

April 23, 1987
Revised November 18, 1999

RULES AND REGULATIONS
of the
BOARD OF ZONING ADJUSTMENT OF THE CITY OF MODESTO

ARTICLE I.
ORGANIZATION

Section 1.1 Establishment. The Board of Zoning Adjustment of the City of Modesto is established pursuant to the provisions of Article 19 of Chapter 2 of Title X of the Modesto Municipal Code.

ARTICLE II.
POWERS AND DUTIES

Section 2.1 Enumerated. The Board of Zoning Adjustment shall have the following powers and duties:

(a) Variances, and Conditional Use Permits, and Plot Plans. To grant certain variances, conditional use permits, and plot plan approvals in accordance with the provisions of Title X of the Modesto Municipal Code (Zoning Regulations).

(b) Appeals from Administrative Decisions. To hear and determine appeals from the decisions of the Director of Planning and Community Development, the Chief Building Official, or any other administrative officer of the City which involves the application of any of the provisions of the zoning regulations.

(c) Advise with and make recommendations to the Council regarding other matters as may be either required by law or referred by the Council.

ARTICLE III.
MEETINGS

Section 3.1 Regular Meetings. The regular meeting of the Board shall be held at 10:00 o'clock a.m. on the fourth Thursday of each calendar month. If a regular meeting day falls on a holiday as defined by the Government Code of the State of California, the meeting shall be held on the next business day. If all members are absent from any regular or adjourned meeting, the Secretary may declare the meeting adjourned to a stated time and place. If the Secretary does so, the Secretary shall cause written notice of the adjournment to be given in the same manner provided for in Section 3.2 for special meetings unless the notice is waived as provided for special meetings.

Whenever a regular or adjourned regular meeting is adjourned as provided in this section, the resulting adjourned regular meeting is a regular meeting for all purposes. When an order of adjournment of any meeting fails to state the hour at which the adjourned meeting shall be held, it shall be held at the hour specified for the regular meeting which was adjourned.

Section 3.2 Special Meetings. A special meeting may be called at any time by the Chairman of the Board whenever, in the Chair's opinion, the public business may require it, or upon the written request of two (2) members of the Board. Whenever a special meeting shall be called, written notice of such meeting shall be delivered personally or by mail by the Secretary of the Board to each member of the Board and to each local newspaper of general circulation, radio or television station requesting notice in writing. Such notice must be delivered at least twenty-four (24) hours before the time of such meeting as specified in the notice. The notice shall specify the time and place of the special meeting and the business to be transacted. No other business shall be considered at such meetings by the Board. The written notice may be dispensed with as to any member of the Board who, at or prior to the time the meeting convenes, files with the Secretary a written notice of waiver. Waiver may be given by telegram. The written notice may also be dispensed with as to any member who is actually present at the meeting at the time it is convened.

Section 3.3 Place of Meetings. All regular meetings shall be held in the official Council Chambers of the City of Modesto or in such other location in the City as may be designated by the Board of Zoning Adjustment.

Section 3.4 Meetings to be Public. All meetings of the Board shall be open to the public.

Section 3.5 Quorum. A majority of the members of the Board shall constitute a quorum for the transaction of business, but fewer members than a quorum may adjourn from time to time.

Section 3.6 Roll Call Vote. A roll call vote shall be taken upon the passage of all resolutions and be entered upon the journal of the proceedings of the Board. Upon the request of any member, a roll call vote shall be taken and recorded on any vote. Whenever a roll call vote of the Board is in order, the names of the members shall be called in alphabetical order except that the name of the presiding officer shall be called last. All members present shall be required to vote. The affirmative or negative vote of a majority of the entire membership of Board shall be necessary for it to take action.

Section 3.7 Attendance. Regular attendance at all meetings of the Board is required of all members to enable the Board to discharge the duties imposed upon it by law. If a member is absent from three (3) regular meetings of the Board consecutively, without securing the permission of the Board expressed in its official minutes, he shall be deemed to have resigned from the Board, and the member's office shall become vacant.

Section 3.8 Agenda and Reports. In order to facilitate the orderly conduct of the business of the Board, the Secretary shall arrange an agenda of the matters to be considered by the Board at its next meeting together with a report outlining all known facts in each case to be considered by the Board, with such analysis as is necessary, including recommended action when appropriate. The agenda and all reports shall be delivered or mailed to each member of the Board, the City Manager, and the City Attorney prior to the Board meeting at which they are to be considered, as far as possible in advance of the meeting as time for preparation will permit. Matters not included on the agenda will not be acted upon by the Board unless (a) a

majority of the Board determines that an emergency situation exists, or (b) the Board by a two-thirds vote, or if less than two-thirds of the members are present, by a unanimous vote, determines that the need to take action arise subsequent to the agenda for the meeting being posted, or (c) the item was on a properly posted agenda for a prior meeting of the Board occurring not more than five (5) days prior to the meeting at which the action is taken.

Section 3.9 Field Trips. In cases where a view of the premises will assist the Board in making a decision, a field trip may be arranged prior to the meeting at which time that case shall be heard.

Section 3.10 Reading of the Minutes. Unless the reading of the minutes of the Board meeting is requested by a member of the Board, such minutes may be approved without reading if the Secretary has previously furnished each member of the Board with a copy thereof.

ARTICLE IV. OFFICERS

Section 4.1 Enumerated. The officers of the Board shall be:

A chairman, whose duties shall be to preside at all meetings and call special meetings;
and

A Vice-Chairman, who shall, in the absence of the Chairman, perform the duties of the Chairman.

Section 4.2 Election of Officers. As soon as practical following the first day of January of each year, the Board shall elect a Chairman and Vice-Chairman.

ARTICLE V. PROCEDURES, POWERS, DUTIES, AND STAFF

Section 5.1 Designated. The provisions of the zoning regulations pertaining to procedures, powers, duties, and staff shall prevail. The Director of Planning and Community Development shall serve as Secretary to the Board. He shall keep a written record of all business transacted by the Board, notify Board members of meetings, and keep the official records of the Board. Upon the direction of the Board, the Secretary shall perform such other secretarial duties as the Board may require.

ARTICLE VI. PARLIAMENTARY PROCEDURES

Section 6.1 - Rules of Debate. The Chairperson, or such other member of the Board of Zoning Adjustment as may be presiding, may second and debate from the chair, subject only to

such limitations of debate as are by these rules imposed upon all members. The Chairperson shall not be deprived of any of the rights and privileges of a Board member by acting as the Presiding Officer exempt the making of motions.

(a) Getting the floor. Every member desiring to speak shall address the chair, and, upon recognition by the Presiding Officer, shall address only the question under debate, avoiding all personalities and indecorous language.

(b) Interruptions. A member once recognized, shall not be interrupted when speaking other than by the Presiding Officer to call the member to order, or as herein otherwise provided. If a member, while speaking, be called to order, the member shall cease speaking until the question of order be determined, and, if in order, the member shall be permitted to proceed.

(c) Privilege of closing debate. The Board member moving the adoption of a resolution or motion shall have the privilege of closing the debate.

(d) Remarks of Board member. A Board member may request through the Presiding Officer, the privilege of having an abstract of the member's statement on any subject under consideration by the Board entered in the minutes. If the Board consents thereto, such statement shall be entered in the minutes.

(e) Synopsis of debate. The Secretary may be directed by the Presiding Officer, with the consent of the Board, to enter in the minutes a synopsis of the discussion on any question coming regularly before the Board.

Section 6.2 - Rules for Processing of Motions.

(a) Making and withdrawing motions. When a motion is made, it shall be stated clearly and concisely by its mover. After a motion is made, it may be stated by the Presiding Officer before debate. A motion may be withdrawn by the mover without the consent of the remaining Board members.

(b) Divisible propositions. If the question contains two (2) or more divisible propositions, the Presiding Officer may, and upon request of a Board member shall, divide the same.

(c) Precedence of motions. When a motion is before the Board, no motion shall be entertained except (precedence in order indicating):

- (aa) To adjourn.
- (ab) To fix hour of adjournment.
- (ac) To lay on the table.
- (ad) For the previous question.
- (ae) To postpone to a certain day.
- (af) To refer.
- (ag) To amend.

(ah) To postpone indefinitely.

(d) Motion to adjourn. A motion to adjourn shall be in order any time except as follows:

- (aa) When repeated without intervening business or discussion.
- (ab) When made as an interruption of a member while speaking.
- (ac) When the previous question has been ordered.
- (ad) While a vote is being taken.

A motion to adjourn to "another time" is debatable only as to the time to which the meeting is adjourned.

(e) Motion to table. A motion to table or lay on the table is not debatable and shall preclude all amendments or debate of the subject under consideration. If the motion shall prevail, the matter may be "taken from the table" only by a successful motion to add it to the agenda at a subsequent meeting, to be discussed at the following regular meeting.

(f) Motion for previous question. A motion for previous question shall close debate on the main motion and shall be undebatable. The statement by a Board member "I call for the question" does not accomplish the same purpose. If a motion fails, debate is reopened, if motion passes, then vote shall be taken on the main motion.

(g) Motion to amend. A motion to amend shall be in order and is debatable only as to the proposed amendment. A motion to amend an amendment shall not be in order. Amendments are to be voted first, then the main motion as amended.

(h) Motion to postpone. A motion to postpone indefinitely shall be fully debatable and if the same is adopted the principal motion shall be declared lost. A motion to postpone to a definite time shall be amendable and debatable as to propriety of postponement and time set.

(i) Motion to refer. A motion to refer to staff or to a Board committee shall not be debatable except for the propriety of referring.

(j) Motion to reconsider. A motion to reconsider any action taken by the Board may be made only on the day such action was taken. It may be made either immediately during the same session, or at a recessed or adjourned session thereof. Such motion must be made by one of the prevailing side, but may be seconded by any member, and may be made at any time and shall be debatable. Nothing herein shall be construed to prevent a Board member of the prevailing side from remaking the same motion at a subsequent meeting of the Board.

In such an event, the person desiring to remake the motion for reconsideration shall submit a written request for reconsideration to the Board Secretary, who shall place the matter on the agenda for the next regular meeting of the Board.

Section 6.3 - Parliamentarian. The Chairperson, acting with the advice of the City Attorney, shall decide all questions of interpretation of these rules and any other questions of a parliamentary nature which may arise at a Board of Zoning Adjustment meeting.

ARTICLE VII. METHOD OF ACTION

Section 7.1 Decisions. All decisions of the Board made under the provisions of the zoning regulations shall be by resolution. All other determinations of the Board may be effected by motion, except when otherwise required by law.

ARTICLE VIII. COMMITTEES

Section 8.1 Special Committees. There shall be such special committees as the Board may establish from time to time.

ARTICLE IX. PUBLIC HEARINGS

Section 9.1 Public Hearing Procedures. The following rules shall govern the conduct of public hearings.

(a) All hearings will be recorded by mechanical means. If a reporter is desired, the fee or fees of such reporter shall be paid by the party requesting his services.

(b) The real parties in interest, including the applicant or any party having a substantial interest in the hearing, may be represented by counsel or a spokesperson.

(c) At the opening of the hearing, a factual report prepared in advance of the hearing by the Planning and Community Development Department staff will be read or presented by the Director of Planning and Community Development, or a member of the staff. As a part of this presentation, suitable large-scale zoning maps, land-use maps and plot plans of the area concerned may be identified and placed in view of the Board and all persons attending the hearing.

(d) At the conclusion of the presentation by the Planning and Community Development Department staff, the applicant or proponents may testify, call witnesses and present any material exhibits, documents or other physical evidence. Reading at length from books and other written material will not be permitted.

(e) At the conclusion of the presentation by the applicant or proponents, any persons who oppose the application may testify, call witnesses and present any material exhibits, documents or other physical evidence. Reading at length from books and other written material will not be permitted.

(f) All exhibits, documents or other physical evidence used by applicant or other interested parties during the hearings, will be introduced into evidence and will become part of the record and retained by the Board until the decision becomes final.

(g) Witnesses shall not be required to be sworn. Each witness will be required to approach the microphone and give their full name and address for the record before testifying.

(h) The right to question the witnesses shall be afforded, if requested. However, the Chairman may require that such questions be addressed through the Chair for resubmission to the witness.

(i) The reading of details of letters and petitions by the persons submitting them will not be permitted. Such documents may be filed with the Secretary and the Secretary shall mark them as having been received for the limited purpose of showing the names of the persons protesting or supporting the application.

(j) While it is desirable in a democratic process to permit every person an unlimited right to speak, such a right unduly prolongs a public hearing and clouds the basic issue if the evidence presented is merely cumulative and repetitious. Therefore, whenever necessary, the Chairman will state that cumulative and repetitious evidence is to be avoided. Similarly, testimony and evidence which is incompetent, irrelevant or immaterial shall be foreclosed by the Chairman. If, because of the informality of the hearing, such improper evidence is received, it shall not be considered by the Board in reaching its decision.

(k) The Board may establish special rules for individual meetings, establishing time limits for presentations and requiring presentations to be made through spokespersons, if possible.

(l) After those in favor and opposed to an application have been heard, the Chairman will ask for the recommendation of the Planning and Community Development staff and the reasons for such recommendation. After such recommendation, both the applicant and opponent shall be given a limited amount of time to summarize their position or respond to the recommendation, after which the Chairman shall close the public portion of the hearing.

(m) The Board should discuss the issues involved and make its decision only after hearing the evidence presented at the public hearing. Discussion of the matter by members of the Board concurrently with or immediately following the staff's factual report and before the public has an opportunity to present its point of view may influence the Board action. Therefore, except for questions by the Board to obtain or clarify the facts, discussion of the matter by Board members should be delayed until after the public hearing is closed and the matter is presented to the Board for discussion and decision.

(n) The Board may take a field trip to view the property involved in the public hearing. All field trips shall be taken as part of a regular, adjourned regular or special meeting of the Board and all interested persons will be afforded the opportunity to be present to hear any reports or comments. A complete record of such field trip will be entered into the minutes so the record will indicate that the field trip was taken into consideration as evidence. If a Board member has personal knowledge of the property or area, the Board member should make a statement to that effect at the time of the hearing so the record will reflect everything being taken into consideration in making the final decision.

(o) In conducting a public hearing, the Board of Zoning Adjustment acts in a quasi-judicial capacity. Board members are responsible for ensuring that the public hearing is conducted in a fair and impartial manner. If a Board member receives a significant personal contact or telephone call outside of the public hearing which concerns a matter pending before or of interest to the Board, he or she shall disclose the substance and nature of the contact or call at the public hearing. If written materials are presented to the Board by an applicant or member of the public, a copy must be made available for public review by filing the materials with the Secretary at least three (3) days in advance of the meeting at which the item or matter is scheduled to be considered or at the time the materials are provided to any Board member, whichever is earliest.

(p) Summary of Procedure for Conduct of Public Hearings by the Modesto Board of Zoning Adjustment:

1. Opening of public hearing.
2. Factual staff report and (optional) recommendation.
3. Applicant's presentation.
4. Opposition presentation.
5. Staff recommendation.
6. Summation by applicant and opposition
7. Close of public portion of hearing.
8. Discussion and decision by Board.