

ORDINANCE NO. 3546-C.S.

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

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

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

8-3.102. CONTRACTING AUTHORITY.

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

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

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

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

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

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

- (o) Contracts for work done by City forces to repair, replace and improve water lines and associated appurtenances for the 9th Street Water Main Replacement Project in the amount of five hundred eighty-five thousand dollars (\$585,000) or less.
- (p) Contracts for Public Works projects consisting of bus stop improvements at various locations on the Modesto Area Express route system. The City Manager may approve all contracts for such projects in the amount of six hundred seventy-five thousand dollars (\$675,000) or less annually.
- (q) Contracts for work done by City forces consisting of roadway and intersection improvements on Oakdale Road between Claratina Avenue and Mable Avenue in the amount of one hundred forty thousand dollars (\$140,000.00) or less.
- (r) Contracts for work done by City forces to repair, replace and improve water lines and associated appurtenances for the Del Rio Water Main Replacement Project in the amount of three hundred ninety thousand dollars (\$390,000.00) or less.

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

SECTION 2. EFFECTIVE DATE. This ordinance shall go into effect and be in full force and operation immediately 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

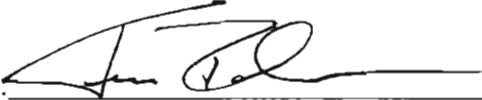
the City; and a notice shall be published once in *The Modesto Bee*, the official newspaper of the City of Modesto, setting forth the title of this ordinance, the date of its introduction and the places where this ordinance is posted.

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 22nd day of February, 2011, by Councilmember Marsh, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Geer upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Burnside, Geer, Hawn, Lopez, Marsh, Muratore, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: 
JIM RIDENOUR, Mayor

ATTEST:

By 
STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By 
SUSANA ALCALA WOOD, City Attorney

Ord. No. 3546

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 March, 2011, Councilmember Lopez moved its final adoption, which motion being duly seconded by Councilmember Muratore, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Burnside, Geer, Hawn, Lopez, Marsh, Muratore,
Mayor Ridenour

NOES: Councilmembers: None.

ABSENT: Councilmembers: None

APPROVED:


JIM RIDENOUR, Mayor

ATTEST:

By 
STEPHANIE LOPEZ, City Clerk

Effective Date: March 1, 2011

ORDINANCE NO. 3547-C.S.

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

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

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

8-3.102. CONTRACTING AUTHORITY.

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

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

- expenditure of City funds in the amount of three hundred thousand dollars (\$300,000.00) or less.
- (d) Contracts for public works projects consisting of the installation and establishment of water service connections associated with new development. The City Manager may approve and authorize all contracts for such projects involving an expenditure of City funds in the amount of seventy-five thousand dollars (\$75,000.00) or less.
 - (e) Contracts for public works projects consisting of repairs determined by the City Manager to be of urgent necessity for the preservation of life, health, or property. The City Manager may approve and authorize all contracts for such projects in the amount of two hundred thousand dollars (\$200,000.00) or less. Within ten (10) days of the authorization for any such work, the City Manager shall report to the City Council the circumstances of the emergency.
 - (f) Contracts for public works projects consisting of the construction, improvement, repair, expansion, renovation, or modification of any facilities associated with development and installed by the developer provided:
 - (1) That an agreement is approved by the City Council prior to commencement of construction of the works.
 - (2) The agreement clearly defines the work to be done and the basis for reimbursement.
 - (3) That total reimbursement required by the agreement is less than four hundred thousand dollars (\$400,000.00) in City funds.
 - (g) Contracts for public works projects consisting of the installation, construction, and improvement, of the Coffee-Claratina Dual Use Neighborhood Park/Storm Basin in the City of Modesto. The City Manager may approve and authorize all contracts for such projects involving an expenditure of City funds in the amount of one million five hundred thousand dollars (\$1,500,000.00) or less.
 - (h) Contracts for public works projects consisting of the installation and construction of any upgrade and/or rebuild of the City's Institutional Network (INET). The City Manager may approve and authorize all contracts for such projects involving an expenditure of City funds in the

amount of four million two hundred thousand dollars (\$4,200,000.00) or less.

- (i) Contracts for public works projects consisting of those improvements to the South Modesto water system identified in that certain technical memorandum prepared by West Yost and Associates dated October 17, 2005, as amended on November 7, 2005, for the benefit of the Galas Brothers Unit II Project bounded by Hatch Road, Estrella Way, Ironside Drive, Salazar Circle and Monticello Lane in the City of Modesto and any incidental work thereto. The City Manager may approve and authorize all contracts for this project involving a total expenditure of City funds not to exceed two million five hundred thousand dollars (\$2,500,000) or less.
- (j) Contracts for public works contracts consisting of the purchase, installation and replacement of water meters including an automated water meter reading (AMR) system and infrastructure work in conjunction with the system-wide water metering program. The City Manager may approve and authorize all contracts for such projects involving an expenditure of City funds in the amount of five million dollars (\$5,000,000) or less annually.
- (k) Contracts for paving and landscaping work to be done by City forces at the City's Traffic Operations Facility located at 117 Elm Street in the amount of one hundred thousand dollars (\$100,000) or less.
- (l) Contracts for public works projects consisting of the design, purchase and installation of water lines and associated equipment used to blend down contaminants at water well sites in the amount of one million five hundred thousand dollars (\$1,500,000) per project.
- (m) Contracts for public works projects consisting of additions and/or expansion of facilities and structures at John Thurman Field not to exceed two million four hundred thousand dollars (\$2,400,000) per project.
- (n) Contracts for work done by City forces to repair, replace and improve water lines and associated appurtenances for the McHenry Avenue Water System Upgrade Project in the amount of four hundred fifty thousand dollars (\$450,000) or less.
- (o) Contracts for work done by City forces to repair, replace and improve water lines and associated appurtenances for the 9th Street Water Main

Replacement Project in the amount of five hundred eighty-five thousand dollars (\$585,000) or less.

- (p) Contracts for Public Works projects consisting of bus stop improvements at various locations on the Modesto Area Express route system. The City Manager may approve all contracts for such projects in the amount of six hundred seventy-five thousand dollars (\$675,000) or less annually.
- (q) Contracts for work done by City forces consisting of roadway and intersection improvements on Oakdale Road between Claratina Avenue and Mable Avenue in the amount of one hundred forty thousand dollars (\$140,000.00) or less.
- (r) Contracts for work done by City forces to repair, replace and improve water lines and associated appurtenances for the Del Rio Water Main Replacement Project in the amount of three hundred ninety thousand dollars (\$390,000.00) or less.
- (s) Contracts for public works projects consisting of energy efficient improvements to City facilities that are funded through the American Recovery and Reinvestment Act (ARRA) of 2009, Energy Efficiency and Conservation Block Grant (EECBG) Program. The City Manager may approve and authorize all contracts for such projects involving an expenditure of City funds in the amount of six hundred thousand dollars (\$600,000.00) or less.

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

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

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

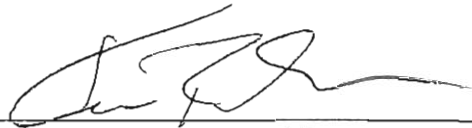
The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 22nd day of March, 2011, by Councilmember Hawn, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Lopez, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Burnside, Geer, Hawn, Lopez, Marsh, Muratore,
Mayor Ridenour

NOES: Councilmembers: None.

ABSENT: Councilmembers: None

APPROVED: _____



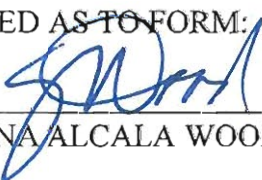
JIM RIDENOUR, Mayor

ATTEST:

By  _____
STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By  _____
SUSANA ALCALA WOOD, City Attorney

Ord. No. 3547

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 April 5, 2011, Councilmember Lopez moved its final adoption, which motion being duly seconded by Councilmember Marsh, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Burnside, Geer, Hawn, Lopez, Marsh, Muratore,
Mayor Ridenour

NOES: Councilmembers: None.

ABSENT: Councilmembers: None

APPROVED:



JIM RIDENOUR, Mayor

ATTEST:

By 
STEPHANIE LOPEZ, City Clerk

Effective Date: May 5, 2011

ORDINANCE NO. 3548-C.S.

AN ORDINANCE AMENDING SECTION 28-3-9 OF THE ZONING MAP TO REZONE FROM LOW-DENSITY RESIDENTIAL ZONE, R-1, TO PLANNED DEVELOPMENT ZONE, P-D(490), PROPERTY LOCATED ON THE SOUTH SIDE OF E. MORRIS AVENUE SOUTH OF AUBURN STREET (ACACIA MEMORIAL PARK ASSOCIATION OF MODESTO)

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 Low-Density Residential Zone, R-1, to Planned Development Zone, P-D(490):

R-1 to P-D(490)

All that certain real property in the northeast quarter of Section 28, Township 3 South, Range 9 East, Mount Diablo Base and Meridian, City of Modesto, County of Stanislaus, State of California, more particularly described as follows:

The West 275.00 feet of Block 603 of the City of Modesto as per map filed December 21, 1942 in Volume 15 of Maps, Stanislaus County Records.

Also including the southerly half of E. Morris Avenue and the easterly half of the alley between Blocks 594 and 603 all being immediately adjacent to the above described property.

SECTION 2. USES. The following uses shall be permitted in said P-D(490) 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. Cemetery and related facilities

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 12th day of April, 2011, by Councilmember Muratore , who moved its introduction and passage to print, which motion being duly seconded by Councilmember Lopez, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Councilmembers: Burnside, Geer, Hawn, Lopez, Muratore, Mayor Ridenour

NOES: Councilmembers: None.

ABSENT: Councilmembers: Councilmember Marsh

APPROVED: 
JIM RIDENOUR, Mayor

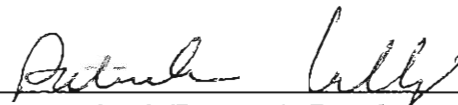
ATTEST:
By 
STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By 
SUSANA ALCALA WOOD, City Attorney

APPROVED AS TO DESCRIPTION:

By 
Community & Economic Development
Department, Planning Division

Ord. No. 3548-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 3rd day of May, 2011, Councilmember Lopez moved its final adoption, which motion being duly seconded by Councilmember Geer, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Councilmembers: Burnside, Geer, Hawn, Lopez, Muratore,

NOES: Councilmembers: None

ABSENT: Councilmembers: Mayor Ridenour

APPROVED:



MAYOR JIM RIDENOUR

ATTEST:



STEPHANIE LOPEZ, City Clerk

Effective Date: June 2, 2011

ORDINANCE NO. 3549-C.S.

AN ORDINANCE AMENDING SECTION 7-3-9 OF THE ZONING MAP OF THE CITY OF MODESTO TO REZONE FROM PLANNED DEVELOPMENT ZONE, P-D(589), TO GENERAL COMMERCIAL ZONE, (C-2), PROPERTY LOCATED ON THE WEST SIDE OF TULLY ROAD NORTH OF STANDIFORD AVENUE (RENATA ENTERPRISES, INC.)

WHEREAS, a verified application for an amendment to Section 7-3-9 of the Zoning Map was filed by Renata Enterprises, Inc. on February 28, 2011, to reclassify from Planned Development Zone, P-D(589), to General Commercial Zone, (C-2), to allow a broader range of commercial uses for the site, property located on the west side of Tully Road north of Standiford Avenue, and

WHEREAS, after a public hearing held on April 18, 2011, it was found and determined by the Planning Commission that the requested zone change is required by public convenience or necessity, the requested zone change will result in an orderly planned use of land resources, and the requested zone change is in accordance with the community objectives as set forth in the Modesto Urban Area General Plan, and

WHEREAS, by Resolution No. 2011-05, adopted on April 18, 2011, the Planning Commission recommended to the Council that the application of Renata Enterprises, Inc. to amend Section 7-3-9 of the Zoning Map to rezone the hereinafter described property from Planned Development, P-D(589), to General Commercial Zone, (C-2), be approved,

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

SECTION 1. After a public hearing held on May 24, 2011, in the Tenth Street Place Chambers located at 1010 10th Street, Modesto, California, this Council finds and

determines that the requested zone change is required by public convenience or necessity, the requested zone change will result in an orderly planned use of land resources, the requested zone change is in accordance with the community objectives as set forth in the Modesto Urban Area General Plan.

This Council also finds and determines that the decision to approve the requested zone change is necessary to carry out the purpose of Chapter 2 of Title 10 of the Modesto Municipal Code for the following reasons:

1. The proposed General Commercial Zone (C-2) will be compatible with the surrounding land uses, because the property is surrounded by commercial and similar zoning uses.
2. The proposed General Commercial Zone (C-2) is consistent with the Modesto Urban Area General Plan, because the General Commercial Zone (C-2) is consistent with the General Plan Land Use designation of MU, Mixed-Use of the site.

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

P-D(589) to (C-2)

Parcel 1, as shown on that certain Parcel Map filed, October 17, 1978, in Book 28 of Parcel Maps, at Page 6, Stanislaus County Records; being a reparceling of Parcel "1-A" as filed in Book 15 of Parcel Maps, at Page 64, Stanislaus County Records, and located in the Northeast quarter of Section 7, Township 3 South, Range 9 East, Mount Diablo Base and Meridian.

Also including the westerly one-half of Tully Road, being immediately adjacent to the above property.

APN: 054-038-006

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

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

SECTION 5. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published one 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 May, 2011, by Councilmember March, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Lopez was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Burnside, Geer, Hawn, Lopez, Marsh, Muratore,
Mayor Ridenour

NOES: Councilmembers: None.

ABSENT: Councilmembers: None

APPROVED: 
JIM RIDENOUR, Mayor

ATTEST:

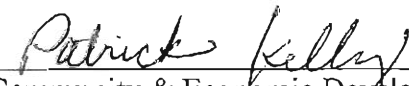
By 
STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By 
SUSANA ALCALA WOOD, City Attorney

APPROVED AS TO DESCRIPTION:

By 
Community & Economic Development
Department, Planning Division

Ord. No. 3549-C.S.

FINAL ADOPTION CLAUSE

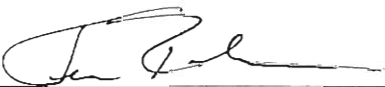
The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 7th day of June, 2011, Councilmember Lopez moved its final adoption, which motion being duly seconded by Councilmember Muratore, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Burnside, Geer, Hawn, Lopez, Marsh, Muratore,
Mayor Ridenour

NOES: Councilmembers: None.


ABSENT: Councilmembers: None

APPROVED:



MAYOR JIM RIDENOUR

ATTEST:


STEPHANIE LOPEZ, City Clerk

Effective Date: July 7, 2011

ORDINANCE NO. 3550-C.S.

AN ORDINANCE ADOPTING THE 2011-2012 ANNUAL AND MULTI-YEAR OPERATING BUDGETS AND THE 2011-2012 CAPITAL IMPROVEMENT PROGRAM FOR THE CITY OF MODESTO AND THE RELATED INTER-FUND TRANSFERS

WHEREAS, pursuant to the Charter of the City of Modesto, the Mayor presented the Proposed Operating Budget and Capital Improvement Program for the 2011-2012 Fiscal Year to the Finance Committee at workshops held on May 9, May 12 and May 16, 2011, and

WHEREAS, the Finance Committee reviewed the Proposed Annual and Multi-year Operating Budgets and the Capital Improvement Program in a series of televised public workshops on May 9, May 12 and May 16, 2011 and

WHEREAS, the Finance Committee recommended modifications to the Proposed Operating and Multi-year budgets and has forwarded said recommendations to the full City Council, and

WHEREAS, the Finance Committee is recommending the proposed Capital Improvement Program to the full City Council, and

WHEREAS, the City Council considered the recommendations of the Finance Committee, and

WHEREAS, in accordance with the City Charter, a duly noticed public hearing was held on June 7, 2011, during which the City Council considered the recommendations of the Finance Committee relating to the Proposed Operating and Multi-year budgets and the Capital Improvement Program, and

WHEREAS, prior to any discussion of the budgets and prior to the final adoption, the City Council by separate motion considered each CIP project that could be the source of a potential conflict of interest to one or more members of the City Council without the participation of those members, and

WHEREAS, copies of the Proposed Operating and Multi-year budgets and the Capital Improvement Program have been and are available for inspection by the public at the office of the

Modesto held on the 7th day of June, 2011, by Councilmember Hawn, who moved its adoption, and passage to print, which motion being duly seconded by Councilmember Lopez, was upon roll call carried and the resolution adopted by the following votes:


AYES: Councilmembers: Burnside, Geer, Hawn, Lopez, Marsh, Muratore,
Mayor Ridenour

NOES: Councilmembers: None.

ABSENT: Councilmembers: None

ATTEST: 
STEPHANIE LOPEZ, City Clerk

(seal)

APPROVED: 
MAYOR JIM RIDENOUR

APPROVED AS TO FORM:

By: 
SUSANA ALCALA WOOD, City Attorney

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 14th day of June, 2011, Councilmember Lopez moved its final adoption, which motion being duly seconded by Councilmember Marsh, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Geer, Hawn, Lopez, Marsh, Muratore, Olsen, Mayor Ridenour

NOES: Councilmembers: None.

ABSENT: Councilmembers: None

APPROVED: _____


MAYOR JIM RIDENOUR

ATTEST: _____


STEPHANIE LOPEZ, City Clerk

Effective Date: June 14, 2011

ORDINANCE NO. 3551-C.S.

AN ORDINANCE AMENDING SECTION 21-3-9 OF THE ZONING MAP OF THE CITY OF MODESTO TO REZONE FROM MEDIUM-HIGH DENSITY RESIDENTIAL, (R-3), TO PROFESSIONAL OFFICE, (P-O), PROPERTY LOCATED ON THE SOUTH SIDE OF EAST GRANGER AVENUE, EAST OF MCHENRY AVENUE AT 200 EAST GRANGER AVENUE. (GV LAND DEVELOPMENT SOLUTIONS)

WHEREAS, a verified application for an amendment to Section 21-3-9 of the Zoning Map was filed by GV Land Development Solutions on May 25, 2011, to rezone from Medium-High Density Residential, (R-3), to Professional Office, (P-O), property located on the south side of East Granger Avenue, east of McHenry Avenue at 200 East Granger Avenue, and

WHEREAS, after a public hearing held on August 1, 2011, it was found and determined by the Planning Commission that the requested zone change is required by public convenience or necessity, the requested zone change will result in an orderly planned use of land resources, the requested zone change is in accordance with the community objectives as set forth in the Modesto Urban Area General Plan, and

WHEREAS, by Resolution No. 2011-12, adopted on August 1, 2011, the Planning Commission recommended to the Council that the application of GV Land Development Solutions to amend Section 21-3-9 of the Zoning Map to rezone the hereinafter described property from, Medium-High Density Residential, (R-3), to Professional Office, (P-O), be approved,

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

SECTION 1. After a public hearing held on September 6, 2011, in the Tenth Street Place Chambers located at 1010 10th Street, Modesto, California, this Council finds and determines that the requested zone change is required by public convenience or necessity, the requested zone change will result in an orderly planned use of land resources, the requested zone change is in accordance with the community objectives as set forth in the Modesto Urban Area General Plan.

This Council also finds and determines that the decision to approve the requested zone change is required by public necessity, convenience, and general welfare for the following reasons:

1. The proposed rezoning to Professional Office is to accommodate development of medical offices, which will provide health services to City residents.
2. The proposed Professional Office Zone amendment will be compatible with the surrounding land uses.

SECTION 2. ZONING CHANGE. Section 21-3-9 of the Zoning Map is hereby amended to rezone the following described property from Medium-High Density Residential, (R-3), to Professional Office, (P-O):

R-3 to P-O

All that portion of Lot 4 of the Coolidge Colony, according to the map filed for record November 15, 1910, in Volume 5 of Maps, at Page 17 Stanislaus County Records, lying in a portion of the Northwest quarter of Section 21, Township 3 South, Range 9 East, Mount Diablo Base and Meridian, in the City of Modesto, County of Stanislaus, State of California, described as follows:

Beginning at the Northeast corner of said Lot 4, said corner being in the center line of 60.00 foot wide Granger Avenue, as shown on record of Survey recorded in Book 27 of Surveys, Page 82, Stanislaus County Records; thence South 00° 24' 05" West 330.24 feet along a lone parallel with said East line of Lot 4, to a point on the North line of Said Lot 4 and said center line of Granger Avenue; thence South 89° 09' 41" East 132.30 feet along said North line and said center line, to the point of beginning

Include also, the northerly 30 feet of Granger Avenue, all being immediately adjacent to the above description.

APN: 031-001-011

SECTION 3. ZONING MAP. Section 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 6th day of September, 2011, by Councilmember Lopez, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Marsh, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Burnside, Geer, Hawn, Lopez, Marsh, Muratore,
Mayor Ridenour

NOES: Councilmembers: None.

ABSENT: Councilmembers: None

APPROVED:  
JIM RIDENOUR, Mayor

ATTEST:


By 
STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By 
SUSANA ALCALA WOOD, City Attorney

APPROVED AS TO DESCRIPTION:

By 
Community Development Department
Planning Division

Ord. No. 3551-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 September, 2011, Councilmember Lopez moved its final adoption, which motion being duly seconded by Councilmember Burnside, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Burnside, Geer, Hawn, Lopez, Marsh, Muratore,

NOES: Councilmembers: None.

ABSENT: Councilmembers: Mayor Ridenour

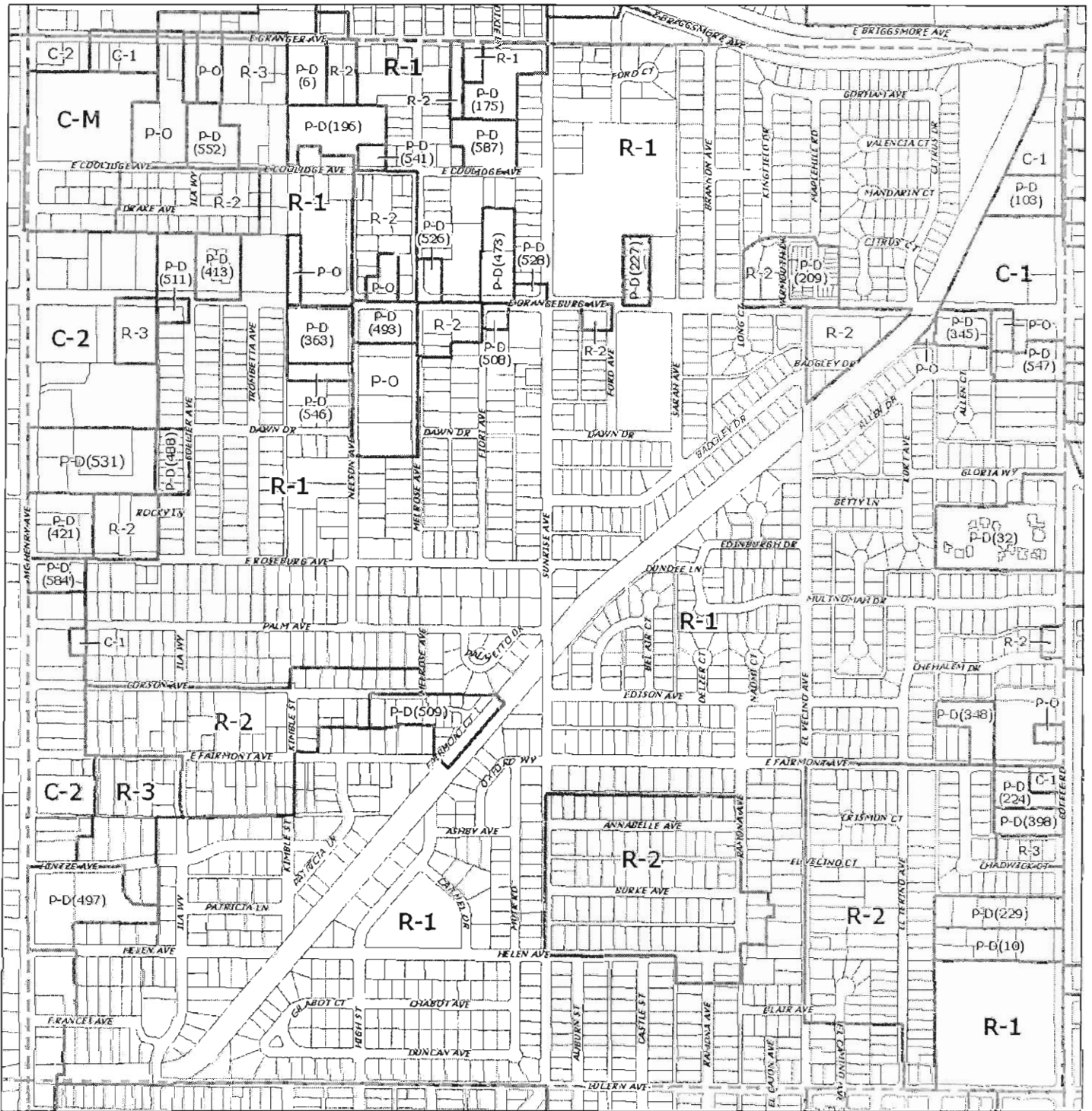
APPROVED: 

MAYOR JIM RIDENOUR

ATTEST:


STEPHANIE LOPEZ, City Clerk

Effective Date: October 13, 2011



ZONING MAP OF THE CITY OF MODESTO

21-3-9

ORDINANCE NO. 3552-C.S.

AN ORDINANCE AMENDING SECTIONS 10-2.2102 AND 10-2.2114 OF ARTICLE 21 OF CHAPTER 2 OF TITLE 10 OF THE MODESTO MUNICIPAL CODE RELATING TO SIGN REGULATIONS.

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

SECTION 1. AMENDMENT OF CODE. Sections 10-2.2102 and 10-2.2114 of Article 21 of Chapter 2 of Title 10 of the Modesto Municipal Code are hereby amended to read as follows:

10-2.2102. DEFINITIONS.

The following are definitions of specialized terms and phrases used in this article. These definitions are organized in alphabetical order.

- (a) A-Frame Sign. A temporary, freestanding sign, consisting of two (2) message panels attached by a hinge or similar device along their top edge, which is placed on the ground with the base of each panel separated by a sufficient distance to allow the sign to stand upright without other support. For the purposes of this definition, A-frame signs include single message panels that are mounted on a wood or metal base which provides the stability and support necessary for the sign to stand upright without attachment to a structure. See Figure 21-1.

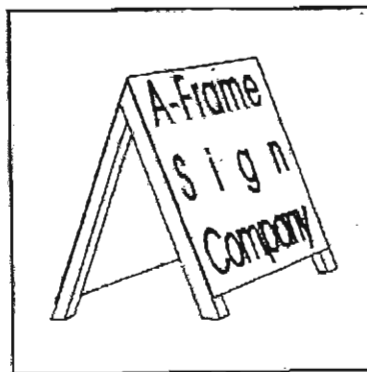


FIGURE 21-1

A-FRAME SIGN

- (b) Area of a Sign. See Section 10-2.2110(a).
- (c) Balloon. For the purposes of this chapter, a round, inflated object with a diameter not exceeding twenty-four (24) inches used as a promotional decoration. Larger inflated objects are not regulated by this article, but are instead subject to Section 10-2.1009 of Code. See also "Promotional Decorations."
- (d) Banner. A temporary sign consisting of a piece of fabric or plastic carrying an advertising message, usually hung on a wall or suspended between two (2) poles, buildings, or other structures.
- (e) Bench Sign. A City-franchised outdoor bus bench to which an advertising message is applied.
- (f) Block Frontage. A block frontage is an area of one (1) or more privately owned parcels along a public street that is bounded by two (2) streets, or a street and a MID or TID canal, railroad right-of-way, or the Hetch Hetchy Right-of-Way.
- (g) Bulletin Board. A sign used to announce a coming event or attraction, or used to convey a specific message related to the site where the bulletin board is located.
- (h) BZA. The City of Modesto Board of Zoning Adjustments.
- (i) Canopy. A roof of a building or a fixed overhead shelter used as a roof, which may or may not be attached to a building and which does not encroach into nor overhang a public street or alley right-of-way.
- (j) Canopy Sign. A sign attached to or hung from a canopy. See Figure 21-3.
- (k) Combined Business Identification Sign. A freestanding sign for a business area in lieu of several exterior directional signs. A business area is defined as:
 - (1) A block frontage along a street bounded by two (2) streets or a street and an MID or TID canal, or railroad right-of-way, or the Hetch Hetchy Right-of-Way; and
 - (2) A block frontage as defined above with six (6) or more businesses.

- (l) Construction Sign. A sign with the names of the architects, engineers, contractors, subcontractors and financing agencies of buildings and structures being constructed upon the site on which the sign is located.
- (m) Corporate Flag. A flag identifying a business or firm.
- (n) Directional Sign. One (1) of two (2) types of signs located on the same site the sign is intended to serve:
 - (1) An exterior directional sign is oriented to a street and used to direct and control pedestrian or vehicular traffic; and
 - (2) An interior directional sign is a directional, warning, or informational sign not bearing any advertising message readable from any street right-of-way.
- (o) Electronic Message Board Sign. A sign capable of displaying words, symbols, figures, or images that can be electronically or mechanically changed by remote or automatic means. No sign shall display animated messages, including flashing, blinking, fading, rolling, shading, dissolving, or any other effect that gives the appearance of movement.
- (p) Fee Resolution. A resolution of the City Council establishing fees for the filing and processing of sign permits, as it may be amended from time-to-time.
- (q) Flag. A generally rectangular piece of fabric, normally attached to a support along one of its edges, and marked with distinctive colors or designs, and/or text. See Figure 21-2. See also "Streamer."

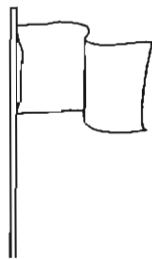
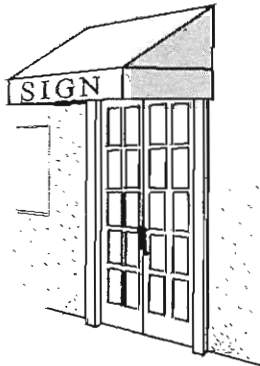


FIGURE 21-2

FLAG

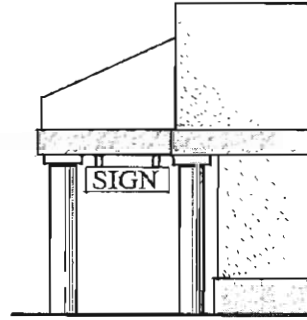
- (r) For Sale or Rent Sign. A sign advertising that the subject building, site or portions of the building or site are for sale, rent or lease.
- (s) Freestanding Sign. A sign detached from any building or structure, with its structural supports permanently attached to the ground.
- (t) Freestanding Use. A land use or occupancy that does not attract customers by its proximity to other businesses and is not part of a shopping center or any group of businesses that jointly attract customers through their proximity or through common advertising.
- (u) Freeway-Oriented Sign. A freestanding sign intended to attract motorists traveling on Freeway 99 to a site within six hundred (600) feet of the freeway.



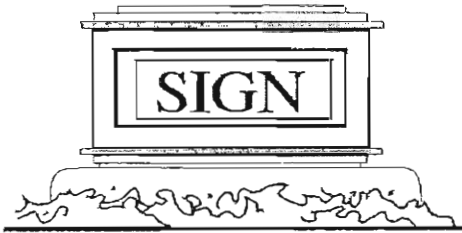
Canopy



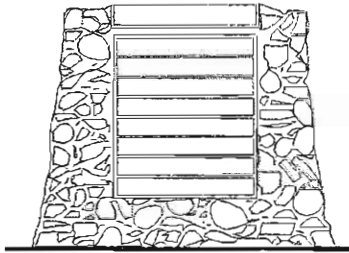
Wall



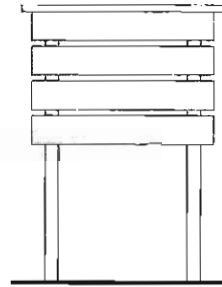
Suspended



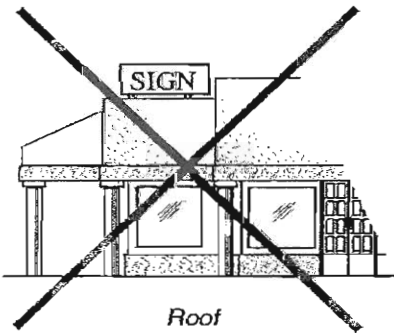
Freestanding Monument



Freestanding Shopping Center Identification



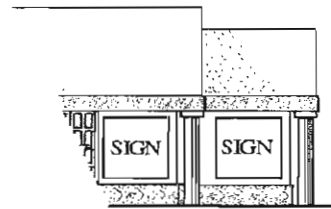
Freestanding Pole/Pylon



Roof
(NOT ALLOWED)



Projecting



Window

FIGURE 21-3
SIGN TYPES

- (v) Garage Sale Sign. A sign that is used to advertise the sale of used or secondhand goods or merchandise at dwellings and on residentially zoned property; these sales may also be known as patio sales, yard sales, etc.
- (w) Gateway Sign. A permanent, freestanding sign identifying a subdivision or other housing project, placed adjacent to a street or driveway providing primary vehicle access to the site.
- (x) Height. See Section 10-2.2110(a).
- (y) Historic Sign. An existing sign, or refurbishing of an existing sign, or re-creation of sign that once existed on the subject site at least fifty (50) years ago.
- (z) Hot Air Balloon. A balloon that is filled with heated air, has a gondola, and is capable of rising and floating in the atmosphere with people aboard.
- (aa) Identification Sign. Any sign that is used to identify or advertise the occupant of a building, lot or premises or the merchandise or activity available at the building, lot or premises where the sign is located.
- (bb) Installed, Installation. The establishment of a sign at its intended location, through construction, erection, painting, attachment, or other means.
- (cc) Lighted Sign. Any sign that is illuminated either directly or indirectly by artificial light.
- (dd) Marquee. A fixed overhead shelter used as a roof, which may or may not be attached to a building, and which projects into or overhangs a public street or alley right-of-way.
- (ee) Marquee Sign. A sign attached to or hung from a marquee and which:
 - (1) Is mounted in a vertical plane;
 - (2) Is mounted parallel to the leading edge of a marquee, except for an undermarquee sign which may be mounted at an angle to the leading edge of a marquee; and
 - (3) Does not project higher than the wall of the building to which the marquee is attached.

- (ff) Monument Sign. An independent, freestanding sign structure supported on the ground by a solid base at least as wide as the sign; as opposed to being supported by poles or open braces.
- (gg) Open House Directional Sign. A sign with the words "open house," which may include an arrow or other directional symbol and real estate office name.
- (hh) Outdoor Advertising Sign. Outdoor advertising signs include any of the following:
 - (1) Commercial. Any sign, excepting a bench sign, that directs attention to a business, profession, product, commodity, or mercantile-oriented service that is not the primary business, profession, product, commodity or mercantile-oriented service sold, manufactured, conducted, or offered on the site on which the sign is located.
 - (2) Noncommercial. Any sign, excepting a bench sign, which does not direct attention to a business, profession, product, commodity or mercantile-oriented service. This includes but is not limited to any sign expressing a personal, political, religious or social message, idea or point of view.
- (ii) Placard. A temporary sign consisting of a rectangle of cardboard, masonite, or similar material, mounted on a wood or metal stake, which is driven into the ground.
- (jj) Political Sign. Any impermanent sign or advertising device or display, with or without letters, words, numbers or figures thereon, which is designed to advertise a candidate for political office, a political party, or a measure scheduled for an election.
- (kk) Principal Frontage. That wall of a building or structure which has frontage on a public street, highway, parking lot, walkway or mall, and which is designated by the owner or occupant of the structure as the principal frontage.
- (ll) Promotional Decorations. Temporary promotional decorations consisting of a string of pennants, fringe, balloons or other decorative materials that are either suspended from poles, hung on walls to outline buildings, or placed on outdoor merchandise displays. Promotional decorations do not include flags or streamers, which are separately defined. See Figure 21-4.

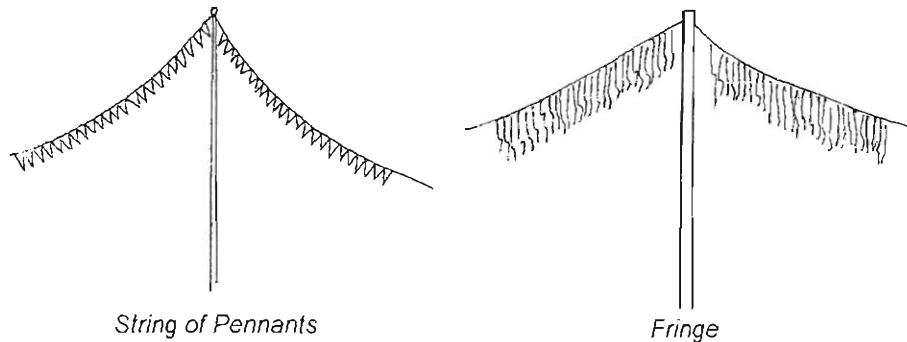


FIGURE 21-4

PROMOTIONAL DECORATIONS

- (mm) Projecting Sign. A projecting sign includes any of the following:
- (1) A sign attached to and projecting from the face of a wall, canopy, or marquee; and
 - (2) A sign mounted on a canopy roof or building roof that has a slope flatter than a forty-five (45) degree angle (one (1) horizontal to one (1) vertical).
- (nn) Real Estate Sign. A sign advertising residential or commercial buildings or property for sale, lease, or rent, either located on the available property or off-site.
- (oo) Review Authority. The individual or official City body (the Planning Commission, Board of Zoning Adjustments (BZA), Director, or Chief Building Official) identified by this article as having the responsibility and authority to review, and approve or disapprove the signs and permits described in this article.
- (pp) Ridgeline. The peak of the roof, top of a parapet, or top of the wall of a building.
- (qq) Shopping Center. A cluster of five (5) or more retail uses on the same or immediately adjacent sites which is presented to the public as a distinct shopping area, and with a single merchants' association comprising the cluster, and a common advertising program.

- (rr) Sign. Any structure, device, letter, figure, character, poster, picture, trademark or reading matter that is used or designed to announce, declare, demonstrate, display or otherwise identify or advertise, or attract the attention of the public (see Figure 21-3). However, a sign shall not include the following:
- (1) Official notices authorized by a court, public body or public officer;
 - (2) Directional, warning or informational signs authorized by federal, state or municipal authority or public utility;
 - (3) A properly displayed official flag of a government, school, religious group, or nonprofit organization;
 - (4) A memorial plaque, tablet or cornerstone indicating the name of a building and date of construction, when cut or carved into any masonry surface or when made of bronze or other incombustible material and made an integral part of the building or structure, not to exceed four (4) square feet in area;
 - (5) Signs within a building except window or wall signs as defined in this section;
 - (6) Christmas decorations and Christmas lights, from November 15 to January 15; or
 - (7) Inflatable devices when utilized in compliance with Section 10-2.1009
- (ss) Site. A parcel or adjoining parcels under single ownership or single control, considered a single unit for the purposes of development or other use.
- (tt) Streamer. A long, narrow flag. See Figure 21-5. See also "Flag."

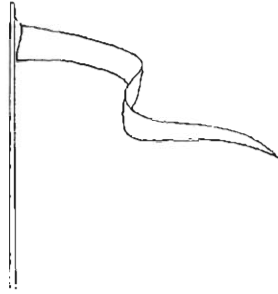


FIGURE 21-5
STREAMER

- (uu) Street Address Sign. The numerals of a street address for a given use or uses in a given building or buildings.
- (vv) Subdivision Sign. A sign indicating the name of a recorded subdivision, the name of the contractor or subdivider, the name of the owner or agent, and/or giving information regarding directions, price and/or terms.
- (ww) Subdivision Directional Sign. A sign indicating the name of a recorded subdivision and information regarding location. The name of the contractor or subdivider, the name of the owner or agent and/or information regarding price and/or terms may also be noted.
- (xx) Suspended Sign. A sign oriented to pedestrians which is hung from the underside of a canopy.
- (yy) Temporary Sign. Any banner, pennant, valance, balloon, streamer, placard, "A" frame, sandwich board or similar impermanent sign, advertising device, or display, with or without letters, words, numbers or figures, which directs, promotes service or price, or which is otherwise designed to attract attention, except for the following:
 - (1) Flags, other than flags of nations or states;
 - (2) Garage sale signs;
 - (3) Political signs;
 - (4) Real estate signs, including for sale or rent and open house signs;
 - (5) Signs for fireworks stands, pumpkin sales, Christmas tree sales lots, and temporary certified farmers markets; and

(6) Window signs.

Paper signs attached to a building, bulletin board, or outside a window are temporary signs unless enclosed in a frame with a glass, Plexiglas, or equivalent cover. The sign area will be subject to the wall and canopy sign standards.

- (zz) Theater. A large room or hall with fixed seats used for film shows, plays, concerts, operas, lectures and other performances.
- (aaa) Video Display Sign. A sign capable of and used for the display of full-motion or animated imagery.
- (bbb) Wall. Any wall or element of a wall or any member or group of members, which defines the exterior boundaries or courts of a building or structure and which has a slope steeper than one (1) horizontal to two (2) vertical, with the horizontal plane.
- (ccc) Wall Sign. Any sign painted on, attached to or erected against the wall of a building with the exposed face of the sign in a place approximately parallel to the plane of the wall and which does not project beyond the top or ends of the wall. Wall sign shall also mean any sign permanently displayed on the inside or outside of a window.
- (ddd) Window Sign. Any sign temporarily displayed on the inside of a window or temporarily painted on a window and facing a street, highway, parking lot, walkway or mall.
- (eee) Zone. One of the various zoning districts into which the City has been divided by this chapter.

10-2.2114. STANDARDS FOR SPECIFIC TYPES OF SIGNS AND LAND USES.

The specific types of signs covered by this section shall comply with the following provisions, in addition to the standards of Section 10-2.2110, 10-2.2112. These signs shall also comply with the sign permit requirements of Section 10-2.2108, except where this section establishes other permit requirements.

- (a) A-Frame Signs for Business Identification. A-frame (sandwich board) signs are allowed only in compliance with the requirements of this subsection, and subject to the approval of a sign permit. A-frame signs are intended to be allowable only when the review authority determines that a property owner has taken advantage of all permanent signs allowed by this article, and individual business visibility remains seriously impaired.

- (1) Where Allowed. A-frame signs may be approved within the commercial zoning districts, only on sites where the review authority determines that street visibility of the business to be served by the sign is seriously impaired, as follows:
 - (i) The business is within a structure that is located more than thirty (30) feet from a public street frontage, the site is developed with all other signs allowed by this section, and the business entry and the other exterior signs allowed for the business by this article are not visible from the public street; or
 - (ii) The space occupied by the business within a building has no exterior wall adjacent to or visible from a public street, and any exterior walls of the building that are adjacent to a public street are occupied by the signs of other businesses, at the maximum number and area of signs allowed by this article.
- (2) Sign Standards. An approved A-frame sign shall comply with all the following requirements.
 - (i) Size Limitations. Each panel of the A-frame sign shall not exceed a width of twenty-four (24) inches and a height of thirty-six (36) inches. The total height of the sign shall not exceed forty-eight (48) inches when the A-frame panels are in place, including the message panels and any legs or other supports.
 - (ii) Design and Construction Standards. The review authority shall approve an A-frame sign only when it first determines that the design and appearance of the sign, including any graphics and/or text, will reflect attractive, professional design, and that the sign will be durable and stable when in place.
 - (iii) Placement Requirements. An approved A-frame sign shall be placed only on private property, at the single location specified by the sign permit. The permit shall specify an approved location for the sign that will maintain a walkway with an adequate and safe width for pedestrians. The location specified by the permit shall also be selected to prevent the undue concentration of A-frame signs in the vicinity.

- (b) Banners and Promotional Decorations. Banners and promotional decorations are allowed only as provided by this subsection. The use of inflatable advertising devices and outdoor merchandise display are not regulated by this section, but are instead subject to Section 10-2.1009 of the Zoning Ordinance. (See also subsection (f) regarding flags and streamers.)
 - (1) Time Limits. Except where other time limits are established by this section, the placement of banners and promotional decorations shall be limited to a total of twelve (12) times per year, for a maximum of ten (10) days for each occasion. The resulting 120-day total may be divided at the discretion of the applicant into any increment that would be a multiple of ten (10) days, where the specific increments are requested in the sign permit application and noted on the issued permit. (For example, the total allowed one hundred twenty (120) days could be divided into two (2) periods of sixty (60) days each, four (4) periods of thirty (30) days each, etc.)
 - (2) Banners.
 - (i) Where Allowed. Banners may be permitted in any commercial zoning district; banners may be permitted in residential zoning districts only for churches, schools, and for model home complexes and apartment projects with vacancies.
 - (ii) Maximum Number. One (1) banner may be permitted for each street frontage of the business.
 - (iii) Size Limitations. Each banner shall not exceed seventy-two (72) square feet in area, and thirty-five (35) feet in height, or the ridgeline of the roof of the building, whichever is lower. A banner placed on a freestanding structure shall not exceed twenty (20) feet in height.
 - (3) Promotional Decorations.
 - (i) Where Allowed. Promotional decorations shall be permitted only within the commercial zoning districts for land uses which are authorized by this Code to display merchandise outdoors.

- (ii) Limitation on Type of Decorations Allowed. The promotional decorations that may be allowed in compliance with this section shall be limited to balloons. The use of strings of pennants, fringe, and/or promotional decorations other than balloons shall be prohibited.
 - (iii) Placement Requirements. No promotional decoration shall extend above the roof line of any building on the site.
- (c) Canopy Signs. Canopy signs shall comply with the following requirements (see Figure 21-9):
- (1) The sign shall be mounted in a vertical plane;
 - (2) The sign shall be mounted parallel to the leading edge of a canopy, except for a suspended sign which may be mounted at an angle to the leading edge of a canopy;
 - (3) The sign shall not project above the top of a canopy with a slope of forty-five (45) degrees (one (1) horizontal to one (1) vertical) or steeper, but may be mounted anywhere on the slope of the canopy;
 - (4) The sign shall not project above the leading edge of a canopy with a slope flatter than forty-five (45) degrees; and
 - (5) The sign may project above the top of a flat (no slope) canopy, but shall not project higher than the wall of the building to which the canopy is attached.

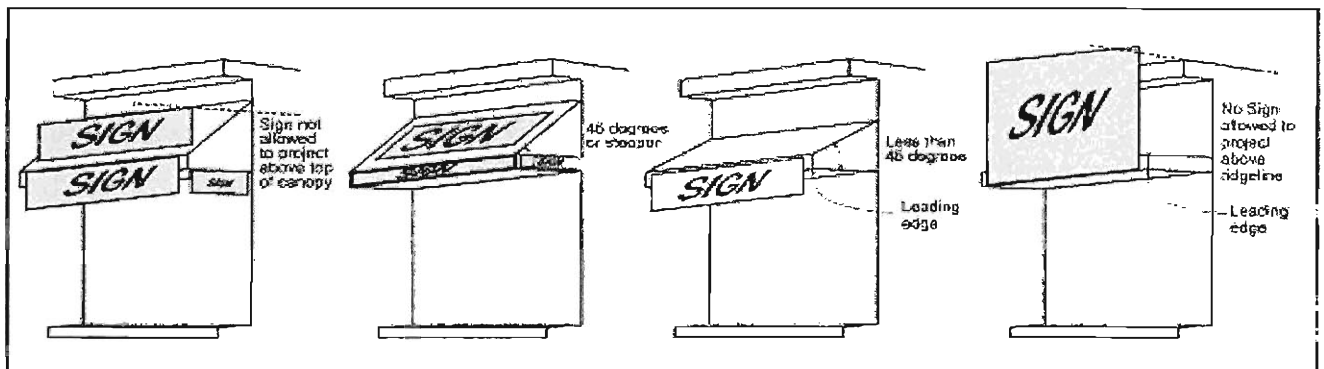


FIGURE 21-9

CANOPY SIGN REQUIREMENTS

- (d) Church Signs. Churches are allowed the following temporary placard signs in addition to those allowed by Section 10-2.2112.
 - (1) Temporary Identification Signs. The following placard signs are allowed for churches conducting services in temporary locations, without limitation on number. These signs are exempt from sign permit requirements, provided that the signs:
 - (i) Are in place on weekends only, no longer than from 5:00 p.m. on Friday, to 12:00 a.m. on Monday;
 - (ii) Are placed on the church site, outside of a public right-of-way, with the permission of the property owner;
 - (iii) Do not exceed six (6) square feet in area or a height of thirty-six (36) inches; and
 - (iv) Are completely removed when not in use, including all stakes and any other mounting materials.
 - (2) Banners. Banners are allowed in compliance with subsection (b) of this section, except that their use shall be limited to a maximum of six (6) times per year, for a maximum of ten (10) days for each time of use.
- (e) Electronic Message Board and Video Display Signs.
 - (1) Electronic Message Boards. Electronic message boards are allowed only in compliance with this subsection.
 - (i) Uses. Electronic message boards may be permitted only for the following uses:
 - a) Automobile dealer.
 - b) Theaters with a minimum of 250 fixed seats.
 - c) Convention centers owned by a public agency.

- d) The following uses when located on an arterial or expressway or freeway, as designated by the City of Modesto General Plan: Shopping center of five (5) acres or more, churches, synagogues, temples, mosques, and other similar places of religious worship, community centers owned by a public agency, stadiums, and high schools and colleges having a minimum campus of 20 acres.
- (ii) Requirements and Limitations. For all uses allowed to have Electronic Message Board as identified in Section 10-2.2114(e)(1), all Electronic Message Board shall be subject to the following requirements and limitations:
- a) Conditional Use Permit. Conditional Use Permit by the Board of Zoning Adjustment is required.
 - b) Sign Type. A single Electronic Message Board may only be allowed as one of the signs permitted by Section 10-2.2112, including Freeway-Oriented Signs pursuant to Section 10-2.2114(g).
 - c) Size Limitation. Electronic Message Boards shall be limited in size as follows:
 - 1) Freestanding Sign. The Electronic Message Board portion of the allowable freestanding sign may not exceed seventy-five (75) percent of the total sign area and must be integrated with the remainder of the sign to form a cohesive design unit.
 - 2) Wall, Canopy and Marquee Signs. Electronic Message Board Wall, Canopy and Marquee signs in the Residential (R-1, R-2 and R-3) and Professional Office (P-O) Zones may not exceed one-half (0.5) square-foot per linear foot of the wall on which the sign is located and in the Commercial and Industrial Zones (C-1, C-2, C-3, C-M, M-1, M-2, D-C) may not exceed (1) square-foot per linear foot of the wall on which the sign is located.

- d) Movement. No sign shall display animated messages, including flashing, blinking, fading, rolling, shading, dissolving, or any other effect that gives the appearance of movement.
- e) Audio. No sign shall include an audio message.
- f) Duration. No message shall be displayed for a period of time less than twenty (20) seconds; however, the Board of Zoning Adjustment may increase the minimum required display time if the sign is located within 100 feet of another Electronic Message Board Sign, traffic signal, flashing warning signs, school crosswalk, train crossings, fire stations, or other situations where a demanding driving environment is deemed to exist.
- g) Transition. Transition from one message to another message shall be instantaneous as perceived from the human eye. Each sign message shall be complete in itself and shall not continue on a subsequent sign message.
- h) On-premises signage. Signs may only be used for advertising the business, profession, product, commodity or mercantile-oriented service sold, manufactured, conducted, or offered on the site on which the sign is located. Noncommercial Outdoor Advertising is allowed in accordance with Section 10-2.2114(i). Commercial Outdoor (offsite) Advertising is prohibited.
- i) Sign Placement.
 - 1) Signs allowed in accordance with Section 10-2.2114(e)(1)(d) shall be located on an arterial, expressway or freeway as designated in the City of Modesto General Plan.

- 2) Signs shall not be placed to obstruct, or otherwise physically interfere with, an official traffic sign, signal or other device, or physically interfere with the vision of drivers in approaching, merging or intersecting traffic to the satisfaction of the Traffic Engineer.
 - 3) Signs shall not be located in the Clear Vision Triangle.
- j) Brightness. Signs shall utilize automatic dimming technology to adjust the brightness of the sign relative to ambient light so that at no time shall a sign exceed a brightness level of three tenths (0.3) foot candles above ambient light, as measured using a foot candle (Lux) meter and in conformance with the following process:
- 1) Light measurements shall be taken with the meter aimed directly at the sign message face, or at the area of the sign emitting the brightest light if that area is not the sign message face, at the following distances:
 - i) A sign that is 0 to 100 square feet in area shall be measured at a distance of 100 feet from the sign area being measured;
 - (ii) A sign that is 101 to 350 square-feet in area shall be measured at a distance of 150 feet from the sign area being measured;
 - (iii) A sign that is 350-650 square-feet in area shall be measured at a distance of 200 feet from the sign area being measured;
 - (iv) A sign that is 651 to 1,000 square-feet in area shall be measured at a distance of 250 feet from the sign area being measured.

- 2) An ambient light measurement shall be taken using a foot candle meter at some point between the period of time between thirty (30) minutes past sunset and thirty (30) minutes before sunrise with the sign turned to black screen.
 - 3) Immediately following the ambient light measurement taken in the manner required by this subsection, an operating sign light measurement shall be taken with the sign turned on to full white copy.
 - 4) The brightness of the sign conforms with the brightness requirements of this subsection, if the difference between the ambient light measurement and the operating sign light measurement is three tenths (0.3) foot candles or less.
 - 5) An application for a building permit shall include calculations by a lighting engineer to demonstrate compliance with requirements specified above.
- k) Malfunction. All signs shall contain a default mechanism that will cause the sign to revert immediately to a black screen if the sign malfunctions.
- (2) Video Display Signs. Video Display Signs are allowed only in compliance with this subsection.
- (i) Uses. Video Display Signs may be permitted only for the following uses:
 - a) Performing Arts Center located at 1000 I Street.
 - b) Convention Center located at 1000 L Street.
 - (ii) Requirements and limitations. All Video Display Signs shall be subject to the following requirements and limitations:
 - a) Conditional Use Permit by the Board of Zoning Adjustment is required.

- b) Sign Type. A Video Display Sign may only be allowed as one of the signs permitted by Section 10-2.809(e).
- c) Audio. No sign shall include an audio message.
- d) Duration. Any portion of the message that uses a full-motion (animated) video display shall have a minimum duration of two (2) seconds and a maximum duration of five (5) seconds. Calculation of the duration shall not include the number of frames per second used in a video display.
- e) Transition. There shall be twenty (20) seconds of still image or blank screen following every message using a video display.
- f) On-premises Signage. Video display signs may only be used for advertising the business, profession, product, commodity or mercantile-oriented service sold, manufactured, conducted, or offered on the site on which the sign is located. Noncommercial Outdoor Advertising is allowed in accordance with Section 10-2.2114(i). Commercial Outdoor (offsite) Advertising is prohibited.
- g) Brightness. Signs shall utilize automatic dimming technology to adjust the brightness of the sign relative to ambient light so that at no time shall a sign exceed a brightness level of three tenths (0.3) foot candles above ambient light, as measured using a foot candle (Lux) meter and in conformance with the following process:
 - 1) Light measurements shall be taken with the meter aimed directly at the sign message face, or at the area of the sign emitting the brightest light if that area is not the sign message face, at the following distances:
 - i) A sign that is 0 to 100 square feet in area shall be measured at a distance of 100 feet from the sign area being measured;

- ii) A sign that is 101 to 350 square-feet in area shall be measured at a distance of 150 feet from the sign area being measured;
 - iii) A sign that is 350-650 square-feet in area shall be measured at a distance of 200 feet from the sign area being measured;
 - iv) A sign that is 651 to 1,000 square-feet in area shall be measured at a distance of 250 feet from the sign area being measured.
- 2) An ambient light measurement shall be taken using a foot candle meter at some point between the period of time between thirty (30) minutes past sunset and thirty (30) minutes before sunrise with the sign turned to black screen.
- 3) Immediately following the ambient light measurement taken in the manner required by the subsection, an operating sign light measurement shall be taken with the sign turned on to full white copy.
- 4) The brightness of the sign conforms with the brightness requirements of this subsection, if the difference between the ambient light measurement and the operating sign light measurement is three tenths (0.3) foot candles or less.
- 5) An application for a building permit shall include calculations by a lighting engineer to demonstrate compliance with requirements specified above.
- h) Malfunction. All signs shall contain a default mechanism that will cause the sign to revert immediately to a black screen if the sign malfunctions.

- (f) Flags and Streamers.
 - (1) Where Allowed. Flags and streamers may be permitted within any zoning district, in compliance with the requirements of this subsection.
 - (2) Corporate Flags. One corporate flag is allowed per use or occupancy in nonresidential zoning districts, and is exempt from sign permit requirements. The flag shall not exceed a maximum area of twenty-four (24) square feet, and its dimensions shall not exceed a ratio of 2:1. The flag shall be flown only from a flagstaff or flagpole.
 - (3) Decorative Flags and Streamers. Decorative flags and streamers without advertising copy or corporate or product identification are allowed as follows:
 - (i) Residential Zoning Districts. One (1) decorative flag or streamer is allowed per parcel, and is exempt from sign permit requirements.
 - (ii) Nonresidential Zoning Districts. Six (6) decorative flags or streamers are allowed per business, and are exempt from sign permit requirements. Additional flags and streamers may be allowed with a sign permit, in compliance with the time limits established by subsection (b)(1), above.
 - (4) National and State Flags. Flags of nations or states are allowed without limitation on their number or size, and are exempt from sign permit requirements.
- (g) Freeway-Oriented Signs. A freeway-oriented sign may be approved in compliance with the following provisions.
 - (1) Where Allowed. A freeway-oriented sign may be authorized for the following uses that are located within six hundred (600) feet of the Freeway 99 right-of-way:
 - (i) A hotel, motel, service station or restaurant, as a freestanding use; or

- (ii) Shopping centers of at least five (5) acres in size. A freeway-oriented sign for a shopping center may advertise the shopping center name, and/or any tenants. One freeway-oriented sign shall be allowed per shopping center.
- (2) Permit Requirement. A sign permit is required for a freeway-oriented shopping center identification sign; conditional use permit approval by the BZA shall be required for all other freeway-oriented signs, and for any freeway-oriented sign with a height greater than thirty-five (35) feet for freestanding uses, or fifty (50) feet for shopping centers.
- (3) Required Findings for Freestanding Uses. The approval of a conditional use permit for a freeway-oriented sign for a freestanding hotel, motel, restaurant, or service station shall require that the BZA first find that:
 - (i) The use or occupancy is a freestanding use; and
 - (ii) The use or occupancy cannot be adequately identified from Freeway 99 by other signs permitted within the applicable zone.
- (4) Approval of Additional Height. The BZA may grant a conditional use permit authorizing a freeway-oriented sign higher than thirty-five (35) feet for freestanding uses, or fifty (50) feet for shopping centers, as follows.
 - (i) Criteria for Approval. A sign with a height greater than thirty-five (35) feet for freestanding uses, or fifty (50) feet for shopping centers, may be approved if the BZA determines that the applicant has demonstrated that an overcrossing of Freeway 99, or its ramps, or trees or vegetation will obstruct the visibility of the proposed sign from the northbound or southbound lanes of Freeway 99.
 - (ii) Procedure for Determining Allowed Height. The BZA shall approve a sign in compliance with subsection (g)(4)(i) above, at a height no more than the minimum necessary to clear the identified visual obstruction. The determination of maximum height by the BZA shall be based on the following procedure, which shall occur prior to the BZA public hearing.

- a) The applicant shall arrange for a boom truck with a sign target to be on the site at the location of the proposed sign, with a tape measure attached to the top of the target so that an accurate ground reading of height can be determined.
 - b) On the BZA field trip, the BZA will go to the site, pick up the applicant or applicant's representative, and drive Freeway 99 north and south of the target on the site. The purpose will be to visually verify that the target is set at the minimum height necessary to clear the visual obstruction.
 - c) At the public hearing and in their deliberations, the BZA shall consider the visual observations from the field trip to be the primary testimony.
- (5) Sign Area Requirements. The maximum sign area for a freeway-oriented sign shall be as follows:
- (i) For a freestanding hotel, motel, service station or restaurant, the maximum sign area shall be one hundred fifty (150) square feet.
 - (ii) For shopping centers of at least five (5) acres but less than twenty (20) acres in size, the maximum sign area shall be three hundred (300) square feet, with no individual tenant panel more than one hundred fifty (150) square feet in area. The sign area can be increased to four hundred (400) square feet if the shopping center name is included on the sign, provided the area of the shopping center name is at least as large as any individual tenant panel.
 - (iii) For shopping centers of twenty (20) acres or greater in size, the maximum sign area shall be seven hundred (700) square feet, with no individual tenant panel more than one hundred fifty (150) square feet in area. The sign area can be increased to eight hundred (800) square feet if the shopping center name is included on the sign, provided the area of the shopping center name is at least as large as any individual tenant panel.

- (iv) For shopping center signs advertising a single tenant or only the shopping center name, the maximum sign area shall be one hundred fifty (150) square feet.
- (h) Historic Signs. A historic sign may be approved in any zone subject to the following requirements:
 - (1) Permit Requirement. Conditional use permit approval by the BZA shall be required in compliance with Article 25 of Chapter 2 of Title 10 of this Code.
 - (2) Permit Review Considerations. Any deviation from the sign regulations of the zone applicable to the site of a proposed historic sign should be noted in the BZA agenda report. The BZA should determine if each deviation is insignificant to the compatibility with other uses in the area and deny or impose conditions deemed necessary for any deviations that are not compatible.
 - (3) Criteria for Approval. The BZA may approve a conditional use permit for a historic sign which deviates from the sign standards of the applicable zone only where:
 - (i) The BZA determines that the existence of the sign at the given site fifty (50) or more years ago has been adequately proven;
 - (ii) The BZA determines that the design of the sign is historically authentic, based on adequate proof of authenticity provided by photographs or plans furnished by the applicant; and
 - (iii) The Landmark Preservation Committee has reviewed the proposed sign and has provided findings that the sign meets the above two (2) criteria.
- (i) Outdoor Advertising Signs. Outdoor advertising signs shall comply with the following provisions:
 - (1) C-2, C-M, M-1 and M-2 Zones. Only the following outdoor advertising signs may be permitted in the C-2, C-M, M-1 and M-2 zones.

- (i) A directional outdoor advertising sign may be authorized with conditional use permit approval for hotels, motels, and restaurants only, provided that the sign does not exceed seventy-two (72) square feet in area and twenty (20) feet in height. The BZA may grant the conditional use permit only after first finding that:
 - a) The use or occupancy is a freestanding use.
 - b) The combined total of all approved directional outdoor advertising signs for a motel, hotel or restaurant is necessary for the public welfare and will not excessively promote the specific motel, hotel or restaurant.
- (ii) Noncommercial outdoor advertising signs may be permitted with a maximum area of seventy-two (72) square feet and a height of twenty (20) feet, except that:
 - a) Signs located on property within two hundred (200) feet of the Freeway 99 right-of-way may be as large as one hundred fifty (150) square feet and thirty-five (35) feet in height.
 - b) Signs located on property within two hundred (200) feet of the Freeway 99 right-of-way may be higher than thirty-five (35) feet, subject to the approval of a conditional use permit through the procedure described in subsection (g) of this section. In deciding whether to grant the conditional use permit, the BZA shall not take into consideration the copy, subject matter or message of the proposed sign.
- (2) C-1 Zone. Noncommercial outdoor advertising signs may be permitted in the C-1 zone with a maximum area of seventy-two (72) square feet and a maximum height of twenty (20) feet.
- (3) Other Zones. Outdoor advertising signs are prohibited in all zones other than those listed in subsections (i)(1) and (i)(2), above.

- (j) Service Station Signs. The following sign requirements apply to service stations in addition to the provisions of Tables 21-2 and 21-3. The following signs are allowed in addition to the signs and sign area allowed by Tables 21-2 and 21-3, except where otherwise limited by this subsection. See Figure 21-10.
- (1) Pump Island Signs. Signs shall be permitted on pump islands, canopy uprights, and nonmovable structures on the pump islands if the combined area of these signs and all other wall and canopy signs do not exceed the total sign area permitted in Table 21-2 for the service station building, and do not project beyond the canopy roof or raised pump island. These signs shall not exceed ten (10) feet in height if there is no canopy. For self-service stations with small attendant booths less than ten (10) feet on any side, the total wall and canopy sign area shall not exceed one hundred sixty (160) square feet.
 - (2) Price Signs. Freestanding motor fuel price signs are permitted as follows, for service stations open to the public.
 - (i) Sign Copy. The copy on the signs shall be limited to specifying the prices and grades of motor fuel, self-service or full service, and brand name of the motor fuel, as required by the California Business and Professions Code.
 - (ii) Maximum Sign Area. The maximum allowable area for fuel price signs shall be twenty-five (25) square feet for the portion of the sign identifying self- or full-service prices, and six (6) square feet for a discount for cash portion of the sign; all can be combined as one (1) sign.
 - (iii) Maximum Sign Height. Maximum sign height shall be fourteen (14) feet.
 - (iv) Maximum Number of Signs. One fuel price sign is permitted for each street frontage of the site.

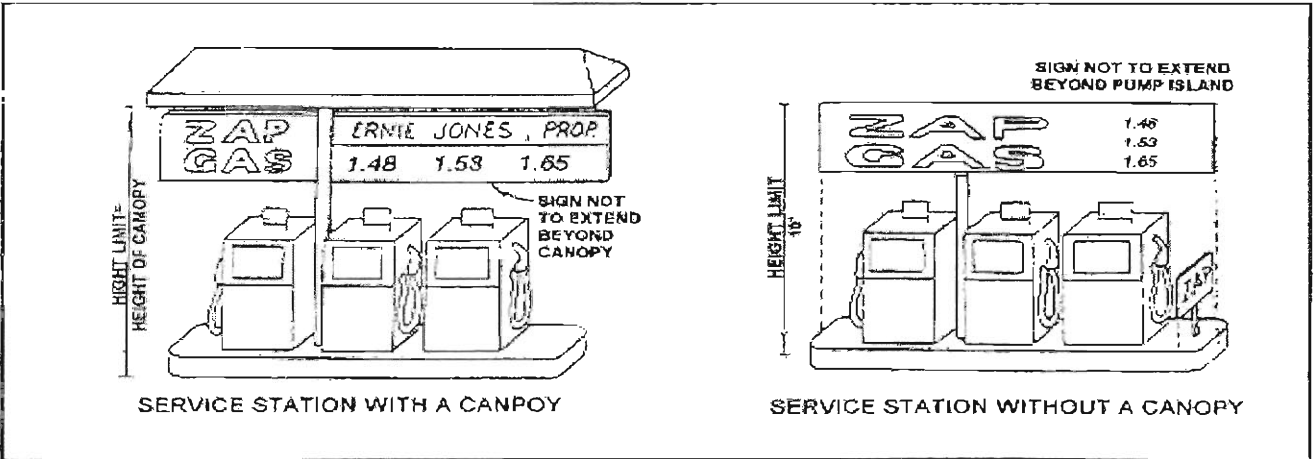


FIGURE 21-10

SERVICE STATION SIGN REQUIREMENTS

- (k) Shopping center identification signs. A shopping center identification sign allowed by Section 10-2.2112 shall also comply with the following requirements:
- (1) Limitation on Copy. The copy on a shopping center sign shall be limited to the shopping center name, with an optional reader board or a listing of uses within the center. The lettering for the reader board or the listing of uses shall be of the same or smaller size than the lettering of the shopping center name.
 - (2) Monument Signs Required. Shopping center identification signs for centers approved after February 4, 1999, shall be limited to monument signs. No pole/pylon signs shall be allowed.
 - (3) Removal of Existing Signs Required. Any freestanding or projecting identification signs installed at the shopping center on or after July 1, 1972, whether identifying the shopping center or any use or occupancy within the center, shall be removed prior to the issuance of a building permit for the installation of a shopping center sign.
 - (4) Limitation on Other Signs. After the installation of a shopping center sign, no additional freestanding or projecting identification sign shall be installed for any use or occupancy within the center, even in cases where the existing signs were installed prior to this Code provision.

- (5) Approval of Additional Signs. A shopping center with more than two hundred fifty thousand (250,000) square feet of gross floor area may be authorized one (1) additional shopping center identification sign through conditional use permit approval, for each street frontage longer than six hundred (600) feet. Where more than one (1) sign is located on a single street frontage, the signs shall be separated by a minimum of three hundred (300) feet.

- (l) Street Address Signs. Each building or group of buildings assigned a street address shall display the street address on a wall of the building, as follows:
 - (1) Location. The street address shall be visible from the street upon which the building is addressed.

 - (2) Size of Numerals. The minimum height, width, and maximum area of the street address numerals shall be as follows:
 - (i) Residential Uses. Each numeral shall have a minimum height of three (3) inches and a minimum stroke width of one-fourth ($\frac{1}{4}$) inch. The total area of all the numerals which comprise the street address shall not exceed one (1) square foot.

 - (ii) Nonresidential and Conditional Uses. Each numeral shall have a minimum height of six (6) inches and a minimum stroke width of one-half ($\frac{1}{2}$) inch. The total area of all the numerals which comprise the street address shall not exceed four (4) square feet.

- (m) Subdivision Sales Signs. Residential subdivisions are permitted the following signs during the marketing of the lots/homes within the subdivision.
 - (1) Sales/Identification Sign. One (1) subdivision identification sign is allowed on the site of each recorded subdivision during lot sales, with a maximum area of sixty-four (64) square feet, and a maximum height of ten (10) feet.

 - (2) Directional Signs. Each recorded subdivision is allowed directional signs to guide potential customers to the site and its model homes or other sales facility, as follows:

- (i) Allowed Location of Signs. Subdivision sales directional signs shall be located as follows.
 - a) Within the boundaries of the subdivision, one (1) directional sign shall be permitted per block.
 - b) Outside the boundaries of the subdivision, directional signs on private property shall be permitted as follows:
 - 1) One (1) at each street intersection where a change in direction (left turn, right turn) is required; and
 - 2) Three (3) where no change in direction is required. No subdivision directional sign shall be closer than one thousand (1,000) feet to another subdivision directional sign for the same subdivision.
- (ii) Sign area and Height. The signs shall not exceed sixteen (16) square feet and six (6) feet in height.
- (3) Temporary Directional Placards. Temporary directional placard signs are allowed without limitation on number, and are exempt from sign permit requirements, provided that the signs:
 - (i) Are in place on weekends only, no longer than from 5:00 p.m. on Friday, to 12:00 a.m. on Monday;
 - (ii) Are placed on private property outside of a public right-of-way, with the permission of the property owner;
 - (iii) Do not exceed three (3) square feet in area or a height of thirty-six (36) inches; and
 - (iv) Are completely removed when not in use, including all stakes and any other mounting materials.
- (4) Subdivision Banners, Flags, and Promotional Decorations. These devices are subject to the requirements of Sections 10-2.2114(b) and 10-2.2114(f).

- (5) Time Limits. The subdivision sales signs allowed by this subsection shall be removed not later than three (3) years from the date the subdivision map is recorded, except as follows:
- (i) Where building permits have been issued by the City for more than fifty (50) percent but less than sixty-five (65) percent of the lots in the subdivision at the end of three (3) years, the sign may remain for an additional one (1) year;
 - (ii) Where building permits have been issued by the City for fifty (50) percent or less of the lots in the subdivision at the end of three (3) years, the sign may remain for an additional two (2) years; and
 - (iii) Temporary directional placards shall be removed in compliance with subsection (m)(3), above.

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 September, 2011, by Councilmember Lopez, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Marsh, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Burnside, Geer, Hawn, Lopez, Marsh, Muratore, Mayor Ridenour

NOES: Councilmembers: None.

ABSENT: Councilmembers: None

APPROVED:


JIM RIDENOUR, Mayor

ATTEST:

By 
STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By 
SUSANA ALCALA WOOD, City Attorney

Ord. No. 3552-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 September, 2011, Councilmember Lopez moved its final adoption, which motion being duly seconded by Councilmember Burnside, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Burnside, Geer, Hawn, Lopez, Marsh, Muratore,

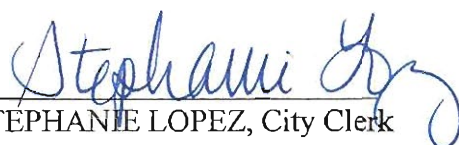
NOES: Councilmembers: None.

ABSENT: Councilmembers: Mayor Ridenour

APPROVED: 

MAYOR JIM RIDENOUR

ATTEST:


STEPHANIE LOPEZ, City Clerk

Effective Date: October 13, 2011

ORDINANCE NO. 3553-C.S.

AN ORDINANCE AMENDING SECTION 22-3-9 OF THE ZONING MAP TO REZONE FROM LOW DENSITY RESIDENTIAL, R-1, TO PLANNED DEVELOPMENT ZONE, P-D(593), PROPERTY LOCATED ON THE WEST SIDE OF OAKDALE ROAD OPPOSITE MORNINGSIDE DRIVE (L STREET ARCHITECTS)

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

SECTION 1. ZONING CHANGE. Section 22-3-9 of the Zoning Map is hereby amended to reclassify the following described property from Low Density Residential, R-1, to Planned Development Zone, P-D(593):

R-1 to P-D(593)

All that certain real property being a portion of the east half of Section 22, Township 3 South, Range 9 East, Mount Diablo Meridian, County of Stanislaus, State of California, being more particularly described as follows:

Beginning at the northwest corner of the property described as Adjusting Parcel 1 in the document recorded January 30, 2004 as Document No. 2004-0012949, Stanislaus County Records, said corner also being the northwest corner of Parcel "A" as shown on that certain map filed for record November 7, 1987 in Book 40 of Parcel Maps, at Page 16, Stanislaus County Records; thence coincident with the north line of said document and said Parcel "A", North 89° 56' 30" East, 500.05 feet to a point on the west right-of-way line of Oakdale Road; thence coincident with said right-of-way line, South 00° 45' 00" East, 251.59 feet; thence leaving said right-of-way line, South 89° 15' 00" West, 289.26 feet; thence North 00° 45' 00" West, 34.00 feet; thence South 89° 15' 00" West 210.75 feet to a point of the west line of said document and said Parcel "A"; thence coincident with said west line North 00° 45' 00" West, 223.62 feet to the Point of Beginning.

Also including the western 50.00 feet of Oakdale Road immediately adjacent to the above-described property.

SECTION 2. USES. The following uses shall be permitted in said P-D(593) 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. All uses as allowed in the Professional Office (P-O) Zone.

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

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

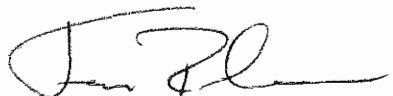
SECTION 5. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in *The Modesto Bee*, the official newspaper of the City of Modesto, setting forth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

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 13th day of September, 2011, by Councilmember Lopez, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Marsh, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Burnside, Geer, Hawn, Lopez, Marsh, Muratore

NOES: Councilmembers: None.

ABSENT: Councilmembers: Mayor Ridenour

APPROVED: 
JIM RIDENOUR, Mayor

ATTEST:


By 
STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By 
SUSANA ALCALA WOOD, City Attorney

APPROVED AS TO DESCRIPTION:

By 
Community & Economic Development
Department, Planning Division

Ord. No. 3553-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 September, 2011, Councilmember Lopez moved its final adoption, which motion being duly seconded by Councilmember Burnside, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Burnside, Geer, Hawn, Lopez, Marsh, Muratore, Mayor Ridenour

NOES: Councilmembers: None.

ABSENT: Councilmembers: None

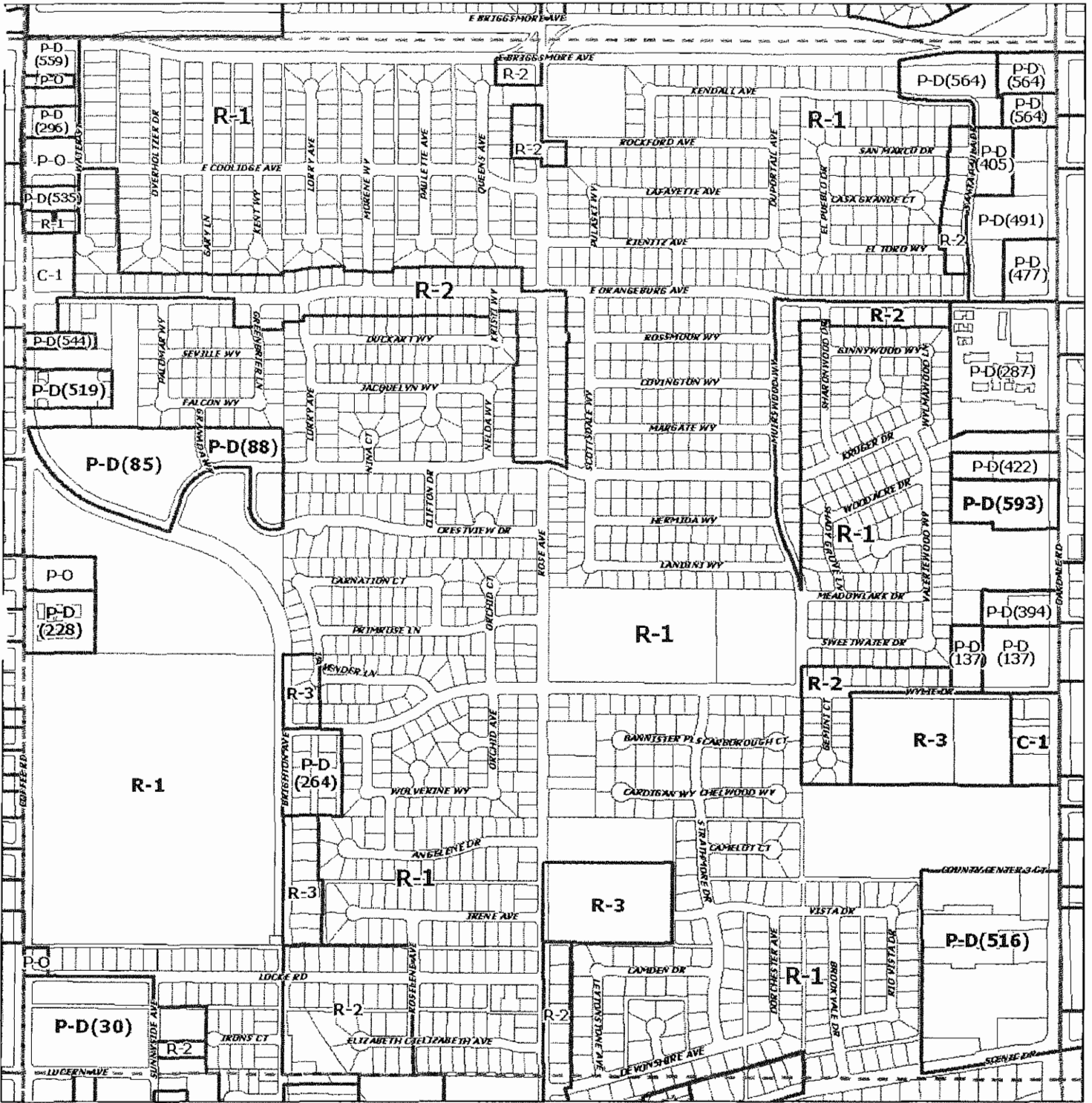
APPROVED:


MAYOR JIM RIDENOUR

ATTEST:


STEPHANIE LOPEZ, City Clerk

Effective Date: October 27, 2011



ZONING MAP OF THE CITY OF MODESTO

22-3-9

ORDINANCE NO. 3554-C.S.

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

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

SECTION 1. AMENDMENT OF CODE. Section 8-3.102 of Article 1 of

Chapter 3 of Title 8 of the Modesto Municipal Code is hereby amended to read as follows:

8-3.102. CONTRACTING AUTHORITY.

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

- (a) Contracts for public works projects consisting of the improvement or modification of traffic signals or signal systems including those street improvements which are incidental to or related to the improvement or modification of the traffic signal. The City Manager may approve and authorize all contracts for such projects involving an expenditure of City funds in the amount of two hundred fifty thousand dollars (\$250,000.00) or less.
- (b) Contracts for public works projects consisting of the construction, improvement, repair, expansion, renovation or modification of any facilities funded by a Mello-Roos Community Facilities District and involving an expenditure of District Facility Taxes in the amount of three million dollars (\$3,000,000.00) or less. The District Administrator may approve and authorize all contracts for such projects.
- (c) Contracts for public works projects consisting of the maintenance, repair, replacement, and improvement of existing water lines. The City Manager may approve and authorize all contracts for such projects involving an expenditure of City funds in the amount of three hundred thousand dollars (\$300,000.00) or less.
- (d) Contracts for public works projects consisting of the installation and

establishment of water service connections associated with new development. The City Manager may approve and authorize all contracts for such projects involving an expenditure of City funds in the amount of seventy-five thousand dollars (\$75,000.00) or less.

- (e) Contracts for public works projects consisting of repairs determined by the City Manager to be of urgent necessity for the preservation of life, health, or property. The City Manager may approve and authorize all contracts for such projects in the amount of two hundred thousand dollars (\$200,000.00) or less. Within ten (10) days of the authorization for any such work, the City Manager shall report to the City Council the circumstances of the emergency.
- (f) Contracts for public works projects consisting of the construction, improvement, repair, expansion, renovation, or modification of any facilities associated with development and installed by the developer provided:
 - (1) That an agreement is approved by the City Council prior to commencement of construction of the works.
 - (2) The agreement clearly defines the work to be done and the basis for reimbursement.
 - (3) That total reimbursement required by the agreement is less than four hundred thousand dollars (\$400,000.00) in City funds.
- (g) Contracts for public works projects consisting of the installation, construction, and improvement, of the Coffee-Claratina Dual Use Neighborhood Park/Storm Basin in the City of Modesto. The City Manager may approve and authorize all contracts for such projects involving an expenditure of City funds in the amount of one million five hundred thousand dollars (\$1,500,000.00) or less.
- (h) Contracts for public works projects consisting of the installation and construction of any upgrade and/or rebuild of the City's Institutional Network (INET). The City Manager may approve and authorize all contracts for such projects involving an expenditure of City funds in the amount of four million two hundred thousand dollars (\$4,200,000.00) or less.
- (i) Contracts for public works projects consisting of those improvements to the South Modesto water system identified in that certain technical memorandum prepared by West Yost and Associates dated October 17,

2005, as amended on November 7, 2005, for the benefit of the Galas Brothers Unit II Project bounded by Hatch Road, Estrella Way, Ironside Drive, Salazar Circle and Monticello Lane in the City of Modesto and any incidental work thereto. The City Manager may approve and authorize all contracts for this project involving a total expenditure of City funds not to exceed two million five hundred thousand dollars (\$2,500,000) or less.

- (j) Contracts for public works contracts consisting of the purchase, installation and replacement of water meters including an automated water meter reading (AMR) system and infrastructure work in conjunction with the system-wide water metering program. The City Manager may approve and authorize all contracts for such projects involving an expenditure of City funds in the amount of five million dollars (\$5,000,000) or less annually.
- (k) Contracts for paving and landscaping work to be done by City forces at the City's Traffic Operations Facility located at 117 Elm Street in the amount of one hundred thousand dollars (\$100,000) or less.
- (l) Contracts for public works projects consisting of the design, purchase and installation of water lines and associated equipment used to blend down contaminants at water well sites in the amount of one million five hundred thousand dollars (\$1,500,000) per project.
- (m) Contracts for public works projects consisting of additions and/or expansion of facilities and structures at John Thurman Field not to exceed two million four hundred thousand dollars (\$2,400,000) per project.
- (n) Contracts for work done by City forces to repair, replace and improve water lines and associated appurtenances for the McHenry Avenue Water System Upgrade Project in the amount of four hundred fifty thousand dollars (\$450,000) or less.
- (o) Contracts for work done by City forces to repair, replace and improve water lines and associated appurtenances for the 9th Street Water Main Replacement Project in the amount of five hundred eighty-five thousand dollars (\$585,000) or less.
- (p) Contracts for Public Works projects consisting of bus stop improvements at various locations on the Modesto Area Express route system. The City Manager may approve all contracts for such projects in the amount of six hundred seventy-five thousand dollars (\$675,000) or less annually.
- (q) Contracts for work done by City forces consisting of roadway and

intersection improvements on Oakdale Road between Claratina Avenue and Mable Avenue in the amount of one hundred forty thousand dollars (\$140,000.00) or less.

- (r) Contracts for work done by City forces to repair, replace and improve water lines and associated appurtenances for the Del Rio Water Main Replacement Project in the amount of three hundred ninety thousand dollars (\$390,000.00) or less.
- (s) Contracts for public works projects consisting of energy efficient improvements to City facilities that are funded through the American Recovery and Reinvestment Act (ARRA) of 2009, Energy Efficiency and Conservation Block Grant (EECBG) Program. The City Manager may approve and authorize all contracts for such projects involving an expenditure of City funds in the amount of six hundred thousand dollars (\$600,000.00) or less.
- (t) Contracts for public works to purchase and construct a Police Officer Memorial and associated appurtenances at the Modesto Police Headquarters in the amount of one hundred twenty-five thousand dollars (\$125,000.00) or less.

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

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

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

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

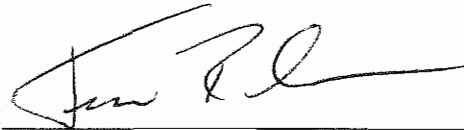
The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 4th day of October, 2011, by Councilmember Burnside, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Muratore, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Burnside, Geer, Hawn, Marsh, Muratore, Mayor Ridenour

NOES: Councilmembers: None.

ABSENT: Councilmembers: Lopez

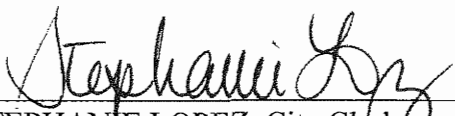
APPROVED: _____



JIM RIDENOUR, Mayor

ATTEST:

By _____


STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By _____


SUSANA ALCALA WOOD, City Attorney

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 11th day of October, 2011, Councilmember Lopez moved its final adoption, which motion being duly seconded by Councilmember Burnside, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Burnside, Geer, Hawn, Lopez, Marsh, Muratore

NOES: Councilmembers: None.

ABSENT: Councilmembers: Mayor Ridenour.

APPROVED: 

MAYOR JIM RIDENOUR

ATTEST:


STEPHANIE LOPEZ, City Clerk

Effective Date: November 11, 2011

ORDINANCE NO. 3555-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 TO PROVIDE 2% @ 60 FULL FORMULA, THREE-YEAR FINAL COMPENSATION TO LOCAL MISCELLANEOUS MEMBERS ENTERING MEMBERSHIP FOR THE FIRST TIME, AND PROVIDE 3% @ 55 FULL FORMULA, THREE-YEAR FINAL COMPENSATION TO LOCAL FIRE SAFETY MEMBERS ENTERING MEMBERSHIP FOR THE FIRST TIME.

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 being attached hereto, marked as "EXHIBIT," and by such reference made a part hereof as though herein set out in full.

SECTION 2. This amendment to the contract is per the tentative agreements signed by each affected bargaining unit; namely, Modesto Confidential and Management Association, Modesto City Employees Association, Modesto Police and Fire Non-Sworn Association and Modesto City Fire Fighters Association.

SECTION 3. 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 4. EFFECTIVE DATE. This ordinance shall take effect thirty (30) days after the date of its final passage and adoption.

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

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

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 1st day of November, 2011, by Councilmember Hawn, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Lopez, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Burnside, Geer, Hawn, Lopez, Marsh, Muratore , Mayor Ridenour.

NOES: Councilmembers: None.

ABSENT: Councilmembers: None.

Approved: 
JIM RIDENOUR, Mayor

Attest: 
STEPHANIE LOPEZ, City Clerk

APPROVED AS TO FORM:

By: 
SUSANA ALCALA WOOD, City Attorney

Ord. No. 3555-C.S.

FINAL ADOPTION CLAUSE


The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 6th day of December, 2011, Councilmember Lopez, moved its final adoption, which motion being duly seconded by Councilmember Burnside, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Burnside, Cogdill, Geer, Gunderson, Lopez, Muratore, Mayor Ridenour.

NOES: Councilmembers: None.

ABSENT: Councilmembers: None.

APPROVED:



MAYOR JIM RIDENOUR

ATTEST:


STEPHANIE LOPEZ, City Clerk

Effective Date: January 6, 2012



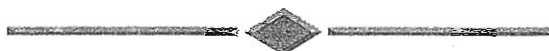
EXHIBIT

California
Public Employees' Retirement System



AMENDMENT TO CONTRACT

Between the
Board of Administration
California Public Employees' Retirement System
and the
City Council
City of Modesto



The Board of Administration, California Public Employees' Retirement System, hereinafter referred to as Board, and the governing body of the 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, November 22, 1991, July 25, 1997, November 7, 2000, June 19, 2001, July 2, 2002, June 26, 2007, August 1, 2008 and March 6, 2009 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 March 6, 2009, and hereby replaced by the following paragraphs numbered 1 through 16 inclusive:

DO NOT SIGN "EXHIBIT ONLY"

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 55 for local miscellaneous members entering membership in the miscellaneous classification on or prior to the effective date of this amendment to contract; age 60 for local miscellaneous members entering membership for the first time in the miscellaneous classification after the effective date of this amendment to contract; age 50 for local police members and for those local fire members entering membership in the fire classification on or prior to the effective date of this amendment to contract and age 55 for local fire members entering membership for the first time in the fire classification after the effective date of this amendment to contract.
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. Public Agency agrees to indemnify, defend and hold harmless the California Public Employees' Retirement System (CalPERS) and its trustees, agents and employees, the CalPERS Board of Administration, and the California Public Employees' Retirement Fund from any claims, demands, actions, losses, liabilities, damages, judgments, expenses and costs, including but not limited to interest, penalties and attorneys fees that may arise as a result of any of the following:
 - (a) Public Agency's election to provide retirement benefits, provisions or formulas under this Contract that are different than the retirement benefits, provisions or formulas provided under the Public Agency's prior non-CalPERS retirement program.
 - (b) Public Agency's election to amend this Contract to provide retirement benefits, provisions or formulas that are different than existing retirement benefits, provisions or formulas.

- (c) Public Agency's agreement with a third party other than CalPERS to provide retirement benefits, provisions, or formulas that are different than the retirement benefits, provisions or formulas provided under this Contract and provided for under the California Public Employees' Retirement Law.
 - (d) Public Agency's election to file for bankruptcy under Chapter 9 (commencing with section 901) of Title 11 of the United States Bankruptcy Code and/or Public Agency's election to reject this Contract with the CalPERS Board of Administration pursuant to section 365, of Title 11, of the United States Bankruptcy Code or any similar provision of law.
 - (e) Public Agency's election to assign this Contract without the prior written consent of the CalPERS' Board of Administration.
 - (f) The termination of this Contract either voluntarily by request of Public Agency or involuntarily pursuant to the Public Employees' Retirement Law.
 - (g) Changes sponsored by Public Agency in existing retirement benefits, provisions or formulas made as a result of amendments, additions or deletions to California statute or to the California Constitution.
4. 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).
5. 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;**
 - b. **ALL HOURLY RATED OR HOURLY BASIS EMPLOYEES HIRED ON AND AFTER OCTOBER 1, 1962; AND**
 - c. **CITY COUNCIL MEMBERS ELECTED INTO OFFICE ON OR AFTER AUGUST 1, 2008.**

PLEASE PRINT IN "EXHIBIT ONLY"

6. 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.
7. The percentage of final compensation to be provided for each year of credited prior and current service as a local miscellaneous member entering membership in the miscellaneous classification on or prior to the effective date of this amendment to contract shall be determined in accordance with Section 21354 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 55 Full and Modified).
8. The percentage of final compensation to be provided for each year of credited current service as a local miscellaneous member entering membership for the first time in the miscellaneous classification after the effective date of this amendment to contract shall be determined in accordance with Section 21353 of said Retirement Law (2% at age 60 Full).
9. The percentage of final compensation to be provided for each year of credited prior and current service as a local police member and for those local fire members entering membership in the fire classification on or prior to the effective date of this amendment to contract shall be determined in accordance with Section 21362.2 of said Retirement Law (3% at age 50 Full).
10. The percentage of final compensation to be provided for each year of credited current service as a local fire member entering membership for the first time in the fire classification after the effective date of this amendment to contract shall be determined in accordance with Section 21363.1 of said Retirement Law (3% at age 55 Full) .

PLEASE PRINT OR SIGN "EXHIBIT ONLY"

11. Public Agency elected and elects to be subject to the following optional provisions:
 - a. Section 21222.1 (One-Time 5% Increase - 1970). Legislation repealed said Section effective January 1, 1980.
 - b. Section 21222.2 (One-Time 5% Increase - 1971). Legislation repealed said Section effective January 1, 1980.
 - c. Section 21319 (One-Time 15% Increase for Local Miscellaneous Members Who Retired or Died Prior to July 1, 1971). Legislation repealed said Section effective January 1, 2002.
 - d. Section 21572 (Increased Level of 1959 Survivor Benefits) for local miscellaneous members only.
 - e. Section 20042 (One-Year Final Compensation) for local police members and for those local fire members and miscellaneous members entering membership on or prior to the effective date of this amendment to contract.
 - f. Section 21427 (Improved Nonindustrial Disability Allowance) for local miscellaneous members only.
 - g. Sections 21624, 21626 and 21628 (Post-Retirement Survivor Allowance) for local safety members and for those local miscellaneous members entering membership on or prior to October 20, 1981.
 - h. Section 21325 (One-Time 3% to 15% Increase For Local Miscellaneous Members and Local Safety Members Who Retired or Died Prior to January 1, 1974). Legislation repealed said Section effective January 1, 2002.

- i. Section 20475 (Different Level of Benefits). Sections 21624, 21626, and 21628 (Post-Retirement Survivor Allowance) are not applicable to local miscellaneous members entering membership for the first time in the miscellaneous classification after October 20, 1981.

Section 21353 (2% @ 60 Full formula) and Section 20037 (Three-Year Final Compensation) are applicable to local miscellaneous members entering membership for the first time in the miscellaneous classification after the effective date of this amendment to contract.

Section 21363.1 (3% @ 55 Full formula) and Section 20037 (Three-Year Final Compensation) are applicable to local fire members entering membership for the first time in the fire classification after the effective date of this amendment to contract.

- j. Section 21322 (One-Time 4% Increase For Local Miscellaneous Members and Local Safety Members Who Retired or Died Prior to January 1, 1981). Legislation repealed said Section effective January 1, 2002.
 - k. Section 21317 (One-Time 15% Increase for Certain Local Safety Members Who Retired for Service Retirement). Legislation repealed said Section effective January 1, 2002.
 - l. Section 21024 (Military Service Credit as Public Service).
 - m. Section 21574.5 (Indexed Level of 1959 Survivor Benefits) for local safety members only.
 - n. Section 21547.7 (Alternate Death Benefit for Local Fire Members Credited with 20 or More Years of Service).
 - o. Section 21118 (Partial Service Retirement) for local miscellaneous members only.
12. 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.

PLEASE PRINT IN ALL CAPS "EXHIBIT ONLY"

13. 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.
14. Public Agency shall also contribute to said Retirement System as follows:
 - a. Contributions required per covered member on account of the 1959 Survivor Benefits provided under Section 21574.5 of said Retirement Law. (Subject to annual change.) In addition, all assets and liabilities of Public Agency and its employees shall be pooled in a single account, based on term insurance rates, for survivors of all local safety members.
 - b. 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.
 - c. 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.
15. 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.

16. 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 _____, _____.

BOARD OF ADMINISTRATION
PUBLIC EMPLOYEES' RETIREMENT SYSTEM

CITY COUNCIL
CITY OF MODESTO

BY _____
DARRYL WATSON, CHIEF
CUSTOMER ACCOUNT SERVICES DIVISION
PUBLIC EMPLOYEES' RETIREMENT SYSTEM

BY _____
PRESIDING OFFICER

Witness Date

Attest:

Clerk

ORDINANCE NO. 3556-C.S.

AN ORDINANCE AMENDING SECTION 4-4-9 OF THE ZONING MAP TO PREZONE GENERAL COMMERCIAL ZONE, P-C-2, AND PREZONE LOW-DENSITY RESIDENTIAL ZONE, P-R-1, PROPERTY BOUNDED BY CROWS LANDING ROAD ON THE WEST, HATCH ROAD ON THE SOUTH, UNION PACIFIC RAILROAD ON THE EAST, AND STATE ROUTE 99 ON THE NORTH (CITY OF MODISTO)

WHEREAS, a verified application for an amendment to Section 4-4-9 of the Zoning Map was filed by the Community and Economic Development Department of the City of Modesto (“Applicant”) to prezone to Prezone General Commercial (P-C-2) and Prezone Low Density Residential (P-R-1), property bounded by Crows Landing Road on the west, Hatch Road on the south, Union Pacific Railroad on the east, and State Route 99 on the north, and

WHEREAS, Government Code Section 56375 requires that the City prezone any area which it proposes to annex, and

WHEREAS, any prezoning designation shall remain in effect until at least two years after completion of the annexation unless the City Council, after a public hearing, determines that a substantial change in circumstances has occurred that necessitates a departure from the prezoning, and

WHEREAS, after a public hearing held on September 19, 2011, in the Tenth Street Place Chambers located at 1010 10th Street, Modesto, California, it was found and determined by the Planning Commission that prezoning to Prezone General Commercial (P-C-2) and Prezone Low Density Residential (P-R-1), property bounded by Crows Landing Road on the west, Hatch

Road on the south, Union Pacific Railroad on the east, and State Route 99 on the north, is in accordance with Government Code Section 65855 for the following reasons:

1. The proposed prezone is required by public convenience and necessity for the following reasons:
 - a. The Property to be prezoned is a County “island” area with an existing land use pattern consistent with the proposed prezoning designations; and,
 - b. The proposed project is supported by General Plan Policy II.C.1.d., which states “Urban growth should be directed...to areas currently served with City services,” and General Plan Policy VIII.D, which states “Infrastructure in County ‘islands’ should be improved to City standards before annexation is complete;” and,
 - c. The proposed prezoning will result in orderly planned use of land resources, because it will provide for infill development that is consistent with City Standards.
2. The proposed prezone is consistent with the Modesto Urban Area General Plan as amended by the proposed amendment to the General Plan for the Shackelford Annexation because:
 - a. The project site lies within the baseline developed area, and the proposed prezone would support the existing land use pattern and General Plan land use designations; and,
 - b. The location of the Property is adjacent to the existing City limits, is within the Sphere of Influence and is consistent with Urban Growth Policy II.C.1.b., which states “Urban development should be kept as contiguous as possible in order to avoid premature urbanization of valuable farm land, foster resident convenience, and provide for economy in City services.”

WHEREAS, by Resolution No. 2011-18, adopted on September 19, 2011, the Planning Commission recommended to the City Council an amendment to Section 4-4-9 of the Zoning Map to prezone the hereafter described property to Prezone General Commercial (P-C-2) and Prezone Low Density Residential (P-R-1), and

WHEREAS, said matter was set for a public hearing of the City Council to be held on November 9, 2011, at 5:30 p.m., in the Tenth Street Place Chambers located at 1010 10th 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 November 9, 2011, 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 above.

SECTION 2. ZONING CHANGE. Section 4-4-9 of the Zoning Map is hereby amended to prezone the following described property to Prezone General Commercial (P-C-2):

P-C-2

A portion of Section 4 and 5, Township 4 South, Range 9 East, Mount Diablo Meridian, located in the County of Stanislaus, State of California, and more particularly described as follows:

BEGINNING at the southeast corner of said Section 5; thence along the southerly line of said Section 5, West 100 feet; thence North 86 feet to the northerly right-of-way line of Hatch Road; thence along said northerly right-of-way line, East 23 feet to the general westerly right-of-way line of Crows Landing Road; thence along said general westerly right-of-way line the following 13 courses: 1) northeasterly along a curve, having a radius of 25 feet and an arc distance of 39 feet; 2) thence North 272 feet; 3) thence northerly along a curve, having a radius of 1990 feet and an arc distance of 184 feet; 4) thence northerly along a reverse curve, having a radius of 2010 feet and an arc distance of 84 feet; 5) thence northwesterly along a reverse curve, having a radius of 15 feet and an arc distance of 23 feet to the southerly right-of-way line of Crater Avenue; 6) thence North 60 feet to the northerly right-of-way line Crater Avenue; 7) thence along a curve, having a radius

of 15 feet and an arc distance of 23 feet; 8) thence North 390 feet; 9) thence northwesterly along a curve, having a radius of 15 feet and an arc distance of 23 feet; 10) thence North 55 feet; 12) thence northeasterly along a curve, having a radius of 15 feet and an arc distance of 24 feet; 13) thence North 43 feet to the general southerly line of the Crows Landing Industrial Addition Annexation recorded August 5, 1952 in Volume 110 of Official Record at Page 427, Stanislaus County; thence along the general southerly and easterly line of said Annex the following two courses: 1) East 70 feet to the easterly line of Section 5; 2) thence along said easterly line, North 1193 feet to the westerly prolongation of the northerly line of the land as described in the Grant Deed recorded May 27, 2010 in Document 2010-0046473, Official Records of Stanislaus County; thence easterly along said westerly prolongation and said northerly line the following two courses: 1) along a curve, having a radius of 407 feet, an arc distance of 234 feet; 2) thence South 80° East 147 feet to the easterly line of Parcel No. 2 as described in the Grant Deed recorded March 12, 1952 in Volume 1076 at Page 55, Official Records of Stanislaus County; thence along said easterly line, South 51 feet to the southerly line of said Grant Deed in Document 2010-0046473; thence along said southerly line the following two courses: 1) thence North 80° West 155 feet; 2) thence along a curve, having a radius of 357 feet and an arc distance of 71 feet to the northerly prolongation of the westerly line of the land described in the Deed recorded June 5, 1952 in Volume 10909 at Page 557, Official Records of Stanislaus County; thence along said northerly prolongation and said westerly line, South 160 feet to the east-west quarter section line of Section 4; thence along said east-west quarter section line, East 98 feet to the northerly prolongation of the easterly line of the land as described in the Grant Deed recorded December 19, 2002 in Document 2002-0167170, Official Records of Stanislaus County; thence along said northerly prolongation and said easterly line, South 172 feet to the northerly line of the land as described in the Grant Deed recorded July 15, 2009 in Document 2009-0069276, Official Records of Stanislaus County; thence along said northerly line, East 24.00 feet to the easterly line of said Grant Deed; thence along said easterly line, South 158 feet to the northerly line of the South Modesto Acres No. 4 as filed in Volume 14 of Maps at Page 23, Stanislaus County Records; thence along said northerly line, West 70 feet to the northeast corner of Lot 22 of Block 3276 of said Map; thence along the east line of Lots 22-24 inclusive of Block 3276, Lots 22-28 inclusive of Block 3278 and Lots 22-24 inclusive of Block 3279 of said Map, South 825 feet to the southeast corner of said Lot 24 of Block 3279; thence along the southerly line of said Lot 24 and its westerly prolongation, West 200 feet to said westerly line of Section 4; thence along said westerly line, South 496 feet to the centerline of School Avenue as shown on the Barozzi Tract as filed in Volume 16 of Maps at Page 25, Stanislaus County Records; thence along said centerline, East 200 feet to the northerly prolongation of the east line of Lot 1; thence along the east line of Lots 1-5 inclusive of Block 3262 and Lots 48-49 inclusive of Block 3263 of said

Map, South 518 feet to the northerly line of Lot 4 of Block 3263 of the Clinton Tract as filed in Volume 14 of Maps at Page 11, Stanislaus County Records; thence along said northerly line, West 20 feet to the northwest corner of said Lot 4; thence along the westerly line of said Lot 4 and its southerly extension, South 227 feet to the southerly right-of-way line of Rio Grande Avenue (60' wide) as shown on said Clinton Tract; thence along said southerly line, East 150 feet to the northwest corner of Lot 1 of Block 3264 of said Clinton Tract; thence along the westerly line of said Lot 1 and its southerly extension, South 280 feet to the southerly line of said Section 4; thence along said southerly line, West 330 feet to the **POINT OF BEGINNING**.

Section 4-4-9 of the Zoning Map is hereby further amended to prezone the following described property to Prezone Low Density Residential (P-R-1):

P-R-1

A portion of Section 4, Township 4 South, Range 9 East, Mount Diablo Meridian, located in the County of Stanislaus, State of California, and more particularly described as follows:

COMMENCING at the southwest corner of said Section 4; thence along the southerly line of said Section 4, East 330 feet to the **POINT OF BEGINNING**; thence continuing along said southerly line, East 2281 feet to the westerly right-of-way line of the Union Pacific Railroad; thence northerly along said westerly right-of-way line of the Union Pacific Railroad 2490 feet to a point 50 feet southwesterly of the intersection of the easterly right-of-way line of said Union Pacific Railroad and the southwesterly right-of-way line of South 7th Street, said Union Pacific Railroad right-of-way being 50 feet wide; thence North 76° East 50 feet to said intersection; thence along said southwesterly right-of-way line, North 42° West 171 feet to the northerly line of the land as described in the Grant Deed recorded May 27, 2010 in Document 2010-0046473, Official Records of Stanislaus County; thence along said northerly line, North 80° West 1716 feet to the easterly line of Parcel No. 2 as described in the Grant Deed recorded March 12, 1952 in Volume 1076 at Page 55, Official Records of Stanislaus County; thence along said easterly line, South 51 feet to the southerly line of said Grant Deed in Document 2010-0046473; thence along said southerly line the following two courses: 1) thence North 80° West 155 feet; 2) thence along a curve, having a radius of 357 feet and an arc distance of 71 feet to the northerly prolongation of the westerly line of the land described in the Deed recorded June 5, 1952 in Volume 10909 at Page 557, Official Records of Stanislaus County; thence along said northerly prolongation and said westerly line, South 160 feet to the east-west quarter section line of Section

4; thence along said east-west quarter section line, East 98 feet to the northerly prolongation of the easterly line of the land as described in the Grant Deed recorded December 19, 2002 in Document 2002-0167170, Official Records of Stanislaus County; thence along said northerly prolongation and said easterly line, South 172 feet to the northerly line of the land as described in the Grant Deed recorded July 15, 2009 in Document 2009-0069276, Official Records of Stanislaus County; thence along said northerly line, East 24.00 feet to the easterly line of said Grant Deed; thence along said easterly line, South 158 feet to the northerly line of the South Modesto Acres No. 4 as filed in Volume 14 of Maps at Page 23, Stanislaus County Records; thence along said northerly line, West 70 feet to the northeast corner of Lot 22 of Block 3276 of said Map; thence along the east line of Lots 22-24 inclusive of Block 3276, Lots 22-28 inclusive of Block 3278 and Lots 22-24 inclusive of Block 3279 of said Map, South 825 feet to the southeast corner of said Lot 24 of Block 3279; thence along the southerly line of said Lot 24 and its westerly prolongation, West 200 feet to said westerly line of Section 4; thence along said westerly line, South 496 feet to the centerline of School Avenue as shown on the Barozzi Tract as filed in Volume 16 of Maps at Page 25, Stanislaus County Records; thence along said centerline, East 200 feet to the northerly prolongation of the east line of Lot 1; thence along the east line of Lots 1-5 inclusive of Block 3262 and Lots 48-49 inclusive of Block 3263 of said Map, South 518 feet to the northerly line of Lot 4 of Block 3263 of the Clinton Tract as filed in Volume 14 of Maps at Page 11, Stanislaus County Records; thence along said northerly line, West 20 feet to the northwest corner of said Lot 4; thence along the westerly line of said Lot 4 and its southerly extension, South 227 feet to the southerly right-of-way line of Rio Grande Avenue (60' wide) as shown on said Clinton Tract; thence along said southerly line, East 150 feet to the northwest corner of Lot 1 of Block 3264 of said Clinton Tract; thence along the westerly line of said Lot 1 and its southerly extension, South 280 feet to the **POINT OF BEGINNING**.

EXCEPTING therefrom that portion of the Shackelford School Annexation as approved by City Council by Resolution No. 79-369 and recorded in Instrument No. 70629, Official Records of Stanislaus County.

SECTION 3. ZONING MAP. Section 4-4-9 of the Zoning Map of the City of Modesto is hereby amended to appear as set forth on Exhibit A 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 special meeting of the Council of the City of Modesto held on the 9th day of November, 2011, by Councilmember Marsh, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Hawn, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Burnside, Geer, Hawn, Lopez, Marsh, Muratore Mayor Ridenour

NOES: Councilmembers: None.

ABSENT: Councilmembers: None.

APPROVED: 
JIM RIDENOUR, Mayor

ATTEST:

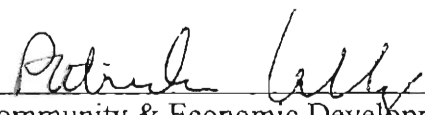
By 
STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By 
SUSANA ALCALA WOOD, City Attorney

APPROVED AS TO DESCRIPTION:

By 
Community & Economic Development
Department – Planning Division

Ord. No. 3556-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 6th day of December, 2011, Councilmember Lopez, moved its final adoption, which motion being duly seconded by Councilmember Burnside, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Burnside, Cogdill, Geer, Gunderson, Lopez,
Muratore, Mayor Ridenour.

NOES: Councilmembers: None.

ABSENT: Councilmembers: None.

APPROVED: 
MAYOR JIM RIDENOUR

ATTEST:


STEPHANIE LOPEZ, City Clerk

Effective Date: January 6, 2012

ORDINANCE NO. 3557-C.S.

AN ORDINANCE AMENDING ARTICLE 9 OF CHAPTER 2
OF TITLE 8 OF THE MODESTO MUNICIPAL CODE
RELATING TO UTILITY USERS' TAX.

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

SECTION 1. AMENDMENT OF CODE. Article 9 of Chapter 2 of Title 8 of
the Modesto Municipal Code is hereby amended to read as follows:

ARTICLE 9. UTILITY USERS' TAX.

8-2.901. SHORT TITLE.

This Article 9 shall be known as the "Utility Users' Tax Law of the City of
Modesto".

8-2.902. DEFINITIONS.

The following words and phrases whenever used in this Article 9, shall be
construed as defined in this Section.

- (a) **"Ancillary telecommunication services"** means services that are associated with or incidental to the provision, use or enjoyment of telecommunications services, including but not limited to the following services:
 - (1) **"Conference bridging service"** means an ancillary service that links two (2) or more participants of an audio or video conference call and may include the provision of a telephone number. Conference bridging service does not include the telecommunications services used to reach the conference bridge.
 - (2) **"Detailed telecommunications billing service"** means an ancillary service of separately stating information pertaining to individual calls on a customer's billing statement.
 - (3) **"Directory assistance"** means an ancillary service of providing telephone number information, and/or address information.

- (4) **“Vertical service”** means an ancillary service that is offered in connection with one or more telecommunications services, which offers advanced calling features that allow customers to identify callers and to manage multiple calls and call connections, including conference bridging services.
- (5) **“Voice mail service”** means an ancillary service that enables the customer to store, send or receive recorded messages. Voice mail service does not include any vertical services that the customer may be required to have in order to utilize the voice mail service.
- (b) **“Ancillary video services”** means services that are associated with or incidental to the provision or delivery of video services, including but not limited to electronic program guide services, recording services, search functions, or other interactive services or communications that are associated with or incidental to the provision, use or enjoyment of video services.
- (c) **“Billing address”** shall mean the mailing address of the service user where the service supplier submits invoices or bills for payment by the customer.
- (d) **“City”** shall mean the City of Modesto.
- (e) **“Gas”** shall mean natural or manufactured gas or any alternate hydrocarbon fuel which may be substituted therefor.
- (f) **“Individual service”** shall mean utility service at a single contiguous location. A service user with more than one meter or billing invoice per utility service at a single contiguous location may combine all billings for purposes of calculating the maximum tax amount.
- (g) **“Mobile telecommunications service”** has the meaning and usage as set forth in the Mobile Telecommunications Sourcing Act (*4 U.S.C. Section 124*) and the regulations thereunder.
- (h) **“Month”** shall mean a calendar month.
- (i) **“Non-Utility Service Supplier”** means:
 - (1) a service supplier, other than a supplier of electric distribution services to all or a significant portion of the City,

which generates electricity for sale to others, and shall include but is not limited to any publicly-owned electric utility, investor-owned utility, cogenerator, distributed generation provider, exempt wholesale generator (*15 U.S.C. Section 79z-5a*), municipal utility district, federal power marketing agency, electric rural cooperative, or other supplier or seller of electricity;

- (2) an electric service provider (ESP), electricity broker, marketer, aggregator, pool operator, or other electricity supplier other than a supplier of electric distribution services to all or a significant portion of the City, which sells or supplies electricity or supplemental services to electricity users within the City; or
 - (3) a gas service supplier, aggregator, marketer or broker, other than a supplier of gas distribution services to all or a significant portion of the City, which sells or supplies gas or supplemental services to gas users within the City.
- (j) **“Paging service”** means a “telecommunications service” that provides transmission of coded radio signals for the purpose of activating specific pagers; such transmissions may include messages and/or sounds.
- (k) **“Person”** shall mean, without limitation, any natural individual, firm, trust, common law trust, estate, partnership of any kind, association, syndicate, club, joint stock company, joint venture, limited liability company, corporation (including foreign, domestic, and non-profit), municipal district or municipal corporation (other than the City) cooperative, receiver, trustee, guardian, or other representative appointed by order of any court.
- (l) **“Place of primary use”** means the street address representative of where the customer’s use of the telecommunications service primarily occurs, which must be the residential street address or the primary business street address of the customer.
- (m) **“Post-paid telecommunication service”** means the telecommunication service obtained by making a payment on a communication-by-communication basis either through the use of a credit card or payment mechanism such as a bank card, travel card, credit card, or debit card, or by charge made to a service

number which is not associated with the origination or termination of the telecommunication service.

- (n) **“Prepaid telecommunication service”** means the right to access telecommunication services, which must be paid for in advance and which enables the origination of communications using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount.
- (o) **“Private telecommunication service”** means a telecommunication service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels. A communications channel is a physical or virtual path of communications over which signals are transmitted between or among customer channel termination points (i. e., the location where the customer either inputs or receives the communications).
- (p) **“Service address”** means the residential street address or the business street address of the service user. For a telecommunication or video service user, "service address" means either:
 - (1) The location of the service user's telecommunication equipment from which the telecommunication originates or terminates, regardless of where the telecommunication is billed or paid; or,
 - (2) If the location in subsection (1) of this definition is unknown (e.g., mobile telecommunications service or VoIP service), the service address means the location of the service user's place of primary use.
 - (3) For prepaid telecommunication service, “service address” means the location associated with the service number or, if not known, the point of sale of the services.

- (q) **“Service supplier”** shall mean any entity or person, including the City that provides utility service to a user of such service within the City.
- (r) **“Service user”** shall mean a person required to pay a tax imposed under the provisions of this Article.
- (s) **“State”** shall mean the State of California.
- (t) **“Streamlined Sales and Use Tax Agreement”** means the multi-state agreement commonly known and referred to as the Streamlined Sales and Use Tax Agreement, as it is amended from time to time.
- (u) **“Tax Administrator”** shall have the Finance Director, or his or her designee.
- (v) **“Telecommunications service”** means the transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points, whatever the technology used. The term “telecommunications services” includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code or protocol of the content for purposes of transmission, conveyance or routing without regard to whether such services are referred to as voice over internet protocol (VoIP) services or are classified by the Federal Communications Commission as enhanced or value added, and includes video and/or data services that is functionally integrated with “telecommunication services.” “Telecommunications services” include, but are not limited to the following services, regardless of the manner or basis on which such services are calculated or billed: ancillary telecommunication services; intrastate, interstate, and international telecommunication services; mobile telecommunications service; prepaid telecommunication service; post-paid telecommunication service; private telecommunication service; paging service; 800 service (or any other toll-free numbers designated by the Federal Communications Commission); 900 service (or any other similar numbers designated by the Federal Communications Commission for services whereby subscribers who call in to pre-recorded or live service).
- (w) **“Video programming”** means those programming services commonly provided to subscribers by a “video service supplier”

including but not limited to basic services, premium services, audio services, video games, pay-per-view services, video on demand, origination programming, or any other similar services, regardless of the content of such video programming, or the technology used to deliver such services, and regardless of the manner or basis on which such services are calculated or billed.

- (x) **“Video services”** means “video programming” and any and all services related to the providing, recording, delivering, use or enjoyment of “video programming” (including origination programming and programming using Internet Protocol, e.g., IP-TV and IP-Video) using one or more channels by a “video service supplier,” regardless of the technology used to deliver, store or provide such services, and regardless of the manner or basis on which such services are calculated or billed, and includes ancillary video services, data services, “telecommunication services,” or interactive communication services that are functionally integrated with “video services.”

- (y) **“Video service supplier”** means any person, company, or service which provides or sells one or more channels of video programming, or provides or sells the capability to receive one or more channels of video programming, including any communications that are ancillary, necessary or common to the provision, use or enjoyment of the video programming, to or from a business or residential address in the City, where some fee is paid, whether directly or included in dues or rental charges for that service, whether or not public rights-of-way are utilized in the delivery of the video programming or communications. A “video service supplier” includes, but is not limited to, multichannel video programming distributors (as defined in 47 U.S.C.A. Section 522(13)); open video systems (OVS) suppliers; and suppliers of cable television; master antenna television; satellite master antenna television; multichannel multipoint distribution services (MMDS); video services using internet protocol (e.g., IP-TV and IP-Video, which provide, among other things, broadcasting and video on demand), direct broadcast satellite to the extent federal law permits taxation of its video services, now or in the future; and other suppliers of video services (including two-way communications), whatever their technology.

- (z) **“VoIP (Voice Over Internet Protocol)”** means the digital process of making and receiving real-time voice transmissions over any Internet Protocol network.

- (aa) **“800 Service”** means a “telecommunications service” that allows a caller to dial a toll-free number without incurring a charge for the call. The service is typically marketed under the name “800,” “855,” “866,” “877,” and “888” toll-free calling, and any subsequent numbers designated by the Federal Communications Commission.
- (bb) **“900 Service”** means an inbound toll “telecommunications service” purchased by a subscriber that allows the subscriber’s customers to call in to the subscriber’s prerecorded announcement or live service. “900 service” does not include the charge for: collection services provided by the seller of the “telecommunications services” to the subscriber, or service or product sold by the subscriber to the subscriber’s customer. The service is typically marketed under the name “900” service, and any subsequent numbers designated by the Federal Communications Commission.

8-2.903. CONSTITUTIONAL, STATUTORY, AND OTHER EXEMPTIONS.

- (a) Nothing in this Article shall be construed as imposing a tax upon any person or service when the imposition of such tax upon such person or service would be in violation of a Federal or State statute, the Constitution of the United States or the Constitution of the State.
- (b) Any service user that is exempt from the tax imposed by this Article pursuant to subsection (a) of this Section shall file an application with the Tax Administrator for an exemption; provided, however, this requirement shall not apply to a service user that is a State or Federal agency or subdivision with a commonly recognized name for such service. Said application shall be made upon a form approved by the Tax Administrator and shall state those facts, declared under penalty of perjury, which qualify the applicant for an exemption, and shall include the names of all service suppliers serving that service user. If deemed exempt by the Tax Administrator, such service user shall give the Tax Administrator timely written notice of any change in service suppliers so that the Tax Administrator can properly notify the new service supplier of the service user’s tax exempt status. A service user that fails to comply with this Article shall not be entitled to a refund of a users’ tax collected and remitted to the Tax Administrator from such service user as a result of such noncompliance.

The decision of the Tax Administrator may be appealed pursuant to Section 8-2.920 of this Article. Filing an application with the Tax Administrator and appeal to the City Administrator, or designee, pursuant to Section 8-2.920 of this Article is a prerequisite to a suit thereon.

- (c) The City Council may, by resolution, establish one or more classes of persons or one or more classes of utility service otherwise subject to payment of a tax imposed by this Article and provide that such classes of persons or service shall be exempt, in whole or in part from such tax for a specified period of time.

8-2.904. TELECOMMUNICATION USERS' TAX.

- (a) There is hereby imposed a tax upon every person in the City using telecommunication services. The tax imposed by this Section shall be at the rate of five and eight-tenths percent (5.8%) of the charges made for such services and shall be collected from the service user by the telecommunication services supplier or its billing agent. There is a rebuttable presumption that telecommunication services, which are billed to a billing or service address in the City, are used, in whole or in part, within the City's boundaries, and such services are subject to taxation under this Section. There is also a rebuttable presumption that prepaid telecommunication services sold within the city are used, in whole or in part, within the City and are therefore subject to taxation under this Section. If the billing address of the service user is different from the service address, the service address of the service user shall be used for purposes of imposing the tax. As used in this Section, the term "charges" shall include the value of any other services, credits, property of every kind or nature, or other consideration provided by the service user in exchange for the telecommunication services. The maximum annual telecommunication users' tax payable by any service user for an individual service shall be one thousand five hundred dollars (\$1,500.00) for each twelve (12) month period commencing January 1 and ending December 31 of the same calendar year
- (b) "Mobile telecommunications service" shall be sourced in accordance with the sourcing rules set forth in the Mobile Telecommunications Sourcing Act (*4 U.S.C. Section 124*). The Tax Administrator may issue and disseminate to telecommunication service suppliers, which are subject to the tax collection requirements of this Article, sourcing rules for the taxation of other

telecommunication services, including but not limited to post-paid telecommunication services, prepaid telecommunication services, VoIP, and private communication services, provided that such rules are based upon custom and common practice that further administrative efficiency and minimize multi jurisdictional taxation (e.g., Streamlined Sales and Use Tax Agreement).

- (c) The Tax Administrator may issue and disseminate to telecommunication service suppliers, which are subject to the tax collection requirements of this Article, an administrative ruling identifying those telecommunication services, or charges therefore, that are subject to or not subject to the tax of subsection (a) above.
- (d) As used in this Section, the term “telecommunication services” shall include, but is not limited to, charges for: connection, reconnection, termination, movement, or change of telecommunication services; late payment fees; detailed billing; central office and custom calling features (including but not limited to call waiting, call forwarding, caller identification and three-way calling); voice mail and other messaging services; directory assistance; access and line charges; universal service charges; regulatory, administrative and other cost recovery charges; local number portability charges; and text and instant messaging. “Telecommunication services” shall not include digital downloads that are not “ancillary telecommunication services,” such as music, ring tones, games, and similar digital products.
- (e) To prevent actual multi jurisdictional taxation of telecommunication services subject to tax under this Section, any service user, upon proof to the Tax Administrator that the service user has previously paid the same tax in another state or city on such telecommunication services, shall be allowed a credit against the tax imposed to the extent of the amount of such tax legally imposed in such other state or city; provided, however, the amount of credit shall not exceed the tax owed to the City under this Section.
- (f) The tax on telecommunication services imposed by this Section shall be collected from the service user by the service supplier. The amount of tax collected in one month shall be remitted to the Tax Administrator, and must be received by the Tax Administrator on or before the twentieth (20th) day of the following month.

8-2.905. ELECTRICITY USERS' TAX.

- (a) There is hereby imposed a tax upon every person using electricity in the City. The tax imposed by this Section shall be at the rate of six percent (6%) of the charges made for such electricity, and for any supplemental services or other associated activities directly related to and/or necessary for the provision of electricity to the service user, which are provided by a service supplier or non-utility service supplier to a service user. The tax shall be collected from the service user by the service supplier or non-utility service supplier, or its billing agent. The maximum annual electricity users' tax payable by any service user for an individual service shall be one thousand five hundred dollars (\$1,500.00) for each twelve (12) month period commencing January 1 and ending December 31 of the same calendar year.
- (b) As used in this Section, the term "charges" shall apply to all services, components and items that are: i) necessary for or common to the receipt, use or enjoyment of electric service; or, ii) currently are or historically have been included in a single or bundled rate for electric service by a local distribution company to a class of retail customers. The term "charges" shall include, but is not limited to, the following charges:
- (1) energy charges;
 - (2) distribution or transmission charges;
 - (3) metering charges;
 - (4) stand-by, reserves, firming, ramping, voltage support, regulation, emergency, or other similar charges for supplemental services to self-generation service users;
 - (5) customer charges, late charges, service establishment or reestablishment charges, demand charges, fuel or other cost adjustments, power exchange charges, independent system operator (ISO) charges, stranded investment or competitive transition charges (CTC), public purpose program charges, nuclear decommissioning charges, trust transfer amounts (bond financing charges), franchise fees, franchise surcharges, annual and monthly charges, and other charges, other charges, fees or surcharges which are necessary for or common to the receipt, use or enjoyment of electric service;

service; and,

- (6) charges, fees, or surcharges for electricity services or programs which are mandated by the California Public Utilities Commission or the Federal Energy Regulatory Commission, whether or not such charges, fees, or surcharges appear on a bundled or line item basis on the customer billing.
- (c) As used in this Section, the term “charges” shall include the value of any other services, credits, property of every kind or nature, or other consideration provided by the service user in exchange for the electricity or services related to the provision of such electricity.
- (d) The Tax Administrator, from time to time, may survey the electric service suppliers to identify the various unbundled billing components of electric retail service that they commonly provide to residential and commercial/industrial customers in the of the City, and the charges therefor, including those items that are mandated by state or federal regulatory agencies as a condition of providing such electric service. The Tax Administrator, thereafter, may issue and disseminate to such electric service suppliers an administrative ruling identifying those components and items which are: i) necessary for or common to the receipt, use or enjoyment of electric service; or, ii) currently are or historically have been included in a single or bundled rate for electric service by a local distribution company to a class of retail customers. Charges for such components and items shall be subject to the tax of subsection (a) above.
- (e) As used in this Section, the term “using electricity” shall not include the mere receiving of such electricity by an electrical corporation or governmental agency at a point within the City for resale.
- (f) The tax on electricity provided by self-production or by a non-utility service supplier not under the jurisdiction of this Article 9 shall be collected and remitted in the manner set forth in Section 8-2.907 of this Article. All other taxes on charges for electricity imposed by this Section shall be collected from the service user by the electric service supplier or its billing agent. The amount of tax collected in one (1) month shall be remitted to the Tax Administrator, and must be received by the Tax Administrator on or before the twentieth (20th) day of the following month; or, at the option of the person required to collect and/or remit the tax, such person shall remit an

estimated amount of tax measured by the tax billed in the previous month or upon the payment pattern of the service user, which must be received by the Tax Administrator on or before the twentieth (20th) day of the following month, provided that such person shall submit an adjusted payment or request for credit, as appropriate, within sixty (60) days following each calendar quarter. The credit, if approved by the Tax Administrator, may be applied against any subsequent remittance that becomes due.

8-2.906. GAS USERS' TAX.

- (a) There is hereby imposed a tax upon every person using gas in the City, which is transported and delivered through a pipeline or by mobile transport. The tax imposed by this Section shall be at the rate of six percent (6%) of the charges made for such gas, including all services related to the storage, transportation and delivery of such gas. The tax shall be collected from the service user by the service supplier or non-utility service supplier, or its billing agent, and shall apply to all uses of gas, including but not limited to, heating, electricity generation, and the use of gas as a component of a manufactured product. The maximum annual gas users' tax payable by any service user for an individual service shall be one thousand five hundred dollars (\$1,500.00) for each twelve (12) month period commencing January 1 and ending December 31 of the same calendar year.
- (b) As used in this Section, the term "charges" shall apply to all services, components and items for gas service that are: i) necessary for or common to the receipt, use or enjoyment of gas service; or, ii) currently are or historically have been included in a single or bundled rate for gas service by a local distribution company to a class of retail customers. The term "charges" shall include, but is not limited to, the following charges:
 - (1) the commodity charges for purchased gas, or the cost of gas owned by the service user (including the actual costs attributed to drilling, production, lifting, storage, gathering, trunkline, pipeline, and other operating costs associated with the production and delivery of such gas), which is delivered through a gas pipeline distribution system;
 - (2) gas transportation charges (including interstate charges to the extent not included in commodity charges);
 - (3) storage charges; provided, however, that the service supplier

supplier shall not be required to apply the tax to any charges for gas storage services when the service supplier cannot, as a practical matter, determine the jurisdiction where such stored gas is ultimately used; but it shall be the obligation of the service user to self-collect the amount of tax not applied to any charge for gas storage by the service supplier and to remit the tax to the appropriate jurisdiction;

- (4) capacity or demand charges, late charges, service establishment or reestablishment charges, transition charges, customer charges, minimum charges, annual and monthly charges, and any other charges which are necessary for or common to the receipt, use or enjoyment of gas service; and,
 - (5) charges, fees, or surcharges for gas services or programs which are mandated by the California Public Utilities Commission or the Federal Energy Regulatory Commission, whether or not such charges, fees, or surcharges appear on a bundled or line item basis on the customer billing.
- (c) As used in this Section, the term “charges” shall include the value of any other services, credits, property of every kind or nature, or other consideration provided by the service user in exchange for the gas or services related to the delivery of such gas.
- (d) The Tax Administrator, from time to time, may survey the gas service suppliers to identify the various unbundled billing components of gas retail service that they commonly provide to residential and commercial/industrial customers in the City, and the charges therefor, including those items that are mandated by state or federal regulatory agencies as a condition of providing such gas service. The Tax Administrator, thereafter, may issue and disseminate to such gas service suppliers an administrative ruling identifying those components and items which are: i) necessary for or common to the receipt, use or enjoyment of gas service; or, ii) currently are or historically have been included in a single or bundled rate for gas service by a local distribution company to a class of retail customers. Charges for such components and items shall be subject to the tax of subsection (a) above.
- (e) There shall be excluded from the calculation of the tax imposed in this Section, charges made for gas which is to be resold and delivered through a pipeline distribution system.

- (f) The tax on gas provided by self-production or by a non-utility service supplier not under the jurisdiction of this Article 9 shall be collected and remitted in the manner set forth in Section 8-2.907. All other taxes on charges for gas imposed by this Section shall be collected from the service user by the gas service supplier or its billing agent. The amount of tax collected in one (1) month shall be remitted to the Tax Administrator, and must be received by the Tax Administrator, on or before the twentieth (20th) day of the following month; or, at the option of the person required to collect and/or remit the tax, such person shall remit an estimated amount of tax measured by the tax billed in the previous month or upon the payment pattern of the service user, which must be received by the Tax Administrator on or before the twentieth (20th) day of the following month, provided that such person shall submit an adjusted payment or request for credit, as appropriate, within sixty (60) days following each calendar quarter. The credit, if approved by the Tax Administrator, may be applied against any subsequent remittance that becomes due.

8-2.907. COLLECTION OF TAX FROM SERVICE USERS RECEIVING DIRECT PURCHASE OF GAS OR ELECTRICITY.

- (a) Any service user subject to the tax imposed by Section 8-2.905 or by Section 8-2.906 of this Article, which produces gas or electricity for self-use; which receives gas or electricity, including any related supplemental services, directly from a non-utility service supplier not under the jurisdiction of this Article; or which, for any other reason, is not having the full tax collected and remitted by its service supplier, a non-utility service supplier, or its billing agent on the use of gas or electricity in the City, including any related supplemental services, shall report said fact to the Tax Administrator and shall remit the tax due directly to the Tax Administrator within thirty (30) days of such use, based on the charges for, or value of, such gas or electricity, or supplemental services, as provided in subsection (b). In lieu of paying said actual tax, the service user may, at its option, remit to the Tax Administrator within thirty (30) days of such use an estimated amount of tax measured by the tax billed in the previous month, or upon the payment pattern of similar customers of the service supplier using similar amounts of gas or electricity, provided that the service user shall submit an adjusted payment or request for credit, as appropriate, within sixty (60) days following each calendar quarter. The credit, if approved by the Tax Administrator in writing,

in writing, may be applied against any subsequent tax bill that becomes due.

- (b) The Tax Administrator may require said service user to identify its non-utility service supplier, and otherwise provide, subject to audit: invoices; books of account; or other satisfactory evidence documenting the quantity of gas or electricity used, including any related supplemental services, and the cost or price thereof. If the service user is unable to provide such satisfactory evidence, or if the administrative cost of calculating the tax in the opinion of the Tax Administrator is excessive, the Tax Administrator may determine the tax by applying the tax rate to the equivalent charges the service user would have incurred if the gas or electricity used, including any related supplemental services, had been provided by the service supplier that is the primary supplier of gas or electricity within the City. Rate schedules for this purpose shall be available from the City. The maximum annual electricity or gas users' tax payable by any such service user for an individual service shall be fifteen hundred dollars (\$1,500.00) for each twelve-month period commencing January 1 and ending December 31 of the same calendar year.

8-2.908. VIDEO USERS' TAX.

- (a) There is hereby imposed a tax upon every person in the City using video services. The tax imposed by this section shall be at the rate of three percent (3%) of the charges made for such services and shall be collected from the service user by the video service supplier or its billing agent. There is a rebuttable presumption that video services, which are billed to a billing or service address in the City, are used, in whole or in part, within the City's boundaries, and such services are subject to taxation under this Article. If the billing address of the service user is different from the service address, the service address of the service user shall be used for purposes of imposing the tax. The maximum annual video users' tax payable by any service user for an individual service shall be fifteen hundred dollars (\$1,500.00) for each twelve-month period commencing January 1 and ending December 31 of the same calendar year.
- (b) As used in this section, the term "charges" shall include, but is not limited to, charges for the following:

- (1) regulatory fees and surcharges, franchise fees and access fees (PEG);
 - (2) initial installation of equipment necessary for provision and receipt of video services;
 - (3) late fees, collection fees, bad debt recoveries, and return check fees;
 - (4) activation fees, reactivation fees, and reconnection fees;
 - (5) video programming and video services;
 - (6) ancillary video programming services (e.g., electronic program guide services, search functions, recording functions, or other interactive services or communications that are ancillary, necessary or common to the use or enjoyment of the video services);
 - (7) equipment leases (e.g., remote, recording and/or search devices; converters); and,
 - (8) service calls, service protection plans, name changes, changes of services, and special services.
- (c) As used in this section, the term “charges” shall include the value of any other services, credits, property of every kind or nature, or other consideration provided by the service user in exchange for the video services.
- (d) The Tax Administrator may issue and disseminate to video service suppliers, which are subject to the tax collection requirements of this Article, an administrative ruling identifying those video services, or charges therefor, that are subject to or not subject to the tax of subsection (a) above.
- (e) The tax imposed by this section shall be collected from the service user by the video service supplier, its billing agent, or a reseller of such services. In the case of video service, the service user shall be deemed to be the purchaser of the bulk video service (e.g., an apartment owner), unless such service is resold to individual users, in which case the service user shall be the ultimate purchaser of the video service. The amount of tax collected in one (1) month shall be remitted to the Tax Administrator, and must be received by

the Tax Administrator on or before the twentieth (20th) day of the following month.

8-2.909. WATER USERS' TAX.

- (a) There is imposed a tax upon every person using water in the City which is transported and delivered through a pipeline distribution system. The tax imposed by this section shall be at the rate of six percent (6%) of the charges made for such water. The maximum annual water users' tax payable by any such service user for an individual service shall be fifteen hundred dollars (\$1,500.00) for each twelve-month period commencing January 1 and ending December 31 of the same calendar year
- (b) As used in this section, the term "charges" shall apply to all services, components and items that are: i) necessary for or common to the receipt, use or enjoyment of water service; or, ii) currently are or historically have been included in a single or bundled rate for water service by a local distribution company to a class of retail customers. The term "charges" shall include, but is not limited to, the following charges: water commodity charges (potable and non-potable); distribution or transmission charges; metering charges; customer charges; fire protection services; late charges; service establishment or reestablishment charges; franchise fees; franchise surcharges; annual and monthly charges; and other charges, fees and surcharges which are necessary for or common to the receipt, use or enjoyment of water service; and, charges, fees, or surcharges for water services or programs, which are mandated by a water district or a state or federal agency, whether or not such charges, fees, or surcharges appear on a bundled or line item basis on the customer billing.
- (c) As used in this section, the term "charges" shall include the value of any other services, credits, property of every kind or nature, or other consideration provided by the service user in exchange for the water services.
- (d) The Tax Administrator, from time to time, may survey the water service suppliers in the City to identify the various unbundled billing components of water retail service that they commonly provide to residential and commercial/industrial customers in the City, and the charges therefor, including those items that are mandated by a water district or a state or federal agency as a condition of providing such water service. The Tax Administrator, thereafter, may issue

may issue and disseminate to such water service suppliers an administrative ruling identifying those components and items which are: i) necessary for or common to the receipt, use or enjoyment of water service; or, ii) currently are or historically have been included in a single or bundled rate for water service by a local distribution company to a class of retail customers. Charges for such components and items shall be subject to the tax of subsection (a) above.

- (e) There shall be excluded from the base on which the tax imposed in this section is computed charges made for water which is to be resold and delivered through a pipeline distribution system; and charges made by a municipal water department, public utility or a city or municipal water district for water used and consumed by such department, public utility or water district in the conduct of the business of such department, utility or district.
- (f) The tax on water service imposed by this section shall be collected from the service user by the water service supplier or its billing agent. The amount of tax collected in one (1) month shall be remitted to the Tax Administrator, and must be received by the Tax Administrator on or before the twentieth (20th) day of the following month.

8-2.910. BUNDLING TAXABLE ITEMS.

If any nontaxable charges are combined with and not separately stated from taxable service charges on the customer bill or invoice of a service supplier, the combined charge is subject to tax unless the service supplier identifies, by reasonable and verifiable standards, the portions of the combined charge that are nontaxable and taxable through the service supplier's books and records kept in the regular course of business, and in accordance with generally accepted accounting principles, and not created and maintained for tax purposes. If the service supplier offers a combination of taxable and non-taxable services, and the charges are separately stated, then for taxation purposes, the values assigned the taxable and non-taxable services shall be based on its books and records kept in the regular course of business and in accordance with generally accepted accounting principles, and not created and maintained for tax purposes. The service supplier has the burden of proving the proper valuation and apportionment of taxable and non-taxable charges.

8-2.911. SUBSTANTIAL NEXUS/MINIMUM CONTRACT.

For purposes of imposing a tax or establishing a duty to collect and remit a tax under this Article, "substantial nexus" and "minimum contacts" shall be construed broadly in favor of the imposition, collection and/or remittance of the utility users' tax to the fullest extent permitted by State and Federal law, and as it may change from time to time by judicial interpretation or by statutory enactment. Any telecommunication service (including VoIP) used by a person with a service address in the City, which service is capable of terminating a call to another person on the general telephone network, shall be subject to a rebuttable presumption that "substantial nexus/minimum contacts" exists for purposes of imposing a tax, or establishing a duty to collect and remit a tax, under this Article. A service supplier shall be deemed to have sufficient activity in the City for tax collection and remittance purposes if its activities include, but are not limited to, any of the following: maintains or has within the City, directly or through an agent or subsidiary, a place of business of any nature; solicits business in the City by employees, independent contractors, resellers, agents or other representatives; solicits business in the City on a continuous, regular, seasonal or systematic basis by means of advertising that is broadcast or relayed from a transmitter with the City or distributed from a location with the City; or advertises in newspapers or other periodicals printed and published within the City or through materials distributed in the City by means other than the United States mail; or if there are activities performed in the City on behalf of the service supplier that are significantly associated with the service supplier's ability to establish and maintain a market in the City for the provision of utility services that are subject to a tax under this Article.

8-2.912. DUTY TO COLLECT PROCEDURES.

- (a) **Collection by Service Suppliers:** The duty of service suppliers to collect and remit the taxes imposed by the provisions of this Article shall be performed as follows:
 - (1) The tax shall be collected by service suppliers insofar as practicable at the same time as, and along with, the collection of the charges made in accordance with the regular billing practice of the service supplier. Where the amount paid by a service user to a service supplier is less than the full amount of the charge and tax which was accrued for the billing period, a proportionate share of both the charge and the tax shall be deemed to have been paid. In those cases where a service user has notified the service supplier of refusal to pay the tax imposed on said charges, Section 8-2.916 shall apply.

- (2) The duty of a service supplier to collect the tax from a service user shall commence with the beginning of the first regular billing period applicable to the service user where all charges normally included in such regular billing are subject to the provisions of this Article. Where a service user receives more than one billing, one or more being for different periods than another, the duty to collect shall arise separately for each billing period.
- (b) **Filing Return and Payment:** Each person required by this Article to remit a tax shall file a return to the Tax Administrator, on forms approved by the Tax Administrator, on or before the due date. The full amount of the tax collected shall be included with the return and filed with the Tax Administrator. The Tax Administrator is authorized to require such additional information as he or she deems necessary to determine if the tax is being levied, collected, and remitted in accordance with this Article. Returns are due immediately upon cessation of business for any reason. Pursuant to *Revenue and Tax Code Section 7284.6*, the Tax Administrator, and its agents, shall maintain such filing returns as confidential information that is exempt from the disclosure provisions of the Public Records Act.

8-2.913. COLLECTION PENALTIES-SERVICE SUPPLIERS.

- (a) Taxes collected from a service user are delinquent if not received by the Tax Administrator on or before the due date. Should the due date occur on a weekend or legal holiday, the return must be received by the Tax Administrator on the first regular working day following the weekend or legal holiday. A direct deposit, including electronic fund transfers and other similar methods of electronically exchanging monies between financial accounts, made by a service supplier in satisfaction of its obligations under this Article shall be considered timely if the transfer is initiated on or before the due date, and the transfer settles into the City's account on the following business day.
- (b) If the person required to collect and/or remit the utility users' tax fails to collect the tax (by failing to properly assess the tax on one or more services or charges on the customer's billing) or fails to remit the tax collected on or before the due date, the Tax Administrator shall attach a penalty for such delinquencies or deficiencies at the rate of fifteen percent (15%) of the total tax that is delinquent or deficient in the remittance, and shall pay interest at

the rate of seventy-five one-hundredths percent (0.75%) per month, or any fraction thereof, on the amount of the tax, exclusive of penalties, from the date on which the remittance first became delinquent, until paid.

- (c) The Tax Administrator shall have the power to impose additional penalties upon persons required to collect and remit taxes pursuant to the provisions of this Article for fraud or gross negligence in reporting or remitting at the rate of fifteen percent (15%) of the amount of the tax collected and/or required to be remitted, or as recomputed by the Tax Administrator.
- (d) For collection purposes only, every penalty imposed and such interest that is accrued under the provisions of this Article shall become a part of the tax herein required to be paid.
- (e) Notwithstanding the foregoing, the Tax Administrator may, in his or her discretion, modify the due dates of this Article to be consistent with any uniform standards or procedures that are mutually agreed upon by other public agencies imposing a utility users' tax, or otherwise legally established, to create a central payment location or mechanism.

8-2.914. ACTIONS TO COLLECT.

Any tax required to be paid by a service user under the provisions of this Article shall be deemed a debt owed by the service user to the City. Any such tax collected from a service user which has not been remitted to the Tax Administrator shall be deemed a debt owed to the City by the person required to collect and remit and shall no longer be a debt of the service user. Any person owing money to the City under the provisions of this Article shall be liable to an action brought in the name of the City for the recovery of such amount, including penalties and interest as provided for in this Article, along with any collection costs incurred by the City as a result of the person's noncompliance with this Article, including, but not limited to, reasonable attorneys' fees. Any tax required to be collected by a service supplier or owed by a service user is an unsecured priority excise tax obligation under *11 U. S. CA. Section 507(a)(8)(C)*. Service suppliers who seek to collect charges for service in bankruptcy proceedings shall also include in any such claim the amount of taxes due the City for those services, unless the Tax Administrator determines that such duty is in conflict with any federal or state law, rule, or regulation or that such action would be administratively impractical.

8-2.915. DEFICIENCY DETERMINATION AND ASSESSMENT-TAX APPLICATION ERRORS.

- (a) The Tax Administrator shall make a deficiency determination if he or she determines that any person required to pay or collect taxes pursuant to the provisions of this Article has failed to pay, collect, and/or remit the proper amount of tax by improperly or failing to apply the tax to one or more taxable services or charges. Nothing herein shall require that the Tax Administrator institute proceedings under this Section 8-2.915 if, in the opinion of the Tax Administrator, the cost of collection or enforcement likely outweighs the tax benefit.
- (b) The Tax Administrator shall mail a notice of such deficiency determination to the person required to pay or remit the tax, which notice shall refer briefly to the amount of the taxes owed, plus interest at the rate of seventy-five one-hundredths percent (0.75%) per month, or any fraction thereof, on the amount of the tax from the date on which the tax should have been received by the City. Within fourteen (14) calendar days after the date of service of such notice, the person may request in writing to the Tax Administrator for a hearing on the matter.
- (c) If the person fails to request a hearing within the prescribed time period, the amount of the deficiency determination shall become a final assessment, and shall immediately be due and owing to the City. If the person requests a hearing, the Tax Administrator shall cause the matter to be set for hearing, which shall be scheduled within thirty (30) days after receipt of the written request for hearing. Notice of the time and place of the hearing shall be mailed by the Tax Administrator to such person at least ten (10) calendar days prior to the hearing, and, if the Tax Administrator desires said person to produce specific records at such hearing, such notice may designate the records requested to be produced.
- (d) At the time fixed for the hearing, the Tax Administrator shall hear all relevant testimony and evidence, including that of any other interested parties. At the discretion of the Tax Administrator, the hearing may be continued from time to time for the purpose of allowing the presentation of additional evidence. Within a reasonable time following the conclusion of the hearing, the Tax Administrator shall issue a final assessment (or non-assessment), thereafter, by confirming, modifying or rejecting the original deficiency determination, and shall mail a copy of such final

assessment to person owing the tax. The decision of the Tax Administrator may be appealed pursuant to Section 8-2.920 of this Article. Filing an application with the Tax Administrator and appeal to the City Administrator, or designee, pursuant to Section 8-2.920 of this Article is a prerequisite to a suit thereon.

- (e) Payment of the final assessment shall become delinquent if not received by the Tax Administrator on or before the thirtieth (30th) day following the date of receipt of the notice of final assessment. The penalty for delinquency shall be fifteen percent (15%) on the total amount of the assessment, along with interest at the rate of seventy-five one-hundredths percent (0.75%) per month, or any fraction thereof, on the amount of the tax, exclusive of penalties, from the date of delinquency, until paid. The applicable statute of limitations regarding a claim by the City seeking payment of a tax assessed under this Article shall commence from the date of delinquency as provided in this subsection (e).
- (f) All notices under this Article may be sent by regular mail, postage prepaid, and shall be deemed received on the third calendar day following the date of mailing, as established by a proof of mailing.

8-2.916. ADMINISTRATIVE REMEDY - NON-PAYING SERVICE USERS.

- (a) Whenever the Tax Administrator determines that a service user has deliberately withheld the amount of the tax owed by the service user from the amounts remitted to a person required to collect the tax, or whenever the Tax Administrator deems it in the best interest of the City, he or she may relieve such person of the obligation to collect the taxes due under this Article from certain named service users for specific billing periods. To the extent the service user has failed to pay the amount of tax owed for a period of two (2) or more billing periods, the service supplier shall be relieved of the obligation to collect taxes due. The service supplier shall provide the City with the names and addresses of such service users and the amounts of taxes owed under the provisions of this Article. Nothing herein shall require that the Tax Administrator institute proceedings under this Section 8-2.916 if, in the opinion of the Tax Administrator, the cost of collection or enforcement likely outweighs the tax benefit.

- (b) In addition to the tax owed, the service user shall pay a delinquency penalty at the rate of fifteen percent (15%) of the total tax that is owed, and shall pay interest at the rate of seventy-five one-hundredths percent (0.75%) per month, or any fraction thereof, on the amount of the tax, exclusive of penalties, from the due date, until paid.
- (c) The Tax Administrator shall notify the non-paying service user that the Tax Administrator has assumed the responsibility to collect the taxes due for the stated periods and demand payment of such taxes, including penalties and interest. The notice shall be served on the service user by personal delivery or by deposit of the notice in the United States mail, postage prepaid, addressed to the service user at the address to which billing was made by the person required to collect the tax; or, should the service user have a change of address, to his or her last known address.
- (d) If the service user fails to remit the tax to the Tax Administrator within thirty (30) days from the date of the service of the notice upon him or her, the Tax Administrator may impose an additional penalty of fifteen percent (15%) of the amount of the total tax that is owed.

8-2.917. ADDITIONAL POWERS AND DUTIES OF THE TAX ADMINISTRATOR.

- (a) The Tax Administrator shall have the power and duty, and is hereby directed, to enforce each and all of the provisions of this Article.
- (b) The Tax Administrator may adopt administrative rules and regulations consistent with provisions of this Article for the purpose of interpreting, clarifying, carrying out and enforcing the payment, collection and remittance of the taxes herein imposed. The administrative ruling shall not impose a new tax, revise an existing tax methodology as stated in this Article, or increase an existing tax, except as allowed by *California Government Code Section 53750(h)(2)*. A copy of such administrative rules and regulations shall be on file in the Tax Administrator's office. To the extent that the Tax Administrator determines that the tax imposed under this Article shall not be collected in full for any period of time from any particular service supplier or service user, that determination shall be considered an exercise of the Tax Administrator's discretion to settle disputes and shall not constitute a change in taxing

methodology for purposes of *Government Code Section 53750* or otherwise. The Tax Administrator is not authorized to amend the City's methodology for purposes of *Government Code Section 53750* and the City does not waive or abrogate its ability to impose the utility users' tax in full as a result of promulgating administrative rulings or entering into agreements.

- (c) Upon a proper showing of good cause, the Tax Administrator may make administrative agreements, with appropriate conditions, to vary from the strict requirements of this Article and thereby: (1) conform to the billing procedures of a particular service supplier so long as said agreements result in the collection of the tax in conformance with the general purpose and scope of this Article; or, (2) to avoid a hardship where the administrative costs of collection and remittance greatly outweigh the tax benefit. A copy of each such agreement shall be on file in the Tax Administrator's office, and are voidable by the Tax Administrator or the City at any time.
- (d) The Tax Administrator may conduct an audit, to ensure proper compliance with the requirements of this Article, of any person required to collect and/or remit a tax pursuant to this Article. The Tax Administrator shall notify said person of the initiation of an audit in writing. In the absence of fraud or other intentional misconduct, the audit period of review shall not exceed a period of three (3) years next preceding the date of receipt of the written notice by said person from the Tax Administrator. Upon completion of the audit, the Tax Administrator may make a deficiency determination pursuant to Section 8-2.915 of this Article for all taxes (and applicable penalties and interest) owed and not paid, as evidenced by information provided by such person to the Tax Administrator. If said person is unable or unwilling to provide sufficient records to enable the Tax Administrator to verify compliance with this Article, the Tax Administrator is authorized to make a reasonable estimate of the deficiency. Said reasonable estimate shall be entitled to a rebuttable presumption of correctness.
- (e) Upon receipt of a written request of a taxpayer, and for good cause, the Tax Administrator may extend the time for filing any statement required pursuant to this Article for a period of not to exceed forty-five (45) days, provided that the time for filing the required statement has not already passed when the request is received. No penalty for delinquent payment shall accrue by reason of such extension. Interest shall accrue during said extension at the rate of

rate of seventy-five one-hundredths percent (0.75%) per month, prorated for any portion thereof.

- (f) The Tax Administrator shall determine the eligibility of any person who asserts a right to exemption from, or a refund of, the tax imposed by this Article.
- (g) Notwithstanding any provision in this Article to the contrary, the Tax Administrator may waive any penalty or interest imposed upon a person required to collect and/or remit for failure to collect the tax imposed by this Article if the non-collection occurred in good faith. In determining whether the non-collection was in good faith, the Tax Administrator shall take into consideration the uniqueness of the product or service, industry practice or other precedence. The Tax Administrator may also participate with other utility users' tax public agencies in conducting coordinated compliance reviews with the goal of achieving administrative efficiency and uniform tax application determinations, where possible. To encourage full disclosure and on-going cooperation on annual compliance reviews, the Tax Administrator, and its agents, may enter into agreements with the tax-collecting service providers and grant prospective only effect on any changes regarding the taxation of services or charges that were previously deemed by the service provider, in good faith and without gross negligence, to be non-taxable. In determining whether the non-collection was in good faith and without gross negligence, the Tax Administrator shall take into consideration the uniqueness of the product or service, industry practice or other precedence.

8-2.918. RECORDS.

- (a) It shall be the duty of every person required to collect and/or remit to the City any tax imposed by this Article to keep and preserve, for a period of at least three (3) years, all records as may be necessary to determine the amount of such tax as he/she may have been liable for the collection of and remittance to the Tax Administrator, which records the Tax Administrator shall have the right to inspect at a reasonable time.
- (b) The City may issue an administrative subpoena to compel a person to deliver, to the Tax Administrator, copies of all records deemed necessary by the Tax Administrator to establish compliance with this Article, including the delivery of records in a common electronic format on readily available media if such records are kept

electronically by the person in the usual and ordinary course of business. As an alternative to delivering the subpoenaed records to the Tax Administrator on or before the due date provided in the administrative subpoena, such person may provide access to such records outside the City on or before the due date, provided that such person shall reimburse the City for all reasonable travel expenses incurred by the City to inspect those records, including travel, lodging, meals, and other similar expenses, but excluding the normal salary or hourly wages of those persons designated by the City to conduct the inspection.

- (c) The Tax Administrator is authorized to execute a non-disclosure agreement approved by the City Attorney to protect the confidentiality of customer information pursuant to *California Revenue and Tax Code Sections 7284.6 and 7284.7*.
- (d) If a service supplier uses a billing agent or billing aggregator to bill, collect, and/or remit the tax, the service supplier shall: 1) provide to the Tax Administrator the name, address and telephone number of each billing agent and billing aggregator currently authorized by the service supplier to bill, collect, and/or remit the tax to the City; and, 2) upon request of the Tax Administrator, deliver, or effect the delivery of, any information or records in the possession of such billing agent or billing aggregator that, in the opinion of the Tax Administrator, is necessary to verify the proper application, calculation, collection and/or remittance of such tax to the City.
- (e) If any person subject to record-keeping under this Article unreasonably denies the Tax Administrator access to such records, or fails to produce the information requested in an administrative subpoena within the time specified, then the Tax Administrator may impose a penalty of Five Hundred Dollars (\$500.00) on such person for each day following: 1) the initial date that the person refuses to provide such access; or, 2) the due date for production of records as set forth in the administrative subpoena. This penalty shall be in addition to any other penalty imposed under this Article.

8-2.919. REFUNDS.

Whenever the amount of any tax has been overpaid or paid more than once or has been erroneously or illegally collected or received by the Tax Administrator under this Article from a person or service supplier, it may be refunded as provided in this Section as follows:

- (a) **Written Claim for Refund:** The Tax Administrator may refund any tax that has been overpaid or paid more than once or has been erroneously or illegally collected or received by the Tax Administrator under this Article from a person or service supplier, provided that no refund shall be paid under the provisions of this Section unless the claimant or his or her guardian, conservator, executor, or administrator has submitted a written claim to the Tax Administrator within one year of the overpayment or erroneous or illegal collection of said tax. Such claim must clearly establish claimant's right to the refund by written records showing entitlement thereto. Nothing herein shall permit the filing of a claim on behalf of a class or group of taxpayers unless each member of the class has submitted a written claim under penalty of perjury as provided by this Section.
- (b) **Compliance with Claims Act:** The filing of a written claim pursuant to *Government Code Section 935* is a prerequisite to any suit thereon. Any action brought against the City pursuant to this Article shall be subject to the provisions of *Government Code Sections 945.6 and 946*. The Tax Administrator, or the City Council where the claim is in excess of Five Thousand Dollars (\$5,000.00), shall act upon the refund claim within the time period set forth in *Government Code Section 912.4*. If the Tax Administrator/City Council fails or refuses to act on a refund claim within the time prescribed by *Government Section 912.4*, the claim shall be deemed to have been rejected by the City Council on the last day of the period within which the City Council was required to act upon the claim as provided in *Government Code Section 912.4*. The Tax Administrator shall give notice of the action in a form which substantially complies with that set forth in *Government Code Section 913*.
- (c) **Refunds to Service Suppliers:** Notwithstanding the notice provisions of subsection (a) of this Section, the Tax Administrator may, at his or her discretion, give written permission to a service supplier, who has collected and remitted any amount of tax in excess of the amount of tax imposed by this Article, to claim credit for such overpayment against the amount of tax which is due the City upon a subsequent monthly return(s) to the Tax Administrator, provided that: 1) such credit is claimed in a return dated no later than one year from the date of overpayment or erroneous collection of said tax; 2) the Tax Administrator is satisfied that the underlying basis and amount of such credit has been reasonably established; and, 3) in the case of an overpayment by a service user to the

service supplier that has been remitted to the City, the Tax Administrator has received proof, to his or her satisfaction, that the overpayment has been refunded by the service supplier to the service user in an amount equal to the requested credit.

8-2.920. APPEALS.

- (a) The provisions of this Section apply to any decision (other than a decision relating to a refund pursuant to Section 8-2.919 of this Article), deficiency determination, assessment, or administrative ruling of the Tax Administrator. Any person aggrieved by any decision (other than a decision relating to a refund pursuant to Section 8-2.919 of this Article), deficiency determination, assessment, or administrative ruling of the Tax Administrator, shall be required to comply with the appeals procedure of this Section. Compliance with this Section shall be a prerequisite to a suit thereon. [See *Government Code Section 935(b)*]. Nothing herein shall permit the filing of a claim or action on behalf of a class or group of taxpayers.
- (b) If any person is aggrieved by any decision (other than a decision relating to a refund pursuant to Section 8-2.919 of this Article), deficiency determination, assessment, or administrative ruling of the Tax Administrator; he or she may appeal to the City Administrator, or designee, by filing a notice of appeal with the City Clerk within fourteen (14) days of the date of the decision, deficiency determination, assessment, or administrative ruling of the Tax Administrator which aggrieved the service user or service supplier.
- (c) The matter shall be scheduled for hearing before an independent hearing officer selected by the City Administrator, or designee, no more than thirty (30) days from the receipt of the appeal. The appellant shall be served with notice of the time and place of the hearing, as well as any relevant materials, at least five (5) calendar days prior to the hearing. The hearing may be continued from time to time upon mutual consent. At the time of the hearing, the appealing party, the Tax Administrator, and any other interested person may present such relevant evidence as he or she may have relating to the determination from which the appeal is taken.
- (d) Based upon the submission of such evidence and the review of the City's files, the hearing officer shall issue a written notice and order upholding, modifying or reversing the determination from which the

appeal is taken. The notice shall be given within fourteen (14) days after the conclusion of the hearing and shall state the reasons for the decision. The notice shall specify that the decision is final and that any petition for judicial review shall be filed within ninety (90) days from the date of the decision in accordance with Code of Civil Procedure Section 1094.6.

- (e) All notices under this Section may be sent by regular mail, postage prepaid, and shall be deemed received on the third calendar day following the date of mailing, as established by a proof of mailing.

8-2.921. REFUND - ANNUAL GROSS INCOME LESS THAN \$8,700.00.

- (a) A refund of not to exceed thirty dollars (\$30.00) of taxes due and paid under the provisions of this article for utility services rendered in any calendar year shall be made whenever all of the following occur:
 - (1) The annual gross income of the household in which the claimant lives is less than eight thousand seven hundred dollars (\$8,700.00) for the claimant's last federal or State personal income tax reporting period.
 - (2) The claimant makes application and files a verified claim in writing with the Finance Director for such refund upon a claim form provided by the Finance Director.
 - (3) The claim is approved by the Finance Director as being in conformance with this section. Only one (1) member of each household may file a claim, and only one (1) claim may be filed for each individual household.
- (b) The claimant shall be the person in whose name the bills for utilities services were rendered. Income of the household means all income of the claimant's household while members of such household and related to the claimant as a spouse or as defined in the *California Revenue and Taxation Code of Sections 17056 and 17057*.
- (c) "Gross income" shall mean the sum of adjusted gross income as used for purposes of the California Personal Income Tax Law, together with the net income from all sources of all kinds, including, but not limited to, alimony, support money, cash public assistance and relief, pensions, annuities, social security, interest on securities

(including tax-free interest on governmental securities), realized capital gains, workmen's compensation (not including medical benefits), unemployment insurance income, insurance benefits of all kinds (other than medical), and gifts; except that income shall not include Medicare benefits, Medicaid benefits, gifts of food and gifts between members of the household, the receipt of surplus food or other relief in kind supplied by a governmental agency.

- (d) The claim for such refund, for the preceding calendar year, shall be made only during the period of January 1 to April 15 of each year, and must be accompanied by a copy of the utility bills, together with proof that the utility taxes have been paid by the claimant or some member of the household. No such refund shall be made on any claim filed or post-marked later than the fifteenth day of April.
- (e) No refund shall be made to any person for taxes levied on a utility account for which any utility tax is due and outstanding for the period for which refund is claimed or for any prior period. No refund shall be made of any tax which was paid with public assistance or relief funds which included an allowance to pay the tax.
- (f) Nothing in this section shall be construed to require that any utility company has any obligation to make or furnish, for the purpose of the refund provisions hereof, proof of utility taxes due or utility taxes paid.

8-2.922. NO INJUNCTION/WRIT OF MANDATE.

No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action, or proceeding in any court against this City or against any officer of the City to prevent or enjoin the collection under this Article of any tax or any amount of tax required to be collected and/or remitted.

8-2.923. NOTICE OF CHANGES TO ORDINANCE.

If a tax under this Article is added, repealed, increased, reduced, or the tax base is changed, the Tax Administrator shall follow the notice requirements of *California Public Utilities Code Section 799*.

8-2.924. EFFECT OF STATE AND FEDERAL REFERENCE/AUTHORIZATION.

Unless specifically provided otherwise, any reference to a State or Federal statute in this Article shall mean such statute as it may be amended from

time to time, provided that such reference to a statute herein shall not include any subsequent amendment thereto, or to any subsequent change of interpretation thereto by a State or Federal agency or court of law with the duty to interpret such law, to the extent that such amendment or change of interpretation would require voter approval under California law, or to the extent that such change would result in a tax decrease (as a result of excluding all or a part of a utility service, or charge therefor, from taxation). Only to the extent voter approval would otherwise be required or a tax decrease would result, the prior version of the statute (or interpretation) shall remain applicable; for any application or situation that would not require voter approval or result in a decrease of a tax, provisions of the amended statute (or new interpretation) shall be applicable to the maximum possible extent.

To the extent that the City's authorization to collect or impose any tax imposed under this Article is expanded or limited as a result of changes in State or Federal law, no amendment or modification of this Article shall be required to conform the tax to those changes, and the tax shall be imposed and collected to the full extent of the authorization up to the full amount of the tax imposed under this Article.

8-2.925. NO INCREASE IN TAX PERCENTAGE OR CHANGE IN METHODOLOGY WITHOUT VOTER APPROVAL; AMENDMENT OR REPEAL.

This Article 9 of Chapter 2 of Title 8 of the Modesto Municipal Code may be repealed or amended by the City Council without a vote of the People. However, as required by *Article XIII C of the California Constitution*, voter approval is required for any amendment provision that would increase the rate of any tax levied pursuant to this Ordinance. The People of the City of Modesto affirm that the following actions shall not constitute an increase of the rate of a tax:

- (1) The restoration of the rate of the tax to a rate that is no higher than that set by this Ordinance, if the City Council has acted to reduce the rate of the tax;
- (2) An action that interprets or clarifies the methodology of the tax, or any definition applicable to the tax, so long as such interpretation or clarification (even if contrary to some prior interpretation or clarification) is not inconsistent with the language of this Ordinance;
- (3) The establishment a class of persons that is exempt or excepted from the tax or the discontinuation of any such exemption or

exception (other than the discontinuation of an exemption or exception specifically set forth in this Ordinance); and

- (4) The collection of the tax imposed by this ordinance, even if the City had, for some period of time, failed to collect the tax.

8-2.926. INDEPENDENT AUDIT OF TAX COLLECTION, EXEMPTION, REMITTANCE, AND EXPENDITURE.

The City shall annually verify that the taxes owed under this Article have been properly applied, exempted, collected, and remitted in accordance with this Article, and properly expended according to applicable municipal law. The annual verification shall be performed by a qualified independent third party and the review shall employ reasonable, cost-effective steps to assure compliance, including the use of sampling audits. The verification shall not be required of tax remitters where the cost of the verification may exceed the tax revenues to be reviewed.

8-2.927. REMEDIES CUMULATIVE.

All remedies and penalties prescribed by this Article or which are available under any other provision of law or equity, including but not limited to the California False Claims Act (*Government Code Section 12650 et seq.*) and the California Unfair Practices Act (*Business and Professions Code Section 17070 et seq.*), are cumulative. The use of one or more remedies by the City shall not bar the use of any other remedy for the purpose of enforcing the provisions of this Article.

8-2.928. INTERACTION WITH PRIOR TAX.

- (a) Collection of Tax by Service Providers. Service providers shall begin to collect the tax imposed by this amended Article 9 as soon as feasible after the effective date of the Article, but in no event later than permitted by *Section 799 of the California Public Utilities Code*.
- (b) Satisfaction of Tax Obligation by Service Users. Prior to April 1, 2012, any person who pays the tax levied pursuant to Article 9 of Chapter 2 of Title 8 of this Code, as it existed prior to its amendment as provided herein, with respect to any charge for a service shall be deemed to have satisfied his or her obligation to pay the tax levied pursuant to Article 9 of Chapter 2 of Title 8 as amended herein, with respect to that charge. The intent of this paragraph is to prevent the imposition of multiple taxes upon a

single utility charge during the transition period from the prior Utility Users' Tax ordinance to the amended Utility Users' Tax ordinance (which transition period ends April 1, 2012) and to permit service providers or other persons with an obligation to remit the tax hereunder, during that transition period, to satisfy their collection obligations by collecting either tax.

- (c) In the event that a final court order should determine that the election enacting this Article 9 of Chapter 2 of Title 8 (as amended herein) is invalid for whatever reason, or that any tax imposed under this Article 9 of Chapter 2 of Title 8 (as amended herein) is invalid in whole or in part, then the taxes imposed under Article 9 of Chapter 2 of Title 8 of this Code, as it existed prior to its amendment as provided herein, shall automatically continue to apply with respect to any service for which the tax levied pursuant to this Article 9 has been determined to be invalid. Such automatic continuation shall be effective beginning as of the first date of service (or billing date) for which the tax imposed by this Article is not valid. However, in the event of an invalidation, any tax (other than a tax that is ordered refunded by the court or is otherwise refunded by the City) paid by a person with respect to a service and calculated pursuant to this Article 9 of Chapter 2 of Title 8 (as amended herein) shall be deemed to satisfy the tax imposed under Article 9 of Chapter 2 of Title 8, as it existed prior to its amendment as provided herein, on that service, so long as the tax is paid with respect to a service provided no later than six months subsequent to the date on which the final court order is published.

SECTION 2. EFFECTIVE DATE. This ordinance shall go into effect and be in full force and operation from and after the date of this Council meeting pursuant to the provisions of Charter Section 702(f).

SECTION 3. PUBLICATION. Not required pursuant to Elections Code Section 9217 and Charter Section 702(f).

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 13th day of December, 2011, by Councilmember Lopez, 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: Burnside, Cogdill, Geer, Gunderson, Lopez, Muratore, Mayor Ridenour

NOES: Councilmembers: None.

ABSENT: Councilmembers: None

APPROVED: 
JIM RIDENOUR, Mayor

ATTEST:

By 
STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By 
SUSANA ALCALA WOOD, City Attorney

Ord. No. 3557-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been introduced and passed pursuant to the provisions of Charter Section 702(f) and Elections Code Section 9217, at the regular meeting of the Council of the City of Modesto held on the 13th day of December, 2011, Councilmember Lopez 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: Burnside, Cogdill, Geer, Gunderson, Lopez, Muratore,
Mayor Ridenour

NOES: Councilmembers: None.

ABSENT: Councilmembers: None

APPROVED: _____


JIM RIDENOUR, Mayor

ATTEST:


STEPHANIE LOPEZ, City Clerk

Effective Date: December 13, 2011

ORDINANCE NO. 3558-C.S.

AN ORDINANCE AMENDING SECTION 2 OF ORDINANCE NO. 2236-C.S. ENTITLED "AN ORDINANCE AMENDING SECTION MAP 10-3-9 OF THE ZONING MAP OF THE CITY OF MODESTO, RECLASSIFYING CERTAIN PROPERTY LOCATED THEREON. (MUIR TRAIL GIRL SCOUT COUNCIL)" PROPERTY LOCATED ON THE SOUTH SIDE OF SYLVAN MEADOWS DRIVE BETWEEN HAIG WAY AND FOREST GLENN DRIVE, 3621 FOREST GLENN DRIVE (GIRL SCOUTS HEART OF CENTRAL CALIFORNIA).

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

SECTION 1. AMENDMENT OF ORDINANCE NO. 2236-C.S. Section 2 of Ordinance No. 2236-C.S. is hereby amended to read as follows:

"SECTION 2. USES. The following uses shall be permitted in said P-D(347) 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 require by Section 10-2.1709 (a) or (b) of the Modesto Municipal Code:

All permitted uses and conditional uses allowed in the P-O, Professional Office Zone, except for ambulance service and substance abuse clinic/facility, which shall require a Conditional Use Permit."

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


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

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 10th day of January, 2012, by Councilmember Lopez, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Gunderson, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Burnside, Cogdill, Geer, Gunderson, Lopez, Mayor Ridenour

NOES: Councilmembers: None.

ABSENT: Councilmembers: Muratore


APPROVED: 
JIM RIDENOUR, Mayor

ATTEST:

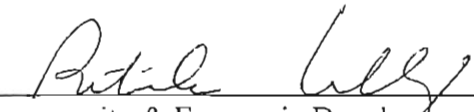
By 
STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By 
SUSANA ALCALA WOOD, City Attorney

APPROVED AS TO DESCRIPTION:

By 
Community & Economic Development
Department, Planning Division

Ord. No. 3558-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 January 12, 2012, Councilmember Lopez moved its final adoption, which motion being duly seconded by Councilmember Burnside, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Burnside, Cogdill, Geer, Gunderson, Lopez, Muratore,
Mayor Ridenour

NOES: Councilmembers: None.

ABSENT: Councilmembers: None

APPROVED: 
MAYOR JIM RIDENOUR

ATTEST: 
STEPHANIE LOPEZ, City Clerk

Effective Date: February 24, 2012