it has deemed advisable, and

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

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

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

SECTION 1. ADOPTION OF BUDGET. That the "City of Modesto Proposed Annual Budget 1998-99", presented by the City Manager to the City Council at its meeting held on May 12, 1998, and as thereafter amended by the City Council, a copy of which Budget, as amended, is on file in the office of the City Clerk, is hereby adopted, as the Budget for the City of Modesto for the fiscal year ending June 30, 1999, and the several amounts stated therein as proposed expenditures.

SECTION 2. ENCUMBRANCES. That the funds of the City of Modesto encumbered on June 30, 1998, are hereby appropriated for the purposes for which they are encumbered and shall be a part of the Budget for the fiscal year 1998-99, adopted hereby.

SECTION 3. CAPITAL PROJECTS. That Capital Projects carried over from fiscal year 1997-98 are hereby re-appropriated as a part of the Budget for the fiscal year 1998-99, adopted hereby.

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

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

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

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

SECTION 6. 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 7. 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 16th day of June, 1998, by Councilmember Friedman, who moved its adoption and passage to print, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Conrad, Dobbs, Fisher, Friedman, Smith,  
Mayor Lang

NOES: Councilmembers: Serpa

ABSENT: Councilmembers: None

APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:

By   
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

COUNCIL ORDINANCE ADOPTING BUDGET  
DISTRIBUTION LIST

- 2 - Clerk
- 1 - Attorney
- 1 - Finance

ORDINANCE NO. 3093-C.S.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY  
OF MODESTO AUTHORIZING THE LEVY OF A SPECIAL  
TAX WITHIN COMMUNITY FACILITIES DISTRICT NO.  
1998-1 (ENTERPRISE BUSINESS PARK)

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

WHEREAS, on May 19, 1998, the City Council of the City of Modesto, State of California (the "Council"), adopted its Resolution No. 98-262 (the "Resolution of Intention to Establish the District") stating its intention to form Community Facilities District No. 1998-1 of the City of Modesto (the "District") pursuant to Chapter 2.5 of Part 1 of Division 2 of Title 5 (commencing with Section 53311) of the California Government Code, commonly known as the "Mello-Roos Community Facilities Act of 1982" (the "Act"); and

WHEREAS, on May 19, 1998, the Council also adopted Resolution No. 98-263 (the "Resolution of Intention to Incur Bonded Indebtedness") stating its intention to incur bonded indebtedness in an amount not to exceed \$2,025,000 within the District for the purpose of financing the costs of certain public facilities (the "Facilities") specified in the Resolution of Intention to Establish the District.; and

WHEREAS, notices were published as required by law relative to the intention of this Council to form the proposed District and to incur the bonded indebtedness within the District; and

WHEREAS, this Council held the noticed public hearings as required by law (1) to determine whether it should proceed with the formation of the District and authorize the rate, method of apportionment, and manner of collection of a special tax to be levied within the District sufficient to pay for the Facilities, including the incidental expenses thereof, and/or the principal and interest as it becomes due on the bonds of the District issued to finance the Facilities, and certain services (the "Services") as specified in the Resolution of Intention to Establish the District, and (2) on the proposal to incur the bonded indebtedness; and

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

WHEREAS, this Council, upon the conclusion of the hearings, did, on June 23, 1998, adopt its Resolution No. 98-330 (the "Resolution of Formation") which established the District, determined the validity of prior proceedings relative to the formation of the District, authorized the levy of a special tax within the District, and called an election for July 7, 1998, on the proposition of levying a special tax and establishing an appropriations limit within the District; and

WHEREAS, this Council, upon conclusion of the hearings, did on June 23, 1998, also adopt its Resolution No. 98-331 (the "Resolution to Incur Bonded Indebtedness") which determined the necessity of incurring bonded indebtedness in an amount not to exceed \$2,025,000 and called an election within the District for July 7, 1998, on the proposition of incurring bonded indebtedness; and

WHEREAS, on July 7, 1998, in accordance with the Resolution of Formation and the Resolution to Incur Bonded Indebtedness, a consolidated election was held within the District in which the qualified voters approved by more than a two-thirds vote the propositions of incurring the bonded indebtedness, levying the special tax, and establishing an appropriations limit within the District;

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

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

SECTION 2. By the passage of this Ordinance, a special tax is levied by this Council at the rate, manner and method of apportionment set forth in Exhibit A attached hereto and incorporated by this reference, being the rate, manner and method of apportionment specified in the Resolution of Formation. The special taxes are levied commencing in fiscal year 1998-99 and in each fiscal year thereafter, unless reduced by subsequent resolution of this Council, at the Maximum Special Tax rate described in Exhibit A.

SECTION 3. The Finance Director is authorized each year to determine the special tax rate and amount to be levied for the next ensuing fiscal year, except that the special tax rate to be levied shall not exceed that set forth in Exhibit A.

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

SECTION 5. All of the collections of the special tax shall be used as provided for in the Act and the Resolution of Formation. The special tax shall be levied only so long as needed for its purpose as described in the Resolution of Formation and the Resolution to Incur Bonded Indebtedness.

SECTION 6. The special tax shall be collected in the same manner as ordinary ad valorem property taxes are collected and shall be subject to the same penalties and the same procedure, sale, and lien priority in case of delinquency as is provided for ad valorem taxes, as such procedure may be modified by law from time to time, or as otherwise provided in Exhibit A.

SECTION 7. EFFECTIVE DATE. This Ordinance shall be effective after thirty (30) days from its final passage and adoption.

SECTION 8. PUBLICATION. At least two (2) days prior to its final adoption, copies of this Ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in The Modesto Bee, the official newspaper of the City of Modesto, setting forth the title of this Ordinance, the date of its introduction and the places where this Ordinance is posted.

The foregoing Ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 23rd day of June, 1998, by Councilmember Friedman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and ordered printed and published by the following vote:

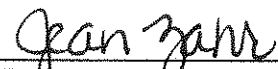
AYES: Councilmembers: Conrad, Dobbs, Fisher, Friedman, Serpa, Smith, Mayor Lang

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:

By   
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

EXHIBIT A

CITY OF MODESTO  
COMMUNITY FACILITIES DISTRICT No. 1998-1  
RATE AND METHOD OF APPORTIONMENT OF SPECIAL TAX

## EXHIBIT A

### CITY OF MODESTO COMMUNITY FACILITIES DISTRICT No. 1998-1 (ENTERPRISE BUSINESS PARK)

#### RATE, METHOD OF APPORTIONMENT AND MANNER OF COLLECTION OF SPECIAL TAX

A special tax applicable to each Assessor's Parcel in Community Facilities District No. 1998-1 (herein "CFD No. 1998-1") shall be levied and collected according to the tax liability determined by the City, through the application of the appropriate amount or rate for Taxable Property, as described below. All of the property in CFD No. 1998-1, unless exempted by law except as provided in Section I below, shall be taxed for the purposes, to the extent, and in the manner herein provided.

#### A. DEFINITIONS

The terms hereinafter set forth have the following meanings:

"Acre or Acreage" means the land area of an Assessor's Parcel as shown on an Assessor's Parcel Map, or if the land area is not shown on an Assessor's Parcel Map, the land area shown on the applicable final subdivision map, parcel map, or other map recorded at the County.

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

"Annual Administrative Expenses" means the annual cost of any or all of the following: the fees and expenses of any fiscal agent or trustee (including any fees or expenses of its counsel) employed in connection with any Bonds of CFD No. 1998-1; the expenses of the City associated with carrying out its duties for such Bonds, including, but not limited to, the levy and collection of Special Tax, the fees and expenses of its counsel, amounts needed to pay rebate to the federal government with respect to any of such Bonds, and costs associated with continuing disclosure; and all other costs and expenses of the City in any way related to the establishment and administration of CFD No. 1998-1. The total Annual Administrative Expenses may be collected as a part of the Facilities Special Tax Requirement, Maintenance Special Tax Requirement or both, but in no event shall the total amount collected in any Calendar Year exceed the total estimated expenses for that year.

"Annual Maintenance Special Tax Requirement" means the amount necessary in any Calendar Year (i) to pay for authorized maintenance expenses, (ii) to pay Annual Administrative Expenses, and (iii) to cure any delinquencies in the payment of Annual Maintenance Special Taxes levied in the prior Quarter or (based on delinquencies in the payment of Special Taxes which have already taken place) are expected to occur in the Quarter in which the tax will be collected.

**“Assessor's Parcel”** or **“Parcel”** means a lot or parcel shown on an Assessor's Parcel Map with an assigned Assessor's Parcel number at the time tax bills are prepared by the City to levy Special Taxes within the CFD. A Parcel which has been created by the recordation of a final subdivision map at least sixty (60) days prior to the start of any Quarter, but for which an Assessor's Parcel number has not yet been assigned, may also be considered an Assessor's Parcel for purposes of Section B.

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

**“Bonds”** means any bonds or other debt (as defined in Section 53317(d) of the Act), whether in one or more series, issued by the City for CFD No. 1998-1.

**“Bond Maturity Date”** means the date on which the Bonds mature as identified in the Bond sale documents.

**“Bond Maturity Quarter”** means the Quarter immediately preceding the Bond Maturity Date.

**“Bond Maturity Special Tax”** means the Maximum Facilities Special Tax that can be levied in the Bond Maturity Quarter.

**“Calendar Year”** means the period commencing on January 1 and ending on December 31 of any given year.

**“City”** means the City of Modesto.

**“City Manager”** means the City Manager of the City of Modesto.

**“Council”** means the City Council of the City of Modesto, acting as the legislative body of CFD No. 1998-1.

**“County”** means the County of Stanislaus.

**“Delinquent Parcel”** means any Parcel of Taxable Property for which Special Taxes have not been collected within ten (10) days after the date on which the Special Taxes were due as indicated on the tax bill sent by the City.

**“Facilities Special Tax”** means a Special Tax levied in any Quarter to pay the Facilities Special Tax Requirement.

**“Facilities Special Tax Requirement”** means the amount necessary in any Quarter (i) to pay interest on the Bonds for the preceding Quarter (and, in the Bond Maturity Quarter, to pay interest and principal on the Bonds in the following Quarter), (ii) to pay any additional interest costs required to bring the Interest Expense Account to its full amount after depositing the amount for the previous

Quarter's interest payment, (iii) to pay one-fourth (1/4) of the Annual Administrative Expenses, and (iv) to cure any delinquencies in the payment of principal or interest on indebtedness of CFD No. 1988-1 which have occurred in the prior Quarter and which have not yet been cured from a draw on the Letter of Credit. The Facilities Special Tax Requirement shall be reduced by the following: (i) any credit from interest earnings on the Interest Expense Account or other Bond funds the earnings on which are available to pay debt service on the Bonds, (ii) proceeds of Special Tax prepayments which are not used or reserved to redeem Bonds, and (iii) the collection of delinquent Special Taxes and associated penalties.

**"Interest Expense Account"** means an amount equal to 150 days of interest on the Bonds assuming an annual interest rate of twelve percent (12%).

**"Letter of Credit"** means the letter of credit relating to the Bonds which shall be issued by a qualified bank, delivered on the closing date of the Bonds, and name the trustee for the Bonds as beneficiary. "Letter of Credit" shall also mean any substitute letter of credit that is issued in the future to replace all or a portion of the original letter of credit issued when Bonds are first sold for CFD No. 1998-1.

**"Maintenance Special Tax"** means a Special Tax levied in any Quarter to pay a portion of the Annual Maintenance Special Tax Requirement.

**"Maximum Quarterly Facilities Special Tax"** means the maximum Facilities Special Tax that can be collected in any Quarter, not including the Bond Maturity Quarter, to pay the Facilities Special Tax Requirement.

**"Maximum Quarterly Facilities Special Tax Revenues"** means the total amount of Facilities Special Tax that can be collected in any Quarter by levying the Maximum Quarterly Facilities Special Tax or the Bond Maturity Special Tax against all Taxable Property within the CFD.

**"Maximum Quarterly Maintenance Special Tax"** means the Maximum Special Tax that can be levied in any Quarter to pay a portion of the Annual Maintenance Special Tax Requirement.

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

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

**"Quarter"** means each of the four three-month periods beginning January 1, April 1, July 1 and October 1 of any Calendar Year.

**"Taxable Property"** means, in any Quarter, all Parcels within CFD No. 1998-1 that are not exempt from the Special Tax pursuant to law except as provided in Section I below.

**B. IDENTIFICATION OF TAXABLE PROPERTY**

Thirty (30) days prior to the beginning of each Quarter, the Administrator shall prepare a list of Assessor's Parcels within the CFD and shall identify the Acreage for all Parcels of Taxable Property against which a Special Tax will be levied in the upcoming Quarter. The Administrator shall also identify the name and address for the record owner of the Parcel to whom the Special Tax bill shall be sent.

**C. MAXIMUM SPECIAL TAX**

*1. Maximum Quarterly Facilities Special Tax*

The Maximum Quarterly Facilities Special Tax for all Parcels of Taxable Property in CFD No. 1998-1 is \$1,019 per Acre.

*2. Bond Maturity Special Tax*

The Bond Maturity Special Tax for all Parcels of Taxable Property in CFD No. 1998-1 is \$32,601 per Acre.

*3. Maximum Quarterly Maintenance Special Tax*

The Maximum Quarterly Maintenance Special Tax for all Parcels of Taxable Property in CFD No. 1998-1 is \$21.53 per Acre in Calendar Year 1998. Beginning in January 1999 and each January 1 thereafter, the Maximum Quarterly Maintenance Special Tax shall be adjusted by applying the increase, if any, in the construction cost index for the San Francisco region for the prior twelve (12) month period as published in the Engineering News Record or other comparable source if the Engineering News Record is discontinued or otherwise not available. Each annual adjustment of the Maximum Quarterly Maintenance Special Tax shall become effective immediately after the adjustment is made.

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

*1. Facilities Special Tax*

Thirty (30) days prior to the start of a given Quarter, the Administrator shall calculate the Facilities Special Tax Requirement for the Quarter. If the levy is for other than the Bond Maturity Quarter, the Administrator shall levy a Special Tax, not to exceed the Maximum Quarterly Facilities Special Tax set forth in Section C.1 above, in an equal amount on each Acre of Taxable Property in the CFD until the amount of the levy equals the Facilities Special Tax Requirement for that Quarter.

In the Bond Maturity Quarter, the Administrator shall levy a Special Tax, not to exceed the Bond Maturity Special Tax set forth in Section C.2 above, in an equal amount on each Acre of Taxable Property until the amount of the levy equals the Facilities Special Tax Requirement for the Bond Maturity Quarter.

2. *Maintenance Special Tax*

Commencing in 1998 and each following Calendar Year, the Administrator shall determine, or shall cause to be determined, the Annual Maintenance Special Tax Requirement for that Calendar Year. The Administrator shall then levy a Maintenance Special Tax, not to exceed the Maximum Quarterly Maintenance Special Tax set forth in Section C.3 above, in an equal amount on each Acre of Taxable Property in the CFD until the amount of the levy equals one-fourth (1/4) of the Annual Maintenance Special Tax Requirement calculated for that Calendar Year.

E. TERMINATION OF SPECIAL TAX

The Maximum Quarterly Facilities Special Tax shall be levied and collected until the Bond Maturity Quarter which shall, in no event, occur later than Calendar Year 2030. The Bond Maturity Special Tax shall be levied and collected in the Bond Maturity Quarter, which shall begin no later than July 1, 2030. The Maximum Quarterly Maintenance Special Tax shall continue to be levied unless and until the City determines that revenues from the Maintenance Special Tax are no longer needed to pay for authorized maintenance services.

F. MANNER OF COLLECTION

All Special Taxes shall be directly billed and collected by the Administrator on a Quarterly basis. Tax bills shall be mailed within seven (7) working days after the start of each Quarter and shall be due and payable within twenty-three (23) days after bills have been mailed. On the day the Quarterly tax bills are mailed, the tax bills shall also be sent via facsimile to each record owner for whom the Administrator is able to obtain a facsimile number; however, failure to fax a tax bill shall in no way affect the obligation of the owner to pay the Special Tax indicated in the amount and by the date indicated on the bill. Notwithstanding the above, after the Bond Maturity Date, the City may elect to levy the Maintenance Special Tax in the same manner and at the same time as ordinary ad valorem property taxes in an annual amount not to exceed four times the then current Maximum Quarterly Maintenance Special Tax.

G. ENFORCEMENT

1. *Facilities Special Tax*

If a Parcel becomes a Delinquent Parcel, the Bonds secured by the Maximum Facilities Special Tax levied on the Parcel shall be called from proceeds generated from a draw on the Letter of Credit. The following steps shall be applied to implement the call of Bonds:

Step Number:

1. Using the prepayment formula set forth in Section H below, the Administrator shall calculate the Prepayment Amount associated with the Delinquent Parcel.
2. The Administrator shall notify the Trustee of the Prepayment Amount calculated in Step 1.
3. The Trustee shall draw on the Letter of Credit in an amount equal to the Prepayment Amount and shall use the proceeds of the draw to retire Bonds secured by Special Taxes on the Delinquent Parcel.
4. The Administrator shall direct the County Recorder to record a Notice of Cessation of Special Tax against the Delinquent Parcel, which shall state that the obligation to pay the Facilities Special Tax has ceased, but the Maximum Quarterly Maintenance Special Tax shall continue to be levied against the Delinquent Parcel. After recordation of the Notice of Cessation of Special Tax, the Delinquent Parcel will no longer be subject to the Facilities Special Tax levy.

2. *Maintenance Special Tax*

All delinquent Maintenance Special Taxes billed off the County tax roll shall be subject to an immediate 10% penalty plus interest charges of 1½% as of the first day of the month after the delinquency date and on the first day of each month thereafter. Any such delinquent Special Taxes shall, at the City's discretion, be placed on the next secured property tax roll. The amount placed on the roll shall include the 10% penalty and the interest charges through the following December 10, after which date any amounts on the tax roll which have not been paid will incur additional penalties and interest. This shall not prevent the City from simultaneously pursuing the delinquency by an action on a contract or guarantee against a third party who promised to pay the taxes, or from assigning such right of action to the property owner or other appropriate party.

**H. PREPAYMENT OF FACILITIES SPECIAL TAX**

*Only the Facilities Special Tax may be prepaid; the Maintenance Special Tax shall continue to be levied on an annual basis on all Taxable Property in the CFD.*

The Facilities Special Tax obligation applicable to an Assessor's Parcel in CFD No. 1998-1 may be prepaid and the obligation of the Assessor's Parcel to pay the Facilities Special Tax permanently satisfied as described herein, provided that a voluntary prepayment may be made only if there are no delinquent Special Taxes with respect to such Assessor's Parcel at the time of prepayment.

Notwithstanding the above, the Facilities Special Tax shall be immediately prepaid from the proceeds of a draw on the Letter of Credit if a Parcel becomes a Delinquent Parcel.

For voluntary prepayments, an owner of an Assessor's Parcel intending to prepay the Facilities Special Tax obligation shall provide the City with written notice of intent to prepay. Within 30 days of receipt of such written notice, the City shall notify the owner of the required prepayment amount. Prepayment must be made not less than 60 days prior to any redemption date for Bonds to be redeemed with the proceeds of such prepaid Facilities Special Taxes.

The “**Prepayment Amount**” shall be calculated as follows (capitalized terms as defined below):

Bond Redemption Amount	
plus	Redemption Premium
plus	Defeasance
plus	Administrative Fees and Expenses
less	<u>Interest Expense Account Credit</u>
equals	Prepayment Amount

As of the proposed date of prepayment or upon notification from the Administrator that a Parcel has become a Delinquent Parcel, the Prepayment Amount shall be determined by applying the following steps:

Step Number:

1. Compute the total Maximum Quarterly Facilities Special Tax that could be collected from the Assessor's Parcel prepaying the Facilities Special Tax in the Quarter in which the prepayment will be received by the City.
2. Divide the Maximum Quarterly Facilities Special Tax computed pursuant to Step 1 for such Assessor's Parcel by the Maximum Quarterly Facilities Special Tax Revenues that can be generated in the Quarter in which the prepayment will be received by the City.
3. Multiply the quotient computed pursuant to Step 2 by the principal amount of Bonds that remain outstanding when the Prepayment Amount is calculated to determine the amount of Bonds to be redeemed (*the “Bond Redemption Amount”*).
4. Multiply the Bond Redemption Amount computed pursuant to Step 3 by the applicable redemption premium, if any, on the Bonds to be redeemed (*the “Redemption Premium”*).
5. Compute the amount needed to pay interest on the Bond Redemption Amount from the last interest payment date on the Bonds until the earliest redemption date on the Bonds.

6. Identify the amount of Facilities Special Taxes levied with respect to the Assessor's Parcel during the current Quarter. If the current Quarter's Facilities Special Tax for that Parcel has not been paid, the amount of such Facilities Special Tax shall be included in the Prepayment Amount.
7. Compute the amount the City reasonably expects to derive from the reinvestment of the Bond Redemption Amount plus the Redemption Premium until the redemption date for the outstanding Bonds that the City expects to redeem with the prepayment.
8. Take the amount computed pursuant to Step 4, add the amounts calculated in Steps 5 and 6, and subtract the amount computed pursuant to Step 7 (*the "Defeasance"*).
9. The administrative fees and expenses of CFD No. 1988-1 are as calculated by the City and include the costs of computing the prepayment, the costs of redeeming Bonds, and the costs of recording any notices to evidence the prepayment and the redemption (*the "Administrative Fees and Expenses"*). For a Delinquent Parcel, the Administrative Fees and Expenses shall also include any costs associated with the draw on the Letter of Credit.
10. An Interest Expense Account credit shall be calculated as a reduction in the required Interest Expense Account for the Bonds to be redeemed pursuant to the prepayment (*the "Interest Expense Account Credit"*).
11. The Special Tax prepayment is equal to the sum of the amounts computed pursuant to Steps 3, 4, 8, and 9, less the amount computed pursuant to Step 10 (*the "Prepayment Amount"*).

## I. LIMITATIONS

Notwithstanding any other provision of this Rate and Method of Apportionment of Special Tax, no Special Tax shall be levied on property owned by a Public Agency, except as otherwise provided in Sections 53317.3 and 53317.5 of the Mello-Roos Community Facilities Act of 1982.

C:\OFFICE\WPWIN\FILES\MODESTO\ENTRPRSE\IRMA3.698

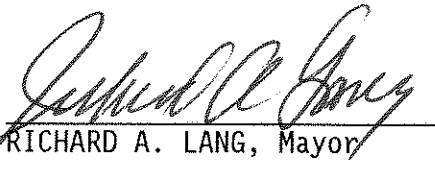
Ord. No. 3093-C.S.

FINAL ADOPTION CLAUSE


The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 7th day of July, 1998, Councilmember Friedman, moved its final adoption, which motion being duly seconded by Councilmember Dobbs, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Conrad, Dobbs, Fisher, Friedman, Serpa, Smith,  
Mayor Lang  
NOES: Councilmembers: None  
ABSENT: Councilmembers: None

APPROVED:

  
RICHARD A. LANG, Mayor

ATTEST:

  
JEAN ZAHR, City Clerk

Effective Date: August 6, 1998

*Clerk* (11)

ORDINANCE NO. 3094 -C.S.

AN ORDINANCE AMENDING SECTIONS 2-1.03 AND 2-1.08 OF CHAPTER 1 OF TITLE 2 OF THE MODESTO MUNICIPAL CODE RELATING TO CITY COUNCIL ORGANIZATION AND PROCEDURE.

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

SECTION 1. AMENDMENT OF CODE. Sections 2-3.01 and 2-1.08 of

Chapter 1 of Title 2 of the Modesto Municipal Code are hereby amended to read as follows:

**2-1.03. AGENDA.**

In order to facilitate the orderly conduct of the business of the Council, the City Clerk shall be notified no later than 5:00 p.m. of the Wednesday immediately preceding a regular Council meeting of all reports, communications, ordinances, resolutions, contract documents or other matters to be submitted to the Council at such meeting. Immediately thereafter the City Clerk shall arrange a list of such matters according to the order of business and furnish each member of the Council, the City Manager, and the City Attorney and each department head with a copy of the same prior to the Council meeting and as far in advance of the meeting as time for preparation will permit.

The City Clerk shall mark with the word "Consent" those items on the agenda regarding which it can reasonably be expected that there will be no discussion by members of the City Council, the City staff or interested persons in the audience. At any time prior to the meeting or at any time during the meeting prior to Council action on the consent agenda any member of the City Council or the City staff or any interested person may request that a consent item be removed from the list of consent items, such item shall be taken up for consideration and disposition separately from the remainder of the consent items not so removed. In order to make clear that the vote on consent items is about to occur, the City Clerk shall read out the title or brief summary of each item marked "Consent" on the agenda to those present at the Council meeting. The presiding officer will immediately upon the conclusion of this reading advise those present that the appropriate time has come to speak on any item so read out from the consent calendar. Those wishing to speak will then confirm the consent item number or numbers they wish to address. Any such item shall be separately taken up for consideration in numerical order prior to the Unfinished Business portion of the agenda. All other consent items, whether previously

removed from the consent calendar or not, shall then be considered at one time by a roll call vote after a motion duly made and seconded.

#### **2-1.08. ORDER OF BUSINESS.**

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

1. Roll call.
2. Pledge of allegiance to the flag.
3. Invocation.
4. Acknowledgments and presentations.
5. Consent items.
6. Unfinished business.
7. Hearings.
8. New business.
9. Oral communications.
10. Written communications.
11. Miscellaneous:
  - a. Legislation.
  - b. Appointments.
  - c. Other.
12. Matters too late for the agenda.
13. Adjournment.
14. Closed session items.

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

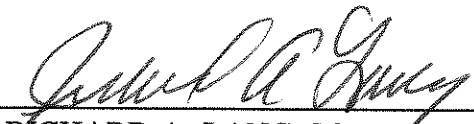
SECTION 3. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in *The Modesto Bee*, the official newspaper of the City of Modesto, setting forth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

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 23rd day of June, 1998, by Councilmember Serpa, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Dobbs, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Conrad, Dobbs, Fisher, Friedman, Serpa, Smith, Mayor Lang

NOES: Councilmembers: None

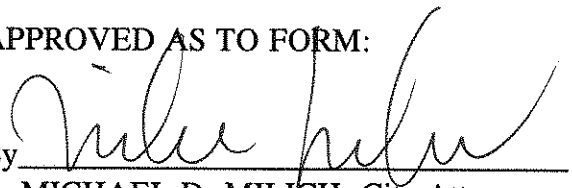
ABSENT: Councilmembers: None

APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:

By   
JEAN ZAHR, City Clerk

(SEAL)

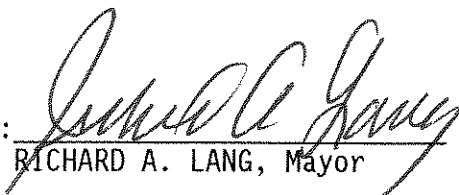
APPROVED AS TO FORM:  
By   
MICHAEL D. MILICH, City Attorney


Ord. No. 3094-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 7th day of July, 1998, Councilmember Friedman, moved its final adoption, which motion being duly seconded by Councilmember Dobbs, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Conrad, Dobbs, Fisher, Friedman, Serpa, Smith,  
Mayor Lang  
NOES: Councilmembers: None  
ABSENT: Councilmembers: None

APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:   
JEAN ZAHR, City Clerk

Effective Date: August 6, 1998

Clark

ORDINANCE NO. 3095 -C.S.

AN ORDINANCE AMENDING SECTION 21-3-9 OF THE ZONING MAP TO REZONE FROM GENERAL COMMERCIAL ZONE, C-2, TO PLANNED DEVELOPMENT ZONE, P-D(531), PROPERTY LOCATED ON THE EAST SIDE OF MCHENRY AVENUE SOUTH OF EAST ORANGEBURG AVENUE AT 1234 MCHENRY AVENUE. (KEARNEY VENTURES)

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

SECTION 1. ZONING CHANGE. Section 21-3-9 of the Zoning Map is hereby amended to reclassify the following described property from General Commercial Zone, C-2, to Planned Development Zone, P-D(531):

C-2 to P-D(531)

All that certain real property situate in a portion of the southwest quarter of the Northwest quarter of Section 21, 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 15 shown on that certain map of the Mensinger Colony, filed in the office of the Recorder of Stanislaus County, California, on May 18, 1909, in Volume 4 of Maps, Page 25;

Excepting therefrom the easterly 10.00 feet.

SECTION 2. USES. The following uses shall be permitted in said P-D(531) 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. C-3 commercial uses.
2. Mini warehouse storage facility.

SECTION 3. ZONING MAP. Section Map 21-3-9 of the Zoning Map of the City of Modesto is amended to appear as set forth on the map attached hereto, which is hereby made a part of this ordinance by reference.

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

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

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 4th day of August, 1998, by Councilmember Dobbs, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Conrad, Dobbs, Fisher, Friedman, Serpa, Smith, Mayor Lang

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:

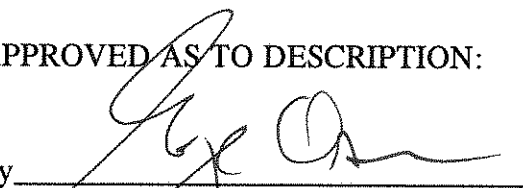
By   
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

APPROVED AS TO DESCRIPTION:

By   
Community Development Department  
Development Services

Ord. No. 3095-C.S.

FINAL ADOPTION CLAUSE

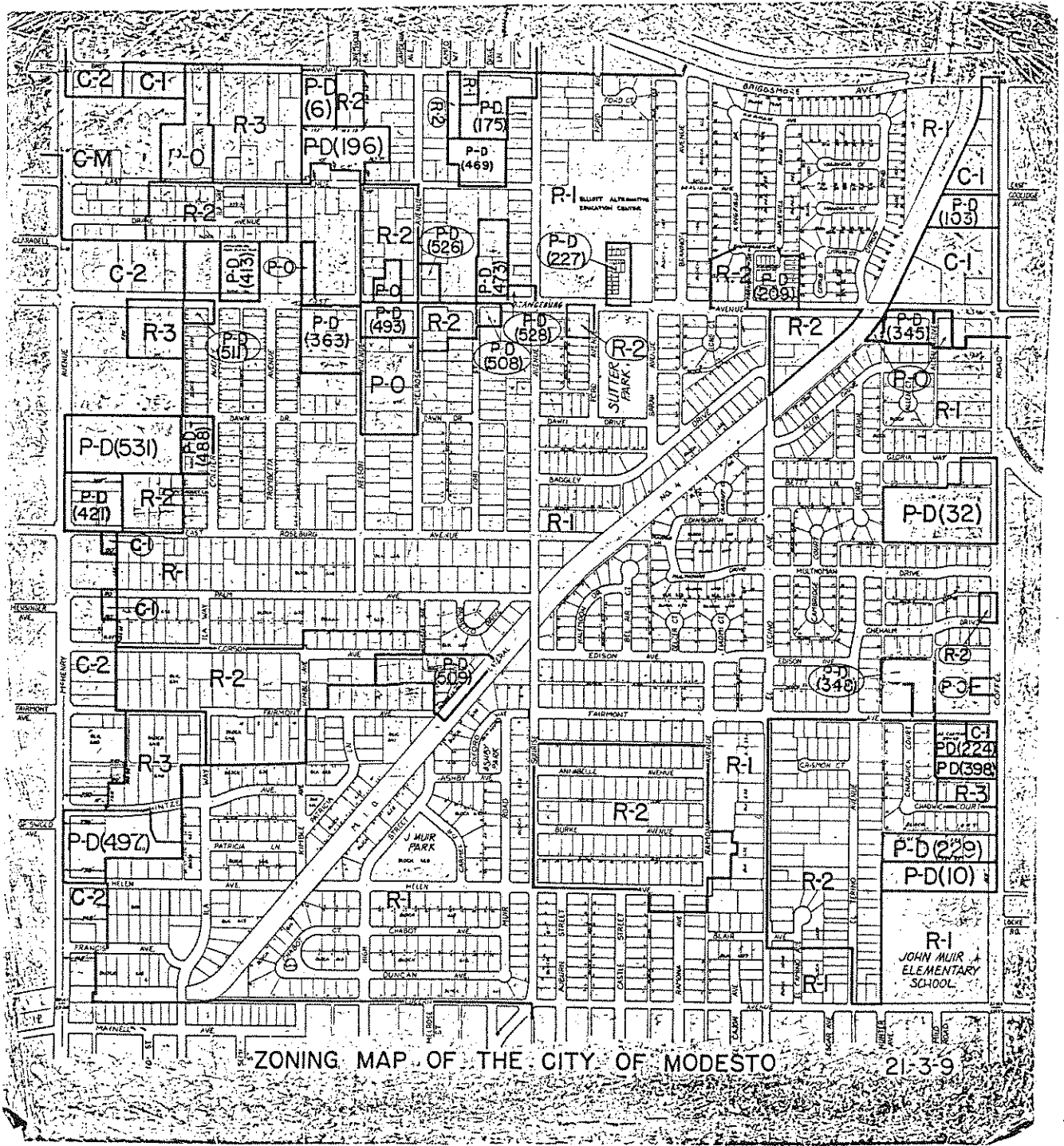
The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 11th day of August, 1998, Councilmember Fisher, moved its final adoption, which motion being duly seconded by Councilmember Friedman, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Conrad, Dobbs, Fisher, Friedman, Serpa, Smith, Mayor Lang  
NOES: Councilmembers: None  
ABSENT: Councilmembers: None

APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:   
JUDY C. HALL, Acting City Clerk

Effective Date: September 10, 1998



Check (3)

ORDINANCE NO. 3096-C.S.

AN ORDINANCE AMENDING SECTIONS 3-2.1401 AND 3-2.1401.1 OF ARTICLE 14 OF CHAPTER 2 OF TITLE III 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. Sections 3-2.1401 and 3-2.1401.1 of Article 14 of Chapter 2 of Title III of the Modesto Municipal Code are hereby amended to read as follows:

**SEC. 3-2.1401. CHANGE IN SPEED LIMITS SET BY STATE LAW.**

Pursuant to authority contained in the California Vehicle Code Sections 22357 and 22358, it is hereby determined upon the basis of an engineering and traffic survey that the prima facie speed limits hereinafter set forth would facilitate the orderly movement of vehicular traffic and would be reasonable and safe, except when passing school grounds, and it is hereby determined that a speed limit greater than those hereinafter set forth would be more than is reasonable or safe. It is hereby declared that the prima facie speed limits hereinafter set forth are established according to law.

<u>NAME OF STREET OR PORTION AFFECTED</u>	<u>DECLARED PRIMA FACIE SPEED LIMIT</u>
ALICE STREET, between Sycamore Avenue and McHenry Avenue	25 miles per hour
BLUE GUM AVENUE, between Carpenter Road and Culpepper Avenue	25 miles per hour
BOWEN AVENUE, between Tully Road and McHenry Avenue	25 miles per hour
BRIGGSMORE AVENUE, between Sisk Road and Prescott Road	30 miles per hour

CARPENTER ROAD, between Blue Gum Avenue and Orangeburg Avenue	30 miles per hour
CARPENTER ROAD, between the Tuolumne River and Robertson Road	35 miles per hour
CENTER STREET, between Rosedale Avenue and Calaveras Avenue	25 miles per hour
CONANT AVENUE, between Sisk Road and Rumble Road	25 miles per hour
CONANT AVENUE, between Standiford Avenue and Veneman Avenue	25 miles per hour
CROWS LANDING, between 7th Street and Blankenburg Avenue	35 miles per hour
CROWS LANDING, between School Avenue and Imperial Avenue	35 miles per hour
CROWS LANDING, between Imperial Avenue and Whitmore	45 miles per hour
DEL VALE AVENUE, between Del Vista Avenue and Glenwood Drive	25 miles per hour
EICHER AVENUE, between Conant Avenue and Goldie Avenue	25 miles per hour
EMERALD AVENUE, between Maze Boulevard and Kansas Avenue	25 miles per hour
ENCINA AVENUE, between Santa Barbara Avenue and Conejo Avenue	25 miles per hour
ENSLEN AVENUE, between Granger Avenue and Orangeburg Avenue	25 miles per hour

FAIRMONT AVENUE, between Virginia Avenue and McHenry Avenue	25 miles per hour
FAIRMONT AVENUE, between Sunrise Avenue and Coffee Road	25 miles per hour
GRAPE AVENUE, between Pearl Street and Evergreen Avenue	25 miles per hour
GRISWOLD AVENUE, between Virginia Avenue and McHenry Avenue	25 miles per hour
HADDON AVENUE, between La Loma Avenue and Conejo Avenue	25 miles per hour
HASHEM DRIVE, between Sylvan Avenue and Oakdale Road	30 miles per hour
JEFFERSON STREET, between Paradise Road and 8th Street	25 miles per hour
K STREET, between Washington Street and 9th Street	25 miles per hour
KEARNEY AVENUE, between Glenwood Drive and Coldwell Drive	25 miles per hour
KELLER STREET, between Sylvan Avenue and Rumble Road	25 miles per hour
LEGION PARK ROAD, between Santa Cruz Avenue and Tioga Drive	25 miles per hour
LEVELAND LANE, between College Avenue and TSRR tracks	25 miles per hour
LINCOLN OAK DRIVE, between Merle Avenue and Floyd Avenue	25 miles per hour
LUCERN AVENUE, between Johnson Street and Coffee Road	25 miles per hour

MADISON STREET, between Paradise Avenue and Laurel Avenue	25 miles per hour
MORTON BOULEVARD, between 9th Street and Downey Avenue	25 miles per hour
NEECE DRIVE, between Rouse Avenue and Sunset Avenue	25 miles per hour
NORTH MARTIN LUTHER KING DRIVE, between Maze Boulevard and Laurel Avenue	25 miles per hour
PEARL STREET, between Carver Road and Dougfir Drive	25 miles per hour
PRINCETON AVENUE, between Tully Road and College Avenue	25 miles per hour
RIVER ROAD, between Herndon Avenue and 1,200 feet west of Herndon Avenue	35 miles per hour
ROBLE AVENUE, between Santa Ana Avenue and Rosina Avenue	25 miles per hour
SHARON WAY, between Budd Street and Prescott Road	25 miles per hour
SHERWOOD AVENUE, between Orangeburg Avenue and Briggsmore Avenue	25 miles per hour
SNYDER AVENUE, between Blue Bird Drive and Dale Road	25 miles per hour
STODDARD AVENUE, between McHenry Avenue and Virginia Avenue	25 miles per hour
SURREY AVENUE, between Oakdale Road and Eastridge Drive	25 miles per hour
TIOGA DRIVE, between Conejo Avenue and Legion Park Drive	25 miles per hour

VENEMAN AVENUE NORTH, between Synder Avenue and Regency Park Drive	25 miles per hour
WESTERN WAY, between Sutter Avenue and Roselawn Avenue	25 miles per hour
WINMOORE WAY, between Crows Landing Road and Jim Way	25 miles per hour
WRIGHT STREET, between Sycamore Avenue and McHenry Avenue	25 miles per hour
WYLIE DRIVE, between Rose Avenue and Oakdale Road	25 miles per hour
7TH STREET, between Sierra Drive and B Street	25 miles per hour
9TH STREET, between 400 feet north of Tully Road and P Street	35 miles per hour
9TH STREET, on the Tuolumne River Bridge	40 miles per hour

**SEC. 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>
BLUE GUM AVENUE, between Morse Road and Carpenter Road	40 miles per hour	February 29, 1996
BRIGGSMORE AVENUE, between Prescott Road and Tully Road	45 miles per hour	June 24, 1994

BRIGGSMORE AVENUE, eastbound between Tully Road and McHenry Avenue	45 miles per hour	June 24, 1994
BRIGGSMORE AVENUE, westbound between Tully Road and McHenry Avenue	45 miles per hour	June 24, 1994
BRIGGSMORE AVENUE, westbound between Coffee Road and McHenry Avenue	45 miles per hour	August 10, 1993
BRIGGSMORE AVENUE, eastbound between McHenry Avenue and 1,000 feet west of Coffee Road	45 miles per hour	June 24, 1994
BRIGGSMORE AVENUE, eastbound between a point 1,000 feet west of Coffee Road and Coffee Road	45 miles per hour	July 28, 1993
BRIGGSMORE AVENUE, between Oakdale Road and Claus Road	50 miles her hour	May 14, 1998
BRIGGSMORE AVENUE, between Coffee Road and Oakdale Road	50 miles per hour	June 24, 1994
BRIGHTON AVENUE, between Coffee Road and Locke Road	35 miles per hour	June 18, 1997
CALIFORNIA AVENUE, between Carpenter Road and North Martin Luther King Drive	35 miles per hour	July 20, 1994
CARPENTER ROAD, between Blue Gum Avenue and Woodland Avenue	40 miles per hour	May 28, 1998
CARPENTER ROAD, between Woodland Avenue and Maze Boulevard	40 miles per hour	November 15, 1995

CARPENTER ROAD, between Maze Boulevard and Paradise Road	50 miles per hour	June 26, 1994
CARVER ROAD, between M.I.D. Lateral #6 and Brixton Lane	40 miles per hour	June 18, 1991
CARVER ROAD, between Brixton Lane and Briggsmore Avenue	35 miles per hour	May 8, 1997
CARVER ROAD, between Briggsmore Avenue and Orangeburg Avenue	35 miles per hour	May 8, 1997
CARVER ROAD, between Orangeburg Avenue and 9th Street	35 miles per hour	May 8, 1997
CELESTE DRIVE, between Coffee Road and Oakdale Road	30 miles per hour	June 18, 1997
CLAUS ROAD, between Sylvan Avenue and Briggsmore Avenue	50 miles per hour	February 29, 1996
CLAUS ROAD, between Briggsmore Avenue and Scenic Drive	45 miles per hour	May 8, 1997
CLAUS ROAD, between Scenic Drive and Yosemite Boulevard	50 miles per hour	February 29, 1996
COFFEE ROAD, between Claratina Avenue and Sylvan Avenue	45 miles per hour	August 30, 1995
COFFEE ROAD, between Sylvan Avenue and Floyd Avenue	40 miles per hour	May 28, 1998
COFFEE ROAD, between Floyd Avenue and Briggsmore Avenue	40 miles per hour	August 5, 1993
COFFEE ROAD, between Briggsmore Avenue and Scenic Drive	40 miles per hour	May 14, 1998
COLLEGE AVENUE, between Rumble Road and Bowen Avenue	30 miles per hour	May 14, 1998

COLLEGE AVENUE, between Bowen Avenue and Princeton Avenue	35 miles per hour	June 16, 1998
CREEKWOOD DRIVE, between Claus Road and Yosemite Boulevard	35 miles per hour	July 19, 1994
CROWS LANDING ROAD, between Blankenburg Avenue to School Avenue	40 miles per hour	February 29, 1996
CROWS LANDING ROAD, between Hatch Road and Whitmore Avenue	35 miles per hour	April 29, 1997
CROWS LANDING ROAD, between 7th Street and Hatch Road	40 miles per hour	June 18, 1997
DALE ROAD, between Pelandale Avenue and Snyder Avenue	40 miles per hour	May 8, 1997
DALE ROAD, between Snyder Avenue and Veneman Avenue	40 miles per hour	May 8, 1997
DALE ROAD, between Veneman Avenue and Standiford Avenue	35 miles per hour	May 8, 1997
EASTRIDGE DRIVE, between Orangeburg Avenue and Scenic Drive	30 miles per hour	August 17, 1994
EL VISTA AVENUE, between Scenic Drive and Yosemite Boulevard	40 miles per hour	July 19, 1994
EMERALD AVENUE, between Maze Boulevard and California Avenue	30 miles per hour	June 17, 1997
EVERGREEN AVENUE, between Orangeburg Avenue and Carver Road	30 miles per hour	June 19, 1997
FLOYD AVENUE, between McHenry Avenue and Coffee Road	35 miles per hour	June 24, 1994

FLOYD AVENUE, between Coffee Road and Oakdale Road	35 miles per hour	June 24, 1994
FLOYD AVENUE, between Oakdale Road and Roselle Avenue	40 miles per hour	June 24, 1994
GRANGER AVENUE, between Tully Road and McHenry Avenue	35 miles per hour	July 11, 1994
GRANGER AVENUE, between McHenry Avenue and Sunrise Avenue	35 miles per hour	July 11, 1994
HATCH ROAD, between Crows Landing Road and Carpenter Road	45 miles per hour	February 29, 1996
KANSAS AVENUE, between Carpenter Road and Emerald Avenue	40 miles per hour	July 11, 1994
KANSAS AVENUE, between Emerald Avenue and Ninth Street	35 miles per hour	July 11, 1994
KANSAS AVENUE, between Morse Road and Rosemore Avenue	40 miles per hour	June 8, 1998
KANSAS AVENUE, between Rosemore Avenue and Carpenter Road	40 miles per hour	June 8, 1998
LA LOMA AVENUE, between H Street and Santa Ana Avenue	35 miles per hour	July 13, 1994
LA LOMA AVENUE, between Santa Ana Avenue and Yosemite Boulevard	35 miles per hour	July 13, 1994

LAKESWOOD AVENUE, between Briggsmore Avenue and Scenic Drive	35 miles per hour	June 18, 1997
LINCOLN AVENUE, between 650 feet north of M.I.D. Lateral #2 and Yosemite Boulevard	40 miles per hour	July 19, 1994
MABLE AVENUE, between Coffee Road and Oakdale Road	35 miles per hour	June 28, 1996
MERLE AVENUE, between Oakdale Road and Roselle Avenue	30 miles per hour	June 28, 1996
MILLER AVENUE, between La Loma Avenue and El Vista Avenue	35 miles per hour	July 19, 1994
MITCHELL ROAD, between Finch Road and the southerly City limits	50 miles per hour	April 28, 1997
MORRIS AVENUE, between McHenry Avenue and Coffee Road	30 miles per hour	March 12, 1992
MORSE ROAD, between Blue Gum Avenue and Kansas Avenue	40 miles per hour	June 16, 1997
MT. VERNON DRIVE, between Prescott Road and Carver Road	30 miles per hour	July 11, 1994
MT. VERNON DRIVE, between Carver Road and College Avenue	30 miles per hour	July 11, 1994
NEECE DRIVE, between Tuolumne Boulevard and Rouse Avenue	35 miles per hour	June 19, 1997
NEEDHAM STREET, between 9th Street and L Street	35 miles per hour	June 18, 1997

NORTH MARTIN LUTHER KING DRIVE, between Maze Boulevard and California Avenue	30 miles per hour	March 13, 1992
NORTH MARTIN LUTHER KING DRIVE, between Maze Boulevard and Paradise Road	30 miles per hour	April 29, 1997
NORWEGIAN AVENUE, between McHenry Avenue and Coffee Road	35 miles per hour	July 11, 1994
OAKDALE ROAD, between 1300 feet north of Mable Avenue and Sylvan Avenue	45 miles per hour	June 28, 1996
OAKDALE ROAD, between Sylvan Avenue and Floyd Avenue	45 miles per hour	February 29, 1996
OAKDALE ROAD, between Floyd Avenue and Briggsmore Avenue	40 miles per hour	June 25, 1994
OAKDALE ROAD, between Briggsmore Avenue and Scenic Drive	40 miles per hour	June 25, 1994
ORANGEBURG AVENUE, between Briggsmore Avenue and Martin Avenue	35 miles per hour	June 19, 1997
ORANGEBURG AVENUE, between Martin Avenue and McHenry Avenue	40 miles per hour	June 19, 1997
ORANGEBURG AVENUE, between McHenry Avenue and Coffee Road	40 miles per hour	June 19, 1997
ORANGEBURG AVENUE, between Coffee Road and Oakdale Road	35 miles per hour	June 19, 1997
ORANGEBURG AVENUE, between Oakdale Road and Lakewood Avenue	35 miles per hour	June 18, 1997

ORANGEBURG AVENUE, between Lakewood Avenue and Claus Road	35 miles per hour	June 19, 1997
PARADISE ROAD, between Vernon Avenue and North Martin Luther King Drive	40 miles per hour	June 26, 1994
PARADISE ROAD, between North Martin Luther King Drive and Washington Street	35 miles per hour	July 27, 1994
PARKER ROAD, between Claus Road and Atchinson, Topeak and Santa Fe Railroad Tracks	45 miles per hour	April 28, 1997
PELANDALE AVENUE, between Sisk Road and Dale Road	45 miles per hour	March 18, 1997
PRESCOTT ROAD, between Snyder Avenue and Standiford Avenue	40 miles per hour	June 16, 1997
PRESCOTT ROAD, between Standiford Avenue and Rumble Road	40 miles per hour	June 16, 1997
PRESCOTT ROAD, between Rumble Road and Briggsmore Avenue	35 miles per hour	June 16, 1997
RIVERSIDE DRIVE, between Edgebrook Drive and Yosemite Boulevard	30 miles per hour	July 19, 1994
ROSE AVENUE, between Floyd Avenue and Briggsmore Avenue	35 miles per hour	July 20, 1994
ROSE AVENUE, between Briggsmore Avenue and Scenic Drive	35 miles per hour	July 20, 1994
ROSEBURG AVENUE, between Carver Road and Tully Road	30 miles per hour	May 8, 1997

ROSEBURG AVENUE, between Tully Road and McHenry Avenue	30 miles per hour	April 29, 1997
ROSEBURG AVENUE, between McHenry Avenue and Sunrise Avenue	30 miles per hour	January 8, 1993
ROSELLE AVENUE, between Floyd Avenue and Briggsmore Avenue	45 miles per hour	December 6, 1995
ROSEMORE AVENUE, between Blue Gum Avenue and Kansas Avenue	35 miles per hour	June 28, 1996
ROUSE AVENUE, between Neece Drive and Colorado Avenue	30 miles per hour	April 29, 1997
RUMBLE ROAD, between Sisk Road and Conant Avenue	35 miles per hour	June 16, 1997
RUMBLE ROAD, between Conant Avenue and Tully Road	35 miles per hour	June 16, 1997
RUMBLE ROAD, between Tully Road and McHenry Avenue	35 miles per hour	June 28, 1996
RUMBLE ROAD, between McHenry Avenue and Coffee Road	35 miles per hour	May 28, 1998
SANTA CRUZ AVENUE, between Yosemite Boulevard and Legion Park Drive	30 miles per hour	July 19, 1994
SCENIC DRIVE, between Burney Street and Coffee Road	35 miles per hour	June 18, 1997
SCENIC DRIVE, between Coffee Road and Oakdale Road	40 miles per hour	April 28, 1997
SCENIC DRIVE, between Oakdale Road and Lakewood Avenue	40 miles per hour	April 28, 1997

SCENIC DRIVE, between Lakewood Avenue and Lillian Drive	40 miles per hour	April 28, 1997
SCENIC DRIVE, between Lillian Drive and Claus Road	40 miles per hour	April 30, 1998
SCENIC DRIVE, between Coffee Road and Bodem Street	35 miles per hour	June 25, 1994
SHARON AVENUE, between Fine Avenue and Claus Road	40 miles per hour	December 7, 1992
SIERRA DRIVE, between G Street and South 7th Street	30 miles per hour	June 19, 1997
SISK ROAD, between Vintage Drive and Standiford Avenue	40 miles per hour	June 25, 1994
SISK ROAD, between Pelandale Avenue and Vintage Drive	45 miles per hour	June 25, 1994
SISK ROAD, between Standiford Avenue and Briggsmore Avenue	45 miles per hour	June 28, 1996
SNYDER AVENUE, between Dale Road and Prescott Road	40 miles per hour	September 1, 1997
SNYDER AVENUE, between Prescott Road and Carver Road	45 miles per hour	September 1, 1997
STANDIFORD AVENUE, between Tully Road and McHenry Avenue	40 miles per hour	June 23, 1994
STANDIFORD AVENUE, between Prescott Road and Tully Road	40 miles per hour	June 23, 1994
STANDIFORD AVENUE, between Sisk Road and Prescott Road	45 miles per hour	June 23, 1994
SUNRISE AVENUE, between Lucern Avenue and Floyd Avenue	35 miles per hour	June 26, 1994

SUTTER AVENUE, between Paradise Road and Robertson Road	30 miles per hour	July 27, 1994
SYCAMORE AVENUE, between Orangeburg Avenue and Griswold Avenue	30 miles per hour	June 28, 1996
SYLVAN AVENUE, between McHenry Avenue and Coffee Road	40 miles per hour	June 23, 1994
SYLVAN AVENUE, between Coffee Road and Oakdale Road	40 miles per hour	June 23, 1994
SYLVAN AVENUE, between Oakdale Road and Roselle Avenue	45 miles per hour	August 30, 1995
SYLVAN AVENUE, between Claus Road and Roselle Avenue	50 miles per hour	April 28, 1997
TENAYA DRIVE, between Santa Cruz Avenue and Mitchell Road	30 miles per hour	February 1, 1996
TULLY ROAD, between M.I.D. Lateral #6 and Standiford Avenue	45 miles per hour	January 20, 1993
TULLY ROAD, between Briggsmore Avenue and Coldwell Avenue	35 miles per hour	March 18, 1997
TULLY ROAD, between Briggsmore Avenue and Standiford Avenue	35 miles per hour	March 18, 1997
TULLY ROAD, between Standiford Avenue and 1500' south of Bangs Avenue	45 miles per hour	March 18, 1997
TUOLUMNE BOULEVARD, between Paradise Road and 7th Street	35 miles per hour	July 19, 1994
UNION AVENUE, between Tully Road and McHenry Avenue	30 miles per hour	November 6, 1995

VENEMAN AVENUE, between Dale Road and Regency Park Drive	35 miles per hour	June 22, 1994
VIRGINIA AVENUE, between Roseburg Avenue and Needham Street	30 miles per hour	June 19, 1997
WHITMORE AVENUE, between Crows Landing Road and Morgan Road	40 miles per hour	June 28, 1996
WHITMORE AVENUE, between Ustick Road and Crows Landing Road	45 miles per hour	February 29, 1996
WOODLAND AVENUE, between Morse Road and Carpenter Road	35 miles per hour	August 10, 1995
WOODLAND AVENUE, between Carpenter Road and 9th Street	35 miles per hour	May 9, 1997
WOODROW AVENUE, between Tully Road and McHenry Avenue	30 miles per hour	June 19, 1997
5TH STREET, between L Street and Sierra Drive	25 miles per hour	July 17, 1996
6TH STREET, between D Street and L Street	30 miles per hour	July 17, 1996
7TH STREET BRIDGE, between B Street and River Road (Reduced speed due to condition of bridge)	25 miles per hour	February 29, 1996
9TH STREET, between Carpenter Road and Tully Road	45 miles per hour	May 9, 1997
9TH STREET, between D Street and Morton Boulevard	30 miles per hour	June 28, 1996
9TH STREET, between P Street and L Street	35 miles per hour	May 26, 1992

9TH STREET, between L Street  
and Tully Road

35 miles per hour

May 9, 1997

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.

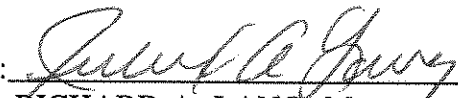
SECTION 3. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in *The Modesto Bee*, the official newspaper of the City of Modesto, setting forth 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 15 day of September, 1998, by Councilmember Serpa, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Conrad, Dobbs, Fisher, Friedman, Serpa, Smith, Mayor Lang

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:

By   
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

Ord. No. 3096-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 22nd day of September, 1998, Councilmember Friedman, moved its final adoption, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Conrad, Dobbs, Fisher, Friedman, Serpa, Smith,  
Mayor Lang


NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:

  
RICHARD A. LANG, Mayor

ATTEST:

  
JEAN ZAHR, City Clerk

Effective Date: October 22, 1998

ORDINANCE NO. 3097-C.S.

AN ORDINANCE AMENDING SECTION 2 OF ORDINANCE NO. 1610-C.S. ENTITLED "AN ORDINANCE AMENDING SECTION 2 OF ORDINANCE NO. 1259-C.S. RELATING TO PLANNED DEVELOPMENT ZONE, P-D(109) (VINTAGE FAIRE)". (THE MACERICH COMPANY)

SECTION 1. AMENDMENT OF ORDINANCE NO. 1610-C.S. Section 2 of Ordinance No. 1610-C.S. is hereby amended to add a 16-screen theater complex and two restaurants to read as follows:

"SECTION 2. USES. The following uses shall be permitted in said P-D(109) Zone if the plan for construction conforms in principle to the approved plan, or if changes are approved by the Secretary of the Planning Commission as required by Section 10-2.1709(c) of the Modesto Municipal Code, or by the Planning Commission if any changes not conforming in principle to the approved plan are proposed, as required by Section 10-2.1709(a) or (b) of the Modesto Municipal Code:

1. A regional shopping center containing a maximum of one million, three hundred thousand (1,300,000) square feet of gross floor area. Uses within the shopping center shall be limited to those uses permitted in the H-1 Zone.
2. A minimum of two thousand, six hundred (2,600) off-street parking spaces.
3. A family amusement machine center.
4. A 16-screen theater complex and two restaurants.

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

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

newspaper of the City of Modesto, setting forth the title of this ordinance, the date of its introduction and the places where this ordinance is posted.

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 22nd day of September, 1998, by Councilmember Fisher, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Dobbs, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Conrad, Dobbs, Fisher, Smith

NOES: Councilmembers: Friedman, Serpa, Mayor Lang

ABSENT: Councilmembers: None

APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:

By   
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

Ord. No. 3097-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 6th day of October, 1998, Councilmember Fisher, moved its final adoption, which motion being duly seconded by Councilmember Dobbs, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Conrad, Dobbs, Fisher, Friedman, Mayor Lang  
NOES: Councilmembers: Serpa  
ABSENT: Councilmembers: Smith

APPROVED: 

RICHARD A. LANG, Mayor

ATTEST: 

JEAN ZAHR, City Clerk

Effective Date: November 5, 1998

ORDINANCE NO. 3098-C.S.

AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF MODESTO AND MACERICH VINTAGE FAIRE LIMITED PARTNERSHIP AND SIGNATURE THEATRES, LLC, RELATING TO ADDING A MULTI-SCREEN CINEMA TO THE VINTAGE FAIRE MALL.

WHEREAS, Government Code Section 65864, et seq., authorizes the City to enter into binding development agreements with any person or persons having a legal or equitable interest in real property for the development of such property and authorizes the City to establish procedures for the application and consideration of such agreements, and

WHEREAS, by City Council Resolution No. 91-185, adopted on March 26, 1991, the City Council established procedures and requirements for the consideration of development agreements, and by City Council Resolution No. 97-492, adopted on August 26, 1997, the City Council revised said procedures and requirements and superseded Resolution No. 91-185, and

WHEREAS, the Planning Commission on May 18, 1998, held a public hearing to consider an application by Macerich Vintage Faire Limited Partnership to amend Planned Development Zone, P-D(109), for the addition of a 16-screen theater and two restaurants, and

WHEREAS, the Planning Commission by Resolution 98-39 recommended approval of the amendment to Planned Development Zone, P-D(109), which included, with the consent of the applicant, a condition requiring a development agreement to address certain issues be negotiated and executed prior to City Council approval of the amendment, and

WHEREAS, the City Council held a public hearing on the amendment to Planned Development Zone, P-D(109), on June 16, 1998, at which hearing the City Council voted to continue the public hearing to August 18, 1998, to allow for the negotiation and execution of said Development Agreement, and

WHEREAS, a proposed Development Agreement was negotiated between representatives of the City of Modesto and the applicants, and

WHEREAS, a duly noticed public hearing was held by the Planning Commission of the City of Modesto on August 3, 1998, in the City Council Chambers, City Hall, 801 11th Street, Modesto, California, for the purpose of making a recommendation to the City Council concerning the proposed Development Agreement, at which hearing evidence both oral and documentary was received and considered, and

WHEREAS, after said public hearing, the Modesto City Planning Commission, by Resolution No. 98-47, adopted on August 3, 1998, recommended to the City Council approval of the proposed Development Agreement between the City of Modesto and Macerich Vintage Faire Limited Partnership and Signature Theatres, LLC, and

WHEREAS, said matter was set for a public hearing of the City Council to be held at 7:00 p.m., on August 18, 1998, in the City Council Chambers, City Hall, 801 11th Street, Modesto, California, at which date and time said duly noticed public hearing of the Council was held for the purpose of considering the proposed Development Agreement between the City of Modesto and Macerich Vintage Faire Limited Partnership and Signature Theatres, LLC, and

WHEREAS, thereafter, by Resolution No. 98-439, the Council denied without prejudice the request for rezoning and by Resolution No. 98-440, the Council denied without prejudice the proposed development agreement to add a multi-screen cinema to the Vintage Faire Mall, thus allowing the applicant to re-apply at any time, and

WHEREAS, the applicant subsequently resubmitted an application on September 4, 1998, and the Planning Commission held a duly noticed public hearing on this application on September 21, 1998, and

WHEREAS, after said public hearing, the Modesto City Planning Commission, by Resolution No. 98-56 adopted on September 21, 1998, recommended to the City Council approval of the proposed Development Agreement between the City of Modesto and Macerich Vintage Faire Limited Partnership and Signature Theatres, LLC, and

WHEREAS, said matter was again set for a public hearing of the City Council to be held at 4:00 p.m., on September 22, 1998, in the City Council Chambers, City Hall, 801 11th Street, Modesto, California, at which date and time said duly noticed public hearing of the Council was held for the purpose of considering the proposed Development Agreement between the City of Modesto and Macerich Vintage Faire Limited Partnership and Signature Theatres, LLC, and

WHEREAS, Section 65867.5 of the Government Code provides that a development agreement is a legislative act which shall be approved by ordinance and is subject to referendum, and

WHEREAS, said Government Code section further provides that a development agreement shall not be approved unless the legislative body finds that the provisions of the agreement are consistent with the general plan and any applicable specific plan,

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

SECTION 1. FINDINGS. The Council of the City of Modesto hereby finds and determines as follows:

1. That the proposed Development Agreement is in accordance with the community's objectives as set forth in the General Plan, because it will not conflict with the General Plan goal of downtown being the entertainment center of the region, for the following reasons:
  - a. Adding a multi-screen theatre to Vintage Faire Mall, which has over 1,000,000 square feet of retail, does not make the Mall an entertainment center.
  - b. The theater operator for the project, Signature Theatres, has committed to closing the existing Briggsmore Seven cinemas and the existing second-run four-screen theatre at the Mall, reducing the potential conflict with the Tenth Street Place cinemas.
2. The proposed Development Agreement is consistent with the specific content and other requirements of City Council Resolution No. 97-492, which establishes procedures and requirements for the consideration of development agreements; the City's subdivision and zoning provisions of the Modesto Municipal Code; and Government Code Section 65864 et seq.
3. No additional significant environmental effects will occur as a result of the proposed Development Agreement that were not previously examined in the General Plan Master EIR, because the Master Environmental Impact Report assumed growth of existing commercial areas, including this area, and the traffic generated by this proposal is less than was analyzed in the MEIR.

4. No new additional mitigation measures or alternatives will be required as a result of the proposed Development Agreement that were not previously considered in the General Plan Master EIR, because the environmental effects of this project are less than were analyzed by the MEIR.
5. The proposed Development Agreement is within the scope of the General Plan Master EIR because there are no additional significant effects or new additional mitigation measures or alternatives required for the project that are not already discussed in the Master EIR.

SECTION 2. APPROVAL OF DEVELOPMENT AGREEMENT. The Development Agreement between the City of Modesto and Macerich Vintage Faire Limited Partnership and Signature Theatres, LLC, is hereby approved. A copy of said Development Agreement is on file in the Office of the City Clerk.

SECTION 3. EXECUTION BY CITY. The City Manager or his authorized designee are hereby authorized to execute said Development Agreement on behalf of the City of Modesto.

SECTION 4. RECORDING OF AGREEMENT. Pursuant to Government Code Section 65868.5, no later than ten (10) days after the City approves said agreement, the City Clerk is hereby directed to record with the County Recorder a copy of the Development Agreement which shall describe the land subject thereto.

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

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

newspaper of the City of Modesto, setting forth the title of this ordinance, the date of its introduction and the places where this ordinance is posted.

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 22nd day of September, 1998, by Councilmember Fisher, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Dobbs, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Conrad, Dobbs, Fisher, Smith

NOES: Councilmembers: Friedman, Serpa, Lang

ABSENT: Councilmembers: None

APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:

By   
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

Ord. No. 3098-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 6th day of October, 1998, Councilmember Fisher, moved its final adoption, which motion being duly seconded by Councilmember Conrad, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Conrad, Dobbs, Fisher, Friedman, Mayor Lang  
NOES: Councilmembers: Serpa  
ABSENT: Councilmembers: Smith

APPROVED:

  
RICHARD A. LANG, Mayor

ATTEST:

  
JEAN ZAHR, City Clerk

Effective Date: November 5, 1998

ORDINANCE NO. 3099-C.S.

AN ORDINANCE AMENDING SECTION 2-3-8 OF THE ZONING MAP TO REZONE FROM SPECIFIC PLAN OVERLAY ZONE, SP-0, TO PLANNED DEVELOPMENT ZONE, P-D(532), PROPERTY LOCATED ON THE NORTH SIDE OF PELANDALE AVENUE EAST OF SISK ROAD. (COSTA LIMITED PARTNERS)

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

SECTION 1. ZONING CHANGE. Section 2-3-8 of the Zoning Map is hereby amended to reclassify the following described property from Specific Plan Overlay Zone, SP-0, to Planned Development Zone, P-D(532):

SP-0 to P-D(532)

All that certain real property being a portion of the Northwest quarter of the Southwest quarter of Section 2, Township 3 South, Range 8 East, Mount Diablo Base and Meridian, County of Stanislaus, State of California, being more particularly described as follows:

COMMENCING for reference at the West quarter corner of said Section 2; thence south  $00^{\circ} 18' 35''$  West along the West line of said section, a distance of 90.10 feet to a point on the South line of the 100-foot-wide right-of-way for Modesto Irrigation District's Lateral No. 6, and the TRUE POINT OF BEGINNING; thence South  $89^{\circ} 56' 43''$  East along last said line, a distance of 1321.03 feet; thence leaving last said line and proceeding South  $00^{\circ} 18' 16''$  West, a distance of 1221.15 feet to a point on the North right-of-way line of a county road known as Pelandale Avenue; thence along last said right-of-way line, South  $89^{\circ} 57' 00''$  West, a distance of 1321.15 feet to a point on the above-mentioned West line of said Section 3; thence North  $00^{\circ} 18' 35''$  East along last said line, a distance of 1223.57 feet to the TRUE POINT OF BEGINNING.

Including, also, that portion of Pelandale Avenue north of the centerline of original 40-foot Pelandale Avenue, all immediately adjacent to the above-described land.

Containing 37.07 acres, more or less.

SECTION 2. USES. The following uses shall be permitted in said P-D(532) Zone if the plan for construction conforms in principle to the approved plan, or if changes are approved by the Secretary of the Planning Commission as required by Section 10-2.1709(c) of the Modesto Municipal Code, or by the Planning Commission if any changes not conforming in principle to the approved plan are proposed, as required by Section 10-2.1709(a) or (b) of the Modesto Municipal Code:

1. A 16-screen theater.
2. A hotel.
3. Other C-3 Zone uses.

SECTION 3. ZONING MAP. Section Map 2-3-8 of the Zoning Map of the City of Modesto is amended to appear as set forth on the map attached hereto, which is hereby made a part of this ordinance by reference.

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

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

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 22nd day of September, 1998, by Councilmember Fisher, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Dobbs, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Dobbs, Fisher, Smith, Mayor Lang

NOES: Councilmembers: Conrad, Friedman, Serpa

ABSENT: Councilmembers: None

APPROVED: 

RICHARD A. LANG, Mayor

ATTEST:

By 

JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By 

MICHAEL D. MILICH, City Attorney

APPROVED AS TO DESCRIPTION:

By 

Community Development Department  
Development Services

Ord. No. 3099-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 6th day of October, 1998, Councilmember Fisher, moved its final adoption, which motion being duly seconded by Councilmember Dobbs, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Conrad, Dobbs, Fisher, Friedman, Mayor Lang  
NOES: Councilmembers: Serpa  
ABSENT: Councilmembers: Smith

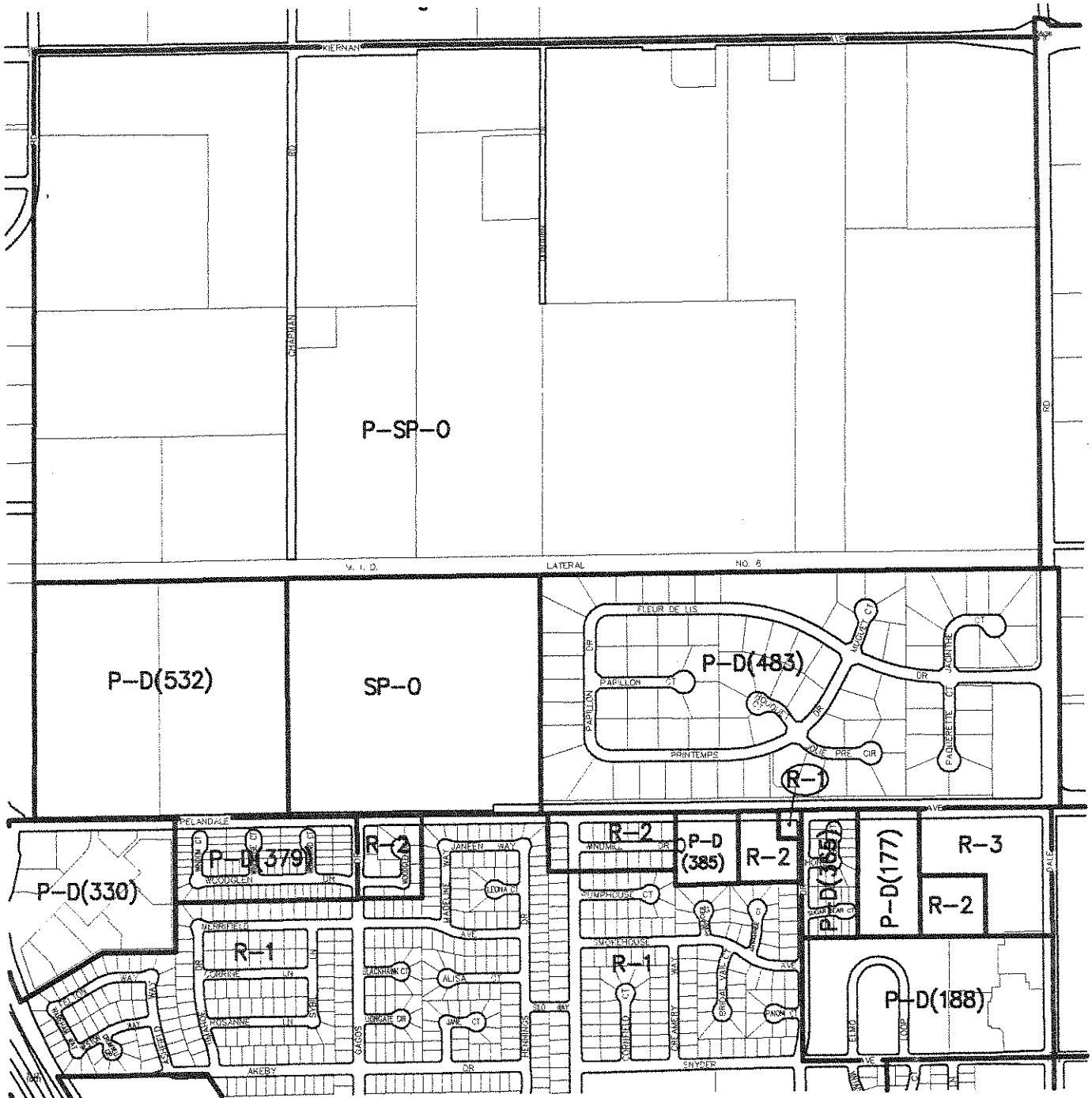
APPROVED:

  
RICHARD A. LANG, Mayor

ATTEST:

  
JEAN ZAHR, City Clerk

Effective Date: November 5, 1998



ZONING MAP OF THE CITY OF MODESTO 2-3-8

Corrected 12-17-98

Corrected 10/6/98

ORDINANCE NO. 3099-C.S.

AN ORDINANCE AMENDING SECTION 2-3-8 OF THE ZONING MAP TO REZONE FROM SPECIFIC PLAN OVERLAY ZONE, SP-0, TO PLANNED DEVELOPMENT ZONE, P-D(530), PROPERTY LOCATED ON THE NORTH SIDE OF PELANDALE AVENUE EAST OF SISK ROAD. (COSTA LIMITED PARTNERS)

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

SECTION 1. ZONING CHANGE. Section 2-3-8 of the Zoning Map is hereby amended to reclassify the following described property from Specific Plan Overlay Zone, SP-0, to Planned Development Zone, P-D(530):

SP-0 to P-D(530)

All that certain real property being a portion of the Northwest quarter of the Southwest quarter of Section 2, Township 3 South, Range 8 East, Mount Diablo Base and Meridian, County of Stanislaus, State of California, being more particularly described as follows:

COMMENCING for reference at the West quarter corner of said Section 2; thence south  $00^{\circ} 18' 35''$  West along the West line of said section, a distance of 90.10 feet to a point on the South line of the 100-foot-wide right-of-way for Modesto Irrigation District's Lateral No. 6, and the TRUE POINT OF BEGINNING; thence South  $89^{\circ} 56' 43''$  East along last said line, a distance of 1321.03 feet; thence leaving last said line and proceeding South  $00^{\circ} 18' 16''$  West, a distance of 1221.15 feet to a point on the North right-of-way line of a county road known as Pelandale Avenue; thence along last said right-of-way line, South  $89^{\circ} 57' 00''$  West, a distance of 1321.15 feet to a point on the above-mentioned West line of said Section 3; thence North  $00^{\circ} 18' 35''$  East along last said line, a distance of 1223.57 feet to the TRUE POINT OF BEGINNING.

Including, also, that portion of Pelandale Avenue north of the centerline of original 40-foot Pelandale Avenue, all immediately adjacent to the above-described land.

CORRECTED 12-17-98

Containing 37.07 acres, more or less.

SECTION 2. USES. The following uses shall be permitted in said P-D(530) Zone if the plan for construction conforms in principle to the approved plan, or if changes are approved by the Secretary of the Planning Commission as required by Section 10-2.1709(c) of the Modesto Municipal Code, or by the Planning Commission if any changes not conforming in principle to the approved plan are proposed, as required by Section 10-2.1709(a) or (b) of the Modesto Municipal Code:

1. A 16-screen theater.
2. A hotel.
3. Other C-3 Zone uses.

SECTION 3. ZONING MAP. Section Map 2-3-8 of the Zoning Map of the City of Modesto is amended to appear as set forth on the map attached hereto, which is hereby made a part of this ordinance by reference.

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

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

ORDINANCE NO. 3099-C.S.

AN ORDINANCE AMENDING SECTION 2-3-8 OF THE ZONING MAP TO REZONE FROM SPECIFIC PLAN OVERLAY ZONE, SP-0, TO PLANNED DEVELOPMENT ZONE, P-D(530), PROPERTY LOCATED ON THE NORTH SIDE OF PELANDALE AVENUE EAST OF SISK ROAD. (COSTA LIMITED PARTNERS)

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

SECTION 1. ZONING CHANGE. Section 2-3-8 of the Zoning Map is hereby amended to reclassify the following described property from Specific Plan Overlay Zone, SP-0, to Planned Development Zone, P-D(530):

SP-0 to P-D(530)

All that certain real property being a portion of the Northwest quarter of the Southwest quarter of Section 2, Township 3 South, Range 8 East, Mount Diablo Base and Meridian, County of Stanislaus, State of California, being more particularly described as follows:

COMMENCING for reference at the West quarter corner of said Section 2; thence south  $00^{\circ} 18' 35''$  West along the West line of said section, a distance of 90.10 feet to a point on the South line of the 100-foot-wide right-of-way for Modesto Irrigation District's Lateral No. 6, and the TRUE POINT OF BEGINNING; thence South  $89^{\circ} 56' 43''$  East along last said line, a distance of 1321.03 feet; thence leaving last said line and proceeding South  $00^{\circ} 18' 16''$  West, a distance of 1221.15 feet to a point on the North right-of-way line of a county road known as Pelandale Avenue; thence along last said right-of-way line, South  $89^{\circ} 57' 00''$  West, a distance of 1321.15 feet to a point on the above-mentioned West line of said Section 3; thence North  $00^{\circ} 18' 35''$  East along last said line, a distance of 1223.57 feet to the TRUE POINT OF BEGINNING.

Including, also, that portion of Pelandale Avenue north of the centerline of original 40-foot Pelandale Avenue, all immediately adjacent to the above-described land.

Containing 37.07 acres, more or less.

SECTION 2. USES. The following uses shall be permitted in said P-D(530) Zone if the plan for construction conforms in principle to the approved plan, or if changes are approved by the Secretary of the Planning Commission as required by Section 10-2.1709(c) of the Modesto Municipal Code, or by the Planning Commission if any changes not conforming in principle to the approved plan are proposed, as required by Section 10-2.1709(a) or (b) of the Modesto Municipal Code:

1. A multi-screen theater.
2. A hotel.
3. Other C-3 Zone uses.

SECTION 3. ZONING MAP. Section Map 2-3-8 of the Zoning Map of the City of Modesto is amended to appear as set forth on the map attached hereto, which is hereby made a part of this ordinance by reference.

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

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

ORDINANCE NO. 3100-C.S.

AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF MODESTO AND COSTA LIMITED PARTNERS AND WESTAR CINEMAS, INC., RELATING TO A LARGE RETAIL CENTER TO INCLUDE A 16-SCREEN THEATER, HOTEL, AND OTHER RETAIL USES.

WHEREAS, Government Code Section 65864, et seq., authorizes the City to enter into binding development agreements with any person or persons having a legal or equitable interest in real property for the development of such property and authorizes the City to establish procedures for the application and consideration of such agreements, and

WHEREAS, by City Council Resolution No. 91-185, adopted on March 26, 1991, the City Council established procedures and requirements for the consideration of development agreements, and by City Council Resolution No. 97-492, adopted on August 26, 1997, the City Council revised said procedures and requirements and superseded Resolution No. 91-185, and

WHEREAS, the Planning Commission on May 18, 1998, held a public hearing to consider an application by Costa Limited Partners to rezone from Specific Plan-Overlay Zone, (SP-O), to Planned Development Zone, property located on the north side of Pelandale Avenue east of Sisk Road for a large retail center to include a 16-screen theater, a 125-room, three-story hotel, five retail stores, a plaza surrounded by shops and restaurants, and

WHEREAS, the Planning Commission by Resolution 98-40 recommended approval of the proposed rezoning which included, with the consent of the applicant, a

condition requiring a development agreement to address certain issues be negotiated and executed prior to City Council approval of the rezoning, and

WHEREAS, the City Council held a public hearing on the rezoning to Planned Development Zone, on June 16, 1998, at which hearing the City Council voted to continue the public hearing to August 18, 1998, to allow for the negotiation and execution of said Development Agreement, and

WHEREAS, a proposed Development Agreement has been negotiated between representatives of the City of Modesto and the applicants, and

WHEREAS, a duly noticed public hearing was held by the Planning Commission of the City of Modesto on August 3, 1998, in the City Council Chambers, City Hall, 801 11th Street, Modesto, California, for the purpose of making a recommendation to the City Council concerning the proposed Development Agreement, at which hearing evidence both oral and documentary was received and considered, and

WHEREAS, after said public hearing, the Modesto City Planning Commission, by Resolution No. 98-48, adopted on August 3, 1998, recommended to the City Council approval of the proposed Development Agreement between the City of Modesto and Costa Limited Partners and Westar Cinemas, Inc., and

WHEREAS, said matter was set for a public hearing of the City Council to be held at 7:00 p.m., on August 18, 1998, in the City Council Chambers, City Hall, 801 11th Street, Modesto, California, at which date and time said duly noticed public hearing of the Council was held for the purpose of considering the proposed rezoning and Development

Agreement between the City of Modesto and Costa Limited Partners and Weststar Cinemas, Inc., and

WHEREAS, thereafter, by Resolution No. 98-441, the Council denied without prejudice the request for rezoning to allow a multi-screen cinema, hotel and retail center on the north side of Pelandale Avenue east of Sisk Road, and by Resolution No. 98-442, the Council denied without prejudice the proposed Development Agreement, thus, allowing the applicant to re-apply at any time, and

WHEREAS, the applicant subsequently resubmitted the identical application on September 4, 1998, and the Planning Commission held a duly noticed public hearing on this application on September 21, 1998, and

WHEREAS, after said public hearing the Modesto City Planning Commission, by Resolution No. 98-58 adopted on September 21, 1998, recommended to the City Council approval of the proposed Development Agreement between the city of Modesto and Costa Limited Partners and Westar Cinemas, Inc., and

WHEREAS, said matter was again set for a public hearing of the City Council to be held at 4:00 p.m., on September 22, 1998, in the City Council Chambers, City Hall, 801 11th Street, Modesto, California, at which date and time said duly noticed public hearing of the council was held for the purpose of considering the proposed Development Agreement between the City of Modesto and City of Modesto and Costa Limited Partners and Westar Cinemas, Inc., and

WHEREAS, Section 65867.5 of the Government Code provides that a development agreement is a legislative act which shall be approved by ordinance and is subject to referendum, and

WHEREAS, said Government Code section further provides that a development agreement shall not be approved unless the legislative body finds that the provisions of the agreement are consistent with the general plan and any applicable specific plan,

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

SECTION 1. FINDINGS. The Council of the City of Modesto hereby finds and determines as follows:

1. That the Development Agreement is in accordance with the community's objectives as set forth in the General Plan, because it will not conflict with the General Plan Economic Development Goal I-D(2), for the following reasons:
  - a. The purpose of the General Plan Economic Development Goal I-D(2) is to "provide more employment opportunities". The Goal should not be applied to defeat a project that creates approximately 1,000 direct and indirect jobs.
  - b. The second sentence of Economic Development Goal I-D(2) mentions that the area to the west is to be served by the Redevelopment Area, but does not mention north of the Redevelopment Area.
  - c. The project meets the criteria for the Regional Commercial designation found in Chapter III, Section B-7(b) and (c). Policy B-8(a) authorizes regional commercial as part of land designated Business Park.
  - d. Based upon the testimony, theaters are retail type uses, and therefore the project is not an "entertainment center".

- e. Chapter III, Policy B-3(b), Commercial locational criteria, encourages locating commercial along major arterials and parkways.
2. The proposed Development Agreement is consistent with the specific content and other requirements of City Council Resolution No. 97-492, which establishes procedures and requirements for the consideration of development agreements; the City's zoning provisions of the Modesto Municipal Code; and Government Code Section 65864 et seq.
3. There are no substantial changes proposed in the Development Agreement which will require major revisions to the Kiernan Business Park and Carver-Bangs Specific Plans Focused EIR, because the EIR studied the impact of Regional Commercial uses in this area, including theaters, and the traffic generated by this project is consistent with what was predicted in the EIR.
4. There are no substantial changes occurring with respect to the circumstances under which the Development Agreement is being undertaken which will require major revisions of the Kiernan Business Park and Carver-Bangs Specific Plans Focused EIR, because although other projects have been approved in this area since the EIR was certified, these projects were already assumed in the analysis for the EIR.
5. No new information, which was not known and could not have been known at the time the Kiernan Business Park and Carver-Bangs Specific Plans Focused EIR was certified as complete, has become available.

## SECTION 2. APPROVAL OF DEVELOPMENT AGREEMENT. The

Development Agreement between the City of Modesto and Costa Limited Partners and Westar Cinemas, Inc., is hereby approved, a copy of which Development Agreement is on file in the Office of the City Clerk.

SECTION 3. EXECUTION BY CITY. The City Manager or his authorized designee are hereby authorized to execute said Development Agreement on behalf of the City of Modesto.

SECTION 4. RECORDING OF AGREEMENT. Pursuant to Government Code Section 65868.5, no later than ten (10) days after the City approves said agreement, the City Clerk is hereby directed to record with the County Recorder a copy of the Development Agreement which shall describe the land subject thereto.

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


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

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 22nd day of September, 1998, by Councilmember Fisher, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Dobbs, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Dobbs, Fisher, Smith, Mayor Lang

NOES: Councilmembers: Conrad, Friedman, Serpa

ABSENT: Councilmembers: None

APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:

By   
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

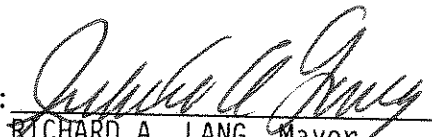
Ord. No. 3100-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 6th day of October, 1998, Councilmember Fisher, moved its final adoption, which motion being duly seconded by Councilmember Friedman, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Conrad, Dobbs, Fisher, Friedman, Mayor Lang  
NOES: Councilmembers: Serpa  
ABSENT: Councilmembers: Smith

APPROVED:

  
RICHARD A. LANG, Mayor

ATTEST:

  
JEAN ZAHR, City Clerk

Effective Date: November 5, 1998

CORRECTED 12-17-98

ORDINANCE NO. 3100 C.S.

AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF MODESTO AND COSTA LIMITED PARTNERS AND WESTAR CINEMAS, INC., RELATING TO A LARGE RETAIL CENTER TO INCLUDE A 16-SCREEN THEATER, HOTEL, AND OTHER RETAIL USES.

WHEREAS, Government Code Section 65864, et seq., authorizes the City to enter into binding development agreements with any person or persons having a legal or equitable interest in real property for the development of such property and authorizes the City to establish procedures for the application and consideration of such agreements, and

WHEREAS, by City Council Resolution No. 91-185, adopted on March 26, 1991, the City Council established procedures and requirements for the consideration of development agreements, and by City Council Resolution No. 97-492, adopted on August 26, 1997, the City Council revised said procedures and requirements and superseded Resolution No. 91-185, and

WHEREAS, the Planning Commission on May 18, 1998, held a public hearing to consider an application by Costa Limited Partners to rezone from Specific Plan-Overlay Zone, (SP-O), to Planned Development Zone, P-D(530), property located on the north side of Pelandale Avenue east of Sisk Road for a large retail center to include a 16-screen theater, a 125-room, three-story hotel, five retail stores, a plaza surrounded by shops and restaurants, and

WHEREAS, the Planning Commission by Resolution 98-40 recommended approval of the proposed rezoning which included, with the consent of the applicant, a

corrected 12-17-98

condition requiring a development agreement to address certain issues be negotiated and executed prior to City Council approval of the rezoning, and

WHEREAS, the City Council held a public hearing on the rezoning to Planned Development Zone, P-D(530), on June 16, 1998, at which hearing the City Council voted to continue the public hearing to August 18, 1998, to allow for the negotiation and execution of said Development Agreement, and

WHEREAS, a proposed Development Agreement has been negotiated between representatives of the City of Modesto and the applicants, and

WHEREAS, a duly noticed public hearing was held by the Planning Commission of the City of Modesto on August 3, 1998, in the City Council Chambers, City Hall, 801 11th Street, Modesto, California, for the purpose of making a recommendation to the City Council concerning the proposed Development Agreement, at which hearing evidence both oral and documentary was received and considered, and

WHEREAS, after said public hearing, the Modesto City Planning Commission, by Resolution No. 98-48, adopted on August 3, 1998, recommended to the City Council approval of the proposed Development Agreement between the City of Modesto and Costa Limited Partners and Westar Cinemas, Inc., and

WHEREAS, said matter was set for a public hearing of the City Council to be held at 7:00 p.m., on August 18, 1998, in the City Council Chambers, City Hall, 801 11th Street, Modesto, California, at which date and time said duly noticed public hearing of the Council was held for the purpose of considering the proposed rezoning and Development

ORDINANCE NO. 3101-C.S.

AN ORDINANCE APPROVING AN AMENDED DEVELOPMENT AGREEMENT BETWEEN THE CITY OF MODESTO AND COSTA LIMITED PARTNERS RELATING TO A LARGE RETAIL CENTER TO INCLUDE A 16-SCREEN THEATER, HOTEL, AND OTHER RETAIL USES.

WHEREAS, Government Code Section 65864, et seq., authorizes the City to enter into binding development agreements with any person or persons having a legal or equitable interest in real property for the development of such property and authorizes the City to establish procedures for the application and consideration of such agreements; and

WHEREAS, by City Council Resolution No. 91-185, adopted on March 26, 1991, the City Council established procedures and requirements for the consideration of development agreements, and by City Council Resolution No. 97-492, adopted on August 26, 1997, the City Council revised said procedures and requirements and superseded Resolution No. 91-185, and

WHEREAS, on September 22, 1998, the City Council introduced Ordinance No. 3100-C.S. which approved a Development Agreement with Costa Limited Partners and WestStar Cinema, Inc., for a 16-screen theater, hotel, restaurants, and retail commercial uses, property located on the North side of Pelandale Avenue East of Sisk Road, and

WHEREAS, by a letter dated September 22, 1998, filed by Steven A. Herum on behalf of Costa Limited Partners, a request was made for an amendment to said Development Agreement to remove the theater operator provisions as set forth in said letter, a copy of which letter is on file in the office of the City Clerk, and

WHEREAS, the City Council approved said proposal in concept on September 22, 1998, and directed staff to schedule public hearings before the Planning Commission and City Council on October 5th and 6th, respectively, for formal consideration of said request, and

WHEREAS, pursuant to said Council direction, the Planning Commission on October 5, 1998, held a public hearing to consider the request of Costa Limited Partners to amend the Development Agreement, and

WHEREAS, a duly noticed public hearing was held by the Planning Commission of the City of Modesto on October 5, 1998, in the City Council Chambers, City Hall, 801 11th Street, Modesto, California, for the purpose of making a recommendation to the City Council concerning the request to amend said Development Agreement, at which hearing evidence both oral and documentary was received and considered, and

WHEREAS, after said public hearing, the Modesto City Planning Commission, by Resolution No. 98-62, adopted on October 5, 1998, recommended to the City Council denial of the request to amend said Development Agreement between the City of Modesto and Costa Limited Partners and Westar Cinemas, Inc., and

WHEREAS, said matter was set for a public hearing of the City Council to be held at 7:00 p.m., on October 6, 1998, in the City Council Chambers, City Hall, 801 11th Street, Modesto, California, at which date and time said duly noticed public hearing of the Council was held for the purpose of considering the requested amendment to the Development Agreement between the City of Modesto and Costa Limited Partners to remove the theater

WHEREAS, the City Council approved said proposal in concept on September 22, 1998, and directed staff to schedule public hearings before the Planning Commission and City Council on October 5th and 6th, respectively, for formal consideration of said request, and

WHEREAS, pursuant to said Council direction, the Planning Commission on October 5, 1998, held a public hearing to consider the request of Costa Limited Partners to amend the Development Agreement, and

WHEREAS, a duly noticed public hearing was held by the Planning Commission of the City of Modesto on October 5, 1998, in the City Council Chambers, City Hall, 801 11th Street, Modesto, California, for the purpose of making a recommendation to the City Council concerning the request to amend said Development Agreement, at which hearing evidence both oral and documentary was received and considered, and

WHEREAS, after said public hearing, the Modesto City Planning Commission, by Resolution No. 98-62, adopted on October 5, 1998, recommended to the City Council denial of the request to amend said Development Agreement between the City of Modesto and Costa Limited Partners and Westar Cinemas, Inc., and

WHEREAS, said matter was set for a public hearing of the City Council to be held at 7:00 p.m., on October 6, 1998, in the City Council Chambers, City Hall, 801 11th Street, Modesto, California, at which date and time said duly noticed public hearing of the Council was held for the purpose of considering the requested amendment to the Development Agreement between the City of Modesto and Costa Limited Partners to remove the theater

operator provisions as set forth in said letter, a copy of which letter is are on file in the office of the City Clerk, and

WHEREAS, Section 65867.5 of the Government Code provides that a development agreement is a legislative act which shall be approved by ordinance and is subject to referendum, and

WHEREAS, said Government Code section further provides that a development agreement shall not be approved unless the legislative body finds that the provisions of the agreement are consistent with the general plan and any applicable specific plan,

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

SECTION 1. FINDINGS. The Council of the City of Modesto hereby finds and determines as follows:

1. That the amended Development Agreement is in accordance with the community's objectives as set forth in the General Plan, because it will not conflict with the General Plan Economic Development Goal I-D(2), for the following reasons:
  - a. The purpose of the General Plan Economic Development Goal I-D(2) is to "provide more employment opportunities". The Goal should not be applied to defeat a project that creates approximately 1,000 direct and indirect jobs.
  - b. The second sentence of Economic Development Goal I-D(2) mentions that the area to the west is to be served by the Redevelopment Area, but does not mention north of the Redevelopment Area.
  - c. The project meets the criteria for the Regional Commercial designation found in Chapter III, Section B-

7(b) and (c). Policy B-8(a) authorizes regional commercial as part of land designated Business Park.

- d. Based upon the testimony, theaters are retail type uses, and therefore the project is not an "entertainment center".
  - e. Chapter III, Policy B-3(b), Commercial locational criteria, encourages locating commercial along major arterials and parkways.
2. The proposed Development Agreement is consistent with the specific content and other requirements of City Council Resolution No. 97-492, which establishes procedures and requirements for the consideration of development agreements; the City's zoning provisions of the Modesto Municipal Code; and Government Code Section 65864 et seq.
  3. There are no substantial changes proposed in the Development Agreement which will require major revisions to the Kiernan Business Park and Carver-Bangs Specific Plans Focused EIR, because the EIR studied the impact of Regional Commercial uses in this area, including theaters, and the traffic generated by this project is consistent with what was predicted in the EIR.
  4. There are no substantial changes occurring with respect to the circumstances under which the Development Agreement is being undertaken which will require major revisions of the Kiernan Business Park and Carver-Bangs Specific Plans Focused EIR, because although other projects have been approved in this area since the EIR was certified, these projects were already assumed in the analysis for the EIR.
  5. No new information, which was not known and could not have been known at the time the Kiernan Business Park and Carver-Bangs Specific Plans Focused EIR was certified as complete, has become available.

## SECTION 2. APPROVAL OF DEVELOPMENT AGREEMENT. The

Amended Development Agreement between the City of Modesto and Costa Limited Partners is hereby approved, a copy of which Development Agreement is on file in the Office of the City

Clerk. Said Amended Development Agreement dated October 6, 1998, deletes all reference to a specific theater operator and eliminates the requirement to close the Festival 10 Theater. In addition, during the hearing, the Council directed, with the consent of the applicant, that the restriction on the opening date (March 1, 2002) that was imposed as a zoning condition also be made part of the amendment.

SECTION 3. EXECUTION BY CITY. The City Manager or his authorized designee are hereby authorized to execute said Development Agreement on behalf of the City of Modesto.

SECTION 4. RECORDING OF AGREEMENT. Pursuant to Government Code Section 65868.5, no later than ten (10) days after the City approves said agreement, the City Clerk is hereby directed to record with the County Recorder a copy of the Development Agreement which shall describe the land subject thereto.

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


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

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 6th day of October, 1998, by Councilmember Fisher, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Conrad, was upon roll call carried and ordered printed and published by the following vote:


AYES: Councilmembers: Conrad, Dobbs, Fisher, Friedman, Mayor Lang

NOES: Councilmembers: Serpa

ABSENT: Councilmembers: Smith

APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:

By   
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

Ord. No. 3101-C.S.

FINAL ADOPTION CLAUSE

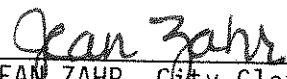
The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 20th day of October, 1998, Councilmember Friedman, moved its final adoption, which motion being duly seconded by Councilmember Conrad, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Conrad, Dobbs, Fisher, Friedman, Smith, Mayor Lang

NOES: Councilmembers: Serpa

ABSENT: Councilmembers: None

APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:   
JEAN ZAHR, City Clerk

Effective Date: November 19, 1998

ORDINANCE NO. 3102 -C.S.

AN ORDINANCE ADDING CHAPTER 6 ENTITLED  
"ADMINISTRATIVE REMEDIES" TO TITLE 1 OF THE  
MODESTO MUNICIPAL CODE.

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

SECTION 1. AMENDMENT OF CODE. Chapter 6 entitled "Administrative Remedies" is hereby added to Title 1 of the Modesto Municipal Code to read as follows:

**CHAPTER 6. ADMINISTRATIVE REMEDIES**

**ARTICLE 1. ADMINISTRATIVE ENFORCEMENT AUTHORITY AND POWERS**

**1-6.101. DECLARATION OF PURPOSE.**

It is the intent of the City of Modesto to promote the health, safety and welfare of the citizens of Modesto, California. The Council finds that enforcement of the municipal code is crucial to the neighborhoods of Modesto. Thus, a uniform, streamlined, convenient and comprehensive code enforcement system provides an important public service. Critical in gaining compliance with this Code and applicable State Codes is the use of a combination of judicial and administrative procedures. The City of Modesto is a charter city, and consistent with its powers as a charter city, it adopts the administrative remedies set forth in this chapter.

**1-6.102. ADMINISTRATIVE REMEDIES.**

This chapter establishes the administrative enforcement remedies for violations of this Code and applicable State Codes. These remedies include administrative abatement, summary abatement, administrative citations, recordation of notices of violation administrative notices and orders, and mediation.

**1-6.103. ADMINISTRATIVE ENFORCEMENT AUTHORITY.**

The City Manager, City Directors, the Police Chief, the Fire Chief and/or their designated agents and designated code enforcement officers have the authority and powers necessary to determine whether a violation of the Code exists and the authority to take appropriate action to gain compliance with the provisions of this Code and applicable State Codes. These powers include the power to issue an administrative citation, notice and order and civil penalties or fines. It

also includes the power to inspect public and private property and to use all the administrative remedies available under this Code.

#### **1-6.104. AUTHORITY TO INSPECT.**

City Directors, the Police Chief, the Fire Chief and/or their designated agents and designated code enforcement officers are authorized to enter upon any property or premises to ascertain whether the provisions of this Code or applicable State Codes are being obeyed, and to make any examinations and surveys as may be necessary in the performance of their enforcement duties. These may include the taking of photographs, samples or other physical evidence. All inspections, entries, examinations and surveys shall be done in a reasonable manner. If an owner, tenant, occupant or agent or other responsible party refuses to grant the City permission to enter or to inspect, the City may seek an administrative inspection warrant pursuant to the procedures provided for in the California Code of Civil Procedure.

#### **1-6.105. ALTERNATIVE REMEDIES.**

Nothing in this chapter shall prevent the City from pursuing criminal, civil or any other legal remedy to address violations of this Code. When the violation upon which an administrative penalty is based pertains to building, plumbing, electrical, structural or zoning provisions, the responsible party shall be provided a reasonable period of time to correct the violation prior to imposition of the administrative penalty, except in those cases in which there is an immediate danger to health or safety.

#### **1-6.106. 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.

- (c) Mailings to the property owner shall be sent to the address listed in the last equalized assessment roll of the Stanislaus County Assessor.
- (d) In the event the responsible party is someone other than the property owner, a copy of the notice shall also be mailed to the property owner.

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

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 Code.

The notice requirements in this section do not apply to initial Notices of Violation which may be sent by regular mail. Service of a Notice of Violation by regular mail is effective on the date of mailing.

#### **1-6.206. PROOF OF SERVICE.**

Proof of getting any notice may be made by the certificate of an officer or employee of the City, or by affidavit of any person over the age of eighteen (18) years, which shows service and conformity with this Code, or other provisions of law applicable to the subject matter concerned.

#### **1-6.207. DEFINITIONS.**

- (a) **Abatement** means any action the City may take to remove or alleviate a nuisance including, but not limited to, demolition, removal, repair, cleaning, boarding, and securing or replacement of property.
- (b) **Administrative enforcement order** means an order issued by an administrative hearing officer after a hearing requiring a responsible party to correct violations, abate a public nuisance, pay administrative fines, civil penalties, administrative costs, authorize the City to abate a public nuisance, assess a code enforcement lien or take any other action as authorized or required by this Code and applicable State Codes.
- (c) **Code enforcement lien** means a lien recorded with the Stanislaus County Recorder's Office for the purposes of collecting outstanding administrative citation penalties, civil penalties and administrative costs imposed as part of a cost recovery, administrative or judicial code enforcement action.

- (d) **Building/structure** shall include, 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.
- (e) **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.
- (f) **City Manager** means the Manager of the City of Modesto, 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.
- (g) **Code enforcement officer** means a person authorized to enforce violations of this Code, uniform codes and applicable State Codes within their department's jurisdiction.
- (h) **Director** shall include all City directors, the Police Chief, the Fire Chief and/or their designated agents.
- (i) **Hearing officer** means any person appointed by the City Manager to preside over administrative hearings.
- (j) **Imminent health and safety hazard** means any condition in which creates a present and immediate danger to life, property, health or public safety.
- (k) **Notice and order** means a document used in abatement actions and assessment of civil penalties involving serious code violations which provide notice of municipal code, uniform code or applicable State Code violations and orders a responsible party to take certain steps to correct the violations within a definitive period of time. Civil penalties may also be imposed in conjunction with this notice.
- (l) **Notice of compliance** means a document issued by a director which represents that a property has been brought into compliance with the criteria set forth under this Code.
- (m) **Notice of satisfaction** means a document or form which indicates that all outstanding civil penalties and costs have been paid in full, or that the

City has negotiated an agreed amount, or that a subsequent administrative or judicial decision has resolved the outstanding debt.

- (n) **Person** shall mean 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.
- (o) **Property** shall mean 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.
- (p) **Property owner** means the record owner of real property as listed in the most current equalized assessment role as maintained by the Stanislaus County Assessor.
- (q) **Responsible party** means any occupant, lessor, lessee, manager, licensee, or other person having control over a structure or parcel of land. A responsible party may be a property owner.
- (r) **Special assessment** means a code enforcement lien against any real property owned by the responsible party within the City of Modesto which may be collected in the same manner and at the same time as ordinary municipal taxes are collected after City's recordation of a notice of special assessment with the County Recorder's Office.

#### **1-6.208. 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. ADMINISTRATIVE CIVIL PENALTIES**

#### **1-6.301. IMPOSITION OF ADMINISTRATIVE CIVIL PENALTIES.**

Administrative civil penalties may be imposed for any of the following acts or omissions:

- (a) All violations of this Code;
- (b) All violations of uniform codes adopted by the City of Modesto; and
- (c) Failure to comply with any order issued by a board, commission, hearing officer or other body appointed by Council and authorized to issue orders. This includes, but is not limited to, the Planning Commission, the Boarding of Zoning Adjustments, and the Board of Building Appeals.

#### **1-6.302. AUTHORITY.**

- (a) Any person violating any provision of this Code or applicable State Codes may be subject to the assessment of civil penalties pursuant to the administrative procedures provided in this article.
- (b) Each and every day a violation of any provision of this Code or applicable State Codes exists constitute a separate and distinct violation.
- (c) Civil penalties may be directly assessed by means of a notice and order issued by the Director or affirmed by the City's administrative hearing officer.
- (d) Civil penalties shall be assessed at a daily rate determined by the Director or administrative hearing officer pursuant to the criteria set forth in this article. Except as authorized pursuant to State and Federal laws, the maximum civil penalty shall be two thousand five hundred dollars (\$2,500) per violation per day with the maximum amount of civil penalties not exceeding one hundred thousand dollars (\$100,000) per parcel or structure for any related series of violations in a year.
- (e) Civil penalties and related administrative costs, including attorney fees, may be recovered by all appropriate legal means, including but not limited to, a code enforcement lien, special assessment of the general tax levy, or by a civil or small claims action brought by the City of Modesto

or both. All civil penalties and administrative costs may be enforced as a personal obligation of the violator.

#### **1-6.303. PROCEDURES - NOTICE AND ORDER.**

- (a) Whenever the Director determines that a violation of one or more provisions of this Code or applicable State Codes has occurred or continues to exist, a civil penalty may be issued in conjunction with a notice and order to the responsible party.
- (b) The notice and order shall refer to all code sections violated and describe how each section is or has been violated.
- (c) The notice and order shall refer to the dates and locations of the violations.
- (d) The notice and order shall address the action required to correct the outstanding violations and establish time frames for completion.
- (e) The notice and order shall establish a daily amount of civil penalties. The Director shall determine the daily amount of civil penalties pursuant to the criteria set forth in this article.
- (f) The notice and order shall identify a date when civil penalties began to accrue and a date when they 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) If a director determines that the violations are continuing, the notice and order shall demand that the responsible party cease and desist from further action causing the violations, or take affirmative action to cease from maintaining or permitting the violation to exist. The notice and order shall demand that the responsible party commence and complete all action to correct the outstanding violations under the guidance of the appropriate City departments.
- (h) The notice and order shall enumerate any other consequences should the responsible party fail to comply with the terms and deadlines outlined in the notice and order.
- (i) The notice and order shall identify appropriate hearing procedures as required by this chapter.

- (j) The notice and order shall be served upon the responsible party by any one of the methods of service listed in Section 1-6.205 of this chapter.
- (k) The notice and order shall identify the factors used by the Director in determining the duration and the daily amount of civil penalties.
- (l) More than one notice and order may be issued against the same responsible party if it encompasses either different dates or different violations.

**1-6.304. DETERMINATION OF CIVIL PENALTIES.**

- (a) In determining the date when civil penalties start to accrue, a director may consider the date when the department first discovered the violation.
- (b) The assessment of civil penalties shall end when all action required by the notice and order has been completed.
- (c) In determining the amount of the civil penalty to be assessed on a daily rate, the Director may consider some or all of the following factors:
  - (1) The duration of the violation.
  - (2) The frequency or recurrence of the violation.
  - (3) The seriousness of the violation.
  - (4) The history of the violation.
  - (5) The responsible parties conduct after issuance of the notice and order.
  - (6) The good faith effort by the reasonable person to comply.
  - (7) The economic impact of the penalty on the responsible party.
  - (8) The impact of the violation upon the community.
  - (9) Any other factors that justice may require.

### **1-6.305. AMOUNT OF ADMINISTRATIVE CIVIL PENALTIES.**

The amount of the administrative civil penalty to be imposed shall be set by the Director or his/her designee responsible for issuing the notice and order. In determining the amount of the administrative penalty, the Director or his or her designee shall consider the criteria set forth in Section 1-6.304. The amount of administrative civil penalties assessed per day or per violation shall be set according to the following schedule:

- (a) Level one violations shall be subject to an administrative civil penalty of one hundred dollars (\$100) to five hundred dollars (\$500);
- (b) Level two violations shall be subject to an administrative civil penalty of five hundred dollars (\$500) to one thousand dollars (\$1,000);
- (c) Level three violations shall be subject to an administrative civil penalty of one thousand dollars (\$1,000) to five thousand dollars (\$5,000);
- (d) Level four violations shall be subject to an administrative civil penalty of twenty-five hundred dollars (\$2,500) to ten thousand dollars (\$10,000); and
- (e) Level five violations shall be subject to an administrative civil penalty of twenty-five hundred dollars (\$2,500) to twenty-five thousand dollars (\$25,000).

### **1-6.306. ADMINISTRATIVE COSTS.**

The Director or hearing officer, if the matter goes to hearing, is authorized to assess any reasonable administrative costs. Administrative costs may include scheduling and processing of the hearing and all subsequent actions. This includes, but is not limited to, all staff time incurred with regard to the hearing and subsequent actions, as well as attorney fees.

### **1-6.307. FAILURE TO COMPLY WITH NOTICE AND ORDER.**

- (a) A director shall request the City Manager or his or her designee to appoint a Hearing Officer and to establish a date, time and place for a civil penalties hearing.
- (b) Failure to comply includes failure to pay the assessed civil penalties, failure to commence and complete corrections by the established

deadlines or failure to refrain from continuing violations of this Code or applicable State Codes.

**1-6.308. CIVIL PENALTIES HEARING.**

- (a) The procedures for the civil penalties hearing are the same as the hearing procedures set forth in Article 5 of this chapter.
- (b) The Hearing Officer shall only consider evidence relevant to the following issues:
  - (1) Whether the responsible party caused or maintained a violation of this Code or applicable State Codes existing on the dates specified in the notice and order;
  - (2) Whether the amount of civil penalties assessed by the Director pursuant to the criteria outlined in this article was reasonable; and
  - (3) The amount of administrative costs incurred.

**1-6.309. ADMINISTRATIVE ENFORCEMENT ORDER.**

- (a) Once all evidence and testimony are completed, the administrative hearing officer shall issue an administrative enforcement order which affirms or rejects the notice and order or which modifies the daily rate or duration of civil penalties depending upon the review of the evidence. The administrative hearing officer may increase or decrease the total amount of civil penalties and costs that are assessed by the notice and order.
- (b) The administrative hearing officer may issue an administrative enforcement order that requires the responsible party to cease from violating this Code or applicable State Codes and to make necessary corrections.
- (c) As part of the administrative enforcement order, the administrative hearing officer may establish specific deadlines for the payment of penalties and costs and condition the total or partial assessment of civil penalties on the responsible party's ability to complete compliance by specified deadlines.

- (d) The administrative hearing officer 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.
- (e) The administrative hearing officer 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.

**1-6.310. FAILURE TO COMPLY WITH THE ADMINISTRATIVE ENFORCEMENT ORDER.**

- (a) Upon the failure of the responsible party to comply with the terms and deadlines set forth in the administrative enforcement order, the Director may use all appropriate legal means to recover the civil penalties, administrative costs and obtain compliance with the administrative enforcement order.
- (b) After the administrative hearing officer issues an administrative enforcement order, the Director shall monitor the violations and determine compliance.

**1-6.311. REVIEW OF FINAL NOTICE AND ORDER.**

All final administrative orders made pursuant to the procedures set forth in this article shall be subject to review only as provided in California Code of Civil Procedure Sections 1094.5 and 1094.6. Should any court of competent jurisdiction determine that the City must provide an appeal to any final administrative order in a manner other than set forth in Sections 1094.5 and 1094.6, then it is the intent of the City Council that the administrative penalty process remain as provided herein and to provide that an appeal which is timely requested follow the procedures set forth in Government Code Section 53069.4.

**1-6.312. 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 4. ADMINISTRATIVE CITATIONS**

### **1-6.401. AUTHORITY.**

- (a) Any person violating any provisions of this Code or applicable State Codes may be issued an administrative citation by a code enforcement officer as provided in this article.
- (b) Each and every day a violation of this Code or applicable State Codes exist constitutes a separate and distinct offense.
- (c) An administrative penalty shall be assessed by means of administrative citation issued by the code enforcement officer and shall be payable directly to the City of Modesto unless otherwise noted on the citation.
- (d) Penalties assessed by means of an administrative citation shall be collected in accordance with the procedures specified in this chapter.

### **1-6.402. ADMINISTRATIVE CITATIONS.**

- (a) Upon discovering any violation of this Code or applicable State Codes, a code enforcement officer may issue an administrative citation to a responsible party in the manner prescribed in this chapter.
- (b) If the responsible party is a commercial business, the code enforcement officer shall attempt to locate the business owner and issue the business owner an administrative citation. If the code enforcement officer can only locate the manger of the commercial business, the administrative citation may be given to the manager of the business. A copy of the administrative citation shall also be mailed to the business owner or responsible party in the manner prescribed by Section 1-6.205 of this chapter.
- (c) The administrative citation shall be signed by the issuing code enforcement officer.
- (d) Method of service.
  - (1) Once the responsible party is located, the code enforcement officer shall attempt to obtain the signature of that person on the administrative citation. If the responsible party refuses or fails to sign the administrative citation, it shall not affect the validity of the citation and subsequent proceedings.

- (2) If the code enforcement officer is unable to locate the responsible party, the administrative citation must then be mailed to the responsible party in the manner prescribed in Section 1-6.205 of this chapter.
- (3) If no one can be located at the property, the administrative citation shall be posted in a conspicuous place on or near the property and a copy subsequently mailed to the responsible party in the manner prescribed in Section 1-6.205 of this chapter.
- (e) A copy of the administrative citation shall thereafter be mailed to the responsible party and to the owner of the property if different from the responsible party in the manner prescribed by Section 1-6.205 of this chapter. The failure of any person with an interest in the property to receive notice shall not affect the validity of any proceedings taken under this article.

#### **1-6.403. CONTENTS OF ADMINISTRATIVE CITATION.**

Any administrative citation that is issued shall contain all of the following information:

- (a) The date and location of the violations and the approximate time the violations were observed;
- (b) The code sections violated and a brief description of how the sections are violated;
- (c) Where appropriate, the actions required to correct the violations;
- (d) Set forth a deadline by which violations must be corrected and the consequences of failing to comply;
- (e) The amount of penalty imposed for the violations, if any;
- (f) An explanation as to how the penalty shall be paid and the time period by which it shall be paid, and the consequences of failure to pay the penalty; and
- (g) Identify all rights and procedures of appeal.

- (h) A statement that a failure to appeal shall constitute a failure to exhaust administrative remedies and results in the citation becoming a final administrative enforcement order.

**1-6.404. ADMINISTRATIVE CITATION PENALTIES.**

- (a) If the responsible party fails to correct the violations, subsequent administrative citations may be issued for the same violations. The amount of the penalty shall increase at a rate specified in (b) below.
- (b) The penalties assessed for each administrative citation issued for the same violations shall be as follows:
  - (1) First administrative citation - one hundred dollars (\$100).
  - (2) Second administrative citation within a twelve (12) month period - two hundred and fifty dollars (\$250).
  - (3) Third or subsequent administrative citation with a twelve (12) month period - five hundred dollars (\$500).
- (c) Payment of the penalty shall not excuse the failure to correct the violations nor shall it bar further enforcement action by the City.
- (d) All penalties assessed shall be payable to the City of Modesto unless otherwise directed on the citation.

**1-6.405. APPEAL OF ADMINISTRATIVE CITATION.**

An appeal from the issuance of an administrative citation shall follow the procedures set forth in 1.6-501.

- (a) As part of the administrative enforcement order, issued upon appeal, the administrative hearing officer may reduce, waive or conditionally reduce the penalties or late fees assessed by the citation.
- (b) The administrative hearing officer may also impose conditions and deadlines to correct the violations or require payment of an outstanding penalty.
- (c) The administrative hearing officer may assess reasonable administrative costs.

**1-6.406. FAILURE TO PAY ADMINISTRATIVE CITATION PENALTY.**

The failure of any person to pay the penalties assessed by an administrative citation within the time specified on the citation may result in the Director referring the matter to the Finance Department or other designated agent for collection. The Director may pursue any other legal remedy to collect the penalties and related administrative costs including the recordation of a code enforcement lien pursuant to the procedures set forth in Section 1-6.701.

**1-6.407. 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 5. ADMINISTRATIVE HEARING PROCEDURES**

**1-6.501. SCOPE.**

Whenever a code enforcement officer has determined that a violation of this Code exists within the City or when an administrative hearing is authorized under this chapter, the procedures set forth herein shall apply to that hearing.

**1-6.502. PROCEDURES.**

- (a) A person served with one of the following documents, orders or notices may file an appeal within twenty (20) calendar days from the service of the notice:
  - (1) Any administrative notice and order;
  - (2) An administrative citation; and
  - (3) A letter from a director indicating an intent to record a notice of violation.
- (b) A request for appeal shall be made in writing and filed with the City Clerk.

- (c) The written appeal request shall contain the following:
  - (1) A brief statement setting forth the interest the appealing party has in the matter relating to the imposition of the penalty;
  - (2) A brief statement, in ordinary and concise language, of the material facts which the appellant claims support his/her/its contention that no administrative penalty should be imposed or that an administrative penalty of a different amount is warranted; and
  - (3) An address which the appellant agrees notice of any additional proceedings or an order relating to the imposition of the administrative penalty may be received by first class mail.
- (d) As soon as practicable after receiving the written notice of appeal, a director shall request the City Manager or his or her designee to appoint an administrative hearing officer. The Director shall schedule a date, time and place for the hearing. A continuance of the hearing may be upon written request to the Director and upon a showing of good cause.
- (e) Written notice of the date, time and place of the hearing shall be served at least ten (10) calendar days prior to the date of the hearing. Notice of hearing shall be sent to the appellant by first class mail at the address provided with the written appeal request. The administrative hearing shall be set for an appeal hearing no sooner than twenty (20) days following a request for a hearing.

**1-6.503. FAILURE TO ATTEND ADMINISTRATIVE HEARING.**

Failure to attend the administrative hearing by the person appealing an administrative notice and order or administrative citation shall constitute a waiver of his or her rights to an administrative hearing and adjudication of the notice or citation, or any portion of the notice or citation.

**1-6.504. POWERS OF ADMINISTRATIVE HEARING OFFICER.**

- (a) The hearing officer may continue a hearing based on good cause shown by one of the parties to the hearing or if the hearing officer determines that due process has not been adequately afforded to one of the parties.
- (b) The hearing officer shall have the authority to issue subpoenas for orders to appear and produce testimony or subpoena duces tecum for orders to

produce documents. The hearing officer shall only issue a subpoena upon a showing of reasonable necessity by the requesting party.

- (c) It is unlawful for any person to refuse to obey a subpoena issued by the administrative hearing officer. Failure to obey a subpoena constitutes contempt and may be prosecuted as a misdemeanor.
- (d) The administrative hearing officer has continuing jurisdiction over the subject matter of an administrative appeal hearing for the purposes of granting a continuance, ensuring compliance with an administrative order, modifying an administrative order, or where extraordinary circumstances exist, granting a new hearing.

#### **1-6.505. CONDUCT OF THE ADMINISTRATIVE APPEAL HEARING.**

- (a) At the time set for the administrative appeal hearing, the hearing officer shall proceed to hear testimony from the representative of the City, the appellant and any other competent persons with respect to imposition of an administrative penalty.
- (b) The proceedings at the hearing shall be reported by a tape recording. Either party may provide a certified shorthand reporter to maintain a record of the proceedings at the requesting party's own expense.
- (c) The hearing officer may, upon request of the responsible party against whom a penalty is to be imposed, or upon request of the City, grant continuances from time to time for good cause shown, or upon his/her own motion.
- (d) The administrative hearing is intended to be informal in nature. Formal rules of evidence and discovery do not apply.
- (e) The parties may represent themselves or be represented by any person of their choice.
- (f) If a party does not proficiently speak or understand the English language, he/she may provide an interpreter, at that party's own cost, to translate for the party. The interpreter shall not have any personal involvement in the issues of the case prior to the hearing.
- (g) Each party shall have the opportunity to cross-examine witnesses and present evidence in support of his or her case.

- (h) The standard of proof to be used by the hearing officer in deciding the issues at an administrative hearing is by a preponderance of the evidence.
- (i) The City bears the burden of proof at an administrative hearing to establish the existence of a violation of this Code or applicable State Codes. In the case of an abatement hearing the City bears the burden of proof to establish the existence of a public nuisance.
- (j) In the case of a violation related to property in the City, the hearing officer may inspect the building and premises involved in the hearing prior to, during, or after the hearing, provided that:
  - (1) Notice of such inspection shall be given to the party before the inspection is made;
  - (2) The parties consent and are given an opportunity to be present during the inspection; and
  - (3) The hearing officer shall state for the record during the hearing, or file a written statement after the hearing for inclusion in the hearing record, the material facts observed and the conclusions drawn therefrom. Notice to the parties, or the owner's consent to inspect the building and surrounding properties is not required if the property can be inspected from areas in which the general public has access or with permission of other persons authorized to provide access to the property on which the building is located.

**1-6.506. ADMINISTRATIVE ENFORCEMENT ORDER.**

- (a) The decision of the administrative hearing officer shall be entitled "Administrative Enforcement Order."
- (b) The Administrative Enforcement Order shall become final on the date of service of the order.
- (c) The Administrative Enforcement Order shall be served on all parties by anyone of the methods listed in Section 1.6-205 of this Code.
- (d) The order shall be issued within 30 days of the hearing, shall be in writing, and shall contain findings of fact and a determination of the issues presented.

- (e) The order shall require the administrative penalty to be paid within twenty-five (25) calendar days of the date of service of the order.
- (f) The order shall inform the owner that if the administrative penalty is not paid within the time specified, it may be made a personal obligation of the owner, it may also be made a lien against the property owned by the responsible party against whom the penalty was imposed, and may be collected by special assessment.
- (g) The order shall inform the responsible party against whom an administrative penalty has been imposed that any appeal of the hearing officer's decision must be filed with a court of competent jurisdiction pursuant to California Code of Civil Procedure Sections 1094.5 and 1094.6.
- (h) The administrative hearing officer, as part of the administrative enforcement order, may reduce, waive or conditionally reduce penalties assessed by a notice and order or citation.
- (i) The hearing officer may also impose conditions and deadlines to correct the violations or require payment of any outstanding penalties.
- (j) The hearing officer may assess reasonable administrative costs.

**1-6.507. JUDICIAL REVIEW.**

Once an administrative enforcement order becomes final as provided for in this chapter, the time in which judicial review of the order must be sought shall be governed by California Code of Civil Procedure Section 1094.6.

**1-6.508. FAILURE TO COMPLY WITH ADMINISTRATIVE ENFORCEMENT ORDER.**

It is unlawful for a party to an administrative enforcement hearing who has been served with a copy of the final administrative enforcement order to fail to comply with the order. Failure to comply with a final administrative enforcement order may be prosecuted as a misdemeanor.

**1-6.509. 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

- (e) The order shall require the administrative penalty to be paid within twenty (25) calendar days of the date of service of the order.
- (f) The order shall inform the owner that if the administrative penalty is not paid within the time specified, it may be made a personal obligation of the owner, it may also be made a lien against the property owned by the responsible party against whom the penalty was imposed, and may be collected by special assessment.
- (g) The order shall inform the responsible party against whom an administrative penalty has been imposed that any appeal of the hearing officer's decision must be filed with a court of competent jurisdiction pursuant to California Code of Civil Procedure Sections 1094.5 and 1094.6.
- (h) The administrative hearing officer, as part of the administrative enforcement order, may reduce, waive or conditionally reduce penalties assessed by a notice and order or citation.
- (i) The hearing officer may also impose conditions and deadlines to correct the violations or require payment of any outstanding penalties.
- (j) The hearing officer may assess reasonable administrative costs.

#### **1-6.507. JUDICIAL REVIEW.**

Once an administrative enforcement order becomes final as provided for in this chapter, the time in which judicial review of the order must be sought shall be governed by California Code of Civil Procedure Section 1094.6.

#### **1-6.508. FAILURE TO COMPLY WITH ADMINISTRATIVE ENFORCEMENT ORDER.**

It is unlawful for a party to an administrative enforcement hearing who has been served with a copy of the final administrative enforcement order to fail to comply with the order. Failure to comply with a final administrative enforcement order may be prosecuted as a misdemeanor.

#### **1-6.509. 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 6. ABATEMENT OF PUBLIC NUISANCE**

### **1-6.601. DECLARATION.**

The Council finds that its purpose in adopting this title is to establish a procedure for the administrative and summary abatement of public nuisances and code violations. The procedures established in this article are in addition to any other legal remedy, criminal or civil, established by law which may be pursued to address municipal code or applicable State Codes violations. These sections govern all other nuisance abatement procedures established in other chapters of this Code unless other procedures are specifically stated to apply.

### **1-6.602. AUTHORITY.**

Any condition caused, maintained or permitted to exist in violation of any provisions of this Code or applicable State Codes which constitutes a public nuisance may be abated by the City pursuant to the procedures set forth in Article 6.

### **1-6.603. ADMINISTRATIVE ABATEMENT.**

#### **(a) Abatement Notice.**

- (1)** Whenever a director or his or her designee determines that public or private property or any portion of private property is a public nuisance as declared in a specific section of this Code or applicable State Codes, a notice and order may be issued to the responsible party to abate the public nuisance. The notice and order shall comply with Section 1.6-303 of this Code.
- (2)** The notice and order to abate a public nuisance shall contain a description of the property in general terms reasonably sufficient to identify the location of the property. It shall refer to this Code or applicable State Code violations which rendered the property a public nuisance.
- (3)** The notice and order to abate a public nuisance shall describe the action required to abate the public nuisance which may include

corrections, repairs, demolition, removal, obtaining the necessary permits, vacation of tenants or other appropriate action and shall establish time frames by which each action must occur.

- (4) The notice and order to abate a public nuisance shall explain the consequences should the responsible party fail to comply with the terms of the notice.
  - (5) The notice and order to abate a public nuisance shall identify all applicable hearing and appeal rights.
  - (6) The notice and order shall be served by anyone of the methods of service listed in Section 1.6-205 of this Code.
- (b) Abatement of Public Nuisance by the City.
- (1) Once the Director or his or her designee follows the procedures set forth herein and the time for compliance has lapsed, if the violations remain, the nuisance conditions may be abated by City personnel or by a private contractor.
  - (2) City personnel or a private contractor can enter upon private property in a reasonable manner as provided by law to abate the public nuisance as specified in the notice and order to abate a public nuisance.
  - (3) If the responsible party abates the nuisance conditions before the City performs the actual abatement pursuant to a notice and order to abate a public nuisance, the Director may still assess all costs incurred by the City against the responsible party pursuant to the procedure set forth herein.
  - (4) When the abatement is completed, a report describing a work performed and an itemized account of the total abatement costs shall be prepared by the Director. The report shall contain the names and addresses of the responsible parties of each parcel, the name and address of the property owner if different from the responsible party, the tax assessor's parcel number and a legal description of the property if the responsible party is an owner.
  - (5) The Director shall schedule a confirmation of costs hearing before an administrative hearing officer unless waived in writing

by all responsible parties. That hearing shall be held pursuant to the procedures set forth in Article 5 of this chapter.

- (6) All administrative and actual costs incurred by the City in abating the violations may be assessed and recovered against the responsible party pursuant to the provisions set forth in this chapter.

#### **1-6.604. SUMMARY ABATEMENT.**

(a) Authority.

Whenever a director determines that an imminent life safety hazard exists that requires immediate correction or elimination, the Director may exercise the following powers without prior notice to the responsible party:

- (1) Order the immediate vacation of any tenants and prohibit occupancy until all repairs are completed; or
- (2) Post the premises as unsafe, substandard or dangerous; or
- (3) Board, fence or secure the building or site; or
- (4) Raise and grade that portion of the building or site to prevent further collapse and remove any hazard to the general public; or
- (5) Make any minimal emergency repairs as necessary to eliminate any imminent life safety hazards; or
- (6) Take any other action as appropriate under the circumstances.

(b) Procedure.

- (1) A director shall pursue only the minimum level of correction or abatement as necessary to eliminate the immediacy of the hazard. Costs incurred by the City of Modesto during the summary abatement process shall be assessed and recovered against the responsible party through the procedure outlined in Section 1.6-702 of this chapter.
- (2) The Director may also pursue any administrative or judicial remedy to abate any remaining public nuisance.

**1-6.605. 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 7. RECOVERY OF ADMINISTRATIVE PENALTIES AND COSTS**

**1-6.701. CODE ENFORCEMENT LIEN.**

- (a) Once a final administrative decision or judicial order establishes the amount of civil penalties, abatement costs, administrative fees and costs assessed against a responsible party for code violations, the Director may record a code enforcement lien against any real property owned by the responsible party.
- (b) Before recordation, the Director shall provide to the responsible party a written notice informing him or her that a code enforcement lien will be recorded unless the City receives full payment for the outstanding amount of civil penalties, costs and fees within the time period prescribed in the notice. Payment shall be due a minimum of ten (10) calendar days from the date of the mailing.
- (c) The Director shall serve this notice by any one of the methods of service set forth in Section 1.6-205.
- (d) If the Director does not receive payment of the outstanding civil penalties and costs within the prescribed time period, the Director may record the code enforcement lien.
- (e) The code enforcement lien shall include the name of the property owner and any affected financial institution, assessor's parcel number, the parcel's legal description, the total amount of civil penalties, costs and fees due, including a breakdown of penalty assessments and reimbursement for the City's administrative costs, and a copy of the administrative or judicial order which awarded the civil penalties, costs and fees.

- (f) A copy of the recorded code enforcement lien shall be served upon the responsible party by one of the methods of service set forth in Section 1.6-205 of this Code.
- (g) The failure of any person with a financial interest in the property to actually receive the notice of lien shall not affect the validity of the lien or any proceedings taken to collect the outstanding civil penalties.

#### **1-6.702. NUISANCE ABATEMENT LIEN.**

- (a) Procedure.
  - (1) The Director may assess a nuisance abatement lien pursuant to Government Code Section 38773.1 by following the following procedures:
    - (i) Prior notice shall be served upon the owner of the parcel abated by the City before recordation of the lien.
    - (ii) The notice shall be served in the same manner as summons in a civil action.
    - (iii) If the owner cannot be found after a diligent search, the notice may be served by posting it on the property for a period of ten (10) calendar days and by publication thereof in a newspaper of general circulation published in the county in which the property is located.
    - (iv) A nuisance abatement lien shall be recorded in the County Recorder's Office in the county in which the parcel of land is located and from the date of recording shall have the same force, affect, and priority of a judgment lien.
      - a) A nuisance abatement lien shall specify the amount of the lien, the name and address of the responsible city department, the date of the abatement order, the street address, legal description and assessor's parcel number of the parcel on which the lien is imposed, and the name and address of the recorded owner of the parcel.
      - b) In the event that the lien is discharged, released, or satisfied, either through payment or foreclosure,

notice of the discharge containing the information specified in subsection (a) above shall be recorded by the Director.

- (v) A nuisance abatement lien may be foreclosed by an action brought by the City for a money judgment.
  - (vi) The City may recover from the property owner any costs incurred regarding the processing and recording of the lien and providing notice to the property owner as part of its foreclosure action to enforce the lien.
- (b) Recovery of Abatement Costs.
- (1) Confirmation of Costs Hearing.
    - (i) After the City has abated a public nuisance, the Director shall request the City Manager to schedule a confirmation of costs hearing in accordance with the administrative enforcement hearing procedures set forth in Article 5. A confirmation of cost hearing is also appropriate if the City incurred abatement preparation costs before a responsible party voluntarily abated the public nuisance.
    - (ii) A notice of the date, time and place of the confirmation of costs hearing shall be served on the responsible party at least ten (10) calendar days prior to the scheduled hearing by any one of the methods set forth in Section 1.6-205.
    - (iii) A copy of the report describing the work performed and an itemized account of the total abatement costs prepared pursuant to Sections 1.6-603 or 1-6.604 of this chapter shall also be served on the responsible party at least ten (10) calendar days prior to the scheduled hearing by any one of the methods set forth in Section 1.6-205.
    - (iv) The enforcement hearing officer at the confirmation of costs hearing shall limit the scope of review to the Director's report describing the work performed and the itemized account of costs together with any objections to its accuracy. The enforcement hearing officer may make such revisions, corrections or modifications in the report or the account as may be just and reasonable.

- (v) The enforcement hearing officer may issue an order which assesses the costs as either a personal obligation against the responsible party or a special assessment against the real property abated by the City.
- (vi) At the confirmation of costs hearing, the enforcement hearing officer shall not consider evidence regarding the merits of the previous abatement hearing or review the decision ordering the administrative or summary abatement.
- (vii) The enforcement hearing officer's order confirming or modifying the amount of costs incurred by the City in performing the abatement shall be final.

(2) Recovery of Abatement Costs as a Personal Obligation.

If the enforcement hearing officer orders that abatement costs be charged as a personal obligation of the responsible party, the Director shall collect the obligation by use of all appropriate legal means. This may include the recordation of a code enforcement lien against any real property owned by the responsible party pursuant to the provisions set forth in Article 7. If unable to collect this obligation, the Director may refer the case to the Finance Department or refer it to the City Attorney to file a court action to recover the costs.

(3) Recovery of Abatement Costs by Special Assessment.

- (i) If the enforcement hearing officer orders that abatement costs shall be charged against the property, the Director shall prepare a notice of special assessment.
- (ii) The Director shall deliver the notice of special assessment to the County Auditor who shall place it on the County Assessment Roll pursuant to Government Code Section 38773.5.
- (iii) The notice of special assessment shall include a copy of the enforcement hearing officer's confirmation of costs order and shall summarize the abatement action. The Director may record a copy of this special assessment

notice to inform any subsequent purchasers or owners about this abatement action and costs.

- (iv) The Director shall file a withdrawal of this notice with the County Recorder when either : (1) the responsible party pays in full the abatement costs; or (2) the County Auditor or Tax Collector posts a lien on the property pursuant to Government Code Section 38773.5.

(4) Collection of Assessment - Penalties and Foreclosure.

Pursuant to the provisions of Government Code Section 38773.5 the County Tax Collector may collect the amount of the assessment at the same time and in the same manner as ordinary municipal taxes, and impose the same penalties and procedures, including the sale of the property, in case of delinquency, as provided for ordinary municipal taxes. All laws applicable to the levy, collection and enforcement of property taxes shall be applicable to the special assessment. The provisions of Government Code Sections 38772 through 38773.5, and any amendments to those sections, are hereby incorporated by reference and made a part of this article.

(5) Nuisance Abatement Lien.

As an alternative to the recovery of abatement costs by special assessment the Director can record a nuisance abatement lien pursuant to the provisions set forth this article.

**1-6.703. 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 8. NOTICES OF VIOLATION.

### 1-6.801. NOTICE OF VIOLATION - PURPOSE.

- (a) The Council finds that there is a need to give notice of pending enforcement actions to persons who may subsequently acquire the property as a means by which to ensure the violations will be corrected. This may be accomplished through the issuance and recordation of a notice of violation.
- (b) The procedures set forth in this title shall be in addition to criminal, civil, or any other remedy established by law which may be pursued by the City of Modesto to address violations of this Code.
- (c) Whenever a director determines that a violation of this Code or applicable State Codes exist, the Director may issue a notice of violation to a responsible party. The notice of violation shall contain the following:
  - (1) The name of the record owner of the property;
  - (2) The street address of the property;
  - (3) The code sections violated;
  - (4) A description of the property's condition which violates the applicable code;
  - (5) A list of all corrections required to bring the property into compliance;
  - (6) A specific date to correct the violations identified in the notice of violation;
  - (7) An explanation of the potential consequences should the property remain in violation after the expiration of the compliance deadline. These consequences shall include, but are not limited to, criminal prosecution, civil injunction, administrative abatement, civil penalties, and recordation of notice of violation.

**1-6.802. RECORDATION OF NOTICES OF VIOLATION.**

- (a) Once a director has issued a notice of violation to a responsible party and the property remains in violation after the compliance date established in the notice of violation, the Director may record the notice of violation with the Stanislaus County Recorder's Office. The Director shall provide the responsible party a notice of intent to record prior to the recordation of the notice of violation. The notice of intent to record shall state that a notice of violation will be recorded unless a written request to appeal the action is received pursuant to the procedures set forth in this Title. The notice of intent to record shall be served according to the procedures set forth in Section 1-6.205 of this Code.
- (b) If no written request to appeal is received within the time frame specified in the notice of intent to record, the Director may cause the notice of violation to be recorded, as long as the violation remains on the premises.
- (c) The recorded notice of violation shall include the following:
  - (1) The name of the property owner;
  - (2) The assessor's parcel number of the premises in violation;
  - (3) The street address of the premises in violation;
  - (4) The parcel's legal description; and
  - (5) A copy of the latest notice of violation.
- (d) Any costs associated with recording and removal may be assessed against the property as set forth in this Title.

**1-6.803. SERVICE OF RECORDED NOTICE OF VIOLATION.**

A copy of the recorded notice of violation shall be mailed to the responsible party and to the property owner and/or any other persons who have requested copies of the notice. Service shall be made pursuant to the provisions of Section 1-6.205 of this Code.

**1-6.804. APPEAL OF NOTICE OF INTENT TO RECORD NOTICE OF VIOLATION.**

An appeal of the Director's notice of intent to record the notice of violation shall follow the procedures set forth in Section 1-6.502 of this Code.

The Director shall, upon receiving a written appeal, schedule a hearing. The purpose of the hearing is to provide the responsible party or property owner an opportunity to state why a notice of violation should not be recorded.

The failure of any person to file an appeal in writing shall constitute a waiver of the right to administrative hearing and shall not affect the validity of the recorded notice of violation.

**1-6.805. APPEAL HEARING.**

- (a) The hearing officer shall only consider evidence relevant to the following issues:
  - (1) Whether the conditions listed in the notice of violation violate this Code or applicable State Codes; and
  - (2) Was the responsible party afforded due process.
- (b) If the hearing officer affirms the Director's decision, the Director may proceed to record the notice of violation.
- (c) If the hearing officer determines the recordation is improper, the hearing officer shall invalidate the Director's decision to record the notice of violation.

**1-6.806. NOTICE OF COMPLIANCE.**

- (a) The responsible party or property owner may file, once the violations listed in the notice of violation have been corrected, a written request for a notice of compliance with the Director.
- (b) The Director shall reinspect the property within ten (10) days from receipt of the request to determine whether the violations listed in the notice of violation have been corrected and whether all necessary permits have been issued and final inspections have been performed, if any are needed.

- (c) The Director shall provide a notice of compliance to the responsible party or property owner. Upon determining that:
  - (1) All violations listed in the recorded notice of violation have been corrected;
  - (2) All necessary permits have been issued and finalized; and
  - (3) All administrative civil penalties have been paid.
- (d) In addition to administrative civil penalties, administrative costs may be assessed. Administrative costs may include costs incurred in the investigation, inspection, reinspection, title search, appeal hearing, and any other processing costs associated with the violations identified in the notice of violation.
- (e) If the Director denies or requests to issue a notice of compliance, the Director shall serve the requesting party, the responsible party and the property owner with a written explanation within five (5) days from the inspection setting forth the reasons for the denial. A written explanation shall be served pursuant to the provisions set forth in Section 1-6.205 of this Code.
- (f) The Director's decision denying a request to issue a notice of compliance constitutes a final decision in the matter and is not appealable.

**1-6.807. RECORDED NOTICE OF VIOLATION - CANCELLATION.**

The Director shall record or cause to be recorded the notice of compliance with the County Recorder's Office. The recordation of the notice of compliance shall have the effect of canceling the recorded notice of violation.

**1-6.808. 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 9. MEDIATION

### 1-6.901. PURPOSE.

The Council finds there's a need for mediation as a means to gain compliance with the provisions of this Code. Mediation often resolves disputes in a more efficient and effective manner without the necessity of more formal administrative action or litigation. The Council further finds that mediation provides an excellent manner in which to exchange ideas, can foster better relations among and with the citizenry of Modesto and enhances the reputation of the City.

### 1-6.902. DEFINITIONS.

- (a) **Enforcement case** means any complaint or case on file with a City department that involves alleged violations of this Code or applicable provisions of state law.
- (d) **Disputing party** means any person responsible for alleged violations, interested or involved citizens who may have complained to the City about the alleged violations, crime victims and appropriate representatives from the City department.
- (e) **Mediation** means a meeting between or among disputing parties to clarify their differences and develop and design their own mutually acceptable agreement with the assistance of a mediator.
- (f) **Mediator** means an employee or agent of the City of Modesto appointed at the discretion of the City Manager or by his or her designee. In the alternative, the City Manager may retain a third party to act as a mediator.

### 1-6.903. PROCEDURE.

A director may refer enforcement cases and other types of disputes and controversies to the City Manager or his or her designee to schedule and coordinate a mediation as may be appropriate under the circumstances.

### 1-6.904. CONFIDENTIALITY.

All documents and results related to the mediation shall be kept confidential in any subsequent administrative or judicial proceedings. Evidence Code Sections

1152 and 1152.5 and other laws pertaining to confidentiality shall apply to the mediation.

**1-6.905. ENFORCEMENT.**

Failure by any of the disputing parties to participate in good faith in a mediation or to comply with the terms of the mediation agreement shall not preclude any of the parties to the mediation from pursuing further administrative or legal action as provided by law.

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 20th day of October, 1998, by Councilmember Friedman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Dobbs, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Conrad, Dobbs, Fisher, Friedman, Serpa, Smith, Mayor Lang

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:

By   
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

Ord. No. 3102-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 October, 1998, Councilmember Friedman, moved its final adoption, which motion being duly seconded by Councilmember Dobbs, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Conrad, Dobbs, Fisher, Friedman, Serpa, Smith, Mayor Lang

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:   
JEAN ZAHR, City Clerk

Effective Date: November 26, 1998

ORDINANCE NO. 3103-C.S.

AN ORDINANCE AMENDING SECTIONS 11-3-9 AND 12-3-9  
OF THE ZONING MAP OF THE CITY OF MODESTO  
PREZONING THE VILLAGE ONE HIGH SCHOOL  
REORGANIZATION AREA TO A SPECIFIC PLAN OVERLAY  
(SP-O) ZONE.

WHEREAS, pursuant to Municipal Code Section 10-2.2604, the City of Modesto proposes to initiate a prezoning of the area designated as the Village One High School Reorganization Area for the purpose of determining the zoning that will apply to the property upon annexation, and

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

WHEREAS, after a public hearing held on October 5, 1998, in the Council Chambers, City Hall, 801 11th Street, Modesto, California, it was found and determined by the Planning Commission that prezoning the Village One High School Reorganization Area as requested is in accordance with Government Code Section 65855 for the following reasons:

1. The proposed prezoning will result in an orderly, planned use of land resources because the proposed prezoning is in accordance with the objectives and policies set forth in the Modesto Urban Area General Plan, which calls for the development of a high school, community park and very low density residential uses in this area.
2. The proposed prezoning is in accordance with the policies and goals presented in the Village One Specific Plan.

WHEREAS, by Resolution No. 98-63, adopted on October 5, 1998, the Planning Commission recommended to the City Council an amendment to Sections 11-3-9 and

12-3-9 of the Zoning Map to prezone the hereafter described property to Specific Plan Overlay Zone, SP-O, and

WHEREAS, said matter was set for a public hearing of the City Council to be held on October 20, 1998, at 7:00 p.m., in the City Council Chambers, City Hall, 801 11th Street, Modesto, California, at which date and time said duly noticed public hearing of the Council was held and evidence both oral and documentary was received and considered,

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

SECTION 1. COUNCIL FINDINGS. After a public hearing held on October 20, 1998, this Council finds and determines that the requested rezoning is in accordance with the General Plan and will serve the public health, safety and general welfare and provide the economic and social advantages resulting from orderly, planned use of land resource for the reasons set forth in Planning Commission Resolution No. 98-63 and quoted above.

SECTION 2. ZONING CHANGE. Sections 11-3-9 and 12-3-9 of the Zoning Map are hereby amended to prezone the Village One High School Reorganization area to the Specific Plan Overlay, SP-O, Zone, described as follows:

All those portions of Sections 11 and 12, Township 3 South, Range 9 East, Mount Diablo Base and Meridian, in the County of Stanislaus, State of California, described as follows:

Commencing at the east one-quarter section corner of said Section 11; thence on the east line of said Section 11, North 0°04'19" East 50.03 feet to the north line of the Village One Reorganization to the City of Modesto, recorded June 1, 1992 as instrument number 050895, Stanislaus County Records and the POINT OF BEGINNING of this description; thence on said north line, North

89°54'47" West 25.00 feet to the southerly extension of the west line of Roselle Avenue; thence on said southerly extension and the west line of Roselle Avenue, North 0°21'34" West 630.78 feet to the easterly extension of the south line of Parcel A as shown in Book 3 of Parcel Maps, Page 87, Stanislaus County Records; thence on said easterly extension, North 89°48'35" West 5.00 feet to the east line of said Parcel A; thence on said east line, North 0°21'34" West 329.50 feet to the north line of said Parcel A, said point also being on the easterly extension of the south line of Parcel 2 as shown in Book 8 of Parcel Maps, Page 62, Stanislaus County Records; thence on said easterly extension, North 89°47'36" West 20.00 feet to the east line of said Parcel 2, thence on said east line, North 0°21'34" West 329.50 feet to the north line of said Parcel 2, said point also being on the south line of Parcel B as shown in Book 4 of Parcel Maps, Page 57, Stanislaus County Records; thence on said south line, South 89°46'34" East 20.00 feet to the east line of said Parcel B; thence on said east line and the east line of Parcel A of said Parcel Map, North 0°21'34" West 652.25 feet to the westerly extension of the north line of Parcel A as shown in Book 44 of Parcel Maps, Page 45, Stanislaus County Records; thence on said extension and the north line of said Parcel A, North 89°48'07" East 1350.37 feet to the northeast corner of said Parcel A; thence on the easterly extension of the north line of said Parcel A, North 89°48'07" East 1591.62 feet to the east line of 40.00 feet wide Litt Road (20.00 feet half-width); thence on said east line, South 0°20'26" East 1973.01 feet to the north line of Sylvan Avenue and the north line of the previously mentioned Village One Reorganization to the City of Modesto; thence on said north line, South 89°48'45" West 1592.43 feet to the southerly extension of the east line of Parcel C as shown in Book 4 of Parcel Maps, Page 143, Stanislaus County Records; thence on said southerly extension, North 0°19'50" West 30.00 feet to the southeast corner of said Parcel C; thence on the south line of Parcel C and Parcel B of said Parcel Map, South 89°48'45" West 1258.97 feet to the beginning of a 15.00 feet radius curve at the northeast corner of Roselle Avenue and Sylvan Avenue; thence North 89°54'47" West 59.96 feet to the point of beginning of this description.

Containing 132.4 acres, more or less.

SECTION 3. ZONING MAP. Sections 11-3-9 and 12-3-9 of the Zoning Map of the City of Modesto are hereby amended to appear as set forth on the map attached hereto and which is hereby made a part of this ordinance by reference.

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

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

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 20th day of October, 1998, by Councilmember Friedman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Dobbs, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Conrad, Dobbs, Fisher, Friedman, Serpa, Smith, Mayor Lang

NOES: Councilmembers: None

ABSENT: Councilmembers: None

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

ATTEST:

By Jean Zahr  
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

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

APPROVED AS TO DESCRIPTION:

By [Signature]  
Community Development Department  
Development Services

Ord. No. 3103-C.S.

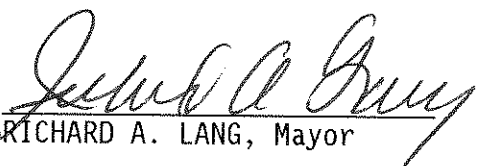
FINAL ADOPTION CLAUSE

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 October, 1998, Councilmember Friedman, moved its final adoption, which motion being duly seconded by Councilmember Dobbs, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Conrad, Dobbs, Fisher, Friedman, Serpa, Smith,  
Mayor Lang

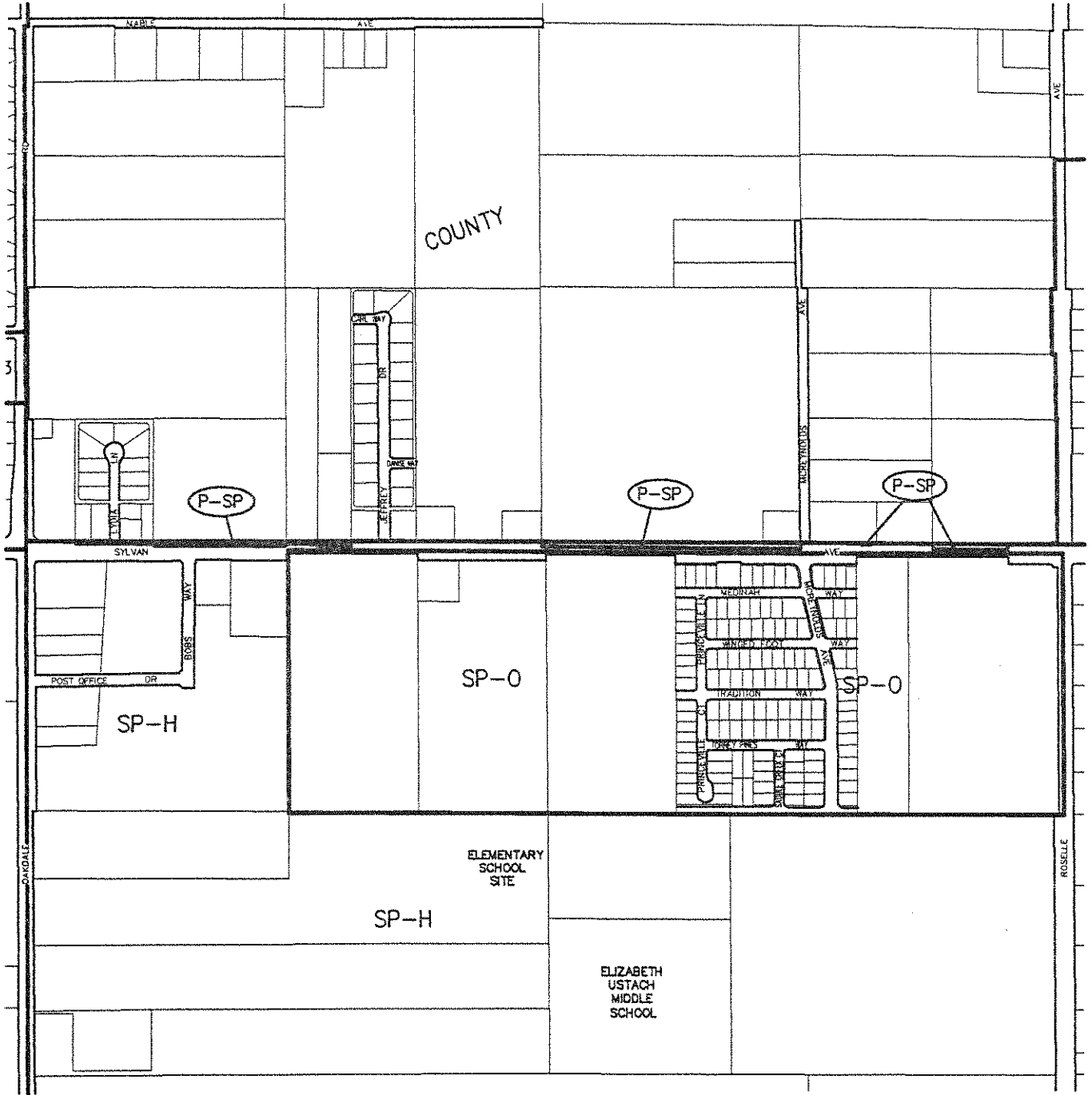
NOES: Councilmembers: None

ABSENT: Councilmembers: None

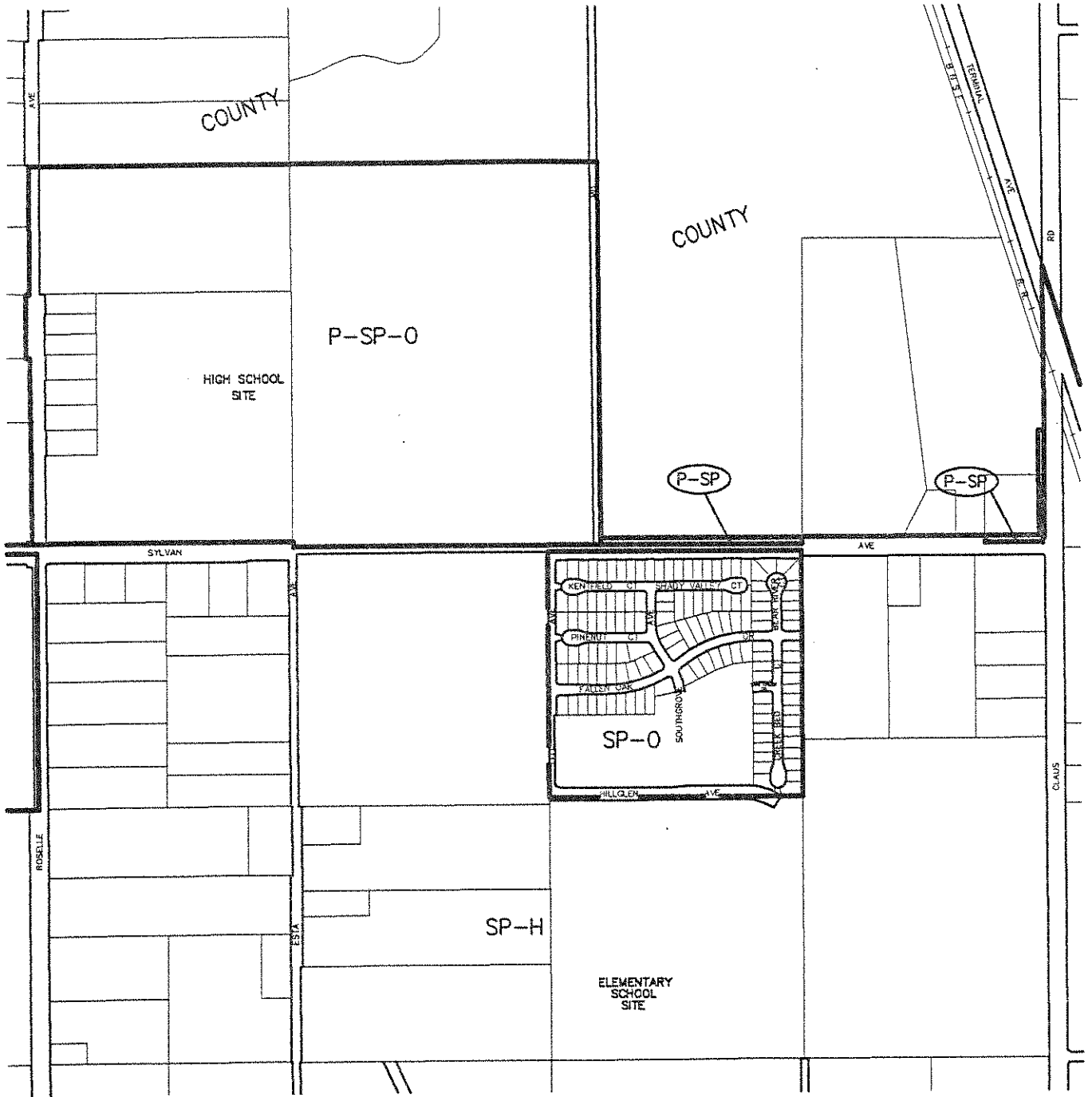
APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:   
JEAN ZAHR, City Clerk

Effective Date: November 26, 1998



ZONING MAP OF THE CITY OF MODESTO 11-3-9



ZONING MAP OF THE CITY OF MODESTO

12-3-9

*Used* (11)

ORDINANCE NO. 3104 -C.S.

AN ORDINANCE ADDING CHAPTER 4 ENTITLED  
"SPECIFIC PLAN REIMBURSEMENT FEES" TO TITLE 10  
OF THE MODESTO MUNICIPAL CODE RELATING TO  
REIMBURSEMENT OF SPECIFIC PLAN FEES.

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

SECTION 1. AMENDMENT OF CODE. Chapter 4 entitled "General and Specific Plans" is hereby added to Title 10 of the Modesto Municipal Code to read as follows:

**CHAPTER 4. GENERAL AND SPECIFIC PLANS**

**ARTICLE 1. SPECIFIC PLAN REIMBURSEMENT FEES**

**10-4.101. PURPOSE AND INTENT.**

It is the intent of the City Council in providing Specific Plan Reimbursement Fees to charge persons who benefit from Specific Plans for the costs of developing those Specific Plans and to reimburse those persons, including the City, who have provided funds to prepare the Specific Plan and related documentation. Specific Plans result in savings to such persons to reducing the cost of documenting environmental consequences and advocating changed land uses which may be authorized pursuant to the Specific Plan.

**10-4.102. ADOPTION OF SPECIFIC PLAN REIMBURSEMENT FEES.**

Pursuant to Government Code Section 65456, the City Council may, by resolution adopted from time to time, fix a specific plan fee to reimburse any person, including the City, for the cost of preparation, adoption, and administration of any Specific Plan prepared pursuant to Government Code Section 65450, et seq.

- (a) In adopting a specific plan fee, the City Council shall make the following findings:
  - (1) That the costs for which the specific plan fee is being assessed are reasonable and were necessarily incurred in the preparation, adoption and administration of the specific plan, including environmental review;

- (2) That the specific plan fee defrays but does not exceed the actual cost of the services and/or expenses incurred in the preparation, adoption and administration of the specific plan; and
  - (3) That the specific plan fee is being fairly prorated among the parcels included in the specific plan based on the relative benefit that each parcel has derived from the specific plan based upon the savings resulting from reducing the cost of documenting environmental consequences and advocating changed land uses which may be authorized pursuant to the specific plan.
- (b) The resolution establishing fees pursuant to this chapter shall contain the following:
- (1) An itemized list, together with a specific description, of the costs for which the Specific Plan fees are being assessed and the total amount of the assessment;
  - (2) A description of the specific parcels of land which are benefited and against which the fees are assessed;
  - (3) A statement indicating the amount of the total assessment that is allocated against each parcel of property in the Specific Plan area and the method of allocation, including any exemptions or credits against the assessment.

**10-4.103. PAYMENT OF FEE**

The fee established pursuant to this Article shall be paid upon application to the City of Modesto for any tentative subdivision map, tentative parcel map, annexation, general or specific plan amendment, precise plan, conditional use permit, rezoning, planned development zoning, plot plan review except for a satellite antenna or second-story addition to a single-family house, or any other land use entitlement which implements, utilizes, or amends the specific plan or supporting documentation, for the property upon which the fee has been assessed.

**10-4.104. REIMBURSEMENT TO THIRD PARTIES.**

If any person or entity other than the City pays all or a portion of the costs for which assessments have been made pursuant to this article, the City Council may, by resolution, provide that all or a portion of the monies that the City receives from the specific plan fee be paid to such person or entity as full or partial reimbursement for the costs that person or entity has incurred.

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 20th day of October, 1998, by Councilmember Friedman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Conrad, Dobbs, Fisher, Friedman, Serpa, Smith, Mayor Lang

NOES: Councilmembers: None

ABSENT: Councilmembers: None

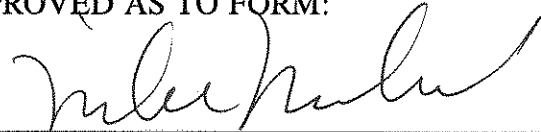
APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:

By   
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

Ord. No. 3104-C.S.

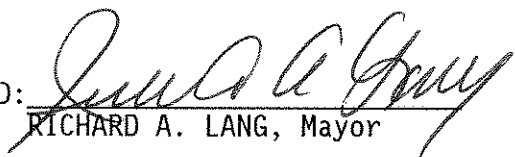
FINAL ADOPTION CLAUSE

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 October, 1998, Councilmember Friedman, moved its final adoption, which motion being duly seconded by Councilmember Dobbs, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Conrad, Dobbs, Fisher, Friedman, Serpa, Smith,  
Mayor Lang

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:   
JEAN ZAHR, City Clerk

Effective Date: November 26, 1998

Clerk

ORDINANCE NO. 3105 -C.S.

AN ORDINANCE AMENDING SECTION 2-7.06 OF CHAPTER 7 OF TITLE 2 OF THE MODESTO MUNICIPAL CODE RELATING TO DISPOSAL OF UNCLAIMED PROPERTY.

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

SECTION 1. AMENDMENT OF CODE. Section 2-7.06 of Chapter 7 of Title 2 of the Modesto Municipal Code is hereby amended to read as follows:

**2-7.06. UNCLAIMED PROPERTY TO BE USED BY CITY OR SOLD AT AUCTION.**

Upon expiration of the initial three-month period, any property so received and not delivered to the true owner or finder may be appropriated to the use of the City of Modesto upon order of the City Manager, and such property not appropriated to City use may be sold at public auction to the highest bidder. Notice of any such sale shall be given by the City Clerk at the direction of the Police Chief at least five (5) days before the time fixed therefor by publication at least once in a newspaper of general circulation published in the County of Stanislaus.

Notwithstanding any of the foregoing, any unclaimed toys or bicycles, or both, in the possession of the Modesto Police Department which have been deemed unclaimed pursuant to the provisions of Section 2-7.02, may, at the discretion of the City Manager upon the recommendation of the Police Chief, be repaired and turned over to the Stanislaus County Probation Department, or to the Stanislaus County Welfare Department, or to any charitable or nonprofit organization which is authorized under its articles of incorporation to participate in a program or activity designed to prevent juvenile delinquency and which is exempt from income taxation under federal or state law, or both, for use in any program or activity designed to prevent juvenile delinquency.

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

SECTION 3. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct

locations in the City; and a notice shall be published once in *The Modesto Bee*, the official newspaper of the City of Modesto, setting forth the title of this ordinance, the date of its introduction and the places where this ordinance is posted.

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 27th day of October, 1998, by Councilmember Friedman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Dobbs, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Conrad, Dobbs, Fisher, Friedman, Serpa, Smith, Mayor Lang

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:

  
RICHARD A. LANG, Mayor

ATTEST:

By Jean Zahr  
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

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

Ord. No. 3105-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 November, 1998, Councilmember Friedman, moved its final adoption, which motion being duly seconded by Councilmember Smith, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Conrad, Dobbs, Fisher, Friedman, Serpa, Smith,  
Mayor Lang

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:   
JEAN ZAHR, City Clerk

Effective Date: December 3, 1998

*Clack*

ORDINANCE NO. 3106 -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 of Modesto, 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 of Modesto without regard to use, date of construction or alterations.

**4-12.101. DEFINITIONS USED WITHIN THIS CHAPTER.**

- (a) **"Building/structure"** shall include, 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 Manager of the City of Modesto, 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"** Shall include 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) **"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) **"Hearing officer"** means the City's Deputy City Manager or any person appointed by the Deputy City Manager to preside over administrative enforcement hearings held pursuant to this chapter.
- (g) **"Person"** shall mean 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.
- (h) **"Property"** shall mean 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.

- (i) **"Property owner"** means the record owner of real property as listed in the most current equalized assessment role as maintained by the Stanislaus County Assessor.
- (j) **"Responsible party"** means any occupant, lessor, lessee, manager, licensee, or other person having control over a structure or parcel of land. A responsible party may be a property owner.
- (k) **"Violation"** shall mean a violation of Title 4 or Title 10 of this code by any property owner or any responsible party.
- (l) **"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.

## 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 of Modesto.
- (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 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.

#### **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 of Modesto 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. PROPERTY CONDITIONS CONSTITUTING A NUISANCE**

#### **4-12.300. 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 or others.

#### **4-12.301. ALLEYS.**

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 5-5.09. 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 of Modesto (Sections 4-7.1101 - 4-7.1108) are excluded from this section.

Any remedy utilized by the City of Modesto 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.

#### **4-12.302. SIDEWALK ENCROACHMENT.**

It shall be unlawful, and constitute 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.

#### **4-12.303. FENCES AND WALLS.**

It shall be unlawful, and constitute a public nuisance, to allow on property in public view within the City of Modesto, 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, as defined in Section 4-12.101(I).

#### **4-12.304. UNSECURED BUILDINGS.**

It shall be unlawful and constitute 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.

#### ARTICLE 4. NUISANCE VEGETATION AND JUNK

##### 4-12.400. DEFINITIONS.

- (a) As used in this article, "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 - 4-7.1108) are excluded from this definition;
  - (2) Any plant or grass, whether growing or dormant, which bears downy or winged seeds;
  - (3) Poison oak (*Rhus diversiloba*) or poison ivy (*Rhus toxicodendron*);
  - (4) Mistletoe (*Phoradendron flavescens*) or other parasitic or injurious growth capable of spreading to healthy trees and plants at any time during its germination or growth cycle;
  - (5) Puncture vine (*Tribulus terrestris*);
  - (6) 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;

- (7) Any tree or other vegetation which is dead, decayed, infected, diseased, infested with or in danger of becoming infested with, objectionable insects, 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 of Modesto (Sections 4-7.1101 - 4-7.1108) are excluded from this definition;
  - (8) 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;
  - (9) 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.
- (b) As used in this article, "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 (½) 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 longer 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 (½) 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 (½) 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 (½) of any continuous ten (10) day period.

#### **4-12.401. NUISANCE VEGETATION AND JUNK PROHIBITED.**

It is unlawful and shall constitute an abatable nuisance for any person owning, leasing, occupying, or having charge, control, or possession of any property in the City to maintain or permit to exist upon such property any nuisance vegetation or junk, regardless of the source or origin of such material.

#### **4-12.402. DUMPING PROHIBITED.**

- (a) It is unlawful and shall constitute an abatable nuisance for any person to abandon or dump any nuisance vegetation or junk upon public property, upon any public street, sidewalk, or alley, upon any private property, or on any wharf, waterway, or bank thereof in the City. The unauthorized leaving of nuisance vegetation or junk upon such property is unlawful and punishable as an infraction or misdemeanor.
- (b) It is unlawful for any person to abandon or dump any garbage, trash, rubbish, nuisance vegetation, or junk into any garbage container without the express permission or consent of the person owning or renting or having legal control of same.

#### **4-12.403. 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.

### **ARTICLE 5. REGULATION OF VACANT AND BOARDED BUILDINGS - PUBLIC NUISANCE**

#### **4-12.500. VACANT BUILDINGS - DECLARATION OF PURPOSE.**

The Council finds that neglected, vacant buildings are a major cause of blight in residential and non-residential neighborhoods. Vacant buildings often attract transients and criminals, including drug users and prostitutes. Use of vacant buildings by transients and criminals, who may employ primitive cooking or heating methods, creates a risk of fire for the vacant building and adjacent properties. Vacant properties are often used as dumping grounds for drug paraphernalia, furniture, tires, garbage, junk and debris and are often overgrown with weeds and grass creating a wide variety of health and safety concerns. In addition, vacant buildings which are simply boarded up for long periods of time with plywood or other materials to prevent entry by transients or vandals very often discourage economic development, disrupting

neighborhood stability, retarding appreciation of property values and promote visual blight conditions, all of which interfere with the rights of neighboring property owners and occupants to the full use and enjoyment of their property.

The City currently expends resources monitoring and responding to vacant buildings, because of the numerous health, welfare, safety and economic problems caused by neglected, vacant buildings. There is already a substantial cost to the City for monitoring neglected, vacant buildings (whether or not those buildings are boarded up) as well as substantial toll on the citizens who are affected by the nuisance conditions created, therefore the City Council finds there is an urgent need to refine the process by which these buildings are monitored and remediated.

#### **4-12.501. BOARDED BUILDINGS - DECLARATION OF PURPOSE.**

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

#### **4-12.502. VACANT BUILDING - DEFINED.**

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

#### **4-12.503. BOARDED BUILDING - DEFINED.**

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

#### **4-12.504. 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 a public nuisance.

#### **4-12.505. METHOD OF BOARDING.**

All windows, doors and openings shall be secured as per the board up specifications maintained by the City's Community Development Department.

All plywood used must be five-eighths (5/8) inch except the security door which shall be three-fourths (3/4) inch.

**4-12.506. 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 (1) 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,
  - (4) Maintenance of the building in continuing compliance with all applicable codes and regulations.

**4-12.507. 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 Building Official 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; or
  - (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.** 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.

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 Building Official within thirty (30) days after the billing is mailed to the owner. The Building Official shall review the written statement and may contact the owner to discuss the application for waiver. The Building Official shall prepare a written decision which shall be mailed to the owner.

Any owner who disagrees with the decision of the Building Official may submit a written notice of appeal to the Building Official within thirty (30) days of receipt of the decision. Failure to timely appeal the decision of the Building Official 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 California Code of Civil Procedure Section 1094.5.

If the fee is not paid within sixty (60) days after billing, or within sixty (60) days after the decision of the Building Official 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.

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 6. NUISANCE - CREATING BEHAVIORS**

### **4-12.600. FINDINGS.**

The City Council finds as follows:

- (a) Just as the physical conditions of properties within the City of Modesto 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 this ordinance exempts property owners from strict compliance with state housing law on evictions, retaliatory conduct or discriminatory conduct, or privacy.

**4-12.601. 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.

**4-12.602. APPLICATION.**

The provisions of this chapter shall apply generally to all property throughout the City of Modesto 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.

**4-12.603. 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.

**4-12.604. 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.

#### **4-12.605. 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.

#### **4-12.606. 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 7. DEFAACEMENT OF PROPERTY**

#### **4-12.700. 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.

#### **4-12.701. 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.

**4-12.702. 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.

**4-12.703. GRAFFITI PROHIBITED.**

- (a) It shall be unlawful for any person to apply graffiti upon any property within the City.
- (b) It shall be 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.

**4-12.704. 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.

**4-12.705. 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.

#### **4-12.706. 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.

**4-12.707. 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 lien 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 liened 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.

**4-12.708. 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 of Modesto 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.

**4-12.709. 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.

**4-12.710. 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.

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

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

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 27th day of October, 1998, by Councilmember Friedman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Dobbs, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Conrad, Dobbs, Fisher, Friedman, Serpa, Smith, Mayor Lang

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:

  
RICHARD A. LANG, Mayor

ATTEST:

By Jean Zahr  
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

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

Ord. No. 3106-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 November, 1998, Councilmember Friedman, moved its final adoption, which motion being duly seconded by Councilmember Smith, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Conrad, Dobbs, Fisher, Friedman, Serpa, Smith,  
Mayor Lang

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:   
JEAN ZAHR, City Clerk

Effective Date: December 3, 1998

BUS BENCH FRANCHISE ORDINANCE

ORDINANCE NO. 3107-C.S.

AN ORDINANCE GRANTING AN EXCLUSIVE FIVE-YEAR BUS BENCH FRANCHISE TO THE UNITED CEREBRAL PALSY ASSOCIATION, INC. OF STANISLAUS/TUOLUMNE COUNTIES 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 from the City and to maintain benches and to place and maintain printed matter or signs on benches at designated locations along the streets in the City of Modesto in accordance with the provisions of this Franchise.

(b) **Term/Termination for Convenience.** The term of the Franchise shall commence on January 1, 1999, and shall end no later than December 31, 2003. The City shall have the right to terminate the Franchise for convenience at any time by providing Grantee with written notice of such termination at least ninety (90) days in advance of the date of termination. Notice of termination of Franchise shall be in writing and may be served by regular United States mail. Service of notice of termination of Franchise for convenience shall be deemed complete upon the mailing of the notice to Sandra J. Elespuru-Bishop, 950 10th Street, Suite 8, Modesto, California 95354. Grantee is responsible for notifying the City in writing of any change of address. Failure of Grantee to give the City written notice of change of address shall not toll or otherwise prevent the commencement of the ninety (90) day notice period.

**SECTION 4. BENCH PARTS.** Grantee shall be responsible for the safe storage of spare benches and bench parts furnished to Grantee by the City. A list of benches and bench parts provided to Grantee by the CITY is included in Exhibit A. Grantee shall be responsible for the safe transportation of the spare benches and bench parts from the current storage location to Grantee's storage location.

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

For the right and privilege of leasing the benches, Grantee prior to January 1, 1999, shall pay to the City Eight Hundred and no/100ths dollars (\$800.00), 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 bus passenger shelters bearing printed matter or signs thereon at up to five locations within the City of Modesto selected by the City Manager or his designee. Where such shelters are placed, Grantee shall remove benches unless otherwise directed by the City Manager or his Designee.

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

(1) No printed matter other than bus schedules shall be placed on any benches erected and maintained adjacent to property zoned by the CITY as R-1, R-2 or as P-D where land use resembles an R-1 or R-2 Zone. The City Manager or his designee's determination of which P-D zoned properties resemble R-1 or R-2 zones shall be conclusive.

(2) For benches which have one-piece backrests, bus schedules, which will be supplied by CITY, shall be placed on the front of the bench backrest on every bus bench by

Grantee in the upper left or right hand corner of each bench in a space which measures ten (10) inches horizontally by eleven (11) inches vertically. CITY will also supply schedules to fit benches which use two (2) inch by six (6) inch boards for backrests. Bus schedules affixed to benches shall be appropriate for the routes served by the bus stop where the bench is located. Grantee shall place a clear plastic, plexiglass, or polycarbonate cover over the schedules to protect them from weathering and vandalism if said covering material is provided by CITY and after an experimental phase which Grantee and City agree successfully demonstrates that said coverings provide appropriate coverage of schedules. Said coverings shall be affixed to the bench backrest with tamper-resistant fittings provided by the CITY. Such coverings shall be replaced by Grantee as needed with covering material provided by City to keep them in "like-new" condition.

(3) Grantee shall submit, upon request, to the City Manager or designee copies of all ads proposed to be placed on benches for preplacement approval.

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

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

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

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

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

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

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

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

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

**SECTION 8. APPROVAL OF LOCATION.** Benches shall be placed, maintained, relocated, and removed as required by the City Manager or his designee. The benches contemplated are designed for the convenience of those using public transit buses in

the CITY and shall be placed only at locations designated as bus stops by the City Manager or his designee. One bench shall be maintained at each bus stop location where a bench is currently in place as of December 31, 1998, so long as a sufficient number of benches are available to do so. No bench shall be installed or maintained:

- (a) Without the express written approval of the proposed location of the bench by the City Manager or his designee;
- (b) In any alley;
- (c) At any location where the distance from the face of the curb to the property line is less than six feet (6'); provided that whenever, in the opinion of the City Manager or his designee, observance of this requirement would result in inconvenience or hardship, this requirement may be waived by the City Manager or his designee; or
- (d) At any location when the owner or the person in lawful possession or control of the property abutting upon the public street at the place where the bench is located, requests in writing to the City Manager or his designee that the bench not be placed or maintained at such location; provided that whenever in the opinion of the City Manager or his designee, observance of this requirement would result in inconvenience or hardship, this requirement may be waived by the City Manager.
- (e) At any location where a bus passenger shelter with advertising thereon is located, unless otherwise directed by the City.

**SECTION 9. RATIO OF BENCHES BETWEEN COMMERCIAL AND RESIDENTIAL AREAS.** For each seven (7) benches installed in areas where benches bearing printed matter or signs other than bus schedules are allowed, at least one bench shall

be installed in areas where benches bearing printed matter or signs other than bus schedules are not allowed. The specific locations of these latter benches shall be specified by the City Manager or his designee.

**SECTION 10. MAINTENANCE OF BENCHES.** All benches owned by the City, regardless of location inside or outside of the City of Modesto, must be cleaned regularly and when needed, and must be maintained in good repair in a safe and sightly condition. Benches shall be inspected and cleaned, as more particularly described in the following section, a minimum of at least once each week including removal of graffiti. Benches shall be cleaned more frequently as needed. The City Manager or his designee's determination as to the state of repair and condition shall be conclusive. Grantee shall inspect each bench periodically to assure full compliance with the provisions of this section. Grantee shall replace broken seat boards as necessary. Grantee shall provide replacement boards and hardware to secure replacement boards in place. Grantee shall utilize bench parts provided by CITY, if any, at beginning of franchise to replace those that are damaged. After the bench parts supplied by CITY at the initiation of this franchise are completely utilized, Grantee shall be responsible for supplying any additional bench parts needed at Grantee's expense. Replacement bench parts shall become the property of the CITY upon their placement within the street right-of-way at a bus stop. Grantee shall be responsible for transporting and installing new or replacement benches and disposing of destroyed benches.

**SECTION 11. CLEANING AROUND BENCHES.** Grantee shall, at least once each week and more often if needed, remove trash and other debris from within five (5) feet of each bench. The City Manager or his designee may specify up to twelve (12) bench

locations to be cleaned on a daily basis. Said twelve (12) specific locations may be changed weekly by the City Manager or his designee. The City Manager or his designee's decision as to the need for trash and debris removal shall be conclusive. Grantee shall inspect each bench location periodically to ensure full compliance with the provisions of this section.

**SECTION 12. PENALTY FOR IMPROPER MAINTENANCE AND CLEANING.** Each bench which has not been maintained, cleaned, or had graffiti removed as required in Section 10, or which has not had the area around it cleaned as required in Section 11 will subject Grantee to a penalty of Twenty and no/100ths Dollars (\$20.00) for each occurrence. Violation of this section shall be determined by the City Manager or his designee after Grantee has had opportunity to respond. A maximum of Two Hundred and no/100ths Dollars (\$200.00) in penalties under this section may be assessed by the CITY during any one calendar month. Penalties are due and payable to the CITY within fifteen (15) days of mailing of an invoice by CITY in the U.S. Mail. The invoice shall specify the bench numbers and locations which do not meet the cleaning and/or maintenance requirements.

**SECTION 13. TRASH RECEPTACLE.** At its sole discretion, CITY may install up to twenty (20) trash receptacles at bench locations selected by CITY. If CITY installs said receptacles, Grantee shall maintain up to twenty (20) of said receptacles in a safe and sanitary condition and empty said receptacles as necessary but not less than once each week. Plastic bags for said receptacles will be furnished by City. City will make available to Grantee a facility where Grantee can deposit, at no cost to Grantee, the litter which is collected from said receptacles.

**SECTION 14. REMOVAL OF BENCHES.** No bench after being installed on the streets or sidewalks of the CITY shall be removed by the Grantee during the term of this franchise except with the consent of the City Manager or his designee. Benches shall be moved or removed only as directed by the City Manager or his designee. The City Manager or his designee may, for a cause considered by him reasonable, order the Grantee to move or remove any bench. When the City Manager or his designee orders the bench moved or removed, the Grantee shall move or remove it within thirty (30) days at its own expense. If the Grantee shall fail to do so, the City Manager or his designee may order the removal of the bench, and in addition, bill the Grantee for the removal in a sum not in excess of Twenty-five and no/100ths Dollars (\$25.00) per bench.

**SECTION 15. LOCATION OF BENCHES AND BENCH SPECIFICATIONS.** All benches shall be placed on sidewalks parallel to the curb line and at a distance from the curb to be determined by the City Manager or his designee. No bench shall be placed so as to injuriously obstruct passage on the sidewalk or street. No bench shall be placed within fifteen feet (15') of any fire hydrant. The clearance between the bench and the nearest obstruction on the sidewalk shall be no less than forty-two inches (42"). No more than two benches may be placed at any one bus stop unless approved by the City Manager or his designee.

**SECTION 16. EMERGENCY SITUATIONS.** Grantee shall be present at the site of an emergency situation within one hour of verbal notification that such an emergency exists. An emergency is defined as damage to or unauthorized movement to a new location of a bench which presents a serious hazard to the public. If the City Manager or his

designee determine that an emergency situation exists, their determination shall be conclusive. Failure of Grantee to respond within the prescribed time limit shall result in a penalty of up to Fifty and no/100ths Dollars (\$50.00) for each failure to respond. Penalties are due and payable to the City within fifteen (15) days of mailing an invoice by the City in the U.S. Mail. CITY may, at its discretion, move the bench to a safe location pending arrival of Grantee.

**SECTION 17. INDEMNITY, INSURANCE AND HOLD HARMLESS.** The Grantee shall provide at its own expense and maintain at all times the following insurance with insurance companies licensed in the State of California and shall provide evidence of such insurance to the CITY as may be required by the City Clerk of the CITY. The policies or certificates thereof shall provide that, thirty (30) days prior to cancellation or material change in the policy, notices of same shall be given to the Risk Manager of the CITY by registered mail, return receipt requested, for all of the following stated insurance policies.

- A. Workers' Compensation - in compliance with the statutes of the State of California, plus employer's liability with a minimum limit of liability of \$500,000.
- B. General Liability insurance with a minimum limit of liability per occurrence of \$1,000,000 for bodily injury and \$100,000 for property damage or \$1,000,000 combined single limit. This insurance shall indicate on the certificate of insurance the following coverages and indicate the policy aggregate limit applying to: premises and operations; broad form contractual; independent contractors and subcontractors; products and completed operations; and/or professional liability.

- C. Automobile Liability insurance with a minimum limit of liability per occurrence of \$1,000,000 for bodily injury and \$100,000 for property damage or \$1,000,000 combined single limit. This insurance shall cover any automobile for bodily injury and property damage.
- D. Advertiser's Liability insurance with a minimum limit of liability per occurrence of \$1,000,000 for legal liability; damages resulting from libel, slander, or defamation; infringement of copyright, title or slogan; and invasion of rights to privacy.

If at any time any of said policies shall be unsatisfactory to the CITY, as to form or substance or if a company issuing such policy shall be unsatisfactory to the CITY, the Grantee shall promptly obtain a new policy, submit the same to the Risk Manager for approval and submit a certificate thereof as hereinabove provided. Upon failure of the Grantee to furnish, deliver or maintain such insurance and certificates as above provided, this Franchise, at the election of the CITY, may be forthwith declared suspended, or terminated. Failure of the Grantee to obtain and/or maintain any required insurance shall not relieve the Grantee from any liability under this Franchise, nor shall the insurance requirements be construed to conflict with or otherwise limit the obligations of the Grantee concerning indemnification. The CITY, its agents, officers, employees, and volunteers shall be named as an additional insured on all insurance policies required herein, except Workers' Compensation. The Workers' Compensation insurer shall agree to waive all rights of subrogation against the CITY, its agents, officers, employees, and volunteers for losses arising from work performed by Grantee for the CITY. The Grantee's insurance policy(ies) shall include a provision that

the coverage is primary as respects the CITY; shall include no special limitations to coverage provided to additional insured; and, shall be placed with insurer(s) with acceptable Best's rating of A:VII or with approval of the Risk Manager. The Grantee shall hold the CITY, its agents, officers, employees, and volunteers, harmless from and save, defend and indemnify them against any and all claims, losses, liabilities and damages from every cause, including but not limited to injury to person or property or wrongful death, with the indemnity to include reasonable attorney's fees, and all costs and expenses, arising directly or indirectly out of any act or omission of Grantee, whether or not the act or omission arises from the sole negligence or other liability of CITY, or its agents, officers, employees, or volunteers relating to or during the performance of its obligations under this Franchise.

**SECTION 18. PERFORMANCE BOND/SECURITY.** The Grantee shall post a performance bond or other surety approved by CITY'S City Attorney in the sum of Two Thousand and no/100ths to the CITY guaranteeing its performance of the conditions of this franchise and stating that the said sum shall be forfeited to the CITY as liquidated damages in the event that Grantee shall fail to perform the conditions of its franchise. Said bond shall be furnished by a surety company authorized to do business in the State of California and shall be approved by the City Attorney. (Cash, irrevocable letter of credit, or a certified cashiers check may be substituted for a bond.)

**SECTION 19. DEFAULT.** In the event that either party shall fail or neglect to do or perform each and all of the terms and conditions of this franchise on his or its part to be performed, the aggrieved party may give the party in default thirty (30) days' written notice to correct the conditions in default, and if the party in default refuses or neglects to make such

corrections within the thirty (30) day period, the aggrieved party may terminate this franchise. Should Grantee herein default, Grantee agrees to leave all benches in the positions approved per Section 9 herein.

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

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

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

**SECTION 22. PENALTY FOR VIOLATION OF SECTION 21.** It shall be unlawful for any person to violate the provisions of SECTION 21 of this franchise, or to cause, permit or suffer the same to be done; and any person who does shall be deemed guilty of a misdemeanor, and upon conviction of any such violation, such person shall be punished by a fine of not more than One Thousand and no/100ths Dollars (\$1,000.00) or by imprisonment for not more than one year or by both such fine and imprisonment.

**SECTION 23. TRANSFER OR ASSIGNMENT.** This franchise may not be sold, transferred, assigned or otherwise disposed of, in whole or in part, without the prior

written consent of the City Council. The Council may grant or deny any such request and may impose such conditions as it may deem to be in the public interest. Any attempted disposition made without such consent shall be void.

**SECTION 24. REPEALS.** Ordinance No. 3065-C.S. is hereby repealed effective January 1, 1999.

**SECTION 25. EFFECTIVE DATE.** This ordinance shall become effective January 1, 1999, or thirty (30) days from and after its final passage and adoption, whichever is later, provided that Grantee, prior to said effective date, shall have filed with the City Clerk written acceptance thereof and an agreement to be bound by and comply with all of the requirements thereof, and delivers to the City Clerk the bond and insurance policies required to be furnished pursuant to the provisions of Section 17 and 18 thereof.

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

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

**SECTION 28. CITY USE OF BENCHES.** Grantee shall make available to CITY, at no cost to 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 CITY to promote CITY programs or messages determined by CITY to be of importance to the public. CITY shall have the sole ability to select said twenty (20) locations. CITY shall be responsible for the cost of 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 CITY. Grantee shall have the ability to remove CITY signs from locations that may subsequently be purchased by advertisers but shall relocate displaced CITY signs to other locations selected by CITY.

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 27th day of October, 1998, by Councilmember Fisher, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Friedman, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Conrad, Dobbs, Fisher, Friedman, Serpa, Smith, Mayor Lang

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:   
RICHARD A. LANG, Mayor

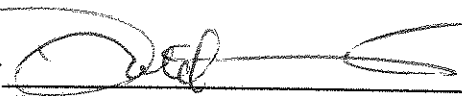
ATTEST:

By   
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

By   
DON NORRIS, Risk Manager

**EXHIBIT A**

**SPARE PARTS**

**INVENTORY**

## BUS BENCHES AND PARTS INVENTORY

EFFECTIVE – August 5, 1998

Complete Bus Benches on Street: 279

### Bus Bench Parts:

- 1 set metal frames for masonite bench backs
- 116 wood backs
- 24 masonite backs
- 1 ½ leg sets
- 10 replacement seat boards

Ord. No. 3107-C.S.

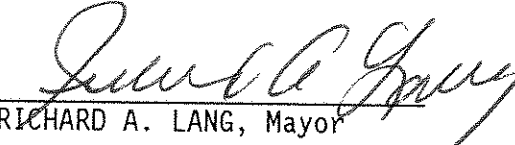
FINAL ADOPTION CLAUSE

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 November, 1998, Councilmember Friedman, moved its final adoption, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Conrad, Dobbs, Fisher, Friedman, Serpa, Smith, Mayor Lang

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:   
JEAN ZAHR, City Clerk

Effective Date: December 10, 1998

ORDINANCE NO. 3108 -C.S.

AN ORDINANCE AMENDING SECTION 2 OF ORDINANCE NO. 1566-C.S. ENTITLED "AN ORDINANCE AMENDING SECTION MAP 23-3-9 OF THE ZONING MAP OF THE CITY OF MODESTO, RECLASSIFYING CERTAIN PROPERTY LOCATED THEREON. (ST. PAUL'S EPISCOPAL CHURCH" AS PREVIOUSLY AMENDED BY ORDINANCE NOS. 1839-C.S., 2350-C.S., AND 2761-C.S. (DR. AND MRS. STANLEY HEINER, C/O NORMOYLE AND NEWMAN)

WHEREAS, the City Council, by Ordinance No. 1566-C.S., which became effective on February 2, 1977, amended Section 23-3-9 of the Zoning Map to reclassify from Low Density Residential Zone, R-1, to Planned Development Zone, P-D(147), property located on the northeast corner of Oakdale Road and St. Paul's Way, to allow a church, a business and professional office complex, a book store, and a 50-dwelling unit retirement center, and

WHEREAS, City Council Resolution No. 76-1344, which was adopted on December 20, 1976, approved a development plan for P-D(147) and contained the conditions of approval thereof, and

WHEREAS, Ordinance No. 1839-C.S., which became effective on July 26, 1979, amended Section 2 of Ordinance No. 1566-C.S. to allow utilization of the church facilities for a maximum 95 child day care nursery, increase the number of elderly housing units from 50 to 100 units, and inclusion of a bank or other financial institution in the professional office portion of said P-D Zone, and

WHEREAS, Ordinance No. 2350-C.S., which became effective on August 15, 1985, amended Section 2 of Ordinance No. 1566-C.S. to allow a private elementary school in existing church facilities, and

WHEREAS, Ordinance No. 2761-C.S., which became effective on June 6, 1991, amended Section 2 of Ordinance No. 1566-C.S. to allow a Wells Fargo Bank and an elderly housing project, and

WHEREAS, a verified application for an amendment to P-D(147) was filed by Dr. and Mrs. Stanley Heiner, c/o Normoyle and Newman on July 29, 1998, to include P-O, professional office uses on the Wells Fargo building portion of the site, property located at the southeast corner of Oakdale Road and Briggsmore Avenue at 1540 Oakdale Road, and

WHEREAS, a public hearing was held by the Planning Commission on September 21, 1998, in the City Council Chambers, City Hall, 801 11th Street, Modesto, California, at which hearing evidence both oral and documentary was received and considered, and the Planning Commission, by its Resolution No. 98-54, approved the P-O, professional office uses on the Wells Fargo building portion of the site for the following reasons:

1. That the conversion of the existing Wells Fargo building for professional office uses will be compatible with other uses allowed in P-D(147) and with the surrounding neighborhood.
2. That the planned development zone is within the Baseline Developed area in an area designated for (MU) Mixed Use which includes provision for professional offices within the mix of allowed uses.

and

WHEREAS, said matter was set for a public hearing before the City Council at its regular meeting place in the Council Chambers in the City Hall, 801 11th Street, Modesto, California, at 4:00 p.m. on October 27, 1998,

NOW, THEREFORE, BE IT RESOLVED that the Council of the City of Modesto does ordain as follows:

SECTION 1. COUNCIL FINDINGS. After hearing evidence, both oral and documentary, the Council finds and determines that the requested amendment to P-D(147) to include P-O, professional office uses on the Wells Fargo building portion of the site is required by public necessity, convenience, and general welfare for the reasons set forth in Planning Commission Resolution No. 98-54 and quoted above.

SECTION 2. AMENDMENT OF ORDINANCE NO. 1566-C.S. Section 2 of Ordinance No. 1566-C.S. as previously amended by Ordinance Nos. 1839-C.S., 2350-C.S., and 2761-C.S., is hereby amended to read as follows:

"SECTION 2. USES. The following uses shall be permitted in said P-D(147) Zone if the plan for construction conforms in principle to the approved plan, or if changes are approved by the Secretary of the Planning Commission as required by Section 10-2.1709(c) of the Modesto Municipal Code, or by the Planning Commission if any changes not conforming in principle to the approved plan are proposed, as required by Section 10-2.1709(a) or (b) of the Modesto Municipal Code:

1. A church facility.
2. Utilization of church facilities for a maximum 95-child day care establishment.
3. Utilization of church facilities for a private K-6 elementary school.
4. A book store; child ministries office space.

5. A bank or financial institution.
6. An elderly housing complex.
7. Professional office uses.”

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.

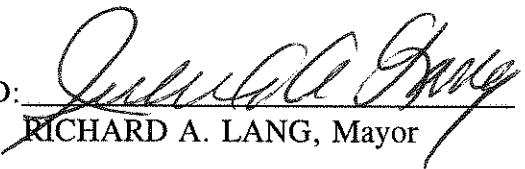
SECTION 4. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in *The Modesto Bee*, the official newspaper of the City of Modesto, setting forth 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 27th day of October, 1998, by Councilmember Friedman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Conrad, Dobbs, Fisher, Friedman, Serpa, Smith, Mayor Lang

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:

By   
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

Ord. No. 3108-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 November, 1998, Councilmember Friedman, moved its final adoption, which motion being duly seconded by Councilmember Smith, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Conrad, Dobbs, Fisher, Friedman, Serpa, Smith, Mayor Lang

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:   
JEAN ZAHR, City Clerk

Effective Date: December 3, 1998

*Clubb*

ORDINANCE NO. 3109-C.S.

AN ORDINANCE ADOPTING A PRECISE PLAN FOR AREA NO. 11 OF THE VILLAGE ONE SPECIFIC PLAN, RELATING TO PROPERTY LOCATED ON THE SOUTH SIDE OF HILLGLEN AVENUE WEST OF FINE ROAD. (KAUFMAN AND BROAD)

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

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

WHEREAS, an application has been filed by Kaufman and Broad for a Precise Plan for Area No. 11, property located on the south side of Hillglen Avenue west of Fine Road, and

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

WHEREAS, a public hearing was held by the Planning Commission of the City of Modesto on November 2, 1998, in the City Council Chambers, City Hall, 801 11th Street, Modesto, and

WHEREAS, after considering public comments, the Planning Commission, by Resolution No. 98-66, recommended to the City Council approval of a Precise Plan for Area No. 11 of the Village One Specific Plan, and an Amendment to Section 12-3-9 of the Zoning

Map to rezone from a Specific Plan-Holding Zone, SP-H, to Specific Plan-Overlay Zone, SP-O, and

WHEREAS, said matter was set for a public hearing of the City Council of the City of Modesto to be held on November 24, 1998, at 4:00 p.m., in the City Council Chambers, City Hall, 801 11th Street, Modesto, and

WHEREAS, the Council declares that said Precise Plan fore Area 11 of the Village One Specific Plan and rezoning to SP-O Overlay Zoning is required by public necessity, convenience, and general welfare for the following reasons:

1. The proposed Precise Plan for Area No. 11 conforms to the Village One Specific Plan.
2. The proposed Precise Plan for Area No. 11 is necessary as an integral step toward development under the Village One Specific Plan.

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

SECTION 1. APPROVAL OF PRECISE PLAN. That the City Council has reviewed and considered the Precise Plan for Area No. 11 of the Village One Specific Plan and rezoning of the Specific Plan-Holding Zone, SP-H, to the Specific Plan-Overlay Zone, SP-O, as recommended by the Planning Commission, and the Council does hereby approve said Precise Plan, a copy of which is on file in the City Clerk's Office.

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

SECTION 3. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct

locations in the City; and a notice shall be published once in *The Modesto Bee*, the official newspaper of the City of Modesto, setting forth the title of this ordinance, the date of its introduction and the places where this ordinance is posted.

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 24th day of November, 1998, by Councilmember Dobbs, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Friedman, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Conrad, Dobbs, Fisher, Friedman, Serpa, Smith,  
Mayor Lang

NOES: Councilmembers: None

ABSENT: Councilmembers: None


APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:

By   
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

Ord. No. 3109-C.S.

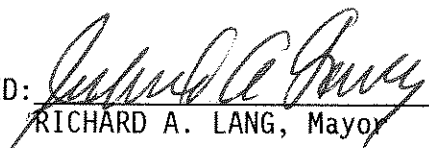
FINAL ADOPTION CLAUSE

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 December, 1998, Councilmember Friedman, moved its final adoption, which motion being duly seconded by Councilmember Dobbs, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Conrad, Dobbs, Fisher, Friedman, Serpa, Smith,  
Mayor Lang

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:   
JEAN ZAHR, City Clerk

Effective Date: January 7, 1999

Clerk

ORDINANCE NO. 3110-C.S.

AN ORDINANCE REZONING VILLAGE ONE PROPERTY FROM SPECIFIC PLAN-HOLDING ZONE, SP-H, TO SPECIFIC PLAN-OVERLAY ZONE, SP-O, FOR PROPERTY LOCATED ON THE SOUTH SIDE OF HILLGLEN AVENUE WEST OF FINE ROAD. (PRECISE PLAN FOR AREA NO. 11 - KAUFMAN AND BROAD)

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

WHEREAS, an application has been filed by Kaufman and Broad for a Precise Plan for Area No. 11, property located on the south side of Hillglen Avenue west of Fine Road, and

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

WHEREAS, after a public hearing held on November 2, 1998, it was found and determined by the Planning Commission that rezoning of the property as requested is required by public necessity, convenience and general welfare, and

WHEREAS, by Resolution No. 98-66, adopted November 2, 1998, the Planning Commission recommended that the application of Kaufman and Broad to rezone Village One property from Specific Plan-Holding Zone, SP-H, to Specific Plan-Overlay Zone, SP-O, for property located on the south side of Hillglen Avenue west of Fine Road be approved, and

WHEREAS, said matter was set for a public hearing of the City Council to be held on November 24, 1998, at 4:00 p.m., in the City Council Chambers, City Hall, 801 11th Street, Modesto, California, at which date and time said duly noticed public hearing of the Council was held and evidence both oral and documentary was received and considered,

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

SECTION 1. After a public hearing held on November 24, 1998, in the Council Chambers, City Hall, 801 11th Street, Modesto, California, this Council finds and determines that the requested rezoning is in accordance with the General Plan and will serve the public health, safety and general welfare and provide the economic and social advantages resulting from orderly, planned use of land resource for the following reasons:

1. The proposed rezoning conforms to the Village One Specific Plan.
2. The proposed rezoning is necessary as an integral step toward development under the Village One Specific Plan.

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

SP-H to SP-O, PPA 11

Being a portion of the southeast quarter of Section 12, Township 3 South, Range 9 East, Mount Diablo Base and Meridian, situate in the City of Modesto, County of Stanislaus, State of California, more particularly described as follows:

BEGINNING at a point that bears South 00°16'58" East, 1275.13 feet along the west line of the southeast quarter of said section 12; thence North 89°49'19" East, 1317.81 feet to the east line of the northwest quarter of the said southeast

quarter of section 12; thence South 00°14'31" East, along last said line, a distance of 1374.10 feet to a point on the southerly line of said section 12; thence along said southerly line South 89°49'52" West, 1316.83 feet to the south quarter corner of said section 12; thence along the west line of the southeast quarter of said section 12, North 00°16'58" West to the point of beginning.

Containing 41.55 acres more or less.


SECTION 3. ZONING MAP. Section 12-3-9 of the Zoning Map of the City of Modesto is amended to appear as set forth on the map attached hereto, which is hereby made a part of this ordinance by reference.

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

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

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 24th day of November, 1998, by Councilmember Dobbs, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Friedman, was upon roll call carried and ordered printed and published by the following vote:

- AYES: Councilmembers: Conrad, Dobbs, Fisher, Friedman, Serpa, Smith, Mayor Lang
- NOES: Councilmembers: None
- ABSENT: Councilmembers: None

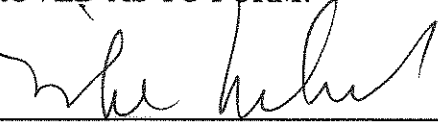
APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:

By   
JEAN ZAHR, City Clerk

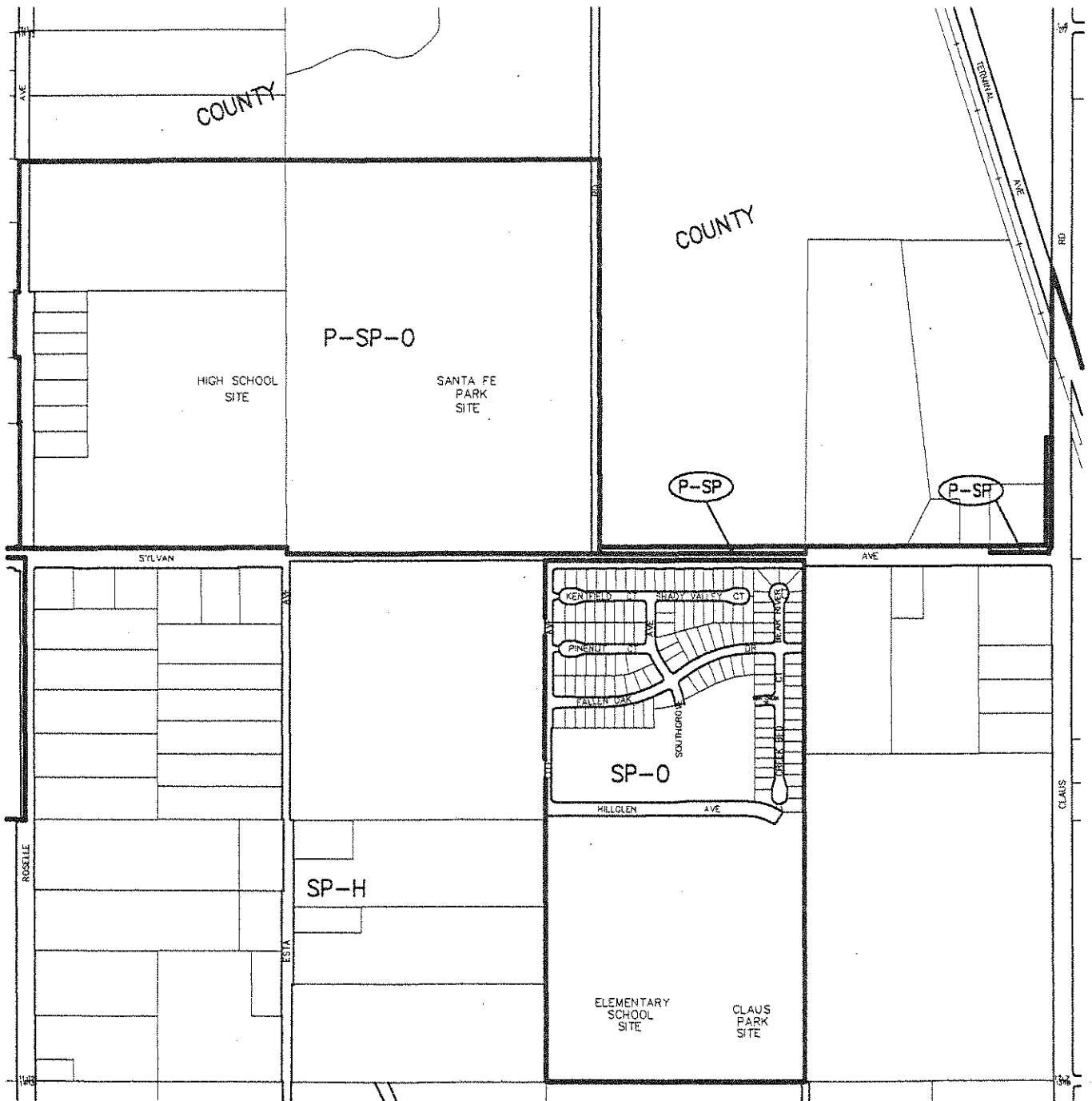
(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

APPROVED AS TO DESCRIPTION:

By   
Community Development Department  
Development Services



ZONING MAP OF THE CITY OF MODESTO

12-3-9

Ord. No. 3110-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 December, 1998, Councilmember Friedman, moved its final adoption, which motion being duly seconded by Councilmember Dobbs, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Conrad, Dobbs, Fisher, Friedman, Serpa, Smith, Mayor Lang

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:   
JEAN ZAHR, City Clerk

Effective Date: January 7, 1999

ORDINANCE NO. 3111-C.S.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF  
MODESTO AUTHORIZING THE LEVY OF A SPECIAL TAX  
WITHIN COMMUNITY FACILITIES DISTRICT NO. 1998-2  
(CARVER-BANGS/PELANDALE-SNYDER)

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

WHEREAS, on November 3, 1998, the City Council of the City of Modesto ("City"), State of California (the "Council"), adopted its Resolution No. 98-582 (the "Resolution of Intention to Establish the District") stating its intention to form Community Facilities District No. 1998-2 of the City of Modesto (the "District") for the purpose of financing the costs of certain public facilities (the "Facilities") and services (the "Services") specified in the Resolution of Intention to Establish the District pursuant to Chapter 2.5 of Part 1 of Division 2 of Title 5 (commencing with Section 53311) of the California Government Code, commonly known as the "Mello-Roos Community Facilities Act of 1982" (the "Act"), and

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

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

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

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

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

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

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

SECTION 2. By the passage of this Ordinance, a special tax is hereby levied by this Council at the rate, manner and method of apportionment set forth in Exhibit "A" attached hereto and incorporated by reference herein, being the rate, manner and method of apportionment

specified in the Resolution of Formation. The special taxes are hereby levied commencing in fiscal year 1998-1999 and in each fiscal year thereafter, unless reduced by subsequent resolution of this Council, at the Maximum Special Tax rate described in Exhibit "A" hereto.

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

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

SECTION 5. All of the collections of the special tax shall be used as provided for in the Act and the Resolution of Formation. The special tax shall be levied only so long as needed for its purpose as described in the Resolution of Intention to Establish the District and the Resolution of Formation.

SECTION 6. The special tax shall be collected in the same manner as ordinary ad valorem property taxes are collected and shall be subject to the same penalties and the same procedure, sale, and lien priority in case of delinquency as is provided for ad valorem taxes, as such procedure may be modified by law from time to time.

SECTION 7. Notwithstanding anything in this ordinance or in Exhibit "A" to the Resolution of Formation (Rate, Method, and Manner of Apportionment of Special Tax), to the contrary, persons or entities advancing funds, providing land or constructing or furnishing facilities contemplated in the Public Report may be permitted a direct credit or credits, as appropriate, against the Facilities Special Tax described in Exhibit "A" to the Resolution of Formation. In the case of oversubscription, cash for the amount of the oversubscription may be paid to such provider(s), as cash becomes available to the District through facility tax collection. Oversubscription is the furnishing of land or facilities whose total value as set forth in the Public Report exceeds the total facility taxes attributable to the furnisher(s) entire development within the District. The gross amount of the credit will be the facilities cost estimate in the Public Report, as that report may be amended or adjusted for inflation from time to time, irrespective of the actual cost of the facility to the developer. When determining the net amount of the credit, the facilities cost estimate in the Public Report shall be reduced by any non-prepaid costs or incidental costs as defined in the Act, Section 53317(c) and (e), by means of a cash administrative cost offset against the above-described gross credits. The administrative offset shall be specified in the final Public Report applicable to the District. The cash offset shall be payable by landowners having such credits at the time they would otherwise be required to pay their facilities taxes. The District also shall be compensated from available tax monies for money and services advanced by it for the acquisition, purchase, modification, expansion, improvement, rehabilitation, maintenance, leasing and/or construction of any or all of the facilities, all in accordance with and subject to the Act (including without limitation, Section

53314.9 of the Act), the Resolution of formation of the District, the Policies and Procedures, the Public Report and other applicable law.

In no event shall reimbursable advances or work-in-kind become either a debt of the City, or a debt in excess of actual facility tax receipts, of the District. All such reimbursement shall only be made or had pursuant to a valid, executed facility/services acquisition agreement in a form approved by the District Administrator. With the approval of the District Administrator, tax credits may be furnished to a landowner to offset taxes otherwise due if the landowner has furnished work-in-kind which has not yet received a notice of completion. Notwithstanding the previous sentence, such discretionary credits shall be fully reimbursable to District in cash in the event that the applicable facilities acquisition agreement is not executed and fulfilled by the provider, or if that provider does not receive a notice of completion from the District Engineer.

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

SECTION 8. EFFECTIVE DATE. This Ordinance shall be effective after thirty (30) days from its final passage and adoption.

SECTION 9. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in

the City; and a notice shall be published once in The Modesto Bee, the official newspaper of the City of Modesto, setting forth the title of this ordinance, the date of its introduction and the places where this ordinance is posted.

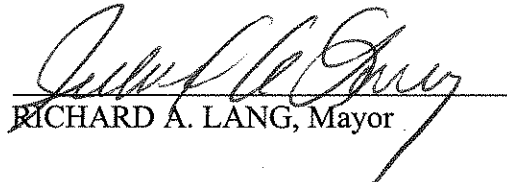
The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 8th day of December, 1998, by Councilmember Friedman, who moved its introduction and passage to print, which motion being duly seconded by Mayor Lang, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Conrad, Friedman, Serpa, Smith, Mayor Lang

NOES: Councilmembers: None

ABSENT: Councilmembers: Dobbs, Fisher

APPROVED:

  
RICHARD A. LANG, Mayor

ATTEST:

By:   
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By:   
MICHAEL D. MILICH, City Attorney

Ord. No. 3111-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the special meeting of the Council of the City of Modesto held on the 15<sup>th</sup> day of December, 1998, Councilmember Friedman, moved its final adoption, which motion being duly seconded by Mayor Lang, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Conrad, Friedman, Serpa, Smith, Mayor Lang

NOES: Councilmembers: None

ABSENT: Councilmembers: Dobbs, Fisher

APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:   
JEAN ZAHR, City Clerk

Effective Date: January 14, 1999

**EXHIBIT A**

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

# Exhibit "A"

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

---

RATE AND METHOD OF APPORTIONMENT OF SPECIAL TAX AND REIMBURSEMENTS

---

A special tax applicable to each Assessor's Parcel in Community Facilities District No. 1998-2 (herein "CFD No. 1998-2") shall be levied and collected according to the tax liability determined by the City Council of the City of Modesto, through the application of the appropriate amount or rate for Taxable Property, as described below. All of the property in CFD No. 1998-2, unless exempted by law or by the provisions of Section F below, shall be taxed for the purposes, to the extent, and in the manner herein provided, including property subsequently annexed to CFD No. 1998-2 unless a separate Rate and Method of Apportionment of Special Tax and Reimbursements is adopted for the annexation area.

A. DEFINITIONS

The terms hereinafter set forth have the following meanings:

"Acre or Acreage" means the land area of an Assessor's Parcel as shown on an Assessor's Parcel Map, or if the land area is not shown on an Assessor's Parcel Map, the land area shown on the applicable Final Map, parcel map, or other recorded County parcel map.

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

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

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

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

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

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

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

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

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

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

**“City”** means the City of Modesto.

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

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

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

**“Final Map”** means a final map, or portion thereof, approved by the City pursuant to the Subdivision Map Act (California Government Code Section 66410 *et seq.*).

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

**"Maintenance Special Tax Requirement"** means the amount necessary in any Fiscal Year to (i) pay for authorized maintenance expenses, (ii) pay administrative expenses of CFD No. 1998-2, and (iii) cure any delinquencies in the payment of Annual Maintenance Special Taxes levied in prior Fiscal Years or (based on delinquencies in the payment of Special Taxes which have already taken place) are expected to occur in the Fiscal Year in which the tax will be collected.

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

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

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

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

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

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

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

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

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

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

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

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

## B. ANNUAL MONITORING

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

## C. MAXIMUM SPECIAL TAX

### 1. *Facilities Special Tax*

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

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

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

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

## **2. *Annual Maintenance Special Tax***

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

CITY OF MODESTO  
 COMMUNITY FACILITIES DISTRICT NO. 1998-2  
 (CARVER-BANGS/PELANDALE-SNYDER)  
 FISCAL YEAR 1998-99 MAXIMUM ANNUAL MAINTENANCE SPECIAL TAX\*

<i>Land Use Type</i>	<i>Tax Area A (Carver-Bangs)</i>	<i>Tax Area B (Pelandale-Snyder)</i>
Single Family	\$118 per unit	\$92 per unit
Multi-Family	\$945 per Acre	\$733 per Acre
Non-Residential	\$945 per Acre	\$733 per Acre

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

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

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

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

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

On an Ongoing Basis

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

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

When a Final Map is Approved by the City Council:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**1. Facilities Special Tax**

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

**2. Annual Maintenance Special Tax**

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

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

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

- Step 3:* If the ratio determined in Step 2 is greater than or equal to 1, levy the maximum Annual Maintenance Special Tax determined pursuant to Section C.2 on all Subdivided Property in the CFD. If the ratio determined in Step 2 is less than 1, continue to Step 4.
- Step 4:* If the ratio determined in Step 2 is less than 1, levy the maximum Annual Maintenance Special Tax against all Parcels of Subdivided Property in equal percentages up to 100% of the maximum Annual Maintenance Special Tax determined pursuant to Section C.2 above until the amount so levied equals the Maintenance Special Tax Requirement for the Fiscal Year.

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

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

#### F. LIMITATIONS

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

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

#### G. ENFORCEMENT

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

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

CAFILES\WPWINMODESTO\CRVRBNGS\IRMA6.CLN

## ATTACHMENT 1

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

#### First Priority

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

#### Second Priority

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

#### Third Priority

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

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

#### Fourth Priority

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

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

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

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

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

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

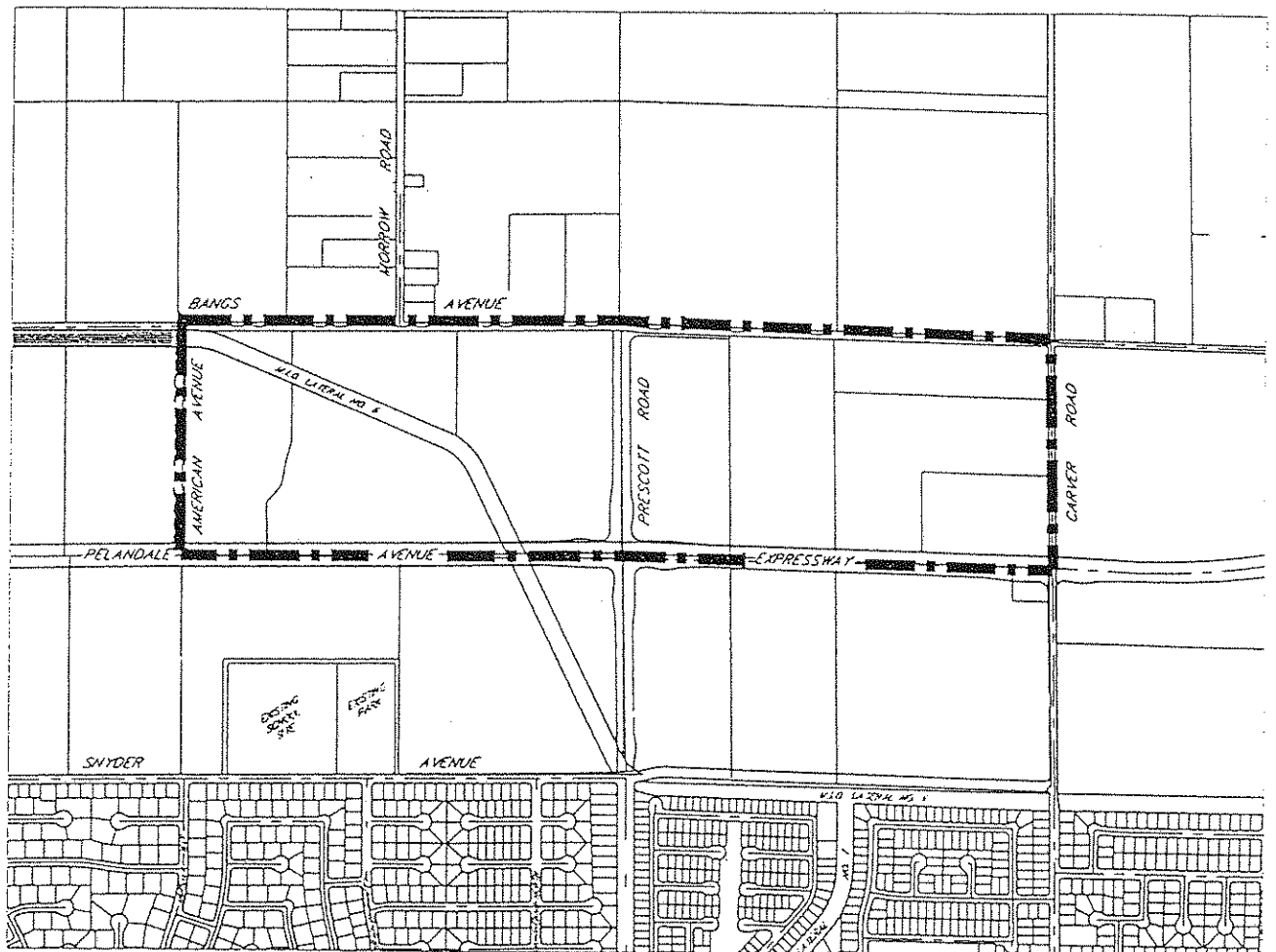
	Carver- Bangs	Pelandale- Snyder
Infrastructure Costs, other than Storm Drainage	\$986,097	\$3,043,306
Plus: Administration 7.00%	<u>\$69,027</u>	<u>\$213,031</u>
Subtotal, Costs other than Storm Drainage	\$1,055,124	\$3,256,337
Storm Drainage Costs	\$1,494,750	\$4,389,042
Plus: Administration 7.00%	<u>\$104,633</u>	<u>\$307,233</u>
Subtotal, Storm Drainage Costs	\$1,599,383	\$4,696,275
<b>Total Costs Assigned to Tax Area</b>	<b>\$2,654,506</b>	<b>\$7,952,612</b>
Total Net Acreage Contributing to Non-Drainage Facilities	137.44	298.40
One-Time Special Tax per Net Acre for non-Drainage	\$7,677	\$10,913
Total Net Acreage Contributing to Storm Drainage	137.44	317.73
One-Time Special Tax per Net Acre for Storm Drainage	\$11,637	\$14,781

Assessor Parcel No.	Property Owner	Net Acreage	1998 Maximum Facilities Special Tax/1
<i>Tax Area A. Carver-Bangs</i>			
78 12 02	Calvary Chapel	0.89	\$17,189
78 18 23	Calvary Chapel	14.19	\$274,065
78 18 24	William Han	28.90	\$558,173
78 18 14	Lowry, Luscher, Donovan	22.60	\$436,495
46 07 15	Kaufman & Broad	16.39	\$316,555
46 07 16	Elaine Fowler	18.11	\$349,775
46 07 18	Ronald Malik	8.75	\$168,997
46 07 19	Ronald Malik	19.30	\$372,759
46 07 20	Ronald Malik	<u>8.31</u>	<u>\$160,499</u>
<i>Total, Carver-Bangs</i>		<i>137.44</i>	<i>\$2,654,506</i>
<i>Tax Area B. Pelandale-Snyder</i>			
78 18 06	TRS Enterprises	35.45	\$910,830
78 18 7	Vossoughi Investments	18.67	\$479,695
78 18 22	Rodney K. Lowe, Inc.	18.35	\$471,473
78 18 28	Corn-Harris Development	20.62	\$529,797
78 18 12	Resource Development	24.08	\$618,696
46 07 17	Marlene Johnston, et. al.	16.22	\$416,746
46 07 11	Verna Mae Johnson Trust	17.95	\$461,196
46 07 12	William P. Couture	35.65	\$915,969
46 07 22	Red Rock Ranch	13.05	\$335,298
46 07 09	Walker Family Partnership	26.90	\$691,152
46 07 07	Resource Development	13.89	\$356,881
46 07 06	Resource Development	4.58	\$117,676
46 07 08	Brent & Diana Holtz	18.62	\$478,411
46 03 02	Big Valley Grace Comm. Church	7.20	\$184,992
46 03 06	Big Valley Grace Comm. Church	9.07	\$233,039
46 03 07	Big Valley Grace Comm. Church	18.10	\$465,050
46 03 09	Big Valley Grace Comm. Church	<u>19.33</u>	<u>\$285,711</u>
<i>Total, Pelandale-Snyder</i>		<i>317.73</i>	<i>\$7,952,612</i>

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

*COMMUNITY FACILITIES DISTRICT NO. 1998-2*

*TAX AREA "A"*



Drawn	J.R.M.
Date	10-14-98
Scale	
Job No.	71-159.16
Dwg.	TAX-A

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

---

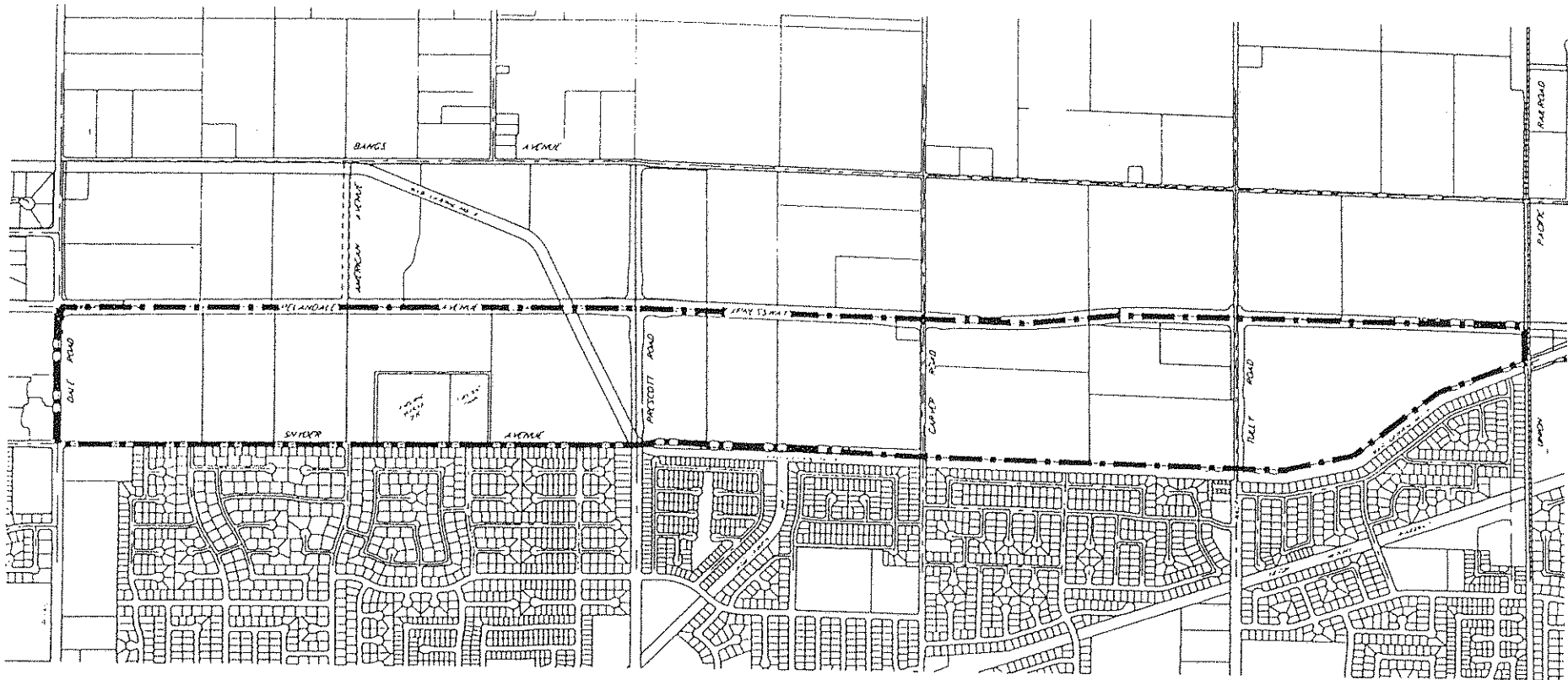
*ATTACHMENT 3A*

900 H ST. STE. G, MODESTO, CALIFORNIA, 95354  
(209) 526-4214

FAX (209)	526-0803
SHEET	1
OF	1

COMMUNITY FACILITIES DISTRICT NO. 1998-2

TAX AREA "B"



Drawn	JRM
Date	10-14-98
Scale	
Job No	71-15916
Dwg	TAX-B

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

ATTACHMENT 3B



900 H ST. STE. C, MOESTO, CALIFORNIA, 95354  
(209) 526-4214

FAX (209)  
526-0803

SHEET

1  
OF 1

*Shank*

ORDINANCE NO. 3112 -C.S.

AN ORDINANCE AMENDING ARTICLE 21 OF CHAPTER 2  
OF TITLE 10 OF THE MODESTO MUNICIPAL CODE  
RELATING TO SIGN REGULATIONS.

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

SECTION 1. AMENDMENT OF CODE. Article 21 of Chapter 2 of Title 10  
of the Modesto Municipal Code is hereby amended to read as follows:

**ARTICLE 21. SIGN REGULATIONS**

**10-2.2101 - PURPOSE.**

This article establishes uniform regulations for signs within the City of Modesto. These sign regulations are intended to provide minimum standards to safeguard life, health, property and public welfare in keeping with the character of the City of Modesto, by regulating and controlling the size, height, structural design, quality of materials, construction, location, lighting and maintenance of all signs and sign structures. The purposes of these sign regulations are also to:

- (a) Encourage signs which are well designed and pleasing in appearance, and to provide incentive and latitude for variety, good design relationship, spacing and location;
- (b) Provide a reasonable and comprehensive system of controls of signs;
- (c) Encourage a desirable urban character which has a minimum of overhead clutter;
- (d) Attract and direct persons to various activities and enterprises in order to provide for commerce and the maximum public convenience;
- (e) Enhance the economic value of the community and each area of it through the regulation of size, location, design and illumination of signs;
- (f) Protect and enhance the character of residential neighborhoods and property values by prohibiting obtrusive and incompatible signs; and

- (g) Promote and maintain healthy commercial centers and property values, to effectively communicate the nature of goods and services, and to avoid wasteful, ugly and unsightly competition in signs.

#### 10-2.2102. DEFINITIONS.

The following are definitions of specialized terms and phrases used in this article. These definitions are organized in alphabetical order.

- (a) **A-frame sign.** A temporary, freestanding sign, consisting of two (2) message panels attached by a hinge or similar device along their top edge, which is placed on the ground with the base of each panel separated by a sufficient distance to allow the sign to stand upright without other support. For the purposes of this definition, A-frame signs include single message panels that are mounted on a wood or metal base which provides the stability and support necessary for the sign to stand upright without attachment to a structure. See Figure 21-1.

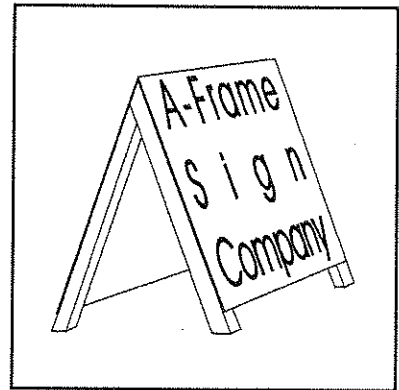


FIGURE 21-1  
A-FRAME SIGN

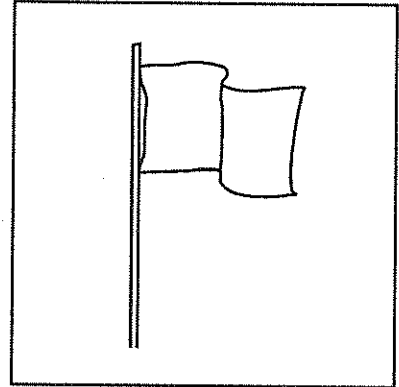
- (b) **Area of a sign.** See Section 10-2.2110(a).
- (c) **Balloon.** For the purposes of this Sign Ordinance, a round, inflated object with a diameter not exceeding twenty-four (24) inches used as a promotional decoration. Larger inflated objects are not regulated by this article, but are instead subject to Section 10-2.1009 of Code. See also "Promotional Decorations."
- (d) **Banner.** A temporary sign consisting of a piece of fabric or plastic carrying an advertising message, usually hung on a wall or suspended between two (2) poles, buildings, or other structures.
- (e) **Bench sign.** A City-franchised outdoor bus bench to which an advertising message is applied.
- (f) **Block frontage.** A block frontage is an area of one (1) or more privately owned parcels along a public street that is bounded by two (2)

streets, or a street and a MID or TID canal, railroad right-of-way, or the Hetch Hetchy Right-of-Way.

- (g) **Bulletin board.** A sign used to announce a coming event or attraction, or used to convey a specific message related to the site where the bulletin board is located.
- (h) **BZA.** The City of Modesto Board of Zoning Adjustments.
- (i) **Canopy.** A roof of a building or a fixed overhead shelter used as a roof, which may or may not be attached to a building and which does not encroach into nor overhang a public street or alley right-of-way.
- (j) **Canopy sign.** A sign attached to or hung from a canopy. See Figure 21-3.
- (k) **Combined business identification sign.** A freestanding sign for a business area in lieu of several exterior directional signs. A business area is defined as:
  - (1) A block frontage along a street bounded by two (2) streets or a street and an MID or TID canal, or railroad right-of-way, or the Hetch Hetchy Right-of-Way; and
  - (2) A block frontage as defined above with six (6) or more businesses.
- (l) **Construction sign.** A sign with the names of the architects, engineers, contractors, subcontractors and financing agencies of buildings and structures being constructed upon the site on which the sign is located.
- (m) **Corporate flag.** A flag identifying a business or firm.
- (n) **Directional sign.** One (1) of two (2) types of signs located on the same site the sign is intended to serve:
  - (1) An exterior directional sign is oriented to a street and used to direct and control pedestrian or vehicular traffic; and
  - (2) An interior directional sign is a directional, warning, or informational sign not bearing any advertising message readable from any street right-of-way.

(o) **Fee Resolution.** A resolution of the City Council establishing fees for the filing and processing of sign permits, as it may be amended from time-to-time.

(p) **Flag.** A generally rectangular piece of fabric, normally attached to a support along one of its edges, and marked with distinctive colors or designs, and/or text. See Figure 21-2. See also "Streamer."



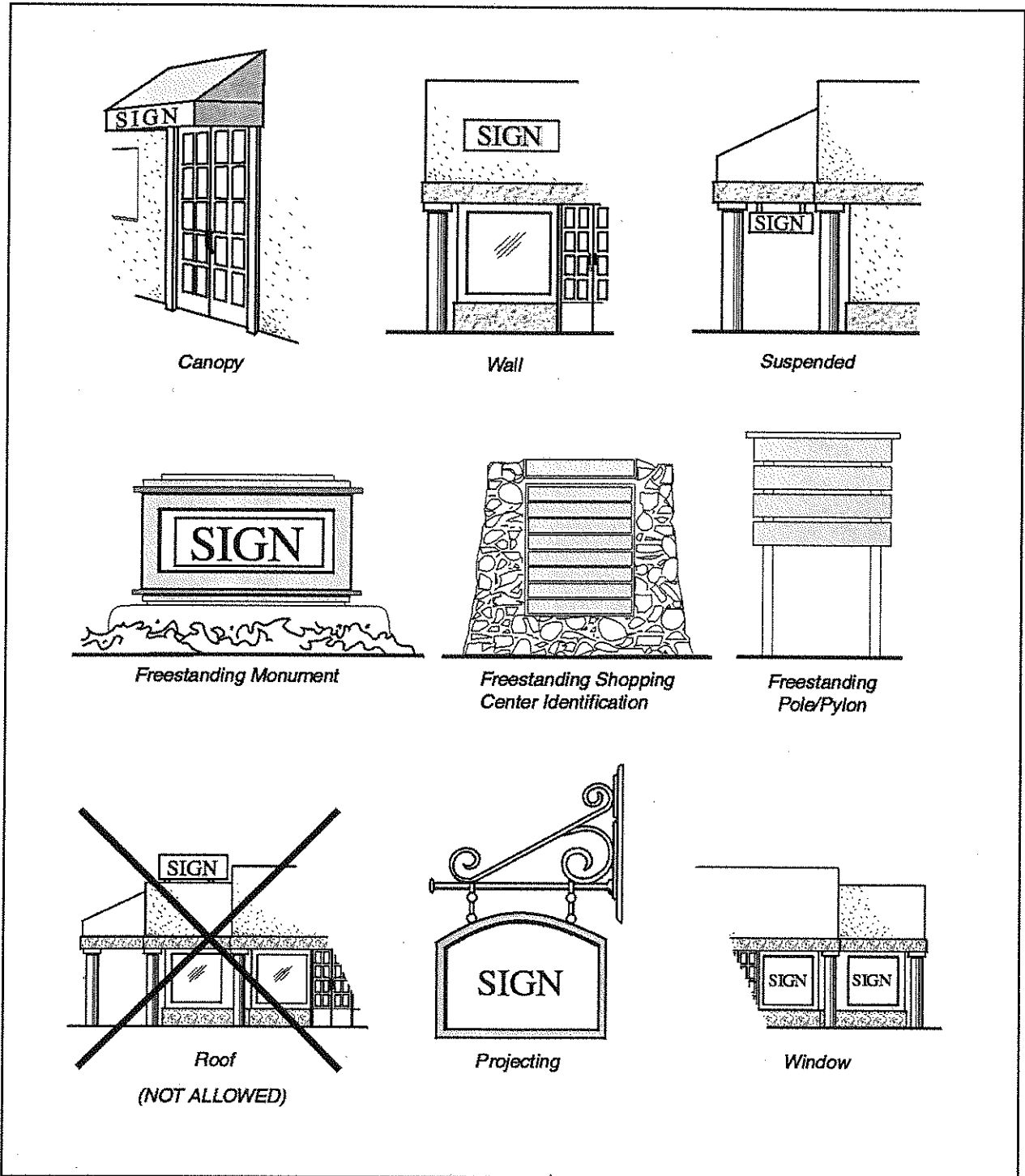
(q) **For sale or rent sign.** A sign advertising that the subject building, site or portions of the building or site are for sale, rent or lease.

(r) **Freestanding sign.** A sign detached from any building or structure, with its structural supports permanently attached to the ground.

FIGURE 21-2  
FLAG

(s) **Freestanding use.** A land use or occupancy that does not attract customers by its proximity to other businesses and is not part of a shopping center or any group of businesses that jointly attract customers through their proximity or through common advertising.

(t) **Freeway-oriented sign.** A freestanding sign intended to attract motorists traveling on Freeway 99 to a site within six hundred (600) feet of the freeway.

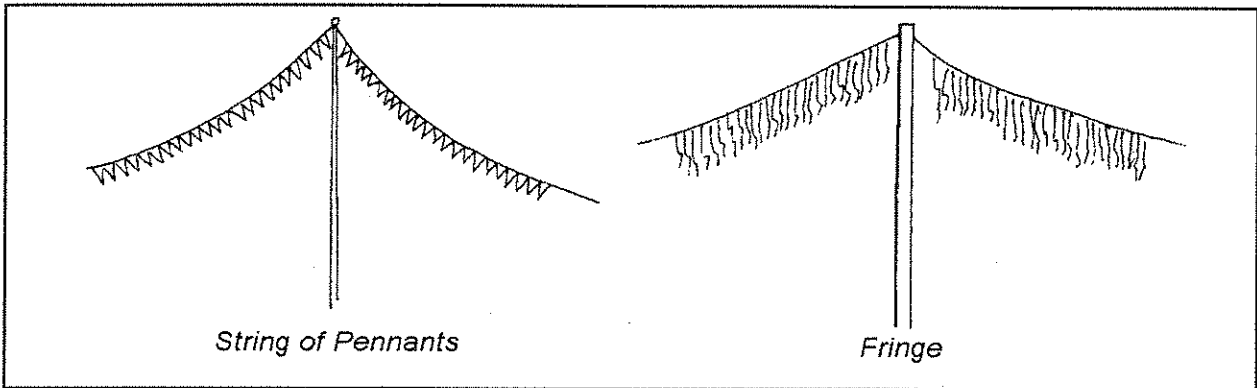


**FIGURE 21-3  
SIGN TYPES**

- (u) **Garage sale sign.** A sign that is used to advertise the sale of used or secondhand goods or merchandise at dwellings and on residentially zoned property; these sales may also be known as patio sales, yard sales, etc.
- (v) **Gateway sign.** A permanent, freestanding sign identifying a subdivision or other housing project, placed adjacent to a street or driveway providing primary vehicle access to the site.
- (w) **Height.** See Section 10-2.2110(a).
- (x) **Historic sign.** An existing sign, or refurbishing of an existing sign, or re-creation of sign that once existed on the subject site at least fifty (50) years ago.
- (y) **Hot air balloon.** A balloon that is filled with heated air, has a gondola, and is capable of rising and floating in the atmosphere with people aboard.
- (z) **Identification sign.** Any sign that is used to identify or advertise the occupant of a building, lot or premises or the merchandise or activity available at the building, lot or premises where the sign is located.
- (aa) **Installed, installation.** The establishment of a sign at its intended location, through construction, erection, painting, attachment, or other means.
- (bb) **Lighted sign.** Any sign that is illuminated either directly or indirectly by artificial light.
- (cc) **Marquee.** A fixed overhead shelter used as a roof, which may or may not be attached to a building, and which projects into or overhangs a public street or alley right-of-way.
- (dd) **Marquee sign.** A sign attached to or hung from a marquee and which:
  - (1) Is mounted in a vertical plane;
  - (2) Is mounted parallel to the leading edge of a marquee, except for an undermarquee sign which may be mounted at an angle to the leading edge of a marquee; and

- (3) Does not project higher than the wall of the building to which the marquee is attached.
- (ee) **Monument sign.** An independent, freestanding sign structure supported on the ground by a solid base at least as wide as the sign; as opposed to being supported by poles or open braces.
- (ff) **Open house directional sign.** A sign with the words "open house," which may include an arrow or other directional symbol and real estate office name.
- (gg) **Outdoor advertising sign.** Outdoor advertising signs include any of the following:
  - (1) **Commercial.** Any sign, excepting a bench sign, that directs attention to a business, profession, product, commodity, or mercantile-oriented service that is not the primary business, profession, product, commodity or mercantile-oriented service sold, manufactured, conducted, or offered on the site on which the sign is located.
  - (2) **Noncommercial.** Any sign, excepting a bench sign, which does not direct attention to a business, profession, product, commodity or mercantile-oriented service. This includes but is not limited to any sign expressing a personal, political, religious or social message, idea or point of view.
- (hh) **Placard.** A temporary sign consisting of a rectangle of cardboard, masonite, or similar material, mounted on a wood or metal stake, which is driven into the ground.
- (ii) **Political sign.** Any impermanent sign or advertising device or display, with or without letters, words, numbers or figures thereon, which is designed to advertise a candidate for political office, a political party, or a measure scheduled for an election.
- (jj) **Principal frontage.** That wall of a building or structure which has frontage on a public street, highway, parking lot, walkway or mall, and which is designated by the owner or occupant of the structure as the principal frontage.
- (kk) **Promotional decorations.** Temporary promotional decorations consisting of a string of pennants, fringe, balloons, or other decorative

materials that are either suspended from poles, hung on walls to outline buildings, or placed on outdoor merchandise displays. Promotional decorations do not include flags or streamers, which are separately defined. See Figure 21-4.



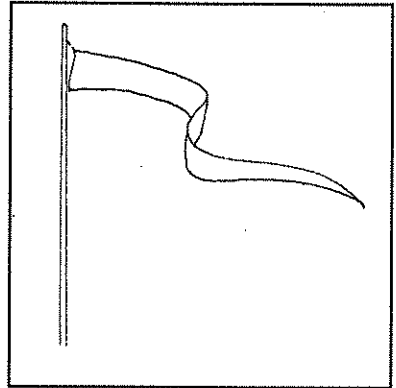
**FIGURE 21-4**  
**PROMOTIONAL DECORATIONS**

- (ll) **Projecting sign.** A projecting sign includes any of the following:
  - (1) A sign attached to and projecting from the face of a wall, canopy, or marquee; and
  - (2) A sign mounted on a canopy roof or building roof that has a slope flatter than a forty-five (45) degree angle (one (1) horizontal to one (1) vertical).
- (mm) **Real estate sign.** A sign advertising residential or commercial buildings or property for sale, lease, or rent, either located on the available property or off-site.
- (nn) **Review authority.** The individual or official City body (the Planning Commission, Board of Zoning Adjustments (BZA), Director, or Chief Building Official) identified by this article as having the responsibility and authority to review, and approve or disapprove the signs and permits described in this article.
- (oo) **Ridgeline.** The peak of the roof, top of a parapet, or top of the wall of a building.
- (pp) **Shopping Center.** A cluster of five or more retail uses on the same or immediately adjacent sites which is presented to the public as a distinct

shopping area, and with a single merchants' association comprising the cluster, and a common advertising program.

- (qq) **Sign.** Any structure, device, letter, figure, character, poster, picture, trademark or reading matter that is used or designed to announce, declare, demonstrate, display or otherwise identify or advertise, or attract the attention of the public (see Figure 21-3). However, a sign shall not include the following:
- (1) Official notices authorized by a court, public body or public officer;
  - (2) Directional, warning or informational signs authorized by federal, state or municipal authority or public utility;
  - (3) A properly displayed official flag of a government, school, religious group, or nonprofit organization;
  - (4) A memorial plaque, tablet or cornerstone indicating the name of a building and date of construction, when cut or carved into any masonry surface or when made of bronze or other incombustible material and made an integral part of the building or structure, not to exceed four (4) square feet in area;
  - (5) Signs within a building except window or wall signs as defined in this section;
  - (6) Christmas decorations and Christmas lights, from November 15 to January 15; or
  - (7) Inflatable devices when utilized in compliance with Section 10-2.1009.
- (rr) **Site.** A parcel or adjoining parcels under single ownership or single control, considered a single unit for the purposes of development or other use.

- (ss) **Streamer.** A long, narrow flag. See Figure 21-5. See also "Flag."
- (tt) **Street address sign.** The numerals of a street address for a given use or uses in a given building or buildings.
- (uu) **Subdivision sign.** A sign indicating the name of a recorded subdivision, the name of the contractor or subdivider, the name of the owner or agent, and/or giving information regarding directions, price and/or terms.



**FIGURE 21-5  
STREAMER**

- (vv) **Subdivision directional sign.** A sign indicating the name of a recorded subdivision and information regarding location. The name of the contractor or subdivider, the name of the owner or agent and/or information regarding price and/or terms may also be noted.
- (ww) **Suspended sign.** A sign oriented to pedestrians which is hung from the underside of a canopy.
- (xx) **Temporary sign.** Any banner, pennant, valance, balloon, streamer, placard, "A" frame, sandwich board or similar impermanent sign, advertising device, or display, with or without letters, words, numbers or figures, which directs, promotes service or price, or which is otherwise designed to attract attention, except for the following:
  - (1) Flags, other than flags of nations or states;
  - (2) Garage sale signs;
  - (3) Political signs;
  - (4) Real estate signs, including for sale or rent and open house signs;
  - (5) Signs for fireworks stands, pumpkin sales, Christmas tree sales lots, and temporary certified farmers markets; and
  - (6) Window signs.

Paper signs attached to a building, bulletin board, or outside a window are temporary signs unless enclosed in a frame with a glass, plexiglass,

or equivalent cover. The sign area will be subject to the wall and canopy sign standards.

- (yy) **Wall.** Any wall or element of a wall or any member or group of members, which defines the exterior boundaries or courts of a building or structure and which has a slope steeper than one (1) horizontal to two (2) vertical, with the horizontal plane.
- (zz) **Wall sign.** Any sign painted on, attached to or erected against the wall of a building with the exposed face of the sign in a place approximately parallel to the plane of the wall and which does not project beyond the top or ends of the wall. Wall sign shall also mean any sign permanently displayed on the inside or outside of a window.
- (aaa) **Window sign.** Any sign temporarily displayed on the inside of a window or temporarily painted on a window and facing a street, highway, parking lot, walkway or mall.
- (bbb) **Zone.** One of the various zoning districts into which the City has been divided by this chapter.

#### 10-2.2103. [AVAILABLE]

#### 10-2.2104. APPLICABILITY.

The sign regulations provided in this article shall apply to all signs within the City of Modesto. It shall be unlawful for any person to install or maintain any sign within the City in violation of the requirements of this article.

- (a) **Sign permits required.** No person shall install, alter, or relocate any sign within the City without first obtaining a sign permit in compliance with Section 10-2.2108 (Sign Permit Requirements and Procedures).
- (b) **Conflicting provisions.** Where a sign may be subject to multiple provisions of this article because it may be considered to fall within more than one of the sign type definitions of Section 10.2-2102 (Definitions), the sign shall comply with the most restrictive requirements.
- (c) **Sign variances.** The BZA may grant variances from the provisions of this article in compliance with the provisions of Article 25 of Chapter 2 of Title 10 of this Code; except that no variance shall be granted to the

sign height, length, and area limitations, or to the types of signs allowed in specific zones by this article.

**10-2.2105. [AVAILABLE]**

**10-2.2106. ADMINISTRATION OF SIGN REGULATIONS.**

- (a) **Enforcement authority.** The provisions of this article shall be enforced by the Chief Building Official and the Director.
- (b) **Inspections.** No sign shall be installed within the City of Modesto without the prior approval of the Chief Building Official and the Director, to ensure compliance with all provisions of this article, and all other laws and ordinances of the City.
- (c) **Appeals.** Any person aggrieved or affected by any decision of an administrative official of the City which involves the application of any of the provisions of this article may appeal the decision to the BZA in compliance with the provisions of Article 28 of Chapter 2 of Title 10 of this Code.

**10-2.2107. [AVAILABLE]**

**10-2.2108. SIGN PERMIT REQUIREMENTS AND PROCEDURES.**

- (a) **General permit requirements and exemptions.** No person shall install, alter, or relocate any sign within the City without first obtaining a sign permit from the Chief Building Official, except as follows.
  - (1) **Exempt signs - No permit or fee required.** The following signs are not required to have sign permits or pay sign permit fees, but shall comply with all other applicable requirements of this article:
    - (aa) Bench signs on public property under a franchise granted by the City;
    - (ab) Construction signs;
    - (ac) Flags, in compliance with Section 10-2.2114 (Standards for Specific Types of Signs and Land Uses);
    - (ad) Garage sale signs, in compliance with Section 10-2.2112 (Sign Requirements by Zone);

- (ae) Interior directional, warning, or information signs, unlighted;
  - (af) Nameplates, with a one (1) square foot maximum size, in compliance with Section 10-2.2112 (Sign Requirements by Zone);
  - (ag) Political signs, in compliance with Section 10-2.2112 (Sign Requirements by Zone);
  - (ah) Real estate signs, including for sale or rent and open house directional signs in compliance with Section 10-2.2112 (Sign Requirements by Zone), and subdivision signs in compliance with Section 10-2.2114 (Standards for Specific Types of Signs and Land Uses);
  - (ai) Signs for fireworks stands, pumpkin sales, Christmas tree sales lots, and temporary certified farmers markets; and
  - (aj) Signs within buildings, not attached directly to the interior of a window.
- (2) **Exempt signs - No fee required.** Noncommercial outdoor advertising signs are required to obtain a sign permit, but shall not be required to pay sign permit fees. These signs shall meet all other requirements of this article.
- (3) **Exemption for copy changes.** Changes in sign copy with no other alterations to the sign shall not require a sign permit, provided that the copy changes also comply with Section 10-2.2118 regarding sign maintenance, and Section 10-2.2120 regarding nonconforming signs.
- (b) **Application preparation and filing.** An application for a sign permit shall include the forms provided by the Chief Building Official, and shall include all additional information and materials described in the City's *Sign Permit Application Instructions*. A completed application shall be filed with the Chief Building Official, and shall be accompanied by the filing fee established by the City Fee Resolution.
- (c) **Application review and approval.** The Chief Building Official and Director shall review each sign permit application filed with the Department, except where this article assigns the responsibility for sign

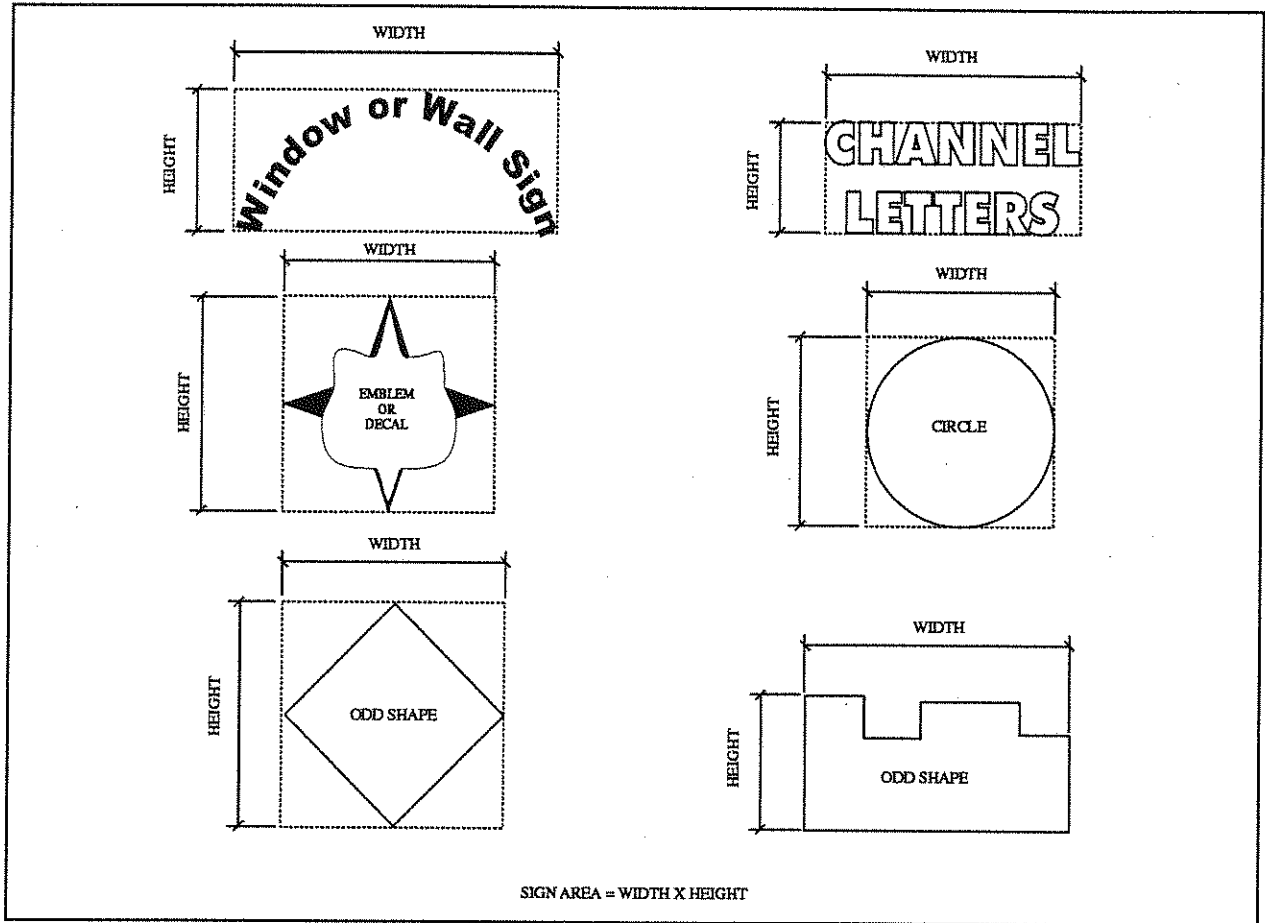
permit review to the Board of Zoning Adjustments (BZA). If the review authority determines that the proposed sign is in compliance with all the requirements of this article and all other laws and ordinances of the City, the review authority shall issue the sign permit.

- (d) **Sign permit issuance and expiration.** Sign permit issuance, expiration, and allowed extensions shall comply with the requirements of the Uniform Building Code applicable to building permits.
- (e) **Issuance in error.** If a sign permit is issued in error by the Chief Building Official and the sign does not comply with all applicable provisions of this article and all other laws and ordinances of the City, the sign permit shall be void and shall confer no rights or privileges upon the permittee. All sign permits shall include a notice that the issuance of the permit does not grant any right or privilege to install a sign in violation of this article or of any other laws or ordinances of the City.

#### 10-2.2109. [AVAILABLE]

#### 10-2.2110. SIGN AREA, HEIGHT AND PLACEMENT.

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



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

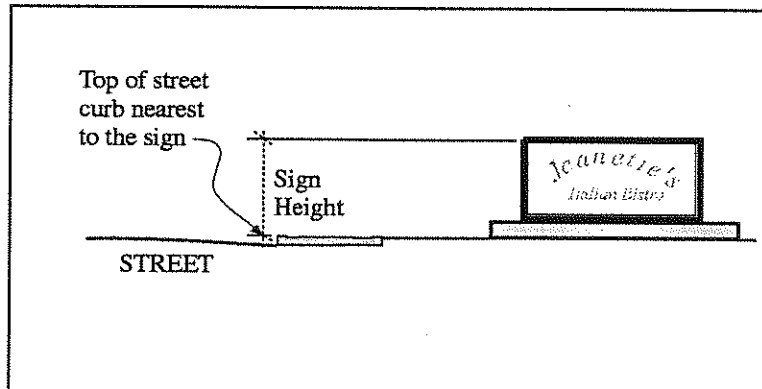


FIGURE 21-7  
MEASUREMENT OF SIGN HEIGHT

- (b) **Maximum sign area requirements.** The maximum allowable area for signs is determined by Sections 10-2.2112 (Sign Requirements by Zone), and 10-2.2114 (Standards for Specific Types of Signs).
- (c) **Sign height limitations.** All signs shall comply with the following requirements.
- (1) **Height limit.** No sign shall exceed a maximum height of thirty-five (35) feet in height, or other height limit established by this section, or by Sections 10-2.2112 (Sign Requirements by Zone), and 10-2.2114 (Standards for Specific Types of Signs), as applicable.
  - (2) **Ridgeline limitation.** A wall, canopy, marquee or projecting sign shall not project above the ridgeline of the building on which the sign is mounted. Where the ridgeline varies in height, no part of the sign shall extend above the ridgeline where it is placed nor above the height representing a minimum of seventy-five (75) percent of the ridgeline of the building.
  - (3) **Additional height.** A sign may be approved with a height in excess of the limitations provided by subsections (c)(1) and (c)(2) above in the following circumstances.
    - (aa) **Wall signs on multi-story buildings.** Wall signs above thirty-five (35) feet in height may be authorized through conditional use permit approval (see Article 25 of Chapter 2 of Title 10 of this Code), provided that:

- (i) The building exceeds four (4) stories or forty-eight (48) feet in height; and
  - (ii) The BZA determines that:
    - (a) The applicant has satisfactorily demonstrated that wall signs at thirty-five (35) feet cannot properly identify the building;
    - (b) The applicant has explored all feasible options to reach a satisfactory solution with a sign at thirty-five (35) feet or less; and
    - (c) The design of the sign will be compatible with the architectural design of the building.
- (ab) **Freeway-oriented signs.** Freeway-oriented signs with a height in excess of thirty-five (35) feet may be approved in compliance with Section 10-2.2114(g) (Standards for Specific Types of Signs - Freeway-oriented signs).
- (4) **Vertical clearance.** No sign shall be less than eight (8) feet above a public or private sidewalk, or fourteen and one-half (14.5) feet above ground level in areas open to vehicular traffic, except wall signs not exceeding three inches in thickness.
- (d) **Sign placement on buildings.** Signs for tenants within buildings that have multiple tenants shall be placed on the portion of the building where the business being advertised is located, except that:
- (1) Where the business tenant space has no street frontage, the review authority may grant a sign permit for sign placement on an exterior building wall determined to provide adequate visibility, and where the sign will be compatible in design and scale with the building architecture and the design and placement of other signs; and
  - (2) The BZA may grant a conditional use permit authorizing placement on other portions of the building, and/or the clustering of allowed signs on one (1) building wall, where the BZA determines that the adjusted sign placement is necessary to

provide adequate identification of the subject businesses from the street, and that placement of the sign at the tenant location will unreasonably limit sign visibility.

- (e) **Projection of signs.** Signs may project into required front, side, and rear yards as approved by the review authority. A sign may project into a street or alley right-of-way only as follows. See Figure 21-8.
  - (1) **Bus bench sign.** May be located entirely within a right-of-way.
  - (2) **Freestanding signs.** Freestanding or exterior identification signs may encroach into a public right-of-way only if a specific encroachment permit is granted.
  - (3) **Marquee signs.** May project into a right-of-way to a point two (2) feet from the face of the curb.
  - (4) **Projecting signs.** May project up to eight (8) feet into a street right-of-way and up to four (4) feet into any alley right-of-way, but not closer than two (2) feet from the face of the curb.
  - (5) **Wall signs.** May project into a right-of-way up to fourteen (14) inches in thickness, provided that:
    - (aa) No display or messages shall be permitted on the edges of the sign, except the sign company identification required by Section 10-2.2116(e); and
    - (ab) Any portion of the sign which projects more than three (3) inches is located in compliance with the vertical clearance requirements of subsection (c)(4) above.

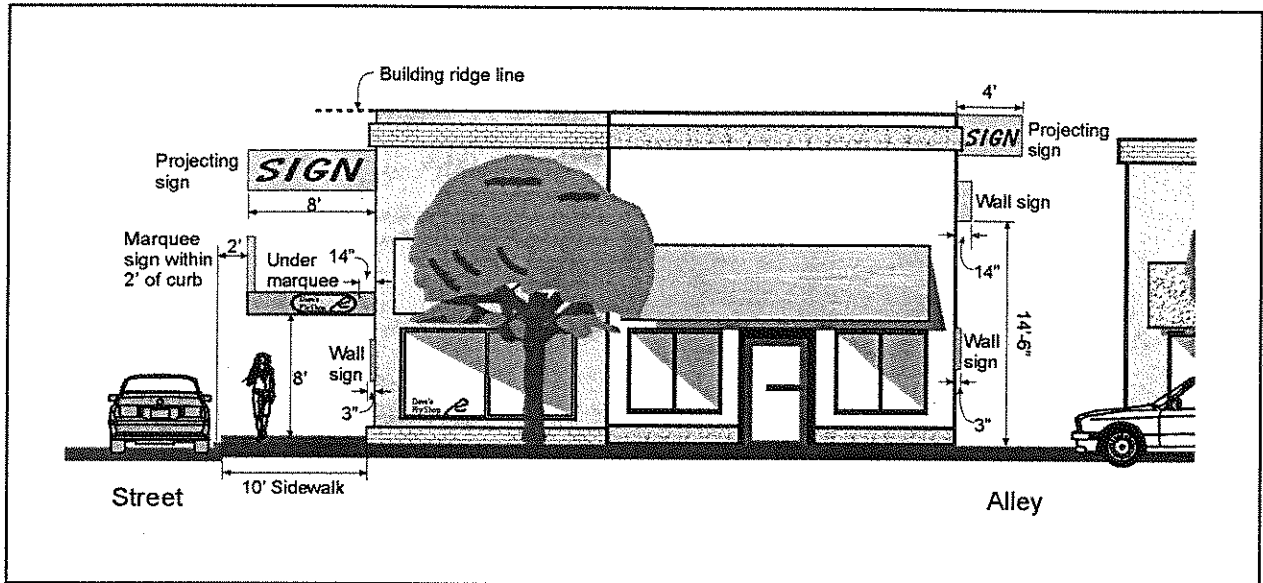


FIGURE 21-8  
EXAMPLES OF ALLOWED SIGN PROJECTIONS

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

10-2.2111. [AVAILABLE]

10-2.2112. SIGN REQUIREMENTS BY ZONE.

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

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

with the maximum sign area and height, number of signs allowed, and additional requirements shown in Table 21-3.

(d) **Highway Commercial (C-3) zone.** Any sign installed within the C-3 zoning district shall comply with the maximum sign area and height, number of signs allowed, and additional requirements shown in Table 21-4. Freestanding business identification signs are allowed within the C-3 zone as follows.

(1) **Permit requirement.** Conditional use permit approval shall be required.

(2) **Type of signs allowed.** All freestanding business identification signs within the C-3 zone shall be monument signs.

(3) **Maximum number of signs and required site characteristics.** One (1) freestanding business identification sign may be approved for a site:

(aa) Which constitutes a block frontage; or

(ab) With six (6) or more tenants; or

(ac) With two hundred (200) feet or more of street frontage.

(4) **Area and height requirements.** The maximum area and height of a freestanding business identification sign within the C-3 zone shall be based on the length of the site street frontage, as follows:

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

(5) **Removal of directional signs required.** A freestanding business identification sign may be permitted only where any existing, exterior directional signs for all businesses on the site are first removed. No new exterior directional signs shall be installed thereafter.

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

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

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

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

Sign Class	Allowed Sign Types	Maximum Number of Signs	Maximum Sign Area	Maximum Sign Height	Additional Requirements
Directional (continued)	Garage sale	2 per garage sale	3 sf each	5 ft	Shall be: unlighted; displayed only when sale is actually being conducted; and only installed on private property with the consent of the owner. These signs shall not be placed on street trees, utility poles, or otherwise within public rights-of-way.
Real estate	Freestanding or wall - For sale or rent	1 per street frontage	8 sf each	6 ft	Shall be unlighted.
	Freestanding - Open house	5 for each house or group of houses offered by the same realtor at the same location	3 sf each	42 in	Shall be unlighted and in place during daylight hours only. Message shall be limited to real estate office name. The signs shall only be installed on private property with the consent of the owner.
	Freestanding - Subdivision sales	See Section 10-2.2114(m)			
Construction	Freestanding or wall	1 per site	64 sf	10 ft	Shall be removed within 30 days after completion of construction.
Political	Freestanding - On parcels with a residential structure	No limitation on number	6 sf each, and a maximum combined total of 60 sf	6 ft	Signs shall be unlighted. Signs shall be installed no more than 120 days prior to election date and be removed within 10 days after election.
	Freestanding - On parcels with no residential structure		32 sf each, and a maximum combined total of 100 sf	10 ft	

**Notes:**

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

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

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

(Continues)

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

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

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

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

**Notes:**

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

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

Sign Class	Allowed Sign Types	Maximum Number of Signs	Maximum Sign Area	Maximum Sign Height	Additional Requirements
Identification	Freestanding, or	1 freestanding, or 1 projecting, or 1 marquee per use, except in shopping centers (see 10-2.2114(k), and "Shopping Center Identification Signs" below). A second marquee sign is allowed if the 2 signs are single-faced, parallel, and placed on opposite ends of the marquee. A pylon/pole sign that existed on 3/1/77 which extends above the ridgeline may remain as a nonconforming sign in addition to one of the allowed signs.	Freestanding: 72 sf, plus 4 sf for a street address, as required by 10-2.2114(l).	20 ft	None
	Projecting, or		Projecting: 72 sf; 48 sf, if any portion of the sign projects over a street or alley right-of-way.	35 ft or the height of the ridgeline, whichever is less	
	Marquee		Marquee: 48 sf		
(Continues)	Canopy, marquee, and wall, on the <i>primary</i> building frontage	No limitation on number	<u>All signs on primary frontage:</u> 4 sf per linear foot of building frontage for first 50 ft of frontage, plus 2 sf per linear foot of building frontage for next 50 ft of frontage, plus 1 sf per linear foot of building frontage for each foot over 100 ft	35 ft or the height of the ridgeline, whichever is less. Wall signs may be approved at a greater height in compliance with 2-10.2110(c).	Signs shall be located on the portion of the building where the use is conducted, except for signs approved in compliance with 10-2.2110(c).
	Canopy, marquee, and wall, on the <i>secondary</i> building frontage		<u>All signs on secondary frontage:</u> 4 sf per linear foot of building frontage for first 50 ft of frontage, plus 2 sf per linear foot of building frontage for next 50 ft of frontage, plus 0.50 sf per linear foot of building frontage for each foot over 100 ft		

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

Sign Class	Allowed Sign Types	Maximum Number of Signs	Maximum Sign Area	Maximum Sign Height	Additional Requirements
Identification (continued)	Window	No limitation on number	No limitation	No limitation	None
	Suspended	1 per use	6 sf per side; 12 sf total	Under the marquee, 8 ft minimum above sidewalk	None
	Freeway-oriented	See Section 10-2.2114(g)			
	Freestanding - Use without structures	1 per use	32 sf for pumpkin and Christmas tree lots; 72 sf for other uses (e.g., a parking lot, etc.)	12 ft for pumpkin and Christmas tree lots; 72 sf for other uses	None
Shopping center identification	Freestanding	1 for each street frontage of the center.	72 sf, plus 4 sf for a street address, as required by 10-2.2114	20 ft	See 10-2.2114(k)
	Freeway-oriented	See Section 10-2.2114(g)			
Directional	Freestanding, exterior	1 per use for each street frontage of the site; 1 allowed on a site with no public street frontage, provided the sign shall be oriented only to the street providing primary site access.	12 sf	6 ft	Business identification shall not exceed 50% of each sign face
	Freestanding, interior	No limitation on number	6 sf	6 ft	None
	Restaurant menu board	2 per site	48 sf	8 ft	Allowed for drive-in restaurants only
(Continues)					

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

<b>Sign Class</b>	<b>Allowed Sign Types</b>	<b>Maximum Number of Signs</b>	<b>Maximum Sign Area</b>	<b>Maximum Sign Height</b>	<b>Additional Requirements</b>
Real estate	Freestanding or wall	1 per site	64 sf	10 ft	None
Construction	Freestanding	1 per site	64 sf	10 ft	None
Political	Freestanding	No limitation on number	32 sf each; and a combined total of 150 sf per site	10 ft	Signs shall be in-stalled no more than 120 days prior to election date and be removed within 10 days after election
Temporary	A-frames, banners, flags, etc	See Section 10-2.2114(a), (b), and (f).			
Outdoor advertising	Prohibited in all zones				

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

Sign Class	Allowed Sign Types	Maximum Number of Signs	Maximum Sign Area	Maximum Sign Height	Additional Requirements
Identification	Freestanding - Individual and combined business identification	1 sign may be approved for a site: a. Which constitutes a block frontage; or b. Has six or more tenants; or c. Has 200 feet or more of street frontage.	See Section 10-2.2112(d).		Sign may be permitted only where any existing, exterior directional signs for all businesses on the site are first removed. No new exterior directional signs shall be installed thereafter. See 10-2.2112(d).
	Canopy, marquee, and wall, on the <i>primary</i> building frontage	No limitation on number	<u>All signs on primary frontage:</u> 4 sf per linear foot of building frontage for first 50 ft of frontage, plus 2 sf per linear foot of building frontage for next 50 ft of frontage, plus 1 sf per linear foot of building frontage for each foot over 100 ft	35 ft or the height of the ridgeline, whichever is less. Wall signs may be approved at a greater height in compliance with 2-10.2110(c).	Signs shall be located on the portion of the building where the use is conducted, except for signs approved in compliance with 10-2.2110(c).
	Canopy, marquee, and wall, on the <i>secondary</i> building frontage		<u>All signs on secondary frontage:</u> 4 sf per linear foot of building frontage for first 50 ft of frontage, plus 2 sf per linear foot of building frontage for next 50 ft of frontage, plus 0.50 sf per linear foot of building frontage for each foot over 100 ft		
(Continues)					

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

<b>Sign Class</b>	<b>Allowed Sign Types</b>	<b>Maximum Number of Signs</b>	<b>Maximum Sign Area</b>	<b>Maximum Sign Height</b>	<b>Additional Requirements</b>
<b>Identification (continued)</b>	Window	No limitation on number	No limitation	No limitation	None
	Suspended	1 per use	6 sf per side; 12 sf total	Under the marquee, 8 ft minimum above sidewalk	None
	Freeway-oriented	See Section 10-2.2114(g)			
	Freestanding - Use without structures	1 per use	32 sf for pumpkin and Christmas tree lots; 72 sf for other uses (e.g., a parking lot, etc.)	12 ft for pumpkin and Christmas tree lots; 72 sf for other uses	None
<b>Shopping center identification</b>	Freeway-oriented	See Section 10-2.2114(g)			
<b>Directional</b>	Freestanding, exterior (Note: these signs are allowed only when the site and business have no freestanding identification sign as allowed by 10-2.2112(d).)	1 for each street frontage of the site; 1 allowed on a site with no public street frontage, provided the sign shall be oriented only to the street providing primary site access.	12 sf	6 ft	Business identification shall not exceed 50% of each sign face
	Freestanding, interior	No limitation on number	6 sf	6 ft	None
	Restaurant menu board	2 per site	48 sf	8 ft	Allowed for drive-in restaurants only
(Continues)					

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

Sign Class	Allowed Sign Types	Maximum Number of Signs	Maximum Sign Area	Maximum Sign Height	Additional Requirements
Real estate	Freestanding or wall	1 per site	64 sf	10 ft	None
Construction	Freestanding	1 per site	64 sf	10 ft	None
Political	Freestanding or wall	No limitation on number	32 sf each; and a combined total of 150 sf per site	10 ft	Signs shall be in-stalled no more than 120 days prior to election date and be removed within 10 days after election
Temporary	A-frames, banners, flags, etc	See Section 10-2.2114(a), (b), and (f).			
Outdoor advertising	Prohibited in all zones				

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

Sign Class	Allowed Sign Types	Maximum Number of Signs	Maximum Sign Area	Maximum Sign Height	Additional Requirements
Identification	Freestanding - Individual business identification	1 sign per site	72 sf, plus 4 sf for required street address	20 ft	Sign shall include street address per 10-2.2114(l).
	Freestanding - Business park identification	1 sign for business park	72 sf	6 ft	BZA approval of plot plan required. Sign copy shall be limited to business park name and logo.
	Canopy, marquee, and wall, on the <i>primary</i> building frontage	No limitation on number	<u>All signs on primary frontage:</u> 4 sf per linear foot of building frontage for first 50 ft of frontage, plus 2 sf per linear foot of building frontage for next 50 ft of frontage, plus 1 sf per linear foot of building frontage for each foot over 100 ft	35 ft or the height of the ridgeline, whichever is less. Wall signs may be approved at a greater height in compliance with 2-10.2110(c).	Signs shall be located on the portion of the building where the use is conducted, except for signs approved in compliance with 10-2.2110(c).
	Canopy, marquee, and wall, on the <i>secondary</i> building frontage		<u>All signs on secondary frontage:</u> 4 sf per linear foot of building frontage for first 50 ft of frontage, plus 2 sf per linear foot of building frontage for next 50 ft of frontage, plus 0.50 sf per linear foot of building frontage for each foot over 100 ft		
(Continues)					

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

Sign Class	Allowed Sign Types	Maximum Number of Signs	Maximum Sign Area	Maximum Sign Height	Additional Requirements
Identification (continued)	Window	No limitation on number	No limitation	No limitation	None
	Suspended	1 per use	6 sf per side; 12 sf total	Under the marquee, 8 ft minimum above sidewalk	None
	Freeway-oriented	See Section 10-2.2114(g).			
	Freestanding - Use without structures	1 per use	32 sf for pumpkin and Christmas tree lots; 72 sf for other uses (e.g., a parking lot, etc.)	12 ft for pumpkin and Christmas tree lots; 72 sf for other uses	None
Directional  (Continues)	Freestanding, exterior	1 for each street frontage of the site; 1 allowed on a site with no public street frontage, provided the sign shall be oriented only to the street providing primary site access.	12 sf	6 ft	Business identification shall not exceed 50% of each sign face
	Freestanding, interior	No limitation on number	6 sf	6 ft	None
	Restaurant menu board	2 per site	48 sf	8 ft	Allowed for drive-in restaurants only

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

<b>Sign Class</b>	<b>Allowed Sign Types</b>	<b>Maximum Number of Signs</b>	<b>Maximum Sign Area</b>	<b>Maximum Sign Height</b>	<b>Additional Requirements</b>
Real estate	Freestanding or wall	1 per site	64 sf	10 ft	None
Construction	Freestanding	1 per site	64 sf	10 ft	None
Political	Freestanding or wall	No limitation on number	32 sf each; and a combined total of 150 sf per site	10 ft	Signs shall be in-stalled no more than 120 days prior to election date and be removed within 10 days after election
Temporary	A-frame signs, banners, flags, etc.	See Section 10-2.2114(a), (b), and (f).			
Outdoor advertising	Prohibited in all zones, except in compliance with Section 10-2.2114(i).				

**10-2.2113. [AVAILABLE]**

**10-2.2114. STANDARDS FOR SPECIFIC TYPES OF SIGNS AND LAND USES.**

The specific types of signs covered by this section shall comply with the following provisions, in addition to the standards of Section 10-2.2110 (Sign Area, Height, and Placement), 10-2.2112 (Sign Requirements by Zone). These signs shall also comply with the sign permit requirements of Section 10-2.2108 (Sign Permit Requirements and Procedures), except where this section establishes other permit requirements.

- (a) **A-frame signs for business identification.** A-frame (sandwich board) signs are allowed only in compliance with the requirements of this subsection, and subject to the approval of a sign permit. A-frame signs are intended to be allowable only when the review authority determines that a property owner has taken advantage of all permanent signs allowed by this article, and individual business visibility remains seriously impaired.
  - (1) **Where allowed.** A-frame signs may be approved within the commercial zoning districts, only on sites where the review authority determines that street visibility of the business to be served by the sign is seriously impaired, as follows:
    - (aa) The business is within a structure that is located more than thirty (30) feet from a public street frontage, the site is developed with all other signs allowed by this section, and the business entry and the other exterior signs allowed for the business by this article are not visible from the public street; or
    - (ab) The space occupied by the business within a building has no exterior wall adjacent to or visible from a public street, and any exterior walls of the building that are adjacent to a public street are occupied by the signs of other businesses, at the maximum number and area of signs allowed by this article.
  - (2) **Sign standards.** An approved A-frame sign shall comply with all the following requirements.

- (aa) **Size limitations.** Each panel of the A-frame sign shall not exceed a width of twenty-four (24) inches and a height of thirty-six (36) inches. The total height of the sign shall not exceed forty-eight (48) inches when the A-frame panels are in place, including the message panels and any legs or other supports.
  - (ab) **Design and construction standards.** The review authority shall approve an A-frame sign only when it first determines that the design and appearance of the sign, including any graphics and/or text, will reflect attractive, professional design, and that the sign will be durable and stable when in place.
  - (ac) **Placement requirements.** An approved A-frame sign shall be placed only on private property, at the single location specified by the sign permit. The permit shall specify an approved location for the sign that will maintain a walkway with an adequate and safe width for pedestrians. The location specified by the permit shall also be selected to prevent the undue concentration of A-frame signs in the vicinity.
- (b) **Banners and promotional decorations.** Banners and promotional decorations are allowed only as provided by this subsection. The use of inflatable advertising devices and outdoor merchandise display are not regulated by this section, but are instead subject to Section 10-2.1009 of the Zoning Ordinance. (See also subsection (f) regarding flags and streamers.)
- (1) **Time limits.** Except where other time limits are established by this section, the placement of banners and promotional decorations shall be limited to a total of twelve (12) times per year, for a maximum of ten (10) days for each occasion. The resulting 120-day total may be divided at the discretion of the applicant into any increment that would be a multiple of ten (10) days, where the specific increments are requested in the sign permit application and noted on the issued permit. (For example, the total allowed one hundred twenty (120) days could be divided into two (2) periods of sixty (60) days each, four (4) periods of thirty (30) days each, etc.)
  - (2) **Banners.**

- (aa) **Where allowed.** Banners may be permitted in any commercial zoning district; banners may be permitted in residential zoning districts only for churches, schools, and for model home complexes and apartment projects with vacancies.
  - (ab) **Maximum number.** One (1) banner may be permitted for each street frontage of the business.
  - (ac) **Size limitations.** Each banner shall not exceed seventy-two (72) square feet in area, and thirty-five (35) feet in height, or the ridgeline of the roof of the building, whichever is lower. A banner placed on a freestanding structure shall not exceed twenty (20) feet in height.
- (3) **Promotional decorations.**
- (aa) **Where allowed.** Promotional decorations shall be permitted only within the commercial zoning districts for land uses which are authorized by this Code to display merchandise outdoors.
  - (ab) **Limitation on type of decorations allowed.** The promotional decorations that may be allowed in compliance with this section shall be limited to balloons. The use of strings of pennants, fringe, and/or promotional decorations other than balloons shall be prohibited.
  - (ac) **Placement requirements.** No promotional decoration shall extend above the roof line of any building on the site.
- (c) **Canopy signs.** Canopy signs shall comply with the following requirements (see Figure 21-9):
- (1) The sign shall be mounted in a vertical plane;
  - (2) The sign shall be mounted parallel to the leading edge of a canopy, except for a suspended sign which may be mounted at an angle to the leading edge of a canopy;
  - (3) The sign shall not project above the top of a canopy with a slope of forty-five (45) degrees (one (1) horizontal to one (1) vertical)

or steeper, but may be mounted anywhere on the slope of the canopy;

- (4) The sign shall not project above the leading edge of a canopy with a slope flatter than forty-five (45) degrees; and
- (5) The sign may project above the top of a flat (no slope) canopy, but shall not project higher than the wall of the building to which the canopy is attached.

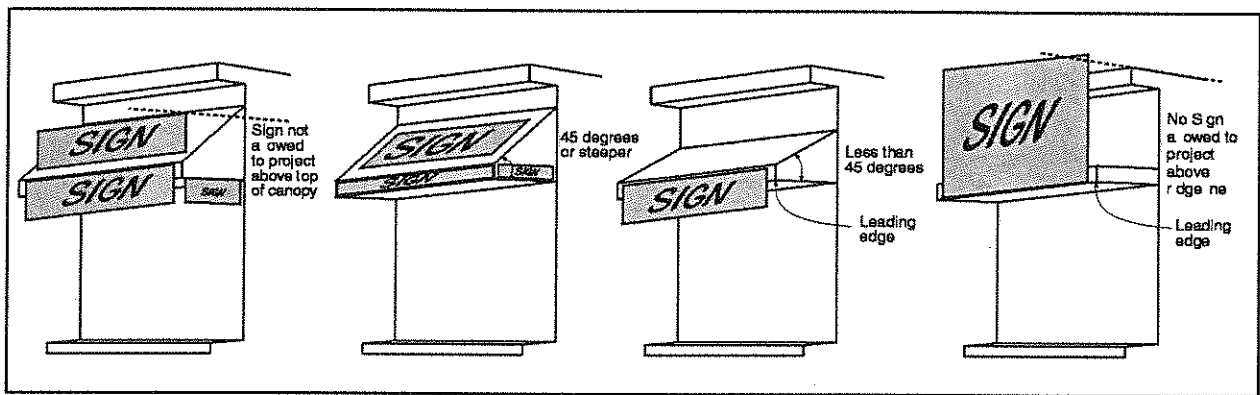


FIGURE 21-9  
CANOPY SIGN REQUIREMENTS

- (d) **Church signs.** Churches are allowed the following temporary placard signs in addition to those allowed by Section 10-2.2112 (Sign Requirements by Zone).
  - (1) **Temporary identification signs.** The following placard signs are allowed for churches conducting services in temporary locations, without limitation on number. These signs are exempt from sign permit requirements, provided that the signs:
    - (aa) Are in place on weekends only, no longer than from 5:00 p.m. on Friday, to 12:00 a.m. on Monday;
    - (ab) Are placed on the church site, outside of a public right-of-way, with the permission of the property owner;
    - (ac) Do not exceed six (6) square feet in area or a height of thirty-six (36) inches; and

- (ad) Are completely removed when not in use, including all stakes and any other mounting materials.
- (2) **Banners.** Banners are allowed in compliance with subsection (b) of this section, except that their use shall be limited to a maximum of six (6) times per year, for a maximum of ten (10) days for each time of use.
- (e) **Electronic message boards.** Electronic message boards are allowed only in compliance with this subsection.
  - (1) **Where allowed.** Electronic message boards may be permitted only for: automobile dealers; convention centers; theaters; and for shopping centers with a gross floor area of two hundred fifty thousand (250,000) square feet or more.
  - (2) **Permit requirement.** Conditional use permit approval by the BZA shall be required.
  - (3) **Sign standards.** An electronic message board may be substituted for one (1) of the signs permitted by Section 10-2.2112 (Sign Requirements by Zone), and shall:
    - (aa) Comply with the sign area and height limitations of Section 10-2.2112; and
    - (ab) Be programmed to change copy no more frequently than five second intervals.
- (f) **Flags and streamers.**
  - (1) **Where allowed.** Flags and streamers may be permitted within any zoning district, in compliance with the requirements of this subsection.
  - (2) **Corporate flags.** One corporate flag is allowed per use or occupancy in nonresidential zoning districts, and is exempt from sign permit requirements. The flag shall not exceed a maximum area of twenty-four (24) square feet, and its dimensions shall not exceed a ratio of 2:1. The flag shall be flown only from a flagstaff or flagpole.

- (3) **Decorative flags and streamers.** Decorative flags and streamers without advertising copy or corporate or product identification are allowed as follows:
  - (aa) **Residential zoning districts.** One (1) decorative flag or streamer is allowed per parcel, and is exempt from sign permit requirements.
  - (ab) **Nonresidential zoning districts.** Six (6) decorative flags or streamers are allowed per business, and are exempt from sign permit requirements. Additional flags and streamers may be allowed with a sign permit, in compliance with the time limits established by subsection (b)(1), above.
- (4) **National and state flags.** Flags of nations or states are allowed without limitation on their number or size, and are exempt from sign permit requirements.
- (g) **Freeway-oriented signs.** A freeway-oriented sign may be approved in compliance with the following provisions.
  - (1) **Where allowed.** A freeway-oriented sign may be authorized for a:
    - (aa) Hotel, motel, or restaurant, as a freestanding use;
    - (ab) Service station; or
    - (ac) Shopping center with a gross floor area of two hundred fifty thousand (250,000) square feet or more, when located within six hundred (600) feet of the Freeway 99 right-of-way.
  - (2) **Permit requirement.** A sign permit is required for a freeway-oriented shopping center identification sign; conditional use permit approval by the BZA shall be required for all other freeway-oriented signs, and for any freeway-oriented sign with a height greater than thirty-five (35) feet.
  - (3) **Required findings.** The approval of a conditional use permit for a freeway-oriented sign for a hotel, motel, restaurant, or service station shall require that the BZA first find that:

- (aa) The use or occupancy (except a service station) is a freestanding use; and
  - (ab) The use or occupancy cannot be adequately identified by other signs permitted within the applicable zone.
- (4) **Approval of additional height.** The BZA may grant a conditional use permit authorizing a freeway-oriented sign higher than thirty-five (35) feet, as follows.
- (aa) **Criteria for approval.** A sign with a height greater than thirty-five (35) feet may be approved if the BZA determines that the applicant has demonstrated that an overcrossing of Freeway 99, or its ramps, or trees or vegetation will obstruct the visibility of the proposed sign from the northbound or southbound lanes of Freeway 99.
  - (ab) **Procedure for determining allowed height.** The BZA shall approve a sign in compliance with subsection (g)(4)(aa) above, at a height no more than the minimum necessary to clear the identified visual obstruction. The determination of maximum height by the BZA shall be based on the following procedure, which shall occur prior to the BZA public hearing.
    - (i) The applicant shall arrange for a boom truck with a sign target to be on the site at the location of the proposed sign, with a tape measure attached to the top of the target so that an accurate ground reading of height can be determined.
    - (ii) On the BZA field trip, the BZA will go to the site, pick up the applicant or applicant's representative, and drive Freeway 99 north and south of the target on the site. The purpose will be to visually verify that the target is set at the minimum height necessary to clear the visual obstruction.
    - (iii) At the public hearing and in their deliberations, the BZA shall consider the visual observations from the field trip to be the primary testimony.

- (h) **Historic signs.** A historic sign may be approved in any zone subject to the following requirements:
  - (1) **Permit requirement.** Conditional use permit approval by the BZA shall be required in compliance with Article 25 of Chapter 2 of Title 10 of this Code.
  - (2) **Permit review considerations.** Any deviation from the sign regulations of the zone applicable to the site of a proposed historic sign should be noted in the BZA agenda report. The BZA should determine if each deviation is insignificant to the compatibility with other uses in the area and deny or impose conditions deemed necessary for any deviations that are not compatible.
  - (3) **Criteria for approval.** The BZA may approve a conditional use permit for a historic sign which deviates from the sign standards of the applicable zone only where:
    - (aa) The BZA determines that the existence of the sign at the given site fifty (50) or more years ago has been adequately proven;
    - (ab) The BZA determines that the design of the sign is historically authentic, based on adequate proof of authenticity provided by photographs or plans furnished by the applicant; and
    - (ac) The Landmark Preservation Committee has reviewed the proposed sign and has provided findings that the sign meets the above two (2) criteria.
- (i) **Outdoor advertising signs.** Outdoor advertising signs shall comply with the following provisions:
  - (1) **C-2, C-M, M-1 and M-2 zones.** Only the following outdoor advertising signs may be permitted in the C-2, C-M, M-1 and M-2 zones.
    - (aa) A directional outdoor advertising sign may be authorized with conditional use permit approval for hotels, motels, and restaurants only, provided that the sign does not exceed seventy-two (72) square feet in area and twenty

(20) feet in height. The BZA may grant the conditional use permit only after first finding that:

- (i) The use or occupancy is a freestanding use.
- (ii) The combined total of all approved directional outdoor advertising signs for a motel, hotel or restaurant is necessary for the public welfare and will not excessively promote the specific motel, hotel or restaurant.

(ab) Noncommercial outdoor advertising signs may be permitted with a maximum area of seventy-two (72) square feet and a height of twenty (20) feet, except that:

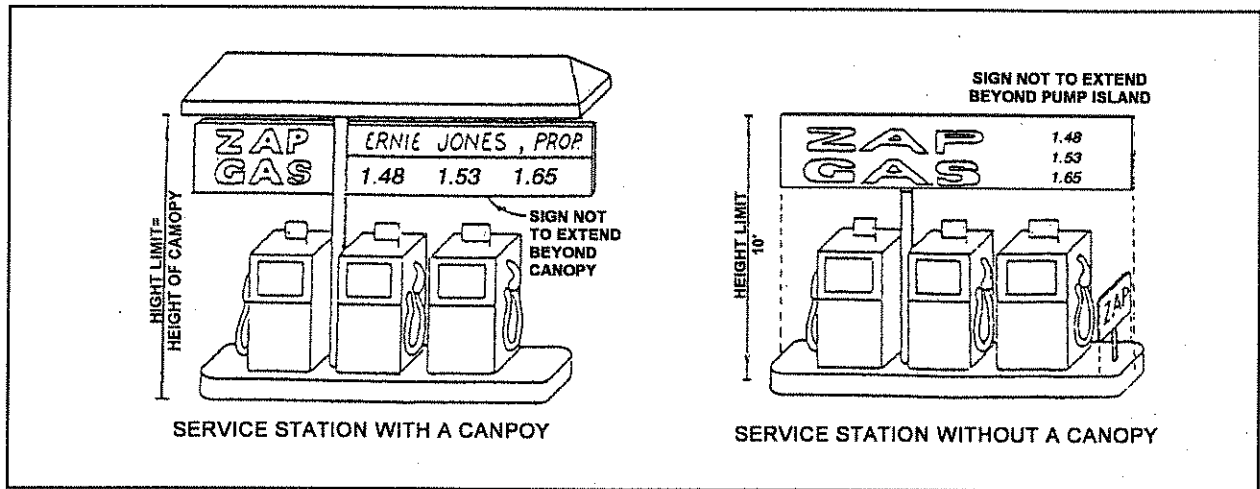
- (i) Signs located on property within two hundred (200) feet of the Freeway 99 right-of-way may be as large as one hundred fifty (150) square feet and thirty-five (35) feet in height.
- (ii) Signs located on property within two hundred (200) feet of the Freeway 99 right-of-way may be higher than thirty-five (35) feet, subject to the approval of a conditional use permit through the procedure described in subsection (g). (Freeway-Oriented Signs). In deciding whether to grant the conditional use permit, the BZA shall not take into consideration the copy, subject matter or message of the proposed sign.

(2) **C-1 zone.** Noncommercial outdoor advertising signs may be permitted in the C-1 zone with a maximum area of seventy-two (72) square feet and a maximum height of twenty (20) feet.

(3) **Other zones.** Outdoor advertising signs are prohibited in all zones other than those listed in subsections (i)(1) and (i)(2), above.

(j) **Service station signs.** The following sign requirements apply to service stations in addition to the provisions of Tables 21-2 and 21-3. The following signs are allowed in addition to the signs and sign area allowed by Tables 21-2 and 21-3, except where otherwise limited by this subsection. See Figure 21-10.

- (1) **Pump island signs.** Signs shall be permitted on pump islands, canopy uprights, and nonmovable structures on the pump islands if the combined area of these signs and all other wall and canopy signs do not exceed the total sign area permitted in Table 21-2 for the service station building, and do not project beyond the canopy roof or raised pump island. These signs shall not exceed ten (10) feet in height if there is no canopy. For self-service stations with small attendant booths less than ten (10) feet on any side, the total wall and canopy sign area shall not exceed one hundred sixty (160) square feet.
- (2) **Price signs.** Freestanding motor fuel price signs are permitted as follows, for service stations open to the public.
  - (aa) **Sign copy.** The copy on the signs shall be limited to specifying the prices and grades of motor fuel, self-service or full service, and brand name of the motor fuel, as required by the California Business and Professions Code.
  - (ab) **Maximum sign area.** The maximum allowable area for fuel price signs shall be twenty-five (25) square feet for the portion of the sign identifying self- or full-service prices, and six (6) square feet for a discount for cash portion of the sign; all can be combined as one (1) sign.
  - (ac) **Maximum sign height.** Maximum sign height shall be fourteen (14) feet.
  - (ad) **Maximum number of signs.** One fuel price sign is permitted for each street frontage of the site.



- (k) **Shopping center identification signs.** A shopping center identification sign allowed by section 10-2.2112 (Sign Requirements by Zone) shall also comply with the following requirements.
- (1) **Limitation on copy.** The copy on a shopping center sign shall be limited to the shopping center name, with an optional reader board or a listing of uses within the center. The lettering for the reader board or the listing of uses shall be of the same or smaller size than the lettering of the shopping center name.
  - (2) **Monument signs required.** Shopping center identification signs for centers approved after February 4, 1999, shall be limited to monument signs. No pole/pylon signs shall be allowed.
  - (3) **Removal of existing signs required.** Any freestanding or projecting identification signs installed at the shopping center on or after July 1, 1972, whether identifying the shopping center or any use or occupancy within the center, shall be removed prior to the issuance of a building permit for the installation of a shopping center sign.
  - (4) **Limitation on other signs.** After the installation of a shopping center sign, no additional freestanding or projecting identification sign shall be installed for any use or occupancy within the center,

even in cases where the existing signs were installed prior to this Code provision.

- (5) **Approval of additional signs.** A shopping center with more than two hundred fifty thousand (250,000) square feet of gross floor area may be authorized one (1) additional shopping center identification sign through conditional use permit approval, for each street frontage longer than six hundred (600) feet. Where more than one (1) sign is located on a single street frontage, the signs shall be separated by a minimum of three hundred (300) feet.
- (l) **Street address signs.** Each building or group of buildings assigned a street address shall display the street address on a wall of the building, as follows.
  - (1) **Location.** The street address shall be visible from the street upon which the building is addressed.
  - (2) **Size of numerals.** The minimum height, width, and maximum area of the street address numerals shall be as follows:
    - (aa) **Residential uses.** Each numeral shall have a minimum height of three (3) inches and a minimum stroke width of one-fourth (1/4) inch. The total area of all the numerals which comprise the street address shall not exceed one (1) square foot.
    - (ab) **Nonresidential and conditional uses.** Each numeral shall have a minimum height of six (6) inches and a minimum stroke width of one-half (1/2) inch. The total area of all the numerals which comprise the street address shall not exceed four (4) square feet.
- (m) **Subdivision sales signs.** Residential subdivisions are permitted the following signs during the marketing of the lots/homes within the subdivision.
  - (1) **Sales/identification sign.** One (1) subdivision identification sign is allowed on the site of each recorded subdivision during lot sales, with a maximum area of sixty-four (64) square feet, and a maximum height of ten (10) feet.

- (2) **Directional signs.** Each recorded subdivision is allowed directional signs to guide potential customers to the site and its model homes or other sales facility, as follows.
  - (aa) **Allowed location of signs.** Subdivision sales directional signs shall be located as follows.
    - (i) Within the boundaries of the subdivision, one (1) directional sign shall be permitted per block.
    - (ii) Outside the boundaries of the subdivision, directional signs on private property shall be permitted as follows:
      - (a) One (1) at each street intersection where a change in direction (left turn, right turn) is required; and
      - (b) Three (3) where no change in direction is required. No subdivision directional sign shall be closer than one thousand (1000) feet to another subdivision directional sign for the same subdivision.
  - (ab) **Sign area and height.** The signs shall not exceed sixteen (16) square feet and six (6) feet in height.
- (3) **Temporary directional placards.** Temporary directional placard signs are allowed without limitation on number, and are exempt from sign permit requirements, provided that the signs:
  - (aa) Are in place on weekends only, no longer than from 5:00 p.m. on Friday, to 12:00 a.m. on Monday;
  - (ab) Are placed on private property outside of a public right-of-way, with the permission of the property owner;
  - (ac) Do not exceed three (3) square feet in area or a height of thirty-six (36) inches; and
  - (ad) Are completely removed when not in use, including all stakes and any other mounting materials.

- (4) **Subdivision banners, flags, and promotional decorations.** These devices are subject to the requirements of Sections 10-2.2114(b), and 10-2.2114(f).
- (5) **Time limits.** The subdivision sales signs allowed by this subsection shall be removed not later than three (3) years from the date the subdivision map is recorded, except as follows:
  - (aa) Where building permits have been issued by the City for more than fifty (50) percent but less than sixty-five (65) percent of the lots in the subdivision at the end of three years, the sign may remain for an additional one (1) year;
  - (ab) Where building permits have been issued by the City for fifty (50) percent or less of the lots in the subdivision at the end of three (3) years, the sign may remain for an additional two (2) years; and
  - (ac) Temporary directional placards shall be removed in compliance with subsection (m)(3), above.

**10-2.2115. [AVAILABLE]**

**10-2.2116. SIGN DESIGN AND CONSTRUCTION STANDARDS.**

All signs shall be designed, constructed, and installed in compliance with the provisions of this section and the maximum area and height requirements of Section 10-2.2110 (Sign Area and Height Limitations).

- (a) **Prohibited sign types and materials.** The following types of signs and sign materials shall be prohibited within the City. It shall be unlawful and punishable as an infraction for any person to place or cause to be placed any sign not in conformity with this section.
  - (1) **Animated signs.** No sign shall have any moving, rotating, or otherwise animated part, or any flashing, blinking, fluctuating or otherwise animated light, except that the following shall be allowed.
    - (aa) A conventional clock face.
    - (ab) A sign showing digital time with changes in time not more often than once a minute.

- (ac) A sign showing digital temperature with changes in temperature only when there is a rise or fall of one (1) degree or more. Changes from Fahrenheit readings to Centigrade readings shall occur not more frequently than five-second intervals.
  - (ad) A sign showing time and temperature, which changes no more frequently than five-second intervals.
  - (ae) An on-premises barber pole of traditional design with a maximum length of thirty (30) inches, which shall revolve only during the time that the barber shop is open for business. The pole shall not exceed ten (10) feet in height.
  - (af) An electronic message board in compliance with Section 10-2.2114 (Standards for Specific Types of Signs and Land Uses).
- (2) **Bench signs.** Bench signs are prohibited, except on public property under a franchise granted by the City.
  - (3) **Building outlining.** The outlining of a building or its roof by permanent lighting with exposed neon tubing, exposed incandescent lighting or other artificial lighting, or an equivalent effect, is allowed only with conditional use permit approval. "Outlining" means delineation, with a row or band of lights, of the edges of a roof or wall surface. This provision does not prohibit floodlighting or generally illuminating buildings and their roofs, nor temporary Christmas displays.
  - (4) **Hazardous signs.** No sign shall be installed at any street intersection, railroad grade crossing, or driveway in a manner that will obstruct the vision of motor vehicle operators, or at any location where, the position, shape or color of the sign may interfere with, obstruct the view of or be confused with any authorized traffic sign, signal or device; or which makes use of the words "STOP", "DANGER," or any other word, phrase, symbol or character in such manner as to interfere with, mislead or confuse motorists.

- (5) **Outdoor advertising signs.** Outdoor advertising signs are prohibited, except in compliance with Section 10-2.2114(i) (Outdoor Advertising Signs).
  - (6) **Signs on street trees, utility poles, or structures in rights-of-way.** No sign shall be attached to any City street tree, or any poles such as utility poles, street signals, street lights, street name signs, or traffic warning signs, or on any bus shelter.
  - (7) **Temporary signs.** Temporary signs are prohibited, except A-frame signs, and banners, flags, and promotional displays, in compliance with Section 10-2.2112 (Standards for Specific Types of Signs and Land Uses).
- (b) **Freestanding signs.** Where a freestanding sign is allowed by these sign regulations, the use of a monument sign rather than a pole or pylon sign is encouraged. The use of pole or pylon signs is restricted for shopping centers by Section 10-2.2114(k) (Shopping Center Identification Signs). Where pole or pylon signs are allowed by these regulations, sign owners shall be advised that the City will not trim or remove any street tree within a public right-of-way solely to improve the visibility of a pole or pylon sign which has been obscured by tree growth.
  - (c) **Sign construction standards.** All signs, sign components, and sign support structures shall be manufactured and installed in compliance with applicable Building, Electrical and Fire Prevention Codes of the City.
  - (d) **Sign illumination.** All fixtures or lighting devices used to illuminate signs shall only emit light of constant intensity; and no sign shall be illuminated by, or contain flashing, intermittent, rotating or moving light, except for electronic message boards in compliance with Section 10-2.2112 (Standards for Specific Types of Signs). No sign lighting device shall be installed or used that will cause glare or reflection that may constitute a traffic hazard or nuisance.
  - (e) **Sign company identification.** No person shall install, alter, or relocate any sign without printing on the sign the name of the person or firm doing the work, the date of the work, and the City of Modesto building permit number. This information shall be printed in the lower right-hand corner of the sign in clearly legible letters, and shall not exceed sixteen (16) square inches in area. If this information is not placed on the sign as required, the Chief Building Official may remove

the sign in compliance with Section 10-2.2120(d) (Abatement of Unsafe or Illegal Signs).

- (f) **Noncommercial use of commercial signs.** Notwithstanding any other provisions of this article to the contrary, any sign or portion of a sign which is otherwise legally permitted as a result of the commercial use or occupancy of a building or site may contain noncommercial messages in compliance with the definition of "Outdoor Advertising Sign - Noncommercial" in Section 10-2.2102. When the commercial use or occupancy of the building or site ceases, the sign shall comply with the applicable provisions of this article relating to the removal of obsolete signs and outdoor advertising signs.

**10-2.2117. [AVAILABLE]**

**10-2.2118. SIGN MAINTENANCE STANDARDS.**

- (a) **Maintenance of signs.** The owner of any sign shall maintain the sign and all supporting structures in a presentable condition at all times. Banners, flags, and promotional decorations shall be removed or replaced when tattered or sun bleached. All painted signs and all supporting structures shall be repainted to keep them in good condition whenever repainting is requested in writing by the Chief Building Official or the Director.
- (b) **Removal of sign copy.** Within ten (10) days after written notification from the Building Official, the owner of an affected sign shall remove, paint over, or cover the copy of any sign which no longer advertises a business conducted on the site, or a product available for purchase by the public. The method of sign copy removal shall be approved by the Chief Building Official or the Director. If the owner fails to comply with the notice within ten (10) days, the Chief Building Official or Director is hereby authorized to remove, paint over, or cover the sign or sign copy. Any expense incurred by the City in removing, painting over, or covering the sign copy shall be paid by the owner of the building or structure to which such sign is attached, or by the owner of the sign.

**10-2.2119. [AVAILABLE]**

**10-2.2120. NONCONFORMING, UNSAFE, AND ILLEGAL SIGNS.**

- (a) **Applicability - Nonconforming signs defined.** For the purpose of this article, a "nonconforming sign" does not conform with the provisions of this article, but lawfully existed and was in use:
- (1) Within the City on March 1, 1977, including signs installed in compliance with use permits and variances granted by the City prior to March 1, 1977;
  - (2) On property outside of the City on the date when the annexation of the property to the City was completed, including signs installed in compliance with use permits and variances granted by the County of Stanislaus;
  - (3) Within the City on the effective date of an amendment to the Zoning Map of the City of Modesto for the property on which the sign is located; or
  - (4) Within the City on the effective date of any future amendment of this article which makes the sign nonconforming.
- (b) **Allowable changes and repairs.** A nonconforming sign shall not be replaced, altered, reconstructed, relocated or expanded in any manner unless it is made to conform with all the provisions of this article. However, other nonconforming signs on the same property need not be made to conform as a result.
- (1) **Copy changes.** Changes in copy shall be permitted if no structural changes in the sign are necessary, except that no change in copy shall be permitted for nonconforming painted wall signs.
  - (2) **Maintenance and repairs.** Ordinary maintenance and minor repairs which will not increase the normal life of the sign and which are required for safety purposes shall be permitted. Structural alterations to a nonconforming sign are prohibited.
- (c) **Discontinued use.** If the use identified by a nonconforming sign is discontinued, the sign shall be removed within thirty (30) days, unless within that time it is made to conform to the provisions of this article. If the sign is not made to conform, it shall thereafter be unlawful. "Discontinue" in this subsection shall mean cessation of operation or

change of use. "Discontinue" shall not mean an ownership change or a name change as long as there is no cessation of operation and the use is not changed.

- (d) **Nonconforming sign abatement.** Each nonconforming sign shall be removed or made to conform to the provisions of this article at the sole cost of the sign owner, before the expiration of the time limit established for the particular type of sign by this article or in the following table, whichever is the shorter period.

**TABLE 21-1  
NONCONFORMING SIGN ABATEMENT REQUIREMENTS**

Type of Sign	Time Limit for Abatement
1. Temporary signs annexed to the City	3 calendar months from the date of annexation (1)
2. Rotating, moving, flashing, changing, or blinking portions of signs	
a. Time and temperature signs	Exempt, no abatement necessary if sign otherwise conforms
b. Conventional clock	Exempt, no abatement necessary if sign otherwise conforms
c. Rotating signs annexed to the City, where the stopping of the rotating portion would substantially eliminate the utility of the sign	3 years from the date of annexation (1)
3. Vehicle fuel price signs per Section 10-2.2114(j)	As allowed by State law
4. Signs on nonconforming uses or buildings	
a. Conforming signs	When the nonconforming use or nonconforming building is terminated
b. Nonconforming signs	As provided by 5. following
5. All other nonconforming signs	
a. Nonconforming as a result of City-initiated rezoning of the site, or an amendment to this article	10 years from the effective date of the rezoning or amendment to this article
b. Annexed to the City	3 years from the date of annexation (1)

**Notes:**

- (1) The BZA may grant a variance to allow up to seven years in addition to the three years allowed from the date of annexation.

(e) **Abatement of unsafe or illegal signs.**

(1) **Unsafe and illegal signs declared a nuisance.** The Council hereby determines that the public health, safety, and welfare require that all signs previously installed in violation of any applicable law or ordinance of the City of Modesto shall be subject to the provisions of this article, and shall comply with the requirements of this article forthwith. The Council further determines and declares that all signs which do not comply, and all signs that are hereafter installed in violation of the provisions of this article shall be and they are hereby declared public nuisances, to be removed and abated as follows.

(2) **Unsafe sign abatement.** Unsafe signs are subject to abatement as follows:

(aa) **Notice to permittee/owner.** The Chief Building Official or the Director shall give notice to the sign permittee or owner where he or she determines that any sign subject to this article is unsafe or insecure, or is a menace to the public, or is in a dilapidated, decayed, or neglected state, or has been installed or is being maintained in violation of the provisions of this article.

(ab) **Correction by City.** If the permittee or owner fails to remove or alter the structure or sign to comply with this article within ten (10) days after notice, or within three (3) days for temporary signs, the sign may be removed or altered to comply by the Chief Building Official or the Director. Any expense incurred by the City in altering the sign to comply shall be paid by the permittee or owner of the property upon which it is located. No permit shall be issued thereafter to any permittee or owner who has not paid these costs.

(ac) **Immediate removal.** The Chief Building Official may remove summarily and without notice, any sign which is an immediate peril to persons or property.

(f) **Enforcement procedures.** The administrative remedies set forth in Chapter 6 of Title 1 of this Code may be used to address violations pertaining to nonconforming, unsafe and illegal signs.

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

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

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 8th day of December, 1998, by Councilmember Fisher, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Friedman, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Conrad, Dobbs, Fisher, Friedman, Serpa, Smith  
Mayor Lang

NOES: Councilmembers: None

ABSENT: Councilmembers: None

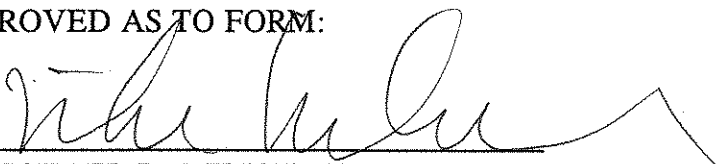
APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:

By   
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:


By   
MICHAEL D. MILICH, City Attorney

Ord. No. 3112-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 5<sup>th</sup> day of January, 1999, Councilmember Friedman, moved its final adoption, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and the ordinance adopted by the following vote:

AYES:	Councilmembers:	Conrad, Dobbs, Fisher, Friedman, Serpa, Smith, Mayor Lang
NOES:	Councilmembers:	None
ABSENT:	Councilmembers:	None

APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:   
JEAN ZAHR, City Clerk

Effective Date: February 4, 1999

Clerk

ORDINANCE NO. 3113 -C.S.

AN ORDINANCE ADOPTING A PRECISE PLAN FOR AREA NO. 7 OF THE VILLAGE ONE SPECIFIC PLAN, RELATING TO PROPERTY LOCATED ON THE SOUTH SIDE OF SYLVAN AVENUE EAST OF ESTA AVENUE. (K-D LAND AND CATTLE COMPANY)

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

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

WHEREAS, an application has been filed by K-D Land and Cattle Company for a Precise Plan for Area No. 7, property located on the south side of Sylvan Avenue east of Esta Avenue, and

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

WHEREAS, a public hearing was held by the Planning Commission of the City of Modesto on November 16, 1998, in the City Council Chambers, City Hall, 801 11th Street, Modesto, and

WHEREAS, after considering public comments, the Planning Commission, by Resolution No. 98-67, recommended to the City Council approval of a Precise Plan for Area No. 7 of the Village One Specific Plan, and an Amendment to Section 12-3-9 of the Zoning

Map to rezone from a Specific Plan-Holding Zone, SP-H, to Specific Plan-Overlay Zone, SP-O, and

WHEREAS, said matter was set for a public hearing of the City Council of the City of Modesto to be held on December 8, 1998, at 4:00 p.m., in the City Council Chambers, City Hall, 801 11th Street, Modesto, and

WHEREAS, the Council declares that said Precise Plan fore Area 7 of the Village One Specific Plan and rezoning to SP-O Overlay Zoning is required by public necessity, convenience, and general welfare for the following reasons:

1. The proposed Precise Plan for Area No. 7 conforms to the Village One Specific Plan.
2. The proposed Precise Plan for Area No. 7 is necessary as an integral step toward development under the Village One Specific Plan.

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

SECTION 1. APPROVAL OF PRECISE PLAN. That the City Council has reviewed and considered the Precise Plan for Area No. 7 of the Village One Specific Plan and rezoning of the Specific Plan-Holding Zone, SP-H, to the Specific Plan-Overlay Zone, SP-O, as recommended by the Planning Commission, and the Council does hereby approve said Precise Plan, a copy of which is on file in the City Clerk's Office.

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

SECTION 3. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in

the City; and a notice shall be published once in *The Modesto Bee*, the official newspaper of the City of Modesto, setting forth the title of this ordinance, the date of its introduction and the places where this ordinance is posted.

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 8th day of December, 1998, by Councilmember Friedman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and ordered printed and published by the following vote:


AYES: Councilmembers: Conrad, Dobbs, Fisher, Friedman, Serpa, Smith, Mayor Lang

NOES: Councilmembers: None

ABSENT: Councilmembers: None


APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:

By   
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

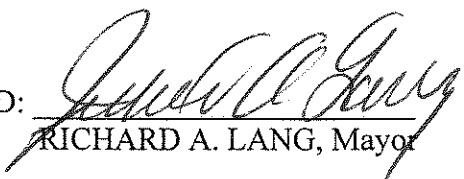
Ord. No. 3113-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the special meeting of the Council of the City of Modesto held on the 15<sup>th</sup> day of December, 1998, Councilmember Friedman, moved its final adoption, which motion being duly seconded by Councilmember Dobbs, was upon roll call carried and the ordinance adopted by the following vote:

AYES:	Councilmembers:	Conrad, Dobbs, Fisher, Friedman, Serpa, Smith, Mayor Lang
NOES:	Councilmembers:	None
ABSENT:	Councilmembers:	None

APPROVED:

  
RICHARD A. LANG, Mayor

ATTEST:

  
JEAN ZAHR, City Clerk

Effective Date: January 7, 1999

*Cliff*

ORDINANCE NO. 3114 -C.S.

AN ORDINANCE REZONING VILLAGE ONE PROPERTY FROM SPECIFIC PLAN-HOLDING ZONE, SP-H, TO SPECIFIC PLAN-OVERLAY ZONE, SP-O, FOR PROPERTY LOCATED ON THE SOUTH SIDE OF SYLVAN AVENUE EAST OF ESTA AVENUE. (PRECISE PLAN FOR AREA NO. 7 - K-D LAND AND CATTLE COMPANY)

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

WHEREAS, an application has been filed by K-D Land and Cattle Company for a Precise Plan for Area No. 7, property located on the south side of Sylvan Avenue east of Esta Avenue, and

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

WHEREAS, after a public hearing held on November 16, 1998, it was found and determined by the Planning Commission that rezoning of the property as requested is required by public necessity, convenience and general welfare, and

WHEREAS, by Resolution No. 98-67, adopted November 16, 1998, the Planning Commission recommended that the application of K-D Land and Cattle Company to rezone Village One property from Specific Plan-Holding Zone, SP-H, to Specific Plan-Overlay Zone, SP-O, for property located on the south side of Sylvan Avenue east of Esta Avenue be approved, and

WHEREAS, said matter was set for a public hearing of the City Council to be held on December 8, 1998, at 4:00 p.m., in the City Council Chambers, City Hall, 801 11th Street, Modesto, California, at which date and time said duly noticed public hearing of the Council was held and evidence both oral and documentary was received and considered,

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

SECTION 1. After a public hearing held on December 8, 1998, in the Council Chambers, City Hall, 801 11th Street, Modesto, California, this Council finds and determines that the requested rezoning is in accordance with the General Plan and will serve the public health, safety and general welfare and provide the economic and social advantages resulting from orderly, planned use of land resource for the following reasons:

1. The proposed rezoning conforms to the Village One Specific Plan.
2. The proposed rezoning is necessary as an integral step toward development under the Village One Specific Plan.

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

SP-H to SP-O, PPA 7

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

Commencing at the Northeast corner of the Southwest Quarter of said Section 12; thence South 89° 48' 45" West, along the North line of said Southwest Quarter, a distance of 2.75 feet to the Centerline of Litt Road and the Point of

Beginning; thence South 00° 17' 06" East, along the centerline of said Litt Road, 2.75 feet west of and parallel with the East line of said Southwest Quarter, a distance of 1272.40 feet to the centerline intersect of Hillglen Avenue; thence South 89° 49' 11" West 38.56 feet to a point of curvature, concave southerly, having a radius of 4002.72 feet; thence westerly along the arc of said curve, through a central angle of 02° 35' 40" an arc distance of 181.25 feet; thence South 87° 13' 31" West 685.70 feet; thence North 02° 46' 26" West 289.25 feet to a point of curvature, concave southwesterly, having a radius of 400.00 feet; thence northwesterly, along the arc of said curve, through a central angle of 37° 31' 55", an arc distance of 262.02 feet; thence North 40° 18' 24" West 316.16 feet to a point of curvature, concave northeasterly, having a radius of 400.00 feet; thence northerly along the arc of said curve, through a central angle of 39° 58' 15", an arc distance of 279.05 feet to a point that is distant 8.50 feet east of the West line of the Northeast Quarter of the Southwest Quarter of said Section 12; thence North 00° 20' 09" West, 8.50 feet east of and parallel with the West line of the Northeast Quarter of said Southwest Quarter, distance of 280.29 feet to a point on the North line of said Southwest Quarter; thence North 89° 48' 45" East, along said North line, a distance of 1307.92 feet to the Point of Beginning, and containing 32.97 acres, more or less.

SECTION 3. ZONING MAP. Section 12-3-9 of the Zoning Map of the City of Modesto is amended to appear as set forth on the map attached hereto, which is hereby made a part of this ordinance by reference.

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

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

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 8th day of December, 1998, by Councilmember Friedman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Conrad, Dobbs, Fisher, Friedman, Serpa, Smith, Mayor Lang

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:

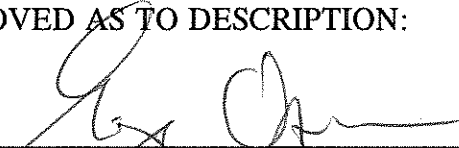
By   
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

APPROVED AS TO DESCRIPTION:


By   
Community Development Department  
Development Services

Ord. No. 3114-C.S.

FINAL ADOPTION CLAUSE

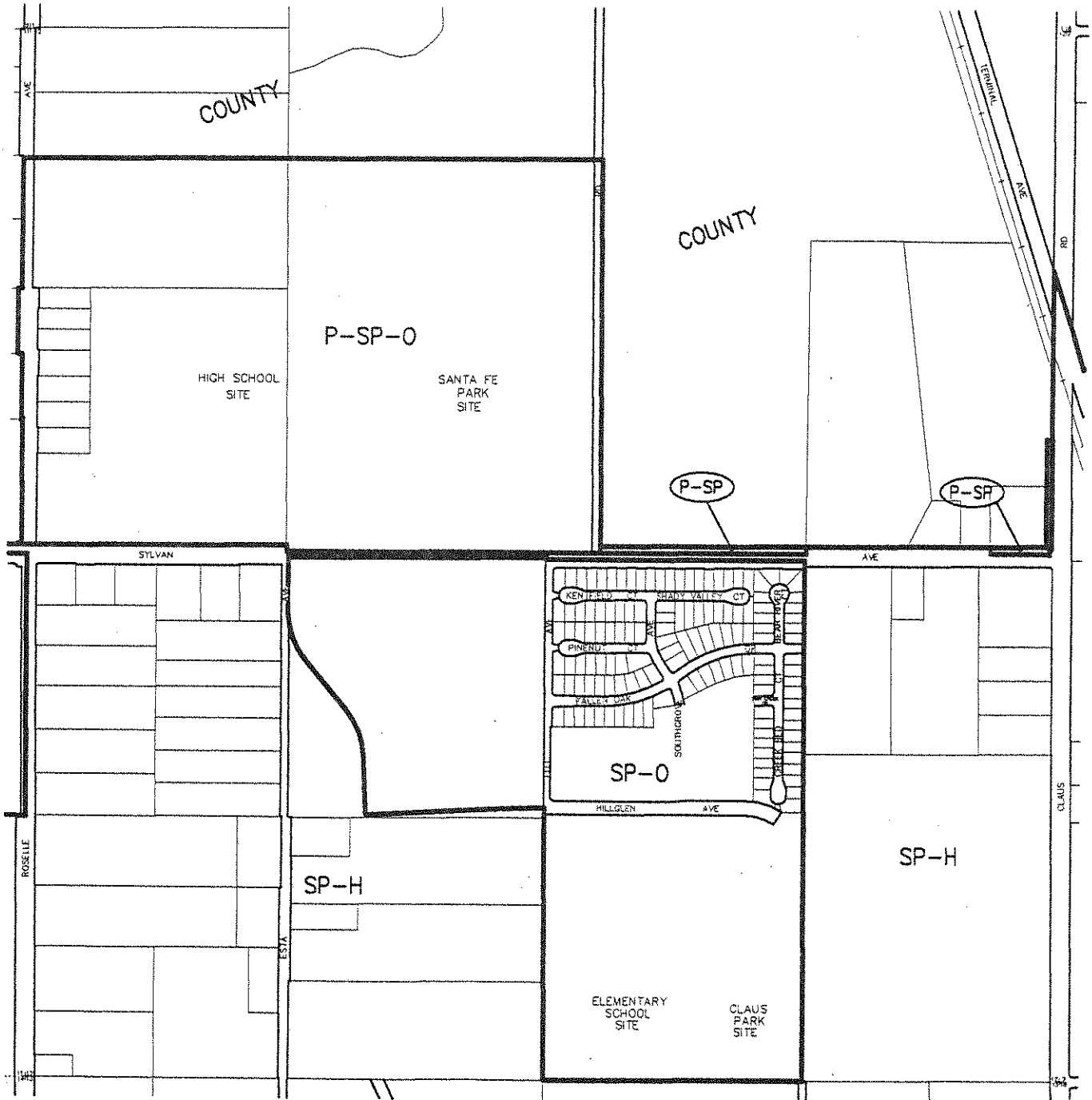
The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the special meeting of the Council of the City of Modesto held on the 15<sup>th</sup> day of December, 1998, Councilmember Friedman, moved its final adoption, which motion being duly seconded by Councilmember Dobbs, was upon roll call carried and the ordinance adopted by the following vote:

AYES:	Councilmembers:	Conrad, Dobbs, Fisher, Friedman, Serpa, Smith, Mayor Lang
NOES:	Councilmembers:	None
ABSENT:	Councilmembers:	None

APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:   
JEAN ZAHR, City Clerk

Effective Date: January 7, 1999



ZONING MAP OF THE CITY OF MODESTO

12-3-9

ORDINANCE NO. 3115-C.S.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MODESTO AUTHORIZING THE LEVY OF A SPECIAL TAX WITHIN THE AREA ANNEXED TO COMMUNITY FACILITIES DISTRICT NO. 1996-1 (TERRITORY WITHIN THE VILLAGE ONE AREA), AND AMENDING ORDINANCE NO. 3005-C.S. (VILLAGE ONE COMMUNITY FACILITIES DISTRICT NO. 1996-1), AS PREVIOUSLY AMENDED BY ORDINANCE NO. 3047

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

WHEREAS, on November 10, 1998, the City Council of the City of Modesto, State of California (the "Council"), adopted its Resolution No. 98-591 (the "Resolution of Intention to Annex") stating its intention to annex certain parcels of land (the "Annexed Territory") to Community Facilities District No. 1996-1 of the City of Modesto (the "District"), within the Village One Area, and to levy a special tax (the "Special Tax") within the Annexed Territory for the purpose of financing the costs of certain public facilities (the "Facilities") and services (the "Services"), pursuant to Chapter 2.5 of Part 1 of Division 2 of Title 5 (commencing with Section 53311) of the California Government Code, commonly known as the "Mello-Roos Community Facilities Act of 1982" (the "Act"), and

WHEREAS, a notice was published as required by law relative to the intention of this Council to accomplish the annexation and to levy the Special Tax within the Annexed Territory, and

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

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

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

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

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

for the purpose of financing the costs of the Facilities and the Services set forth in Exhibit A to the Resolution Ordering the Annexation, and

WHEREAS, the City Council previously approved Ordinance No. 3005-C.S., which became effective on November 14, 1996, and amended said ordinance on August 5, 1997, by its approval of Ordinance No. 3047-C.S., to conform it more precisely with the City's tax credit policy with respect to acquisition of facilities, land and services for the District, and the City Council wishes to again amend ordinance No. 3005-C.S. to conform to its existing tax credit policy within the District,

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

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

SECTION 2. By the passage of this Ordinance, a special tax is hereby levied within the Annexed Territory and, unless otherwise provided, in any territory that may be subsequently annexed to the District by this Council, at the rate, manner and method of apportionment set forth in Exhibit A attached hereto, as Exhibit A may from time to time be amended, being the rate, manner and method of apportionment specified in the Resolution Ordering the Annexation. The special taxes are hereby levied commencing in fiscal year 1998-1999 and in each fiscal year thereafter, unless reduced by subsequent resolution of this Council, at the Maximum Special Tax rate described in Exhibit A hereto.

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

SECTION 4. No properties or entities are exempt from the special tax unless the properties or entities are expressly exempted in the Resolution Ordering the Annexation (and Exhibit A hereto), or in any subsequent resolution of consideration to levy a new special tax or special taxes or to alter the rate or method of apportionment or an existing special tax as provided in Section 53334 of the Act.

SECTION 5. All of the collections of the special tax shall be used as provided for in the Act and the Resolution Ordering the Annexation. The special tax shall be levied only so long as needed for its purpose as described in the Resolution of Intention to Annex the District and the Resolution Ordering the Annexation.

SECTION 6. The annual maintenance special tax, as defined in Exhibit A, shall be collected in the same manner as ordinary ad valorem property taxes are collected and shall be subject to the same penalties and the same procedure, sale, and lien priority in case of delinquency as is provided for ad valorem taxes, as such procedure may be modified by law from time to time.

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

SECTION 7. Notwithstanding anything in this ordinance or in Exhibit

“A’ to the Resolution of Formation (Rate, Method, and Manner of Apportionment of Special Tax), to the contrary, persons or entities advancing funds, providing land or constructing or furnishing facilities contemplated in the Public Report may be permitted a direct credit or credits, as appropriate, against the Facilities Special Tax described in Exhibit “A” to the Resolution of Formation. In the case of oversubscription, cash for the amount of the oversubscription may be paid to such provider(s), as cash becomes available to the District through facility tax collection. Oversubscription is the furnishing of land or facilities whose total value as set forth in the Public Report exceeds the total facility taxes attributable to the furnisher(s) entire development within the District. The gross amount of the credit will be the facilities cost estimate in the Public Report, as that report may be amended or adjusted for inflation from time to time, irrespective of the actual cost of the facility to the developer. When determining the net amount of the credit, the facilities cost estimate in the Public Report shall be reduced by any non-prepaid costs or incidental costs as defined in the Act, Section 53317(c) and (e), by means of a cash administrative cost offset against the above-described gross credits. The administrative offset shall be specified in the final Public Report applicable to the District. The cash offset shall be payable by landowners having such credits at the time they would otherwise be required to pay their facilities taxes. The District also shall be compensated from available tax monies for money and services advanced by it for the acquisition, purchase, modification, expansion, improvement, rehabilitation, maintenance, leasing and/or construction of any or all of the facilities, all in accordance with and subject to the Act (including without limitation, Section

53314.9 of the Act), the Resolution of formation of the District, the Policies and Procedures, the Public Report and other applicable law.

In no event shall reimbursable advances or work-in-kind become either a debt of the City, or a debt in excess of actual facility tax receipts, of the District. All such reimbursement shall only be made or had pursuant to a valid, executed facility/services acquisition agreement in a form approved by the District Administrator. With the approval of the District Administrator, tax credits may be furnished to a landowner to offset taxes otherwise due if the landowner has furnished work-in-kind which has not yet received a notice of completion. Notwithstanding the previous sentence, such discretionary credits shall be fully reimbursable to District in cash in the event that the applicable facilities acquisition agreement is not executed and fulfilled by the provider, or if that provider does not receive a notice of completion from the District Engineer.

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

SECTION 8. Ordinance No. 3005-C.S. is hereby amended to delete its existing Section 7, as amended into it by Ordinance No. 3047-C.S., and to add a new and different Section 7 as follows:

Notwithstanding anything in this ordinance or in Exhibit

“A” to the Resolution of Formation (Rate, Method, and Manner of Apportionment of Special Tax), to the contrary, persons or entities advancing funds, providing land or constructing or furnishing facilities contemplated in the Public Report may be permitted a direct credit or credits, as appropriate, against the Facilities Special Tax described in Exhibit “A” to the Resolution of Formation. In the case of oversubscription, cash for the amount of the oversubscription may be paid to such provider(s), as cash becomes available to the District through facility tax collection. Oversubscription is the furnishing of land or facilities whose total value as set forth in the Public Report exceeds the total facility taxes attributable to the furnisher(s) entire development within the District. The gross amount of the credit will be the facilities cost estimate in the Public Report, as that report may be amended or adjusted for inflation from time to time, irrespective of the actual cost of the facility to the developer. When determining the net amount of the credit, the facilities cost estimate in the Public Report shall be reduced by any non-prepaid costs or incidental costs as defined in the Act, Section 53317(c) and (e), by means of a cash administrative cost offset against the above-described gross credits. The administrative offset shall be specified in the final Public Report applicable to the District. The cash offset shall be payable by landowners having such credits at the time they would otherwise be required to pay their facilities taxes. The District also shall be compensated from available tax monies for money and services advanced by it for the acquisition, purchase, modification, expansion, improvement, rehabilitation, maintenance, leasing and/or construction of any or all of the facilities, all in accordance with and subject to the Act (including without limitation, Section

53314.9 of the Act), the Resolution of formation of the District, the Policies and Procedures, the Public Report and other applicable law.

In no event shall reimbursable advances or work-in-kind become either a debt of the City, or a debt in excess of actual facility tax receipts, of the District. All such reimbursement shall only be made or had pursuant to a valid, executed facility/services acquisition agreement in a form approved by the District Administrator. With the approval of the District Administrator, tax credits may be furnished to a landowner to offset taxes otherwise due if the landowner has furnished work-in-kind which has not yet received a notice of completion. Notwithstanding the previous sentence, such discretionary credits shall be fully reimbursable to District in cash in the event that the applicable facilities acquisition agreement is not executed and fulfilled by the provider, or if that provider does not receive a notice of completion from the District Engineer.

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

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

SECTION 10. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in The Modesto Bee, the official newspaper of the City of Modesto, setting forth the title of this ordinance, the date of its introduction and the places where this ordinance is posted.

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 15th day of December, 1998, by Councilmember Friedman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Dobbs, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Conrad, Dobbs, Fisher, Friedman, Serpa, Smith,  
Mayor Lang

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:

By   
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

Ord. No. 3115-C.S.

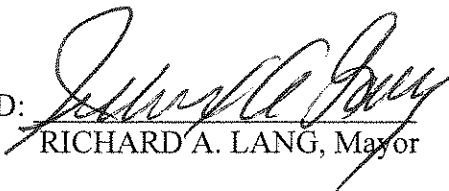
FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the special meeting of the Council of the City of Modesto held on the 12<sup>th</sup> day of January, 1999, Councilmember Dobbs, moved its final adoption, which motion being duly seconded by Councilmember Friedman, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Conrad, Dobbs, Fisher, Friedman, Serpa, Smith,  
Mayor Lang

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:   
JEAN ZAHR, City Clerk

Effective Date: February 11, 1999

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

**CITY OF MODESTO  
STANISLAUS COUNTY, CALIFORNIA**

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

**AMENDED APRIL 1997  
FOR  
ANNEXATION NO. 1**

Prepared by:

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

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

**TABLE OF CONTENTS**

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

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

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

**INTRODUCTION**

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

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

(hereinafter referred to as the "District") and

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

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

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

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

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

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

**I. DESCRIPTION OF FACILITIES**

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

**A. ARTERIAL ROADS**

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

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

## B. STORM DRAINAGE SYSTEM

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

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

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

## C. UTILITY RELOCATION

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

## D. PARKS

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

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

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

**E. PUBLIC FACILITIES**

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

**F. OTHER**

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

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

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

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

## **II. BOUNDARIES OF COMMUNITY FACILITIES DISTRICT ANNEXATION NO. 1**

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

### III. COST ESTIMATES

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

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

Arterial Roads	\$20,509,278
Storm Drainage	\$13,240,470
Utility Relocation	\$1,120,458
Parks	\$10,863,967
Public Facilities	\$25,000
Other	<u>\$2,698,683</u>

Subtotal: \$48,457,856

Annual CFD Administration (1%) \$484,579

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

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

**B. OPERATIONS AND MAINTENANCE COSTS FOR MAINTENANCE SPECIAL TAX**

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

\* Annual maintenance cost at buildout in 1996 dollars:

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

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

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

A special tax applicable to each Assessor's Parcel in Community Facilities District No. 1996-1 (herein "CFD No. 1996-1") shall be levied and collected according to the tax liability determined by the City Council of the City of Modesto, through the application of the appropriate amount or rate for Taxable Property, as described below. All of the property in CFD No. 1996-1, unless exempted by law or by the provisions of Section E below, shall be taxed for the purposes, to the extent, and in the manner herein provided, including property subsequently annexed to CFD No. 1996-1 unless a separate Rate and Method of Apportionment of Special Tax is adopted for the annexation area.

##### A. **DEFINITIONS**

The terms hereinafter set forth have the following meanings:

**"Acre or Acreage"** means the land area of an Assessor's Parcel as shown on an Assessor's Parcel Map, or if the land area is not shown on an Assessor's Parcel Map, the land area shown on the applicable Final Subdivision Map, parcel map, or other recorded County parcel map.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **B. ASSIGNMENT TO LAND USE CLASS**

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

**C. MAXIMUM SPECIAL TAX**

**1. Facilities Special Tax**

a) Very Low Density Residential Property and Village Residential Property

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

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

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

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

**Step 4:** Multiply the Gross Acreage for each Land Use Class determined in Step 3 by the Facilities Special Tax identified for each Land Use Class in Table 1 below.

**Step 5:** Separately for each Land Use Class identified in the Final Subdivision Map, divide the product determined in Step 4 by the number of residential units within that Land Use Class as reflected in the Final Subdivision Map.

**Step 6:** Multiply the quotient(s) determined in Step 5 by 1.01 to calculate the Facilities Special Tax per residential unit that shall be collected prior to final building permit inspection or issuance of a certificate of occupancy, whichever occurs first.

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

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

**Step 1:** Determine the Gross Acreage of the Multi-Family Residential, Commercial, or Industrial Property within the Final Subdivision Map. Such determination shall include netting out any property within the Final Subdivision Map that is not Subdivided Property, as set forth in Step 1 of Section C.1.a. above.

**Step 2:** Multiply the Gross Acreage determined in Step 1 by the Maximum Facilities Special Tax applicable to each Land Use Class as shown in Table 1 below.

**Step 3:** Multiply the product determined in Step 2 above by 1.01 to calculate the total Facilities Special Tax that shall be collected from Multi-Family Residential, Commercial or Industrial Property prior to final building permit inspection or issuance of a certificate of occupancy, whichever occurs first.

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

Land Use Class	Description	Per-Acre Special Tax
1	Very Low Density Residential	\$19,654 per Gross Acre
2	Village Residential	\$29,398 per Gross Acre
3	Multi-Family Residential	\$76,228 per Gross Acre
4	Commercial	\$86,313 per Gross Acre
5	Industrial	\$40,419 per Gross Acre

Beginning in January 1997, the Facilities Special Tax shall be adjusted annually by applying the greater of (i) the construction cost index for the San Francisco region for the prior twelve (12) month period as published in the Engineering News Record or other comparable source if the Engineering News Record is discontinued or otherwise not available, or (ii) four percent (4.0%). Each annual adjustment of the Facilities Special Tax shall become effective on the subsequent July 1, and shall apply to all Parcels which have not paid the Facilities Special Tax prior to July 1.

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

## 2. Maintenance Special Tax

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

a) Developed Property

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

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

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

Beginning in January 1997, the maximum Annual Maintenance Special Tax shall be adjusted annually by applying the greater of (i) the construction cost index for the San Francisco region for the prior twelve (12) month period as published in the Engineering News Record or other comparable source if the Engineering News Record is discontinued or otherwise not available, or (ii) four percent (4.0%). Each annual adjustment of the maximum Annual Maintenance Special Tax shall become effective on the subsequent July 1.

b) Undeveloped Property

Undeveloped Residential Property:

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

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

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

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

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

Undeveloped Commercial and Undeveloped Industrial Property:

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

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

**1. Facilities Special Tax**

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

**2. Maintenance Special Tax**

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

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

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

**E.     LIMITATIONS**

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

**F.     ENFORCEMENT**

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

## **V. GENERAL TERMS AND CONDITIONS**

### **A. SUBSTITUTION FACILITIES**

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

### **B. APPEALS AND INTERPRETATION PROCEDURE**

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

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

### **C. ADMINISTRATION OF FUNDS**

#### **1. Facilities Fund**

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

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

**2. Maintenance Fund**

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

## **VI. CERTIFICATION**

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

---

**Jerry L. Slinkard**  
**Vail Engineering Corporation**

---

**Date**