

Clark

ORDINANCE NO. 3019 -C.S.

AN ORDINANCE AMENDING SECTION 26-3-9 OF THE ZONING MAP TO REZONE FROM GENERAL COMMERCIAL ZONE, C-2, AND MEDIUM-HIGH DENSITY RESIDENTIAL ZONE, R-3, TO PLANNED DEVELOPMENT ZONE, P-D(495), AS AN ADDITION TO PLANNED DEVELOPMENT ZONE, P-D(495), PROPERTY LOCATED ON THE NORTH SIDE OF YOSEMITE BOULEVARD BETWEEN NORTH RIVERSIDE DRIVE AND TRASK LANE. (U. S. RENTALS)

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

SECTION 1. ZONING CHANGE. Section 26-3-9 of the Zoning Map is hereby amended to reclassify the following described property from Neighborhood Commercial Zone, C-2, and Medium-High Density Residential Zone, R-3, to Planned Development Zone, P-D(495), as an addition to Planned Development Zone, P-D(495):

C-2 and R-3 to P-D(495) as an Addition to P-D(495)

Being a portion of the southwest quarter of Section 26, Township 3 South, Range 9 East Mount Diablo Base and Meridian, being more particularly described as follows:

Parcel B as per parcel map filed December 29, 1971, in book 29 of parcel maps, page 150, Stanislaus County Records.

Including also all of Yosemite Boulevard located between the above described property and the south line of said Section 26.

SECTION 2. USES. The following uses shall be permitted in said P-D(495) Zone, as an addition to P-D(495), 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. Equipment rental yard.
2. Trailer haul concrete mixing system.

SECTION 3. ZONING MAP. Section 26-3-9 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 January, 1997, 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:

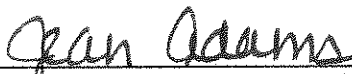
AYES: Councilmembers: Cogdill, Dobbs, Fisher, Friedman, McClanahan, Serpa, Mayor Lang

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:

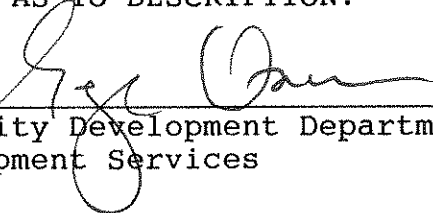
By   
JEAN ADAMS, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

APPROVED AS TO DESCRIPTION:

By   
Community Development Department  
Development Services

Ord. No. 3019-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 14th day of January, 1997, Councilmember Serpa moved its final adoption, which motion being duly seconded by Councilmember Friedman, was upon roll call carried and the ordinance adopted by the following vote:

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


NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:

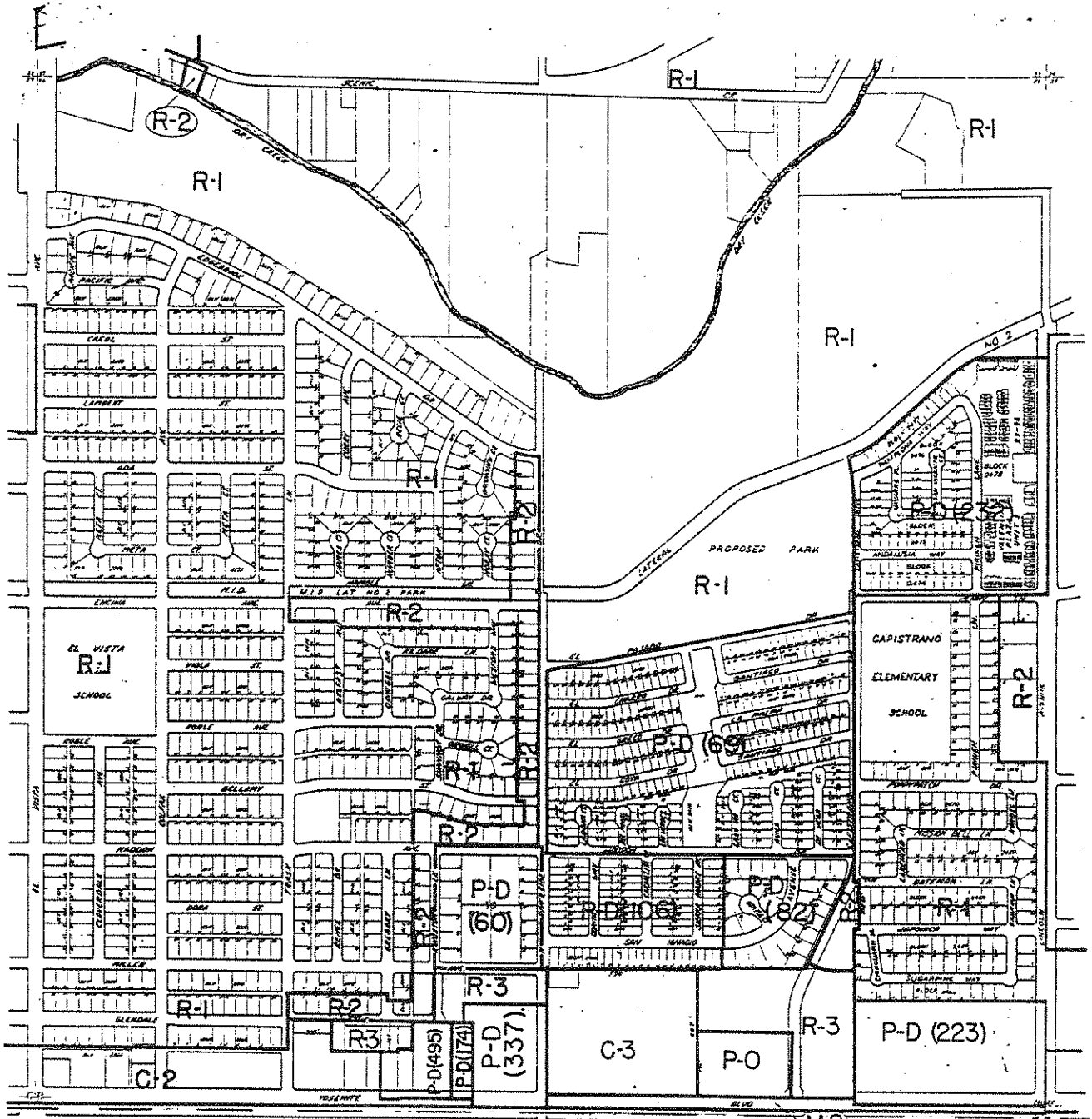
  
MAYOR RICHARD A. LANG

ATTEST:

  
JEAN ADAMS, City Clerk

Effective Date: February 13, 1997





ZONING MAP CITY OF MODESTO

26-3-9

*Clark*

ORDINANCE NO. 3020 -C.S.

AN ORDINANCE AMENDING SECTIONS 18-3-10 AND 19-3-10 OF THE ZONING MAP OF THE CITY OF MODESTO PREZONING CERTAIN PROPERTY LOCATED THEREON. (EMPIRE NORTH UNIT #1)

WHEREAS, pursuant to Municipal Code Section 10-2.2604, the City of Modesto proposes to initiate a prezoning of the westerly portion of the area designated as the Empire North Unit #1 Specific Plan for the purpose of determining the zoning that will apply to the property upon annexation, and

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

WHEREAS, after a public hearing held on December 2, 1996, in the Council Chambers, City Hall, 801 11th Street, Modesto, California, it was found and determined by the Planning Commission that prezoning the Empire North Unit #1 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 Empire North Unit #1 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 Empire North Unit #1 Specific Plan is adjacent to the corporate limits of Modesto, and is within an area designated for residential development in the Modesto Urban Area General Plan.
3. The requested prezoning is in accordance with the community's objectives set forth in the Modesto Urban Area General Plan because it provides for a

mix of housing types, and for the preservation of open space along the river corridor.

4. The requested rezoning is in accordance with the policies and goals presented in the Empire North Unit #1 Specific Plan.

WHEREAS, by Resolution No. 96-64, adopted on December 2, 1996, the Planning Commission recommended to the City Council an amendment to Sections 18-3-10 and 19-3-10 of the Zoning Map to rezone 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 January 7, 1997, at 7:00 p.m., in the City Council Chambers, City Hall, 801 11th Street, Modesto, California, at which date and time said duly noticed public hearing of the Council was held and evidence both oral and documentary was received and considered,

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

SECTION 1. COUNCIL FINDINGS. After a public hearing held on January 7, 1997, this Council finds and determines that the requested rezoning is in accordance with the General Plan and will serve the public health, safety and general welfare and provide the economic and social advantages resulting from orderly, planned use of land resource for the reasons set forth in Planning Commission Resolution No. 96-64 and quoted above.

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

All that certain real property situate in Sections 18 and 19, Township 3 South, Range 10 East, Mount Diablo Base and Meridian, in the County of Stanislaus, State of California, described as follows:

Starting at the northwest corner of the northeast quarter of said Section 19, thence North  $89^{\circ}05'30''$  East, 1102.98 feet; thence South  $0^{\circ}18'44''$  West, 2020.76 feet; thence South  $49^{\circ}10'12''$  West, 22.63 feet; thence South  $72^{\circ}27'34''$  West, 204.22 feet; thence South  $78^{\circ}27'13''$  West, 125.02 feet; thence South  $80^{\circ}55'05''$  West, 246.73 feet; thence North  $12^{\circ}00'00''$  West, 885.70 feet; thence South  $89^{\circ}26'13''$  West, 10.31 feet; thence northerly along a nontangential curve concave to the west having a radius of 11,597.66 feet, through a central angle of  $6^{\circ}32'07''$ , an arc distance of 1322.87 feet to the point of beginning.

Including also all of Parker Road, and all of the Santa Fe Railroad Right-of-Way, all immediately adjacent to the above described property; and

SECTION 3. ZONING MAP. Sections 18-3-10 and 19-3-10 of the Zoning Map of the City of Modesto are hereby amended to appear as set forth on the map attached hereto and which 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 January, 1997, by Councilmember Cogdill, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Dobbs, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Cogdill, Dobbs, Serpa, Mayor Lang

NOES: Councilmembers: Fisher, Friedman, McClanahan

ABSENT: Councilmembers: None

APPROVED:

  
RICHARD A. LANG, Mayor

ATTEST:

By Jean Adams  
JEAN ADAMS, City Clerk

(SEAL)

APPROVED AS TO FORM:

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

APPROVED AS TO DESCRIPTION:

By [Signature]  
Community Development Department  
Development Services

Ord. No. 3020-C.S.

FINAL ADOPTION CLAUSE


The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 14th day of January, 1997, Councilmember Cogdill moved its final adoption, which motion being duly seconded by Councilmember Dobbs, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Cogdill, Dobbs, Serpa, Mayor Lang

NOES: Councilmembers: Fisher, Friedman, McClanahan

ABSENT: Councilmembers: None

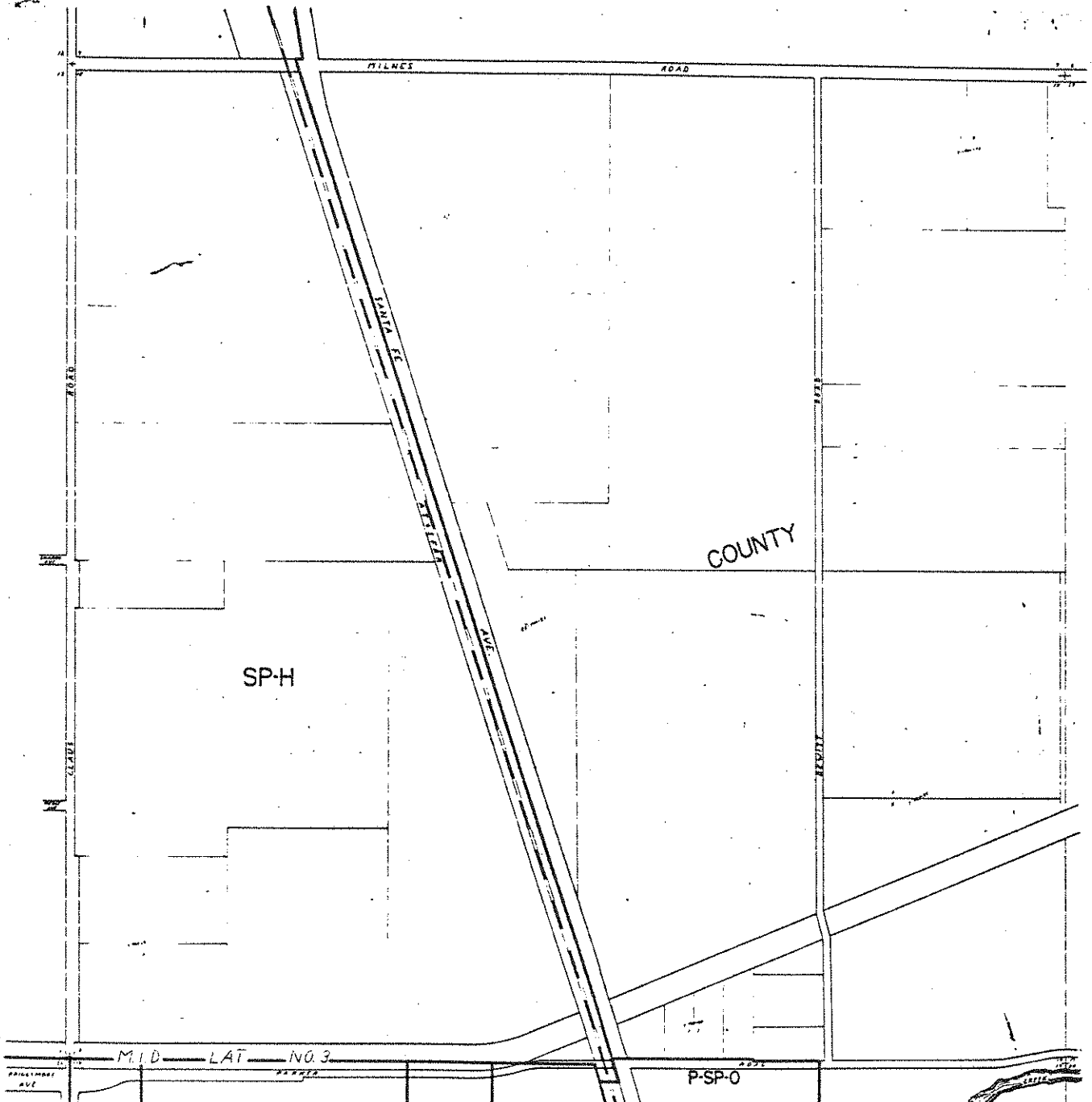
APPROVED:

  
MAYOR RICHARD A. LANG

ATTEST:

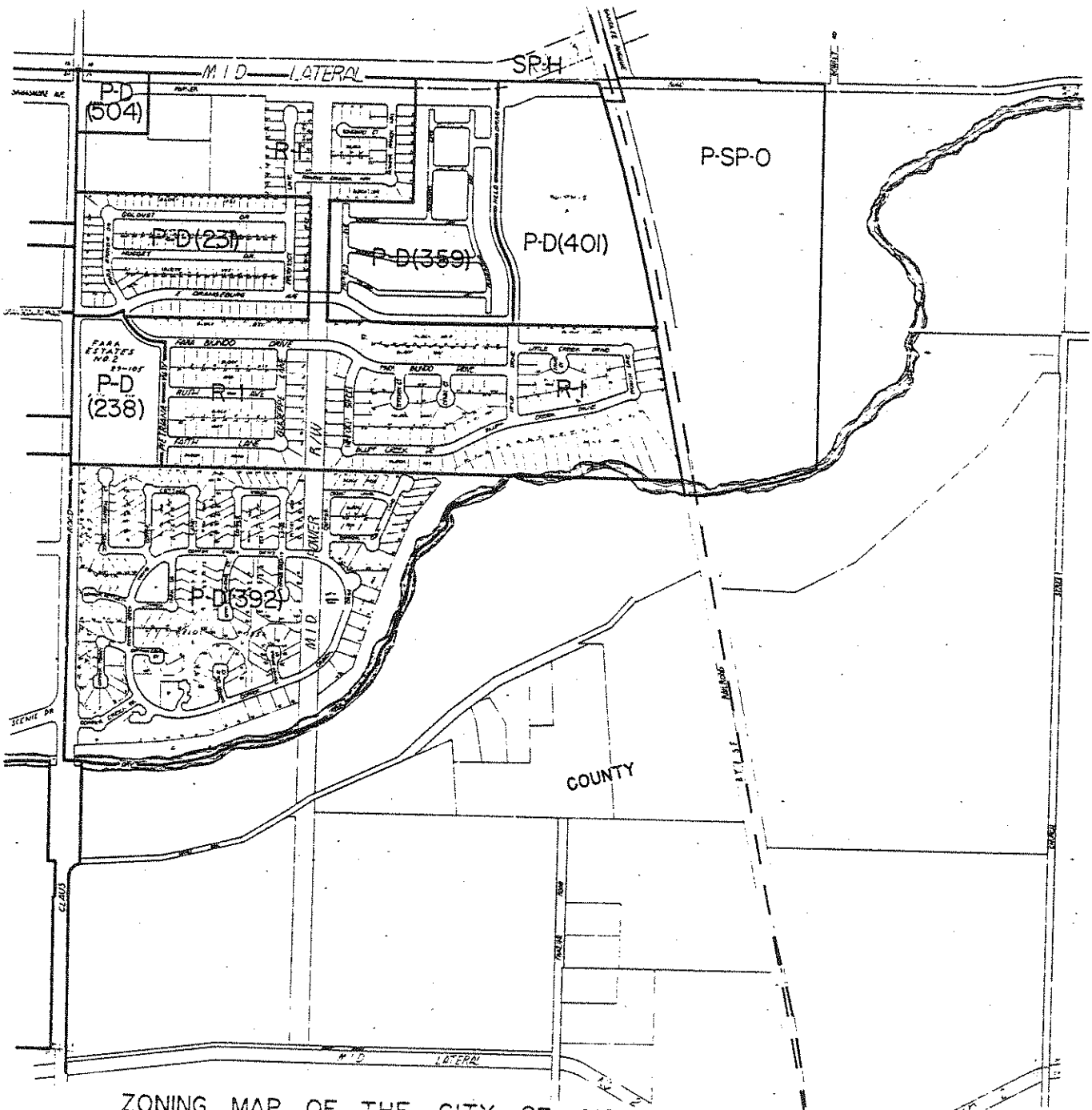
  
JEAN ADAMS, City Clerk

Effective Date: February 13, 1997



ZONING MAP OF THE CITY OF MODESTO

18-3-10



ZONING MAP OF THE CITY OF MODESTO

19-3-10



*Clark*

ORDINANCE NO. 3021 -C.S.

AN ORDINANCE AMENDING SECTION 9-10.03 OF CHAPTER 10 OF TITLE IX OF THE MODESTO MUNICIPAL CODE RELATING TO THE MODESTO LANDMARK PRESERVATION COMMISSION.

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

SECTION 1. AMENDMENT OF CODE. Section 9-10.03 of Chapter 10 of Title IX of the Modesto Municipal Code is hereby amended to read as follows:

**SEC. 9-10.03. MODESTO LANDMARK PRESERVATION COMMISSION ESTABLISHED.**

- (a) This chapter establishes the Modesto Landmark Preservation Commission with the following responsibilities:
  - (1) To promote public recognition and appreciation for Modesto Landmark Preservation Sites.
  - (2) To conduct continuing surveys and research in order to identify and classify, as to their relative importance, properties which have historic, architectural, archaeological, engineering or cultural significance to the community.
  - (3) To recommend properties which meet the criteria of significance stated herein for designation as Modesto Landmark Preservation Sites.
  - (4) To protect Modesto Landmark Preservation Sites by public review of all proposed alterations, relocations, demolitions or new construction within designated site boundaries.
  - (5) To advise property owners and educate the public in appropriate maintenance, rehabilitation or restoration methods. To encourage continued uses, compatible with their character, of Modesto Landmark Preservation Sites.
- (b) The Modesto Landmark Preservation Commission, hereinafter the "Commission," shall consist of five (5) or seven (7) voting members appointed by the Modesto City Council in conformance

with Section 1102 of the Charter of the City of Modesto. All said members shall be registered voters residing in the City of Modesto. The said voting members should be selected from the following if possible:

- (1) At least one (1) member should be an architect, or if an architect should not be available, an experienced person of the building trades.
  - (2) At least one (1) member should be a professional or experienced person in the areas of history, architectural history, archaeology, planning, real estate, design, building trades, landscape architecture or law.
  - (3) At least one (1) member should be a person with a background in finance, accounting, appraising or related fields.
  - (4) At least one (1) member should be a member of the McHenry Museum and Historical Society.
  - (5) The other members shall be drawn from persons with a demonstrated interest and/or expertise in historic preservation.
  - (6) One (1) member should also be a member of the Modesto Culture Commission and would serve on both commissions. Alternatively, a person recommended by the Culture Commission may be appointed by the City Council to serve only on the Landmark Preservation Commission.
- (c) The Commission, when formed, shall be organized and operated pursuant to the rules and regulations set forth in the Modesto Municipal Code for the purpose of carrying out the intent of this chapter, which rules and regulations are not inconsistent with the laws of the City of Modesto and the State of California.
  - (d) The Commission shall make an annual report by June 30, containing a statement of its activities and plans to the Mayor, the City Council and the City Manager.
  - (e) The Commission shall meet monthly to initiate surveys and nominations of properties, to review potential Modesto Landmark Preservation Sites, to make recommendations of properties to

City Council for designation, and to prepare the Commission's annual report.

In addition, the Commission will meet at its earliest convenience, when called by the Chairman, to review such building permits or applications as are referred to it by the City Chief Building Official or Director of Planning and Community Development. The City Chief Building Official or Director of Planning and Community Development shall refer to the Commission such building permits or applications on projects which they determine should be considered for preservation in accordance with the intent of this chapter.

- (f) To accomplish the intent and purpose of this chapter, the City of Modesto shall provide the Commission with adequate staff support and supplies, including the assistance designated by the City Manager to perform the duties prescribed under this chapter.

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 January, 1997, by Councilmember Friedman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and ordered printed and published by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:

By   
JEAN ADAMS, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

Ord. No. 3021-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 14th day of January, 1997, Councilmember Serpa moved its final adoption, which motion being duly seconded by Councilmember Friedman, was upon roll call carried and the ordinance adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:

  
MAYOR RICHARD A. LANG

ATTEST:

  
JEAN ADAMS, City Clerk

Effective Date: February 13, 1997

2/10/14

ORDINANCE NO. 3022 -C.S.

AN ORDINANCE ADDING SECTION 4-2.33 TO CHAPTER 2 OF TITLE IV OF THE MODESTO MUNICIPAL CODE AND REPEALING SECTION 4-2.02 THEREOF RELATING TO PROHIBITION OF AGGRESSIVE BEGGING.

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

SECTION 1. AMENDMENT OF CODE. Section 4-2.33 of Chapter 2 of

Title IV of the Modesto Municipal Code is hereby added to read as follows:

**SEC. 4-2.33. PROHIBITION OF AGGRESSIVE BEGGING.**

- (a) **Findings.** The Modesto City Council finds that aggressive begging for money or anything of value directed at residents of and visitors to the City of Modesto threatens public safety, impairs commercial activity and harms public welfare. Aggressive begging interferes with the public's inherent right to use and enjoy public places without fear of intimidation caused by those persons who harass others by asking for money or goods. Such conduct can undermine economic vitality by inconveniencing patrons and thus reduces shopping activity within the City. Such conduct can discourage visitors and prospective customers from coming to the City of Modesto for business, shopping or recreation because it creates an atmosphere of discomfort and fear.
- (b) **Definitions.** For the purposes of this section, the following definitions apply:
- (1) **"Aggressively beg"** means to beg with the intent to intimidate another person into giving money or goods.
  - (2) **"Intimidate"** means to engage in conduct which would make a reasonable person fearful or feel compelled.
  - (3) **"Beg"** means to ask for money or goods as a charity or gift, whether by words, bodily gestures, signs, or other means.
  - (4) **"Harass or hound"** means to closely follow the person solicited, touch the person solicited, or direct profane or abusive language toward the person solicited after the

person solicited either expressly or impliedly makes it known that he or she does not want to give money or anything of value to the solicitor.

- (5) **"Public place"** means an area generally visible to public view and includes alleys, bridges, buildings, driveways, parking lots, parks, plazas, sidewalks and streets.
- (c) **Prohibition.** It shall be unlawful for any person on the streets, sidewalks or in any public place within the City of Modesto, whether publicly or privately owned, to aggressively beg, intimidate, harass or hound another person for the purpose of inducing that person to give money or anything of value.
- (d) **Violation.**
  - (1) The provisions of Title I Chapter 2.1 of the Modesto Municipal Code shall be applicable to all violations of this section.
  - (2) Violation of this section shall constitute a misdemeanor.

SECTION 2. REPEALS. Section 4-2.02 of Chapter 2 of Title IV of the Modesto Municipal Code is hereby repealed.

SECTION 3. SEVERABILITY. The provisions of this ordinance are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of this ordinance, or the invalidity of the application thereof to any person or circumstance shall not affect the validity of the remainder of this ordinance, or the validity of its application to other persons or circumstances.

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 January, 1997, by Councilmember McClanahan, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Friedman, was upon roll call carried and ordered printed and published by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:

By   
JEAN ADAMS, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

Ord. No. 3022-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 January, 1997, Councilmember Friedman moved its final adoption, which motion being duly seconded by Councilmember Serpa, was upon roll call carried and the ordinance adopted by the following vote:

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


NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:

  
MAYOR RICHARD A. LANG

ATTEST:

  
JEAN ADAMS, City Clerk

Effective Date: February 27, 1997

Book

ORDINANCE NO. 3023-C.S.

AN ORDINANCE AMENDING SECTION 4-7.1502 OF ARTICLE 15 OF CHAPTER 7 OF TITLE IV OF THE MODESTO MUNICIPAL CODE AND ADDING SECTION 4-7.1502.1 THERETO DISORDERLY CONDUCT.

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

SECTION 1. AMENDMENT OF CODE. Section 4-7.1502 of Article 15 of Chapter 7 of Title IV of the Modesto Municipal Code is hereby amended to read as follows:

**SEC. 4-7.1502. DISORDERLY CONDUCT.**

It shall be unlawful for any person:

- (a) To use offensive, lewd, vulgar, licentious, profane, threatening, abusive or insulting language within the hearing of any other person to the annoyance of such person, in any public place, or any place open to the patronage of the public.
- (b) To engage in or be a party to any boisterous or offensive conduct or behavior in any public place or any place open to the patronage of the public.
- (c) To shout, or willfully make any loud raucous noise, either outside or inside a public building or a building open to the patronage of the public, to the annoyance or disturbance of any other person inside or outside said building.
- (d) To congregate with two (2) or more other persons on any public street or in any public place, or in any place open to the patronage of the public, when the purpose of so congregating is to annoy, disturb, or interfere with the lawful discharge or pursuit of any lawful business or occupation by any other person, or to maliciously interfere with or annoy any other person lawfully on such place, by words, act or conduct generally offensive to the community and to such person.
- (e) To become part of, or remain in a group of three (3) or more persons in any public place or any place open to the patronage of

the public, when any member of such group is engaged in the commission of a felony or a misdemeanor; or when any member of such group is known to be about to engage in the commission of a felony or a misdemeanor, and after disobedience to a request to disperse has been made to such persons by a law enforcement officer or by the owner or person in charge of said premises.

- (f) To utter, or use within the hearing of any other person, any language, words, epithets, expressions or remarks, either intended to or likely to incite or create a breach of the peace.
- (g) To incite or encourage by words or conduct, disobedience to any lawful order or request of any law enforcement officer pursuant to and in the performance of his duties.
- (h) To park any automobile or other vehicle, whether attended or not, upon any private parking lot intended for the employees, customers, clients, or patrons of any professional, business, commercial or industrial establishments when such parking lot is posted at the entrance thereof in a conspicuous manner conveying the information to the public that such parking lot is reserved for such employees, customers, clients and patrons of said professional, business, commercial or industrial establishment.
- (i) To enter the premises, including the grounds of any private residence, for the purpose of participating in any festivity, party, social function, social affair, dance, ceremony or private gathering of persons, unless such person so entering the premises or grounds, was at the time of such entering, an invitee or guest of the occupant of said premises; and no person under false pretense of being an invitee or guest shall gain admittance to any such premises or grounds.

SECTION 2. Section 4-7.1502.1 is hereby added to Article 15 of

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

**SEC. 4-7.1502.1. PROHIBITION OF OBSTRUCTING ANY STREET, SIDEWALK, OR PUBLIC PLACE WITHIN THE BUSINESS DISTRICT; EXCEPTIONS.**

- (a) **Findings.** The Modesto City Council finds that pedestrian safety and the free flow of pedestrian traffic, as well as public safety in general is substantially impaired by people sitting or lying on public sidewalks, streets, or other public places in a way that makes passage by others difficult. Such conduct presents a hazard, not only to pedestrians, but also to those who position themselves in such a way as to block public passage.

In addition, the Modesto City Council finds that public welfare is promoted by economically sound commercial areas within the City of Modesto. Easy accessibility to goods and services attracts both businesses and consumers and results in tax revenues to support public services. This results in an increase in economic productivity.

People who sit, lie down, or substantially obstruct pedestrian traffic inconvenience and intimidate patrons. This conduct leads to a rapid decline in commercial activity and economic growth. Such a decline ultimately threatens public safety, public health and the public welfare of the citizens.

- (b) **Definitions.** For purposes of this section, the following definitions apply:
- (1) **"Public place"** means an area open to the public and includes sidewalks, streets, alleys, bridges, parking lots, parks, plazas, and doorways and entrances to buildings.
  - (2) **"Business district"** means any area zoned for business purposes by the zoning ordinances of the City of Modesto.
- (c) **Prohibition; Exceptions.** No person, after notification by a law enforcement officer that he or she is in violation of the prohibition stated in this section, shall sit, lie down or substantially obstruct the free passage of any person or persons on any street, sidewalk or other such public place in the business district of the City of Modesto during the hours between 7:00 a.m. and 12:00 a.m., except as provided below:

- (1) Sitting or lying down on a public sidewalk due to a medical emergency;
- (2) Using a wheelchair or similar device to move about the public sidewalk as a result of disability;
- (3) Operating or patronizing a commercial establishment conducted on the public sidewalk pursuant to an encroachment permit;
- (4) Participating in or attending a parade, festival, performance, rally, demonstration, meeting, or similar event conducted on the public sidewalk pursuant to any applicable permit;
- (5) Sitting on a chair or bench located on the public sidewalk and supplied by a public agency or by the abutting private property owner;
- (6) Sitting on a public sidewalk while waiting for public or private transportation;
- (7) Applying this section so that it would result in the interference with, or inhibition of, any exercise of the constitutionally protected right of freedom of speech or assembly.

(d) **Violation.** A violation of the provisions of this section shall constitute an infraction.

SECTION 3. SEVERABILITY. The provisions of this ordinance are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of this ordinance, or the invalidity of the application thereof to any person or circumstance shall not affect the validity of the remainder of this ordinance, or the validity of its application to other persons or circumstances.

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 January, 1997, by Councilmember McClanahan, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Friedman, was upon roll call carried and ordered printed and published by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: \_\_\_\_\_

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

ATTEST:

By Jean Adams  
JEAN ADAMS, City Clerk

(SEAL)

APPROVED AS TO FORM:

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



Ord. No. 3023-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 January, 1997, Councilmember Friedman moved its final adoption, which motion being duly seconded by Councilmember Serpa, was upon roll call carried and the ordinance adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:   
MAYOR RICHARD A. LANG

ATTEST:   
JEAN ADAMS, City Clerk

Effective Date: February 27, 1997

ORDINANCE NO. 3024 -C.S.

AN ORDINANCE ADDING SECTION 4-5.11 TO CHAPTER 5 OF TITLE IV OF THE MODESTO MUNICIPAL CODE AND REPEALING SECTION 4-5.07 THEREOF RELATING TO PROHIBITION OF OBSTRUCTION OF THE PUBLIC RIGHT-OF-WAY.

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

SECTION 1. AMENDMENT OF CODE. Section 4-5.11 is hereby added to Chapter 5 of Title IV of the Modesto Municipal Code to read as follows:

**SEC. 4-5.11. PROHIBITION OF OBSTRUCTION OF THE PUBLIC RIGHT-OF-WAY.**

- (a) **Definitions.** For the purposes of this section, the following definitions apply:
  - (1) **"Human habitation or camping"** means exhibiting the intent to temporarily reside in a location not designed or equipped for human habitation as evidenced by such exemplar indices as: sleeping, eating, storing personal possessions, the lack of permanent shelter or ambient temperature control, or of any property interest in the location.
  - (2) **"Obstruct, hinder or interfere with pedestrian or vehicular traffic"** means to place, maintain or deposit an object or article in such a manner as to block passage by any person or vehicle, or to require a person or driver of a motor vehicle to take evasive action so as to avoid physical contact with the object or article.
  - (3) **"Personal property"** means personal effects such as furniture and clothing, goods, animals, food, weapons, items for sale, or any moveable article.
  - (4) **"Public right-of-way"** means sidewalks, parks, streets, alleys, parking lots, bridges and doorways and entrances to buildings open to common use by all members of the public.

(b) **Prohibition.**

- (1) It shall be unlawful for any person to construct, maintain, place, cause to be placed or allow to remain upon the public right-of-way any structure, tent, or shelter utilized for human habitation or camping which shall obstruct, hinder or interfere with pedestrian or vehicular traffic.
- (2) It shall be unlawful for any person to place, cause to be placed, pile, deposit or allow to remain upon the public right-of-way any article of personal property which shall obstruct, hinder, or interfere with pedestrian or vehicular traffic.

(c) **Exceptions.**

- (1) Goods or merchandise in actual course of receipt, delivery or removal;
- (2) Chairs, tables or the like belonging to a commercial establishment conducted on a public sidewalk pursuant to an encroachment permit or other applicable permit;
- (3) Moveable structures or articles used in a parade, festival, performance, rally, demonstration, meeting, or similar event conducted on a public right-of-way pursuant to applicable permit;
- (4) Wheelchair or walker or similar device used to move about the public right-of-way due to a disability;
- (5) This section shall not apply where its application will result in an interference with or inhibition of any exercise of the constitutionally protected right of freedom of speech or assembly.
- (6) This section shall not apply where its application results in an interference or conflict with Chapter 19, Articles 1 and 2 of the California Business and Professions Code.

(d) **Violation.** A violation of any provision of this section shall constitute an infraction.

(e) **Disposition by a public agency of personal property in violation of this section.**

- (1) The provisions of this section are inapplicable to any object, article or item of personal property intentionally abandoned by its owner and found to be in violation of this section. Such property may be destroyed or otherwise disposed of by the Police Department.
- (2) All personal property found in violation of this section, with the exception of property determined by the Police Department as intentionally abandoned, shall be confiscated and held by the Police Department for a period of three (3) months unless the owner of the property is present when the Police Department determines a violation of this section exists, and voluntarily waives those rights set forth hereinafter in subsections (e)(3), (e)(4) and (e)(5) below.
- (3) The Police Department shall notify the owner, if his or her identity is reasonably ascertainable, that it is in possession of the property and where it may be claimed. The City of Modesto may require payment by the owner of a reasonable charge to defray costs of storage and care for property.
- (4) The Police Department shall sell property unclaimed after the expiration of three (3) months at a public auction.
- (5) Notice of such sale shall be given by the Police Chief at least five (5) days before the date of the sale by publication.
- (6) Any property remaining unsold after being offered at such public auction may be destroyed or otherwise disposed of by the Police Department.

SECTION 2. REPEALS. Section 4-5.07 of Chapter 5 of Title IV of the Modesto Municipal Code is hereby repealed.

SECTION 3. SEVERABILITY. The provisions of this ordinance are declare to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of this ordinance, or the invalidity of the application thereof to any person or circumstance shall not affect the validity of the remainder of this ordinance or the validity of its application to other persons or circumstances.

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 January, 1997, by Councilmember McClanahan, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Friedman, was upon roll call carried and ordered printed and published by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:

By   
JEAN ADAMS, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

Ord. No. 3024-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 January, 1997, Councilmember Friedman moved its final adoption, which motion being duly seconded by Councilmember Serpa, was upon roll call carried and the ordinance adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:   
MAYOR RICHARD A. LANG

ATTEST:   
JEAN ADAMS, City Clerk

Effective Date: February 27, 1997

ORDINANCE NO. 3025-C.S.

AN ORDINANCE ADDING ARTICLE 18 TO CHAPTER 7 OF TITLE IV OF THE MODESTO MUNICIPAL CODE RELATING TO PROHIBITION OF FURNISHING OR PERFORMING UNINVITED SERVICES ASSOCIATED WITH THE CLEANING, WASHING OR POLISHING OF THE EXTERIOR OF A VEHICLE.

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

SECTION 1. AMENDMENT OF CODE. Article 18 is hereby added to Chapter 7 of Title IV of the Modesto Municipal Code to read as follows:

**ARTICLE 18. PROHIBITION OF UNINVITED SERVICES ASSOCIATED WITH THE CLEANING OF THE EXTERIOR OF A VEHICLE.**

**SEC. 4-7.1801. PROHIBITION OF FURNISHING OR PERFORMING UNINVITED SERVICES ASSOCIATED WITH THE CLEANING OF THE EXTERIOR OF A VEHICLE.**

It shall be unlawful for any person on the streets, parking lots, sidewalks or parks of the City of Modesto, or other places open to the public, to harass or annoy another person by solicitation, consisting of repetitive asking or urging, so as to induce that person to compensate the solicitor for furnishing or performing, or attempting to furnish or perform, any services associated with the cleaning, washing, polishing, providing of or other care to any exterior portion of a vehicle including, but not limited to, windshields or windows, when the person solicited did not request or invite such services, nor consent to or give permission for the performance of these services.

- (a) The provisions of Title I, Chapter 2.1 of the Modesto Municipal Code shall be applicable to all violations of this section.
- (b) Any person violating any provision of this section may be issued an administrative citation.
- (c) Violation of the provisions of this section shall constitute an infraction.



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

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

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 14th day of January, 1997, by Councilmember McClanahan who moved its introduction and passage to print, which motion being duly seconded by Councilmember Friedman, was upon roll call carried and ordered printed and published by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:

By   
JEAN ADAMS, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

Ord. No. 3025-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 January, 1997, Councilmember Friedman moved its final adoption, which motion being duly seconded by Councilmember Serpa, was upon roll call carried and the ordinance adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:   
MAYOR RICHARD A. LANG

ATTEST:   
JEAN ADAMS, City Clerk

Effective Date: February 27, 1997

ORDINANCE NO. 3026 -C.S.

AN ORDINANCE AMENDING SECTIONS 10-2.2404 AND 10-2.2405 OF ARTICLE 24 OF CHAPTER 2 OF TITLE X OF THE MODESTO MUNICIPAL CODE RELATING TO ADULT ENTERTAINMENT BUSINESSES.

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

SECTION 1. AMENDMENT OF CODE. Sections 10-2.2404 and 10-2.2405 of Article 24 of Chapter 2 of Title X of the Modesto Municipal Code are hereby amended to read as follows:

**SEC. 10-2.2404. AMORTIZATION OF NONCONFORMING ADULT BUSINESS USES.**

Any use of real property existing on November 2, 1995, which does not conform to the provisions of Section 10-2.2403, but which was constructed, operated, and maintained in compliance with all previous regulations, shall be regarded as a nonconforming use which may be continued until November 3, 1996. (One (1) year after the effective date of this ordinance.) On or before such latter date, all such nonconforming uses shall be terminated unless an application for extension of time has been approved in accordance with the provisions of Section 10-2.2405.

- (a) **Abandonment.** Notwithstanding the above, any discontinuance or abandonment of the use of any lot or structure as an adult entertainment business shall result in a loss of legal nonconforming status of such use.
- (b) **Amortization – annexed property.** Any adult entertainment business which was a legal use at the time of annexation of the property and which is located in the City, but which does not conform to the provisions of Section 10-2.2403 shall be terminated within one (1) year of the date of annexation unless an application for extension of time has been approved in accordance with the provisions of Section 10-2.2405.

**SEC. 10-2.2405. EXTENSION OF TIME FOR TERMINATION OF NONCONFORMING USE.**

The owner or operator of a nonconforming use as described in Section 10-2.2404 may apply under the provisions of this section to the Community Development Director for an extension of time within which to terminate the nonconforming use.

- (a) **Time and manner of application.** An application for an extension of time within which to terminate a use made nonconforming by the provisions of Section 10-2.2403, may be filed by the owner of the real property upon which such use is operated, or by the operator of the use. Such an application must be filed with the Community Development Director at least ninety (90) days but no more than 180 (one hundred eighty) days prior to the time established in Section 10-2.2404 for termination of such use.
- (b) **Content of application; fees.** The application shall state the grounds for requesting an extension of time. The filing fee for such application shall be the same as that for a variance as is set forth in the schedule of fees established by resolution from time to time by the City Council.
- (c) **Hearing procedure.** The City Manager shall appoint a hearing officer to hear the application. The hearing officer shall set the matter for hearing within forty-five (45) days of receipt of the application. All parties involved shall have the right to offer testimonial, documentary and tangible evidence bearing on the issues; may be represented by counsel; and shall have the right to confront and cross-examine witnesses. Any relevant evidence may be admitted that is the sort of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs. Any hearing under this section may be continued for a reasonable time for the convenience of a party or a witness. The decision of the hearing officer shall be final and subject to judicial review pursuant to Code of Civil Procedure Section 1094.6.
- (d) **Approval of extension; findings.** An extension under the provisions of this section shall be for a reasonable period of time commensurate with the investment involved, and shall be approved only if the hearing officer makes all of the following findings or such other findings as are required by law:

- (1) The applicant has made a substantial investment (including but not limited to lease obligations) in the property or structure on or in which the nonconforming use is conducted; such property or structure cannot be readily converted to another use; and such investment was made prior to July 5, 1994;
- (2) The applicant will be unable to recoup said investment as of the date established for termination of the use; and
- (3) The applicant has made good faith efforts to recoup the investment and to relocate the use to a location in conformance with Section 10-2.2403.

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

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

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 14th day of January, 1997, by Councilmember McClanahan, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Friedman, was upon roll call carried and ordered printed and published by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:

  
RICHARD A. LANG, Mayor

ATTEST:

By Jean Adams  
JEAN ADAMS, City Clerk

(SEAL)

APPROVED AS TO FORM:

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

Ord. No. 3026-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 January, 1997, Councilmember Friedman moved its final adoption, which motion being duly seconded by Councilmember Serpa, was upon roll call carried and the ordinance adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:   
MAYOR RICHARD A. LANG

ATTEST:   
JEAN ADAMS, City Clerk

Effective Date: February 27, 1997



*Clerk*

ORDINANCE NO. 3027 -C.S.

AN ORDINANCE AMENDING SECTION 6-1.103 OF ARTICLE 1 OF CHAPTER 1 OF TITLE VI OF THE MODESTO MUNICIPAL CODE RELATING TO BUSINESS LICENSE REQUIRED.

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

SECTION 1. AMENDMENT OF CODE. Section 6-1.103 of Article 1 of Chapter 1 of Title VI of the Modesto Municipal Code is hereby amended to read as follows:

**SEC. 6-1.103. LICENSE REQUIRED.**

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

requirement conflicts with applicable statutes of the United States or of the State of California.

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

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

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

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 14th day of January, 1997, by Councilmember McClanahan, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Friedman, was upon roll call carried and ordered printed and published by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: 

RICHARD A. LANG, Mayor

ATTEST:

By   
JEAN ADAMS, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

Ord. No. 3027-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 January, 1997, Councilmember Friedman moved its final adoption, which motion being duly seconded by Councilmember Serpa, was upon roll call carried and the ordinance adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:   
MAYOR RICHARD A. LANG

ATTEST:   
JEAN ADAMS, City Clerk

Effective Date: February 27, 1997

Clerk

ORDINANCE NO. 3028-C.S.

AN ORDINANCE AMENDING SECTIONS 5-9.301 AND 5-9.406 OF CHAPTER 9 OF TITLE V OF THE MODESTO MUNICIPAL CODE RELATING TO ADULT ENTERTAINMENT BUSINESSES.

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

SECTION 1. AMENDMENT OF CODE. Sections 5-9.301 and 5-9.406 of Chapter 9 of Title V of the Modesto Municipal Code are hereby amended to read as follows:

**SEC. 5-9.301. ADULT ENTERTAINMENT BUSINESS DEVELOPMENT AND PERFORMANCE STANDARDS.**

- (a) Maximum occupancy load, fire exits, aisles and fire equipment shall be regulated, designed and provided in accordance with the Fire Department and building regulations and standards adopted by the City of Modesto.
- (b) No Adult Entertainment Business shall be operated in any manner that permits the observation of any material or activities depicting, describing or relating to "Specified Sexual Activities" or "Specified Anatomical Areas" from any public way or from any location outside the building or area of such establishment. This provision shall apply to any display, decoration, sign, show window or other opening. No exterior door or window on the premises shall be propped or kept open at any time while the business is open, and any exterior windows shall be covered with opaque covering at all times.
- (c) All off-street parking area and premise entries of the sexually oriented business shall be illuminated from dusk to closing hours of operation with a lighting system which provides an average maintained horizontal illumination of one (1) foot candle of light on the parking surface and/or walkways. The required lighting level is established in order to provide sufficient illumination of the parking areas and walkways serving the sexually oriented business for the personal safety of patrons and employees and to reduce the incidence of vandalism and criminal conduct. The

lighting shall be shown on the required sketch or diagram of the premises.

- (d) The premises within which the Adult Entertainment Business is located shall provide sufficient sound-absorbing insulation so that noise generated inside said premises shall not be audible anywhere on any adjacent property or public right-of-way or within any other building or other separate unit within the same building.
- (e) Except for those businesses also regulated by the California Department of Alcoholic Beverage Control, an Adult Entertainment Business shall be open for business only between the hours of 8:00 a.m. and midnight on any particular day.
- (f) Any Adult Entertainment Business which is also a "picture arcade" pursuant to Section 4-1.1302 of this code shall comply with Sections 4-1.1303 and 4-1.1304.
- (g) The building entrance to an Adult Entertainment Business shall be clearly and legibly posted with a notice indicating that persons under eighteen (18) years of age are precluded from entering the premises. Said notice shall be constructed and posted to the satisfaction of the Community Development Director or designee. No person under the age of eighteen (18) years shall be permitted within the premises at any time.
- (h) All indoor areas of the Adult Entertainment Business within which patrons are permitted, except rest rooms, shall be open to view by the management at all times.
- (i) The Adult Entertainment Business shall provide and maintain separate rest room facilities for male patrons and employees, and female patrons and employees. Male patrons and employees shall be prohibited from using the rest room(s) for females, and female patrons and employees shall be prohibited from using the rest room(s) for males, except to carry out duties of repair, maintenance and cleaning of the rest room facilities. The rest rooms shall be free from any Adult Material. Rest rooms shall not contain television monitors or other motion picture or video projection, recording or reproduction equipment. The foregoing provisions of this paragraph shall not apply to an Adult Entertainment Business which deals exclusively with sale or rental of Adult Material which is not used or consumed on the

premises, such as an Adult Bookstore or Adult Video Store, and which does not provide rest room facilities to its patrons or the general public.

- (j) The following additional requirements shall pertain to Adult Entertainment Businesses providing live entertainment depicting Specified Anatomical Areas or involving Specified Sexual Activities:
- (1) No person shall perform live entertainment for patrons of an Adult Entertainment Business except upon a stage at least eighteen (18) inches above the level of the floor which is separated by a distance of at least ten (10) feet from the nearest area occupied by patrons, and no patron shall be permitted within ten (10) feet of the stage while the stage is occupied by an entertainer. "Entertainer" shall mean any person who is an employee or independent contractor of the Adult Entertainment Business, or any person who, with or without any compensation or other form of consideration, performs live entertainment for patrons of an Adult Entertainment Business.
  - (2) The Adult Entertainment Business shall provide separate dressing room facilities for entertainers which are exclusively dedicated to the entertainers' use.
  - (3) The Adult Entertainment Business shall provide an entrance/exit for entertainers which is separate from the entrance/exit used by patrons.
  - (4) The Adult Entertainment Business shall provide access for entertainers between the stage and the dressing rooms which is completely separated from the patrons. If such separate access is not physically feasible, the Adult Business shall provide a minimum three-foot (3') wide walk aisle for entertainers between the dressing room area and the stage, with a railing, fence or other barrier separating the patrons and the entertainers capable of (and which actually results in) preventing any physical contact between patrons and entertainers.
  - (5) No person who is required to obtain a permit pursuant to Section 5-9.206, either before, during or after performances, shall have physical contact with any patron

and no patron shall have physical contact with any entertainer either before, during or after performances by such entertainer. This subsection shall only apply to physical contact on the premises of the Adult Entertainment Business.

- (6) Fixed rail(s) at least thirty (30) inches in height shall be maintained establishing the separations between entertainers and patrons required by this subsection.
  - (7) No patron shall directly pay or give any gratuity to any entertainer and no entertainer shall solicit any pay or gratuity from any patron.
  - (8) No owner or other person with managerial control over an Adult Entertainment Business (as that term is defined herein) shall permit any person on the premises of the Adult-Oriented Business to engage in a live showing of the human male or female genitals, pubic area or buttocks with less than a fully opaque coverage, and/or the female breast with less than a fully opaque coverage over any part of the nipple or areola and/or covered male genitals in a discernibly turgid state. This provision may not be complied with by applying an opaque covering simulating the appearance of the specified anatomical part required to be covered.
- (k) Adult Entertainment Businesses shall employ security guards in order to maintain the public peace and safety, based upon the following standards:
- (1) Adult Entertainment Businesses featuring live entertainment shall provide at least one (1) security guard at all times while the business is open. If the occupancy limit of the premises is greater than thirty-five (35) persons, an additional security guard shall be on duty.
  - (2) Security guards for other Adult Entertainment Businesses may be required if it is determined by the Police Chief that their presence is necessary in order to prevent any of the conduct listed in Section 5-9.208(b)(3) from occurring on the premises.



- (3) Security guard(s) shall be charged with preventing violations of law and enforcing compliance by patrons of the requirements of these regulations. Security guards shall be uniformed in such a manner so as to be readily identifiable as a security guard by the public and shall be duly licensed as a security guard as required by applicable provisions of state law. No security guard required pursuant to this subsection shall act as a door person, ticket seller, ticket taker, admittance person, or sole occupant of the manager's station while acting as a security guard.

The foregoing applicable requirements of this Section shall be deemed conditions of Adult Entertainment Business Regulatory Permit approvals, and failure to comply with every such requirement shall be grounds for revocation of the Permit issued pursuant to these regulations.

#### **SEC. 5-9.406. NUISANCE PER SE.**

Violations of Municipal Code Sections 10-2.2403, 10-2.2404, 5-9.103, 5-9.205, 5-9.206, 5-9.208, 5-9.213, 5-9.304, 5-9.403 or 5-9.405 shall constitute a nuisance per se, whether or not such violations are repeated or intentional, subject to abatement at the expense of the person or persons creating, causing, committing, or maintaining any of these violations. Where a violation of a valid ordinance is proven, the cost, including court costs and attorney's fees relating to such proof, shall be recoverable in addition to any other abatement related costs both as a personal obligation of the violator and of the property owner owning the property where the violation occurred, and as a lien against that property in accordance with the procedures set forth in California Government Code Sections 38773, 38773.1 or 38773.5 as they exist now or may be amended or recodified in the future. The City Attorney may, in addition to or in lieu of prosecuting a criminal action or revoking the appropriate permits, commence an action or actions, proceeding or proceedings for the abatement, removal and enjoinder thereof in the manner provided by law, and shall take such other steps and shall apply to such other court or courts as may have jurisdiction to grant such a relief as will abate or remove such adult entertainment business and restrain and enjoin any person from operating, conducting, or maintaining an adult entertainment business contrary to the provisions of the Modesto Municipal Code.

**SEC. 5-9.407. SEVERABILITY.**

If any section, subsection, subdivision, paragraph, sentence, clause, or phrase in this chapter or any part thereof is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this chapter or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase thereof irrespective of the fact that any one (1) or more subsections, subdivisions, paragraphs, sentences, clauses, or phrases be declared unconstitutional, or invalid, or ineffective.

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

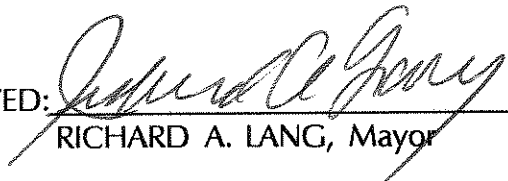
SECTION 3. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in The Modesto Bee, the official newspaper of the City of Modesto, setting forth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

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 14th day of January, 1997, by Councilmember McClanahan, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Friedman, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Cogdill, Dobbs, Fishem, Friedman, McClanahan, Serpa, Mayor Lang

NOES: Councilmembers: None

ABSENT: Councilmembers: None

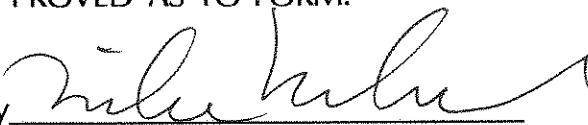
APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:

By   
JEAN ADAMS, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

Ord. No. 3028-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 January, 1997, Councilmember Friedman moved its final adoption, which motion being duly seconded by Councilmember Serpa, was upon roll call carried and the ordinance adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:   
MAYOR RICHARD A. LANG

ATTEST:   
JEAN ADAMS, City Clerk

Effective Date: February 27, 1997

ORDINANCE NO. 3029 -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
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
ENSLEN AVENUE, between Granger Avenue and Orangeburg Avenue	25 miles per hour
FAIRMONT AVENUE, between Virginia Avenue and McHenry Avenue	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
BOWEN AVENUE, between Tully Road and McHenry Avenue	35 miles per hour	July 1, 1994
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 per hour	August 5, 1993
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	January 11, 1993
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	August 9, 1993
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	June 25, 1994
CARVER ROAD, between Briggsmore Avenue and Orangeburg Avenue	35 miles per hour	June 25, 1994
CARVER ROAD, between Orangeburg Avenue and 9th Street within	35 miles per hour	June 25, 1994
CELESTE DRIVE, between Coffee Road and Oakdale Road	30 miles per hour	January 29, 1993
CLAUS ROAD, between Sylvan Avenue and Briggsmore Avenue	50 miles per hour	February 29, 1996
CLAUS ROAD, between Briggsmore Avenue and Scenic Drive	50 miles per hour	August 5, 1993
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	August 12, 1993
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	August 5, 1993
COLLEGE AVENUE, between Rumble Road and Bowen Avenue	30 miles per hour	August 9, 1993

COLLEGE AVENUE, between Bowen Avenue and Princeton Avenue	35 miles per hour	March 13, 1992
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
DALE ROAD, between Pelandale Avenue and Snyder Avenue	40 miles per hour	October 26, 1992
DALE ROAD, between Snyder Avenue and Veneman Avenue	40 miles per hour	October 26, 1992
DALE ROAD, between Veneman Avenue and Standiford Avenue	35 miles per hour	August 9, 1993
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	35 miles per hour	January 7, 1993
ENCINA AVENUE, between Santa Barbara Avenue and Conejo Avenue	35 miles per hour	January 7, 1993
EVERGREEN AVENUE, between Orangeburg Avenue and Carver Road	35 miles per hour	January 7, 1993
FAIRMONT AVENUE, between Sunrise Avenue and Coffee Road	35 miles per hour	January 7, 1993

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 Carpenter Road	40 miles per hour	July 11, 1994
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

LAKWOOD AVENUE, between Briggsmore Avenue and Scenic Drive	35 miles per hour	January 28, 1993
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	March 4, 1992
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	January 28, 1992
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	January 28, 1993
NEEDHAM STREET, between 9th and L Streets	35 miles per hour	January 28, 1993

NORTH MARTIN LUTHER KING DRIVE, between Maze Boulevard and California Avenue	30 miles per hour	March 13, 1992
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 24, 1994
ORANGEBURG AVENUE, between Martin Avenue and McHenry Avenue	40 miles per hour	January 8, 1993
ORANGEBURG AVENUE, between McHenry Avenue and Coffee Road	40 miles per hour	June 24, 1994
ORANGEBURG AVENUE, between Coffee Road and Oakdale Road	35 miles per hour	June 25, 1994
ORANGEBURG AVENUE, between Oakdale Road and Lakewood Avenue	35 miles per hour	June 25, 1994

ORANGEBURG AVENUE, between Lakewood Avenue and Claus Road	35 miles per hour	June 25, 1994
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	November 30, 1992
PELANDALE AVENUE, between Sisk Road and Dale Road	45 miles per hour	January 28, 1992
PRESCOTT ROAD, between Snyder Avenue and Standiford Avenue	40 miles per hour	December 30, 1992
PRESCOTT ROAD, between Standiford Avenue and Rumble Road	40 miles per hour	December 30, 1992
PRESCOTT ROAD, between Rumble Road and Briggsmore Avenue	35 miles per hour	August 9, 1993
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	December 30, 1992
ROSEBURG AVENUE, between Tully Road and McHenry Avenue	30 miles per hour	January 8, 1993
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	35 miles per hour	April 29, 1992
RUMBLE ROAD, between Sisk Road and Conant Avenue	40 miles per hour	July 6, 1992
RUMBLE ROAD, between Conant Avenue and Tully Road	35 miles per hour	January 8, 1993
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	January 8, 1993
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	30 miles per hour	January 27, 1993
SCENIC DRIVE, between Coffee Road and Oakdale Road	40 miles per hour	June 25, 1994

SCENIC DRIVE, between Oakdale Road and Lakewood Avenue	40 miles per hour	October 28, 1992
SCENIC DRIVE, between Lakewood Avenue and Lillian Drive	40 miles per hour	January 8, 1993
SCENIC DRIVE, between Lillian Drive and Claus Road	40 miles per hour	May 26, 1992
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 and South 7th Streets	30 miles per hour	January 19, 1993
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	October 26, 1992
SNYDER AVENUE, between Prescott Road and Carver Road	45 miles per hour	November 5, 1992
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
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 Standiford Avenue and Coldwell Avenue	35 miles per hour	March 13, 1992
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	January 18, 1993
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	January 27, 1992
WOODROW AVENUE, between Tully Road and McHenry Avenue	30 miles per hour	January 20, 1993
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 400 feet north of Tully Road	45 miles per hour	May 26, 1992
9TH STREET, between D Street Morton Boulevard	30 miles per hour	June 28, 1996
9TH STREET, between P Street and L Street	35 miles per hour	May 26, 1992

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.

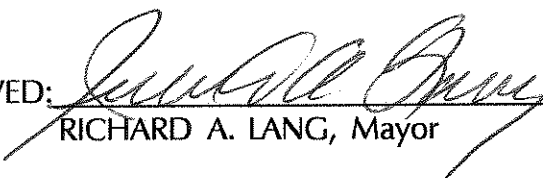
SECTION 3. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in The Modesto Bee, the official newspaper of the City of Modesto, setting forth 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 11th day of February, 1997, by Councilmember Fisher, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Serpa, was upon roll call carried and ordered printed and published by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None


APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:

By   
JEAN ADAMS, City Clerk

(SEAL)

APPROVED AS-TO FORM:

By   
MICHAEL D. MILICH, City Attorney

Ord. No. 3029-C.S.

FINAL ADOPTION CLAUSE


The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 18th day of February, 1997, Councilmember Friedman, moved its final adoption, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and the ordinance adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:

  
RICHARD A. LANG, Mayor

ATTEST:

  
JEAN ADAMS, City Clerk

Effective Date: March 20, 1997

Clark

ORDINANCE NO. 3030 -C.S.

AN ORDINANCE ADDING ARTICLE 29 TO CHAPTER 2 OF TITLE X OF THE MODESTO MUNICIPAL CODE RELATING TO PROHIBITION OF HUMAN HABITATION OF MOBILE LIVING QUARTERS OR TENTS: EXCEPTIONS.

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

SECTION 1. AMENDMENT OF CODE. Article 29 is hereby added to Chapter 2 of Title X of the Modesto Municipal Code to read as follows:

**ARTICLE 29. PROHIBITION OF HUMAN HABITATION OF MOBILE LIVING QUARTERS OR TENTS: EXCEPTIONS.**

**SEC. 10-2.2901. DEFINITIONS.**

- (a) For the purposes of this article, the term "mobile living quarters" shall mean any motor vehicle, whether operable or not, and any transportable structure including, but not limited to, a camper shell, mobile home, travel trailer, tent, camp car, camp trailer, recreational vehicle, bus, boat or aircraft that has been designed or equipped to permit human habitation or shelter.
- (b) For the purposes of this article, the term "occupy" shall mean to exhibit the intent to live in mobile living quarters for more than seventy-two (72) hours whether or not their actual occupancy is continuous, as evidenced by such example indices as: sleeping, eating, cleaning, utilizing public utilities, keeping personal goods, or other domestic activities undertaken within and about the mobile living quarters.

**SEC. 10-2.2902. PROHIBITION OF OCCUPANCY; EXCEPTIONS.**

It shall be unlawful for any person to occupy or permit the occupancy of any mobile living quarters on property subject to their control, within the City of Modesto, for more than seventy-two (72) consecutive hours, except as provided below:

- (a) Except as specifically permitted by a provision of this code.
- (b) Except where fire or natural disaster causes a property owner's permanent home to be uninhabitable, that individual may take



up temporary residence in "mobile living quarters" on that individual's property, if they have obtained a building permit to repair or rebuild their home, and the mobile living quarters have been approved for such habitation by City's Development Services Division. All such approvals shall be in writing. No such approval shall permit any emergency occupancy for more than one hundred twenty (120) consecutive days.

SECTION 2. EFFECTIVE DATE. This ordinance shall go into effect and be in full force and operation from and after one (1) year 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 25th day of February, 1997, by Councilmember Friedman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember McClanahan, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Cogdill, Friedman, McClanahan, Mayor Lang

NOES: Councilmembers: Dobbs, Fisher, Serpa

ABSENT: Councilmembers: None

APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:

By   
JEAN ADAMS, City Clerk

(SEAL)

APPROVED AS TO FORM:

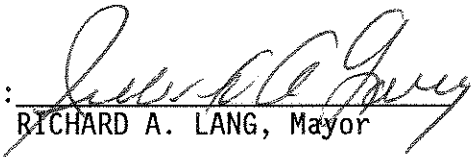
By   
MICHAEL D. MILICH, City Attorney

Ord. No. 3030-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 4th day of March, 1997, Councilmember Friedman, moved its final adoption, which motion being duly seconded by Councilmember McClanahan, was upon roll call carried and the ordinance adopted by the following vote:

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

APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:   
JEAN ADAMS, City Clerk

Effective Date: April 3, 1997

*Alib*

ORDINANCE NO. 3031 -C.S.

AN ORDINANCE ADOPTING A PRECISE PLAN FOR AREAS 4 AND 5 OF THE VILLAGE ONE SPECIFIC PLAN RELATING TO PROPERTY LOCATED ON THE NORTH SIDE OF HILLGLEN AVENUE, SOUTH OF SYLVAN AVENUE, WEST OF ROSELLE AVENUE, EAST OF ROAD F (JAGUAR INVESTMENT CORPORATION - SILVERADO AT THE VILAGE SUBDIVISION)

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

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

WHEREAS, Jaguar Investment Corporation proposes to develop a 135-lot, single-family subdivision called "Silverado At The Village", all on a 26.5-acre site which straddles the Precise Plan Areas 4 and 5, located on the north side of Hillglen Avenue south of Sylvan Avenue and

WHEREAS, the application package also seeks underlying zoning of Specific Plan-Overlay Zone, SP-O, which is to be coupled with the Precise Plan in accordance with the requirements of the Specific Plan and

WHEREAS, a public hearing was held by the Planning Commission of the City of Modesto on February 10, 1997, in the City Council Chambers, City Hall, 801 11th Street, Modesto, and

WHEREAS, after considering public comments, the Planning Commission, by Resolution 97-08, recommended to the City Council approval of a Precise Plan for Areas 4 and 5 of the Village One Specific Plan, and

WHEREAS, said matter was set for a public hearing of the Council of the City of Modesto to be held on March 25, 1997, at 4:00 p.m., in the City Council Chambers, City Hall, 801 11th Street, Modesto, and

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

WHEREAS, the Council declares that said Precise Plans are required by public necessity, convenience, and general welfare for the following reasons:

1. The proposed Precise Plans for Areas 4 and 5 conform to the revised Specific Plan in that it follows the previously-established land use mix, the street layout, and development specifications.
2. The proposed rezoning to SP-O Zone Overlay is necessary as an integral step toward development under the Village One Specific Plan.

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 Areas 4

and 5 of the Village One Specific Plan and rezoning from Specific Plan-Holding Zone, SP-H, to Specific Plan-Overlay Zone, SP-O, as recommended by the Planning Commission, and the Council does hereby approve said Precise Plans, subject to the following conditions:

1. Except as amended herein, or by reference, all development shall be in accordance with the Village One Specific Plan and the specifications contained in the booklets entitled "Village One - Precise Plan Area 4," and "Village One - Precise Plan Area 5, Modesto, California," prepared for Jaguar Investment Corporation by Lew-Garcia-Davis Engineers, dated/received December 9, 1996, as amended and on file in the office of the Community Development Director.
2. Prior to recordation of a final map, the developer shall submit and obtain approval of landscaping and irrigation plans, including lots siding onto McReynolds Avenue and Sylvan Avenue dedicated landscaping. All landscaping, irrigation, and maintenance shall be in accordance with the approved plans.
3. Prior to recordation of a final map, the developer shall secure and establish a City Mello-Roos Community Facilities District for both capital improvements and ongoing maintenance.
4. Prior to recordation of a final map, the developer shall advance the necessary infrastructure costs or shall construct the facilities necessary to extend infrastructure service to the area. If temporary measures are utilized, the developer shall also fund the amount necessary to effect a permanent provision when such can be accomplished. The costs shall be determined by the Director of Public Works and Transportation.
5. Prior to recordation of a final map, all improvement plans prepared by a registered civil engineer, shall be prepared and approved. All improvements shall be in accordance with the approved plans.

6. Prior to recordation of a final map, annexation to the schools' Mello-Roos District shall be completed.
7. Public utility easements, as required by the utility companies serving the subdivision, shall be dedicated by the final map.
8. Irrigation lines within the subdivision shall be removed, protected, or relocated as required by the Modesto Irrigation District and the Public Works and Transportation Director. Appropriate easements for irrigation lines to remain shall be dedicated as necessary.
9. Prior to recordation of a final map, the developer shall show on the plans submitted to Engineering all fire hydrants as required by the Fire Chief. All hydrants required by the Fire Chief shall be installed and operable prior to construction of any structures.
10. The applicant shall record a "Notice of Conditions" in the Stanislaus County Recorder's Office on a form available in the Community Development Department.
11. The subdivider shall indemnify, defend, and hold harmless the City of Modesto, its agents, officers, and employees from any and all claims, actions, or proceedings against the City of Modesto, its agents, officers, and employees to attack, set aside, void, or annul any approval by the City of Modesto and its advisory agency, appeal board, or a legislative body concerning a subdivision, which action is brought within the time period provided for in Section 66499.37 of the Government Code of the State of California. The City of Modesto shall promptly notify the subdivider of any claim, action, or proceeding and shall cooperate fully in the defense. If the City fails to do so, the subdivider shall not thereafter be responsible to defend, indemnify, or hold City harmless.
12. Prior to recordation, the developer shall provide proper street names which have been cleared by Stanislaus County and the City of Modesto.

13. Prior to recordation of any final map, references to "Sylvan Estates Vesting Tentative Subdivision Map" shall be removed.
14. Prior to recordation, the provisions for disposition of storm water runoff shall be finalized. If on-site retention is to be utilized, those lots shall be shown on the tentative map.
15. Prior to recordation, all "Policy Directions Applying to All Precise Plan Areas" pages III-4 through III-8 shall be adhered to and/or placed in the text of the Precise Plans as applicable.

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.



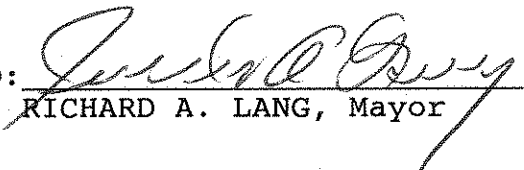
The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 25th day of March, 1997, by Councilmember Friedman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Dobbs, was upon roll call carried and ordered printed and published by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:

  
RICHARD A. LANG, Mayor

ATTEST:

By   
JEAN ADAMS, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney


Ord. No. 3031-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 15th day of April, 1997, Councilmember Friedman moved its final adoption, which motion being duly seconded by Councilmember Dobbs, was upon roll call carried and the ordinance adopted by the following vote:

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

APPROVED:   
MAYOR RICHARD A. LANG

ATTEST:   
JEAN ADAMS, City Clerk

Effective Date: May 15, 1997

Link

ORDINANCE NO. 3032 -C.S.

AN ORDINANCE REZONING VILLAGE ONE PROPERTY FROM SPECIFIC PLAN-HOLDING ZONE, SP-H, TO SPECIFIC PLAN-OVERLAY ZONE, SP-O, FOR PROPERTY LOCATED ON THE NORTH SIDE OF HILLGLEN AVENUE, SOUTH OF SYLVAN AVENUE, WEST OF ROSELLE AVENUE, EAST OF ROAD F. (PRECISE PLAN FOR AREAS NO. 4 AND 5 - JAGUAR INVESTMENT CORPORATION - SILVERADO AT THE VILLAGE SUBDIVISION)

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, Jaguar Investment Corporation proposes to develop a 135-lot, single-family subdivision called "Silverado At The Village", all on a 26.5-acre site which straddles the Precise Plan for Areas 4 and 5, located on the north side of Hillglen Avenue south of Sylvan Avenue, west of Roselle Avenue, east of Road F, and

WHEREAS, the application package also seeks underlying zoning of Specific Plan-Overlay Zone, SP-O, which is to be coupled with the Precise Plan in accordance with the requirements of the Specific Plan, and

WHEREAS, after a public hearing held on February 10, 1997, 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. 97-08, adopted February 10, 1997, the Planning Commission recommended that the application of

Jaguar Investment Corporation to rezone Village One property from Specific Plan-Holding Zone, SP-H, to Specific Plan-Overlay Zone, SP-O, for property located on the north side of Hillglen Avenue, south of Sylvan Avenue, west of Roselle Avenue, east of Road F, be approved, and

WHEREAS, said matter was set for a public hearing of the City Council to be held on March 25, 1997, at 4:00 p.m., in the City Council Chambers, City Hall, 801 11th Street, Modesto, California, at which date and time said duly noticed public hearing of the Council was held and evidence both oral and documentary was received and considered,

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

SECTION 1. After a public hearing held on March 25, 1997, in the Council Chambers, City Hall, 801 11th Street, Modesto, California, this Council finds and determines that the requested rezoning is in accordance with the General Plan and will serve the public health, safety and general welfare and provide the economic and social advantages resulting from orderly, planned use of land resource for the following reasons:

1. The proposed Precise Plans for Areas 4 and 5 conform to the revised Specific Plan in that they follow the previously-established land use mix, the street layout, and development specifications.
2. The proposed rezoning to SP-O Zone Overlay is necessary as an integral step toward development under the Village One Specific Plan.

SECTION 2. ZONING CHANGE. Section 11-3-9 of the Zoning Map of the City of Modesto is hereby amended to rezone the

following described property from Specific Plan-Holding Zone, SP-H, to Specific Plan-Overlay Zone, SP-O,

SP-H to SP-O, PPA 4

A portion of the southeast quarter of Section 11, 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 southeast quarter; thence South  $89^{\circ}44'50''$  East along the north line of said southeast quarter and the centerline of Sylvan Avenue, a distance of 1307.74 feet to the centerline of McReynolds Avenue; thence South  $00^{\circ}33'35''$  East, a distance of 100.00 feet to the beginning of a curve concave to the east, having a radius of 400.00 feet; thence southerly along the arc of said curve through a central angle of  $14^{\circ}19'26''$ , a distance of 100.00 feet; thence South  $14^{\circ}53'01''$  East, a distance of 418.82 feet to the beginning of a curve concave to the west, having a radius of 400.00 feet; thence southerly along the arc of said curve through a central angle of  $14^{\circ}22'26''$ , a distance of 100.35 feet; thence South  $00^{\circ}30'35''$  East, a distance of 620.09 feet to the south line of Lot 14 of Santa Fe Colony, recorded in Volume 4 of Maps, Page 12, Stanislaus County Records; thence North  $89^{\circ}46'34''$  West along the south line of Lots 14, 13 and 12 of said Santa Fe Colony, a distance of 1436.01 feet to the southwest corner of said Lot 12; thence North  $00^{\circ}32'45''$  West along the west line of said 12 and the west line of said southeast quarter, a distance of 1323.07 feet to the point of beginning.

SP-H to SP-O, PPA 5

A portion of the southeast quarter of Section 11, 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 northeast corner of said southeast quarter, said point being the intersection of the centerline of Roselle Avenue and the centerline of Sylvan Avenue; thence North  $89^{\circ}44'50''$  West along the north line of said southeast quarter and said centerline of Sylvan Avenue, a distance of 1321.75 feet to the centerline of McReynolds Avenue; thence South  $00^{\circ}33'35''$  East, a distance of 100.00 feet to the

beginning of a curve concave to the east, having a radius of 400.00 feet; thence southerly along the arc of said curve through a central angle of 14°19'26", a distance of 100.00 feet; thence South 14°53'01" East, a distance of 418.82 feet to the beginning of a curve concave to the west, having a radius of 400.00 feet; thence southerly along the arc of said curve through a central angle of 14°22'26", a distance of 100.35 feet; thence South 00°30'35" East, a distance of 620.09 feet to the south line of Lot 14 of Santa Fe Colony, recorded in Volume 4 of Maps, Page 12, Stanislaus County Records; thence South 89°46'34" East along the south line of Lots 14 and 15 of said Santa Fe Colony, a distance of 1190.41 feet to the east line of said Section 11 and the centerline of said Roselle Avenue; thence North 00°24'49" West along said east line of Section 11 and said centerline of Roselle Avenue, a distance of 1321.71 feet to the point of beginning.

SECTION 3. ZONING MAP. Sections 11-3-9 of the Zoning Map of the City of Modesto is amended to appear as set forth on the map attached hereto, which is hereby made a part of this ordinance by reference.

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

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

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 25th day of March, 1997, by Councilmember Friedman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Dobbs, was upon roll call carried and ordered printed and published by the following vote:

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

APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:

By   
JEAN ADAMS, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

APPROVED AS TO DESCRIPTION:

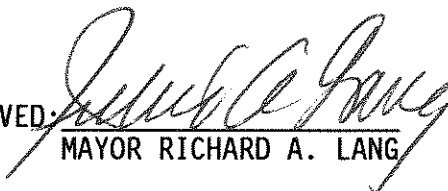
By   
Community Development Department  
Development Services

Ord. No. 3032-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 15th day of April, 1997, Councilmember Friedman moved its final adoption, which motion being duly seconded by Councilmember Dobbs, was upon roll call carried and the ordinance adopted by the following vote:

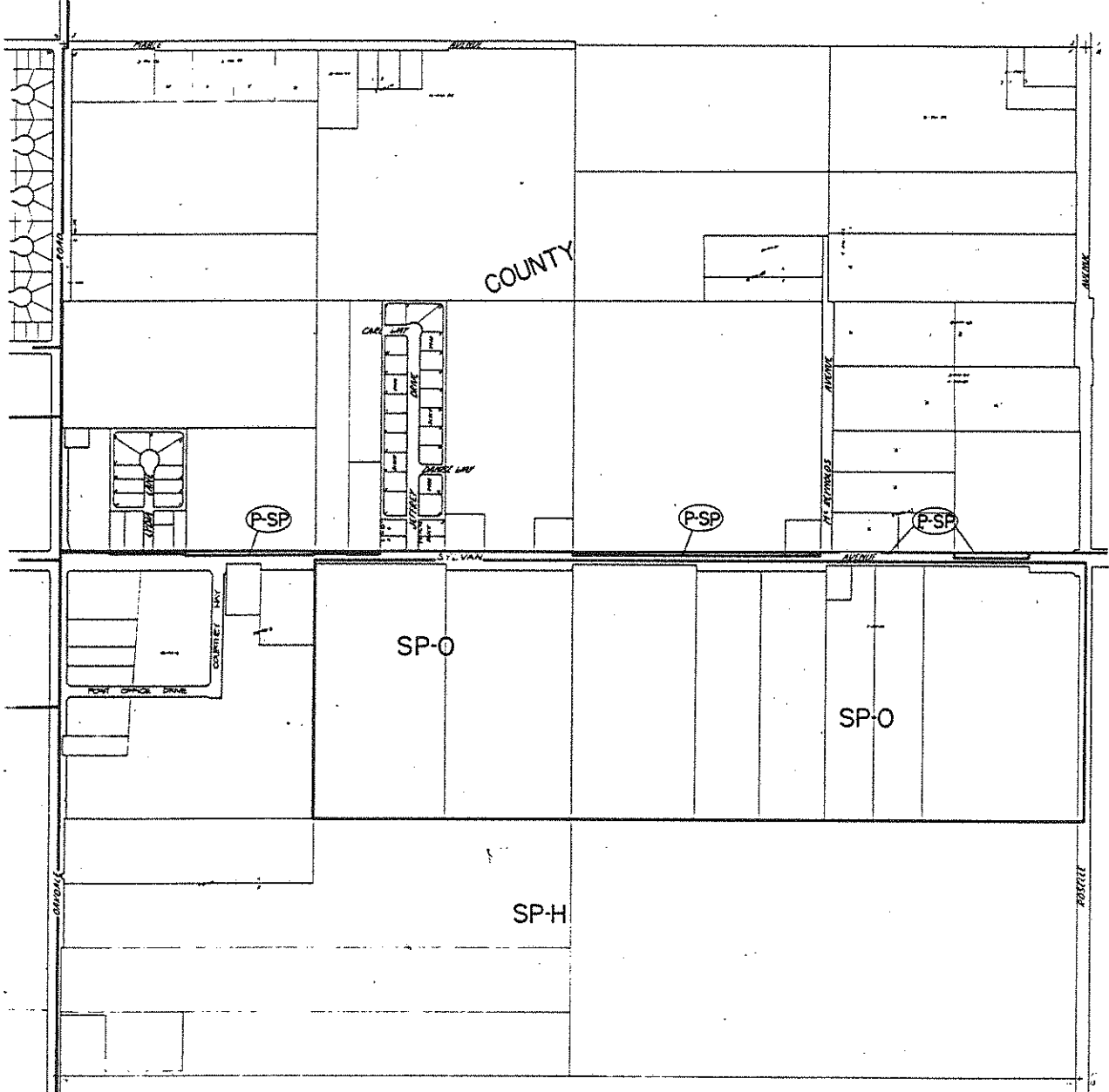
AYES: Councilmembers: Cogdill, Dobbs, Fisher, Friedman, McClanahan,  
Serpa, Mayor Lang  
NOES: Councilmembers: None  
ABSENT: Councilmembers: None

APPROVED:   
MAYOR RICHARD A. LANG

ATTEST:   
JEAN ADAMS, City Clerk

Effective Date: May 15, 1997





ZONING MAP OF THE CITY OF MODESTO 11-3-9

Clarke

ORDINANCE NO. 3033 -C.S.

AN ORDINANCE ADOPTING A PRECISE PLAN FOR AREAS 21 AND 22 OF THE VILLAGE ONE SPECIFIC PLAN RELATING TO PROPERTY LOCATED ON THE NORTH SIDE OF FLOYD AVENUE, SOUTH OF KODIAK DRIVE, EAST OF ESTA AVENUE, AND WEST OF FINE AVENUE (BRIGHT DEVELOPMENT - MILLBROOK ESTATES)

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

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

WHEREAS, Bright Development proposes to develop a 200-lot, single-family subdivision called Millbrook Estates, all on a 36.7-acre site which straddles the Precise Plan Areas 21 and 22, located on the north side of Floyd Avenue, south of Kodiak Drive, east of Esta Avenue, and west of Fine Avenue, and

WHEREAS, the application package also seeks underlying zoning of Specific Plan-Overlay Zone, SP-O, which is to be coupled with the Precise Plan in accordance with the requirements of the Specific Plan, and

WHEREAS, a public hearing was held by the Planning Commission of the City of Modesto on February 10, 1997, in the City Council Chambers, City Hall, 801 11th Street, Modesto, and

WHEREAS, after considering public comments, the Planning Commission, by Resolution 97-06, recommended to the City Council approval of a Precise Plan for Areas 21 and 22 of the Village One Specific Plan, and

WHEREAS, said matter was set for a public hearing of the Council of the City of Modesto to be held on March 25, 1997, at 4:00 p.m., in the City Council Chambers, City Hall, 801 11th Street, Modesto, and

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

WHEREAS, the Council declares that said Precise Plans are required by public necessity, convenience, and general welfare for the following reasons:

1. The proposed Precise Plans for Areas 21 and 22 conform to the revised Specific Plan in that it follows the previously-established land use mix, the street layout, and development specifications.
2. The proposed rezoning to SP-O Zone Overlay is necessary as an integral step toward development under the Village One Specific Plan.

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 Areas 21

and 22 of the Village One Specific Plan and rezoning from Specific Plan-Holding Zone, SP-H, to Specific Plan-Overlay Zone, SP-O, as recommended by the Planning Commission, and the Council does hereby approve said Precise Plans, subject to the following conditions:

1. Except as amended herein, or by reference, all development shall be in accordance with the Village One Specific Plan and the specifications contained in the booklets entitled "Village One - Precise Plan Area 21" and "Village One - Precise Plan Area 22, Modesto, California," prepared for Bright Development by Delamare-Fultz Engineers, dated/received November 18, 1996, as amended and on file in the office of the Community Development Director.
2. Prior to recordation of a final map, the developer shall submit and obtain approval of landscaping and irrigation plans, including Floyd Avenue dedicated landscaping. All landscaping, irrigation, and maintenance shall be in accordance with the approved plans.
3. Prior to recordation of a final map, the developer shall secure and establish a City Mello-Roos Community Facilities District for both capital improvements and ongoing maintenance.
4. Floyd Avenue shall be developed at a 104-foot-wide right of way at this location.
5. Prior to recordation of a final map, the developer shall advance the necessary infrastructure costs or shall construct the facilities necessary to extend infrastructure service to the area. If temporary measures are utilized, the developer shall also fund the amount necessary to effect a permanent provision when such can be accomplished. The costs shall be determined by the Director of Public Works and Transportation.
6. Prior to recordation of a final map, all improvement plans prepared by a registered civil engineer, shall be prepared and approved. All improvements shall be in accordance with the approved plans.

7. Prior to recordation of a final map, annexation to the schools' Mello-Roos District shall be completed.
8. Public utility easements, as required by the utility companies serving the subdivision, shall be dedicated by the final map.
9. Irrigation lines within the subdivision shall be removed, protected, or relocated as required by the Modesto Irrigation District and the Public Works and Transportation Director. Appropriate easements for irrigation lines to remain shall be dedicated as necessary.
10. Prior to recordation of a final map, the developer shall show on the plans submitted to Engineering all fire hydrants as required by the Fire Chief. All hydrants required by the Fire Chief shall be installed and operable prior to construction of any structures.
11. The applicant shall record a "Notice of Conditions" in the Stanislaus County Recorder's Office on a form available in the Community Development Department.
12. The subdivider shall indemnify, defend, and hold harmless the City of Modesto, its agents, officers, and employees from any and all claims, actions, or proceedings against the City of Modesto, its agents, officers, and employees to attack, set aside, void, or annul any approval by the City of Modesto and its advisory agency, appeal board, or a legislative body concerning a subdivision, which action is brought within the time period provided for in Section 66499.37 of the Government Code of the State of California. The City of Modesto shall promptly notify the subdivider of any claim, action, or proceeding and shall cooperate fully in the defense. If the City fails to do so, the subdivider shall not thereafter be responsible to defend, indemnify, or hold City harmless.
13. Prior to recordation, the developer shall provide proper street names which have been cleared by Stanislaus County and the City of Modesto.
14. Prior to recordation, the provisions for disposition of storm water runoff shall be finalized. If on-site retention is to be utilized, those lots shall be shown on the tentative map.

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 25th day of March, 1997, by Councilmember Cogdill, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and ordered printed and published by the following vote:

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

APPROVED:

  
RICHARD A. LANG, Mayor

ATTEST:

By

  
JEAN ADAMS, City Clerk

(SEAL)

APPROVED AS TO FORM:

By

  
MICHAEL D. MILICH, City Attorney

Ord. No. 3033-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 15th day of April, 1997, Councilmember Friedman moved its final adoption, which motion being duly seconded by Councilmember Dobbs, was upon roll call carried and the ordinance adopted by the following vote:

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

APPROVED:   
MAYOR RICHARD A. LANG

ATTEST:   
JEAN ADAMS, City Clerk

Effective Date: May 15, 1997



*Clark*

ORDINANCE NO. 3034 -C.S.

AN ORDINANCE REZONING VILLAGE ONE PROPERTY FROM SPECIFIC PLAN-HOLDING ZONE, SP-H, TO SPECIFIC PLAN-OVERLAY ZONE, SP-O, FOR PROPERTY LOCATED ON THE NORTH SIDE OF FLOYD AVENUE, SOUTH OF KODIAK DRIVE, EAST OF ESTA AVENUE, AND WEST OF FINE AVENUE. (PRECISE PLAN FOR AREAS 21 AND 22 - BRIGHT DEVELOPMENT - MILLBROOK ESTATES)

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, Bright Development proposes to develop a 200-lot, single-family subdivision called Millbrook Estates, all on a 36.7-acre site which straddles the Precise Plan Areas 21 and 22, located on the north side of Floyd Avenue, south of Kodiak Drive, east of Esta Avenue, and west of Fine Avenue, and

WHEREAS, the application package also seeks underlying zoning of Specific Plan-Overlay Zone, SP-O, which is to be coupled with the Precise Plan in accordance with the requirements of the Specific Plan, and

WHEREAS, after a public hearing held on February 10, 1997, 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. 97-06, adopted February 10, 1997, the Planning Commission recommended that the application of Bright Development to rezone Village One property from Specific

Plan-Holding Zone, SP-H, to Specific Plan-Overlay Zone, SP-O, for property located on the north side of Floyd Avenue, south of Kodiak Drive, east of Esta Avenue, and west of Fine Avenue, be approved, and

WHEREAS, said matter was set for a public hearing of the City Council to be held on March 25, 1997, at 4:00 p.m., in the City Council Chambers, City Hall, 801 11th Street, Modesto, California, at which date and time said duly noticed public hearing of the Council was held and evidence both oral and documentary was received and considered,

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

SECTION 1. After a public hearing held on March 25, 1997, in the Council Chambers, City Hall, 801 11th Street, Modesto, California, this Council finds and determines that the requested rezoning is in accordance with the General Plan and will serve the public health, safety and general welfare and provide the economic and social advantages resulting from orderly, planned use of land resource for the following reasons:

1. The proposed Precise Plans for Areas 21 and 22 conform to the revised Specific Plan in that it follows the previously-established land use mix, the street layout, and development specifications.
2. The proposed rezoning to SP-O Zone Overlay is necessary as an integral step toward development under the Village One Specific Plan.

SECTION 2. ZONING CHANGE. Section 13-3-9 of the Zoning Map of the City of Modesto is hereby amended to rezone the

following described property from Specific Plan-Holding Zone,  
SP-H, to Specific Plan-Overlay Zone, SP-O,

SP-H to SP-O, PPA 21

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

BEGINNING at the southwest corner of said Northeast Quarter of the Northwest Quarter of Section 13; thence North  $0^{\circ}25'08''$  West along the west line of said Northeast Quarter of the Northwest Quarter of Section 13, a distance of 1322.39 feet to the northwest corner of said Northeast Quarter of the Northwest Quarter of Section 13; thence North  $89^{\circ}49'52''$  East along the north line of said Northeast Quarter of the Northwest Quarter of Section 13 a distance of 471.76 feet to the centerline of Millbrook Avenue as shown on map filed for record in Volume 23 of Surveys, Page 22, Stanislaus County Records; thence southeasterly along said centerline of Millbrook Avenue the following 3 courses: South  $25^{\circ}54'07''$  East 923.48 feet, Southeasterly 222.56 feet along a tangent curve, concave to the west, having a radius of 502.75 feet and a central angle of  $25^{\circ}21'52''$ , and South  $0^{\circ}32'15''$  East 275.87 feet to the south line of said Northeast Quarter of the Northwest Quarter of Section 13; thence South  $89^{\circ}51'30''$  West along said south line a distance of 918.57 feet to the point of beginning.

Containing: 23.07 Acres

SP-H to SP-O, PPA 22

All that certain real property situate in a portion of the North half of Section 13, Township 3 South, Range 9 East, Mount Diablo Base and Meridian, in the City of Modesto, County of Stanislaus, State of California, described as follows:

COMMENCING at the southwest corner of the Northeast Quarter of the Northwest Quarter of said Section 13; thence North  $89^{\circ}51'30''$  East along the south line of said Northeast Quarter of the Northwest Quarter of Section 13 a distance of 918.57 feet to the centerline of Millbrook Avenue, shown as Esta Avenue on map filed

for record in Volume 23 of Surveys, Page 22, Stanislaus County Records, and the true POINT OF BEGINNING of this description; thence Northwesterly along said centerline of Millbrook Avenue the following 3 courses: North 0°32'15" West 275.87 feet, Northwesterly 222.56 feet along a tangent curve, concave to the west, having a radius of 502.75 feet and a central angle of 25°21'52", and North 25°54'07" West 923.48 feet to the north line of said Section 13; thence North 89°49'52" East along said north line of Section 13 a distance of 2161.86 feet to the northeast corner of Lot 2 as shown on map of the "Adams Colony" filed for record in Volume 4 of Maps, Page 5, Stanislaus County Records; thence South 0°19'45" East along the east lines of Lots 2 and 3 of said "Adams Colony", being also the centerline of Fine Avenue, a distance of 1323.63 feet to the southeast corner of said Lot 3; thence South 89°51'30" West along the south line of said Lot 3 and the westerly extension thereof, being also the centerline of Floyd Avenue, a distance of 1712.98 feet to the point of beginning.

Containing 56.89 Acres.

SECTION 3. ZONING MAP. Sections 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 25th day of March, 1997, by Councilmember Cogdill, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and ordered printed and published by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

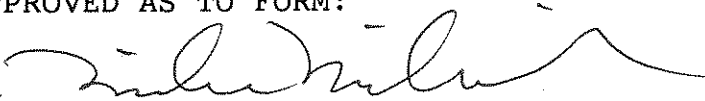
APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:

By   
JEAN ADAMS, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

APPROVED AS TO DESCRIPTION:


By   
Community Development Department  
Development Services

Ord. No. 3034-C.S.

FINAL ADOPTION CLAUSE

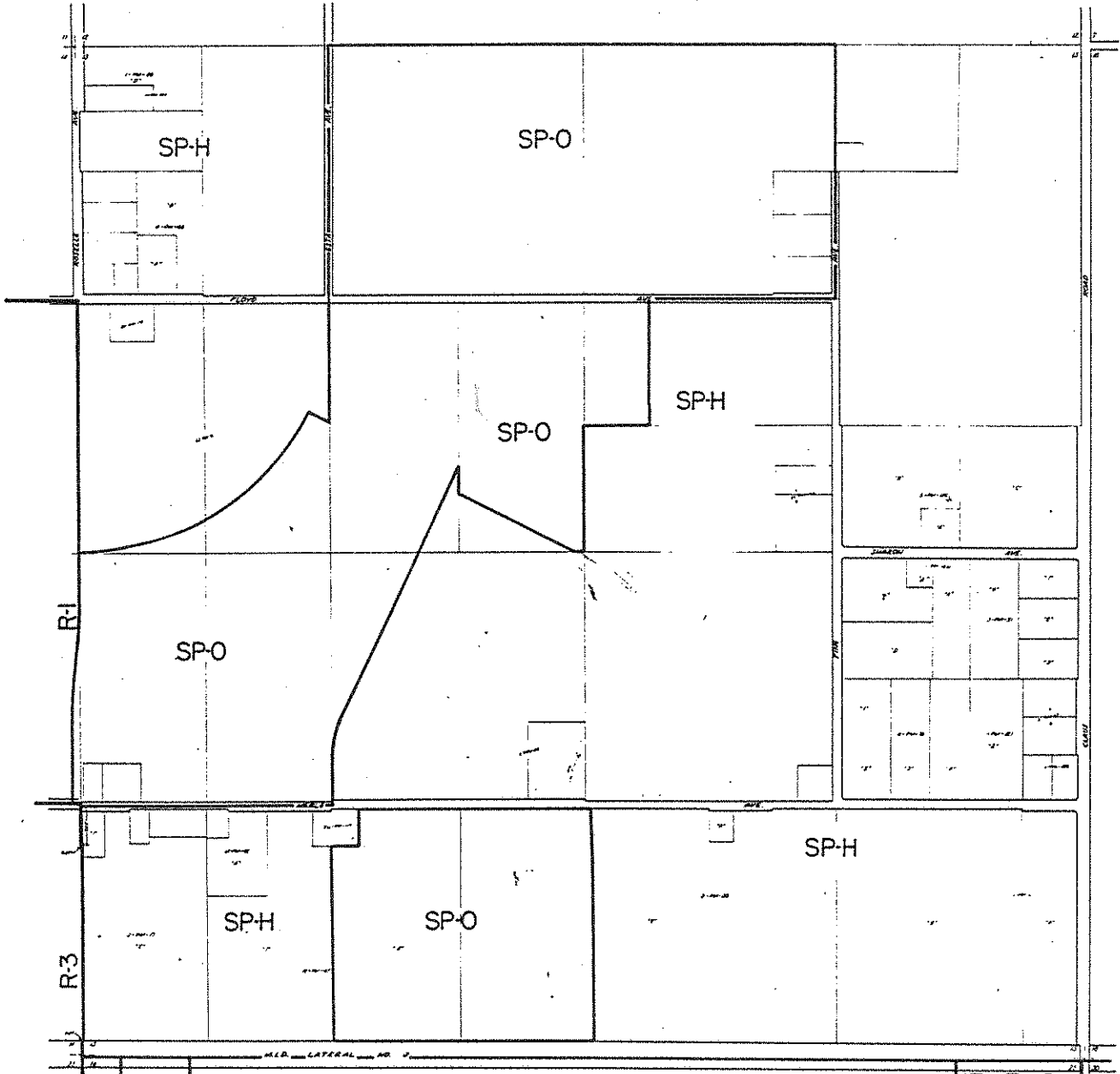
The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 15th day of April, 1997, Councilmember Friedman moved its final adoption, which motion being duly seconded by Councilmember Dobbs, was upon roll call carried and the ordinance adopted by the following vote:

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

APPROVED:   
MAYOR RICHARD A. LANG

ATTEST:   
JEAN ADAMS, City Clerk

Effective Date: May 15, 1997



ZONING MAP OF THE CITY OF MODESTO

13-3-9

Clerk

ORDINANCE NO. 3035 -C.S.

AN ORDINANCE AMENDING SECTIONS 1-3-8 AND 2-3-8 OF THE ZONING MAP OF THE CITY OF MODESTO PREZONING CERTAIN PROPERTY LOCATED THEREON. (KIERNAN BUSINESS PARK)

WHEREAS, pursuant to Municipal Code Section 10-2.2604, the City of Modesto proposes to initiate a prezoning of the area designated as the Kiernan Business Park 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 March 3, 1997, in the Council Chambers, City Hall, 801 11th Street, Modesto, California, it was found and determined by the Planning Commission that prezoning the Kiernan Business Park 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 or necessity because the proposed Kiernan Business Park Specific Plan will provide for needed economic development opportunities for the City and its residents.
2. The requested prezoning will result in an orderly planning 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 business park in this area.
3. The requested prezoning is in accordance with the community's objectives as set forth in the General



Plan because it implements the General Plan Economic Development Goals (presented in Section I-D of the General Plan) by providing "adequate land, strategically located to facilitate the expansion of Modesto's economic base..." and the General Plan Community Growth Policies presented in Section II-B of the General Plan.

4. The requested rezoning is in accordance with the policies and goals presented in the Kiernan Business Park Specific Plan.

WHEREAS, by Resolution No. 97-19, adopted on March 3, 1997, the Planning Commission recommended to the City Council an amendment to Sections 1-3-8 and 2-3-8 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 April 1, 1997, 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 April 1, 1997, 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. 97-19 and quoted above.

SECTION 2. CEQA FINDING. That the Final Focused EIR for the Kiernan Business Park and Carver-Bangs Specific Plans is complete and adequate, and that it has been prepared and completed in accordance with the provisions of CEQA.

SECTION 3. ZONING CHANGE. Sections 1-3-8 and 2-3-8 of the Zoning Map are hereby amended to prezone the following described property to Specific Plan Overlay Zone, SP-0:

All that certain real property situate in a portion of Sections 1 and 2, Township 3 South, Range 8 East, Mount Diablo Base and Meridian, in the County of Stanislaus, State of California, described as follows:

Starting at the northwest corner of said Section 2-3-8, being the centerline intersection of original 40-foot Stoddard Avenue and original 50-foot Kiernan Avenue, said point being the Point of Beginning; thence easterly 5,310 feet, more or less, along the centerline of Kiernan Avenue, to the northeast corner of said Section 2-3-8, being the centerline intersection of original 50-foot Dale Road and original 50-foot Kiernan Avenue; thence easterly 2,655 feet, more or less, along the centerline of Kiernan Avenue to the centerline intersection of original 40-foot American Avenue and original 50-foot Kiernan Avenue; thence southerly 2,631 feet, more or less, to the southeast corner of Lot 34 as shown on that map of Albermerl Tract Recorded in Book 4, Page 19 of Maps, April 13, 1909, in the Office of the Recorder of Stanislaus County; thence southerly 129 feet, more or less, to the south side of 100-foot M.I.D. Lateral No. 6, thence southerly 1,233 feet, more or less, to a point on the existing City limit line, thence westerly along said City limit 2,599 feet, more or less, to a point on the east side of 100-foot Dale Road; thence northerly along said east line of Dale Road, 1,234 feet, more or less, to the point of intersection of said east line of Dale Road and the south line of 100-foot M.I.D. Lateral No. 6; thence westerly 2,643 feet, more or less, to the quarter Section 2-3-8; thence southerly 1,241 feet, more or

less, to a point on the centerline of 100-foot Pelandale Road; thence westerly along the centerline of Pelandale Road 2,642 feet, more or less, to the northwest corner of the southwest quarter quarter of said Section of 2-3-8; thence northerly 3,389 feet, more or less, to the Point of Beginning.

SECTION 4. ZONING MAP. Sections 1-3-8 and 2-3-8 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 1st day of April, 1997, by Councilmember Friedman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and ordered printed and published by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

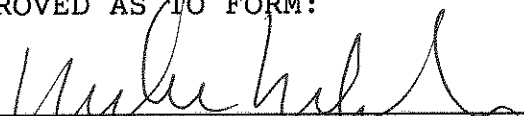
APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:

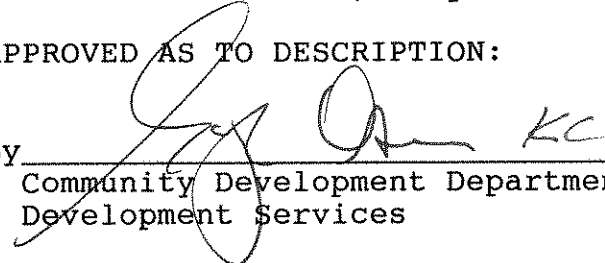
By   
JEAN ADAMS, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

APPROVED AS TO DESCRIPTION:

By  KC  
Community Development Department  
Development Services

Ord. No. 3035-C.S.

FINAL ADOPTION CLAUSE

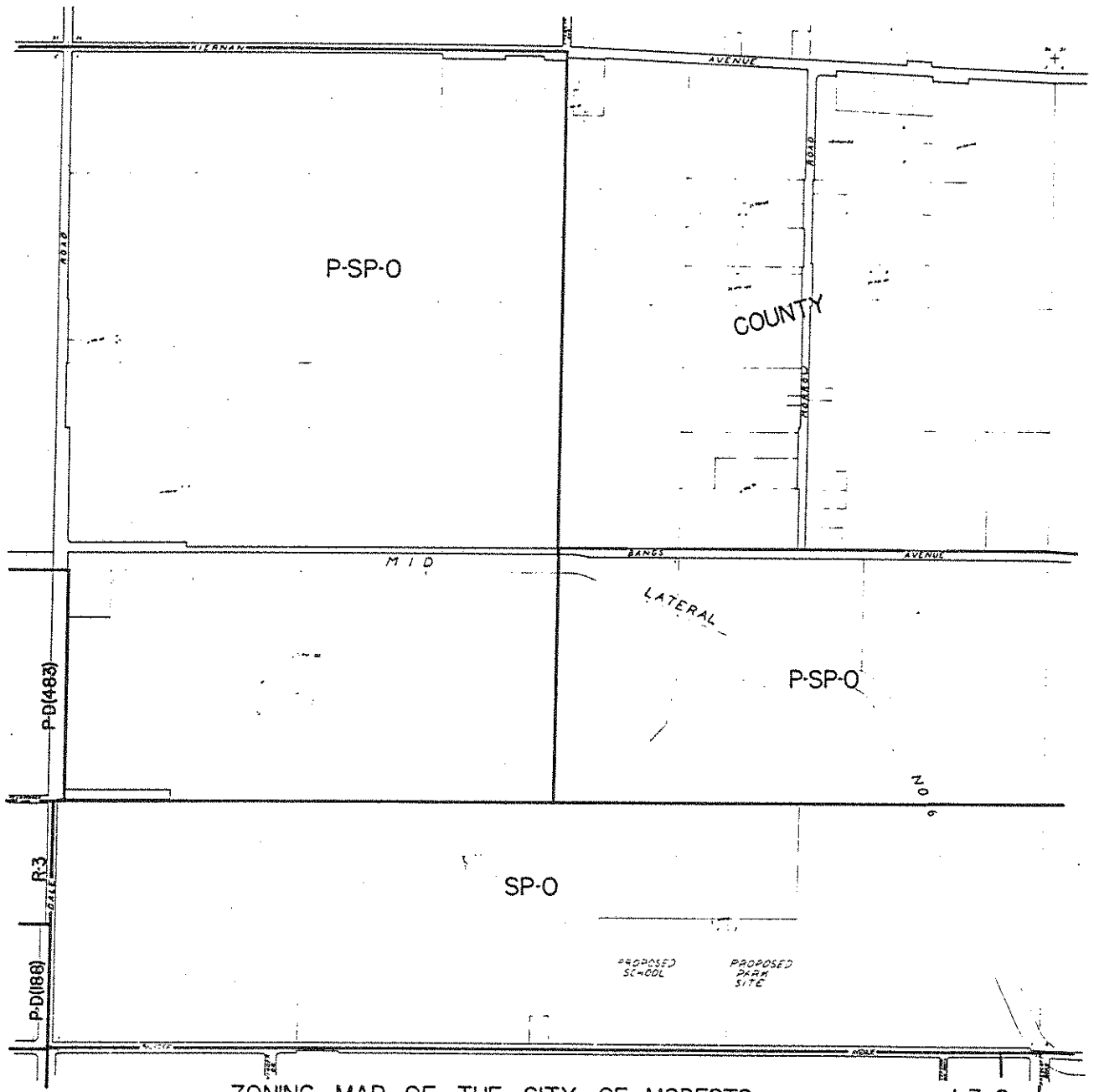
The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 15th day of April, 1997, Councilmember Friedman moved its final adoption, which motion being duly seconded by Councilmember Dobbs, was upon roll call carried and the ordinance adopted by the following vote:

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

APPROVED:   
MAYOR RICHARD A. LANG

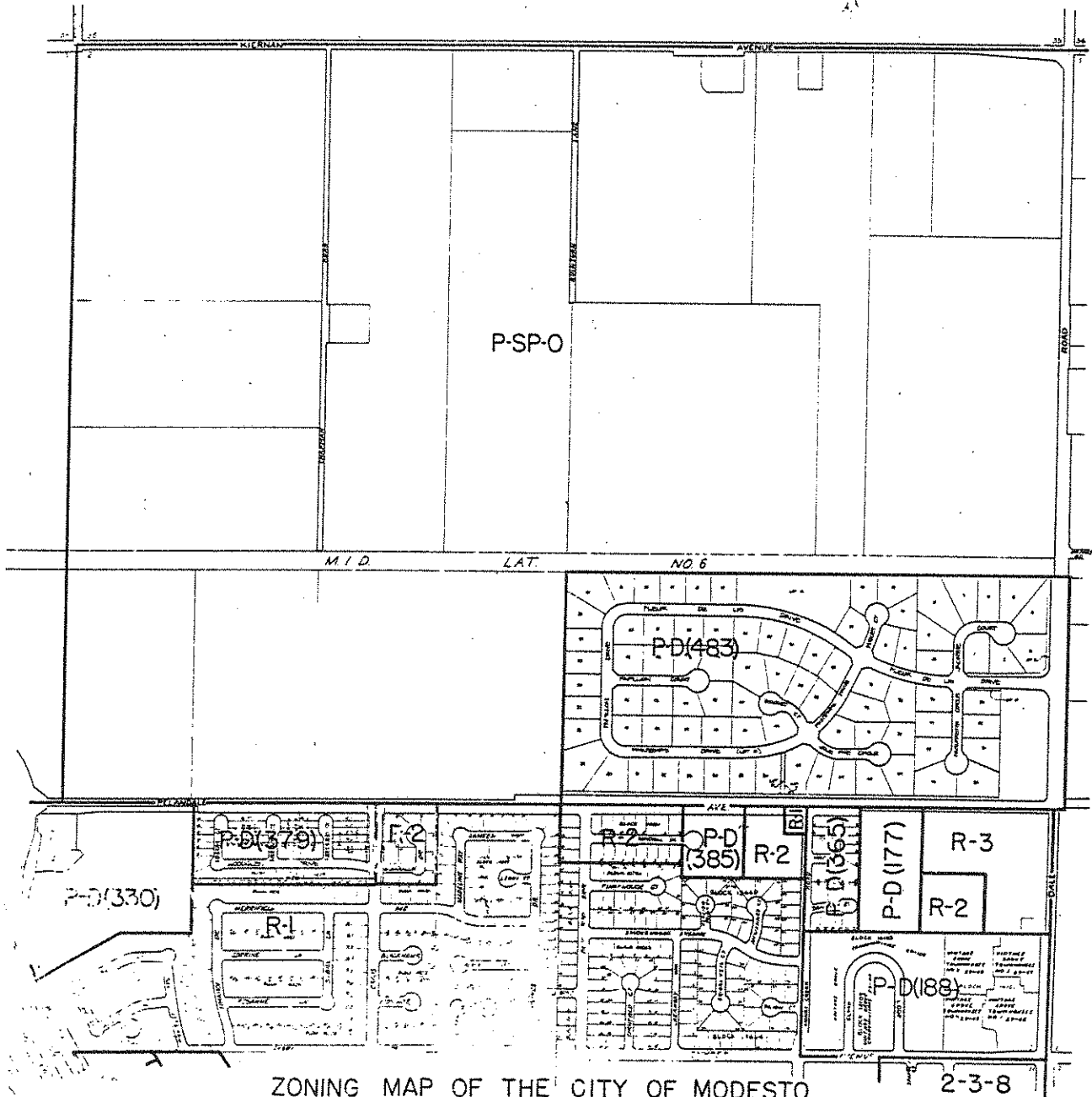
ATTEST:   
JEAN ADAMS, City Clerk

Effective Date: May 15, 1997



ZONING MAP OF THE CITY OF MODESTO

1-3-8



ZONING MAP OF THE CITY OF MODESTO

2-3-8

Check

ORDINANCE NO. 3036 -C.S.

AN ORDINANCE AMENDING SECTIONS 1-3-8 AND 6-3-9 OF THE ZONING MAP OF THE CITY OF MODESTO PREZONING CERTAIN PROPERTY LOCATED THEREON. (CARVER-BANGS)

WHEREAS, pursuant to Municipal Code Section 10-2.2604, the City of Modesto proposes to initiate a prezoning of the area designated as the Carver-Bangs 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 March 3, 1997, in the Council Chambers, City Hall, 801 11th Street, Modesto, California, it was found and determined by the Planning Commission that prezoning the Carver-Bangs Specific Plan as requested should be denied for the reason set forth in Planning Commission Resolution No. 97-20, and

WHEREAS, by Resolution No. 97-20, adopted on March 3, 1997, the Planning Commission recommended to the City Council denial of the requested prezoning for the Carver-Bangs Specific Plan area to Specific Plan Overlay Zone, SP-0, and

WHEREAS, said matter was set for a public hearing of the City Council to be held on April 1, 1997, 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 April 1, 1997, this Council finds and determines that the requested rezoning is in accordance with the General Plan and will serve the public health, safety and general welfare and provide the economic and social advantages resulting from orderly, planned use of land resource for the following reasons:

1. The requested rezoning is required by public convenience or necessity because the proposed Carver-Bangs Specific Plan will provide needed services and facilities for that area.
2. The requested rezoning will result in an orderly planning use of land resources because the proposed rezoning is in accordance with the objectives and policies set forth in the Modesto Urban Area General Plan, which calls for residential development in this area.
3. The requested rezoning is in accordance with the community's objectives as set forth in the General Plan because it implements the General Plan by providing "a diversity of housing types..." (Section I-D(3) of the General Plan).
4. The requested rezoning is in accordance with the policies and goals presented in the Carver-Bangs Specific Plan.

SECTION 2. CEQA FINDING. That the Final Focused EIR for the Kiernan Business Park and Carver-Bangs Specific Plans is complete and adequate, and that it has been prepared and completed in accordance with the provisions of CEQA.

SECTION 3. ZONING CHANGE. Sections 1-3-8 and 6-3-9 of the Zoning Map are hereby amended to prezone the property described in the attached Exhibit "A" to Specific Plan Overlay Zone, SP-0

SECTION 4. ZONING MAP. Sections 1-3-8 and 6-3-9 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 1st day of April, 1997, by Councilmember Cogdill, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Dobbs, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Cogdill, Dobbs, Friedman, Mayor Lang  
NOES: Councilmembers: Fisher, Mcclanahan, 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

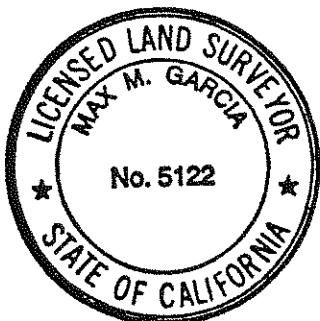
## EXHIBIT "A"

A portion of Section 1, Township 3 South, Range 8 East and Section 6, Township 3 South, Range 9 East, Mount Diablo Base and Meridian, situate in the County of Stanislaus, State of California, more particularly described as follows:

Beginning at the southwest corner of the north half of the southeast quarter of said Section 1; thence North 89°07'16" East along the south line of said north half, a distance of 2647.00 feet to the southwest corner of Lot 5 of the Nash Tract, recorded in Volume 4 of Maps, Page 10, Stanislaus County Records; thence South 88°31'21" East along the south line of Lots 5 and 8 of said Nash Tract, a distance of 2658.35 feet to the east line of Carver Road, said east line lies 20.00 feet east of and parallel with the centerline of said Carver Road; thence North 00°43'54" West along said east line, a distance of 1341.07 feet to the north line of Bangs Avenue; thence along the north line of said Bangs Avenue the following three (3) courses:

- 1) North 88°27'13" West, a distance of 2516.00 feet;
- 2) North 83°01'33" West, a distance of 146.43 feet;
- 3) South 89°10'00" West, a distance of 2640.73 feet to the intersection with the west line of the east half of said Section 1; thence South 00°35'00" East along the said west line of the east half of said Section 1, a distance of 1360.36 feet to the point of beginning.

This real property description has been prepared by me, or under my direction, in conformance with the Professional Land Surveyor's Act.



*Max M. Garcia*      3/3/97  
Max M. Garcia, L.S. 5122      Date  
License Expires: 06/30/99

Ord. No. 3036-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 15th day of April, 1997, Councilmember Cogdill, moved its final adoption, which motion being duly seconded by Councilmember Dobbs, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Cogdill, Dobbs, Friedman, Mayor Lang

NOES: Councilmembers: Fisher, McClanahan, Serpa

ABSENT: Councilmembers: None

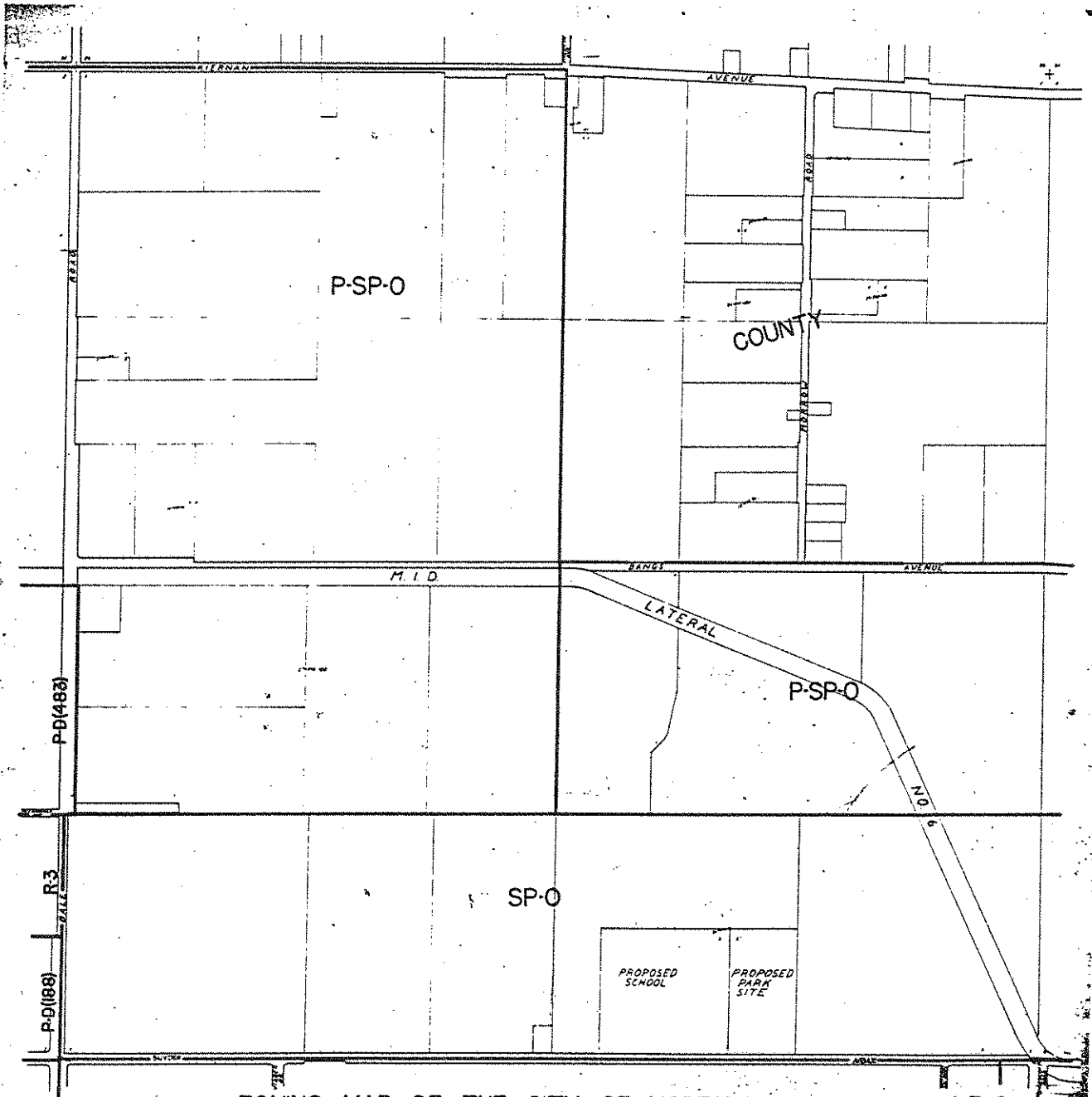
APPROVED

  
RICHARD A. LANG, Mayor

ATTEST:

  
JEAN ADAMS, City Clerk

Effective Date: May 15, 1997



ZONING MAP OF THE CITY OF MODESTO 1-3-8



ZONING MAP OF THE CITY OF MODESTO

6-3-9

Click

ORDINANCE NO. 3037-C.S.

AN ORDINANCE AMENDING SECTION 4-2.09 OF  
CHAPTER 2 OF TITLE IV OF THE MODESTO MUNICIPAL  
CODE RELATING TO DRINKING IN PUBLIC.

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

SECTION 1. AMENDMENT OF CODE. Section 4-2.09 of Chapter 2 of  
Title IV of the Modesto Municipal Code is hereby amended to read as follows:

**SEC. 4-2.09. DRINKING IN PUBLIC.**

No person shall drink and/or be in possession of an open container of any beer, wine or other intoxicating beverage on any public street, sidewalk, alley, playground, or walkway except in the geographic area immediately surrounding a community-wide event which has received the prior written approval of the City Manager. The written approval shall specify the boundaries of the exempted area and the duration of the exemption.

Nor shall any person drink and/or be in possession of an open container containing any intoxicating beverage on any private parking lot held open to the public except for intoxicating beverages dispensed or consumed on a private parking lot pursuant to a license issued for that purpose by the State of California. Nor shall any person drink and/or be in possession of any open container containing any intoxicating beverage on any public parking lot except those that directly abut a City park, and only with advance written approval of the Parks and Recreation Director. This section shall not be deemed to make punishable any act or acts which are prohibited by any law of the State of California.

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

SECTION 3. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and



distinct locations in the City; and a notice shall be published once in The Modesto Bee, the official newspaper of the City of Modesto, setting forth the title of this ordinance, the date of its introduction and the places where this ordinance is posted.

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 8th day of April, 1997, by Councilmember Dobbs, who moved its introduction and passage to print, which motion being duly seconded by Councilmember McClanahan, was upon roll call carried and ordered printed and published by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

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

ATTEST:

By Jean Adams  
JEAN ADAMS, City Clerk

(SEAL)

APPROVED AS TO FORM:

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

Ord. No. 3037-C.S.

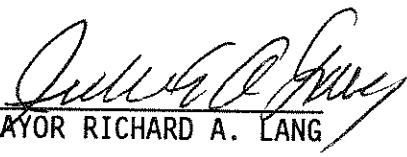
FINAL ADOPTION CLAUSE


The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 15th day of April, 1997, Councilmember Friedman moved its final adoption, which motion being duly seconded by Councilmember Dobbs, was upon roll call carried and the ordinance adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:   
MAYOR RICHARD A. LANG

ATTEST:   
JEAN ADAMS, City Clerk

Effective Date: May 15, 1997

ORDINANCE NO. 3038-C.S.

*This ordinance  
was NOT finally  
adopted*

AN ORDINANCE AMENDING SECTIONS 10-2.1102 AND 10-2.1703 OF CHAPTER 2 OF TITLE X OF THE MODESTO MUNICIPAL CODE AND ADDING SECTION 10-2.1102.1 TO ARTICLE 11 OF CHAPTER 2 OF TITLE X OF THE MODESTO MUNICIPAL CODE RELATING TO PERMITTED USES -- MOVIE THEATERS.

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

SECTION 1. AMENDMENT OF CODE. Sections 10-2.1102 and 10-2.1703 of Chapter 2 of Title X of the Modesto Municipal Code are hereby amended to read as follows:

**SEC. 10-2.1102. PERMITTED USES.**

The following are permitted uses:

- (a) Any permitted use in the C-1 Zone.
- (b) Appliance store.
- (c) Armored car service.
- (d) Automobile and recreational vehicle dealer.
- (e) Automobile repair (excluding painting, body and fender work, machining and tire rebuilding, except that incidental to general repair).
- (f) Bar, cocktail lounge.
- (g) Broadcasting studio (radio or television).
- (h) Carnival.
- (i) Circus.
- (j) Department store.

- (k) Electric motor shop.
- (l) Exterminating service.
- (m) Farm supply store.
- (n) Floor covering store.
- (o) Fortune-telling.
- (p) Janitorial service.
- (q) Laboratory (research and testing).
- (r) Locksmith shop.
- (s) Medical and orthopedic supply store.
- (t) Printing shop.
- (u) Recreation services (bowling alley, ice or roller skating rink, racquetball club or similar indoor uses).
- (v) Security agency.
- (w) Sign painting shop.
- (x) Taxicab office, repair and storage (excluding painting and body and fender work, except that incidental to general repair).
- (y) Taxidermist shop.
- (z) Tire, battery and vehicle accessory store (excluding tire rebuilding, recapping and retreading).
- (aa) Upholstery and furniture repair shop.

**SEC. 10-2.1703. PERMITTED USES.**

The following are permitted uses:

- (a) Any use specified in the ordinance establishing a P-D Zone.

- (b) Condominiums, community apartment projects and stock cooperatives, whether residential or otherwise. These uses are permitted only in a P-D Zone.
- (c) Theater (indoor). Except as set forth in Section 10-2.1102.1, this use is permitted only in a P-D Zone.

SECTION 2. AMENDMENT OF CODE. Section 10-2.1102.1 is hereby added to Article 11 of Chapter 2 of Title X of the Modesto Municipal Code to read as follows:

**SEC. 10-2.1102.1. PERMITTED USES WITHIN THE DOWNTOWN P-D ZONE AREA.**

- (a) All uses as set forth in Section 10-2.1102.
- (b) Theater (indoor).

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 6th day of May, 1997, by Councilmember Friedman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Cogdill, was upon roll call carried and ordered printed and published by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: Fisher, McClanahan


APPROVED: \_\_\_\_\_  
RICHARD A. LANG, Mayor

ATTEST:

By \_\_\_\_\_  
JEAN ADAMS, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

ORDINANCE NO. 3039-C.S.

AN ORDINANCE ADOPTING A PRECISE PLAN FOR AREA 26 OF THE VILLAGE ONE SPECIFIC PLAN, RELATING TO PROPERTY LOCATED ON THE SOUTH SIDE OF FLOYD AVENUE, WEST OF MILLBROOK AVENUE, AND NORTH OF BELHARBOUR DRIVE. (OLYMPIC VILLAGE)

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

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

WHEREAS, L & L Ventures have filed a proposal to develop a 12-lot, single-family subdivision called Olympic Park on a 2.8-acre site to the west of Millbrook Avenue, and

WHEREAS, the application package also seeks underlying zoning of SP-O which is to be coupled with the Precise Plan, in accordance with the requirements of the Specific Plan, and

WHEREAS, a public hearing was held by the Planning Commission of the City of Modesto on March 17, 1997, in the City Council Chambers, City Hall, 801 11th Street, Modesto, and

WHEREAS, after considering public comments, the Planning Commission, by Resolution 97-22, recommended to the City

Council approval of a Precise Plan for Area No. 26 of the Village One Specific Plan, and

WHEREAS, said matter was set for a public hearing of the Council of the City of Modesto to be held on May 6, 1997, at 7:00 p.m., in the City Council Chambers, City Hall, 801 11th Street, Modesto, and

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

WHEREAS, the Council declares that said Precise Plan is for Area 26 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. 26 conforms to the revised Specific Plan in that it follows the previously-established land-use, the street layout and land use.
2. The proposed rezoning to SP-O Zone Overlay 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. 26 of the Village One Specific Plan and underlying zoning of SP-Zone Overlay as recommended by the Planning Commission, and the Council does hereby approve said Precise Plan, subject to the following conditions:



1. Except as amended herein or by reference, all development shall be in accordance with the Village One Specific Plan and the specifications contained in the booklet entitled "Village One - Precise Plan Area 26, Modesto, California", prepared for L & L Ventures by Delamare-Fultz Engineers, dated/received January 21, 1997, as amended and on file in the office of the Community Development Director.
2. Prior to recordation of a final map, the developer shall submit and obtain approval of landscaping and irrigation plans including Floyd Avenue dedicated landscaping, and those lots siding onto Millbrook Avenue. All landscaping, irrigation, and maintenance shall be in accordance with the approved plans.
3. Prior to recordation of a final map, the developer shall secure and establish a City Mello-Roos Community Facilities District for both capital improvements and ongoing maintenance.
4. Floyd Avenue shall be developed at a 104-foot-wide right-of-way as per the Village One Minor Arterial Standard as shown in Figure II-6 of the Village One Specific Plan (the cross-section shown on page 8 of Precise Plan is for Floyd Avenue west of Roselle Avenue).
5. Prior to recordation of a final map, the developer shall advance the necessary infrastructure costs or shall construct the facilities necessary to extend infrastructure service to the area. If temporary measures are utilized, the developer shall also fund the amount necessary to effect a permanent provision when such can be accomplished. The costs shall be determined by the Director of Public Works and Transportation.
6. Prior to recordation of a final map, all improvement plans prepared by a registered civil engineer shall be prepared and approved. All improvements shall be in accordance with the approved plans.
7. Prior to recordation of a final map, annexation to the schools' Mello-Roos District shall be completed.

8. Public utility easements, as required by the utility companies serving the subdivision, shall be dedicated by the final map.
9. Irrigation lines within the subdivision shall be removed, protected, or relocated as required by the Modesto Irrigation District and the Public Works and Transportation Director. Appropriate easements for irrigation lines to remain shall be dedicated as necessary.
10. Prior to recordation of a final map, the developer shall show on the plans submitted to Engineering all fire hydrants as required by the Fire Chief. All hydrants required by the Fire Chief shall be installed and operable prior to construction of any structures.
11. The applicant shall record a "Notice of Conditions" in the Stanislaus County Recorder's Office on a form available in the Planning and Community Development Department.
12. The subdivider shall indemnify, defend, and hold harmless the City of Modesto, its agents, officers, and employees from any and all claims, actions, or proceedings against the City of Modesto, its agents, officers, and employees to arbitrate, attack, review, set aside, void, or annul, any approval by the City of Modesto and its advisory agency, appeal board, or a legislative body concerning a subdivision. The City of Modesto shall promptly notify the subdivider of any claim, action, or proceeding and shall cooperate fully in the defense. If the City fails to do so, the subdivider shall not thereafter be responsible to defend, indemnify, or hold City harmless.
13. Prior to recordation, the developer shall provide proper street names which have been cleared by Stanislaus County and the City of Modesto.
14. Prior to recordation of any final map, references to "Esta Avenue" shall be changed to "Millbrook Avenue".
15. Prior to recordation, the provisions for disposition of storm water runoff shall be finalized.

16. The intersection and associated dedications will need to be adjusted to reflect major/connector intersection standard.
17. Landscaping shall be placed in the dedicated 10-foot setback along the side yard of those homes along Millbrook Avenue and maintained by the Landscape District.

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

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

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 6th day of May, 1997, by Councilmember McClanahan, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Friedman, was upon roll call carried and ordered printed and published by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

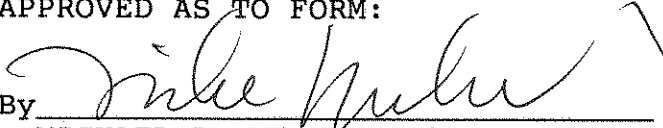
APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:

By   
JEAN ADAMS, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

Ord. No. 3039-C.S.

FINAL ADOPTION CLAUSE

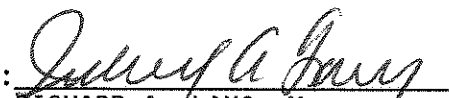
The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 13th day of May, 1997, Councilmember Friedman, moved its final adoption, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and the ordinance adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:

  
RICHARD A. LANG, Mayor

ATTEST:

  
JEAN ADAMS, City Clerk

Effective Date: June 12, 1997

*Clerk*

ORDINANCE NO. 3040 -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 FLOYD AVENUE, WEST OF MILLBROOK AVENUE, AND NORTH OF BELHARBOUR DRIVE. (PRECISE PLAN FOR AREA 26 - L & L VENTURES - OLYMPIC PARK SUBDIVISION)

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, L & L Ventures proposes to develop a 12-lot, single-family subdivision called "Olympic Park", all on a 2.8-acre site located on the south side of Floyd Avenue, west of Millbrook Avenue, and north of Belharbour Drive, and

WHEREAS, the application package also seeks underlying zoning of Specific Plan-Overlay Zone, SP-O, which is to be coupled with the Precise Plan in accordance with the requirements of the Specific Plan, and

WHEREAS, after a public hearing held on March 17, 1997, 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. 97-22, adopted March 17, 1997, the Planning Commission recommended that the application of L & L Ventures 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 Floyd Avenue, west of Millbrook Avenue, and north of Belharbour Drive, be approved, and

WHEREAS, said matter was set for a public hearing of the City Council to be held on May 6, 1997, at 7:00 p.m., in the City Council Chambers, City Hall, 801 11th Street, Modesto, California, at which date and time said duly noticed public hearing of the Council was held and evidence both oral and documentary was received and considered,

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

SECTION 1. After a public hearing held on May 6, 1997, in the Council Chambers, City Hall, 801 11th Street, Modesto, California, this Council finds and determines that the requested rezoning is in accordance with the General Plan and will serve the public health, safety and general welfare and provide the economic and social advantages resulting from orderly, planned use of land resource for the following reasons:

1. The proposed Precise Plan for Area 26 conforms to the revised Specific Plan in that it follows the previously-established boundary, the street layout, and land use.
2. The proposed rezoning to SP-O Zone Overlay is necessary as an integral step toward development under the Village One Specific Plan.

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

SP-H to SP-O, PPA 26

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

BEGINNING at the northwest corner of said Southeast Quarter of the Northwest Quarter of Section 13, being a point on the centerline of Floyd Avenue; thence North  $89^{\circ}51'30''$  East, along the north line of said Southeast Quarter of the Northwest Quarter of Section 13 and said centerline of Floyd Avenue, a distance of 918.57 feet to the intersection with the centerline of future MILLBROOK AVENUE, (formerly referred to as "ESTA AVENUE" on survey filed for record in Volume 23 of Surveys at Page 22, Stanislaus County Records); thence southerly and westerly, along said centerline of future MILLBROOK AVENUE, the following five (5) courses:

- (1) South  $0^{\circ}32'15''$  East 219.45 feet,
- (2) Southerly 220.67 feet, along a tangent curve, concave to the west, having a radius of 502.75 feet and a central angle of  $25^{\circ}08'55''$ ,
- (3) South  $24^{\circ}36'40''$  West, along a tangent line, a distance of 788.32 feet,
- (4) Southwesterly 341.65 feet, along a tangent curve, concave to the northwest, having a radius of 300.00 feet and a central angle of  $65^{\circ}14'59''$ , and
- (5) South  $89^{\circ}51'39''$  West, along a tangent line, being also the south line of said Southeast Quarter of the Northwest Quarter of Section 13, a distance of 263.19 feet, to the southwest corner of said Southeast Quarter of the Northwest Quarter of Section 13; thence North  $0^{\circ}29'46''$  West, along the west line of said Southeast Quarter of the Northwest Quarter of Section 13, a distance of 1323.72 feet to the point of beginning.

Containing: 22.47 Acres

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



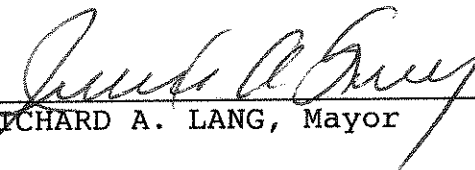
SECTION 4. EFFECTIVE DATE. This ordinance shall go into effect and be in full force and operation from and after thirty (30) days after its final passage and adoption.

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

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 6th day of May, 1997, by Councilmember McClanahan, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Friedman, was upon roll call carried and ordered printed and published by the following vote:

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

APPROVED:

  
RICHARD A. LANG, Mayor

ATTEST:

By

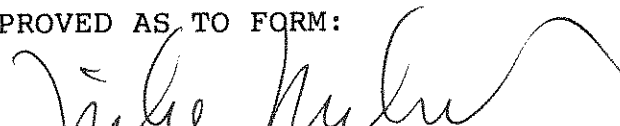


JEAN ADAMS, City Clerk

(SEAL)

APPROVED AS TO FORM:

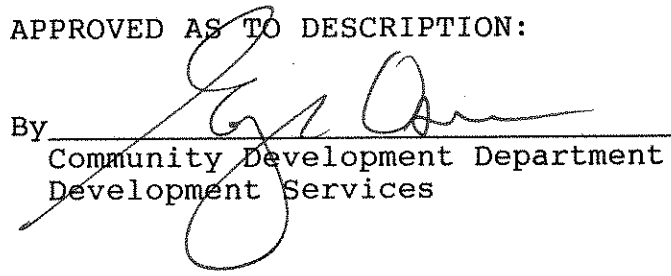
By



MICHAEL D. MILICH, City Attorney

APPROVED AS TO DESCRIPTION:

By

  
Community Development Department  
Development Services

Ord. No. 3040-C.S.

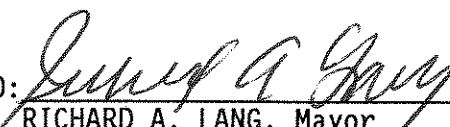
FINAL ADOPTION CLAUSE


The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 13th day of May, 1997, Councilmember Friedman, moved its final adoption, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and the ordinance adopted by the following vote:

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

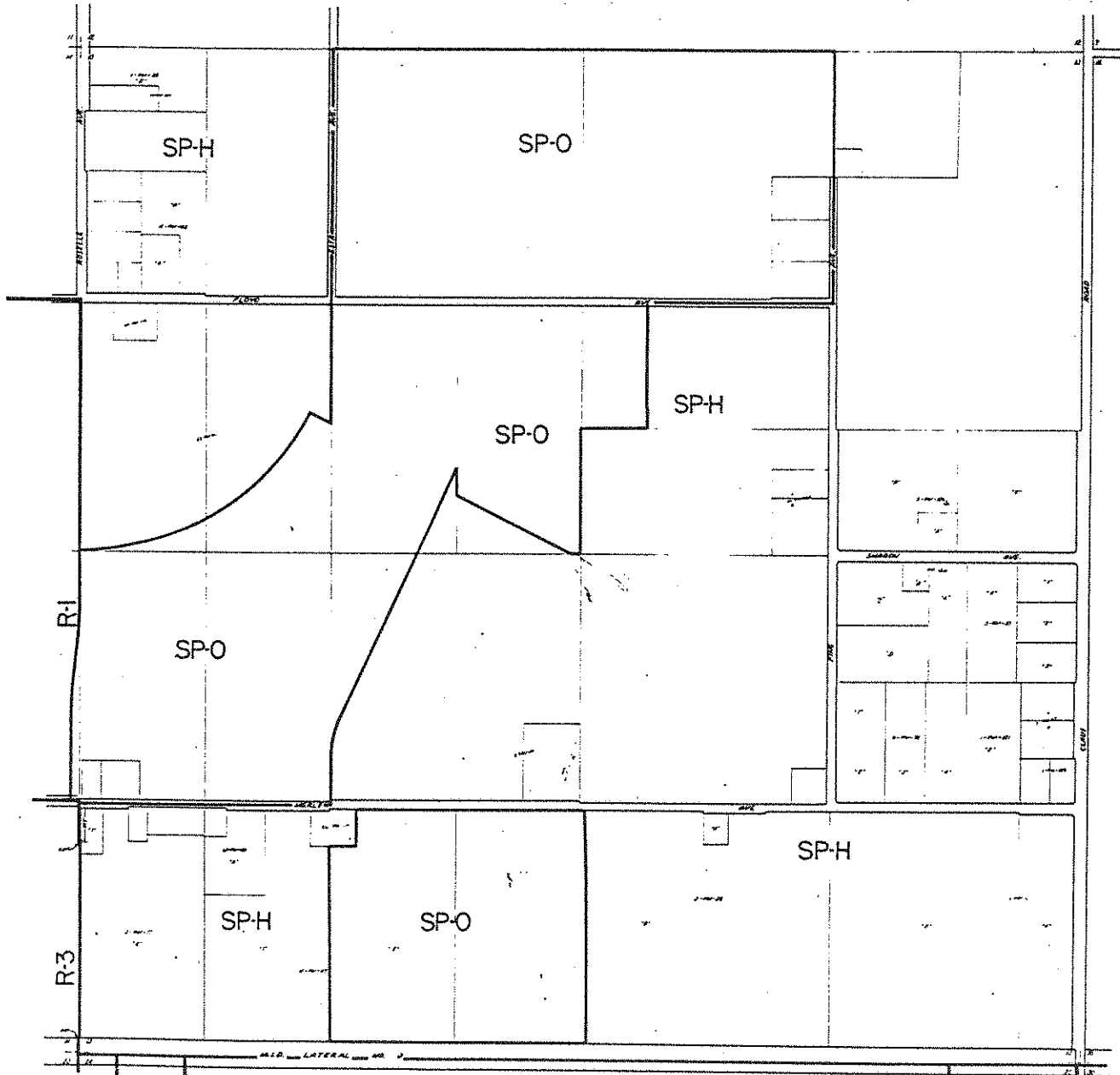
NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:   
JEAN ADAMS, City Clerk

Effective Date: June 12, 1997



ZONING MAP OF THE CITY OF MODESTO

13-3-9

ORDINANCE NO. 3041 -C.S.

AN ORDINANCE AMENDING SECTION 28-3-9 OF THE ZONING MAP TO REZONE FROM MEDIUM-HIGH DENSITY RESIDENTIAL ZONE, R-3, TO PLANNED DEVELOPMENT ZONE, P-D(521), PROPERTY LOCATED AT 133 DOWNEY AVENUE ON THE NORTH SIDE OF DOWNEY AVENUE WEST OF JOHNSON STREET. (MICHAEL W. BIRCH)

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

SECTION 1. ZONING CHANGE. Section 28-3-9 of the Zoning Map is hereby amended to reclassify the following described property from Medium-High Density Residential Zone, R-3, to Planned Development Zone, P-D(521):

R-3 to P-D(521)

Lots 22 and 23 and the East 12 feet of Lot 21 in Block 568 of the CITY OF MODESTO, as per Map thereof recorded December 21, 1942 in Book 15 of Maps, Stanislaus County Records.

Also including the northerly 40 feet of 80-foot Downey Avenue, located immediately adjacent to the above described property.

SECTION 2. USES. The following uses shall be permitted in said P-D(521) 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. Business/Professional Offices, interim residence.
2. Off-street parking as shown on the approved plans.

SECTION 3. ZONING MAP. Section Map 28-3-9 of the Zoning Map of the City of Modesto is amended to appear as set forth on the map attached hereto, which is hereby made a part of this ordinance by reference.

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

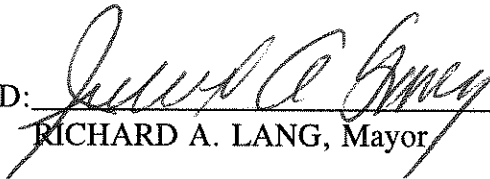
SECTION 5. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in The Modesto Bee, the official newspaper of the City of Modesto, setting forth 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 May, 1997, by Councilmember Cogdill, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Friedman, was upon roll call carried and ordered printed and published by the following vote:


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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:

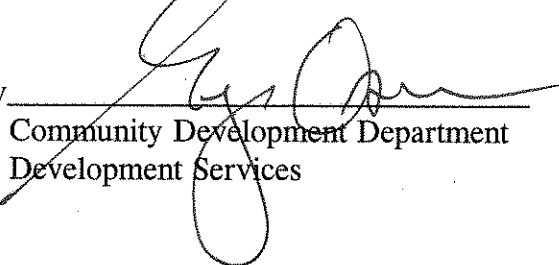
By   
JUDY C. HALL, Acting City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

APPROVED AS TO DESCRIPTION:

By   
Community Development Department  
Development Services

Ord. No. 3041-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 May, 1997, Councilmember Friedman, moved its final adoption, which motion being duly seconded by Councilmember McClanahan, was upon roll call carried and the ordinance adopted by the following vote:

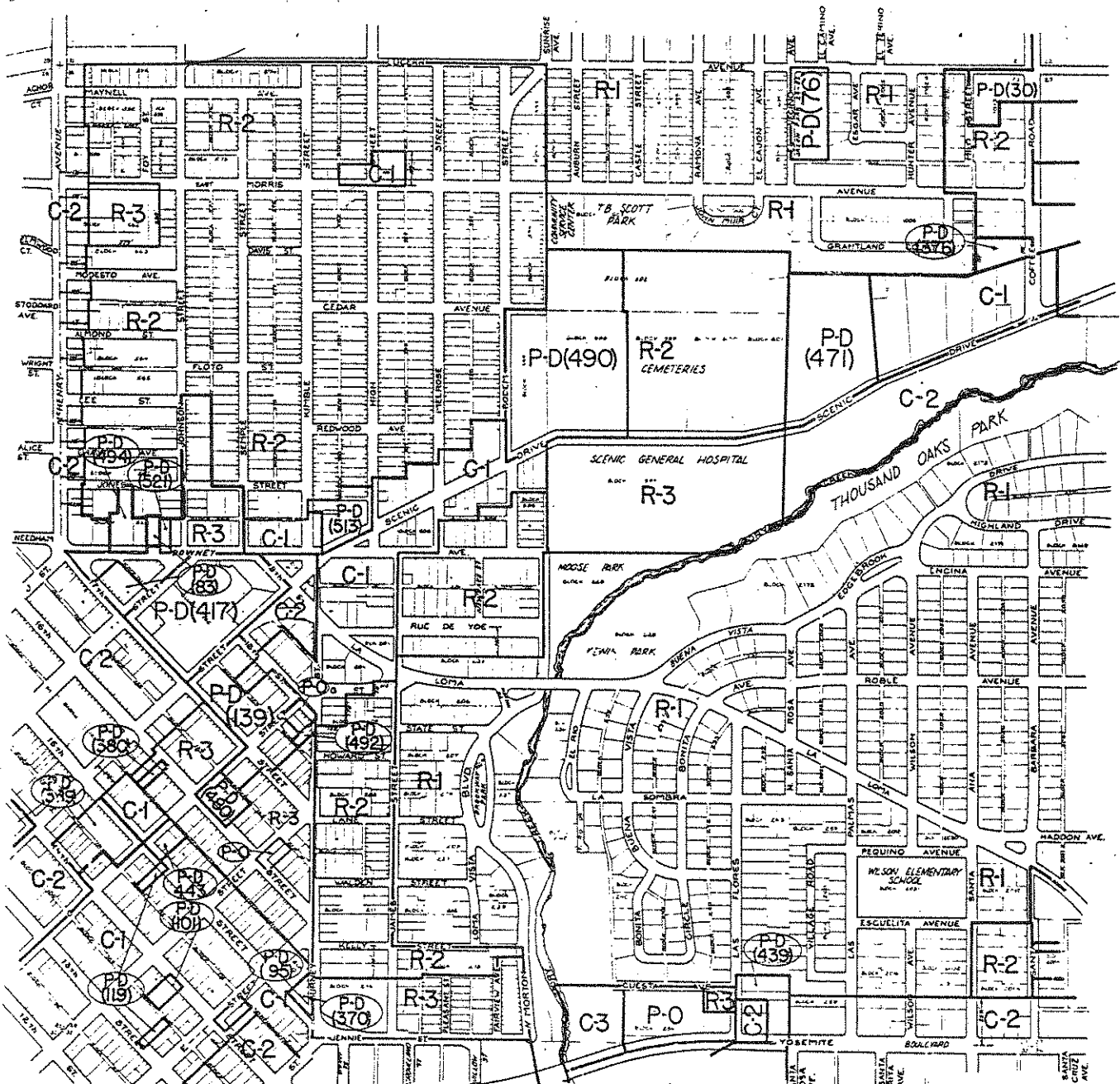
AYES: Councilmembers: Cogdill, Dobbs, Fisher, Friedman, McClanahan, Serpa, Mayor Lang  
NOES: Councilmembers: None  
ABSENT: Councilmembers: None

APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:   
JEAN ADAMS, City Clerk

Effective Date: June 26, 1997





ZONING MAP OF THE CITY OF MODESTO

28-3-9

ORDINANCE NO. 3042 -C.S.

AN ORDINANCE AMENDING CHAPTER 12 OF TITLE IV OF  
THE MODESTO MUNICIPAL CODE RELATING TO  
NEIGHBORHOOD PRESERVATION.

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

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

**CHAPTER 12. NEIGHBORHOOD PRESERVATION**

**ARTICLE 1. ADMINISTRATIVE REMEDIES**

**SEC. 4-12.100. FINDINGS; APPLICABILITY.**

- (a) The Modesto City Council finds that existing procedures for correcting violations of Title IV and Title X of this code can be cumbersome, time-consuming, and needlessly expensive for all parties. To provide a streamlined, convenient, alternative procedure with respect to such code violations, this chapter adopts an administrative approach to those issues.

This chapter provides for administrative remedies, which are in addition to all other legal remedies, criminal or civil, which may be pursued by the City to address any violation of Titles IV and X of this Code.

- (b) Use of this chapter shall be at the sole discretion of the City.

**ARTICLE 2. DEFINITIONS**

**SEC. 4-12.200. DEFINITIONS.**

- (a) "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.
- (b) For purposes of this chapter and except where otherwise indicated, "Director" means the head of the Community

Development Department, the Police Chief, the Fire Chief, the Public Works and Transportation Director, and the Parks and Recreation Director, as appropriate to their respective jurisdictions under this code, or the Director's designee. Written designation shall not be required. Such designees may be referred to as "enforcement officers".

- (c) "Enforcement officer" means a City employee designated by any Director to enforce the provisions of Title IV or Title X of this code. Such employees may be employed in any City department.
- (d) "Fine" shall mean a nonpenal sum in the nature of a quasi-contractual obligation payable upon administrative determination that a person is a violator.
- (e) "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 owner" means the record owner of real property as listed in the most current equalized assessment role as maintained by the Stanislaus County Assessor.
- (i) "Responsible party" means any person or entity having control of or responsibility for real property sufficient to require or permit remediation of a violation. A responsible party may be a property owner.
- (j) "Violation" shall mean a violation of Title IV or Title X of this code by any property owner or any responsible party.

### ARTICLE 3. COMPLIANCE ORDER

#### SEC. 4-12.300. COMPLIANCE ORDER.

- (a) Whenever an enforcement officer determines that a violation is occurring or exists, the enforcement officer may issue a written compliance order to any person responsible for the violation.
- (b) A compliance order issued pursuant to this chapter shall contain the following information:
  - (1) The date and location of the violation and the approximate time the violation was observed;
  - (2) The section of this Code violated and a description of the violation, where violations are caused by human conduct or inaction occurring on or near residential real property, the compliance order shall state with particularity the behaviors which constitute the nuisance, including, where applicable, addresses and unit numbers of the person(s) allegedly causing the nuisance, and the actions the enforcement officer orders the owner or responsible party to take to abate the nuisance;
  - (3) The actions required to correct the violation;
  - (4) The time period after which administrative fines will begin to accrue if compliance with the order has not been achieved. In all cases, this time period must be reasonable in light of all the circumstances of an individual case;
  - (5) The maximum penalty that may be imposed;
  - (6) An explanation of the consequences of noncompliance with this chapter and a description of the hearing procedure and appeal process;
  - (7) A statement advising the owner that he or she has the right to request a hearing to contest the citation and order;
  - (8) A statement advising the owner that an administrative fine in an amount not to exceed two thousand five hundred

(\$2,500.00) dollars per day to a maximum of one hundred thousand (\$100,000.00) dollars may be imposed upon the owner or responsible party, or both, and made a lien on the property involved if the nuisance is not abated as required by the compliance order and no written request for hearing is filed within thirty (30) days of receipt of the citation notice;

- (9) A statement advising the owner or responsible party that they may not improperly retaliate against any tenant because the City has instituted proceedings under this ordinance.
- (10) A Statement that in responding to the compliance order, the owner or responsible party should comply with all applicable federal, state and local regulations relating to evictions and prohibitions against discrimination.

#### **SEC. 4-12.301. METHOD OF SERVICE.**

- (a) Written notice shall be given by personal service where practical, or mailed by certified mail, return receipt requested to the property owner and/or to a responsible party if one exists and is identifiable at the address as shown on the last equalized County assessment roll.
- (b) Where personal service or service by mail upon the property owner and or responsible party for the violation is unsuccessful, a copy of the order shall be conspicuously posted at the property which is the subject of the order.
- (c) The failure of any person to receive any notice required under this chapter shall not affect the validity of any proceedings taken under this chapter.

#### **ARTICLE 4. HEARING**

#### **SEC. 4-12.400. HEARING.**

- (a) If the enforcement officer determines that all violations have been corrected within the time specified in the compliance order, no further action shall be taken.

- (b) If full compliance is not achieved within the time specified in the compliance order, and the Director receives a written appeal from an allegedly responsible party within that time, the Director shall set a hearing before a hearing officer. Otherwise, the compliance order shall be final, except for appropriate assessment of administrative fines and costs against an owner or responsible party, which assessment may be appealed and heard by a hearing officer if the appeal is received by the Director within thirty (30) days after service of notice of the assessment.
- (c) The hearing officer shall cause a written notice of hearing to be served by personal service or certified mail, return receipt requested, on the property owner at the address as it appears on the last equalized County assessment roll available on the date the notice is prepared, and may cause the notice to be served on the responsible party, if any. Notice to a responsible party shall be deemed notice to a property owner and vice versa.

#### SEC. 4-12.401. NOTICE OF HEARING.

- (a) Every notice of hearing on a compliance order shall contain the date, time and place at which the hearing shall be conducted by the hearing officer, and a copy of the order and any amendments or supplements to the order.
- (b) Each hearing shall be set for a date not less than twenty (20) days nor more than sixty (60) days from the date the notice of hearing is personally served or mailed unless the Director determines that the matter is urgent or that good cause exists for an extension of time.
- (c) The hearing is intended to provide a full opportunity for a person subject to a compliance order to object to the determination that a violation has occurred and/or that the violation has continued to exist. The failure of any person subject to a compliance order, pursuant to this chapter, to appear at or participate in good faith at the hearing shall constitute a failure to exhaust administrative remedies, and result in the compliance order becoming final.

#### SEC. 4-12.402. HEARING CONDUCT, FINDINGS AND ORDER.

- (a) At the place and time set forth in the notice of hearing, the hearing officer shall proceed to hear the testimony of City staff.

The compliance order and any amendments or addenda thereto which have previously been provided to the cited party pursuant to this Code shall be accepted as prima facie evidence of the matters contained in them whether or not City staff is present at the hearing. The hearing officer will then hear the testimony and receive the evidence of the cited party. General rules of procedure are set forth below:

- (1) The hearing officer may accept all evidence tending to be probative of one or more material facts, whether offered by either party, and whether or not subject to hearsay, privilege or other objections, and shall give all such evidence the appropriate evidentiary weight based upon its apparent trustworthiness and validity. The material facts to be determined are whether or not there was an existing violation on or after the time specified in the compliance order for remediation of a violation, and whether or not the cited appellant is a violator.
- (2) The hearing officer may administer an oath to all witnesses, and all proceedings may be undertaken pursuant to oath.
- (3) The hearing officer may grant continuances from time to time for good cause shown at the hearing.
- (4) The proceedings at the hearing may be recorded by tape recorder. Either party may provide a certified shorthand reporter to maintain a record of the proceedings at that party's expense.
- (5) The hearing officer may take official notice, either before or after submission of the case for decision, of any fact which may be judicially noticed by the courts of this state or which may appear in any of the official records of the City.
- (6) The hearing officer may inspect the location or site of the violation.
- (7) The hearing officer may continue the hearing and request additional information from either or both the enforcement officer and the cited party whether outside the presence of the other or not prior to issuing a written decision.

- (b) Within fifteen (15) days following the conclusion of the hearing, the hearing officer shall make findings and issue a determination regarding:
  - (1) The existence of each alleged violation;
  - (2) Whether the person cited is a violator;
  - (3) The failure of the violator to take required corrective action within the required time period.
- (c) The hearing officer shall issue written findings on each violation. The findings shall be supported by evidence received at the hearing.
- (d) If the hearing officer finds by a preponderance of the evidence that a violation has occurred and that the violation was not corrected within the time period specified in the compliance order, and that the person cited is a violator, the hearing officer shall issue an administrative order.
- (e) If the hearing officer finds that no violation has occurred or that the violation was corrected within the time period specified in the compliance order, or that the appellant is not a violator, the hearing officer shall issue a finding of those facts.

## ARTICLE 5. ADMINISTRATIVE ORDER

### SEC. 4-12.500. ADMINISTRATIVE ORDER.

If the hearing officer makes the findings indicated in Section 4-12.402(d), that officer shall issue an administrative order in accordance with Section 4-12.402 which imposes any or all of the following:

- (a) An order to correct or abate, including a schedule for correction or abatement where appropriate;
- (b) Administrative fines as provided in Section 4-12.501;
- (c) Administrative costs as provided in Section 4-12.502;



- (d) Abatement by City where appropriate as set forth in Sections 4-12.803, or 4-12.804.

**SEC. 4-12.501. ADMINISTRATIVE FINES.**

- (a) The hearing officer may impose administrative fines for the violation of any provision of this Code in an amount not to exceed a maximum of two thousand five hundred (\$2,500.00) dollars per day for each ongoing violation, except that the total administrative penalty shall not exceed one hundred thousand (\$100,000.00) dollars exclusive of administrative costs, interest and restitution for compliance reinspections, for any related series of violations.
- (b) In determining the amount of the administrative penalty, the hearing officer may take any or all of the following factors into consideration:
  - (1) The duration of the violation;
  - (2) The frequency, recurrence and number of violations, related or unrelated, by the same violator;
  - (3) The seriousness of the violation;
  - (4) The good faith efforts of the violator to come into compliance;
  - (5) The economic impact of the penalty on the violator;
  - (6) The impact of the violation on the community;
  - (7) Such other factors as justice may require.
- (c) Administrative penalties imposed by the hearing officer shall accrue from the date specified in the compliance order and shall cease to accrue on the date the violation is corrected as determined by that officer.
- (d) The hearing officer has discretion to suspend the imposition of applicable penalties for any period of time during which:
  - (1) The violator has filed for necessary permits; and

- (2) Such permits are required to achieve compliance; and
  - (3) Such permit applications are actively pending before the City, State or other appropriate governmental agency.
- (e) Administrative penalties assessed by the hearing officer shall be due on and after the date specified in the administrative order.
  - (f) If the violation is not corrected as specified in the hearing officer's order to correct, administrative penalties shall continue to accrue on a daily basis until the violation is corrected, subject to the maximum amount set forth in Section 4-12.501(a) above.
  - (g) If the violator gives written notice to the Director that the violation has been corrected and if the Director finds that compliance has been achieved, the Director shall deem the date the written notice was postmarked or personally delivered to the Director or the date of the final inspection, whichever first occurred, to be the date the violation was corrected. If no written notice is provided to the Director, the violation will be deemed corrected on the date of the final satisfactory inspection. The Director shall notify the hearing officer of the date of compliance. Thereafter, the hearing officer may modify any previous administrative order to accurately reflect the intended administrative penalty.

**SEC. 4-12.502. ADMINISTRATIVE COSTS.**

- (a) The hearing officer shall assess administrative costs against the violator when it is found that a violation has occurred and that compliance has not been achieved within the time specified in the compliance order.
- (b) The administrative costs may include any and all costs incurred by the City in connection with the matter before the hearing officer including, but not limited to, costs of investigation, employee wage and benefit costs incurred in preparation for the hearing and for the hearing itself, and costs for all reinspections necessary to enforce the compliance order.

**SEC. 4-12.503. FAILURE TO COMPLY WITH ADMINISTRATIVE COMPLIANCE ORDER.**

Failure to pay the assessed administrative penalties and administrative costs specified in the administrative order of the hearing officer may be enforced as:

- (a) A personal obligation of the violator that is quasi-contractual in nature as if the quasi-contract provided for reasonable attorneys' fees and costs to the prevailing party; and/or
- (b) By means of a lien upon the real property upon which the violation occurred pursuant to the lien procedure in Sections 4-12.700 and 4-12.701. The lien shall remain in effect until all of the administrative penalties, interest and administrative costs are paid in full.

**SEC. 4-12.504. RIGHT OF JUDICIAL REVIEW.**

Any person aggrieved by an administrative order of the hearing officer may obtain review of the administrative order in the Superior Court by filing with the court a petition for writ of mandate pursuant to Section 1094.5 of the California Code of Civil Procedure.

**ARTICLE 6. COMPLIANCE**

**SEC. 4-12.600. REPORT OF COMPLIANCE.**

The Director, responsible party, or property owner may report the date of compliance with the administrative order to the hearing officer for the purposes of preventing further accumulation of an administrative fine.

**SEC. 4-12.601. COMPLIANCE DISPUTE.**

- (a) If the Director does not file a document with the hearing officer pursuant to Section 4-12.600 above, a violator who believes that compliance has been achieved may request a compliance hearing before the hearing officer.
- (b) The hearing shall be noticed and conducted in the same manner as a hearing on a compliance order provided in Sections 4-12.401 through 4-12.402 of this chapter.

- (c) At the hearing, the officer shall determine if compliance has been achieved and, if so, when it was achieved. If the officer determines that compliance has been achieved, administrative fines shall not accrue beyond the compliance date. The decision of the hearing officer shall be final, subject only to writ of mandate.

## ARTICLE 7. LIEN PROCEDURE

### SEC. 4-12.700. LIEN PROCEDURE.

- (a) Whenever the amount of any administrative penalty and/or administrative cost imposed by the hearing officer pursuant to this chapter in connection with real property has not been satisfied in full within ninety (90) days after it becomes due and/or has not been successfully challenged by a timely writ of mandate, this obligation may constitute a lien against the real property on which the violation occurred.
- (b) The lien provided herein shall have no force and effect until recorded with the County Recorder. Once recorded, the administrative order shall have the force and effect and priority of a judgment lien governed by the provisions of Section 697.340 of the Code of Civil Procedure and may be extended as provided in Sections 683.110 to 683.220, inclusive, of the Code of Civil Procedure.
- (c) Interest shall accrue on the principal amount of the lien remaining unsatisfied pursuant to law.
- (d) Prior to recording any such lien, the hearing officer shall prepare and file with the City Clerk a document stating the amounts finally due and owing.

### SEC. 4-12.701. RECORDING OF LIEN.

Within thirty (30) days following receipt of the information in Section 4-12.700(d) the City Clerk shall file the same as a judgment lien in the Office of the County Recorder of Stanislaus County, California.

**SEC. 4-12.702. SATISFACTION OF LIEN.**

Once payment in full is received by the City for outstanding penalties and costs, the Finance Director shall so advise the City Clerk who shall either record a notice of satisfaction or provide the property owner or financial institution with a notice of satisfaction so they may record the notice with the Office of the County Recorder. Such notice of satisfaction shall cancel the City's lien.

**ARTICLE 8. ABATEMENTS**

**SEC. 4-12.800. ABATEMENTS - DECLARATION OF PURPOSE.**

The Council finds it necessary to establish appropriate procedures for the administrative and summary abatement of public nuisances and code violations. The procedures established in these sections 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 code violations. These sections govern all other nuisance abatement procedures established in other chapters of the Municipal Code unless other procedures are specifically stated to apply.

**SEC. 4-12.801. AUTHORITY.**

Any condition caused, maintained or permitted to exist in violation of any provisions of this Municipal Code which constitutes a public nuisance may be abated by the City pursuant to the procedures set forth herein. A public nuisance is anything which is injurious to health, or is indecent, or is offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property by a neighborhood, or any considerable number of persons.

**SEC. 4-12.802. GENERAL PROCEDURES.**

**(a) Compliance Order - Abatement of Nuisance**

- (1)** When an enforcement officer determines that public or private property or any portion of public or private property has a public nuisance as generally defined in the next preceding section or as declared in any other section of the Municipal Code on it, a compliance order may be

issued to the owner or responsible person to abate the public nuisance.

- (2) The compliance order shall in addition to all other required provisions of a compliance order, refer to specific violations of the Municipal Code which render the property a public nuisance.
- (3) The compliance order shall describe the actions required to abate the public nuisance which may include, but are not limited to: corrections, repairs, clean-up, removal, vacation of tenants or occupants or other appropriate action, and shall establish time frames by which each action must occur.

**(b) Compliance Time Frames**

The enforcement officer shall set reasonable time frames for all violations to have been corrected by the property owner and/or responsible party.

- (c) If full compliance is not achieved and a written appeal not received by the Director within the time specified in the order, the compliance order shall be final. If a timely appeal is received, the Director shall set a hearing before a hearing officer in accordance with Sections 4-12.401 through 4-12.503.

**SEC. 4-12.803. ABATEMENT OF A PUBLIC NUISANCE BY THE CITY.**

- (a) Once a compliance order has become final, or a hearing officer has issued an administrative order including the finding that abatement by City is appropriate under Section 4-12.500(d), the nuisance conditions may be abated forthwith by City personnel or by City's private contractor.
- (b) City personnel or a private contractor can enter upon private property in a reasonable manner at reasonable times as provided by law to abate the nuisance conditions as specified in the abatement notice or administrative order. In the event of owner and/or responsible party objection to their entry, City personnel may use the procedures found in Section 4-12.900 of this chapter.

- (c) If the property owner or responsible person abates the nuisance conditions before the City performs the actual abatement pursuant to an abatement notice or administrative order, the Director or hearing officer may still assess all appropriate costs incurred by the City against the responsible person pursuant to the procedures set forth herein.
- (d) When abatement is completed, a report describing the 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 persons of each parcel, the name and address of the property owner if different from the responsible person, the tax assessor's parcel number and a reasonable description of the property location if the responsible person is an owner.
- (e) The Director shall schedule a confirmation of costs hearing before an administrative hearing officer pursuant to the procedures set forth in Sections 4-12.400 through 4-12.503 of this Code, unless waived by all responsible persons.
- (f) All administrative and actual costs incurred by the City in abating the violations may be assessed against and recovered from the responsible person or owner pursuant to the provisions set forth in 4-12.503.

**SEC. 4-12.804. ABATEMENT OF IMMINENTLY DANGEROUS CONDITIONS.**

Whenever a City department head, charged with the enforcement authority therefor, determines that a condition on or a use of property within the City constitutes or reasonably appears to cause or constitute an immediate threat to the health or safety of the public or a significant portion thereof, the department head may institute the following procedures:

- (a) With respect to substandard residential buildings as defined in the California Health and Safety Code, Section 17920.3 or successor statutes, the Director may institute any appropriate action to prevent, restrain, correct, or abate the violation or nuisance in accordance with Health and Safety Code Section 17980, et seq. and their successor statutes.

- (b) Unless the Director determines, based upon competent evidence, that an imminent emergency situation involving the physical safety of the populace exists, in which case the Director may dispense with due process and summarily demolish the building or take such other appropriate action as conditions may require. With respect to other nuisances, the procedures set forth in subsections (c) through (d) below shall apply.
- (c) **Cost.** The department head shall keep an itemized account of the costs incurred by the City in removing or isolating such imminently dangerous condition. Such costs may be recovered as provided in this chapter.
- (d) **Emergencies.** Nothing in this Chapter shall prevent public safety officials from taking such actions in emergency situations as in their discretion are appropriate.

## ARTICLE 9. INSPECTIONS

### SEC. 4-12.900. AUTHORITY TO INSPECT.

- (a) A Director as defined in Section 4-12.200(b) and any enforcement officer are authorized to enter upon any property or premises in response to a complaint to ascertain whether the provisions of the Municipal Code or applicable state codes are being obeyed, and to make any examinations and surveys that may be necessary in the performance of their enforcement duties. These may include the taking of photographs, samples or other physical evidence, and includes the use of a sound level measurement device to measure noise disturbances. All inspections, entries, examinations and surveys shall be done in a reasonable manner and at a reasonable hour under all the circumstances. If an owner, occupant or agent or other responsible person refuses permission to enter or inspect, the code enforcement officer may seek an administrative inspection warrant pursuant to the procedures provided for in Section 1822.50 et seq. of the California Code of Civil Procedure.
- (b) It shall be unlawful for any person to obstruct or interfere with any City of Modesto compliance officer, or with any vehicle or equipment of such Director, when such compliance officer is engaged in enforcing the provisions of this chapter.



**SEC. 4-12.901. REINSPECTION FEES; PURPOSE.**

The Council finds there is a need to recover costs incurred by the City in its code enforcement efforts including time spent by City personnel reinspecting properties throughout the City in an effort to ensure compliance with the Municipal Code or applicable state codes. The assessment and collection of reinspection fees shall not preclude the imposition of any administrative or judicial fees, costs or fines for violations of the Municipal Code or applicable state codes.

**SEC. 4-12.902. ASSESSMENT OF REINSPECTION FEES.**

Whenever an enforcement officer reinspects a property that is the subject of a compliance order, administrative order or abatement notice to determine compliance efforts, investigate subsequent complaints or other similar reinspection, that enforcement officer or the appropriate director may assess a reinspection fee against the responsible person.

**SEC. 4-12.903. AMOUNT OF REINSPECTION FEES.**

A reinspection fee schedule shall be established and revised as necessary by City Council resolution to reflect current costs. The reinspection fee schedule shall be filed in the City Clerk's office.

**SEC. 4-12.904. NOTIFICATION OF ASSESSMENT OF REINSPECTION FEES.**

- (a) Where the assessment of reinspection fees is authorized under this article, an enforcement officer or director assessing such a fee shall provide the responsible person with a written notice assessing reinspection fees. The written assessment shall contain the following information:
- (1) The amount of fees charged; and
  - (2) The corresponding dates when reinspection took place; and
  - (3) A deadline by which the reinspection fee must be paid.
- (b) Notification of the reinspection fee assessment shall be provided to the responsible person by personal delivery or certified mail, return receipt requested.

- (c) Reinspection fees may be assessed as part of any judicial or administrative enforcement action provided for in this Code.
- (d) The failure of any responsible person to receive notice of the reinspection fees shall not affect the validity of any fees imposed under this article.

**SEC. 4-12.905. COLLECTION OF INSPECTION OR REINSPECTION FEE.**

Final determination of an inspection or reinspection fee shall create a debt in the nature of a quasi-contractual obligation, including an award of reasonable attorney's fees, in favor of a prevailing party running from the property owner to the City. The City shall collect the assessed inspection, reinspection and late fees by the use of all appropriate legal means, including but not limited to: referral to the Finance Department for collection in small claims court, or by imposition of a lien pursuant to Sections 4-12.700 through 4-12.702. Appeal from assessment of a reinspection fee shall be by writ of mandate.

**ARTICLE 10. NOTICE OF VIOLATION**

**SEC. 4-12.1000. RECORDATION OF NOTICES OF VIOLATION;  
PURPOSE.**

The procedures below shall be in addition to criminal, civil, or any other remedy established by law which may be pursued to address violations of the Municipal Code.

**SEC. 4-12.1001. PROCEDURES FOR RECORDATION.**

- (a) When a Director has issued a compliance order which has become final, or there exists a final administrative order to a responsible person and the property that is the subject of the order appears on inspection to remain in violation after the deadline established in the order, the Director may record a notice of violation with the Recorder's Office of Stanislaus County.
- (b) The recorded notice of violation shall include the name of the property owner, the assessor's parcel number, the street address, the parcel's legal description, and a copy of the latest notice of violation.

- (c) Any costs associated with recording and removal of a recorded document may be assessed against the property as provided for in Section 4-12.502.

**SEC. 4-12.1002. SERVICE OF NOTICE OF VIOLATION.**

A copy of the recorded notice of violation shall be mailed to the responsible person and/or to the property owner.

**SEC. 4-12.1003. NOTICE OF COMPLIANCE - REMOVAL PROCEDURES.**

- (a) When the violations listed on the compliance order have been corrected, the responsible person or property owner may file with the Director a written request for a notice of compliance on a form provided by the City.
- (b) The Director shall reinspect the property within ten (10) days after receipt of a request made pursuant to subsection (a) to determine whether the violations listed in the notice of violation have been corrected and/or whether all necessary permits have been issued and final inspections have been performed.
- (c) The Director shall provide a notice of compliance to the responsible person or property owner if the Director determines that:
  - (1) All violations listed in the recorded notice of violation have been corrected; and
  - (2) All necessary permits, if any there be, have been issued and finalized; and
  - (3) All administrative fines, costs and civil penalties due under this ordinance have been paid; and
  - (4) The party requesting the notice of compliance has reimbursed the City for all actual administrative costs associated with the violations specified on the notice of violation.
  - (5) The Director shall record a notice of compliance, when warranted, with the County Recorder's Office. The recordation of the notice of compliance shall have the

effect of canceling the recorded notice or notices of violation to which it refers.

- (d) Administrative costs may include costs incurred in the investigation, inspection, reinspection, title search, appeal hearing, and any other processing costs associated with the violations specified on the notice of violation.
- (e) If the Director denies a request to issue a notice of compliance, the Director shall serve the requesting party, the responsible person and the property owner with a written explanation within ten (10) days after the inspection setting forth the reasons for the denial. The written explanation shall be served by certified mail.
- (f) The Director's decision denying a request to issue a notice of compliance 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. 4-12.1004. PROHIBITION AGAINST ISSUANCE OF MUNICIPAL PERMITS.**

For properties on which a notice of violation has been recorded, the City may withhold permits for repair, construction and/or alteration on the affected property not necessary to obtain a notice of compliance until a notice of compliance has been issued by the Director.

**ARTICLE 11. PROPERTY CONDITIONS**

**SEC. 4-12.1100. POLICY.**

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.

Owners and occupants of some properties within the City have permitted visual blight conditions to exist which are injurious and inimical to the public health, safety, and welfare of the residents of the City and which 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 blight conditions will promote health, safety, and welfare of the residents of the City because maximum use and enjoyment of property closely proximate to another depend upon maintenance of both properties.

#### **SEC. 4-12.1101. DEFINITIONS**

As used in this Chapter:

- (a) "Property" includes any parcel of land which is identified on the Secured Roll of the Stanislaus County Assessor, and that half of any public street or alley directly abutting thereon as well as any public sidewalk upon said parcel, whether or not such street, alley, or sidewalk space has actually been improved or developed.
- (b) "Building" includes garages, carports, apartments, houses, mobile homes, warehouses, storage sheds, stores, offices, or other similar structures.
- (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 stead in connection with this Chapter.

#### **SEC. 4-12.1102. UNSECURED BUILDINGS.**

It is unlawful for any person who owns, leases, occupies, or has charge, control, or possession of any property in the City to fail to install, or to fail to use, reasonable security measures to prevent unauthorized entry into any building upon such property. Except when the owner or other authorized person 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.

**SEC. 4-12.1103. ABANDONED BUILDINGS.**

It is unlawful for any person who owns, leases, occupies, or has charge, control, or possession of any property in the City to allow to remain upon such property any building that is abandoned, partially destroyed, or in a state of partial construction or demolition without an active building permit for the building.

**SEC. 4-12.1104. USE OF A BUILDING FOR ILLEGAL ACTIVITIES.**

It is unlawful for any person who owns, leases, occupies, or has charge, control, or possession of any property in the City to allow any building upon such property to be used to provide shelter to or seclusion of any action, act, or occurrence which is a crime under federal, state, or local laws.

**SEC. 4-12.1105. RATS, MICE, GROUND SQUIRRELS.**

It is unlawful for any person who owns, leases, occupies, or has charge, control, or possession of any developed property in the City to have upon such property any animals commonly known as rats, mice, or ground squirrels unless such animals are securely confined in a cage. For purposes of this section, "developed property" means any property having completed thereon any building, whether occupied or not.

**SEC. 4-12.1106. 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 MMC Section 5-5.09. Public utility and cable television equipment, owned or maintained by those companies, is exempt from this section. Accumulated vegetative materials which comply with all regulations of the pruned refuse collection program of the City of Modesto (MMC Sections 4-7.1101 - 4-7.1108) are excluded from this section.

**SEC. 4-12.1107. NEIGHBORHOOD NUISANCE.**

Except as may otherwise be allowed by the Modesto Municipal Code, it is unlawful for any person to allow any condition 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.

## ARTICLE 12. NUISANCE VEGETATION AND JUNK

### SEC. 4-12.1200. 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 flammable vegetative material or substance which constitutes a danger to public safety by creating a fire hazard. Accumulated vegetative materials which comply with all regulations of the Pruned Refuse Collection Program of the City of Modesto (MMC 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 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.
  - (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 (MMC 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.
- (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 fourteen (14) consecutive days. Materials described below which are upon the property of a properly zoned business and which constitute lawfully stored or displayed merchandise or service of said business are excluded from this article.
- (1) A pile, mound, or stack of dirt, soil, rock, gravel, bark, humus, sod, or other similar natural material; providing, however, that an accumulation of such material which is assembled, gathered, or collected as an integral part of an organized landscape design, or which is collected during use of a building permit, 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 or by the expiration of the building permit, whichever occurs first. A project shall be deemed completed if there is no obvious change to the accumulation or to the project in any thirty-day period.
  - (2) Packing material or packing supplies; lumber, dry wall, roofing tile, cement, nails, or other building materials, products, or supplies; irrigation or plumbing pipe; 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-day period.



- (3) Firewood in a disorganized or scattered jumble, heap, or pile.
- (4) An accumulation of aluminum cans, newspaper, plastic bottles, glass, cardboard or cardboard boxes, or an accumulation of other recyclable materials.
- (5) Any stool, 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, or any similar item, whether or not any such item is broken or abandoned.
- (6) Any appliance, tool, equipment, furniture, furnishing, or other item of personal property which reasonable persons normally or usually keep in an indoors location for protection and convenience.
- (7) Any item or items of 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.

**SEC. 4-12.1201. NUISANCE VEGETATION AND JUNK PROHIBITED.**

It is unlawful 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.

**SEC. 4-12.1202. DUMPING PROHIBITED.**

- (a) It is unlawful for any person to deposit, place, leave, 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 deposit, place, leave, 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 same.

#### **SEC. 4-12.1203. 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 criminally or civilly or subject to abatement as provided herein.

### **ARTICLE 13. VEHICLES AND VEHICLE PARTS**

#### **SEC. 4-12.1300. MOTOR VEHICLES, BOATS, AND TRAILERS.**

It is unlawful to store, park, leave, maintain, keep, or allow to remain any vehicle upon any property within the City and in public view or in view of any neighbor for longer than fourteen (14) consecutive days if such vehicle cannot be legally, safely, and mechanically operated upon a public highway or upon a waterway in its current condition.

For purposes of this Article, "vehicle" means any motor vehicle, semitrailer, trailer, camp trailer, camper, house car, trailer coach (each as defined by the California Vehicle Code), any boat, motor home, or any combination thereof. For purposes of this Section, "property" does not include any public street, sidewalk, or alley abutting thereon.

This Section does not apply to any vehicle that:

- (a) Is placed totally within a carport and completely covered by a tarpaulin or similar covering;
- (b) Is completely enclosed within a building in a lawful manner; or

- (c) Is upon the property of a properly zoned and licensed vehicle dealer or dismantler operating in compliance with the applicable laws.

#### **SEC. 4-13.1301. VEHICLE PARTS.**

It is unlawful to store, park, leave, or allow to remain in view of the general public or of any neighbor any part or assemblage of parts of any vehicle defined in MMC Section 4-12.1300, or any automotive repair equipment, tool, hoist, or other automotive repair machinery of any kind upon any property for longer than fourteen (14) consecutive days.

"Part or assemblage of parts" includes any trailer tongue or hitch, pickup or trailer bed, hubcap, tire, wheel, transmission, drive shaft, universal joint, differential, axle, shock absorber, brake pad, door, windshield, seat, fender, grill, body, chassis, frame, hood, starter, alternator, generator, spark plug, spark plug wire, battery, catalytic converter, muffler, exhaust pipe, engine block, piston, piston rings, and any other automotive part or automotive accessory whatsoever.

This Section shall not apply to any part or assemblage of parts that:

- (a) Is located completely within a carport, garage or other appropriate building; or
- (b) Is upon the property of a lawfully licensed and properly zoned business for the sale, repair, or restoration of vehicles.

#### **SEC. 4-12.1302. ABANDONMENT OF VEHICLES OR VEHICLE PARTS.**

It shall be unlawful to park, store, place, leave, deposit, or dump any vehicle specified in MMC Section 4-12.1300, or any part or assemblage of parts specified in MMC Section 4-12.1301, upon any property without the permission of the person having lawful authority over said property. The unauthorized leaving of said vehicle or part is unlawful and punishable as an infraction or misdemeanor.

### **ARTICLE 14. DEFACEMENT OF PROPERTY**

#### **SEC. 4-12.1400. 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.

#### SEC. 4-12.1401. 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 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 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.

**SEC. 4-12.1402. 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.

**SEC. 4-12.1403. 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.

**SEC. 4-12.1404. 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.

**SEC. 4-12.1405. PUNISHMENT PROVISIONS.**

- (a) Each fine imposed for a violation of this Article shall be (i) a fine of one hundred twenty-five dollars (\$125.00) for a first violation; (ii) a fine of two hundred fifty dollars (\$250.00) for a second violation within a year; (iii) a fine 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 fine 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 cleanup, repair, or replacement of the property damaged by that person.
- (e) If a minor is personally unable to pay any fine 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 fine and restitution.

#### SEC. 4-12.1406. 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.

**SEC. 4-12.1407. 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 (\$100.00) dollars plus interest on the unpaid amount plus penalty, which interest shall accrue at the rate of one and one-half (1½) percent per month until paid.
  - (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 30 of each year shall, upon adoption of a resolution by the City Council, be collected along with, and in the same manner as, the general property taxes. The liened property shall be subject to the penalties, procedures, and sale in case of delinquency as provided in the Civil Code of California.
  - (7) As an alternative to a lien and pursuant to Government Code Section 38773.5, the expense of abatement may constitute a special assessment against a parcel of land owned by the responsible party. The assessment shall be collected as provided for in Government Code Section 38773.5.
  - (8) In addition to any other remedy provided herein or available at law, expense of abatement pursuant to Government Code Sections 38773, 38773.1 and 38773.5 shall constitute a personal obligation against the responsible party.
- (b) The recovery of expense of abatement of any nuisance resulting from the defacement of property by graffiti or any other inscribed



material by a minor who has created, caused, or committed the nuisance shall be according to the following procedure:

- (1) The City Manager, or his or her designee ("hearing officer"), shall give the minor and the parent or guardian having custody and control of the minor not less than forty-eight (48) hours notice of a hearing to be held by the hearing officer for the purpose of showing cause why the City should not recover the expense of abatement from the minor and the parent or guardian having custody and control of the minor. Following notice, the hearing shall be held by the hearing officer at the time, date, and place designated and at such hearing the minor and the parent or guardian having custody and control of the minor may each be heard and provided with the opportunity to show cause why the City should not recover the expense of abatement from the minor and the parent or guardian having custody and control of the minor. Following the hearing, the hearing officer shall determine whether the City should recover expense of abatement from the minor and the parent or guardian having custody and control of the minor.
- (2) If the hearing officer determines that the City should recover the expense of abatement from the minor and the parent or guardian having custody and control of the minor, the City may provide an accounting of the expense of abatement along with a demand for payment to the minor and the parent or guardian having custody and control of the minor.
- (3) The parent or guardian having custody and control of the minor shall be jointly and severally liable with the minor for the expense of abatement pursuant to Government Code Sections 38772, 38773.2, and 38773.6. If payment is not made within thirty (30) days from the date of the accounting and demand for payment, the payment shall be deemed delinquent and shall be subject to a penalty assessment of one hundred (\$100.00) dollars plus interest on the unpaid amount plus penalty, which interest shall accrue at the rate of one and one-half (1½) percent per month until paid.

- (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 30 of each year shall, upon adoption of a resolution by the City Council, may be collected along with, and in the same manner as, the general property taxes. The 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.

#### **SEC. 4-12.1408. 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.

**SEC. 4-12.1409. 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.

**SEC. 4-12.1410. 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.

**SEC. 4-12.1411. 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.

**ARTICLE 15. GRAFFITI REMOVAL ASSISTANCE PROGRAM**

**SEC. 4-12.1500. APPROPRIATION OF FUNDS.**

The City may appropriate money from the General Fund to remove graffiti or other inscribed material from public or privately owned property within the City, and to replace or repair public or privately owned property within the City that has been defaced with graffiti or other inscribed material that cannot be removed cost effectively.

**SEC. 4-12.1501. AUTHORIZATION.**

The provisions of this article authorize only the removal of the graffiti or other inscribed material itself, or, if the graffiti or other inscribed material cannot be removed cost effectively, the repair or replacement of the portion of the property that was defaced, and not the painting, repair, or placement of other parts of the property that were not defaced.

**SEC. 4-12.1502. CONSENT.**

The removal, repair, or replacement may be performed, in the case of publicly owned property, only after securing the consent of the public entity having jurisdiction over the property, and in the case of privately owned property, only after securing the consent of the owner or possessor.

**SEC. 4-12.1503. RECOVERY OF CITY FUNDS.**

- (a) Pursuant to Government Code Section 53069.3(d), if the City has used funds pursuant to this article to remove graffiti or other inscribed material created, caused, or committed by a minor, the City may recover the funds 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 funds 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 funds 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 funds 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 funds from the minor and the parent or guardian having custody and control of the minor, the City shall provide an accounting of the funds 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 funds used by the City 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 (\$100.00) dollars plus interest on the unpaid amount plus penalty, which interest shall accrue at the rate of one and one-half (1½) percent per month until paid.

- (4) In the event the funds have not been paid within thirty (30) days from the date of issuing an accounting and demand for payment, the amount unpaid including any penalty and interest therein, shall constitute a lien pursuant to Government Code Sections 38772 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 30 of each year shall, upon adoption of a resolution by the City Council, may be collected along with, and in the same manner as, the general property taxes. The 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 funds 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 funds pursuant to Government Code Section 38772 shall constitute a personal obligation against the minor and a personal obligation against the parent or guardian having custody and control of the minor.

**SEC. 4-12.1504. 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.

**SEC. 4-12.1505. 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.

**ARTICLE 16. ADMINISTRATIVE ABATEMENT**

**SEC. 4-12.1600. DECLARATION OF NUISANCE AFTER DUE PROCESS.**

Whenever a City code enforcement staff person has determined that a violation of a section of this Code exists within the City and the property owner or other legally responsible party has failed, neglected, or refused to comply with City's requests to bring the property promptly into compliance with the law, the City Manager, after according the owner and any other responsible parties notice, opportunity to be heard, and opportunity to cross-examine witnesses regarding the matter, may declare, pursuant to competent testimony under oath, that said condition is a public nuisance and order its abatement.

**SEC. 4-12.1601. INSPECTION WARRANT.**

Prior to entry upon private property to verify the existence of a violation of this Code, an appropriate warrant authorizing the contemplated search or other necessary actions shall be first obtained from a court of competent jurisdiction.

**SEC. 4-12.1602. ABATEMENT AT OWNER'S EXPENSE.**

After determination that a violation of this chapter constitutes a public nuisance, the City may remove or abate such nuisance upon private property or may engage a private party so to do. The costs of such abatement, including incidental expenses, shall, if unpaid within thirty (30) days after invoice, become a personal debt of the property owner or owners and a lien upon the subject property for collection at the same time and in the same manner as ad valorem taxes are collected. No abatement shall occur under this Section unless preceded by issuance of judicial warrants authorizing entry, search, seizure, and abatement, or, in the alternative, written consent and release of liability by the property owner or other responsible parties. "Incidental expenses" include, but are not limited to, personnel costs, both direct and indirect; costs incurred in documenting the nuisance; the actual expenses and costs of the City in the preparation and mailing of notices, specifications, and contracts, in inspecting the site, and in obtaining necessary warrants so to do.

**SEC. 4-12.1603. CONDUCT OF ADMINISTRATIVE HEARINGS.**

Administrative hearings required by this Code shall be conducted in accordance with regulations promulgated from time to time by the City Attorney. The hearing officer shall have the power to compel the attendance of witnesses in the matter at issue, to compel production of relevant evidence, and to continue the hearing from time to time.

**SEC. 4-12.1604. DEMOLITION.**

No property shall be found to be a public nuisance and ordered demolished unless it is found that there is no reasonable way other than demolition to correct such nuisance. A copy of the order requiring abatement by demolition shall be recorded with the Stanislaus County Recorder.

**SEC. 4-12.1605. ABATEMENT BY OWNER; NONINTERFERENCE BY OWNER OR OCCUPANT.**

Before the arrival of the persons authorized to abate the nuisance, any property owner may abate the nuisance at his or her own expense. No owner or occupant of the property shall obstruct any abatement activity by any authorized person after abatement activities have commenced.

**SEC. 4-12.1606. SPECIAL ASSESSMENT; COLLECTION.**

The cost of nuisance abatement upon each parcel of land constitutes a special assessment against that parcel upon filing of said assessment with the Auditor of Stanislaus County, who shall enter each assessment on the County tax roll opposite the parcel of land. The assessment shall be collected at the same time and in the same manner as ordinary municipal ad valorem taxes are collected, and shall be subject to the same penalties and the same procedure and sale in case of delinquency as provided for such taxes. All laws applicable to the levy, collection, and enforcement of municipal ad valorem taxes shall be applicable to such assessment.

**SEC. 4-12.1607. ALTERNATIVE RECOVERY OF ABATEMENT COSTS; LIEN ATTACHMENT.**

Public nuisance abatement costs may also be secured for recovery by recordation of a lien in the official real property records of Stanislaus County. Said lien shall be in the amount of abatement costs, plus interest of ten (10) percent per annum from the date of confirmation to the date of payment in full. Any such lien shall be removed by the City upon full payment of the costs thereby secured. The liened property shall be subject to the penalties, procedures, and sale in case of delinquency as provided in the Civil Code of California.

**SEC. 4-12.1608. ABATEMENT COSTS ARE PERSONAL DEBT OF OWNER.**

In addition to any other remedy provided herein or available at law, costs of nuisance abatement upon real property within the City constitute a personal debt of the persons or parties who owned said real property at the time of nuisance abatement by the City.

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

SECTION 3. 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 May, 1997, by Councilmember Serpa, who moved its introduction and passage to print, which motion being duly seconded by Councilmember McClanahan, was upon roll call carried and ordered printed and published by the following vote:

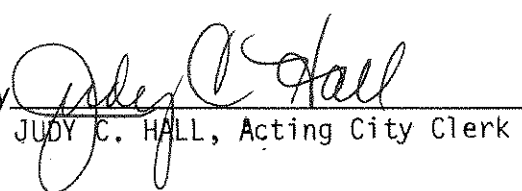
AYES:	Councilmembers:	Cogdill, Dobbs, Fisher, Friedman, McClanahan, Serpa, Mayor Lang
NOES:	Councilmembers:	None
ABSENT:	Councilmembers:	None

APPROVED: \_\_\_\_\_

  
RICHARD A. LANG, Mayor

ATTEST:

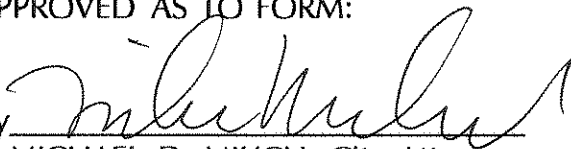
By \_\_\_\_\_

  
JUDY C. HALL, Acting City Clerk

(SEAL)

APPROVED AS TO FORM:

By \_\_\_\_\_

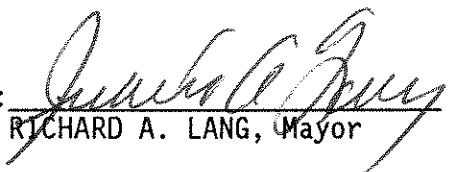
  
MICHAEL D. MILICH, City Attorney

Ord. No. 3042-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 May, 1997, Councilmember Friedman, moved its final adoption, which motion being duly seconded by Councilmember McClanahan, was upon roll call carried and the ordinance adopted by the following vote:

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

APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:   
JEAN ADAMS, City Clerk

Effective Date: June 26, 1997

*Check* (3)

ORDINANCE NO. 3043-C.S.

AN ORDINANCE AMENDING SECTION 1 OF ORDINANCE NO. 2250-C.S. ENTITLED "AN ORDINANCE AMENDING SECTION 2 OF ORDINANCE NO. 1840-C.S. ENTITLED, 'AN ORDINANCE AMENDING SECTION MAP 30-3-9 OF THE ZONING MAP OF THE CITY OF MODESTO, RECLASSIFYING CERTAIN PROPERTY LOCATED THEREON. (ERROL VRH)'" (ART MITCHELL).

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

SECTION 1. AMENDMENT OF ORDINANCE NO. 2250-C.S. Section 1 of

Ordinance No. 2250-C.S. is hereby amended to read as follows:

"SECTION 2. USES. The following uses shall be permitted in said P-D(225) 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 retail furniture store and warehouse and related parking.
2. A retail-wholesale building supply business.
3. All C-2 zone uses for which a sufficient number of off-street parking spaces are provided on the property, except that ambulance service is not allowed.
4. Serving of alcoholic beverages (beer and wine) in conjunction with a new restaurant.

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 May, 1997, by Councilmember Friedman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Dobbs, was upon roll call carried and ordered printed and published by the following vote:

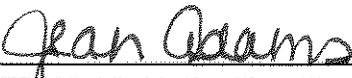
AYES: Councilmembers: Dobbs, Friedman, McClanahan, Serpa, Mayor Lang

NOES: Councilmembers: None

ABSENT: Councilmembers: Cogdill, Fisher

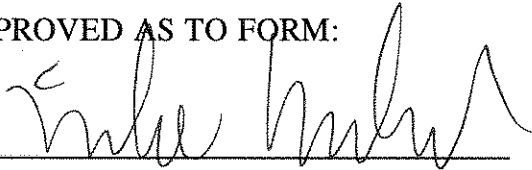
APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:

By   
JEAN ADAMS, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

Ord. No. 3043-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 June, 1997, Councilmember Friedman, moved its final adoption, which motion being duly seconded by Councilmember Dobbs, was upon roll call carried and the ordinance adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:   
JEAN ADAMS, City Clerk

Effective Date: July 10, 1997

Clerk

ORDINANCE NO. 3044 -C.S.

AN ORDINANCE AMENDING SECTION 2 OF ORDINANCE NO. 2905-C.S. ENTITLED "AN ORDINANCE AMENDING SECTION MAP 10-3-9 OF THE ZONING MAP TO REZONE FROM LOW DENSITY RESIDENTIAL ZONE, R-1, TO PLANNED DEVELOPMENT ZONE, P-D(501), PROPERTY LOCATED ON THE NORTHWEST CORNER OF SYLVAN AVENUE AND OAKDALE ROAD. (HAGOPIAN, LUST, AND CALLAWAY)" (KEARNEY VENTURES)

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

SECTION 1. AMENDMENT OF ORDINANCE NO. 2905-C.S. Section 2 of Ordinance No. 2905-C.S. is hereby amended to read as follows:

"SECTION 2. USES. The following uses shall be permitted in said P-D(501) Zone, if the plan for construction conforms in principle to the approved plan, or if changes are approved by the Secretary of the Planning Commission as required by Section 10-2.1709(c) of the Modesto Municipal Code, or by the Planning Commission if any changes not conforming in principle to the approved plan are proposed, as required by Section 10-2.1709(a) or (b) of the Modesto Municipal Code:

- 1. General commercial strip center including a mini warehouse facility.

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 May, 1997, by Councilmember Dobbs, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and ordered printed and published by the following vote:

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

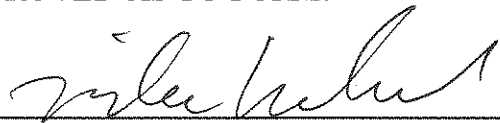
APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:

By   
JEAN ADAMS, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

Ord. No. 3044-C.S.

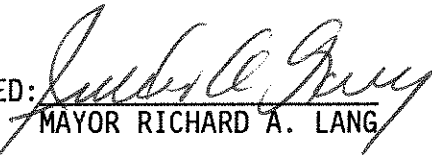
FINAL ADOPTION CLAUSE

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 June, 1997, 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: Cogdill, Dobbs, Fisher, Friedman, McClanahan,  
Mayor Lang

NOES: Councilmembers: Serpa

ABSENT: Councilmembers: None

APPROVED:   
MAYOR RICHARD A. LANG

ATTEST:   
JEAN ADAMS, City Clerk

Effective Date: July 10, 1997



ORDINANCE NO. 3045 -C.S.

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

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

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

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

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

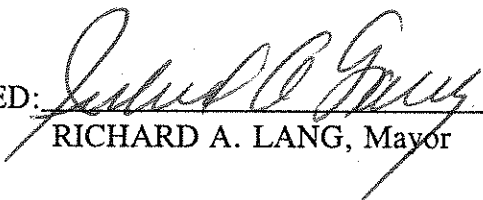
SECTION 4. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in *The Modesto Bee*, the official newspaper of the City of Modesto, setting forth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

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 3rd day of June, 1997, by Councilmember Friedman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember McClanahan, was upon roll call carried and ordered printed and published by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:

By   
JEAN ADAMS, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

# EXHIBIT

AMENDMENT TO CONTRACT  
BETWEEN THE  
BOARD OF ADMINISTRATION  
OF THE  
PUBLIC EMPLOYEES' RETIREMENT SYSTEM  
AND THE  
CITY COUNCIL  
OF THE  
CITY OF MODESTO

The Board of Administration, Public Employees' Retirement System, hereinafter referred to as Board, and the governing body of above public agency, hereinafter referred to as Public Agency, having entered into a contract effective August 1, 1946, and witnessed July 27, 1946, and as amended effective December 1, 1950, July 1, 1956, July 1, 1959, November 1, 1959, January 1, 1960, October 1, 1962, January 1, 1969, May 1, 1973, May 1, 1974, June 24, 1975, March 28, 1978, July 4, 1978, November 1, 1980, October 20, 1981, June 29, 1982, October 15, 1985, June 24, 1986, April 14, 1987 and November 22, 1991 which provides for participation of Public Agency in said System, Board and Public Agency hereby agree as follows:

- A. Paragraphs 1 through 13 are hereby stricken from said contract as executed effective November 22, 1991, and hereby replaced by the following paragraphs numbered 1 through 13 inclusive:
1. All words and terms used herein which are defined in the Public Employees' Retirement Law shall have the meaning as defined therein unless otherwise specifically provided. "Normal retirement age" shall mean age 60 for local miscellaneous members and age 50 for local safety members.
  2. Public Agency shall participate in the Public Employees' Retirement System from and after August 1, 1946 making its employees as hereinafter provided, members of said System subject to all provisions of the Public Employees' Retirement Law except such as apply only on election of a contracting agency and are not provided for herein and to all amendments to said Law hereafter enacted except those, which by express provisions thereof, apply only on the election of a contracting agency.
  3. Employees of Public Agency in the following classes shall become members of said Retirement System except such in each such class as are excluded by law or this agreement:
    - a. Local Fire Fighters (herein referred to as local safety members);
    - b. Local Police Officers (herein referred to as local safety members);

- c. Employees other than local safety members (herein referred to as local miscellaneous members).
4. In addition to the classes of employees excluded from membership by said Retirement Law, the following classes of employees shall not become members of said Retirement System:
  - a. **POLICE COURT EMPLOYEES; AND**
  - b. **ALL HOURLY RATED OR HOURLY BASIS EMPLOYEES HIRED ON AND AFTER OCTOBER 1, 1962.**
5. Assets heretofore accumulated with respect to members in the local retirement system have been transferred to the Public Employees' Retirement System and applied against the liability for prior service incurred thereunder. That portion of the assets so transferred which represent the accumulated contributions (plus interest thereof) required of the employees under said local system has been credited to the individual membership account of each such employee under the Public Employees' Retirement System.
6. The percentage of final compensation to be provided for local miscellaneous members for each year of credited prior and current service shall be determined in accordance with Section 21353 of said Retirement Law, subject to the reduction provided therein for service on and after January 1, 1956, the effective date of Social Security coverage, and prior to June 30, 1978, termination of Social Security, for members whose service has been included in Federal Social Security (2% at age 60 Full and Modified).
7. The percentage of final compensation to be provided for each year of credited prior and current service as a local safety member shall be determined in accordance with Section 21362 of said Retirement Law (2% at age 50 Full).
8. Public Agency elected and elects to be subject to the following optional provisions:
  - a. Section 21222.1 (Special 5% Increase-1970). Legislation repealed said Section effective January 1, 1980.
  - b. Section 21222.2 (Special 5% Increase-1971). Legislation repealed said Section effective January 1, 1980.
  - c. Section 21319 (Special 15% Increase for Local Miscellaneous Members).
  - d. Section 21571 (Basic Level of 1959 Survivor Benefits) for local safety members only.
  - e. Section 21572 (Increased Level of 1959 Survivor Benefits) for local miscellaneous members only.

- f. Section 20042 (One-Year Final Compensation).
  - g. Section 21427 (Improved Non-Industrial Disability Allowance) for local miscellaneous members only.
  - h. Sections 21624, 21626 and 21628 (Post-Retirement Survivor Allowance) for local safety members and those local miscellaneous members entering membership on or prior to October 20, 1981.
  - i. Section 21325 (Special 3% - 15% Increase) for or on behalf of those local miscellaneous members and local safety members who retired or died prior to January 1, 1974.
  - j. Section 20475 (Different Level of Benefits). Sections 21624, 21626 and 21628 (Post-Retirement Survivor Allowance) are not applicable to local miscellaneous members entering membership after October 20, 1981.
  - k. Section 21322 (Special 4% Increase) for or on behalf of those local miscellaneous members and local safety members who retired or died prior to January 1, 1981.
  - l. Section 21317 (Special 15% Increase for Local Safety Members).
  - m. Section 21024 (Military Service Credit as Public Service), Statutes of 1976.
9. Public Agency, in accordance with Government Code Section 20790, ceased to be an "employer" for purposes of Section 20834 effective on March 28, 1978. Accumulated contributions of Public Agency shall be fixed and determined as provided in Government Code Section 20834, and accumulated contributions thereafter shall be held by the Board as provided in Government Code Section 20834.
10. Public Agency shall contribute to said Retirement System the contributions determined by actuarial valuations of prior and future service liability with respect to local miscellaneous members and local safety members of said Retirement System.
11. Public Agency shall also contribute to said Retirement System as follows:
- a. A reasonable amount, as fixed by the Board, payable in one installment within 60 days of date of contract to cover the costs of administering said System as it affects the employees of Public Agency, not including the costs of special valuations or of the periodic investigation and valuations required by law.

- b. A reasonable amount, as fixed by the Board, payable in one installment as the occasions arise, to cover the costs of special valuations on account of employees of Public Agency, and costs of the periodic investigation and valuations required by law.
- 12. Contributions required of Public Agency and its employees shall be subject to adjustment by Board on account of amendments to the Public Employees' Retirement Law, and on account of the experience under the Retirement System as determined by the periodic investigation and valuation required by said Retirement Law.
- 13. Contributions required of Public Agency and its employees shall be paid by Public Agency to the Retirement System within fifteen days after the end of the period to which said contributions refer or as may be prescribed by Board regulation. If more or less than the correct amount of contributions is paid for any period, proper adjustment shall be made in connection with subsequent remittances. Adjustments on account of errors in contributions required of any employee may be made by direct payments between the employee and the Board.

B. This amendment shall be effective on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_.

BOARD OF ADMINISTRATION  
PUBLIC EMPLOYEES' RETIREMENT SYSTEM

CITY COUNCIL  
OF THE  
CITY OF MODESTO

BY \_\_\_\_\_  
KENNETH W. MARZION, CHIEF  
ACTUARIAL & EMPLOYER SERVICES DIVISION  
PUBLIC EMPLOYEES' RETIREMENT SYSTEM

BY \_\_\_\_\_  
PRESIDING OFFICER

\_\_\_\_\_  
Witness Date

Attest:

\_\_\_\_\_  
Clerk

PLEASE DO NOT SIGN "REMIT ONLY"

PLEASE DO NOT SIGN "REMIT ONLY"

Ord. No. 3045-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 24th day of June, 1997, Councilmember Cogdill, moved its final adoption, which motion being duly seconded by Councilmember Friedman, was upon roll call carried and the ordinance adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:

  
RICHARD A. LANG, Mayor

ATTEST:

  
JEAN ADAMS, City Clerk

Effective Date: July 24, 1997

*Clerk*

ORDINANCE NO. 3046 -C.S.

AN ORDINANCE AMENDING SECTIONS 10-2.1102 AND 10-2.1703 OF CHAPTER 2 OF TITLE X OF THE MODESTO MUNICIPAL CODE AND ADDING SECTION 10-2.1102.1 TO ARTICLE 11 OF CHAPTER 2 OF TITLE X OF THE MODESTO MUNICIPAL CODE RELATING TO PERMITTED USES -- MOVIE THEATERS.

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

SECTION 1. AMENDMENT OF CODE. Sections 10-2.1102 and 10-2.1703 of Chapter 2 of Title X of the Modesto Municipal Code are hereby amended to read as follows:

**SEC. 10-2.1102. PERMITTED USES.**

The following are permitted uses:

- (a) Any permitted use in the C-1 Zone.
- (b) Appliance store.
- (c) Armored car service.
- (d) Automobile and recreational vehicle dealer.
- (e) Automobile repair (excluding painting, body and fender work, machining and tire rebuilding, except that incidental to general repair).
- (f) Bar, cocktail lounge.
- (g) Broadcasting studio (radio or television).
- (h) Carnival.
- (i) Circus.
- (j) Department store.



- (k) Electric motor shop.
- (l) Exterminating service.
- (m) Farm supply store.
- (n) Floor covering store.
- (o) Fortune-telling.
- (p) Janitorial service.
- (q) Laboratory (research and testing).
- (r) Locksmith shop.
- (s) Medical and orthopedic supply store.
- (t) Printing shop.
- (u) Recreation services (bowling alley, ice or roller skating rink, racquetball club or similar indoor uses).
- (v) Security agency.
- (w) Sign painting shop.
- (x) Taxicab office, repair and storage (excluding painting and body and fender work, except that incidental to general repair).
- (y) Taxidermist shop.
- (z) Tire, battery and vehicle accessory store (excluding tire rebuilding, recapping and retreading).
- (aa) Upholstery and furniture repair shop.

**SEC. 10-2.1703. PERMITTED USES.**

The following are permitted uses:

- (a) Any use specified in the ordinance establishing a P-D Zone.

- (b) Condominiums, community apartment projects and stock cooperatives, whether residential or otherwise. These uses are permitted only in a P-D Zone.
- (c) Theater (indoor). Except as set forth in Section 10-2.1102.1, this use is permitted only in a P-D Zone.

SECTION 2. AMENDMENT OF CODE. Section 10-2.1102.1 is hereby added to Article 11 of Chapter 2 of Title X of the Modesto Municipal Code to read as follows:

**SEC. 10-2.1102.1. PERMITTED USES WITHIN THE DOWNTOWN P-D ZONE AREA.**

- (a) All uses as set forth in Section 10-2.1102.
- (b) Theater (indoor).

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 17th day of June, 1997, by Councilmember Friedman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Serpa, was upon roll call carried and ordered printed and published by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: Fisher, McClanahan

APPROVED:

  
RICHARD A. LANG, Mayor

ATTEST:

By

  
JEAN ADAMS, City Clerk

(SEAL)

APPROVED AS TO FORM:

By

  
MICHAEL D. MILICH, City Attorney

Ord. No. 3046-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 24th day of June, 1997, Councilmember Friedman moved its final adoption, which motion being duly seconded by Councilmember Cogdill, was upon roll call carried and the ordinance adopted by the following vote:

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

APPROVED:   
MAYOR RICHARD A. LANG

ATTEST:   
JEAN ADAMS, City Clerk

Effective Date: July 24, 1997

ORDINANCE NO. 3047 -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. 1997-1 (NORTH BEYER), AND AMENDING ORDINANCE NO. 3005-C.S., (VILLAGE ONE COMMUNITY FACILITIES DISTRICT NO. 1996-1).

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

WHEREAS, on May 13, 1997, the City Council of the City of Modesto, State of California (the "Council"), adopted its Resolution No. 97-252 (the "Resolution of Intention to Establish the District") stating its intention to form Community Facilities District No. 1997-1 of the City of Modesto (the "District") for the purpose of financing the costs of certain public facilities (the "Facilities") and services (the "Services") specified in the Resolution of Intention 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 \$200,000.00 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 June 24, 1997, adopt its Resolution No. 97-355 (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 22, 1997, on the proposition of levying a special tax and establishing an appropriations limit within the District, and

WHEREAS, on July 22, 1997, or sooner in accordance with law, 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, and

WHEREAS, the City Council previously approved Ordinance No. 3005-C.S., which became effective on November 14, 1996, and wishes to amend said ordinance to conform it more precisely with the Village One Finance Plan adopted by City Council Resolution No. 96-463 on August 13, 1996, as that document may be amended from time to time.

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. Ordinance No. 3005-C.S. is hereby amended to add a new Section 7, and renumber existing sections 7 and 8 therein as follows:

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 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. The amount of the credit will be the facilities cost estimate in the Public Report, as that report may be amended from time to time, irrespective of the actual cost of the facility to the developer. When determining the amount of the credit, the facilities cost estimate in the Public Report shall be reduced by any costs incurred by the City in the construction of the facilities. Where apportionment is required, as with respect to a total facilities cost stated in the Public Report, 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 City Manager or his/her designee shall be conclusive evidence of the amount of the credit derived thereby.

SECTION 8. 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 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.

SECTION 3. 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 1997-98 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 4. The Finance Director of the City of Modesto is hereby authorized each year to determine the special tax rate and amount to be levied for the next ensuing fiscal year, except that the special tax rate to be levied shall not exceed that set forth in Exhibit "A" hereto.

SECTION 5. No properties or entities are exempt from the special tax unless the properties or entities are expressly exempted in the Resolution of Formation (and Exhibit "A" hereto), or in any subsequent resolution of consideration to levy a new special tax or special taxes or to alter the rate or method of apportionment or an existing special tax as provided in Section 53334 of the Act.

SECTION 6. 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 7. 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 8. Notwithstanding anything in this ordinance or in Exhibit B to the resolution of formation (Rate, Method, and Manner of Apportionment of Special Tax), to the contrary, persons or entities 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 B to the resolution of formation. The amount of the credit will be the facilities cost estimate in the Public Report, as that report may be amended from time to time, irrespective of the actual cost of the facility to the developer. When determining the amount of the credit, the facilities cost estimate in the Public Report shall be reduced by any costs incurred by the City in the construction of the facilities. Where apportionment is required, as with respect to a total facilities cost stated in the Public Report, 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 City Manager or his/her designee shall be conclusive evidence of the amount of the credit derived thereby.

SECTION 9. 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 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 24th day of June, 1997, by Councilmember Friedman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and ordered printed and published by the following vote:

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

APPROVED:

  
RICHARD A. LANG, Mayor

ATTEST:

By   
JEAN ADAMS, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

EXHIBIT A  
RATE AND METHOD OF APPORTIONMENT OF SPECIAL TAX

EXHIBIT A

CITY OF MODESTO  
COMMUNITY FACILITIES DISTRICT NO. 1997-1  
(North Beyer Park Specific Plan)

RATE AND METHOD OF APPORTIONMENT OF SPECIAL TAX

A special tax applicable to each Assessor's Parcel in Community Facilities District No. 1997-1 (herein "CFD No. 1997-1") 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. 1997-1, 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. 1997-1 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 maintenance and landscaping of parks, parkways and/or open space.

"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.

"Council" means the City Council of the City of Modesto, acting as the legislative body of CFD No. 1997-1.

"Developed Property" means, in any Fiscal Year, all Taxable Property for which a final building permit inspection was conducted or a certificate of occupancy issued prior to June 1 of the preceding Fiscal Year.

"Facilities Special Tax" means a Special Tax levied in any Fiscal Year to pay for public facilities authorized to be funded by CFD No. 1997-1, including appurtenant expenses such as planning, design, engineering and inspection.

"Fiscal Year" means the period starting July 1 and ending on the following June 30.

"Initial Church Property" means all Parcels that, at the time of formation of CFD No. 1997-1, had existing structures that were used as places of worship and which were exempt from ad valorem property taxes because they were owned by a religious organization. If Initial Church Property is developed for other land uses that make it Taxable Property in future Fiscal Years, the exemption for such property set forth in Section E below shall no longer apply, and the property shall be treated as Taxable Property after such changes in land use takes place.

"Future Church Property" means any Parcel within the CFD that meets all of the following criteria: (1) a structure has been built that is used as a place of worship, rectory, convent or private school, (2) the Parcel is exempt from ad valorem proeprty taxes because it is owned by a religions organization, and (3) the Parcel is not Initial Church Property.

"Land Use Class" means any of the three classes listed in Table 1 and Table 2 below.

"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. 1997-1, 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.

"Multi-Family Residential Property" means, in any Fiscal Year, all Parcels for which a building permit has been issued for a residential structure consisting of two or more Residential Units that share common walls including, but not limited to, townhomes, condominiums, duplexes, triplexes, fourplexes and apartment units.

"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 Residential or Multi-Family Residential Property and which is not exempt from Special Taxes pursuant to Section E below.

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

"Residential Unit" means a single residential dwelling unit and shall include single family homes and individual condominium, townhome, duplex, triplex and fourplex units, as well as individual apartment units in a multi-family building.

"Single Family Detached Residential Property" means, in any Fiscal Year, all Parcels for which a building permit has been issued for a residential structure consisting of only one Residential Unit.

"Taxable Property" means, in any Fiscal Year, all Parcels of Single Family Detached Residential Property, Multi-Family Residential Property and Non-Residential Property within CFD No. 1997-1.

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, the Parcel shall be assigned to the appropriate Land Use Class based upon the land use 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. Determination of the appropriate Land Use Class shall be at the sole discretion of the City.

C. MAXIMUM SPECIAL TAX

i. *Facilities Special Tax*

The following maximum rates apply to all Parcels of Taxable Property within CFD No. 1997-1 for each Fiscal Year in which the Facilities Special Tax is collected:

TABLE 1 MAXIMUM FACILITIES SPECIAL TAX (Fiscal Year 1997-98)		
Land Use Class	Description	Maximum Facilities Special Tax
1	Single Family Detached Residential Property	\$84 per Residential Unit
2	Multi-Family Residential Property	\$54 per Residential Unit
3	Non-Residential Property	\$4,263 per Acre

Beginning in January 1998, the Facilities Special Tax shall be adjusted annually 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 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.

2. *Annual Maintenance Special Tax*

All Taxable 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. 1997-1 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. 1997-1 for each Fiscal Year in which the Maintenance Special Tax will be levied:

<u>TABLE 2</u> MAXIMUM ANNUAL MAINTENANCE SPECIAL TAX (Fiscal Year 1997-98)		
Land Use Class	Description	Maximum Annual Maintenance Special Tax
1	Single Family Detached Residential Property	\$80 per Residential Unit
2	Multi-Family Residential Property	\$52 per Residential Unit
3	Non-Residential Property	\$396 per Acre

Beginning in January 1998, the maximum Annual Maintenance Special Tax shall be adjusted annually 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 Annual Maintenance Special Tax shall become effective on the subsequent July 1.

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. 1997-1 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 for that Fiscal Year.



The Maintenance Special Tax shall then be levied on all Parcels of Developed Property as follows:

- Step 1:* Calculate the total Maintenance Special Tax revenues that could be collected from Developed 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 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 in equal percentages up to 100% of the maximum Annual Maintenance Special Tax determined pursuant to Section C.2 above.

The Annual Maintenance Special Tax for CFD No. 1997-1 shall be collected in the same manner and at the same time as ordinary ad valorem property taxes, provided, however, that CFD No. 1997-1 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 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. In addition, no Special Tax shall be levied in any Fiscal Year on Initial Church Property. The City may choose to levy a Special Tax on Future Church Property in any Fiscal Year if revenues from such levy are needed to meet the Maintenance Special Tax Requirement. If the City determines that Special Tax revenues generated from levying a Special Tax on Future Church Property are not needed to meet the Maintenance Special Tax Requirement in any Fiscal Year, the City may choose not to levy a Special Tax on Future Church Property in that Fiscal Year.

#### F. 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 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.

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Ord. No. 3047-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 1st day of July, 1997, Councilmember McClanahan, moved its final adoption, which motion being duly seconded by Councilmember Friedman, was upon roll call carried and the ordinance adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:

  
RICHARD A. LANG, Mayor

ATTEST:

  
JEAN ADAMS, City Clerk

Effective Date: August 5, 1997

ORDINANCE NO. 3048-C.S.

AN ORDINANCE ADOPTING THE OPERATING BUDGET  
AND FIRST YEAR OF THE 1997-98 CAPITAL  
IMPROVEMENT PROGRAM FOR THE CITY OF MODESTO  
FOR THE FISCAL YEAR ENDING JUNE 30, 1998, 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 1997-1998 fiscal year has been submitted to the City Council by the City Manager, and the City Council has made such revisions as it has deemed advisable, and

WHEREAS, in accordance with the City Charter, a public hearing has been held upon the adoption of the proposed budget after due notice, as provided by law, and

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

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

SECTION 1. That the "City of Modesto Proposed Annual Budget 1997-98", and the several amounts stated therein as proposed expenditures, presented by the City Manager to the City Council at its meeting held May 13, 1997, 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, 1998, excepting those items listed on Exhibit "A",

attached hereto, which were each dealt with by separate motion.

SECTION 2. That funds of the City of Modesto encumbered on June 20, 1997, are hereby appropriated for the purposes for which they are encumbered and shall be a part of the budget for the fiscal year 1997-1998 adopted hereby.

SECTION 3. That Capital Projects carried over from fiscal year 1996-1997 are hereby re-appropriated as a part of the budget for the fiscal year 1997-1998 adopted hereby. The amount of said appropriations will equal the Reserve for Appropriated Carryover Projects established in the General Ledger Accounts of the City of Modesto for all funds as of June 30, 1997.

SECTION 4. That the City Council is authorized by resolution to transfer funds from one fund to another fund and to transfer and authorize the expenditure of funds from the Reserved Fund Balances for specific purposes.

SECTION 5. That the City Manager is authorized to transfer funds within departmental budgets, and between departments within the General Fund, among the following classifications, to wit: Employee Services, Professional and Contractual Services, Materials and Supplies, other operating expenses and Capital Appropriations; and to transfer appropriations for capital items budgeted within the same capital fund and that the City Manager may delegate this authority to the Deputy City Manager.

SECTION 6. Pursuant to Section 722 of the Charter of the City of Modesto, this ordinance shall take effect upon adoption.

SECTION 7. Copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in The Modesto Bee, the official newspaper of the City of Modesto, setting forth the title of this ordinance, the date of its adoption and the places where this ordinance is posted.

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 24th day of June, 1997, 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: Cogdill, Dobbs, Fisher, Friedman, McClanahan, Serpa, Mayor Lang  
NOES: Councilmembers: None  
ABSENT: Councilmembers: None

APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:

By   
JEAN ADAMS, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

15. Consider adopting the 1997-98 Operating Budget and Capital Improvement Program, including reappropriation of capital projects in progress.  
(Adoption of an ordinance approving the Fiscal Year 1997-98 Annual budget (including the first year of the Four-Year Capital Improvement Program, with reappropriations of capital projects in progress) needed; a resolution establishing the 1997-98 Fiscal Year Appropriations Limit and re-estimating 1996-97 Fiscal Year limit, including the price and population factors to be used in the calculation needed; a resolution amending the 1996-97 budget adjusting appropriations and re-estimating revenue needed.)

**ACTION:** By order of the chair, the Pelandale Extension was referred to the Financial Policy committee.

By motion (McClanahan/Cogdill, Friedman absent) the Parks & Recreation General Fund portion of the Operational budget was approved.

By motion (Dobbs/Friedman, unan; Cogdill/Fisher absent) the McHenry Mansion appropriation in the CIP budget was approved.

By motion (Friedman/Dobbs, unan; Cogdill/Fisher absent) the McHenry/ Needham Right Turn Lane appropriation in the CIP budget was approved.

By motion (Friedman/Dobbs, unan; Cogdill/Fisher absent) the 9th Street Railroad Relocation appropriation in the CIP budget was approved.

By motion (McClanahan/Friedman, unan; Cogdill absent) the Police Shop Relocation appropriation in the CIP budget was approved.

By motion (Dobbs/McClanahan, unan; Fisher absent) the Miscellaneous Storm Drain appropriation in the CIP budget was approved.

By motion (McClanahan/Friedman, unan; Cogdill absent) the Water System Strengthening appropriation in the CIP budget was approved.

Motion failed (Friedman/Cogdill; Dobbs & McClanahan absent; Fisher & Lang, no) to remove the Lincoln/Lakewood Bridge Project from the Capital Improvements Program. As a result, the appropriation and reappropriation for the Lincoln/Lakewood Bridge was not approved. The project will remain in the long range Capital Improvement Program but unfunded in FY 1997-98.

Ord. 3048-C.S. introduced (Friedman/Fisher, unan.).



CDK

ORDINANCE NO. 3049 -C.S.

AN ORDINANCE AMENDING SECTION 10-2.2002 OF ARTICLE 20 OF CHAPTER 2 OF TITLE X OF THE MODESTO MUNICIPAL CODE RELATING TO NUMBER OF PARKING SPACES REQUIRED, AND REPEALING SECTION 10-2.2003 THEREOF RELATING TO IN-LIEU PARKING.

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

SECTION 1. AMENDMENT OF CODE. Section 10-2.2002 of Article 20 of Chapter 2 of Title X of the Modesto Municipal Code is hereby amended to read as follows:

**SEC. 10-2.2002. NUMBER OF REQUIRED SPACES.**

Except as otherwise provided in this article, or by the Council, Commission or Board as part of plot plan reviews, rezoning, use permits or other similar applications, the minimum number of required off-street parking spaces shall be:

- (a) Residential Uses.
  - (1) Unless otherwise provided below, in projects with one (1) to thirty-six (36) dwelling units, two (2) off-street parking spaces shall be provided for each unit. For each additional unit above thirty-six (36), one and one-half (1.5) spaces per unit shall be provided.
  - (2) In the R-1 Zone where two (2) dwelling units are permitted upon Board approval, three (3) off-street parking spaces are required for the two (2) units.
  - (3) In a project, for every dwelling unit utilizing private streets or driveways:
    - (aa) An additional one-half (0.5) space is required for each unit with a one-car garage.
    - (ab) One (1) additional space is required for each unit with a two-car garage.

- (4) For the purpose of meeting the requirements in (3) that are greater than those in (1), tandem or driveway standard-size spaces may be counted.
- (5) For developments utilizing private streets or driveways, one (1) recreational vehicle parking space shall be provided for every twenty-five (25) dwelling units. For projects with less than twenty-five (25) dwelling units, no such spaces are required. Recreational vehicle spaces shall at a minimum be ten (10) feet wide and twenty-six (26) feet long.

(b) Nonresidential Uses.

- (1) Bar: One (1) for each three (3) seats or one (1) for each sixty (60) square feet of drinking area when the number of seats not known or not permanently fixed.
- (2) Beauty college: Two and one-half (2.5) for each training station.
- (3) Bingo game: One (1) for each four (4) seats.
- (4) Boarding and lodging house, club or fraternity with sleeping rooms: One (1) for each two (2) beds.
- (5) Bowling alley: Four (4) for each lane.
- (6) Child day care: One (1) for each five (5) children.
- (7) Church: One (1) for each four (4) seats in the building with the largest capacity.
- (8) Dance hall: One (1) for each fifty (50) square feet of floor area used for dancing.
- (9) Hospital: One and three-quarters (1.75) for each bed.
- (10) Hotel or motel: One (1) for each guest room. Additional spaces for restaurants, meeting facilities and other related uses shall be provided as required.
- (11) Library: One (1) for each three hundred (300) square feet.

- (12) Manufacturing or related use: One (1) for each six hundred (600) square feet.
- (13) Medical or dental office: One (1) for each two hundred (200) square feet.
- (14) Motor vehicle and machinery repair: One (1) for each three hundred (300) square feet.
- (15) Mortuary or funeral home: One (1) for each four (4) seats in the largest room used for services (tandem spaces may be counted).
- (16) Office or service business: One (1) for each three hundred (300) square feet.
- (17) Pool hall: One (1) for each three hundred (300) square feet.
- (18) Restaurant: One (1) for each three (3) seats or one (1) for each sixty (60) square feet of dining area when the number of seats is not known or not permanently fixed.
- (19) Retail business: One (1) for each three hundred (300) square feet.
- (20) Sanitarium, nursing home, home for the elderly or other twenty-four (24) hour care facility: One (1) for each four (4) beds. Additional parking shall be provided as required for a proprietor's dwelling.
- (21) School for instruction in the arts, athletics, or self-defense and vocational schools: One (1) for each three hundred (300) square feet.
- (22) Theaters: One (1) for each four (4) seats.
- (23) Veterinary hospital: One (1) for each three hundred (300) square feet including animal runs.
- (24) Warehouse: One (1) for each two thousand (2,000) square feet up to ten thousand (10,000) square feet, one (1) for each five thousand (5,000) square feet after the first ten thousand (10,000) square feet. Parking for a

mini-warehouse shall only be required if there is an office or residence included in the project.

- (25) Wholesale business: One (1) for each three hundred (300) square feet.
- (c) Nonresidential uses inside downtown P-D Zone area.
- (1) Bar: One (1) for each four (4) seats or one (1) for each sixty (60) square feet of drinking area when the number of seats is not known or not permanently fixed.
  - (2) Beauty college: Two and one-half (2.5) for each training station.
  - (3) Bingo game: One (1) for each four (4) seats.
  - (4) Boarding and lodging house, club or fraternity with sleeping rooms: One (1) for each two (2) beds.
  - (5) Bowling alley: Four (4) for each lane.
  - (6) Church: One (1) for each five (5) seats in the building with the largest capacity.
  - (7) Dance hall: One (1) for each fifty (50) square feet of floor area used for dancing.
  - (8) Hospital: One and one-half (1.5) for each bed.
  - (9) Hotel or motel: One (1) for each guest room. Additional spaces for restaurants, meeting facilities and other related uses shall be provided as required.
  - (10) Library: One (1) for each five hundred (500) square feet.
  - (11) Manufacturing or related use: One (1) for each six hundred (600) square feet.
  - (12) Medical or dental office: One (1) for each two hundred (200) square feet.

- (13) Motor vehicle and machinery repair: One (1) for each six hundred (600) square feet, with repair space for motor vehicles or machinery not counted as parking spaces.
- (14) Mortuary or funeral home: One (1) for each five (5) seats in the largest room used for services (tandem spaces may be counted).
- (15) Office or service business: One (1) for each five hundred (500) square feet.
- (16) Pool hall: Two (2) for each table.
- (17) Restaurant: One (1) for each four (4) seats or one (1) for each sixty (60) square feet of dining area when the number of seats is not known or not permanently fixed.
- (18) Retail business: One (1) for each five hundred (500) square feet.
- (19) Sanitarium, nursing home, home for the elderly or other twenty-four (24) hour care facility. One (1) for each four (4) beds. Additional parking shall be provided as required for a proprietor's dwelling.
- (20) School for instruction in the arts, athletics, or self-defense and vocational schools: One (1) for each five hundred (500) square feet.
- (21) Theaters: One (1) for each five (5) seats.
- (22) Veterinary hospital: One (1) for each five hundred (500) square feet, including animal runs.
- (23) Warehouse: One (1) for each two thousand (2,000) square feet up to ten thousand (10,000) square feet, one (1) for each five thousand (5,000) square feet after the first ten thousand (10,000) square feet. Parking for a mini-warehouse shall only be required if there is an office or residence included in the project.
- (24) Wholesale business: One (1) for each eight hundred (800) square feet.

- (d) Additional spaces required by expansion, reconstruction or change in use shall be provided in accordance with this article, except that reconstruction or change in use shall not result in a requirement for additional parking in the area bounded by Needham Avenue, Downey Avenue, Burney Street, Grand Street, Morton Boulevard, B Street, Tuolumne Boulevard, Freeway 99 and Kansas Avenue.
- (e) When the required number of spaces results in a fractional space, it shall be counted as a space if it is one-half (0.5) space or more.
- (f) When a building is removed, any new building on the site shall have spaces provided in accordance with this article.
- (g) Where there are mixed uses, the requirement for spaces shall be the sum of the requirements for each use.
- (h) The Board may approve joint use of spaces subject to the following:
  - (1) A maximum of fifty (50) percent of the requirement for one use may be provided by the spaces for another use if the two (2) uses are open substantially different hours or days of the week.
  - (2) The parking spaces for both uses comply with all other requirements of this article.
  - (3) If the properties where the use and the required parking are located are owned by different parties, a covenant shall be recorded by the owner of the parking for the benefit of the City and in a form approved by the City Attorney. The covenant shall stipulate that the parking will be maintained as long as the use requiring it continues. It shall also stipulate that the title and right to use the property where the parking is located is subservient to the title to the property where the use is located and that the property will not be made subject to any other covenant or contract for use without prior consent of the Board.
- (i) When the parking requirement for a use is not listed above, or if the procedure for determining the requirement is not specified,

the Board shall determine the applicable requirement or procedure.

- (j) When a parking requirement is based on square footage, it shall mean gross square footage.
- (k) When a parking requirement is based on number of seats, number of beds or other similar formula, the number shall be as determined by the Director.

SECTION 2. REPEALS. Section 10-2.2003 of Article 20 of Chapter 2 of Title X of the Modesto Municipal Code is hereby repealed.

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

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

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 24th day of June, 1997, by Councilmember Cogdill, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Friedman, was upon roll call carried and ordered printed and published by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:

By   
JEAN ADAMS, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney




Ord. No. 3049-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 1st day of July, 1997, Councilmember McClanahan, moved its final adoption, which motion being duly seconded by Councilmember Friedman, was upon roll call carried and the ordinance adopted by the following vote:

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

APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:   
JEAN ADAMS, City Clerk

Effective Date: August 5, 1997

Week 3

ORDINANCE NO. 3050 -C.S.

AN ORDINANCE AMENDING SECTION 14-3-9 OF THE ZONING MAP TO REZONE FROM LOW DENSITY RESIDENTIAL ZONE, R-1, AND PROFESSIONAL OFFICE ZONE, P-O, TO PLANNED DEVELOPMENT ZONE, P-D(522), PROPERTY LOCATED ON THE EAST SIDE OF OAKDALE ROAD BETWEEN BRIGGSMORE AND MERLE AVENUES. (NORA NARAGHI)

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

SECTION 1. ZONING CHANGE. Section 14-3-9 of the Zoning Map is hereby amended to reclassify the following described property from Low Density Residential Zone, R-1, and Professional Office Zone, P-O, to Planned Development Zone, P-D(522):

All that certain real property situated in the southwest quarter of Section 14, Township 3 South, Range 9 East, Mount Diablo Base and Meridian, being a portion of Lot 3 of the O. McHenry Ranch, as per map filed February 14, 1905, in Volume 2 of Maps at page 7, described as follows:

P-O to P-D(522)

Commencing at the southwest corner of said Lot 3, also being the southwest corner of said Section 14; thence North 00°19'00" West along the centerline of Oakdale Road and the west line of Section 14, 449.04 feet, more or less, to the TRUE POINT OF BEGINNING; thence continuing along said west line and said centerline North 00°19'00" West 216.40 feet, thence North 89°41'00" East, 50.00 feet, to a point on the easterly right of way line of Oakdale Road; thence South 89°26'01" East, 227.55 feet; thence North 00°13'20" East, 187.69 feet; thence North 9°19'20" West, 32.91 feet; thence North 37°50'40" West, 24.57 feet; thence North 89°30'30" West, 209.20 feet, to a point on the easterly right of way line of Oakdale Road; thence South 89°41'00" West, 50.00 feet to a point on the centerline of Oakdale Road and the west line of Section 14; thence North 00°19'00" West, along said west line and said centerline 418.70 feet, more or less, to the centerline of Merle Avenue, said point being the northwest corner of the southwest quarter of the southwest quarter of said Section 14; thence South 89°29'55" East, 473.00 feet along said centerline of Merle Avenue and the north line of the southwest quarter of the southwest quarter of Section 14; thence South 00°30'05" West, 30.00 feet, to a point on the southerly right of way line of Merle Avenue; thence continuing South 00°30'05" West, 821.76 feet, more or less to a point on the northerly right of

way line of Modesto Irrigation District Lateral No. 3, a 140.00 foot right of way as described in that certain deed recorded June 8, 1903, in Volume 87 at Page 42, Official Records, Stanislaus County Records; thence North 82°14'18" West, 132.08 feet, to the beginning of a curve concave to the south having a radius of 543.10 feet and delta of 30°11'51"; thence along the arc of said curve 286.24 feet, to a point on the easterly right of way line of Oakdale Road; thence South 89°41'00" West, 50.00 feet, to the TRUE POINT OF BEGINNING.

R-1 TO P-D(522)

Commencing at the southwest corner of said Lot 3, also being the southwest corner of said Section 14; thence North 00°19'00" West along the centerline of Oakdale Road and the west line of Section 14, 1,323.26 feet, more or less, to the centerline of Merle Avenue, said point being the northwest corner of the southwest quarter of the southwest quarter of said Section 14; thence South 89°29'55" East, 473.00 feet along said centerline of Merle Avenue and the north line of the southwest quarter of the southwest quarter of Section 14, to the TRUE POINT OF BEGINNING; thence South 88°49'44" East along the centerline of Merle Avenue, 125 feet, more or less, to the centerline of fifty foot wide Wisdom Way; thence South 0°19'47" East along the centerline of said Wisdom Way, 547 feet, more or less; thence South 89°30'01" East, 368 feet, more or less, to the northwest corner of that property owned by the City of Modesto as a Drainage Basin and Water Tank site; thence South 0°19'28" East, 369.06 feet, to a point on the northerly right of way line of Modesto Irrigation District Lateral No. 3, a 140.00 foot right of way as described in that certain deed recorded June 8, 1903, in Volume 87 at Page 42, Official Records, Stanislaus county Records; thence North 82°17'05" West, along said northerly right of way line, 498 feet, more or less; thence North 0°19'42" West, 856 feet, more or less, to the TRUE POINT OF BEGINNING.

SECTION 2. USES. The following uses shall be permitted in said P-D(521)

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 commercial center with C-3 Zone uses.

2. A congregate care facility.

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

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

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

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 8th day of July, 1997, by Councilmember Cogdill, who moved its introduction and passage to print, which motion being duly seconded by Mayor Lang, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Cogdill, Dobbs, Friedman, McClanahan, Mayor Lang

NOES: Councilmembers: Serpa

ABSENT: Councilmembers: Fisher

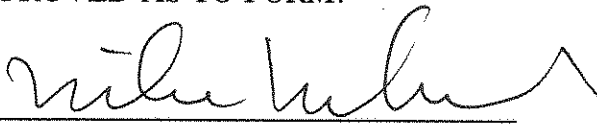
APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:

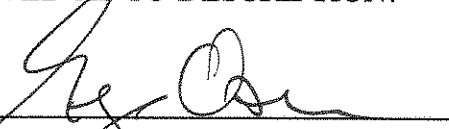
By   
JEAN ADAMS, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

APPROVED AS TO DESCRIPTION:

By   
Community Development Department  
Development Services

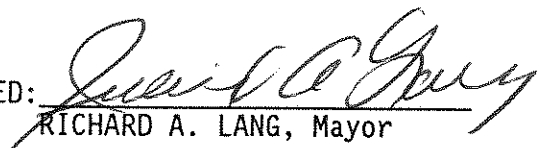
Ord. No. 3050-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 15th day of July, 1997, Councilmember McClanahan, moved its final adoption, which motion being duly seconded by Councilmember Friedman, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Cogdill, Friedman, McClanahan, Mayor Lang  
NOES: Councilmembers: Serpa  
ABSENT: Councilmembers: Dobbs, Fisher

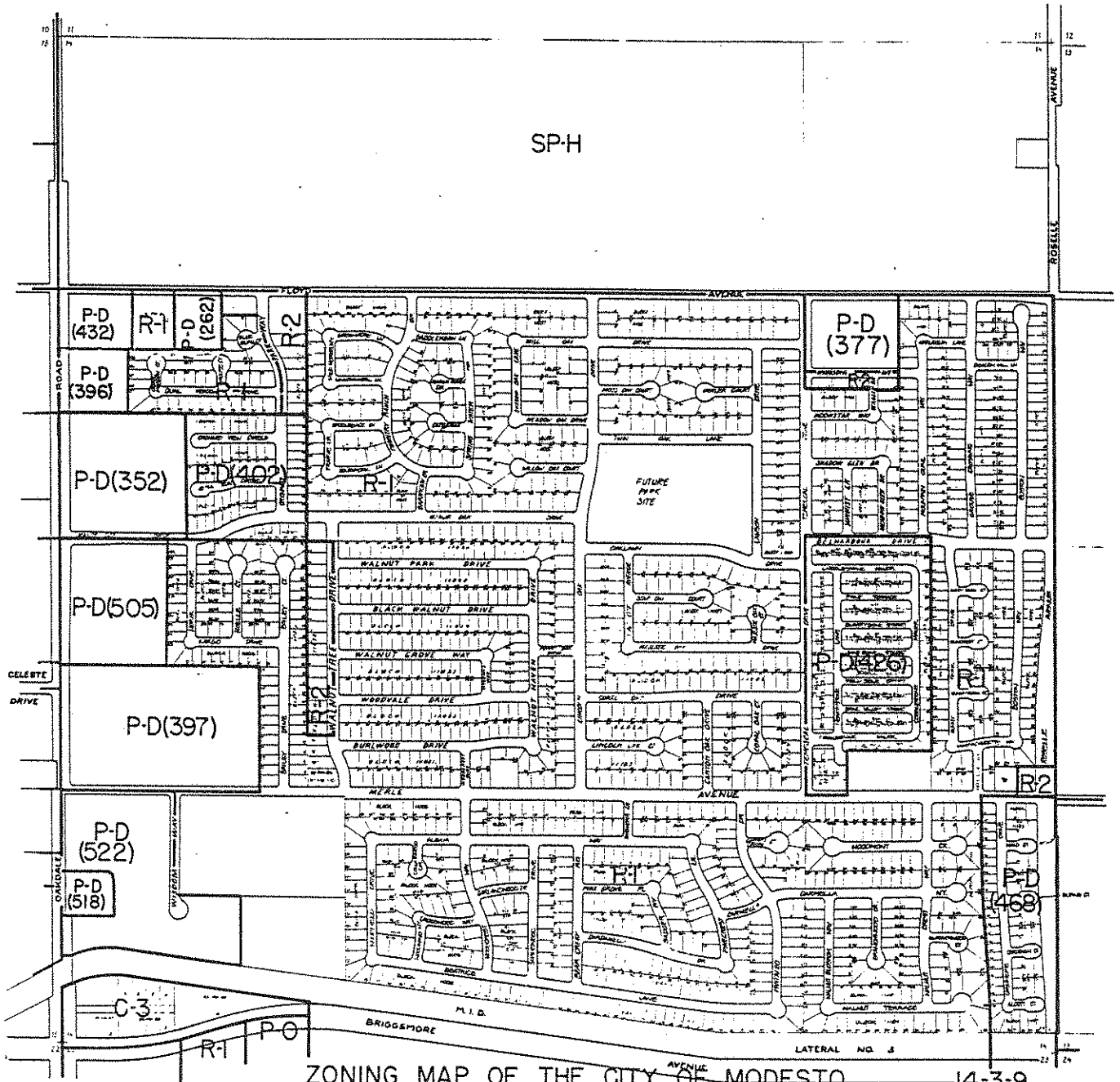
APPROVED:

  
RICHARD A. LANG, Mayor

ATTEST:

  
JEAN ADAMS, City Clerk

Effective Date: August 14, 1997



ZONING MAP OF THE CITY OF MODESTO 14-3-9

*Clark*

ORDINANCE NO. 3051 -C.S.

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

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

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

SEC. 2-9.01. MAIL BALLOT ELECTIONS.

The Council may call municipal elections to be conducted wholly by mail ballots. Such elections shall be conducted in accordance with the provisions of Section 4100 et seq. of the Elections Code of the State of California, as now exists or may hereafter be amended. This section is enacted under the authority granted by Section 302 of the Charter of the City of Modesto.

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

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



The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 8th day of July, 1997, by Councilmember Friedman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember McClanahan, was upon roll call carried and ordered printed and published by the following vote:

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

APPROVED: 

RICHARD A. LANG, Mayor

ATTEST:

By   
JEAN ADAMS, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

Ord. No. 3051-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 15th day of July, 1997, Councilmember Friedman moved its final adoption, which motion being duly seconded by Councilmember Cogdill, was upon roll call carried and the ordinance adopted by the following vote:

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

APPROVED:   
MAYOR RICHARD A. LANG

ATTEST:   
JEAN ADAMS, City Clerk

Effective Date: August 14, 1997

*Clerk*

ORDINANCE NO. 3052-C.S.

AN ORDINANCE AMENDING SECTION 12-4.202 OF ARTICLE 2 OF CHAPTER 4 OF TITLE XII OF THE MODESTO MUNICIPAL CODE RELATING TO GENERAL REGULATIONS GOVERNING USE OF PARKS.

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

SECTION 1. AMENDMENT OF CODE. Section 12-4.202 of Article 2 of Chapter 4 of Title XII of the Modesto Municipal Code is hereby amended to read as follows:

**SEC. 12-4.202. GENERAL REGULATIONS GOVERNING USE OF PARKS.**

- (a) Except as otherwise authorized by law, it shall be unlawful and an infraction for any person, firm or corporation to do or cause or permit to be done any of the acts hereinafter specified within any park owned or operated by the City of Modesto.
  - (1) To enter or trespass in any area, building or facility which is fenced and locked or enclosed and locked or is posted with a No Trespassing sign.
  - (2) To ride or bring any horse or other similar animal or to propel a vehicle in or upon any area of a park, except those areas specifically provided and designated for such purposes, unless prior written permission is obtained from the Director.
  - (3) To ride a bicycle unless on trails or pathways designated for bicycle use.
  - (4) To drive or operate any motor vehicle in any park in excess of fifteen (15) miles per hour.
  - (5) To park any automobile or other vehicle in any park at any place other than designated parking areas. Places where parking is permitted shall be designated by appropriate signs.

- (6) To drive or operate any automobile, gasoline-powered go-carts, model airplanes, boats or midget cars in any park except in designated areas or unless prior written permission is obtained from the Director.
- (7) To clean, wash, polish or make other than emergency repairs upon any automobile, motorcycle or self-driven vehicle in any park.
- (8) To carry, bring into or ignite, fire or otherwise set off any firearms, air guns, slingshots, firecrackers or fireworks in any park except those fireworks which are part of organized and permitted special events for which prior written permission to use fireworks has been obtained from the Director.
- (9) To make a fire in any park other than in stoves, pits or braziers provided by the City unless prior written permission is obtained from the Director and a permit is obtained from the Air Pollution Control District for burning in open pits.
- (10) To bring into any park any material which will, if spilled or spread, be injurious to the turf or plant growth.
- (11) To cut or remove any wood, turf, rock, tree, flower, shrub, sand or gravel from any park unless prior written permission is obtained from the Director.
- (12) To throw or dispose of in any park any bottles, tin cans, broken glass, paper, clothes, cast iron, rubbish, soil, tree trimmings, garbage, ashes or other debris of any kind except in approved containers provided by the City.
- (13) To remove, damage or destroy any athletic equipment provided by the City, normal wear and tear excepted.
- (14) To move or remove from one location to another any part or parts of field equipment.
- (15) To move or remove from one location to another any equipment used for park maintenance.

- (16) To open or close any valve pertaining to the water mains or sprinkler system or to expose or interfere with any gas pipe, hydrant, stopcock, sewer, catch basin, backflow preventer, or other similar device in any park.
- (17) To cut, break or deface in any way buildings, equipment, grounds or other facilities of any park.
- (18) To wound, kill or catch any bird or other wild animal in any park.
- (19) To indulge in indecent or riotous conduct or language or to otherwise make noises in such a manner as to disturb any picnic, meeting, concert or exhibition in any park.
- (20) To operate a public address system without prior written permission of the Director. This prohibition shall not include the use of small portable radios used to receive regularly broadcasted programs, as long as such radios are operated at such a volume as not to disturb other persons present in the park.
- (21) To disturb or interfere with any employee of the City of Modesto acting within the scope of his employment, or to disturb or interfere with any spectator or participant in any event or activity conducted in any park, or to enter any park for the purpose of committing any such disturbance or interference.
- (22) To camp or lodge in or upon any park unless prior written permission is obtained from the Director.
- (23) To sell refreshments, foodstuffs or novelties in any park or on any street immediately adjacent thereto without the prior written permission of the Director or the City Council.
- (24) To practice, carry on, conduct or solicit for any trade, occupation, business or profession in any park without the prior written permission of the City Council.

- (25) To play or engage in any game or contest in any park except in such places as are specially provided or designated for that purpose.
- (26) To play upon any tennis courts wearing shoes other than those having vulcanized soles and heels, commonly known as tennis shoes.
- (27) To refuse to open any tennis court being used for singles play to doubles play at the end of the set being played when other persons are waiting, unless prior written permission is obtained from the Director.
- (28) To refuse to relinquish any tennis court being used for doubles play at the end of the set being played when other persons are waiting unless prior written permission is obtained from the Director.
- (29) To use any tennis courts for tennis tournaments, team practices or other special events of any kind without the prior written permission of the Director or the City Council.
- (30) To play or engage in the hitting of golf balls in any park, except on driving ranges and golf courses.
- (31) To ride bicycles through any children's playground area.
- (32) To discard lighted or unlighted cigars or cigarettes in children's playground areas.
- (33) To wade or swim in any pool in any park except when supervised.
- (34) To use any park facility for which a charge is now or hereafter made without first having paid the fee requested and having received the required permit.
- (35) To enter any park facility for which a charge is made without first paying the full legal charge made for such entrance unless such entrance is by the consent or permission of the person or persons in charge.

- (36) To use any park facility or equipment which has been reserved or which is indicated by an authorized or official sign to have been reserved without first having received the written permission of the Director.
  - (37) To remove any authorized or official sign indicating that any park facility or equipment is reserved.
  - (38) For any male person to resort to any toilet set apart for women, and for any female person to resort to any toilet set apart for men, provided that this prohibition shall not apply to children accompanied by their father, mother or guardian.
  - (39) It shall be unlawful to climb onto any building or structure in a park not designated for such activity.
  - (40) To possess any container made of glass in any park or to bring, carry or transport any container made of glass into any park except that the sponsor of an organized event may obtain permission from the department to possess glass containers.
  - (41) It shall be unlawful for any person without authority to tear down, deface or destroy any sign posted pursuant to the above sections.
  - (42) It shall be unlawful for any person to consume alcoholic beverages within fifteen (15) feet of an abutting edge of any public parking lot that directly abuts a City park, unless approved in advance in writing by the Director.
- (b) Except as otherwise authorized by law, it shall be unlawful and a misdemeanor for any person, firm or corporation to do or cause or permit to be done any of the acts hereinafter specified within any park owned or operated by the City of Modesto.
- (1) No person shall remain in any park between the hours of 10:00 p.m. and 6:00 a.m. of the following day.
  - (2) The prohibitions contained in Section 12-4.202(b)(1) will not apply to:

- (i) Special use facilities, as may be posted by the department extending use hours;
  - (ii) Any person attending a meeting, entertainment event, recreation activity, dance or similar activity in such park, provided such activity is sponsored or co-sponsored by the department or permit therefor, has been issued by the department;
  - (iii) Any person exiting such park immediately after the conclusion of any activity set forth in Section 12-4.202(b)(2)(ii);
  - (iv) Any peace officer or employee of the City while engaged in the performance of his/her duties.
- (c) The City of Modesto hereby designates all of its public parks as drug-free zones pursuant to and within the meaning of Health & Safety Code Section 11380.5.

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

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



The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 22nd day of July, 1997, 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: None

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: 

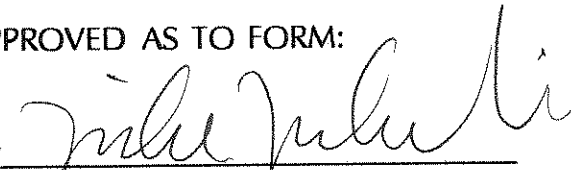
RICHARD A. LANG, Mayor

ATTEST:

By Jean Adams  
JEAN ADAMS, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

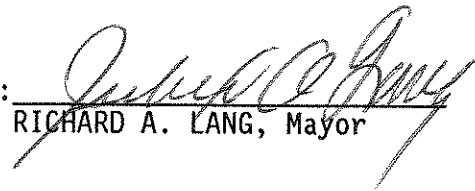
Ord. No. 3052-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 5th day of August, 1997, Councilmember Friedman, moved its final adoption, which motion being duly seconded by Councilmember Dobbs, was upon roll call carried and the ordinance adopted by the following vote:

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

APPROVED:

  
RICHARD A. LANG, Mayor

ATTEST: \_\_\_\_\_  
JEAN ADAMS, City Clerk

Effective Date: September 4, 1997

*Y. K.*

ORDINANCE NO. 3053-C.S.

AN ORDINANCE AMENDING SECTION 4-2.09 OF CHAPTER 2 OF TITLE IV OF THE MODESTO MUNICIPAL CODE RELATING TO DRINKING IN PUBLIC.

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

SECTION 1. AMENDMENT OF CODE. Section 4-2.09 of Chapter 2 of

Title IV of the Modesto Municipal Code is hereby amended to read as follows:

**SEC. 4-2.09. DRINKING IN PUBLIC.**

No person shall drink and/or be in possession of an open container, including, but not limited to, any bottle, can or other receptacle containing any beer, wine or other intoxicating beverage on any public street, sidewalk, alley, playground, or walkway except:

- (a) In the geographic area immediately surrounding a community-wide event which has received the prior written approval of the City Manager which shall specify the boundaries of the exempted area and the duration of the exemption.
- (b) In or on the property of an establishment, business place, outdoor dining area or other location properly licensed for the consumption of alcoholic beverages under the Alcoholic Beverage Control Act of the State of California.

No person shall drink and/or be in possession of an open container containing any intoxicating beverage on any private parking lot held open to the public except for intoxicating beverages dispensed or consumed on a private parking lot pursuant to a license issued for that purpose by the State of California. Nor shall any person drink and/or be in possession of any open container containing any intoxicating beverage on any public parking lot except those that directly abut a City park, and only with advance written approval of the Parks and Recreation Director. This section shall not be deemed to make punishable any act or acts which are prohibited by any law of the State of California.

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

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

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 5th day of August, 1997, by Councilmember Friedman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Dobbs, was upon roll call carried and ordered printed and published by the following vote:

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

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

ATTEST:

By *Jean Adams*  
JEAN ADAMS, City Clerk

(SEAL)

APPROVED AS TO FORM:

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

Ord. No. 3053-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 August, 1997, Councilmember Friedman, moved its final adoption, which motion being duly seconded by Councilmember Dobbs, was upon roll call carried and the ordinance adopted by the following vote:

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

APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:   
JEAN ADAMS, City Clerk

Effective Date: September 11, 1997

ORDINANCE NO. 3054 -C.S.

AN ORDINANCE ADDING CHAPTER 15 ENTITLED "OUTDOOR DINING IN THE PUBLIC RIGHTS-OF-WAY PERMITTED" TO TITLE IV OF THE MODESTO MUNICIPAL CODE.

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

SECTION 1. AMENDMENT OF CODE. Chapter 15 entitled "Outdoor Dining in the Public Rights-of-Way Permitted" is hereby added to Title IV of the Modesto Municipal Code to read as follows:

**CHAPTER 15. OUTDOOR DINING IN THE PUBLIC RIGHTS-OF-WAY PERMITTED**

**ARTICLE 1. OUTDOOR DINING PERMIT REQUIRED.**

**SEC. 4-15.101. OUTDOOR DINING DEFINED.**

Outdoor dining entails the use of City sidewalks and public rights-of-way for the consumption of food or beverages in conjunction with the operation of a bona fide food service establishment properly licensed for such service and which provides on-premises customer seating.

**SEC. 4-15.102. OUTDOOR DINING PERMIT REQUIRED.**

No owner or operator of a business establishment shall occupy any portion of a public sidewalk, court, plaza, alley, or street with tables and chairs for outdoor dining without first obtaining a permit in accordance with the provisions of this article.

**SEC. 4-15.103. AUTHORITY TO ISSUE OUTDOOR DINING PERMITS.**

The Public Works and Transportation Director, or his or her designated representative, is hereby authorized to issue outdoor dining permits, revocable at will, to owners or operators of business establishments for the placement of tables and chairs in the public sidewalk, court, alley or street adjacent to and incidental to the operation of a food service establishment, according to the procedures as set forth in this article. An outdoor dining permit will not be issued where, in the opinion of the

Public Works and Transportation Director, or his or her designated representative, the speed, volume or nearness of vehicular traffic is not compatible with outdoor dining. Issuance will not be unreasonably withheld.

**SEC. 4-15.104. APPLICATION FOR OUTDOOR DINING PERMIT.**

Every owner or operator of a business establishment desiring to place tables and chairs in a public sidewalk, court, alley or street shall first submit an application for the issuance of such a permit to the Public Works and Transportation Department. Each application shall state the name of the applicant, the name and address of the establishment, the proposed area to be occupied by the tables and chairs, and the hours and days that the area is to be so occupied. The application shall be accompanied by a space-use plan which indicates the location, number and arrangement of the tables and chairs to be used, the location of the entrance to the establishment, and the location of any existing sidewalk obstructions in the proposed area to be occupied by the tables and chairs. Trees, traffic signs, benches and all similar obstacles shall constitute obstructions.

**SEC. 4-15.105. ISSUANCE OF OUTDOOR DINING PERMIT.**

If the proposed design and location of the tables and chairs to be used for outdoor dining, as described in the application, conforms to those guidelines set forth by the Public Works and Transportation Director the Public Works and Transportation Director, or his or her designated representative, shall issue an encroachment permit to the applicant.

No permit shall be issued until the permit applicant has paid a one time fee for the permit. The amount of the permit fee is in an amount as shall be set forth from time to time by resolution of the City Council.

Once an encroachment permit is issued by the Public Works and Transportation Director, the permittee shall display a copy of the approved permit within the business establishment in an area clearly visible from the sidewalk.

**SEC. 4-15.106. CONDITIONS AND RESTRICTIONS PERTAINING TO OUTDOOR DINING.**

The issuance of permits by the Public Works and Transportation Director for the use of City sidewalks and public rights-of-way for the



consumption of food or beverages in front of business establishments are subject to the following:

- (a) The outdoor dining area shall leave not less than four (4) consecutive feet of sidewalk width to ensure adequate space for pedestrian traffic on the adjacent sidewalk. The minimum width stated above must be free of all obstacles and obstructions for a clear path of travel. For the purpose of minimum clear path, traffic signs, trees and all similar obstacles shall constitute obstructions. It is the responsibility of the permittee to keep this sidewalk pedestrian zone clear and unimpeded for pedestrian movement. The specific requirements for this minimum clear path are set out on a diagram available to the applicant from the Public Works and Transportation Department.
- (b) Outdoor dining areas may not intrude on pedestrian "clear zones" at corners and thus must be set back a minimum of six (6) feet from any crosswalk. The outdoor dining area must not interfere with curbs, ramps or driveways. No element of the outdoor dining area may interfere with access to any building including all paths of travel or exit.
- (c) When the sidewalk area is not in use for seating and service, all removable fixtures (i.e. chairs, planters, tables, etc.) shall be stored inside the restaurant premises.
- (d) The outdoor dining area must remain clear of litter at all times. The permittee shall maintain the tables and chairs in the permitted outdoor dining area in a clean condition at all times.
- (e) Outdoor dining areas must conform to and comply with all relevant regulations in the Modesto Municipal Code and all applicable building laws including state laws and regulations.
- (f) Tables, chairs, and customers shall be confined to the area shown on the application submitted by the permittee.

#### SEC. 4-15.106. INSURANCE.

Each outdoor dining permittee shall provide the City Clerk with evidence of insurance coverage in the amount and form as approved by the City's Risk Manager. Such amounts shall be set forth from time to time by resolution of the City Council.

**ARTICLE 2. ALCOHOLIC BEVERAGE RESTRICTIONS  
APPLICABLE TO OUTDOOR DINING AREAS.**

**SEC. 4-15.201. ALCOHOLIC BEVERAGE RESTRICTIONS.**

The service of alcoholic beverages shall be restricted solely to on-premises consumption by customers within the outdoor dining area. Each of the following standards apply to outdoor dining areas which provide alcoholic beverage service:

- (a) The outdoor dining area must be clearly and physically separated from pedestrian traffic. All barriers, railings or fences placed around a sidewalk cafe whether moveable or permanent, affixed and contiguous to the sidewalk and in place during hours of operation to clearly define the area. The spacing, if any, between barriers, railings, fences or planters must prevent pedestrian traffic through them. Landscaping can be either in planters or planted in the ground. In order to maximize visual access and pedestrian safety, the height of the railing, barrier or planter, with its planted material, shall not be less than four (4) feet;
- (b) The business operator shall post a written notice to customers that the drinking or carrying of an open container of alcohol is prohibited outside the outdoor dining area;
- (c) The outdoor dining area operation must be duly licensed by the State Department of Alcoholic Beverage Control, and the City of Modesto requirements and restrictions for the service of alcoholic beverages in outdoor dining areas shall not be less than those required by the State Department of Alcoholic Beverage Control; and
- (d) Any and all exits from the bona fide food service establishment to be used for the service of alcoholic beverages to the outdoor dining area must be included in the encroachment granted by the permit issued pursuant to this chapter.

**SEC. 4-15.202. OUTDOOR DINING PERMIT NOT DEED OR EASEMENT.**

Permission to encroach upon a portion of a public sidewalk with tables and chairs granted under this chapter shall not constitute a deed or grant of an easement by the City.

**SEC. 4-15.203. SUSPENSION OR REVOCATION OF OUTDOOR DINING PERMIT.**

The outdoor dining permit granted under this chapter shall be subject to suspension or revocation by the Public Works and Transportation Director when the permittee violates any of the restrictions and conditions set forth in this chapter, or any rule or regulation of the Public Works and Transportation Director adopted in pursuance of the provisions of this chapter. The outdoor dining permit shall be automatically suspended upon the termination of the insurance required under Section 4-15.105 of this chapter. Upon termination of the insurance required under Section 4-15.105, permittee agrees to indemnify and hold the City of Modesto, its officers, agents and employees free and harmless from any and all damages, costs, charges or liability of any kind or character that may arise out of, relate to, or in any way be connected with the exercise of the rights granted pursuant to the issuance of the encroachment permit.

The City of Modesto must notify the State Department of Alcoholic Beverage Control of any suspension or revocation of an outdoor dining permit granted under this chapter.

**ARTICLE 3. PROTEST AND APPEAL PROCESS.**

**SEC. 4-15.301. PROTEST ISSUANCE OF PERMIT.**

Any person or persons who deem their interests or property, or that of the general public, will be adversely affected by the occupancy of a public sidewalk, court, alley or street with tables and chairs for outdoor dining and for which permission has been applied for under the provisions of this chapter, may protest the issuance of said permit by writing to the Public Works and Transportation Director within thirty (30) calendar days after the applicant has posted the outdoor dining permit as required under Section 4-15.105 of this chapter. Upon receipt of any such protest, the Public Works and Transportation Director will schedule a hearing to hear all protests or oppositions to the issuance of an outdoor dining permit.

**SEC. 4-15.302. DENIAL OF PERMIT.**

Upon denial of a permit by the Public Works and Transportation Director, an applicant may, within fifteen (15) calendar days following

notification of such denial, file a notice of appeal to the City Council, who shall then hear all appeals concerning the application for permit.

#### **ARTICLE 4. PENALTIES.**

##### **SEC. 4-15.401. PENALTIES.**

The placement of tables and chairs on a public sidewalk or other public right-of-way without a permit issued in compliance with this chapter shall constitute an infraction punishable by a fine of one hundred (\$100.00) dollars. The nonpayment of such fine, or the continued existence of a condition in violation of this chapter, shall be grounds for the Public Works and Transportation Director to prohibit placement of tables and chairs by the responsible owner or operator of the fronting business establishment until such penalty has been paid or the condition corrected.

##### **SEC. 4-15.402. REMOVAL OF TABLES AND CHAIRS.**

Any tables and chairs placed in or upon the public sidewalk or rights-of-way without a validly issued permit may be seized and removed pursuant to this section. The City of Modesto shall issue a notice to the owner or operator of the business establishment fronting on the sidewalk from which the tables and chairs are to be removed before such tables and chairs are seized. The owner or operator of the business establishment shall be given ten (10) business days in which to remedy the violation. If the responsible party does not remedy the violation and apply for and obtain an outdoor dining area permit within the time prescribed, the City may seize and remove the tables and chairs.

Any other provisions of this chapter notwithstanding, if tables and chairs are placed in the public sidewalk or in or upon the public sidewalk or rights-of-way in such a manner as to pose an immediate and serious danger to persons or property, the City may seize such tables and chairs without prior notice to the person responsible for such tables and chairs if it is impractical to remedy the danger by moving the tables and chairs to another point on the sidewalk or public right-of-way.

The responsible party shall be notified promptly of such seizure of tables and chairs and shall have the right to request an informal hearing before a designated City official within ten (10) business days after such notification to determine whether the seizure was proper. All tables

and chairs seized pursuant to this section shall be retained by the City and may be recovered as provided herein.

As a condition of recovering outdoor dining tables and chairs properly seized pursuant to this section, the person responsible for such tables and chairs shall pay an impound fee covering the actual cost to the City of transporting and storing the outdoor dining tables and chairs.

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

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

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 5th day of August, 1997, by Councilmember Friedman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Dobbs, was upon roll call carried and ordered printed and published by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: Fisher

APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:

By   
JEAN ADAMS, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

Ord. No. 3054-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 August, 1997, Councilmember Friedman, moved its final adoption, which motion being duly seconded by Councilmember Dobbs, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Cogdill, Fisher, Friedman, McClanahan, Serpa,  
Mayor Lang

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:

  
RICHARD A. LANG, Mayor

ATTEST:

  
JEAN ADAMS, City Clerk

Effective Date: September 11, 1997

Clerk

ORDINANCE NO. 3055-C.S.

AN ORDINANCE AMENDING SECTION 3-1.101 OF ARTICLE 1 OF CHAPTER 1 OF TITLE III OF THE MODESTO MUNICIPAL CODE RELATING TO FIRE CODE AND HAZARDOUS MATERIALS.

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

SECTION 1. AMENDMENT OF CODE. Section 3-1.101 of Article 1 of Chapter 1 of Title III of the Modesto Municipal Code is hereby amended to read as follows:

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

- (a) That certain document, three (3) copies of which are on file in the Office of the City Clerk of the City of Modesto, being marked and designated as "Uniform Fire Code, 1994 Edition," together with appendices I-C, II-B, II-E, II-F, II-I, III-A, IV-A, V-A, VI-A, VI-B, VI-C, VI-D, VI-E, VI-F, and VI-G thereto, as adopted and revised from time to time by the International Fire Code Institute, and as compiled and published by the International Conference of Building Officials, the Western Fire Chiefs' Association, and the Association of International Fire Chiefs, which Code prescribes regulations governing conditions hazardous to life and property from fire and explosion, as hereinafter amended, deleted and added to, be and the same is hereby adopted by reference as the Fire Code of the City of Modesto for the protection of the public health and safety.
- (b) WHEREAS, amendment of the 1994 Edition of the Uniform Fire Code, to provide more stringent standards for fire extinguishing systems, fire hazard and hazardous materials controls is necessary to serve the public interest by reducing the risk to life and property of the citizens of Modesto because of the following local conditions:
  - (1) Summer weather conditions are very dry, hot and windy causing ordinary combustibles to be easily ignited and fires to be fast spreading.



- (2) Very dense fog conditions occur in winter. Reduced visibility causes delays in fire response.
- (3) Fire response is delayed by railroad tracks which:  
  
divide the City from northeast between Tully Road and McHenry Avenue to the west side of Ninth Street.  
  
run parallel to Highway 99 through the City, restricting response at locations where overpasses are not provided.  
  
run parallel to Yosemite Boulevard restricting access to the airport, Tuolumne Regional Park and adjacent areas.  
  
restrict access at intersections and streets in the areas of Ninth, Tenth, D and E Streets.
- (4) Modesto Irrigation Canal #3 restricts access to the neighborhoods and developments to the north and east of Briggsmore Avenue from Oakdale Road to Claus Road.

NOW, THEREFORE, for the above reasons taken individually and cumulatively and in accordance with the authority granted in Sections 17958.5 and 17958.7 of the California Health and Safety Code, the Council of the City of Modesto expressly finds that there are local climatic, and topographical conditions that make the increased fire protection requirements set forth in this ordinance reasonably necessary.

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 August, 1997, by Councilmember Friedman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Dobbs, was upon roll call carried and ordered printed and published by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:

By   
JEAN ADAMS, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney


Ord. No. 3055-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 26th day of August, 1997, Councilmember Serpa, moved its final adoption, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and the ordinance adopted by the following vote:

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

APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:   
JEAN ADAMS, City Clerk

Effective Date: September 25, 1997

Clerk

ORDINANCE NO. 3056 -C.S.

AN ORDINANCE AMENDING SECTION 2 OF ORDINANCE NO. 2957-C.S. ENTITLED "AN ORDINANCE AMENDING SECTION 7-3-9 OF THE ZONING MAP TO REZONE FROM LOW DENSITY RESIDENTIAL ZONE, R-1, TO PLANNED DEVELOPMENT ZONE, P-D(510), PROPERTY LOCATED ON THE WEST SIDE OF CARVER ROAD SOUTH OF STANDIFORD AVENUE, 3401 CARVER ROAD (ISADORE KURLAND)." (DR. MAHER ABADIR)

SECTION 1. AMENDMENT OF ORDINANCE NO. 2957-C.S. Section 2 of

Ordinance No. 2957-C.S. is hereby amended to read as follows:

"SECTION 2. USES. The following uses shall be permitted in said P-D(510) 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. Church facilities.
- 2. Off-street parking as shown on the approved plan.

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

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

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 19th day of August, 1997, by Councilmember Friedman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember McClanahan, was upon roll call carried and ordered printed and published by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:

  
RICHARD A. LANG, Mayor

ATTEST:

By Jean Adams  
JEAN ADAMS, City Clerk

(SEAL)

APPROVED AS TO FORM:

By Mike Milich  
MICHAEL D. MILICH, City Attorney

Ord. No. 3056-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 26th day of August, 1997, Councilmember Friedman moved its final adoption, which motion being duly seconded by Councilmember McClanahan, was upon roll call carried and the ordinance adopted by the following vote:

AYES:	Councilmembers:	Cogdill, <sup>Dobbs</sup> /Fisher, Friedman, McClanahan, Serpa, Mayor Lang
NOES:	Councilmembers:	None
ABSENT:	Councilmembers:	None

APPROVED:   
MAYOR RICHARD A. LANG

ATTEST:   
JEAN ADAMS, City Clerk

Effective Date: September 25, 1997

ORDINANCE NO. 3057-C.S.

AN ORDINANCE APPROVING TEN (10) DEVELOPMENT AGREEMENTS BETWEEN THE CITY OF MODESTO AND CERTAIN PROPERTY OWNERS IN THE PELANDALE/SNYDER SPECIFIC PLAN AREA, LOCATED ON THE SOUTH SIDE OF PELANDALE AVENUE EAST OF DALE ROAD, NORTH OF SNYDER AVENUE AND M.I.D. LATERAL NO. 6 IN MODESTO, CALIFORNIA, RELATING TO THE PROVISION OF CITY SEWER SERVICE TO THESE PROPERTIES.

WHEREAS, a request for Development Agreements has been filed by Neumiller and Beardslee for specific property owners in the Pelandale/Snyder Specific Plan Area, to be located on the south side of Pelandale Avenue east of Dale Road, north of Snyder Avenue and M.I.D. Lateral No. 6 in Modesto, California, and

WHEREAS, the Pelandale-Snyder Specific Plan was approved by the Modesto City Council on January 16, 1996, by Resolution No. 96-19, and

WHEREAS, a public hearing was held by the Stanislaus County Local Agency Formation Commission (LAFCO) on March 27, 1996, in the County Commission Chambers, 1100 H Street, Modesto, California, at which hearing annexation of the Pelandale/Snyder Specific Plan Area was approved, and

WHEREAS, a public hearing was held by the Modesto City Council on June 4, 1996, in the City Council Chambers, at which hearing the annexation of the Pelandale/Snyder Area was ordered by the Modesto City Council, and

WHEREAS, a Measure "A" vote was not required for this area, as the area was annexed prior to extending sewer service to the area, and the effective date of the Pelandale/Snyder

Reorganization was July 9, 1996, by Instrument No. 96-0055231-00,  
and

WHEREAS, to date, sewer service has not been extended  
to this area, and no development has yet occurred, and

WHEREAS, specific property owners in the Pelandale-  
Snyder Specific Plan Area have submitted Development Agreements  
for their properties for the purpose of allowing the City to  
provide sewer service to their properties, and

WHEREAS, the Planning Commission held a duly noticed  
public hearing on May 19, 1997, and after said public hearing,  
the Planning Commission, by Resolution No. 97-44, recommended to  
the City Council Development Agreements between the City of  
Modesto and specific owners of property in the Pelandale/Snyder  
Specific Plan Area, and

WHEREAS, a duly noticed public hearing was held by the  
City Council on August 26, 1997, to consider the proposed  
Development Agreements between the City of Modesto and specific  
property owners in the Pelandale/Snyder Specific Plan Area, to be  
located on the south side of Pelandale Avenue east of Dale Road,  
north of Snyder Avenue and M.I.D. Lateral No. 6 in Modesto,  
California, and

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

WHEREAS, said Government Code Section further provides  
that a development agreement shall not be approved unless the



legislative body finds that the provisions of the agreement are consistent with the general plan and any applicable specific plan,

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

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

- a. That the proposed Development Agreements are consistent with the Modesto Urban Area General Plan and the Pelandale/Snyder Specific Plan as well as subdivision and zoning provisions of the Modesto Municipal Code and Government Code Sections 65864 et seq.
- b. The Pelandale/Snyder Specific Plan EIR (adopted January 16, 1996 - State Clearing House No. 93042004) adequately describes the project for purposes of CEQA. (Section 15162 State CEQA Guidelines)
- c. No substantial changes are proposed in the Pelandale/Snyder Specific Plan because there is no involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects. (Section 15162(a)(1) State CEQA Guidelines)
- d. No substantial changes have occurred with respect to circumstances under which the Pelandale/Snyder Specific Plan is undertaken which will require major revisions of the previous EIR because there is no involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects. (Section 15162(a)(2) State CEQA Guidelines)
- e. There is no new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete. (Section 15162(a)(3) State CEQA Guidelines)

SECTION 2. APPROVAL OF TEN (10) DEVELOPMENT

AGREEMENTS. Development Agreements between the City of Modesto and ten (10) specific property owners, listed below, in the Pelandale/Snyder Specific Plan Area, to be located on the south side of Pelandale Avenue east of Dale Road, north of Snyder Avenue and M.I.D. Lateral No. 6 in Modesto, California, are hereby approved. A copy of each Development Agreement is on file in the Office of the City Clerk, and following is a list of said property owners and Assessor's Parcel Numbers:

Name	Property (APN No.)
1. Marvin G. Dole, Gail C. Dole, Dale H. Nagel, and Carol A. Nagel	46-03-02
2. The Roger Lee Gish and Mary Alice Gish 1991 Trust	46-07-07
3. The Walker Family Partnership	46-07-09
4. The Verna Mae Johnson Revocable Living Trust	46-07-11
5. William P. Couture, et al	46-07-12
6. Red Rock Ranch	46-07-14
7. T.R.S. Enterprises, Inc.	78-18-06
8. Vossoughi Investments	78-18-07
9. The Franklin and Christina Van Konynenburg Family Trust and the Leachman Brothers Trust of 1992	78-18-12, 13
10. Clarence J. DeBoer, Rosa DeBoer, Nancy Elaine Berner, Gerald Clarence DeBoer, Doris Irene Goldson, and Barbara Jeanne Ortman	78-18-22

SECTION 3. EXECUTION BY CITY. The City Manager or his authorized designee are hereby authorized to execute said ten (10) Development Agreements, listed above, on behalf of the City of Modesto.

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

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

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

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 26th day of August, 1997, by Councilmember Friedman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Cogdill, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Cogdill, Dobbs, Friedman, Mayor Lang  
NOES: Councilmembers: Fisher, McClanahan, 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

Ord. No. 3057-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 September, 1997, 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: Dobbs, Fisher, Friedman, Mayor Lang  
NOES: Councilmembers: McClanahan, Serpa  
ABSENT: Councilmembers: Cogdill

APPROVED:

  
RICHARD A. LANG, Mayor

ATTEST:

  
JEAN ADAMS, City Clerk

Effective Date: October 9, 1997

Clerk

ORDINANCE NO. 3058 -C.S.

AN ORDINANCE AMENDING CHAPTER 12 OF TITLE IV 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 IV of the Modesto Municipal Code is hereby amended to read as follows:

**CHAPTER 12. COMMUNITY PRESERVATION**

**ARTICLE 1. ADMINISTRATIVE REMEDIES**

**SEC. 4-12.100. FINDINGS; APPLICABILITY.**

- (a) The Modesto City Council finds that existing procedures for correcting violations of Title IV and Title X of this code can be cumbersome, time-consuming, and needlessly expensive for all parties. To provide a streamlined, convenient, alternative procedure with respect to such code violations, this chapter adopts an administrative approach to those issues.

This chapter provides for administrative remedies, which are in addition to all other legal remedies, criminal or civil, which may be pursued by the City to address any violation of Titles IV and X of this Code.

- (b) Use of this chapter shall be at the sole discretion of the City.

**ARTICLE 2. DEFINITIONS**

**SEC. 4-12.200. DEFINITIONS USED WITHIN THIS CHAPTER.**

- (a) "**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.
- (b) For purposes of this chapter and except where otherwise indicated, "**Director**" means the head of the Community

Development Department, the Police Chief, the Fire Chief, the Public Works and Transportation Director, and the Parks and Recreation Director, as appropriate to their respective jurisdictions under this code, or the Director's designee. Written designation shall not be required. Such designees may be referred to as "enforcement officers".

- (c) "**Enforcement officer**" means a City employee designated by any Director to enforce the provisions of Title IV or Title X of this code. Such employees may be employed in any City department.
- (d) "**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.
- (e) "**Penalty**" shall mean a nonpenal sum in the nature of a quasi-contractual obligation payable upon administrative determination that a person is a violator.
- (f) "**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.
- (g) "**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.
- (h) "**Responsible party**" means any person or entity having control of or responsibility for real property sufficient to require or permit remediation of a violation. A responsible party may be a property owner.
- (i) "**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.

- (j) **"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.
- (k) **"Violation"** shall mean a violation of Title IV or Title X of this code by any property owner or any responsible party.
- (l) **"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.

### ARTICLE 3. CIVIL ADMINISTRATIVE REMEDIES

#### SEC. 4-12.300. ADMINISTRATIVE CITATION AND COMPLIANCE ORDER; ADMINISTRATIVE PENALTY.

- (a) Whenever an enforcement officer determines that a violation is occurring or exists, the enforcement officer may issue a written citation and compliance order to any person responsible for the violation.
- (b) A citation and compliance order issued pursuant to this chapter shall contain the following information:
  - (1) The date and location of the violation and the approximate time the violation was observed;
  - (2) The section of this Code violated and a description of the violation, where violations are caused by human conduct or inaction occurring on or near residential real property, the compliance order shall state with particularity the behaviors which constitute the nuisance, including, where applicable, addresses and unit numbers of the person(s) allegedly causing the nuisance;
  - (3) The actions ordered by the enforcement officer to correct the violation;



- (4) The time period after which administrative penalties will begin to accrue if compliance with the order has not been achieved. In all cases, this time period must be reasonable in light of all the circumstances of an individual case;
- (5) The maximum administrative penalty that may be imposed for all violations of Title IV and Title X of the Modesto Municipal Code.
- (6) A statement advising the owner or responsible party as follows: The amount of the administrative penalty to be imposed shall be set by the department head or his/her designee responsible for issuing the administrative penalty order. Each day a violation continues or occurs constitutes a separate violation. In determining the amount of the administrative penalty to be imposed, the City official shall consider factors including but not limited to the seriousness of the violation, the responsible party's efforts to correct the violation, the injury or damage, if any, suffered by any member of the public, any instances in which the responsible party has been in violation of the same or similar code provisions in the previous three years, the amount of City staff time which was expended investigating or addressing the violation, and the amount of administrative penalties which have been imposed in similar situations. The responsible party shall be subject to an administrative penalty according to the following schedule:
  - (a) First violation within a twelve (12) month period shall be an administrative penalty of one hundred (\$100.00) dollars to five hundred (\$500.00) dollars for each day a violation continues or occurs;
  - (b) Second violation within a twelve (12) month period shall be an administrative penalty of two hundred (\$200.00) dollars to one thousand (\$1,000.00) dollars for each day a violation continues or occurs;
  - (c) Third violation within a twelve (12) month period shall be an administrative penalty of five hundred (\$500.00) dollars to two thousand five hundred

(\$2,500.00) dollars for each day a violation continues or occurs.

- (7) An explanation of the consequences of noncompliance with this chapter and a description of the hearing procedure and appeal process;
- (8) A statement advising the owner that an administrative penalty in an amount not to exceed two thousand five hundred (\$2,500.00) dollars per day, and the maximum penalty shall not exceed one hundred thousand (\$100,000.00) dollars, may be imposed upon the owner or responsible party, or both, and made a lien on the property involved if the nuisance or condition is not abated as required by the compliance order and no written request for hearing is filed within thirty (30) days of receipt of the citation notice;
- (9) A statement advising the owner that he or she has the right to request a hearing to contest the citation, order and the imposition of the administrative penalty;
- (10) A statement, where applicable, advising the owner or responsible party that they may not improperly retaliate against any tenant because the City has instituted proceedings under this ordinance.
- (11) A statement, where applicable, that in responding to the compliance order, the owner or responsible party should comply with all applicable federal, state and local regulations relating to evictions and prohibitions against discrimination.

#### SEC. 4-12.301. METHOD OF SERVICE.

- (a) Written notice shall be given by personal service where practical, or mailed by certified mail, return receipt requested to the property owner and/or to a responsible party if one exists and is identifiable at the address as shown on the last equalized County assessment roll.
- (b) Where personal service or service by mail upon the property owner and/or responsible party for the violation is unsuccessful,

a copy of the order shall be conspicuously posted at the property which is the subject of the order.

- (c) The failure of any person to receive any notice required under this chapter shall not affect the validity of any proceedings taken under this chapter.

#### ARTICLE 4. HEARING

##### SEC. 4-12.400. HEARING.

- (a) If the enforcement officer determines that all violations have been corrected within the time specified in the compliance order, no further action shall be taken.
- (b) If full compliance is not achieved within the time specified in the compliance order, and the Director receives a written appeal from an allegedly responsible party within that time, the Director shall set a hearing before a hearing officer. Otherwise, the compliance order shall be final, except for appropriate assessment of administrative penalties and costs against an owner or responsible party, which assessment may be appealed and heard by a hearing officer if the appeal is received by the Director within thirty (30) days after service of notice of the assessment.
- (c) The hearing officer shall cause a written notice of hearing to be served by personal service or certified mail, return receipt requested, on the property owner at the address as it appears on the last equalized County assessment roll available on the date the notice is prepared, and may cause the notice to be served on the responsible party, if any. Notice to a responsible party shall be deemed notice to a property owner and vice versa.

##### SEC. 4-12.401. NOTICE OF HEARING.

- (a) Every notice of hearing on a compliance order shall contain the date, time and place at which the hearing shall be conducted by the hearing officer, and a copy of the order and any amendments or supplements to the order.
- (b) Each hearing shall be set for a date not less than twenty (20) days nor more than sixty (60) days from the date the notice of

hearing is personally served or mailed unless the Director determines that the matter is urgent or that good cause exists for an extension of time.

- (c) The hearing is intended to provide a full opportunity for a person subject to a compliance order to object to the determination that a violation has occurred and/or that the violation has continued to exist. The failure of any person subject to a compliance order, pursuant to this chapter, to appear at or participate in good faith at the hearing shall constitute a failure to exhaust administrative remedies, and result in the compliance order becoming final.

#### SEC. 4-12.402. HEARING CONDUCT, FINDINGS AND ORDER.

- (a) At the place and time set forth in the notice of hearing, the hearing officer shall proceed to hear the testimony of City staff. The compliance order and any amendments or addenda thereto which have previously been provided to the cited party pursuant to this Code shall be accepted as prima facie evidence of the matters contained in them whether or not City staff is present at the hearing. The hearing officer will then hear the testimony and receive the evidence of the cited party. General rules of procedure are set forth below:
  - (1) The hearing officer may accept all evidence tending to be probative of one or more material facts, whether offered by either party, and whether or not subject to hearsay, privilege or other objections, and shall give all such evidence the appropriate evidentiary weight based upon its apparent trustworthiness and validity. The material facts to be determined are whether or not there was an existing violation on or after the time specified in the compliance order for remediation of a violation, and whether or not the cited appellant is a violator.
  - (2) The hearing officer may administer an oath to all witnesses, and all proceedings may be undertaken pursuant to oath.
  - (3) The hearing officer may grant continuances from time to time for good cause shown at the hearing.

- (4) The proceedings at the hearing may be recorded by tape recorder. Either party may provide a certified shorthand reporter to maintain a record of the proceedings at that party's expense.
  - (5) The hearing officer may take official notice, either before or after submission of the case for decision, of any fact which may be judicially noticed by the courts of this state or which may appear in any of the official records of the City.
  - (6) The hearing officer may inspect the location or site of the violation.
  - (7) The hearing officer may continue the hearing and request additional information from either or both the enforcement officer and the cited party whether outside the presence of the other or not prior to issuing a written decision.
- (b) Within fifteen (15) days following the conclusion of the hearing, the hearing officer shall make findings and issue a determination regarding:
- (1) The existence of each alleged violation;
  - (2) Whether the person cited is a violator;
  - (3) The failure of the violator to take required corrective action within the required time period.
- (c) The hearing officer shall issue written findings on each violation. The findings shall be supported by evidence received at the hearing.
- (d) If the hearing officer finds by a preponderance of the evidence that a violation has occurred and that the violation was not corrected within the time period specified in the compliance order, and that the person cited is a violator, the hearing officer shall issue an administrative order.
- (e) If the hearing officer finds that no violation has occurred or that the violation was corrected within the time period specified in the compliance order, or that the appellant is not a violator, the hearing officer shall issue a finding of those facts.

## ARTICLE 5. ADMINISTRATIVE ORDER

### SEC. 4-12.500. ADMINISTRATIVE ORDER.

If the hearing officer makes the findings indicated in Section 4-12.402(d), that officer shall issue an administrative order in accordance with Section 4-12.402 which imposes any or all of the following:

- (a) An order to correct or abate, including a schedule for correction or abatement where appropriate;
- (b) Administrative penalties as provided in Section 4-12.501;
- (c) Administrative costs as provided in Section 4-12.502;
- (d) Abatement by City where appropriate as set forth in Section 4-12.803.

### SEC. 4-12.501. ADMINISTRATIVE PENALTIES.

- (a) The hearing officer may impose administrative penalties for the violation of any provision of this Code in an amount not to exceed a maximum of two thousand five hundred (\$2,500.00) dollars per day for each ongoing violation, except that the total administrative penalty shall not exceed one hundred thousand (\$100,000.00) dollars exclusive of administrative costs, interest and restitution for compliance re inspections, for any related series of violations.
- (b) In determining the amount of the administrative penalty, the hearing officer may take any or all of the following factors into consideration:
  - (1) The duration of the violation;
  - (2) The frequency, recurrence and number of violations, related or unrelated, by the same violator;
  - (3) The seriousness of the violation;
  - (4) The good faith efforts of the violator to come into compliance;

- (5) The economic impact of the penalty on the violator;
  - (6) The impact of the violation on the community;
  - (7) Such other factors as justice may require.
- (c) Administrative penalties imposed by the hearing officer shall accrue from the date specified in the compliance order and shall cease to accrue on the date the violation is corrected as determined by that officer.
- (d) The hearing officer has discretion to suspend the imposition of applicable penalties for any period of time during which:
- (1) The violator has filed for necessary permits; and
  - (2) Such permits are required to achieve compliance; and
  - (3) Such permit applications are actively pending before the City, State or other appropriate governmental agency.
- (e) Administrative penalties assessed by the hearing officer shall be due on and after the date specified in the administrative order.
- (f) If the violation is not corrected as specified in the hearing officer's order to correct, administrative penalties shall continue to accrue on a daily basis until the violation is corrected, subject to the maximum amount set forth in Section 4-12.501(a) above.
- (g) If the violator gives written notice to the Director that the violation has been corrected and if the Director finds that compliance has been achieved, the Director shall deem the date the written notice was postmarked or personally delivered to the Director or the date of the final inspection, whichever first occurred, to be the date the violation was corrected. If no written notice is provided to the Director, the violation will be deemed corrected on the date of the final satisfactory inspection. The Director shall notify the hearing officer of the date of compliance. Thereafter, the hearing officer may modify any previous administrative order to accurately reflect the intended administrative penalty.

**SEC. 4-12.502. ADMINISTRATIVE COSTS.**

- (a) The hearing officer shall assess administrative costs against the violator when it is found that a violation has occurred and that compliance has not been achieved within the time specified in the compliance order.
- (b) The administrative costs may include any and all costs incurred by the City in connection with the matter before the hearing officer including, but not limited to, costs of investigation, employee wage and benefit costs incurred in preparation for the hearing and for the hearing itself, and costs for all reinspections necessary to enforce the compliance order.

**SEC. 4-12.503. FAILURE TO COMPLY WITH ADMINISTRATIVE COMPLIANCE ORDER.**

Failure to pay the assessed administrative penalties and administrative costs specified in the administrative order of the hearing officer may be enforced as:

- (a) A personal obligation of the violator that is quasi-contractual in nature as if the quasi-contract provided for reasonable attorneys' fees and costs to the prevailing party; and/or
- (b) By means of a lien upon the real property upon which the violation occurred pursuant to the lien procedure in Sections 4-12.700 and 4-12.701. The lien shall remain in effect until all of the administrative penalties, interest and administrative costs are paid in full.

**SEC. 4-12.504. RIGHT OF JUDICIAL REVIEW.**

Any person aggrieved by an administrative order of the hearing officer may obtain review of the administrative order in the Superior Court by filing with the court a petition for writ of mandate pursuant to Section 1094.5 of the California Code of Civil Procedure.



## ARTICLE 6. COMPLIANCE

### SEC. 4-12.600. REPORT OF COMPLIANCE.

The Director, responsible party, or property owner may report the date of compliance with the administrative order to the hearing officer for the purposes of preventing further accumulation of an administrative penalty.

### SEC. 4-12.601. COMPLIANCE DISPUTE.

- (a) If the Director does not file a document with the hearing officer pursuant to Section 4-12.600 above, a violator who believes that compliance has been achieved may request a compliance hearing before the hearing officer.
- (b) The hearing shall be noticed and conducted in the same manner as a hearing on a compliance order provided in Sections 4-12.401 through 4-12.402 of this chapter.
- (c) At the hearing, the officer shall determine if compliance has been achieved and, if so, when it was achieved. If the officer determines that compliance has been achieved, administrative penalties shall not accrue beyond the compliance date. The decision of the hearing officer shall be final, subject only to writ of mandate.

## ARTICLE 7. LIEN PROCEDURE

### SEC. 4-12.700. LIEN PROCEDURE.

- (a) Whenever the amount of any administrative penalty and/or administrative cost imposed by the hearing officer pursuant to this chapter in connection with real property has not been satisfied in full within ninety (90) days after it becomes due and/or has not been successfully challenged by a timely writ of mandate, this obligation may constitute a lien against the real property on which the violation occurred.
- (b) The lien provided herein shall have no force and effect until recorded with the County Recorder. Once recorded, the administrative order shall have the force and effect and priority of a judgment lien governed by the provisions of Section 697.340 of

the Code of Civil Procedure and may be extended as provided in Sections 683.110 to 683.220, inclusive, of the Code of Civil Procedure.

- (c) Interest shall accrue on the principal amount of the lien remaining unsatisfied pursuant to law.
- (d) Prior to recording any such lien, the hearing officer shall prepare and file with the City Clerk a document stating the amounts finally due and owing.

#### **SEC. 4-12.701. RECORDING OF LIEN.**

Within thirty (30) days following receipt of the information in Section 4-12.700(d) the City Clerk shall file the same as a judgment lien in the Office of the County Recorder of Stanislaus County, California.

#### **SEC. 4-12.702. SATISFACTION OF LIEN.**

Once payment in full is received by the City for outstanding penalties and costs, the Finance Director shall so advise the City Clerk who shall either record a notice of satisfaction or provide the property owner or financial institution with a notice of satisfaction so they may record the notice with the Office of the County Recorder. Such notice of satisfaction shall cancel the City's lien.

### **ARTICLE 8. ABATEMENT OF PUBLIC NUISANCE**

#### **SEC. 4-12.800. PUBLIC NUISANCE DEFINED.**

Except as may otherwise be allowed by the Modesto Municipal Code, it is unlawful for any person to allow any condition 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.

#### **SEC. 4-12.801. ABATEMENTS - DECLARATION OF PURPOSE.**

The Council finds it necessary to establish appropriate procedures for the administrative and summary abatement of public nuisances and code violations. The procedures established in these sections 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 code violations. These sections govern all other nuisance abatement procedures established in other chapters of the Municipal Code unless other procedures are specifically stated to apply.

**SEC. 4-12.802. AUTHORITY.**

Any condition caused, maintained or permitted to exist in violation of any provisions of this Municipal Code which constitutes a public nuisance may be abated by the City pursuant to the procedures set forth herein. A public nuisance is anything which is injurious to health, or is indecent, or is offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property.

**SEC. 4-12.803. GENERAL PROCEDURES.**

**(a) Abatement of nuisance by compliance order.**

- (1) When an enforcement officer determines that public or private property or any portion of public or private property has a public nuisance as generally defined in the next preceding section or as declared in any other section of the Municipal Code on it, a compliance order may be issued to the owner or responsible person to abate the public nuisance.
- (2) The compliance order shall in addition to all other required provisions of a compliance order, refer to specific violations of the Municipal Code which render the property a public nuisance.
- (3) The compliance order shall describe the actions required to abate the public nuisance which may include, but are not limited to: corrections, repairs, clean-up, removal, vacation of tenants or occupants or other appropriate action, and shall establish time frames by which each action must occur.
- (4) The enforcement officer shall set reasonable time frames for all violations to have been corrected by the property owner and/or responsible party.

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- (3) The compliance order shall describe the actions required to abate the public nuisance which may include, but are not limited to: corrections, repairs, clean-up, removal, vacation of tenants or occupants or other appropriate action, and shall establish time frames by which each action must occur.
- (4) The enforcement officer shall set reasonable time frames for all violations to have been corrected by the property owner and/or responsible party.

- (5) If full compliance is not achieved and a written appeal not received by the Director within the time specified in the order, the compliance order shall be final. If a timely appeal is received, the Director shall set a hearing before a hearing officer in accordance with Sections 4-12.401 through 4-12.503.

**(b) Abatement of a public nuisance by the City.**

- (1) Once a compliance order has become final, or a hearing officer has issued an administrative order including the finding that abatement by City is appropriate under Section 4-12.500(d), the nuisance conditions may be abated forthwith by City personnel or by City's private contractor.
- (2) City personnel or a private contractor can enter upon private property in a reasonable manner at reasonable times as provided by law to abate the nuisance conditions as specified in the abatement notice or administrative order. In the event of owner and/or responsible party objection to their entry, City personnel may use the procedures found in Section 4-12.900 of this chapter.
- (3) If the property owner or responsible person abates the nuisance conditions before the City performs the actual abatement pursuant to an abatement notice or administrative order, the Director or hearing officer may still assess all appropriate costs incurred by the City against the responsible person pursuant to the procedures set forth herein.
- (4) When abatement is completed, a report describing the 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 persons of each parcel, the name and address of the property owner if different from the responsible person, the tax assessor's parcel number and a reasonable description of the property location if the responsible person is an owner.
- (5) The Director shall schedule a confirmation of costs hearing before an administrative hearing officer pursuant to the

procedures set forth in Sections 4-12.400 through 4-12.503 of this Code, unless waived by all responsible persons.

- (6) All administrative and actual costs incurred by the City in abating the violations may be assessed against and recovered from the responsible person or owner pursuant to the provisions set forth in 4-12.503.

**SEC. 4-12.804. ABATEMENT OF IMMINENTLY DANGEROUS CONDITIONS.**

- (a) Whenever a City department head, charged with the enforcement authority therefor, determines that a condition on or a use of property within the City constitutes or reasonably appears to cause or constitute an immediate threat to the health or safety of the public or a significant portion thereof, the department head may institute the following procedures:
  - (1) With respect to substandard residential buildings as defined in the California Health and Safety Code, Section 17920.3 or successor statutes, the Director may institute any appropriate action to prevent, restrain, correct, or abate the violation or nuisance in accordance with Health and Safety Code Section 17980, et seq. and their successor statutes.
  - (2) The Director determines, based upon competent evidence, that an imminent emergency situation involving the physical safety of the populace exists, the Director may dispense with due process and summarily demolish the building or take such other appropriate action as conditions may require.
- (b) **Cost.** The department head shall keep an itemized account of the costs incurred by the City in removing or isolating such imminently dangerous condition. Such costs may be recovered as provided in this chapter.
- (c) **Emergencies.** Nothing in this Chapter shall prevent public safety officials from taking such actions in emergency situations as in their discretion are appropriate.

## ARTICLE 9. INSPECTIONS

### SEC. 4-12.900. AUTHORITY TO INSPECT.

- (a) A Director as defined in Section 4-12.200(b) and any enforcement officer are authorized to enter upon any property or premises in response to a complaint to ascertain whether the provisions of the Municipal Code or applicable state codes are being obeyed, and to make any examinations and surveys that may be necessary in the performance of their enforcement duties. These may include the taking of photographs, samples or other physical evidence, and includes the use of a sound level measurement device to measure noise disturbances. All inspections, entries, examinations and surveys shall be done in a reasonable manner and at a reasonable hour under all the circumstances. If an owner, occupant or agent or other responsible person refuses permission to enter or inspect, the code enforcement officer may seek an administrative inspection warrant pursuant to the procedures provided for in Section 1822.50 et seq. of the California Code of Civil Procedure.
- (b) It shall be unlawful for any person to obstruct or interfere with any City of Modesto enforcement officer, or with any vehicle or equipment of such Director, when such compliance officer is engaged in enforcing the provisions of this chapter.

### SEC. 4-12.901. REINSPECTION FEES; PURPOSE.

The Council finds there is a need to recover costs incurred by the City in its code enforcement efforts including time spent by City personnel reinspecting properties throughout the City in an effort to ensure compliance with the Municipal Code or applicable state codes. The assessment and collection of reinspection fees shall not preclude the imposition of any administrative or judicial fees, costs or penalties for violations of the Municipal Code or applicable state codes.

### SEC. 4-12.902. ASSESSMENT OF REINSPECTION FEES.

Whenever an enforcement officer reinspects a property that is the subject of a compliance order, administrative order or abatement notice to determine compliance efforts, investigate subsequent complaints or other similar reinspection, that enforcement officer or the appropriate director may assess a reinspection fee against the responsible person.

**SEC. 4-12.903. AMOUNT OF REINSPECTION FEES.**

A reinspection fee schedule shall be established and revised as necessary by City Council resolution to reflect current costs. The reinspection fee schedule shall be filed in the City Clerk's office.

**SEC. 4-12.904. NOTIFICATION OF ASSESSMENT OF REINSPECTION FEES.**

- (a) Where the assessment of reinspection fees is authorized under this article, an enforcement officer or director assessing such a fee shall provide the responsible person with a written notice assessing reinspection fees. The written assessment shall contain the following information:
  - (1) The amount of fees charged; and
  - (2) The corresponding dates when reinspection took place; and
  - (3) A deadline by which the reinspection fee must be paid.
- (b) Notification of the reinspection fee assessment shall be provided to the responsible person by personal delivery or certified mail, return receipt requested.
- (c) Reinspection fees may be assessed as part of any judicial or administrative enforcement action provided for in this Code.
- (d) The failure of any responsible person to receive notice of the reinspection fees shall not affect the validity of any fees imposed under this article.

**SEC. 4-12.905. COLLECTION OF INSPECTION OR REINSPECTION FEE.**

Final determination of an inspection or reinspection fee shall create a debt in the nature of a quasi-contractual obligation, including an award of reasonable attorney's fees, in favor of a prevailing party running from the property owner to the City. The City shall collect the assessed inspection, reinspection and late fees by the use of all appropriate legal means, including but not limited to: referral to the Finance Department for collection in small claims court, or by imposition of a lien pursuant



to Sections 4-12.700 through 4-12.702. Appeal from assessment of a reinspection fee shall be by writ of mandate.

#### **ARTICLE 10. NOTICE OF VIOLATION**

##### **SEC. 4-12.1000. RECORDATION OF NOTICES OF VIOLATION; PURPOSE.**

The procedures below shall be in addition to criminal, civil, or any other remedy established by law which may be pursued to address violations of the Municipal Code.

##### **SEC. 4-12.1001. PROCEDURES FOR RECORDATION.**

- (a) When a Director has issued a compliance order which has become final, or there exists a final administrative order to a responsible person and the property that is the subject of the order appears on inspection to remain in violation after the deadline established in the order, the Director may record a notice of violation with the Recorder's Office of Stanislaus County.
- (b) The recorded notice of violation shall include the name of the property owner, the assessor's parcel number, the street address, the parcel's legal description, and a copy of the latest notice of violation.
- (c) Any costs associated with recording and removal of a recorded document may be assessed against the property as provided for in Section 4-12.502.

##### **SEC. 4-12.1002. SERVICE OF NOTICE OF VIOLATION.**

A copy of the recorded notice of violation shall be mailed to the responsible person and/or to the property owner.

##### **SEC. 4-12.1003. NOTICE OF COMPLIANCE - REMOVAL PROCEDURES.**

- (a) When the violations listed on the compliance order have been corrected, the responsible person or property owner may file with the Director a written request for a notice of compliance on a form provided by the City.

- (b) The Director shall reinspect the property within ten (10) days after receipt of a request made pursuant to subsection (a) to determine whether the violations listed in the notice of violation have been corrected and/or whether all necessary permits have been issued and final inspections have been performed.
- (c) The Director shall provide a notice of compliance to the responsible person or property owner if the Director determines that:
  - (1) All violations listed in the recorded notice of violation have been corrected; and
  - (2) All necessary permits, if any there be, have been issued and finalized; and
  - (3) All administrative penalties, and costs due under this ordinance have been paid; and
  - (4) The party requesting the notice of compliance has reimbursed the City for all actual administrative costs associated with the violations specified on the notice of violation.
  - (5) The Director shall record a notice of compliance, when warranted, with the County Recorder's Office. The recordation of the notice of compliance shall have the effect of canceling the recorded notice or notices of violation to which it refers.
- (d) Administrative costs may include costs incurred in the investigation, inspection, reinspection, title search, appeal hearing, and any other processing costs associated with the violations specified on the notice of violation.
- (e) If the Director denies a request to issue a notice of compliance, the Director shall serve the requesting party, the responsible person and the property owner with a written explanation within ten (10) days after the inspection setting forth the reasons for the denial. The written explanation shall be served by certified mail.
- (f) The Director's decision denying a request to issue a notice of compliance 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. 4-12.1004. PROHIBITION AGAINST ISSUANCE OF MUNICIPAL PERMITS.**

For properties on which a notice of violation has been recorded, the City may withhold permits for repair, construction and/or alteration on the affected property not necessary to obtain a notice of compliance until a notice of compliance has been issued by the Director.

**ARTICLE 11. PROPERTY CONDITIONS**

**SEC. 4-12.1100. POLICY.**

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.

Owners and occupants of some properties within the City permit conditions to exist which are below the minimum conditions required by this Title IV and Title X 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 IV and Title X 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.

**SEC. 4-12.1101. 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 MMC 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 (MMC Sections 4-7.1101 - 4-7.1108) are excluded from this section.

#### **SEC. 4-12.1102. SIDEWALK ENCROACHMENT.**

It shall be unlawful, and constitute a public nuisance to place wires, cables, 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.

#### **SEC. 4-12.1103. 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, 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 defective or unsightly or are in such a condition of deterioration or disrepair that the value of the surrounding properties is depreciated by this condition.

#### **SEC. 4-12.1104. UNSECURED BUILDINGS.**

It is unlawful 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. Failure to so secure a building shall constitute a public nuisance subject to abatement.

### **ARTICLE 12. REGULATION OF VACANT AND BOARDED BUILDINGS**

#### **SEC. 4-12.1200. 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 promoting 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.

**SEC. 4-12.1201. BOARDED BUILDINGS - DECLARATION OF PURPOSE.**

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

**SEC. 4-12.1202. BOARDED BUILDING - DEFINED.**

For the purposes of this chapter, the term "boarded building" shall mean a vacant 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.

**SEC. 4-12.1203. METHOD OF BOARDING.**

If an owner or responsible party chooses or is required to board up the windows and doors and other openings of a building in order to prevent

entry by others, the materials used to board up the building shall be painted to match the color of the existing building.

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. Removable glazed sections must be removed and placed inside the house.

**SEC. 4-12.1204. BOARDED OR VACANT BUILDING - TIME PERIOD MAINTENANCE.**

- (a) No responsible party shall allow a building to stand vacant for more than sixty (60) days, unless one of the following applies:
- (1) The building is the subject of an active building permit and the owner is progressing diligently to repair the premises for occupancy.
  - (2) The building meets all codes, and is actively being offered for sale, lease, or rent.
  - (3) The building is being maintained in a safe and orderly manner and does not contribute to blight conditions.
  - (4) Maintenance in a safe and orderly manner shall include:
    - (i) Maintenance of any landscaping and plant materials in good condition.
    - (ii) Maintenance of the exterior of the building, including but not limited to paint and finishes, in good condition.
    - (iii) Regular removal of all exterior trash, debris and graffiti.
    - (iv) Maintenance of the building in continuing compliance with all applicable codes and regulations.

**SEC. 4-12.1205. 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.

**SEC. 4-12.1206. 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 9(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.

#### **SEC. 4-12.1207. PENALTIES.**

Unless otherwise expressly provided the remedies, procedures and penalties provided by this chapter are cumulative to each other and to any others available under state law or other city ordinances.



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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's decision by submitting a written notice of appeal to the building official within thirty (30) days of receipt of the building official's 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.

#### SEC. 4-12.1207. PENALTIES.

Unless otherwise expressly provided the remedies, procedures and penalties provided by this chapter are cumulative to each other and to any others available under state law or other city ordinances.

## ARTICLE 13. NUISANCE - CREATING BEHAVIORS

### SEC. 4-12.1300. 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.

### SEC. 4-12.1301. 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 the Municipal Code and state law and all remedies set forth herein shall be cumulative to other remedies which may be available under the Municipal Code or state law.

#### **SEC. 4-12.1302. 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.

#### **SEC. 4-12.1303. 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.

**SEC. 4-12.1304. AUTHORITY.**

The Community Development Director, the Police Chief or the Fire Chief or their designees may administer the provisions of this article.

**SEC. 4-12.1305. PENALTY FOR VIOLATIONS; ENFORCEMENT.**

- (a) The administrative enforcement procedure described in Sections 4-12.400 through 4-12.500 notwithstanding, the City Attorney may, in addition to or alternatively to that procedure, bring a civil action for injunctive relief and civil penalties in an amount not to exceed twenty thousand (\$20,000.00) dollars 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.

**SEC. 4-12.1306. 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 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.
- (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.

**SEC. 4-12.1307. COMPLIANCE ORDER; ISSUANCE.**

- (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 compliance order to abate the nuisance as provided in Section 4-12.300.
- (b) No compliance 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, active professional property management, and taking steps to repair physical conditions which contribute to the nuisance.
- (c) (1) Whenever an enforcement officer issues a compliance 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.

**SEC. 4-12.1308. DIRECTOR'S REVIEW; NOTICE OF ADMINISTRATIVE PENALTY.**

- (a) After the time for abatement set forth in the compliance 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.
- (b) 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 compliance 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 Sections 4-12.400 through 4-12.504.

**ARTICLE 14. NUISANCE VEGETATION AND JUNK**

**SEC. 4-12.1400. 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 flammable vegetative material or substance which constitutes a danger to public safety by creating a fire hazard. Accumulated vegetative

materials which comply with all regulations of the Pruned Refuse Collection Program of the City of Modesto (MMC 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 eight (8) 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 (MMC 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 ( $\frac{1}{2}$ ) of any continuous ten (10) day period. Materials described below which are upon the property of a properly zoned business and which constitute lawfully stored or displayed merchandise or services of said business are excluded from this article.
- (1) An accumulation of dirt, soil, rock, gravel, bark, humus, sod, or other similar natural material; providing, however, the accumulation of such material which is an integral part of an organized landscape design, or which is part of an incomplete project, is excluded from this definition if the excess or the residue of such accumulation is completely removed from the property by the completion of the building or landscaping project. A project shall be deemed completed if there is no obvious change to the accumulation or to the project in any thirty-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-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 ( $\frac{1}{2}$ ) of any continuous ten (10) day period.
- (5) Any appliance, tool, equipment, furniture, furnishing, or other item of personal property including, but not limited to, any couch, love seat, sofa, sofa bed, recliner, hassock, upholstered chair, mattress, bed springs, box springs, bed frame, headboard, desk, dresser, bureau, cabinet, television, radio, stereo, stove, refrigerator, freezer, dish washer, washing machine, dryer, shopping cart, sinks, toilets, or any similar item, whether or not any such item is broken or abandoned, resting or being stored on the premises in public view for more than one-half ( $\frac{1}{2}$ ) of any continuous ten (10) day period.
- (6) Any item or items or personal property, of any size and of any quantity, which are littered on or scattered upon or about the property in a random, haphazard, aimless, disarrayed, or disorganized manner, so as to cause a public nuisance for more than one-half ( $\frac{1}{2}$ ) of any continuous ten (10) day period.

#### **SEC. 4-12.1401. 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.

#### **SEC. 4-12.1402. 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.

#### **SEC. 4-12.1403. 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 criminally or civilly and creates a nuisance subject to penalty or abatement as provided in this chapter.

### **ARTICLE 15. ADMINISTRATIVE HEARINGS**

#### **SEC. 4-12.1500. COMMENCEMENT OF PROCEEDINGS.**

Whenever a City code enforcement person has determined that a violation of Title IV and/or Title X of the Modesto Municipal Code exists within the City and the property owner or other legally responsible party has failed, neglected, or refused to comply with City's requests to bring the property promptly into compliance with the law, or to bring a condition in violation of the code into compliance with the law, the City Manager, or his/her designated hearing officer, may notice an administrative hearing.

#### **SEC. 4-12.1501. NOTICE OF HEARING.**

- (a) Notice of hearing shall be served personally or mailed by certified mail, return receipt requested. The notice shall specify the time and place of the hearing and shall order the owner of the property to appear before a hearing officer to show cause why the premises, or any condition on the premises, should not be declared a public nuisance and abated in accordance with this code. Such notice shall be served not less than twenty (20) calendar days prior to the time set for the hearing. Service shall

be deemed complete at the time notice is personally served or deposited in the mail.

- (b) The notice shall set forth the acts or omissions with which the person is charged, specifying the specific sections of the Modesto Municipal Code which the person is alleged to have violated.
- (c) The notice shall specify the corrective action required, including temporary corrective action when appropriate.
- (d) The notice shall contain a statement, where applicable, advising the owner that he has the option of voluntarily abating the nuisance prior to the date set for the hearing. Should the owner choose voluntary abatement, the abatement must be completed prior to the hearing date. The owner must advise the hearing officer in writing that he/she will abate the nuisance. The owner must state the date of completion of abatement. The hearing officer will inspect the premises on the completion date, and if the nuisance has been abated, the hearing officer will remove the hearing from the calendar.
- (e) The notice shall advise the property owner that failure to correct the violation will result in the City's correcting the violation and collecting the charges by billing or by a lien on the property.
- (f) The notice shall advise the property owner of the right to appeal the charge that a nuisance exists.
- (g) The notice shall state that failure of the owner to appear at the hearing after notice has been served personally or by certified mail, return receipt requested, shall be deemed a waiver of the hearing and admission by said owner of the nuisance charged. The notice shall also advise that in the event of such failure to appear, the hearing officer may order that the nuisance be abated by the City of Modesto.

#### **SEC. 4-12.1502. HEARINGS.**

- (a) At the hearing, the hearing officer shall receive testimony under oath from any director, code enforcement officer, owner, and other interested persons respecting the condition of the premises, including other relevant facts concerning the matter, including issues pertaining to repair, removal or demolition of the

property, or of any condition existing on the property. The hearing shall be tape recorded and may be continued from time to time for good cause shown, or upon the hearing officer's own motion.

- (b) The hearing need not be conducted according to technical rules relating to evidence and witnesses, except as hereinafter provided. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of the evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. The rules of privilege shall be effective to the extent that they are otherwise required by statute to be recognized at the hearing, and irrelevant and unduly repetitious evidence shall be excluded.

#### **SEC. 4-12.1503. RIGHTS OF THE PARTIES.**

- (a) Each party may represent themselves, or be represented by any one of their choice.
- (b) Each party may call and examine witnesses on any matter relevant to the issues of the hearing.
- (c) Each party may introduce documentary and physical evidence relevant to the issues of the hearing.
- (d) Each party may cross examine opposing witnesses on any matter relevant to the issues of the hearing.
- (e) Any party may request the premises involved in the hearing be inspected by the hearing officer prior to, during or after the hearing. Notice of such inspection shall be given to the parties before the inspection is made. All parties are given the opportunity to be present during the inspection. Should the hearing officer inspect the premises, the officer shall prepare a written statement of all material facts observed and the conclusion drawn therefrom. Such statement shall be included in the record during the hearing.

**SEC. 4-12.1504. DECISION OF THE HEARING OFFICER.**

If it is shown by a preponderance of the evidence that the condition of the premises constitutes a public nuisance, the hearing officer shall order its abatement and order the recovery of costs of abatement where applicable.

The decision of the hearing officer shall be in writing. The decision shall specify that the abatement be completed within a time as specified by the hearing officer. The decision shall inform the owner that if the nuisance is not abated within the time specified, the nuisance may be abated by the City in such a manner as may be ordered by the City Manager or his/her designee, and the expense of such abatement made a lien on the property involved.

The decision shall also inform any party aggrieved by the decision of his or her right to appeal pursuant to Sections 1-4.01 through 1-4.05 of the Modesto Municipal Code.

**SEC. 4-12.1505. ABATEMENT AT OWNER'S EXPENSE.**

After determination that a violation of this chapter constitutes a public nuisance, the City may remove or abate such nuisance upon private property or may engage a private party so to do. The costs of such abatement, including incidental expenses, shall, if unpaid within thirty (30) days after invoice, become a personal debt of the property owner or owners and said costs may constitute a special assessment or lien as set forth in Sections 4-12.1507 and 4-12.1508. No abatement shall occur under this Section unless preceded by issuance of judicial warrants authorizing entry, search, seizure, and abatement, or, in the alternative, written consent and release of liability by the property owner or other responsible parties. "Incidental expenses" include, but are not limited to, personnel costs, both direct and indirect; costs incurred in documenting the nuisance; the actual expenses and costs of the City in the preparation and mailing of notices, specifications, and contracts, in inspecting the site, and in obtaining necessary warrants so to do.

**SEC. 4-12.1506. ABATEMENT BY OWNER; NONINTERFERENCE BY OWNER OR OCCUPANT.**

Before the arrival of the persons authorized to abate the nuisance, any property owner may abate the nuisance at his or her own expense. No

owner or occupant of the property shall obstruct any abatement activity by any authorized person after abatement activities have commenced.

**SEC. 4-12.1507. SPECIAL ASSESSMENT; COLLECTION.**

The cost of nuisance abatement upon each parcel of land constitutes a special assessment against that parcel upon filing of said assessment with the Auditor of Stanislaus County, who shall enter each assessment on the County tax roll opposite the parcel of land. The assessment shall be collected at the same time and in the same manner as ordinary municipal ad valorem taxes are collected, and shall be subject to the same penalties and the same procedure and sale in case of delinquency as provided for such taxes. All laws applicable to the levy, collection, and enforcement of municipal ad valorem taxes shall be applicable to such assessment.

**SEC. 4-12.1508. ALTERNATIVE RECOVERY OF ABATEMENT COSTS; LIEN ATTACHMENT.**

Public nuisance abatement costs may also be secured for recovery by recordation of a lien in the official real property records of Stanislaus County. Said lien shall be in the amount of abatement costs, plus interest of ten (10) percent per annum from the date of confirmation to the date of payment in full. Any such lien shall be removed by the City upon full payment of the costs thereby secured. The liened property shall be subject to the penalties, procedures, and sale in case of delinquency as provided in the Civil Code of California.

**SEC. 4-12.1509. ABATEMENT COSTS ARE PERSONAL DEBT OF OWNER.**

In addition to any other remedy provided herein or available at law, costs of nuisance abatement upon real property within the City constitute a personal debt of the persons or parties who owned said real property at the time of nuisance abatement by the City.

**ARTICLE 16. DEFACEMENT OF PROPERTY**

**SEC. 4-12.1600. 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.

#### SEC. 4-12.1601. 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 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 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.

**SEC. 4-12.1602. 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.

**SEC. 4-12.1603. 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.

**SEC. 4-12.1604. 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.

**SEC. 4-12.1605. PUNISHMENT PROVISIONS.**

- (a) Each penalty imposed for a violation of this Article shall be (i) a penalty of one hundred twenty-five (\$125.00) dollars for a first violation; (ii) a penalty of two hundred fifty (\$250.00) dollars for a second violation within a year; (iii) a penalty of five hundred (\$500.00) dollars 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 cleanup, 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.

#### **SEC. 4-12.1606. 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.

**SEC. 4-12.1607. 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 (\$100.00) dollars plus interest on the unpaid amount plus penalty, which interest shall accrue at the rate of one and one-half (1½) percent per month until paid.

- (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 30 of each year shall, upon adoption of a resolution by the City Council, be collected along with, and in the same manner as, the general property taxes. The liened property shall be subject to the penalties, procedures, and sale in case of delinquency as provided in the Civil Code of California.
  - (7) As an alternative to a lien and pursuant to Government Code Section 38773.5, the expense of abatement may constitute a special assessment against a parcel of land owned by the responsible party. The assessment shall be collected as provided for in Government Code Section 38773.5.
  - (8) In addition to any other remedy provided herein or available at law, expense of abatement pursuant to Government Code Sections 38773, 38773.1 and 38773.5 shall constitute a personal obligation against the responsible party.
- (b) The recovery of expense of abatement of any nuisance resulting from the defacement of property by graffiti or any other inscribed material by a minor who has created, caused, or committed the nuisance shall be according to the following procedure:
- (1) The City Manager, or his or her designee ("hearing officer"), shall give the minor and the parent or guardian having custody and control of the minor not less than forty-eight (48) hours notice of a hearing to be held by the

hearing officer for the purpose of showing cause why the City should not recover the expense of abatement from the minor and the parent or guardian having custody and control of the minor. Following notice, the hearing shall be held by the hearing officer at the time, date, and place designated and at such hearing the minor and the parent or guardian having custody and control of the minor may each be heard and provided with the opportunity to show cause why the City should not recover the expense of abatement from the minor and the parent or guardian having custody and control of the minor. Following the hearing, the hearing officer shall determine whether the City should recover expense of abatement from the minor and the parent or guardian having custody and control of the minor.

- (2) If the hearing officer determines that the City should recover the expense of abatement from the minor and the parent or guardian having custody and control of the minor, the City may provide an accounting of the expense of abatement along with a demand for payment to the minor and the parent or guardian having custody and control of the minor.
- (3) The parent or guardian having custody and control of the minor shall be jointly and severally liable with the minor for the expense of abatement pursuant to Government Code Sections 38772, 38773.2, and 38773.6. If payment is not made within thirty (30) days from the date of the accounting and demand for payment, the payment shall be deemed delinquent and shall be subject to a penalty assessment of one hundred (\$100.00) dollars plus interest on the unpaid amount plus penalty, which interest shall accrue at the rate of one and one-half (1½) percent per month until paid.
- (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 30 of each year shall, upon adoption of a resolution by the City Council, may be collected along with, and in the same manner as, the general property taxes. The 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.

#### **SEC. 4-12.1608. 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.

#### **SEC. 4-12.1609. REWARD.**

The City hereby offers a reward of one hundred (\$100.00) dollars 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.

**SEC. 4-12.1610. 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.

**SEC. 4-12.1611. 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.

**ARTICLE 17. GRAFFITI REMOVAL ASSISTANCE PROGRAM**

**SEC. 4-12.1700. APPROPRIATION OF FUNDS.**

The City may appropriate money from the General Fund to remove graffiti or other inscribed material from public or privately owned property within the City, and to replace or repair public or privately owned property within the City that has been defaced with graffiti or other inscribed material that cannot be removed cost effectively.

**SEC. 4-12.1701. AUTHORIZATION.**

The provisions of this article authorize only the removal of the graffiti or other inscribed material itself, or, if the graffiti or other inscribed material cannot be removed cost effectively, the repair or replacement of the portion of the property that was defaced, and not the painting, repair, or placement of other parts of the property that were not defaced.

**SEC. 4-12.1702. CONSENT.**

The removal, repair, or replacement may be performed, in the case of publicly owned property, only after securing the consent of the public entity having jurisdiction over the property, and in the case of privately

owned property, only after securing the consent of the owner or possessor.

#### SEC. 4-12.1703. RECOVERY OF CITY FUNDS.

- (a) Pursuant to Government Code Section 53069.3(d), if the City has used funds pursuant to this article to remove graffiti or other inscribed material created, caused, or committed by a minor, the City may recover the funds 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 funds 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 funds 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 funds 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 funds from the minor and the parent or guardian having custody and control of the minor, the City shall provide an accounting of the funds 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 funds used by the City 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 (\$100.00) dollars plus interest on the unpaid amount plus penalty, which interest shall accrue at the rate of one and one-half (1½) percent per month until paid.

- (4) In the event the funds have not been paid within thirty (30) days from the date of issuing an accounting and demand for payment, the amount unpaid including any penalty and interest therein, shall constitute a lien pursuant to Government Code Sections 38772 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 30 of each year shall, upon adoption of a resolution by the City Council, may be collected along with, and in the same manner as, the general property taxes. The lien property shall be subject to the penalties, procedures, and sale in case of delinquency as provided in the Civil Code of California.
- (5) As an alternative to a lien and pursuant to Government Code Section 38773.6, the funds 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 funds pursuant to Government Code Section 38772 shall constitute a personal obligation against the minor and a personal obligation against the parent or guardian having custody and control of the minor.

#### **SEC. 4-12.1704. 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.



**SEC. 4-12.1705. 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 26th day of August, 1997, 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: Cogdill, Dobbs, Fisher, Friedman, McClanahan, Serpa, Mayor Lang

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:

By   
JEAN ADAMS, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

Ord. No. 3058-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 September, 1997, Councilmember Fisher, moved its final adoption, which motion being duly seconded by Councilmember Serpa, was upon roll call carried and the ordinance adopted by the following vote:

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

APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:   
JEAN ADAMS, City Clerk

Effective Date: October 2, 1997

*Clerk*

ORDINANCE NO. 3059-C.S.

AN ORDINANCE AMENDING SECTIONS 8-3.102, 8-3.105, 8-3.203, AND 8-3.302 OF CHAPTER 3 OF TITLE VIII OF THE MODESTO MUNICIPAL CODE RELATING TO CITY CONTRACTS.

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

SECTION 1. AMENDMENT OF CODE. Sections 8-3.102, 8-3.105, 8-3.203, and 8-3.302 of Chapter 3 of Title VIII of the Modesto Municipal Code are hereby amended to read as follows:

**SEC. 8-3.102. CONTRACTING AUTHORITY.**

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

- (a) Contracts for public works projects consisting of the improvement or modification of traffic signals or signal systems including those street improvements which are incidental to or related to the improvement or modification of the traffic signal. The City Manager may approve and authorize all contracts for such projects involving an expenditure of City funds in the amount of two hundred thousand dollars (\$200,000.00) or less.
- (b) Contracts for public works projects consisting of the improvement, repair, expansion, renovation, or modification of the baseball stadium facilities located at John Thurman Field in the City of Modesto. The City Manager may approve and authorize all contracts for such projects involving an expenditure of City funds in the amount of three million dollars (\$3,000,000.00) or less.

Any contract for public works projects which may be so approved as set forth in subsections (a) and (b) above and authorized by the City Manager is not subject to the public bidding requirements of article 3 of

this chapter or of Section 1307 of the Modesto City Charter. This section is adopted pursuant to Sections 801(1c) and 1307 of the Modesto City Charter. The City Manager may delegate his or her authority in a manner consistent with the procedures established by this chapter. As set forth in Section 2-2.03 of this Code, all contract documents that require City Council approval shall be approved as to form by the City Attorney or the City Attorney's authorized representative before presentation to the City Council.

#### **SEC. 8-3.105. PUBLIC WORKS PROJECTS.**

Except as set forth in Section 8-3.102, every project exceeding fifty thousand dollars (\$50,000.00) for the construction or improvement of public buildings, works, drains, sewers, utilities, parks, playgrounds and streets (exclusive of projects for resurfacing, maintenance and repair of streets) shall be deemed a public works project and be subject to the provisions set forth in Article 3 of this chapter commencing with Section 8-3.301.

#### **SEC. 8-3.203. EXCEPTIONS TO FORMAL BIDDING REQUIREMENTS.**

Except as otherwise provided by this chapter or when directed by the City Manager, all purchases of supplies, materials, equipment and contractual services involving an expenditure of City funds in the amount of twenty thousand dollars (\$20,000.00) or less, shall be purchased, when feasible and when in the best interest of the City, in the open market by letter inquiry, informal solicitation, or telephone or facsimile solicitations, with or without newspaper advertisement, and without observation of prescribed formal bid procedures.

Open market purchases, whenever possible and practicable, shall be based on at least three (3) competitive quotations (letter inquiries and/or telephone solicitations), and shall be awarded to the person, firm or corporation submitting the lowest responsible quotation. In determining the lowest quotation, the City shall do so on the basis defined in Section 8-3.204 for establishing the lowest responsible bid used in formal bid purchases.

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

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

- (a) Contracts for professional services as defined in Section 8-3.104.
- (b) Where the Purchasing Agency's requirements can be met solely by a single patented article or process.
- (c) Where the Purchasing Officer, in his discretion, determines that calling for bids on a competitive basis as set forth in Section 8-3.204 is undesirable due to exigent circumstances.
- (d) Where the Purchasing Officer, in his discretion, determines that a process other than the formal bid procedure set forth in Section 8-3.204 will result in a procurement for the City at the lowest possible cost commensurate with the desired quality. Such alternatives may include, but are not limited to, a "two-step" procurement process or a procurement based solely on a technical evaluation.

#### **SEC. 8-3.302. EMERGENCY PURCHASES.**

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

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

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

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

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 26th day of August, 1997, by Councilmember Friedman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember McClanahan, was upon roll call carried and ordered printed and published by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:

By   
JEAN ADAMS, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney



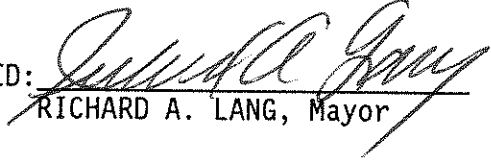
Ord. No. 3059-C.S.

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 September, 1997, Councilmember Fisher, moved its final adoption, which motion being duly seconded by Councilmember Serpa, was upon roll call carried and the ordinance adopted by the following vote:

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

APPROVED:

  
RICHARD A. LANG, Mayor

ATTEST:

  
JEAN ADAMS, City Clerk

Effective Date: October 2, 1997

ORDINANCE NO. 3060-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).

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

WHEREAS, on June 10, 1997, the City Council of the City of Modesto, State of California (the "Council"), adopted its Resolution No. 97-329 (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 July 15, 1997, adopt its Resolution No. 97-414 (the "Resolution Calling the Election") which called an election for August 19, 1997, on the proposition of levying the Special Tax within the Annexed Territory, and

WHEREAS, on August 19, 1997, in accordance with the Resolution Calling the Election, a consolidated 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 September 9, 1997, the Council adopted its Resolution No. 97-\_\_\_ (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 Exhibits B and C, respectively, to the Resolution Ordering the Annexation,

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 1997-98 and in each fiscal year thereafter, unless reduced by subsequent resolution of this Council, at the Maximum Special Tax rate described in Exhibit A hereto.

SECTION 3. The Finance Director of the City of Modesto is hereby authorized each year to determine the special tax rate and amount to be levied for the next ensuing fiscal year, except that the special tax rate to be levied shall not exceed that set forth in Exhibit A hereto, 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 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. The amount of the credit will be the facilities cost estimate in the Public Report, as that report may be amended from time to time, irrespective of the actual cost of the facility to the developer. When determining the amount of the credit, the facilities cost estimate in the Public Report shall be reduced by any costs incurred by the City in the construction of the facilities. Where apportionment is required, as with respect to a total facilities cost stated in the Public Report, 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 City Manager or his/her 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 9th day of September, 1997, by Councilmember McClanahan, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Friedman, was upon roll call carried and ordered printed and published by the following vote:

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

APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:

By   
JEAN ADAMS, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

Ord. No. 3060-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 23rd day of September, 1997, Councilmember Serpa, moved its final adoption, which motion being duly seconded by Councilmember Friedman, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Cogdill, Dobbs, Friedman, McClanahan, Serpa,  
Acting Mayor Fisher

NOES: Councilmembers: None

ABSENT: Councilmembers: Mayor Lang

APPROVED:   
TIM FISHER, Acting Mayor

ATTEST: \_\_\_\_\_  
JEAN ADAMS, City Clerk

Effective Date: October 23, 1997

EXHIBIT A

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



#### 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.

*CFD NO. 1996-1 (VILLAGE ONE)  
Public Report - Mello Roos Community Facilities Act of 1982*

**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	\$19,715 per Gross Acre
2	Village Residential	\$29,479 per Gross Acre
3	Multi-Family Residential	\$76,394 per Gross Acre
4	Commercial	\$86,616 per Gross Acre
5	Industrial	\$40,564 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.

Corrected 10/9/97

ORDINANCE NO. 3061-C.S.

AN ORDINANCE APPROVING DEVELOPMENT AGREEMENTS BETWEEN THE CITY OF MODESTO AND CERTAIN PROPERTY OWNERS IN THE CARVER-BANGS, EMPIRE NORTH UNIT 1, FAIRVIEW VILLAGE, AND NORTH BEYER SPECIFIC PLAN AREAS, RELATING TO THE PROVISION OF CITY SEWER SERVICE TO THESE PROPERTIES.

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, requests for Development Agreements have been filed by specific owners of property in the Carver Bangs, Empire North Unit 1, Fairview and North Beyer Specific Plan areas, in Modesto, California, and

WHEREAS, the Modesto Urban Area General Plan calls for urban development and the extension of sewer service in the areas covered by the proposed development agreements, and

WHEREAS, the proposed development agreements are within areas which have been annexed to the City of Modesto, and

WHEREAS, a duly noticed public hearing was held by the Planning Commission of the City of Modesto on September 8, 1997, 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 agreements, 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. 97-65, adopted on September 8, 1997, recommended to the City Council approval of the proposed development agreements between specific owners of property in the Carver-Bangs, Empire North Unit 1, Fairview and North Beyer Specific Plan Areas within the City of Modesto, and

WHEREAS, said matter was set for a public hearing of the City Council to be held at 7:00 p.m., on September 16, 1997, 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 proposed development agreements between the City of Modesto and specific property owners in the Carver Bangs, Empire North Unit 1, Fairview, and North Beyer Specific Plan areas, in Modesto, California, and

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

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

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

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

1. That the proposed Development Agreements are consistent with the Modesto Urban Area General Plan and the Carver-Bangs, Empire North Unit 1, Fairview and North Beyer Specific Plan as well as subdivision and zoning provisions of the Modesto Municipal Code and Government Code Sections 65864 et seq.
2. There are no substantial changes in the proposed development agreements which will require major revisions of the Kiernan Business Park and Carver-Bangs Specific Plan Focused EIR (SCH No. 94082005), Empire North Unit 1 Specific Plan Focused EIR (SCH No. 95122030), Fairview Village Focused EIR (SCH No. 95032006), or Mitigated Negative Declaration for the North Beyer Specific Plan (SCH No. 96102053).
3. There are no substantial changes occurring with respect to the development agreements being undertaken which will require major revisions in the Kiernan Business Park and Carver-Bangs Specific Plan Focused EIR, Empire North Unit 1 Specific Plan Focused EIR, Fairview Village Focused EIR, or Mitigated Negative Declaration for the North Beyer Specific Plan.

4. No new information, which was not known and could not have been known at the time the Kiernan Business Park and Carver-Bangs Specific Plan Focused EIR, Empire North Unit 1 Specific Plan Focused EIR, Fairview Village Focused EIR, or Mitigated Negative Declaration for the North Beyer Specific Plan were certified as complete, has become available.

**SECTION 2. APPROVAL OF DEVELOPMENT AGREEMENTS.**

Development Agreements between the City of Modesto and specific property owners, as listed below, in designated Specific Plan Areas are hereby approved. A copy of each Development Agreement is on file in the Office of the City Clerk.

Name	Property (APN NO.)
<b><u>Carver-Bangs Specific Plan:</u></b>	
1. Calvary Chapel of Modesto	78-18-02, 23
2. Chateau Provence, LLC	46-07-18, 19, 20
3. Wilson Schuler	46-07-15
<b><u>Empire North Unit 1 Specific Plan:</u></b>	
4. The Bluffs Senior Housing Development, LLC and Parker Bluffs Ltd. Partnership	14-38-09, 10
<b><u>Fairview Village Specific Plan:</u></b>	
5. Norman Galas	56-27-02
6. World Investment II	56-28-08

**North Beyer Specific Plan:**

7.	Florsheim Brothers	52-05-24, 28
8.	Kirk Lindsey	52-05-21
9.	William & Veronica Loretelli	52-05-11, 12
10.	Vito Pantaleo	52-05-09
11.	Vito Pantaleo	52-05-29
12.	Victoria Pantaleo Martin	52-05-25

SECTION 3. EXECUTION BY CITY. The City Manager or his authorized designee are hereby authorized to execute said Development Agreements, as listed above, 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 agreements, the City Clerk is hereby directed to record with the County Recorder a copy of each 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 16th day of September, 1997, by Councilmember Friedman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Cogdill, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Cogdill, Dobbs, Friedman, Mayor Lang

NOES: Councilmembers: Fisher, McClanahan, 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

Ord. No. 3061-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 October, 1997, Councilmember Friedman, moved its final adoption, which motion being duly seconded by Councilmember Cogdill, was upon roll call carried and the ordinance adopted by the following vote:

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

APPROVED:

  
RICHARD A. LANG, Mayor

ATTEST:

  
JEAN ADAMS, City Clerk

Effective Date: November 6, 1997

Corrected <sup>clerk</sup> 10/9/97

ORDINANCE NO. 3061-C.S.

AN ORDINANCE APPROVING ELEVEN (11) DEVELOPMENT AGREEMENTS BETWEEN THE CITY OF MODESTO AND CERTAIN PROPERTY OWNERS IN THE CARVER-BANGS, EMPIRE NORTH UNIT 1, FAIRVIEW VILLAGE, AND NORTH BEYER SPECIFIC PLAN AREAS, RELATING TO THE PROVISION OF CITY SEWER SERVICE TO THESE PROPERTIES.

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, requests for Development Agreements have been filed by specific owners of property in the Carver Bangs, Empire North Unit 1, Fairview and North Beyer Specific Plan areas, in Modesto, California, and

WHEREAS, the Modesto Urban Area General Plan calls for urban development and the extension of sewer service in the areas covered by the proposed development agreements, and

WHEREAS, the proposed development agreements are within areas which have

been annexed to the City of Modesto, and

WHEREAS, a duly noticed public hearing was held by the Planning Commission of the City of Modesto on September 8, 1997, 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 agreements, 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. 97-65, adopted on September 8, 1997, recommended to the City Council approval of the proposed development agreements between specific owners of property in the Carver-Bangs, Empire North Unit 1, Fairview and North Beyer Specific Plan Areas within the City of Modesto, and

WHEREAS, said matter was set for a public hearing of the City Council to be held at 7:00 p.m., on September 16, 1997, 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 proposed development agreements between the City of Modesto and specific property owners in the Carver Bangs, Empire North Unit 1, Fairview, and North Beyer Specific Plan areas, in Modesto, California, and

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

WHEREAS, said Government Code section further provides that a development

agreement shall not be approved unless the legislative body finds that the provisions of the agreement are consistent with the general plan and any applicable specific plan,

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

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

1. That the proposed Development Agreements are consistent with the Modesto Urban Area General Plan and the Carver-Bangs, Empire North Unit 1, Fairview and North Beyer Specific Plan as well as subdivision and zoning provisions of the Modesto Municipal Code and Government Code Sections 65864 et seq.
2. There are no substantial changes in the proposed development agreements which will require major revisions of the Kiernan Business Park and Carver-Bangs Specific Plan Focused EIR (SCH No. 94082005), Empire North Unit 1 Specific Plan Focused EIR (SCH No. 95122030), Fairview Village Focused EIR (SCH No. 95032006), or Mitigated Negative Declaration for the North Beyer Specific Plan (SCH No. 96102053).
3. There are no substantial changes occurring with respect to the development agreements being undertaken which will require major revisions in the Kiernan Business Park and Carver-Bangs Specific Plan Focused EIR, Empire North Unit 1 Specific Plan Focused EIR, Fairview Village Focused EIR, or Mitigated Negative Declaration for the North Beyer Specific Plan.

4. No new information, which was not known and could not have been known at the time the Kiernan Business Park and Carver-Bangs Specific Plan Focused EIR, Empire North Unit 1 Specific Plan Focused EIR, Fairview Village Focused EIR, or Mitigated Negative Declaration for the North Beyer Specific Plan were certified as complete, has become available.

**SECTION 2. APPROVAL OF ELEVEN (11) DEVELOPMENT**

AGREEMENTS. ELEVEN (11) Development Agreements between the City of Modesto and specific property owners, as listed below, in designated Specific Plan Areas are hereby approved. A copy of each Development Agreement is on file in the Office of the City Clerk.

Name	Property (APN NO.)
<b><u>Carver-Bangs Specific Plan:</u></b>	
1. Calvary Chapel of Modesto	78-18-02, 23
2. Chateau Provence, LLC	46-07-18, 19, 20
3. Wilson Schuler	46-07-15
<b><u>Empire North Unit 1 Specific Plan:</u></b>	
4. The Bluffs Senior Housing Development, LLC and Parker Bluffs Ltd. Partnership	14-38-09, 10
<b><u>Fairview Village Specific Plan:</u></b>	
5. The Bonzi Ownership Group	56-28-07
6. Norman Galas	56-27-02
7. World Investment II	56-28-08

**North Beyer Specific Plan:**

- |     |                              |                  |
|-----|------------------------------|------------------|
| 8.  | Florsheim Brothers           | 52-05-24, 28     |
| 9.  | Kirk Lindsey                 | 52-05-21         |
| 10. | William & Veronica Loretelli | 52-05-11, 12     |
| 11. | Vito Pantaleo                | 52-05-09, 25, 29 |

SECTION 3. EXECUTION BY CITY. The City Manager or his authorized designee are hereby authorized to execute said eleven (11) Development Agreements, as listed above, 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 agreements, the City Clerk is hereby directed to record with the County Recorder a copy of each 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 16th day of September, 1997, by Councilmember Friedman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Cogdill, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Cogdill, Dobbs, Friedman, Mayor Lang

NOES: Councilmembers: Fisher, McClanahan, 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



*Lark*

ORDINANCE NO. 3062-C.S.

AN ORDINANCE APPROVING FOUR (4) DEVELOPMENT AGREEMENTS BETWEEN THE CITY OF MODESTO AND CERTAIN PROPERTY OWNERS IN THE PELANDALE-SNYDER SPECIFIC PLAN AREA , RELATING TO THE PROVISION OF CITY SEWER SERVICE TO THESE PROPERTIES.

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, requests for Development Agreements have been filed by specific owners of property in the Carver Bangs, Empire North Unit 1, Fairview, North Beyer, and Pelandale/Snyder Specific Plan areas, in Modesto, California, and

WHEREAS, the Modesto Urban Area General Plan calls for urban development and the extension of sewer service in the areas covered by the proposed development agreements, and

WHEREAS, the proposed development agreements are within areas which have been annexed to the City of Modesto, and

WHEREAS, a duly noticed public hearing was held by the Planning Commission of the City of Modesto on September 8, 1997, 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 agreements, 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. 97-65, adopted on September 8, 1997, recommended to the City Council approval of the proposed development agreements between specific owners of property in the Pelandale/Snyder Specific Plan Areas within the City of Modesto, and

WHEREAS, said matter was set for a public hearing of the City Council to be held at 7:00 p.m., on September 16, 1997, 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 proposed development agreements between the City of Modesto and specific property owners in the Pelandale/Snyder Specific Plan areas, in Modesto, California, and

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

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

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

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

1. That the proposed Development Agreements are consistent with the Modesto Urban Area General Plan and the Pelandale/Snyder Specific Plan as well as subdivision and zoning provisions of the Modesto Municipal Code and Government Code Sections 65864 et seq.
2. The Pelandale/Snyder Specific Plan EIR (adopted January 16, 1996 - State Clearing House No. 93042004) adequately describes the project for purposes of CEQA. (Section 15162 State CEQA Guidelines).
3. No substantial changes are proposed in the Pelandale/Snyder Specific Plan because there is no involvement of new significant environmental effects or substantial increase in the severity of previously identified significant effects. (Section 15162(a)(1) State CEQA Guidelines).
4. No substantial changes have occurred with respect to circumstances under which the Pelandale/Snyder Specific Plan is undertaken which will require major revisions of the EIR because there is no involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects in the Pelandale-Snyder Specific Plan EIR.
5. There is no new information of substantial importance which was not known and could not have been known with the exercise of reasonable diligence at the time the Pelandale-Snyder Specific Plan EIR was certified as complete. (Section 15162(a)(3)).

SECTION 2. APPROVAL OF FOUR (4) DEVELOPMENT AGREEMENTS.

Four (4) Development Agreements between the City of Modesto and specific property owners,

as listed below, in the designated Specific Plan Area are hereby approved. A copy of each Development Agreement is on file in the Office of the City Clerk.

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Name	Property (APN NO.)
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**Pelandale-Snyder Specific Plan:**

- |    |                                   |                  |
|----|-----------------------------------|------------------|
| 1. | Big Valley Grace Community church | 46-03-06, 07, 09 |
| 2. | Marlene Johnston                  | 46-07-17         |
| 3. | Snyder Ranch                      | 78-18-28         |
| 4. | Charles Viss                      | 46-07-06         |

SECTION 3. EXECUTION BY CITY. The City Manager or his authorized designee are hereby authorized to execute said four (4) Development Agreements, as listed above, 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 agreements, the City Clerk is hereby directed to record with the County Recorder a copy of each 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 16th day of September, 1997, by Councilmember Friedman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Cogdill, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Cogdill, Dobbs, Friedman, Mayor Lang

NOES: Councilmembers: McClanahan, Serpa

ABSENT: Councilmembers: Fisher

APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:

By   
JEAN ADAMS, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

Ord. No. 3062-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 October, 1997, Councilmember Cogdill, moved its final adoption, which motion being duly seconded by Councilmember Friedman, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Cogdill, Dobbs, Friedman, Mayor Lang

NOES: Councilmembers: McClanahan, Serpa

ABSENT: Councilmembers: Fisher

APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:   
JEAN ADAMS, City Clerk

Effective Date: November 6, 1997

Check  
6:

ORDINANCE NO. 3063 -C.S.

AN ORDINANCE AMENDING SECTION 28-3-9 OF THE ZONING MAP TO REZONE FROM MEDIUM-HIGH DENSITY RESIDENTIAL ZONE, R-3, TO PLANNED DEVELOPMENT ZONE, P-D(523), PROPERTY LOCATED AT 601 AND 607 16TH STREET. (DR. RANDALL HAYASHI)

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

SECTION 1. ZONING CHANGE. Section 28-3-9 of the Zoning Map is hereby amended to reclassify the following described property from Medium-High Density Residential Zone, R-3, to Planned Development Zone, P-D(523):

R-3 to P-D(523)

All that certain property located in Block 119, city of Modesto, being a portion of the southwest quarter of Section 28, Township 3 South, Range 9 East; Mount Diablo Base and Meridian, more particularly described as follows:

All of Lots 12 and 13 and the northeasterly 74.00 feet of Lots 14, 15, and 16 of said Block 119, as shown on the map recorded in Volume 15 of Maps, Stanislaus County Records.

Including also the southwesterly 40.00 feet of 16th Street, the northwesterly 40.00 feet of F Street, and the northeasterly 10.00 feet of the alley, all being adjacent to the above described property.

SECTION 2. USES. The following uses shall be permitted in said P-D(523) 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/professional offices as allowed in P-O Zone.

2. Off-street parking as shown on approved plan.

SECTION 3. ZONING MAP. Section Map 28-3-9 of the Zoning Map of the City of Modesto is amended to appear as set forth on the map attached hereto, which is hereby made a part of this ordinance by reference.

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

SECTION 5. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the 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.

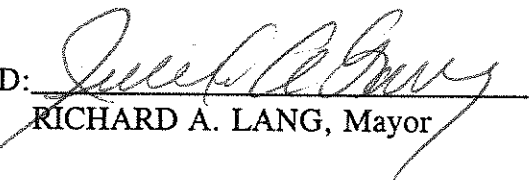


The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 16th day of September, 1997, by Councilmember Friedman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and ordered printed and published by the following vote:

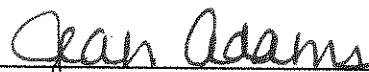
AYES: Councilmembers: Cogdill, Dobbs, Fisher, Friedman, McClanahan, Serpa, Mayor Lang

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:

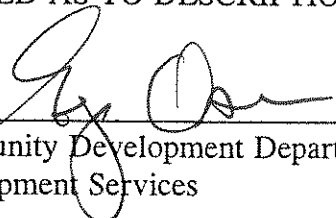
By   
JEAN ADAMS, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

APPROVED AS TO DESCRIPTION:

By   
Community Development Department  
Development Services

Ord. No. 3063-C.S.

FINAL ADOPTION CLAUSE

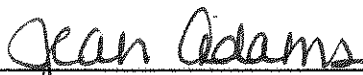
The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 7th day of October, 1997, Councilmember Friedman moved its final adoption, which motion being duly seconded by Councilmember Dobbs, was upon roll call carried and the ordinance adopted by the following vote:

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

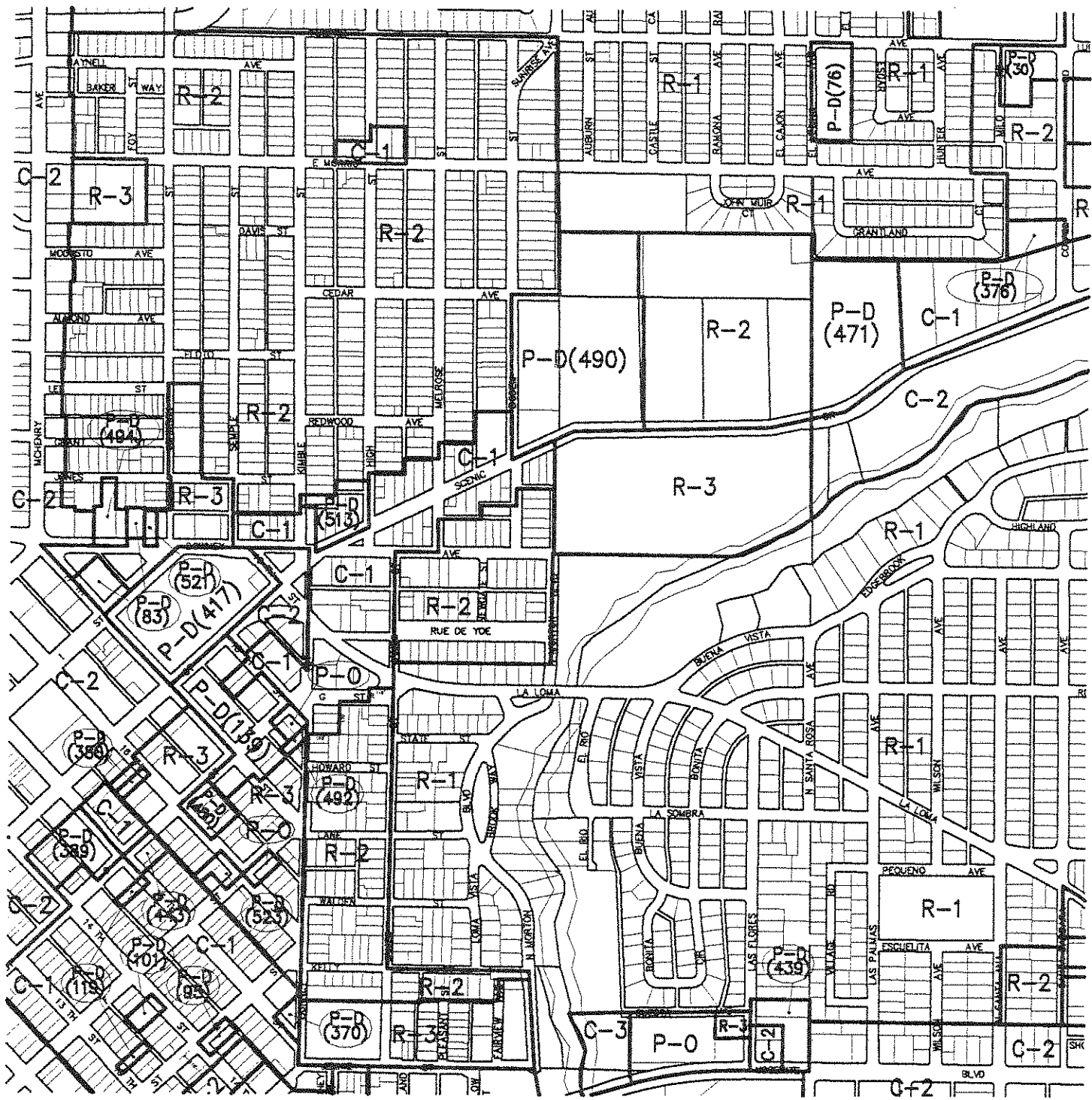
NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:   
MAYOR RICHARD A. LANG

ATTEST:   
JEAN ADAMS, City Clerk

Effective Date: November 6, 1997



3064

ORDINANCE NO. 3064 -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(473), AS AN ADDITION TO P-D(473) PROPERTY LOCATED TO THE REAR OF 609 EAST ORANGEBURG AVENUE, NORTH OF EAST ORANGEBURG AVENUE, WEST OF SUNRISE AVENUE. (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(473), as an addition to P-D(473):

R-1 to P-D(473), as an addition to P-D(473)

All that real property situate in the City of Modesto, County of Stanislaus, State of California, described as follows:

All that 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, more particularly described as follows:

Commencing at the Southwest corner of the Southeast quarter of the Northeast quarter of the Northwest quarter of said Section 21, being in the intersection of Melrose Avenue with East Orangeburg Avenue; thence East along the South line of the Northeast quarter of the Northwest quarter of said Section 21, being the centerline of East Orangeburg Avenue, a distance of 320 feet to the Southwest corner of existing P-D(473); thence North along the West line of existing P-D(473) which is parallel to the West line of the East half of the Northeast quarter of the Northwest quarter of said Section 21, a distance of 264 feet to the Northwest corner of said P-D(473); thence East along the North line of said P-D(473) and parallel to the aforementioned centerline of East Orangeburg Avenue, a distance of 10.00 feet to the Point of Beginning of this Description; thence North and parallel to the West line of the East half of the Northeast quarter of the Northwest quarter of said Section 21, a distance of 207 feet; thence East and parallel to the aforementioned centerline of East Orangeburg Avenue, a distance of 165 feet; thence south and parallel to the aforementioned

West line of the East half of the Northeast quarter of the Northwest quarter of said Section 21, a distance of 207 feet to the Northeast corner of said P-D(473); thence West along the North line of existing P-D(473) and parallel to the aforementioned centerline of East Orangeburg Avenue, a distance of 165 feet to the Point of Beginning.

SECTION 2. USES. The following uses shall be permitted in said P-D(473) Zone, as an addition to P-D(473), 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 the 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 7th day of October, 1997, by Councilmember Dobbs, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Cogdill, was upon roll call carried and ordered printed and published by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: Fisher

APPROVED: 

RICHARD A. LANG, Mayor

ATTEST:

By 

JEAN ADAMS, City Clerk

(SEAL)

APPROVED AS TO FORM:

By 

MICHAEL D. MILICH, City Attorney

APPROVED AS TO DESCRIPTION:

By 

Community Development Department  
Development Services

Ord. No. 3064-C.S.

FINAL ADOPTION CLAUSE

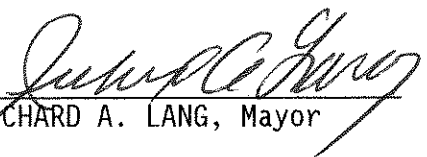
The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 14th day of October, 1997, Councilmember McClanahan, moved its final adoption, which motion being duly seconded by Councilmember Cogdill, was upon roll call carried and the ordinance adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: Fisher

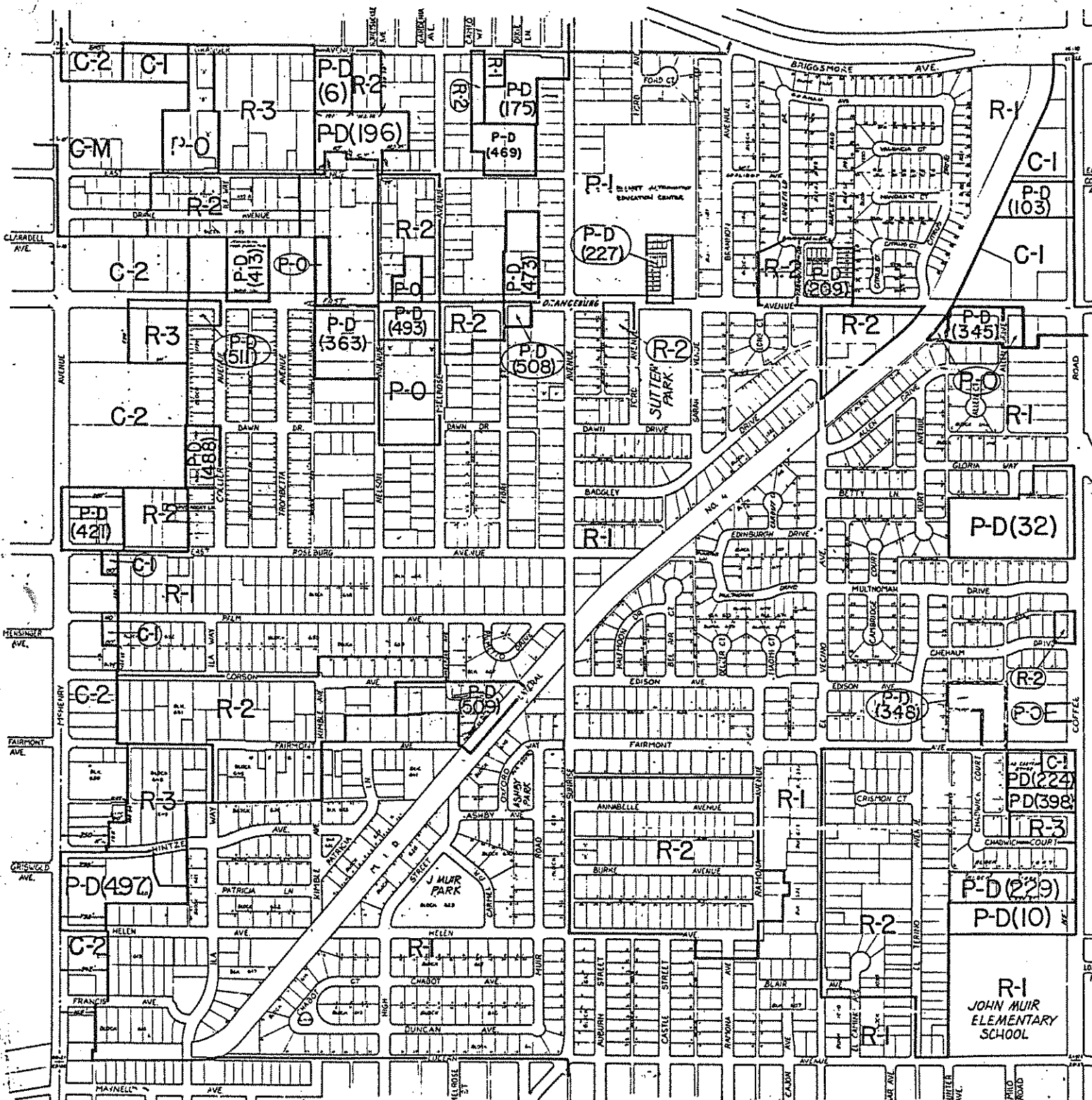
APPROVED:

  
RICHARD A. LANG, Mayor

ATTEST:

  
JEAN ADAMS, City Clerk

Effective Date: November 13, 1997



ZONING MAP OF THE CITY OF MODESTO

21-3-9



ORDINANCE NO. 3066 -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
ENSLEN AVENUE, between Granger Avenue and Orangeburg Avenue	25 miles per hour
FAIRMONT AVENUE, between Virginia Avenue and McHenry Avenue	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 per hour	August 5, 1993
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	January 11, 1993
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	August 9, 1993
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	June 25, 1994
CARVER ROAD, between Briggsmore Avenue and Orangeburg Avenue	35 miles per hour	June 25, 1994
CARVER ROAD, between Orangeburg Avenue and 9th Street within	35 miles per hour	June 25, 1994
CELESTE DRIVE, between Coffee Road and Oakdale Road	30 miles per hour	January 29, 1993
CLAUS ROAD, between Sylvan Avenue and Briggsmore Avenue	50 miles per hour	February 29, 1996
CLAUS ROAD, between Briggsmore Avenue and Scenic Drive	50 miles per hour	August 5, 1993
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	August 12, 1993
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	August 5, 1993

COLLEGE AVENUE, between Rumble Road and Bowen Avenue	30 miles per hour	August 9, 1993
COLLEGE AVENUE, between Bowen Avenue and Princeton Avenue	35 miles per hour	March 13, 1992
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
DALE ROAD, between Pelandale Avenue and Snyder Avenue	40 miles per hour	October 26, 1992
DALE ROAD, between Snyder Avenue and Veneman Avenue	40 miles per hour	October 26, 1992
DALE ROAD, between Veneman Avenue and Standiford Avenue	35 miles per hour	August 9, 1993
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	35 miles per hour	January 7, 1993
ENCINA AVENUE, between Santa Barbara Avenue and Conejo Avenue	35 miles per hour	January 7, 1993



EVERGREEN AVENUE, between Orangeburg Avenue and Carver Road	35 miles per hour	January 7, 1993
FAIRMONT AVENUE, between Sunrise Avenue and Coffee Road	35 miles per hour	January 7, 1993
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 Carpenter Road	40 miles per hour	July 11, 1994
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	January 28, 1993
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	March 4, 1992
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	January 28, 1992
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	January 28, 1993
NEEDHAM STREET, between 9th and L Streets	35 miles per hour	January 28, 1993
NORTH MARTIN LUTHER KING DRIVE, between Maze Boulevard and California Avenue	30 miles per hour	March 13, 1992
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 24, 1994
ORANGEBURG AVENUE, between Martin Avenue and McHenry Avenue	40 miles per hour	January 8, 1993
ORANGEBURG AVENUE, between McHenry Avenue and Coffee Road	40 miles per hour	June 24, 1994
ORANGEBURG AVENUE, between Coffee Road and Oakdale Road	35 miles per hour	June 25, 1994

ORANGEBURG AVENUE, between Oakdale Road and Lakewood Avenue	35 miles per hour	June 25, 1994
ORANGEBURG AVENUE, between Lakewood Avenue and Claus Road	35 miles per hour	June 25, 1994
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	November 30, 1992
PELANDALE AVENUE, between Sisk Road and Dale Road	45 miles per hour	January 28, 1992
PRESCOTT ROAD, between Snyder Avenue and Standiford Avenue	40 miles per hour	December 30, 1992
PRESCOTT ROAD, between Standiford Avenue and Rumble Road	40 miles per hour	December 30, 1992
PRESCOTT ROAD, between Rumble Road and Briggsmore Avenue	35 miles per hour	August 9, 1993
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	December 30, 1992
ROSEBURG AVENUE, between Tully Road and McHenry Avenue	30 miles per hour	January 8, 1993
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	35 miles per hour	April 29, 1992
RUMBLE ROAD, between Sisk Road and Conant Avenue	40 miles per hour	July 6, 1992
RUMBLE ROAD, between Conant Avenue and Tully Road	35 miles per hour	January 8, 1993
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	January 8, 1993
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	30 miles per hour	January 27, 1993
SCENIC DRIVE, between Coffee Road and Oakdale Road	40 miles per hour	June 25, 1994
SCENIC DRIVE, between Oakdale Road and Lakewood Avenue	40 miles per hour	October 28, 1992
SCENIC DRIVE, between Lakewood Avenue and Lillian Drive	40 miles per hour	January 8, 1993
SCENIC DRIVE, between Lillian Drive and Claus Road	40 miles per hour	May 26, 1992
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 and South 7th Streets	30 miles per hour	January 19, 1993
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	October 26, 1992
SNYDER AVENUE, between Prescott Road and Carver Road	45 miles per hour	November 5, 1992

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
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 Standiford Avenue and Coldwell Avenue	35 miles per hour	March 13, 1992

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	January 18, 1993
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	January 27, 1992
WOODROW AVENUE, between Tully Road and McHenry Avenue	30 miles per hour	January 20, 1993
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 400 feet north of Tully Road	45 miles per hour	May 26, 1992



9TH STREET, between D Street Morton Boulevard	30 miles per hour	June 28, 1996
9TH STREET, between P Street and L Street	35 miles per hour	May 26, 1992

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

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

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 14th day of October, 1997, 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: Cogdill, Dobbs, Fisher, McClanahan, Serpa, Mayor Lang

NOES: Councilmembers: None

ABSENT: Councilmembers: Friedman

APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:

By   
JEAN ADAMS, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

Ord. No. 3066-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 October, 1997, Councilmember Friedman moved its final adoption, which motion being duly seconded by Councilmember Dobbs, was upon roll call carried and the ordinance adopted by the following vote:

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

APPROVED:   
MAYOR RICHARD A. LANG

ATTEST:   
JEAN ADAMS, City Clerk

Effective Date: November 20, 1997

ORDINANCE NO. 3067 -C.S.

AN ORDINANCE AMENDING CHAPTER 5 OF TITLE V OF  
THE MODESTO MUNICIPAL CODE RELATING TO SOLID  
WASTE.

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

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

**CHAPTER 5 - SOLID WASTE**

**SEC. 5-5.01. DECLARATION OF POLICY.**

The accumulation, collection, removal and disposal of solid waste must be controlled by the City for the protection of the public health, safety and welfare. The Council finds that to give effect to this policy, a comprehensive system for the periodic collection, removal and disposal of solid waste from all premises in the City is essential and benefits all occupants of premises in the City, and, therefore, all such occupants are required to provide for removal or collection of solid waste from all premises in the City in accordance with the provisions of this chapter.

**SEC. 5-5.02. PENALTY PROVISIONS.**

A violation of any provision of this chapter shall be punishable as an infraction as set forth in Section 1-2.01 of this Code, except where provisions of this chapter specifically make such violation a misdemeanor.

**SEC. 5-5.03. DEFINITIONS.**

The following words and phrases, whenever used in this chapter, shall be construed as defined in this section:

- (a) **"Annexation"** means the legal process of including new territory within the incorporated boundaries of the City.
- (b) **"Automated collection container"** means a standard container designed for automated collection.

- (c) "**Cannery or food processing waste**" means the solid residues resulting from canning/food processing operations, which is segregated by the generator and which is collected for reuse.
- (d) "**Collection**" means the collection and transport of solid waste.
- (e) "**Collection routes**" means streets or areas designated for collection on a particular day/schedule.
- (f) "**Collection vehicle**" means any vehicle used by the collector for the collection of solid waste.
- (g) "**Collector**" means a person or firm authorized by a valid service agreement with the City of Modesto to collect solid waste within the City limits.
- (h) "**Commercial**" means occurring in a business zone.
- (i) "**Construction and demolition sites**" means sites where construction or demolition activities are taking place.
- (j) "**Containerized yard waste**" means yard waste set out for collection in a standard container.
- (k) "**Customer**" shall mean any person, firm or corporation receiving service under the provisions of this chapter.
- (l) "**Designated recycling collection location**" means the location where an authorized recycling collector has agreed with a customer to pick up segregated recyclable materials as approved by the Public Works and Transportation Director.
- (m) "**Detachable container**" means a container, watertight and with a cover, designed for direct dumping into a collection vehicle, and constructed in standard sizes with a minimum of one (1) cubic yard in capacity, as approved by the Public Works and Transportation Director, and furnished by a collector.
- (n) "**Disposal**" means the final disposition of solid waste at a solid waste facility.
- (o) "**Drop box container**" means a metal box designed for loading upon a vehicle for transportation to a solid waste facility, with a minimum of

twenty (20) cubic yards' capacity, of a design approved by the Public Works and Transportation Director, and furnished by a collector.

- (p) "**Finance Director**" means the Finance Director of the City of Modesto or his/her duly authorized agent.
- (q) "**Garbage**" means putrescible kitchen and table food waste and animal, fish, food, fowl, fruit or vegetable matter, or any portion thereof, resulting from the storage, preparation, cooking, or handling of food stuffs, or any other material contaminated by or rendered useless because of contact with any putrescible matter, except that garbage shall not include cannery or food processing wastes as defined in Section 5-5.03(c), industrial garbage as defined in Section 5-5.03(w), or swill as defined in Section 5-5.03(ap).
- (r) "**Garbage/Recyclables**" means garbage and recyclables commingled in the same container. Garbage/recyclables shall also include rubbish when said rubbish is included in the same container.
- (s) "**Hazardous substance or hazardous wastes**" means all substances defined as hazardous waste, acutely hazardous waste, or extremely hazardous waste by the State of California in the Health and Safety Codes or in future amendments to or recodifications of such statutes, or identified and listed as hazardous waste by the U.S. Environmental Protection Agency pursuant to the Federal Resource Conservation and Recovery Act and all future amendments thereto.
- (t) "**Household hazardous waste**" means hazardous waste generated at a residential location within the City.
- (u) "**Health Officer**" means the Stanislaus County Department of Environmental Resources.
- (v) "**Industrial areas**" means areas which are zoned industrial by the City's zoning code.
- (w) "**Industrial garbage**" means garbage produced by any person, firm or corporation engaged in the business of processing or manufacturing agricultural products, animals, poultry, goods, wares or other products or materials, who processes or manufactures the same for the purpose of wholesale in processed or manufactured form, and shall include cannery/food processing waste. Industrial garbage also means garbage

produced by any person, firm or corporation engaged in the business of building construction and/or building demolition.

- (x) **"Industrial garbage collector"** means an agent or employee of the City, or any person, or the employees thereof, with whom an agreement shall have been entered under the terms of this chapter for the collection of industrial garbage.
- (y) **"Initial term and any extensions"** means the term of a service agreement and any extensions beyond that time period as established by the City Council.
- (z) **"Place" or "Premises"** means every dwelling house, dwelling unit, apartment house or multiple-dwelling building, trailer or mobile home park, store, restaurant, rooming house, hotel, motel, hospital, office building, department store; manufacturing, processing or assembling shop or plant; warehouse; and every other property or building where any person resides or any business or activity is carried on or conducted within the City of Modesto.
- (aa) **"Property value"** means a worth to the extent that a person will collect the materials involved with compensation to the owner or producer, or at no cost to the owner or producer.
- (ab) **"Pruned refuse"** means tree trimmings and similar material not to exceed six (6) feet in length and six (6) inches in diameter, and no single piece shall weigh more than fifty (50) pounds.
- (ac) **"Public Works and Transportation Director"** means the Public Works and Transportation Director of the City of Modesto and his/her duly authorized agent.
- (ad) **"Recyclable materials"** means domestic, commercial or industrial by-products which may have an economic value if recycled, which may be source separated, set aside, handled, packaged or offered for collection by the residence/business. Recyclables include, but are not limited to, glass, newspaper, plastics, metal, bi-metal, aluminum, and other materials.
- (ae) **"Recyclables"** means recyclable materials.
- (af) **"Recycling"** means the process of collecting, sorting, cleansing, treating, reconstituting, and/or marketing recyclable materials which would

otherwise be disposed of in a landfill. The collection, transport or disposal of solid waste which is not intended for, or capable of being, reused, shall not be construed to be recycling.

- (ag) "**Recycling collector**" means a person, firm, organization or company which the City has authorized to provide recycling service in the City.
- (ah) "**Recycling container**" means any container provided by an authorized recycling collector to a customer for the purpose of segregating recyclable materials for collection by collector. Recycling containers shall be clearly marked to indicate purpose and to warn that theft of the container, theft of its contents, or diversion for uses other than by the collector are punishable under the Municipal Code.
- (ai) "**Removal**" means transportation and disposal of solid waste by noncustomers in accordance with the provisions of this chapter.
- (aj) "**Residential premises**" means any dwelling unit the occupant of which places his/her solid waste in a standard container.
- (ak) "**Rubbish**" means nonputrescible, useless, unused, unwanted or discarded material or debris, either combustible or noncombustible, which by their presence may injuriously affect the health, safety and comfort of persons and property in the vicinity thereof.
- (al) "**Salvageable waste**" means matter and material which will be reused and which has a property value.
- (am) "**Service area**" means the area of the City to be served by a collector as described in the service agreement between City and collector.
- (an) "**Solid waste**" means all putrescible and nonputrescible solid, semi-solid and liquid waste accumulated or delivered for collection and disposal within the City and includes, but is not limited to, construction debris, demolition debris, bulky waste, and yard waste. Solid waste does not include hazardous waste or household hazardous waste, designated waste, infectious waste, recyclable materials when recycled, sewage, or abandoned automobiles.
- (ao) "**Standard container**" means a plastic container, watertight and with a close-fitting cover, of not less than sixty (60) nor more than ninety (90) gallons' net capacity of a design satisfactory to the Public Works and Transportation Director or such other disposal unit approved by the



Public Works and Transportation Director, and supplied by the solid waste collector to its residential customers. The Public Works and Transportation Director shall make the determination whether a residential customer receives a sixty- or a ninety-gallon container.

- (ap) "**Swill**" means all classes of putrescible, animal, fish, fowl, fruit or vegetable matter, and shall include matter or substances used in the preparation, cooking, dealing in or storage of meats, fowl, fish, fruits and vegetables that are subject to immediate decay and the attraction of flies or rodents, and having a property value.
- (aq) "**Swill collector**" means an agent or employee of the City, or any person, or the agents, assignees, or employees thereof, with whom an agreement shall have been entered under the terms of this chapter for the collection of swill.
- (ar) "**Term**" means the length of an agreement entered under the terms of this chapter.
- (as) "**Yard waste**" means leaves, weeds, grass cuttings, vines, shrubbery, similar soft vegetative materials, and woody prunings from trees which are cut up into two (2) foot lengths no larger than six (6) inches in diameter for placement in a yard waste recycling container, except that yard waste shall not include pruned refuse or source separated leaves set out for collection between November 1 and December 31 of each year pursuant to Article 11 of Chapter 7 of Title IV of the Modesto Municipal Code.
- (at) "**Yard waste recycling container**" means a dark green standard container to be used for the separate collection and recycling of yard waste. Yard waste recycling container shall also mean a detachable or other container as approved by the Public Works and Transportation Director, used for the collection and recycling of yard waste from commercial or other customer classes.

#### **SEC. 5-5.04. SEGREGATION AND DISPOSITION OF SOLID WASTE MATERIALS.**

Every producer of solid waste may segregate the same into garbage, recyclables, garbage/recyclables, containerized yard waste, industrial garbage, rubbish, and/or swill, and dispose of the same as provided in this chapter.

**SEC. 5-5.05. DEPOSITING OR BURYING SOLID WASTE.**

No person shall throw, drop, leave, dump, bury, place, or otherwise dispose of any solid waste upon any property within the City limits of the City, either with or without intent to remove the same from such property; or upon any street, way, sidewalk, gutter, stream or creek or the banks thereof, or any public place or public property within the City limits of the City, except as otherwise approved by the Public Works and Transportation Director, or at a permitted solid waste facility approved for such use.

**SEC. 5-5.06. ACCUMULATION OF GARBAGE  
GARBAGE/RECYCLABLES, YARD WASTE, OR RUBBISH.**

Every person shall keep the premises occupied by that person, and every owner of any unoccupied premises or property and every owner of three-family dwellings, apartment houses and multiple-dwelling buildings shall keep the same in a clean and sanitary condition, and shall not cause, suffer, or permit any garbage, garbage/recyclables, or yard waste to accumulate on such premises or property for a period in excess of one (1) calendar week; or cause, suffer, or permit any rubbish to accumulate on their premises for a period in excess of one (1) calendar month; provided, however, that this provision shall not be construed to prohibit any person from keeping building materials on any premises or property during the period of active construction, reconstruction, or repair of a building or structure thereon under a current valid building permit; nor the neat storage of clean recyclables intended to be taken by the occupant to a recycling center, nor the keeping of wood, neatly piled, upon such premises for household use; nor the composting of grass or trimmings in a manner allowed pursuant to the Composting Regulations of the State of California.

**SEC. 5-5.07. GARBAGE, GARBAGE/RECYCLABLES, YARD WASTE,  
AND/OR SWILL COLLECTION.**

Collection or removal of garbage, garbage/recyclables, and yard waste shall be made at least once a week, and collection of swill shall be made daily. Collectors shall transfer the contents of all containers into the collection vehicle provided therefor without spilling any contents.

**SEC. 5-5.08. CONTAINERS REQUIRED.**

It shall be unlawful for any person occupying any premises within the City, or for any person owning, controlling or maintaining any premises within the City where solid waste is created, produced, or accumulated, to fail or neglect to provide a sufficient number of each approved type of standard containers for

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

#### **SEC. 5-5.09. NUMBER OF CONTAINERS REQUIRED.**

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

- (a) One-family and two-family dwellings: Effective January 1, 1997, one (1) black standard container for garbage and garbage/recyclables, and one (1) dark green standard container for yard waste recycling per dwelling unit.
- (b) Three-family dwellings, apartment houses, and multiple-dwelling buildings: Effective January 1, 1998, one (1) standard container per dwelling unit for garbage and garbage/recyclables, unless a lesser number is authorized by the Public Works and Transportation Director, and sufficient yard waste collection containers of a type approved by the Public Works and Transportation Director.
- (c) Motel, hotel, trailer park, or mobile home park: One (1) standard container for garbage and garbage/recyclables per unit or space, unless a lesser number is authorized by the Public Works and Transportation Director, and sufficient yard waste collection containers of a type approved by the Public Works and Transportation Director.

- (d) Commercial place or premises: Effective January 1, 1998, not less than one (1) standard container for garbage or garbage/recyclables, and sufficient yard waste collection containers of a type approved by the Public Works and Transportation Director.

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

Nothing herein shall be construed to prohibit the joint use of a detachable container or drop box container by two (2) or more customers upon approval of the Public Works and Transportation Director.

#### **SEC. 5-5.10. PROHIBITED LOCATION OF CONTAINERS.**

Solid waste, rubbish, swill, and industrial garbage containers shall not be placed or allowed to remain in or on any street right-of-way, except on solid waste pickup day or as otherwise authorized by the Public Works and Transportation Director.

#### **SEC. 5-5.11. CONTAINER LOCATIONS.**

- (a) On single-family and two-family premises, standard solid waste containers shall be placed by the customer on the premises and when subject to collection may be collected by the collector as follows:
  - (1) Where alleys exist, immediately adjacent to and accessible from the alley without the necessity of entering the premises.
  - (2) Where alleys do not exist, on the asphaltic portion of the street next to the curb, or the edge of the driveway apron, or such other location as approved by the Public Works and Transportation Director.
  - (3) All containers shall be placed no more than four (4) feet from an area where the collection vehicle can reasonably park. All residential containers set out for collection shall have the necessary clearance from obstructions on either side of the container as well as overhead clearance needed for the collection vehicle to empty contents of the container without causing damage to public or private property. In case of dispute, an

- (d) Commercial place or premises: Effective January, 1998, not less than one (1) standard container for garbage or garbage/recyclables, and sufficient yard waste collection containers of a type approved by the Public Works and Transportation Director.

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

Nothing herein shall be construed to prohibit the joint use of a detachable container or drop box container by two (2) or more customers upon approval of the Public Works and Transportation Director.

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Solid waste, rubbish, swill, and industrial garbage containers shall not be placed or allowed to remain in or on any street right-of-way, except on solid waste pickup day or as otherwise authorized by the Public Works and Transportation Director.

#### **SEC. 5-5.11. CONTAINER LOCATIONS.**

- (a) On single-family and two-family premises, standard solid waste containers shall be placed by the customer on the premises and when subject to collection may be collected by the collector as follows:
  - (1) Where alleys exist, immediately adjacent to and accessible from the alley without the necessity of entering the premises.
  - (2) Where alleys do not exist, on the asphaltic portion of the street next to the curb, or the edge of the driveway apron, or such other location as approved by the Public Works and Transportation Director.
  - (3) All containers shall be placed no more than four (4) feet from an area where the collection vehicle can reasonably park. All residential containers set out for collection shall have the necessary clearance from obstructions on either side of the container as well as overhead clearance needed for the collection vehicle to empty contents of the container without causing damage to public or private property. In case of dispute, an

acceptable residential container location shall be as determined by the Public Works and Transportation Director.

- (4) All containers shall be screened from public view, except on pickup day, in a manner approved by the Public Works and Transportation Director.
  
- (b) Standard and detachable containers for solid waste service to multiple-dwelling buildings, apartments, commercial and industrial premises shall be placed in a location no greater than fifty (50) feet from the nearest point where the collector's vehicle can reasonably be parked. Drop box containers shall be located as agreed upon between the customer and the collector. In case of dispute, the location shall be as determined by the Public Works and Transportation Director.
  
- (c) Containers for solid waste may be placed on premises at locations other than described in this section if the customer is handicapped or disabled and the location is approved by the Public Works and Transportation Director.

**SEC. 5-5.12. EXPLOSIVES OR HAZARDOUS MATERIALS.**

No person shall deposit in any container used for solid waste, any explosive, highly flammable, radioactive or otherwise hazardous material or substance. A violation of this section shall be punishable as a misdemeanor.

**SEC. 5-5.13. SPILLAGE OF SOLID WASTE.**

All solid waste hauled by any person over public streets in the City shall be secured during the hauling thereof so as to prevent spillage or blowing.

**SEC. 5-5.14. FURNISHING OF DETACHABLE AND DROP BOX CONTAINERS.**

Any agreement entered into by the City for garbage, garbage/recyclables, yard waste collection shall provide for the availability of approved detachable containers and drop box containers by the collector on a rental basis. The collector shall be responsible for the general repair and upkeep of all detachable containers and drop box containers. The customer shall maintain all rented detachable containers and drop box containers in sanitary condition at all times.

**SEC. 5-5.15. HOURS OF COLLECTION.**

- (a) No collections shall be made in residential districts, as shown on the Zoning Map of the City of Modesto, or at schools, churches, hospitals, offices or commercial establishments in or adjacent to said residential district except between the hours of 6:00 a.m. and 6:00 p.m. year-round.
- (b) No collections shall be made in commercial areas when in or adjacent to residential areas except between the hours of 6:00 a.m. and 9:00 p.m. Monday through Sunday.
- (c) No collection shall be made from premises in residential or commercial areas other than described in subsections (a) and (b) above except when prior approval has been given by the Public Works and Transportation Director.

**SEC. 5-5.16. COLLECTION EQUIPMENT.**

All collections shall be made with vehicles of a design approved by the Public Works and Transportation Director. All collections shall be made as quietly as possible, and use of any unnecessarily noisy trucks or equipment is prohibited.

**SEC. 5-5.17. AGREEMENT TO COLLECT SOLID WASTE.**

- (a) It shall be unlawful for any person to engage in the business of collecting solid waste within the City unless such person is an employee or agent of the City, or is a party to an agreement approved by the Council pursuant to this chapter, or is the employee of such a party.
- (b) It shall be unlawful for any person to interfere in any manner with the lawful operations of such a collector or their authorized agents or assignees.
- (c) The City may provide in any agreement pursuant to this chapter that the collector may assign a portion or portions of the solid waste collection services for which that person or entity is so contracted to one (1) or more agents or assignees upon approval of the City Council. The collector shall be responsible for the operation and conduct of such agents or assignees.

**SEC. 5-5.18. REMOVAL OF SOLID WASTE BY PRODUCERS.**

Notwithstanding the provisions of Section 5-5.17:

- (a) Any person may remove or may cause to be removed from premises occupied by that person or under their control, such solid waste as is created or produced on such premises in excess of the regular solid waste collection made by City's collector if the following conditions have been or will be complied with: Subsections (b)(1) and (2) below.
  
- (b) Any person may remove or may cause to be removed from premises occupied by that person or under their control, all solid waste created or produced on such premises if all of the following conditions have been met or will be complied with:
  - (1) Such removal shall be made only by the owner or occupant personally, or by employees of such owner or occupant.
  
  - (2) All vehicles used in carrying out such removal shall be owned by or under the exclusive control of the owner or occupant, and such vehicles and activities shall meet all the requirements of this chapter and all other laws and ordinances of the State of California and the City relating to solid waste disposal.
  
  - (3) Persons removing solid waste in excess of normal annual residential volume (defined herein as 3,000 pounds per year) shall comply with the following additional requirements:
    - (i) No waste shall be permitted to leak, blow, litter or fall from any vehicle engaged in such removal.
  
    - (ii) All removal shall be done safely and quietly with due regard to the property of others.
  
    - (iii) No person shall remove solid waste from any location within two hundred (200) feet of a public or private elementary, junior high, or high school, where such school is shown on an official map of the City, as designated by the Public Works and Transportation Director, as said map shall be periodically updated, during the forty-five (45) minutes before the commencement of the regular school day and forty-five (45) minutes following the conclusion of the regular school day, where such locations are accessible to and used by children as routes to or from school.



- (iv) Persons engaged in solid waste removal pursuant to these requirements shall be responsible for any damage in excess of normal wear and tear to the City's driving surfaces, whether or not paved, resulting from the illegal weight of, or any leakage or spillage of oils, fluids or solids by vehicles used in such solid waste removal.
  - (v) Vehicles used shall comply with CHP and D.O.T. regulations, and shall be thoroughly washed and disinfected inside the collection body following each use.
  - (vi) No driver shall operate a vehicle as in (v) above, without a valid and appropriate driver's license.
  - (vii) All vehicles as in (v) above shall be clearly identified with the name and local telephone number of its operator affixed thereto.
  - (viii) Garbage shall be disposed of at a permitted transfer facility or at the Fink Road Sanitary Landfill. If disposed of outside of Stanislaus County, the county where disposal occurs shall have an export agreement with the City of Modesto.
  - (ix) Yard waste shall be separated from garbage/recyclables and taken to a permitted composting facility or such other locations as directed by the Public Works and Transportation Director.
  - (x) Materials placed in blue, see-through recycling bags for the purpose of separating recyclables from other solid waste shall be recycled at a permitted recycling facility.
  - (xi) Insurance requirements as specified from time to time by the City's Risk Manager shall be complied with.
- (4) A cash security deposit shall be deposited with the City in an amount set from time to time by Council resolution, to ensure prompt removal of solid waste in the event it is not removed from the premises on a regular weekly basis by a noncustomer owner or person in control of the premises. The security deposit shall be made for each separate residential property or business location owned or controlled by a noncustomer, based on the

frequency and volume of past collection. Events requiring City to use a noncustomer's deposit for solid waste removal shall be treated as a public nuisance subject to immediate abatement and charged to such noncustomer. Conduct requiring City to expend noncustomer deposit monies shall constitute a misdemeanor.

- (5) Persons engaged in solid waste removal shall procure and retain a receipt from a Permitted Solid Waste Facility for each week they remain a noncustomer of a collector and display all such receipts for the preceding one-quarter calendar year upon reasonable request by appropriate City authority. Failure to show proof of solid waste disposal for each week that a person is a noncustomer shall constitute a public health and safety risk sufficient to permit City to administratively require such person to become a customer.
- (c) Any producer of industrial garbage or swill, or their employees, may transport the same upon or through any street or public place of the City for disposal at a permitted disposal facility or site.
- (d) It shall be unlawful for any person acting as an employee of a producer of industrial garbage or swill to collect or transport such industrial garbage or swill from more than one (1) industrial producer thereof.
- (e) Any person engaged in the business of gardening or tree trimming, or building demolition, or construction cleanup work, including both yards and building interiors, is authorized to remove and dispose of yard waste, rubbish or salvageable waste produced as an incident to such business.

**SEC. 5-5.19. RATE MAKING FOR SOLID WASTE COLLECTION SERVICES.**

- (a) Charges for solid waste service shall be as determined by the collector for each customer class and shall not be subject to City review and mediation.
- (b) The City shall not engage in rate-making with respect to charges for solid waste collection service, except to set maximum rates as set forth in (c) below.
- (c) Inasmuch as collectors granted exclusive service agreements will have no competition with respect to customers who do not wish to be

noncustomers, the City Council reserves the right to set maximum rates that may be charged for any solid waste collection services offered by collectors having agreements with the City specifying that the collector has an exclusive Service Agreement with respect to such service or services. No collector may charge differing rates within the same class of solid waste customer.

**SEC. 5-5.20. FEE FOR COLLECTION OF SOLID WASTE AND INDUSTRIAL GARBAGE.**

The privilege of engaging in the businesses of collecting solid waste, industrial garbage or swill is conditioned on entering into a contractual relationship with the City to provide some or all of these services.

**SEC. 5-5.21. FEE FOR COLLECTION OF SWILL.**

The fee for the privilege of engaging in the business of collecting swill in the City shall be the sum of twenty-five dollars (\$25.00) per calendar quarter, or fraction thereof, payable in advance.

**SEC. 5-5.22. DELINQUENT FEES.**

- (a) **Penalty.** To all fees not paid within thirty (30) days following the close of the preceding quarter there shall be added a penalty of five (5) percent of the amount of fees due per month or fraction thereof until paid; the maximum penalty imposed on any one (1) delinquency occurring heretofore or hereafter shall not exceed twenty-five (25) percent of the amount of service agreement fees due.
- (b) **Interest.** In addition to any penalties imposed by this section, delinquent service agreement fees heretofore or hereafter occurring shall be subject to interest at the rate of seven (7) percent per annum until paid.

**SEC. 5-5.23. COLLECTION AGREEMENT PROPOSALS.**

Proposals to enter into a collection agreement with the City pursuant to this chapter shall be submitted in writing to the City Clerk. Each proposal shall contain the following information:

- (a) **Name and address of the proponent.** If the proponent is a firm or partnership, names of all owners and partners of all classes, limited and general, shall be listed. If the proponent is a corporation, the names and titles of each of the officers and directors shall be listed, and in addition

the names of all stockholders owning, holding or controlling five (5) percent or more of corporate stock shall be listed.

- (b) The types of services offered.
- (c) The number, kind and capacity of the vehicles and other equipment to be used for such purposes.
- (d) A financial statement showing the proponent's financial status and their financial ability to conduct the collection operation proposed in their proposal.
- (e) Proposed consideration to the City if agreement is reached.

**SEC. 5-5.24. PROCEDURE TO ENTER INTO AGREEMENT.**

Upon receipt of a proposal to enter into an agreement hereunder, the Council shall pass a resolution declaring its intention to consider the proposal, setting forth notice of the day, hour and place, when and where any and all persons may appear before the Council and be heard thereon. The time fixed for such hearing shall be not less than ten (10) days nor more than thirty (30) days after the date of the passage of said resolution.

**SEC. 5-5.25. PROTESTS MAY BE FILED.**

At any time not later than the hour set for the hearing, any person interested may make written protest stating objections against the proposed agreement. Such protest must be signed by the protestant and delivered to the City Clerk.

**SEC. 5-5.26. HEARING.**

At the time set for the hearing, the Council shall proceed to hear the matter, and all persons shall be given opportunity to be heard. The Council may adjourn said hearing from time to time.

**SEC. 5-5.27. COMPETITIVE BIDS.**

The Council may in its discretion, in lieu of considering proposals for agreements, advertise for competitive bids for agreements specified by the City.

**SEC. 5-5.28. ENTERING AGREEMENTS.**

Upon consideration of a proposal or bid for an agreement, the Council may refuse to agree, or may enter into an agreement with any proponent or bidder as may appear from a proposal or bid to be in its opinion best qualified to render proper and efficient collection service.

Every agreement entered into by the Council pursuant to the provisions of this chapter shall cover the following matters:

- (a) The name and address of the person, firm or corporation with whom the agreement is made.
- (b) The type of collection service authorized.
- (c) Whether the agreement is exclusive or nonexclusive; limited or unlimited.
- (d) The term of the agreement, which in no case shall be longer than ten (10) years.
- (e) Such other conditions as the Council may provide.

**SEC. 5-5.29. LIMIT ON NUMBER OF AGREEMENTS.**

In order to preserve the health, safety and welfare of the people in the City, the Council hereby retains the authority to limit the number of agreements for the collection of solid waste, swill, and industrial garbage which will be made under this chapter.

**SEC. 5-5.30. INSURANCE.**

Each collector engaging in the collection of solid waste and industrial garbage shall provide the City Clerk with evidence of insurance coverage in the amount and form as approved by the City's Risk Manager. Such amounts shall be set forth from time to time by resolution of the City Council and shall be the same for all collectors.

**SEC. 5-5.31. FAITHFUL PERFORMANCE BOND BY SOLID WASTE COLLECTORS.**

Each party other than City to an agreement to collect solid waste pursuant to the provisions of this chapter shall file with the City Clerk a faithful performance

bond or other form of security satisfactory to the City in an amount required by the agreement, and said amount shall be the same for all collectors. Said bond or security shall be conditioned upon the faithful performance of all of the terms and conditions of said agreement and the provisions of this chapter, insofar as they are applicable to said collector.

#### **SEC. 5-5.32. ASSIGNMENT OF AGREEMENTS.**

No agreement entered into by the Council with a collector pursuant to the provisions of this chapter and no ownership interest in any party to such an agreement can be sold, gifted, transferred, leased, assigned, mortgaged, pledged, hypothecated, or otherwise encumbered or disposed of, in whole or in part, directly or indirectly, whether voluntarily or by operation of law, or through any stock transfer, transfer in trust, change in control, consolidation or merger of any company or corporation, without the prior written consent of the City Council granted after a public hearing in accordance with the procedures specified in Sections 5-5.23, 5-5.24 5-5.25 and 5-5.26 of this chapter. The Council may grant or deny such a request, and may impose such conditions as it may deem to be in the public interest including, but not limited to, conditions requiring acceptance of amendments to this service agreement and the payment to City of a reasonable transfer fee in an amount to be determined by the City Council sufficient to cover the City's costs associated with the transfer. Any attempted disposition made without such consent shall be void.

- (a) **Proof of Financial Responsibility.** In the event of any assignment duly authorized by the Council, the assignee shall assume the liability and responsibilities of the collector. Any such transfer or assignment shall be made only by an instrument in writing, such as a bill of sale or similar document, a duly executed copy of which shall be filed in the office of the City Clerk with thirty (30) days after any such transfer or assignments. Consent of the Council may not be unreasonably refused; provided, the proposed assignee shall demonstrate to the City Council the financial responsibility as required by all the provisions of this chapter and the service agreement.
- (b) **Hypothecation.** Prior consent of the Council shall be required for a transfer in trust, mortgage or other hypothecation, in whole or in part, to secure an indebtedness, when such indebtedness hypothecations shall equal or exceed fifty (50) percent of the independently appraised market value of the property used by collector in its operation. Such consent shall not be unreasonably withheld.

- (c) **Acquisitions of Interest.** In the event the collector is a corporation, it shall notify the Council when ownership of more than thirty (30) percent of the voting stock of the collector is acquired by a person or group of persons acting in concert, none of whom already own twenty (20) percent or more of the voting stock, singly or collectively. Any such acquisition shall require the approval of the Council which approval shall not be unreasonably withheld. Failure to comply with this provision shall be grounds for the termination of the service agreement pursuant to the provisions of this chapter and the service agreement.
  
- (d) **Bankruptcy.** In the event that collector should become insolvent or if proceedings in bankruptcy shall be instituted by or against collector, or if collector shall be adjudged bankrupt or insolvent by any court, or if a receiver or trustee in bankruptcy or a receiver of any property of collector shall be appointed in any suit or proceeding brought by or against collector, or if collector shall make an assignment for the benefit of creditors, and during the pendency of said proceeding the collector fails to maintain service levels as required herein or by any other applicable law, City may initiate termination of the service agreement.

#### **SEC. 5-5.33. TERMINATION OF AGREEMENTS.**

Any agreement entered by the Council pursuant to the provisions of this chapter may be terminated by the Council, if after conducting a public hearing on said termination, the Council finds and determines that the person doing business by virtue of such agreement has failed to comply with any of its material terms, or this chapter, has failed to render satisfactory collection services, or without cause in accordance with the provisions of the agreement.

- (a) **Termination for Cause.** The City further reserves the right to terminate the service agreement or impose liquidated damages in the event of any of the following:
  - (1) If collector practices, or attempts to practice, any fraud or deceit upon the City.
  - (2) If collector becomes insolvent, unable, or unwilling to pay its debts, or upon listing of an order for relief in favor of collector in a bankruptcy proceeding.
  - (3) If collector fails to provide or maintain in full and in effect, any or all of the bonds and/or coverages required by its service agreement with the City.

- (4) If collector willfully and materially violates any orders or rulings of any regulatory body having jurisdiction over collector relative to its service agreement with the City, provided that the collector may contest any such orders or rulings by appropriate proceedings conducted in good faith, in which case no breach of the service agreement shall be deemed to have occurred.
  - (5) If collector ceases to provide collection services as required by the service agreement over all or a substantial portion of its service area for a period of seven (7) days or more, for any reason within the control of the collector.
  - (6) If the collector willfully fails and/or refuses to provide City with required information, reports, and/or test results related to vehicle incidents or other incidents where such tests are conducted as part of an investigation of an incident, in a timely manner as provided in its service agreement.
  - (7) Any other act or omission by the collector, which materially violates the terms, conditions, or requirements of its service agreement.
- (b) **Process for Imposing Damages for Termination.** The Solid Waste Program Manager, may file a complaint with the Public Works and Transportation Director charging a failure of collector to comply with the provisions of this chapter or the service agreement.
- (1) Upon issuance of the Solid Waste Program Manager's complaint, the Director shall conduct a factual investigation thereof and render a decision relative to the justification for complaint, in writing, within ten (10) days following the decision.
  - (2) If the Director determines that the collector's performance pursuant to its service agreement with the City has not been in conformity with the provisions of either the service agreement, the requirements of this chapter, or the requirements of the California Integrated Waste Management Board, including, but not limited to, the laws governing transfer, storage, or disposal of special wastes, the Director may advise collector in writing of such deficiencies. The Director may set a reasonable time within which correction of all such deficiencies is to be made. Unless otherwise specified, a reasonable time for correction shall be thirty (30) days from the receipt by the collector of such written



notice. The Director shall review the collector's response and notify the collector of his/her decision, in writing.

- (3) A decision or order of the Director shall be final and binding on collector if the collector fails to file a "Notice of Appeal" with the City Manager within thirty (30) days of receipt of the Director's decision. Within ten (10) working days of receipt of a Notice of Appeal, the City Manager shall either refer the appeal to the City Council for proceedings in accordance with section b(4) below, or refer the matter to a hearing officer.
  - (4) The City Council shall set the appeal on the matter referred by the City Manager for hearing within sixty (60) days from receipt by the City Manager of the appeal or referral. At the hearing, the City Council shall consider the report of the Public Works and Transportation Director indicating the deficiencies, and shall give the collector, or its representatives and any other interested person, a reasonable opportunity to be heard.
  - (5) Based on the evidence presented at the public hearing, the Council shall determine whether the service agreement should be terminated, liquidated damages imposed, or both. The City Council may also find in favor of collector. The decision of the City Council shall be final and binding. Collector's performance under the service agreement is not excused during the period of time prior to the City Council's final determination as to whether such performance is deficient.
- (c) **Remedies: Liquidated Damages.** The City Council may, at its discretion, assess liquidated damages not to exceed the sum of five thousand dollars (\$5,000.00) per day, for each calendar day that service is not provided by collector in accordance with the service agreement for a period not to exceed forty-five (45) days.
- (d) **Additional Remedies.** In addition to liquidated damages, above, the City shall have the following rights:
- (1) **To rent or lease equipment from collector.** The City may rent or lease equipment from collector for the purpose of collecting, transporting, and disposing of solid waste which collector is obligated to collect, transport, and dispose of pursuant to its service agreement, for a period not to exceed six (6) months.

- (2) **To contract with others to perform the services.** The City may contract others to perform the services otherwise to be performed by collector hereunder, or perform such services itself.
- (3) **To obtain injunctive relief.** In the event of a breach under the terms of the service agreement by collector, City may suffer irreparable injury and incalculable damages sufficient to support injunctive relief, to enforce the provisions of the service agreement and to enjoin the breach thereof.
- (4) **To reduce the service area.** If at the time of the annual review the total number of unresolved complaints exceeds two and one-half tenths (0.25) of one percent of the total annual stops for the prior year, the City Council may determine whether it is appropriate to decrease the service area of collector because of poor performance and authorize another collector to provide services. The maximum reduction in service area for poor performance under this provision shall be ten (10) percent for each occurrence.
- (5) **To invoke eminent domain.** Nothing set forth in a service agreement entered into between City and collector shall be deemed or construed to impair or affect, in any way, to any extent, the right of the City to acquire the property of the collector, either by purchase or through the exercise of the right of eminent domain, at fair market value, or be construed to contract away or to modify or abridge, whether for a term or in perpetuity, the City's right of eminent domain.
- (6) **To collect and bill collector.** Should collector fail to provide collection services as stipulated in its service agreement, within twenty-four (24) hours of a request being communicated by the City to collector to do so, the City may collect and dispose of same and collector shall be liable for all expenses incurred including, but not limited to, disposal, operating, administration, and legal costs. Reimbursement to City for such expenses will be paid by collector within thirty (30) days after date of invoice.
- (7) **To conduct inspections.** At all reasonable times, during any normal business hours, the collector shall permit the City's authorized representatives to examine all property of the collector, and to examine and copy any and all records kept or

maintained by the collector under its control which pertain to the service agreement.

- (e) **Force Majeure.** Collector shall not be in default under its service agreement in the event that any of the services provided by the collector under the terms of the agreement are temporarily interrupted or discontinued for any of the following reasons: riots, wars, sabotage, civil disturbances, insurrections, explosion, natural disasters such as floods, earthquakes, landslides, fires, strikes, lockouts, other labor disturbances or other catastrophic events which are beyond the reasonable control of collector. Other catastrophic events do not include the financial inability of the collector to perform or failure of the collector to obtain any necessary permits or licenses from other governmental agencies or the right to use the omissions of the collector. In the event a labor disturbance interrupts collection services as required by a service agreement, City may elect to exercise its rights under the service agreement.

#### **SEC. 5-5.34. CUSTOMER MAY CONTRACT FOR EXCESS COLLECTION.**

Any owner or occupant of any premises may contract with a City collector, or their agents or assignees, for special haul services for the removal of solid waste or rubbish in excess of services provided by the collector under regular collection fees.

#### **SEC. 5-5.35 COLLECTION OF SOLID WASTE CHARGES.**

Any agreement entered into by the Council pursuant to the provisions of this chapter for the collection of solid waste, except industrial garbage, shall specify that all charges for solid waste service shall be collected solely by the collector or by the City pursuant to contract with a collector. The City may contract with a collector to perform customer billing and collection services. Nevertheless, such a contract shall not obligate the City to, and the City shall not, use its police power to collect bills remaining overdue or unpaid.

#### **SEC. 5-5.36. RECORDS REQUIRED.**

Each collector pursuant to the provisions of this chapter shall maintain detailed records of all receipts and expenditures received or incurred in the operation of such business, including all fees collected for services rendered.

The City, its officers and employees shall be entitled to inspect, audit and copy such books and records upon notice at all reasonable times.

**SEC. 5-5.37. ANNUAL FINANCIAL REPORT BY SOLID WASTE COLLECTORS.**

Each collector of solid waste or industrial garbage pursuant to the provisions of this chapter shall file each year with the Finance Director a detailed financial statement, including a balance sheet and profit and loss statement. Said statement shall be filed on or before the date set forth in said agreement for the fiscal or calendar year specified in said agreement. Any collector who fails to file said statement on or before said date shall pay a penalty of one hundred dollars (\$100.00) a day for each calendar day, or part thereof, until said statement is filed.

This section shall not apply to swill collectors.

**SEC. 5-5.38. INSPECTION AND ENFORCEMENT.**

The Health Officer and the Public Works and Transportation Director may, from time to time, inspect all premises within the City to determine compliance with and to enforce the provisions of this chapter.

**SEC. 5-5.39. APPLICATION OF OTHER PROVISIONS OF THIS CODE.**

Except for the provisions of Article 3 thereof, the provisions of Chapter 1 of Title VI of this Code shall not apply to collectors under the provisions of this chapter.

**SEC. 5-5.40. COLLECTION.**

- (a) It shall be unlawful and punishable as an infraction for any person, other than an authorized curbside recycling collector, or its employees or agents, to remove salvageable waste which has been placed at a designated collection location. Placement of salvageable waste at a designated collection location shall constitute consent to its collection by an authorized recycling collector.
- (b) Theft of recycling containers or diversion of said containers to uses other than their designated purpose shall be punishable as an infraction.

**SEC. 5-5.41. UNATTENDED NEWSPAPER RECYCLING RECEPTACLES PROHIBITED WITHOUT THE ISSUANCE OF A TEMPORARY PERMIT.**

- (a) It shall be unlawful for any person, other than a collector authorized by a service agreement with City and as expressly permitted by the Public Works and Transportation Director, to place, locate, establish, maintain, erect, leave, or otherwise make available any unattended newspaper recycling receptacle which is in public view, in the City of Modesto, for the purpose of collecting discarded newspaper as hereinafter defined; provided, however, that in the case of undertakings sponsored by and located on a site owned by a bona fide nonprofit organization, or religious organization, or public agency, the City Manager or his/her delagee shall be authorized to issue temporary permits for the location and use of newspaper recycling receptacles.
- (b) The City Manager shall promulgate, and from time to time amend rules and regulations for the issuance of temporary permits; and such rules and regulations as adopted or amended are hereby incorporated herein by reference as if fully set forth herein.
- (c) For the purposes of this section, the following words and phrases shall have the meanings set forth herein:
  - (1) "**Newspaper**" shall mean newspapers, magazines, or print material of like purpose.
  - (2) "**Newspaper recycling receptacle**" shall mean any unattended bin, box, container, structure or device, the purpose of which is to serve as a container for the collection of discarded newspaper as herein defined.
  - (3) "**Person**" shall mean any natural person, partnership, corporation, association, firm, company or entity, and shall include both male and female gender.

SECTION 2. 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 October, 1997, by Councilmember Fisher, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Cogdill, was upon roll call carried and ordered printed and published by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: McClanahan

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

ATTEST:

By Jean Adams  
JEAN ADAMS, City Clerk

(SEAL)

APPROVED AS TO FORM:

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

Ord. No. 3067-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 October, 1997, Councilmember Friedman, moved its final adoption, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and the ordinance adopted by the following vote:

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

APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:   
JEAN ADAMS, City Clerk

Effective Date: November 27, 1997

*Clab*

REVISED 10/28/97

ORDINANCE NO. 3068 -C.S.

AN ORDINANCE AMENDING SECTIONS 11-6.01, 11-6.12, 11-6.13, 11-6.14, 11-6.15 AND 11-6.16 OF CHAPTER 6 OF TITLE XI OF THE MODESTO MUNICIPAL CODE RELATING TO COLLECTIONS OF PUBLIC UTILITIES CHARGES.

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

SECTION 1. AMENDMENT OF CODE. Sections 11-6.01, 11-6.12, 11-6.13, 11-6.14, 11-6.15 and 11-6.16 of Chapter 6 of Title XI of the Modesto Municipal Code are hereby amended to read as follows:

**SEC. 11-6.01. MANAGEMENT AND ADMINISTRATION OF FUNDS.**

The Finance Director or a designee shall be in control of collections of all moneys due the City for utility service charges including water, sewer and storm drain services under the general direction of the City Manager. The Finance Director shall pay the same into the City Treasury and account for the same in the same manner as sums paid into the Treasury and accounts for other funds received in an official capacity.

**SEC. 11-6.12. GARBAGE SERVICE CHARGES.**

All places or premises within the City shall have sufficient containers to hold all garbage generated, produced or accumulated on the place or premises during a one-week period in accordance with Chapter 5 of Title V.

**SEC. 11-6.13. CHARGES FOR GARBAGE SERVICE.**

- (a) Maximum charges to classes of customers, for example, residential, commercial and industrial customers, for garbage service may be established by Council from time to time by resolution and placed on file in the office of the City Clerk and Public Works and Transportation Director.



- (b) Below maximum charges for garbage service shall be as determined by the collector for each customer class and shall not be subject to City review and mediation.
- (c) The Council may impose a separate solid waste recycling program charge. If such a charge is imposed, it shall be added to the charge for garbage service collected by collector and transmitted to the City. The method of accounting for the amount of such recycling program charges collected by the collector and the time and manner of transmitting them to the City shall be as determined by the Finance Director.

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

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

#### **SEC. 11-6.14. COLLECTION PROCEDURES.**

In addition to all other provisions and requirements of this chapter, the Council may, from time to time by resolution, establish additional rules and regulations concerning the collections of moneys that may become due the City for utility service charges including water, sewer and storm drain services. These provisions shall apply to all persons using said services in the City regardless of whether any person using said services shall have a contract for utility services with the City. Failure to comply with any provision, requirement, rule or regulation under this chapter shall be unlawful and may be punishable as an infraction.

- (a) Bills for unmetered utility services shall be issued on a monthly basis for utility services in the month immediately preceding the billing cycle in which they are issued. The utility bills are due and payable upon presentation; and if they are not paid at the end of the cycle in which they are billed, they shall be considered delinquent. If they are delinquent for more than ten (10) days and a delinquent notice pursuant to Sections 10009 and 10009.1 of the Public Utilities Code issued by the Finance Director has been delivered to the user or posted on the premises, a delinquent charge shall be added to the regular service charges; and water/sewer service shall be subject to being disconnected. If the water/sewer service is disconnected because of nonpayment, the water/sewer service shall not be reconnected until the amount of the

delinquent bill, including the delinquent charges and an additional charge for reconnection, is paid except where a new owner has acquired title or a new tenant has taken up residence since the delinquent bill was incurred. In case of a previous tenant leaving a delinquent bill, the City may require that subsequent service be furnished under the name of the owner of real property or his agent. The delinquent charge and reconnection charge shall be in accordance with a schedule approved by the Council from time to time by resolution.

- (b) Bills for metered utility services shall be issued for the month immediately preceding the date of the meter reading and shall be due and payable upon presentation. If the utility bills are not paid at the end of the cycle in which they are billed, they shall be considered delinquent, and the same procedure and charges as for unmetered service shall apply.
- (c) The utility service charges herein specified will be charged against vacant or untenanted buildings unless notice of the vacancy and a request for the discontinuance of service is made to the office of the Finance Director.
- (d) All unpaid accounts for utility services delivered at any premise shall be a lien against the real property.
- (e) Unmetered service charges shall receive a five (5) percent discount when paid one (1) year in advance; except that when unmetered charges are billed in conjunction with metered charges, no discount shall be applicable.
- (f) Senior and disabled citizens, upon qualification satisfactory to the Finance Director, shall receive a discount in accordance with a schedule set by Council from time to time by resolution for water, sewer and storm drain charges.

**SEC. 11-6.15. MANAGEMENT AND ADMINISTRATION OF UNCOLLECTIBLE UTILITY SERVICE CHARGES AND REFUNDS OF COLLECTED UTILITY FUNDS.**

- (a) The Finance Director or designee (Director) shall have the discretion to write-off utility service charges that the Finance Director deems uncollectible or refund utility services charges of any type.
- (b) In order to receive a refund, a city-utility customer must:

- (1) File a sufficient claim within two (2) years of the questioned payment on a form provided by the Director, unless waived by the Director.
- (2) Satisfy the Director both: (A) That the refund is appropriate, and (B) That the claimant was the utility-user of record who paid the funds subject to refund.
- (3) Refunds may be requested either in cash or account credit.

**SEC. 11-6.16. MANAGEMENT AND COLLECTION OF GARBAGE SERVICE CHARGES BY COLLECTORS.**

Only Sections 11-6.12 and 11-6.13, above, and this section of Chapter 6, shall apply to garbage collectors.

- (a) The City may contract with any collector to provide garbage invoice services for compensation, but the City shall not use its police powers or other authority to assist any collector with bill collection.
- (b) Owners of real property shall ultimately be responsible for garbage service charges, deposits, penalty charges, and associated administrative charges, if any, for services to their premises.
- (c) Garbage service charges may be billed directly to tenants/lessees or owners of real property. The following billing/collection procedures shall apply to collectors, tenants/lessees, and property owners:
  - (1) Billing for all garbage services including services for prorated (less than one month) periods, shall be monthly or bimonthly, and upon completion of the first month's garbage service in the event billing is bimonthly. Licensees shall give thirty (30) days written notice to tenants/lessees and property owners, and sixty (60) days written notice to the City of Modesto prior to changing their billing cycle from monthly to bimonthly or from bimonthly to monthly.
  - (2) Each collector may collect a deposit equivalent to two (2) months' service charge from a tenant/lessee or property owner prior to directing its billing to that tenant/lessee or property owner. At the property owner's option, the property owner may pay all or a portion of the deposit on behalf of a tenant/lessee. The collector shall credit the account of any tenant/lessee or

property owner in the full amount of the deposit, in the event the tenant/lessee or property owner shall not have been issued more than two (2) notices as provided in (b)(3) below, within eighteen (18) months of initiation of service.

- (3) In the event a tenant/lessee or property owner fails to pay a collector's bill, tendered in accordance with the foregoing, within thirty (30) days after that bill is mailed to the tenant/lessee or property owner, the collector shall be obligated to do the following:
  - (i) Mail notice of the delinquency to the tenant/lessee or property owner, which notice will include an administrative charge, sufficient to defray the cost of the notice to the collector, as established from time to time by the City Council. The notice shall include a statement that the delinquent sum is immediately due and is subject to a penalty fee if there are unpaid charges still owed collected sixty (60) days after the original billing date. The notice shall also state that collector may discontinue service if there are unpaid charges still owed sixty (60) days after the original billing date.
  - (ii) Simultaneously mail a copy of the notice to both the tenant/lessee and to the property owner.
  - (iii) Collector is not required to continue to provide service to any customer whose service has been discontinued due to nonpayment.
  - (iv) Collector is not required to start or restart service at any address where service has been discontinued due to nonpayment until such time as all previous charges, penalty fees, administrative charges and appropriate deposit are paid or other arrangements have been agreed to between the collector and the customer.

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

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

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 21st day of October, 1997, by Councilmember Fisher, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Cogdill, was upon roll call carried and ordered printed and published by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: McClanahan

APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:

By   
JEAN ADAMS, City Clerk

(SEAL)

APPROVED AS TO FORM:


By   
MICHAEL D. MILICH, City Attorney


Ord. No. 3068-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 October, 1997, Councilmember Friedman, moved its final adoption, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and the ordinance adopted by the following vote:

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

APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:   
JEAN ADAMS, City Clerk

Effective Date: November 27, 1997

*Check*

ORDINANCE NO. 3069 -C.S.

AN ORDINANCE ADDING CHAPTER 8 ENTITLED "CITY OF MODESTO WATER FACILITIES REVENUE BOND LAW" TO TITLE VIII OF THE MODESTO MUNICIPAL CODE RELATING TO POWERS AND PROCEDURES TO ISSUE REVENUE BONDS FOR THE PURPOSE OF FINANCING WATER FACILITIES OF THE CITY, AND INCLUDING DEFINITIONS, GENERAL PROVISIONS, POWERS, ISSUANCE PROCEDURES AND CERTAIN SUPPLEMENTAL PROVISIONS.

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

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

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



SECTION 1. AMENDMENT OF CODE. Chapter 8 entitled "City of Modesto Water Facilities Revenue Bond Law" is hereby added to Title VIII of the Modesto Municipal Code to read as follows:

**CHAPTER 8 - CITY OF MODESTO WATER FACILITIES REVENUE BOND LAW**

**ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS**

**SEC. 8-8.101. TITLE.**

This chapter may be cited as the City of Modesto Water Facilities Revenue Bond Law.

**SEC. 8-8.102. PURPOSE.**

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

**SEC. 8-8.103. DEFINITIONS.**

Unless the context otherwise requires, the following definitions shall govern the construction of this chapter:

- (a) **"Acquisition"** and its variants means acquisition, construction, improvement, furnishing, equipping, remodeling, repair, reconstruction or rehabilitation.
- (b) **"Bonds"** means any bonds, notes, interim certificates, commercial paper, debentures or other obligations issued by the City pursuant to this chapter, which are payable exclusively from revenues and other funds permitted by this chapter.
- (c) **"Chapter"** means this Chapter 8 of Title VIII of the Modesto Municipal Code, as amended from time to time in accordance herewith.
- (d) **"Charter"** means the charter of the City, as amended from time to time.

- (e) "City" means the City of Modesto, California, a charter city in the State existing under and exercising powers pursuant to the Charter and the Constitution of the State.
- (f) "City Council" means the City Council of the City.
- (g) "Costs" means, with reference to a project, any or all of the following costs incurred for the acquisition thereof:
  - (1) Obligations of the City incurred for labor and materials in connection with the acquisition of the project;
  - (2) The cost of acquisition of any property, whether real or personal and improved or unimproved, including franchise rights and other intangible property, and any interests therein, required for the acquisition of the project;
  - (3) The cost of demolishing, removing or relocating any building or structure, and the cost of making relocation assistance payments required by law;
  - (4) The cost of contract bonds and of insurance of all kinds that may be required or necessary during the course of the acquisition of the project;
  - (5) All costs of engineering, legal and consultant services, including the costs of the City for surveys, estimates, plans and specifications and preliminary investigation therefor, and for supervising construction, as well as for the performance of all other duties required by or consequent upon the proper acquisition of the project;
  - (6) All costs incurred in connection with proceedings by the City necessary to comply with the California Environmental Quality Act of 1970, as amended;
  - (7) All amounts required to fund any reserve funds for bonds and any interest on bonds becoming due and payable during a period not exceeding the period of acquisition of the project and twelve (12) months thereafter;
  - (8) All costs of issuance of the bonds;

- (9) All costs which the City shall be required to pay under the terms of any contract or contracts for the acquisition of the project;
  - (10) The refinancing of any existing indebtedness secured by or payable from revenues; and
  - (11) Any sums required to reimburse the City for advances made for any of the above items or for any other costs incurred and for work done which are properly chargeable to the project.
- (h) **"Enterprise"** means any and all facilities and assets, real and personal, tangible or intangible of the City, now or hereafter existing, for the transmission or distribution or sale of water, including (i) all property rights, contractual rights and facilities of the City relating to water, including all facilities, properties, structures or works for the treatment, conservation, storage, transmission or distribution of water now owned by the City; and (ii) all additions, betterments, extensions or improvements to such facilities, properties, structures or works or any part thereof hereafter acquired and constructed.
- (i) **"Project"** means any project undertaken by the City for the acquisition or construction of any improvement, betterment or additions to or extension of the enterprise.
- (j) **"Revenues"** means all gross, income and revenue received or receivable by the City from the ownership or operation of the enterprise, including all rates, fees and charges (including all connection fees, contributions in aid of construction, and charges and standby water availability charges) received by the City for the water service and the other services and facilities of the enterprise and all other income and revenue howsoever derived by the City from the ownership or operation of the enterprise or arising from the enterprise, but excluding in all cases any proceeds of taxes and any refundable deposits made to establish credit and advances. With respect to any grant anticipation notes issued pursuant to Section 8-8.211 of this chapter, the term "revenues" shall also include the revenues derived from the proceeds of any federal or State grant with respect to the enterprise.
- (k) **"State"** means the State of California.

## **ARTICLE 2. ISSUANCE OF BONDS TO FINANCE THE ENTERPRISE**

### **SEC. 8-8.201. GENERAL POWERS.**

The City is authorized and empowered:

- (a) To issue bonds for the purpose of financing or otherwise assisting the acquisition of enterprises authorized by this chapter and for the purpose of issuing funding or refunding bonds.
- (b) To establish the terms and conditions for the financing of any component of the enterprise undertaken pursuant to this chapter.
- (c) To employ or contract for such legal, consultant, underwriting, economic feasibility, or other services in connection with the financing of the enterprise or any portion thereof, as may be necessary in the judgment of the City Council for the successful financing of an enterprise and the issuance and sale of bonds.
- (d) In addition to all other powers specifically granted in this chapter, to do all things necessary or convenient to carry out the purposes of this chapter.

### **SEC. 8-8.202. AUTHORIZATION OF BONDS.**

The City may issue its bonds for the purpose of financing or otherwise assisting the acquisition of all or any portion of the enterprise as authorized by this chapter. Every issue of bonds shall be a limited obligation of the City, payable solely from all or any part of the revenues.

### **SEC. 8-8.203. ISSUANCE OF BONDS.**

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

definitive bonds, the City may issue interim receipts, certificates, or temporary bonds which shall be exchanged for such definitive bonds.

**SEC. 8-8.204. TERMS OF BONDS.**

Any resolution or resolutions authorizing any bonds or any issue of bonds may contain provisions respecting any of the following terms and conditions which shall be a part of the contract with the owners of the bonds:

- (a) The pledge of all or any part of the revenues subject to such agreements with bond owners as may then exist.
- (b) The interest and principal to be received and other charges to be charged and the amounts to be raised each year thereby, and the use and disposition of the revenues.
- (c) The setting aside of reserves or sinking funds and the regulation and disposition thereof.
- (d) Limitations on the purposes to which the proceeds of a sale of any issue of bonds, then or thereafter issued, may be applied, and pledging such proceeds to secure the payment of the bonds or any issue of bonds.
- (e) Limitations on the issuance of additional bonds, the terms upon which additional bonds may be issued and secured, and the refunding of outstanding bonds.
- (f) The procedure, if any, by which the terms of any contract with bond owners may be amended or abrogated, the amount of bonds the owners of which must consent thereto, and the manner in which such consent may be given.
- (g) Specification of the acts or omissions to act which shall constitute a default in the duties of the City to the owners of the bonds, and providing the rights and remedies of such owners in the event of default.
- (h) The provision for any series of bonds of any credit enhancement or credit support vehicle, or any interest rate hedge or exchange agreement.
- (i) Such other terms and conditions pertaining to the issuance of the bonds as are deemed advisable by the City Council.

**SEC. 8-8.205. TRUST AGREEMENT.**

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

**SEC. 8-8.206. PERSONAL LIABILITY.**

Neither the members of the City Council nor any person executing the bonds shall be liable personally on the bonds or be subject to any personal liability or accountability by reason of the issuance thereof.

**SEC. 8-8.207. REFUNDING BONDS.**

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

**SEC. 8-8.208. REPAYMENT OF BONDS.**

Revenues, or any portion thereof, as designated in the resolution, agreement or indenture authorizing the issuance of the bonds, shall be the sole source of funds

pledged by the City for repayment of bonds issued hereunder. Bonds issued hereunder shall not be deemed to constitute a debt or liability of the City or a pledge of the faith and credit of the City but shall be payable solely from revenues. All bonds shall contain on the face thereof a statement to the following effect:

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

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

#### **SEC. 8-8.209. TRUST FUNDS.**

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

#### **SEC. 8-8.210. PURCHASE OF BONDS BY CITY.**

The City shall have the power out of any funds available therefor to purchase its bonds. The City may hold, pledge, cancel or resell such bonds subject to and in accordance with its agreement with bond owners.

#### **SEC. 8-8.211. BOND ANTICIPATION NOTES.**

In anticipation of the sale of bonds authorized by this chapter, the City is hereby authorized to issue bond anticipation notes, and to renew the same from time to time, in such series and amounts as are determined by the Council to be necessary or appropriate for the costs of the enterprise approved by the Council. Such notes or commercial paper shall be payable from revenues or other moneys or assets authorized by this chapter to be pledged to secure payment of bonds, and which are not otherwise pledged, or from the proceeds or sale of the particular bonds in anticipation of which they are issued. Such notes shall be

issued in the same manner as bonds or as otherwise provided by resolution of the City Council.

**SEC. 8-8.212. GRANT ANTICIPATION NOTES.**

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

**ARTICLE 3. MISCELLANEOUS PROVISIONS**

**SEC. 8-8.301. LIBERAL CONSTRUCTION.**

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

**SEC. 8-8.302. PROVISIONS OF THIS CHAPTER ARE COMPLETE, ADDITIONAL AND ALTERNATIVE.**

This chapter shall be deemed to provide a complete, additional and alternative method for doing the things authorized hereby, and shall be regarded as supplemental and additional to the powers conferred by other laws. The issuance of bonds under the provisions of this chapter need not comply with the requirements of any other law applicable to the issuance of bonds. The purposes authorized hereby may be effectuated and bonds are authorized to be issued for any such purposes under this chapter notwithstanding that any other law may provide for such purposes or for the issuance of bonds for like purposes and without regard to the requirements, restrictions, limitations or other provisions contained in any other law.



**SEC. 8-8.303. ACTIONS TO DETERMINE VALIDITY OF BONDS AND PROCEEDINGS.**

An action may be brought pursuant to Chapter 9 (commencing with Section 860 of Title 10 of Part 2 of the Code of Civil Procedure) to determine the validity of bonds and the legality and validity of all proceedings previously taken and proposed to be taken for the authorization, issuance, sale, and delivery of the bonds and for the payment of the principal thereof and interest thereon.

**SEC. 8-8.304. AMENDMENT OF CHAPTER.**

This chapter shall not be amended so as to have a material, adverse affect upon the rights of the owners of any outstanding bonds theretofore issued hereunder, without the written consent of such bond owners; provided, however, that this chapter may be amended at any time (a) to make such provisions for the purpose of curing any ambiguity, or of curing, correcting or supplementing any defective provision herein contained as the city may deem necessary or desirable; or (b) if such amendment does not materially impair or adversely affect the interests of any such bond owner or City in the opinion of the City Council; or (c) if such amendments apply solely to bonds not theretofore issued.

**SEC. 8-8.305. CHAPTER CONTROLLING.**

To the extent that the provisions of this chapter are inconsistent with the provisions of any general statute or special act or parts thereof, the provisions of this chapter shall be deemed controlling.

**SEC. 8-8.306. PARTIAL INVALIDITY.**

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

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

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

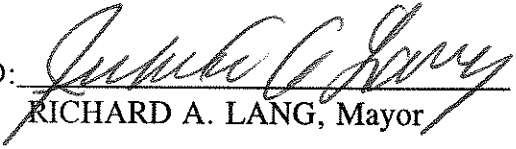
The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 28th day of October, 1997, by Councilmember Friedman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Cogdill, was upon roll call carried and ordered printed and published by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: McClanahan

APPROVED:

  
RICHARD A. LANG, Mayor

ATTEST:

By Jean Adams  
JEAN ADAMS, City Clerk

(SEAL)

APPROVED AS TO FORM:

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


Ord. No. 3069-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 4th day of November, 1997, Councilmember Friedman, moved its final adoption, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and the ordinance adopted by the following vote:

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

APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:   
JEAN ADAMS, City Clerk

Effective Date: December 4, 1997

ORDINANCE NO. 3070 -C.S.

AN ORDINANCE AMENDING ARTICLE 7 OF CHAPTER 3 OF TITLE II OF THE MODESTO MUNICIPAL CODE TO ELIMINATE REFERENCE TO THE "PARKS AND RECREATION DEPARTMENT" AND TO CREATE THE "COMMUNITY SERVICES AND NEIGHBORHOOD CONNECTIONS DEPARTMENT"; AND AMENDING ARTICLE 10 OF CHAPTER 3 OF TITLE II OF THE MODESTO MUNICIPAL CODE TO ELIMINATE REFERENCE TO THE "PUBLIC WORKS AND TRANSPORTATION DEPARTMENT" AND TO CREATE THE "OPERATIONS AND MAINTENANCE DEPARTMENT" AND ADDING ARTICLE 12 TO CHAPTER 3 OF TITLE II OF THE MODESTO MUNICIPAL CODE.

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

SECTION 1. AMENDMENT OF CODE. Article 7 of Chapter 3 of Title II of the Modesto Municipal Code is hereby amended to read as follows:

**ARTICLE 7. COMMUNITY SERVICES AND NEIGHBORHOOD CONNECTIONS DEPARTMENT**

**SEC. 2-3.701. CREATION AND FUNCTIONS.**

A Community Services and Neighborhood Connections Department is hereby established. The functions of the Community Services and Neighborhood Connections Department shall include:

- (a) Plan and operate a broad program of public recreation for all age groups, designed to encourage and maintain interest and participation by individuals and by organizations, both public and private.
- (b) Plan, develop and improve park and recreation areas and facilities.
- (c) Plan and establish relationships with community and neighborhood groups in order to initiate and promote improvement of the quality of life in the City of Modesto.
- (d) Perform such other functions as the City Manager may direct.

**SEC. 2-3.702. ORGANIZATION AND DIRECTION.**

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

**SEC. 2-3.703. ACTING COMMUNITY SERVICES AND NEIGHBORHOOD CONNECTIONS DIRECTOR.**

In the case of absence or disability of the Community Services and Neighborhood Connections Director, the City Manager shall designate a person to perform the duties and exercise the powers of the Community Services and Neighborhood Connections Director.

**SEC. 2-3.704. REFERENCES.**

- (a) Whenever this Code or any ordinance, resolution or other official document or action of the City of Modesto refers to or uses the titles Parks and Recreation Director it shall be deemed to refer to the Community Services and Neighborhood Connections Director of the City of Modesto in relation to any matter under the jurisdiction of that director.
- (b) Whenever this Code or any ordinance, resolution or other official document or action of the City of Modesto refers to or uses the name Parks and Recreation Department, it shall be deemed to refer to the Community Services and Neighborhood Connection Department of the City of Modesto in relation to any matter under the jurisdiction of that department.

SECTION 2. AMENDMENT OF CODE. Article 10 of Chapter 3 of Title II of the Modesto Municipal Code is hereby amended to read as follows:

## **ARTICLE 10. OPERATIONS AND MAINTENANCE DEPARTMENT**

### **SEC. 2-3.1001. CREATION AND FUNCTIONS.**

An Operations and Maintenance Department is hereby established. The functions of the Operations and Maintenance Department shall include:

- (a) Operate and maintain the City's utility services and such other public works facilities as are not otherwise assigned to another department by the City Manager.
- (b) Prepare and maintain records relating to the utilities and public works facilities of the City.
- (c) Plant and maintain street trees in accordance with a general plan for street trees.
- (d) Perform such other duties as the City Manager may direct.

### **SEC. 2-3.1002. ORGANIZATION AND DIRECTION.**

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

### **SEC. 2-3.1003. ACTING OPERATIONS AND MAINTENANCE DIRECTOR.**

In the case of absence or disability of the Operations and Maintenance Director, the City Manager shall designate a person to perform the duties and exercise the powers of the Operations and Maintenance Director.

### **SEC. 2-3.1004. REFERENCES.**

- (a) Whenever this Code or any ordinance, resolution or other official document or action of the City of Modesto refers to or uses the titles Director of Parking and Traffic, Director of Engineering Services, Director of Utility Services, Public Works and Transportation Director, they shall be deemed to refer to the Operations and Maintenance Director

of the City of Modesto in relation to any matter under the jurisdiction of that director.

- (b) Whenever this Code or any ordinance, resolution or other official document or action of the City of Modesto refers to or uses the names Parking and Traffic Department or Department of Parking and Traffic; or Engineering Services Department or Department of Engineering Services; or Utility Services Department or Department of Utility Services or Public Works and Transportation Department, they shall be deemed to refer to the Operations and Maintenance Department of the City of Modesto in relation to any matter under the jurisdiction of that department.

SECTION 3. AMENDMENT OF CODE. Article 12 is hereby added to Chapter 3 of Title II of the Modesto Municipal Code to read as follows:

**ARTICLE 12. ENGINEERING AND TRANSPORTATION DEPARTMENT**

**SEC. 2-3.1201. CREATION AND FUNCTIONS.**

An Engineering and Transportation Department is hereby established. The functions of the Engineering and Transportation Department shall include:

- (a) Perform or direct all phases of engineering work required in connection with the functions of the City and not otherwise assigned to another department by the City Manager.
- (b) Coordinate the planning, design, and inspection of engineering projects and services of the City.
- (c) Prepare and maintain records of the City.
- (d) Conduct engineering studies to determine the need for parking facilities, and recommend, plan, design, develop, operate and maintain on- and off-street parking facilities of the City.
- (e) Conduct traffic engineering studies, including accident analysis, to determine the need for and appropriate method for the control of traffic to provide for the safe, convenient and economical movement of persons and vehicles on the public streets and ways of the City.



- (f) Perform or direct all phases of engineering work required in connection with the functions of the City and not otherwise assigned to another department by the City Manager.
- (g) Coordinate the planning, design, and inspection of engineering projects and services of the City.
- (h) Prepare and maintain engineering records of the City.
- (i) Coordinate the planning, design and inspection of utility projects and services of the City.
- (j) Perform such other duties as may be assigned or required by the City Manager.

**SEC. 2-3.1202. ORGANIZATION AND DIRECTION.**

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

**SEC. 2-3.1203. ACTING ENGINEERING AND TRANSPORTATION DIRECTOR.**

In the case of absence or disability of the Engineering and Transportation Director, the City Manager shall designate a person to perform the duties and exercise the powers of the Engineering and Transportation Director.

**SEC. 2-3.1204. REFERENCES.**

- (a) Whenever this Code or any ordinance, resolution or other official document or action of the City of Modesto refers to or uses the names Parking and Traffic Director or Engineering Services Director they shall be deemed to refer to the Engineering and Transportation Director of the City of Modesto in relation to any matter under the jurisdiction of that director.
- (b) Whenever this Code or any ordinance, resolution or other official document or action of the City of Modesto refers to or uses the names Parking and Traffic Department or Department of Parking and Traffic;

or Engineering Services Department or Department of Engineering Services; they shall be deemed to refer to the Engineering and Transportation Department of the City of Modesto in relation to any matter under the jurisdiction of that department.

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

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

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 28th day of October, 1997, by Councilmember Fisher, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Serpa, was upon roll call carried and ordered printed and published by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: McClanahan

APPROVED: 

RICHARD A. LANG, Mayor

ATTEST:

By 

JEAN ADAMS, City Clerk

(SEAL)

APPROVED AS TO FORM:

By 

MICHAEL D. MILICH, City Attorney

Ord. No. 3070-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 4th day of November, 1997, Councilmember Friedman, moved its final adoption, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and the ordinance adopted by the following vote:

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

APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:   
JEAN ADAMS, City Clerk

Effective Date: December 4, 1997

*Check*

ORDINANCE NO. 3071 -C.S.

AN ORDINANCE AMENDING SECTIONS 7-1.104, 7-1.105, 7-1.106, 7-1.108, 7-1.109, 7-1.110, 7-1.201, 7-1.301, 7-1.304, 7-1.401 AND 7-1.404 OF ARTICLE 1 CHAPTER 1 OF TITLE VII OF THE MODESTO MUNICIPAL CODE; ADDING CHAPTER 4 TO TITLE VII ENTITLED "USE OF PARK AND RECREATION AREAS AND FACILITIES"; AND ADDING CHAPTER 5 TO TITLE VII ENTITLED "STREET TREES".

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

SECTION 1. AMENDMENT OF CODE. Sections 7-1.104, 7-1.105, 7-1.106, 7-1.108, 7-1.109, 7-1.110, 7-1.201, 7-1.301, 7-1.304, 7-1.401 and 7-1.404 of Chapter 1 of Article VII of the Modesto Municipal Code are hereby amended to read as follows:

**SEC. 7-1.104. ENCROACHMENTS IN SIDEWALK-PLANTING STRIP.**

- (a) It shall be unlawful and punishable as an infraction for any person, firm or corporation to place, erect or maintain or to permit the placing, erection, maintenance or existence of any encroachment, as hereinabove defined, upon, over or under the sidewalk-planting strip, without an encroachment permit from the City of Modesto, granted as herein provided, unless such an encroachment is specifically allowed by Section 7-1.103 of this article.
- (b) Any person, firm or corporation desiring to place, erect or maintain an encroachment in the sidewalk-planting strip which is not specifically allowed by Section 7-1.103 of this article shall make application for an encroachment permit at the office of the Engineering and Transportation Director. The application shall be in writing on a form furnished by the City for that purpose and shall specify the information set forth in Section 7-1.106 of this article.
- (c) The Engineering and Transportation Director may issue permits for encroachments in the sidewalk-planting strip in accordance with resolutions passed by the Council from time to time which establish conditions under which the permit may be issued. In each case, the applicant shall agree in writing to the conditions of the permit. In the event that the Council has not established conditions for a particular type

of encroachment, the application shall be submitted to the Council for action.

- (d) The Council may require removal of any encroachment or may revoke any encroachment permit at any time. The Engineering and Transportation Director shall give notice to remove or of revocation in the form and manner specified in subsection (h) of this section to the person maintaining said encroachment.
- (e) Any person, firm or corporation whose property encroaches in any manner upon, over or under the sidewalk-planting strip, who is required to and has not obtained a permit for the placing, erection and/or maintenance of such encroachment, shall remove the same after written notice by the Engineering and Transportation Director.
- (f) In case of an immediate hazard or danger, the Engineering and Transportation Director may cause such an encroachment to be summarily removed without notice.
- (g) It shall be unlawful for a person, firm or corporation to place, erect or maintain or to permit the placing, erection, maintenance or existence of an encroachment upon, over or under the sidewalk-planting strip if an encroachment permit is required and has not been obtained, has expired or has been revoked and the time specified in the notice from the Engineering and Transportation Director for removal of the same has expired.
- (h) Notice of such removal shall be by registered or certified mail, addressed to the post office address of the owner or occupant of the premises where the encroachment exists, or by personal service of such notice upon the owner or occupant by a person authorized by the Engineering and Transportation Director to deliver such notice. The time required for removal of such encroachment shall be specified in the notice.

#### **SEC. 7-1.105. PERMIT REQUIRED.**

It shall be unlawful for any person to construct, repair or remove, or cause to be constructed or repaired or removed, in the City, any sidewalk, driveway, curb or curb and gutter without first obtaining a permit from the Engineering and Transportation Director to do so. In no case, however, shall a permit be granted to construct sidewalks, curbs or curbs and gutters when the Council has instituted improvement proceedings under the general laws of the State relating to such work.

**SEC. 7-1.106. APPLICATION FOR PERMIT.**

Any person desiring a permit for the construction, repair or removal of any curb, gutter, sidewalk or driveway, or an encroachment, shall file with the Engineering and Transportation Director an application therefor in writing on a form furnished by the City for that purpose. Such forms shall specify the following:

- (a) The name and address of the applicant;
- (b) The location of the property at which the proposed construction, removal, repair or encroachment is to be made or installed;
- (c) The name of the person who will perform the work;
- (d) The nature and dimensions of the proposed work; and
- (e) Such additional information as the Engineering and Transportation Director may require.

**SEC. 7-1.108. FEES.**

All fees for services performed by City personnel, as required by this chapter, shall be in accordance with a schedule of fees approved by the Council from time to time by resolutions and on file in the offices of the City Clerk and Engineering and Transportation Director.

**SEC. 7-1.109. RESPONSIBILITY FOR ACCIDENTS: INSURANCE.**

Permittee shall be responsible for any and all claims and liabilities for damages caused by any of the work herein permitted or caused by permittee's failure to perform his obligations under the permit. In the event any such claim or liability for damages is made against or imposed upon the City or any department, officer or employee thereof, permittee shall and by acceptance of the permit agrees to defend, indemnify and hold each of them harmless from such claim or liability. Each street improvements permittee shall provide the City Clerk with evidence of insurance coverage in the amount and form as approved by the City's Risk Manager, except property owners constructing, repairing or removing any curb, gutter, sidewalk or driveway themselves along the street frontages of property owned by them. Insurance amounts shall be set forth from time to time by resolution of the City Council.

**SEC. 7-1.110. POSTING OF BOND.**

If permittee fails, in the opinion of the Engineering and Transportation Director, to comply with the provisions hereof or the conditions of any permit, the Director may refuse to grant and may withhold issuance of any subsequent permits to permittee until the latter has paid all costs due City for prior permits and has posted with the City a cash bond in the sum of five hundred dollars (\$500.00), which bond or any part thereof shall be used as follows:

- (a) To pay the actual cost of work completed by the Engineering and Transportation Director in connection with any permit issued, including overhead costs.
- (b) To pay the actual cost of work done by the Engineering and Transportation Director to repair or restore any public improvements damaged or destroyed by permittee during the course of any operations performed under any permit, including overhead costs.
- (c) To pay the actual cost of placing lighted barricades placed on or about the permittee's work, including overhead costs, and the costs of the furnishing by City of any other safety barricades or warnings in connection with any permit issued.

**SEC. 7-1.201. STANDARDS.**

Curbs and gutters shall be constructed or repaired in accordance with current standard drawings and specifications approved by the Council from time to time by resolution and on file in the offices of the City Clerk and Operations and Maintenance Director.

In addition to said standards, all curbs and gutter construction or repair shall comply with the following regulations:

- (a) All curb and gutter construction or repair shall be under the direction, supervision and to the satisfaction of the Operations and Maintenance Director.
- (b) All debris and surplus materials shall be removed promptly upon the completion of the work.
- (c) When curb and gutter is constructed in areas where there is no sidewalk, the area behind the curb and gutter shall be graded as shown on the standard drawings.



- (d) Applicant shall maintain the premises in a safe manner, shall provide adequate barricades and lights at his own expense to protect the safety of the public using the adjacent street or sidewalk area, and shall hold the City free and harmless from any and all damages or liability incurred because of his operations.

**SEC. 7-1.301. STANDARDS.**

Sidewalks on public rights-of-way shall be constructed or repaired in accordance with current standard drawings and specifications as approved by the Council from time to time by resolution and on file in the offices of the City Clerk and Operations and Maintenance Director.

In addition to said standards, all sidewalk construction or repair shall comply with the following regulations:

- (a) All sidewalk construction or repair shall be done under the direction, supervision and to the satisfaction of the Operations and Maintenance Director.
- (b) All debris and surplus materials shall be removed promptly upon completion of the work.
- (c) Applicant shall maintain the premises in a safe manner, and shall provide adequate barricades and lights at his own expense to protect the safety of the public using the adjacent street or sidewalk area, and shall hold the City free and harmless from any and all damages or liability incurred because of his operations.

**SEC. 7-1.304. NOTICE OF SIDEWALK DEFECTS.**

If a public sidewalk abutting or on an owner's property appears to be in a condition which is dangerous to people using the sidewalk, that property owner shall give prompt written notice of that sidewalk condition to the City of Modesto's Operations and Maintenance Director. If the property owner fails to properly notify the city of such a condition, the property owner shall be liable for damages or injuries caused by the condition of the sidewalk.

**SEC. 7-1.401. STANDARDS.**

Driveways shall be constructed or repaired in accordance with current standard drawings and specifications approved by the Council from time to time by

resolution and on file in the offices of the City Clerk and Engineering and Transportation Director.

In addition to said standards, driveway construction or repair shall comply with the regulations set forth below. For purposes of such regulations, all measurements of driveways adjacent to vertical curbs shall be made at the top of the curbing, and all measurements of driveways adjacent to drive over curbs shall be made at the property line.

- (a) The maximum width of any driveway adjacent to a vertical curb shall not be more than forty-one (41) feet. The maximum width of any driveway adjacent to a drive-over curb shall not be more than thirty-five (35) feet.
- (b) The minimum distance between driveways serving the same lot or parcel of land shall not be less than twenty (20) feet.
- (c) The total width of any driveway serving any lots or parcels of land in a single ownership shall not exceed the following limits:
  - (1) For frontages having a vertical curb, the limit shall be fifty (50) percent of the street frontage of the property or forty-one (41) feet, whichever is greater.
  - (2) For frontages having a drive-over curb, the limit shall be fifty (50) percent of the street frontage of the property or thirty-five (35) feet whichever is greater.

In the case of lots or parcels fronting on more than one street, the calculation for driveways on a given street shall be based only on the frontage of that street.

- (d) No driveway shall be so located that it interferes with intersecting sidewalks, traffic signals, lamp standards, fire hydrants, or other public improvements unless specific approval is given by the Engineering and Transportation Director and the necessary adjustments to sidewalks, traffic signals, light standards, fire hydrants, or other public improvements or installations are accomplished without cost to the City.
- (e) All work shall be done under the supervision of the Engineering and Transportation Director and in accordance with City standards and specifications in effect at the time of such work. All debris and surplus materials shall be promptly removed upon the completion of such work.

- (f) Applicant shall maintain the premises in a safe manner and shall provide adequate barricades and lights at his own expense to protect the safety of the public using the adjacent streets or sidewalks and shall hold the City free and harmless from any and all charges or damages or liability incurred because of his operation.
- (g) The Engineering and Transportation Director may grant variances from these standards in accordance with resolutions passed by the Council from time to time which establish conditions under which variances may be granted. In each case the applicant shall agree in writing to the conditions of the variance. In the event that the Council has not established conditions for a particular type of variance, the application shall be submitted to the Council for action. A variance granted pursuant to this subsection is revocable at any time by the Council.
- (h) The Council shall have the authority to rescind any permit heretofore or hereafter granted for a driveway when it finds such action to be in the public interest. Such driveways shall be removed and replaced as provided in Section 7-1.404 of this article.

#### **SEC. 7-1.404. REPLACEMENT OF DRIVEWAYS.**

- (a) **When Required.** Driveways which are no longer required for reasonable vehicular access to the property served shall be removed and standard curb, gutter and sidewalk installed by the property owner. When the Engineering and Transportation Director finds that driveways which have been constructed are no longer so required, he may notify the owner or person in possession of the property to remove said driveway and to replace the driveway opening with standard curb and gutter. Notice to replace may be given by delivering a written notice personally to the owner of the property, or by mailing said notice to the owner thereof at his last known address as the same appears on the assessment rolls.
- (b) **Form of Notice.** The notice shall specify what work is required to be done, and what materials shall be used in construction, and shall further specify that if construction is not commenced within thirty (30) days after notice is given, and diligently and without interruption prosecuted to completion, the Engineering and Transportation Director shall cause the construction to be done and the cost of the same shall be a lien on the property.

- (c) **Construction by Engineering and Transportation Director.** If the construction is not commenced and prosecuted to completion with due diligence, the Engineering and Transportation Director shall forthwith perform the necessary work to remove the driveway and eliminate the curb cut.
- (d) **Collection of Cost of Construction.** Upon completion of the work, the Engineering and Transportation Director shall notify the property owner and the Finance Director of the cost of construction. The Finance Director shall bill the property owner for the cost of the work and if the amount thereof is not paid within thirty (30) days from the date of billing, he shall record a notice of lien against the parcel of property fronting upon the curb so constructed, which lien shall continue until the cost has been paid.

The notice of lien may include claims against one or more separate parcels of property, whether contiguous or not, together with the amount due, respectively for each such parcel.

- (e) **Notice of Lien.** The notice of lien shall be delivered by the Finance Director to the County Auditor who shall enter the amount thereof on the County assessment book opposite the description of the particular property and the amount shall be collected together with all other taxes thereon against the property. The notice of lien shall be delivered to the County Auditor before the date fixed by law for the delivery of the assessment book to the County Board of Equalization.
- (f) **Manner of Collection of Lien.** Thereafter the amount of the lien shall be collected at the same time and in the same manner as ordinary City taxes are collected, and shall be subject to the same penalties and interest and to the same procedure under foreclosure and sale in case of delinquency as provided for ordinary City taxes.
- (g) **Exemptions.** The provisions of this section shall not apply to driveways which were constructed prior to July 9, 1959, and for which a curb replacement fee was paid.

SECTION 2. AMENDMENT OF CODE: Chapter 4 entitled "Use of Park and Recreation Areas and Facilities" is hereby added to Title VII of the Modesto Municipal Code to read as follows:

## CHAPTER 4. USE OF PARK AND RECREATION AREAS AND FACILITIES

### SEC. 7-4.01. DEFINITIONS.

Unless otherwise expressly stated, whenever used in this article, the following words shall be defined as follows:

- (a) **"Park"** shall mean any areas set aside for recreational uses, areas conserved for their scenic interest, playgrounds, beaches, recreation centers, golf courses, model plane fields, and any other areas owned or operated by the City of Modesto and which are intended for active or passive recreational purposes. The word "park" shall also include any parking lot adjacent to any park, any buildings, equipment, plants or other facilities located in any park.
- (b) **"Director"** shall mean the Director of the Operations and Maintenance Department of the City of Modesto.
- (c) **"City Council"** shall mean the legislative body of the City of Modesto.
- (d) **"Department"** shall mean the Operations and Maintenance Department of the City of Modesto.
- (e) **"City"** shall mean the City of Modesto.

### SEC. 7-4.02. GENERAL REGULATIONS GOVERNING USE OF PARKS.

- (a) Except as otherwise authorized by law, it shall be unlawful and an infraction for any person, firm or corporation to do or cause or permit to be done any of the acts hereinafter specified within any park owned or operated by the City of Modesto.
  - (1) To enter or trespass in any area, building or facility which is fenced and locked or enclosed and locked or is posted with a No Trespassing sign.
  - (2) To ride or bring any horse or other similar animal or to propel a vehicle in or upon any area of a park, except those areas specifically provided and designated for such purposes, unless prior written permission is obtained from the Director.

- (3) To ride a bicycle unless on trails or pathways designated for bicycle use.
- (4) To drive or operate any motor vehicle in any park in excess of fifteen (15) miles per hour.
- (5) To park any automobile or other vehicle in any park at any place other than designated parking areas. Places where parking is permitted shall be designated by appropriate signs.
- (6) To drive or operate any automobile, gasoline-powered go-carts, model airplanes, boats or midget cars in any park except in designated areas or unless prior written permission is obtained from the Director.
- (7) To clean, wash, polish or make other than emergency repairs upon any automobile, motorcycle or self-driven vehicle in any park.
- (8) To carry, bring into or ignite, fire or otherwise set off any firearms, air guns, slingshots, firecrackers or fireworks in any park except those fireworks which are part of organized and permitted special events for which prior written permission to use fireworks has been obtained from the Director.
- (9) To make a fire in any park other than in stoves, pits or braziers provided by the City unless prior written permission is obtained from the Director and a permit is obtained from the Air Pollution Control District for burning in open pits.
- (10) To bring into any park any material which will, if spilled or spread, be injurious to the turf or plant growth.
- (11) To cut or remove any wood, turf, rock, tree, flower, shrub, sand or gravel from any park unless prior written permission is obtained from the Director.
- (12) To throw or dispose of in any park any bottles, tin cans, broken glass, paper, clothes, cast iron, rubbish, soil, tree trimmings, garbage, ashes or other debris of any kind except in approved containers provided by the City.

- (13) To remove, damage or destroy any athletic equipment provided by the City, normal wear and tear excepted.
- (14) To move or remove from one location to another any part or parts of field equipment.
- (15) To move or remove from one location to another any equipment used for park maintenance.
- (16) To open or close any valve pertaining to the water mains or sprinkler system or to expose or interfere with any gas pipe, hydrant, stopcock, sewer, catch basin, backflow preventer, or other similar device in any park.
- (17) To cut, break or deface in any way buildings, equipment, grounds or other facilities of any park.
- (18) To wound, kill or catch any bird or other wild animal in any park.
- (19) To indulge in indecent or riotous conduct or language or to otherwise make noises in such a manner as to disturb any picnic, meeting, concert or exhibition in any park.
- (20) To operate a public address system without prior written permission of the Director. This prohibition shall not include the use of small portable radios used to receive regularly broadcasted programs, as long as such radios are operated at such a volume as not to disturb other persons present in the park.
- (21) To disturb or interfere with any employee of the City of Modesto acting within the scope of his employment, or to disturb or interfere with any spectator or participant in any event or activity conducted in any park, or to enter any park for the purpose of committing any such disturbance or interference.
- (22) To camp or lodge in or upon any park unless prior written permission is obtained from the Director.

- (23) To sell refreshments, foodstuffs or novelties in any park or on any street immediately adjacent thereto without the prior written permission of the Director or the City Council.
- (24) To practice, carry on, conduct or solicit for any trade, occupation, business or profession in any park without the prior written permission of the City Council.
- (25) To play or engage in any game or contest in any park except in such places as are specially provided or designated for that purpose.
- (26) To play upon any tennis courts wearing shoes other than those having vulcanized soles and heels, commonly known as tennis shoes.
- (27) To refuse to open any tennis court being used for singles play to doubles play at the end of the set being played when other persons are waiting, unless prior written permission is obtained from the Director.
- (28) To refuse to relinquish any tennis court being used for doubles play at the end of the set being played when other persons are waiting unless prior written permission is obtained from the Director.
- (29) To use any tennis courts for tennis tournaments, team practices or other special events of any kind without the prior written permission of the Director or the City Council.
- (30) To play or engage in the hitting of golf balls in any park, except on driving ranges and golf courses.
- (31) To ride bicycles through any children's playground area.
- (32) To discard lighted or unlighted cigars or cigarettes in children's playground areas.
- (33) To wade or swim in any pool in any park except when supervised.



- (34) To use any park facility for which a charge is now or hereafter made without first having paid the fee requested and having received the required permit.
  - (35) To enter any park facility for which a charge is made without first paying the full legal charge made for such entrance unless such entrance is by the consent or permission of the person or persons in charge.
  - (36) To use any park facility or equipment which has been reserved or which is indicated by an authorized or official sign to have been reserved without first having received the written permission of the Director.
  - (37) To remove any authorized or official sign indicating that any park facility or equipment is reserved.
  - (38) For any male person to resort to any toilet set apart for women, and for any female person to resort to any toilet set apart for men, provided that this prohibition shall not apply to children accompanied by their father, mother or guardian.
  - (39) It shall be unlawful to climb onto any building or structure in a park not designated for such activity.
  - (40) To possess any container made of glass in any park or to bring, carry or transport any container made of glass into any park except that the sponsor of an organized event may obtain permission from the department to possess glass containers.
  - (41) It shall be unlawful for any person without authority to tear down, deface or destroy any sign posted pursuant to the above sections.
  - (42) It shall be unlawful for any person to consume alcoholic beverages within fifteen (15) feet of an abutting edge of any public parking lot that directly abuts a City park, unless approved in advance in writing by the Director.
- (b) Except as otherwise authorized by law, it shall be unlawful and a misdemeanor for any person, firm or corporation to do or cause or permit to be done any of the acts hereinafter specified within any park owned or operated by the City of Modesto.

- (1) No person shall remain in any park between the hours of 10:00 p.m. and 6:00 a.m. of the following day.
- (2) The prohibitions contained in Section 7-4.202(b)(1) will not apply to:
  - (i) Special use facilities, as may be posted by the department extending use hours;
  - (ii) Any person attending a meeting, entertainment event, recreation activity, dance or similar activity in such park, provided such activity is sponsored or co-sponsored by the department or permit therefor, has been issued by the department;
  - (iii) Any person exiting such park immediately after the conclusion of any activity set forth in Section 7-4.202(b)(2)(ii);
  - (iv) Any peace officer or employee of the City while engaged in the performance of his/her duties.
- (c) The City of Modesto hereby designates all of its public parks as drug-free zones pursuant to and within the meaning of Health & Safety Code Section 11380.5.

**SEC. 7-4.03. PARKING FOR DISABLED PERSONS.**

- (a) The Director is hereby authorized to reserve and designate parking for disabled persons and disabled veterans at all parks and recreation facilities owned or operated by the City.
- (b) No persons shall stop, stand or park in any space designated for parking for disabled persons unless their vehicle displays a disabled person's license plate or placard, or a disabled veteran's license plate or placard, as provided by the Vehicle Code of the State of California.

SECTION 3. AMENDMENT OF CODE. Chapter 5 entitled "Street Trees" is hereby added to Title VII of the Modesto Municipal Code to read as follows:

- (1) No person shall remain in any park between the hours of 10:00 p.m. and 6:00 a.m. of the following day.
- (2) The prohibitions contained in Section 7-4.202(b)(1) will not apply to:
  - (i) Special use facilities, as may be posted by the department extending use hours;
  - (ii) Any person attending a meeting, entertainment event, recreation activity, dance or similar activity in such park, provided such activity is sponsored or co-sponsored by the department or permit therefor, has been issued by the department;
  - (iii) Any person exiting such park immediately after the conclusion of any activity set forth in Section 7-4.202(b)(2)(ii);
  - (iv) Any peace officer or employee of the City while engaged in the performance of his/her duties.
- (c) The City of Modesto hereby designates all of its public parks as drug-free zones pursuant to and within the meaning of Health & Safety Code Section 11380.5.

**SEC. 7-4.201. PARKING FOR DISABLED PERSONS.**

- (a) The Director is hereby authorized to reserve and designate parking for disabled persons and disabled veterans at all parks and recreation facilities owned or operated by the City.
- (b) No persons shall stop, stand or park in any space designated for parking for disabled persons unless their vehicle displays a disabled person's license plate or placard, or a disabled veteran's license plate or placard, as provided by the Vehicle Code of the State of California.

**SECTION 3. AMENDMENT OF CODE.** Chapter 5 entitled "Street Trees" is hereby added to Title VII of the Modesto Municipal Code to read as follows:

## CHAPTER 5 - STREET TREES

### SEC. 7-5.01. DEFINITIONS.

For the purpose of this chapter the words and phrases used herein shall have the following meaning unless the context shows a different meaning:

- (a) **"Department"** shall mean the Operations and Maintenance Department.
- (b) **"Director"** shall mean the Operations and Maintenance Director.
- (c) **"Street Tree Plan"** shall mean an official adopted plan for the planting of certain varieties of trees in public rights-of-way or planting easements within the City.
- (d) **"Official Street Trees"** shall be those specified in the Street Tree Plan.
- (e) **"Right-of-way"** shall mean that portion of the public street right-of-way between the curb, or curb line, and the adjacent property line used for the purpose of planting and maintaining city street trees.
- (f) **"Planting Easement"** shall mean that portion of land made available as a public easement for the purpose of planting and maintaining city street trees.
- (g) **"Maintain"** or **"Maintenance,"** when used in reference to street trees, shall mean and include pruning, spraying, mulching, fertilizing, cultivating, supporting, treating for disease or injury, promoting public safety, or any other similar act which promotes the life, growth, health or beauty of street trees not to include the control of vertebrate pests.
- (h) **"Street Tree"** shall mean any tree whose center of trunk at ground level is within the right-of-way or planting easement.

### SEC. 7-5.02. STREET TREE PLAN.

The Operations and Maintenance Department, in cooperation with the Community Development Department, shall prepare or have prepared a Street Tree Plan. Such plan, when approved by the City Manager, shall be submitted to the Planning Commission, which shall review said plan and submit its recommendations thereon to the Council. After making any revisions thereto which it may deem advisable, the Council shall adopt such plan by resolution. The Director shall, from time to time, recommend any revisions thereto.

Amendments to the plan shall be made in the same manner as the original adoption. Said plan shall include the types, varieties, and locations of street trees to be planted. Said plan shall include type of trees to be planted in commercial, industrial and neighborhood zones. The types of trees shall be divided into general varieties which may be modified at the discretion of the Director.

**SEC. 7-5.03. RESPONSIBILITIES, DUTIES AND AUTHORITY OF THE DIRECTOR.**

The Director, under the general supervision of the City Manager, shall have the authority and responsibility to do the following:

- (a) Carry out the provisions of this chapter.
- (b) Remove or replace any tree located within a planting right-of-way or easement, in accordance with the provisions of this chapter.
- (c) Enter in or upon any part of a right-of-way or easement or adjacent property as is reasonably necessary for the purpose of planting and maintaining street trees.

**SEC. 7-5.04. PLANTING AND MAINTENANCE.**

- (a) Except as otherwise provided in this section, within the limits of funds provided in the City budget, the City will supply, replace, and plant approximately one (1) tree per lot, excepting corner lots, where two (2) or three (3) trees will be planted, and maintain street trees in all rights-of-way and planting easements within the City.
- (b) Fees shall be charged to provide the cost of furnishing, locating, planting and fertilizing street trees as provided in Section 4-4.803.1 of Article 8 of Chapter 4 of Title IV of this Code.
- (c) The City, by mutual agreement, may provide and plant street trees in subdivisions outside of the City at a fee to be established by resolution of the Council, which fee shall not be less than that charged within the City.
- (d) No maintenance of street trees will be provided by the City in areas not within the City except by special agreement nor on privately owned property except in rights-of-way or public planting easements.

- (e) The property owner or occupant, as the case may be, shall be responsible for watering street trees located in rights-of-way or easements abutting said property.
- (f) This section shall not prevent any person, firm or public utility from installing and maintaining any overhead wires or underground pipes or conduits lawfully on, over or under public streets or public rights-of-way, subject to the provisions and requirements of Chapter 4 of Title IV of this Code. The Director, when reviewing plans for planting, maintenance or removal of street trees, shall consider the effect upon existing overhead wires or underground pipes or conduits and shall avoid unnecessary disturbance to or relocation of said facilities.

**SEC. 7-5.05. REMOVAL AND MAINTENANCE.**

- (a) The Director shall be responsible for inspection, maintenance, removal and replacement of street trees planted within rights-of-way or easements. The Director may cause street trees or other plant material planted in a right-of-way or easement to be removed by the City if they are deemed by the Director to be unhealthy, hazardous, undesirable or causing excessive damage to existing public improvements, or street trees.
- (b) The Director shall have the authority to require property owners to take such action as is necessary to control insects, scales, parasites, fungus, and other injurious pests or plant material that would cause serious injury to street trees and other plant material within the City. The City shall notify the property owner in writing, describing the conditions and stating the control necessary to correct the condition, and establishing a reasonable time within which the corrective steps shall be taken.
- (c) The Director shall have the authority to require property owners to remove or prune any privately planted tree, shrub, vine, or other plant material if it is determined by the Director to be seriously interfering with the growth and health of any street tree.
- (d) In the event a property owner desires to remove a tree from the right-of-way or easement abutting his property, he or his authorized agent shall make application to the Department. The Director shall determine whether or not such tree is required to be retained in order to preserve the intent and purpose of the Street Tree Plan. In making his determination, the Director shall consider the inconvenience or hardship which retention of the tree would cause the property owner, and consider

also the condition, age, desirability of variety and location of the tree. If the Director finds that the tree may be removed without violating the intent and spirit of the Street Tree Plan, he may authorize the property owner to remove such tree at his own expense and liability. If a permit is granted for removal of a street tree, all removal work shall be completed within sixty (60) days from the date of issuance of the permit, and shall be under the general supervision of, and in accordance with, rules established by the Director. All tree stumps shall be removed to a depth specified by the Director. All removal permits shall be void after the expiration of sixty (60) days from the date of issuance, unless extended by the Director.

**SEC. 7-5.06. PROTECTION.**

- (a) No person shall remove, trim, prune, spray, or cut any above or below-ground portions of any street tree in a right-of-way or easement without first obtaining permission from the Director.
- (b) No person shall interfere or cause any person to interfere with any work being done under the provisions of this chapter by any employee of the City, or by any person or firm doing work for the City or under a permit granted by the City.
- (c) No person shall interfere or cause anyone to interfere with or damage any overhead wires or underground pipes or conduits while removing, trimming, pruning, spraying, or cutting any street trees in a right-of-way or easement. The owner of such facilities shall be notified when such work may interfere with or cause damage to the facilities. The cost of repair of the damage to overhead wires, underground pipes or conduits shall be the responsibility of the person, firm or corporation doing or causing the work to be done. The City of Modesto and its officers and employees shall be exempt from the provisions of this subsection.
- (d) It shall be unlawful for any person to injure or destroy by any means any tree planted or maintained by the City in rights-of-way or easements, including, but not limited to, the following:
  - (1) Constructing a concrete sidewalk or driveway or otherwise filling up the ground around any street tree so as to shut off air or water from its roots.
  - (2) Piling building materials, equipment, or other substance around any tree.

- (3) Pouring any deleterious material on any tree or on the ground near any tree.
  - (4) Posting any sign, poster, notice, or other object on any tree, tree stake or guard, or fastening any guy wire, cable, rope, nails, screws, or other device to any tree, tree stake or guard.
  - (5) Causing or encouraging any fire or burning near or around any tree.
  - (6) Using any mechanical weeding device against a tree.
  - (7) Constructing retaining walls, fences, or other similar improvements which prohibit the planting or maintaining of street trees or otherwise affect their growth.
  - (8) Operating construction equipment in such a manner to cause it to contact the tree.
  - (9) Disrupt the anchorage of the tree or change the grade around the tree.
- (e) No person shall plant a tree or other plant material in a right-of-way or easement other than lawn or other similar planting materials, unless approved by the Director.

**SEC. 7-5.07. DUTY TO TRIM TREES.**

Notwithstanding other provisions of this chapter, it is hereby made the duty of every person owning or occupying any land or lots of land within the City to keep all private trees extending over any street or alley trimmed up to a height of not less than twelve (12) feet, except that a height of not less than seven (7) feet shall be permitted over the sidewalk area, and also to keep said space clear of debris.

**SEC. 7-5.08. COOPERATION WITH OTHER DEPARTMENTS AND AGENCIES.**

- (a) The Engineering and Transportation Department shall notify the Operations and Maintenance Department of any applications for new curb, gutter, sidewalk or driveway installation, or other improvement which might require the removal of or cause injury to any street tree, or interfere with the fulfillment of the Street Tree Plan.



- (b) Any public utility maintaining any overhead wires or underground pipes or conduits shall obtain permission from the Director before performing any maintenance to said wires, pipes, or conduits, which would cause injury to street trees. Said public utility shall in no way injure, deface, prune, or scar any street tree until their plans and procedures have been approved by the Director.
- (c) The Director shall be permitted to inspect any and all maintenance or operational work performed by public utilities which might affect street trees. During the performance of said work, if in the opinion of the Director, it would cause excessive or unnecessary injury to any street tree, the Director shall have the authority to stop said maintenance and operational work and arrange with said public utility another method of maintenance or operational work satisfactory to the City.
- (d) The provisions of subsections (b) and (c) of this section shall not apply to emergency public utility maintenance work which is performed during nonworking hours for City personnel.

#### **SEC. 7-5.09. LIABILITY.**

Nothing in this chapter shall impose any liability upon the City, or members of the Council, or any of its officials or employees, nor relieve the owner or occupant of any private property from the duty to keep his private property, sidewalks, and rights-of-way abutting such private property in a safe condition, free from hazards to public use.

#### **SEC. 7-5.10. APPEALS.**

Any person excepting to any denial, suspension or revocation by the Director of a permit applied for or held by him pursuant to the provisions of this Chapter, or excepting to any other administrative action taken by the Director in administering the provisions of this Chapter may appeal to the Council. Such an appeal shall be taken in accordance with the procedure prescribed by Chapter 4 of Title I of this Code.

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

**SECTION 5. PUBLICATION.** At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in

the City; and a notice shall be published once in *The Modesto Bee*, the official newspaper of the City of Modesto, setting forth the title of this ordinance, the date of its introduction and the places where this ordinance is posted.

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 28th day of October, 1997, by Councilmember Fisher, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Serpa, was upon roll call carried and ordered printed and published by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: McClanahan

APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:

By   
JEAN ADAMS, City Clerk

(SEAL)

APPROVED AS TO FORM:


By   
MICHAEL D. MILICH, City Attorney

Ord. No. 3071-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 4th day of November, 1997, Councilmember Friedman, moved its final adoption, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and the ordinance adopted by the following vote:

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

APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:   
JEAN ADAMS, City Clerk

Effective Date: December 4, 1997

ORDINANCE NO. 3072 -C.S.

AN ORDINANCE AMENDING THE TITLE OF TITLE XII OF THE MODESTO MUNICIPAL CODE TO ELIMINATE REFERENCE TO THE "PARKS AND RECREATION DEPARTMENT" AND TO CREATE THE "COMMUNITY SERVICES AND NEIGHBORHOOD CONNECTIONS DEPARTMENT"; AMENDING SECTIONS 12-1.03, 12-1.04, 12-1.05, 12-1.06 AND 12-1.09 OF CHAPTER 1 OF TITLE XII; AMENDING SECTION 12-3.02 OF CHAPTER 3 OF TITLE XII; AMENDING SECTIONS 12-4.101, 12-4.102, 12-4.103 AND 12-4.104 OF ARTICLE 1 OF CHAPTER 4 OF TITLE XII; REPEALING ARTICLE 2 OF CHAPTER 4 OF TITLE XII; AND REPEALING CHAPTER 5 OF TITLE XII OF THE MODESTO MUNICIPAL CODE.

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

SECTION 1. AMENDMENT OF CODE. The title of Title XII, entitled "Parks and Recreation", of the Modesto Municipal Code is hereby amended to read as follows:

**TITLE XII - COMMUNITY SERVICES AND NEIGHBORHOOD CONNECTIONS**

SECTION 2. AMENDMENT OF CODE. Sections 12-1.03, 12-1.04, 12-1.05, 12-1.06 and 12-1.09 of Chapter 1 of Title XII of the Modesto Municipal Code are hereby amended to read as follows:

**SEC. 12-1.03. STANDARDS OF LANDSCAPE DESIGN.**

- (a) **Plan preparation.** It is required that a licensed landscape architect, landscape contractor, architect, or engineer, be employed in preparing the landscape and irrigation plans. In addition to plants, the use of structural elements like pools, fountains, raised planters, benches and sunshades are encouraged but not required in the landscape plan.

Prior to plan preparation, the Operations and Maintenance Director should be contacted for street tree information to ensure the landscape plantings will not interfere with the City's tree planting plan. Underground Service Alert and Modesto Irrigation District should also

be contacted to avoid conflict with existing or proposed utility lines or appurtenances.

- (b) **Plant materials.** The selection of plant materials should include both evergreen and deciduous trees, shrubs, and attractive erosion-preventing ground cover. It is required that at least ninety (90) percent of the plants selected in non-turf areas be well suited to the climate of the region and require minimal water once established in the landscape. Up to ten (10) percent of the plants may be of a non-drought-tolerant variety as long as they are grouped together and can be irrigated separately. Attention shall be given to appearance, height, spread, growth rate, moisture requirements, potential root damage, disease, and pest susceptibility, climatic adaptability, soil type slope, function, and degree of maintenance required.
- (c) **Plant coverage.** Plants shall be so spaced and sized that, when mature, they will fill the planter area. Although a reasonable number of growing seasons will be allowed for full plant coverage to develop, interim ground cover shall be provided during this period. Interim cover of surfacing materials shall consist of rocks, gravel, wood mulch or chips, or any other acceptable material. Mulches must be a minimum of three (3) inches thick when used as an interim measure.
- (d) **Plant maintenance.** Underground automated irrigation systems shall be provided to assure efficient water use with a minimum of labor and water waste. Irrigation controllers must have multiple-cycle capabilities and include a rain-sensing override device. Plant material must be maintained in a healthy condition. Unhealthy plants shall be replaced. Planters shall be kept free of all weeds, debris and trash.
- (e) **Planter construction.** All planter areas shall have a peripheral concrete or acceptable permanent border to prevent cars and pedestrians from damaging plant materials. All planters constructed adjacent to buildings or structures shall be so designed to avoid irrigation water intrusion into or on that adjacent building or structure. The minimum width of a planter bed shall be forty (40) inches measured from the inside of curbing or acceptable permanent border.
- (f) **Compacted soils.** Prior to the planting of any materials, the compacted soils surrounding a building site shall be cultivated or amended to a friable condition. "Friable condition" shall mean cultivation or amendment of the soil to an easily crumbled or loosely compacted condition down to a minimum depth per planting material requirements,

whereby the root structure of newly planted material will be allowed to spread unimpeded.

**SEC. 12-1.04. LANDSCAPE PLAN SPECIFICATIONS.**

- (a) Three (3) copies of the landscape plan shall be submitted for review and approval by the Community Services and Neighborhood Connections Director, in accordance with the standards of landscape design set forth in this chapter.
- (b) One (1) copy of all building elevations and site grading plans or one (1) copy of all building plans shall be submitted together with the landscape plan. The building elevation and site grading plans shall be in sufficient detail to permit determination of the location, width, and height of all doors and windows, and roof overhangs on all proposed buildings within or adjacent to proposed landscaped areas.
- (c) The landscape plans shall be legible and drawn to a scale no smaller than one (1) inch equals twenty (20) feet. Maximum sheet size on all drawing shall be twenty-four (24) inches by thirty-six (36) inches ("D" size).
- (d) The landscape plans shall indicate property lines, important dimension lines, setback lines, walls and fences, driveways, adjacent streets, outline of all structures, and adjacent land uses.
- (e) The landscape plans shall indicate planting details, pre-emergent soil treatment rates and materials.

Soil test for horticultural suitability and infiltration rates shall be required at time of landscape plan submittal. Soils shall be prepared and/or amended as appropriate to encourage successful plant growth.

A minimum of three (3) inches of mulch shall be added in non-turf areas to the soil surface after planting. Plant types that are intolerant to mulch shall be excluded from this requirement.

Sheet plastic and other non-porous material shall not be placed under mulch.

- (f) The use of turf as a plant material will not be permitted in narrow planter areas (less than ten (10) feet in width), in traffic median strips, parking strips, between curbs and sidewalks, and on slopes that are in excess of three to one (3:1).

On slopes exceeding fifteen (15) percent, a level buffer zone of eighteen (18) inches is required between bermed turf areas and any hardscape (i.e., streets, walkways, etc.).

- (g) The landscape plans shall include a plant list giving the common and botanical names of plants to be used. This plant list shall be arranged in legend form with a key number assigned to each plant. On the plan, each plant shall be identified by a key number. The size of the plant, its spacing, and the quantity to be used, shall follow in the legend, as the following example illustrates.

<u>No.</u>	<u>Botanical Name</u>	<u>Common Name</u>	<u>Size</u>	<u>Space</u>	<u>Quantity</u>
1.	Campanula isophylla	Italian bellflower	Flat	6"	6
2.	Eucalyptus polyanthemos	Silver dollar gum	5 gal.	20'	10
3.	Pinus mugo mughus	Mugho pine	1 gal	10'	14
4.	Ajuga reptans	Carpet bugle	Flat	6"	5
5.	Callistemon red chico	Fireball bush	1 gal.	10'	6
6.	Hedra canariensis	Algerian ivy	Flat	10'	3

**SEC. 12-1.05. IRRIGATION PLAN SPECIFICATIONS.**

- (a) Three (3) copies of the irrigation plans shall be submitted for review and approval by the Community Services and Neighborhood Connections Director to ensure adequate irrigation coverage and compliance with the requirements of the Plumbing Code of the City. The irrigation system shall be designed with water conservation in mind. Wind direction, surface drainage, soil type, and application method shall be considered.
- (b) Irrigation plan shall indicate potable water system point of connection and size, water pressure available, and maximum demand of the system in gallons per minute or gallons per hour if appropriate.

Reclaimed water may also be used as an alternate irrigation water source if it is supplied through a dual distribution system that conforms to Stanislaus County Health Department Standards.

- (c) Irrigation equipment specified must be identified by manufacturer's name and equipment identification number.

- (d) Performance data for irrigation heads and emitters including discharge rates, effective diameter, and operating pressure shall be listed in irrigation legend.
- (e) All locations of irrigation valves, controllers, hose bibs, quick coupler valves, sprinkler heads, and backflow prevention devices, valves, filters, pressure regulators, emitters, rain switches, and moisture sensors must be indicated.
- (f) Irrigation details must be used to clarify particular situations. Typical details should include backflow prevention devices, valves, irrigation heads, emitters, filters, pressure regulators, moisture sensors, rain switches, check valves, and irrigation controllers.
- (g) All irrigation lines must be sized.
- (h) Schedule 40 P.V.C. pipe is required under all paved areas. Piping must be installed a minimum of twelve (12) inches underground for non-pressure irrigation lines and eighteen (18) inches underground for constant pressure irrigation lines. Emitter distribution tubing may be located at grade.
- (i) Irrigation watering schedules for the entire year must be provided on irrigation drawings. These schedules will include an establishment (first twelve (12) months) and post-establishment. Post-establishment schedules will be divided into four (4) quarters. Those quarters are winter, spring, summer and fall. All watering schedules must be in compliance with current City of Modesto water scheduling requirements.
- (j) Irrigation system must be designed by a qualified designer. Qualified designers would include: certified irrigation designers, landscape contractors, and landscape architects, and engineers.
- (k) Pop-up sprinklers in turf areas shall have a minimum four-inch pop-up height. Sprinkler coverage shall be one hundred (100) percent. Heads shall be placed at a maximum of fifty (50) percent of the diameter of throw (head to head). Sprinkler heads must have matched precipitation rates within each control valve circuit. System should be designed for minimum runoff and overspray onto non-irrigated areas.
- (l) Sprinklers and sprays shall not be used in areas less than ten (10) feet wide. Drip and bubblers shall be used that do not exceed one and one-half (1½) gallons per minute per device.



- (m) Serviceable check valves are required where elevation differential may cause low head drainage.
- (n) Irrigation controllers must be capable of dual or multiple programming. Controllers must have multiple cycle start capacity and a flexible calendar program. Controllers shall be set to operate between sunset and sunrise.
- (o) Water application rates shall not exceed the infiltration rate of soil. A minimum of a one-hour period shall be allowed prior to the application of additional water.

#### **SEC. 12-1.06. INSPECTION.**

Upon installation of landscaping and irrigation systems, the installer must contact the Community Services and Neighborhood Connections Department and request an inspection. An inspector from the Community Services and Neighborhood Connections Department will inspect the installation to verify compliance with the approved landscape and irrigation plans. The landscape and irrigation installation must conform to the approved plans before a certificate of occupancy will be issued by the Chief Building Official.

#### **SEC. 12-1.09. MODEL HOMES.**

To promote landscape water conservation through education, all single-family residential developments consisting of eight (8) or more homes shall provide at least one (1) model home that demonstrates the principles of water efficient landscapes described in this code.

- (a) **Plant Materials.** Each "water efficient" model home to be landscaped shall contain exclusively low-water-use plant materials as identified on a suggested planting list available from the Community Services and Neighborhood Connections Department or approved by the Community Services and Neighborhood Connections Director.
- (b) **Irrigation System.** Each "water efficient" model home shall contain exclusively an irrigation system that provides a high-efficiency water application method. (Drip or tickle may not be used in turf areas.)
- (c) **Signs.** Each development with "water efficient" model homes shall provide the following information to potential buyers:

- (1) Front Yard Sign: A four-square foot sign shall be located in the front yard of each "water efficient" model such that it is clearly visible to buyers. The sign shall indicate that the model features a water efficient landscape and irrigation elements such as hydrozones, irrigation equipment, and other elements which contribute to the overall water efficient theme.

SECTION 3. AMENDMENT OF CODE: Section 12-3.02 of Chapter 3 of

Title XII is hereby amended to read as follows:

**SEC. 12-3.02. RULES AND REGULATIONS.**

The following acts are hereby prohibited upon said John Thurman Field, and the commission of any of them is declared to be a misdemeanor, punishable in accordance with the provisions of Section 1-2.01, Chapter 2, Title 1 of this Code:

- (a) To trespass upon said John Thurman Field.
- (b) To engage in or play sports activities or to conduct any activity thereon without first obtaining permission to do so from the Community Services and Neighborhood Connections Director or entering into an agreement with the City for use of the facilities.
- (c) To willfully or maliciously injure the turf or sod thereon, or in any way to destroy property thereon, or to remove property or equipment therefrom (except the property of the person so removing the same) without permission from the Community Services and Neighborhood Connections Director.
- (d) To take possession of any athletic equipment other than that belonging to themselves upon or from said park or lands or streets adjacent thereto or the sale or offer for sale thereon of athletic equipment, food, drinks or other commodities except as may be provided by the rules and regulations which may hereafter be adopted by the Council.
- (e) To drive or park any vehicle on or over any part of the lands comprising said John Thurman Field except at the designated parking area, or as may be designated by the Community Services and Neighborhood Connections Director. This shall not apply to City equipment or other authorized equipment engaged in work connected with the facilities of the park.

- (f) To deposit rubbish, garbage, cut grass or other foreign matter upon said John Thurman Field or any part thereof.

SECTION 4. AMENDMENT OF CODE. Sections 12-4.101, 12-4.102, 12-4.103 and 12-4.104 of Article 1 of Chapter 4 of Title XII are hereby amended to read as follows:

**SEC. 12-4.101. USE OF MANCINI BOWL.**

- (a) **Children's Activities.** The use of Mancini Bowl may be authorized by the Community Services and Neighborhood Connections Director for community musical events by juvenile musicians, for grammar school graduation exercises, for children's games, for presentation of outdoor pageants and theatricals by juveniles, for use by Boy Scouts, Girl Scouts, 4-H Clubs, for group activities of juvenile organizations, for band concerts, for school festivals of all types. Requests for such uses shall have first priority to use the Bowl provided the request is submitted to the Community Services and Neighborhood Connections Department at least thirty (30) days prior to the date when the use is desired.
- (b) **Continuance of Existing Uses.** The use of Mancini Bowl may be authorized by the Community Services and Neighborhood Connections Director for any use which has been made of the Bowl during the five-year period immediately preceding the effective date of this article. Requests for such uses shall be submitted in writing to the Community Services and Neighborhood Connections Department for processing.
- (c) **Fees.** No fees or charges shall be imposed for the use of the Bowl for the uses set forth in this section.

**SEC. 12-4.102. OTHER ORGANIZATIONS.**

- (a) **Uses Authorized.** The use of Mancini Bowl may be authorized by the Community Services and Neighborhood Connections Director for special events or special meetings other than regular meetings by other organizations. All such requests for use of the Bowl for these purposes shall be submitted in writing to the Community Services and Neighborhood Connections Director and shall be approved or denied by the Community Services and Neighborhood Connections Director based on the availability of the Bowl for the use requested and the determination of the Community Services and Neighborhood

Connections Director that the use requested is consistent with park purposes and the existing land uses in the surrounding area. In the event the Community Services and Neighborhood Connections Director denies such a request, the applicant may appeal such denial to the City Council. In the event the Council approves the request, the applicant shall thereafter obtain a permit for the approved use from the Department of Parks and Recreation, which shall be issued by the Department in accordance with the action of the Council.

- (b) **Fees and Charges.** The rental fee to be charged for authorized use of Mancini Bowl, pursuant to this section, shall be as established from time to time by resolution adopted by the Council.

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

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

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

**SEC. 12-4.104. GENERAL MANAGEMENT.**

The general management of Mancini Bowl shall be under the direction and supervision of the Community Services and Neighborhood Connections Director, or his designated representatives, who shall administer the use of the Bowl pursuant to the policies and regulations established by this article.

SECTION 5. REPEALS. Article 2 of Chapter 4 of Title XII of the Modesto Municipal Code is hereby repealed.

SECTION 6. REPEALS. Chapter 5 of Title XII of the Modesto Municipal Code is hereby repealed.

SECTION 7. EFFECTIVE DATE. This ordinance shall go into effect and be in full force and operation from and after thirty (30) days after its final passage and adoption.

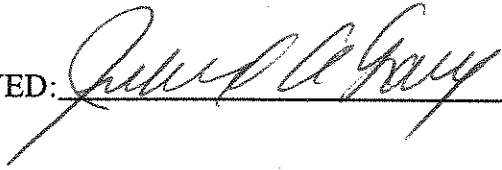
SECTION 8. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in *The Modesto Bee*, the official newspaper of the City of Modesto, setting forth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

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 28th day of October, 1997, by Councilmember Fisher, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Serpa, was upon roll call carried and ordered printed and published by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: McClanahan

APPROVED: 

RICHARD A. LANG, Mayor

ATTEST:

By   
JEAN ADAMS, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

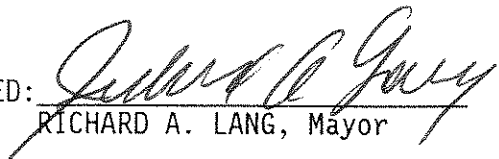
Ord. No. 3072-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 4th day of November, 1997, Councilmember Friedman, moved its final adoption, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and the ordinance adopted by the following vote:

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

APPROVED:

  
RICHARD A. LANG, Mayor

ATTEST:

  
JEAN ADAMS, City Clerk

Effective Date: December 4, 1997

ORDINANCE NO. 3073 -C.S.

AN ORDINANCE AMENDING SECTION 23-3-9 OF THE ZONING MAP TO REZONE FROM LOW DENSITY RESIDENTIAL ZONE, R-1, TO PLANNED DEVELOPMENT ZONE, P-D(525), PROPERTY LOCATED ON THE EAST SIDE OF OAKDALE ROAD SOUTH OF WYLIE DRIVE. (KEARNEY VENTURES)

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

SECTION 1. ZONING CHANGE. Section 23-3-9 of the Zoning Map is hereby amended to reclassify the following described property from Low Density Residential Zone, R-1, to Planned Development Zone, P-D(525):

R-1 to P-D(525)

All that certain real property shown as Parcel 1, 2 and 3 on that certain parcel map filed for record in Book 15 of Parcel Maps at Page 24, Stanislaus County Records, on September 24, 1972, lying within the southwest quarter of Section 23, Township 3 South, Range 9 East, Mount Diablo Base and Meridian, City of Modesto, County of Stanislaus, State of California.

Including the north 4.00 feet of the 14.00-foot-wide alley immediately adjacent to the above-mentioned Parcel 3.

Including also the eastern 46.50 feet of Oakdale Road located immediately adjacent to and between the above-mentioned Parcels 1, 2 and 3 and the west line of Section 23-3-9.

SECTION 2. USES. The following uses shall be permitted in said P-D(525) Zone if the plan for construction conforms in principle to the approved plan, or if changes are approved by the Secretary of the Planning Commission as required by Section 10-2.1709(c) of the Modesto Municipal Code, or by the Planning Commission if any changes not conforming in principle to the approved plan are proposed, as required by Section 10-2.1709(a) or (b) of the Modesto Municipal Code:



1. Commercial strip center for uses as allowed in the C-1, Neighborhood Commercial Zone and including a pool sales and supply store.
2. Off-street parking as shown on approved plans.

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

SECTION 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 November, 1997, by Councilmember Fisher, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Dobbs, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Cogdill, Dobbs, Fisher, Friedman, McClanahan, Mayor Lang

NOES: Councilmembers: Serpa

ABSENT: Councilmembers: None

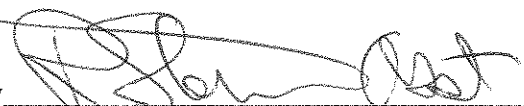
APPROVED:   
RICHARD A. LANG, Mayor

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

Ord. No. 3073-C.S.

FINAL ADOPTION CLAUSE


The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 12th day of November, 1997, Councilmember Friedman, moved its final adoption, which motion being duly seconded by Councilmember McClanahan, was upon roll call carried and the ordinance adopted by the following vote:

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

APPROVED:

  
RICHARD A. LANG, Mayor

ATTEST:

  
JEAN ADAMS, City Clerk

Effective Date: December 12, 1997



ZONING MAP CITY OF MODESTO

23-3-9

ORDINANCE NO. 3074-C.S.

AN ORDINANCE ADOPTING A PRECISE PLAN FOR AREA 33 OF THE VILLAGE ONE SPECIFIC PLAN, RELATING TO PROPERTY LOCATED ON THE SOUTH SIDE OF MERLE AVENUE WEST OF FINE AVENUE (STEWART BRADLEY ESTATES).

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

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

WHEREAS, Stewart Bradley has filed a proposal to develop an 80-lot, single-family subdivision called Bradley Estates on a 16.93-acre site located on the south side of Merle Avenue west of Fine Avenue, and

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

WHEREAS, a public hearing was held by the Planning Commission of the City of Modesto on November 3, 1997, in the City Council Chambers, City Hall, 801 11th Street, Modesto, and

WHEREAS, after considering public comments, the Planning Commission, by Resolution 97-88, recommended to the City

Council approval of a Precise Plan for Area No. 33 of the Village One Specific Plan, and Amendment to Sections 13-3-9 of the Zoning Map to rezone from a Specific Plan-Holding (SP-H) Zone to a Specific Plan-Overlay (SP-O) Zone, and

WHEREAS, said matter was set for a public hearing of the Council of the City of Modesto to be held on November 25, 1997, at 4:00 p.m., in the City Council Chambers, City Hall, 801 11th Street, Modesto, and

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

WHEREAS, the Council declares that said Precise Plan for Area 33 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. 33 conforms to the Village One Specific Plan.
2. The proposed Precise Plan for Area No. 33 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. 33 of the Village One Specific Plan and rezoning of the Specific Plan-Holding (SP-H) Zone to the Specific Plan-Overlay (SP-O) Zone

as recommended by the Planning Commission, and the Council does hereby approve said Precise Plan.

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

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

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 25th day of November, 1997, by Councilmember Fisher, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Friedman, was upon roll call carried and ordered printed and published by the following vote:

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

APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:

By   
JEAN ADAMS, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney



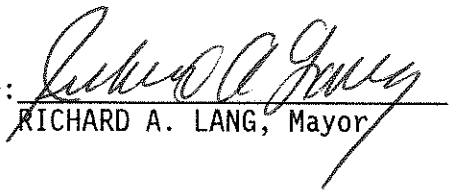
Ord. No. 3074-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 9th day of December, 1997, Councilmember McClanahan, moved its final adoption, which motion being duly seconded by Councilmember Friedman, was upon roll call carried and the ordinance adopted by the following vote:

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

APPROVED:

  
RICHARD A. LANG, Mayor

ATTEST:

  
JEAN ADAMS, City Clerk

Effective Date: January 8, 1998

Birk

ORDINANCE NO. 3075 -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 FINE AVENUE. (PRECISE PLAN FOR AREA 33 - STEWART BRADLEY - BRADLEY ESTATES SUBDIVISION)

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, Stewart Bradley proposes to develop an 80-lot, single-family subdivision called "Bradley Estates", all on a 16.93-acre site located on the south side of Merle Avenue west of Fine Avenue, and

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

WHEREAS, after a public hearing held on November 3, 1997, 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. 97-88, adopted November 3, 1997, the Planning Commission recommended that the application of Stewart Bradley 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 Fine Avenue be approved, and

WHEREAS, said matter was set for a public hearing of the City Council to be held on November 25, 1997, at 4:00 p.m., in the City Council Chambers, City Hall, 801 11th

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

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

SECTION 1. After a public hearing held on November 25, 1997, 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 to a SP-O Zone conforms to the Village One Specific Plan.
2. The proposed rezoning to a SP-O Zone 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 (SP-H) Zone to a Specific Plan-Overlay (SP-O) Zone:

SP-H to SP-O, PPA 33

A portion of the south half 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 northeast corner of the Nottingham Place Phase One Subdivision Map recorded September 5, 1996, in Book 37 of Maps at Page 55, Stanislaus County Records, said point lying at the intersection of the south line of a 40-foot-wide road known as Merle Avenue and the east line of Maid Mariane Lane, said east line being 18.50 feet east of and parallel with the centerline of said Maid Mariane Lane; thence South 00° 27' 18" East along said east line of Maid Mariane Lane, a distance of 1233.27 feet to the north line of

M.I.D. Lateral No. 3; thence along said north line, North 89° 52' 51" East, a distance of 1252.24 feet; thence North 00° 51' 08" West, a distance of 1253.30 feet to the south line of said Merle Avenue; thence the following five courses along the south line of Merle Avenue; South 89° 20' 00" West, a distance of 328.29 feet; thence South 00° 40' 00" West, a distance of 10.00 feet; thence South 89° 20' 00" West, a distance of 328.29 feet; thence North 00° 40' 00" East, a distance of 10.00 feet; thence South 89° 52' 29" West, a distance of 599.93 to the point of beginning.

Including also the southerly portion of Merle Avenue lying between the centerline of the original 40-foot Merle Avenue and the northerly line of the above-described property; and also including the northerly portion of the M.I.D. Lateral No. 3 lying between the south line of said Section 13 and the southerly line of the above-described property.

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 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 25th day of November, 1997, by Councilmember Fisher, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Friedman, was upon roll call carried and ordered printed and published by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: Cogdill, 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

Ord. No. 3075-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 9th day of December, 1997, Councilmember Friedman, moved its final adoption, which motion being duly seconded by Councilmember Fisher, was upon roll call carried and the ordinance adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: Cogdill, Dobbs

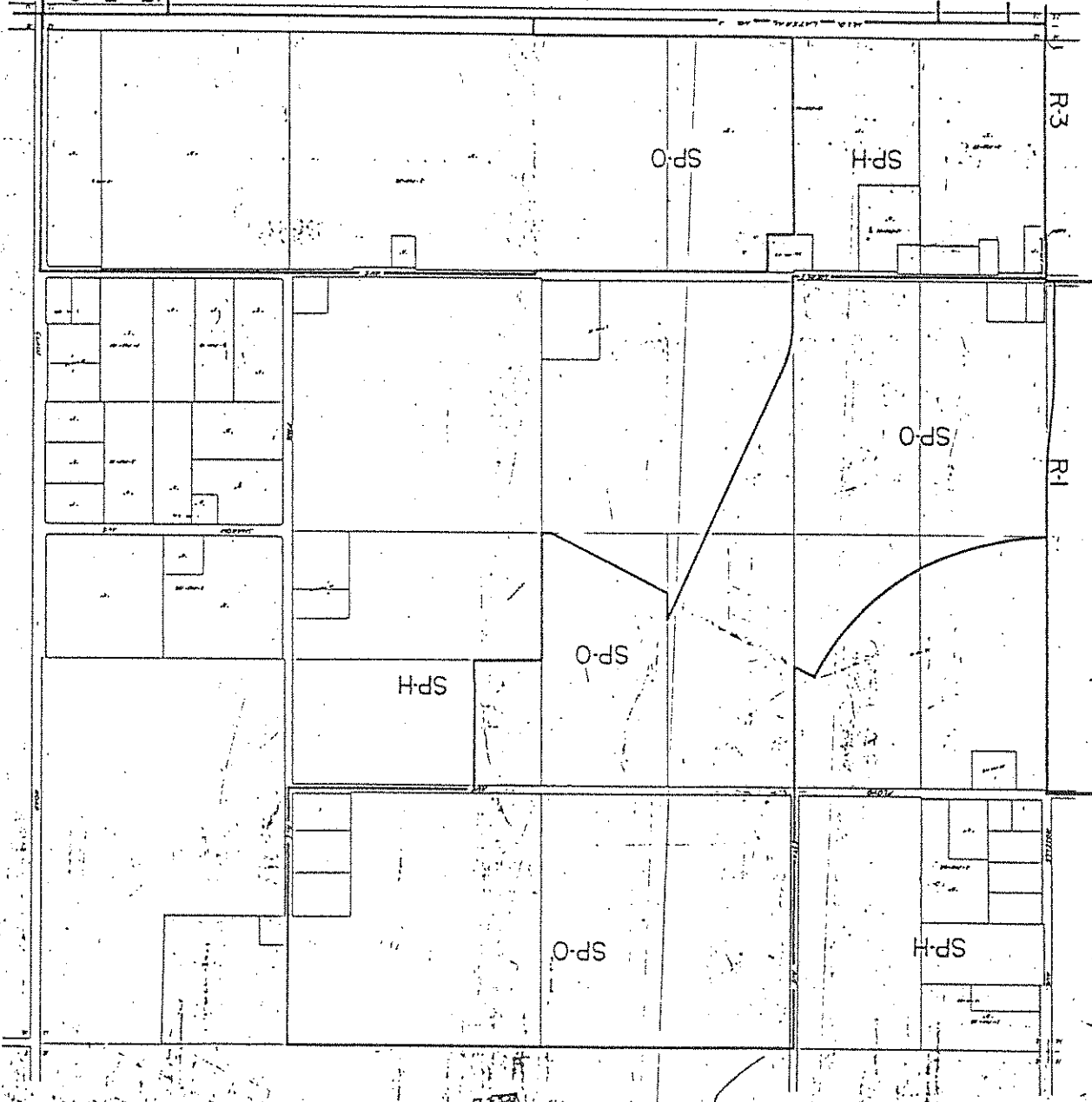
APPROVED:   
RICHARD A. LANG, Mayor

ATTEST:   
JEAN ADAMS, City Clerk

Effective Date: January 8, 1998

13-3-9

ZONING MAP OF THE CITY OF MODESTO



R-3

R-1

SP-0

SP-H

SP-0

SP-0

SP-H

SP-0

SP-H