

ORDINANCE NO. 3522-C.S.

AN ORDINANCE APPROVING A FIRST AMENDMENT TO A  
DEVELOPMENT AGREEMENT BETWEEN THE CITY OF  
MODESTO AND COSTA LIMITED PARTNERS

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

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Resolution No. 97-492, adopted on August 26, 1997, the City Council revised said procedures and requirements and superseded Resolution No. 91-185, and

WHEREAS, on December 16, 1999, Costa Limited Partners had a legal or equitable interest in the real property located in the City of Modesto, County of Stanislaus, California, as diagramed on Exhibit "A" and more particularly described in Exhibit "B" ("Property"), both of which are attached hereto and incorporated by this reference. The Property consists of approximately ten (10) acres within the Kiernan Business Park Specific Plan, and

WHEREAS, on December 16, 1999, Ordinance No. 3168-C.S. entitled "An Ordinance Approving A Development Agreement Between The City Of Modesto And Costa Limited Partners Relating To A 17-Screen 80,000 Square Foot Theater, Including One I-Max Type Large Screen Theater, On Property Located On The East Side of Chapman Road North Of Pelandale Avenue (P-D(540))" was introduced at a special meeting of the Council of the City of

Modesto, and

WHEREAS, on December 16, 1999, Ordinance No. 3168-C.S. approved a Development Agreement Between The City Of Modesto And Costa Limited Partners (“Development Agreement”), and

WHEREAS, on January 4, 2000, Ordinance No. 3168-C.S. was adopted at a regular meeting of the Council of the City of Modesto. Ordinance No. 3168-C.S. became effective on and was in full force and operation from and after thirty (30) days after its adoption, and

WHEREAS, the Development Agreement was recorded March 28, 2000, in the Official Records of Stanislaus County as Document No. 2000-0023082-00, and

WHEREAS, Pelandale Development LLC, A California Limited Liability Company (“Pelandale”) has a legal or equitable interest in the Property, and

WHEREAS, City, a charter city, is authorized pursuant to Government Code Sections 65868, 65867 and 65867.5 to amend development agreements, and

WHEREAS, the City and Pelandale now desire to enter into a First Amendment To Development Agreement Between The City Of Modesto And Costa Limited Partners (“First Amendment”) to extend the term of the Development Agreement to May 17, 2021, and

WHEREAS, a duly noticed public hearing was held by the Planning Commission of the City of Modesto on December 7, 2009, in the Tenth Street Place Chambers, located at 1010 10<sup>th</sup> Street, Modesto, California, for the purpose of making a recommendation to the City Council concerning the First Amendment, at which hearing evidence both oral and documentary

was received and considered, and

WHEREAS, after said public hearing, the Modesto City Planning Commission, by Resolution No. 2009-32, adopted on December 7, 2009, recommended to the City Council approval of the environmental clearance and the First Amendment, and

WHEREAS, said matter was set for a public hearing of the City Council to be held at 5:30 p.m., on January 26, 2010, in the Tenth Street Place Chambers, located at 1010 10<sup>th</sup> Street, Modesto, California, at which date and time said duly noticed public hearing of the Council was held for the purpose of considering and introducing the First Amendment to extend the term of the Development Agreement to May 17, 2021, and

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

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

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

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

1. The First Amendment is in accordance with the community's objectives as set forth in the General Plan, because the site is designated Regional

Commercial in the General Plan, the project meets the criteria for the Regional Commercial designation found in Chapter III, Section B-7(b) and (c) of the General Plan, it furthers the General Plan Economic Development Goal I-D(2) to “provide more employment opportunities,” and it will ensure that the appropriate infrastructure for development will be in place in a timely manner as called for by the General Plan Community Growth Policies in Chapter II.

2. The provisions of the First Amendment are consistent with the General Plan and the Kiernan Business Park Specific Plan.
3. That the First Amendment is consistent with the specific content and other requirements of City Council Resolution No. 97-492, which establishes procedures and requirements for the consideration of development agreements; the City’s subdivision and zoning provisions of the Modesto Municipal Code; and Government Code Section 65854 et seq.
4. Staff has prepared an Initial Study, Environmental Checklist No. EA/C&ED 2009-27, which concludes that the First Amendment is within the scope of the General Plan Master EIR (SCH No. 2007072023), and that pursuant to Section 21157.1(b) of CEQA, no new environmental review is required.

SECTION 2. APPROVAL OF FIRST AMENDMENT. The First Amendment is hereby approved. A copy of the First Amendment is on file in the Office of the City Clerk.

SECTION 3. EXECUTION BY CITY. The City Manager, or his authorized designee, is hereby authorized to execute said First Amendment on behalf of the City of Modesto.

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

SECTION 5. EFFECTIVE DATE. This ordinance shall go into effect and be in

full force and operation from and after thirty (30) days after its final passage and adoption.

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

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 26th day of January 2010, 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: Geer, Hawn, Lopez, Marsh, Muratore, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

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

  
JIM RIDENOUR, Mayor

ATTEST:

By \_\_\_\_\_

  
STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By \_\_\_\_\_

  
SUSANA ALCALA WOOD, City Attorney

Ord. No. 3522-C.S.

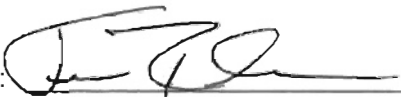
FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 2nd day of February 2010, 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: 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: March 4, 2010

ORDINANCE NO. 3523-C.S.

AN ORDINANCE AMENDING SECTION 7-3-9 OF THE ZONING MAP OF THE CITY OF MODESTO TO REZONE FROM LOW-DENSITY RESIDENTIAL ZONE (R-1), TO MEDIUM DENSITY RESIDENTIAL ZONE (R-2), PROPERTY LOCATED ON THE WEST SIDE OF CARVER ROAD SOUTH OF STANDIFORD AVENUE (TLB INVESTMENTS).

WHEREAS, a verified application for an amendment to Section 7-3-9 of the Zoning Map was filed by Robert Braden Consulting on behalf of TLB Investments on September 23, 2009, to rezone from Low-Density Residential Zone (R-1), to Medium Density Residential Zone (R-2), property located on the west side of Carver Road south of Standiford Avenue, and

WHEREAS, after a public hearing held on December 7, 2009, 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. 2009-30, adopted on December 7, 2009, the Planning Commission recommended to the Council that the application of Robert Braden Consulting on behalf of TLB Investments to amend Section 7-3-9 of the Zoning Map to rezone the hereinafter described property from Low-Density Residential Zone (R-1), to Medium Density Residential Zone (R-2), be approved,

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

SECTION 1. After a public hearing held on January 26, 2010, in the Tenth Street Place Chambers located at 1010 10<sup>th</sup> 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 Medium Density Residential Zone (R-2), will be compatible with the surrounding land uses, because the property is surrounded by R-2 and commercial zoning.
2. The proposed Medium Density Residential Zone (R-2), is consistent with the Modesto Urban Area General Plan because the Medium Density Residential Zone, (R-2), is consistent with the General Plan Residential Designation 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 Low-Density Residential Zone (R-1), to Medium Density Residential Zone (R-2):

(R-1) to (R-2)

Real property in the City of Modesto, County of Stanislaus, State of California, described as follows:

That portion of the South half of the North 15.04 chains of the East 13.52 chains of Lot 1 of the KNAPP TRACT in the Northeast quarter of the Southwest quarter

of Section 7, Township 3 South, Range 9 East, Mount Diablo Base and Meridian, particularly described as follows:

Beginning at a point on the east line of said Lot 1, said point being on the center line of Carver Road and bearing South 0 Degrees 41' East 593.8 feet from the Northeast corner of said Lot 1; running thence North 89 Degrees 17' West 250 feet along the North boundary of the land conveyed to V.S. Price and Lula O. Price, his wife, and V.S. price Jr., on the 3<sup>rd</sup> day of December 1946, which Deed is recorded in the office of the County Recorder of Stanislaus County, California, as Instrument No. 33926; thence North 0 Degrees 41' West 97 feet 6 inches, more or less, to the North line of the said South half of the North 15.04 chains of the East 13.52 chains of Lot 1 of the said KNAPP TRACT, thence south 89 Degrees 17' East 250 feet to the East line of said Lot 1, thence South 0 Degrees 41' East 97 feet 6 inches, more or less, to the point of beginning.

APN: 054-051-001

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

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 26th day of January , 2010, by Councilmember Marsh, 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: Geer, Hawn, Lopez, Marsh, Muratore, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:   
JIM RIDENOUR, Mayor

ATTEST:


By   
STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
SUSANA ALCALA WOOD, City Attorney

APPROVED AS TO DESCRIPTION:

By   
Community Development Department  
Planning Division

Ord. No. 3523-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 2nd day of February 2010, 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: 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: March 4, 2010

**ORDINANCE NO. 3524 -C.S.**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MODESTO  
AUTHORIZING THE LEVY OF SPECIAL TAXES WITHIN THE CITY OF  
MODESTO COMMUNITY FACILITIES DISTRICT NO. 2009-1 (KIERNAN  
BUSINESS PARK EAST)**

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

WHEREAS, on December 14, 2009, this City Council, by Resolution No. 2009-576, adopted a resolution entitled “A Resolution Declaring the City Council’s Intention to Establish City of Modesto Community Facilities District No. 2009-1 (Kiernan Business Park East) and to Authorize the Levy of a Special Tax Within Said Community Facilities District” stating its intention to form City of Modesto Community Facilities District No. 2009-1 (Kiernan Business Park East) (the “Community Facilities District”) pursuant to the Mello-Roos Community Facilities Act of 1982, as amended (the “Act”) in order to finance certain services and facilities and incidental expenses to be incurred in connection with financing the foregoing, and

WHEREAS, the City Council has held a noticed public hearing concerning the establishment of the Community Facilities District, as required by the Act, and

WHEREAS, subsequent to said hearing, the City Council adopted resolutions entitled “A Resolution Establishing City of Modesto Community Facilities District No. 2009-1 (Kiernan Business Park East), Authorizing the Levy of Special Taxes Therein and Establishing an Annual Appropriations Limit” (the “Resolution of Formation”), “A Resolution Determining it Necessary to Incur Bonded Indebtedness Within the City of Modesto Community Facilities District No. 2009-1 (Kiernan Business Park East),” and “A

Resolution Calling a Special Election for the City of Modesto Community Facilities District No. 2009-1 (Kiernan Business Park East),” which resolutions established the Community Facilities District, authorized the levy of special taxes therein and called an election within the Community Facilities District on the propositions of levying special taxes, authorizing the issuance of bonds and establishing an appropriations limit, and

WHEREAS, an election was held within the Community Facilities District at which the qualified electors approved by more than a two-thirds vote the proposition of levying special taxes, issuing bonds and establishing an appropriations limit,

NOW, THEREFORE, the Council of the City of Modesto, acting as the legislative body of City of Modesto Community Facilities District No. 2009-1 (Kiernan Business Park East), DOES ORDAIN as follows:

SECTION 1. The above recitals are all true and correct.

SECTION 2. By the passage of this Ordinance, the City Council authorizes and levies special taxes within the Community Facilities District at the rates and in accordance with the methods of apportionment set forth in Attachment A to the Resolution of Formation and which, for reference purposes, is attached hereto as Attachment A and incorporated by this reference (the “Rate and Method”).

SECTION 3. The Administrator of the Infrastructure Financing Program shall be responsible for annually preparing, or causing the preparation of, the current roll of special tax levy obligations by assessor’s parcel number on non-exempt property within the Community Facilities District. The City Council or, to the maximum extent permitted by law, the Administrator of the Infrastructure Financing Program is authorized to determine the

specific special taxes to be levied on each parcel of land in the Community Facilities District, in the manner and as provided in the Rate and Method. In connection with the foregoing, the Administrator of the Infrastructure Financing Program of the City shall take any and all steps necessary in order to deliver to the Stanislaus County Tax Collector, on or before the date specified in Section 53340, a certified list of all parcels subject to the Annual Maintenance Special Tax and/or the Annual Facilities Special Tax (each as defined in the Rate and Method) levies, including the amount of each such tax to be levied on each parcel for the applicable tax year. The special taxes to be levied shall not exceed the maximum rates set forth in the Rate and Method, but the special taxes may be levied at lower rates.

SECTION 4. Properties of entities of the state, federal or other local governments shall be exempt from the above-referenced special taxes only to the extent set forth in the Rate and Method, and otherwise shall be subject to tax consistent with the provisions of Section 53317.3 of the Act in effect as of the date of adoption of this Ordinance.

SECTION 5. All of the collections of the special taxes shall be used only as provided for in the Act and the Resolution of Formation. The special taxes shall be levied only so long as needed to accomplish the purposes described in the Resolution of Formation and the Rate and Method.

SECTION 6. The One-Time Special Facilities Tax (as defined in the Rate and Method) shall be collected prior to the issuance of a building permit for new construction of any structure on Taxable Property within the Community Facilities District. The Annual Maintenance Special Tax and the Annual Facilities Special Tax shall be collected in the same

manner as ordinary *ad valorem* taxes are collected and shall be subject to the same penalties and the same procedure and sale in cases of delinquency as provided for *ad valorem* taxes as such collection procedure may be modified by law or this City Council from time to time. Notwithstanding the foregoing, the Administrator of the Infrastructure Financing Program may collect, or cause to be collected, one or more installments of such special taxes by means of direct billing of the property owners within the Community Facilities District if, in the judgment of the Administrator of the Infrastructure Financing Program, such means of collection will reduce the burden of administering the Community Facilities District or is otherwise appropriate in the circumstances. In such event, such special taxes shall become delinquent if not paid when due as set forth in any such respective billing to the property owners.

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

SECTION 8. 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 City Council of the City of Modesto, California, held on the 26<sup>th</sup> of January, 2010, by Councilmember Marsh, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Geer, was upon roll call carried and ordered printed and published by the following vote:

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

NOES: None.

ABSENT: None.

ABSTAIN: None




JIM RIDENOUR,  
Mayor of the City of Modesto

ATTEST:

  
STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

  
SUSANA ALCALA WOOD, City Attorney

Ord. No. 3524-C.S.

FINAL ADOPTION CLAUSE

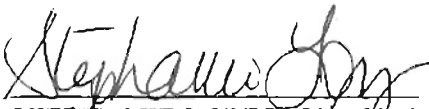
The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 2nd day of February 2010, Councilmember Lopez moved its final adoption, which motion being duly seconded by Councilmember Geer, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: 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: March 4, 2010

**ATTACHMENT A**  
**CITY OF MODESTO**  
**COMMUNITY FACILITIES DISTRICT NO. 2009-1**  
**(KIERNAN BUSINESS PARK EAST)**

**RATE AND METHOD OF APPORTIONMENT OF SPECIAL TAX**

## Attachment A

### CITY OF MODESTO COMMUNITY FACILITIES DISTRICT NO. 2009-1 (KIERNAN BUSINESS PARK EAST)

#### RATE AND METHOD OF APPORTIONMENT OF SPECIAL TAX

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Special Taxes applicable to each Assessor's Parcel in Community Facilities District No. 2009-1 (Kiernan Business Park East) [herein "CFD No. 2009-1" or the "CFD"] shall be levied and collected according to the tax liability determined by the City Council of the City of Modesto, through the application of the appropriate amount or rate for Taxable Property, as described below. All of the property in CFD No. 2009-1, unless exempted by law or by the provisions of Section H below, shall be taxed for the purposes, to the extent, and in the manner herein provided, including property subsequently annexed to CFD No. 2009-1 unless a separate Rate and Method of Apportionment of Special Tax is adopted for the annexation area.

#### A. DEFINITIONS

The terms hereinafter set forth have the following meanings:

**"Acre" or "Acreage"** means the land area of an Assessor's Parcel as shown on an Assessor's Parcel Map, or if the land area is not shown on an Assessor's Parcel Map, the land area shown on the applicable Final Map or other Development Plan.

**"Act"** means the Mello-Roos Community Facilities Act of 1982, as amended, being Chapter 2.5 (commencing with Section 53311), Division 2 of Title 5 of the California Government Code.

**"Administrative Expenses"** means any or all of the following: the fees and expenses of any fiscal agent or trustee (including any fees or expenses of its counsel) employed in connection with any Bonds, and the expenses of the City carrying out its duties with respect to CFD No. 2009-1 and the Bonds, including, but not limited to, levying and collecting the Special Taxes, the fees and expenses of legal counsel, charges levied by the County Auditor's Office, Tax Collector's Office, and/or Treasurer's Office, costs related to annexing property into the CFD, costs related to property owner inquiries regarding the Special Taxes, costs associated with complying with any continuing disclosure requirements for the Bonds and the Special Taxes, and all other costs and expenses of the City in any way related to the establishment or administration of the CFD.

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

**"Annual Facilities Special Tax"** means a special tax levied in any Fiscal Year to pay the Annual Facilities Special Tax Requirement, as defined below.

**"Annual Facilities Special Tax Requirement"** means the amount necessary in any Fiscal Year to: (i) pay principal and interest on Bonds; (ii) pay Administrative Expenses that have not been included in the Annual Maintenance Special Tax Requirement for the Fiscal Year; (iii) create or replenish reserve funds; (iv) cure any delinquencies in the payment of principal

or interest on indebtedness of CFD No. 2009-1 which have occurred in the prior Fiscal Year or (based on delinquencies in the payment of the Annual Facilities Special Taxes which have already taken place) are expected to occur in the Fiscal Year in which the tax will be collected; and (v) construct or acquire Authorized Facilities. The amounts referred to in clauses (i) and (ii) of the preceding sentence may be reduced in any Fiscal Year by: (i) interest earnings on or surplus balances in funds and accounts for the Bonds to the extent that such earnings or balances are available to apply against debt service pursuant to a Bond indenture, Bond resolution, or other legal document that sets forth these terms; (ii) proceeds received by CFD No. 2009-1 from the collection of penalties associated with delinquent Annual Facilities Special Taxes; and (iii) any other revenues available to pay debt service on the Bonds as determined by the Administrator.

**“Annual Maintenance Special Tax”** means a special tax levied in any Fiscal Year to pay the Annual Maintenance Special Tax Requirement, as defined below.

**“Annual Maintenance Special Tax Requirement”** means that amount necessary in any Fiscal Year to: (i) pay for Authorized Services; (ii) pay Administrative Expenses that have not been included in the Annual Facilities Special Tax Requirement for the Fiscal Year; (iii) cure any delinquencies in the payment of Annual Maintenance Special Taxes levied in prior Fiscal Years or (based on delinquencies in the payment of Annual Maintenance Special Taxes which have already taken place) are expected to occur in the current Fiscal Year; and (iv) pay debt service on Bonds to the extent permitted in the Bond documents.

**“Assessor’s Parcel”** or **“Parcel”** means a lot or parcel shown on an Assessor’s Parcel Map with an assigned Assessor’s Parcel number.

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

**“Authorized Facilities”** means those facilities that are authorized to be funded by CFD No. 2009-1.

**“Authorized Services”** means those services that are authorized to be funded by CFD No. 2009-1.

**“Bonds”** means bonds or other debt (as defined in the Act), whether in one or more series, issued, insured, or assumed by CFD No. 2009-1 related to Authorized Facilities.

**“Business Park Property”** means any Parcel of Developed Property for which a building permit was issued for construction of a building that will be a part of a campus-like environment for office, light production, or warehouse uses in high quality single- or multiple-occupant buildings. Business Park Property may include development focused primarily on research, product development, professional office, or limited manufacturing and distribution land uses, as determined by the Administrator using reasonable and established City zoning and other land use standards.

**“Capitalized Interest”** means funds in any capitalized interest account available to pay debt service on Bonds.

**“CFD Formation”** means the date on which the Resolution of Formation to form CFD No. 2009-1 was adopted by the City Council.

**“City”** means the City of Modesto.

**“City Council”** means the City Council of the City of Modesto, acting as the legislative body of CFD No. 2009-1.

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

**“Developed Property”** means, in any Fiscal Year, the following:

*For purposes of levying the Annual Maintenance Special Tax, “Developed Property” means:*

- for Single Family Property, all Parcels for which a Final Map was recorded prior to June 30 of the preceding Fiscal Year,
- for Multi-Family Property and Non-Residential Property, all Parcels for which a building permit for construction, reconstruction, or expansion of a building structure was issued prior to June 30 of the preceding Fiscal Year. Notwithstanding the foregoing, Parcels of Multi-Family Property and Non-Residential Property on which a vacant building is located that cannot be occupied without demolition or reconstruction of the building shall not be categorized as Developed Property until a permit is issued for construction of a new building or reconstruction of the existing building.

*For purposes of levying the Annual Facilities Special Tax, “Developed Property” means:*

- for Single Family Property, all Parcels for which a building permit for construction of a Unit was issued prior to June 30 of the preceding Fiscal Year,
- for Multi-Family Property and Non-Residential Property, all Parcels for which a building permit for construction, reconstruction, or expansion of a building structure was issued prior to June 30 of the preceding Fiscal Year. Notwithstanding the foregoing, Parcels of Multi-Family Property and Non-Residential Property on which a vacant building is located that cannot be occupied without demolition or reconstruction of the building shall not be categorized as Developed Property until a permit is issued for construction of a new building or reconstruction of the existing building.

**“Development Plan”** means an apartment plan, site plan, or other development plan that identifies such information as the type of structure, the acreage, the square footage, and/or the number of Units that will be developed on Multi-Family Property.

**“Expected Land Uses”** means the Units of Single Family Property, Acres of Multi-Family Property, and Acres of Non-Residential Property expected to be developed within CFD No. 2009-1 at the time of CFD Formation.

**“Expected Maximum Annual Facilities Special Tax Revenues”** means the amount of annual revenue, conservatively estimated by the Administrator, that would be available from Expected Land Uses if the Maximum Annual Facilities Special Tax was levied. The Expected Maximum Annual Facilities Special Tax Revenues at the time of CFD Formation is shown in Attachment I.

**“Final Map”** means a final map, parcel map, or portion thereof, approved by the City pursuant to the Subdivision Map Act (California Government Code Section 66410 *et seq.*) that creates lots which do not need to be further subdivided prior to issuance of a building permit for a residential or non-residential structure.

**“Fiscal Year”** means the period starting July 1 and ending on the following June 30.

**“Hotel Property”** means any Parcel of Developed Property for which a building permit was issued for construction of a non-residential structure that constitutes a place of lodging providing sleeping accommodations and related facilities for travelers, as determined by the Administrator using reasonable and established City zoning and other land use standards.

**“Land Use Class”** means one of the seven mutually-exclusive land use classes of Developed Property identified in Table I in Section C below and defined in this Section A. The City shall, in its sole discretion, determine the appropriate Land Use Class for Parcels on which a structure was built prior to CFD Formation.

**“Maximum Annual Facilities Special Tax”** means the greatest amount of Annual Facilities Special Tax that can be levied on an Assessor’s Parcel in any Fiscal Year determined in accordance with Sections C and D below.

**“Maximum Annual Maintenance Special Tax”** means the greatest amount of Annual Maintenance Special Tax that can be levied on an Assessor’s Parcel in any Fiscal Year determined in accordance with Sections C and D below.

**“Maximum One-Time Facilities Special Tax”** means the greatest amount of One-Time Facilities Special Tax that can be levied on an Assessor’s Parcel in any Fiscal Year determined in accordance with Sections C and D below.

**“Maximum Special Taxes”** means, collectively, the Maximum One-Time Facilities Special Tax, Maximum Annual Facilities Special Tax, and Maximum Annual Maintenance Special Tax.

**“Multi-Family Property”** means any Parcel of Developed Property for which a building permit was issued for construction of a residential structure consisting of apartment Units, as

determined by the Administrator using reasonable and established City zoning and other land use standards.

**“Net Taxable Acreage”** or **“Net Taxable Acre”** means the total acreage within a Final Map or Parcel less arterial road right-of-ways and property that is defined in the Final Map for use as a park site, school site, or City-owned or CFD-owned storm drainage basin. If a Subdivision Map is recorded which is not a Final Map for some or all Parcels created by a subdivision, the Administrator shall calculate the Net Taxable Acreage of such unsubdivided Parcels by identifying the Acreage of the Parcel and (i) adding a portion of the acreage of any non-arterial right-of-way that fronts the Parcel determined by drawing lines at right angles to the right-of-way, and (ii) subtracting a portion of the acreage of any arterial right-of-way that fronts the Parcel determined by drawing lines at right angles to the right-of-way. The Net Taxable Acreage of a Parcel or Final Map shall be determined in the sole discretion of the City.

**“Non-Residential Property”** means, collectively, Business Park Property, Office Property, Retail Property, Hotel Property, and Other Property.

**“Office Property”** means any Parcel of Developed Property for which a building permit was issued for construction of a building that will be divided primarily into individual offices (including cubicles or other modular office space) for use by companies to conduct business, as determined by the Administrator using reasonable and established City zoning and other land use standards.

**“One-Time Facilities Special Tax”** means a Special Tax levied and collected in full by the City prior to a structural building permit being issued for new construction on Taxable Property.

**“One-Time Facilities Special Tax Requirement”** means the amount determined by the City that is needed to pay facility costs authorized to be funded by CFD No. 2009-1, which will not be paid by the Bonds or Annual Facilities Special Tax.

**“Other Property”** means any Parcel of Developed Property for which a building permit was issued for construction of a non-residential structure that is not Business Park Property, Office Property, Retail Property, or Hotel Property.

**“Proportionately”** means, for Developed Property, that the ratio of the actual Annual Facilities Special Tax and actual Annual Maintenance Special Tax levied in any Fiscal Year to the Maximum Annual Facilities Special Tax and Maximum Annual Maintenance Special Tax authorized to be levied in that Fiscal Year, respectively, is equal for all Assessor’s Parcels of Developed Property. In addition, for Undeveloped Property, “Proportionately” means that the ratio of the actual Annual Facilities Special Tax and actual Annual Maintenance Facilities Special Tax to the Maximum Annual Facilities Special Tax and Maximum Annual Maintenance Special Tax, respectively, is equal for all Assessor’s Parcels of Undeveloped Property.

**“Public Property”** means any property within the boundaries of CFD No. 2009-1 that is owned by the federal government, State of California, County, City, or other public agency.

**“Retail Property”** means any Parcel of Developed Property for which a building permit was issued for construction of a building that will include primarily commercial establishments which sell general merchandise, hard goods, personal services, and other items directly to consumers, including but not limited to travel agencies, hardware stores, food stores, automotive dealers, service stations, home furnishing stores, restaurants, bars, banks, repair shops, movie theaters, day care centers, and art galleries, as determined by the Administrator using reasonable and established City zoning and other land use standards.

**“Single Family Attached Property”** means any Parcel of Developed Property for which a building permit was issued (for purposes of levying the Annual Facilities Special Tax) or will be issued (for purposes of levying the Annual Maintenance Special Tax) for construction of a residential structure consisting of two or more Units that share common walls, have separate Assessor’s Parcel numbers assigned to them, and are offered as for-sale Units, including such residential structures that meet the statutory definition of a condominium contained in Civil Code Section 1351.

**“Single Family Detached Property”** means any Parcel of Developed Property for which a building permit was issued (for purposes of levying the Annual Facilities Special Tax) or will be issued (for purposes of levying the Annual Maintenance Special Tax) for construction of a Unit that does not share a common wall with another Unit.

**“Single Family Property”** means, collectively, Single Family Attached Property and Single Family Detached Property.

**“Special Taxes”** means, collectively, the One-Time Facilities Special Tax, the Annual Facilities Special Tax, and the Annual Maintenance Special Tax.

**“Square Foot,” “Square Footage,” or “Square Feet”** means the floor area square footage reflected on the original construction building permit issued for construction of a building of Non-Residential Property and any Square Footage subsequently added to a building of such Taxable Property after issuance of a building permit for expansion or renovation of such building.

**“Subdivision Map”** means a Final Map, Development Plan, large lot subdivision map, tentative map, or other map recorded with the County and/or approved by the City that results in the subdivision of a Parcel or a change in the quantity or type of proposed land uses.

**“Taxable Property”** means all of the Assessor’s Parcels within the boundaries of CFD No. 2009-1 which are not exempt from the Special Tax pursuant to law or Section H below.

**“Taxable Public Property”** means, in any Fiscal Year, all Parcels of Public Property within CFD No. 2009-1 that: (i) based on a tentative map or other Subdivision Map, were expected to be Taxable Property; and (ii) based on this expectation, Maximum Special Taxes were assigned to the Parcels in a prior Fiscal Year. However, if Parcels designated as Public

Property based on a tentative map or other Subdivision Map are relocated, the new Public Property will again become exempt. If such relocation occurs, the Acreage previously designated as Public Property will become Taxable Property and the Acreage that becomes Public Property will not be taxed. This trading of Acres of Public Property will be permitted to the extent that there is no net loss in Maximum Special Tax revenues.

**“Undeveloped Property”** means, in any Fiscal Year, all Parcels of Taxable Property within CFD No. 2009-1 that are not Developed Property.

**“Unit”** means: (i) for Single Family Property, an individual single-family unit; and (ii) for Multi-Family Property, an individual unit within an apartment structure.

## **B. DATA FOR ANNUAL ADMINISTRATION**

On or about July 1 of each Fiscal Year, the Administrator shall identify the current Assessor’s Parcel numbers for all Parcels of Taxable Property. The Administrator shall also determine: (i) whether each Assessor’s Parcel of Taxable Property is Developed Property or Undeveloped Property; (ii) for Developed Property, which Parcels are Single Family Property, Multi-Family Property, and Non- Residential Property; (iii) the Acreage and number of Units for each Parcel of Multi-Family Property; (iv) the Acreage and Square Footage of each Parcel of Non-Residential Property, and (v) the One-Time Facilities Special Tax Requirement, the Annual Facilities Special Tax Requirement, and the Maintenance Special Tax Requirement. In any Fiscal Year, if it is determined that (i) a Final Map for a portion of property in CFD No. 2009-1 was recorded after January 1 of the prior Fiscal Year (or any other date after which the Assessor will not incorporate the newly-created Parcels into the then current tax roll), (ii) because of the date the Final Map was recorded, the Assessor does not yet recognize the new Parcels created by the Final Map, and (iii) one or more of the newly-created Parcels meets the definition of Developed Property, the Administrator shall calculate the Special Tax for the property affected by recordation of the Final Map by determining the Special Tax that applies separately to each newly-created Parcel, then applying the sum of the individual Special Taxes to the Parcel that was subdivided by recordation of the Final Map.

## **C. CALCULATING MAXIMUM SPECIAL TAXES**

The Administrator shall use the procedures set forth below to calculate the Maximum Special Taxes for each Parcel in CFD No. 2009-1 in each Fiscal Year, including the Maximum One-Time Facilities Special Tax, Maximum Annual Facilities Special Tax, and Maximum Annual Maintenance Special Tax.

### **1. Maximum Special Taxes**

The Maximum Special Taxes set forth in Table 1 below shall be used for purposes of calculating the Maximum Special Taxes for all Parcels of Taxable Property. The Maximum Special Tax for any Parcel of Developed Property shall be the per-Unit, per Square Foot, or per-Net Taxable Acre amount that produces the greatest Special Tax revenue.

**Table 1**  
**Maximum Special Taxes**  
**Fiscal Year 2009-10 \***

Land Use Class	Maximum One-Time Facilities Special Tax		Maximum Annual Facilities Special Tax		Maximum Annual Maintenance Special Tax	
	<i>Per Unit or Per Square Foot</i>	<i>Per Net Taxable Acre</i>	<i>Per Unit or Per Square Foot</i>	<i>Per Net Taxable Acre</i>	<i>Per Unit or Per Square Foot</i>	<i>Per Net Taxable Acre</i>
Single Family Property	\$14,634 per Unit	N/A	\$1,312 per Unit	N/A	\$297 per Unit	N/A
Multi-Family Property	\$0 per Unit	\$0	\$586 per Unit	\$14,206	\$218 per Unit	\$5,283
Business Park Property	\$14.00 per Square Foot	\$243,850	\$0.36 per Square Foot	\$6,271	\$0.07 per Square Foot	\$1,209
Office Property	\$21.54 per Square Foot	\$833,836	\$0.48 per Square Foot	\$18,579	\$0.03 per Square Foot	\$1,209
Retail Property	\$22.52 per Square Foot	\$873,208	\$0.54 per Square Foot	\$20,940	\$0.03 per Square Foot	\$1,209
Hotel Property	\$13.64 per Square Foot	\$528,909	\$0.47 per Square Foot	\$18,220	\$0.03 per Square Foot	\$1,209
Other Property	\$22.52 per Square Foot	\$873,208	\$0.54 per Square Foot	\$20,940	\$0.07 per Square Foot	\$1,209
Undeveloped Property	N/A	N/A	N/A	\$20,940	N/A	\$5,283

*\* All Maximum Special Taxes shown in Table 1 are subject to the annual adjustments described in Section D below. N/A means not applicable.*

**2. Multiple Land Use Classes on an Assessor's Parcel**

In some instances an Assessor's Parcel of Developed Property may contain more than one Land Use Class. The Maximum Special Taxes levied on an Assessor's Parcel shall be the sum of the Maximum Special Taxes for all Units of Single Family Property and the Maximum Special Taxes calculated for Multi-Family Property and Non-Residential Property (based on the applicable Final Map,

parcel map, Development Plan, condominium plan, or other recorded County map) located on that Assessor's Parcel.

**D. ESCALATION OF MAXIMUM SPECIAL TAXES**

**1. One-Time Facilities Special Tax**

Beginning in January 2010 and each January thereafter, the Maximum One-Time Facilities Special Taxes shown in Table 1 shall be adjusted annually by the greater of: (i) the percentage increase, if any, in the construction cost index for the San Francisco region for the prior twelve (12) month period as published in the Engineering News Record or other comparable source if the Engineering News Record is discontinued or otherwise not available; or (ii) four percent (4.0%). Each annual adjustment of the Maximum One-Time Facilities Special Tax shall become effective on the subsequent July 1.

**2. Annual Facilities Special Tax**

Beginning with Fiscal Year 2010-11, and each Fiscal Year thereafter, the Maximum Annual Facilities Special Taxes shown in Table 1 shall be increased by two percent (2%) of the amount in effect in the prior Fiscal Year.

**3. Annual Maintenance Special Tax**

Beginning in January 2010 and each January thereafter, the Maximum Annual Maintenance Special Taxes shown in Table 1 shall be adjusted annually by the greater of: (i) the percentage increase, if any, in the construction cost index for the San Francisco region for the prior twelve (12) month period as published in the Engineering News Record or other comparable source if the Engineering News Record is discontinued or otherwise not available; or (ii) four percent (4.0%). Each annual adjustment of the Maximum Annual Maintenance Special Tax shall become effective on the subsequent July 1.

**E. BACK-UP FORMULA**

Each time a new or revised Subdivision Map ("Land Use/Entitlement Change") is proposed any time after the City has issued Bonds, the Administrator shall recalculate the Expected Maximum Annual Facilities Special Tax Revenues based on the proposed Land Use/Entitlement Change. If the proposed Land Use/Entitlement Change will reduce debt service coverage on outstanding Bonds below the amount committed to in the Bond documents, then, before approval of the Land Use/Entitlement Change, the landowner requesting the Land Use/Entitlement Change shall prepay to the City an amount that corresponds to the lost Maximum Annual Facilities Special Tax revenue, as determined by applying the steps set forth in Section I below to prepay the Annual Facilities Special Tax. Any such prepayment shall be used by the City to call Bonds.

**F. METHOD OF LEVY OF THE SPECIAL TAX**

**1. One-Time Facilities Special Tax**

The Maximum One-Time Facilities Special Tax determined pursuant to Sections C and D above shall be levied on all Taxable Property in CFD No. 2009-1 and shall be collected as set forth in Section G below.

**2. Annual Facilities Special Tax**

Commencing with Fiscal Year 2010-11 and for each following Fiscal Year, the Administrator shall determine the Annual Facilities Special Tax Requirement for that Fiscal Year. The Annual Facilities Special Tax shall then be levied on all Parcels of Taxable Property in CFD No. 2009-1 as follows:

*Step 1:* The Annual Facilities Special Tax shall be levied Proportionately on each Parcel of Developed Property within the CFD up to 100% of the Maximum Annual Facilities Special Tax for each Parcel for such Fiscal Year until the amount levied on Developed Property is equal to the Annual Facilities Special Tax Requirement prior to applying any Capitalized Interest that is available in the CFD accounts;

*Step 2:* If additional revenue is needed after Step 1, and after applying Capitalized Interest to the Annual Facilities Special Tax Requirement, the Annual Facilities Special Tax shall be levied Proportionately on each Assessor's Parcel of Undeveloped Property within the CFD, up to 100% of the Maximum Annual Facilities Special Tax for each Parcel of Undeveloped Property for such Fiscal Year;

*Step 3:* If additional revenue is needed after applying the first two steps, the Annual Facilities Special Tax shall be levied Proportionately on each Assessor's Parcel of Taxable Public Property, up to 100% of the Maximum Annual Facilities Special Tax assigned to each Parcel of Taxable Public Property.

**3. Annual Maintenance Special Tax**

Commencing with Fiscal Year 2010-11 and for each following Fiscal Year, the Administrator shall determine the Annual Maintenance Special Tax Requirement for that Fiscal Year. The Annual Maintenance Special Tax shall then be levied on all Parcels of Taxable Property as follows:

*Step 1:* The Annual Maintenance Special Tax shall be levied Proportionately on each Parcel of Developed Property within the CFD up to 100% of the Maximum Annual Maintenance Special Tax for each Parcel for such Fiscal Year;

*Step 2:* If additional revenue is needed after Step 1, the Annual Maintenance Special Tax shall be levied Proportionately on each Assessor's Parcel of Undeveloped Property within the CFD, up to 100% of the Maximum Annual Maintenance Special Tax for each Parcel of Undeveloped Property for such Fiscal Year;

*Step 3:* If additional revenue is needed after applying the first two steps, the Annual Maintenance Special Tax shall be levied Proportionately on each Assessor's Parcel of Taxable Public Property, up to 100% of the Maximum Annual Maintenance Special Tax assigned to each Parcel of Taxable Public Property.

#### **G. COLLECTION OF SPECIAL TAX**

The Maximum One-Time Facilities Special Tax shall be collected prior to a building permit being issued for new construction of any residential or non-residential structure on Taxable Property within CFD No. 2009-1, and shall be immediately delinquent if not so paid.

The Annual Facilities Special Tax and Annual Maintenance Special Tax for CFD No. 2009-1 shall be collected in the same manner and at the same time as ordinary ad valorem property taxes; provided, however, that prepayments are permitted as set forth in Section I below and provided further that the City may directly bill, collect at a different time or in a different manner, and/or collect delinquent Annual Facilities Special Taxes and Annual Maintenance Special Taxes through foreclosure or other available methods.

The Annual Facilities Special Tax shall be levied and collected until principal and interest on Bonds have been repaid, costs of constructing or acquiring authorized facilities from Annual Facilities Special Tax proceeds have been paid, and all Administrative Expenses have been reimbursed. However, in no event shall an Annual Facilities Special Tax be levied after Fiscal Year 2060-2061. The Annual Maintenance Special Tax will continue to be levied and collected unless and until the City determines that the Annual Maintenance Special Tax no longer needs to be levied to pay Authorized Services of the CFD and all Administrative Expenses have been reimbursed. Under no circumstances may the Annual Facilities Special Tax on one Parcel in the CFD be increased by more than ten percent (10%) as a consequence of delinquency or default in payment of the Annual Facilities Special Tax levied on another Parcel or Parcels in the CFD.

#### **H. EXEMPTIONS**

Notwithstanding any other provision of this Rate and Method of Apportionment of Special Tax, no Special Taxes shall be levied on Public Property, except Taxable Public Property, as defined herein. Special Taxes shall not be levied on Parcels that are owned by a public utility for an unmanned facility or on Parcels that are subject to an easement that precludes any other use on the Parcels.

## I. PREPAYMENT OF SPECIAL TAX

The following definitions apply to this Section I:

**“Outstanding Bonds”** means all Previously Issued Bonds which remain outstanding, with the following exception: if an Annual Facilities Special Tax has been levied against, or already paid by, an Assessor’s Parcel making a prepayment, and a portion of the Annual Facilities Special Tax will be used to pay a portion of the next principal payment on the Bonds that remain outstanding (as determined by the Administrator), that next principal payment shall be subtracted from the total Bond principal that remains outstanding, and the difference shall be used as the amount of Outstanding Bonds for purposes of this prepayment formula.

**“Previously Issued Bonds”** means all Bonds that have been issued on behalf of the CFD prior to the date of prepayment.

**“Public Facilities Requirements”** means either \$6,500,000 in 2009 dollars, which shall increase on January 1, 2010, and on each January 1 thereafter by the percentage increase, if any, in the construction cost index for the San Francisco region for the prior twelve (12) month period as published in the Engineering News Record or other comparable source if the Engineering News Record is discontinued or otherwise not available, or such lower number as shall be determined by the City as sufficient to fund Authorized Facilities. The Public Facilities Requirements shown above may be adjusted or a separate Public Facilities Requirement identified each time property annexes into CFD No. 2009-1; at no time shall the added Public Facilities Requirement for that annexation area exceed the amount of public improvement costs that are expected to be supportable by the Maximum Annual Facilities Special Tax revenues generated within that annexation area.

**“Remaining Facilities Costs”** means the Public Facilities Requirements (as defined above), minus costs of Authorized Facilities funded by Outstanding Bonds (as defined above), developer equity, and/or any other source of funding.

The Annual Facilities Special Tax obligation applicable to an Assessor's Parcel in the CFD may be prepaid and the obligation of the Assessor's Parcel to pay the Annual Facilities Special Tax permanently satisfied as described herein, provided that a prepayment may be made only if there are no delinquent Annual Facilities Special Taxes with respect to such Assessor's Parcel at the time of prepayment. The Annual Maintenance Special Tax may not be prepaid. An owner of an Assessor's Parcel intending to prepay the Annual Facilities Special Tax obligation shall provide the City with written notice of intent to prepay. Within 30 days of receipt of such written notice, the City or its designee shall notify such owner of the prepayment amount for such Assessor's Parcel. Prepayment must be made not less than 75 days prior to any redemption date for Bonds to be redeemed with the proceeds of such prepaid Annual Facilities Special Taxes. The Prepayment Amount shall be calculated as follows (capitalized terms as defined below):

Bond Redemption Amount	
plus	Remaining Facilities Amount
plus	Redemption Premium
plus	Defeasance Requirement
plus	Administrative Fees and Expenses
<u>less</u>	<u>Reserve Fund Credit</u>
equals	Prepayment Amount

As of the proposed date of prepayment, the Prepayment Amount shall be determined by application of the following steps:

- Step 1.** Compute the total Maximum Annual Facilities Special Tax that could be collected from the Assessor's Parcel prepaying the Annual Facilities Special Tax in the Fiscal Year in which prepayment would be received by the City.
- Step 2.** Divide the Maximum Annual Facilities Special Tax from Step 1 by the total amount that could be collected if the Maximum Annual Facilities Special Tax was levied on all Parcels of Taxable Property in the CFD in the Fiscal Year in which the prepayment would be received by the City.
- Step 3.** Multiply the quotient computed pursuant to Step 2 by the Outstanding Bonds to compute the amount of Outstanding Bonds to be retired and prepaid (the "*Bond Redemption Amount*").
- Step 4.** Compute the current Remaining Facilities Costs (if any).
- Step 5.** Multiply the quotient computed pursuant to Step 2 by the amount determined pursuant to Step 4 to compute the amount of Remaining Facilities Costs to be prepaid (the "*Remaining Facilities Amount*").
- Step 6.** Multiply the Bond Redemption Amount computed pursuant to Step 3 by the applicable redemption premium, if any, on the Outstanding Bonds to be redeemed (the "*Redemption Premium*").
- Step 7.** Compute the amount needed to pay interest on the Bond Redemption Amount starting with the first Bond interest payment date after which the prepayment has been received until the earliest redemption date for the Outstanding Bonds, which, depending on the Bond offering document, may be as early as the next interest payment date.
- Step 8:** Compute the amount of interest the City reasonably expects to derive from reinvestment of the Bond Redemption Amount plus the Redemption Premium from the first Bond interest payment date after

which the prepayment has been received until the redemption date for the Outstanding Bonds.

- Step 9:** Take the amount computed pursuant to Step 7 and subtract the amount computed pursuant to Step 8 (the "*Defeasance Requirement*").
- Step 10.** Determine the costs of computing the prepayment amount, the costs of redeeming Bonds, and the costs of recording any notices to evidence the prepayment and the redemption (the "*Administrative Fees and Expenses*").
- Step 11.** If and to the extent so provided in the indenture pursuant to which the Outstanding Bonds to be redeemed were issued, a reserve fund credit shall be calculated as a reduction in the applicable reserve fund for the Outstanding Bonds to be redeemed pursuant to the prepayment (the "*Reserve Fund Credit*").
- Step 12.** The Annual Facilities Special Tax prepayment is equal to the sum of the amounts computed pursuant to Steps 3, 5, 6, 9, and 10, less the amount computed pursuant to Step 11 (the "*Prepayment Amount*").

#### **J. INTERPRETATION OF SPECIAL TAX FORMULA**

The City reserves the right to make minor administrative and technical changes to this document that do not materially affect the rate and method of apportioning the Special Taxes. In addition, the interpretation and application of any section of this document shall be left to the City's discretion. Interpretations may be made by the City by ordinance or resolution for purposes of clarifying any vagueness or ambiguity in this Rate and Method of Apportionment of Special Tax.

#### **K. ENFORCEMENT**

All delinquent Annual Facilities Special Taxes, or delinquent Annual Maintenance Special Taxes, billed off the County tax roll shall be subject to an immediate 10% penalty plus interest charges of 1.5 % as of the first day of the month after the delinquency date and on the first day of each month thereafter. Any such delinquent Special Taxes shall, at the City's discretion, be placed on the next secured property tax roll. The amount placed on the roll shall include the 10% penalty and the interest charges through the following January 1. This shall not prevent the City from simultaneously pursuing the delinquency by an action on a contract of guarantee against a third party who promised to pay the taxes, or from assigning such right of action to the property owner or other appropriate party.

**ATTACHMENT I  
CITY OF MODESTO  
COMMUNITY FACILITIES DISTRICT NO. 2009-1  
(KIERNAN BUSINESS PARK EAST)**

**Expected Land Uses and Expected Maximum Annual Facilities Special Tax Revenues**

Land Use Class	Expected Number of Units/Acres	Maximum Annual Facilities Special Tax per Unit/Acre FY 2009-10 [1]	Expected Maximum Annual Facilities Special Tax Revenues FY 2009-10 [1]
Single Family Property	262 Units	\$1,312 per Unit	\$343,740
Multi-Family Property	3.3 Acres	\$14,206 per Acre	\$46,880
Business Park Property [2]	0.0 Acres	\$6,271 per Acre	\$0
Office Property	2.3 Acres	\$18,579 per Acre	\$43,200
Retail Property	9.3 Acres	\$20,940 per Acre	\$194,400
Hotel Property	4.4 Acres	\$18,220 per Acre	\$79,900
<b>Expected Maximum Annual Facilities Special Tax Revenues at CFD Formation \$708,120 (Fiscal Year 2009-10 \$)</b>			

- [1] On July 1, 2010, and each July 1 thereafter, the Maximum Annual Facilities Special Tax and Expected Maximum Annual Facilities Special Tax Revenues shall be increased by two percent (2%) of the amount in effect in the previous Fiscal Year. Revenues may not be exact due to rounding.
- [2] All Business Park Property is expected to annex to CFD No. 2009-1 after CFD Formation. At such time as annexations occur, the Administrator shall update this Attachment I to reflect the expected Acreage and Expected Maximum Annual Facilities Tax Revenues associated with the annexed property.

**ORDINANCE NO. 3525-C.S.**

AN ORDINANCE AMENDING SECTION 4-12.405 OF ARTICLE 4 OF CHAPTER 12 OF TITLE 4 OF THE MODESTO MUNICIPAL CODE RELATING TO DEFACEMENT OF PROPERTY - PUNISHMENT PROVISIONS.

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

SECTION 1. AMENDMENT OF CODE. Section 4-12.405 of Article 4 of Chapter 12 of Title 4 of the Modesto Municipal Code is hereby amended to read as follows:

**4-12.405. PUNISHMENT PROVISIONS.**

Violations of this article may, at the discretion of the City Attorney, be prosecuted either criminally or administratively.

- (a) Each penalty imposed for an administrative violation of this article shall be (1) a penalty of one hundred twenty-five dollars (\$125.00) for a first violation; (2) a penalty of two hundred fifty dollars (\$250.00) for a second violation within a year; (3) a penalty of five hundred dollars (\$500.00) for each additional violation within one (1) year.
- (b) Where there has been a conviction, or guilty or nolo contendere plea on a misdemeanor violation of this article, the court shall, as a condition of any grant of probation and in addition to any penalty imposed pursuant to this article, and at the City's option, order the defendant to complete community service, including graffiti removal service, of not less than six (6) hours and no more than forty-eight (48) hours for a first conviction. Upon the second and subsequent conviction, a person shall be required, at the City's option, to perform community service, including graffiti removal service of not less than forty-eight (48) hours and no more than ninety-six (96) hours. A defendant shall be ordered to complete community service during a time other than during his or her hours of school attendance or employment.
- (c) Where there has been a conviction, or guilty or nolo contendere plea on a misdemeanor violation of this article, the court shall, as a condition of any grant of probation and in addition to any punishment imposed pursuant to this article, and at the victims option, order the defendant to perform the necessary labor to cleanup, repair, or replace the property damaged by that person.

- (d) Where there has been a conviction, or guilty or nolo contendere plea on a misdemeanor violation of this article, the court shall, as a condition of any grant of probation and in addition to any punishment imposed pursuant to this article, and at the victims option, and as restitution, order the defendant to pay for any related costs incurred for the clean up, repair, or replacement of the property damaged by that person.
- (e) If a minor is personally unable to pay any penalty or restitution levied for violating any provision of this article, the parent or legal guardian of the minor shall be liable for payment of the penalty and restitution.

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

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

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 11th day of May, 2010, by Councilmember Olsen, 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: Geer, Lopez, Marsh, Muratore, Olsen, Mayor Ridenour

NOES: Councilmembers: None.

ABSENT: Councilmembers: Hawn.

APPROVED:   
JIM RIDENOUR, Mayor

ATTEST:

By   
STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
SUSANA ALCALA WOOD, City Attorney

Ord. No. 3525-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 25th of May, 2010, Councilmember Marsh moved its final adoption, which motion being duly seconded by Councilmember Hawn, was upon roll call carried and the ordinance adopted by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

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

  
MAYOR JIM RIDENOUR

ATTEST: \_\_\_\_\_

  
STEPHANIE LOPEZ, City Clerk

Effective Date: June 24, 2010

ORDINANCE NO. 3526-C.S.

AN ORDINANCE AMENDING SECTIONS 10-2.215, 10-2.216, 10-2.221, 10-2.222, 10-2.234, 10-2.509, 10-2.510, 10-2.511, 10-2.512, 10-2.513, 10-2.514, 10-2.515, 10-2.516, 10-2.602, 10-2.606, 10-2.608, 10-2.609, 10-2.610, 10-2.702, 10-2.706, 10-2.708, 10-2.709, 10-2.2704, 10-2.2706, 10-2.3002, 10-2.3003, 10-2.3004, AND 10-2.3005 OF CHAPTER 2 OF TITLE 10 OF THE MODESTO MUNICIPAL CODE; ADDING SECTIONS 10-2.229.1, 10-2.230.1, 10-2.508, 10-2.613, 10-2.713 AND 10-2.3007 THERETO; AND REPEALING SECTIONS 10-2.603 AND 10-2.703 THEREOF RELATING TO ZONING REGULATIONS.

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

SECTION 1. AMENDMENT OF CODE. Sections 10-2.215, 10-2.216, 10-2.221, 10-2.222, 10-2.234, 10-2.509, 10-2.510, 10-2.511, 10-2.512, 10-2.513, 10-2.514, 10-2.515, 10-2.516, 10-2.602, 10-2.606, 10-2.608, 10-2.609, 10-2.610, 10-2.702, 10-2.706, 10-2.708, 10-2.709, 10-2.2704, 10-2.2706, 10-2.3002, 10-2.3003, 10-2.3004 and 10-2.3005 of Chapter 2 of Title 10 are hereby amended to read as follows:

**10-2.215. DEPARTMENT.**

The Community and Economic Development Department of the City of Modesto.

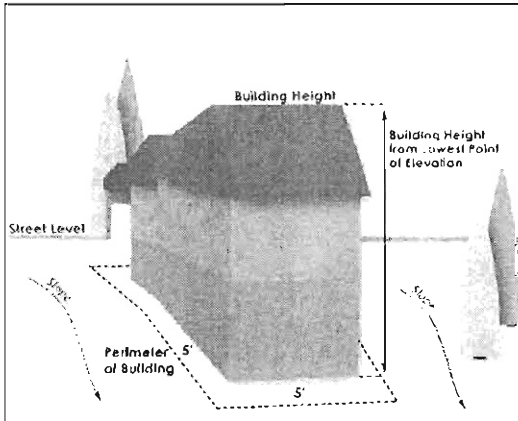
**10-2.216. DIRECTOR.**

The Community and Economic Development Director or designee of the City of Modesto.

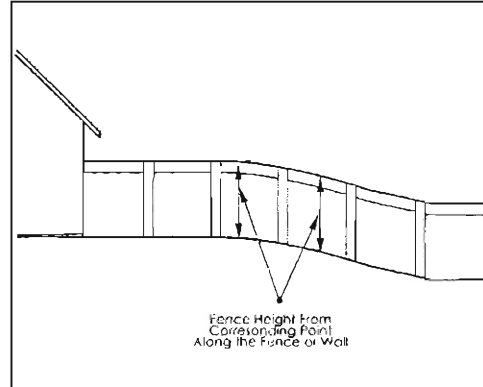
**10-2.221. GRADE.**

The lowest point of elevation on the finished graded surface of the ground, paving or sidewalk within that area which is no more than five (5) feet from the perimeter of the structure or building footprint, or in the case of a fence or wall, within one (1) foot perpendicular from the corresponding point along the fence or wall. The footprint of a building or structure, as described herein, shall include the supporting posts for any unenclosed portion of the structure, such as for a porch, patio cover, or canopy structure. See diagrams.

Building Height



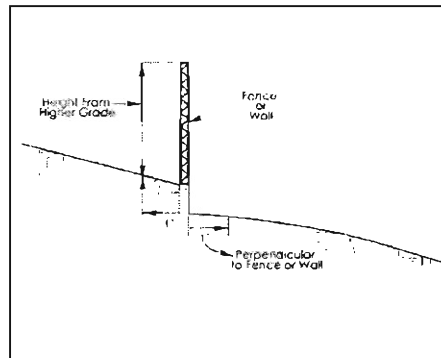
Fence or Wall Height



10-2.222. HEIGHT.

The vertical distance above grade to the highest point of a building or structure, fence or wall. Where the grade differs on each side of a fence or wall, the height of the fence or wall shall be measured from the higher grade. See diagram.

Fence or Wall Height



#### **10-2.234. LOT WIDTH.**

The horizontal distance between the side lot lines measured parallel to the front lot line at any point between the front and rear lot lines.

#### **10-2.509. HEIGHT.**

- (a) No structure shall exceed two (2) stories or thirty (30) feet whichever is the lesser height, except when permitted by a conditional use permit for structures occupied by the following uses: church, building or facility operated by a governmental agency, building or facility operated by a utility company.
- (b) No wall or fence shall exceed eight (8) feet in height, except if required for noise mitigation.

#### **10-2.510. FRONT YARD.**

- (a) Every building shall have a minimum front yard of fifteen (15) feet except for garages, carports and required parking spaces opening onto the front street which shall have a minimum front yard of twenty (20) feet.
- (b) On through lots, walls or fences higher than forty-two (42) inches in height and buildings shall have a front yard as required above on both frontages. If vehicular access is denied and a minimum six-foot wall or fence is maintained across one frontage that backs up to an Arterial Street or Expressway, accessory structures no higher than the wall or fence are permitted in the yard area adjacent to that frontage.
- (c) Front yard areas shall be unobstructed unless otherwise provided except that walls and fences outside the clear vision triangle are permitted a maximum of forty-two (42) inches in height.
- (d) A trash enclosure up to fifty-two (52) inches in height serving individual cans may be permitted in the front yard setback where there is no practical alternative, subject to the approval of the Director. Such enclosures shall be located as far from the front property line as feasible and shall fully screen the trash cans.

#### **10-2.511. SIDE YARDS.**

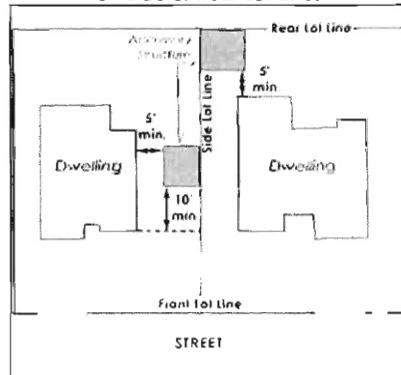
- (a) The minimum side yard for a dwelling shall be five (5) feet, except that a minimum ten (10) foot setback shall be required for two-story portions of

a new dwelling or second-story additions to an existing dwelling where located adjacent to an existing single-story dwelling, and subject to development plan review pursuant to §10-2.508(a). The ten (10) foot setback does not apply where the subject lot and adjacent lot were created by a final map within the past ten years. The required ten (10) foot setback may be reduced to a minimum of five (5) feet if it can be demonstrated that the additional setback is infeasible due to physical constraints and that the reduced setback is consistent with the Neighborhood Compatibility Guidelines as determined by the Director.

Use of a side yard by an adjacent property owner is not permissible without consent of the affected property owner, except as specified for that particular subdivision named Walnut Tree Estates, located at Walnut Tree Drive and Merle Avenue, the final map for which was filed on May 20, 1981, in Volume 29 of Maps, Page 90, Stanislaus County Records, the special provisions for permanent use of the side yard which were specified in Ordinance No. 2286-C.S. approved on September 4, 1984.

- (b) The minimum interior side yard for a single-story accessory structure, garage, carport, or required parking space shall be five (5) feet except that no side yard is required if the following conditions are satisfied:
  - (1) The accessory structure shall not be used for human habitation.
  - (2) The accessory structure shall be detached and at least five (5) feet from any dwelling. This minimum five (5) foot area between a dwelling and accessory structure shall be unobstructed from the ground upward.
  - (3) The accessory structure shall be located at least ten (10) feet behind the front corner of that portion of the dwelling nearest to the proposed accessory structure. See diagram.
  - (4) In no case shall any portion of a building or accessory structure overhang a property line.

**Accessory Structure  
Setback Requirements when located  
on Side or Rear Lot Lines**



- (c) The minimum side yard for all two-story portions of accessory buildings, whether used for human habitation or not, shall be five (5) feet.
- (d) On corner lots, the street side yard shall be a minimum of fifteen (15) feet for a dwelling or accessory building except for lots legally existing or on an approved tentative subdivision map prior to July 7, 1955, which shall have a minimum street side yard of seven and one-half (7.5) feet. Garages, carports and required parking spaces opening onto a side street shall have a minimum twenty-foot yard. Street-side yards shall be unobstructed, except that walls and fences outside the clear vision triangle are permitted to a maximum of forty-two (42) inches in height.

**10-2.512. REAR YARD.**

The minimum rear yard shall be ten (10) feet for any single-story portion of a building except that a minimum fifteen (15) foot rear yard shall be required for any two-story portion of a building. The minimum rear yard shall be fifteen (15) foot for any building that backs up to an Arterial Street or Expressway. The rear yard requirement for accessory buildings shall be in accordance to side yard requirements specified in §10-2.511(b) and (c). The minimum rear yard shall be five (5) feet for any garage, carport, or parking space with access off an alley.

**10-2.513. STREET FRONTAGE.**

Every lot shall have frontage on a street.

**10-2.514. AREA.**

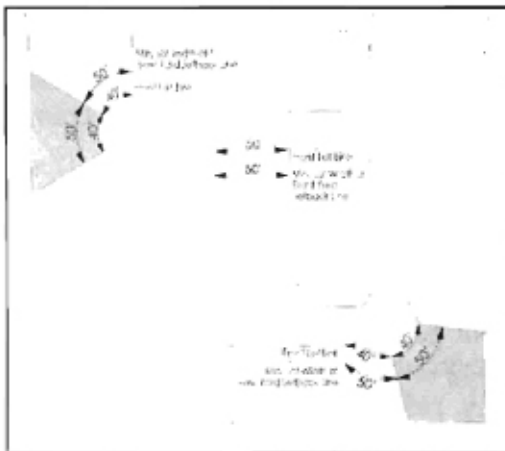
Every lot shall have a minimum area of five thousand (5,000) square feet for interior lots and five thousand five hundred (5,500) square feet for corner lots, except that a larger lot size may be required where necessary to maintain compatibility with the existing lots of an established neighborhood, in accordance with the Neighborhood Compatibility Guidelines.

**10-2.515. LOT WIDTH.**

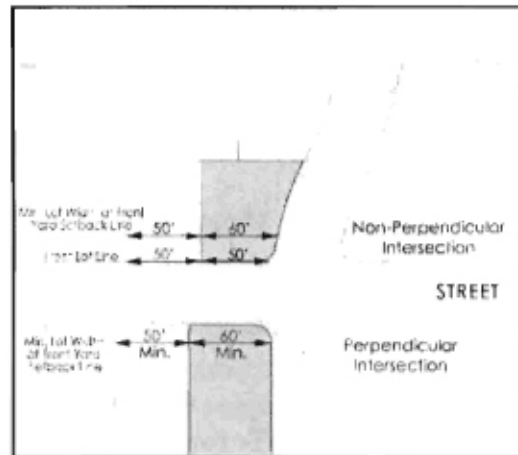
- (a) Every interior lot shall have a minimum width of fifty (50) feet, except the width may be reduced to a minimum of forty (40) feet at the front lot line where the front lot line is curved (i.e., lots on cul-de-sacs, elbows, or curvilinear streets), but the minimum width from the front yard setback line to the rear lot line shall be fifty (50) feet. See Diagram. The lot width may also be reduced as allowed in subsection (c) of this section.
- (b) Every corner lot shall have a minimum width of sixty (60) feet except the width may be reduced down to a minimum of fifty (50) feet at the front lot line for lots on non-perpendicular intersections or when the front lot line is curved but the minimum width from the front yard setback line to the rear lot line shall be sixty (60) feet. See Diagram.
- (c) Flag lots with a minimum width of twenty (20) feet at both the front lot line and front yard setback line may be approved with two (2) findings:
  - (1) Creation of the lot(s) will enable use of an existing parcel to permitted density.
  - (2) The existing parcel is of a size and shape that does not allow the creation of standard shaped lots, as determined in accordance with the Neighborhood Compatibility Guidelines.

- (d) No building permit shall be issued for a lot approved under subsection (c) above without a recorded subdivision or parcel map.

Lot Width (Interior)



Lot Width (Corner)



**10-2.516. LOT COVERAGE.**

All buildings and required parking spaces shall not cover more than fifty (50) percent of the area of an interior lot and fifty-five (55) percent of a corner lot.

**10-2.602. PERMITTED USES.**

The following are permitted uses:

- (a) Any permitted use in the R-1 Zone, including lodging, boarding or twenty-four (24) hour care where there are two (2) dwelling units on a lot.
- (b) Multiple-family dwellings, subject to the following: .
  - (1) Any development consisting of one (1) to four (4) dwelling units is permitted.
  - (2) Any development consisting of five (5) or more dwelling units shall be subject to development plan review by the Director and will be reviewed for compliance with the Multi-Family Residential Design Guidelines and the Neighborhood Compatibility Guidelines.
  - (3) Any development adjacent to property zoned R-1 that exceeds one (1) story shall be subject to development plan review by the Director in accordance with §10-2.508(a), except as specifically excepted therein.
- (c) Unattended containers placed for the donation of recyclable paper or beverage containers, not exceeding fifty (50) square feet per installation, in conjunction with and on the same site as a church, school, or governmental use shall be subject to development plan review.

**10-2.606. HEIGHT.**

- (a) No structure shall exceed two (2) stories or thirty (30) feet whichever is the lesser height, except when permitted by a conditional use permit for structures occupied by the following uses: church, building or facility operated by a governmental agency, building or facility operated by a utility company.
- (b) No wall or fence shall exceed eight (8) feet, except if required for noise mitigation.
- (c) All proposed uses or development involving structures which include a second-story component that are subject to development plan review shall be evaluated for compliance with the Multi-Family Residential Design Guidelines and the Neighborhood Compatibility Guidelines.

**10-2.608. SIDE AND REAR YARDS.**

- (a) For any one (1) story building or portion of a building, the minimum side yard shall be five (5) feet and minimum rear yard shall be ten (10) feet. Other applicable standards for side and rear yards are as required in the R-1 Zone.
- (b) For any two (2) story portion of a residential building not adjacent to property zone R-1 in the City or A-2, R-A or R-1 in the County, the minimum side yard shall be ten (10) feet and the minimum rear yard shall be fifteen (15) feet.
- (c) For any two (2) story portion of a residential building adjacent to property zoned R-1 in the City or A-2, R-A or R-1 in the County, the minimum side and rear yards shall be fifteen (15) feet.

**10-2.609. AREA AND DENSITY.**

- (a) Every lot created after October 25, 2007, shall have a minimum area of sixty-four thousand (64,000) square feet. Any lots less than sixty-four thousand (64,000) square feet existing prior to October 25, 2007, may be adjusted in shape or size as long as the adjusted lots comply with the previous minimum of six thousand (6,000) square feet for interior lots and six thousand five hundred (6,500) square feet for corner lots.
- (b) One (1) dwelling unit shall be permitted for each three thousand (3,000) square feet of lot area (maximum density fourteen and five-tenths (14.5) dwelling units per net acre).
- (c) A minimum of one (1) dwelling unit per four thousand (4,000) square feet (minimum density ten and nine-tenths (10.9) dwelling units per net acre) unless the applicant demonstrates and the Planning Commission makes the following findings:
  - (1) The proposed development is on an existing lot created prior to October 25, 2007, where the proposed lot cannot accommodate a development of the minimum density due to configuration of existing buildings or shape or size of the lot, or
  - (2) A lower density will not adversely affect the City's ability to accommodate and provide its remaining share of the regional housing needs assigned by StanCOG for very-low and low-income households based on the remaining acreage of Medium Density Residential (R-2) zoned land at the time of application, provided,

that if an adverse impact as described could otherwise occur, that such impact will be mitigated by one of the following means:

- (i) An equivalent parcel of land of the same or greater acreage is provided by the applicant and rezoned to the same or greater density simultaneously, or
- (ii) The applicant agrees to construct and covenant for affordable units on the subject site or another site in a number sufficient to ensure no net loss of units based on the minimum density set forth herein.

**10-2.610. LOT WIDTH.**

- (a) Every lot shall have a minimum width of sixty (60) feet except the width may be reduced to a minimum of fifty (50) feet at the front lot line when the front lot line is curved (i.e., lots on cul-de-sacs, elbows, or curvilinear streets) but the minimum width from the front yard setback line to the rear lot line shall be sixty (60) feet. The lot width may also be reduced as allowed in subsection (b) below.
- (b) Flag lots with a minimum width of twenty (20) feet at both the front lot line and front yard setback line may be approved with two (2) findings:
  - (1) Creation of the lot(s) will enable use of an existing parcel to permitted density.
  - (2) The existing parcel is of a size and shape that does not allow the creation of standard shaped lots, as determined in accordance with the Multi-Family Residential Design Guidelines and Neighborhood Compatibility Guidelines.
- (c) No building permit shall be issued for a lot approved under subsection (b) above without a recorded subdivision or parcel map.

**10-2.702. PERMITTED USES.**

The following are permitted uses:

- (a) Any permitted use in the R-2 Zone.
- (b) Boarding house.

- (c) Lodging house.

**10-2.706. HEIGHT.**

- (a) No structure shall exceed three (3) stories or forty-two (42) feet whichever is the lesser height, except when permitted by a conditional use permit for structures occupied by the following uses: church, building or facility operated by a governmental agency, building or facility operated by a utility company.
- (b) No wall or fence shall exceed eight (8) feet, except if required for noise mitigation.
- (c) All proposed uses or development involving structures which include a second or third-story component that are subject to development plan review shall be evaluated for compliance with the Multi-Family Residential Design Guidelines and the Neighborhood Compatibility Guidelines.

**10-2.708. SIDE AND REAR YARDS.**

- (a) For any one (1) or two (2) story building or portion of a building, side and rear yards shall be as required in the R-2 zone.
- (b) For any three (3) story portion of a building not adjacent to property zoned R-1 in the City or A-2, R-A or R-1 in the County the minimum side yard shall be ten (10) feet and the minimum rear yard shall be fifteen (15) feet.
- (c) For any three (3) story portion of a residential building adjacent to property zoned R-1 in the City or A-2, R-A or R-1 in the County the minimum side and rear yards shall be twenty (20) feet.

**10-2.709. AREA AND DENSITY.**

- (a) Every lot created after October 25, 2007, shall have a minimum area of three (3) acres (one hundred thirty thousand six hundred eighty (130,680) square feet). Any lots less than three (3) acres existing prior to October 25, 2007, may be adjusted in shape or size as long as the adjusted lots comply with the previous minimum of six thousand (6,000) square feet for interior lots and six thousand five hundred (6,500) square feet for corner lots.

- (b) Three (3) dwelling units shall be permitted for the first six thousand (6,000) square feet. One (1) dwelling unit shall be permitted for each fifteen hundred (1,500) square feet over the required area for three (3) dwelling units (maximum density twenty-nine (29.0) dwelling units per net acre).
- (c) A minimum of one (1) dwelling unit per two thousand (2,000) square feet (minimum density twenty-one and eight tenths (21.8) dwelling units per net acre) unless the applicant demonstrates and the Planning Commission makes the following findings:
  - (1) The proposed development is on an existing lot created prior to October 25, 2007, where the proposed lot cannot accommodate a development of the minimum density due to configuration of existing buildings or shape or size of the lot, or
  - (2) A lower density will not adversely affect the City's ability to accommodate and provide its remaining share of the regional housing needs assigned by StanCOG for very-low and low-income households based on the remaining acreage of Medium-High Density Residential (R-3) zoned land at the time of application, provided, that if an adverse impact as described could otherwise occur, that such impact will be mitigated by one of the following means:
    - (i) An equivalent parcel of land of the same or greater acreage is provided by the applicant and rezoned to the same or greater density simultaneously, or
    - (ii) The applicant agrees to construct and covenant for affordable units on the subject site or another site in a number sufficient to ensure no net loss of units based on the minimum density set forth herein.

**10-2.2704. REVIEW PROCEDURE.**

- (a) Upon the filing of a complete application for plot plan review, the Secretary shall set a date for consideration by the Board, Commission, or Director. The date shall be not less than ten (10) nor more than fifty (50) days after the filing date.
- (b) No more than twenty (20) days after the closing of consideration the Board, Commission, or Director shall announce findings and decisions,

the Board and Commission by resolution, the Director by an administrative decision. The resolution or administrative decision shall state the reasons the Commission's, Board's, or Director's action is necessary to carry out the purpose of this Chapter as well as any conditions of approval. A copy of the resolution or administrative decision shall be mailed to the applicant.

- (c) A Board or Commission resolution shall be final and effective fifteen (15) days after date of adoption unless the decision is appealed to the Council within the fifteen-day period. Filing of an appeal shall stay the effective date of the Board's or Commission's decision until the Council has acted on the appeal. Appeals shall be filed and considered by the Council in accordance with Section 1-4.01 et seq. of the Municipal Code.
- (d) An administrative decision of the Director shall be final and effective fifteen (15) days after date of approval or denial unless the decision is appealed to the Board of Zoning Adjustment within the fifteen-day period. Filing of an appeal shall stay the effective date of the Director's administrative decision until the Board has acted on the appeal. Appeals shall be filed and considered by the Board in accordance with the procedures in §10-2.2803 of the Modesto Municipal Code.

#### **10-2.2706. CONCURRENT REVIEW OF PLOT PLANS.**

Notwithstanding any provisions of this Chapter to the contrary, where a project requires both plot plan review by the Commission or Director and a variance from the Board, the Board shall review and either approve or deny both the plot plan and variance requests in accordance with all other applicable procedures. Where any form of plot plan review is required by either the Board or Commission, plot plan approval shall not be required by the Director.

#### **10-2.3002. APPLICABILITY.**

- (a) The following specific regulations shall apply to all Development Plan Reviews. Where conflict in regulation occurs with other provisions of this chapter, the regulations in this article shall apply.
- (b) The following development projects are subject to Development Plan Review:
  - (1) All projects in the P-O, C-1, C-2, C-3, C-M, M-1, M-2, or B-P zones which do not otherwise require a Plot Plan Review or Conditional Use Permit.

- (2) All second story projects in the R-1, R-2, and R-3 zones pursuant to Section 10-2.508.
- (3) In the P-D zone, for all Commercial and Industrial uses, changes in development plan pursuant to Section 10-2.1709 (c).
- (4) The following types of projects are exempt from Development Plan Review:
  - (i) Alterations which meet both of the following criteria: roofline is unchanged, and existing materials and styles are maintained.
  - (ii) Parking lot resurfacing or restriping provided that no change or alteration is made to trees, landscaping, or access points
  - (iii) Tenant improvements affecting only the building interior.

#### **10-2.3003. SCOPE OF REVIEW.**

Where Development Plan Review is required for a use or structure under the provisions of this article, the following aspects of the project are to be reviewed by the Director:

- (a) Conformance of the proposed project to applicable development standards as established by this Title and the Standard Specifications Conformance of the proposed development with adopted Design Review Guidelines applicable to the zone and development.
- (b) The location of the site and structures in relation to buildings on adjoining sites, with particular attention to privacy.
- (c) In granting plot plan approval, the Director may impose conditions deemed necessary or desirable to maintain neighborhood compatibility and to protect the public health, safety or welfare.

#### **10-2.3004. REVIEW PROCEDURE.**

- (a) Upon filing of any Development Plan subject to review under this article, the Planning staff shall, within ten (10) working days, make a determination as to completeness of the application and associated information. The Planning Division, Community & Economic

Development Department, may refer the application and all accompanying maps, drawings, plans, elevations, tabulations and other information to various City departments for review and comment.

- (b) Following a determination that the application is complete, the Director shall review the application and shall, following completion of such review, announce an administrative decision, which may include conditions and corrections required to establish conformance with regulations as described above. A copy of this decision shall be mailed to the applicant.
- (c) At the discretion of the Director, a Development Plan subject to review under this article may be referred to the Planning Commission for decision.
- (d) The administrative decision shall be final and effective fifteen (15) days after the date of approval or denial unless the decision is appealed in writing to the Planning Commission within the fifteen (15) day period.
- (e) For residential projects, subject to development plan review pursuant to §10-2.508(a) for compliance with the Neighborhood Compatibility Guidelines, the following notification procedures shall be followed:
  - (1) Within fifteen (15) days following application for an administrative decision by the Director, a notice shall be mailed to every property owner, as shown on the updated equalized assessment role of the County of Stanislaus, who owns property, any part of which is within one hundred fifty (150) feet of the property involved. This notice, shall at a minimum, identify the location of the subject property, describe the proposal, and explain where the proposed plans shall be available for public review.
  - (2) At the time of administrative decision by the Director, a second notice shall be mailed to all those who received the first notice, plus any other interested parties requesting such notice. In addition to the information included on the first notice, the second notice shall indicate that a decision has been made, whether for approval or denial, and explain the 15-day appeal period which starts as of the date of mailing of the second notice, as shown by the postmark.

#### **10-2.3005. APPEALS.**

Any person disagreeing with an administrative decision made pursuant to this article, may appeal the decision for two story buildings or accessory structures or

second story additions to the Board of Zoning Adjustments. All other appeals shall be heard by the Planning Commission (“Commission”). A written appeal shall be filed with the Director within fifteen (15) days of the decision. Filing of an appeal within this period shall stay the effective date of the decision until the Commission has acted on the appeal. The written appeal shall clearly state the decision excepted to and the grounds for the appeal. Appeals shall be filed and considered by the Commission in accordance with the following procedure:

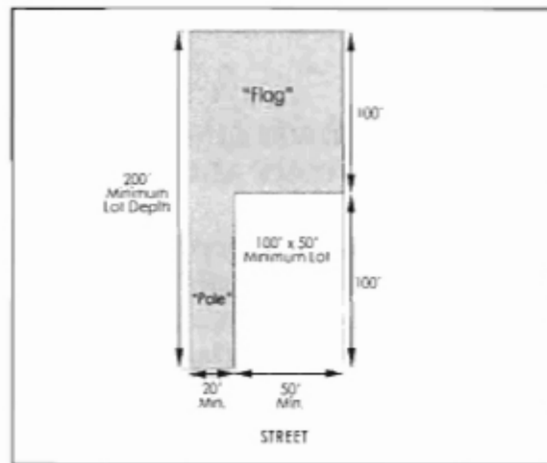
- (a) Upon the filing of an appeal in the proper form and with a fee as established by the Council, the Director shall set the matter for consideration by the Commission within thirty (30) days after the date of the filing of said appeal with the Director. Written notice of the date and time of consideration shall be given to the appellant and any other persons requesting notice not less than ten (10) days prior to Commission consideration.
- (b) No more than twenty (20) days after the closing of consideration, the Commission shall announce its findings and decision by resolution. Its decision shall be final unless an appeal to the Council is filed in accordance with Section 1-4.01 et seq. of the Municipal Code.
- (c) Written notice shall be considered as having been given whenever it has either been personally delivered or deposited in the United States mail, postage prepaid, and addressed to the person entitled to receive the notice.

SECTION 2. AMENDMENT OF CODE. Sections 10-2.229.1, 10-2.230.1, 10-2.508, 10-2.613, 10-2.713 and 10-2.3007 of Chapter 2 of Title 10 are hereby added to read as follows:

**10-2.229.1. LOT, FLAG.**

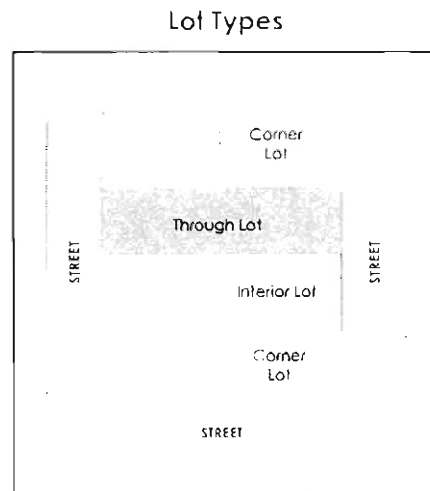
A lot that does not satisfy the standard minimum lot width requirement for the zone at the front lot line and consists of two distinct parts: the “flag” (which is the buildable portion of the lot) located generally behind another lot; and the “flag pole” which provides the only access from the street to the buildable portion of the lot. See diagram.

### Flag Lot



**10-2.230.1. LOT, THROUGH.**

A lot located between two parallel streets, with frontage on both streets. See diagram.

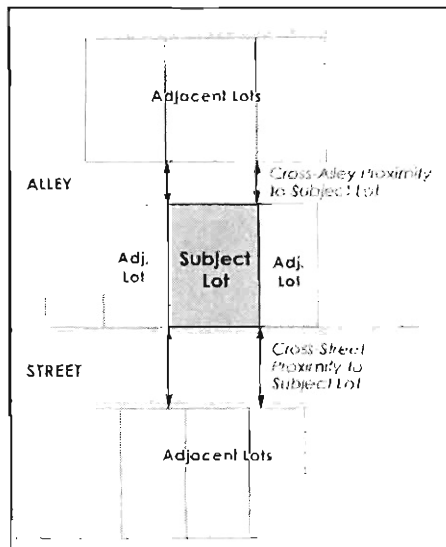


**10-2.508. NEW TWO-STORY DWELLINGS AND ACCESSORY BUILDINGS, AND SECOND STORY ADDITIONS.**

- (a) All new two-story dwellings and accessory buildings, and all second-story additions to an existing dwelling, balcony, or accessory building, including exterior alterations (such as a new window) to second-story portions of an existing dwelling or accessory building, shall be subject to development plan review by the Director pursuant to Article 30, for compliance with the Neighborhood Compatibility Guidelines as adopted and amended from time to time by City Council. A proposed project shall be subject to second-story development plan review if the proposed project has any of the following characteristics, as determined by the Director:
  - (1) The height above grade to top plate line is at any point equivalent to two stories or sixteen (16) feet or more.
  - (2) Windows or balconies are provided at a height from which views of a neighboring rear yard and actively used side yard areas are readily visible.
- (b) Notwithstanding §10-2.508(a), the following conditions are exempt from second-story development plan review.

- (1) The subject lot and adjacent residential lots were created by a final subdivision map recorded within the past ten years. This exemption does not apply to any addition or exterior alteration to an existing dwelling. The term “adjacent residential lot” in this subsection means each lot zoned or used residentially that share a common property line or is separated by an alley or Collector or Residential Street to the subject lot, including those which touch only at a corner. See Diagram.
  
- (2) The proposed exterior alterations to existing second-story portions of a dwelling or accessory building will have no impact on the privacy and use of neighboring rear yard areas and building massing is consistent with the neighboring dwellings, as determined by the Director.

**Adjacent Residential Lots**



**10-2.613. DESIGN.**

When considering any building permit or administrative approval, development plan review, or conditional use permit, the Director, Board of Zoning Adjustment or Planning Commission, as applicable, shall apply the policies and guidelines of the applicable adopted design guidelines to the proposed project.

**10-2.713. DESIGN.**

When considering any building permit or administrative approval, development plan review, or conditional use permit, the Director, Board of Zoning Adjustment or Planning Commission, as applicable, shall apply the policies and guidelines of the applicable adopted design guidelines to the proposed project.

**10.2.3007. CONCURRENT REVIEW OF PROJECTS.**

Notwithstanding any provisions of this chapter to the contrary, where a project requires multiple applications, the applications are reviewed concurrently by the higher reviewing body. For example, a project requires both a variance from the Board and development plan review by the Director, the Board shall review and either approve or deny both the development plan review and variance requests in accordance with all other applicable procedures. Where residential development of a tentative subdivision or parcel map requires development plan review, the development plan review shall occur by the Planning Commission at the same time as consideration for tentative subdivision or parcel map.

SECTION 3. REPEALS. Sections 10-2.603 and 10-2.703 of Chapter 2 of Title 10 are hereby repealed:

**10-2.603. PLOT PLAN USES.** This Section is Repealed.

**10-2.703. PLOT PLAN USES.** This Section is Repealed.

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

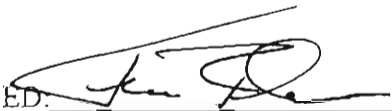
SECTION 5. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in *The Modesto Bee*, the official newspaper of the City of Modesto, setting forth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

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 11th day of May, 2010, 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: Geer, Lopez, Marsh, Muratore, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: Hawn

APPROVED:   
JIM RIDENOUR, Mayor

ATTEST:

By   
STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
SUSANA ALCALA WOOD, City Attorney

Ord. No. 3526

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 25th day of May, 2010, Councilmember Lopez moved its final adoption, which motion being duly seconded by Councilmember Hawn, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: 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 24, 2010

ORDINANCE NO. 3527-C.S.

AN ORDINANCE AMENDING SECTIONS 10-2.502, 10-2.902, 10-2.1002, 10-2.1703, 10-2.2002, 10-2.2110 and 10-2.2202 OF CHAPTER 2 OF TITLE 10 OF THE MODESTO MUNICIPAL CODE; ADDING SECTIONS 10-2.216.2, 10-2.218.1, 10-2.236.1, 10-2.2202.1 and 10-2.2202.2 THERETO; AND REPEALING SECTIONS 10-2.225, 10-2.503, 10-2.1102.1, 10-2.1706, 10-2.2009 and 10-2.2318 THEREOF RELATING TO ZONING REGULATIONS

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

SECTION 1. AMENDMENT OF CODE. Sections 10-2.502, 10-2.902, 10-2.1002, 10-2.1703, 10-2.2002, 10-2.2110 and 10-2.2202 of Chapter 2 of Title 10 are hereby amended to read as follows:

**10-2.502. PERMITTED USES.**

The following are permitted uses:

- (a) One (1) single-family dwelling per lot.
- (b) Two (2) single-family dwellings or a duplex on any corner lot, provided that the driveway serving the off-street parking for one (1) dwelling unit shall have access to one (1) street and the driveway serving the off-street parking for the other dwelling unit shall have access to another street. If the lot has access to an alley, one (1) or both driveways may access to the alley.
- (c) Two (2) dwelling units are allowed on interior lots where the following conditions are met:
  - (1) The property owner shall live in one (1) of the units. Prior to final inspection of any such unit, owner shall record a notice of conditions specifying that owner shall occupy one (1) of the units at all times.
  - (2) One (1) of the units shall have no more than six hundred forty (640) square feet. Subject to execution and recordation of a covenant providing that one (1) of the units shall be affordable to

persons/families of low income in accordance with Section 10-3.501, this limitation shall be increased to eight hundred (800) square feet. Subject to execution and recordation of a covenant providing that one (1) of the units shall be affordable to persons/families of very low income in accordance with Section 10-3.501, this limitation shall be increased to one thousand (1000) square feet.

- (3) Off street parking spaces shall be provided, the number in conformance with Section 10-2.2002(a)(1). Where affordability covenants have been executed, one (1) space in tandem may be provided in conjunction with provision of low income housing, and up to two (2) spaces in tandem in conjunction with very low income housing.
- (4) If there is an existing unit prior to plan approval, the unit must be brought into conformance with the Housing Code prior to occupancy of the second unit.
- (5) Maintaining a single-family dwelling appearance is required through means such as:
  - (i) Attaching the second unit to the first on small or typical sized lots. On large or deep lots detached units are acceptable.
  - (ii) Putting the second unit entrance to the side or rear of the building so it is not readily visible from the same street as the first unit's entrance.
  - (iii) Locating parking so that all three (3) spaces are not readily visible from the same street. Alley access for both units is acceptable.
  - (iv) Employing construction materials and architectural styles which blend the units so they appear as a single residence if attached or a single residence and accessory building if detached.
- (6) The City Council may designate, from time to time, by resolution, areas within which second units will not be permitted due to infrastructure constraints relating to water and sanitary sewer.

- (d) The provision of lodging and/or boarding to a maximum of three (3) persons by a proprietor who lives on the premises. Lodgers and boarders may use the proprietor's kitchen, but shall not be permitted separate eating, cooking or food storage facilities. Lodging or boarding is not permitted where there are two (2) dwellings on a lot.
- (e) The operation of a bed and breakfast home, provided that not more than two (2) bedrooms may be used for the lodging of guests and that the property owner shall reside on the premises.
- (f) Adult day care for three (3) or fewer persons in addition to members of the family if there is only one (1) dwelling unit on the lot.
- (g) A small family day care home as defined by California Health and Safety Code Section 1596.78(c) and provided by Section 1597.45. Only one (1) day care business is permitted per lot.
- (h) A residential care facility serving six (6) or fewer persons in addition to staff.
- (i) Parks owned and operated by a governmental agency.
- (j) The growing of fruit and nut trees, vines, row crops and horticultural stock.
- (k) Signs subject to the provisions of Article 21.
- (l) Accessory uses and structures customarily incidental to the above permitted uses. Use of shipping containers as defined is not permitted.
- (m) A large family day care home as defined by California Health and Safety Code Section 1596.78(b) and provided by Section 1597.46 subject to development plan review as provided in Article 30. Review of a large family day care home shall be limited to a determination that required parking has been provided and that the site plan will preclude undue noise impacts on neighboring properties and provide for appropriate pick-up and drop-off not impacting the traffic level of service or safety characteristics of the streets in the vicinity.
- (n) Manufactured Homes.
  - (1) Purpose and Intent.

The purpose and intent of allowing and regulating manufactured homes:

- (i) To provide an alternative type of housing for persons desiring an alternative to conventional housing types;
  - (ii) To assist in providing a diversity of housing in the community, regarding housing choices, types and prices; and
  - (iii) To ensure the compatibility of such dwellings with surrounding uses and properties and to avoid any impacts associated with such dwellings.
- (2) Definitions.
- (i) **“Manufactured Home”** means a structure that was constructed on or after June 15, 1976, is transportable in one or more sections, is eight body feet or more in width, or 40 body feet or more in length, in the traveling mode, or, when erected on site, is 320 or more square feet, is built on a permanent chassis and designed to be used as a single-family dwelling with or without a foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein, and which was constructed in a factory according to the National Manufactured Housing Construction and Safety Standards Act of 1974, as amended (42 U.S.C. 5401-5445) and has been issued a label of approval by the United States Department of Housing and Urban Development.
  - (ii) **“Mobile Home”** means a structure that was constructed prior to June 15, 1976, is transportable in one or more sections, is eight body feet or more in width, or 40 body feet or more in length, in the traveling mode, or, when erected onsite, is 320 or more square feet, is built on a permanent chassis and designed to be used as a single-family dwelling with or without a foundation system when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein, and which has not been inspected and approved as meeting the requirements on the National

Manufactured Housing Construction and Safety Standards Act of 1974, as amended (42 U.S.C. 5401-5445). A mobile home is distinguished from a manufactured home as defined herein.

- (iii) **“Modular Home”** means any structure or component thereof, designed primarily for residential occupancy which is wholly or in substantial part made, fabricated, formed, or assembled in manufacturing facilities for installation, or assembly and installation, on the building site, and which is designed and constructed to conform to the California Building Code. For the purpose of this Chapter, a modular home that meets the California Building Code shall be considered the same as a detached, single-family dwelling and permitted under the same zoning regulations as a detached, single-family dwelling.
- (iv) **“Permanent Foundation”** shall mean assembly of materials constructed below, or partially below grade, not intended to be removed from its installation site, which is designed per the manufacturer’s instructions to support a manufactured home structure and engineered to resist the imposition of external natural forces, as defined by the California Health and Safety Code or the California Building Code, whichever is more restrictive.

(3) Development Standards.

- (i) Eligibility. A manufactured home is eligible for installation if:
  - a) It was constructed after June 15, 1976, and was issued a label of approval by the United States Department of Housing and Urban Development; and
  - b) It has not been altered in violation of applicable federal and state codes.
  - c) All other mobile homes shall be prohibited.
- (ii) Use. Manufactured homes may only be occupied only as a residential use type.

- (iii) Foundation. Manufactured homes shall be attached to a permanent foundation in compliance with all applicable regulations in the California Building Code, and of the Health and Safety Code. The permanent foundation shall be constructed so that the floor of the manufactured home shall be no higher than eighteen (18) inches above finished grade.
- (iv) Exterior finish materials. Manufactures Homes shall include exterior finish materials that are in keeping with the character of the neighborhood, permitted by the California Building Code and customarily used on conventional residential dwellings, such as wood, vinyl, masonry or similar materials. The exterior finish materials shall extend down to the minimum distance above finished grade allowed by the California Building Code. Shiny, metallic surfaces are prohibited. Any perimeter space between the exterior finish materials and the finished grade shall be filled in with a Masonry Veneer as defined in the California Building Code.
- (v) Roof pitch and material. Manufactured Homes shall maintain a roof pitch of not less than two (2) inch vertical rise for each twelve (12) inch of horizontal run and include roof materials that are in keeping with the character of the neighborhood, permitted by the California Building Code and customarily used on conventional residential dwellings, such as asphalt shingles, concrete or clay tiles or equivalent material.
- (vi) Roof overhang. A minimum roof overhang of at least one (1) foot shall be provided for each Manufactured Home.
- (vii) Utility connections. All Manufactured Homes shall have standard utility connections. The housing unit electrical, gas, water and drain connections shall be made permanent in a manner applicable to permanent buildings. Gas shutoff valves, meters and regulators shall not be located beneath the Manufactured Home.
- (viii) Municipal Code. Manufactured Homes shall be subject to all provisions of the Municipal Code applicable to conventional residential structures and meet all

development standards for the zone in which they are to be installed.

(4) Building Permit.

Prior to installation of a Manufactured Home on a permanent foundation, the owner or a licensed contractor shall obtain a building permit from the City Building Safety Division.

**10-2.902. PERMITTED USES.**

The following are permitted uses subject to Development Plan Review by the Director:

- (a) Business office (including government office, insurance sales and services, real estate sales and services, stockbroker, utility office; excluding retail or wholesale sales, banks, savings and loans and similar financial institutions).
- (b) Medical and dental office or laboratory, chiropractor, chiropodist, optometrist.
- (c) Pharmacy (excluding manufacture or distribution of pharmaceuticals) only when accessory to a medical office or clinic.
- (d) Professional office (including accountant, architect, attorney, engineer, surveyor).
- (e) Unattended containers placed for the donation of recyclable paper or beverage containers, not exceeding fifty (50) square feet per installation, in conjunction with and/or the same site as a church or governmental use.
- (f) A parking area for an immediately adjacent commercial use in a commercial zone.
- (g) Non-residential Condominiums.

**10-2.1002. PERMITTED USES.**

The following are permitted uses, subject to Development Plan Review by the Director:

- (a) Any permitted use in the P-O Zone other than dwellings.

- (b) Antique store.
- (c) Apparel store.
- (d) Art supply store.
- (e) Art studio, art gallery.
- (f) Autograph and philatelist store.
- (g) Automobile lubrication.
- (h) Automobile tune-up.
- (i) Bank, savings and loan, credit union.
- (j) Bakery (retail).
- (k) Barbershop, beauty shop.
- (l) Bookstore, newsstand.
- (m) Business services (duplicating, addressing, mailing, blueprinting, photostating, stenographic).
- (n) Camera store.
- (o) Child and adult day care.
- (p) Church.
- (q) Computer store (sales and repair).
- (r) Drugstore, pharmacy.
- (s) Fabric store (including upholstery material).
- (t) Florist, plant nursery.
- (u) Food store.
- (v) Frozen food lockers (individual retail rental).

- (w) Furniture store.
- (x) Gift, novelty or souvenir store.
- (y) Gunsmith shop.
- (z) Hardware store (limited to household and garden).
- (aa) Housewares and small appliance store (including pictures, frames, lamps, shades, window shades, draperies, curtains, microwaves, irons, toasters).
- (ab) Instruction in arts, athletics, self defense (such as art, music, drama, dance, gymnastics, judo, karate).
- (ac) Interior decorating service.
- (ad) Jewelry, watch or clock store (sales and repair).
- (ae) Laundry and dry cleaning store.
- (af) Library.
- (ag) Liquor store (off-premise consumption).
- (ah) Luggage and leather good store (sales and repair)
- (ai) Motel, hotel.
- (aj) Museum.
- (ak) Musical instruments and record store.
- (al) Office supply and stationery store.
- (am) Paint and wallpaper store.
- (an) Parks owned and operated by a governmental agency.
- (ao) Parking lot or garage.
- (ap) Parts store (excluding tires) for automobiles, motorboats, motorcycles, and trailers (sales only, no repair, service, rebuilding or installation).

- (aq) Pet store.
- (ar) Photographic studio, film processing.
- (as) Radio, television and electronic device store (sales and repair).
- (at) Repair shop (such as bicycle, camera, lawn mower and saw sharpening, knife and tool, musical instrument, key duplication, small appliance, handyman repair service).
- (au) Restaurant (Alcoholic beverages may be served only in conjunction with meals. No separate bar or cocktail lounge is allowed. Music may be provided, but no dancing or entertainment is permitted).
- (av) Reverse vending machines or unattended containers for the donations of recyclable paper or beverage containers, occupying no more than fifty (50) square feet, in conjunction with and on the same site as any other permitted or conditional use.
- (aw) Service station.
- (ax) Shoe store (sales and repair).
- (ay) Sporting goods store.
- (az) Tailor and seamstress shop.
- (ba) Tobacco store.
- (bb) Toy or hobby store.
- (bc) Travel agency.
- (bd) Vocational school.

**10-2.1703. PERMITTED USES.**

The following are permitted uses:

- (a) Any use specified in the ordinance establishing a P-D Zone.
- (b) Residential condominiums, community apartment projects and stock cooperatives. These uses are permitted only in a P-D Zone.

## 10-2.2002. NUMBER OF REQUIRED SPACES.

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

- (a) Residential Uses.
  - (1) Unless otherwise provided below, for sites with one (1) to thirty-six (36) dwelling units, two (2) off-street parking spaces shall be provided for each unit. For each additional unit above thirty-six (36), one and one-half (1.5) spaces per unit shall be provided. Studio and one-bedroom units shall require one (1) space per unit.
  - (2) In a project, for every dwelling unit not having direct vehicular access to a public street:
    - (i) An additional one-half (0.5) space is required for each unit with a one (1) car garage.
    - (ii) One (1) additional space is required for each unit with a two (2) car garage.
  - (3) For the purpose of meeting the requirements in (a)(3) of this section that are greater than those in (a)(1) of this section, tandem or driveway standard-size spaces may be counted.
  - (4) For developments where vehicular access is via private streets or common driveways, one (1) recreational vehicle parking space shall be provided for every twenty-five (25) dwelling units. For projects with less than twenty-five (25) dwelling units, no such spaces are required. Recreational vehicle spaces shall at a minimum be ten (10) feet wide and twenty-six (26) feet long.
  - (5) Residential care facility, residential service facility, or family day care home: One (1) additional space for each employee or attendant beyond two (2).
- (b) Nonresidential Uses.

- (1) Bar: One (1) for each three (3) seats or one (1) for each sixty (60) square feet of drinking area when the number of seats not known or not permanently fixed;
- (2) Beauty college: Two and one-half (2.5) for each training station;
- (3) Bingo game: One (1) for each four (4) seats;
- (4) Boarding and lodging house, club or fraternity with sleeping rooms: One (1) for each two (2) beds;
- (5) Bowling alley: One (1) for each three hundred (300) square feet;
- (6) Child day care other than family day care homes: One (1) for each five (5) children;
- (7) Church: One (1) for each four (4) seats in the building with the largest capacity;
- (8) Dance hall: One (1) for each fifty (50) square feet of floor area used for dancing;
- (9) Hospital: One and three-quarters (1.75) for each bed;
- (10) Hotel or motel: One (1) for each guest room. Additional spaces for restaurants, meeting facilities and other related uses shall be provided as required;
- (11) Library: One (1) for each three hundred (300) square feet;
- (12) Manufacturing or related use: One (1) for each six hundred (600) square feet;
- (13) Medical or dental office: One (1) for each two hundred (200) square feet;
- (14) Motor vehicle and machinery repair: One (1) for each three hundred (300) square feet;
- (15) Mortuary or funeral home: One (1) for each four (4) seats in the largest room used for services (tandem spaces may be counted);

- (16) Office or service business: One (1) for each three hundred (300) square feet;
  - (17) Outdoor recreational use: Ten (10) spaces per usable recreation acre;
  - (18) Pool hall: One (1) for each three hundred (300) square feet;
  - (19) Restaurant: One (1) for each three (3) seats or one (1) for each sixty (60) square feet of dining area when the number of seats is not known or not permanently fixed;
  - (20) Retail business: One (1) for each three hundred (300) square feet;
  - (21) Sanitarium, nursing home, home for the elderly or other twenty-four (24) hour care facility: One (1) for each four (4) beds. Additional parking shall be provided as required for a proprietor's dwelling;
  - (22) School for instruction in the arts, athletics, or self-defense and vocational schools: One (1) for each three hundred (300) square feet;
  - (23) Theaters: One (1) for each four (4) seats;
  - (24) Veterinary hospital: One (1) for each three hundred (300) square feet including animal runs;
  - (25) Warehouse: One (1) for each two thousand (2,000) square feet up to ten thousand (10,000) square feet, one (1) for each five thousand (5,000) square feet after the first ten thousand (10,000) square feet. Parking for a mini-warehouse shall only be required if there is an office or residence included in the project; and
  - (26) Wholesale business: One (1) for each three hundred (300) square feet.
- (c) Nonresidential Uses Inside the Downtown Area, as defined in Section 10-2.216.2.
- (1) Bar: One (1) for each four (4) seats or one (1) for each sixty (60) square feet of drinking area when the number of seats is not known or not permanently fixed;

- (2) Beauty college: Two and one-half (2.5) for each training station;
- (3) Bingo game: One (1) for each four (4) seats;
- (4) Boarding and lodging house, club or fraternity with sleeping rooms: One (1) for each two (2) beds;
- (5) Bowling alley: One (1) for each three hundred (300) square feet;
- (6) Church: One (1) for each five (5) seats in the building with the largest capacity;
- (7) Dance hall: One (1) for each fifty (50) square feet of floor area used for dancing;
- (8) Hospital: One and one-half (1.5) for each bed;
- (9) Hotel or motel: One (1) for each guest room. Additional spaces for restaurants, meeting facilities and other related uses shall be provided as required;
- (10) Library: One (1) for each five hundred (500) square feet;
- (11) Manufacturing or related use: One (1) for each six hundred (600) square feet;
- (12) Medical or dental office: One (1) for each two hundred (200) square feet;
- (13) Motor vehicle and machinery repair: One (1) for each six hundred (600) square feet, with repair space for motor vehicles or machinery not counted as parking spaces;
- (14) Mortuary or funeral home: One (1) for each five (5) seats in the largest room used for services (tandem spaces may be counted);
- (15) Office or service business: One (1) for each five hundred (500) square feet;
- (16) Pool hall: Two (2) for each table;

- (17) Restaurant: One (1) for each four (4) seats or one (1) for each sixty (60) square feet of dining area when the number of seats is not known or not permanently fixed;
  - (18) Retail business: One (1) for each five hundred (500) square feet;
  - (19) Sanitarium, nursing home, home for the elderly or other twenty-four (24) hour care facility. One (1) for each four (4) beds. Additional parking shall be provided as required for a proprietor's dwelling;
  - (20) School for instruction in the arts, athletics, or self-defense and vocational schools: One (1) for each five hundred (500) square feet;
  - (21) Theaters: One (1) for each five (5) seats;
  - (22) Veterinary hospital: One (1) for each five hundred (500) square feet, including animal runs;
  - (23) Warehouse: One (1) for each two thousand (2,000) square feet up to ten thousand (10,000) square feet, one (1) for each five thousand (5,000) square feet after the first ten thousand (10,000) square feet. Parking for a mini-warehouse shall only be required if there is an office or residence included in the project;
  - (24) Wholesale business: One (1) for each eight hundred (800) square feet.
- (d) Additional spaces required by expansion, reconstruction or change in use shall be provided in accordance with this article, except that reconstruction or change in use shall not result in a requirement for additional parking in the Downtown Area, as defined in Section 10-2.216.2.
  - (e) When the required number of spaces results in a fractional space, it shall be counted as a space if it is one-half (0.5) space or more.
  - (f) When a building is removed, any new building on the site shall have spaces provided in accordance with this article.
  - (g) Where there are mixed uses, the requirement for spaces shall be the sum of the requirements for each use unless approved for joint use of spaces as set forth below in this section.

- (h) The Board may approve joint use of spaces subject to the following:
  - (1) A maximum of fifty (50) percent of the requirement for one (1) use may be provided by the spaces for another use if the two (2) uses are open substantially different hours or days of the week;
  - (2) The parking spaces for both uses comply with all other requirements of this article;
  - (3) For mixed-use projects incorporating both residential and office or commercial uses, the Board/Commission shall be guided by the following principals in making its determination:
    - (i) For office/residential combinations, the Board/Commission may consider a reduction in the number of spaces required for the office portion of up to one-half (1/2) space for each space required for the residential portion of the project.
    - (ii) For commercial/residential combinations, the Board shall consider the specific nature of the commercial businesses and their hours of operation. Criteria for consideration shall include (a) no overlap in peak period of parking between uses, and (b) the extent of overlap in hours of operation. Dependent upon this determination, the Board/Commission may consider a maximum reduction in the number of spaces required for the commercial portion of the project of up to one-half (1/2) space for each space required for the residential portion of the project.
  - (4) If the properties where the use and the required parking are located are owned by different parties, a covenant shall be recorded by the owner of the parking for the benefit of the City and in a form approved by the City Attorney. The covenant shall stipulate that the parking will be maintained as long as the use requiring it continues. It shall also stipulate that the title and right to use the property where the parking is located is subservient to the title to the property where the use is located and that the property will not be made subject to any other covenant or contract for use without prior consent of the Board.
- (i) When the parking requirement for a use is not listed above, or if the procedure for determining the requirement is not specified, the Board shall determine the applicable requirement or procedure.

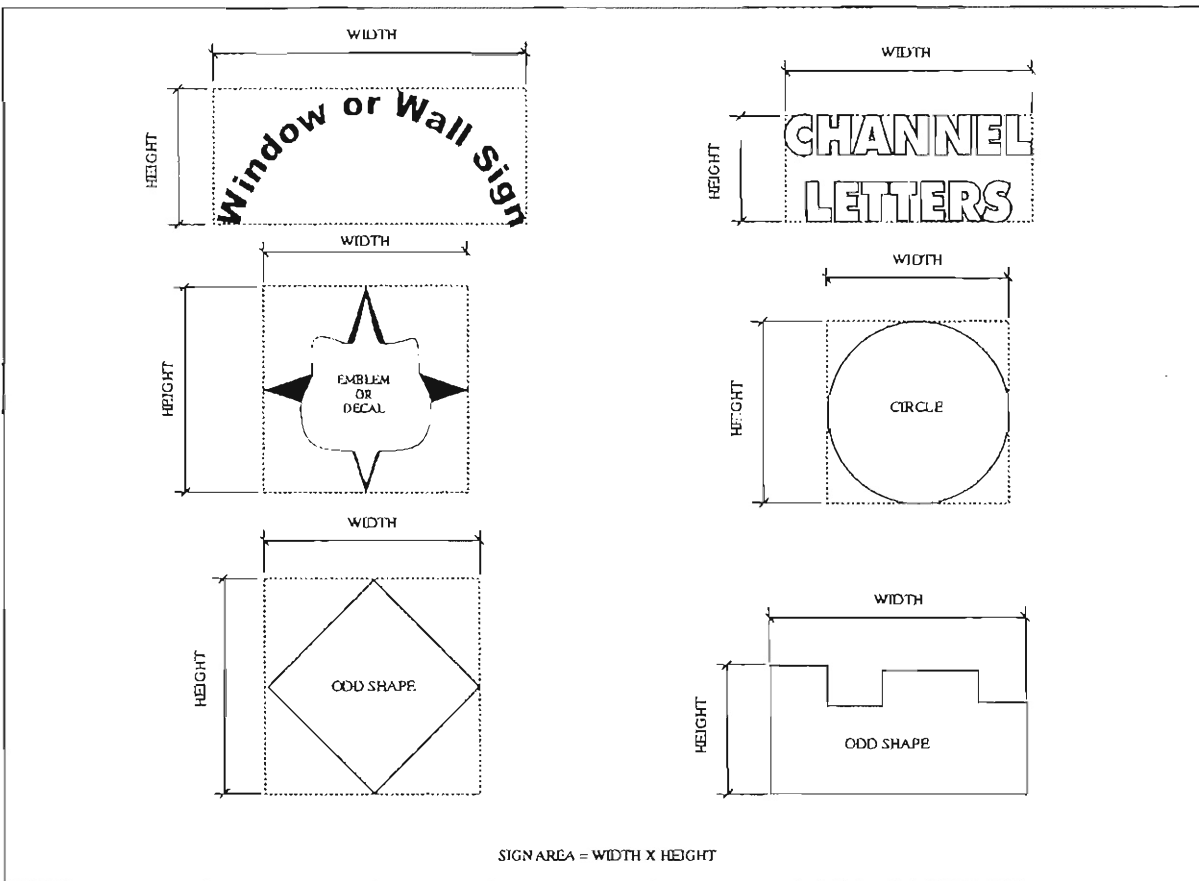
- (j) When a parking requirement is based on square footage, it shall mean gross square footage.
- (k) When a parking requirement is based on number of seats, number of beds or other similar formula, the number shall be as determined by the Director.

**10-2.2110. SIGN AREA, HEIGHT AND PLACEMENT.**

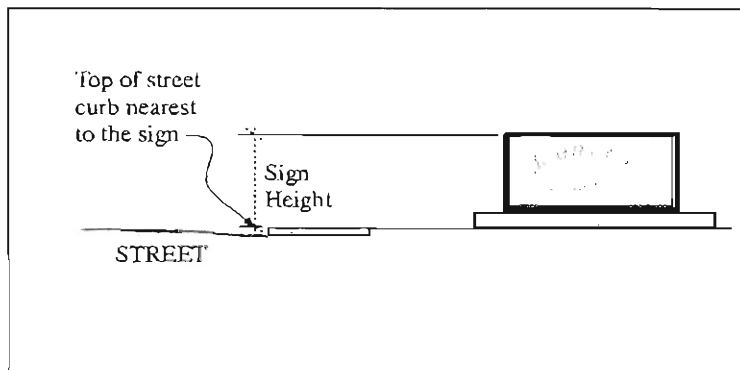
- (a) **Measurement of sign area and height.** For the purposes of determining compliance with this article, the area and height of signs shall be measured as provided by this section.

- (1) **Sign area.** Sign area shall be measured as the area in square feet of the smallest simple geometric shape within which a single sign face can be enclosed. The total area of the sign shall include all sign faces, except where two (2) faces are placed back-to-back and are at no point more than two (2) feet from one (1) another, the area of the sign shall be taken as the area of one (1) face if the two (2) faces are of equal area, or as the area of the larger face if the two (2) faces are of unequal area. See Figure 21-6.

- (2) **Sign height.** Sign height shall be measured as the vertical distance from the top of the street curb nearest the sign, to the top of the sign, including the support structure and any design elements. See Figure 21-7.

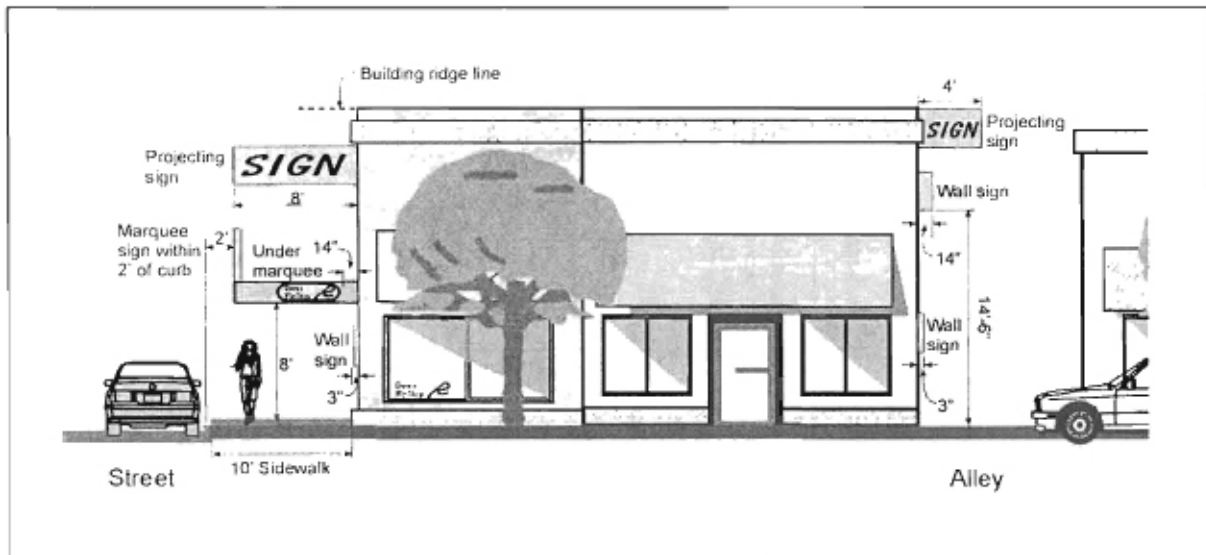


**FIGURE 21-6  
MEASUREMENT OF SIGN AREA**



**FIGURE 21-7  
MEASUREMENT OF SIGN HEIGHT**

- (b) **Maximum sign area requirements.** The maximum allowable area for signs is determined by Sections 10-2.2112, and 10-2.2114. No freestanding sign of any type or class, subject to this article shall exceed one hundred fifty (150) square feet in area.
- (c) **Sign height limitations.** All signs shall comply with the following requirements.
- (1) **Maximum sign height.** No wall, canopy, marquee or projecting sign located on a building shall project higher than the ridgeline of the roof, parapet or wall of which the sign is to be affixed. The maximum height of other signs shall be as specified by Sections 10-2.2112 and 10-2.2114, as applicable.
  - (2) **Minimum sign height.** No sign shall be less than eight (8) feet above a public or private sidewalk, or fourteen and one-half (14.5) feet above ground level in areas open to vehicular traffic, except wall signs not exceeding three (3) inches in thickness.



**FIGURE 21-8  
EXAMPLES OF ALLOWED SIGN PROJECTIONS**

**TABLE 21-1  
SIGNS PERMITTED IN RESIDENTIAL ZONES (R-1, R-2, R-3)**

Sign Class	Allowed Sign Types	Maximum Number of Signs	Maximum Sign Area	Maximum Sign Height	Additional Requirements
Identification - Residential uses	Resident/dwelling name plate	1 per dwelling unit	1 sf	Height of wall	None
	Gateway	1 on each side of a driveway serving 5 or more dwellings	12 sf each	36 in	Sign copy shall be limited to housing project name and logo, street name and address, and/or for sale, rent, or lease.
Identification - Conditional uses (1)	Freestanding, identification or bulletin board	1 per site	25 sf, plus 4 sf for required street address	6 ft	None
	Freestanding identification, high school or college having a minimum campus area of 20 acres		72 sf	20 ft	None
	Freestanding identification, all other school or church identification		72 sf	20 ft	CUP required.
	Canopy and wall	No limitation on number	0.5 sf in combined area for each linear foot of wall	35 ft	Shall be externally illuminated only.
Identification - Nonconforming uses (2)	Canopy and wall	No limitation on number	0.5 sf in combined area for each linear foot of any wall facing a public street	35 ft	Shall face a public street; and shall be externally illuminated only
	Window		No limitation on area	Height of window	Shall face a public street; and shall be externally illuminated only, except for neon signs inside of windows.
Directional	Freestanding, exterior	1 per driveway or pedestrian walkway serving 5 or more dwellings	12 sf	Freestanding sign: 6 ft Wall sign: 12 ft	Sign copy shall be limited to street name and address, housing project name and logo, and/or for sale, rent, or lease.

**TABLE 21-1  
SIGNS PERMITTED IN RESIDENTIAL ZONES (R-1, R-2, R-3)**

Sign Class	Allowed Sign Types	Maximum Number of Signs	Maximum Sign Area	Maximum Sign Height	Additional Requirements
(Continues)	Freestanding, interior	No limitation on number	6 sf each	6 ft	None
<b>Directional</b> (continued)	Garage sale	2 per garage sale	3 sf each	5 ft	Shall be: unlighted; displayed only when sale is actually being conducted; and only installed on private property with the consent of the owner. These signs shall not be placed on street trees, utility poles, or otherwise within public rights-of-way.
<b>Real estate</b>	Freestanding or wall - For sale or rent	1 per street frontage	8 sf each	6 ft	Shall be unlighted.
	Freestanding - Open house	5 for each house or group of houses offered by the same realtor at the same location	3 sf each	42 in	Shall be unlighted and in place during daylight hours only. Message shall be limited to real estate office name. The signs shall only be installed on private property with the consent of the owner.
	Freestanding - Subdivision sales	See Section 10-2.2114(m)			
<b>Construction</b>	Freestanding or wall	1 per site	64 sf	10 ft	Shall be removed within 30 days after completion of construction.
<b>Political</b>	Freestanding - On parcels with a residential structure	No limitation on number	6 sf each, and a maximum combined total of 60 sf	6 ft	Signs shall be unlighted. Signs shall be installed no more than 120 days prior to election date and be removed within 10 days after election.
	Freestanding - On parcels with no residential structure		32 sf each, and a maximum combined total of 100 sf	10 ft	

**Notes:**

- (1) These signs are allowed only for uses that are required by Chapter 2 of Title 10 of the Municipal Code (Zoning Regulations) to have conditional use permit approval in the applicable zoning district.

- (2) Allowed only for the purpose of replacing one nonconforming use with another nonconforming use, in compliance with Article 22 of Chapter 2 of Title 10 of the Municipal Code (Nonconforming Uses).

**TABLE 21-2  
SIGNS PERMITTED IN THE P-O ZONE**

Sign Class	Allowed Sign Types	Maximum Number of Signs	Maximum Sign Area	Maximum Sign Height	Additional Requirements
Identification - Residential uses	Resident/dwelling name plate	1 per dwelling unit	1 sf	Height of wall	Shall be wall mounted and unlighted.
Identification - Non-residential uses	Freestanding	1 per street frontage	16 sf, plus 4 sf for required street address	8 ft	The sign facing the street which provides the street address of the site shall include a street address. See 10-2.2114.L.
	Canopy and wall	No limitation on number	0.5 sf in combined area for each linear foot of wall	Ridgeline of the roof, parapet or wall of which the sign is to be affixed	None
Identification - For uses also allowed in the R-3 zone with CUP approval (1)	Freestanding, identification or bulletin board	1 per site, in addition to the signs for nonresidential uses above	25 sf, plus 4 sf for required street address	6 ft	None
	Freestanding, school or church identification	1 per site	72 sf	20 ft	Conditional Use Permit approval required for sign
Identification - Nonconforming uses (2)	Canopy and wall	No limitation on number	0.5 sf in combined area for each linear foot of any wall facing a public street	Ridgeline of the roof, parapet or wall of which the sign is to be affixed	Shall face a public street; and shall be externally illuminated only.
	Window		No limitation on area	Height of window	Shall face a public street; and shall be externally illuminated only, except for neon signs inside of windows.

(Continues)

TABLE 21-2  
SIGNS PERMITTED IN THE P-O ZONE

Sign Class	Allowed Sign Types	Maximum Number of Signs	Maximum Sign Area	Maximum Sign Height	Additional Requirements
Directional	Freestanding, exterior	1 per driveway or pedestrian walkway serving 5 or more dwellings	12 sf	Freestanding sign: 6 ft Wall sign: 12 ft	Sign copy shall be limited to street name and address, housing project name and logo, and/or for sale, rent, or lease.
	Freestanding, interior	No limitation on number	6 sf each	6 ft	None
	Garage sale	2 per garage sale	3 sf each	5 ft each	Shall be: unlighted; displayed only when sale is actually being conducted; and only installed on private property with the consent of the owner. These signs shall not be placed on street trees, utility poles, or otherwise within public rights-of-way.
Real estate	Freestanding or wall - For sale or rent	1 per street frontage	8 sf each	6 ft	Shall be unlighted
	Freestanding - Open house	5 for each house or group of houses offered by the same realtor at the same location	3 sf each	42 in	Shall be unlighted and in place during daylight hours only. Message shall be limited to real estate office name. The signs shall only be installed on private property with the consent of the owner.

**TABLE 21-2  
SIGNS PERMITTED IN THE P-O ZONE**

Sign Class	Allowed Sign Types	Maximum Number of Signs	Maximum Sign Area	Maximum Sign Height	Additional Requirements
Construction	Freestanding or wall	1 per site	64 sf	10 ft	Shall be removed within 30 days after completion of construction.
Political	Freestanding - On parcels with a residential structure	No limitation on number	16 sf each, and a maximum combined total of 60 sf	6 ft	Signs shall be unlighted. Signs shall be installed no more than 120 days prior to election date and be removed within 10 days after election.
	Freestanding - On parcels with no residential structure		32 sf each, and a maximum combined total of 100 sf	10 ft	

**Notes:**

- (1) These signs are allowed only for land uses that are also allowed in the R-3 zone with conditional use permit approval.
- (2) Allowed only for the purpose of replacing one nonconforming use with another nonconforming use, in compliance with Article 22 of Chapter 2 of Title 10 of this Code (Nonconforming Uses).

**TABLE 21-3  
SIGNS PERMITTED IN COMMERCIAL AND INDUSTRIAL ZONES (C-1, C-2, C-M, M-1, AND M-2)**

Sign Class	Allowed Sign Types	Maximum Number of Signs	Maximum Sign Area	Maximum Sign Height	Additional Requirements
Identification	Freestanding, or	1 freestanding, or 1 projecting, or 1 marquee per use, except in shopping centers (see 10-2.2114(k), and "Shopping Center Identification Signs" below). A second marquee sign is allowed if the 2 signs are single-faced, parallel, and placed on opposite ends of the marquee. A pylon/pole sign that existed on 3/1/77 which extends above the ridgeline may remain as a nonconforming sign in addition to one of the allowed signs.	Freestanding: 72 sf, plus 4 sf for a street address, as required by 10-2.2114(l).	20 ft	None
	Projecting, or		Projecting: 72 sf; 48 sf, if any portion of the sign projects over a street or alley right-of-way.	Ridgeline of the roof, parapet or wall of which the sign is to be affixed	
	Marquee		Marquee: 48 sf		
	Canopy, marquee, and wall, on the <i>primary</i> building frontage	No limitation on number	<u>All signs on primary frontage:</u> 4 sf per linear foot of building frontage for first 50 ft of frontage, plus 2 sf per linear foot of building frontage for next 50 ft of frontage, plus 1 sf per linear foot of building frontage for each foot over 100 ft	Ridgeline of the roof, parapet or wall of which the sign is to be affixed	Signs shall be located on the portion of the building where the use is conducted, except for signs approved in compliance with 10-2.2110(c).
Canopy, marquee, and wall, on the <i>secondary</i> building frontage	<u>All signs on secondary frontage:</u> 4 sf per linear foot of building frontage for first 50 ft of frontage, plus 2 sf per linear foot of building frontage for next 50 ft of frontage, plus 0.50 sf per linear foot of building frontage for each foot over 100 ft				
(Continues)					

**TABLE 21-3  
SIGNS PERMITTED IN COMMERCIAL AND INDUSTRIAL ZONES (C-1, C-2, C-M, M-1, AND M-2)**

Sign Class	Allowed Sign Types	Maximum Number of Signs	Maximum Sign Area	Maximum Sign Height	Additional Requirements
Identification (continued)	Window	No limitation on number	No limitation	No limitation	None
	Suspended	1 per use	6 sf per side; 12 sf total	Under the marquee, 8 ft minimum above sidewalk	None
	Freeway-oriented	See Section 10-2.2114(g)			
	Freestanding - Use without structures	1 per use	32 sf for pumpkin and Christmas tree lots; 72 sf for other uses (e.g., a parking lot, etc.)	12 ft for pumpkin and Christmas tree lots; 72 sf for other uses	None
Shopping center identification	Freestanding	1 for each street frontage of the center.	72 sf, plus 4 sf for a street address, as required by 10-2.2114	20 ft	See 10-2.2114(k)
	Freeway-oriented	See Section 10-2.2114(g)			
Directional  (Continues)	Freestanding, exterior	1 per use for each street frontage of the site; 1 allowed on a site with no public street frontage, provided the sign shall be oriented only to the street providing primary site access	6 sf	6 ft	No business identification, monument type only
	Freestanding, interior	No limitation on number	6 sf	6 ft	None
	Restaurant and car wash menu board	2 per site	48 sf	8 ft	Allowed for drive-in restaurants and car washes only

**TABLE 21-3  
SIGNS PERMITTED IN COMMERCIAL AND INDUSTRIAL ZONES (C-1, C-2, C-M, M-1, AND M-2)**

<b>Sign Class</b>	<b>Allowed Sign Types</b>	<b>Maximum Number of Signs</b>	<b>Maximum Sign Area</b>	<b>Maximum Sign Height</b>	<b>Additional Requirements</b>
<b>Real estate</b>	Freestanding or wall	1 per site	64 sf	10 ft	None
<b>Construction</b>	Freestanding	1 per site	64 sf	10 ft	None
<b>Political</b>	Freestanding	No limitation on number	32 sf each; and a combined total of 150 sf per site	10 ft	Signs shall be installed no more than 120 days prior to election date and be removed within 10 days after election
<b>Temporary</b>	A-frames, banners, flags, etc	See Section 10-2.2114(a), (b), and (f).			
<b>Outdoor advertising</b>	Prohibited in all zones				

**TABLE 21-4  
SIGNS PERMITTED IN THE C-3 COMMERCIAL ZONE**

Sign Class	Allowed Sign Types	Maximum Number of Signs	Maximum Sign Area	Maximum Sign Height	Additional Requirements
Identification       (Continues)	Freestanding - See Section 10-2.2112(d).	See Section 10-2.2112(d).	See Section 10-2.2112(d).		See Section 10-2.2112(d).
	Canopy, marquee, and wall, on the <i>primary</i> building frontage	No limitation on number	<u>All signs on primary frontage:</u> 4 sf per linear foot of building frontage for first 50 ft of frontage, plus 2 sf per linear foot of building frontage for next 50 ft of frontage, plus 1 sf per linear foot of building frontage for each foot over 100 ft	Ridgeline of the roof, parapet or wall of which the sign is to be affixed	Signs shall be located on the portion of the building where the use is conducted, except for signs approved in compliance with 10-2.2112(e).
	Canopy, marquee, and wall, on the <i>secondary</i> building frontage		<u>All signs on secondary frontage:</u> 4 sf per linear foot of building frontage for first 50 ft of frontage, plus 2 sf per linear foot of building frontage for next 50 ft of frontage, plus 0.50 sf per linear foot of building frontage for each foot over 100 ft		

**TABLE 21-4  
SIGNS PERMITTED IN THE C-3 COMMERCIAL ZONE**

Sign Class	Allowed Sign Types	Maximum Number of Signs	Maximum Sign Area	Maximum Sign Height	Additional Requirements
Identification (continued)	Window	No limitation on number	No limitation	No limitation	None
	Suspended	1 per use	6 sf per side; 12 sf total	Under the marquee, 8 ft minimum above sidewalk	None
	Freeway-oriented	See Section 10-2.2114(g)			
	Freestanding - Use without structures	1 per use	32 sf for pumpkin and Christmas tree lots; 72 sf for other uses (e.g., a parking lot, etc.)	12 ft for pumpkin and Christmas tree lots; 72 sf for other uses	None
Shopping center identification	Freeway-oriented	See Section 10-2.2114(g)			
Directional  (Continues)	Freestanding, exterior See Section 10-2.2112(d).	1 for each street frontage of the site; 1 allowed on a site with no public street frontage, provided the sign shall be oriented only to the street providing primary site access.	6 sf	6 ft	No Business identification, monument type only
	Freestanding, interior	No limitation on number	6 sf	6 ft	None
	Restaurant and car wash menu board	2 per site	48 sf	8 ft	Allowed for drive-in restaurants and car washes only

**TABLE 21-4  
SIGNS PERMITTED IN THE C-3 COMMERCIAL ZONE**

Sign Class	Allowed Sign Types	Maximum Number of Signs	Maximum Sign Area	Maximum Sign Height	Additional Requirements
Real estate	Freestanding or wall	1 per site	64 sf	10 ft	None
Construction	Freestanding	1 per site	64 sf	10 ft	None
Political	Freestanding or wall	No limitation on number	32 sf each; and a combined total of 150 sf per site	10 ft	Signs shall be installed no more than 120 days prior to election date and be removed within 10 days after election
Temporary	A-frames, banners, flags, etc	See Section 10-2.2114(a), (b), and (f).			
Outdoor advertising	Prohibited in all zones				

**TABLE 21-5  
SIGNS PERMITTED IN THE B-P (BUSINESS PARK) ZONE**

Sign Class	Allowed Sign Types	Maximum Number of Signs	Maximum Sign Area	Maximum Sign Height	Additional Requirements
Identification	Freestanding - Individual business identification	1 sign per site	72 sf, plus 4 sf for required street address	20 ft	Sign shall include street address per 10-2.2114(i).
	Freestanding - Business park identification	1 sign for business park	72 sf	6 ft	BZA approval of plot plan required. Sign copy shall be limited to business park name and logo.
	Canopy, marquee, and wall, on the <i>primary</i> building frontage	No limitation on number	<u>All signs on primary frontage:</u> 4 sf per linear foot of building frontage for first 50 ft of frontage, plus 2 sf per linear foot of building frontage for next 50 ft of frontage, plus 1 sf per linear foot of building frontage for each foot over 100 ft	Ridgeline of the roof, parapet or wall of which the sign is to be affixed	Signs shall be located on the portion of the building where the use is conducted, except for signs approved in compliance with 10-2.2110(c).
	Canopy, marquee, and wall, on the <i>secondary</i> building frontage		<u>All signs on secondary frontage:</u> 4 sf per linear foot of building frontage for first 50 ft of frontage, plus 2 sf per linear foot of building frontage for next 50 ft of frontage, plus 0.50 sf per linear foot of building frontage for each foot over 100 ft		
(Continues)					

**TABLE 21-5  
SIGNS PERMITTED IN THE B-P (BUSINESS PARK) ZONE**

Sign Class	Allowed Sign Types	Maximum Number of Signs	Maximum Sign Area	Maximum Sign Height	Additional Requirements
Identification (continued)	Window	No limitation on number	No limitation	No limitation	None
	Suspended	1 per use	6 sf per side; 12 sf total	Under the marquee, 8 ft minimum above sidewalk	None
	Freeway-oriented	See Section 10-2.2114(g).			
	Freestanding - Use without structures	1 per use	32 sf for pumpkin and Christmas tree lots; 72 sf for other uses (e.g., a parking lot, etc.)	12 ft for pumpkin and Christmas tree lots; 72 sf for other uses	None
Directional  (Continues)	Freestanding, exterior	1 for each street frontage of the site; 1 allowed on a site with no public street frontage, provided the sign shall be oriented only to the street providing primary site access.	6 sf	6 ft	No Business identification, monument type only
	Freestanding, interior	No limitation on number	6 sf	6 ft	None
	Restaurant menu board	2 per site	48 sf	8 ft	Allowed for drive-in restaurants only

**TABLE 21-5  
SIGNS PERMITTED IN THE B-P (BUSINESS PARK) ZONE**

Sign Class	Allowed Sign Types	Maximum Number of Signs	Maximum Sign Area	Maximum Sign Height	Additional Requirements
Real estate	Freestanding or wall	1 per site	64 sf	10 ft	None
Construction	Freestanding	1 per site	64 sf	10 ft	None
Political	Freestanding or wall	No limitation on number	32 sf each; and a combined total of 150 sf per site	10 ft	Signs shall be installed no more than 120 days prior to election date and be removed within 10 days after election
Temporary	A-frame signs, banners, flags, etc.	See Section 10-2.2114(a), (b), and (f).			
Outdoor advertising	Prohibited in all zones, except in compliance with Section 10-2.2114(i).				

**ARTICLE 22. NONCONFORMING USES, STRUCTURES AND SITES, AND LOTS.**

**10-2.2202. NONCONFORMING USES.**

- (a) A nonconforming use may be continued in accordance with the provisions of this Section but, except as provided in subsection (b) and (c) of this section, no nonconforming use may be enlarged within the building it occupies, nor shall it be enlarged or increased to occupy a greater area of land than that occupied by such use, nor shall any nonconforming use be moved in whole or in part to any other portion of the lot or parcel of land occupied by such nonconforming use.
- (b) **Minor Expansion.** Minor Expansion of a nonconforming use resulting in an increase in area occupied of less than twenty (20) percent may be permitted only if approved by the Director. In order to approve a minor expansion, the Director must find the expansion will not significantly impede the transition of a non-conforming use to a conforming use at a later date and will have no greater impact on surrounding properties in terms of noise, traffic, parking, hours of operation and visual compatibility.
- (c) **Major Expansion.** Major Expansion of a nonconforming use resulting in an increase in area occupied by more than twenty (20) percent may be permitted only if a Conditional Use Permit is approved by the Board. In order to approve a major expansion, the Board must find the expansion will not significantly impede the transition of a non-conforming use to a conforming use at a later date and will have no greater impact on surrounding properties in terms of noise, traffic, parking, hours of operation and visual compatibility.
- (d) **Replacement.** Replacement of one nonconforming use for another shall require approval by the Director. In order to approve the replacement, the Director must find the new use will have no greater impact on surrounding properties in terms of noise, traffic, parking, hours of operation and visual compatibility.
- (e) **Discontinuance.** If a nonconforming use is discontinued for a continuous period of one (1) year, all future uses shall conform to the provisions of this Chapter except that the Director may grant an approval for another nonconforming use as provided for in Section (d) above. Discontinuance of use shall be deemed to have occurred whenever any of the following apply:
  - (1) The non-conforming use of a structure is discontinued for a period of twelve or more consecutive calendar months.

(2) No business receipts or records are available for the twelve month period.

(3) A non-conforming use is replaced by a conforming use.

SECTION 2. AMENDMENT OF CODE. Sections 10-2.216.2, 10-2.218.1, 10-2.236.1, 10-2.2202.1 and 10-2.2202.2 of Chapter 2 of Title 10 are hereby added to read as follows:

**10-2.216.2. DOWNTOWN AREA.**

The "Downtown Area" is that area bounded by Needham Avenue, Downey Avenue, Burney Street, Grand Street-D Street, Yosemite Boulevard, South Morton Boulevard, B Street, Tuolumne Boulevard, Freeway 99, and Kansas Avenue and the extension thereto across the Union Pacific RR tracks back to Needham Avenue. The purpose of this definition is intended for determining required parking in the area shown below, pursuant to Section 10-2.2002(c).



#### **10-2.218.1. DWELLING UNIT.**

A single unit providing complete, independent living facilities for one or more persons including permanent provisions for living, sleeping, eating, cooking and sanitation.

#### **10-2.236.1. NONCONFORMING STRUCTURE AND SITE.**

A structure or site that was lawfully established and maintained but which, because of the application of the site development standards in this Chapter, including coverage, setbacks, parking, landscaping, walls, and fences, no longer conforms to the regulations of the zone in which it is located.

#### **10-2.2202.1. NONCONFORMING STRUCTURES AND SITES.**

- (a) Conformity to laws and regulations. All work performed on a non-conforming structure or site shall be pursuant to a building permit, meet all the requirements of this Chapter and all City Codes, and conform to any other health or safety regulations or laws imposed by local, County, State, regional, or Federal agencies in effect at the time of the work and shall not expand any non-conformity except as allowed in Subsection (c) of this Section.
- (b) Maintenance. A nonconforming structure or site, or a structure or site devoted to a nonconforming use, may be maintained. Maintenance may include interior remodels and such repair work as necessary to keep the structure or site in sound condition, but maintenance shall not include the replacement of a structure, except as allowed in Subsection (d) of this Section.
- (c) Additions, enlargements and relocations. A nonconforming structure or site may not be added to, enlarged, or relocated, unless the addition, enlargement or relocation conforms to all the regulations of the zone in which it is located.
- (d) Damage or destruction. Any structure(s) or site(s), damaged or destroyed by accidental or natural causes may be reconstructed up to the legal non-conforming size, placement, or number of dwelling units. The Director may require changes to the plans if necessary to meet the California Building and Fire Codes. Reconstruction shall commence within one year after the date the damage or destruction occurred and shall be diligently pursued to completion.

**10-2.2202.2. NONCONFORMING LOT.**

- (a) Definition. All lots recorded or part of an approved tentative subdivision on July 7, 1955, shall be deemed to comply with applicable area and width requirements.
- (b) Non conforming residential lots. All residentially zoned nonconforming lots are entitled to at least one (1) single-family dwelling, and additional units may be permitted per the minimum density requirements of the zone in which the lot is located.

SECTION 3. REPEALS. Sections 10-2.225, 10-2.503, 10-2.1102.1, 10-2.1706, 10-2.2009 and 10-2.2318 of Chapter 2 of Title 10 are hereby repealed:

**10-2.225. KITCHEN.** This Section is Repealed

**10-2.503. PLOT PLAN USES.** This Section is Repealed

**10-2.1102.1. PERMITTED USES WITHIN THE DOWNTOWN P-D ZONE AREA.** This Section is Repealed

**10-2.1706. AREA.** This Section is Repealed

**10-2.2009. TEMPORARY PARKING LOTS DOWNTOWN.** This Section is Repealed

**10-2.2318. BUILDABLE LOTS.** This Section is Repealed

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

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

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the   th    day of    May   , 2010, 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: Geer, Lopez, Marsh, Muratore, Olsen, Mayor Ridenour

NOES: Councilmembers: None


ABSENT: Councilmembers: Hawn

APPROVED:

  
JIM RIDENOUR, Mayor

ATTEST:

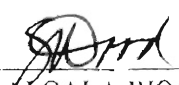
By:

  
STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By:

  
SUSANA ALCALA WOOD, City Attorney

Ord. No. 3527

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 25th day of May, 2010, Councilmember Lopez moved its final adoption, which motion being duly seconded by Councilmember Hawn, was upon roll call carried and the ordinance adopted by the following vote:

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

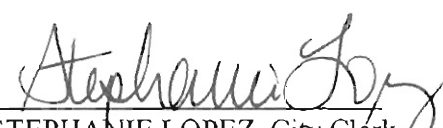
NOES: Councilmembers: None.

ABSENT: Councilmembers: None

APPROVED:

  
MAYOR JIM RIDENOUR

ATTEST:

  
STEPHANIE LOPEZ, City Clerk

Effective Date: June 24, 2010

**ORDINANCE NO. 3528-C.S.**

AN ORDINANCE AMENDING SECTION 28-3-9 OF THE ZONING MAP TO REZONE FROM GENERAL COMMERCIAL ZONE, C-2, AND HIGH-DENSITY RESIDENTIAL ZONE, R-3, TO PLANNED DEVELOPMENT ZONE, P-D(591), PROPERTY LOCATED ON THE EAST SIDE OF MCHENRY AVENUE, SOUTH OF MORRIS AVENUE (L STREET ARCHITECTS LIMITED)

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 General Commercial Zone, C-2, and High Density Residential, R-3, to Planned Development Zone, P-D(591):

C-2 to P-D(591)

All that portion of Block 562, City of Modesto, County of Stanislaus, State of California, located in a portion of the Northwest one-quarter of Section 28, Township 3 South, Range 9 East, Mount Diablo Base and Meridian, described as follows:

The westerly 135 feet of Lots 17 and 18 in Block 562, City of Modesto, according to the Map thereof, filed in Volume 15 of Maps, Stanislaus County Records;

Also including the southerly one-half of 60 foot wide east Morris Avenue and the easterly one-half of 80 foot wide McHenry Avenue, all being immediately adjacent to the above described property.

R-3 to P-D(591)

All that portion of Block 562, City of Modesto, County of Stanislaus, State of California, located in a portion of the Northwest one-quarter of Section 28, Township 3 South, Range 9 East, Mount Diablo Base and Meridian, described as follows:

The easterly 114 feet of Lots 17 and 18 in Block 562, City of Modesto, according to the Map thereof, filed in Volume 15 of Maps, Stanislaus County Records;

Also including the southerly one-half of 60 foot wide east Morris Avenue immediately adjacent to the above described property.

SECTION 2. USES. The following uses shall be permitted in said P-D(591) 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. Car wash

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 25<sup>th</sup> day of May, 2010, by Councilmember Lopez, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Olsen, was upon roll call carried and ordered printed and published by the following vote:

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

NOES: Councilmembers: None.

ABSENT: Councilmembers: None

APPROVED:   
JIM RIDENOUR, Mayor

ATTEST:

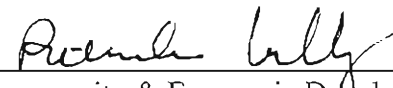
By   
STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
SUSANA ALCALA WOOD, City Attorney

APPROVED AS TO DESCRIPTION:

By   
Community & Economic Development  
Department – Planning Division

Ord. No. 3528 – C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 9th day of June, 2010, Councilmember Hawn moved its final adoption, which motion being duly seconded by Councilmember Lopez, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: 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: July 9, 2010

**ORDINANCE NO. 3529-C.S.**

AN ORDINANCE AMENDING CHAPTER 2 OF TITLE 5 OF THE MODESTO MUNICIPAL CODE RELATING TO MASSAGE ESTABLISHMENTS.

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

SECTION 1. AMENDMENT OF CODE. Chapter 2 of Title 5 of the Modesto

Municipal Code is hereby amended to read as follows:

**CHAPTER 2 - MASSAGE/BODYWORK BUSINESSES.**

**ARTICLE 1. GENERAL PROVISIONS.**

**5-2.101. PURPOSE AND INTENT.**

It is the purpose and intent of this Chapter to provide for the orderly regulation of the massage/bodywork business and massage practitioners in the City of Modesto. The City Council recognizes massage is a viable professional field offering the public valuable health and therapeutic services including, but not limited to, massage, bodywork and somatic therapies.

This Chapter establishes minimum standards for massage and bodywork practitioners and their business establishments so as to protect and safeguard the public health, safety and welfare and to enhance the reputation of the profession and integrity of the services provided.

It is the purpose and intent of the City Council that massage/bodywork establishments and persons offering such services be regulated so as to ensure that persons offering massage/bodywork services possess the minimum qualifications necessary to operate such businesses and to perform the services offered and to ensure that those offering these services conduct their work in a lawful and professional manner and comply with required building, sanitation and health standards.

**5-2.102. DEFINITIONS.**

Unless the particular provision or the context otherwise requires, the definitions

and provisions contained in this section shall govern the construction, meaning, and application of words and phrases used in this Chapter.

- (a) **Employee:** For the purposes of this Chapter, shall include independent contractors.
- (b) **Massage or bodywork techniques:** Means any nonincidental touching, rubbing, stroking, kneading, tapping, pounding, vibrating, or stimulating of the external parts of the human body including, but not limited to, the following methods of treatment:
  - (1) Bio-mechanical manipulation of soft-tissue through touch for the purposes of prevention, rehabilitation and healing. This includes, but is not limited to, deep-tissue and pre and post sports massage and manual lymph drainage therapeutic technique, myofascial release and neuromuscular reeducation;
  - (2) Hydrotherapy;
  - (3) Heliotherapy;
  - (4) Electro-mechanical or vibratory devices;
  - (5) Herbal applications or chemical preparations such as oil or alcohol rubs, aromatic lubricants, powders, creams, ointments, or similar preparations commonly used in this practice;
  - (6) Salt baths;
  - (7) Petrissage;
  - (8) Effleurage;
  - (9) Tapotement; and
  - (10) Application of pressure, using specific thumb and finger techniques working on precise reflex points on feet, hands and ears.

- (c) **Massage/bodywork business:** Means any establishment having a fixed place of business where any individual, firm, association, partnership, corporation, or combination of individuals, engages in, conducts, carries on or permits to be engaged in, conducted or carried on, massage/bodywork services or techniques, acupressure, reflexology, alcohol rubs, Russian, Swedish, or Turkish Baths, facial massage/bodywork, electric or magnetic treatments, or health treatments involving massage/bodywork or baths.
- (d) **Massage/bodywork practitioner:** Means any natural person, other than a medical practitioner licensed by the State of California, who practices or administers any massage/bodywork technique as defined above in exchange for a fee, income, or anything of any value whatsoever within the City of Modesto.
- (e) **Manager:** Means the person(s) designated by the operator of the massage/bodywork business to act as the representative and agent of the operator in managing day-to-day operations with the same liabilities and responsibilities. Evidence of management includes, but is not limited to, evidence that the individual has power to direct or hire and dismiss employees, control hours of operation, create policy or rules or purchase supplies. A manager may also be an owner. A manager must meet the standards and qualifications of Section 5-2.104 to qualify as a manager.
- (f) **On-site therapy:** Means any method of pressure on, or friction against, or stroking, kneading, tapping, pounding, vibrating, or stimulating the external parts of the human body with the hands without such supplementary aids as rubbing alcohol, liniment, antiseptic, oil, powder, cream, lotion, ointment, or other similar preparations, when the client remains fully clothed and at a location other than a massage/bodywork establishment, and is limited to business offices, sports complexes, convention centers and public events.
- (g) **Out-call massage:** Means the engaging in or carrying on of massage/bodywork for a fee or any consideration at a location other than a duly licensed massage/bodywork establishment.
- (h) **Operator/owner:** Means all persons who have an ownership interest in the massage/bodywork business and are responsible for its day-to-day operations. The operator/owner also is an individual(s) whose name(s) appears on the City of Modesto business license.
- (i) **Person:** Means any individual, or corporation, partnership, association or other group or combinations of individuals acting as an entity.

- (j) **Reflexology:** Is the application of specific pressures to reflex points in the hands and feet. It is a clothed session with only the removal of shoes and socks allowed.

**5-2.103. MASSAGE/BODYWORK BUSINESS: CERTIFICATE REQUIRED.**

Every person conducting, managing, owning, or operating a massage/bodywork business in the City shall first obtain a certificate under the provisions of Division 2, Chapter 10.5 of the Business and Professions Code, commencing with Section 4600. Said certificate must be displayed in a prominent place on the premises in which the business is conducted.

**5-2.104. MASSAGE/BODYWORK PRACTITIONER: CERTIFICATE REQUIRED.**

Every person employed as a massage/bodywork practitioner or self-employed providing massage/bodywork services for compensation and/or providing on-site therapy and/or out-call massage for compensation in the City shall obtain a certificate under the provisions of Division 2, Chapter 10.5 of the Business and Professions Code, commencing with Section 4600.

**5-2.105. TRANSITION PROVISION FOR ESTABLISHMENTS AND PRACTITIONERS LICENSED UNDER THE FORMER ORDINANCE PRIOR TO THE EFFECTIVE DATE OF THE ORDINANCE NOW CODIFIED IN THIS CHAPTER.**

All persons holding a valid massage establishment or a massage technician license which was issued pursuant to the provisions of City of Modesto's former massage ordinance prior to the enactment of the current provisions of this Code shall be permitted to continue to operate on the existing City permit until a certificate which is issued under the provisions of Division 2, Chapter 10.5 of the Business and Professions Code, commencing with Section 4600, is obtained, or until either October 31, 2010, or the expiration date of the existing City permit, whichever occurs first.

**ARTICLE 2. ON-SITE THERAPY AND OUT-CALL MASSAGE.**

**5-2.201. OFF-PREMISES MASSAGE/BODYWORK.**

No person shall perform or administer massage or bodywork techniques as either on-site therapy or out-call massage/bodywork, as those terms are defined herein, for money or other consideration, without obtaining a certificate pursuant to the provisions of Division 2, Chapter 10.5 of the Business and Professions Code,

commencing with Section 4600, in conjunction with a valid City of Modesto Business License.

**5-2.202. OUT-CALL PROHIBITION.**

Out-call massage/bodywork shall not be performed unless authorized in writing by a physician, surgeon, chiropractor or osteopath duly licensed to practice in the State of California. Violation of this Section shall constitute a misdemeanor.

**5-2.203. TIME CONSTRAINTS.**

Out-call massage and on-site therapy shall only be conducted between the hours of 8:00 a.m. and 8:00 p.m.

**5-2.204. LOCATIONS - PROHIBITED.**

Out-call massage or on-site therapy shall not be conducted in the following locations:

- (a) A hotel/motel room or any other similar location used primarily for transitory habitation purposes.
- (b) The residence of the out-call or on-site massage/bodywork practitioner.

**ARTICLE 3. FACILITIES AND OPERATING REQUIREMENTS.**

**5-2.301. REQUIREMENTS.**

Every massage/bodywork establishment and every massage/bodywork practitioner shall comply with the following facilities and operations requirements.

The Police Department shall, from time to time, make an inspection of each massage/bodywork establishment for the purpose of determining compliance with this Chapter.

- (a) The massage/bodywork establishment premises and facilities shall meet and be maintained in a condition to comply with all applicable code requirements of the City of Modesto, including, but not limited to, those related to the safety of structures, adequacy of the plumbing, lighting, heating, ventilation, waterproofing of rooms in which showers, water or

steam baths are used, and the health and cleanliness of the facility.

- (b) Massage/bodywork establishments and massage/bodywork practitioners shall at all times have an adequate supply of clean sanitary towels, coverings and linens. Towels, nondisposable coverings, and linens shall not be used on more than one (1) client, unless they have first been laundered and disinfected. Disposable towels and disposable coverings shall not be used on more than one (1) client. Soiled linens and paper towels shall be deposited in separate receptacles.
- (c) In the massage/bodywork establishment, wet and dry heat rooms, steam or vapor rooms or cabinets, toilet rooms, showers and bathrooms, tanning booths, whirlpool baths, and pools shall be thoroughly cleaned and disinfected as needed, and at least once each day when the premises are open, with a disinfectant. Bath tubs shall be thoroughly cleaned with a disinfectant after each use. All walls, ceilings, floors and other physical facilities for the establishment shall be in good repair and maintained in a clean and sanitary condition.
- (d) All equipment used in the massage/bodywork operation shall be maintained in a clean and sanitary condition. Instruments utilized in performing massage or bodywork techniques shall not be used on more than one (1) client unless they have been sterilized, using standard sterilization methods.
- (e) Clients of the massage/bodywork establishment shall be furnished with a dressing room. Dressing rooms will be used only by clients of the same sex at the same time. Dressing rooms need not be separate from the room in which the massage is being performed.
- (f) Toilet facilities shall be provided in convenient locations within the massage/bodywork establishment and shall consist of at least one (1) unisex toilet with lavatories or wash basins provided with soap and both hot and cold running water either in the toilet room or vestibule.
- (g) A minimum of one (1) wash basin for employees shall be provided at all times. The basin shall be located within or as close as practicable to the area devoted to performing of massage or bodywork services. Soap and sanitary towels shall also be provided at each basin.

- (h) A copy of the certificate held under the provisions of Division 2, Chapter 10.5 of the Business and Professions Code by each and every massage/bodywork practitioner employed in the establishment shall be displayed in an open and conspicuous place on the premises. Massage/bodywork practitioners shall be fully clothed at all times. Clothing shall be of a fully opaque, non-transparent material and provide the complete covering from mid-thigh to three (3) inches below the collarbone.
- (i) The owner, operator or manager of the massage/bodywork establishment shall keep a complete and current list of the names and residence addresses of all massage/bodywork practitioners and employees of the massage/bodywork establishment and the name and residence addresses of the manager or managing employee purported to be principally in charge of the operation of the massage/bodywork establishment, and shall provide copies of the certificates held by all such personnel under the provisions of Division 2, Chapter 10.5 of the Business and Professions Code, commencing with Section 4600 to the Chief of Police. The roster shall be kept at the premises and be available for inspection by officials charged with enforcement of this Chapter. It is the responsibility of the owner, operator or manager of the massage/bodywork establishment to insure that the Chief of Police has been provided with copies of the certificates held under the provisions of Division 2, Chapter 10.5 of the Business and Professions Code, commencing with Section 4600, for all personnel currently working at the establishment.
- (j) Every massage/bodywork establishment shall keep a written record of the date and hour of each treatment administered, the name and address of each patron, the name of the massage/bodywork practitioner administering treatment, and the type of treatment administered. Such written record shall be open to inspection by officials charged with the enforcement of this Chapter. Such record shall be kept on the premises of the massage/bodywork establishment for a period of two (2) years.
- (k) No person shall enter, be, or remain in any part of a massage/bodywork establishment while in the possession of, consuming, or using any drug except a prescription drug. The responsible owner, operator, managing employee, manager or licensee shall not permit any such person to enter or remain upon such premises.

- (l) Every massage/bodywork establishment shall be open at all times during business hours for inspection by any officer of the City of Modesto.
- (m) All exterior doors shall remain unlocked from the inside during business hours. A person operating a massage/bodywork establishment shall be responsible for and provide that said premises shall, during business hours, be readily accessible and open for inspection by law enforcement officers for the purpose of locating evidence that would substantiate a violation of the provisions of this Chapter.
- (n) No massage/bodywork establishment shall simultaneously operate as a school of massage, or share facilities with a school of massage or bodywork technique.

**ARTICLE 4. PROHIBITED CONDUCT APPLICABLE TO MASSAGE/  
BODYWORK BUSINESS AND PRACTITIONERS.**

**5-2.401. PROHIBITIONS.**

- (a) Massage/bodywork techniques shall be provided or given at a massage/bodywork establishment only between the hours of 6:00 a.m. and 10:00 p.m. No massage/bodywork establishment shall be open to clients between 10:00 p.m. and 6:00 a.m.
- (b) Alcoholic beverages may be served or furnished on the premises if the proprietor receives a special event permit from the Chief of Police and satisfies any and all requirements of the Alcoholic Beverage Control Department applicable to such special event. The sale of alcohol on the premises is prohibited.
- (c) No owner, manager, operator, or responsible managing employee shall permit, and no massage/bodywork practitioner shall offer or perform any service other than those permitted under this Chapter.
- (d) No massage/bodywork practitioner or employee of a massage/bodywork establishment shall:
  - (1) Expose the sexual or genital part of the massage/bodywork practitioner or employee in the course of a massage/bodywork

technique; or

- (2) Expose the sexual or genital part of any other person in the course of a massage/bodywork technique.

Sexual and genital parts shall include the genitals, anus, perineum of any person and the breasts of any female.

- (e) No massage/bodywork practitioner or employee of a massage/bodywork establishment shall place, publish or distribute or cause to be placed, published or distributed any advertising matter that depicts any portion of the human body that would reasonably suggest to prospective customers that any services available that is prohibited under this Chapter nor shall any massage/bodywork practitioner or massage/bodywork establishment employ language in any advertising text or business name that would reasonably suggest to a prospective client that any service is available that is prohibited under this Chapter.
- (f) A massage/bodywork practitioner shall not violate the provisions of Sections 647(a) and (b) of the California Penal Code, or any other state law involving a crime of moral turpitude, and such practices shall not be allowed or permitted by the massage/bodywork establishment.
- (g) A massage/bodywork practitioner shall not massage a client of one sex within the view of a client of the opposite sex, and such practices shall not be allowed or permitted by the massage/bodywork establishment. Parents, guardians, translators or caregivers are excluded from this requirement.
- (h) This ordinance does not prohibit the sale of merchandise at retail.

## **ARTICLE 5. ENFORCEMENT.**

### **5-2.501. VIOLATION AND PENALTY.**

- (a) It is unlawful for any person, association, firm or corporation to engage in, conduct or carry on, or to permit to be engaged in, conducted, or carried on, in or upon any premises, the business of massage/bodywork or to render or permit to be rendered massage or bodywork services at a location removed from a massage/bodywork business in the absence of a certificate issued pursuant to the provisions of Division 2, Chapter 10.5 of the

Business and Professions Code, commencing with Section 4600.

- (b) Any massage/bodywork business operated, conducted, or maintained contrary to the provisions of this Chapter shall be unlawful and a public nuisance, and the City Attorney may, in the exercise of discretion, in addition to or in lieu of prosecuting a criminal action hereunder, commence an action or actions, proceeding or proceedings, for the abatement, removal and enjoinder thereof, in any manner provided by law.
- (c) A violation of any of the provisions or failing to comply with any of the mandatory requirements of this Chapter shall constitute a misdemeanor; except that notwithstanding any other provision of this Code, any such violation constituting a misdemeanor under this Chapter may, in the discretion of the City Attorney, be charged and prosecuted as an infraction. Any violation of this Chapter prosecuted as a misdemeanor shall be punishable by a fine of not more than one thousand dollars (\$1,000.00) or by imprisonment in the County Jail for a period of not more than six (6) months, or by both fine and imprisonment. Any infraction prosecuted under the provisions of this Chapter shall be made punishable by a fine not to exceed five hundred dollars (\$500.00).
- (d) Each person shall be charged with a separate offense for each and every day during which any violation of any provision of this Chapter is committed, continued or permitted by such person and shall, upon conviction, be punished accordingly.
- (e) Pursuant to the City Attorney's prosecutorial discretion, the City may enforce violations of this Chapter as criminal, civil and/or administrative violations utilizing administrative remedies.
- (f) It is the duty of the Police Chief to enforce rules and regulations in accordance with this Chapter.

**5-2.502. SEVERABILITY.**

If any section, subsection, sentence, clause or phrase of this Chapter is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Chapter. The City Council hereby declares that it would have

passed the ordinance codified in this Chapter, and each and every section, subsection, sentence, clause or phrase not declared invalid or unconstitutional without regard to whether any portion of this Chapter would be subsequently declared invalid or unconstitutional.

**5-2.503. EMPLOYMENT OF MASSAGE/BODYWORK TECHNICIANS.**

No manager or owner/operator of a massage/bodywork establishment shall allow or permit a person to administer massage/bodywork for such establishment unless the practitioner possesses a valid certificate under the provisions of Division 2, Chapter 10.5 of the Business and Professions Code, commencing with Section 4600. It shall be the responsibility of massage/bodywork establishment manager or owner to insure that every practitioner administering massage/bodywork in the establishment possesses a valid certificate under the provisions of Division 2, Chapter 10.5 of the Business and Professions Code, commencing with Section 4600.

**5-2.504. BUSINESS LOCATION CHANGE.**

At least ten (10) days prior to change the location of a massage/bodywork establishment, the person conducting, managing, owning, or operating a massage/bodywork business shall notify of the intended location. The Police Chief shall insure that the massage/bodywork establishment complies with all application provisions of this Code.

**5-2.505. SALE OR TRANSFER OF MASSAGE/BODYWORK ESTABLISHMENT INTEREST.**

The sale or transfer of any interest in any massage/bodywork establishment shall be reported to the Police Chief at least ten (10) days prior to such sale or transfer.

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 1st day of June 2010, 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: Geer, Hawn, Lopez, Marsh, Muratore, Olsen, Mayor Ridenour

NOES: Councilmembers: None.


ABSENT: Councilmembers: None

APPROVED:



JIM RIDENOUR, Mayor

ATTEST:

By   
STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
SUSANA ALCALA WOOD, City Attorney

Ord. No. 3529-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 9th day of June, 2010, Councilmember Hawn moved its final adoption, which motion being duly seconded by Councilmember Lopez, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: 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: July 9, 2010

ORDINANCE NO. 3530-C.S.

AN ORDINANCE AMENDING SECTION 3-2.1401.1 OF ARTICLE 14 OF CHAPTER 2 OF TITLE 3 OF THE MODESTO MUNICIPAL CODE RELATING TO SPEED LIMITS.

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

SECTION 1. AMENDMENT OF CODE. Section 3-2.1401.1 of Article 14 of Chapter 2 of Title 3 of the Modesto Municipal Code is hereby amended to read as follows:

**3-2.1401.1. CHANGE IN SPEED LIMITS SET BY STATE LAW: FOR PURPOSE OF ENFORCEMENT USING RADAR OR OTHER ELECTRONIC DEVICE.**

By authority of, and upon the basis of engineering and traffic surveys conducted pursuant to Vehicle Code and the Traffic Manual of the Department of Transportation, it is determined that the prima facie speed limits which follow would facilitate the orderly movement of vehicular traffic and would be reasonable and safe.

<u>NAME OF STREET OR PORTION AFFECTED</u>	<u>DECLARED PRIMA FACIE SPEED LIMIT</u>	<u>DATE SURVEYED</u>
BANGS AVENUE, between Dale Road and McHenry Avenue	45 miles per hour	January 2, 2007
BLUE GUM AVENUE, between Morse Road and Carpenter Road	35 miles per hour	February 4, 2010
BRIGGSMORE AVENUE, between Claus Road and Santa Fe Railroad Tracks	45 miles per hour	January 30, 2007
BRIGGSMORE AVENUE, between Coffee Road and Oakdale Road	50 miles per hour	July 1, 2009

BRIGGSMORE AVENUE, between McHenry Avenue and Coffee Road	45 miles per hour	June 24, 2009
BRIGGSMORE AVENUE, westbound and eastbound between Oakdale Road and Claus Road	50 miles her hour	December 5, 2006
BRIGGSMORE AVENUE, between Prescott Road and Tully Road	45 miles per hour	February 26, 2010
BRIGGSMORE AVENUE, between Tully Road and McHenry Avenue	45 miles per hour	June 24, 2009
BRIGHTON AVENUE, between Coffee Road and Locke Road	30 miles per hour	January 31, 2007
CALIFORNIA AVENUE, between Carpenter Road and Martin Luther King Drive	30 miles per hour	July 11, 2002
CARPENTER ROAD, between Blue Gum Avenue and Woodland Avenue	40 miles per hour	February 2, 2010
CARPENTER ROAD, between Woodland Avenue and Maze Boulevard	40 miles per hour	February 1, 2007
CARPENTER ROAD, between Maze Boulevard and Paradise Road	50 miles per hour	February 2, 2010
CARVER ROAD, between Bangs Avenue and Pelandale Avenue	35 miles per hour	December 5, 2006
CARVER ROAD, between Pelandale Avenue and Brixton Lane	30 miles per hour	December 5, 2006
CARVER ROAD, between Brixton Lane and Briggsmore Avenue	30 miles per hour	December 7, 2006

CARVER ROAD, between Briggsmore Avenue and Orangeburg Avenue	30 miles per hour	December 6, 2006
CARVER ROAD, between Orangeburg Avenue and 9th Street	30 miles per hour	December 6, 2006
CELESTE DRIVE, between Coffee Road and Oakdale Road	30 miles per hour	February 14, 2007
CLARATINA AVENUE, between Coffee Road and Oakdale Road	55 miles per hour	July 1, 2009
CLAUS ROAD, between Sylvan Avenue and Briggsmore Avenue	50 miles per hour	February 15, 2007
CLAUS ROAD, between Briggsmore Avenue and Scenic Drive	45 miles per hour	February 20, 2007
CLAUS ROAD, between Scenic Drive and Yosemite Boulevard	50 miles per hour	February 21, 2007
COFFEE ROAD, between Claratina Avenue and Sylvan Avenue	40 miles per hour	December 15, 2009
COFFEE ROAD, between Sylvan Avenue and Floyd Avenue	40 miles per hour	February 8, 2010
COFFEE ROAD, between Floyd Avenue and Briggsmore Avenue	40 miles per hour	February 26, 2010
COFFEE ROAD, between Briggsmore Avenue and Scenic Drive	40 miles per hour	February 8, 2010
COLLEGE AVENUE, between Rumble Road and Bowen Avenue	30 miles per hour	February 4, 2010
COLLEGE AVENUE, between Bowen Avenue and Princeton Avenue	35 miles per hour	February 21, 2003

COLLEGE AVENUE, between Princeton Avenue and Needham Avenue	25 miles per hour	February 21, 2003
CREEKWOOD DRIVE, between Claus Road and Yosemite Boulevard	35 miles per hour	February 26, 2010
CROWS LANDING ROAD, between 7th Street and Hatch Road	35 miles per hour	May 7, 2003
CROWS LANDING ROAD, between Hatch Road and Whitmore Avenue	35 miles per hour	February 2, 2010
DALE ROAD, northbound and southbound, between Bangs Avenue and Kiernan Avenue	40 miles per hour	October 13, 2006
DALE ROAD, between Bangs Avenue and Snyder Avenue	35 miles per hour	February 27, 2007
DALE ROAD, between Snyder Avenue and Veneman Avenue	35 miles per hour	February 28, 2007
DALE ROAD, between Veneman Avenue and Standiford Avenue	35 miles per hour	March 1, 2007
EASTRIDGE DRIVE, between Orangeburg Avenue and Scenic Drive	30 miles per hour	February 11, 2010
EL VISTA AVENUE, between Scenic Drive and Yosemite Boulevard	35 miles per hour	August 13, 2009
EMERALD AVENUE, between Maze Boulevard and California Avenue	30 miles per hour	February 5, 2010
EVERGREEN AVENUE, between Orangeburg Avenue and Carver Road	30 miles per hour	March 6, 2007

FLOYD AVENUE, between Coffee Road and Oakdale Road	30 miles per hour	March 14, 2007
FLOYD AVENUE, between McHenry Avenue and Coffee Road	30 miles per hour	March 13, 2007
FLOYD AVENUE, eastbound and westbound, between Oakdale Road and Roselle Avenue	35 miles per hour	January 9, 2007
FLOYD AVENUE, between Roselle Avenue and Claus Road	40 miles per hour	June 24, 2009
G STREET, between 9 <sup>th</sup> Street and 17 <sup>th</sup> Street	25 miles per hour	December 14, 2009
GRANGER AVENUE, between Tully Road and McHenry Avenue	35 miles per hour	February 26, 2010
GRANGER AVENUE, between McHenry Avenue and Sunrise Avenue	35 miles per hour	February 26, 2010
H STREET, between 9 <sup>th</sup> Street and 17 <sup>th</sup> Street	25 miles per hour	February 4, 2010
HATCH ROAD, between Carpenter Road and Crows Landing Road	45 miles per hour	March 21, 2007
JEFFERSON STREET, between Maze Boulevard and Paradise Road	30 miles per hour	February 19, 2004
KANSAS AVENUE, between Morse Road and Rosemore Avenue	40 miles per hour	May 6, 2003
KANSAS AVENUE, between Rosemore Avenue and Carpenter Road	40 miles per hour	February 10, 2010
KANSAS AVENUE, between Carpenter Road and Emerald Avenue	35 miles per hour	February 10, 2010

KANSAS AVENUE, between Emerald Avenue and Ninth Street	35 miles per hour	May 6, 2003
LA LOMA AVENUE, between Burney Street and Yosemite Boulevard	30 miles per hour	March 22, 2007
LAKWOOD AVENUE, between Briggsmore Avenue and Scenic Drive	35 miles per hour	February 11, 2010
LINCOLN AVENUE, between Dry Creek and Yosemite Boulevard	35 miles per hour	March 27, 2007
MABLE AVENUE, between Coffee Road and Oakdale Road	30 miles per hour	March 28, 2007
MARTIN LUTHER KING DRIVE, between Maze Boulevard and Paradise Road	30 miles per hour	March 29, 2007
MERLE AVENUE, between Oakdale Road and Roselle Avenue	30 miles per hour	February 26, 2003
MERLE AVENUE, between Roselle Avenue and Claus Road	35 miles per hour	February 25, 2010
MILLER AVENUE, between La Loma Avenue and El Vista Avenue	35 miles per hour	February 25, 2010
MITCHELL ROAD, between Finch Road and the southerly City limits	50 miles per hour	May 7, 2003
MORRIS AVENUE, between McHenry Avenue and Coffee Road	30 miles per hour	April 30, 2007
MORSE ROAD, between Blue Gum Avenue and Kansas Avenue	40 miles per hour	April 4, 2007
MT. VERNON DRIVE, between Prescott Road and College Avenue	30 miles per hour	February 3, 2010

NEECE DRIVE, between Tuolumne Boulevard and Rouse Avenue	35 miles per hour	April 17, 2007
NEEDHAM STREET, between 9th Street and L Street	35 miles per hour	April 18, 2007
NORWEGIAN AVENUE, between McHenry Avenue and Coffee Road	35 miles per hour	February 26, 2010
OAKDALE ROAD, between 1300 feet north of Mable Avenue and Sylvan Avenue	45 miles per hour	April 19, 2007
OAKDALE ROAD, between Sylvan Avenue and Floyd Avenue	45 miles per hour	April 24, 2007
OAKDALE ROAD, between Floyd Avenue and Briggsmore Avenue	40 miles per hour	February 4, 2010
OAKDALE ROAD, between Briggsmore Avenue and Scenic Drive	40 miles per hour	February 4, 2010
ORANGEBURG AVENUE, between Briggsmore Avenue and Martin Avenue	35 miles per hour	April 25, 2007
ORANGEBURG AVENUE, between Martin Avenue and McHenry Avenue	40 miles per hour	April 26, 2007
ORANGEBURG AVENUE, between McHenry Avenue and Coffee Road	40 miles per hour	May 1, 2007
ORANGEBURG AVENUE, between Coffee Road and Oakdale Road	35 miles per hour	May 2, 2007

ORANGEBURG AVENUE, between Oakdale Road and Lakewood Avenue	35 miles per hour	May 3, 2007
ORANGEBURG AVENUE, between Lakewood Avenue and Claus Road	35 miles per hour	May 8, 2007

PARADISE ROAD, between Carpenter Road and Martin Luther King Drive	35 miles per hour	May 9, 2007
PARADISE ROAD, between Martin Luther King Drive and Washington Street	30 miles per hour	May 10, 2007
PARKER ROAD, between Santa Fe and Church Street	45 miles per hour	February 4, 2010
PELANDALE AVENUE, between Sisk Road and Dale Road	45 miles per hour	November 30, 2006
PELANDALE AVENUE, between Dale Road and Prescott Avenue	50 miles per hour	March 5, 2010
PELANDALE AVENUE, between Prescott Avenue and Carver Road	50 miles per hour	March 5, 2010
PELANDALE AVENUE, between Carver Road and Tully Road	50 miles per hour	March 5, 2010
PELANDALE AVENUE, between Tully Road and McHenry Avenue	50 miles per hour	March 5, 2010
PRESCOTT ROAD, between Snyder Avenue and Standiford Avenue	40 miles per hour	May 15, 2007
PRESCOTT ROAD, between Standiford Avenue and Rumble Road	40 miles per hour	May 16, 2007
PRESCOTT ROAD, between Rumble Road and Briggsmore Avenue	35 miles per hour	May 17, 2007
RIVERSIDE DRIVE, between Edgebrook Drive and Yosemite Boulevard	30 miles per hour	May 22, 2007

ROSE AVENUE, between Floyd Avenue and Briggsmore Avenue	30 miles per hour	May 24, 2007
ROSE AVENUE, between Briggsmore Avenue and Scenic Drive	30 miles per hour	May 30, 2007
ROSEBURG AVENUE, between Carver Road and Tully Road	30 miles per hour	June 13, 2002
ROSEBURG AVENUE, between Tully Road and McHenry Avenue	30 miles per hour	February 11, 2010
ROSEBURG AVENUE, between McHenry Avenue and Sunrise Avenue	30 miles per hour	February 4, 2010
ROSELLE AVENUE, between Sylvan Avenue and Floyd Avenue	40 miles per hour	February 26, 2003
ROSELLE AVENUE, between Floyd Avenue and Briggsmore Avenue	45 miles per hour	March 5, 2010
ROSEMORE AVENUE, between Blue Gum Avenue and Kansas Avenue	35 miles per hour	April 18, 2007
ROUSE AVENUE, between Colorado Avenue and Neece Drive	30 miles per hour	February 5, 2010
RUMBLE ROAD, between Sisk Road and Conant Avenue	30 miles per hour	December 15, 2009
RUMBLE ROAD, between Conant Avenue and Tully Road	30 miles per hour	February 4, 2010
RUMBLE ROAD, between Tully Road and McHenry Avenue	30 miles per hour	February 4, 2010

RUMBLE ROAD, between McHenry Avenue and Coffee Road	30 miles per hour	May 17, 2002
SANTA CRUZ AVENUE, between Yosemite Boulevard and Legion Park Drive	30 miles per hour	February 9, 2010
SCENIC DRIVE, between Burney Street and Coffee Road	35 miles per hour	July 8, 2009
SCENIC DRIVE, between Coffee Road and Oakdale Road	40 miles per hour	July 8, 2009
SCENIC DRIVE, between Oakdale Road and Lakewood Avenue	40 miles per hour	February 10, 2010
SCENIC DRIVE, between Lakewood Avenue and Lillian Drive	40 miles per hour	July 8, 2009
SCENIC DRIVE, between Lillian Drive and Claus Road	40 miles per hour	July 8, 2009
SIERRA DRIVE, between G Street and 7th Street	30 miles per hour	February 25, 2010
SISK ROAD, between Pelandale Avenue and Standiford Avenue	40 miles per hour	November 28, 2006
SISK ROAD, between Standiford Avenue and Briggsmore Avenue	40 miles per hour	November 29, 2006
SNYDER AVENUE, between Dale Road and Prescott Road	30 miles per hour	December 15, 2009
SNYDER AVENUE, between Prescott Road and Tully Road	30 miles per hour	May 16, 2002
STANDIFORD AVENUE, between Sisk Road and Prescott Road	45 miles per hour	February 4, 2010

STANDIFORD AVENUE, between Prescott Road and Tully Road	40 miles per hour	February 4, 2010
STANDIFORD AVENUE, between Tully Road and McHenry Avenue	40 miles per hour	February 4, 2010
SUNRISE AVENUE, between Floyd Avenue and Lucern Avenue	30 miles per hour	February 9, 2010
SUTTER AVENUE, between Paradise Road and Robertson Road	30 miles per hour	March 5, 2010
SYLVAN AVENUE, between McHenry Avenue and Coffee Road	40 miles per hour	February 4, 2010
SYLVAN AVENUE, between Coffee Road and Oakdale Road	40 miles per hour	February 4, 2010
SYLVAN AVENUE, between Oakdale Road and Roselle Avenue	45 miles per hour	June 24, 2009
SYLVAN AVENUE, between Roselle Avenue and Claus Road	45 miles per hour	February 4, 2010
TENAYA DRIVE, between Empire Avenue and the easterly city limit on Tenaya Drive	30 miles per hour	June 18, 2002
TULLY ROAD, between Bangs Avenue and Standiford Avenue	45 miles per hour	December 14, 2009
TULLY ROAD, between Standiford Avenue and Briggsmore Avenue	35 miles per hour	December 14, 2009
TULLY ROAD, between Briggsmore Avenue and Coldwell Avenue	35 miles per hour	December 14, 2009
TULLY ROAD, between Coldwell Avenue and 9 <sup>th</sup> Street	30 miles per hour	December 14, 2009

TUOLUMNE BOULEVARD, between Paradise Road and 7th Street	35 miles per hour	February 2, 2010
UNION AVENUE, between Tully Road and McHenry Avenue	30 miles per hour	December 15, 2009
VENEMAN AVENUE, between Dale Road and Regency Park Drive	30 miles per hour	December 15, 2009
VIRGINIA AVENUE, between Roseburg Avenue and Needham Street	30 miles per hour	December 11, 2010
WHITMORE AVENUE, between Ustick Road and Crows Landing Road	45 miles per hour	February 2, 2010
WHITMORE AVENUE, between Crows Landing Road and Morgan Road	40 miles per hour	February 2, 2010
WOODLAND AVENUE, between Morse Road and Carpenter Road	30 miles per hour	February 2, 2010
WOODLAND AVENUE, between Carpenter Road and 9th Street	30 miles per hour	February 26, 2010
WOODROW AVENUE, between Tully Road and McHenry Avenue	30 miles per hour	May 21, 2002
5TH STREET, between L Street and Sierra Drive	30 miles per hour	February 4, 2010
6TH STREET, between M Street and Sierra Drive	30 miles per hour	May 28, 2002
7TH STREET BRIDGE, between B Street and River Road	30 miles per hour	August 30, 2000

9TH STREET, between Carpenter Road and Tully Road	45 miles per hour	February 4, 2010
9TH STREET, between Tully Road and L Street	35 miles per hour	March 5, 2010
9TH STREET, between D Street and Morton Boulevard	35 miles per hour	February 4, 2010

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 Modesto held on the 22nd day of June, 2010, by Councilmember Hawn 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: Geer, Hawn, Lopez, Marsh, Muratore, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: 

JIM RIDENOUR, Mayor

ATTEST:

By 

STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By 

SUSANA ALCALA WOOD, City Attorney

Ord. No. 3530-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 July, 2010, Councilmember Lopez moved its final adoption, which motion being duly seconded by Councilmember Hawn, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: 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: August 5, 2010

**ORDINANCE NO. 3531-C.S.**

AN ORDINANCE ADOPTING THE 2010-11 ANNUAL AND MULTI-YEAR OPERATING BUDGETS AND THE 2010-11 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 2010-11 Fiscal Year to the Finance Committee at workshops held on May 17, 2010 and June 2, 2010, 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 17, 2010 and June 2, 2010 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 9, 2010, during which the City Council considered the recommendations of the Finance Committee relating to the Proposed Operating and Multi-year budgets and the Capital Improvement Program, and

WHEREAS, prior to any discussion of the budgets and prior to the final adoption, the City Council by separate motion considered each CIP project that could be the source of a potential

conflict of interest to one or more members of the City Council without the participation of those members, and

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

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

SECTION 1. ADOPTION OF BUDGET. That the Proposed Operating and Multi-year Budgets, a copy of which is on file in the City Clerk's Office and as shown in Exhibit 4, 7, 8, 9, and 11 (Exhibit 4-General Fund Reductions, Exhibit 7-Non-General Fund Reductions, Exhibit 8-Fund Summary, Exhibit 9-Transfers List, Exhibit 11-Multi-Year Operating Budget List) are hereby adopted as the Fiscal Year 2010-11 Operating and Multi-year Budgets for the City of Modesto.

SECTION 2. ADOPTION OF BUDGET CONTROLS/FINANCIAL POLICIES. That the Financial Policies for budgetary control and authority as shown in Exhibit 10 and incorporated herein by reference is hereby adopted for the Fiscal Year 2010-11.

SECTION 3. ADOPTION OF CAPITAL IMPROVEMENT PROGRAM. That the Capital Improvement Program, a copy of which is on file in the City Clerk's office and shown in the proposed CIP budget document and in Exhibit 2 (which is incorporated by reference herein) and other amounts previously approved for spending on Capital Improvement Projects are hereby adopted as the 2010-11 Capital Improvement Program for the City of Modesto.

SECTION 4. MULTI-YEAR OPERATING PROGRAMS. That unexpended funds previously approved and appropriated in Multi-Year Programs are hereby re-appropriated for the programs for which they were originally authorized (Exhibit 11).

SECTION 6. COUNCIL POLICIES. That the Policy Issues outlined in the 2010-11 Proposed Operating and Multi-year Budgets have been reviewed and are adopted hereby.

SECTION 7. EFFECTIVE DATE. Pursuant to Section 722 of the Charter of the City of Modesto, this ordinance shall go in effect and be in full force and operation immediately upon adoption.

SECTION 8. PUBLICATION. Copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in *The Modesto Bee*, the official newspaper of the City of Modesto, setting forth the title of this ordinance, the date of its introduction and the places where this ordinance is posted.


The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 22nd day of June, 2010, by Councilmember Hawn, who moved its adoption, and passage to print, which motion being duly seconded by Councilmember Muratore, was upon roll call carried and the resolution adopted by the following votes:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

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

  
JIM RIDENOUR, Mayor

ATTEST:

  
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 6th day of July, 2010, Councilmember Lopez moved its final adoption, which motion being duly seconded by Councilmember Hawn, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: 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: August 5, 2010

ORDINANCE NO. 3532-C.S.

AN ORDINANCE ADDING ARTICLE 8 TO CHAPTER 2 OF  
TITLE 10 OF THE MODESTO MUNICIPAL CODE  
RELATING TO DOWNTOWN CORE (DC) ZONE

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

SECTION 1. AMENDMENT OF CODE. Article 8 is hereby added to Chapter  
2 of Title 10 of the Modesto Municipal Code to read as follows:

**10-2.801. PURPOSE AND INTENT.**

This Article establishes a form based code as the mechanism for development review and entitlement within the Downtown Core (DC) Zone. The form based code focuses on the form of the built environment as primary and the uses contained within the built environment as secondary. The Downtown Core Zone is divided into three Districts with distinct development criteria. The Districts are delineated on the Planning District Map and defined in the Planning Districts section.

The Downtown Core Zone is intended to:

- (a) Implement General Plan Policy by promoting higher density, mixed-use development to create a balanced, vibrant downtown and active neighborhood centers.
- (b) Implement Redevelopment Master Plan Policy by promoting mixed-use development in the Downtown Core Zone;
- (c) Preserve and enhance the area's historically eclectic architecture;
- (d) Facilitate use of large-specimen, shade-giving street trees;
- (e) Facilitate increased densities and intensification of shared uses;
- (f) Ensure development occurs at a human scale;
- (g) Promote store frontage and display along public streets;
- (h) Provide additional housing choices and opportunities;

- (i) Reduce dominance of parking areas and parking structures;
- (j) Improve pedestrian circulation;
- (k) Encourage useable, well-designed private open spaces.

**10-2.802. ADMINISTRATION.**

- (a) Applicability. The provisions of this Article shall supersede any standards, provisions or regulations of all other Articles of Title 10 that are in conflict with its provisions. All other standards, provisions or regulations of Title 10 that are not in conflict with this Article shall remain in effect. This Article shall apply to all subdivisions, parcel maps, lot line adjustments, buildings, structures and land uses within the Downtown Core Zone, as identified on the Planning District Map, with the following exceptions:
  - (1) Parcels existing prior to September 3, 2010, that do not conform to the development provisions of this Article may not be modified in a manner that would increase the degree of nonconformity with this Article.
  - (2) Buildings existing prior to September 3, 2010, that do not conform to the development provisions of this Article may be expanded by up to 25% of the gross floor area of the building. The expanded area shall be subject to the development standards of the C-2 Zone and the parking and use type provisions of this Article.
  - (3) Uses established prior to September 3, 2010, that do not conform to the Use Type provisions of this Article may not be expanded and shall be replaced by Use Types conforming to the provisions of this Article when discontinued for a continuous period of six (6) months. When a non-conforming use has been discontinued for less than six (6) months, one nonconforming use may replace another if the new use is listed as a Permitted Use in the Zone that was in effect prior to September 3, 2010.
  - (4) Use of right-of-way extending beyond the prescribed three-foot area for outdoor dining, shall be allowed in accordance with the provisions of Article 1 of Chapter 15 of Title 4 of the Municipal Code for buildings existing prior to September 3, 2010, that are not set back from the street.

- (5) Development of Assessor Parcel Nos. 104-006-008 and 104-006-009 may occur as specified by City Council Resolution No. 2007-100, as amended by Planning Commission Resolution No. 2007-32, and the development schedule specified in said Resolutions may be amended as provided for by Article 17.
- (6) Development of Assessor Parcel Nos. 105-015-001 and 105-015-002 may occur as specified by City Council Resolution No. 2007-619, and the development schedule specified in said Resolution may be amended as provided for by Article 17.
- (7) Development of Assessor Parcel Nos. 106-042-001 through 007 may occur as specified by City Council Resolution No. 2009-568, and the development schedule specified in said Resolution may be amended as provided for by Article 17.

Subdivisions, parcel maps and lot line adjustments shall be reviewed in accordance with the provisions of Chapter 4 of Title 4. Buildings and Structures, including by Warrant, shall be reviewed in accordance with the processes established by Sections 10-2.3003 through 10-2.3005 of the Modesto Municipal Code. Variances shall be reviewed in accordance with the processes established by Sections 10-2.2507 through 10-2.2511 of the Modesto Municipal Code, except all references to Board shall be replaced by Commission.

Overall development intensity and density within the Downtown Core Zone shall occur in accordance with the Community Development Policies of the General Plan.

- (b) Warrants. A Warrant is a minor deviation in the setback or stepback provisions that under limited circumstances still achieves the objectives specified in the Purpose and Intent and Planning District Sections. The following deviations may be approved by the Director where the findings following the deviation are made:
  - (1) Minimum 15-foot stepback from street property line(s) above the sixth floor within the Central and Transition Districts:
    - (i) The building occupies a corner lot; and
    - (ii) No other deviations of this nature exist within buildings fronting on street sections extending one block from the associated intersection; and

- (iii) The width of the building along any public street is no more than 100 feet; and
  - (iv) The building is no more than ten stories tall in the Central District or eight stories tall in the Transition District; and
  - (v) The building maintains a setback of at least five feet above the sixth floor.
- (2) Minimum 30-foot stepback from the interior property line above the sixth floor within the Central and Transition Districts:
- (i) The width of the subject parcel is less than 110 feet; and
  - (ii) No more than two other buildings constructed above six stories exist within the subject block frontage; and
  - (iii) The building maintains a setback of at least 20' above the sixth floor.
- (3) Maximum zero-foot setback from interior property line at floors 1-6 within the Central and Transition Districts:
- (i) The area is provided for a Paseo or a Plaza; and
  - (ii) No more than one other Paseo or Plaza exists within the subject block frontage; and
  - (iii) A minimum ten-foot wide, unobstructed pedestrian access/circulation area is provided.
- (c) Variances. Deviations from the provisions of this Article that are not provided for by Warrant may be approved by Variance. There are three types of Variances from the provisions of this Article: Hardship Variance, Civic Variance, and Landmark Variance. Hardship Variances are for parcels with unique physical characteristics or circumstances that make development under the provisions of this Article exceptionally difficult. Civic Variances are for developments that provide a unique cultural amenity or necessary government service, which would not be possible under the provisions of this Article. Landmark Variances are for large buildings or structures that provide a unique, iconic architectural style.

Variations may be approved by the Planning Commission where the findings following the Variance type are made. Only one Variance type may be approved per property.

The applicant for any of the three Variance types listed below shall have the burden of proof of demonstrating the required findings.

(1) Hardship Variance:

- (i) There are special circumstances or conditions applicable to the property in question such that strict application of the provisions of this Article would deprive the applicant of practical use of the property; and
- (ii) The special circumstances or conditions do not exist for adjacent parcels; and
- (iii) The variance provided is the minimum deviation necessary to make possible the development of the property in a manner that otherwise complies with the provisions of this Article.

(2) Civic Variance:

- (i) The property is proposed to be used for civic building(s)/grounds that provide a regional amenity by furthering cultural opportunities, or the subject property is proposed to be used for governmental civic building(s)/grounds that provide a necessary service or particular societal amenity; and
- (ii) The nature of the civic building(s)/grounds is such that application of the provisions of this Article would preclude its use for the intended purpose; and
- (iii) The variance provided is the minimum deviation necessary to make possible the development of the property in a manner that otherwise complies with the provisions of this Article.

- (3) Landmark Variance:
- (i) The property is proposed to be developed with a building or structure that employs a form and architectural style that is of high quality and will serve as a landmark attraction that is uniquely recognizable as being associated with Modesto; and
  - (ii) The form and architectural style cannot be achieved without a deviation from the provisions of this Article; and
  - (iii) The variance provided is the minimum deviation necessary to make possible the development of the property in a manner that otherwise complies with the provisions of this Article.

#### 10-2.803. PLANNING DISTRICTS.

- (a) **Central District (CD).** This district is intended to foster the most intensive and active urban environment in the Downtown Core Zone, while ensuring an overall human scale to development. This is accomplished with large, but unobtrusive building envelopes that accommodate a mixture of uses, including residential, with an interface that promotes a very strong public/private connection and lively streetscape.

The district contains Historic Preservation Sites, which catalog buildings that are included on the landmark preservation list in the General Plan. It also contains Historic Resource Sites, which catalog buildings that have been identified as having some historical significance, but are not on the historic preservation list. Special considerations for these sites are provided in the General Provisions section of this Article.

- (b) **Transition District (TD).** This district is intended to foster an intensive and active urban environment, but at a reduced scale from what is found in the Central District. This is accomplished with medium-large building envelopes that accommodate a mixture of uses, including residential, with an interface that promotes a strong public/private connection and lively streetscape.

In addition to Historic Preservation Sites and Historic Resource Sites, the district contains the High Speed Rail Corridor. The High Speed Rail







Corridor is intended to accommodate future High Speed and associated Regional Rail within the Downtown Core Zone. Special considerations for these sites are addressed in the General Provisions section of this Article.

- (c) **Buffer District (BD).** This district is intended to provide a buffer between the more intensive Central and Transition Districts and the less intensive uses located on the eastern side of the Downtown Core Zone. This is accomplished with smaller building envelopes that are primarily residential or live/work space. The sense of connection to the public realm is still strong, but there is a more distinctive transition between the public realm and the private realm.

The district contains a Historic Preservation Site that requires special consideration beyond the development provisions of the Transition District. The additional provisions pertaining to this site are addressed in the General Provisions section of this Article.

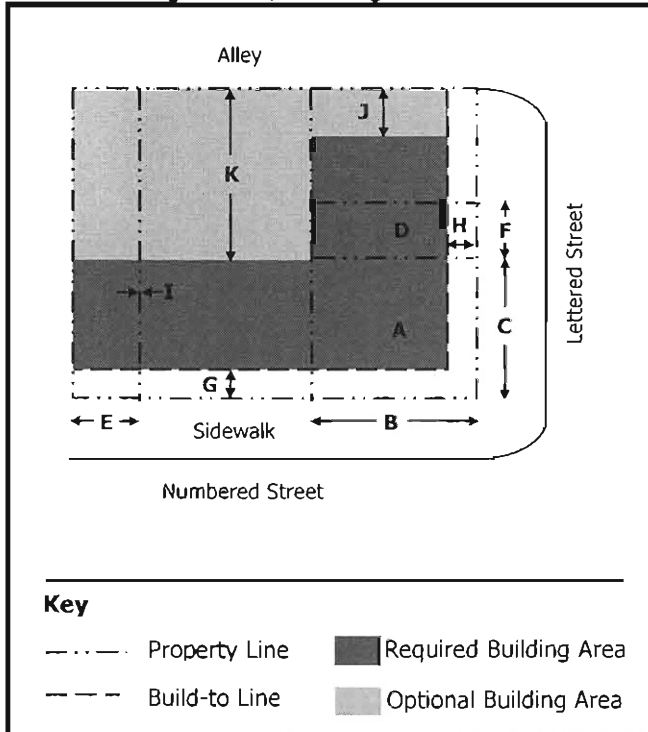


## Planning District Map

- |   |                     |   |                          |  |                             |
|---|---------------------|---|--------------------------|--|-----------------------------|
|  | Central District    |  | Buffer District          |  | Historic Preservation Sites |
|  | Transition District |  | High Speed Rail Corridor |  | Historic Resource Sites     |

# 10-2.804 Central District (CD)

**Table 8-1 Central District  
Parcel Configuration, Building Placement**



**Key**

- Property Line
- Build-to Line
- Required Building Area
- Optional Building Area

**Parcel Configuration**

**Corner Parcel (At Street Intersection)**

Parcel Area	5,000 sf. min.	<b>A</b>
Width Along Numbered Street	55' min.	<b>B</b>
Width Along Lettered Street	55' min.	<b>C</b>

**Interior Parcel**

Parcel Area	1,375 sf. min.	<b>D</b>
Width Along Numbered Street	25' min.	<b>E</b>
Width Along Lettered Street	25' min.	<b>F</b>

**Notes**

All parcels shall front on a public street except air space condominiums and parcels used exclusively for parking and/or circulation gaining access to/from the alley.

**Building Placement (Floors 1-6)**

**Build-to Line**

Numbered Street Frontage	5'*	<b>G</b>
Lettered Street Frontage	5'*	<b>H</b>

**Setback**

Interior	0' max	<b>I</b>
Alley		
≤ 55' From Lettered Street <sup>1</sup>	22' max	<b>J</b>
> 55' From Lettered Street <sup>2</sup>	85' max	<b>K</b>

**Notes**

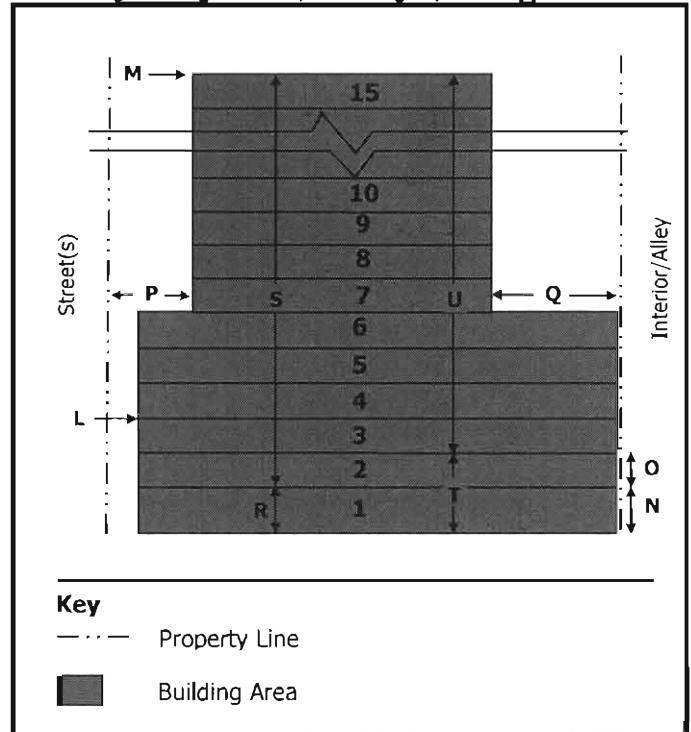
80% of the façade shall be built to the build-to line.

\* To be further considered in conjunction with the development of streetscape standards.

<sup>1</sup>Setback from Alley where building is at or less than 55' from Lettered Street.

<sup>2</sup>Setback from Alley where building is beyond 55' from Lettered Street.

**Table 8-2 Central District  
Building Configuration, Frontages, Use Types**



**Key**

- Property Line
- Building Area

**Building Configuration**

**Height**

Building Min.	3 Stories	<b>L</b>
Building Max.	15 Stories	<b>M</b>
Floor to Floor Height		
First Floor	16' - 18'	<b>N</b>
Floors 2-15	13' - 14'	<b>O</b>

**Stepback (Floors 7-15)**

Street Frontage(s)	15' min.	<b>P</b>
Interior/Alley	30' min.	<b>Q</b>

**Notes**

Top floor height measured to eave or base of parapet.

Combining of floor area on the building interior to accommodate theater or mezzanine space is permitted.

**Permitted Frontages & Use Types**

**Stoop Frontage**

First Floor	Civic, Residential	<b>R</b>
Floors 2-15	Civic, Office, or Residential	<b>S</b>

**Shopfront Frontage**

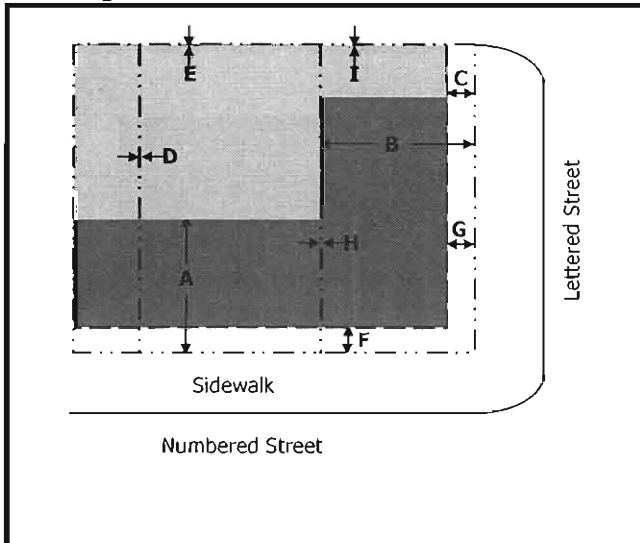
Floors 1-2	Retail, Office, or Lodging	<b>T</b>
Floors 3-15	Office, Lodging, or Residential	<b>U</b>

**Notes**

Frontage types are defined in Section 10-2.807.

Use types are defined in Section 10-2.808.

**Table 8-3 Central District  
Parking Location and Provision**



**Key**

— · — ·	Property Line	■	Ground Level Parking Area
— — —	Build-to Line	■	Upper Levels Parking Area

**Parking Location (Distance From Property Line)**

<b>Ground Level (Surface or Structured Parking)</b>		
Numbered Street	55' min.	<b>A</b>
Lettered Street	> 22' from Alley <sup>1</sup>	<b>B</b>
	≤ 22' from Alley <sup>2</sup>	<b>C</b>
Interior	0' min.	<b>D</b>
Alley	0' min.	<b>E</b>
<b>Levels 2-Upper Deck (Structured Parking)</b>		
Numbered Street	5' min.	<b>F</b>
Lettered Street	5' min.	<b>G</b>
Interior	0' min.	<b>H</b>
Alley	0' min.	<b>I</b>

**Notes**

<sup>1</sup>Setback from Lettered Street where parking is greater than 22' from Alley

<sup>2</sup>Setback from Lettered Street where parking is at or Less than 22' from Alley.

**Parking Provision**

**Minimum Spaces Required (Off-Street)**

Ground Floor	
Residential/Lodging	No parking required
Retail/Civic/Office	No parking required
Floors 2-15	
Residential/Lodging	1 per unit
Retail/Civic/Office	1 per 500 square feet

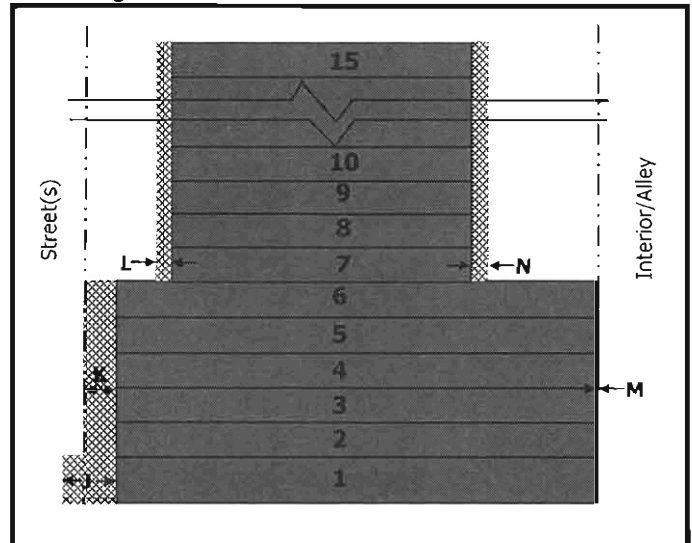
**Maximum Spaces Permitted (Off-Street)**

Ground Floor	
Residential/Lodging	1 per unit
Retail/Civic/Office	1 per 500 square feet
Floors 2-15	
Residential/Lodging	1 per unit
Retail/Civic/Office	1 per 300 square feet

**Notes**

Shared parking is permitted by Section 10-2.809

**Table 8-4 Central District  
Building Encroachments**



**Key**

— · — ·	Property Line	■	Building Area
▨	Encroachment		

**Building Encroachments**

**Street Frontages**

Ground Floor	8' max	<b>J</b>
Floors 2-6	5' max	<b>K</b>
Floors 7-15	2' max	<b>L</b>

**Interior/Alley**

Floors 1-6	0' max	<b>M</b>
Floors 7-15	2' max	<b>N</b>

**Notes**

Awnings, canopies, signs and stoops may extend the full width of the permitted encroachment at ground floor

Awnings and balconies may extend the full width of the permitted encroachment at levels 2-6.

Other architectural appurtenances may extend two feet maximum into the permitted encroachment.

# 10-2.805 Transition District (TD)

**Table 8-5 Transition District  
Parcel Configuration, Building Placement**

**Key**

- Property Line
- Build-to Line
- Required Building Area
- Optional Building Area

Parcel Configuration		
Corner Parcel (At Street Intersection)		
Parcel Area	5,000 sf. min	<b>A</b>
Width Along Numbered Street	55' min	<b>B</b>
Width Along Lettered Street	55' min	<b>C</b>
Interior Parcel		
Parcel Area	1,375 sf. min	<b>D</b>
Width Along Numbered Street	25' min	<b>E</b>
Width Along Lettered Street	25' min	<b>F</b>
Notes		
All parcels shall front on a public street except air space condominiums and parcels used exclusively for parking and/or circulation gaining access to/from the alley.		
Building Placement (Floors 1-6*)		
Build-to Line		
Numbered Street Frontage	5'**	<b>G</b>
Lettered Street Frontage	5'**	<b>H</b>
Setback		
Interior		
Adjacent to CD or TD	0' max	<b>I</b>
Adjacent to BD	3' min, 5' max	<b>J</b>
Alley		
≤ 55' from Lettered Street <sup>1</sup>	22' max	<b>K</b>
> 55' from Lettered Street <sup>2</sup>	85' max	<b>L</b>
Notes		
70% of the façade shall be built to the build-to line.		
*Along a shared property line between the Transition and Buffer Districts, the associated Building Placement provision applies only to Floors 1-4, even if separated by an alley.		
** To be further considered in conjunction with the development of streetscape standards.		
<sup>1</sup> Setback from Alley where building is at or less than 55' from Lettered Street.		
<sup>2</sup> Setback from Alley where building is beyond 55' from Lettered Street.		

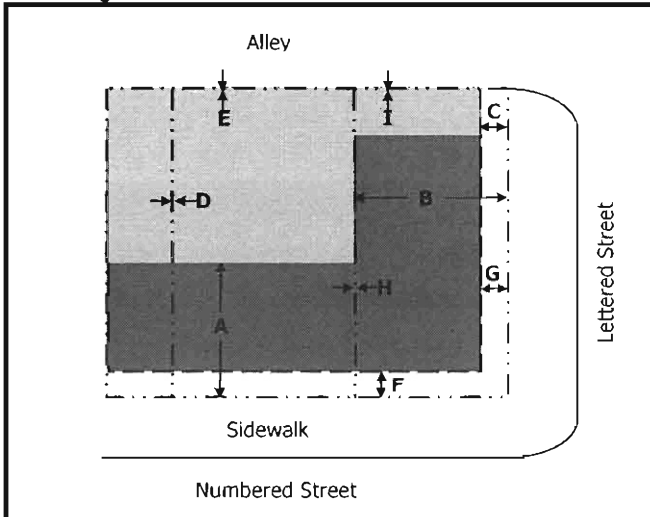
**Table 8-6 Transition District  
Building Configuration, Frontages, Use Types**

**Key**

- Property Line
- Building Adjacent to CD or TD
- Building Adjacent to BD

Building Configuration		
Height		
Building Min.	2 Stories	<b>M</b>
Building Max.		
Adjacent to CD or TD	8 Stories	<b>N</b>
Adjacent to BD	6 Stories	<b>O</b>
Floor to Floor Height		
First Floor	16' - 18'	<b>P</b>
Floors 2-8	13' - 14'	<b>Q</b>
Stepback		
Street Frontage(s)		
Floors 7-8	15' min	<b>R</b>
Interior/Alley		
Floors 7-8	30' min	<b>S</b>
Interior/Alley Adjacent to BD		
Floors 5-6	30' min	<b>T</b>
Notes		
Top floor height measured to eave or base of parapet.		
Combining of floor area on the building interior to accommodate theater or mezzanine space is permitted.		
Permitted Frontages & Use Types		
Stoop Frontage		
First Floor	Civic, Residential	<b>U</b>
Floors 2-8	Civic, Office, Residential	<b>V</b>
Shopfront Frontage		
Floors 1-2	Retail, Office, Lodging or Service	<b>W</b>
Floors 2-8	Office, Lodging, or Residential	<b>X</b>
Notes		
Frontage types are defined in Section 10-2.807.		
Use types are defined in Section 10-2.808.		

**Table 8-7 Transition District  
Parking Location and Provision**



**Key**

- - - - Property Line
- - - - Build-to Line
- Light Gray Box Ground Level Parking Area
- Dark Gray Box Upper Levels Parking Area

**Parking Location (Distance From Property Line)**

Ground Level (Surface or Structured Parking)		
Numbered Street	55' min.	<b>A</b>
Lettered Street	> 22' from Alley <sup>1</sup>	55' min. <b>B</b>
	≤ 22' from Alley <sup>2</sup>	5' min. <b>C</b>
Interior	0' min.	<b>D</b>
Alley	0' min.	<b>E</b>

**Levels 2-Upper Deck (Structured Parking)**

Numbered Street	5' min.	<b>F</b>
Lettered Street	5' min.	<b>G</b>
Interior	0' min.	<b>H</b>
Alley	0' min.	<b>I</b>

**Notes**

- <sup>1</sup>Setback from Lettered Street where parking is greater than 22' from Alley.
- <sup>2</sup>Setback from Lettered Street where parking is at or less than 22' from Alley.

**Parking Provision**

**Minimum Spaces Required (Off-Street)**

Ground Floor	
Residential/Lodging	1 per unit
Retail/Civic/Office/Service	1 per 500 square feet
Floors 2-8	
Residential/Lodging	1 per unit
Retail/Civic/Office/Service	1 per 500 square feet

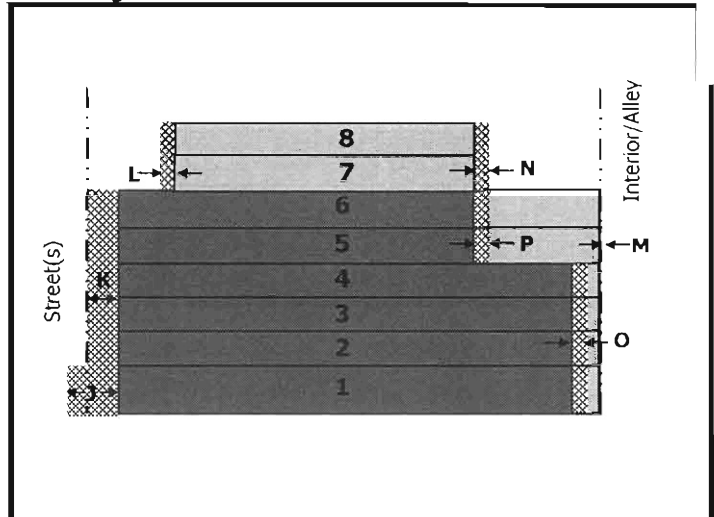
**Maximum Spaces Permitted (Off-Street)**

Ground Floor	
Residential/Lodging	1.5 per unit
Retail/Civic/Office/Service	1 per 300 square feet
Floors 2-8	
Residential/Lodging	1.5 per unit
Retail/Civic/Office/Service	1 per 300 square feet

**Notes**

Shared parking is permitted by Section 10-2.809.

**Table 8-8 Transition District  
Building Encroachments**



**Key**

- - - - Property Line
- Hatched Box Encroachment
- Light Gray Box Building Adjacent to CD or TD
- Dark Gray Box Building Adjacent to BD

**Building Encroachments**

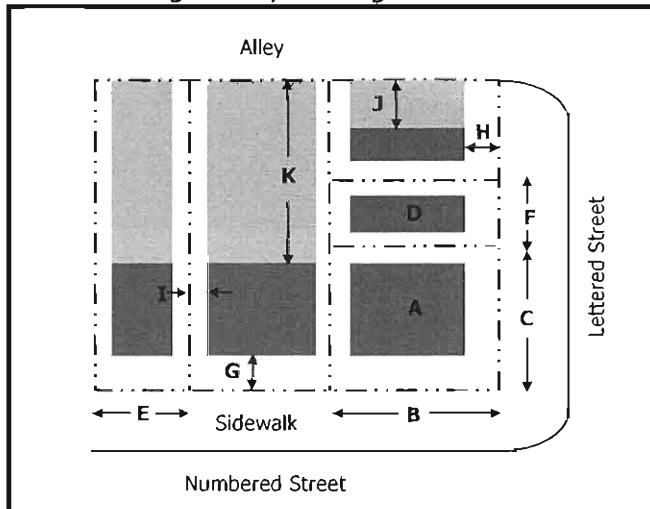
Street Frontages		
Ground Floor	8' max	<b>J</b>
Floors 2-6	5' max	<b>K</b>
Floors 7-8	2' max	<b>L</b>
Interior/Alley		
Adjacent to CD or TD		
Floors 1-6	0' max	<b>M</b>
Floors 7-8	2' max	<b>N</b>
Adjacent to BD		
Floors 1-4 (Interior Only)	2' max	<b>O</b>
Floors 5-6	2' max	<b>P</b>

**Notes**

- Awnings, canopies, signs and stoops may extend the full width of the frontage encroachment at ground floor.
- Awnings and balconies may extend the full width of the permitted encroachment at floors 2-6.
- Other architectural appurtenances may extend two feet maximum into the permitted encroachment.

# 10-2.806 Buffer District (BD)

**Table 8-9 Buffer District  
Parcel Configuration, Building Placement**



**Key**

- Property Line
- Required Building Area
- Optional Building Area

**Parcel Configuration**

**Corner Parcel (At Street Intersection)**

Parcel Area	3,600 sf. min.	<b>A</b>
Numbered Street Width	60' min.	<b>B</b>
Lettered Street Width	60' min.	<b>C</b>

**Interior Parcel**

Parcel Area	2,100 sf. min.	<b>D</b>
Numbered Street Width	35' min.	<b>E</b>
Lettered Street Width	35' min.	<b>F</b>

**Notes**

All parcels shall front on a public street except air space condominiums and parcels used exclusively for parking and/or circulation gaining access to/from the alley.

**Building Placement (Floors 1-3)**

**Setback**

Numbered Street Frontage	5' min*, 12' max	<b>G</b>
Lettered Street Frontage	5' min*, 12' max	<b>H</b>
Interior	3' min., 5' max	<b>I</b>

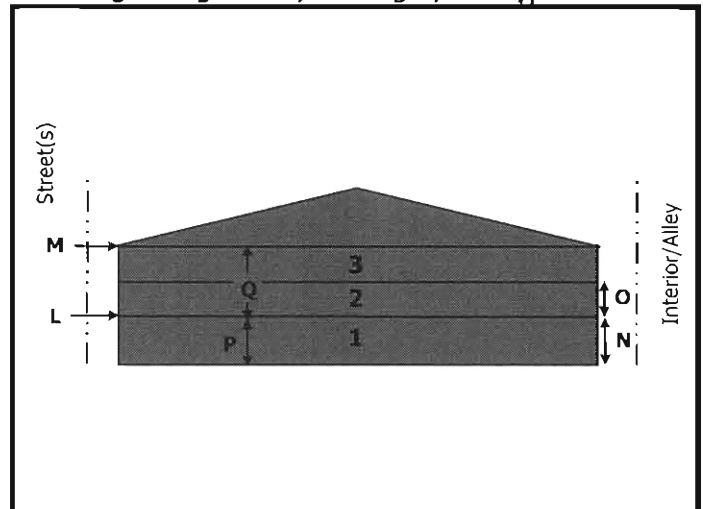
**Alley**

≤ 55' from Lettered Street <sup>1</sup>	22' max	<b>J</b>
> 55' From Lettered Street <sup>2</sup>	85' max	<b>K</b>

**Notes**

\* To be further considered in conjunction with the development of streetscape standards.  
<sup>1</sup>Setback from Alley where building is at or less than 55' from Lettered Street.  
<sup>2</sup>Setback from Alley where building is beyond 55' from Lettered Street.

**Table 8-10 Buffer District  
Building Configuration, Frontages, Use Types**



**Key**

- Property Line
- Building Area

**Building Configuration**

**Height**

Building Min.	1 Story	<b>L</b>
Building Max.	3 Stories	<b>M</b>
Floor to Floor Height		
First Floor	16' - 18'	<b>N</b>
Floors 2-3	13' - 14'	<b>O</b>

**Notes**

Top floor height measured to eave or base of parapet.  
 Combining of floor area on the building interior to accommodate theater or mezzanine space is permitted

**Permitted Frontage and Use Types**

**Stoop Frontage**

First Floor	Civic, Residential	<b>P</b>
Floors 2-3	Civic, Office, Residential	<b>Q</b>

**Shopfront Frontage**

First Floor	Retail, Office, Lodging	<b>P</b>
Floors 2-3	Office, Lodging, or Residential	<b>Q</b>

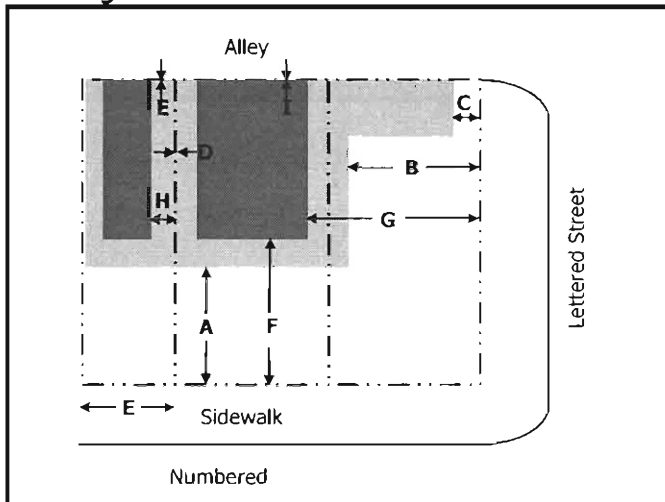
**Porch Frontage**

First Floor	Office, Retail, Lodging or Residential	<b>P</b>
Floors 2-3	Office, Lodging, or Residential	<b>Q</b>

**Notes**

Frontage types are defined in Section 10-2.807  
 Use types are defined in Section 10-2.808.

**Table 8-11 Buffer District  
Parking Location and Provision**



**Key**

--- Property Line	■ Upper Levels Parking Area
	■ Ground Level Parking Area

**Parking Location (Distance From Property Line)**

**Ground Level (Surface or Structured Parking)**

Numbered Street	55' min.	<b>A</b>
Lettered Street		
> 22' from Alley <sup>1</sup>	55' min.	<b>B</b>
≤ 22' from Alley <sup>2</sup>	5' min.	<b>C</b>
Interior	0' min.	<b>D</b>
Alley	0' min.	<b>E</b>

**Level 2-Upper Deck (Structured Parking)**

Numbered Street	65' min	<b>F</b>
Lettered Street	65' min.	<b>G</b>
Interior	5' min.	<b>H</b>
Alley	0' min.	<b>I</b>

**Notes**  
<sup>1</sup> Setbacks from Lettered Street where parking is greater than 22' from Alley  
<sup>2</sup> Setbacks from Lettered Street where parking is at or Less than 22' from Alley.

**Parking Provision**

**Minimum Spaces Required (Off-Street)**

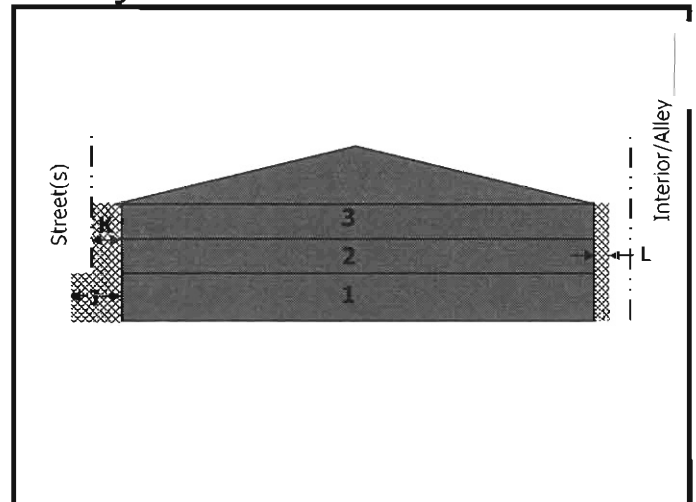
Ground Floor	
Residential/Lodging	1 per unit
Retail/Civic/Office/Service	1 per 500 square feet
Upper Floors	
Residential/Lodging	1 per unit
Retail/Civic/Office	1 per 500 square feet

**Maximum Spaces Permitted (Off-Street)**

Ground Floor	
Residential/Lodging	2 per unit
Retail/Civic/Office/Service	1 per 300 square feet
Upper Floors	
Residential/Lodging	2 per unit
Retail/Civic/Office	1 per 300 square feet

**Notes**  
 Shared parking is permitted by Section 10-2.809.

**Table 8-12 Buffer District  
Building Encroachments**



**Key**

--- Property Line	■ Building Area
	▨ Encroachment

**Building Encroachments**

**Street Frontages**

Ground Floor	8' max	<b>J</b>
Floors 2-3	2' max	<b>K</b>

**Interior/Alley**

Floors 1-3 (Interior Only)	2' max	<b>L</b>
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**Notes**  
 Awnings, canopies, signs, stoops and porches may extend the full width of the permitted encroachment at ground floor.  
 Awnings and balconies may extend the full width of the frontage encroachment at floors 2-3.  
 Other architectural appurtenances may extend two feet maximum into the permitted encroachment.

# 10-2.807 Frontage Types

**Table 8-13 Frontage Types**

Property Line →	
	<p><b>Shopfront</b> – A frontage where the façade is closely aligned to the property line with the ground floor level at grade. Variation within the building’s linear plane to accommodate recessed entries and windows, as well as architectural appurtenances is permitted. The primary building entrance shall occur along the street frontage and at least 70% of the first floor façade shall be glazed in clear glass to promote a strong connection between the public and private realms. The area between the build to line and front property line is paved with materials and/or colors that are unique and distinguishable from the public sidewalk.</p>
	<p><b>Stoop</b> – A landscaped frontage where the façade of the building is closely aligned to the property line with a ground floor level raised 24 to 36 inches above grade to ensure privacy within the building. Variation within the building’s linear plane to accommodate recessed entries and windows, as well as architectural appurtenances is permitted. The primary building entrance shall occur along the street frontage and be accessed via a stoop that projects a minimum of 5’. A 36” high fence/wall provided along the property line maintains street spatial definition. Where the stoop extends in front of the property line, it shall be framed by a wall and/or removable planters a minimum of 36” high.</p>
	<p><b>Porch</b> – A landscaped frontage where the façade is set back from the front property line a minimum of 10 feet with a ground floor raised 12 to 36 inches above grade. A porch extends at least 60% of the lineal width of the building frontage and projects a minimum of 6 feet to ensure usability. The primary building entrance is accessed via the porch, and a walkway provides direct access between the public sidewalk and the porch. A 36” high fence or hedge provided along the property line maintains street spatial definition.</p>

# 10-2.2808 Use Types

**Table 8-14 Use Types**

<p><b>Civic</b></p> <p>Civic uses are generally not-for-profit and serve a public benefit by furthering social, cultural, artistic, religious or educational opportunities. These uses provide a service that typically generate substantial visitation and activity during operating hours.</p> <p>Examples Include:</p> <ul style="list-style-type: none"> <li>Government</li> <li>Place of Worship</li> <li>School</li> <li>Performing Arts Theater</li> <li>Museum/Aquarium</li> <li>Art Studio</li> </ul>	<p><b>Residential</b></p> <p>Residential uses are housing units occupied by the owner or a renter for a prolonged period of time. Each unit generally contains full food preparation and consumption facilities. Occupancy will generally range from six months to several years.</p> <p>Examples Include:</p> <ul style="list-style-type: none"> <li>Apartment</li> <li>Condominium</li> <li>Single-Family Home</li> <li>Rowhouse</li> <li>Duplex</li> <li>Residential Care Home</li> </ul>
<p><b>Lodging</b></p> <p>Lodging uses offer temporary housing for a fee. The housing options may range from shared studios to multi-bedroom suites with full food preparation and consumption facilities. The duration of stay will range from one night to as long as one month.</p> <p>Examples Include:</p> <ul style="list-style-type: none"> <li>Hotel/Motel</li> <li>Bed and Breakfast</li> <li>Hostel</li> </ul>	<p><b>Retail</b></p> <p>Retail uses are for-profit businesses that offer durable goods, nondurable goods, entertainment and/or personal services that are purchased, consumed or enjoyed by patrons on-site. These uses tend to have a fast turnover, with complete transactions typically lasting a few minutes to a couple of hours.</p> <p>Examples Include:</p> <ul style="list-style-type: none"> <li>Apparel Store</li> <li>Bar/Club</li> <li>Beauty Salon</li> <li>Café/Restaurant</li> <li>Grocery Store</li> <li>Movie Theater</li> </ul>
<p><b>Office</b></p> <p>Office uses are employment-intensive job centers providing either specialized personal services requiring licensing/registration with the state/federal government or administrative services. These uses typically operate between the hours of 7am and 6pm Monday through Friday.</p> <p>Examples Include:</p> <ul style="list-style-type: none"> <li>Attorney</li> <li>Architect/Engineer</li> <li>Financial Planner</li> <li>Dentist/Doctor</li> <li>Real Estate Professional</li> <li>Staffing Agency</li> </ul>	<p><b>Service</b></p> <p>Service uses are businesses that repair, clean and/or rent durable goods or facilities, or that sell durable or nondurable wholesale goods to retailers or for special events. Transactions usually involve appointments and take one day to several months from the time they are initiated to the time they are concluded.</p> <p>Examples Include:</p> <ul style="list-style-type: none"> <li>Automotive Repair</li> <li>Janitorial Services</li> <li>Banquet Halls</li> <li>Car Rental</li> <li>Catering Business</li> </ul>
<p><b>End Notes</b></p> <ol style="list-style-type: none"> <li>1. Determination over specific uses that are permitted within the Downtown Core shall be made by the Community and Economic Development Director or designee based on the above definitions and professional judgment.</li> <li>2. Ancillary uses customarily associated with each use type are permitted as incidental and subordinate to a permitted use. For example: restaurants and conference facilities may be permitted in conjunction with a hotel; day care facilities may be provided with a corporate office.</li> <li>3. Adult Entertainment and Single-Room Occupancies are not permitted in the Downtown Core Zone.</li> <li>4. Bars, clubs and other venues providing entertainment and/or special events are subject to the provisions of Article 4 of Chapter 1 of Title 4, where applicable.</li> </ol>	

## 10-2.809. GENERAL PROVISIONS.

### (a) **Parking**

#### (1) Design

- (i) Except where in conflict with the provisions of this Article, all parking areas shall be designed in accordance with Section 10-2.2004 of the Modesto Municipal Code.
- (ii) Parking structures shall not exceed six levels, plus an upper deck, in the Central and Transition Districts and two levels, plus an upper deck, in the Buffer District.
- (iii) Parking structures in the requisite building placement area not concealed behind a habitable liner shall conform to all building placement and building configuration requirements of the respective district and provide a façade that gives the appearance of being habitable.
- (iv) Where surface parking occurs along the build-to or setback line fronting a lettered street within 22' of the alley, a minimum 3.5-foot-high streetscreen shall be provided along the build-to line, or a line co-planer with the adjoining building's façade in the Buffer District.

#### (2) Access

- (i) Vehicular access to and from parking areas shall occur through alleyways.
- (ii) Pedestrian access to and from parking areas shall occur within buildings, paseos, plazas or the area along lettered streets designated for ground level parking.

#### (3) Shared Parking

- (i) The minimum number of required parking spaces may be reduced when a building contains different Use Types. Parking may also be reduced between buildings with different Use Types that are located within immediately adjacent blocks.

- (ii) When parking is shared between buildings located on different sites, a parking covenant shall be required in accordance with Section 10-2.2002(h)(4) of the Modesto Municipal Code.
  - (iii) The reduction in parking shall be determined by dividing the sum of the parking required by two Use Types occupying the same amount of building floor area (square footage) by the associated factor from Table 8-15.
- (4) Off-Site Parking
- (i) Off-site parking may be used to meet the parking requirements of this Article.
  - (ii) Off-site parking shall be located within 1,460' of the building it serves, as measured along streets, alleys and sidewalks from the nearest point of the parking area to the nearest point of the building.
- (5) Miscellaneous
- (i) Underground parking is not regulated by this Article.

**Table 8-15 Shared Parking**

	Civic	Lodging	Office	Residential	Retail	Service
Civic	1	1.5	1.2	1.3	1.2	1.2
Lodging	1.5	1	1.7	1.1	1.3	1.5
Office	1.2	1.7	1	1.4	1.2	1.1
Residential	1.3	1.1	1.4	1	1.2	1.3
Retail	1.2	1.3	1.2	1.2	1	1.1
Service	1.2	1.5	1.1	1.3	1.1	1

*Example: A building that is comprised of an office use type occupying 100,000 square feet and a residential use type occupying 50,000 square feet may divide the sum of the parking required for 50,000 square feet of office use type (100 spaces) and 50,000 square feet of residential use type (e.g., 75 spaces) by 1.4 resulting in the requirement for 125 parking spaces (175/1.4 = 125). Then add the minimum parking required for the remaining 50,000 square feet of office use type (100 spaces) to determine the total parking requirement for the building (125 + 100 = 225 total parking spaces).*

(b) **Public/Private Transition Area**

(1) **Outdoor Dining and Display**

- (i) Use of the three (3) feet of public right-of-way adjoining the street property line(s) for the following purposes shall be allowed, subject to obtaining the necessary approvals:
  - a) Outdoor dining
  - b) Display of public art
  - c) Display of merchandise
  - d) Display of Downtown Core Zone Sidewalk Signs
  - e) Display of seasonal items
  - f) Display of removable planters/flower pots
- (ii) Outdoor dining, merchandise display and Downtown Core Zone Sidewalk Signs shall relate to the commercial activity taking place within the adjoining ground floor business.
- (iii) All merchandise display, Downtown Core Zone Sidewalk Signs, outdoor dining and associated enclosures shall be removed during non-business hours.
- (iv) Downtown Core Zone Sidewalk Signs are limited to one per parcel per public street frontage.
- (v) Display of merchandise is limited to 50% of the lineal width of the adjoining business along the street(s).

(c) **Special Areas**

(1) **High Speed Rail Corridor**

- (i) Where in conflict, High Speed Rail and/or Regional Rail design specifications within the High Speed Rail Corridor shall supersede the development provisions of this Article.

(2) Historic Preservation Sites

- (i) Relocation of buildings contained within designated Historic Preservation Sites on the Planning District Map is not permitted.
- (ii) Development adjoining Historic Preservation Sites shall be no greater than two stories higher or lower than the historic building.

(3) Historic Resource Sites

- (i) Relocation of buildings contained within designated Historic Resource Sites to properties within the original City boundaries, as incorporated in 1884, is permitted.
- (ii) If a designated Historic Resource site building is relocated, then the subject property may be developed in accordance with the provisions of the underlying District, as shown on the Planning District Map.
- (iii) Development adjoining Historic Resource Sites still containing a historic building, shall be no greater than two stories higher or lower than the building.

(d) **Miscellaneous Design Issues**

(1) Design Guidelines

- (i) All development within the Downtown Core Zone is subject to the City of Modesto Design Guidelines for Commercial and Industrial Development, where applicable.

(2) Wireless Telecommunications

- (i) Wireless facilities are subject to the provisions of Article 31 as they apply to the C-2 Zone.

(3) Rooftop Utilities

- (i) All building utilities and mechanical equipment located on rooftops shall be screened within penthouses or attics.

- (4) Ground Utilities
  - (i) All ground level building utilities and mechanical equipment not contained within buildings shall be located within the area designated for ground level parking.
- (5) Blocks without Alleys
  - (i) Development occurring on lots without alleys shall assume an alley parallel to and 140' behind the numbered street(s) property line(s) for the purposes of complying with the development provisions for the applicable Planning District.
  - (ii) Developments that comprise an entire block may build over the alley following an abandonment of the subject alley.
- (6) Properties Containing Multiple Planning Districts
  - (i) Where one property contains two Planning Districts, the boundary between the Districts shall be treated in the same manner as a property line for the purposes of complying with the associated development provisions of the respective Planning Districts.
- (e) **Signs**
  - (1) Downtown Core Zone Sidewalk Signs
    - (i) Downtown Core Zone Sidewalk Signs of a size, design and materials as approved by the City Council and as administered by the Downtown Improvement District are permitted in the locations specified in Section 10-2.809(b) of this Article.
  - (2) Wall Signs
    - (i) Permitted subject to the provisions of Section 10-2.2112, Table 21-3 of the Modesto Municipal Code, except maximum sign area shall be one (1) square foot per linear foot of width of the wall upon which the sign is placed.

- (3) Suspended Signs
  - (i) Permitted subject to the provisions of Section 10-2.2112, Table 21-3 of the Modesto Municipal Code.
- (4) Projecting Signs
  - (i) Permitted subject to the provisions of Section 10-2.2112, Table 21-3 of the Modesto Municipal Code, except maximum sign area shall be limited to 12 square feet and the sign may not project more than three feet from the façade of the building.
- (5) Projecting Marquee Signs
  - (i) Permitted subject to the provisions of Section 10-2.2112, Table 21-3 of the Modesto Municipal Code, except the sign may only project eight feet beyond the building façade, and the sign shall only be permitted for Theaters.
- (6) Canopy Signs
  - (i) Permitted subject to the provisions of Section 10-2.2112, Table 21-3 of the Modesto Municipal Code, except maximum sign area shall be one (1) square foot per linear foot of width of the wall upon which the canopy is affixed.
- (7) Window Signs
  - (i) Permitted subject to the provisions of Section 10-2.2112, Table 21-3 of the Modesto Municipal Code, except maximum sign area is limited to 50% of the area of the window.
- (8) Temporary Signs
  - (i) Permitted subject to the provisions of Section 10-2.2112, Table 21-3 of the Modesto Municipal Code.

- (9) Notes
  - (i) Except where in conflict with the provisions of this Article, all signs shall conform with Article 21.
- (f) **Management**
  - (1) Operating Hours
    - (i) Within the Buffer District, Retail Use Type businesses are limited to operating between the hours of 7:00 am and 10:00 pm.
  - (2) Outdoor Storage
    - (i) Outdoor storage shall only occur within the Optional Building Area and is limited to items relating to business being conducted within the building on the same property.

**10-2.810. DEFINITIONS.**

- (a) **Adjacent.** Sharing a common property line or Planning District line, even if separated by a street or alley. Properties that are separated by a street are considered adjacent even if they are located diagonally across an intersection.
- (b) **Adjoining.** Sharing a common boundary.
- (c) **Architectural Appurtenance.** Building accessories or elements that project from the surface of the building, such as eaves, bulkheads, window trim, etc.
- (d) **Attic.** An area above the top floor of a building that is typically residential in nature with a pitched roof, which is designed to house utilities and/or equipment and provide insulation.
- (e) **Block Frontage.** A frontage area running along one street, between the nearest two transecting streets.
- (f) **Build-to Line.** A line behind and paralleling the street property lines along which the building façade must be placed.
- (g) **Co-planer.** Even with the surface of a building.

- (h) **Downtown Core Zone Sidewalk Sign.** An A-frame sign designed in accordance with provisions approved by the City Council and administered by the Downtown Improvement District, that is available to businesses in the Downtown Core Zone through the Downtown Improvement District.
- (i) **Encroachment.** Extension of building elements beyond the build-to line or required setback.
- (j) **Façade.** The plane of the building and its architectural elements facing the public street. The “face” of the building.
- (k) **Frontage.** The area between the façade of a building and the street property line.
- (l) **Habitable Liner.** A relatively shallow building area that is conditioned and intended for human activities (residence, office, etc.), which separates a parking structure from the public realm.
- (m) **High Speed Rail Corridor.** A transect intended to accommodate future High Speed and associated Regional Rail.
- (n) **Historic Preservation Site.** Properties containing buildings that are included in the Landmark Preservation list in the General Plan.
- (o) **Historic Resource Site.** Properties containing buildings that have been identified as having some historical significance, but are not on the historic preservation list.
- (p) **Paseo.** A 15-foot to 30-foot wide, open-air area for pedestrian passage between the public sidewalk and parking or other uses to the rear of property, which provides storefronts along one or both sides.
- (q) **Penthouse.** An area above the top story of a building, which is used to store mechanical equipment, building utilities, etc. Penthouses are either well-integrated into the architecture of the building they serve or are set back from the building’s edges and designed to be inconspicuous.
- (r) **Plaza.** An open air area greater than 30 feet wide that is used for public meeting space or passive open space.
- (s) **Setback.** The minimum or maximum dimension from property line that a building must be placed.

- (t) **Single Room Occupancies.** Rooms that can be leased or rented for extended periods of time or as a primary residence without the provision of either separate or common food preparation and consumption facilities.
- (u) **Stepback.** The minimum dimension from property line that the tower element or upper levels of a building must be placed.
- (v) **Story.** A level within a building or structure measured from the finished floor to the finished floor above, or to the eave or base of the parapet in the case of the top floor, that is generally accessible and used by patrons of the building. Enclosures for mechanical equipment above the top floor, and attics in the case of a pitched roof, are not considered a building story for the purposes of this Code.
- (w) **Streetscreen.** A wall built along the build-to line or building setback line used to screen a parking area or other areas not otherwise screened by a building from the adjoining street.
- (x) **Upper Deck.** The highest level or “roof” of a parking structure.

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

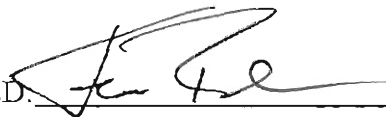
SECTION 3. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in *The Modesto Bee*, the official newspaper of the City of Modesto, setting forth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

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 13th day of July, 2010, by Councilmember Olsen, 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: Geer, Hawn, Lopez, Muratore, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: Marsh

APPROVED:   
JIM RIDENOUR, Mayor

ATTEST:

By   
STEPHANIE LOPEZ, City clerk

(SEAL)

APPROVED AS TO FORM:

By   
SUSANA ALCALA WOOD, City Attorney

Ord. No. 3532-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 4th day of August, 2010, 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: 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: September 3, 2010

**ORDINANCE NO. 3533-C.S.**

AN ORDINANCE AMENDING SECTIONS 28-3-9, 29-3-9 and 32-3-9 OF THE ZONING MAP TO REZONE FROM C-2 (GENERAL COMMERCIAL), C-M (COMMERCIAL INDUSTRIAL), M-1 (LIGHT INDUSTRIAL) AND P-D (PLANNED DEVELOPMENT) ZONES (P-D 165, 190, 322, 372, 389, 578, 582 AND 5900, TO A PROPOSED DOWNTOWN CORE (DC) ZONE, PROPERTY LOCATED IN THE DOWNTOWN CORE

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

SECTION 1. ZONING CHANGE: Sections 28-3-9, 29-3-9 and 32-3-9 of the Zoning Map are hereby amended to reclassify the following described property, from General Commercial, C-2, Commercial Industrial, C-M, Light Industrial, M-1, and Planned Development Zones, P-D165, 190, 322, 372, 389, 578, 582, and 590, to a Proposed Downtown Core (DC) Zone:

C-2 to Downtown Core Zone:

All that portion of the Southeast quarter of Section 29, Township 3 South, Range 9 East, and the Northeast quarter of Section 32, Township 3 South, Range 9 East, Mount Diablo Meridian, in the City of Modesto, County of Stanislaus, State of California, described as follows:

Bearings are based on the North American Datum of 1983, California Coordinate System Zone 3.

Commencing from a point identified as the intersection of the centerlines of 80 foot wide 6th Street and 80 foot wide F Street as shown on Block 31 in the City of Modesto and the Point of Beginning of this description; thence North 43° 10' 29" West 2900.747 feet to the intersection of the centerlines of 80 foot wide 6th Street and 80 foot wide L Street as shown on Block 36 in the City of Modesto; thence North 46° 48' 33" East 191.001 feet; thence South 43° 10' 29" East 2900.843 feet; thence South 46° 50' 17" West 191.001 feet to the Point of Beginning.

Also including all that portion of the Southwest quarter of the Southwest quarter of Section 28, Township 3 South, Range 9 East, the Southeast quarter

of Section 29, Township 3 South, Range 9 East, and the Northeast quarter of Section 32, Township 3 South, Range 9 East, Mount Diablo Meridian, in the City of Modesto, County of Stanislaus, State of California, described as follows:

Commencing from a point identified as the intersection of the centerlines of 72 foot wide 8th Street and 100 foot wide I Street as shown on Block 143 in the City of Modesto and the Point of Beginning of this description; thence North  $46^{\circ} 48' 33''$  East 366.713 feet to the intersection of the centerlines of 88 foot wide 9th Street and 100 foot wide I Street as shown on Blocks 56 and 143 of the City of Modesto; thence South  $43^{\circ} 9' 53''$  East 970.154 feet to the intersection of the centerlines of 88 foot wide 9th Street and 80 foot wide G Street as shown on Block 54 in the City of Modesto; thence North  $46^{\circ} 49' 27''$  East 194.758 feet; thence North  $43^{\circ} 5' 54''$  West 480.07 feet; thence North  $46^{\circ} 49' 15''$  East 188.714 feet; thence South  $43^{\circ} 9' 51''$  East 480.08 feet; thence North  $46^{\circ} 50' 10''$  East 570.225 feet; thence South  $43^{\circ} 9' 58''$  East 480.803 feet; thence North  $46^{\circ} 48' 52''$  East 190.07 feet to the intersection of the centerlines of 80 foot wide 12th Street and 80 foot wide F Street as shown on Block 81 in the City of Modesto; thence North  $43^{\circ} 10' 1''$  West 480.732 feet to the intersection of the centerlines of 80 foot wide 12th Street and 80 foot wide G Street as shown in Block 81 of the City of Modesto; thence North  $46^{\circ} 50' 10''$  East 760.33 feet to the intersection of the centerlines of 80 foot wide 14th Street and 80 foot wide G Street as shown on Block 104 in the City of Modesto; thence North  $43^{\circ} 10' 47''$  West 480.312 feet to the intersection of the centerlines of 80 foot wide 14th Street and 80 foot wide H Street as shown on Block 104 in the City of Modesto; thence South  $46^{\circ} 51' 20''$  West 380.229 feet to the intersection of the centerlines of 80 foot wide 13th Street and 80 foot wide H Street as shown on Block 104 in the City of Modesto; thence North  $43^{\circ} 10' 35''$  West 490.346 feet to the intersection of the centerlines of 80 foot wide 13th Street and 100 foot wide I Street as shown on Block 106 in the City of Modesto; thence North  $46^{\circ} 48' 33''$  East 380.287 feet to the intersection of the centerlines of 80 foot wide 14th Street and 100 foot wide I Street as shown on Block 106 in the City of Modesto; thence North  $43^{\circ} 9' 5''$  West 275.263 feet; thence South  $46^{\circ} 48' 40''$  West 190.203 feet; thence North  $43^{\circ} 10' 23''$  West 215.194 feet; thence North  $46^{\circ} 47' 53''$  East 190.217 feet; thence North  $43^{\circ} 10' 10''$  West 480.049 feet to the intersection of the centerlines of 80 foot wide 14th Street and 80 foot wide K Street as shown on Block 107 in the City of Modesto; thence South  $46^{\circ} 47' 42''$  West 760.249 feet to the intersection of the centerlines of 80 foot wide 12th Street and 80 foot wide K Street as shown on Block 85 in the City of Modesto; thence North  $43^{\circ} 9' 59''$  West 315.188 feet; thence South  $46^{\circ} 48' 33''$  West 190.074 feet; thence North  $43^{\circ} 9' 5''$  West 81.296 feet; thence North  $46^{\circ} 53' 55''$  East 190.053 feet; thence North  $43^{\circ} 9' 59''$  West 83.621 feet to the intersection of the centerlines of 80 foot wide 12th Street and 80 foot wide L Street as shown on Block 86 in the City of Modesto;

thence South 46° 51' 59" West 380.106 feet to the intersection of the centerlines of 80 foot wide 11th Street and 80 foot wide L Street as shown on Block 86 in the City of Modesto; thence South 43° 9' 58" East 480.11 feet to the intersection of the centerlines of 80 foot wide 11th Street and 80 foot wide K Street as shown on Block 86 in the City of Modesto; thence South 46° 48' 54" West 1131.039 feet to the intersection of the centerlines of 72 foot wide 8th Street and 80 foot wide K Street as shown on Block 143 in the City of Modesto; thence South 43° 10' 36" East 970.552 feet to the intersection of the centerlines of 72 foot wide 8th Street and 100 foot wide I Street and the Point of Beginning.

Excepting thereof the following description: all of Lots 25 through 32 in Block 32 in the City of Modesto and the Northeasterly 40 feet of 6th Street, all being immediately adjacent to the Southwesterly property line of the above said lots; including also the Southeasterly 40 feet of H Street immediately adjacent to the above described property.

And excepting thereof the following description: all of Lots 28 through 32 in Block 84 in the City of Modesto; including also all of the Southeasterly one-half of J Street and the Southwesterly one-half of the alley in said Block 84 and all immediately adjacent to the above described property.

C-M to Downtown Core Zone:

All that portion of the Southeast quarter of Section 29, Township 3 South, Range 9 East, and the Northeast quarter of Section 32, Township 3 South, Range 9 East, Mount Diablo Meridian, in the City of Modesto, County of Stanislaus, State of California, described as follows:

Commencing from a point identified as the intersection of the centerlines of 80 foot wide 7th Street and 80 foot wide L Street as shown on Block 40 in the City of Modesto and the Point of Beginning of this description; thence North 46° 48' 33" East 189.828 feet; thence South 43° 11' 42" East 479.997 feet; thence North 46° 48' 34" East 189.978 feet to the intersection of the centerlines of 72 foot wide 8th Street and 80 foot wide K Street as shown on Block 40 in the City of Modesto; thence South 43° 10' 36" East 2080.684 feet; thence South 46° 49' 23" West 570.046 feet; thence North 43° 9' 8" West 2560.544 feet; thence North 46° 48' 33" East 188.994 feet to the intersection of 80 foot wide 7th Street and 80 foot wide L Street and the Point of Beginning.

Also including all that portion of the Southeast quarter of Section 29, Township 3 South, Range 9 East, and the Northeast quarter of Section 32, Township 3 South, Range 9 East, Mount Diablo Meridian, in the City of Modesto, County of Stanislaus, State of California, described as follows:

Commencing from a point identified as the intersection of the centerlines of 86 foot wide 9th Street and 80 foot wide F Street as shown on Block 53 in the City of Modesto and the Point of Beginning of this description; thence North  $46^{\circ} 48' 51''$  East 954.26 feet; thence North  $43^{\circ} 9' 58''$  West 480.804 feet; thence South  $46^{\circ} 49' 52''$  West 954.248 feet to the intersection of the centerlines of 86 foot wide 9th St and 80 foot wide G Street as shown on Block 53 in the City of Modesto; thence South  $43^{\circ} 9' 53''$  East 481.086 feet to the intersection of the centerlines of 86 foot wide 9th Street and 80 foot wide F Street and the Point of Beginning.

Excepting thereof the following description: Lots 27 through 32 in Block 42 of the City of Modesto, as shown on tat map of City Blocks of the City of Modesto recorded in Volume 5 of Maps, Page 42, Stanislaus County Records; also including the Northeast half of 7th Street, the Southeast half of J Street, and the Southwest half of the alley, all being immediately adjacent to the above described properties.

M-1 to Downtown Core Zone:

All that portion of the Southeast quarter of Section 29, Township 3 South, Range 9 East, Mount Diablo Meridian, in the City of Modesto, County of Stanislaus, State of California, described as follows:

Commencing from a point identified as the intersection of the centerlines of 72 foot wide 8th Street and 80 foot wide L Street as shown on Block 40 in the City of Modesto and the Point of Beginning of this description; thence South  $46^{\circ} 48' 34''$  West 190.132 feet; thence South  $43^{\circ} 11' 42''$  East 479.998 feet; thence North  $46^{\circ} 48' 33''$  East 335.901 feet; thence North  $43^{\circ} 9' 57''$  West 479.997 feet; thence South  $46^{\circ} 48' 33''$  West 146.013 feet to the intersection of the centerlines of 72 foot wide 8th Street and 80 foot wide L Street and the Point of Beginning.

Also including all that portion of the Southeast quarter of Section 29, Township 3 South, Range 9 East, and the Northeast quarter of Section 32, Township 3 South, Range 9 East, Mount Diablo Meridian, in the City of Modesto, County of Stanislaus, State of California, described as follows:

Commencing from a point identified as the intersection of the centerlines of 80 foot wide 7th Street and 80 foot wide F Street as shown on Block 45 in the City of Modesto and the Point of Beginning of this description; thence North  $46^{\circ} 48' 21''$  East 746.467 feet to the intersection of the centerlines of 86 foot wide 9th Street and 80 foot wide F Street; thence North  $43^{\circ} 9' 53''$  West 1451.242 feet to the intersection of the centerlines of 88 foot wide 9th Street and 100

foot wide I Street as shown on Block 142 in the City of Modesto; thence South 46° 48' 33" West 366.713 feet to the intersection of the centerlines of 72 foot wide 8th Street and 100 foot wide I Street; thence South 43° 10' 36" East 1110.133 feet; thence South 46° 49' 23" West 570.045 feet; thence South 43° 20' 40" East 340.3 feet; thence North 47° 6' 35" East 188.994 feet to the intersection of the centerlines of 80 foot wide 7th Street and 80 foot wide F Street and the Point of Beginning.

P-D(165) to Downtown Core Zone:

All that portion of the Northeast quarter of Section 29, Township 3 South, Range 9 East, Mount Diablo Meridian, in the City of Modesto, County of Stanislaus, State of California, described as follows:

All of the Southeasterly 6 feet of Lot 2 and all of Lots 3, 4 and 5 in Block 86, in the City of Modesto; also including the Southwesterly 40 feet of 12th Street immediately adjacent to the above described property.

P-D(190) to Downtown Core Zone:

All that portion of the Northeast one-quarter of Section 32, Township 3 South, Range 9 East, of the Mount Diablo Base Meridian described as follows:

All of Lots 25, 26, 27, 28, 29, 30, 31, 32 in Block 32 in the City of Modesto and the Northeasterly 40 feet of 6th Street, all being immediately adjacent to the southwesterly property line of the above said lots. Including also the Southeasterly 40 feet of H Street immediately adjacent to the above described property.

P-D(322) to Downtown Core Zone:

All that certain real property situate in a portion of the Southeast quarter of Section 29, Township 3 South, Range 9 East, Mount Diablo Base and Meridian, in the City of Modesto, County of Stanislaus, State of California, described as follows:

All of Lots 28 through 32, Block 84, of the City of Modesto. Including also all of the Southeasterly one-half of J Street, the Northeasterly one-half of 11th Street and the Southwesterly one-half of the alley in said Block 84 and all immediately adjacent to the above described property.

P-D(372) to Downtown Core Zone:

All that certain real property situated in a portion of the South one-half of Section 29, 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 intersection of the centerlines of 80.00 foot wide 11th and L Streets as shown on map of "Town of Modesto" filed in the Office of the Recorder of Stanislaus County, California, on April 18, 1903, in Volume 1 of Maps at Page 82; thence from said intersection, along the center line of 11th Street.

1. South 43° 29' 30" East 480.00 feet to a point of intersection with the center line of 80.00 foot wide K Street, as shown on said map of "Town of Modesto"; thence along the centerline of K Street.
2. South 46° 30' 30" West, 764.00 feet to the point of intersection with the center line of 80.00 foot wide 9th Street, as shown on said map of "Town of Modesto"; thence along the center of line of 9th Street.
3. North 43° 29' 30" West, 480.00 feet to the point of intersection with the center line of aforementioned L Street; thence along the center line of L Street.
4. North 46° 30' 30" East, 764.00 feet to the point of beginning of this description.

Also including all that certain real property situated in a portion of the South one-half of Section 29, 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 intersection of the centerlines of 80.00 foot wide 9th Street and 80.00 foot wide L Street as shown on map of "Town of Modesto" filed in the Office of the Recorder of Stanislaus County, California, on April 18, 1903, in Volume 1 of Maps at Page 82; thence from said intersection, along the center line of 9th Street.

1. South 43° 29' 30" East 480.00 feet to a point of intersection with the center line of 80.00 foot K Street, as shown on said map of "Town of Modesto"; thence along the centerline of K Street.
2. South 46° 30' 30" West 220.00 feet to a line located parallel to and 176.00 feet distant from the southwestern line of aforementioned 9th Street; thence leaving said center line of K Street and along said parallel line.

3. North 43° 29' 30" West, 480.00 feet to the center line of aforementioned L Street; thence along the center line of L Street.
4. North 46° 30' 30" East, 220.00 feet to the point of beginning of this description.

P-D(389) to Downtown Core Zone:

All that certain real property situate in a portion of the Southeast quarter of Section 29, Township 3 South, Range 9 East, Mount Diablo Base and Meridian, in the City of Modesto, County of Stanislaus, State of California, described as follows:

All of City of Modesto Block 105 as shown on map of "Town of Modesto" filed in the Office of the Recorder of Stanislaus County, California, on April 18, 1903, in Volume 1 of Maps at Page 82. Including one-half of 100.00 foot wide I Street and one-half of 80.00 foot wide 13th, 14th, and H Streets and all immediately adjacent to the above mentioned Block 105. Including also all of the 20.00 foot wide alley located in the above mentioned Block 105.

Also including all that certain real property situated in a portion of the Southeast quarter of Section 29, Township 3 South, Range 9 East, Mount Diablo Base and Meridian, in the City of Modesto, County of Stanislaus, State of California, described as follows:

All of Lots 5 through 16 and Lots 20 through 28 in City of Modesto Block 114 as shown on map of "Town of Modesto" filed in the Office of the Recorder of Stanislaus County, California, on April 18, 1903, in Volume 1 of Maps at page 82. Including one-half of 80.00 foot wide 14th, 15th, and G Streets immediately adjacent to the above described lots. Including also all of the 20.00 foot wide alley located between Lots 5 through 13 and Lots 20 through 28 in above mentioned Block 114. Including also that 10.00 foot half-width portion of the alley located immediately adjacent to Lots 14, 15, and 16 in the above mentioned Block 114.

P-D(578) to Downtown Core Zone:

All that certain real property situated in the City of Modesto, County of Stanislaus, State of California, and being a portion of the South half of Section 29, Township 3 South, Range 9 East, and a portion of the North half of Section 32, Township 3 South, Range 9 East, Mount Diablo Base and Meridian, more particularly described as follows:

Lots 27, 28, 29, 30, 31, and 32 in Block 42 of the City of Modesto, as shown on that map of City Blocks of the City of Modesto recorded in Volume 5 of

Maps, Page 42, Stanislaus County Records; also including the Northeast half of 7th Street, the Southeast half of J Street, and the Southwest half of the alley, all being immediately adjacent to the above described properties.

P-D(582) to Downtown Core Zone:

All that certain real property situated in the City of Modesto, County of Stanislaus, State of California, and being a portion of the southeast quarter of Section 29, Township 3 South, Range 9 East, Mount Diablo Base and Meridian, more particularly described as follows:

All of Lots 1 thru 7 in Block 106 as shown on that Map of City of Modesto Block 106 filed in Volume 15 of Maps, Page 106, Stanislaus County Records; and

Also including those portions of the southwesterly half of 14th Street, the southeasterly half of J Street, and the northeasterly half of the alley, being immediately adjacent to the above described property and extended to the intersections of said streets and alley.

P-D(590) to Downtown Core Zone:

All that portion of Block 54, City of Modesto, County of Stanislaus, State of California located in the Northeast one-quarter of Section 32, Township 3 South, Range 9 East, Mount Diablo Base and Meridian, described as follows:

All of Lots 1 through 16 in Block 54, City of Modesto, according to the Map thereof, filed in Volume 15 of Maps, Stanislaus County Records;

Also including the Southeasterly one-half of H Street, the Southwesterly one-half of 10th Street, the Northwesterly one-half of G Street, and the Northeasterly one-half of the alley in Block 54; all being immediately adjacent to the above described property.

SECTION 2. ZONING MAP. Sections 28-3-9, 29-3-9 and 32-3-9 of the Zoning Map of the City of Modesto are hereby amended to appear as set forth on the maps attached hereto, which is hereby made a part of this ordinance by reference.

SECTION 3. EFFECTIVE DATE. This ordinance shall go into effect and be in full force and operation from and after thirty (30) days after its final passage and adoption, however, this ordinance shall not become effective unless and until the Ordinance Adding

Article 8 to Chapter 2 of Title 10 of the Modesto Municipal Code Relating to Downtown Core Zone first becomes effective.

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

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 13<sup>th</sup> day of July , 2010, by Councilmember Olsen, 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: Geer, Hawn, Lopez, Muratore, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: Marsh

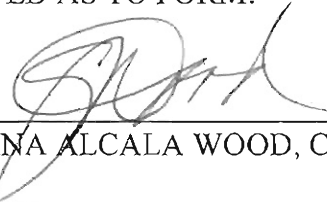
APPROVED:   
JIM RIDENOUR, Mayor

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. 3533-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 4th day of August, 2010, 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: 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: September 3, 2010

**ORDINANCE NO. 3534-C.S.**

AN ORDINANCE AMENDING SECTIONS 5-5.105, 5-5.110 AND 5-5.111 OF CHAPTER 5 OF TITLE 5 OF THE MODESTO MUNICIPAL CODE RELATING TO DISPOSAL OF SOLID WASTE, AND SECTION 4-5.02 OF CHAPTER 5 OF TITLE 4 OF THE MODESTO MUNICIPAL CODE RELATING TO GARBAGE CONTAINERS.

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

SECTION 1. AMENDMENT OF CODE. Sections 5-5.105, 5-5.110 and 5-5.111 of Chapter 5 of Title 5 of the Modesto Municipal Code and Section 4-5.02 of Chapter 5 of Title 4 of the Modesto Municipal Code are hereby amended to read as follows:

**5-5.105. ILLEGAL DUMPING, DEPOSITING OR BURYING SOLID WASTE.**

- (a) It is unlawful and shall constitute an abatable nuisance for any person to place solid waste or hazardous waste as defined in Sections 5-5.103(s) and 5-5.103(an), upon either (1) any public property; or (2) the private property of another without the consent of the property owner, except as otherwise approved by the Director of the Parks, Recreation and Neighborhoods Department, or at a permitted solid waste facility approved for such use. Intent to remove the solid or hazardous waste shall not constitute a defense to this offense.
- (b) It is unlawful for any person to place hazardous waste as defined in Section 5-5.103(s), into any garbage container, street or public right-of-way.
- (c) It is unlawful for any person to place solid waste as defined in Section 5-5.103(an), into any garbage container without the permission or consent of the person owning or renting or having legal control of that container.

**5-5.110. PROHIBITED LOCATION OF CONTAINERS.**

Solid waste, rubbish, swill, and industrial garbage containers shall not be placed or allowed to remain in or on any street right-of-way, except within 24 hours prior to and following service day or as otherwise authorized by the Parks, Recreation and Neighborhoods Director.

**5-5.111. CONTAINER LOCATIONS.**

- (a) On single-family and two (2) family premises, standard solid waste containers

shall be placed by the customer on the premises and when subject to collection may be collected by the collector as follows:

- (1) Where alleys exist, immediately adjacent to and accessible from the alley without the necessity of entering the premises.
  - (2) Where alleys do not exist, on the asphaltic portion of the street next to the curb, or the edge of the driveway apron, or such other location as approved by the Parks, Recreation and Neighborhoods Director.
  - (3) All containers shall be placed no more than four (4) feet from an area where the collection vehicle can reasonably park. All residential containers set out for collection shall have the necessary clearance from obstructions on either side of the container as well as overhead clearance needed for the collection vehicle to empty contents of the container without causing damage to public or private property. In case of dispute, an acceptable residential container location shall be as determined by the Parks, Recreation and Neighborhoods Director.
  - (4) All containers should be screened from public view, except within 24 hours prior to and following service day, in a manner approved by the Parks, Recreation and Neighborhoods Director.
- (b) Standard and detachable containers for solid waste service to multiple-dwelling buildings, apartments, commercial and industrial premises shall be placed in a location no greater than fifty (50) feet from the nearest point where the collector's vehicle can reasonably be parked. Drop box containers shall be located as agreed upon between the customer and the collector. In case of dispute, the location shall be as determined by the Parks, Recreation and Neighborhoods Director.
- (c) Containers for solid waste may be placed on premises at locations other than described in this section if the customer is handicapped or disabled and the location is approved by the Parks, Recreation and Neighborhoods Director.

#### **4-5.02. GARBAGE CONTAINERS IN STREETS PROHIBITED.**

It shall be unlawful and punishable as an infraction to allow to stand or remain in any such street, any can, bucket, barrel or other receptacle used for holding swill or garbage, except within 24 hours prior to and following service day.

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.

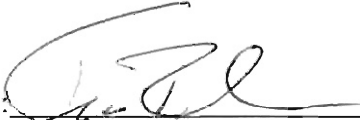
SECTION 3. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in *The Modesto Bee*, the official newspaper of the City of Modesto, setting forth 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 August, 2010, by Councilmember Lopez, 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: Geer, Hawn, Lopez, Marsh, Muratore, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:   
JIM RIDENOUR, Mayor

ATTEST:

By   
STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
SUSANA ALCALA WOOD, City Attorney

Ord. No. 3534-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 September , 2010, 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: 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: October 7, 2010

**ORDINANCE NO. 3535-C.S.**

AN ORDINANCE AMENDING SECTIONS 33-4-8, 32-4-8, 5-5-8, 4-5-8, 3-5-8, 9-5-8, 10-5-8, 11-5-8, 16-5-8, 15-5-8, 14-5-8, 22-5-8, AND 23-5-8 OF THE ZONING MAP TO PREZONE FROM GENERAL AGRICULTURE, A-2-20 TO PLANNED DEVELOPMENT ZONE, P-P-D(592), REZONE FROM LOW DENSITY RESIDENTIAL, R-1, TO PLANNED DEVELOPMENT ZONE, P-D(592) AND AMEND PREZONING FROM PLANNED DEVELOPMENT ZONE, P-P-D(506) TO PLANNED DEVELOPMENT ZONE, P-P-D(592), PROPERTY LOCATED APPROXIMATELY SEVEN MILES SOUTHWEST OF THE MODESTO CITY LIMITS ON THE SOUTH SIDE OF KEYES ROAD, WEST OF VIVIAN ROAD (OWNER INITIATED - UNINHABITED)

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

SECTION 1. ZONING CHANGE. Sections 33-4-8, 32-4-8, 5-5-8, 4-5-8, 3-5-8, 9-5-8, 10-5-8, 11-5-8, 16-5-8, 15-5-8, 14-5-8, 22-5-8 and 23-5-8 of the Zoning Map are hereby amended to reclassify the following described property from General Agriculture, A-2-20 to Planned Development Zone, P-P-D(592), rezone from Low Density Residential, R-1, to Planned Development Zone, P-D(592) and amend prezoning from Planned Development Zone, P-P-D(506) to Planned Development Zone, P-P-D(592):

A-2-20 to P-P-D(592)

All that certain property situate, lying, and being portions of Sections 32, 33, and 34, Township 4 South, Range 8 East, Mount Diablo Base and Meridian, and portions of Sections 2, 3, 4, 5, 9, 10, 11, 14, 15, 16, 22, and 23, Township 5 South, Range 8 East, Mount Diablo Base and Meridian, lying in the County of Stanislaus, State of California, and being more particularly described as follows:

**BEGINNING** at the intersection of the northeasterly bank of the San

Joaquin River with the north line of Section 5, Township 5 South, Range 8 East, said point being 1940.61 feet west of the Northeast corner of said Section 5, measured along the north line of said Section 5, thence the following twenty three (23) courses:

- 1) South 89° 9' 19" East 120.00 feet, along the north line of said Section 5, to the southwesterly corner of that certain tract of land commonly identified as Assessor's Parcel 17-61-14; thence
- 2) North 31° 17' 15" East 2196.48 feet, along the northwesterly line of the aforementioned tract of land, to the northerly corner thereof; thence
- 3) South 57° 40' 55" East 563.69 feet, along the northeasterly line of the aforementioned tract of land, also being along the southwesterly line of Parcel 1, as shown on that certain Parcel Map filed in Book 9 of Parcel Maps, at Page 93, Stanislaus County Records, to the southerly corner of said Parcel 1, also being a point on the northerly line of the Westport Drain; thence
- 4) North 47° 46' 05" East 175.78 feet, along the northerly line of said Westport Drain, to an angle point in said northerly line; thence
- 5) South 81° 49' 46" East 965.70 feet, continuing along said northerly line; thence
- 6) North 77° 00' 15" East 1979.94 feet, continuing along said northerly line; thence
- 7) South 52° 48' 45" East 1635.36 feet, continuing along said northerly line; thence
- 8) North 84° 06' 15" East 1220.77 feet, continuing along said northerly line; thence
- 9) South 46° 52' 45" East 1616.86 feet, continuing along said northerly line; thence
- 10) South 89° 33' 45" East 2608.68 feet, continuing along said northerly line; thence
- 11) South 80° 03' 55" East 300.00 feet, continuing along said northerly line; thence
- 12) South 89° 33' 45" East 1212.42 feet, continuing along said northerly line, to the intersection of said northerly line with the east right-of-way line of Jennings Road, said east right-of-way line being 20.00 feet east, measured at a right angle, of the east line of said Section 2, Township 5 South,

- Range 8 East; thence
- 13) South 00°26'32" West 2686.49 feet, along the east right-of-way line of said Jennings Road, being parallel with and 20.00 feet east, measured at a right angle, of the east line of said Section 2, to a point on the south right-of-way line of Zeering Road; thence
  - 14) South 90°00'00" West 20.00 feet, along the south right-of-way line of said Zeering Road, to a point on the east line of said Section 2; thence
  - 15) South 00°26'32" West 2593.63 feet, along the east line of said Section 2, to a point on the north right-of-way line of Monte Vista Avenue, said north right-of-way line being 30.00 feet north, measured at a right angle, of the north line of said Section 11, Township 5 South, Range 8 East; thence
  - 16) South 89°29'02" East 2646.38 feet, along the north right-of-way line of said Monte Vista Avenue, being parallel with and 30.00 feet north, measured at a right angle, of the north line of said Section 11, to a point on the northerly extension of the north-south 1/4 section line of said Section 11; thence
  - 17) South 00°27'47" west 5317.77 feet, along said north-south 1/4 section line, and northerly extension thereof, to the south 1/4 corner of said Section 11; thence
  - 18) South 89°31'26" East 2646.67 feet, along the south line of said Section 11, to the southeast corner of said Section 11; thence
  - 19) South 00°07'48" West 2641.61 feet, along the east line of said Section 14, Township 5 South, Range 8 East, to the east 1/4 corner of said Section 14; thence
  - 20) South 00°08'00" west 2642.52 feet, along the east line of said Section 14, to the southeast corner of said Section 14; thence
  - 21) South 00°26'51" West 5309.76 feet, along the east line of said Section 23, Township 5 South, Range 8 East, to the southeast corner of said Section 23; thence
  - 22) North 89°44'09" West 1759.80 feet, along the south line of said Section 23, to the intersection of the south line of said Section 23 with the northeasterly bank of the aforementioned San Joaquin River; thence
  - 23) Meander downstream in a northwesterly direction along the

northeasterly bank of said San Joaquin River 40280 feet, more or less, to the point of beginning.

**EXCEPTING THEREFROM** all that certain real property annexed to the City of Modesto by the Jennings Addition, filed December 30, 1969, in Volume 2308 of Official Records, at Page 377, Stanislaus County Records.

**ALSO EXCEPTING THEREFROM** All that certain real property situate in Section 3, Township 5 South, Range 8 East, Mount Diablo Base and Meridian, County of Stanislaus, State of California described as follows:

Beginning at the northeast corner of Parcel No. 1 of the Jennings Addition to the City of Modesto recorded December 29, 1969, as Instrument No. 42699 in Volume 2308 of Official Records, Page 377, Stanislaus County Records, said point being on the north line of said Section 3, South 89° 34' 35" East 1,720.00 feet from the northwest corner of said Section 3; thence South 27° 08' 03" East on the easterly line of said Jennings Addition, 563.98 feet to the southeast corner of said Jennings Addition; thence continue South 27° 08' 03" East 921 feet to a point on the westerly extension of a fence line running easterly; thence along said fence line and its westerly extension South 89° 35' East 1,304.17 feet to the intersection with a fence line running northerly; thence northerly on said fence line the following three (3) courses: 1) North 2° 42' 24" East 593.76 feet; 2) North 89° 53' 19" East 51.49 feet; 3) North 0° 00' 30" West 722.64 feet to the north line of said Section 3; thence on said north line, North 89° 33' 37" West 2,061.24 feet to the point of beginning.

Containing a total of 4637.9 acres, more or less.  
Subject to covenants, conditions, restrictions, reservations, rights, rights-of-way, and easements of record.

R-1 to P-D(592)

All that real property in the State of California, County of Stanislaus, being portions of Sections 3, 4, 9 and 10, Township 5 South, Range 8 East, Mount Diablo Base and Meridian, described as follows:

Parcel No. 1

- Beginning at a point on the North line of Section 3, which is also the North-eastern corner of that land conveyed to the City of Modesto by Deed recorded December 13, 1968 as Instrument No. 39046 in Volume 2251 of Official Records at page 583, Stanislaus County Records, said point being South 89 34' 35" East, 1720.00 feet from the North west corner of Section 3, having grid coordinates X=1,832,240.84, Y=378,073.00 of Zone 3 of the California State Plane Coordinate System; thence along the Northeasterly boundary of said City property South 27 08' 03" East, 563.98 feet; thence leaving the Northeasterly boundary of City property and along a line parallel with and 500.00 feet Southerly at right angles from the North line of Section 3, North 89 34' 35" West, 1426.98 feet; thence North 0 25' 25" East, 150.00 feet; thence along a line parallel with and 350.00 feet Southerly at right angles from the North line of Section 3, South 89 34' 35" East, 550.00 feet; then North 0 25' 25" East, 350.00 feet to a point on the North line of Section 3, thence along said North line South 89 34' 35" East, 616.06 feet to the point of beginning, containing 10.463 Acres more or less.

Parcel No. 2

Beginning at a point on the Southerly line of that land conveyed to the City of Modesto by Deed recorded December 13, 1968, as Instrument No. 39046, in Volume 2251 of Official Records at page 583, Stanislaus County Records, said point being 150.00 feet Southerly at right angles and 1079.87 feet from the Northwest corner of the Northeast quarter of the Northeast quarter of Section 10, said point having grid coordinates X=833,368.24, Y=372,632.99, of Zone 3 of the California State Plane Coordinate System; thence along the Southerly line of said City property, North 89 41' 17" West, 5980.00 feet; thence North 0 18' 43" East, 300.00 feet; thence along a line parallel with and 300.00 feet Northerly at right angles from the Southerly line of said City property, South 89 41' 17" East, 1151.30 feet; thence North 0 18' 43" East, 200.00 feet; thence along a line parallel with and 500.00 feet Northerly at right angles from the Southerly line of said City property, South 89 41' 17" East, 1008.53 feet; thence North 23 00' 00" West, 167.25 feet; thence North 67 00' 00" East, 369.96 feet; thence along a line parallel with and

800.00 feet Northerly at right angles from the Southerly line of said City property, South 89° 41' 17", East, 3546.60 feet; thence South 0° 18' 43" West, 800.00 feet to the point of beginning, containing 89.433 Acres more or less.

P-P-D(506) to P-P-D(592)

All that certain real property situate in Section 3, Township 5 South, Range 8 East, Mount Diablo Base and Meridian, County of Stanislaus, State of California described as follows:

Beginning at the northeast corner of Parcel No. 1 of the Jennings Addition to the City of Modesto recorded December 29, 1969, as Instrument No. 42699 in Volume 2308 of Official Records, Page 377, Stanislaus County Records, said point being on the north line of said Section 3, South 89° 34' 35" East 1,720.00 feet from the northwest corner of said Section 3; thence South 27° 08' 03" East on the easterly line of said Jennings Addition, 563.98 feet to the southeast corner of said Jennings Addition; thence continue South 27° 08' 03" East 921 feet to a point on the westerly extension of a fence line running easterly; thence along said fence line and its westerly extension South 89° 35' East 1,304.17 feet to the intersection with a fence line running northerly; thence northerly on said fence line the following three (3) courses: 1) North 2° 42' 24" East 593.76 feet; 2) North 89° 53' 19" East 51.49 feet; 3) North 0° 00' 30" West 722.64 feet to the north line of said Section 3; thence on said north line, North 89° 33' 37" West 2,061.24 feet to the point of beginning.

Containing 51.18 acres, more or less.

SECTION 2. USES. The following uses shall be permitted in said P-D(592)

Zone:

Structures or grounds operated by a government agency, including but not limited to: wastewater treatment and storage facilities, reclaimed water and biosolids disposal area, agricultural operations, law enforcement firing range, compost facility and other ancillary uses approved by the City Council.

SECTION 3. ZONING MAP. Sections 33-4-8, 32-4-8, 5-5-8, 4-5-8, 3-5-8, 9-5-8, 10-5-8, 11-5-8, 16-5-8, 15-5-8, 14-5-8, 22-5-8 and 23-5-8 of the Zoning Map of the City of

Modesto are 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.

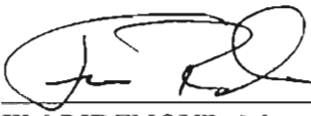
SECTION 5. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in *The Modesto Bee*, the official newspaper of the City of Modesto; setting forth 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 4<sup>th</sup> day of August, 2010, by Councilmember Hawn, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Olsen, was upon roll call carried and ordered printed and published by the following vote:

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

NOES: Councilmembers: None.

ABSENT: Councilmembers: None

APPROVED:   
JIM RIDENOUR, Mayor

ATTEST:


By   
STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
SUSANA ALCALA WOOD, City Attorney

APPROVED AS TO DESCRIPTION:

By   
Community & Economic Development  
Department - Planning Division

Ord. No. 3535-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 September, 2010, 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: 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: October 7, 2010

**ORDINANCE NO. 3536-C.S.**

AN ORDINANCE AMENDING SECTIONS 8-3.203 AND 8-3.206 OF ARTICLE 2 OF CHAPTER 3 OF TITLE 8 OF THE MODESTO MUNICIPAL CODE RELATING TO CENTRAL PURCHASING – SUPPORT OF LOCAL VENDORS.

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

SECTION 1. AMENDMENT OF CODE. Sections 8-3.203 and 8-3.206 of

Article 2 of Chapter 3 of Title 8 of the Modesto Municipal Code are hereby amended to read as follows:

**8-3.203. FORMAL BID PROCEDURES.**

This formal bid procedure shall apply to all purchases whose total maximum cost to City exceeds fifty thousand dollars (\$50,000.00), and shall include at least the following:

- (a) Preliminary approval by the City Manager of a staff proposed bid package, including all project, material, supply and/or equipment specifications, requirements and all other matters reasonably required of bidders, including, but not limited to, all contractual terms proposed. The total maximum cost to the City if a bid is accepted by the Purchasing Manager, and a contract is executed by the City Manager or designee, shall be set forth.
- (b) Notice Inviting Bids. Notice inviting bids shall be published in the official newspaper by one (1) or more insertions, the first of which shall be at least seven (7) days before the time of bid opening, in accordance with the provisions of Section 1307 of the City Charter. The required newspaper notice shall include a general description of the supplies, materials, equipment, and contractual services to be purchased, state where bid blanks and specifications may be secured and the time and place for opening bids.

Wherever feasible, the Purchasing Manager shall send notices inviting bids to prospective vendors and contractors. It shall be the responsibility of the Purchasing Manager to encourage as wide a response as possible

from prospective vendors or contractors.

- (c) Bid Deposits. Where required by the City Charter and when not so required but deemed necessary or desirable by the Purchasing Manager, all bids shall be accompanied by either a certified or cashier's check, or a bidder's bond executed by a corporate surety authorized to engage in such business in California, made payable to the City. Such security shall be in an amount not less than the amount specified in the notice inviting bids or in the specifications referred to therein, or if no amount is specified by the notice inviting bids, then in an amount not less than ten (10) percent of the aggregate amount of the bid. If the successful bidder neglects or refuses to enter into the contract, provide supplies, materials, equipment, or contractual services according to specifications within the time specified in the notice inviting bids or specifications referred to therein, the amount of the bidder's security shall be declared forfeited to the City, and shall be collected and paid into its General Fund, and all bonds forfeited shall be prosecuted and the amount thereof collected and paid into such fund.

All bids not submitted with the required deposit shall be rejected. Unsuccessful bidders shall be entitled to the return of deposits when such have been required after acceptance of the contract by the selected bidder.

- (d) Sealed Bids. Bids shall be sealed, shall be identified as bids on the envelope, shall be submitted at the place and no later than the time stated in the public notice inviting bids, and shall be opened at a public meeting at the time and place stated in the public notice. Bids received after the stated time shall not be accepted, whether or not a bid is late through any fault of the late bidder, and shall be returned to the bidder unopened.
- (e) Council May Reject Bids. The Council shall have the authority to accept or reject any or all bids, or to waive any informalities or minor irregularities in a bid. The Council, after rejecting bids, or if no bids are received, may declare and determine that, in its opinion, based on estimates approved by the City Manager, the purchase in question may be made without a formal bid procedure and, after the adoption of a resolution to this effect by at least five (5) affirmative votes of the Council, may proceed to have said purchase made in the manner stated without further observation of the provisions of this section.
- (f) Lowest Responsive and Responsible Bidder. In addition to price in determining the "lowest responsive and responsible bidder", consideration

will be given to quality and performance of the commodity to be purchased, or service provided by the seller. Criteria for determining low bid shall include, but not be limited to, the following:

- (1) The ability, capacity and skill of the bidder to provide the supplies, materials, equipment or contractual services as required.
  - (2) The ability of the bidder to provide the supplies, materials, equipment or contractual services within the time specified.
  - (3) The character, integrity, reputation, judgment, experience and efficiency of the bidder.
  - (4) The quality or performance of previous purchases from said bidder.
  - (5) The ability of the bidder to provide future maintenance, repair parts and services for the use of the commodity purchased.
  - (6) Local vendor as defined in Section 8-3.206(c).
- (g) Faithful Performance Bond. When the specifications so provide, the successful bidder shall furnish surety in the form of certified or cashier's check, corporate surety bond or savings and loan certificate for faithful performance of the contract.

#### **8-3.206. SUPPORT OF LOCAL VENDORS.**

- (a) Should the bidder that submits the lowest responsive bid or quote and would otherwise normally qualify to receive the bid pursuant to Sections 8-3.203 and 8-3.204 of the Modesto Municipal Code not be a local business as defined herein, the lowest bid or quote submitted by a local business that is within five percent (5%) of the lowest bid or quote, whether or not that bidder is the second lowest bidder, may be deemed to be the lowest bidder if the bidder agrees to reduce its bid to match the bid or quote of the lowest bidder in writing within five (5) business days after notification by City Purchasing staff, and providing that the Purchasing Manager, or designee, determines that said local bidder is a responsible bidder submitting a bid or quote that is responsive to the City's specifications, terms, and conditions and the application of this section is appropriate.

- (b) If the lowest local bidder within five percent (5%) of the lowest bid or quote does not elect to reduce its bid or quote to match the bid or quote of the lowest bidder, then the next lowest local bidder shall be given the opportunity to match the bid or quote of the lowest bidder as set forth above, providing that this bidder is also within five percent (5%) of the lowest bid or quote that has been deemed responsive.
- (c) To qualify as a local bidder, the bidder must have a physical business location within the City of Modesto and a current City of Modesto business license.
- (d) This support of local vendor's policy shall only apply to supplies, materials, equipment and non-professional contractual services required for the conduct of City business.
- (e) Exceptions shall include contracts valued at less than \$1,000 and those contracts which Federal, State or City Charter law forbid from granting such support, such as public works agreements and Federal Transit Administration expenditures.
- (f) Solicitations for bids or quotes must include notice of this section.

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

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

Ord. No. 3536-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 September, 2010, Councilmember Hawn, 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: 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: October 7, 2010

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 4<sup>th</sup> day of August, 2010, by Councilmember Marsh, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Lopez, was upon roll call carried and ordered printed and published by the following vote:

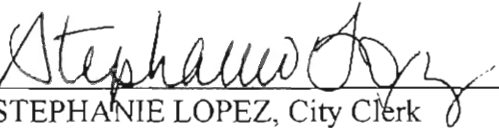
AYES: Councilmembers: Geer, Hawn, Lopez, Muratore, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: Marsh

APPROVED:   
JIM RIDENOUR, Mayor

ATTEST:

By   
STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
SUSANA ALCALA WOOD, City Attorney

ORDINANCE NO. 3537-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 9<sup>th</sup> 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.

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) and (q) 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.

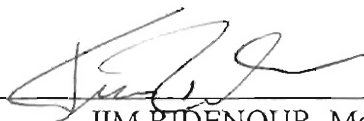
SECTION 3. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in *The Modesto Bee*, the official newspaper of the City of Modesto, setting forth 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 5th day of October, 2010, 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: Geer, Hawn, Lopez, Marsh, Muratore, Olsen, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None.

APPROVED:   
JIM RIDENOUR, Mayor

ATTEST:

By   
STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
SUSANA ALCALA WOOD, City Attorney

Ord. No. 3537-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 12<sup>th</sup> day of October, 2010, Councilmember Lopez moved its final adoption, which motion being duly seconded by Councilmember Hawn was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: 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: October 12, 2010

ORDINANCE NO. 3538-C.S.

AN ORDINANCE AMENDING SECTION 8-3-9 OF THE ZONING MAP OF THE CITY OF MODESTO TO REZONE FROM PLANNED DEVELOPMENT ZONE P-D(131), TO HIGHWAY COMMERCIAL ZONE (C-3), PROPERTY LOCATED AT THE SOUTHWEST CORNER OF MCHENRY AVENUE AND WEST UNION AVENUE (MODESTO COMMERCE BANK).

WHEREAS, a verified application for an amendment to Section 8-3-9 of the Zoning Map was filed by DeLaMare-Fultz Engineering on behalf of Modesto Commerce Bank on July 30, 2010, to rezone from Planned Development Zone P-D(131), to Highway Commercial Zone (C-3), property located at the southwest corner of McHenry Avenue and West Union Avenue, and

WHEREAS, after a public hearing held on September 13, 2010, 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. 2010-19, adopted on September 13, 2010, the Planning Commission recommended to the Council that the application of DeLaMare-Fultz Engineering on behalf of Modesto Commerce Bank to amend Section 8-3-9 of the Zoning Map to rezone the hereinafter described property from Planned Development Zone P-D(131), to Highway Commercial Zone (C-3), be approved,

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

SECTION 1. After a public hearing held on October 12, 2010, in the Tenth Street Place Chambers located at 1010 10<sup>th</sup> 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 C-3 Highway Commercial uses will provide for a greater variety of development opportunities at the site that is compatible with the surrounding land uses.
2. The proposed rezoning is consistent with the Modesto Urban Area General Plan because the C-3 Highway Commercial zoning is consistent with the General Plan "Commercial" lane use designation of the site.

SECTION 2. ZONING CHANGE. Section 8-3-9 of the Zoning Map is hereby amended to rezone the following described property from Planned Development Zone P-D(131), to Highway Commercial Zone (C-3):

(P-D131) to (C-3)

All of Parcel 1 as shown on the Map filed October 11, 1974 in Book 20 of Parcel Maps, at Page 9, in the Stanislaus County Records.

Including also, the Westerly 55 feet of McHenry Avenue and the Southerly 30 feet of West Union Avenue, all being immediately adjacent to said Parcel 1.

APN: 055-038-019

SECTION 3. ZONING MAP. Section 8-3-9 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.

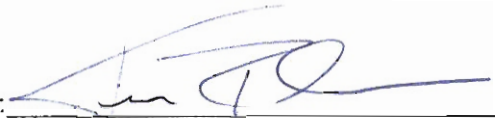
The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 12th day of October , 2010, by Councilmember Olsen, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Lopez, was upon roll call carried and ordered printed and published by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: 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 Development Department Planning Division

Ord. No. 3538-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 26<sup>th</sup> day of October, 2010, Councilmember Lopez moved its final adoption, which motion being duly seconded by Councilmember Hawn, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: 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: November 25, 2010

ORDINANCE NO. 3539-C.S.

AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF MODESTO AND REZA VOSSOUGH, SHARRON ANN VOSSOUGH, MEHDI VOSSOUGH, ATAOLLAH AHSANI, SHAHRAM SHARAFI, FATEMEH FALAHAT-PISHEH (SHARAFI), ZAHRA SHARAFI (MOHEBBI), MANA DEVELOPMENTS, A CALIFORNIA GENERAL PARTNERSHIP, AND HANS J. WAGNER RELATING TO THE DEVELOPMENT OF THE MANA-WAGNER PARCELS LOCATED ON THE WEST SIDE OF AMERICAN AVENUE, SOUTH OF BANGS AVENUE. (MANA DEVELOPMENTS AND HANS WAGNER)

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

WHEREAS, by City Council Resolution No. 97-492, adopted on August 26, 1997, the City Council has established procedures and requirements for the consideration of development agreements, and

WHEREAS, Mana Developments, a California general partnership and Hans Wagner have applied for a Development Agreement regarding the development of the Mana-Wagner parcels located on the west side of American Avenue, south of Bangs Avenue which includes provisions regarding the development of the site, processing of future entitlements, payment of fees and taxes, installation of public infrastructure, and implementation of environmental mitigation measures, and

WHEREAS, a duly noticed public hearing was held by the Planning Commission of the City of Modesto on October 4, 2010, in the Tenth Street Place Chambers located at 1010 10th Street, Modesto, California, for the purpose of making a recommendation to the City Council concerning the proposed Development Agreement, at which hearing evidence both oral and documentary was received and considered, and

WHEREAS, after said public hearing, the Modesto City Planning Commission, by Resolution No. 2010-22, adopted on October 4, 2010, recommended to the City Council approval of the proposed Development Agreement between the City of Modesto and Reza Vossoughi, Sharron Ann Vossoughi, Mehdi Vossoughi, Ataollah Ahsani, Shahram Sharafi, Fatemeh Falahat-Pisheh (Sharafi), Zahra Sharafi (Mohebbi), Mana Developments, a California General Partnership, and Hans J. Wagner, and

WHEREAS, said matter was set for a public hearing of the City Council to be held at 5:30 p.m., on December 7, 2010, in the City Council Chambers, City Hall, 1010 - 10<sup>th</sup> Street, Modesto, California, at which date and time said duly noticed public hearing of the Council was held for the purpose of considering the proposed Development Agreement between the City of Modesto and Reza Vossoughi, Sharron Ann Vossoughi, Mehdi Vossoughi, Ataollah Ahsani, Shahram Sharafi, Fatemeh Falahat-Pisheh (Sharafi), Zahra Sharafi (Mohebbi), Mana Developments, a California General Partnership, and Hans J. Wagner for a Development Agreement regarding the development of the Mana-Wagner parcels located on the west side of American Avenue, south of Bangs Avenue, and

WHEREAS, the City Council has received and considered the Final Mitigated Negative Declaration for the proposed Development Agreement (SCH No. 2010062086) which analyzed the potential environmental effects of the proposed Development Agreement and has, by separate resolution, adopted said Final Mitigated Negative Declaration, and

WHEREAS, the City Council has received and considered any comments received during the public review period for said Final Mitigated Negative Declaration, and

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

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

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

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

1. The proposed Development Agreement is consistent with the General Plan and the Kiernan Business Park Specific Plan of the City of Modesto because the resulting development would be consistent with the Kiernan Business Park Specific Plan and the Development Agreement would ensure that adequate infrastructure is constructed concurrent with development, as required by the General Plan.
2. The proposed Development Agreement is consistent with the specific

content and other requirements of City Council Resolution No. 91-185, which establishes procedures and requirements for the consideration of development agreements; the City's subdivision and zoning provisions of the Modesto Municipal Code; and Government Code Section 65854 et seq.

3. The proposed Development Agreement has been adequately analyzed by the Final Mitigated Negative Declaration (SCH No. 2010062086).

SECTION 2. APPROVAL OF DEVELOPMENT AGREEMENT. The

Development Agreement between the City of Modesto and Reza Vossoughi, Sharron Ann Vossoughi, Mehdi Vossoughi, Ataollah Ahsani, Shahram Sharafi, Fatemeh Falahat-Pisheh (Sharafi), Zahra Sharafi (Mohebbi), Mana Developments, a California General Partnership, and Hans J. Wagner relating to the development of the Mana-Wagner parcels located on the west side of American Avenue, south of Bangs Avenue located in the Kiernan Business Park Specific Plan, is hereby approved. A copy of which is on file in the Office of the City Clerk.

SECTION 3. EXECUTION BY CITY. The City of Modesto, a municipal corporation, has authorized the execution of the Development Agreement by its City Manager and attestation by its City Clerk on behalf of the City of Modesto.

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

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

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

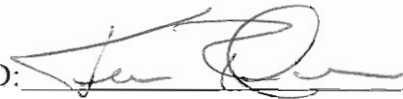
The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 7<sup>th</sup> day of December, 2010, by Councilmember Marsh, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Hawn, was upon roll call carried 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

Ord. No. 3539

FINAL ADOPTION CLAUSE


The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 14th day of December, 2010, Councilmember Lopez moved its final adoption, which motion being duly seconded by Councilmember Hawn, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: 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: January 13, 2011

ORDINANCE NO. 3540-C.S.

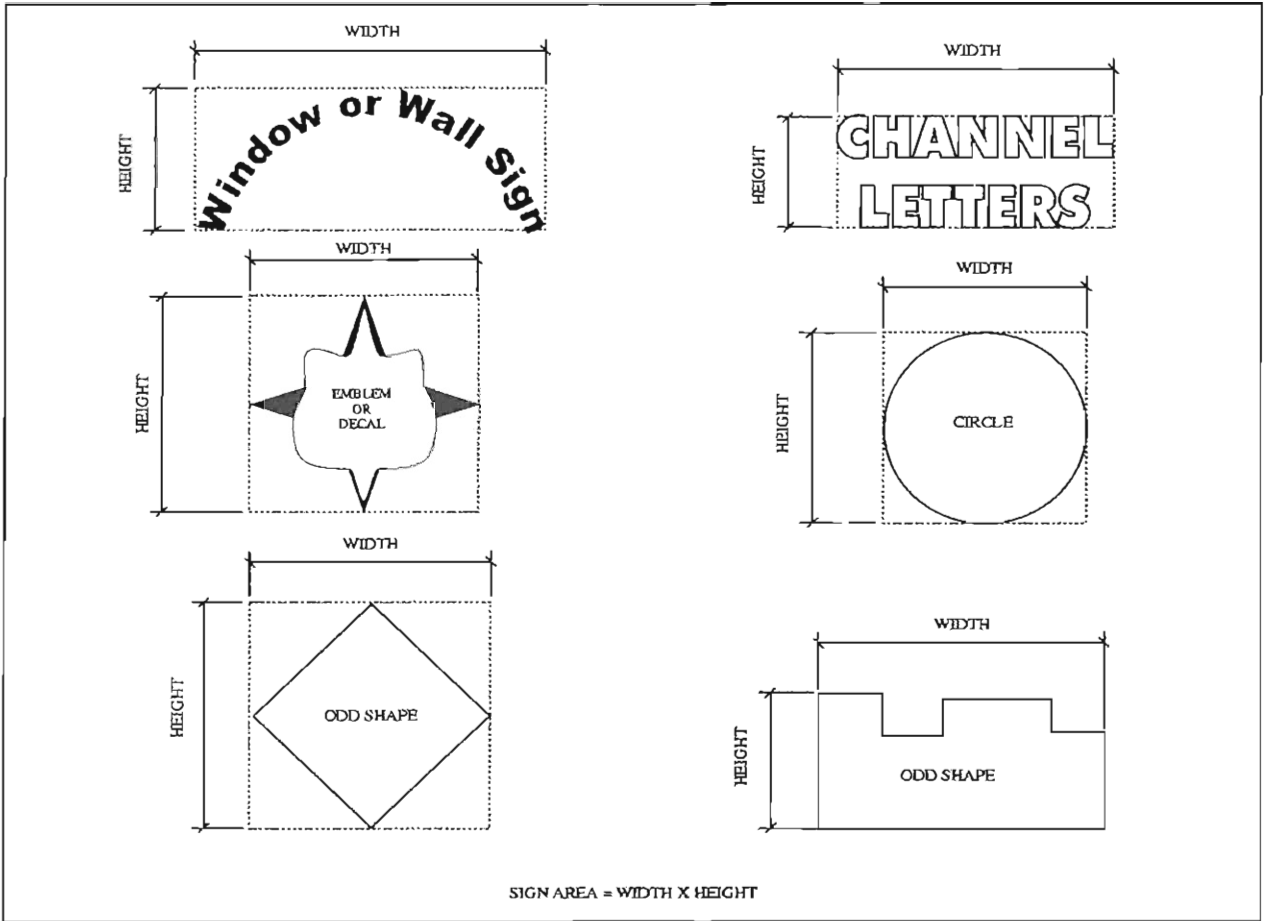
AN ORDINANCE AMENDING SECTIONS 10-2.2110 AND 10-2.2114 OF ARTICLE 21 OF CHAPTER 2 OF TITLE 10 OF THE MODESTO MUNICIPAL CODE RELATING TO SIGN REGULATIONS.

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

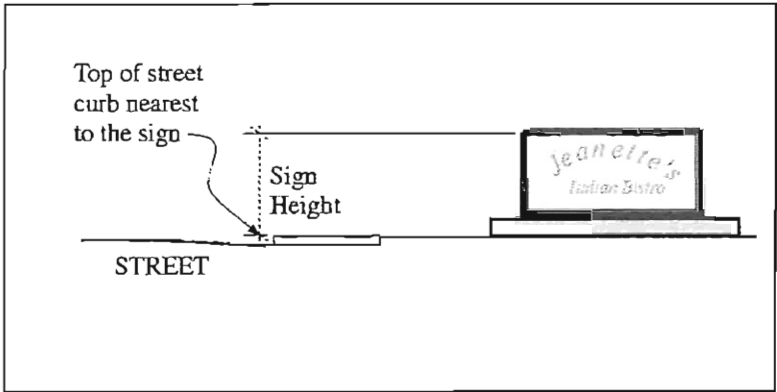
SECTION 1. AMENDMENT OF CODE. Sections 10-2.2110 and 10-2.2114 of Article 21 of Chapter 2 of Title 10 of the Modesto Municipal Code are hereby amended to read as follows:

**10-2.2110. SIGN AREA, HEIGHT AND PLACEMENT.**

- (a) **Measurement of sign area and height.** For the purposes of determining compliance with this article, the area and height of signs shall be measured as provided by this section.
- (1) **Sign area.** Sign area shall be measured as the area in square feet of the smallest simple geometric shape within which a single sign face can be enclosed. The total area of the sign shall include all sign faces, except where two (2) faces are placed back-to-back and are at no point more than two (2) feet from one another, the area of the sign shall be taken as the area of one (1) face if the two (2) faces are of equal area, or as the area of the larger face if the two (2) faces are of unequal area. See Figure 21-6.
- (2) **Sign height.** Sign height shall be measured as the vertical distance from the top of the street curb nearest the sign, to the top of the sign, including the support structure and any design elements. See Figure 21-7.



**FIGURE 21-6  
MEASUREMENT OF SIGN AREA**



**FIGURE 21-7  
MEASUREMENT OF SIGN HEIGHT**

- (b) **Maximum sign area requirements.** The maximum allowable area for signs is determined by Sections 10-2.2112 and 10-2.2114. No freestanding sign of any type or class, subject to this article shall exceed one hundred fifty (150) square feet in area, except as specified in Section 10-2.2114(g).
- (c) **Sign height limitations.** All signs shall comply with the following requirements.
  - (1) **Maximum Sign Height.** No wall, canopy, marquee or projecting sign located on a building shall project higher than the ridgeline of the roof, parapet or wall of which the sign is to be affixed. The maximum height of other signs shall be as specified by Sections 10-2.2112 and 10-2.2114, as applicable.
  - (2) **Minimum Sign Height.** No sign shall be less than eight (8) feet above a public or private sidewalk, or fourteen and one-half (14.5) feet above ground level in areas open to vehicular traffic, except wall signs not exceeding three (3) inches in thickness.
- (d) **Sign placement on buildings.** Signs for tenants within buildings that have multiple tenants shall be placed on the portion of the building where the business being advertised is located, except that:
  - (1) Where the business tenant space has no street frontage, the review authority may grant a sign permit for sign placement on an exterior building wall determined to provide adequate visibility, and where the sign will be compatible in design and scale with the building architecture and the design and placement of other signs; and
  - (2) The BZA may grant a conditional use permit authorizing placement on other portions of the building, and/or the clustering of allowed signs on one (1) building wall, where the BZA determines that the adjusted sign placement is necessary to provide adequate identification of the subject businesses from the street, and that placement of the sign at the tenant location will unreasonably limit sign visibility.
- (e) **Projection of signs.** Signs may project into required front, side and rear yards as approved by the review authority. A sign may project into a street or alley right-of-way only as follows (see Figure 21-8):

- (1) Bus bench signs. May be located entirely within a right-of-way.
- (2) Freestanding signs. Freestanding or exterior identification signs may encroach into a public right-of-way only if a specific encroachment permit is granted.
- (3) Marquee signs. May project into a right-of-way to a point two (2) feet from the face of the curb.
- (4) Projecting signs. May project up to eight (8) feet into a street right-of-way and up to four (4) feet into any alley right-of-way, but not closer than two (2) feet from the face of the curb.
- (5) Wall signs. May project into a right-of-way up to fourteen (14) inches in thickness, provided that:
  - (i) No display or messages shall be permitted on the edges of the sign, except the sign company identification required by Section 10-2.2116(e); and
  - (ii) Any portion of the sign which projects more than three (3) inches is located in compliance with the vertical clearance requirements of Subsection (c)(2) above.
- (f) **Signs creating obstructions.** No sign shall be installed or maintained so that it may block access to any door, window, fire escape or exit way.

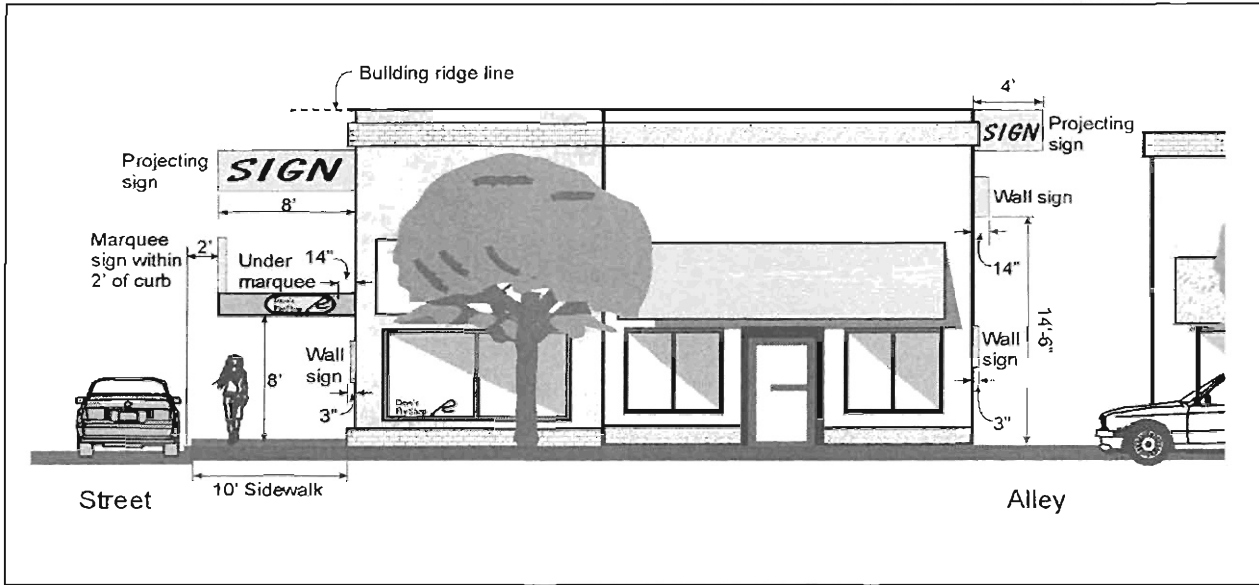


FIGURE 21-8  
 EXAMPLES OF ALLOWED SIGN PROJECTIONS

#### 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.)

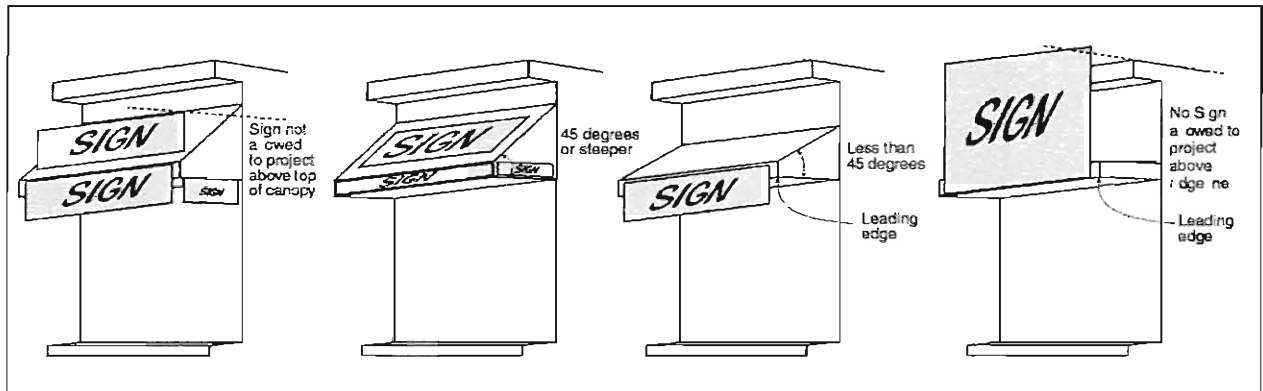
(2) **Banners.**

(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 boards.** Electronic message boards are allowed only in compliance with this subsection.

(1) Retail uses: Electronic message boards may be permitted only for the following uses: automobile dealers, convention centers, theaters, and shopping centers with a gross floor area of 250,000 square feet or more, subject to the following provisions:

(i) Conditional Use Permit by the Board of Zoning Adjustment is required.

(ii) An electronic message board may be used as one of the signs permitted by Section 10-2.2112 and shall comply with the sign area and height limitations of that Section.

(iii) Electronic message boards permitted by this subsection shall be programmed to change copy no more frequently than five (5) second intervals.

(2) Schools: Electronic message boards are permitted in conjunction with high schools and colleges having a minimum campus of twenty (20) acres, subject to the following provisions:

(i) An electronic message board may be used as a part of one of the signs permitted by Section 10-2.2112. The area devoted to the electronic message board shall be limited to a maximum of forty-eight (48) square feet. The sign bearing the electronic message board shall be oriented to an arterial street or expressway.

(ii) Electronic message boards permitted by this subsection shall be programmed to change copy no more frequently than five (5) second intervals.

(f) **Flags and streamers.**

(1) **Where allowed.** Flags and streamers may be permitted within any zoning district, in compliance with the requirements of this

subsection.

- (2) **Corporate flags.** One corporate flag is allowed per use or occupancy in nonresidential zoning districts, and is exempt from sign permit requirements. The flag shall not exceed a maximum area of twenty-four (24) square feet, and its dimensions shall not exceed a ratio of 2:1. The flag shall be flown only from a flagstaff or flagpole.
- (3) **Decorative flags and streamers.** Decorative flags and streamers without advertising copy or corporate or product identification are allowed as follows:
  - (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 free-standing 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.

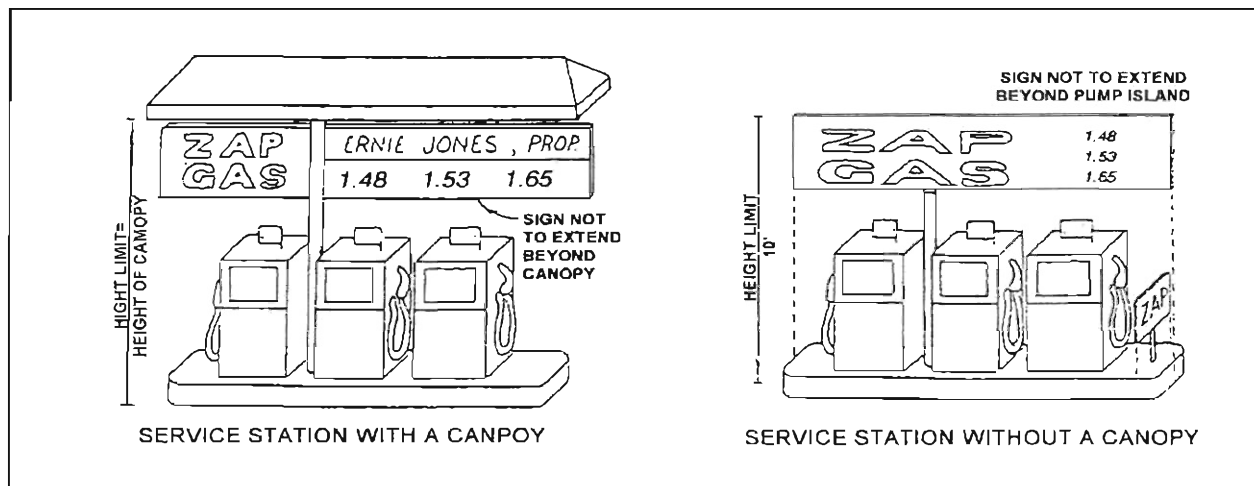


FIGURE 21-10  
SERVICE STATION SIGN REQUIREMENTS

- (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 (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 (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 (1000) 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.

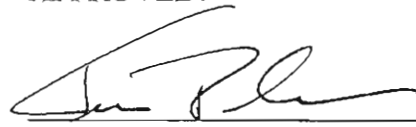
The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 7th day of December, 2010, by Councilmember Lopez, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Muratore, was upon roll call carried and ordered printed and published by the following vote:

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

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:

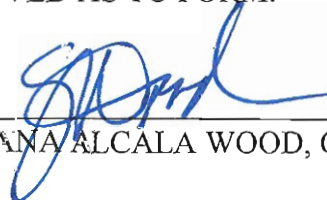
  
\_\_\_\_\_  
JIM RIDENOUR, Mayor

ATTEST:

By   
\_\_\_\_\_  
STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
\_\_\_\_\_  
SUSANA ALCALA WOOD, City Attorney

Ord. No. 3540

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 14th day of December, 2010, Councilmember Lopez moved its final adoption, which motion being duly seconded by Councilmember Hawn, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: 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: January 13, 2011

ORDINANCE NO. 3541-C.S.

AN ORDINANCE AMENDING ARTICLE 1 OF CHAPTER 1 OF TITLE 9 OF THE MODESTO MUNICIPAL CODE; AMENDING SECTIONS 9-1.201, 9-1.204, 9-1.502, 9-1.804, 9-1.805, 9-1.806, 9-1.807, 9-1.1602.1, 9-1.1602.2, 9-1.1602.3 AND 9-1.1602.4 OF CHAPTER 1 OF TITLE 9 OF THE MODESTO MUNICIPAL CODE; ADDING SECTIONS 9-1.101.1, 9-1.805.1 AND 9-1.811.1 THERETO; AND ADDING ARTICLE 17 TO CHAPTER 1 OF TITLE 9 OF THE MODESTO MUNICIPAL CODE RELATING TO THE BUILDING CODE.

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

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

**ARTICLE 1. ADOPTION BY REFERENCE OF THE 2010 CALIFORNIA BUILDING CODE**

**9-1.101. ADOPTION BY REFERENCE OF THE 2010 CALIFORNIA BUILDING CODE.**

That certain document, one (1) copy of which is on file in the Office of the City Clerk of the City of Modesto, being marked and designated as the 2010 California Building Code, California Code of Regulations, Title 24, Part 2, Volumes 1 and 2, as published by the International Code Council, as now existing, or hereafter amended, regulating and governing the conditions of all properties, buildings, and structures; by providing the standards for facilities and other physical things and conditions essential to ensure that structures are safe, sanitary and fit for occupancy and use; and the condemnation of buildings and structures unfit for human occupancy and use and the demotion of such structures; providing for the issuance of permits and collection of fees therefor; and providing penalties for the violation thereof; and each and all of the regulations, provisions, penalties, conditions and terms of said 2010 California Building Code on file in the Office of the City Clerk of the City of Modesto is hereby referred to, adopted and made a part hereof, as if fully set out in this ordinance, with the additions, deletions, insertions and changes, if any, prescribed in this Chapter, be and hereby is adopted as the Building Code of the City of Modesto.

SECTION 2. AMENDMENT OF CODE. Sections 9-1.201, 9-1.204, 9-1.502, 9-1.804, 9-1.805, 9-1.806, 9-1.807, 9-1.1602.1, 9-1.1602.2, 9-1.1602.3 and 9-1.1602.4 of Chapter 1 of Title 9 of the Modesto Municipal Code are hereby amended to read as follows:

**9-1.201. TITLE.**

These regulations shall be known as the “Building Code of the City of Modesto,” and may be cited and referred to herein as such or may be cited and referred to herein as the “Building Code,” the “2010 California Building and 2010 California Residential Code,” the “California Building and Residential Code,” or “this Code.”

**9-1.204. APPENDICES.**

Provisions contained in the appendices of the 2010 California Building Code and the 2010 California Residential Code shall not apply unless specifically adopted by the State of California Building Standards Commission or the City of Modesto.

**9-1.502. WORK EXEMPT FROM PERMIT.**

Exemptions from permit requirements of this Code shall not be deemed to grant authorization for any work to be done in any manner in violation of the provisions of this Code or any other local, state, or federal law.

A permit shall not be required for the following:

- (a) One-story, detached accessory structures used as tool and storage sheds, playhouses, and similar uses, provided the floor area does not exceed 120 square feet (11 m<sup>2</sup>).
- (b) Fences not over six (6) feet (1829 mm) high.
- (c) Oil derricks.
- (d) Retaining walls that are not over 4 (four) feet (1,219 mm) in height measured from the bottom of the footing to the top of the wall, unless supporting a surcharge or impounding Class I, II or IIIA liquids.
- (e) Water tanks supported directly on grade if the capacity does not exceed 5,000 gallons (18,925 L) and the ratio of height to diameter or width does not exceed 2:1.

- (f) Sidewalks and driveways not more than 30 inches (762 mm) above adjacent grade, and not over any basement or story below and are not part of an accessible route.
- (g) Prefabricated swimming pools that are less than twenty-four (24) inches (610 mm) deep.
- (h) Painting, papering, tiling, carpeting, cabinets, counter tops, and similar finish work.
- (i) Temporary motion picture, television and theater stage sets, and scenery.
- (j) Shade cloth structures constructed for nursery or agricultural purposes, not including service systems.
- (k) Swings and other playground equipment accessory to detached one- and two-family dwellings.
- (l) Window awnings supported by an exterior wall that do not project more than 54 inches (1,372 mm) from the exterior wall and do not require additional support of Group R-3 and U occupancies.
- (m) Nonfixed and movable fixtures, cases, racks, counters, and partitions not over 5 feet 9 inches (1,753 mm) in height.
- (n) One (1) and two (2) family residential decks not exceeding two hundred (200) square feet (18.58 m<sup>2</sup>) in area, that are not more than thirty (30) inches (762 mm) above grade at any point, are not attached to a dwelling and do not serve the exit door required by Section R311.4 of the California Residential Code.

#### **9-1.804. TYPES OF INSPECTIONS.**

For onsite construction, from time to time the Building Official, upon notification from the permit holder or his agent, shall make or cause to be made any necessary inspections and shall either approve that portion of the construction as completed or shall notify the permit holder or his or her agent wherein the same fails to comply with this Code. The Building Safety Division, upon notification of the permit holder or their agent, shall within a reasonable time make the inspections set forth in Sections 9-1.805 through 9-1.813.

Note: Reinforced steel or structural framework: of any part of any building or structure shall not be covered or concealed without first obtaining the approval of the Building Official.

#### **9-1.805. FOOTING AND FOUNDATION INSPECTION.**

Inspection of the foundation and footings shall be made after poles or piers are set or trenches or basement areas are excavated and any required forms erected and any required reinforcing steel is in place and supported prior to the placing of concrete. The foundation or footing inspection shall include excavations for thickened slabs intended for the support of bearing walls, partitions, structural supports, or equipment and special requirements for wood foundations. Materials for the foundation shall be on the job site except where concrete is ready-mixed in accordance with ASTM C94. Under this circumstance concrete is not required to be at the job site.

#### **9-1.806. FLOOD PLAIN INSPECTIONS/LOWEST FLOOR ELEVATION.**

For construction in areas prone to flooding as established by Table R301.2(1) of the California Residential Code upon placement of the lowest floor, including basement, and prior to further vertical construction, the Building Official shall require submission of documentation, prepared and sealed by a registered design professional, of the elevation of the lowest floor, including basement, required in Section R322. In flood hazard areas, upon placement of the lowest floor, including the basement, and prior to further vertical construction, the elevation certification required in Section 1612.5 of the California Building Code shall be submitted to the Building Official.

#### **9-1.807. FRAME AND MASONRY INSPECTION.**

Inspection of framing and masonry construction shall be made after the roof, masonry, all framing, firestopping, draftstopping and bracing are in place and after chimneys and vents to be concealed are completed and the rough electrical, plumbing, heating wires, pipes and ducts are approved.

#### **9-1.1602.1. DEFINITIONS.**

Section 202 of the 2010 California Building Code is hereby amended to read as follows:

**Building Official.** The officer or other designated authority charged with the administration and enforcement of this Code, or duly authorized representative. *The office and title of Chief Building Official of the City of Modesto shall serve as the officer responsible for administration and enforcement of this Code.*

#### **9-1.1602.2. STRUCTURAL DESIGN.**

Section 1612.3 of the 2010 California Building Code is hereby amended to read as follows:

### **1612.3. ESTABLISHMENT OF FLOOD HAZARD AREAS.**

To establish flood hazard areas, the governing body shall adopt a flood hazard map and supporting data. The flood hazard map shall include, at minimum, areas of special flood hazard as identified by the Federal Emergency Management Agency in an engineering report entitled "*The Flood Insurance Study for the City of Modesto*", dated September 26, 2008, as amended or revised with the accompanying Flood Insurance Rate Map (FIRM) and Flood Boundary and Floodway Map (FBFM) and related supporting data along with any revisions thereto. The adopted flood hazard map and supporting data are hereby adopted by reference and declared to be part of this section.

### **9-1.1602.3. STRUCTURAL TESTS AND SPECIAL INSPECTIONS.**

Section 1702 of the 2010 California Building Code is hereby amended to read as follows:

**STRUCTURAL OBSERVATION.** The visual observation of the structural system by a registered design professional for general conformance to the approved construction documents at significant construction stages and at completion of the structural system. Structural observation does not include or waive the responsibility for the inspection required by Title 9, Chapter 1, Article 8 and Section 1704 of the California Building Code or other sections of this Code.

### **9-1.1602.4. SPECIAL INSPECTIONS.**

Section 1704.1 of the 2010 California Building Code is hereby amended to read as follows:

#### **1704.1. GENERAL.**

Where application is made for construction as described in this Section, the owner or registered design professional in responsible charge acting as the owner's agent shall employ one (1) or more special inspectors to provide inspection during construction on the types of work listed under Section 1704 of the California Building Code. The special inspector shall be a qualified person who shall demonstrate competence, to the satisfaction of the Building Official, for inspection of the particular type of construction or operation requiring special inspection. These inspections are in addition to the inspections specified in Article 8 of Chapter 1 of Title 9.

SECTION 3. AMENDMENT OF CODE. Sections 9-1.101.1 , 9-1.805.1 and 9-1.811.1 are hereby added to Chapter 1 of Title 9 of the Modesto Municipal Code.

**9-1.101.1. ADOPTION BY REFERENCE OF THE 2010 CALIFORNIA RESIDENTIAL CODE.**

That certain document, (1) copy of which is on file in the Office of the City Clerk at the City of Modesto, being marked and designated as the California Residential Code, 2010 edition, California Code of Regulations Title 24, Part 2.5 as published by the International Code Council, regulating and governing the conditions of residential detached one and two family dwellings by providing the standards for facilities and other physical things and conditions essential to ensure that these structures are safe, sanitary and fit for occupation and use; and the condemnation of buildings and structures unfit for human occupancy and use and the demolition of such structures as herein provided; providing for the issuance of permits and collection of fees therefore; and providing penalties for the violation thereof; and each and all of the regulations, provisions, penalties, conditions and terms of said building code on file in the office of the City Clerk of the City of Modesto are hereby referred to, adopted, and made part hereof, as if fully set out in this ordinance, with the additions, deletions and changes, if any, prescribed in this chapter, be and hereby are adopted by reference as the Building Code of the City of Modesto.

**9-1.805.1. CONCRETE SLAB AND UNDERFLOOR INSPECTION.**

Concrete slab and underfloor inspections shall be made after in-slab or underfloor reinforcing steel and building service equipment, conduit, piping accessories, and other ancillary equipment items are in place, but before any concrete is placed or floor sheathing installed, including the subfloor.

**9-1.811.1. FIRE-RESISTANCE-RATED CONSTRUCTION INSPECTION.**

Where fire-resistance-rated construction is required between dwelling units or due to location on property, the Building Official shall require an inspection of such construction after all lathing and/or wallboard is in place, but before any plaster is applied, or before wallboard joints and fasteners are taped and finished. Protection of joints and penetrations in fire resistance rated assemblies shall not be concealed from view until inspected and approved.

SECTION 4. AMENDMENT OF CODE: Article 17 is hereby added to Chapter 1 of

Title 9 of the Modesto Municipal Code to read as follows:

**ARTICLE 17. TECHNICAL AMENDMENTS TO THE 2010 CALIFORNIA RESIDENTIAL CODE.**

**9-1.1701. DEFINITION.**

Section 202 of the 2010 California Residential Code is hereby amended to read as follows:

Building Official. The officer or other designated authority charged with the administration and enforcement of this Code, or duly authorized representative. The office and title of Chief Building Official of the City of Modesto shall serve as the officer responsible for administration and enforcement of this Code.

9-1.1702. TABLE R301.2(1) CLIMATIC AND GEOGRAPHIC DESIGN CRITERIA.

Table R301.2(1) of the 2010 California Residential Code is hereby amended to read as follows:

**Table R301.2(1)  
Climatic and Geographic Design Criteria**

Ground Snow Load	Wind Design		Seismic Design Category	Subject to Damage From:			Winter Design Temp	Ice Barrier Underlayment Required	Flood Hazards	Air Freeze Index	Mean Annual Temp
	Speed MPH	Topographic Effects		Weathering	Frost Line Depth	Termite					
0	85	No	D	Negligible	12 Inches	Very Heavy	n/a	n/a	MMC 9-4.302	50	60

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

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

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 7th day of December, 2010, 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 and 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. 3541

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 14th day of December, 2010, Councilmember Lopez moved its final adoption, which motion being duly seconded by Councilmember Hawn, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: 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: January 13, 2011

ORDINANCE NO. 3542-C.S.

AN ORDINANCE AMENDING ARTICLE 1 OF CHAPTER 3 OF TITLE 9 OF THE MODESTO MUNICIPAL CODE; AMENDING SECTIONS 9-3.201, 9-3.204, 9-3.502 AND 9-3.1401.1 OF CHAPTER 3 OF TITLE 9 OF THE MODESTO MUNICIPAL CODE; AND REPEALING SECTION 9-3.1401 RELATING TO THE ELECTRICAL CODE.

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

SECTION 1. AMENDMENT OF CODE. Article 1 of Chapter 3 of Title 9 of the Modesto Municipal Code is hereby amended to read as follows:

**ARTICLE 1. ADOPTION BY REFERENCE OF THE 2010 CALIFORNIA ELECTRICAL CODE**

**9-3.101. ADOPTION BY REFERENCE OF THE 2010 CALIFORNIA ELECTRICAL CODE.**

That certain document, one (1) copy of which is on file in the Office of the City Clerk of the City of Modesto, being marked and designated as the 2010 California Electrical Code, California Code of Regulations Title 24, Part 3, as published by the Building News, inc. (BNi), as now existing, or hereafter amended, regulating, governing and providing standards for the erection, installation, repair, relocation, replacement, addition to, use, or maintenance of electrical systems and parts thereof for the protection of public health and safety, providing for the issuance of permits and collection of fees, providing penalties for the violation thereof; and each and all of the regulations, provisions, penalties, conditions and terms of said 2010 California Electrical Code on file in the Office of the City Clerk of the City of Modesto is hereby referred to, adopted and made a part hereof, as if fully set out in this ordinance, with the additions, deletions, insertions, and changes if any, prescribed in this Chapter, be and hereby is adopted as the Electrical Code of the City of Modesto.

SECTION 2. AMENDMENT OF CODE. Sections 9-3.201, 9-3.204, 9-3.502 and 9-3.1401.1 of Chapter 3 of Title 9 of the Modesto Municipal Code are hereby amended to read as follows:

**9-3.201. TITLE.**

These regulations shall be known as the "Electrical Code of the City of Modesto", and may be cited and referred to herein as such or may be cited and referred to herein as the "Electrical Code", the "2010 California Electrical Code", the "California Electrical Code", or "this Code".

#### **9-3.204. APPENDICES.**

Provisions contained in the appendices of the 2010 California Building Code shall not apply unless specifically adopted by the State of California Building Standards Commission or the City of Modesto.

#### **9-3.502. WORK EXEMPT FROM PERMIT.**

Exemptions from permit requirements of this Code shall not be deemed to grant authorization for any work to be done in any manner in violation of the provisions of this Code or any other local, state, or federal law.

##### **Electrical:**

A permit shall not be required for the following:

- (a) Portable motors or other portable appliances energized by means of a cord or cable having an attachment plug end to be connected to an approved receptacle when that cord or cable is permitted by this Code.
- (b) Repair or replacement of fixed motors, transformers, or fixed approved appliances of the same type and rating in the same location.
- (c) Temporary decorative lighting not to exceed ninety (90) days.
- (d) Repair or replacement of current-carrying parts of any switch, contractor, or control device.
- (e) Reinstallation of attachment plug receptacles, but not the outlets therefore.
- (f) Repair or replacement of an over current device of the required capacity in the same location.
- (g) Repair or replacement of electrodes or transformers of the same size and capacity for signs or gas tube system.
- (h) Taping joints.

- (i) Removal of electrical wiring.
- (j) Temporary wiring for experimental purposes in suitable experimental laboratories not to exceed ninety (90) days.
- (k) The wiring for temporary theater, motion picture, or television stage sets.
- (l) Electrical wiring, devices, appliances, apparatus, or equipment operating at less than twenty-five (25) volts and not capable of supplying more than fifty (50) watts of energy.
- (m) Low-energy power, control, and signal circuits of Classes II and III as defined in this Code.
- (n) A permit shall not be required for the installation, alteration, or repair of electrical wiring, apparatus, or equipment, or the generation, transmission, distribution, or metering of electrical energy or in the operation of signals or the transmission of intelligence by a public or private utility in the exercise of its function as a serving utility.

**Repairs and Maintenance:**

Minor repair work, including the replacement of lamps or the connection of approved portable electrical equipment to approved permanently installed receptacles.

**Radio and Television Transmitting Stations:**

The provisions of this Code shall not apply to electrical equipment used for radio and television transmissions, but do apply to equipment and wiring for a power supply and the installations of towers and antennas.

**Temporary Testing Systems:**

A permit shall not be required for the installation of any temporary system required for the testing or servicing of electrical equipment or apparatus.

Exemption from the permit requirements of this Code shall not be deemed to grant authorization for any work to be done in violation of the provisions of the Code or any other laws or ordinances of the City of Modesto.

**9-3.1401. DEFINITION.**

Building Official. The officer or any other designated authority charged with the administration and enforcement of this Code, or duly authorized representative. The office and title of Chief Building Official of the City of Modesto shall serve as the officer responsible for administration and enforcement of this Code.

SECTION 3. REPEALS. Section 9-3.1401 of Chapter 3 of Title 9 of the Modesto Municipal Code is hereby repealed.

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

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

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 7 day of December, 2010, 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:



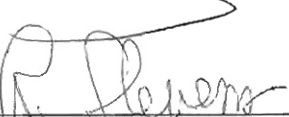
JIM RIDENOUR, Mayor

ATTEST:

By   
STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
SUSANA ALCALA WOOD, City Attorney

Ord. No. 3542

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 14th day of December, 2010, Councilmember Lopez moved its final adoption, which motion being duly seconded by Councilmember Hawn, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: 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)

Effective Date: January 13, 2011

ORDINANCE NO. 3543-C.S.

AN ORDINANCE AMENDING ARTICLE 1 OF CHAPTER 7 OF TITLE 9 OF THE MODESTO MUNICIPAL CODE; AMENDING SECTIONS 9-7.201, 9-7.204 AND 9-7.502 OF CHAPTER 7 OF TITLE 9 OF THE MODESTO MUNICIPAL CODE; AND REPEALING SECTION 9-7.1403 RELATING TO THE MECHANICAL CODE.

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

SECTION 1. AMENDMENT OF CODE. Article 1 of Chapter 7 of Title 9 of the Modesto Municipal Code is hereby amended to read as follows:

**ARTICLE 1. ADOPTION BY REFERENCE OF THE 2010 CALIFORNIA MECHANICAL CODE**

**9-3.101. ADOPTION BY REFERENCE OF THE 2010 CALIFORNIA MECHANICAL CODE.**

That certain document, one (1) copy of which is on file in the Office of the City Clerk of the City of Modesto, being marked and designated as the 2010 California Mechanical Code, California Code of Regulations, Title 24, Part 4, as published by the International Association of Plumbing and Mechanical Officials (IAPMO), as now existing, or hereafter amended, which said Code governs and provides proper regulations of mechanical systems and parts thereof, including, but not limited to, addition to or erection, installation, alteration, repair, relocation, replacement, use, or maintenance of any heating, ventilation, cooling, refrigeration systems or equipment thereof; incinerators or parts or equipment thereof; or other miscellaneous heat producing appliances, parts or equipment thereof; providing for the issuance of permits and collection of fees therefor; providing for the inspection thereof; providing penalties for the violation thereof; and each and all of the regulations, provisions, penalties, conditions and terms of said 2010 California Mechanical Code on file in the Office of the City Clerk of the City of Modesto is hereby referred to, adopted and made a part hereof, as if fully set out in this ordinance, with the additions, deletions, insertions, and changes, if any, prescribed in this Chapter, be and hereby is adopted as the Mechanical Code of the City of Modesto.

SECTION 2. AMENDMENT OF CODE. Sections 9-7.201, 9-7.204 and

9-7.502 of Chapter 7 of Title 9 of the Modesto Municipal Code are hereby amended to read as follows:

**9-7.201. TITLE.**

These regulations shall be known as the “Mechanical Code of the City of Modesto”, and may be cited and referred to herein as such or may be cited and referred to herein as the “Mechanical Code”, the “2010 California Mechanical Code”, the “California Mechanical Code”, or “this Code”.

**9-7.204. APPENDICES.**

Provisions contained in the appendices of the 2010 California Mechanical Code shall not apply unless specifically adopted by the State of California Building Standards Commission or the City of Modesto.

**9-7.502. WORK EXEMPT FROM PERMIT.**

Exemptions from permit requirements of this Code shall not be deemed to grant authorization for any work to be done in any manner in violation of the provisions of this Code or any other local, state, or federal law.

**Mechanical:**

A permit shall not be required for the following:

- (a) Portable heating appliance.
- (b) Portable ventilation equipment.
- (c) Portable cooling unit.
- (d) Steam, hot, or chilled water piping within any heating or cooling equipment regulated by this Code.
- (e) Replacement of any part that does not alter its approval or make it unsafe.
- (f) Portable evaporative cooler.

- (g) Self-contained refrigeration system containing ten (10) pounds (5 kg) or less of refrigerant and actuated by motors of one (1) horsepower (746 W) or less.

Exemption from the permit requirements of this Code shall not be deemed to grant authorization for any work to be done in violation of the provisions of the Code or any other laws or ordinances of the City of Modesto.

SECTION 3. REPEALS. Section 9-7.1403 of Chapter 7 of Title 9 of the Modesto Municipal Code is hereby repealed.

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

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


The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 7 day of December, 2010, 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. 3543

FINAL ADOPTION CLAUSE

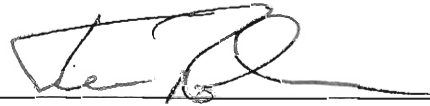
The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 14th day of December, 2010, Councilmember Lopez moved its final adoption, which motion being duly seconded by Councilmember Hawn, was upon roll call carried and the ordinance adopted by the following vote:

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

NOES: Councilmembers: None.

ABSENT: Councilmembers: None

APPROVED:



JIM RIDENOUR, Mayor

ATTEST:

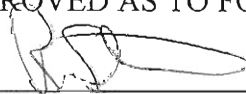
By

  
STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By

  
SUSANA ALCALA WOOD, City Attorney

Effective Date: January 13, 2011



ORDINANCE NO. 3544-C.S.

AN ORDINANCE AMENDING ARTICLE 1 OF CHAPTER 2 OF TITLE 9 OF THE MODESTO MUNICIPAL CODE; AND AMENDING SECTIONS 9-2.201 AND 9-2.502 OF CHAPTER 2 OF TITLE 9 OF THE MODESTO MUNICIPAL CODE RELATING TO THE PLUMBING CODE.

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

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

**ARTICLE 1. ADOPTION BY REFERENCE OF THE 2010 CALIFORNIA PLUMBING CODE**

**9-2.101. ADOPTION BY REFERENCE OF THE 2010 CALIFORNIA PLUMBING CODE.**

That certain document, one (1) copy of which is on file in the Office of the City Clerk of the City of Modesto, being marked and designated as the 2010 California Plumbing Code, California Code of Regulations, Title 24, Part 5, as published by the International Association of Plumbing and Mechanical Officials (IAPMO), as now existing, or hereafter amended, regulating and governing the erection, alteration, installation, repair, relocation, replacement, addition to, use or maintenance of plumbing and drainage systems and parts thereof for the protection of public health and safety, providing for the issuance of permits and collection of fees, providing penalties for the violation thereof; and each and all of the regulations, provisions, penalties, conditions and terms of said 2010 California Plumbing Code on file in the Office of the City Clerk of the City of Modesto is hereby referred to, adopted and made a part hereof, as if fully set out in this ordinance, with the additions, deletions, insertions and changes, if any, prescribed in this Chapter, be and hereby is adopted as the Plumbing Code of the City of Modesto.

SECTION 2. AMENDMENT OF CODE. Sections 9-2.201 and 9-2.502 of Chapter 2 of Title 9 of the Modesto Municipal Code are hereby amended to read as follows:

**9-2.201. TITLE.**

These regulations shall be known as the "Plumbing Code of the City of Modesto," and may cited and referred to herein as such or may be cited and referred to herein as the "Plumbing Code," the "2010 California Plumbing Code," the "California Plumbing Code," or "this Code."

**9-2.502. WORK EXEMPT FROM PERMIT.**

Exemptions from permit requirements of this Code shall not be deemed to grant authorization for any work to be done in any manner in violation of the provisions of this Code or any other local, state, or federal law.

**Gas:**

A permit shall not be required for the following:

- (a) Portable heating appliance.
- (b) Replacement of any minor part that does not alter approval of equipment or make such equipment unsafe.

**Plumbing:**

A permit shall not be required for the following:

- (a) The stopping of leaks in drains, water, soil, waste or vent pipe, provided, however, that if any concealed trap, drain pipe, water, soil, waste or vent pipe becomes defective and it becomes necessary to remove and replace the same with the new material, such work shall be considered as new work and a permit shall be obtained and inspection made as provided in this Code.
- (b) The clearing of stoppages or the repairing of leaks in pipes, valves, or fixtures and the removal and reinstallation of water closets, provided such repairs do not involve or require the replacement or rearrangement of valves, pipes, or fixtures.

Exemption from the permit requirements of this Code shall not be deemed to grant authorization for any work to be done in violation of the provisions of the Code or any other laws or ordinances of the City of Modesto.

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

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

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 7 day of December, 2010, 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

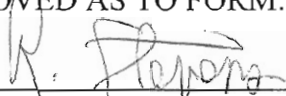
NOES: Councilmembers: None.

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. 3544

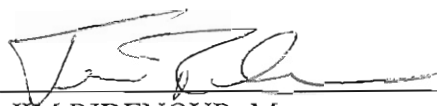
FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 14th day of December, 2010, Councilmember Lopez moved its final adoption, which motion being duly seconded by Councilmember Hawn, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: 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)

Effective Date: January 13, 2011

ORDINANCE NO. 3545-C.S.

AN ORDINANCE AMENDING CHAPTER 1 OF TITLE 3 OF THE MODESTO MUNICIPAL CODE AND ADOPTING BY REFERENCE THE CALIFORNIA FIRE CODE, 2010 EDITION, REGULATING AND GOVERNING THE SAFEGUARDING OF LIFE AND PROPERTY FROM FIRE AND EXPLOSIVE HAZARDS ARISING FROM THE STORAGE, HANDLING, AND USE OF HAZARDOUS SUBSTANCES, MATERIALS AND DEVICES, AND FROM CONDITIONS HAZARDOUS TO LIFE OR PROPERTY IN THE OCCUPANCY OF BUILDINGS AND PREMISES IN THE CITY OF MODESTO; PROVIDING FOR THE ISSUANCE OF PERMITS AND COLLECTION OF FEES, PROVIDING PENALTIES FOR THE VIOLATION THEREOF, AND REPEALING ALL ORDINANCES AND PARTS OF THE ORDINANCES IN CONFLICT THEREWITH.

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

SECTION 1. AMENDMENT OF CODE. Chapter 1 of Title 3 of the Modesto

Municipal Code is hereby amended to read as follows:

**CHAPTER 1. ADOPTION OF THE CALIFORNIA FIRE CODE, 2010 EDITION**

**ARTICLE 1. FIRE CODE**

**3-1.101. FINDINGS FOR ADOPTION OF THE CALIFORNIA FIRE CODE, 2010 EDITION.**

The City Council of the City of Modesto hereby finds and determines: That the International Code Council is a private organization which has been in existence for at least three (3) years. That the California Fire Code, 2010 Edition, published by said organization, is a nationally recognized compilation of proposed rules, regulations, and standards of said organization. That said California Fire Code, 2010 Edition has been printed and published as a code in book form within the meaning of Section 50022.2 et seq. of the Government Code. That one (1) copy of the California Fire Code, 2010 Edition, certified by the City Clerk of the City of Modesto to be a true copy, has been filed for use and examination by the public in the office of the City Clerk of the City of Modesto. Sections of the California

Fire Code, 2010 Edition may be referred to by the number used in said published compilation, preceded by the words “California Fire Code Section” or “Fire Code Section”, and may also be referred to by additional reference to the Modesto Municipal Code and sections therein pertaining to said California Fire Code, 2010 Edition.

The additional requirements and standards established herein are needed to properly protect the health, safety, and welfare of the existing and future residents and workers of the City of Modesto. Said requirements and standards are reasonably necessary because of local climatic, geological, and topographical conditions, and comply with existing state laws and regulations.

Amendment of the California Fire Code, 2010 Edition, is necessary so as to provide more stringent standards for fire extinguishing systems; fire hazard and hazardous materials controls is necessary to serve the public interest by reducing the risk to life and property of the citizens of Modesto because of the following local conditions:

- (a) Summer weather conditions are very dry, hot and windy causing ordinary combustibles to be easily ignited and fires to be fast spreading;
- (b) Very dense fog conditions occur in winter. Reduced visibility causes delays in fire response;
- (c) Fire response is delayed by railroad tracks which:
  - (1) Divide the City from northeast between Tully Road and McHenry Avenue to the west side of Ninth Street;
  - (2) Run parallel to Highway 99 through the City, restricting response at locations where overpasses are not provided;
  - (3) Run parallel to Yosemite Boulevard restricting access to the airport, Tuolumne Regional Park, and adjacent areas; and
  - (4) Restrict access at intersections and streets in the areas of Ninth, Tenth, D, and E Streets.
- (d) Modesto Irrigation Canal #3 restricts access to the neighborhoods and developments to the north and east of Briggsmore Avenue from Oakdale

Road to Claus Road;

- (e) Fire response is delayed by rivers and creeks which:
  - (1) Divide the southwest area of the City and City contract areas and restrict access to these areas; and
  - (2) Divide the City from east to southwest along Scenic Drive.

THEREFORE, for the above reasons taken individually and cumulatively and in accordance with the authority granted in Sections 17958.5 and 17958.7 of the California Health and Safety Code, the Council of the City of Modesto expressly finds there are local climatic and topographical conditions that make the increased fire protection requirements set forth in this chapter reasonably necessary.

**3-1.102. ADOPTION BY REFERENCE OF THE CALIFORNIA FIRE CODE, 2010 EDITION.**

- (a) That certain document, one (1) copy of which is on file in the office of the City Clerk of the City of Modesto, being marked and designated as the California Fire Code, 2010 Edition, California Code of Regulations Title 24, Part 9, including Appendix Chapter 4, and Appendix B, BB, C, CC, E, F, G and I, as published by the International Code Council, regulating and governing the safeguarding of life and property from fire and explosion hazards arising from the storage, handling, and use of hazardous substances, materials and devices, and from conditions hazardous to life or property in the occupancy of buildings and premises as herein provided; providing for the issuance of permits and collection of fees therefor; and providing penalties for the violation thereof; and each and all of the regulations, provisions, penalties, conditions and terms of said California Fire Code, 2010 Edition, on file in the office of the City Clerk of the City of Modesto is hereby referred to, adopted, and made a part hereof, as if fully set out in this ordinance, with the additions, insertions, deletions and changes, if any, prescribed in this chapter be and is hereby adopted as the Fire Code of the City of Modesto.
- (b) These regulations shall be known as the Fire Code of the City of Modesto and may be cited as such or may be cited as the "California Fire Code, 2010 Edition," the "2010 California Fire Code", "the Fire Code", or "this Code."

### **3-1.103. REPEAL OF CONFLICTING ORDINANCES.**

All former ordinances or parts thereof conflicting or inconsistent with the provisions of this ordinance or with the 2010 California Fire Code as adopted and amended are hereby repealed.

## **ARTICLE 2. AMENDMENTS, ADDITIONS AND DELETIONS TO THE 2007 CALIFORNIA FIRE CODE**

### **3-1.201. COMBUSTIBLE WASTE MATERIAL.**

Section 304.1.2 of the 2010 California Fire Code is hereby amended to read as follows:

**304.1.2. Vegetation.** Cut or uncut weeds, grass, vines and other seasonal and recurring growth on vacant land shall be deemed a public nuisance and shall be removed by the owner when notified to do so by the Fire Code Official. When the Fire Code Official determines that total removal of growth is impractical due to the size or environmental factors, approved fuel breaks shall be established. Designated areas shall be cleared of combustible vegetation to establish the fuel breaks.

Abatement of a public nuisance shall be in accordance with Article 6 of Chapter 6 of Title 1 of the Modesto Municipal Code. The Fire Department may impose a nuisance abatement lien pursuant to Section 1-6.702 of the Modesto Municipal Code.

The Fire Department may recover, from a property owner, those costs associated with the suppression costs incurred in fighting a fire and for providing rescue or emergency medical services should a fire occur on said property after the owner has been notified to abate such public nuisance and has failed to do so.

### **3-1.202. OPEN BURNING, RECREATIONAL FIRES AND PORTABLE OUTDOOR FIREPLACES.**

Section 307.1 of the 2010 California Fire Code is hereby amended to read as follows:

**307.1. Open burning.** No person shall kindle, conduct, or maintain any

burning of grass, weeds, agricultural trimmings, or other combustibles or authorize any such fire to be kindled, conducted, or maintained without a permit as required by the San Joaquin Valley Unified Air Pollution Control District and compliance with all safeguards pursuant thereto. Any such permitted burning shall be restricted to agricultural purposes and confined to areas of the City in which agricultural uses are lawful.

### **3-1.203. VEHICLE IMPACT PROTECTION.**

Section 312.2 of the 2010 California Fire Code is hereby amended to read as follows:

**312.2. Posts.** Guard posts or other approved means shall be provided to protect storage tanks and connected piping, valves and fittings; dispensing areas; and use areas subject to vehicular damage. When guard posts are installed, the posts shall be:

1. Constructed of steel not less than six (6) inches in diameter and concrete filled,
2. Spaced not more than four (4) feet between posts on center,
3. Set not less than three (3) feet deep in a concrete footing of not less than a fifteen (15) inch diameter,
4. Set with the top of the posts not less than three (3) feet above ground, and
5. Located not less than five (5) feet from the tank.

### **3-1.204. PARKING AND GARAGING OF TRANSPORTATION VEHICLES CARRYING HAZARDOUS MATERIALS.**

Parking and garaging of transportation vehicles carrying hazardous materials as defined in Chapter 27 of the 2010 California Fire Code shall be in accordance with Sections 3406.6.2 through 3406.6.3 of the 2010 California Fire Code.

### **3-1.205. FIRE PROTECTION AND WATER SUPPLIES.**

Section 507.1 of the 2010 California Fire Code is hereby amended to read as

follows:

**507.1. Required Water Supply.**

- (a) An approved water supply capable of supplying the required fire flow for fire protection shall be provided to premises upon which facilities, building or portions of buildings are hereafter constructed or moved into or within the jurisdiction. See Appendix-B of the 2010 California Fire Code.
- (b) Fire hydrants shall be located on the supply side of the fire suppression system check valve.
- (c) Fire hydrants shall be accessible to the Fire Department apparatus by roads meeting the requirements of Section 503.1 of the 2010 California Fire Code.

**3-1.206. FUEL FIRED APPLIANCES.**

Section 603.4 of the 2010 California Fire Code is hereby amended to read as follows:

603.4. Portable Unvented Heaters. The use of listed portable unvented fuel-fired heating equipment is limited to supplemental heating in Group S-2, and U occupancies.

**3-1.207. INCINERATORS.**

Section 603.8 of the 2010 California Fire Code is hereby amended to read as follows:

**603.8. Incinerators.** The use of incinerators is prohibited inside the City limits of Modesto.

**EXCEPTION:** Incinerators used by state licensed facilities for the cremation of human remains.

Subsections 603.8.1, 603.8.2, 603.8.3, 603.8.4 and 603.8.5 are deleted.

**3-1.208. AUTOMATIC SPRINKLER SYSTEMS.**

Section 903.2 of the 2010 California Fire Code is hereby amended by adding the following:

**New Construction.**

- (a) An approved automatic fire sprinkler system is required in all new buildings and structures constructed on or after the effective date of this ordinance, notwithstanding the use and occupancy thereof, when the total floor area under one roof exceeds five thousand (5,000) square feet. Area separation walls shall not be used for the purpose of eliminating automatic fire sprinkler systems required by this section.
- (b) When other automatic sprinklers systems are required by the Modesto Municipal Code or the 2010 California Fire Code for certain uses and/or occupancies, the requirements of Section 903.2 of the 2010 California Fire Code shall also apply.
- (c) An approved automatic residential fire sprinkler system shall be installed in all one and two-family dwellings and townhouses in accordance with NFPA 13D or Section R313.3 of the 2010 California Residential Code.

**EXCEPTION:** Carports, sheds, tanks, towers and agricultural buildings.

**Existing Buildings and Structures.** An approved automatic fire sprinkler system shall be installed in all existing buildings and structures when the value of additions, alterations, or repairs made within any twelve-month period that exceed fifty (50) percent of the current county assessed valuation for improvements only and the existing building or structure exceeds five thousand (5,000) square feet or additions result in said building or structure exceeding five thousand (5,000) square feet.

**EXCEPTION:**

- 1. Carports, sheds, tanks, towers and agricultural buildings.
- 2. Each portion of an existing building or structure separated by one or more area separation walls, constructed in accordance with the

current adopted edition of the Building Code, when each portion does not exceed five thousand (5,000) square feet.

3. Existing buildings or structures and their addition(s) are exempt from automatic sprinklers when the value of the remodel of the existing building(s) or structure(s) is less than fifty (50) percent of the current county assessed valuation for improvements only, of the buildings or structures, and sprinklers are permitted to be omitted from the addition(s), due to type of construction, use, or other special situations, by National Fire Protection Association Standard 13.

### **3-1.209. MONITORING.**

Section 903.4.1 of the 2010 California Fire Code is hereby amended by adding the following:

Alarm, supervisory and trouble signals shall be distinctly different and shall be automatically transmitted to a UL LISTED supervising station as defined in NFPA 72 or, when approved by the Fire Code Official, shall sound an audible signal at a constantly attended location.

### **3-1.210. PORTABLE FIRE EXTINGUISHERS.**

Section 906.9.1 of the 2010 California Fire Code is hereby amended to read as follows:

**906.9.1 Extinguishers Weighing 40 Pounds or Less.** Portable fire extinguishers having a gross weight not exceeding forty (40) lbs. (18 kg) shall be installed so that their tops are not more than four (4) feet above the floor.

**Existing Installations.** Portable fire extinguishers shall only be required to be lowered during tenant improvements.

### **3-1.211. FIRE ALARM AND DETECTION SYSTEMS.**

Section 907.1 of the 2010 California Fire Code is hereby amended by adding the following:

**907.1.6. Certification.** A certificate from Underwriters Laboratories (UL) shall be required on all monitored commercial fire alarm systems installed after the effective date of this ordinance. UL certification shall be provided for all previously existing commercial fire alarm systems no later than January 1, 2005. UL certification is required to be maintained for commercial fire alarm systems throughout the life of the alarmed building.

**3-1.212. FALSE FIRE ALARMS.**

Section 908 of the 2010 California Fire Code is hereby amended by adding the following:

**908.7. False Fire Alarms.** False fire alarms shall not be given, signaled or transmitted or caused or permitted to be given, signaled or transmitted. The City Council may adopt by resolution reasonable fees to recover the costs associated with responses to building or structures that have excessive false fire alarms.

**3-1.213. HOT WORKS.**

Section 2604.2.6 of the 2010 California Fire Code is hereby amended to read as follows:

**2604.2.6. Fire Extinguisher.** A minimum of one portable fire extinguisher complying with Section 906 and with a minimum 2-A: 20B:C-rating shall be readily accessible within thirty (30) feet (9144 mm) of the location where hot works is performed and shall be accessible without climbing stairs. When required by the Fire Code Official, a minimum 2-A: 20B:C-rated fire extinguisher shall be mounted to each portable welding cart.

**3-1.214. HAZARDOUS MATERIALS INVENTORY STATEMENT.**

Section 2701.5.2 of the 2010 California Fire Code is hereby amended to read as follows:

**2701.5.2. Hazardous Materials Inventory Statement (HMIS).** Where required by the Fire Code Official, an application for a permit shall include an HMIS, such as SARA (Superfund Amendments and Reauthorization Act of 1986) Title III, Tier II Report, or other approved statement. The HMIS shall include the following information:

1. Product name.
2. Component.
3. Chemical Abstract Service (CAS) number.
4. Location where stored or used.
5. Container size.
6. Hazard classification.
7. Amount in storage.
8. Amount in use-*closed systems*.
9. Amount in use-open systems.
10. Key Box. When required by the Fire Code Official, an approved key box, sized to contain emergency information, (HMMP, HMIS and Material Safety Data Sheets) shall be provided.

*The HMIS shall comply with Health and Safety Code, Chapter 6.95, Sections 2500 through 25545, and Title 19, Division 2, Chapter 4.*

### **3-1.215. DEFINITION; HAZARDOUS MATERIALS.**

Section 2702.1 of the 2010 California Fire Code is amended to read as follows:

**HAZARDOUS MATERIALS.** Those chemicals or substances which are physical hazards or health hazards as defined and classified in Chapter 27 of the 2010 California Fire Code, or as defined in the California Health and Safety Code, Division 20, Chapter 6.95, commencing with Section 25500, whether the materials are in usable or waste condition.

### **3-1.216. DEPOSITS OF HAZARDOUS MATERIALS; CLEANUP, ABATEMENT, OR MITIGATION REQUIRED; LIABILITY FOR COSTS.**

Section 2703.3.1.4 of the 2010 California Fire Code is hereby amended to read as

follows:

**2703.3.1.4. Responsibility for Cleanup.** The person, firm or corporation responsible for an unauthorized discharge shall institute and complete all actions necessary to remedy the effects of such unauthorized discharge, whether sudden or gradual, at no cost to the jurisdiction. When deemed necessary by the Fire Code Official, cleanup may be initiated by the Fire Department or by an authorized individual or firm. Costs associated with such cleanup shall be borne by the owner, operator or other person responsible for the unauthorized discharge. The remedy provided by this section shall be in addition to any other remedies provided by law.

For purposes of this section, costs incurred by the City shall include, but shall not necessarily be limited to, the following: actual labor costs of City personnel, including worker's compensation benefits, fringe benefits, administrative overhead; cost of equipment operation; cost of materials obtained directly by the City; and cost of any contract labor and materials. The authority to recover costs under this section shall not include actual fire suppression services that are normally or usually provided by the Fire Department.

### **3-1.217. STORAGE OF CONTAINERS.**

Section 3204.3.1.1 of the 2010 California Fire Code is amended to read as follows:

**3204.3.1.1. Location.** Stationary containers shall be located in accordance with Section 3203.6 of the 2010 California Fire Code. Containers of cryogenic fluids shall not be located within diked areas containing other hazardous materials.

Storage of flammable cryogenic fluids in stationary containers outside of buildings is prohibited within the limits established by law as the limits of districts in which such storage is prohibited. All R-1, R-2 and R-3 zoning designations as identified in Title 10 of the Modesto Municipal Code.

### **3-1.218. PERMITS REQUIRED FOR EXPLOSIVES.**

Section 3302 of the 2010 California Fire Code is hereby amended by adding the following:

**3302.1. Permits Required.** When permits are required to be issued by the Fire Code Official, the Fire Code Official may grant the authority to the agency having enforcement jurisdiction. Permit shall be obtained:

1. To possess, store, sell, display or otherwise dispose of explosive materials at any location.
2. To transport explosive materials.
3. To use explosive materials.
4. To operate a terminal for handling explosive materials.

**3-1.219. NOTICE OF NEW STORAGE SITES.**

Section 3303 of the 2010 California Fire Code is hereby amended by adding the following:

**3303.1. Notice of New Storage Sites.** When a new explosive material storage location, including a temporary job-site, is established, the local law enforcement agency and fire department shall be notified immediately of the type, quantity and location of explosive materials at the site.

**3-1.220. EXPLOSIVE MATERIALS PROHIBITED AND LIMITED ACTS.**

Section 3304 of the 2010 California Fire Code is hereby amended by adding the following:

**3304.1. Manufacturing.** Explosive materials shall not be manufactured within the city limits of Modesto.

**3304.1.2. Limits Established by Law.** The storage of explosives and blasting agents is restricted to those areas of the City zoned as Heavy Industrial Zone (M-2).

**EXCEPTION:**

1. Temporary storage for use in connection with approved blasting operations conducted in accordance with all applicable provisions

of this article.

2. Wholesale and retail storage and display of ammunition and gunpowder shall be in accordance with Title 19 California Code of Regulations, Chapter 10.

### **3-1.221. MANUFACTURING OF FIREWORKS.**

Section 3308 of the 2010 California Fire Code is hereby amended by adding the following:

3308.2. Manufacturing. The manufacturing of fireworks is prohibited within the city limits of Modesto.

### **3-1.222. PERMITS: DISPLAYS OF FIREWORKS AND APPEAL PROCESS.**

Section 3308 of the 2010 California Fire Code is hereby amended by adding the following:

3308.3. Permits. The Fire Code Official may grant a permit for the display of fireworks, including proximate audience displays and pyrotechnic special effects in theatrical and group entertainment as applied for, or with conditions thereto, unless s/he finds that to do so would be contrary to the public health, safety, or welfare. The decision of the Fire Code Official shall be in writing and shall be mailed, postage prepaid, to the applicant.

3308.3.2. Appeal. The decision of the Fire Code Official, in acting on an application for permission to conduct a public display in accordance with the provisions of this section may be appealed to the City Manager. Notice of an appeal of the Fire Code Official's decision shall be filed by the applicant with the City Clerk within ten (10) days after the date of the decision. Upon failure to file such notice within the ten (10) day period, the action of the Fire Code Official shall be final and conclusive. The applicant may appeal the decision of the City Manager to the City Council by filing a notice of appeal to the City Clerk within ten (10) days after the date of the City Manager's decision. Upon failure to file such notice within the ten (10) day period, the action of the City Manager, or his/her designee, shall be final and conclusive.

**3308.3.3. Fee.** A nonrefundable fee as established by resolution of the City Council, from time to time, shall accompany every application for permission to conduct a public display of fireworks. This fee shall be in addition to any other fee or tax imposed by Title 6 of the Modesto Municipal Code.

### **3-1.223. SALES OF FIREWORKS.**

Section 3308 of the 2010 California Fire Code is hereby amended by adding the following:

3308.4. Sales. It shall be unlawful to engage in the sale of "Safe and Sane" fireworks in the City of Modesto without first having secured a permit to do so.

- (1) Effective 2005, the total number of sales permits issued in any given year shall be limited to seventy (70).
- (2) Sales permits for the sale of "Safe and Sane" fireworks in the City of Modesto shall be issued only to local nonprofit organizations and existing local for-profit organizations as defined herein.
  - (A) A "nonprofit organization" shall mean any nonprofit association, club, or corporation organized for veteran, patriotic, welfare, religious, civic betterment, youth or charitable purposes, as defined by Section 501(c) of the Internal Revenue Code of the United States, or affiliated with a public school located within the city limits of Modesto. Each new organization shall provide the City with a copy of their "Letters of Incorporation" as proof of their nonprofit status. Existing organizations shall submit verification of current corporation status from the State of California Secretary of State's Office. Those organizations that are an integral part of a recognized national organization having tax exempt status must provide IRS written verification of such status. All applications will be subject to additional verification with the State of California and IRS if nonprofit status comes into question.
  - (B) Public school organizations shall provide current written verification of affiliation from the school each year.

- (C) A "local nonprofit organization" must have its principal and permanent meeting place in the City of Modesto. The organization must have obtained nonprofit status and have been organized and established in the City of Modesto for a minimum of one (1) continuous year preceding the filing of the application for permit. The organization must also have a bona fide membership of at least ten (10) members who reside in the City of Modesto, which will be verified each year. Applications shall be signed by two (2) bona fide officers of the eligible organization, wherein the officer, on behalf of the organization and its agents, agrees to abide by State laws, administrative regulations, and all stipulations of this Code and the permit if permission to operate a fireworks stand is granted to the organization.
  - (D) An "existing local for-profit organization" must have a permitted fixed business location in the City of Modesto, have been issued a fireworks sales permit the previous year, have remained under the same management and/or ownership continuously since 1999, and have paid all business license and mill tax fees due the City of Modesto by the close of the application period. In the event mill taxes and business license fees are not current the organization's application will be denied.
  - (E) If any of the above items fail to be met at the time of application, the organization's application shall be denied.
- (3) Sales permits for retail sales of "Safe and Sane" fireworks in the City of Modesto issued pursuant to provision of this Code are not transferable by the holder of the permit. The sales permits may be used only by the organization to which they are issued. Violations will result in the immediate loss of the organization's sales permit.
  - (4) All applications for sales permits shall be in writing to the Fire Code Official on forms supplied by the City. Applications may only be filed during normal business hours from April 1st of each year up to and including April 30th of the same year, at which time the filing period for that year will close. A separate sales permit shall be required for each proposed location of a fireworks stand.

Each organization may file an application for one (1) sales permit for which there is only one tax ID number.

- (5) Applications shall set forth the proposed location of the fireworks stand including the nine (9) digit parcel number (APN) of the Stanislaus County Assessor, a site map, and other information as may be required by the Fire Code Official.
- (6) Applicants for sales permits shall be notified by June 15th of each year by the Fire Code Official of approval or disapproval of such application. Sales permits will be issued after final inspection of the stand reveals compliance with all state and local regulations. Organizations shall not open for sales prior to the final inspection of their stand. If an organization's stand fails to pass inspection there will be a re-inspection fee charged for the third (3rd) inspection, and each inspection thereafter until final inspection is approved, as established by Resolution No. 03-446.
- (7) Every application shall be accompanied by proof of insurance as specified in Section 3-1.226. Other items required at the time of application will be the organization's verification of eligibility as stated in 2(A) above, list of bona fide members, and current written permission signed by the property owner of record (with respect to lessee permission, approval shall be in the sole discretion of the Fire Code Official to sell fireworks at that location. Organizations representing public schools, as stated in 2(B) above, require written verification from the school of their affiliation.
- (8) Every application shall be accompanied by a nonrefundable application fee as established by resolution of the City Council from time to time. This application fee shall be in addition to any fees or taxes imposed by Title 6 of the Modesto Municipal Code.
- (9) Any local nonprofit organization as defined herein may make application for a sale permit but pre-approved (continuously permitted since 1999) organizations will have first option for a permit.
  - (A) When additional sales permits are authorized and all current pre-approved organizations have applied for such permits, a lottery will be held to fill any vacancies.
  - (B) This lottery will be held fourteen (14) days after the last day of the filing period specified in paragraph 4 and will include the names of all new local nonprofit organizations that have filed a complete application within the said filing

period. If the fourteenth (14th) day falls on a weekend the lottery will be held on the next business day.

- (C) One organization will be drawn for each available vacancy. If the organization whose name is drawn declines the permit, another name will be drawn until each vacancy is filled.
  - (D) Any organization having an approved application that fails to open their stand for that sales year will automatically forfeit their permit and a new organization will be chosen the following year provided a permit is available.
- (10) A nonprofit organization may apply for a sales permit with regard to a stand located in an area annexed by the City of Modesto under the following conditions:
- (A) Two (2) consecutive years prior to annexation, the applicant was issued a sales permit, by the City or County in which the property was formerly located, and applicant presents proof of the issuance of said permits;
  - (B) The applicant has received a valid City of Modesto business license; and
  - (C) The organization must either
    - (1) Meet the criteria of set forth in Section 33-1.223(2)(A) or
    - (2) Present documentary evidence establishing its primary meeting for a minimum of two (2) years preceding application to City of Modesto was at the location for which the sales permit is currently sought.
  - (D) Annexed property that was previously used for a temporary booth by an organization whose current primary meeting place is outside the city limits of Modesto is not eligible to make application for a sales permit.

Permits issued to these organizations will be issued without the necessity of being selected by lottery, even though such issuance

may increase the number of permits to more than allowed herein. The addition of these organizations does not change the original intent to issue a total of seventy (70) sales permits per year.

### **3-1.224. SALES, STORAGE, USE, AND HANDLING OF FIREWORKS.**

Section 3308 of the 2010 California Fire Code is hereby amended by adding the following:

**3308.5. General.** Sales, storage, use, and handling of fireworks shall be in accordance with this chapter.

1. **Sales.** Retail sale or display with the intent to sell fireworks is limited to State of California Fire Marshal approved and labeled "Safe and Sane" fireworks within the City of Modesto, by State of California licensed retailers, provided a permit to sell those fireworks has been approved and obtained from the Fire Code Official. Fireworks may be sold or offered for sale from 12:00 noon to 10:00 p.m. on June 28, 9:00 a.m. to 10:00 p.m. on June 29 through July 5, and 9:00 a.m. to 12:00 noon on July 6.

The storage of fireworks within the City of Modesto is limited to State of California Fire Marshal-approved and labeled "Safe and Sane" fireworks by State of California licensed wholesalers and retailers.

- (A) **Wholesale Storage.** Wholesalers may store "Safe and Sane" fireworks within the City of Modesto solely during the period of June 1 through July 31 of each year. Storage facilities shall comply with H3 occupancy classification requirements as defined by the 2010 California Building Code.
- (B) **Retailers Storage.** Retailers may store "Safe and Sane" fireworks within the City of Modesto solely during the period of June 22 through July 15 of each year. "Safe and Sane" fireworks that are not being sold or displayed with the intent to sell, shall be stored solely in the following manner:
  - (1) Within the permitted fireworks stand with a responsible adult on the premises at all times.

- (2) In a completely enclosed and locked utility type trailer constructed of one-fourth (1/4) inch plywood or other approved noncombustible material.
  - (3) In a completely detached garage on residential property with a minimum ten (10) feet clearance from other structures or property lines. There shall be no open-flame or spark producing equipment, or Class 1 flammable liquids stored or used within the garage.
  - (4) Fireworks shall not be stored within forty (40) feet of any building classified or used as a public or private school, day care facility, residential care facility, hospital, place of detention, public oil/gas station, or public garage, or any place of public assembly that can accommodate fifty (50) or more persons.
  - (5) In an approved and permitted fireworks warehouse.
2. **Operator Safety.** Each year, one (1) or more representatives from each organization, that is granted a permit to sell fireworks, shall attend a stand operator safety seminar conducted by the City of Modesto Fire Department and the fireworks industry. Failure to attend the seminar shall result in the revocation of the organization's permit to sell fireworks for that calendar year.
3. **Temporary Fireworks Stands.**
- (1) All retail sales of "Safe and Sane" fireworks shall be permitted only from within a temporary fireworks stand and sales from any other building or structure is hereby prohibited.
  - (2) City Business License, Fire Department Permit and State License shall be displayed in the fireworks stand during hours of operation.
  - (3) Temporary fireworks stand shall not be set up before application for permit has been approved nor earlier than June 14.

- (4) The fireworks stands shall be located at least twenty (20) feet from other structures.
- (5) Zoning of property, in which the fireworks stand will be located, shall be in accordance with Section 10-2.2330 of the Modesto Municipal Code.
- (6) Fireworks shall not be stored, sold, offered for sale, or discharged within one hundred (100) feet of a location where gasoline, LPG, other class 1 flammable liquids or flammable gasses are stored or dispensed.
- (7) All unsold stock and accompanying litter shall be removed from the location by 5:00 p.m. on the 6th day of July.
- (8) The fireworks stand shall be removed from the temporary location by 12:00 noon on the 12th day of July, and all accompanying litter shall be cleared from said location by said time and date.
- (9) A penalty of one hundred dollars (\$100.00) per day will be assessed to the permittee of any fireworks stand not removed by 12:00 noon on the 12th day of July.

**4. Safety Precautions.**

- (1) No person under the age of eighteen (18) shall sell, or handle for sale, any classification of fireworks.
- (2) No person under the age of eighteen (18) shall purchase or be allowed to purchase any classification of fireworks.
- (3) Smoking, open-flame, and spark-producing equipment shall be prohibited for a distance of twenty (20) feet around any fireworks stand.
- (4) Dry grass, weeds, trash, and other combustible material shall be removed for a distance of twenty (20) feet around any fireworks stand.
- (5) Fireworks shall not be discharged within fifty (50) feet of a fireworks stand.

5. **Stand Construction.**

- (1) Merchandise may be displayed in approved glass enclosed counters or showcases, or
- (2) Merchandise may be displayed in stands constructed in the following manner:
  - (A) Walls and roof shall be of plywood at least one-fourth (1/4) inches thick or of an approved noncombustible material.
  - (B) The stand shall be provided with a roof.
  - (C) Walls shall extend to a minimum height of six (6) feet eight (8) inches, on at least three (3) sides. These three (3) sides shall be without openings, except for an exit door.
  - (D) An exit door with a minimum size of twenty-four (24) inches in width and six (6) feet in height, shall be provided in each stand. Exits shall be maintained clear and unobstructed at all times.
  - (E) The front wall of the stand shall provide a physical barrier not less than eighteen (18) inches in height between the public and the merchandise on display.
  - (F) Approved "NO SMOKING" signs shall be prominently displayed in and on the stand.
  - (G) Approved "NO SALES TO PERSONS UNDER THE AGE OF 18" signs shall be prominently displayed in the stand.
  - (H) An approved fire extinguisher having a minimum U.L. classification of 2A shall be located in the stand, near the exit and readily accessible.
  - (I) Sellers of fireworks shall comply with all rules and regulations of Title 19 of the California Code of Regulations and with the rules and regulations of the Fire Code Official.

- (J) Stands will be limited to twenty-four (24) feet by eight (8) feet or one hundred ninety-two (192) square feet in size. Pre-existing stands as identified by the fireworks suppliers shall retain the right to operate their oversized stands, without change, until said stand or organization forfeits or loses their operating permit. A copy of said list shall remain on file with the Fire Code Official.

**6. Operation of Fireworks Stand Only by Permittee.**

- (1) It is unlawful for the permittee organization to allow any person or entity other than the permittee organization to operate the fireworks stand for which the permit is issued, whether by agreement, assignment or otherwise, or to otherwise participate in the profits of the operation of such fireworks stand. Violations will result in the immediate loss of the organization's permit.
- (2) It is unlawful for a non-profit organization to allow any person other than the individuals who are members of the permittee organization, their spouses or adult children, or volunteers to whom no compensation is paid, to sell or otherwise participate in the sale of fireworks at such fireworks stand.
- (3) It is unlawful for a non-profit organization to pay any consideration to any person for selling or otherwise participating in the sale of fireworks at such fireworks stand, except the hiring of a night watchman or security officer.

**3-1.225. REVOCATION OF PERMIT AND SEIZURE OF FIREWORKS.**

Section 3308 of the 2010 California Fire Code is hereby amended by adding the following:

**3308.6. Revocation of Fireworks Sales Permit.** The Fire Code Official, or his/her designee, may revoke, immediately and without notice or hearing, the "Safe and Sane" fireworks sales permit of any location or organization when any of the provisions of Sections 3-1.223, 3-1.224, or 3-1.226 are violated. The Fire Code Official shall inform the permittee

that permittee may seek review of the Fire Code Official's decision, by the City Manager, on the next business day. At the earliest opportunity on the next business day after revocation, the Fire Code Official shall provide the City Manager with written notice that a fireworks sales permit has been revoked, including the name of the permittee and a brief statement of the grounds for revocation. If requested by the permittee, the City Manager, or his/her designee, shall meet with the permittee and the Fire Code Official, or his/her designee, that day to review the Fire Code Official's decision. The decision of the City Manager shall be final.

**3308.6.1.** Revocation of any sales permit will be effective for that calendar year.

### **3-1.226. FIREWORKS DISPLAYS INSURANCE REQUIRED.**

Section 3308 of the 2010 California Fire Code is hereby amended by adding the following:

#### **3308.7. Insurance.**

1. The permittee shall furnish a certificate of insurance for each policy required, executed by the company issuing such policy, and approved as to form by the Risk Manager. Such policies shall contain a provision which holds the City as an additional insured and declaring said insurance to be primary and that no other insurance carried by an insured party shall be called upon for contribution. Notwithstanding any other provision of this section, the failure of the permittee to carry such insurance during the time covered by such permit shall automatically revoke the permit as of the date of expiration of such insurance policy or policies. A payment of one hundred and two dollars (\$102.00) shall be made to the City before any such revoked permit may be reinstated.
2. The permittee/licensee shall provide at its own expense and maintain at all times the following insurance with insurance companies licensed in the State of California and shall provide evidence of such insurance to the City as may be required by the Risk Manager of the City. The policies or certificates thereof shall provide that, thirty (30) days prior to cancellation or material change in the policy, notices of same shall be given to the Risk Manager of the City by certified mail, return receipt requested, for all of the following stated insurance policies.

- (a) Worker's Compensation - in compliance with the statutes of the State of California, plus employer's liability with a minimum limit of liability of five hundred thousand dollars (\$500,000).
- (b) General Liability insurance with a minimum limit of liability per occurrence of five million dollars (\$5,000,000) for bodily injury and five hundred thousand (\$500,000) for property damage. This insurance shall indicate on the certificate of insurance the following coverages and indicate the policy aggregate limit applying to: premises and operations; broad form contractual; independent permittee/licensee's and subcontractors; products and completed operations; and professional liability.
- (c) Automobile Liability insurance with a minimum limit of liability per occurrence of one million dollars (\$1,000,000) for bodily injury and one hundred thousand (\$100,000) for property damage or one million (\$1,000,000) combined single limit. This insurance shall cover any automobile for bodily injury and property damage. If at any time any of said policies shall be unsatisfactory to the City, as to form or substance, or if a company issuing such policy shall be unsatisfactory to the City, the permittee/licensee shall promptly obtain a new policy, submit the same to the Risk Manager for approval and submit a certificate thereof as hereinabove provided. Upon failure of the permittee/licensee to furnish, deliver or maintain such insurance and certificates as above provided, the permit/license is automatically revoked. Failure of the permittee/licensee to obtain and/or maintain any required insurance shall not relieve the permittee/licensee from any liability under this Agreement, nor shall the insurance requirements be construed to conflict with or otherwise limit the obligations of the permittee/licensee concerning indemnification. The City, its agents, officers, employees, and volunteers shall be named as an additional insured on all insurance policies required herein, except Workers' Compensation and Professional Liability. The Workers' Compensation insurer shall agree to waive all rights of subrogation against the City, its agents, officers, employees, and volunteers. The permittee/licensee's insurance policy(ies) shall include a provision that the coverage is

primary as respects the City; shall include no special limitations to coverage provided to additional insured; and, shall be placed with insurer(s) with acceptable Best's rating of A:VII or with approval of the Risk Manager. The permittee/licensee must deliver certificates evidencing existence of the insurance listed above to the Finance Director at the time the permit is granted.

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

For any claims related to a permit, the permittee/licenses insurance coverage shall be primary insurance as respects the Entity, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the Entity, its officers, officials, employees, or volunteers shall be excess of the permittee/licensee's insurance and shall not contribute with it.

3. The permittee/licensee shall agree to hold the City of Modesto, its agents, officers, employees, and volunteers harmless from and save, defend, and indemnify them against any and all claims, losses, liabilities, and from every cause, including but not limited to injury to person or property or wrongful death, with the indemnity to include reasonable attorney fees and all costs and expenses arising directly or indirectly out of any act or omission of permittee arising out of any activity authorized by the permit.
4. The permittee/licensee shall provide at its own expense and maintain at all times the specified insurance policies with insurance companies approved by the State of California and shall provide evidence of such insurance to the City as may be required by the Risk Manager of the City. The policies or certificates thereof shall provide that, thirty (30) days prior to cancellation or material change in the policy, notices of same shall be given to the Finance Director of the City by registered mail, return receipt requested.

**3-1.227. POSSESSION, SALE, USE OR DISCHARGE OF DANGEROUS FIREWORKS.**

- (a) For purposes of this section, dangerous fireworks are those fireworks specified as such in the State Fireworks Law, Section 12505 of the California Health and Safety Code, and such other fireworks as may be determined to be dangerous by the State Fire Marshal.
- (b) It shall be unlawful for any person to possess, sell, use or discharge dangerous fireworks, or a dangerous firework kit, unless a permit authorizing such possession, sale, use or discharge has been issued by the Fire Code Official to the person, as is defined in Section 1-6.207 of the Modesto Municipal Code, using, selling, discharging or found in possession of said fireworks or kits, and unless such person is in possession of a valid pyrotechnic operator's license issued by the Office of the State Fire Marshal. The Fire Code Official may establish reasonable rules and regulations for governing issuance of a firework permit and may issue the same subject to payment of a fee as established by the City Council from time to time.
- (c) The Fire Code Official, or designee, shall seize, take, remove or cause to be removed, at the expense of the owner, all stocks of dangerous fireworks offered or exposed for sale, stored, or held in violation of this chapter.

**3-1.228. STORAGE OF FLAMMABLE AND COMBUSTIBLE LIQUIDS IN TANKS.**

Section 3404.2.9.6.1 of the 2010 California Fire Code is hereby amended to read as follows:

**3404.2.9.6.1. Location Where Above Ground Tanks are Prohibited.**

Storage of Class I and II Liquids in aboveground tanks outside of buildings is prohibited, with the exception of protected tanks designed, installed and maintained in accordance with Chapter 34 of the 2010 California Fire Code. In addition, all above ground tanks shall be UL 2085 listed. The provisions of this section shall not apply to facilities for the production, generation, or transmission of electric energy that provide power to entities furnishing retail electrical services to the general public within the city of Modesto.

**3-1.229. OPERATING HEATING, LIGHTING AND COOKING APPLIANCES PROHIBITED.**

Section 3405.3.3 of the 2010 California Fire Code is hereby amended to read as follows:

**3405.3.3. Heating, Lighting and Cooking Appliances.** Heating, lighting, and cooking appliances which utilize flammable or combustible liquids shall not be operated within a building or structure.

**EXCEPTION:**

1. Operation in single-family dwellings.
2. Groups S-2 and U occupancies.

**3-1.230. STORAGE AND DISPENSING OF FLAMMABLE AND COMBUSTIBLE LIQUIDS ON FARMS AND CONSTRUCTION SITES.**

Section 3406.2 of the 2010 California Fire Code is hereby amended to read as follows:

**3406.2. General.** The capacity of temporary aboveground tanks containing Class I and Class II Liquids shall not exceed one thousand one hundred (1,100) gallons (4163.9 L). The capacity of permanent aboveground tanks containing Class I and II Liquids shall not exceed ten thousand (10,000) gallons (37,854 L). Temporary tanks of single-compartment design shall be constructed in accordance with Section 3406; permanent tanks shall be constructed in accordance with Chapter 34 of the 2010 California Fire Code.

**3-1.231. STORAGE OF FLAMMABLE AND COMBUSTIBLE LIQUIDS.**

Section 3406.2.4.4 of the 2010 California Fire Code is hereby amended to read as follows:

**3406.2.4.4. Locations Where Above-Ground Tanks are Prohibited.** The storage of Class I and II liquids in above-ground tanks is prohibited within the limits established by law as the limits of districts in which such storage is prohibited. All R-1, R-2 and R-3 zoning designations as identified in Title 10 of the Modesto Municipal Code.

**3-1.232. BULK PLANTS STORAGE OF FLAMMABLE AND COMBUSTIBLE LIQUIDS.**

Section 3406.4 of the 2010 California Fire Code is hereby amended to read as follows:

3406.4. Bulk Plants. Portions of properties where flammable and combustible liquids are received by tank vessels, pipelines, tank cars or tank vehicles and are stored or blended in bulk for the purpose of distributing such liquids by tank vessels, pipelines, tank cars, tank vehicles or containers shall be in accordance with Section 3406.4.1 through 3406.4.10.4 of the 2010 California Fire Code.

The construction of new bulk plants for storage of flammable or combustible liquids is restricted to areas of the city of Modesto zoned Heavy Industrial Zones (M-2). All existing nonconforming bulk plants for storage of flammable or combustible liquids which substantially comply with the requirements of this Code may be continued in use if a permit therefore shall be granted by the Fire Code Official.

### **3-1.233. BULK TRANSFER AND PROCESS TRANSFER OPERATIONS.**

Section 3406.5 of the 2010 California Fire Code is hereby amended to read as follows:

**3406.5. Bulk Transfer and Process Transfer Operations.** Bulk transfer and process transfer operations shall be in approved locations. Tank cars shall be unloaded only on private sidings or railroad siding facilities equipped for transferring flammable or combustible liquids. Tank vehicle and tank car transfer facilities shall be separated from buildings, aboveground tanks, combustible materials, property lines, streets, alleys or public ways by a distance of twenty (25) feet (7620 mm) for Class I liquids and fifteen (15) feet (4572 mm) for Class II and III liquids measured from the nearest position of any loading or unloading valve.

Tank vehicles and tank cars shall be unloaded as soon as possible after arrival at point of delivery and shall not be used as storage tanks. Unless otherwise approved, a tank car shall not be allowed to remain on a siding at the point of delivery for more than twenty-four (24) hours while connected for transfer operations.

### **3-1.234. PERMITS FOR LIQUIFIED PETROLEUM GASES.**

Section 3801.2 of the 2010 California Fire Code is hereby amended to read as follows:

**3801.2. Permits.** Permit(s) shall be required as set forth in Sections 105.6 and 105.7.

**EXCEPTION:**

1. Residential occupancies. Containers shall not exceed ten (10) gallons water capacity with an aggregate total of twenty (20) gallons.
2. Approved containers not exceeding sixteen and four-tenths (16.4) ounces when displayed for sale in mercantile occupancies.
3. Factory installed containers for recreational vehicles not exceeding ten (10) gallon water capacity.
4. Factory installed tanks that are permanently attached to recreational vehicles.

Distributors shall not fill an LP-gas container for which a permit is required unless a permit for installation has been issued for that location by the Fire Code Official.

**3-1.235. USE OF LIQUIFIED PETROLEUM GAS CONTAINERS IN BUILDINGS.**

Section 3803.2.1 of the 2010 California Fire Code is hereby amended to read as follows:

**3803.2.1. Portable Containers.** Portable LP-gas containers, as defined in NFPA 58 shall not be used in buildings except as specified in this section.

1. Areas undergoing construction.
  - A. Portable containers, not exceeding five (5) gallon water capacity, may be allowed in buildings or areas undergoing construction, when permitted by the Fire Code Official.
  - B. LP-gas containers shall not be used in a basement, pit, or similar location where heavier-than-air gas might collect. LP-gas containers not exceeding sixteen and four tenths (16.4) ounces may be used in an above-grade under floor space or basement only when such space is provided with an approved means of ventilation.
2. In educational, business, and institutional occupancies when used for research and experimentation provided the individual capacity

of any one container does not exceed sixteen and four-tenths (16.4) ounces and the aggregate capacity of all containers does not exceed two and one-half (2-1/2) gallons water capacity. When more than one such container is present in the same room, each container shall be separated by a distance of not less than ten (10) feet.

3. At demonstrations and public exhibitions for temporary use provided the individual capacity of any one container does not exceed sixteen and four-tenths (16.4) ounces and when more than one such container is present in the same room, each container shall be separated by a distance of not less than ten (10) feet.
4. With self-contained torch assemblies and similar appliances provided that the individual capacity does not exceed sixteen and four-tenths (16.4) ounces.

Such containers shall not be used for commercial or residential food preparation.

### **3-1.236. MAXIMUM CAPACITY OF LPG CONTAINERS.**

Section 3804.2 of the 2010 California Fire Code is hereby amended to read as follows:

The outside storage of liquefied petroleum gas (LP-gas) shall conform to the provisions of City of Modesto zoning ordinances. The outside storage and use of liquefied petroleum gases is restricted as specified in this section.

The aggregate capacity of any one installation shall not exceed two thousand (2,000) gallons, except that in particular installations this capacity limit may be altered by the Fire Code Official, after consideration of special features such as topographical conditions, nature of occupancy, proximity of buildings, capacity of proposed tanks, degree of private fire protection to be provided, and facilities of the local Fire Department.

1. Storage and dispensing of LP-gas for resale purposes, into approved containers and vehicles, is restricted to those areas of the City zoned as Light Industrial (M-1), Heavy Industrial (M-2), and, in addition thereto, to other commercially zoned properties used as automotive service stations. Dispensing shall be performed only by qualified persons.

2. Dispensing of LP-gas for private use is restricted to those zones identified in subsection 1, and when approved by the Fire Code Official, may be permitted in those areas of the City zoned General Commercial (C-2). Dispensing shall be performed only by qualified persons.
3. For cooking, lighting, or heating in a building, only on a property that does not have natural gas service existing on a boundary line of said property or when prohibition of such storage would cause undue hardship.
4. For temporary use on construction sites, when authorized by the Fire Code Official.
5. For use as an alternative fuel supply for an emergency standby generator, when authorized by the Fire Code Official.
6. For use with certain mobile vending and certain commercial barbecue equipment and other specific uses when authorized by the Fire Code Official.
7. For use by artisans in pursuit of their trade, when authorized by the Fire Code Official.
8. Storage of portable containers awaiting exchange may be permitted in commercial zoned areas of the City, including those zoned Neighborhood Commercial (C-1), when approved by the Fire Code Official and stored in accordance with Section 3809. Such storage shall be located a minimum of twenty (20) feet from any fuel dispenser.

**EXCEPTION:**

1. Storage of LP-gas in accordance with Subsections 3, 4 and 5 shall be limited to one container not to exceed two hundred fifty (250) gallons water capacity.
2. The aggregate capacity of containers in storage and use in accordance with subsections 6 and 7 shall not exceed fifteen (15) gallons. Individual containers shall not exceed five (5) gallons water capacity, unless authorized by the Fire Code Official, and shall not be manifolded.

**3-1.237. STORAGE OF PORTABLE LP-GAS CONTAINERS AWAITING USE, RESALE, OR EXCHANGE.**

Section 3809.12 of the 2010 California Fire Code is hereby amended to read as follows:

**3809.12. Separation from exits.** Containers stored inside or outside buildings accessible to the public shall be located not less than ten (10) feet from any exit door or building opening, when only one (1) exit is provided from the building or area, and not less than five (5) feet from any exit door or building opening, when two (2) or more exits are provided from the building or area.

Table 3809.12 of the 2010 California Fire Code is hereby amended to read as follows:

Quantity of LP-Gas Stored (Pounds)	Distances to a Building or Group of Buildings, Public Way, or Line of Property that can be Built Upon (feet)
720 or less	0
721 to 2,500	10
2,501 to 6,000	15
6,001 to 10,000	20
Over 10,000	25

**3-1.238. DELETIONS PERMIT REQUIRED FOR CERTAIN OPERATIONS.**

2010 California Fire Code Chapter 1 - Scope and Administration is hereby amended to read as follows:

Sections 103.2, 103.4, 103.4.1, and 108 are hereby deleted.

**3-1.239. PERMIT AMOUNTS FOR COMPRESSED GASES.**

Chapter 1, Table 105.6.8 of the 2010 California Fire Code is amended to read as follows:

**105.6.8. Compressed Gases.** An operational permit is required for the

storage, use or handling at normal temperature and pressure (NTP) of compressed gases in excess of the amounts listed in Chapter 1, table 105.6.8.

**EXCEPTION:** Vehicles equipped for and using compressed gas as a fuel for propelling the vehicle.

**Table 105.6.8-Permit Amounts for Compressed Gases<sup>1</sup>**

Type of Gas	Amount x 0.0283 for m <sup>3</sup>
Corrosive	Any Amount
Flammable (except cryogenic fluids and liquefied petroleum gases)	200 cubic feet
Highly toxic	Any Amount
Inert and simple asphyxiant	200 cubic feet
Irritant	200 cubic feet
Other Health Hazards	200 cubic feet
Oxidizing (including oxygen)	200 cubic feet
Pyrophoric	Any Amount
Radioactive	Any Amount
Sensitizer	200 cubic feet
Toxic	Any Amount
Unstable (reactive)	Any Amount
Acutely hazardous (as listed in 40-CFR-355)	Threshold Planning Quantity or more.

<sup>1</sup>See Chapter 30 of the 2010 California Fire Code for additional requirements and exceptions.

**3-1.240. PERMIT AMOUNTS FOR CRYOGENS.**

Chapter 1, Table 105.6.10 of the 2010 California Fire Code is amended to read as follows:

**105.6.10. Cryogenic Fluids.** An operational permit is required to

produce, store, transport on site, use, handle or dispense cryogenic fluids in excess of the amounts listed in Chapter 1, Table 105.6.10.

**EXCEPTION:** Permits are not required for vehicles equipped for and using cryogenic fluids as a fuel for propelling the vehicle or for refrigerating the lading.

**Table 105.6.10--Permit Amounts for Cryogen<sup>1</sup>**

<b>Type of Cryogenic Fluid</b>	<b>Inside Building</b>	<b>Outside Building</b>
Corrosive	Over 1 gallon	Over 1 gallon
Flammable	Over 1 gallon	55 gallons
Highly Toxic	Over 1 gallon	Over 1 gallon
Nonflammable	55 gallons	55 gallons
Oxidizer (including oxygen)	50 gallons	50 gallons

See Appendix Chapter 1 of the 2010 California Fire Code.

### **ARTICLE 3. ADMINISTRATION**

#### **3-1.301. FEES.**

- (a) **Permit Fee.** The Council of the City of Modesto may, by resolution adopted from time to time, fix a fee for any permit issued pursuant to the Fire Code.
- (b) **Plan Check Fee.** When the valuation of proposed construction exceeds one thousand dollars (\$1,000.00), or a plan is required to be submitted, a plan checking fee shall be paid at the time of submitting plans and specifications for checking.

Where plans are incomplete or changed so as to require an additional plan check, an additional plan check fee shall be charged. The Council of the City of Modesto may, by resolution adopted from time to time, fix a fee for plan checking.

#### **3-1.302. APPEALS.**

Applicant may appeal the decision of the Fire Code Official to the City Council

within thirty (30) days from the date of the decision being appealed whenever the Fire Code Official:

1. Disapproves an application for use of alternate materials, methods and/or types of construction,
2. Disapproves an application for permit or refuses to grant a permit applied for,
3. When it is claimed that the provisions of the code do not apply, or
4. When it is claimed that the true intent and meaning of the code have been misconstrued or wrongly interpreted.

### **3-1.303. VIOLATIONS COMPLIANCE WITH ORDERS, NOTICES AND TAGS.**

Section 109.3 of the 2010 California Fire Code, Chapter 1 - Administration is hereby amended to read as follows:

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

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

### **3-1.304. ADMINISTRATIVE REMEDIES.**

In addition to any other remedies set forth in this chapter, administrative penalties may be imposed against any person, as defined in Section 1-6.207 of the Modesto Municipal Code, for violating any of the requirements set forth in this chapter. Any administrative penalties assessed shall be as follows:

- (a) For violations of Section 3-1.227, possession, sale, use or discharge of dangerous fireworks, the administrative penalty shall be seven hundred fifty dollars (\$750.00) for each specific act found to be in violation of that section.
- (b) For all violations of this chapter, other than Section 3-1.227, possession, sale, use or discharge of dangerous fireworks, the amount of the administrative penalty shall be two hundred fifty dollars (\$250.00) for the first violation, five hundred dollars (\$500.00) for a second violation within any twelve (12) month period, and seven hundred fifty dollars (\$750.00) for any subsequent violations within any twelve (12) month period.

#### **SECTION 2. FINDING AND DECLARATION.** As required by the 2010

California Fire Code Section 101.8, the Council of the City of Modesto finds and declares that the foregoing additions, modifications and changes to the regulations adopted pursuant to the 2010 California Fire Code are reasonably necessary because of local climate and geographic conditions. This ordinance also prescribes local procedures to be used in the administration and enforcement of this Code; provides for local interpretations of this Code, and makes other changes in this Code consistent with local custom and practice as reflected in the prior local Fire Code.

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

**SECTION 4. SAVINGS.** The provisions of this ordinance shall not affect any proceedings, suit or prosecution heretofore or hereafter commenced under the provisions of the

Municipal Code as they existed prior to the effective date of this ordinance. No offense committed and no liability, penalty or forfeiture, either civilly or criminally incurred under the provisions of the Municipal Code as they existed prior to the effective date of this ordinance shall be discharged or affected by the adoption of this ordinance; but prosecutions and suits for such offenses, liabilities, penalties or forfeitures shall be instituted or proceeded with in all respects as if this ordinance had not been adopted.

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 7 day of December, 2010, 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:

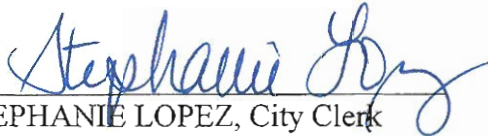
AYES: Councilmembers: Burnside, Geer, Hawn, Lopez, Marsh, Muratore, Mayor Ridenour

NOES: Councilmembers: None.

ABSENT: Councilmembers: None.

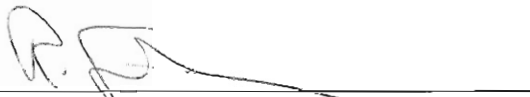
APPROVED:   
JIM RIDENOUR, Mayor

ATTEST:

By:   
STEPHANIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

By:   
SUSANA ALCALA WOOD, City Attorney

Ord. No. 3545

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 14th day of December, 2010, Councilmember Lopez moved its final adoption, which motion being duly seconded by Councilmember Hawn, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: 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

Effective Date: January 13, 2011

